

ORDINANCE NO. 07-05-2007

AN ORDINANCE PROHIBITING THE MAINTENANCE OR KEEPING OF ANY HOUSE, BUILDING OR STRUCTURE WITHIN THE CITY OF ELKINS WHICH HAS BECOME DILAPIDATED, UNSAFE, UNSANITARY, OR DETRIMENTAL TO PUBLIC WELFARE OR THE HEALTH OF THE COMMUNITY; PRESCRIBING A PROCEDURE TO BE FOLLOWED IN PROVIDING NOTICE AND REMOVAL OF THE CONDITION; REPEALING ALL CODE SECTIONS IN CONFLICT HEREWITH; REPEALING ELKIN'S MUNICIPAL CODE CHAPTER 5.16; ADOPTING A NEW CHAPTER 5.18 OF THE ELKINS MUNICIPAL CODE; AND FOR OTHER PURPOSES.

WHEREAS, unsafe, unsanitary, and dilapidated houses, buildings and structures, or portions thereof, within the City of Elkins pose an unnecessary risk to the residents of the City as well as visitors.

WHEREAS, the City should endeavor to protect its residents and visitors to the City from the harmful effects of such conditions.

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

SECTION 1: There is hereby adopted an Ordinance regulating the condition of houses, buildings and structures, or portions thereof, within the City of Elkins, Arkansas. Effective with the passage of this Ordinance the following shall be added as Chapter 5.18 of the Elkins Municipal Code.

Maintenance of Houses, Buildings and Structures

Sections

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Section 5.18.01: Prohibited Conduct

It shall be unlawful for any person or legal entity to own, keep or maintain any house, mobile home, trailer, building and/or structure, or portion thereof, within the corporate limits of the City which constitutes a nuisance and which is found and declared to be a nuisance by resolution of the City Council. A "Portion" of a building or structure shall mean and include, but shall not be limited to, parts or areas served by a separate utility meter or meters, or having a separate entrance thereto.

Section 5.18.02: Condemnation Authorized

Any house, mobile home, trailer, building and/or structure, or portion thereof, which is found and declared to be a nuisance by resolution of the City Council will be condemned and vacated, or be vacated, torn down and removed as provided in this Ordinance.

Section 5.18.03: Resolution of Council

The resolution of the City Council condemning any house, mobile home, trailer, building and/or structure, or portion thereof, which constitutes a nuisance, will include in the resolution an adequate description of the house, mobile home, trailer, building and/or structure, or portion thereof, the name, if known, of the owner thereof, and shall set forth the reason the house, mobile home, trailer, building and/or structure, or portion thereof, is or has been condemned as a nuisance. At least ten days prior to the City Council meeting at which the Condemnation Resolution is to be considered, the Building Inspector/Official shall provide the same notice to the property owner, any lien holders, and mortgage holders, as required in Section 04.

Section 5.18.04: Notice to Owner/Others

After a house, mobile home, trailer, building and/or structure, or portion thereof, has been found and declared to be a nuisance and condemned by resolution as provided in this Ordinance, a true and certified copy of the resolution will be sent, by the Elkins Building Inspector/Official, certified mail, addressee or addressee's agent only, and by first class mail, postage prepaid, to the owner thereof if the whereabouts of the owner thereof are known. A true and certified copy of the resolution shall also be sent, by the Elkins Building Inspector/Official, by first class mail, postage prepaid, to any recorded mortgage or lien holders with an interest in the subject property. A true and certified copy of the resolution shall also be posted at a conspicuous place on the house, mobile home, trailer, building and/or structure or portion thereof regardless of whether the whereabouts of the owner are known. If the owner of the house, mobile home, trailer, building and/or structure or portion thereof are unknown or if his whereabouts or last address is unknown, the posting of the copy of the resolution as provided in this section will suffice as notice.

Section 5.18.05: Abatement of Nuisance; Removal by City

If the house, mobile home, trailer, building and/or structure, or portion thereof, constituting a nuisance, has not been torn down and removed, or the nuisance otherwise abated

within thirty (30) days after the posting of the true and certified copy of the resolution at a conspicuous place on the house, mobile home, trailer, building and/or structure, as aforesaid, the

