

ORDINANCE NO. 2010-10-364

**AN ORDINANCE CREATING SECTION 42 OF THE CODE OF ORDINANCES
FOR THE CITY OF TONTITOWN, ARKANSAS, ENVIRONMENT REGULATION**

WHEREAS, it is necessary for Tontitown to regulate unsightly and/or unsanitary conditions of real property, and


WHEREAS, it is a burden on property owners to upkeep unsanitary and unsightly conditions on their property, and

WHEREAS, the City Council has determined that it is in the best interests of the City of Tontitown, Arkansas, to adopt Section 42 of the Code of Ordinances for the City of Tontitown, Arkansas, regulating garbage, debris, trash and/or waste.

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


Section 42 et. seq., of the Code of Ordinances for the City of Tontitown, Arkansas is hereby created for the City of Tontitown, a copy of which is attached hereto and made of this ordinance by reference.

PASSED AND APPROVED THIS 5th DAY OF October, 2010.



Mayor of the City of Tontitown

ATTEST:



Recorder-Treasurer of the City of Tontitown

SPONSOR:

Planning Commission

City of Tontitown

Environmental Code

Approved by Tontitown Planning Commission 9/28/2010



Chapter 42 - ENVIRONMENT

ARTICLE I. - IN GENERAL

ARTICLE II. - LITTERING

ARTICLE III. - UNSANITARY AND UNSIGHTLY CONDITIONS ON PRIVATE PROPERTY

ARTICLE IV. - GRAFFITI

ARTICLE I. - IN GENERAL

Secs. 42-1—42-25. - Reserved

ARTICLE II. - LITTERING

State law reference—Litter Control Act, A.C.A. § 8-6-401 et seq.

Sec. 42-26. - Prohibited.

Sec. 42-27. - Discarded refrigerators, other airtight containers.

Secs. 42-28—42-50. - Reserved.

Sec. 42-26. - Prohibited.

No person within the city shall throw, discard, deposit or scatter upon any sidewalk, alley, street, bridge, public passageway, or other public thoroughfare, public park, public beach or upon any private property owned by another person, any garbage, debris, trash or any other waste product of any kind.

Sec. 42-27. - Discarded refrigerators, other airtight containers.

No person shall leave or permit to remain outside of a dwelling, building or other structure, or within an unoccupied or abandoned building, dwelling or other structure under his control, in a place accessible to children an abandoned, unattended or discarded icebox, refrigerator or other container which has an airtight door or lid, snap lock or other locking device which cannot be opened by pushing from the inside, without first removing the door or lid, snap lock or other locking device.

State law reference—Discarding certain items prohibited, A.C.A. § 8-6-408.

Secs. 42-28—42-75. - Reserved.

ARTICLE III. - UNSANITARY AND UNSIGHTLY CONDITIONS ON PRIVATE PROPERTY*

State law reference—Municipal authority regarding weeds, rubbish, unsanitary conditions generally, A.C.A. § 14-54-901 et seq.

Sec. 42-76. - Definitions.

Sec. 42-77. - Clearance of unsightly or unsanitary conditions on real property.

Sec. 42-78. - Lien against real property; notice of abandoned, inoperative vehicle.

Sec. 42-79. - Service of notice.

Sec. 42-80. - Enforcement of lien.

Sec. 42-81. - Additional penalties.

Secs. 42-82—42-90. - Reserved.

Sec. 42-76. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Garbage means all normal kitchen waste, such as vegetable and animal wastes and their by-products; but does not include sewage and human body wastes.

Rubbish means brush, grass, leaves and other normal yard refuse, paper, cans, bottles and empty food and drink containers.

Things include, but are not limited to, the following items: inoperative motor vehicles; inoperative household or commercial appliances; furniture; building materials; building rubbish; defective septic tanks; human or animal excrement; metal, plastic, or paper containers.

(1)

Abandoned means that property to which no person claims or exercises the rights of ownership.

(2)

Appliances means, but is not limited to, refrigerators, deep freezers, stoves, ovens, air conditioners, washers, dryers, trash compactors, dishwashers, televisions, radios, hot water heaters, and plumbing fixtures.

(3)

Building material means, but is not limited to, items such as boards, bricks, cement, nails, pipe, sheet metal, siding, tar paper and windows which have never been incorporated into a structure or which have been removed from a structure and may be readily incorporated into another structure. This article applies only to building material which lies in public view and with respect to which its owner has no definite immediate plans for its use.

Tontitown Environmental Code

(4)

Building rubbish means any post construction solid waste which, because of its quantity, quality or condition, cannot be readily and immediately put to a beneficial use.

