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Doc#2009- 9410

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City of Conway, Arkansas

Ordinance No. O-09-55

AN ORDINANCE ADOPTING A NUISANCE ABATEMENT CODE AS PART OF THE CONWAY MUNICIPAL CODE; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.

WHEREAS, the City of Conway presently regulates the maintenance of property through several ordinances and code sections;

WHEREAS, large portions of these ordinances and code sections are not written in a manner consistent with the Arkansas Fire Prevention Code of 2007; and

WHEREAS, the new Nuisance Abatement Code is designed to be consistent with both the Arkansas Fire Prevention Code and the Conway Zoning Ordinance; and

WHEREAS, during the 2007, the State of Arkansas adopted new legislation granting cities greater authority to mitigate nuisances and the new Nuisance Code references and incorporates this authority; and

WHEREAS, reasonable and enforceable regulations of nuisance abatement code benefit public health, safety and welfare and enhances the value of the properties so regulated.

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

SECTION 1: That the Nuisance Abatement Code, attached hereto as Exhibit "A" and incorporated herein by reference, is hereby adopted in its entirety.

SECTION 2: That the Nuisance Abatement code be codified within Title 5, Health and Sanitation, by the addition of Chapter 5.09, Nuisance Abatement.

SECTION 3: That all ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict. Specifically,

- Chapter 5.04.11, Subsection A (as created by Ord. No. O-96-78)
- Chapter 5.08, Sections 01, 02, 03, 04, 05 (as created by Ord. Nos. 04-95, O-01-63, O-04-54, O-00-161, O-75-19, O-79-40)
- Chapter 9.44 (as created by Ord. No. O-02-53)
- Chapter 11.24 (as created by Ord. No. A-420)

of the Conway Municipal Code are hereby repealed.

SECTION 4: That the provisions of this Ordinance are hereby declared to be severable and if any section, phrase, or provision shall be declared or held invalid, such invalidity shall not affect the remainder of the sections, phrases or provisions.

SECTION 5: It is hereby found and determined that the adoption of this Ordinance is immediately necessary to insure the proper and orderly growth of the City of Conway, Arkansas and is necessary for the immediate preservation of public, health, safety and welfare; **THEREFORE**, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect from and after its passage.

PASSED this 28th day of April, 2009.

APPROVED:



Mayor Tab Townsell

ATTEST:



Michael O. Garrett
City Clerk/Treasurer

CITY OF CONWAY

***NUISANCE ABATEMENT
CODE***

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ARTICLE ONE – ADMINISTRATION

Section 1 – INTRODUCTION

1.1.1 General. These regulations shall be known as the *Conway Nuisance Abatement Code*. These regulations are intended to ensure public health, safety and welfare insofar as they are affected by the continued occupancy and maintenance of structures and premises within the City of Conway, Arkansas.

1.1.2 Applicability. The provisions of this Code shall apply to all residential and nonresidential structures and all premises within the City of Conway, Arkansas and constitute minimum requirements and standards for premises, structures, life safety, safety from fire and other hazards, and for safe and sanitary maintenance; the responsibility of owners, operators and occupants; the occupancy of existing structures and premises, and for administration, enforcement and penalties. Structures and premises that do not comply with these provisions shall be altered or repaired to provide a minimum level of health and safety as required herein. Repairs, alterations, additions to and change of occupancy in existing buildings shall comply with the *Arkansas State Fire Prevention Code*. Where different standards or requirements are imposed by this Code and other competent authority or by different sections of this Code, the most restrictive standard or requirement shall govern.

1.1.3 Maintenance. Equipment, systems, devices and safeguards required by this Code or a previous regulation or code under which the structure or premises was constructed, altered or required shall be maintained in good working order. No occupant shall cause any required service, facility, equipment or utility to be removed from or shut off from or discontinued for any occupied dwelling, except for temporary interruptions necessitated by repairs or alterations. The requirements of this Code are not intended to provide the basis for removal or abrogation of fire protection and safety systems and devices in existing structures. Except as otherwise specified herein, the owner shall be responsible for the maintenance of buildings, structures and premises.

Section 2

CODE ENFORCEMENT OFFICERS

1.2.1 General. This Code shall be enforced by all Code Enforcement Officers of the City of Conway. For the purposes of this Code, a Code Enforcement Officer shall be defined as any city employee who has been duly sworn and authorized to uphold the ordinances of the City and laws of the State of Arkansas related to property uses, maintenance, nuisances, inspections, issuances of building permits, certifications and licensing etc., within the municipal boundaries of the City. This Code may also be enforced by any and all duly sworn law enforcement officers of the Conway Police Department.

1.2.2 Identification. All Code Enforcement Officers shall carry proper identification and present the same upon request when performing duties under this Code.

1.2.3 Modifications. Whenever there are practical difficulties involved in carrying out the provisions of this Code, the Senior Code Enforcement Officer shall have the authority to grant modifications for individual cases, provided the Senior Code Enforcement Officer shall first make written findings that a special condition or circumstance exists such that the strict letter of this Code is impractical and the modification is in compliance with the intent and purpose of this Code and that such modification does

not lessen health, life and fire safety requirements. The details of action granting modifications shall be recorded and entered in the department files.

