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CHAPTER 95: HEALTH AND SANITATION

**ARTICLE I
GENERAL PROVISIONS**

**95.01 Unsightly Or Unsanitary
Conditions On Real Property; Order And
Notice To Correct**

- (A) The mayor, or his duly authorized representative, is hereby authorized to order the owner of any real property within the city to cut weeds and grass growing thereon, remove garbage, rubbish and other unsanitary and unsightly articles and things therefrom and eliminate, fill up or remove any stagnant pool of water or any other unsanitary thing, place or condition on such property which might become a breeding place for mosquitoes, flies and germs harmful to the health of the community. Whenever any such condition is found to exist, the mayor, or his duly authorized representative, shall give the owner of the property written notice to perform such acts within 10 days. In case the owner of the property is unknown or his whereabouts is not known or he is a nonresident of this state, a copy of the written notice shall be posted upon the premises.
- (B) It shall be unlawful for any person to fail or refuse to comply with any order and notice given pursuant to this section.

(Code 1965, §11-1; Ord. No. 1303, 5-28-62; Ord. No. 1721, 12-15-69; Code 1991, §95.01; Ord. 4510, 08-19-03)

Cross reference(s)--Penalty, §95.99.

State law reference(s)--Municipal authority, A.C.A. §14-54-901.

**95.02 Abatement By City; Costs
Responsibility Of Owner**

If the conditions described in a notice given pursuant to §95.01 are not removed or corrected within 10 days after such notice is given, the mayor, or his duly authorized representative, is hereby authorized to enter upon the property and do whatever is necessary to correct or remove the conditions described, in the notice. The costs of correcting said conditions shall be charged to the owner or owners of the property and the city shall have a lien against such property for such costs.

(Code 1965, 11-2; Ord. No. 1303, 5-28-62; Ord. No. 1721, 12-15-69; Ord. No. 2557, 9-4-79; Code 1991, §95.02; Ord. 4510, 08-19-03)

Cross reference(s)--Penalty, §95.99.

State law reference(s)--Refusal of owner to comply, A.C.A. §14-54-903.

95.03 Enforcement Of Lien; Notice

- (A) The lien herein provided for may be enforced and collected in either one of the following manners:
- (1) The lien may be enforced at any time within 18 months after work has been done, by an action in circuit court; or
 - (2) The amount of the lien herein provided may be determined at a hearing before the City Council held after 30 days' written notice by certified mail to the owner or owners of the property, if the name and whereabouts of the owner or owners be known, and if the name of the owner or owners cannot be determined, then only after publication of notice of such hearing in a newspaper having a bona fide circulation in Washington County for one insertion per week for four consecutive weeks; the determination of the City Council shall be subject to appeal by the property owner in circuit court; and the amount so determined at said hearing, plus ten percent penalty for collection, shall be by the City Council certified to the tax collector of the county, and by him placed on the tax books as delinquent taxes, and collected accordingly, and the amount, less three percent thereof, when so collected shall be paid to the city by the county tax collector.
- (B) In case the owner of any lot or other real property is unknown or his whereabouts is not known or he is a nonresident of this state, then a copy of the written notice hereinabove referred to shall be posted upon the premises and before any action to enforce such lien shall be had, the City Clerk shall make an affidavit setting out the facts as to unknown address or whereabouts or nonresidence, and thereupon service of the publication as now provided for by law against nonresident defendants may be had, and an attorney ad litem may be appointed to notify the defendant by registered letter addressed to his last known place of residence if same can be found.

(Code 1965, §§11-3, 11-3.1; Ord. No. 1303, 5-28-62; Ord. No. 1721, 12-15-69; Ord. No. 2557, 9-4-79; Ord. No. 2922, 5-17-83; Code 1991, §95.03)

State law reference(s)--Enforcement of lien for clearance

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by municipality, A.C.A. §14-54-904; Notice to unknown or nonresident owners, A.C.A. §14-54-902.