(5)

Inoperative means an item which, by mechanical or physical defect, can no longer be used for its intended purpose and which is not serving a functional purpose. Inoperative, when applied to motor vehicles, refers to any motor vehicle which is inoperable, dismantled, damaged or is unable to start or move under its own power. A vehicle shall be presumed to be inoperative when any of the following conditions exist:

a.

One or more tires are flat.

b.

One or more wheels are missing.

c.

The hood or trunk is raised or missing and has appeared to remain so for more than three days.

d.

Weeds or grass have grown up around the vehicle.

e.

The engine is missing.

f.

The vehicle has no current vehicle tags or registration.

g.

The door or doors, fender or fenders are removed or missing.

h.

The front or rear windshield is broken, removed or missing, or the side windows are broken or removed or missing.

(6)

Motor vehicle means a self-propelled device that is required under the laws of the State of Arkansas to be licensed in order to be operated upon the public roadways.

Unsanitary means that a place, condition or thing is unsanitary when it might become a breeding place for flies, mosquitoes and germs harmful to the health of the community.

Unightly means that a place, condition or thing is unsightly when it is in public view and offends the then-prevailing standard of the community as a whole, and not limited to a specific area, as to aesthetics or order.

Weeds means any vegetation, lush or decayed, regardless of its beauty or utility and regardless of the fact that it might serve as a sanctuary for animals beneficial to man, which, because of its natural condition or lack of maintenance by the owner or occupant of the property, threatens the health or safety of the community or creates an unsightly condition thereon.

Sec. 42-77. - Clearance of unsightly or unsanitary conditions on real property.

(a)

Owners or occupants of real property within the corporate limits of the city are hereby required to cut weeds, remove garbage, rubbish, inoperative motor vehicles or other unsightly or unsanitary things; and eliminate, fill up or remove stagnant pools of water or any other unsanitary thing, place or condition upon their real property.

(b)

It shall be unlawful for the owner or occupant of real property to permit the accumulation or development of weeds, garbage, rubbish, inoperative motor vehicles or other unsightly or unsanitary things or conditions on real property within the city.

Exception: This section of the Code of Ordinances does not apply to any motor vehicle held in conjunction with a business enterprise lawfully licensed by the city for the storage, servicing, or repair of motor vehicles so long as the property is located in the appropriate zone pursuant to the zoning ordinances of the city, and meets the other qualifications for such business enterprise as set out in the Code of Ordinances of the City.

(c)

The dumping of tree cuttings, tree trunks, fill dirt and other appropriate fill material may be permitted to reclaim gullies and ravines upon application to, and approval by, the city planning commission under the following conditions:

(1)

Written certification by the applicant that he is the legal owner of the property or that he has the written permission of the property owner.

(2)

Access must be completely restricted to the applicant only.

(3)

All material must be covered by fill dirt and smoothed over at intervals not to exceed two weeks.

Failure to comply with the above conditions will be grounds for revocation of the permit and may result in the issuance of a citation pursuant to subsections (a) and (b) of this section.

(d)

Nothing covered by this article is intended to preclude or conflict with the provisions of chapter 102 and all substances not governed by chapter 102 are to be governed by this article. This article is intended to supplement chapter 22.

Sec. 42-78. - Lien against real property; notice of abandoned, inoperative vehicle.

(a)

If the owner or occupant of any real property within the corporate limits of the city neglects or refuses, after being given seven days' written notice by the police department or code enforcement officers of the city, to remove, abate or eliminate any condition referred to in section 42-77, the city will do whatever is necessary to correct the condition and will charge the cost of the correction to the property owner to secure its costs; the city will perfect a lien against the affected property pursuant to A.C.A. § 14-54-903 et seq.

(b)

Before any abandoned or inoperative motor vehicle is taken into custody and possession from private property, the city shall give the private property owner or occupant and the owner of the motor vehicle, if ascertainable, 30 days' notice by registered or certified mail that such action will be taken unless the motor vehicle is restored to a functional use, disposed of in a manner not prohibited by A.C.A. § 8-6-401, et seq., or placed in an enclosed building. The 30-day notice may be waived by the owner or occupants of the property jointly and severally.

(c)

Any owner/occupant shall be presumed to have notice for the violation if the owner/occupant has received notice of a similar type violation within the previous one year.

Sec. 42-79. - Service of notice.

(a)

Owners of property in violation of this article shall be notified in writing at their current or last-known address.

(b)

In case the owner of any lot or other real property is unknown or his whereabouts is not known or is a nonresident of this state, then a copy of the written notice shall be posted upon the premises.

Before any action to enforce the lien shall be had, the city clerk shall make an affidavit setting out the facts as to unknown address or whereabouts of nonresidents.