1.2.4 Enforcement Procedures Whenever, in the judgment of the Code Enforcement Officer charged with enforcement of this code, it is determined upon investigation that a public nuisance is being maintained or exists within the City, such officer shall issue a written notice in accordance with Section 4.3.1, to the person committing or maintaining such nuisance, requiring such person to remedy and abate the nuisance.

1.2.5 No duty to enforce Nothing in this Code shall be construed as requiring the City to enforce the regulations in this Code against:

- 1) alleged violations determined to be frivolous complaints, or
- 2) alleged violations lacking in substantive evidence to constitute a nuisance, or
- 3) alleged violations where the evidentiary value of the alleged violation is not enough to support a conviction in court, or
- 4) violations which may occur and are not recognized by the city due to the lack of availability of the resources.

Section 3 INSPECTIONS

1.3.1 Right of entry. Code Enforcement Officers are authorized to enter structures or premises at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures. If entry is refused or not obtained, the officers may pursue such search authorizations as are provided by law.

1.3.2 Inspections. Code Enforcement Officers shall make all of the inspections required by this Code. All reports of such inspections shall be in writing by the responsible officer. Code Enforcement Officers are authorized to rely upon a responsible expert opinion as the officer deems necessary to report upon unusual technical issues that arise.

Section 4 VIOLATIONS

1.4.1 Violations declared to be strict liability misdemeanors. It shall be unlawful for a person, firm or corporation to be in conflict with or in violation of any of the provisions of this Code. Any person who is convicted of a violation of this Code shall be guilty of a misdemeanor, and the violation shall be deemed a strict liability offense.

1.4.2 Fines. (O-10-25)

- A. Except as otherwise provided, any person, firm or corporation violating any of the several provisions of this Code shall, upon conviction, be punished by a fine of Twenty-five Dollars (\$25.00). If the violation is continuous in nature, each day such violation shall be permitted to continue shall be considered a separate offense and shall be punishable as such.

- B. The penalty for subsequent offenses shall be:
1. Fifty Dollars (\$50.00) for the second offense that occurs within twelve (12) months of the prior offense.
 2. One Hundred Dollars (\$100.00) for the third offense that occurs within twelve (12) months of prior offenses.
 3. Two Hundred Dollars (\$200.00) for the fourth and all subsequent offenses that occur within twelve (12) months of prior offenses.

1.4.3 Citations. Code Enforcement Officers are hereby authorized to issue citations to any person, firm or corporation in conflict with or in violation of any of the provisions of this Code. Issuances of citations must comply with the Arkansas Rules of Criminal Procedures. Conway District Court shall have exclusive jurisdiction over citations issued pursuant to this Code.

1.4.4 Appeals. Any person after being found guilty of a violation or after entering a plea of guilty or *nolo contendere* to a violation shall have those appellant rights granted under the Laws of the State of Arkansas, US Constitution and Arkansas Rules of Criminal Procedure. Appeals of convictions of a violation will be with Faulkner County Circuit Court.

Section 5 REVOCATION OF CERTIFICATES, LICENSES AND PERMITS

1.5.1 General. The purpose of this section is to provide a procedure for the revocation of various certificates, licenses and permits issued by the City of Conway to prevent the use of structures described in subsection 1.5.2. The certificates, licenses and permits subject to revocation under this Code are those relating to the particular or general use of property; including, without limitation and for the purpose of illustration only: certificates of occupancy, zoning variances, certification of appropriateness, business licenses, sign permits, building permits, electrical and plumbing inspection approvals, conditional use permits, special use permits, and the like.

1.5.2 Administrative Revocation. Code Enforcement Officers shall have the authority to initiate administrative revocation of any such certificate, license or permit, if he or she has a reasonable belief that the use of the property or structure:

- (A) Poses a danger to the health and welfare of the public;
- (B) Threatens property or safety of any citizen;
- (C) Violates the terms and or scope of the certificate, license, or permit; or
- (D) Lacks compliance with applicable State licensing laws and requirements.

The non-emergency administrative revocation of a certificate, license, or permit shall follow the procedures of notice and determination provided in Section 1.6 below.

1.5.3 Temporary Emergency Orders. The Senior Code Enforcement Officer shall have the authority to issue a temporary emergency order in conjunction with notice of an administrative revocation as described in subsection 1.5.2. The Temporary Emergency Order shall have the effect of prohibiting all activity that may be harmful to the public or any person and suspending any certificate, license, or permit authorizing the same. The Senior Code Enforcement Officer may issue a temporary emergency order when he or she has a reasonable belief that the use of the property or structure:

- (A) Poses an *imminent* danger to the health, safety or welfare of the public; or
- (B) Threatens the life or poses an imminent danger of serious injury to any citizen.

