

ORDINANCE NO. A-535

AN ORDINANCE TO AMEND SECTIONS 11-42, 11-43, 11-44, 11-45 AND 11-46 AND TO ADD A NEW SECTION TO BE NUMBERED 11-47 AND TO REPEAL SECTIONS 11-15, 11-16 AND 11-17 OF THE CODE OF ORDINANCES OF THE CITY OF CROSSETT AND DECLARING AN EMERGENCY.

WHEREAS, the city's present ordinances dealing with the procedure and authority for the city to condemn and remove dilapidated or unsafe buildings, houses and structures is presently inadequate; and

WHEREAS, the city's ordinances dealing with the procedure and authority for the city to require the removal of litter, as defined by Section 11-27(5), as amended, of the Code of Ordinances of the City of Crossett, Arkansas is presently inadequate; and

WHEREAS, Ark. Code Ann. §14-56-201, et seq., authorizes the city to remove or raze any building or house that is dilapidated, unsightly, unsafe, unsanitary, obnoxious, or detrimental to the public welfare; and

WHEREAS, Ark. Code Ann. §14-54-901 authorizes cities to order the owner of lots and other real property within the city to cut weeds and remove trash, garbage, rubbish, and other unsightly and unsanitary articles and things from the property; and

WHEREAS, it is now desirable to enact an ordinance to provide for the authority and procedure to govern the removal or razing of buildings, houses or other structures in the city that have become dilapidated, unsightly, unsafe, unsanitary, obnoxious, or detrimental to the public welfare and to provide for the cutting of weeds and removal of garbage, rubbish, litter and other unsightly and unsanitary articles or things on private property located within the city.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CROSSETT, ARKANSAS:

SECTION 1: Sections 11-42, 11-43, 11-44, 11-45 and 11-46 are amended to read as follows:

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WHEREAS, Ark. Code Ann. §14-54-901 authorizes cities to order the owner of lots and other real property within the city

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order the owner of lots and other real property within the city to cut weeds and remove trash, garbage, rubbish, and other unsightly and unsanitary articles and things from the property located within the city.

WHEREAS, it is now desirable to enact a code to provide for the authority and procedure to govern the razing of buildings, houses or other structures in the city that have become dilapidated, unsightly, unsafe, obnoxious, or detrimental to the public welfare and for the cutting of weeds and removal of garbage, rubbish, and other unsightly and unsanitary articles or things on property located within the city.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF CROSSETT, ARKANSAS:
SECTION 1: Sections 11-42, 11-43, 11-44, 11-45 and 11-46 are amended to read as follows:

Section 11-42. Weeds, Litter, Unsightly Articles and Dilapidated Buildings Prohibited.

(a) **Weeds, Litter and Unsightly Articles.** It shall be unlawful for the owner of any lot or other parcel of real property located within the city limits to permit weeds, trash, garbage, rubbish, litter, household appliances, motor vehicle parts, abandoned or inoperable motor vehicles and other unsightly and unsanitary articles, things or conditions to exist on their property or to permit stagnant pools of water or other unsanitary conditions to exist which might become a breeding place for mosquitos, flies and germs harmful to the health of the community.

(b) **Dilapidated Buildings.** It shall be unlawful for the owner of any lot or other parcel of real property located within the city to permit any building, house or other structure that has become dilapidated, unsightly, unsafe, unsanitary, obnoxious or detrimental to the public health and welfare to exist on the property.

(c) **Definitions.** For purposes of this section, the words "litter", "garbage", and "rubbish" shall have the same definition as contained in Section 11-27 of the Code of Ordinances of the city as now defined or hereafter amended.

(d) **City Engineer to Administer.** The city engineer or building official shall be responsible for determining whether a property owner is in violation of subsection (a) or (b) above. A determination by the city engineer or building official shall be final. When the city engineer or building official determines that a prohibited condition exists, he shall prepare a report describing the prohibited condition, the street address or location and the name or names of the owner of the property. He shall promptly furnish the original of the report to the city clerk who shall immediately notify the owner of the violation as provided in Section 11-44 of this ordinance.

If the owner fails to correct the prohibited condition within the allowed time, the city engineer or building official shall take the necessary action to correct the prohibited condition including, if necessary, contracting with a third party to correct the condition. Upon correcting the condition, the city engineer or building official shall file a detailed report with the city clerk itemizing all expenses, including notice and publication expenses, incurred by the city in correcting the condition. The city clerk shall notify the property owner of the hearing time, date and place when the city council will determine the amount of charges and lien to be assessed against the property and its owner.

Section 11-43. Refusal of Owner to Comply; Lien

(a) If the owner of any lot or other real property within the city shall neglect or refuse to remove, abate, or eliminate any condition that is prohibited under Section 11-42 of this ordinance, after having been given seven (7) days' notice in writing to do so, the city is authorized to remove, abate, raze, correct or eliminate the condition and to charge the cost thereof to the owner of the property.

(b) If the nature of the prohibited condition is such that the owner cannot correct or abate the condition within seven (7) days due to weather or other problems beyond the owner's control, the owner may apply to the City Engineer or building official for a seven (7) day extension which the City Engineer or building official may grant only if the owner has made a good faith effort to correct or abate the prohibited condition. Only one extension may be granted.

