

ORDINANCE NO. 2020-06

AN ORDINANCE AMENDING HEBER SPRINGS MUNICIPAL CODE TITLE 5 CHAPTER 5.04; PROVIDING FOR THE MAINTENANCE OF PROPERTY AND CONDEMNATION AND REMOVAL OF HOUSES, BUILDINGS, PERSONAL PROPERTY AND/OR STRUCTURES CONSTITUTING A NUISANCE WITHIN THE CORPORATE LIMITS; PROVIDING FOR A LIEN ON THE PROPERTY; PROVIDING A PENALTY THEREFOR, AND FOR OTHER PURPOSES.

Whereas, the City Council of the City of Heber Springs has reviewed its ordinances with regards to the maintenance of real property within the City, and

Whereas, the City Council has determined that it is in the best interest of the City, its citizens and residents to revise and update such Ordinances to ensure public health, safety, and welfare insofar as they are affected by the occupancy and maintenance of structures and premises within the city of Heber Springs.

Now, therefore be it ordained by the city council of the City of Heber Springs, Arkansas as follows:

SECTION 1. The Heber Springs Municipal Code Title 5 Chapter 5.04 is hereby amended to read as follows:

CHAPTER 5.04 MAINTENANCE OF PROPERTY

Section 5.04.01 - Interpretation and Applicability

5.04.01 General Rules of Interpretation: These regulations shall be known as the Heber Springs 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 Heber Springs. 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, such terms shall have ordinarily accepted meanings such as the context implies. Whenever the words "structure", "property", or "dwelling unit", are stated in this code, they shall be construed as though they were followed by the words "or any part thereof."

Section 5.04.02 - Definitions

5.04.02 Definitions:

Abandoned motor vehicle: Any motor vehicle, regardless of whether wrecked or inoperable, which is left on any property within the city, for a period of more than 72 hours, without approval from the property owner to place the vehicle upon such property.

Accessory structure: A Structure which is on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure. Structures with kitchen type appliances, areas used or intended for sleeping, and with or without bathroom facilities, is considered to be a dwelling unit or housekeeping unit, not an accessory structure.

Approved: Consented or agreed to in writing by the Fire Marshal or his proper designee.

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.

Carport: A roofed structure providing space for parking of motor vehicles and enclosed on no more than three sides.

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 owner(s) of the property. The Easement shall be permitted to be for use under, on or above a said lot or lots.

Extermination 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 pest 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.

Garage: An enclosed structure used for the purpose of storing motor or other articles and including a door or other apparatus to secure the structure.

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

Habitable space: Spaces in structures for living, sleeping, eating, or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces.

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 pest.

Inoperable motor vehicle: A vehicle which cannot be driven upon the public streets for reason including but not limited to being unlicensed, 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 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 including but is not limited to automobiles, buses, electric scooter, mopeds, motorcycles, trucks, tractors, go-carts and motor homes.

Nuisance: A nuisance is any of the following:

- (A) Any act or condition determined by the city council to be a nuisance;
- (B) Any condition, act, or place that is determined to be a threat to the public peace, health, safety and welfare;
- (C) Any act, omission, or property condition that is detrimental to the health, safety and welfare of the public in that it:
 - (i) Injures or endangers the comfort, repose, health or safety of others; (ii) Is offensive to the senses;
 - (iii) Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage;
 - (iv) In any way renders other persons insecure in life or the use of property;
 - or (v) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.

Obstruction: Anything that may block and hinder passage, or progress or course on any city street, or sidewalk or that may block the line of sight at any intersection of any street within the city.

Occupancy: The purpose of 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.

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 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.

Public Property: means any real property in the city which is owned by a governmental body and includes buildings, parking lots, parks, streets, sidewalks, and other similar property. Public property does not include easements or right-of-ways for roads or streets.

Public way: any street, alley or similar parcel of land essentially unobstructed from the ground to the sky, which is deeded, dedicated or other wise 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 unit or home. For the purpose of this code, the term residence includes dwelling units, housekeeping 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 city 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.

Structure: A building or other object composed of several parts, which is built or constructed or a portion thereof and which may, or may not, be a fixture upon real property.

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 limitations the following: Boat trailer, camper trailer, cargo trailer, 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 into, or removing such air from, any space.

Weeds and Grass: Grass, plants or other groundcover that is allowed to grow to a height in excess of eight (8) inches.

Wrecked motor vehicle: Any motor vehicle which does not have lawfully affixed thereto an unexpired license plate and the condition of which has been involved in a motor vehicle accident and is impaired in its use for driving, 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.

