

ORDINANCE NO. 246

AN ORDINANCE TO DEFINE AND ESTABLISH THAT WHICH CONSTITUTES A NUISANCE TO THE CITIZENS OF THE CITY OF CARLISLE, LONOKE COUNTY, ARKANSAS ESTABLISHING PROHIBITIONS AND PENALTIES WITH RESPECT THERETO, DECLARING AN EMERGENCY AND FOR OTHER PURPOSES

ARTICLE I. IN GENERAL

Sec. 1-1. Definitions

\* "Garbage" as all normal kitchen waste, such as vegetable and animal wastes and their byproducts, but does not include sewage and human body wastes.

\* "Rubbish" as brush, grass, leaves and other normal yard refuse, paper, cans, bottles and empty food and drink containers.

\* "Things" as inoperative motor vehicles, inoperative household or commercial appliances, furniture, building material, building rubbish, defective septic tanks, human or animal excrement, metal plastic or paper containers.

\* Abandoned: Property to which no person claims or exercises the rights of ownership.

\* Appliances: Mainly, but not limited to, refrigerators, freezers, stoves, ovens, air conditioners, washers, dryers, trash compactors, dishwashers, televisions, radios, hot-water heaters and plumbing fixtures.

\* Building Material: Mainly, but not limited to, boards, bricks, cement, nails, pipe, sheet metal, siding, tar paper and windows which have never been incorporated into a structure or which have been removed from a structure and may be readily incorporated into another structure. This article applies only to building material which lies in public view and with respect to which its owner has no definite immediate plans for its use.

\* Building rubbish: Any post-construction solid waste, which because of its quantity, quality or condition cannot be readily and immediately put to a beneficial use.

\* Inoperative: An item which, by mechanical or physical defect, no longer can be used for its intended purpose and which is not serving a functional purpose. Inoperative, when applied to motor vehicles, refers to any motor vehicle which is inoperable, dismantled, damaged or unable to start or move under its own power.

A vehicle is presumed to be inoperative when any of the following conditions exist: It has not been moved for more than thirty days; one or more tires are flat; one or more wheels are missing; the hood or trunk is raised or missing and has appeared to remain so for more than thirty days; weeds or grass have grown up around the vehicle; the engine is missing; the vehicle has no current vehicle tags or registration; the door or doors, fender or fenders are removed or missing; the front or rear windshield is broken, removed or missing or the side windows are broken, removed or missing.

\* Motor vehicle: Every device capable of being moved upon a public highway and in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.

\* Unsanitary: A place, condition or thing that is unsightly when it is in public view and offends the then-prevailing standard of the community as a whole and not limited to a specific area, as to aesthetics or order.

\* Weed: Any vegetation, lush or decayed, regardless of its beauty or utility and regardless of the fact that it might serve as a sanctuary for animals beneficial to man, which, because of its natural

condition or lack of maintenance by the owner or occupant of the property, threatens the health or safety of the community or creates an unsightly condition thereon.

**Sec. 1-2. Penalty.**

Any person convicted of a violation of any of the provisions of this article shall be guilty of a misdemeanor and shall be subject to a fine of not more than \$100.00 per day per violation from the date of citation. This penalty shall be in addition to any other remedies and/or sanctions available to the City and set forth herein elsewhere.

**Sec. 1-3. Prohibited generally; abatement.**

(a) It shall be unlawful for any person having supervision or control of any lot, tract, parcel of land or portion thereof, within the corporate limits of the city to suffer or permit any of the following:

