

## ORDINANCE # 2013-04

### AN ORDINANCE REQUIRING LAND OWNERS IN THE CITY OF TUCKERMAN TO MAINTAIN PREMISES IN SAFE AND SANITARY MANNER, REQUIRING THAT WEEDS AND GRASS BE CUT, AND THAT UNSAFE OR VACANT STRUCTURES BE REMOVED, AND FOR OTHER PURPOSES

**Whereas:** pursuant to Arkansas Code Annotated section 14-54-901 et seq. Incorporated towns and cities of the first and second class are empowered to order the owner of lots and other real property within their towns or cities to cut weeds; to remove garbage, rubbish, and other unsightly and unsanitary articles and things upon the property, remove unsafe or vacant structures, 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, after the town or city has provided therefor by an ordinance to that effect;

**And, Whereas:** the previous Ordinance No, 298 did not adequately cover all circumstances involved, and therefore Ordinance No 298, is hereby repealed, and Whereby this Ordinance is necessary to require Land Owners in the City of Tuckerman, Arkansas to maintain their premises in a safe and sanitary manner, and to protect the Citizens of Tuckerman, requiring that weeds and grass be cut, and that unsafe or vacant structures be removed, and for other purposes, and pursuant to the powers granted the City of Tuckerman by Arkansas Code Annotated section 14-54-901 et seq.;

**Now Therefore Be It Ordained and Established by the City Council of Tuckerman.**

**Section 1.** Ordinance No. 298 is hereby repealed.

**Section 2.** All property owners within the City of Tuckerman, Arkansas, are hereby required to cut weeds, grass, remove garbage, rubbish and other unsightly articles and things from their property, remove unsafe or vacant structures, and to eliminate, fill up, or remove stagnant pools of water, or any other unsanitary things, places or conditions which might become a breeding place for mosquitoes, flies other noxious insects, and germs harmful to the health of the community.

**Section 3.** If the owner or owners of any lot or other real property within the City of Tuckerman, Arkansas, after the giving of seven (7) days notice in writing by the Mayor or Code Enforcement Officer shall refuse or neglect to perform the duties as set out in this Ordinance in connection with his or her real property as specified in Section 2 herein, the real property owner or owners shall be considered in violation of this Ordinance and may be punished in accordance with the provisions hereinafter set forth.

(A) (1) In case the owner of any lot or other real property is unknown or his or her whereabouts is not known or he or she is a nonresident of this state, then a copy of the written notice under §14-54-903 shall be posted upon the premises.

(2) Before any action to enforce the lien, the municipal recorder or the city clerk shall make an affidavit setting out the facts as to unknown address or whereabouts of



nonresidents.

(B) (1) Thereupon, service of the publication as provided for by law against nonresident defendants may be had.

(2) An attorney ad litem shall be appointed to notify the defendant by certified letter addressed to his or her last known place of residence if it can be found.

(C) Except as provided in subsection (b) of this section, notices required by this subchapter shall be published, mailed, or delivered by the municipal recorder or the city clerk or other person as designated by the Tuckerman City Council.

(D) Notwithstanding any other provision of law, after a notice has been issued for a specific violation of this Ordinance directing an owner to eliminate a condition on the owner's property, any additional notice for a subsequent violation of that specific violation within the same calendar year shall not be required before the issuance of a citation.

**Section 4.** All lands within the City Limits dedicated to growing agricultural products or crops or validly enrolled in a government sponsored conservation or agricultural program shall be exempt from this Ordinance.

**Section 5.** Every person convicted of a violation of any provision of this Ordinance shall be fined not less than \$100.00 nor more than \$500.00. Each day of violation beyond the initial seven day notice period that the conditions are allowed to continue shall be considered as an additional violation and be punished accordingly.

**Section 6. Definitions:** As used in this Ordinance:

(A) (1) "Clean-up lien" means a lien securing the cost of work undertaken by the City of Tuckerman to remove, abate, or eliminate a condition in violation of local codes or ordinances.