Elkins Water Department shall be directed to cut off and stop water service to the house, mobile home, trailer, building and/or structure, or portion thereof, constituting a nuisance, if the house, mobile home, trailer, building and/or structure, or portion thereof, is served by the Elkins Water Department. If the house, mobile home, trailer, building and/or structure, or portion thereof, constituting a nuisance, has not been vacated, or not torn down and removed if the house, mobile home, trailer, building and/or structure is condemned in its entirety, or said nuisance otherwise abated, within thirty (30) days after the posting of the resolution of condemnation as aforesaid, the house, mobile home, trailer, building and/or structure, so condemned in its entirety shall be torn down and/or removed as directed by the Mayor, or by such other official, person or persons as shall be designated by the City Council. Provided however, that prior to the actual tearing down and removal of the nuisance structure, the Elkin's Building Inspector/Official shall place on the City Council Agenda, a second hearing on the matter to afford the owner, or any mortgage or lien holders of record, the opportunity to present evidence that the nuisance violations which precipitated the condemnation have been brought into compliance. This second hearing shall be placed on the City Council Agenda for the first City Council meeting which occurs at least thirty (30) days after the initial condemnation resolution was passed. The Council, after reviewing said evidence, shall then vote on whether the structure in question shall be demolished. The vote shall be determined by simple majority. The vote at the second meeting to determine the demolition of the structure shall constitute the final action of the City Council regarding that condemnation. If the City Council should vote in favor of demolishing the structure in question, the Elkin's Building Inspector/Official shall wait thirty (30) days from the date of the final vote by the City Council before beginning actual demolition. The sole purpose of this thirty (30) day waiting period, is to allow the property owner, mortgage holder, or lien holder an opportunity to appeal the decision of the City Council pursuant to Ark. Code Ann. Sec. 14-56-425 or Ark. District Court Rule No. 9. No further arguments or appeals will be heard before the Council after the final vote. This Ordinance shall in no way act to limit any individuals' rights or privileges to appeal such decision under Ark. Code Ann. Sec. 14-56-425 or Ark. District Court Rule No. 9.

Section 5.18.06: Vacating Premises

If any house, mobile home, trailer, building and/or structure or portion thereof is occupied at the time of the posting of the Notice declaring a nuisance as provided in this Ordinance, the occupant or occupants thereof shall have thirty (30) days in which to vacate the premises after the posting; and any occupancy or holding over from and after the mentioned thirty (30) days from the posting shall constitute a misdemeanor.

Section 5.18.07: Allowing Occupation of Premises

It shall be unlawful for the owner of any house, mobile home, trailer, building and/or structure, or portion thereof, posted as a nuisance under this code section, to lease, let or otherwise allow to be occupied any such house, mobile home, trailer, building and/or structure, or portion thereof, after it shall have been vacated pursuant to the provisions of this Ordinance.

Section 5.18.08: Occupying Premises

It shall be unlawful for any person to occupy, by lease or otherwise, any house, mobile home, trailer, building and/or structure, or portion thereof, pursuant to the posting of the Notice of condemnation under this Ordinance, and any person so occupying it shall be guilty of a misdemeanor.

Section 5.18.09: Parts of Structures as Nuisances

It is the express purpose and intent of the City Council that if any house, mobile home, trailer, building and/or structure containing a portion thereof which constitutes a nuisance is not subject to tearing down and removing in its entirety, then the portion thereof so constituting a nuisance shall be vacated and kept vacated.

Section 5.18.10: Disposal of removed Structure

The Elkin's Building Inspector/official or such other official or person as shall be designated by the City Council to tear down and remove any house, mobile home, trailer, building and/or structure constituting a nuisance will accomplish and effect the removal thereof and dispose of it in such a manner as deemed appropriate in the circumstances, and to that end, if it has substantial value, shall sell the house, mobile home, trailer, building and/or structure, or any saleable material thereof, by public sale to the highest bidder for cash, ten days' notice of the sale being first given by one publication in some newspaper having a general circulation in the city to accomplish and effect its removal and the abatement of the nuisance.

Section 5.18.11: Proceeds of Sale

All proceeds of the sale under this Ordinance of any house, mobile home, trailer, building and/or structure, or the proceeds of the sale of saleable materials therefrom, and all fines collected from the provisions of this Ordinance, shall be paid by the person collecting them to the city recorder/treasurer. If any such house, mobile home, trailer, building and/or structure or the saleable materials thereof are sold for an amount which exceeds all costs incidental to the abatement of the nuisance (including the cleaning up of the premises) by the city, plus any fine imposed, the balance will be returned by the city recorder/treasurer to the former owner of the house, mobile home, trailer, building and/or structure constituting the nuisance if the owner can be located, otherwise the excess sale proceeds will be held by the recorder/treasurer for the demand of the owner.

Section 5.18.12: Failure to Follow Court Order

If the owner of any house, mobile home, trailer, building and/or structure judicially found to be a nuisance under this Ordinance fails or refuses to abide by the orders of the court, the Elkin's Building Inspector/official or such other official or person referred to in Sections 05 and 05 will take such action as provided in Sections 04 and 10 as will be applicable to such owner.

The provision contained in the immediately preceding sentence applies independently of any action as may be taken by the court judicially declaring the nuisance.

Sections 13 thru 99: Reserved

SECTION 2: All parts of this Municipal Code in conflict herewith, are hereby repealed to the extent of such conflict, specifically Chapter 5.16 is expressly repealed.

SECTION 3: Except as hereinabove specifically provided, Title 5 of the Elkins Municipal Code is ratified and confirmed.

PASSED AND APPROVED this 2 day of August, 2007.



JACK LADYMAN, Mayor

ATTEST:



NORRITA FISHER, Recorder-Treasurer