(c)

Thereupon, service of the publication, as provided for by law against nonresident defendants, may be had. An attorney ad litem shall be appointed to notify the defendant by registered letter addressed to his last known place of residence if it can be found.

(d)

Except as provided in subsection (b) of this section, notices required by this article shall be published, mailed or delivered by the city recorder or clerk or such other person as designated by the city council.

State law reference—Notice to unknown or nonresident owners, A.C.A. § 14-54-902.

Sec. 42-80. - Enforcement of lien.

(a)

The lien provided for in A.C.A. § 14-54-903 may be enforced and collected in either one of the following manners:

(1)

At any time within ten years after a lien has been filed, by an action for foreclosure in the circuit court; or

(2)

The amount of the lien may be determined at a hearing before the city council held after 30 days' written notice by certified mail to the owner of the property if the name and whereabouts of the owner are known. If the name of the owner cannot be determined, then the amount will be determined only after publication of notice of the hearing in a newspaper having a bona fide circulation in the county where the property is located for one insertion per week for four consecutive weeks. The determination of the city council is subject to appeal by the property owner in the circuit court. The amount so determined at the hearing, plus ten percent penalty for collection, shall be certified by the city to the tax collector of the county and placed on the tax books as delinquent taxes, and collected accordingly. The amount, less three percent thereof, when so collected shall be paid to the city by the county tax collector.

State law reference—Enforcement of lien, A.C.A. § 14-54-904.

Sec. 42-81. - Additional penalties.

In addition to any liens provided for in this article, any violation of this article by a property owner and/or person holding a possessory interest in the property, such as a leasehold tenant, are punishable by those penalties prescribed in section 1-9 of this Code.

Secs. 42-82—42-90. - Reserved.

ARTICLE IV. - GRAFFITI

[Sec. 42-91. - Defined.](#)

[Sec. 42-92. - Declaration as unsightly and a nuisance.](#)

[Sec. 42-93. - Removal.](#)

[Sec. 42-94. - City's right to take corrective action.](#)

[Sec. 42-95. - Possession of spray paint and markers.](#)

[Secs. 42-96—42-125. - Reserved.](#)

Sec. 42-91. - Defined.

Graffiti means and includes any unauthorized inscription, word, figure or design or collection thereof, which is marked, etched, scratched, painted, drawn or printed on any structural component of any building structure or other facility, regardless of the nature of the material of that structural component.

Sec. 42-92. - Declaration as unsightly and a nuisance.

The existence of graffiti on buildings, or on structures, including but not limited to, fences or walls, located upon any property in the city is declared a nuisance.

Sec. 42-93. - Removal.

Whenever the city becomes aware of the existence of graffiti visible from the public right-of-way on any property, including structures or improvements within the city, the police department, upon such discovery, shall give or cause to be given, notice to the owner of the property or the property owner's agent, and/or any leasehold tenant, to take corrective action and remove the graffiti from the property within seven days from the date the notice is served.

Sec. 42-94. - City's right to take corrective action.

If the graffiti is not removed by the owner in the required time provided by the previous section in this article, then the city shall have the right to enter upon private property to the extent necessary to take corrective action. The city may then seek the cost of the graffiti removal from the property owner and/or leasehold tenant.

Sec. 42-95. - Possession of spray paint and markers.

Possession of spray paint and markers with intent to make graffiti is prohibited. No person shall carry an aerosol spray paint can or broad tipped indelible marker with the intent to make graffiti.

Secs. 42-96—42-125. - Reserved.

ROLL CALL

SHALL THE ORDINANCE PASS:

	Yea	Nay
Alderman David Bolinger	___	___ (Ward 1, Position 1)
Alderman Henry Piazza	___	___ (Ward 1, Position 2)
Alderman Arthur Penzo	___	___ (Ward 2, Position 1)
Alderman Bobby Pianalto	___	___ (Ward 2, Position 2)
Alderman Julie Bowling	___	___ (Ward 3, Position 1)
Alderman Ken Robertson	___	___ (Ward 3, Position 2)
Mayor Joseph Edgmon	___	___
TOTALS:	___	___

ROLL CALL

SHALL THE ORDINANCE BECOME EFFECTIVE IMMEDIATELY:

	Yea	Nay
Alderman David Bolinger	✓	___ (Ward 1, Position 1)
Alderman Henry Piazza	✓	___ (Ward 1, Position 2)
Alderman Arthur Penzo	✓	___ (Ward 2, Position 1)
Alderman Bobby Pianalto	✓	___ (Ward 2, Position 2)
Alderman Julie Bowling	✓	___ (Ward 3, Position 1)
Alderman Ken Robertson <i>Absent</i>	___	___ (Ward 3, Position 2)
Mayor Joseph Edgmon	___	___
TOTALS:	<u>5</u>	<u>0</u>