

Regular Meeting: August 8, 2022
First Read: August 8, 2022

ORDINANCE NO. 2022 - 29

**AN ORDINANCE CONCERNING THE
MAINTENANCE OF REAL PROPERTY;
PROVIDING FOR THE REMOVAL OF UNSANITARY CONDITIONS
SUCH AS TREE BRANCHES, TREE LIMBS,
FALLEN TREES, AND YARD WASTE
IN ALL AREAS OF THE CITY
EXCEPT AGRICULTURALLY-ZONED AREAS;
PROVIDING FOR THE CUTTING OF GRASS AND WEEDS;
AMENDING THE MUNICIPAL CODE;
DECLARING AN EMERGENCY;
AND FOR OTHER PURPOSES**

WHEREAS, The City of Fairfield Bay has a Municipal Code, as well as various local "covenants and restrictions" upon the use of residential real property, including the obligation to keep property free of unsanitary conditions, weeds, overgrowth, yard waste, fallen branches, fallen tree limbs, and fallen trees; and

WHEREAS, The City has experienced difficulty in enforcing some of the provisions of the Municipal Code, leading to some persistent unsanitary conditions in the City, as well as waste, deterioration of property values, harboring of rodents, and other pests, and unsightly growth of weeds, grass, and other underbrush, which are almost always admittedly in violation of local covenants and restrictions, or which may occur in other well-traveled, and highly visible, areas of the City; and

WHEREAS, The City desires to accelerate the clean-up of certain problems in high-density residential areas, and areas close to high-density residential areas, as a continuation of efforts it began on a temporary basis in May of 2015, which has resulted in better compliance and a reduction in unsanitary conditions, pests, rodents, and other unsafe conditions; and

WHEREAS, The City desires to consolidate its Municipal Code provisions to provide for an easier method of viewing and understanding the legal requirements;

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

1. **NOT TO BE CODIFIED:** Chapter 5.12, Maintenance of Real Property, Supplemental, shall be added to the Fairfield Bay Municipal Code as an amendment, as set forth herein, with additions to the Municipal Code in *bold italics* and deletions in bold interlineations, like this word: ~~deletions~~.
2. **CODIFICATION REQUIRED:**

CHAPTER 5.12
Maintenance of Real Property, Supplemental

5.12.02 General, Scope. That the provisions of this Chapter of the Municipal Code, shall be read in addition to the provisions of Chapter 5.04 (Maintenance of Real Property) that precede it in the Municipal Code, and shall govern the minimum conditions and the responsibilities of persons for maintenance of structures, equipment and exterior property in all areas of the City except those zoned as Agricultural.

5.12.04 Responsibility. That the owner of the premises shall maintain the structures and exterior property in compliance with these requirements, except as otherwise explicitly provided for in the Municipal Code. A person shall not occupy as owner-occupant, or permit another person to occupy, premises which are not in a sanitary and safe condition and which do not comply with the requirements of this chapter. Occupants of a dwelling unit, rooming unit or housekeeping unit are responsible for keeping in a clean, sanitary and safe condition that part of the dwelling unit, rooming unit, housekeeping unit and premises which they occupy and control. Owners, occupants, and others exercising control over the real property, including lessees, sublessees, and those persons occupying real property pursuant to a contract for sale, shall be jointly responsible, and severally responsible, for the maintenance of the structures and exterior property conditions.

5.12.08 Vacant structures and land. All vacant structures and premises thereof, or vacant land, shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health or safety, or adversely affect real property values in the surrounding area.

5.12.12 EXTERIOR PROPERTY AREAS.

A. Sanitation. All exterior property and premises shall be maintained in a clean, safe and sanitary condition. The occupant(s) shall keep that part of the exterior property which such occupant occupies or controls in a clean and sanitary condition.

B. Grass or Weeds: Shall not exceed ten inches in height in all districts; except that the restrictions noted above will not apply to areas specifically designated or recognized by the city, the state or the United States as agricultural, wetlands, open spaces, parks, natural or wild flower areas, or other designated preservation areas.

C. **Rodent harborage.** *All structures and exterior property in all districts shall be kept free from rodent harborage and infestation. Where rodents are found, they shall be promptly exterminated by approved processes which will not be injurious to human health. After extermination, proper precautions shall be taken to eliminate rodent harborage and prevent re-infestation.*

D. **Accumulation of rubbish or garbage.** *All exterior property areas shall be free from any accumulation of rubbish or garbage.*

E. **Accumulation of fallen trees, tree branches, tree limbs, and other large-size natural debris.** *All exterior property and premises shall be free from any accumulation of fallen trees, tree branches, tree limbs, and other large-size natural debris.*

5.12.16 Enforcement. *It shall be unlawful for a person, firm, or business entity to be in conflict with, or in violation of, any provisions of this Chapter of the Municipal Code. Any person who is convicted of any violation of this Chapter of the Municipal Code shall be guilty of a VIOLATION, and the violations of this Chapter of the Municipal Code shall be deemed strict-liability offenses.*

A. **Notice - Residential.** *Notice of a potential violation shall be made in writing by regular first class mail to the residential property address (owners and spouses, tenants and spouses, occupants and spouses), by regular first class mail to the last-known owner's address, and by posting a copy of the notice of potential violation on the residential property itself, in a manner determined to notify owners, tenants, occupants and passers-by of the potential violation, by using a Notice of Violation on Orange paper, posted on the real property. Personal Delivery of Notice to an Occupant, Resident, or Owner, or any person residing at the property address (over the age of 16 years), shall be sufficient Notice in lieu of the posting-on-property notice requirement, hereinabove. Once notices have been delivered by regular first-class mail, and either by posting or hand-delivery of Notice to the occupants of the real property, the City shall not be obligated to provide additional notice until the violation has been resolved.*