1.5.3.1 Service of Temporary Emergency Orders. Service of Temporary Emergency Orders may be made by any Code Enforcement Officer upon the owner, manager, employee, or occupant of a structure that is subject to the provisions of subsection 1.5.3. If no one is located at the structure, the Temporary Emergency Order shall be affixed to the structure and written notice shall proceed according to subsection 1.6.2. All notices for this subsection shall clearly state “Temporary Emergency Order” and conform to the requirements of subsection 1.6.1.

1.5.4 Special Uses, Conditional Uses, and Other Authorizations Issued by City Council. The City Council for the City of Conway may revoke a special use, conditional use, or any other authorization to use property or conduct business that violates the terms of the use or threatens the property or safety of any citizen, or is detrimental to the health, safety or welfare of the public. Such a revocation may be performed at any regular or special meeting of City Council. The revocation shall be based upon the report of a Code Enforcement Officer, complaint of a citizen, or *sua sponte* action by City Council.

Section 6 ADMINISTRATIVE PROCEDURES

1.6.1 Notice of Violation. A “Notice of Violation” shall be written on standardized or letter form approved by the Senior Code Enforcement Officer that shall include the following information:

- (A) The name of the owner, if known;
- (B) An address or description of the real estate sufficient for identification;
- (C) A description of the violation or violations;
- (D) A statement that citations may be issued and fines assessed in addition to any administrative remedy imposed by the City.
- (E) Include a statement that the City has a right to cause repairs or demolition to be made and that the costs may be assessed against the owner and the property of the owner; and
- (F) The information required by ARK. CODE ANN. 14-54-903, if applicable.

1.6.2 Method of service. Administrative notices (such as a Notice of Violation) shall be issued by any person authorized under ARK. CODE ANN. § 14-54-903 by:

- (A) Posting on the subject property;
- (B) Regular mail; and
- (C) Certified mail, return receipt requested.

1.6.2.1 Notice by Mail. Notice by mail shall be sent to the owner’s address of record with the applicable county treasurer or collector. When sent to the proper address with proper postage, notice by mail shall be deemed properly served without regard as to whether the owner or occupant accepted the mail or the mail was otherwise returned.

1.6.3 Transfer of ownership. After receiving a notice of violation, it shall be unlawful for the owner of any property or structure to sell, transfer, mortgage, and lease or otherwise alienate or dispose of the same until:

- (A) The property or structure has been caused to conform with this code; or
- (B) The owner shall provide the other party a true copy of any notice of violation issued by a Code Enforcement Officer and shall furnish to the Senior Code Enforcement Officer a signed and notarized statement from the other party accepting responsibility for the property or structure.

1.6.4 Exceptions. The Notice of Violation requirements of this section shall not apply to the issuances of citations. Issuance of citations must comply with the procedures described in subsection 4.3.

Section 7 CONDEMNATION

1.7.1 Keeping condemned structures prohibited. That it shall be and it is hereby declared to be unlawful for any person or persons, partnership, corporation or association, to own, keep or maintain any house, building and/or structure within the corporate limits of the City of Conway, Arkansas, which constitutes a nuisance and which is found and declared to be a nuisance by Resolution of the City Council.

1.7.2 Condemnation. That any such house, building, and/or structure which is found and declared to be a nuisance by Resolution of the City Council will be condemned to insure the removal thereof as herein provided.

1.7.3 Notices. The Code Enforcement Department shall be responsible for publication, mailing or delivery of all notices required to condemn structures.

1.7.3.1 Prior notice of proposed condemnation. That prior to the consideration of a Resolution by the City Council declaring any house, building and/or structure as a nuisance, the owner(s) and any mortgagee(s) or lien holder(s), of such house, building and/or structure shall be mailed written notification of the date, time and place that the City Council will consider said Resolution. In addition, said notice shall inform the owner(s) and any mortgagee(s) or lien holder(s), of the right to be heard at the City Council meeting on the proposed Resolution declaring such house, building and/or structure to be a nuisance.

1.7.3.2 Notice to unknowns/non-residents. Should the owner(s) and mortgagee(s) and/or lien holder(s) of any such house, building and/or 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 City Clerk or his designee shall make an affidavit setting out the facts as to unknown address, unknown whereabouts and/or non-resident status of said owner(s), mortgagee(s), and lien holder(s). Thereupon, service of publication as now provided for 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.

1.7.4 Resolution Information. That the Resolution of the City Council condemning any house, building and/or structure which constitutes a nuisance will include in said Resolution an adequate description of the house, building, and/or structure; the name(s), if known, of the owner(s) and mortgagee(s) and/or lien holder(s) thereof; and shall set forth the reason or reasons said house, building and/or structure is or has been condemned as a nuisance.

1.7.5 Posting. After a house, building and/or structure has been found and declared to be a nuisance and condemned by Resolution as herein provided, a true and certified copy of said Resolution will be mailed to the owner(s) and mortgagee(s) and/or lien holder(s) thereof, if the whereabouts of said owner(s) and mortgagee(s) and/or lien holder(s) 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 and/or structure. Provided, that if the owner(s) and mortgagee(s) and/or lien holder(s) of said house, building and/or structure be unknown or if his or their whereabouts or last known address be unknown, the posting of the copy of said Resolution as hereinabove provided will suffice as notice of the condemnation.