(c) If it is necessary for the city to remove, abate, raze or eliminate the prohibited condition, the city shall have a lien against the property for all costs incurred in abating the condition including publication expense, cost of service of notice plus a ten percent (10%) penalty.

Section 11-44. Notice to Owner.

(a) Notice to resident owners. Notice to abate the prohibited condition may be given owners residing in the State of Arkansas by personal service of the notice to the resident owner. Personal service shall be completed by delivering the notice to the owner by any certified law enforcement officer in the Crossett Police Department or by any person authorized to serve process under Rule 4, Rules of Civil Procedure. Personal service shall be completed as provided by Rule 4(d), Rules of Civil Procedure, as now adopted or as hereafter amended. Notice to a resident owner may also be completed by the city clerk mailing a copy of the notice to the owner by certified mail, deliver to addressee only, with restricted delivery to the addressee at the last known address of the owner in accordance with the requirements of Rule 4(d)(8), Rules of Civil Procedure. Provided, however, that the length of time to correct or abate the prohibited condition shall be seven (7) days as provided by Ark. Code Ann. §14-54-903 and Section 11-43 above.

(b) Notice to Non-Resident Owners. Notice to non-resident owners shall be given by the city clerk mailing the notice to the owners at their last known address pursuant to the provisions of Rule 4(e), Rules of Civil Procedure.

(c) Service Upon Owner Whose Identity or Whereabouts Is Unknown. Where it appears by affidavit of the city clerk that, after diligent inquiry, the identity or whereabouts of the owner remains unknown, service shall be by warning order issued by the city clerk and published for two consecutive weeks in a newspaper having general circulation in the city and by mailing a copy of the notice and warning order to the owner at the owner's last known address, if any, by any form of mail with delivery restricted to the addressee and by posting a copy of the notice on the property for seven (7) consecutive days.

Section 11-45. Correction or Abatement By City.

(a) If the owner of any lot or other real property within the city shall neglect or refuse to remove, abate or eliminate the prohibited condition after notice has been given, the city is authorized to do whatever is necessary to correct the condition and charge the cost thereof to the owner. In correcting the condition, the city may itself, or through contracting with a third party, correct or abate the prohibited condition. If the prohibited condition

involves a dilapidated, unsightly, unsafe or unsanitary building, residence or structure, the city may, through its fire department, raze the structure by burning it.

(b) If it becomes necessary for the city to correct or abate a prohibited condition, it shall not be obligated to protect nor be liable for the loss or destruction of any property that may be damaged or destroyed in the process.

Section 11-46. Enforcement of Lien By City.

(a) The lien provided for in Ark. Code Ann. §14-54-903 and Section 11-43 of this ordinance may be enforced and collected in either one of the following manners:

1. At any time within eighteen (18) months after the work has been done, by filing an action in Ashley County Chancery Court to foreclose its lien on the property; or

2. The amount of the lien provided in §14-54-903, as amended, and as provided by Section 11-43 of this ordinance, may be determined at a hearing before the Crossett City Council held after thirty (30) days' written notice by certified mail, return receipt requested, deliver to addressee only, to the owner of the property if the name and whereabouts of the owner are known. Alternatively, the city may serve the notice on the owner personally as provided by Section 11-44(a) above. If the name of the owner cannot be determined, then the amount will be determined only after publication of notice of the hearing in a newspaper having a bona fide circulation in the City of Crossett for one insertion per week for four consecutive weeks. After the hearing by the council, the council shall furnish, in writing, the amount charged, including penalty, for correcting the prohibited condition. The determination of the governing body is subject to appeal by the property owner to the Ashley County Circuit Court. If no appeal is filed within thirty (30) days of the hearing date by the Crossett City Council, the determination by the council shall become final and non-appealable. After the amount becomes final and non-appealable, the amount shall be certified by the Crossett City Council to the Ashley County Tax Collector who shall place the amount on the ad valorem tax books as delinquent taxes and shall be collected accordingly. The amount, less three percent (3%) thereof, when so collected shall be paid to the City of Crossett by the Ashley County Tax Collector.

Section 11-47. Penalty. Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding twenty-five dollars (\$25.00). Each day such a violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

SECTION 2: All laws and parts of laws in conflict herewith are hereby repealed including specifically Sections 11-15, 11-16, 11-17, 11-42, 11-43, 11-44, 11-45 and 11-46 of the Code of Ordinances of the City of Crossett, Arkansas.

SECTION 3: Emergency Clause. The Crossett City Council finds that there are numerous houses and other structures in the City of Crossett that are in a dilapidated, unsightly and unsanitary condition and that these structures are sometimes used for illegal purposes and in addition constitute a nuisance and health hazard to neighboring property. The city council also finds that property owners are allowing abandoned automobiles, appliances, litter, trash and other unsightly articles and things to accumulate on their property which constitutes a hazard to the health, safety and welfare of the inhabitants of the city so that an emergency is declared to exist and this ordinance shall become effective immediately upon its adoption and publication as required by law.

Adopted this 17 day of August, 1992.

CITY OF CROSSETT, ARKANSAS

BY: Leslie M. Black
LESLIE M. BLACK, MAYOR

ATTEST:

Nelson Toler
NELSON TOLER, CITY CLERK/TREASURER