

ORDINANCE NO. 98

AN ORDINANCE PROVIDING FOR THE CONDEMNATION AND REMOVAL OF HOUSES, BUILDINGS AND/OR STRUCTURES EXISTING IN A DILAPIDATED, UNSIGHTLY, UNSAFE, UNSANITARY OR OBNOXIOUS STATE, OR THAT ARE DETRIMENTAL TO THE PUBLIC WELFARE.

WHEREAS, houses, buildings and/or structures do exist or may come to exist within the Town of Avoca, Arkansas (the "Town"), which are in such a condition that they present a danger or threat to the health and safety of the public; and

WHEREAS, houses, buildings and/or structures that are dilapidated, unsightly, unsafe, unsanitary, obnoxious or detrimental to the public welfare are a nuisance; and

WHEREAS, the Town is granted authority to raze houses, buildings and/or structures by A.C.A. §14-56-203, and is granted a lien against the real property upon which such structure was located for the cost of the removal, repair or razing by A.C.A. §14-54-904; and

WHEREAS, the Town Council desires to protect the public from such houses, buildings and/or structures and to implement an efficient procedure for the designation and removal of such houses, buildings and/or structures.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Avoca, Arkansas:

Section 1: That it shall be and it is hereby declared to be unlawful for any person or persons, partnership, corporation, company or association to own, keep or maintain any house, building and/or structure ("structure") within the corporate limits of the Town of Avoca, Arkansas, that constitutes a nuisance and which is found and declared to be a nuisance by resolution of the Town Council.

Section 2: Any houses, buildings and/or structures that are dilapidated, unsightly, unsafe, unsanitary, obnoxious or detrimental to the public welfare are a nuisance.

Section 3: That any such structure which is found and declared to be a nuisance by resolution of the Town Council will be condemned to insure the removal thereof as herein provided.

Section 4:
A. That prior to the consideration of a resolution by the Town Council declaring any structure as a nuisance, the owner(s) and any mortgagee(s) or lienholder(s) of such structure shall be mailed written notification of the date, time and place that the Town Council will consider said

resolution. In addition, said notice shall inform the owner(s) and any mortgagee(s) or lienholder(s) of the right to be heard at the Town Council meeting on the proposed resolution declaring such structure to be a nuisance.

B. Should the owner(s) and mortgagee(s) and/or lienholder(s) of any such structure be unknown or their whereabouts be unknown, or if they do not reside in Arkansas, then a copy of the written notice shall be posted upon said premises and the Mayor or his designee shall make an affidavit setting out the facts as to the unknown address, unknown whereabouts and/or non-resident status of said owner(s), mortgagee(s) and lienholder(s). Thereupon, service of publication as now provided by law against unknown and/or non-resident defendant(s) may be had and an attorney *ad litem* shall be appointed to notify such persons by registered letter addressed to their last known place(s) of residence or business.

Section 5: That the resolution of the Town Council condemning any structure which constitutes a nuisance will include in said resolution an adequate description of the structure; the name(s), if known, of the owner(s) and mortgagee(s) and/or lienholder(s) thereof; and shall set forth the reason or reasons said structure is or has been condemned as a nuisance.

Section 6: After a structure has been found and declared to be a nuisance and condemned by resolution as herein provided, a true or certified copy of said resolution will be mailed to the owner(s) and mortgagee(s) and/or lienholder(s) thereof, if the whereabouts of said owner(s) and mortgagee(s) and/or lienholder(s) thereof is known or their last known address is known, and a copy thereof shall be posted at a conspicuous place on said structure. Provided, that if the owner(s) and mortgagee(s) and/or lienholder(s) of said structure is unknown, or if his/her whereabouts or last known address is unknown, the posting of the copy of said resolution as hereinabove provided will suffice as notice of the condemnation.

Section 7: If a structure constituting a nuisance has not been torn down or removed or said nuisance otherwise abated within thirty (30) days after posting the true copy of the resolution at a conspicuous place on said structure constituting the nuisance, it will be torn down and/or removed by the Zoning Official or his duly-designated representative.

Section 8: The Zoning Official or any other person or persons designated by him/her to tear down and remove any such structure constituting a nuisance will insure the removal thereof and dispose of the same in such a manner as deemed appropriate in the circumstances and to that end may, if the same have a substantial value, sell said structure, or any saleable materials thereof, by public sale to the highest bidder for cash. Such a sale shall require ten (10) days notice thereof being first given by one publication in some newspaper having a general circulation in the Town, to insure the removal and/or the abatement of the nuisance.

Section 9: All proceeds of the sale of any such 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 or persons collecting the same to the Town Treasurer. If any such structure or the

saleable materials thereof is sold for an amount which exceeds all costs incidental to the abatement of the nuisance, including the cleaning up of the premises incurred by the Town, plus any fine or fines imposed, the balance thereof will be returned by the Town Treasurer to the former owner or owners of such structure constituting the nuisance.

Section 10: If the Town has any net costs in the removal of any structure, the Town shall have a lien on the property as provided by A.C.A. §14-54-904.

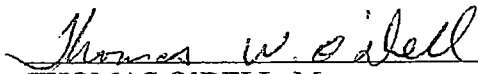
Section 11: A fine of not less than Two Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars (\$1,000.00) is hereby imposed against the owner(s) of any structure found and declared to be a nuisance by resolution of the Town Council thirty (30) days after the same has been so found and declared to be a nuisance if not abated during that time. For each day thereafter that said nuisance has not been abated constitutes a continuing offense punishable by a fine up to Five Hundred Dollars (\$500.00) per day; provided the notice as provided in Section 5 hereof has been given within ten (10) days after said structure has been by resolution found and declared to be a nuisance.

Section 12: In the event it is deemed advisable by the Town Council that a particular structure be judicially declared to be a nuisance by a court having jurisdiction of such matters, the Town Council is hereby authorized to employ an attorney to bring such an action for said purpose in the name of the Town, and the only notice to be given to the owner(s) and mortgagee(s) and/or lienholder(s) of any such structure sought to be judicially declared to be a nuisance will be that as now provided for by law in such cases in a court of equity or circuit court. When any such structure has been declared judicially to be a nuisance by a court of competent jurisdiction, a fine up to One Thousand Dollars (\$1,000.00) is hereby imposed against the owner(s) thereof from the date said finding is made by the court, and for each day thereafter that said nuisance has not been abated constitutes a continuing offense punishable by a fine up to Five Hundred Dollars (\$500.00) per day.

Section 13: If, for any reason, any portion of this ordinance be held to be invalid, such invalidity shall in no way affect the remaining portions thereof which are valid, but said valid portions shall be and remain in full force and effect.

Section 14: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

PASSED AND APPROVED this 19th day of February, ~~2013~~ 2014


THOMAS O'DELL, Mayor

ATTEST:


DIANE BOWEN, Town Recorder/Treasurer

\\SLINKARD-DC\Data Shared\AVOCA\Ordinances\Ord. No. ___, Condemnation.wpd

6. Bowen reported she had mis-numbered the Condemnation Ordinance. Per our attorney it can be corrected by a motion.

Ald. Pinkley moved to amend the number of the condemnation ordinance passed on February 19, 2014, from No. 97 to Ordinance No. 98. Ald. Barnes seconded the motion. All approved. Motion carried