

ORDINANCE NO. 1032

AN ORDINANCE AMENDING ORDINANCE NUMBER 725 REQUIRING THE KEEPING OF CLEAN, SIGHTLY, AND SANITARY PREMISES; REQUIRING PROPERTY OWNERS AND TENANTS TO ELIMINATE, FILL UP AND REMOVE STAGNANT POOLS OF WATER, UNSANITARY THINGS, PLACES AND CONDITIONS WHICH MIGHT BECOME A BREEDING PLACE FOR VERMIN, FLIES, MOSQUITOES, VIRUSES, AND GERMS WHICH MIGHT BE A DANGER TO THE PUBLIC HEALTH; PROHIBITING THE DUMPING OF TRASH OR REFUSE WITHIN THE CITY OF DE QUEEN; REQUIRING OWNERS AND OCCUPANTS OF PREMISES ABUTTING ON STREETS TO KEEP THE STREET GUTTERS ALONGSIDE THEIR PREMISES CLEAR OF ALL MATTER PREVENTING THE FREE FLOW OF WATER THEREIN AND PROHIBITING OBSTRUCTIONS TO SUCH FLOW; PROVIDING FOR THE CONDEMNATION AND REMOVAL OF HOUSES, BUILDINGS AND STRUCTURES CONSTITUTING NUISANCES WITHIN THE CITY LIMITS; PROVIDING FOR A LIEN ON THE PROPERTY; PROVIDING PENALTIES FOR VIOLATION OF THIS ORDINANCE; PROVIDING FOR ADMINISTRATIVE PROCEDURES TO ENFORCE THIS ORDINANCE; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.

WHEREAS, on the 6th day of August, 1991, the City Council did herein pass Ordinance number 725 regarding the clean up of certain conditions on property located within the City of De Queen city limits. That since said time there have been certain changes to the enforcement of said Ordinance;

AND WHEREAS, the City Council has decided that the municipal ordinances need revision and improvement as a condition precedent to the renewed effort to improve the City of De Queen;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF DE QUEEN, ARKANSAS, THAT:

PART A – POLICY

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SECTION 1: This ordinance shall be known and cited as the “CODE OF NUISANCE ABATEMENT AND HEALTH MAINTENANCE.” The City’s policy shall be to improve the overall appearance and health conditions in De Queen, to abate nuisances, to punish violators, and to respond affirmatively to the need to remain vigilant as to the re-occurrence of nuisances, unsightly conditions, and threats to the public

health, after the current nuisances, and threats to public health are abated under the ongoing program of eradication of the same.

SECTION 2: The current program of nuisance abatement and clean-up, both administratively, and by litigation shall continue, and the City Council commits itself to appropriating sufficient funds to pay for the costs of clean-up and nuisance abatement.

PART B - HEALTH PROTECTION MEASURES

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SECTION 1: All property owners within De Queen, are hereby required to cut weeds, grass, shrubs, dead trees, and remove garbage, rubbish, junk, wrecked or inoperative motor vehicles, old tires, mechanical parts, pipe, scrap metals, broken concrete, broken tiles and brick, and all other unsanitary and unsightly articles and things from their property, and to eliminate, fill up or remove stagnant pools of water, pools of chemicals, and any other unsanitary thing, place or condition which is, or might become, a breeding place for vermin, mosquitoes, flies, germs and viruses which are harmful to the community, including the correction of defective sewer service lines and connections, or the connection of the property's sewage system with the public sewer system, or a properly installed and functioning private sewer system (septic tank and related field lines and service lines) on the property.

SECTION 2: If the owner or owners of any lot or other real property within the city limits after the giving of seven (7) days' notice in writing by the Fire Chief or someone dully appointed by him, shall refuse or neglect to perform the duties in connection with his, her or their property as specified in Section 1, the Code Enforcement Officer is authorized to enter upon the property and do whatever is necessary to correct the condition including but not limited to having said weeds, rank grass and other vegetation cut and removed, and dead trees cut and removed, and eliminate all unsanitary and unsightly conditions. The actual costs thereof shall be charged to the owner of the lots or other real property. The City shall be given a lien against the property for the costs, including all administrative and collection costs.

Additionally, non-compliance after notice shall be sufficient reason for the City of De Queen to discontinue all city services to the property involved, and the Fire Chief or Code Enforcement Officer may, at his discretion, direct the disconnecting and removal of all water meters and other service meters and connections to the property, until compliance with the demand to abate the nuisance is made. This

policy of the discontinuance of city services is to be supplemental to all other methods of enforcing compliance with the policies of this ordinance and shall apply to other Parts of this ordinance as though specifically set forth in such other Parts. It is the City Council's intent to provide all procedures necessary and lawful to the Fire Chief and/or code Enforcement Officer and the executive branch of the municipal government to the end that public health and pleasant, clean, surroundings in the City shall be obtained and maintained.