Section 5.04.03 - General Regulations

5.04.03.01 General: These regulations are intended to ensure the public health, safety and welfare insofar as they are affected by the continued occupancy and maintenance of structures, premises, equipment and exterior property within the city of Heber Springs. The provisions of this code shall apply to all residential and non-residential structures and all premises within the city of Heber Springs. Where different standards or requirements are imposed in the Heber Springs ordinances, or in any technical code adopted by the city, state or other governing jurisdiction, the most restrictive standard or requirement shall govern.

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

5.04.03.03 Responsibility: The owner of the premises shall maintain the structure 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. Equipment, devices, safeguards and required services installed in any residential or non-residential structures within the city of Heber Springs, shall be maintained in good working order. No occupant shall cause any required services, facility, equipment or utility to be removed from or shut off or discontinued for any occupied dwelling, except for temporary interruptions necessitated by repairs or alterations.

Except as otherwise specified herein, the owner shall be responsible for the maintenance of the buildings, structures and premises.

5.04.03.04 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.

5.04.03.05 Grass or Weeds. Grass or weeds shall not exceed eight (8) inches in height in all zoning districts.

5.04.03.06 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.

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

5.04.03.08 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.

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 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.

5.04.03.09 Authorized removal of inoperable motor vehicles. Fire Marshal or 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.

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.

5.04.03.10 Swimming Pools, Spas and Hot Tubs. 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.

5.04.03.11 Exterior Structure. 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.

5.04.03.12 Rubbish or Garbage. All exterior property and premises of every structure shall be free from any accumulation of rubbish or garbage.

5.04.03.13 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.

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

Section 5.04.04 - Illustrative Nuisances

5.04.04.01 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 stench, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stench.
- (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.

5.04.04.02 Uncut weeds, grass and other unsightly and unsanitary articles. All property owners and occupants within the municipal boundaries of the City of Heber Springs 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.

5.04.04.03 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.

5.04.04.04 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 of 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.

5.04.04.05 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.

5.04.04.06 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 5.04.05 Additional Remedies

5.04.05.01 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. The City reserves the right to secure a priority clean-up lien pursuant to A.C.A. §14-54-901 *et seq.*

5.04.05.02 Vacating of Unfit or Unsafe Structures and Utility Services. Any dwelling or dwelling unit declared as unfit for human habitation or unsafe by the City Council of Heber Springs as so designated and placarded by the Fire Marshal or 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 may 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 Fire Marshal or Code Enforcement Officer notifies utilities that service may be provided to the dwelling or dwelling unit.

5.04.05.03 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 Fire Marshal or 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.

5.04.05.04 Placard removal. The Fire Marshal or 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 Fire Marshal or Code Official shall be subject to the penalties provided by this Code.

5.04.05.05 Prohibited occupancy. Any occupied structure condemned and placarded by the Fire Marshal or Code Official shall be vacated as ordered by the Fire Marshal or 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.

Section 5.04.06 Condemnation

5.04.06.01 Keeping condemned structures prohibited. 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 Heber Springs, Arkansas, which constitutes a nuisance and which is found and declared to be a nuisance by Resolution of the City Council.

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

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

5.04.06.04 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.

5.04.06.05 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.

5.04.06.06 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.

5.04.06.07 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.

5.04.06.08 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 Fire Marshal or Code Enforcement Officer or his duly designated representative.

5.04.06.09 Saleable material. The Fire Marshal or 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.

5.04.06.10 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.

5.04.06.11 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 A.C.A. §14-54-901 *et seq.*

5.04.06.12 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 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.

5.04.06.13 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 5.04.07 Emergency Procedures

5.04.07.01 Temporary safeguards. Notwithstanding other provisions of this code, whenever, in the opinion of the Fire Marshal or Code Enforcement Officer, there is imminent danger due to an unsafe condition, the Fire Marshal or 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.

5.04.07.02 Closing streets. When necessary for public safety, the Fire Marshal or 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.

5.04.07.03 Emergency repairs. For the purposes of this section, the Fire Marshal or 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 shall institute appropriate action against the owner of the premises where the unsafe structure is or was located for the recovery of such costs.

Section 5.04.08 – Administrative Procedures

5.04.08.01 Notice of violation. A “Notice of Violation” shall be written on standardized or letter form that shall include the following information:

- (A) The name of the owner and/or occupant, if known;
- (B) An address or description of the real estate sufficient for identification;
- (C) A description of the violation or violations;
- (D) A time frame to have the violation corrected (not less than seven (7) days)
- (E) A statement that citations may be issued and fines assessed in addition to any administrative remedy imposed by the City.
- (F) Include a statement that the City has a right to cause repairs or demolition to be made and that the cost may be assessed against the owner and the property of the owner; and
- (G) The information required by Ark. Code Ann. § 14-54-903, if applicable.