1.7.6 Removal. If the house, building and/or 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 and/or structure constituting the nuisance, it will be torn down and/or removed by the Senior Code Enforcement Officer or his duly designated representative.

1.7.7 Saleable material. The Senior Code Enforcement Officer or any other person or persons designated by him to tear down and remove any such house, building and/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 have a substantial value, sell said house, building and/or structure, or any saleable 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.

1.7.8 Proceeds. All proceeds of the sale of any such house, building and/or structure, or the proceeds of the sale of saleable materials there from and all fines collected from the provisions of this ordinance shall be paid by the person or persons collecting the same to the City Clerk-Treasurer. If any such house, building and/or structure, or the saleable 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 will be returned by the City Treasurer to the former owner or owners of such house, building and/or structure constituting the nuisance.

1.7.9 Liens. If the City has any net costs in removal of any house, building or structure, the City shall place a lien on the personal property or real estate property as provided by ARK. CODE ANN. § 14-54-904.

1.7.10 Fine. A fine of not less than Two Hundred Fifty (\$250.00) nor more than Five Hundred Dollars (\$500.00) is hereby imposed against the owner(s) of any house, building and/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 day 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 5 hereof has been given within ten (10) days after said house, building and/or structure has been by Resolution found and declared to be a nuisance.

1.7.11 Judicial declaration. In the event it is deemed advisable by the City Council that a particular house, building and/or structure be judicially declared to be a nuisance by a Court having jurisdiction of such matters, the City Council is hereby authorized to employ an attorney to bring such an action for said purpose in the name of the City, and the only notice to be given to the owner(s) and mortgagee(s) and/or lien holder(s) of any such house, building and/or structure sought to be judicially declared to be a nuisance will be that as now provided for by law in such cases in Circuit Court. When any such house, building and/or structure has been declared judicially to be a nuisance by a Court of competent jurisdiction, a fine of One Hundred Dollars (\$100.00) is hereby imposed against the owner(s) thereof from the date said finding is made by the Court and for each day thereafter, said nuisance be not abated constitutes a continuing offense punishable by a fine of One Hundred Dollars (\$100.00) per day.

Section 8 EMERGENCY PROCEDURES

1.8.1 Temporary safeguards. Notwithstanding other provisions of this code, whenever, in the opinion of the Senior Code Enforcement Officer, there is imminent danger due to an unsafe condition, the code official shall order the necessary work to be done, including the boarding up of openings, to render such structure temporarily safe whether or not the legal procedure herein described has been instituted; and shall cause such other action to be taken as the code official deems necessary to meet such emergency.

1.8.2 Closing streets. When necessary for public safety, the code official shall temporarily close structures and close, or order the authority having jurisdiction to close, sidewalks, streets, public ways and places adjacent to unsafe structures, and prohibit the same from being utilized.

1.8.3 Emergency repairs. For the purposes of this section, the Senior Code Enforcement Officer shall employ the necessary labor and materials to perform the required work as expeditiously as possible. Costs incurred in the performance of emergency work shall be paid by the City. The City Attorney shall institute appropriate action against the owner of the premises where the unsafe structure is or was located for the recovery of such costs.

Article Two DEFINITIONS

Section 1 PURPOSE

2.1.1 General. Unless otherwise expressly stated, the following terms shall, for the purposes of this Code, have the meanings shown in this chapter. Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies. Whenever the words "dwelling unit," "dwelling," "premises," "building," "rooming house," "rooming unit," "housekeeping unit," or "story" are stated in this Code, they shall be construed as though they were followed by the words "or any part thereof."

Section 2 LIST OF DEFINITIONS

2.2.1 Definitions.

ABANDONED MOTOR VEHICLE. Any motor vehicle, regardless of whether wrecked or inoperable, which is left on public or private property, for a period of more than 72 hours, without approval from the property owner to place the vehicle upon such property.

APPROVED. Consented or agreed to in writing by the Senior Code Enforcement Officer, or his proper designee.

BASEMENT. That portion of a building which is partly or completely below grade.

BATHROOM. A room containing plumbing fixtures including a bathtub or shower.

BEDROOM. Any room or space used or intended to be used for sleeping purposes.

BOAT. Any vessel initially designed for the carrying of passengers or cargo upon the water, whether currently seaworthy or not, and regardless of size or design, including, without limitation, barges, motorboats whether inboard or outboard, canoes, rowboats, rafts and sailboats.

CARPORT. A roofed structure providing space for the parking of motor vehicles and enclosed on not more than two sides.

CODE ENFORCEMENT OFFICER. Any city employee who has been duly sworn and authorized to uphold the ordinances of the City and laws of the State of Arkansas related to property uses, maintenance, nuisances, inspections, issuances of building permits, certifications and licensing etc., within the municipal boundaries of the City. All duly sworn law enforcement officers of the Conway Police Department are authorized to exercise authority as Code Enforcement Officers.

