

## ORDINANCE No. 2011-02

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF TUTTLE, GRADY COUNTY, STATE OF OKLAHOMA AMENDING THE CODE OF ORDINANCES OF THE CITY OF TUTTLE, OKLAHOMA ADOPTING NEW NUISANCE REGULATIONS; PROVIDING FOR SEVERABILITY; AND DECLAIRING AN EMERGENCY**

**BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF TUTTLE, OKLAHOMA:**

**SECTION 1:** Chapter 12 of Code of Ordinances of the City of Tuttle, Oklahoma is hereby repealed.

**SECTION 2:** A new Chapter 12 is hereby added to the Code of Ordinances of the City of Tuttle, Oklahoma to read as follows:

### CHAPTER 12 - NUISANCES

#### **Section 12-1 – Nuisances generally.**

(a) *Intent, creation and maintenance of public nuisance prohibited; provisions of chapter not applicable to private nuisances.*

(1) The intent of this chapter is to safeguard public health, safety and welfare by addressing and removing unsanitary, unsafe and unhealthy conditions, as defined in this Code and the International Property Maintenance Code, as adopted in Section 4-08 of this Code.

(2) It shall be unlawful for any person or firm to create or maintain a public nuisance within the city, or to permit a public nuisance to remain on premises under the person or firm's control within the city. Public nuisances are expressly declared to be conditions detrimental to the health, safety, and/or welfare of the public.

(3) The public is defined as any number of the inhabitants of the city or any neighborhood generally.

(4) The enumeration of certain public nuisances shall be cumulative and not limit other provisions of law or ordinances defining nuisances, either in more general or more specific terms.

(5) While the city supports an ongoing commitment to aesthetic values, situations which violate aesthetic standards but which do not create any actual or potential detriment to the health, safety, and/or welfare of the public are not "public nuisances" as the term is used in this chapter. Situations involving private nuisances, including subdivision private covenants, shall not use the provisions of this chapter to interfere with the normal resolution of these problems through civil process or private action.

(b) *General definition of nuisance.* In addition to other public nuisances declared by other sections of this Code, the city hereby declares the following to be public nuisances:

(1) The sale, or offering for sale, of unwholesome food or drink; or the keeping of a place where such sales or offerings are made.

- (2) The sale, offering for sale, or furnishing of intoxicating liquor in violation of the state statutes or city ordinances; or the keeping of a place where intoxicating liquor is sold, offered for sale, or furnished in violation of the state statutes or city ordinances.
- (3) The exposure, display, sale or distribution of obscene pictures, books, pamphlets, magazines, papers, documents or objects, or the keeping of a place where such are exposed, displayed, sold or distributed.
- (4) The keeping of a place where persons gamble, whether by cards, slot machines, punch boards or otherwise.
- (5) The keeping of a place where prostitution, illicit sexual intercourse or other immoral acts are practiced.
- (6) The keeping of a place where repetitive activities in violation of state statutes or city ordinances are practiced or occur.
- (7) The repeated use of any real property or structure to commit a felony violation of the Oklahoma Uniform Controlled Dangerous Substances Act.
- (8) The public exposure of a person having a contagious disease.
- (9) The continued making of loud or unusual noises that annoy persons of ordinary sensibilities; or the keeping of an animal, which makes such noises.
- (10) The operation or use of any electrical apparatus or machine that materially or unduly interferes with radio or television reception by others.
- (11) Any use of a street or sidewalk, or a place adjacent thereto, which causes crowds of people to gather so as to obstruct traffic on such street or sidewalk, or which otherwise obstructs traffic thereon, except as may be authorized by law or ordinance.
- (12) Permitting solid or liquid waste or other solid or liquid to flow or fall, or ice or snow to fall, from any building or structure upon any street or sidewalk.
- (13) All wells, pools, cisterns, bodies or containers of water in which mosquitoes breed or are likely to breed, or which are so constructed, formed, maintained, conditioned or situated as to endanger public safety.
- (14) Rank or noxious weeds or grass, carcasses, accumulations of manure, refuse or similar hazards, which are or are likely to be breeding places for flies, mosquitoes, rodents, vermin or disease germs; and the premises on which such exist.
- (15) Any building, wall, fence or other structure that has been damaged by fire, decay or otherwise, and that is so situated as to endanger the safety of the public, or which are otherwise built, erected or maintained in violation of any ordinance or code.
- (16) Any pit, hole, trench or similar hazard that is so constructed, formed, maintained, conditioned or situated as to endanger the public safety.
- (17) Any fire or explosion hazard that endangers or is likely to endanger public peace, health, safety or welfare.
- (18) Any occupation or activity that endangers, or is likely to endanger public peace, health, safety or welfare.
- (19) Any vehicle, whether in operating condition or not, or any trailer without a current vehicle plate as required by the state statutes for vehicles used on the public highways, when stored or kept in a residentially zoned district at an unfenced location and in front of the building line on the lot in question.
- (21) Any inoperable or dismantled vehicle, as defined in section 12-6.
- (22) The outside storage, disposal, or abandonment of any unused freezer, refrigerator or similar device or appliances.