- (1) Grass, weeds, or any other plant that is not cultivated, to grow to a greater height than ten (10) inches on an average on an individual lot, tract, parcel or to grow in rank profusion upon the premises.
- (2) Rubbish, brush, trash, dead trees, building materials or any other objectionable unsightly or unsanitary matter of whatever nature to accumulate or be present upon any lot, tract or parcel of land. If building materials are stored on the premises, all such material must be stored at least eighteen (18) inches off the ground.
- (3) Grass, weeds or any plant that is not cultivated, to grow in rank profusion, or otherwise, in, along, upon or across the abutting sidewalk or parkway, to a height of more than ten (10) inches on the average.
- (4) The storage of a junk an/or abandoned automobile for a period not to exceed thirty (30) days, unless it is in connection with an automotive sales or repair business enterprise which operates under a duly licensed and exhibited privilege license and is located in a properly zoned area. In this paragraph "abandoned automobile" means any motor vehicle or part thereof that is in a state of disrepair and incapable of being moved under its own power or does not have a current license plate.
- (5) The open storage of iceboxes, refrigerators, or any other appliances or furniture for a period not to exceed thirty (30) days and during storage period, all doors, latches and locks are to be removed or made inoperative in a manner to ensure the safety of all citizens, unless it in connection with an appliance sales or repair business enterprise which operates under a duly issued and exhibited privilege license and is located in a properly zoned area.
- (6) The use of any stream or drainage way for the purpose of throwing or placing of stumps, grass, weeds, brush, litter, rubbish, or any other liquid or solid material within or along the banks of any such stream or natural drainage way, unless required permits have been obtained.
- (7) The accumulation of stagnant pools of water, or allow any form of vessel that might accumulate water in which mosquitoes or other insects may breed.
- (8) The property, including all adjacent rights-of-way and alleys, to be used for illegal dumping of any solid or liquid, household, commercial, industrial, construction or demolition waste, including but not limited to: garbage, trash, furniture, tin cans, bottles, rubbish, refuse, lumber, whether dumped, thrown, burned, spilled or abandoned, unless required permits have been obtained.
- (9) Trees, shrubs, bushes or any other plant impeding the flow of pedestrian traffic

on any sidewalk and/or public right-of way, or in any other manner causing an unauthorized obstruction of the public enjoyment of a sidewalk and/or public right-of-way.

(10) Any act or condition constituting a nuisance under A.C.A. or common law.

(b) Whenever the city employee designated by the mayor or his duly authorized agent or representative, determines that there are reasonable grounds to believe that there has been a violation of any provisions of this section, he shall give notice of such alleged violation to the person responsible therefor, that such alleged violation shall constitute a nuisance. Such notice shall:

(1) Be in writing.

(2) Include a statement of the reasons why it is being issued, and the sections of the code that are alleged to be in violation.

(3) Allow a maximum of thirty (30) days for performance of any act it requires.

(4) State, that if such alleged violations are not voluntarily corrected within the stated time as set forth in the notice, the city employee designated by the mayor or his duly authorized agent or representative, shall institute legal proceedings, charging the person with a violation of this section.

(c) The person responsible for the violation shall be notified by one (1) or more of the following methods:

(1) By delivery to the owner, agent or responsible party, personally.

(2) By leaving the notice at the usual place, abode or business of the owner, Agent or responsible party, with a person of suitable age and discretion.

(3) By depositing the notice in the United States Post Office, addressed to the owner, agent or responsible party, at his last known address by certified mail, postage prepaid thereon.

(4) By posting and keeping posted for a period of not less than twenty-four (24) hours, a copy of the notice in a conspicuous place on the premises, alleged to be in violation.

#### Sec. 1-4. Trash, weeds, etc.

(a) The city employee designated by the mayor may order the owner or occupant of any real property within the city to cut weeds, remove garbage, rubbish and other unsightly and unsanitary articles and things that may be upon the property; and to eliminate, fill up, or remove stagnant pools of water or any other unsanitary thing, place or condition which might become a breeding place for mosquitoes, flies and germs harmful to the health of the community. The order shall be in writing and shall be issued to the owner of the real property involved. If the owner of any real property is unknown or his whereabouts is not known or he is a nonresident of this state, then a copy of the written notice shall be posted upon the premises in some prominent place.

(b) If the owner of any real property within the city neglects or refuses to remove, abate or eliminate any such condition as provided for in subsection (a) of this section after having been given thirty (30) days notice in writing to do so, the city department designated by the mayor may do whatever may be necessary to correct the condition and charge the cost thereof to the owner of the real property. The city shall have a lien against such property for the cost.

(c) The lien may be enforced and collected in either of the following manners:

(1) Within eighteen (18) months after work has been done, by an action in the circuit court.

