

ORDINANCE NUMBER 685

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, AMENDING TITLE 8 - HEALTH AND SAFETY, OF THE MUNICIPAL CODE BY DELETING CHAPTER 8.12 - NUISANCE ABATEMENT, IN ITS ENTIRETY AND ADDING A NEW CHAPTER 8.12 - NUISANCE ABATEMENT.

WHEREAS, staff has recommended that the City Council amend the City's Municipal Code regarding the nuisance abatement process; and

WHEREAS, the City Council finds that the amendment recommended by staff is appropriate and in the City's best interests.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, AS FOLLOWS:

Section 1. That Title 8 - HEALTH AND SAFETY, of the Municipal Code, is hereby amended by deleting Chapter 8.12 - Nuisance Abatement, in its entirety and adding a new Chapter 8.12 - Nuisance Abatement as follows:

Chapter 8.12 - NUISANCE ABATEMENT

8.12.010 - Definitions.

As used in this chapter, the following terms are defined in this section:

"Building" means any real property structure, movable or immovable, permanent or temporary, vacant or occupied, used (or of a type customarily used) for human occupancy or business purposes, or where livestock, produce, or personal or business property is located, stored or used.

"City" means the incorporated area of the City of Cottonwood.

"Contiguous sidewalks, streets and alleys" means any sidewalk, street or alley, public or private, adjacent to the edge or boundary, or touching on the edge or boundary, of any real property.

"Dilapidated building" means any building in such disrepair, or damaged to such an extent, that its strength or stability is substantially less than a new building, or that is

likely to burn or collapse, and the condition of which endangers the life, health, safety, or property of the public as determined by the city.

"Governing body" means the City Council of the City of Cottonwood. "Grounds" means any private or public land, vacant or improved.

"Lots" means any plot or quantity of land, vacant or improved, private or public, as surveyed, platted or apportioned for sale or any other purpose.

"Person" means an individual, partnership, firm, corporation, association, trust, state, municipality, political subdivision, responsible party or any other entity that is legally capable of owning, leasing or otherwise possessing real property.

"Public nuisance" means the existence of a dilapidated building or an accumulation of rubbish, trash, weeds, or other accumulations of filth, debris or dilapidated structures which constitute a hazard to public health and safety from buildings, grounds, lots, contiguous sidewalks, streets and alleys.

"Real property" means buildings, grounds, lots and tracts of land.

"Responsible Party" means person(s) legally responsible for property, a person who has the actual use, possession or control of real property, authorized agent and/or a person who is a recorded owner of real property as shown in the public records in the office of the Yavapai County Recorder, and includes a person holding equitable title as an heir or under a recorded installment sales contract, contract for deed or similar instrument

"Structures" include buildings, improvements and other structures that are constructed or placed on land.

8.12.020 - Public Nuisance - Unlawful.

A. Violation. A person, firm or corporation shall have created a public nuisance and committed a violation of this chapter if such person, firm or corporation without lawful authority:

1. Allows the accumulation of rubbish, trash, weeds, filth or debris upon property located in the city, or permits a dilapidated building to remain upon property located in the city, of, over or concerning which they are the responsible party;
2. Places rubbish, trash, weeds, filth or debris upon contiguous sidewalks, streets and alleys in the city which are dedicated and open to the public, or permits a dilapidated building to remain upon contiguous sidewalks, streets and alleys in the city which are dedicated and open to the public;
3. Places rubbish, trash, weeds, filth or debris, or permits such to remain upon any other private or public property in the city not owned or under the control of the person, firm or corporation.

8.12.030 - Duty to Remove - Notice to Abate.

- A. Duty to Remove. A person, firm or corporation that is the responsible party of property within the city shall remove or otherwise abate a public nuisance by a date set forth within the notice, but not to exceed thirty (30) days.
- B. Notice to Abate.
 - 1. Upon reasonable belief that a violation of this chapter has occurred, the city shall issue a notice in writing which shall be served in person or by certified mail upon the responsible party at their last known address or at the address on file in the Yavapai County Treasurer's Office to which the most recent tax bill was mailed. If the owner does not reside on the property, the notice shall be served upon the owner in person or by certified mail to the owner's last known address. Failure by any party to receive the notice shall not be a bar to abatement, assessment of costs or lien of assessment pursuant to this chapter.
 - 2. The city may record the notice to abate in the Yavapai County Recorder's Office. If the notice to abate is recorded and compliance with the notice to abate is subsequently satisfied, the city shall record a release of the notice to abate.

8.12.040 - Notice to Abate-Contents.

The notice to abate shall contain the following:

- A. The street address and a legal description sufficient for identification of the property on which the alleged violation occurred.
- B. A statement that the city has determined that there is a reasonable belief that a violation of this chapter has occurred on the property identified in the notice to abate.
- C. An order that the responsible party shall have thirty days from the date of mailing or personal service of the notice to abate to remove any rubbish, trash, filth, debris or dilapidated building upon the property or upon contiguous sidewalks, streets or alleys.
- D. A statement that rubbish, trash, filth, debris or building materials must be disposed of at an approved waste collection facility or by other legal means and that a tipping fee receipt or other evidence of legal disposal is to be submitted to the city prior to a determination of compliance with the notice to abate.
- E. A statement that the city may cause the violation to be abated if the responsible party or any person with an interest in the property fails to comply with the order within the specified compliance period.