- (23) The operation or use of any electric fence controller, which:
- a. Has not been approved by Underwriters Laboratories; or
  - b. Has nonfunctioning safety features within the electric fence controller; or
  - c. Is operated or used on property that has not been posted so as to notify those persons entering the controlled area in which the electric fence charger is used and present.
- (24) The construction of or maintenance of any fence, wall, or barrier which alone or by trapping debris reduces the carrying capacity of any floodplain or drainage course; provided this chapter shall not prevent the erection of dams by landowners which form ponds, detention areas or retention areas where the water is impounded or retained solely within the landowner's property unless such detention or retention overflows upon and negatively impacts adjacent or abutting property.
- (25) The accumulation of trash, garbage, rubbish or other debris in such quantities and at such locations as to reduce the carrying capacity of any floodplain, drainage course or easement to such an extent as to create a threat of flooding to the persons or property of another at a location off the tract where the accumulation of trash, garbage, rubbish or other debris is located.
- (26) Trees or tree limbs damaged or dead to the extent that a tree, limb or tree part could fall.
- (27) Weeds including, but not limited to, poison ivy, poison oak or poison sumac, and all vegetation at any state of maturity which exceeds a height of 12 inches, except healthy trees, shrubs or produce for human consumption when grown in a tended and cultivated garden, unless such trees, shrubbery or produce by their density or location constitute a detriment to the health, safety or welfare of the public, or creates a fire or traffic hazard, or harbors, conceals or invites deposits or accumulations of trash, or harbors or invites rodents or vermin, or is dead or diseased.
- (28) The existence of graffiti or the act of placing graffiti on any real or personal property, of altering or defacing any real or personal property of another without their consent through the use of paint, spray paint, markers, objects or other substances capable of destroying property, which is offensive to a reasonably sensitive person.
- (29) Trash including, but not limited to, refuse, litter, ashes, leaves, tree limbs or brush, debris, paper, combustible materials, rubbish, offal, or waste, or matter of any kind or form that is uncared for, discarded, or abandoned.
- (30) Weeds and debris of any type on undeveloped or partially developed property which is within 150 feet from any property zoned for any other use.
- (31) All trees, hedges, signs or other obstructions, or any portion of the same, located within a site-distance triangle (as defined in this Code, the Subdivision Regulations, and the Zoning Code) which prevents persons driving vehicles approaching an intersection of streets from having a clear view of traffic approaching such intersection.

Any of the above shall constitute a public nuisance and shall be abated as set out in Section 12-2 of this Code unless otherwise stated in this chapter.

(c) *Definitions.*

For the purpose of this Chapter, the words below shall have the following definitions, whether or not capitalized unless the context clearly requires another meaning, ascribed to them and the requirements and regulations set forth for each shall apply in the City of Tuttle.

- (1) Boarding and securing or boarded and secured means the closing, boarding or locking of any or all exterior openings so as to prevent entry into the structure.

(2) Unsecured building shall mean any structure which is not occupied by a legal or equitable owner thereof, or by a lessee of a legal or equitable owner, and into which there are one (1) or more unsecured openings, such as broken windows, unlocked windows, broken doors, unlocked doors, holes in exterior walls, holes in the roof, broken basement or cellar hatchways, unlocked basement or cellar hatchways or other similarly unsecured openings which would facilitate an unauthorized entry into the structure.

(3) Weed includes, but is not limited to, poison ivy, poison oak, or poison sumac and all vegetation at any state of maturity which:

- a. Exceeds 12 inches in height, except healthy trees, shrubs, or produce for human consumption, grown in a tended and cultivated garden unless such trees and shrubbery by their density or location constitute a detriment to the health, benefit and welfare of the public and community or a hazard to traffic or create a fire hazard to the property or otherwise interfere with the mowing of said weeds;
- b. Regardless of height, harbors, conceals, or invites deposits or accumulation of refuse or trash;
- c. Harbors rodents or vermin;
- d. Gives off unpleasant or noxious odors;
- e. Constitutes a fire or traffic hazard; or
- f. Is dead or diseased.

The term "weed" shall not include tended crops.

(4) Trash means any refuse, litter, ashes, leaves, debris, paper, combustible materials, rubbish, offal, or waste, or matter of any kind or form which is uncared for, discarded, or abandoned.

(5) Owner means the owner of record as shown by the most current tax rolls of the county treasurer's office.