(2) The amount of the lien may be determined at a hearing before the city council held after thirty (30) days written notice by certified mail to the owner(s) of the property, if the name and whereabouts of the owner(s) be known. If the name of the owner(s) cannot be determined, then the hearing before the city council may be held after publication of notice of such hearing in a newspaper having a bona fide circulation in the county, for one (1) insertion per week for four (4) consecutive weeks. The amounts due the city as determined at the hearing, including all costs incurred by the city relevant to the nuisance, plus ten percent (10%) penalty for collection, shall be that certified by the city council to the county tax collector, and by him placed on the tax books as a penalty to be collected in the manner and with the priority of delinquent taxes, and the amount, less three percent (3%) thereof, when so collected, shall be paid to the city.

## ARTICLE II. UNSAFE BUILDINGS OR STRUCTURES

### Sec. 2-1. Violation.

It shall be a violation of this article for any owner, as defined herein, to permit, allow to remain, fail to take action to demolish and/or remove or correct, or fail to board and secure any dangerous, dilapidated, substandard or unsafe building or structure as directed by the city pursuant to sections 2-5 and 2-6.

### Sec. 2-2. Jurisdiction.

In every case in which any person shall be prosecuted and found guilty of a violation of any of the provisions of this article or any other ordinance of the city in relation to nuisances, it shall be competent for, and shall be the duty of the district court, if the circumstances of the case require it, to make an order requiring the removal, abatement or discontinuance of the nuisance shown in such case, and to order and direct that if within a reasonable and given time therein named, the same shall not be removed, abated or discontinued by the person or persons proceeded against therefore, such nuisance shall be abated or removed by the city employee designated by the mayor with such assistance as he may deem necessary to call to his aid for that purpose, and in such case the person proceeded against shall be responsible for all the costs and expenses incurred in the removal or abatement of such nuisance by the city.

### Sec. 2-3. Definitions.

The following words, terms and phrases, when used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Dangerous* means, with reference to a building or structure, that it:

- (1) Is so damaged, decayed, dilapidated, unsanitary, unsafe or vermin-infested that it creates a serious hazard to the health or safety of the occupant or of the public.
- (2) Lacks illumination, ventilation, or sanitation facilities adequate to protect the health or safety of the occupants or of the public.
- (3) Is a dilapidated building or structure.
- (4) Is a substandard building or structure.
- (5) Is an unsafe building or structure.

*Dilapidated building or structure* means a building, structure, dwelling, dwelling unit, multiple dwelling, apartment, apartment house including among others, a garage, shed, and

similar accessory structure, which by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment, is unsafe, unsanitary, or which constitute a fire hazard, or is otherwise dangerous to human life and are no longer adequate for the purpose for which they were originally intended.

*Owner* means the holder of the title in fee simple and any person in whose name tax bills on property are submitted. "Owner" also means any person who, alone or jointly or severally with others:

(1) Has legal title to any building or structure, with or without accompanying actual possession thereof, or

(2) Has charge, care or control of any building or structure, as owner, executor, executrix, administrator, trustee, guardian of the estate of the owner, mortgagee or vendee in possessions, assignee of rents, lessee, or other person in control of a building or structure, or his duly authorized agents. Any such person thus representing the actual owner shall be bound to comply with the provisions of this article, and of rules and regulations adopted pursuant thereto, to the same extent as if he were the owner.

*Substandard dwelling or structure* means a dwelling unit, multiple dwelling, apartment, apartment house or any other space used or intended to be used as a habitable living space in any building or structure which does not meet the basic requirements for such use.

*Unsafe building or structure* means a building or structure that is unsafe. All dwellings, apartment houses, rooming houses or buildings or structures, used as such, which are unsafe, unsanitary, unfit for human habitation, or not provided with adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use constitute a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment.

#### **Sec. 2-4. Penalty.**

Any person convicted of a violation of any of the provisions of this article shall be guilty of a misdemeanor and shall be subject to a fine of not more than \$100.00 per day per violation from the date of citation. This penalty shall be in addition to any other remedies and/or sanctions available to the City and set forth herein elsewhere.

#### **Sec. 2-5. Abatement notice and notice to vacate.**

(a) Whenever the city employee designated by the mayor declares a building or structure to be dangerous or unfit for human habitation, he shall give notice to the owner of such declaration by placarding the building or structure. The notice shall:

(1) Be in writing.