CONDEMN. To adjudge unfit for human occupancy.

DWELLING UNIT. Any room or group of rooms located within a structure forming a single habitable unit with facilities that are used or intended to be used for living, sleeping, cooking, eating, and sanitation by a household or family.

EASEMENT. That portion of land or property reserved for present or future use by a person or agency other than the legal fee owner(s) of the property. The easement shall be permitted to be for use under, on or above a said lot or lots.

EXTERIOR PROPERTY. The open space on the premises and on adjoining property under the control of owners or operators of such premises.

EXTERMINATION. The control and elimination of insects, rats or other pests by eliminating their harborage places; by removing or making inaccessible materials that serves as their food; by poison spraying, fumigating, and trapping or by any other approved pest elimination methods.

GARBAGE. The animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food.

GRAFFITI. Any inscription, word, figure, or design that is marked, etched, scratched, drawn, painted, pasted or otherwise affixed to or on any structural component of any building, structure, or other permanent facility regardless of the nature of the material of that structural component, or the nature of the inscription, to the extent that the same was not authorized in advance by the owner, or otherwise deemed to be a public nuisance.

GUARD. A building component or a system of building components located at or near the open sides of elevated walking surfaces that minimizes the possibility of a fall from the walking surface to a lower level.

HABITABLE SPACE. Space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces, and similar areas are not considered habitable spaces.

HISTORIC. Any existing buildings or structures designated by the City of Conway, the State of Arkansas, or the United States government to be historic or located within a Conway historic district.

HOUSEKEEPING UNIT. A room or group of rooms forming a single habitable space equipped and intended to be used for living, sleeping, cooking and eating which does not contain, within such a unit, a toilet, lavatory and bathtub or shower.

IMMINENT DANGER. A condition which could cause serious or life-threatening injury or death at any time.

INFESTATION. The presence, within or contiguous to, a structure or premises of insects, rats, vermin or other pests.

INOPERABLE MOTOR VEHICLE. A vehicle which cannot be driven upon the public streets for reason including but not limited to being unlicensed, uninsured, wrecked, abandoned, in a state of disrepair, or incapable of being moved under its own power. Such vehicle is also considered an abandoned vehicle if left on public or private property without authorization from the property owner for a period in excess of 72 hours.

LABELED. Devices, equipment, appliances, or materials to which has been affixed a label, seal, symbol or other identifying mark of a nationally recognized testing laboratory, inspection agency or other organization concerned with product evaluation that maintains periodic inspection of the production of the above-labeled items and by whose label the manufacturer attests to compliance with applicable nationally recognized standards.

LET FOR OCCUPANCY OR LET. To permit, provide or offer possession or occupancy of a dwelling, dwelling unit, rooming unit, building, premise or structure by a person who is or is not the legal owner of

record thereof, pursuant to a written or unwritten lease, agreement or license, or pursuant to a recorded or unrecorded agreement of contract for the sale of land.

MOTOR VEHICLE. A machine of conveyance which is self-propelled and designed to travel along the ground, and includes but is not limited to automobiles, buses, electric scooters, mopeds ~~bicycles~~, motorcycles, trucks, tractors, go-carts, golf carts, motor homes.

NUISANCE. This term is defined in Article 4 Section 1 of this Code.

OCCUPANCY. The purpose for which a building or portion thereof is utilized or occupied.

OCCUPANT. Any individual living or sleeping in a building, or having possession of a space within a building.

OPENABLE AREA. That part of a window, skylight or door which is available for unobstructed ventilation and which opens directly to the outdoors.

OPERATOR. Any person who has charge, care or control of a structure or premises which is let or offered for occupancy.

OWNER. Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

PERSON. An individual, corporation, partnership or any other group acting as a unit.

PREMISES. A lot, plot or parcel of land, easement or public way, including any structures thereon.

PRIVATE PROPERTY. Means any real property within the city which is privately owned and which is not defined as public property in this section.

PUBLIC PROPERTY. Means any real property in the city which is owned by a governmental body and includes buildings, parking lots, parks, streets, sidewalks, rights-of-way, easements and other similar property.

PUBLIC WAY. Any street, alley or similar parcel of land essentially unobstructed from the ground to the sky, which is deeded, dedicated or otherwise permanently appropriated to the public for public use.

REMOVAL. The act of clearing all material and debris whenever it becomes necessary to demolish any building that has been condemned and found to be a nuisance by resolution of the city council.

RESIDENCE. A structure serving as a dwelling or home. For the purposes of this Code, the term residence includes dwelling units and rooming houses.

ROOMING HOUSE. A building arranged or occupied for lodging, with or without meals, for compensation. Bed-and-breakfasts, boarding houses, half-way houses, and hotels, as those terms are defined under the Conway Zoning Ordinance, are included within the definition of a Rooming House.

ROOMING UNIT. Any room or group of rooms forming a single habitable unit occupied or intended to be occupied for sleeping or living, but not for cooking purposes.