SECTION 3: In the event the owner, of the lot or other real property is unknown or his or her whereabouts is, not known, or if, the owner, is a non-resident of Arkansas, then a copy of the written notice herein-above referred to shall be posted upon the premises, and before any action to enforce the lien shall be had, the City Clerk shall make an affidavit setting out the facts as to the unknown address or whereabouts of nonresidents. Thereupon service of process by publication as provided by law against nonresident defendants may be had. Attorney ad litem shall be appointed to notify the defendant owner, by certified letter addressed to the last-known address or place of residence, if it can be found.

Notwithstanding any other provision of law, after a notice has been issued for a specific violation of an order under this ordinance directing an owner to eliminate a condition on the owner's property, an 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: The lien for clearance herein provided may be enforced and collected within ten (10) years after a lien has been filed in either one of the following manners:

(A) The lien may be enforced by filing a foreclosure action in the Circuit Court of Sevier County, Arkansas; OR

(B) The amount of the lien may be determined at a hearing before the City Council held after thirty (30) days written notice by certified mail to the owner, if the name and whereabouts of the owner, are known. But if the name of the owner, owners, tenant, or tenants be unknown or cannot be determined, then after publication of notice of such hearing in a newspaper having a bona fide circulation in Sevier County, for one (1) insertion per week for four (4) consecutive weeks; and the amount so determined at said hearing, plus ten percent (10%) penalty for collection, shall be certified by the City Council to the Sevier County Tax Collector, and placed by him or her on the tax books as delinquent taxes, and collected

accordingly. The amount, less three percent (3%) thereof, when so collected shall be paid to the City of De Queen by the county tax collector.

SECTION 5: Any person, firm or corporation violating the provisions of Part B of this Ordinance, upon conviction, shall be guilty of a misdemeanor and shall be fined in a sum of not less than One Hundred dollars, nor more than Five Hundred dollars. The Code Enforcement Officer may issue citations. Any law enforcement officer may issue citations.

PART C – VACANT PROPERTIES – NUISANCES

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SECTION 1: From and after the passage and approval of this ordinance, it shall be unlawful for any person, firm, or corporation to dump, place, or throw any form of trash, refuse, cans, junk, bottles, garbage, dead animals, paper, rags, metal objects, inoperative motor vehicles scrap metals, concrete scrap, brick or other ceramic scrap, bones, or any other kind or form of trash or garbage upon the streets, alleys, and other publicly-owned properties within De Queen.

SECTION 2: Any person, firm, or corporation who shall violate these provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than One Hundred Dollars (#100.00), nor more than One Thousand Dollars (\$1,000.00). In addition to any sentence the court upon conviction shall impose not more than 8 hours of community service for a first offense; or not more than twenty-four (24) hours for a second or subsequent offense. The Fire Chief or the Code Enforcement Officer may issue citations for such violations.

PART D – OBSTRUCTION OF GUTTERS

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SECTION 1: All owners and occupants of any lot, block or other parcel of realty which abuts on any gutter of any street in De Queen shall be required to keep such gutter or gutters which the premises owned or occupied by them may abut, clean and clear of all obstructions to the free flow of water therein and any person, firm or corporation is prohibited from depositing or permitting any accumulation of any matter or thing in the gutter or gutters abutting the property owned or occupied by them, all to the end that nothing will be placed or permitted to remain in the street and gutter, or either of them which obstructs, or impedes, or causes to be obstructed the free flow of water therein.

SECTION 2: Any person, firm or corporation violating these provisions of this ordinance upon conviction shall be guilty of a misdemeanor and shall be fined in any sum of not less than One Hundred Dollars (\$100.00), nor more than One Thousand Dollars (\$1,000.00). The Fire Chief and/or the Code Enforcement Officer may issue citations.

PART E - BUILDINGS AND STRUCTURES

SECTION 1: The City shall have the power to order the removal or razing of, or to remove or raze, any buildings or houses that in the opinion of the council have become dilapidated, unsightly, unsafe, unsanitary, obnoxious, or detrimental to the public welfare and shall provide, herein, the manner of removing and making these removals.

SECTION 2: Any such house, building or other structure found and declared to be a nuisance by resolution of the City Council, will be condemned so as to cause the removal thereof provided in this part.

SECTION 3: Any resolution adopted by the City Council condemning any house, building or other structure shall include in the resolution an adequate description of the house, building or other structure, the name or names, if known, of the owner or owners thereof; and shall set forth the reason or reasons for declaring the particular house, building or other structure a nuisance.