(2) Include a description of the real estate sufficient for identification.

(3) Include a statement of the reasons why it is being issued.

(4) State time within which the building or structure occupants must be vacated, if appropriate.

(5) Require that all necessary permits be secured and work commenced within thirty (30) days and continue to satisfactory completion within such time as the city employee designated by the mayor determines.

(6) State that, if such repairs, reconstruction, alteration, removal or demolition are not completed within the stated time as set forth in the notice, the city may institute legal proceedings by charging the person with a violation of this article or may cause through demolition or otherwise, an abatement of the nuisance.

(7) State that the owner shall board and secure the structure or condition within the time set forth in the notice and that the owner shall maintain such boarding or securing at all times until the structure is brought into full compliance with this article or is razed and removed following approval and permitting as otherwise required or specified by the city. Boarding and securing of the structure or condition does not relieve the owner of the requirement to diligently pursue rehabilitation and repair or demolition and/or removal of the structure or condition. All boards and materials used to secure shall be weatherproofed or treated and shall be painted and maintained with a color of paint which blends with the overall structure.

(b) Service of the notice shall be as follows:

(1) By delivery to the owner personally, or by leaving the notice at the usual place of abode or the owner with a responsible adult; or

(2) By depositing the notice in the United States Post Office addressed to the owner at his last known address by certified mail, return receipt requested, with postage prepaid thereon;

(3) By posting and keeping posted for twenty-four (24) hours a copy of the notice in placard form in a conspicuous place on the premises to be vacated or repaired.

#### **Sec. 2-6. Abatement by city.**

(a) If the owner, agent or person in control of premises subject to a notice served pursuant to this article cannot be found within the stated time limit, or if the owner, agent, or person in control fails, neglects, or refuses to comply with the notice to repair, rehabilitate, secure, or demolish and remove the building or structure the city, after having ascertained the cost, may cause such building or structure to be abated, demolished or secured. The city shall require that the building or structure remain vacant during the pendency of the action or until the nuisance is abated.

(b) Expenses incurred by the city under this section shall be charged to the owner of the involved and shall be collected in the manner as provided in section 1-4 of Article I.

#### **Sec. 2-7. Vacating of building or structure.**

(a) Any building or structure that has been ordered to be vacated under this article shall be vacated within thirty (30) days after notice to do so has been given to the owner or occupant of the building or structure.

(b) No building or structure that has been ordered vacated pursuant to this article and so placarded shall be used for human habitation without approval of the city and after unfit placard is removed by the city. The city shall remove such placard whenever the defect or defects upon which placarding action were based have been eliminated.

#### **Sec. 2-8. Removal of placard notice.**

No person shall deface or remove a placard posted pursuant to this article unless authorized to do so.

#### **Sec. 2-9. Emergency abatement.**

Any buildings, walls, or party walls or any portions thereof, chimneys, or other structures in the city that from fire, excavation, improper erection or construction, or from any other cause, which at any time become unsafe or dangerous to life and limb, shall be razed and removed, or made secure by the city, if within twenty-four (24) hours from the time of serving notice, the owner of record fails to commence rehabilitation of or removal of the same and if within seventy-two (72) hours, the owner of record, shall fail to complete the removal.

The city shall place and enforce a lien upon the premises for expenses incurred by the city.

### ARTICLE III. REPEALING CLAUSE

#### Sec. 3-1.

All ordinances, specifically Ordinance numbers 136, 214, and 235, of the City of Carlisle, Lonoke County, Arkansas and/or parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

### ARTICLE IV. EMERGENCY CLAUSE

#### Sec. 4-1.

That it is hereby ascertained and declared that the abatement of nuisances within the City of Carlisle, Lonoke County, Arkansas is necessary for the public welfare, safety, comfort, and convenience of the inhabitants of the City of Carlisle, Lonoke County, Arkansas, an emergency is hereby declared, and this Ordinance shall take effect immediately upon its passage and approval.

PASSED THIS 23 DAY OF MAY, 2002.

BRENDA HORNER  
MAYOR

ATTEST:

TORI MATAR  
CLERK