(6) Cleaning means the removal of trash from property.

(7) Advertising means any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind lawfully placed on property by an owner or tenant of the property, or an agent of such owner or tenant, for the purpose of promoting products or services or conveying information to the public.

(8) Graffiti means, without limitation, any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind visible to the public that is drawn, painted, chiseled, scratched or etched on a rock, tree, wall, bridge, fence, gate, building or other structure; provided, this definition shall not include advertising or any other letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind lawfully placed on property by an owner of the property, a tenant of the property, or by an authorized agent for such owner or tenant.

(9) Removal, remove, or removed, when used in relation to the eradication of graffiti, means the act of taking graffiti off of, or masking the presence of graffiti on a rock, tree, wall, bridge, fence, gate, building or other structure.

(10) Dilapidated building means:

- a. A structure which, through neglect or injury, lacks necessary repairs or otherwise is in a state of decay or partial ruin to such an extent that the structure is a hazard to the health, safety, or welfare of the general public.
- b. A structure which is unfit for human occupancy due to the lack of necessary repairs and is considered uninhabitable or is a hazard to the health, safety, and welfare of the general public.

c. A structure which is determined by the city to be an unsecured building, as defined by 11 O.S. Section 22-112.1, more than three times within any 12-month period.

d. A structure which has been boarded and secured, as defined by 11 O.S. Section 22-112.1, for more than 36 consecutive months.

e. Unfit for human occupancy means a structure that due to lack of necessary repairs is considered uninhabitable and is a hazard to the health, safety, and welfare of the general public.

(11) Mortgage holder means mortgage holder of record as shown by the most current tax rolls of the county treasurer's office.

(12) Person shall mean any person, firm, partnership, association, corporation, company or organization of any kind.

(13) Vehicle shall mean any motor vehicle, automobile, truck, trailer, motorcycle, recreational vehicle, tractor, buggy, wagon, or self-propelled farm or construction equipment. Vehicle in the singular shall be interpreted as meaning the plural when multiple inoperable vehicles exist on a property.

(14) Public property shall mean any property owned or controlled by the City of Tuttle, Grady County Commissioners, the State of Oklahoma or United States Government.

(15) Private property shall mean any real property, which is not public property.

(16) Dismantled, junked, abandoned or inoperable vehicles shall be deemed to include the major parts thereof, including bodies, engines, transmissions, frames and rear ends.

#### **Section 12-2. - Abatement generally.**

(a) *Abatement.* Unless noted elsewhere, the city shall abate the public nuisances in this Code, pursuant to 11 O.S. Section 22-111 et seq., and in compliance with the following:

(1) At least ten days' notice shall be given to the owner of the property by mail at the address shown by the current year's tax rolls in the county treasurer's office before the city takes action. The notice shall order the property owner to clean the property of trash, or to cut or mow the weeds or grass on the property (or to abate the property as appropriate) and the notice shall further state that unless such work is performed within ten days of the date on the notice the work shall be done by the city and a notice of lien shall be filed with the county clerk against the property for the costs due/owing.

(2) After mailing the notice to abate a nuisance, the city will post a copy of the notice upon the property in violation and photographs will be obtained clearly showing violations on the premises. If the property owner cannot be located within ten (10) days from the date of mailing by the city, notice may be given by posting a copy of the notice on the property or by publication, as defined in Section 1-102 of Title 11, Oklahoma statutes, one time not less than ten (10) days prior to any hearing or action by the city.

(3) At the time of mailing the notice to the property owner, the city shall obtain a receipt of mailing from the postal service, which receipt shall indicate the date of mailing and the name and address of the mail recipient.

(4) Ten days after the notice to abate has been mailed and posted, the code enforcement officer shall revisit the property for the purpose of confirming owner compliance or continued violation of the property. If violations remain on the property, the code enforcement officer will document existing violations and forward a work order request for abatement to the city.

(5) The abatement crew will obtain photographs documenting existing violations at the start of abatement and compliance of the property at the end of abatement. These photographs shall be forwarded to the code enforcement officer, who will add the photographs to the case file.

(6) Upon a finding by the city that the condition of the property constitutes a detriment or hazard and that the property would be benefited by the removal of such conditions, the agents of the city are granted the right of entry onto the property for the removal of trash, mowing of weeds or grass, and performance of the necessary duties as a governmental function of the city. After abatement is completed, the city shall determine the actual cost of abatement and any other expenses as may be necessary in connection therewith, including, but not limited to, the cost of notice and mailing and a notice of lien shall be filed with the county clerk, by the city, describing the property and the work performed by the city, and stating that the city claims a lien on the property for the costs of cleaning and mowing. The city clerk shall mail a statement of such costs and a demand for payment of labor and materials to the owner.