RUBBISH. Combustible and noncombustible waste materials, except garbage; the term shall include the residue from the burning of wood, coal, coke and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and dust and other similar materials.

UNCUT WEEDS AND GRASS. See Section 3.2.4 for definition.

SENIOR CODE ENFORCEMENT OFFICER. The Head of the Code Enforcement Department or, in his or her absence, the person who is directed or appointed to temporarily assume the duties of the Head of the Code Enforcement Department.

STRUCTURE. That which is built or constructed or a portion thereof.

TENANT. A person, corporation, partnership or group, whether or not the legal owner of record, occupying a building or portion thereof as a unit.

TOILET ROOM. A room containing a water closet or urinal but not a bathtub or shower.

TRAILER. Means any freewheeling object designed or intended to be pulled or towed behind a motor vehicle, regardless of whether wrecked or inoperable, and regardless of whether currently inspected and/or registered, including without limitation the following: Boat trailers, camper trailers, cargo trailers, special trailers for items such as golf carts or motorcycles, utility trailers, and farm implements.

VENTILATION. The natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space.

WORKMANLIKE. Executed in a skilled manner; e.g., generally plumb, level, square, in line, undamaged and without marring adjacent work.

WRECKED MOTOR VEHICLE. Any motor vehicle which does not have lawfully affixed thereto an unexpired license plate and the condition of which is wrecked, dismantled, partially dismantled, incapable of operation by its own power on a public street, or from which the wheels, engine, transmission or any substantial part thereof has been removed.

ARTICLE THREE GENERAL REQUIREMENTS

Section 1 GENERAL

3.1.1 Scope. The provisions of this chapter shall govern the minimum conditions and the responsibilities of persons for maintenance of structures, equipment and exterior property.

3.1.2 Responsibility. The owner of the premises shall maintain the structures and exterior property in compliance with these requirements, except as otherwise provided for in this 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 or premises which they occupy and control.

3.1.3 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.

Section 2 EXTERIOR PROPERTY AREAS

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

3.2.2 Grading and drainage. All premises shall be graded and maintained to prevent the erosion of soil and to prevent the accumulation of stagnant water thereon, or within any structure located thereon.

3.2.2.1 Illegal Dumping. That is shall be unlawful for any person, firm, or corporation to drop, dispose of, throw, toss or otherwise deposit leaves, paper, debris, brush, limbs, grass, or other simillar articles in drainage ditches, curbs and along gutters of city streets in the City of Conway,Arkansas.

3.2.3. Sediments and mud. All public roadways shall be kept clean of sediment and soil erosion from soil disturbing activities.

3.2.3.2 Abatement. Any person engaging in soil disturbing activities within the Conway city limits shall be required to implement measures to minimize the tracking of sediments and mud onto adjacent streets and roadways by vehicles leaving the site.

3.2.3.2 Exclusions. The following activities are specifically excluded from the requirements of this ordinance: emergency street, storm drainage or utility repairs. The following properties are specifically excluded from the requirements of this ordinance: approved retention areas and reservoirs.

3.2.3.3 Clean-up. If a soil disturbing activity creates a violation, the violator shall clean up the material daily or as frequently as needed to avoid a hazard or nuisance. If an activity is found in violation of the provisions of this ordinance, the city of Conway's appointed representative shall issue a "cease and desist" order for all activities on the site until the appropriate clean-up measures are implemented and provisions are made to prevent additional pollution. The city's approval of construction, building permit approvals, payments, release of payments or bonds and final approvals shall also be withheld or revoked until a violation is corrected and appropriate sediment control measures are in place.

3.2.3.4 Fine Any violation of this ordinance shall be considered an offense punishable by a fine of not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00) and each day of violation may be considered a separate offense.

3.2.4 Grass or Weeds. Grass or weeds shall not exceed eight (8) inches in height in all zoning districts. This restriction will not apply to:

a. property that is zoned A-1, except when abutting developed property. A-1 property shall be maintained with a 15' buffer along the lot line adjacent to the developed property with grass and weeds in such buffer shall not exceed eight (8) inches in height.

b. areas specifically designated or recognized by the city, the state or the United States as wetlands, open spaces, natural or wild flower areas, or other designated preservation areas.

3.2.5 Rodent harborage. All structures and exterior property 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 reinfestation.

3.2.6 Exhaust vents. Pipes, ducts, conductors, fans or blowers shall not discharge gases, steam, vapor, hot air, grease, smoke, odors or other gaseous or particulate wastes directly upon abutting or adjacent public or private property or that of another tenant.

3.2.7 Accessory structures. All accessory structures, including detached garages, fences and walls, shall be maintained structurally sound and in good repair.

3.2.8 Motor vehicles. Except as provided for in other regulations, no inoperative or unlicensed motor vehicle shall be parked, kept or stored on any premises, and no motor vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled. Painting of motor vehicles is prohibited unless conducted inside an approved spray booth.