SECTION 4: After a house, building or other structure has been found and declared to be a nuisance and condemned by resolution of the City Council, a true and certified copy of said resolution will be mailed to the owner or owners, if the whereabouts of said owner or owners thereof be known or their last known address be known, and a copy thereof shall be posted at a conspicuous place on said house, building or structure, or any appurtenance of same. PROVIDED, if the owner or owners of said house, building or structure be unknown, or if known, their whereabouts or last known address be unknown, the posting of the copy of the certified resolution will suffice as notice. Tenants shall be given notices of like kind in the same manner

SECTION 5: If the house, building or other structure constituting a nuisance has not been torn down and removed, or said nuisance otherwise abated, within thirty (30) days after posting the true copy of the resolution at a conspicuous place on said house, building or other structure constituting the nuisance, it will be torn down or

burned and removed by the Fire Chief and/or Code Enforcement Officer, at his discretion, or by a designated representative, or private contractor employed by the City after competitive bidding.

SECTION 6: The Fire Chief, Code Enforcement Officer, the representative, or contractor chosen by him to destroy and remove any such house, building or 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 has substantial value, sell said house, building or structure, or any sale-able material thereof, by public sale to the highest bidder for cash, ten (10) days' notice thereof being first given by one publication in some newspaper having a general circulation in the City, to insure its removal and the abatement of the nuisance.

SECTION 7: All the proceeds of such sales, and the proceeds of sale of sale-able materials therefrom and all fines collected from the provisions of this ordinance shall be paid by the person collecting the same to the City Clerk/Treasurer. If any such house, building or structure, or the sale-able materials thereof, be 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 or fines imposed, the balance thereof shall be returned by the City Treasurer to the former owner or owners, of such house, building or structure constituting the nuisance, depending upon who is entitled to such refunds.

SECTION 8: If the City has any net costs incurred in the abatement of the nuisance, it shall have a lien on the property as provided by A.C.A., Section 14-54-904. The lien may be enforced in either of the following manners:

- (A) The lien may be enforced by filing a foreclosure action in the Circuit Court of Sevier County, Arkansas; OR
- (B) The amount of the lien may be determined at a hearing before the City Council held after thirty (30) days written notice by certified mail to the owner, if the name and whereabouts of the owner, are known. But if the name of the owner, owners, tenant, or tenants be unknown or cannot be determined, then after publication of notice of such hearing in a newspaper having a bona fide circulation in Sevier County, for one (1) insertion per week for four (4) consecutive weeks; and the amount so determined at said hearing, plus ten percent (10%) penalty for collection, shall be certified by the City Council to the Sevier County Tax Collector,

and placed by him or her on the tax books as delinquent taxes, and collected accordingly. The amount, less three percent (3%) thereof, when so collected shall be paid to the City of De Queen by the county tax collector.

SECTION 9: A fine of not less than Two Hundred Fifty Dollars (\$250.00), not more than Five Hundred Dollars (\$500.00) is hereby imposed against the owner or owners of any house, building or structure found and declared to be a nuisance by resolution of the City Council thirty (30) days after the same has been so found and declared to be a nuisance, and for each separate day (of 24 consecutive hours) thereafter said nuisance be not abated constitutes a separate and distinct offense punishable by a fine of Two Hundred Fifty Dollars (\$250.00) for each said separate and distinct offense; PROVIDED, the notice as herein provided in Section 4 of this Part has been given within ten (10) days after said house, building or structure has been declared a nuisance by resolution of the City Council.

SECTION 10: If the City Council deems it advisable that a particular house, building or structure be judicially declared a nuisance by a Court of competent jurisdiction, the City Council is hereby authorized to direct the City Attorney to file suit to obtain such judicial relief. If the court imposes any fines and costs which are not paid by the owner or owners, or if the owner or owners do not obey the court's order to abate the nuisance, The Fire Chief and/or Code Enforcement Officer shall take all actions provided for in Sections 6 and 7 of this Part. This relief is in addition to, but not in lieu of, such actions as the Court decides to take to enforce its orders.

PART F - GENERAL MATTERS

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SECTION 1: If any portion of this Ordinance is determined to be invalid, such invalidity shall in no way affect the remaining portions of the ordinance, and such valid portions shall remain in full force and effect.

SECTION 2: This Ordinance repeals Ordinances Numbered 478, 659, 595 (which was repealed by 659), and 725 and all other ordinances and parts of ordinances which conflict with it. The repeal of these Ordinances shall not abate action, suits or other proceedings based on them, or any of them. Nor shall their repeal nullify any claims or causes of action which accrued before the effective date of this ordinance.