(7) If payment is not made within thirty (30) days from the date of the mailing of the statement, then within the next sixty (60) days, the municipal clerk shall forward a certified statement of the amount of the cost to the county treasurer of the county in which the property is located and the same shall be levied on the property and collected by the county treasurer as other taxes authorized by law. Once certified by the county treasurer, payment may only be made to the county treasurer except as otherwise provided for in this section. Until fully paid, the cost and the interest thereon shall be the personal obligation of the property owner from and after the date the cost is certified to the county treasurer. In addition the cost and the interest thereon shall be a lien against the property from the date the cost is certified to the county treasurer, coequal with the lien of ad valorem taxes and all other taxes and special assessments and prior and superior to all other titles and liens against the property, and the lien shall continue until the cost shall be fully paid. At the time of collection the county treasurer shall collect a fee of Five Dollars (\$5.00) for each parcel of property. The fee shall be deposited to the credit of the general fund of the county. If the county treasurer and the municipality agree that the county treasurer is unable to collect the assessment, the municipality may pursue a civil remedy for collection of the amount owing and interest thereon by an action in person against the property owner and an action in rem to foreclose its lien against the property. A mineral interest, if severed from the surface interest and not owned by the surface owner, shall not be subject to any tax or judgment lien created pursuant to this section.

(8) Upon receiving payment for abatement, the city clerk shall forward to the county treasurer a notice of such payment and directing discharge of the lien.

(9) Upon a finding that the condition of the property constitutes an immediate detriment or hazard to the public, and that the property would be benefited by the removal of such conditions, the agents of the city may proceed to abate the nuisance immediately without prior notice.

(10) In cases where it is deemed impractical to summarily abate a nuisance, the city may bring suit in the district court of the county in which the property is located.

(b) *Summary abatement.*

(1) Pursuant to 11 O.S. Section 22-111, if it is anticipated that summary abatement of a nuisance for excessive weed or grass growth, or accumulations of trash or debris will be required, the notice shall state that any accumulations of trash or excessive weed or grass growth on the owner's property occurring within six months from and after the date of the notice may be summarily abated by the city and that all costs of such abatement shall be assessed against the owner and a lien may be imposed on the property to secure such payment, all without further prior notice to the property owner.

(2) If the city has provided notice to a property owner for summary abatement, the city may, upon confirmation of recurring violations of the same within six months of the original notice date, declare the property to be a nuisance and summarily abate the property without further prior notice to the property owner.

(3) At the time of each such summary abatement, the city shall notify the property owner of the abatement and the costs thereof. The notice shall state that the property owner may request a hearing within ten days after the date of mailing the summary notice.

(4) The city shall follow the notice requirements set out in this section for invoicing the property owner for abatement costs.

(c) *Exception for agriculture and railroad property.* The provisions of this section shall not apply to any property zoned and used for agricultural purposes or to railroad property under the jurisdiction of the Oklahoma Corporation Commission. However, the city may cause the removal of weeds or trash from property zoned and used for agricultural purposes pursuant to the provisions of this section but only if such weeds or trash pose a hazard to traffic and are located in or within ten yards of the public right-of-way at intersections.

(d) *Authority of officers to carry out duties of nuisance abatement; appeal of administrative orders.*

(1) Pursuant to the authority granted by the 11 O.S. Section 22-111(A)(7), the city hereby designates the city manager as the administrative officer to carry out each and all of the duties of the city of this Section 12-2.

(2) An order or decision of the administrative officer may be appealed to the city council by the person against whom a nuisance abatement order was directed, or a successor in interest, where it is alleged there is an error in any order or decision of the hearing officer; such appeal shall be taken by filing written notice of appeal with the city clerk within ten days after the notice or order is rendered, specifying the name and mailing address of the appellant and the grounds thereof.

(3) Stay of proceedings: An appeal stays all proceedings in furtherance of the action appealed from, with the exception of emergency abatements.

### **Section 12-3. - Abatement of graffiti.**

(a) *Abatement.* The city shall abate graffiti pursuant to 11 O.S. Section 22-112.2, as follows:

(1) The property owner and the tenant, if any may give their written consent to the city authorizing removal of the graffiti. By giving such written consent, the owner and the tenant each waive the right to notice and a hearing by the city.

(2) If the consent of the property owner and the tenant, if any, to remove graffiti from the property cannot be obtained, the city may remove the graffiti without such consent pursuant to the procedures set forth in this section.

(3) At least 20 days' notice shall be given by mail to the owner of the property at the address shown by the current year's tax rolls in the county treasurer's office. Notice to the tenant, if any, shall be given by mail directed to the property address. The notice shall order the property owner and the tenant, if any, to remove graffiti from the property and shall further state that unless such work is performed within 20 days of the date on the notice the work shall be done by the city.