B. **Notice – Non-residential.** *Notice of a potential violation shall be made in writing by regular first-class mail to the real property address (owners and spouses of owners, tenants and spouses of tenants, occupants and spouses, registered agents, or the persons identified at the County Assessor's office as responsible for paying taxes), to the last-known owner's address, and by posting a Notice of Violation on orange paper, at the location of the real property. Personal delivery of Notice to any person over the age of 18 years, on the premises, shall be sufficient Notice in lieu of the posting-on-the-property notice requirement, hereinabove. Once notices have been delivered by regular first-class mail, and either by posting or hand-delivery of Notice to a person over the age of 18, while on the real property, the City shall not be obligated to provide additional notice until the violation has been resolved.*

C. **Additional Notice – location of owner unknown or unavailable, unoccupied real property.** *After providing at least one first class mail notice as set forth above, and after posting the real property, and after the post office returns the first-class mail notices, the City shall publish notice of a violation in a regular newspaper of general circulation in the City, at*

least two separate times (assuming single publication per week). The City shall not issue a citation until seven (7) calendar days after the second publication of such Notice. Once notice has been published, additional publication is not required until the real property violations have been resolved. Appointment of an attorney ad litem pursuant to Arkansas Code Annotated Section 14-54-902(b)(2) shall be made by the Mayor, to provide certified mail notice to the last known place of residence of an unknown owner, or non-resident owner, when notice by publication is required.

D. Penalty - Fine. Except as otherwise provided herein, a person convicted of violating any provision of this Section of the Municipal Code shall be punished by a fine not less than \$150.00 for a first offense; not less than \$250.00 for a second offense; and not less than \$400.00 for a third and any subsequent offense. Fines shall also include, as an additional charge, all city costs of cleanup (if any), court costs, court fees, and court expenses, as well. Each day of violation after the initial Notice shall be deemed a separate offense, for which the fines set forth herein may likewise be applied.

E. City Building Officials, the Municipal Police Department (and its officer), any Sheriff's Deputy, and any State Police Officer, are authorized to issue Citations to any person, firm, or business entity in conflict with, or in violation of, the provisions of this Ordinance. Owners, occupants, tenants, and those exercising apparent authority over real property (for example by storing vehicles, mobile homes, trailers, boats, recreational vehicles, or by other use of real property, for any duration longer than seven (7) calendar days, within the previous 365 days) shall be liable for any VIOLATION, provided that the City may only collect its COSTS of any cleanup from one of the violators.

F. Accelerated consideration: No sooner than seven (7) calendar days after mailing and posting of the Notice set forth above, whichever is later, the City may issue a Citation for the violation. If publication is required, the City may issue a Citation no sooner than seven (7) calendar days after publication of the second notice.

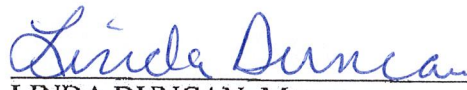
5.12.20 ADDITIONAL REMEDY: *After providing Notice, as set forth hereinabove, and in addition to issuing a Citation, and in order to protect the health, safety and welfare of the citizens and visitors to the City, the City Building Officials may exercise the City's right to enter onto residential real property no sooner than seven (7) calendar days after mailing and posting of the Notice set forth above, whichever is later, and exercise such action as may be necessary to preserve the peace, health and safety of its citizens, by: (1) removing unsafe and unsanitary conditions, including fallen trees, fallen tree limbs, fallen branches, and other debris, or (2) removing rodents, or (3) cutting grass and weeds, or (4) removing garbage or rubbish, or (5) any or all of the foregoing items (1) to (4). The City may impose an in-rem bill (against the real property), not to exceed the greater of (a) the actual cost of the action taken, or (b) \$350.00. The remedies set forth herein shall be an ALTERNATIVE TO, and not in addition to, any other remedy provided in the following: Section 5.04.06; Section 5.04.07.03.02; AND Section 5.04.07.03.05 of the Municipal Code. HOWEVER, nothing set forth in this Section shall preclude the use of any other remedies as set forth in this Municipal Code for any separate or subsequent violation. The remedies set forth herein shall be CUMULATIVE TO the remedies set forth in Section 5.12.16, hereinabove; any in-rem bill against the real property shall be added as the City's COSTS to any Citation issued to any individual pursuant to this Chapter of the Municipal Code. The remedies set forth herein shall be CUMULATIVE*

TO any remedies set forth under the Arkansas Code Annotated.

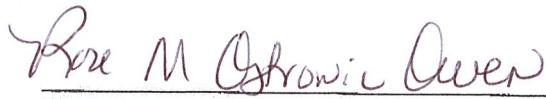
3. The Municipal Code be, and it is hereby AMENDED with the addition of those words in *bold italics*, hereinabove.

4. **NOT TO BE CODIFIED: EMERGENCY CLAUSE:** The City Council finds that there is an emergency, given the problems with enforcement in the current Municipal Code provisions, and the additional remedies and prohibitions set forth herein are necessary for the peaceful health, safety, and welfare of the City, its citizens, property owners, taxpayers, visitors, occupants, and residents, **THEREFORE, AN EMERGENCY IS HEREBY DECLARED TO EXIST**, and this Ordinance shall be in effect from October 31, 2022, at 11:59 pm, and after that date.

DATED THIS 10 DAY OF October, 2022.


LINDA DUNCAN, Mayor

Attest:


Rose Ostronic Owen, Recorder-Treasurer

Revised2:

Kelly Law Firm, PLC
8/8/22