3.2.8.1 Storage of inoperable or abandoned vehicles. No person shall park, store, leave or permit the parking, storing or leaving of any motor vehicle, and/or trailer of any kind, which is

wrecked or inoperable, whether attended or not, upon any private property within the city, except as allowed by the following exceptions:

- (1) Any subject item parked or stored within a building or enclosed garage on private property
- (2) Any subject item held in connection with a business enterprise lawfully licensed by the city for servicing and repair of subject items and properly zoned operated in an appropriate business zone pursuant to the zoning ordinances of the city.
- (3) Subject vehicle within a carport that is being actively repaired on at least a weekly basis. Subject vehicles and its parts when not being repaired shall be neatly and completely covered with an opaque cover.
- (4) Inoperable vehicles deemed inoperable only due to not having current vehicle license plate or vehicle registration tag, may be stored in a covered carport.
- (5) Inoperable vehicles may be stored on private property when provided with a fitted and maintained cover designed for such vehicle.

3.2.8.2 Authorized removal of inoperable motor vehicles. Code Enforcement Officers shall have the authority to remove inoperable motor vehicles on private property thirty (30) days after written notice has been affixed to the subject item. Such notice shall state that the subject item is a nuisance and order whoever has an interest in the subject item to remove the item from the property. If such nuisance is found upon private property, in addition to the foregoing notice, a copy of such shall be placed on the residence or business. The presence of such subject items on private property is hereby declared a public nuisance which may be abated in accordance with the provisions of this Code. Any inoperable vehicle sitting on city streets can and will be removed immediately at owners expense.

3.2.8.3 Exception: A motor vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes.

3.2.9 Defacement of property. No person shall willfully or wantonly damage, mutilate or deface any exterior surface of any structure or building on any private or public property by placing thereon any marking, carving or graffiti. It shall be the responsibility of the owner to restore said surface to an approved state of maintenance and repair.

Section 3 SWIMMING POOLS, SPAS AND HOT TUBS

3.3.1 Maintenance. Swimming pools, hot tubs and spas shall be maintained in a clean and sanitary condition, and in good repair. Please see ARK. CODE ANN. § 14-54-901.

Section 4 EXTERIOR STRUCTURE

3.4.1 General. The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

3.4.2 Premises identification. Buildings shall have approved address numbers placed in a position to be plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be a minimum of 3 inches in height on residential structures and shall be a minimum of 4 in height on commercial structures.

Section 5 RUBBISH AND GARBAGE

3.5.1 Accumulation of rubbish or garbage. All exterior property and premises of every structure shall be free from any accumulation of rubbish or garbage.

3.5.2 Disposal of rubbish. Every occupant of a structure shall dispose of all rubbish in a clean and sanitary manner by placing such rubbish in approved containers.

3.5.3 Appliance/Furniture and similar equipment not in operation shall not be discarded, abandoned or stored on premises outside of any enclosed building such as storage shed or accessory building.

3.5.4 Disposal of garbage. Every occupant of a structure shall dispose of garbage in a clean and sanitary manner by placing such garbage in an approved garbage disposal facility or an approved leak-proof garbage container.

3.5.4.1 No trash or garbage container shall be stored in a front or side yard abutting a street so as to be closer to the street than the building on the lot except on trash days. Garbage and trash containers must be placed within 5 feet of curb no earlier than 5:00 p.m. the day before and removed before 7:00 p.m. the day garbage is picked up

Section 6 SANITARY DRAINAGE SYSTEM

3.6.1 General. All plumbing fixtures shall be properly connected to either a public sewer system or to an approved private sewage disposal system.

3.6.2 Maintenance. Every plumbing stack, vent, waste and sewer line shall function properly and be kept free from obstructions, leaks and defects.

ARTICLE 4 NUISANCES

Section 1 GENERAL

4.1.1 Intent. It is the intent of this Code to prevent and abate nuisances within the municipal boundaries of the City of Conway. For the purposes of this Code, the word "nuisance" is defined as any act,

omission, or property condition that is detrimental to the health, safety and welfare of the public in that it:

- (A) Injures or endangers the comfort, repose, health or safety of others;
- (B) Is offensive to the senses;
- (C) Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage;
- (D) In any way renders other persons insecure in life or the use of property; or
- (E) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.

4.1.2 Prohibited. It shall be unlawful for any person or entity to cause, permit, maintain or allow the creation or maintenance of a nuisance.