(4) At the time of mailing the notice to the property owner and the tenant, if any, the city shall obtain a receipt of mailing from the postal service, which receipt shall indicate the date of mailing and the name and address of the mailers.

(5) Notice shall also be given by posting a copy of the notice on the property within 24 hours of mailing of the notice.

(6) Twenty days after notification and posting for graffiti, the code enforcement officer will revisit the property to confirm owner compliance with the notice, or that the violation of graffiti remains. The code enforcement officer shall properly document his findings with photographs. If violations of graffiti remain on the property, and upon finding that the condition of the property constitutes a detriment or hazard, and that the property, the public, and the community would be benefited by removal of such conditions, the agents of the city are granted the right of entry onto the property for the removal of the graffiti thereon and for performance of the necessary duties as a governmental function of the municipality. The code enforcement officer will forward a work order request for abatement of the same to the city.

(7) In removing the graffiti, the city shall restore the property as nearly as possible to the condition as it existed immediately prior to the graffiti being placed on the property.

(8) The abatement crew will obtain photographs documenting the existence of graffiti violations at the start of abatement and compliance of the property at the end of abatement. These photographs shall be forwarded to the code enforcement officer, who will add the photographs to the case file.

(b) *Summary abatement (graffiti).* A notice is given to a property owner and tenant, if any, ordering graffiti to be removed from property within the city in accordance with the procedures provided for in this section, any subsequent accumulations of graffiti on the property occurring within a one-year period may be summarily abated without further prior notice to the property owner and tenant, if any. However, prior to the summary abatement by the city, notice thereof shall be posted at least one (1) time on the property not less than two business days prior to such summary abatement. This subsection shall not apply if the records of the county clerk show that the ownership and tenant of the property was transferred after notice were given pursuant to this section.

(c) *Expense of removal.* Removal of graffiti, pursuant to the provisions of this section, shall be at the city's sole expense.

(d) *Authority to abate.* Nothing in the provisions of this section shall prevent the city from abating graffiti as a nuisance or otherwise exercising its police power to protect the health, safety, or welfare of the public.

(e) *Authority of officers to carry out duties of nuisance abatement; appeal of administrative orders.*

(1) Pursuant to the authority granted by the 11 O.S. Section 22-112.2(A)(6), the city hereby designates the city manager as the administrative officer to carry out each and all of the duties of the city of this Section 12.3.

(2) *Hearing.* A hearing may be held by the administrative officer to determine whether the accumulation of graffiti on the property has caused the property to become detrimental or a hazard to the health, safety, or general welfare of the public and community.

(3) An order or decision of the administrative officer may be appealed to the city council by the person against whom a nuisance abatement order was directed, or a successor in interest, where it is alleged there is an error in any order or decision of the hearing officer; such appeal shall be taken by filing written notice of appeal with the city clerk within ten days after the notice or order is rendered, specifying the name and mailing address of the appellant and the grounds thereof.

(4) *Stay of proceedings:* An appeal stays all proceedings in furtherance of the action appealed from, with the exception of emergency abatements.

(f) Release from liability. The city and its officers, employees or agents shall not be liable for any damages or loss of property due to the removal of graffiti performed pursuant to the provisions of this section.

**Section 12-4. - Abatement of dilapidated buildings or structures.**

(a) Pursuant to 11 O.S. Section 22-112 et seq., the city may cause dilapidated buildings within the city limits to be torn down and removed in accordance with the following procedures:

(1) The city council shall serve as the hearing body for the abatement of dilapidated buildings and structures. At least ten days' notice that a building is to be torn down or removed shall be given to the owner of the property before the City Council holds a hearing. A copy of the notice shall be posted on the property to be affected. In addition a copy of the notice shall be sent by mail to the property owner at the address shown by the current year's tax rolls in the county treasurer's office. Written notice shall also be mailed to any mortgage holders as shown by the records in the county clerk's office to the mortgagee's last known address.

(2) At the time of mailing the notice to any property owner or mortgage holder, the city shall obtain a receipt of mailing from the postal service, which receipt shall indicate the date of mailing and the name and address of the mailer.

(3) At least one (1) day before the public hearing is held, the code enforcement officer will revisit the property to confirm owner compliance or the continued existence of violations.

(4) At the public hearing, the City Council shall determine if the property is dilapidated and has become detrimental to the health, safety, or welfare of the general public and the community, or if the property creates a fire hazard which is dangerous to other property. City Council may review the significance of the building or structure to the community by requesting a recommendation from the Planning Commission.

(5) Pursuant to a finding that the condition of the property constitutes a detriment or a hazard to the public and that the property would be benefited by the removal of such conditions, the city may cause the dilapidated building to be torn down and removed. The city shall fix reasonable time frames for the commencement and completion of the work, however the work shall not commence earlier than 30 days from the date of the order. Any action to challenge the order of the city shall be filed within 30 business days from the date of the order.