(2) A clean-up lien may have priority against other lienholders as provided in this section;

(B) "Court lien" means a lien securing the fines or penalties imposed by a court of competent jurisdiction against the owner of an unsafe and vacant structure or weed lot for failure to comply with applicable building codes that have been secured by a court lien by action of the Tuckerman City Council;

(C) "Priority clean-up lien" means a clean-up lien for work undertaken the City of Tuckerman on an unsafe and vacant structure or weed lot that is given priority status over other lienholders following notice and hearing;

(D) "Unsafe and vacant structure" or an "abandoned home or residential property" means:

(1) A structure located on previously platted and subdivided property that is not fit for human habitation and has been declared unsafe and vacant by the City of Tuckerman in which it is located in violation of this Ordinance; or

(2) A home or residential property that is:



(a) Unoccupied;

(b) In violation of a city safety standard; and

(c) Located in an area eligible for federal funds under §14-54-905; and

(E) "Weed lot" means a previously platted and subdivided lot that is vacant or upon which an unsafe and vacant structure is located and that contains debris, rubbish, or grass which is higher than seven (7) inches above the ground.

#### Section 7. liens

(A) If the owner or lienholder of any lot or other real property within the City of Tuckerman neglects or refuses to remove, abate, or eliminate any condition under an ordinance passed by the city or town as provided in §14-54-901, after having been given seven (7) days' notice in writing to do so, then the City of Tuckerman may do whatever is necessary to correct the condition and to charge the cost thereof to the owner of the lots or other real property.

(B) (1) The City of Tuckerman is given a lien against the property for the costs, including all administrative and collection costs.

(2) The City of Tuckerman shall file the lien with the circuit clerk no later than one hundred twenty (120) days after the town or city completes the clean-up work on the property.

(C) The City of Tuckerman may perfect its clean-up lien as a lien against the property if the property:

(1) Contains an unsafe and vacant structure; or

(2) Has been cited as a weed lot.

(E) The clean-up lien amount shall equal costs, including administrative costs, that the City of Tuckerman incurs to help bring the property into compliance with this Ordinance because the owner or lienholder failed to remove or repair an unsafe and vacant structure or failed to correct the conditions that caused the property to become a weed lot or overgrown by weeds within the time required by the notice.

(F) (1) If a court of competent jurisdiction levies fines or penalties against the owner of an unsafe and vacant structure or weed lot for failure to comply with applicable building codes, then the Tuckerman City Council, by majority vote, from time to time and subject to notice and hearing provided by this section, may secure any outstanding court fines or penalties resulting from the owner's failure to clean up an unsafe and vacant structure or weed lot with a court lien against the property for the full value of all the outstanding fines and penalties.

(2) A court lien does not have first priority status over prior recorded liens and may be imposed in addition to clean-up liens.



(3) (a) Notices shall be sent by regular mail and by certified mail, return receipt requested.

(b) Notice to an owner is sufficient if sent to the owner's address of record with the applicable county treasurer or collector.

(G) (1) If the City of Tuckerman wishes to secure a priority clean-up lien, it shall provide seven (7) business days' notice to lienholders before undertaking any work at the property.

(2) Notice is sufficient if the notice is sent to the lienholder's address shown in the relevant land records.

(3) The City of Tuckerman is not required to give notices to holders of unrecorded liens or to unrecorded assignees of lienholders.

(4) Any lienholder receiving notice under this section shall send, within seven (7) business days from receipt of the notice, a written response to the City of Tuckerman indicating whether the owner of the property is in default under the terms of the note or mortgage.

(5) Any notice required under this section may be issued by a:

(a) Police officer employed by the City of Tuckerman;

(b) The City of Tuckerman City attorney; or

(c) Code enforcement officer employed by the City of Tuckerman.

(6) After the work has been completed, the City of Tuckerman shall provide second notice to the owner of the total amount of the clean-up lien, including administrative and filing costs.

(7) If the City of Tuckerman wishes to secure a priority clean-up lien after the work has been completed, it shall provide second notice to the lienholders of record of the total amount of the clean-up lien.

(8) The City of Tuckerman is not required to give notice of court liens to prior lienholders.

(9) Notice of the amount of a clean-up lien or a court lien may be combined with the notice of the hearing before the governing body to create and impose the clean-up lien or court lien.

(a) The amount of any clean-up lien or court lien provided in this section may be determined at a public hearing before the Tuckerman City Council held after thirty (30) days' written notice by mail, return receipt requested, to the owner of the property if the name and address of the owner are known and to the lienholders of record.

