

Public Nuisance Ordinance

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AN ORDINANCE OF THE BOARD OF MAYOR AND SELECTMEN OF THE CITY OF WEST POINT, MISSISSIPPI FINDING AND DECLARING CERTAIN PROPERTY TO BE A PUBLIC NUISANCE AND ESTABLISHING PROCEDURES FOR THE ABATEMENT THEREOF

BE IT RESOLVED by the Board of Mayor and Selectmen of the City of West Point, Mississippi the following, to wit:

Section 1: Findings

Pursuant to the authority granted by the Legislature to the City of West Point, Mississippi by Section 21-17-1 *et Sequa* and Section 21-19-1 *et Sequa* of the Mississippi Code of 1973, Amended, and such other statutes as may be applicable, the Board of Mayor and Selectmen of the City of West Point finds and determines the following, to wit:

- 1) The city has a history and reputation for well-kept properties, and property values and general welfare of the community are founded, in part, upon the appearance and maintenance of private property;
- 2) Owners and occupants of some properties within the city have permitted visual blight, including, but not limited to, deteriorated buildings, the accumulation of overgrown, rank and noxious vegetation and the accumulation of broken or discarded personal property in front, side, and rear yards;
- 3) The existence of such conditions as described in this chapter is injurious and inimical to the public health, safety and welfare of city residents and contributes to the deterioration of residential, commercial and industrial areas;
- 4) Abatement of these conditions is in the best interest of the health, safety and welfare of the citizens of the city because maximum use and enjoyment of properties in close proximity to one another depends upon minimum standards of cleanliness, safety, and sightliness.
- 5) The beneficial effects of maintaining minimum standard of cleanliness, safety, and sightliness for properties in the city include, but are not limited to, appreciation of property values, physical improvements of residential, commercial and industrial zones, attraction of capital investors to residential, commercial and industrial zones, increase in commercial trade and industrial productivity and increase in the tax base of the city;
- 6) The abatement of such conditions will improve the general welfare, health, safety, and image of the city;
- 7) The abatement procedures set forth in this chapter are reasonable and afford due process to all affected persons;
- 8) The uses and abuses of property, as described in this chapter, reasonably relate to the proper exercise of police power to protect the health, safety and welfare of the public.

Section 2: Definitions

As used in this Ordinance, the following words and terms shall be defined as follows:

- 1) ***Abate/Abatement*** means action to terminate, stop, cease, repair, rehabilitate, replace, demolish, correct or otherwise remedy nuisance activity, condition, premises or conduct by such means and in such manner as to bring the activity, condition, premises or conduct into compliance with the laws or regulations of the City of West Point and/or the State of Mississippi or in such manner as is necessary to promote the health, safety or general welfare of the public.

- 2) **City** shall mean the City of West Point, Mississippi, acting under the authority of its Board of Mayor and Selectmen.
- 3) **City Clerk** means the City Clerk of the City of West Point, Mississippi.
- 4) **Compliance Officer** shall mean the City Building Inspector, any sworn Police Officer of the City of West Point, Mississippi, or any other City official named by the Board of Mayor and Selectmen to enforce the provisions of this Ordinance.
- 5) **Court Clerk** shall mean the clerk or any assistant clerk of the Municipal Court of the City of West Point, Mississippi.
- 6) **Minor** shall mean any person under the age of eighteen (18) years, and who is not emancipated.
- 7) **Municipal Court** shall mean the Municipal Court of the City of West Point, Mississippi.
- 8) **Owner** means the owner or owners of any premises or real property.
- 9) **Premises or real property** shall mean, in context, any location, building, structure, residence, garage, room, shed, shop, store, dwelling, lot, parcel, land or portion thereof, whether improved or unimproved.
- 10) **Public Nuisance** shall mean any condition, instrumentality or machine located in a building or on premises, which constitutes a health hazard and/or which is or may be unsafe or dangerous to members of the general public by reason of their inability to appreciate the peril therein, and/or which may reasonably be expected to attract children to the premises and risk injury by playing with, in, or on it.
- 11) **Responsible party or person** means any individual, business or entity responsible for creating, causing, maintaining or permitting the nuisance activity, premises, condition or conduct; and includes, but is not limited to, the property owner, tenant, lessee, possessor, or occupant of real property, the president or other officer of the corporation, a business owner or manager of a business.

Section 3: Unlawful Property Nuisance.