(6) The city clerk shall immediately file a notice of dilapidation and lien with the county clerk describing the property, the findings of the city at the hearing, and stating that the city claims a lien on the property for the destruction and removal costs and that such costs are the personal obligation of the property owner from and after the date of filing of the notice.

(7) Upon expiration of the time frame provided by the city for the commencement and completion of the work, the code enforcement officer shall revisit the property to confirm owner compliance or the continued existence of violations. Upon confirmation that the property owner has failed to comply with the city's order of abatement, the code enforcement officer shall submit a request for work order to tear down and remove the dilapidated structure or building.

(8) Upon order by the city to abate a dilapidated structure, the city crew, or private contractor, shall apply for a demolition permit, specifying the licensed plumber who will cap or plug the private sanitary sewer line at the main. Exception: If the dilapidated structure is a mobile home in a designated mobile home park, the sewer may be capped at the pad and not at the main sewer line. The plumber shall call the building inspector for an inspection of the sewer cap/plug prior to demolition, unless a "wreck first" is approved

by the City Manager or designee. Where there is a septic tank, the tank shall be pumped, crushed and backfilled with appropriate material.

(9) The demolition of a dilapidated structure, whether by city crews or private contract, shall include the capping of private sanitary sewer lines per item number (8), removal of dilapidated structures including foundations, removal of trash and debris, grading the lot to a smooth condition (no ruts) and to drain; erosion control shall be used as necessary. If the dilapidated building is the primary structure on residentially zoned property, all structures shall be demolished. If the dilapidated building is accessory to a primary residential structure, only the dilapidated building shall be demolished.

(10) The abatement crew will obtain photographs documenting existing violations at the start of abatement and compliance of the property at the end of abatement. These photographs shall be forwarded to the city to add the photographs to the case file.

(11) Upon completion of the demolition project, the abatement crew shall call the building inspector for an inspection of the completed abatement. The building inspector shall verify the demolition has been completed per city ordinance.

(12) Upon completion of the abatement, the city shall determine actual costs of the dismantling and removal of dilapidated buildings and any other expenses that may be necessary, including the cost of notice and mailing, and the city clerk shall forward a statement of the actual cost attributable to the dismantling and removal of the buildings and a demand for payment to the property owner. A copy shall also be mailed to the mortgage holder, if any. The city clerk shall obtain a receipt of mailing from the postal service.

(13) If payment attributable to the actual costs of the dismantling and removal of the buildings is not made within six months from the date of the mailing of the statement to the owner of such property, the city clerk shall forward a certified statement of the amount of the cost to the county treasurer of the county in which the property is located.

(14) Once payment is made for abatement costs, the city clerk shall forward a release of lien to the county treasurer and/or clerk of the county in which the property is located. If payment attributable to the actual cost of the dismantling and removal of the buildings is not made within six months from the date of the mailing of the statement to the owner of such property, the city clerk shall forward a certified statement of the amount of the cost to the county treasurer of the county in which the property is located. Once certified to the county treasurer, payment may only be made to the county treasurer except as otherwise provided for in this section. The costs shall be levied on the property and collected by the county treasurer as are other taxes authorized by law. Until finally paid, the costs and the interest thereon shall be the personal obligation of the property owner from and after the date of the notice of dilapidation and lien is filed with the county clerk. In addition, the costs and the interest thereon shall be a lien against the property from the date the notice of the lien is filed with the county clerk. The lien shall be coequal with the lien of ad valorem taxes and all other taxes and special assessments and shall be prior and superior to all other titles and liens against the property. The lien shall continue until the cost is fully paid. At the time of collection, the county treasurer shall collect a fee of \$5.00 for each parcel of property. The fee shall be deposited to the credit of the general fund of the county. If the county treasurer and the municipality agree that the county treasurer is unable to collect the assessment, the municipality may pursue a civil remedy for collection of the amount owing and interest thereon including an action in personam against the property owner and an action in rem to foreclose its lien against the property.

(b) Nothing in the provisions of this section shall prevent the city from abating a dilapidated building as a nuisance or otherwise exercising its police power to protect the health, safety, or welfare of the general public.

(c) The officers, employees or agents of the city shall not be liable for any damages or loss of property due to the removal of dilapidated buildings performed pursuant to the provisions of this section or as otherwise prescribed by law.