4.1.3 Illustrative enumeration of a nuisance. The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property of any of the following items, conditions or actions is hereby declared to be and constitute a nuisance; provided, however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:

- (A) Noxious weeds and other rank vegetation;
- (B) Accumulations or storage of rubbish, garbage, materials, metals, lumber, tires, and other materials;
- (C) Any condition which provides harborage for rats, mice, snakes and other vermin;
- (D) Dilapidated structures;
- (E) All unnecessary or unauthorized noises and annoying vibrations, including animal noises.
- (F) All disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches.
- (G) The carcasses of animals or fowl not disposed of within a reasonable time after death.
- (H) The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, creamery, industrial wastes or other substances.
- (I) Any building, structure or other place or location where any activity which is in violation of local, state or federal law is conducted, performed or maintained.
- (J) Any accumulation of stagnant water permitted or maintained on any lot or piece of ground.
- (K) Dense smoke, noxious fumes, gas, soot or cinders in unreasonable quantities.
- (L) Graffiti.
- (M) Inoperable or abandoned motor vehicles.
- (N) The use of tarpaulins, canvas, plastic, oil cloth, sheeting and other similar materials as fencing or to shield or enclose any structure (including, without limitation, openings for windows, doors, walls, roofs, garage doors or carports) except when temporarily necessary to perform repairs under a properly issued building permit.
- (O) Permanent or temporary basketball goals (except those approved by the City) on any public street or on any right-of-way adjacent to a public street.

Section 2
UNSIGHTLY APPEARANCES

4.2.1 Uncut weeds, grass and other unsightly and unsanitary articles. All property owners and occupants within the municipal boundaries of the City of Conway are required to cut weeds and grass, remove garbage, rubbish and other unsightly and unsanitary articles and things from their property, and to eliminate, fill up, or remove stagnant pools of water or any other unsanitary thing, place or condition which might become a breeding place for mosquitoes, flies and germs harmful to the health of the community. For specific requirements related to the required maintenance of grass and weeds, refer to subsection 3.2.4.

4.2.2 Nuisance Structures. Any building or other structure which is in such a dilapidated condition that it is unsafe or unfit for human habitation, or kept in such an unsanitary condition that it is a menace to the health or safety of people residing in the vicinity thereof, or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located shall constitute a nuisance.

- (A) **Unsafe structures.** An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe conditions due to lack of abandonment or lack of maintenance, or, unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.
- (B) **Unfit structure for human occupancy.** A structure is unfit for human occupancy whenever the Code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this Code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.
- (C) **Unlawful structure.** An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under this Code, or was erected, altered or occupied contrary to law.

Section 3
ADDITIONAL REMEDIES

4.3.1 Authorized abatement. If the owner of any lot or other real property within the city shall neglect or refuse to remove, abate or eliminate any condition, violation, or prohibition as may be provided for in this Code, after having been given a **Notice of Violation** with seven (7) days' notice in writing to do so by the appropriate city official, the city is hereby authorized to do whatever is necessary to correct the condition, including but not limited to entering upon the property and having such weeds, rank grass or other vegetation cut and removed, or eliminating any unsanitary and unsightly condition, or causing necessary repairs to be made and charging the cost thereof to the owner of such premises, which shall constitute a lien thereon. The above mentioned seven days' notice shall be calculated by counting the first day of the seven day period as the day after written notice is given to the owner, by counting every

calendar day, including weekends and holidays, and by establishing the deadline to take the above required actions as 11:59 p.m. on the seventh day. Condemnations shall follow the procedures established in Section 7 of Article I. The City reserves the right to secure a priority clean-up lien pursuant to ARK. CODE ANN. § 14-54-903.

4.3.2 Authorized removal of basketball goals. Code Enforcement Officers shall have the authority to order the immediate removal of any permanent or temporary basketball goal (unless approved by the City) that is on any public street or on any right-of-way adjacent to a public street. If the apparent owner of the basketball goal is unknown, unavailable, or unwilling to remove the basketball goal, a Code Enforcement Officer may cause the goal to be removed.

4.3.3. Vacating of Unfit or Unsafe Structures and Utility Services. Any dwelling or dwelling unit declared as unfit for human habitation or unsafe by the Conway Code Enforcement Department as so designated and placarded by a Code Enforcement Officer, shall be vacated within seven (7) days after notice of such action has been given by the Building official to both the owner and occupant of the building. On the eighth (8th) day after said notice the Code Enforcement Department shall notify all utility services that no such services shall be provided to the dwelling or dwelling unit. After utility services are cutoff no further services shall be made available until a rehabilitation permit is obtained or until the Director of Code Enforcement notifies utilities that service may be provided to the dwelling or dwelling unit.

Section 4 PLACARDING

4.4.1 Placarding. Upon failure of the owner or person responsible to comply with the Notice of Violation for a nuisance structure or equipment within the time given, the Code official shall then post on the premises or on defective equipment a placard bearing the word "**NUISANCE**" and a statement of the penalties provided for occupying the premises, operating the equipment or removing the placard.

4.4.1.1 Placard removal. The Code Official shall remove unfit for human habitation or unsafe structure placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated. Any person who defaces or removes a condemnation placard without the approval of the Code Official shall be subject to the penalties provided by this Code.

Section 5 PROHIBITED OCCUPANCY

4.5.1 Prohibited occupancy. Any occupied structure condemned and placarded by the Code Official shall be vacated as ordered by the Code Official. Any person who shall occupy placarded premises or shall operate placarded equipment, and any owner or any person responsible for the premises who shall let anyone occupy placarded premises or operate placarded equipment shall be liable for the penalties provided by this Code.