(b) If the name of the owner cannot be determined, then the amount of the



clean-up lien or court lien shall be determined at a public hearing before the Tuckerman City Council only after publication of notice of the hearing in a newspaper having a bona fide circulation in the county where the property is located for one (1) insertion per week for four (4) consecutive weeks.

(c) (1) The determination of the Tuckerman City Council confirming the amount of any clean-up lien or court lien and creating and imposing any clean-up lien or court lien under this section is subject to appeal by the property owner or by any lienholder of record in the circuit court, filed within forty-five (45) days after the determination is made.

(2) If the owner or lienholder fails to appeal in this time, the lien amount is fully perfected and not subject to further contest or appeal.

(3) The City of Tuckerman shall file its lien with the circuit clerk no later than sixty (60) days after Tuckerman City Council confirms the lien amount, or if the lien is appealed, within sixty (60) days after the City of Tuckerman wins on appeal.

(H) (1) If the City of Tuckerman wishes to secure a first-priority status for any priority clean-up lien created and imposed under this section, it shall file an action with the circuit court within which the property is located seeking a declaration that the clean-up lien is entitled to priority over previously recorded liens and naming the holders of the recorded liens as defendants.

(2) Priority status shall be awarded to the priority clean-up lien with respect to any previously recorded lien if the court determines that such lienholder has failed to exercise its rights to foreclose its lien when the obligation it secures becomes in default or has failed to pay the costs of work undertaken by City of Tuckerman that composes the clean-up lien. However, the amount as to which the clean-up lien shall have priority shall be the amount the court finds reasonable and is limited to:

(a) No more than one thousand dollars (\$1,000) for grass or weed cutting;

(b) No more than five thousand dollars (\$5,000) to board and secure the property;

(c) No more than seven thousand five hundred dollars (\$7,500) to demolish any structures on the property; or

(d) No more than fifteen thousand dollars (\$15,000) for environmental remediation.

(I) The liens provided for in this Ordinance may be enforced and collected at any time within ten (10) years after a lien has been filed in either one (1) of the following manners:

(1) By an action for foreclosure in the circuit court by the City of Tuckerman, or if the City of Tuckerman has established a land bank, by a land bank that has been assigned the lien; or

(2) (a) The amount so determined at the hearing, plus ten percent (10%) penalty for collection, shall be certified by the Tuckerman City Council to the tax collector of the county where the City of Tuckerman is located and placed by him or her on the tax books



as delinquent taxes and collected accordingly.

(b) The amount, less three percent (3%) thereof, when so collected shall be paid to the municipality by the county tax collector.

(J) (1) In any situation in which the City of Tuckerman issues an order for the removal, repair to return the structure to compliance with minimum building code standards, or razing of a building or house under the provisions of §14-56-203 and this Ordinance and such order is not complied with by the owner of the building or house and the city then removes, repairs, or razes the building or house, a lien is granted and given against the real property for the cost of the removal, repair, or razing.

(2) If the city determines to repair the building or house to meet the minimum building code standards, the city shall comply with all necessary requirements under §14-58-303 and this Ordinance for competitive bidding for purchases of supplies and materials or for contracts for work or labor needed to complete the repairs on the building or house.

(K) The lien granted by this subsection shall also be enforced pursuant to the lien enforcement procedures set forth in subsection (a) of this section.

(L) In all suits brought to enforce the liens described in this section, the reimbursement of costs, including title search fees and reasonable attorney's fees, shall be awarded to the City of Tuckerman.

**Section 8. Repealer.** All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

**Section 9. Emergency.** It is found and declared by the City Council of the City of Tuckerman, Arkansas, that there is an increasing need for the cutting of weeds, grass, vines and low-hanging limbs and removal of unsafe or vacant structures by the owners and persons in possession of real property and that failure to do so creates a health and traffic hazard, and an emergency is hereby declared to exist and this Ordinance being necessary for the preservation of the public peace, health and safety, shall take effect immediately after its passage, approval, and publication as required by law.

PASSED AND APPROVED this 10<sup>th</sup> day of September, 2013.

Larry R. Bowen  
MAYOR

Sept. 10, 2013  
DATE:

ATTEST:

Carol A. Bowen  
CITY CLERK Alderman

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