**Section 12-5. - Boarding and securing dilapidated buildings.**

(a) *Abatement.* After a building has been declared dilapidated, as provided in section 12-4, and before the commencement of the tearing and removal of a dilapidated building, the city may authorize that such building be boarded and secured. Pursuant to 11 O.S. Section 22-112.1 et seq., the city shall abate unsecured buildings or structures as follows:

(1) At least ten days' notice that an unsecured building is to be boarded and secured shall be given by mail to any property owner and mortgage holder as shown by the current year's tax rolls in the county treasurer's office. A copy of the notice shall also be posted on the affected property. If neither the property owner nor mortgage holder can be located, notice may be given by posting a copy of the notice on the property or by publication. Such notice shall direct the owner to secure all openings to the structure(s).

(2) At the time of mailing the notice to any property owner or mortgage holder, the city shall obtain a receipt of mailing from the postal service, which receipt shall indicate the date of mailing and the name and address of the mail recipient. Such notice shall be published one time, not less than ten (10) days prior to any hearing or action by the municipality pursuant to the provisions of this section.

(3) Upon a finding that the property constitutes a public nuisance as an unsecured structure or building, the city clerk may file a notice of unsecured structure and lien with the county clerk's office describing the property, stating the findings of the city at the hearing at which such building was determined to be unsecured, and stating that the city claims a lien on the property for the costs of boarding and securing such building and that such costs are the personal obligation of the property owner from and after the date of filing the notice.

(4) If it is anticipated that summary abatement of an unsecured structure/building will be required, the notice shall state that any subsequent need for boarding and securing the building or structure within a six-month period after the initial boarding and securing of the building pursuant to such notice may be summarily boarded and secured by the city and that the costs of such boarding and securing shall be assessed against the owner.

(5) Ten days after the notice to abate has been mailed and posted, the code enforcement officer shall revisit the property for the purpose of confirming owner compliance or continued violation of the property. If violations of unsecured structures or buildings remain on the property, the code enforcement officer will document existing violations and process a work order request for abatement of the same.

(6) The abatement crew will obtain photographs documenting existing violations at the start of abatement and compliance of the property at the end of abatement. These photographs shall be forwarded to the code enforcement officer, who will add the photographs to the case file.

(7) The city shall follow subsection 12-4(a)(12)-(14) for invoicing the property owner for abatement costs.

**Section 12-6. - Abandoned, inoperable or junked vehicles.**

(a) *Certain vehicles prohibited.* No person shall park, store, leave or permit the parking, storing or leaving of any abandoned partially dismantled, nonoperating, wrecked or junked vehicle in the open upon public or private property or on a public street, for a period exceeding 48 hours, unless such vehicle or the parts thereof are stored within a fully enclosed building, or are stored

on property lawfully designated under the zoning ordinances as a place where such vehicles may be stored.

(b) *Abandonment of vehicles on public roadways.* Vehicles that are abandoned on a public roadway may be removed pursuant to 47 O.S. 901 et seq.

(c) *Rebuttable presumption.* A rebuttable presumption exists that vehicles have been abandoned when any one (1) of the following conditions exists:

(1) Weeds and/or grass undergrowth indicates to a reasonable person that the vehicle has not been moved, thereby permitting such growth to occur; or

(2) One (1) or more wheels are flat or missing; or

(3) Portions of the vehicle which are needed for its operation or control are missing; or

(4) Neighboring residents provide written statements as to the length of time such vehicle has been standing in one place without removal, or statements that parts are taken from, or added to, such vehicle, which would indicate a salvage, garage or used parts operation; or

(5) Evidence exists that provisions of the Code of Ordinances pertaining to Zoning or to junk or salvage yards, are being violated; or

(6) No current license tag is present or visible on the vehicle.

(d) *Abatement procedures.*

(1) The city may cause a red-tag notice to be posted on any vehicle constituting a nuisance as defined in this section. Such red-tag shall state that the vehicle is a nuisance and shall be removed, repaired or completely enclosed within a building within 48 hours after such red-tag notice is posted.

(2) If the property owner, vehicle owner or lessee or other person in control of the property upon which such vehicle is located, fails to comply with the red-tag notice, the code enforcement officer or city police may issue a citation to the owner and/or vehicle for violation of this section and the code enforcement officer shall cause formal notice to be issued by providing at least ten days' notice to the owner of the property by mail at the address shown by the current year's tax rolls in the county treasurer's office ordering the property owner to remove or repair the vehicle or to place such vehicle in an enclosed building. After formal notice is provided, the registered or legal owner of the vehicle, or their agent, may contest the validity of the order by filing a written request for a hearing with the city clerk. The written request must be filed within ten days of receiving the order. Any such hearing shall be scheduled within 72 hours of the request, excluding weekends and holidays. The city shall make a determination whether the order to remove or repair the vehicle or to place such vehicle in an enclosed building was justified.