- F. A statement that the responsible party shall have fifteen days from mailing or personal service of the notice to abate to appeal the issuance of the notice to abate to the City Council and that failure to appeal will constitute waiver of all rights to an administrative hearing and determination of the matter. The procedure for filing an appeal shall be set forth in the notice to abate.
- G. A statement that a person who places any rubbish, trash, filth or debris upon any private or public property located in the city that is not owned or controlled by that person may be found guilty of a class I misdemeanor or a civil violation and, in addition to any fine or penalty which may be imposed for a violation of this chapter, is liable for the costs which may be assessed for removing, abating or enjoining rubbish, trash, filth, debris or a dilapidated building, including legal fees.

8.12.050 - Appeal of Notice to Abate.

Any person receiving a notice to abate may appeal to the City Council as follows:

- A. Notice of Appeal. A written notice of appeal shall be filed with the City Clerk within fifteen days after the notice to abate was mailed or personally served. The date of receipt by the City Clerk shall be the date of filing.
- B. Contents of Notice of Appeal. The notice of appeal shall state in reasonable detail why the appellant should not be required to comply with the notice to abate.
- C. Hearing on Appeal. Upon receipt of the notice of appeal, the City Council shall place the matter on the agenda for its next regular meeting. The city shall appear and present evidence of the existence of the public nuisance. The appellant may present evidence controverting the existence of the public nuisance. The hearing shall be informal and without regard to the rules of procedure or evidence governing court proceedings. The City Council shall decide the appeal, and its decision shall be final.
- D. Extension of Time for Compliance. If the City Council's decision is adverse to the appellant, the date for compliance set forth in the notice to abate shall be extended by the number of days elapsing between the filing of the notice of appeal and the rendering of the City Council's decision.

8.12.60 - Abatement by City- Assessment of Costs.

- A. When any person as the responsible party to whom notice has been given fails, neglects or refuses to remove or otherwise abate the public nuisance by a date set for compliance within the notice, the city may abate such violation. Upon abatement of the violation the city shall prepare an assessment containing a

verified statement of the actual cost of such removal or abatement. The responsible party shall be required to pay the actual cost, plus twenty (20) percent of such cost, to the city within thirty (30) calendar days after the assessment has been mailed to the last known address of record of the responsible party. A duplicate copy of such assessments shall be mailed to the person or persons to whom the original notice of removal was mailed in the manner heretofore prescribed for service of the notice of removal. If the total assessment, including the twenty (20) percent additional charge as set out above, is not paid within thirty (30) calendar days after mailing of the assessment, the city may apply a lien to the property in the amount of the original assessment, including the twenty (20) percent additional charge, plus the cost of title search, recording fees, legal fees and other related fees plus ten (10) percent interest accruing from the date of the filing of the lien until paid. Failure to comply may result in a civil court action. Cost of Removal. Before undertaking the actual removal or abatement, the city shall attempt to obtain at least three written estimates from qualified contractors (if available locally) and shall accept the lowest such estimate that is otherwise satisfactory to the city. In the alternative, the removal or abatement may be performed by city personnel, and the cost shall be deemed to be the same at the lowest estimate obtained from a qualified contractor as determined by the city.

- B. Historical Review. Before the removal of a dilapidated building, the City shall, if and as applicable, consult with the State Historic Preservation Office to determine if the building may be of historic value.
- C. Removal from Tax Rolls. Upon the removal of a dilapidated building, the city shall give notice to the Yavapai County Assessor for the purpose of adjusting the valuation of the real property on the property assessment tax rolls.

8.12.070 - Emergency Abatement of Violations by the City.

- A. When a violation of this code poses a substantial and immediate threat of serious harm to the health or safety of any person, then the city may immediately enter the property and take the minimum action necessary to relieve the threat of serious harm. Prior to entering the property, the City shall obtain:
 - 1. The consent of the responsible party, or person who has the right to control the property; or
 - 2. A search warrant from the City's Municipal Court Judge authorizing the city to enter the property and relieve the threat of harm. The Municipal Court Judge shall issue such an order only upon a showing that probable cause to believe that a violation of this code exists which poses a

substantial and immediate threat of serious harm to the health, safety or property of any persons on the property or in the immediate vicinity. The city shall make reasonable attempts to contact the responsible party if immediate means of contact are readily available by telephone or electronic means.

- B. The responsible party, or person who has the right to control the property who is found to be in violation of this section may be issued a criminal citation for all violations causing the emergency abatement. The Municipal Court Judge may impose monetary reimbursement orders as justified by the violations.