It is unlawful for any person owning, renting, leasing, occupying, managing or having charge, or possessing of any real property in this City to maintain such premises in such a manner that any of the following conditions are found to exist thereon:

- 1) A building, structure, or portion thereof, which is in a dilapidated or dangerous condition so as to be unfit, unsafe, or unsuitable for human occupancy. Such conditions include, but are not limited to:
 - a. Inadequate or inoperable mechanical, electrical, plumbing, or sanitation systems or equipment;
 - b. Lack of sound and effective exterior walls or roof covering to provide weather protection;
 - c. Lack of structural integrity, including deteriorated or inadequate foundations, joints, vertical or horizontal support;
 - d. Broken, missing, or inoperable windows or doors constituting a hazardous condition or a potential attraction to trespassers;
 - e. Buildings or structures which are unpainted or which otherwise lack exterior coating, causing dry rot, warping or termite infestation;
 - f. Broken, deteriorated, or substantially defaced structures visually impacting on the neighborhood or presenting a risk to public safety;
 - g. Substandard building conditions described in the International Building Code.
- 2) An abandoned building or structure such as:
 - a. An unoccupied and unsecured building or structure;
 - b. A partially constructed, reconstructed, or demolished building or structure where work is abandoned for 120 consecutive days;
 - c. A damaged or partially destroyed building or structure not removed or repaired within 120 days after the damage or destruction, or, if the removal or repair cannot reasonably be accomplished within 120 days, upon which removal or repair has not been commenced within such period and prosecuted diligently toward completion.
- 3) Property maintained in a condition so defective, unsightly, or in a state of such deterioration, disrepair or neglect that it causes a health, safety or fire hazard or an public nuisance to children or others such as:

- a. The accumulation of dirt, litter, refuse, trash or debris in carports, parking areas, driveways, front yards, side yards, rear yards, vestibules, doorways of buildings, the adjoining sidewalk, or alley;
 - b. Storage of personal property (other than items designated for outdoor use) in front, exterior side, or rear yard areas visible to public view, including, but not limited to unregistered, inoperative or dismantled vehicles or vehicle parts, building materials not currently being used for the construction of improvements on the site, appliances, household furnishings or equipment, tools, machines, garbage cans, packing boxes, debris, rubbish, and broken or discarded furniture;
- 4) Trees, weeds, grass, vines, brush, or other vegetation which are dead, decayed, infested, diseased, overgrown, or likely to harbor rats or vermin, or which are detrimental to neighboring property or property values. This paragraph shall be applicable to every track of land upon which any building, facility or other structure of any type is located, regardless of the condition of the structure. This paragraph shall not be applicable to:
- a. Tracks of land in its natural forested or unimproved state that have not been subdivided, platted, or recorded for development purposes;
 - b. Tracks of land used primarily for agricultural purposes;
 - c. Tracks of land that have not been improved or occupied for a period of at least 25 years and upon which no structure exists;
 - d. Natural wildlife areas, open fields, or other similar situated tracks of land with and A-O (Agricultural-Open) zone pursuant to the Zoning Ordinance and Development Code of the City
- 5) Abandoned and broken equipment or machinery, or parts thereof;
- 6) The discharge of sewerage or untreated wastewater into any yard, open ditch, storm sewer line or any other open public or private property area;
- 7) Fences or walls:
- a. which lack structural support because of missing or wet soil, missing or failed footings, or missing or failed fastenings; or which otherwise do not stand erect;
 - b. which are in disrepair due to damage, crumbling mortar, missing bricks or wood, rotted wood, breaks or dents in their structure;
- 8) Front yards, and street side yards on improved lots, including corner lots, which lack required landscaping with a lawn, ground cover, bushes, or trees, or which lack required covering with rock or other decorative material, except during permitted construction, demolition, or remodel work on the lot;
- 9) A surface excavation or grading on private property which:
- a. Contains four (4) or more inches of standing water for a period in excess of five (5) days during which no rain has fallen; or
 - b. Has sides which slope at an angle that exceeds City standards.
 - c. This prohibition does not apply to:
 - i. Completed drainage facilities which are owned or maintained by, or approved and maintained in the manner approved by, the City of West Point or Clay County;
 - ii. Excavations made as part of construction approved by the City and protected with barriers or fences that meet City, County and/or State standards; or
 - iii. Excavations which are completely surrounded by a fence or other secure barrier at least six (6) feet tall;
- 10) A vehicle or vehicles parked or stored in a required front or corner side yard, except on a driveway or a paved area or behind a solid fence or wall a minimum of six (6) feet in height, on lots in a residentially zoned district. No more than fifty percent (50%) of the front yard may be paved or used for such parking.
- 11) Clothing, linen, towels, laundry, rugs, mattresses, and other similar material hung, placed, or attached to power lines, trees, bushes, fences, buildings, railings, or walls and visible from public property or an area open to the public.
- 12) Waste matter or personal property placed on rooftops.
- 13) Construction or agricultural equipment, machinery, or materials, parked or placed on residential premises and visible from public property or an area open to the public; except during permitted construction, demolition or remodel work on the site. This restriction does not apply to residential areas located within A-O (Agricultural-Open) zones.

- 14) Commercial vehicles with a gross weight of 10,000 pounds or more which are parked on the street right-of-way or on a lot or parcel in a residentially zoned district, unless the vehicle is in the process of delivering goods or services.
- 15) Vehicle or vessel repair which occurs in a residentially zoned district and is offensive or detrimental to the health, safety, or welfare of other persons, or which substantially interferes with the reasonable enjoyment of property by other persons, because of the substances, odors, noise, or visual clutter created by the repair; or because of the items stored in connection with the repair, or because the repair is performed on a vehicle not owned by the occupant of the property;
- 16) Any building or structure which is a public nuisance under common law.
- 17) Any violation of the zoning ordinances or occupying or otherwise using property in violation of the provisions of any conditional use permit, planned development permit, variance or other land use entitlement or land use permit.
- 18) Any condition or activity which is a "nuisance" or a "public nuisance" as defined in by the State of Mississippi or which is specifically declared to constitute a nuisance by any statute of the State of Mississippi or by any ordinance of the City of West Point.
- 19) Any building or structure which is constructed, altered, repaired, modified, maintained or used in violation of the provisions of the City of West Point, Mississippi Zoning Ordinance and Development Code.