(3) Upon failure of the owner of the vehicle, or the owner, lessee or person in control of the property upon which the vehicle is located, to comply with the formal notice by removal or repair of the vehicle or to place such vehicle in an enclosed building, and fails to request a hearing within the required time frame, the police chief shall take steps to remove the vehicle via towing and impounding, and provide for storage in a proper place. All costs incurred as a result of such action shall be assessed against the owner of the vehicle or the owner, lessee, or person in control of the property upon which the vehicle is located, or both.

(e) *Request for hearing.* After the removal or storage of any abandoned or wrecked vehicle at the request of the city, the registered or legal owner of the vehicle, or their agent, may contest the validity of the removal or storage, by filing a written request for a hearing with the city. The written request may be filed before or after the vehicle is retrieved from storage. However, the city shall not be required to conduct a hearing if the request is received more than ten days following

actual or constructive notice to the owner or driver of the vehicle that said vehicle has been so removed or stored. Any such hearing shall be scheduled within 72 hours of the request, excluding weekends and holidays. The hearing officer shall make a determination whether the vehicle removal and storage was justified.

(f) *Disposition of vehicle after removal by city.* The owner of any vehicle removed from property may regain possession thereof by making application to the chief of police, within 30 days after its removal, and upon payment to the city of all reasonable costs of removal and storage that shall have accrued to such vehicle. If no claim for such vehicle is made within 30 days after its removal by the city, the vehicle may be sold for the best price obtainable, as junk or otherwise, and the proceeds shall be used to pay any removal or storage fees against the vehicle. Any excess after such fees are paid shall be deposited in the general fund of the city.

#### **Section 12-7. - Emergency abatement.**

(a) *Immediate abatement.* If such nuisance exists in a condition which will cause imminent danger or peril to life or property, or in such a condition so menacing to the public health, peace or safety, the city may proceed to abate the nuisance immediately without prior notice; provided, however, that notice and an opportunity to be heard shall be afforded the property owner as soon as possible after abatement.

(b) *Emergency abatement procedures.*

(1) Upon determination that a nuisance constitutes an emergency, the city shall prepare an emergency order of abatement, to be mailed to the property owner and mortgage holder. The city manager will first approve any such emergency order of abatement, indicating the justification for the emergency abatement.

(2) Upon approval of the city manager, a copy of the approved emergency order, will be forwarded for commencement of the emergency abatement; said abatement shall begin upon receipt or as soon as practical within 24 hours of receipt.

(3) At the time of the emergency abatement, the code enforcement officer will post a copy of the emergency order of abatement conspicuously upon the property. The abatement crew will obtain photographs of the property immediately prior to commencement of the abatement and after abatement is completed.

(4) At the conclusion of the emergency abatement, all costs will be submitted for invoicing pursuant to subsection 12-2(a)(6)—(8).

#### **Section 12-8. - Penalty.**

Any person, firm or corporation, partnership or other legal entity who anywhere within the City of Tuttle commits any nuisance, either as principal or accessory, or who knowingly permits the creation or maintenance of any nuisance on any property owned or occupied, or managed or leased by him/herself as defined in this shall be guilty of an offense and, upon conviction thereof, shall be fined in any amount not to exceed the limits established in Section 11-50, Article 3, Chapter 11 of this Code of ordinances. Each day upon which a violation continues shall be deemed a separate offense.

#### **Section 12-9. - Exceptions.**

Pursuant to 11 O.S., this Code shall not apply to property zoned and used for agricultural purposes or to railroad property under the jurisdiction of the Oklahoma Corporation Commission.

**Section 12-10. - State law references.**

Nuisances, generally, 50 O.S. 1971

Public health and safety, 63 O.S. § 1-1011 (health nuisance-removal-costs)

Public health and safety, 63 O.S. § 1-209, 1998 (health authorities)

Cities and towns, 11. O.S. § 22-111 (cleaning and mowing of property)

Cities and towns, 11. O.S. § 22-112 (condemnation of dilapidated buildings)

Cities and towns, 11. O.S. § 22-112.1 (removal of dilapidated buildings)

Cities and towns, 11. O.S. § 22-112.2 (graffiti removal)

Cities and towns, 11. O.S. § 22-121 (authority to define nuisances)

**SECTION 3.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity of effectiveness of the remaining portions of this ordinance or any part thereof.

**SECTION 4.** It being immediately necessary for the preservation of the public health, peace and safety of the citizens of the City of Tuttle, Oklahoma that an Emergency be declared.

WHEREFORE, an Emergency is hereby declared to exist and this Ordinance shall be in full force and effect immediately upon its passage, approval and publication.

**PASSED AND APPROVED,** with the emergency clause, by the Mayor and City Council of the City of Tuttle this 10<sup>th</sup> day of January, 2011.

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Bobby Williams, Mayor  
City of Tuttle, Oklahoma

ATTEST:

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Lacy Kelly, City Clerk