5.04.08.02 Method of Service. Any notice under this Chapter, other than for emergency orders under Section 5.04.07 hereof, shall be issued by any person authorized under Arkansas law, and including without limitation, Ark. Code Ann. § 14-54-903, as may be amended from time to time, by:

- (A) Personal service;
- (B) Regular mail or certified mail, return receipt requested; or
- (C) When the identity or whereabouts of a person is unknown, by weekly publication in a newspaper having general circulation throughout the City for two (2) consecutive weeks.

5.04.08.03 Notice by Mail. Notice by mail shall be sent to the owner's address of record with the Cleburne County 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.

5.04.08.04 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.

5.04.08.05 Exceptions. The Notice of Violation requirements shall not apply to the issuances of citations. Issuance of citations must comply with the procedures provided for under Arkansas law.

5.04.08.06 Pre-Existing Uses. Any use or condition that exists upon the adoption of this Chapter, the Heber Springs Zoning Code, subdivision regulations or any other law, ordinance,

statute or code enforced by the City of Heber Springs, or any amendment thereto, that would be prohibited, absent the adoption of such provision, restriction or other limitation, shall be deemed to be a permitted non-conforming use and shall be allowed to continue unless the condition or use is determined by the City Council to be a hazard to the health, safety and welfare of the citizens of the City, subject to the terms hereof:

- (A) Any use or condition that is determined by the City Council to be a hazard to the health, safety and welfare of the citizens of the City shall be discontinued, abated and corrected immediately upon the adoption of the restriction, limitation or other requirement concerning the said use or condition.
- (B) In the event that any use or condition should not be considered to be a hazard to the health, safety and welfare of the Citizens of the City of Heber Springs shall be discontinued, abated and corrected within six (6) months from the adoption of the said limitation upon the use or condition.

Section 5.04.09 – Violations

5.04.09.01. Violations assessed a penalty. Any person, firm, corporation, partnership, association owner, agent, occupant or anyone having supervision or control of any property in violation of this Code shall be assessed the following fines:

- 1) First Violation Notice – Written Warning advising the occupant or owner of the violation and how to remedy the violation
- 2) Subsequent violation – \$25- \$500.00 Fine

Any citation shall be served in the manner of a traffic or criminal citation in accord with the then current Arkansas law and filed with the Cleburne County District Court, Heber Springs Department, which will require not only the payment of the violation penalty but also the attendance of such violator to such court and payment of any applicable court cost as may be authorized and permitted by Arkansas law. Offenses shall accrue daily for so long as the offense is determined to exist.

5.04.09.02 Violations declared to be misdemeanors. It shall be unlawful for a person, firm or other entity to be in violation of any of the provisions of this Code. Any person, firm or entity who is convicted of a violation of the Code shall be guilty of a misdemeanor.

5.04.09.03 Citations / Affidavit for Warrant. Code Enforcement Officers are hereby authorized to issue citations to any person, firm or entity in conflict with or in violation of any of the

provisions of this Code. Issuances of citations and/or an affidavit for warrant must comply with the Arkansas Rules of Criminal Procedures. The Cleburne County District Court, Heber Springs Department, shall have jurisdiction over citations issued pursuant to this Code. Notwithstanding any other provision of law, after a notice has been issued for a specific violation directing an owner or occupant to eliminate a condition on the relevant Premises, an additional notice for a subsequent violation of that specific violation within the same calendar year shall not be required before the issuance of a citation.

5.04.09.04 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.

5.04.09.05 Authorized Abatement. If the owner of any Premises shall neglect or refuse to remove, abate or eliminate any condition that is not in compliance with any provision of the Code of Ordinances of the City of Heber Springs or is not a permitted use for the Premises under the Heber Springs Zoning code that is not otherwise permitted as an existing, nonconforming use, after having been given a notice or violation or other warning, the City may, upon seven (7) days advance notice, with such notice to be given to the record title owner of the Premises and the occupant, if any, and with such notice to be conspicuously posted upon the Premises, the City may take all actions determined by the City to abate, correct, or otherwise address the condition referenced in the notice specified herein. The cost of any action undertaken by the City shall constitute a lien upon the Premises. The notice period referenced herein shall be calculated by counting the day following the day upon which the said notice is placed in the United States Mail for delivery or by posting the said notice upon the Premises, whichever is later and shall exclude holidays recognized by the State of Arkansas and weekends. In the event that the condition referenced in the notice is not corrected within the time specified herein, the City shall take all actions to enforce the lien as provided in the Code of Ordinances or as may be authorized by Ark. Code Ann. § 14-54-903, as may be amended from time to time.

SECTION 2. Any ordinance or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 3. 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.

Passed this _____ day of _____, 2020.

Approved:

Jimmy Clark, Mayor

Attest:

Nancy Hurley, City Clerk