Section 4: Public Nuisance Declared

All property found to be maintained in violation of any one or more of the provisions of Section 3 of this Ordinance is hereby declared to be a public nuisance and shall be abated pursuant to the procedures set forth herein. The procedures for abatement set forth herein shall not be exclusive and shall not in any manner limit or restrict the City from enforcing other City ordinances or abating public nuisances in any manner provided by law.

Section 5: Responsibility for Property Maintenance

Every responsible party who owns or is in possession of premises within the City is required to maintain such premises in a manner so as not to violate the provisions of this Chapter.

Section 6: Right to Enter Property to Inspect or Abate

Any officer, employee, or agent of the City of West Point may enter and inspect or abate any building or premises whenever necessary to secure compliance with, or prevent violation of, any provision of this Ordinance. If required by law, the officer, employee or agent shall first obtain consent of the responsible party or an appropriate court order.

Section 7: Abatement Procedure

- 1) **Compliance Order; contents.** Whenever the Compliance Officer determines that any property is maintained in violation of one or more of the provisions of this Ordinance, he or she shall serve on one or more of the responsible parties a written Compliance Order which contains:
 - a. The date and location of the violation;
 - b. The section of the code violated and a brief description of the violation;
 - c. The actions required to correct the violation(s) or abate the condition(s);
 - d. The time period after which the City will enter the property to abate the conditions or issue a misdemeanor violation citation if compliance is not achieved;
 - e. The time period for abatement shall be at least fifteen (15) days, unless it is determined by the Compliance Officer that the conditions constitute an imminent threat to the public health, safety or welfare. The Compliance Officer may grant an extension of time upon good cause, provided the responsible party signs a written agreement to abate the nuisance within a time certain.
 - f. That a citation will be issued charging the responsible party or parties with a misdemeanor violation of the terms of this Ordinance if abatement is not achieved within the time set forth in the Compliance Order.

2) Citation; Order to Appear. If the responsible parties or parties fail to abate the conditions set forth in the Compliance Order issued by the Compliance Officer, the Compliance Officer shall issue a misdemeanor citation charging the responsible party with violation of the terms of this Ordinance.

Said citation shall be in writing and of a form and content approved by the Municipal Court. The citation shall be an order and summons to appear before the Municipal Court at a time and date established by the Municipal Court and said time and date shall be written on the citation. The Compliance Officer shall file a copy of the Citation with the Court Clerk and the Court Clerk shall enter the Citation on the Court docket. Failure of the Responsible Party or Parties to appear before the Municipal Court at the time and date set forth on the Citation shall constitute *prima facie* evidence of Contempt of Court and subject to judicial action by the Municipal Court.

Section 8: Penalties

Any responsible party who violates any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than \$100.00 or more than \$1,000.00, or by imprisonment in the county jail for not to exceed 90 days, or by both such fine and imprisonment. Each day that a violation continues to exist shall constitute a separate offense.

Section 9: Severability

The procedures provided in this Chapter shall be cumulative and in addition to any other procedure or legal remedy provided for in the Ordinance of the City of West Point or by state law for the abatement of nuisance related activities, premises, conditions or conduct. Nothing in this Chapter shall be deemed to prevent the City from commencing a civil or criminal proceeding to abate a nuisance under applicable civil, criminal or municipal code provisions as an alternative or alternatives to the proceedings set forth in this Ordinance. The provisions of this ordinance are hereby declared to be severable and if any clause, sentence, word, section or provision is declared void or unenforceable for any reason by any court of competent jurisdiction, it shall not affect any portion of the ordinance other than said part of portion thereof.

Section 10: Effective Date

This Ordinance shall be effective upon passage and upon its publication as required by law.

The above and foregoing Ordinance was previously reduced to writing, proposed and introduced for the consideration of the Board of Mayor and Selectmen of the City of West Point, Mississippi and was voted upon Section by Section and upon the Ordinance as a whole. Selectman John Cummings moved that the Ordinance be adopted and that motion was seconded by Selectman James Watson. Whereupon, the Mayor called for a roll-call vote and the vote was as follows:

Selectman Linda Hannah voted AAye@
Selectman Homer L. Ryland voted AAye@
Selectman John Cummings voted AAye@
Selectman Tommy Bryan voted AAye@
Selectman James Watson voted AAye@

The Mayor therefore declared the motion carried and the Ordinance adopted on this the 8th day of July, 2003 by the Board of Mayor and Selectmen of the City of West Point, Mississippi in lawful session assembled.

Kenneth D. Dill, Mayor

(SEAL)

Dewel G. Brasher, Jr., City Clerk