8.12.080 - Appeal of Notice of Assessment.

- A. Appeal of Notice of Assessment. A written notice of appeal shall be filed with the City Clerk within fifteen (15) days after the date of the notice of assessment was mailed or personally served. All appeals of assessments shall specify the grounds for appeal of the assessment. The date of receipt of the notice of appeal by the City Clerk shall be the date of filing. No appeals of violations shall be heard at the hearing on an appeal of an assessment.
- B. Report of Assessment. If an appeal of the notice of assessment is not timely filed, the city shall prepare a report of assessment for consideration by the City Council. The report shall list the common address, legal description and tax parcel number of the property. The report of assessment shall set forth the facts supporting it as well as an itemized listing of the original assessment, including the twenty (20) percent additional charge, plus the cost of title search, recording fees, legal fees and other related fees plus ten (10) percent interest accruing from the date of the filing of the lien until paid. Upon acceptance of the report, it shall be signed by the Mayor.

8.12.090 - Hearing on Appeal of Assessment.

- A. Hearing on Appeal. Upon receipt of the notice of appeal, the City Council shall place the matter on the agenda for its next regular meeting, or as soon thereafter as practicable. Written notice of the hearing shall be provided to all appropriate city departments and to the appellant. The appropriate representative of the city shall appear and present the facts supporting the assessment as well as an itemized listing of the original assessment, including the twenty (20) percent additional charge, plus the cost of title search, recording fees, legal fees and other related fees plus ten (10) percent interest accruing from the date of the filing of the lien until paid. The appellant may present evidence controverting the imposition of the assessment. The City Council shall determine whether the assessment was made in accordance with the provisions of this chapter and applicable state statutes. The City Council shall issue its findings in writing upholding or modifying the amount

of the assessment. The decision of the City Council shall be final.

- B. Extension of Time for Compliance. If the City Council's decision is adverse to the appellant, the date for compliance set forth in the notice of assessment shall be extended by the number of days elapsing between the filing of the notice of appeal and the rendering of the City Council's decision.

8.12.100 - Lien of Assessment-Recordation-Foreclosure.

- A. Recordation. If the responsible party fails to pay the assessment within thirty calendar days after receipt of the notice of assessment (or any extension as may be granted in writing by the City Council), the assessment shall be delinquent and recorded in the office of the Yavapai County Recorder. The assessment lien shall include the date, amount of assessment, legal description, tax parcel number and name of the City of Cottonwood.
- B. Lien of Assessment. The assessment shall be a lien against the real property from and after the date of recordation and shall continue to accrue ten (10) percent interest until paid. To the extent allowed by law, the assessment lien shall be prior and superior to all other liens, obligations, mortgages or other encumbrances, except liens for general taxes.
- C. Foreclosure. The City Council may, but shall not be obligated to, bring an action to enforce the assessment lien in the Yavapai County Superior Court through a judgment of foreclosure and order of sale, at any time after the recordation of the assessment. Failure to enforce the assessment lien by such an action shall not affect its validity. The recorded assessment is prima facie evidence of the truth of all matters recited therein and of the regularity of all proceedings before the recordation thereof.

8.12.110 - Interference with Enforcement, Transfer of Property & Fraudulent Transfer.

- A. Interference with Enforcement.

- 1. Any person who interferes with, prevents, or attempts to interfere with or prevent an individual employed by the city or other person contracted by the city from investigating an alleged violation of this chapter, or from correcting or abating a violation of this chapter, is guilty of a Class 1 misdemeanor.

- B. Transfer of Property.

- 1. The transfer of any and all property interests in any manner, including,

but not limited to, the sale, trade, lease, gift or assignment of any real property against which a Notice of Violation has been issued shall not relieve the party(ies) served unless the legal entity assuming an ownership interest in such property, in writing, assumes responsibility for compliance with the Notice of Violation and a copy of such writing is presented to the city.

C. Fraudulent Transfer.

1. Any legal entity, real or statutory, who transfers the ownership interest in real property against which a notice to abate has been served without obtaining written acceptance of liability from the new owner or responsible party for the items listed in the notice to abate shall be guilty of a Class 1 misdemeanor.

8.12.120 - Subsequent Assessments.

A prior assessment shall not constitute a bar to a subsequent assessment or assessments for violations of this chapter and any number of liens on the same lot, tract of land or grounds may be recorded and enforced in the same or separate actions by the city.

8.12.130 - Penalties.

In addition to any cost incurred, any person, firm or corporation found guilty of violating any of the provisions of this chapter shall be guilty of a Class 3 misdemeanor. Each occurrence or day the violation continues shall be a separate offense.

Section 2. That if any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be unlawful, invalid or unenforceable by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof.

PASSED AND ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF COTTONWOOD, ARIZONA, THIS 15TH DAY OF SEPTEMBER 2020.



Tim Elinski, Mayor

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APPROVED AS TO FORM:



Steven B. Horton, Esq., City Attorney

ATTEST:



Marianne Jiménez, City Clerk

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