95.04 Public Nuisance; Abatement

- (A) It shall be unlawful for the owners, occupants, tenants, or lessees of any dwelling or place of business to allow garbage, trash or other litter to accumulate on his premises, or to place or cause to be placed paper, cardboard or other litter in such manner as to cause unsightly or unsanitary conditions in the city.
- (B) Code Compliance Officers or their authorized representatives shall have the duty of notifying the owner, occupant, tenant, or lessee of a dwelling or place of business where one or more of the conditions described in subsection (A) of this section is found to exist.
- (C) It shall be the duty of the owner, occupant, tenant or lessee of such premises to correct said condition or conditions within 30 days from date of receipt of such notice.
- (D) If the owner, occupant, tenant, or lessee fails to obey such notice and continues to maintain said prohibited condition or conditions, such person shall be deemed in violation of this section and shall be subject to the penal provisions contained in this chapter.
- (E) The provisions of this section are supplementary to, and do not amend or repeal the provisions of §§95.01 through 95.03 of this Code.

(Code 1965, §10-5; Ord. No. 1194, 4-6-59; Ord. No. 1619, 8-19-68; Code 1991, §95.04)

Cross reference(s)--Penalty, §95.99.

State law reference(s)-- Municipal authority, A.C.A. §14-54-901; Removal or razing of buildings, A.C.A. §14-56-203.

95.05 Regulation Of Smoking In Most Public Places And Places Of Employment

- (A) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Bar. An establishment, whether termed a private club or public establishment, that is devoted primarily to the sale and service of alcoholic beverages for on-premises consumption and where the service of food, if any, is incidental to the consumption of such beverages.

Restaurant. An eating establishment, including but not limited to dining establishments, private clubs, coffee shops, cafeterias, sandwich shops, private and public cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as non-residential kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

Enclosed area. All space partially enclosed between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

Manager. The owner, lessee, or other person in charge of a public place.

Place of employment. An enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, hallways, classrooms, and employee cafeterias. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility. A "bar" and a "retail tobacco store" are not places of employment for purposes of this Section. An enclosed private office that is not regularly entered or occupied by a nonsmoking employee is not a place of employment for purposes of this section.

Public place.

- (1) Any enclosed indoor area that is used by the public or private club members and guests, except designated hotel and motel guest rooms.
- (2) Any swimming pool owned or operated by the city.

Retail Tobacco Store. A retail store utilized primarily for the sale and use of tobacco products and accessories and in which the sale of other products is merely incidental.

Smoking. Holding a lighted pipe, cigar, or cigarette of any kind, or lighting, or emitting or exhaling the smoke of, a pipe, cigar, or cigarette of any kind.

- (B) *Prohibition of Smoking in public places and places of employment*

Smoking is prohibited in all public places, places of employment, and city vehicles unless specifically

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exempted in subsection (C).

(C) *Exemptions.*

The following types of establishments are exempted from the smoking prohibition of this ordinance:

- (1) Bars
- (2) Retail tobacco stores

(D) *Duties of Managers.*

- (1) The manager of a place within which smoking is prohibited by this ordinance shall place "No Smoking" or "Smoke Free" signage at the major entrance and other appropriate places within the establishment.
- (2) The manager of a public place in which smoking is prohibited or restricted shall not knowingly permit or fail to make reasonable efforts to prevent smoking in any area where smoking is prohibited.

(E) *Enforcement.*

- (1) City police shall enforce this section pursuant to their normal police power.
- (2) If a manager knowingly permits or fails to make reasonable efforts to prevent smoking by the establishment's customers or employees where prohibited by this section, the manager shall be guilty of a violation and a fine or not more than \$100.00 per occurrence.
- (3) A person who smokes in an area where smoking is prohibited by provisions of this section shall be guilty of a violation punishable by a fine not exceeding fifty (\$50.00) dollars per occurrence.
- (4) In addition to the fines established by this Section, multiple violations of this Section by a person who owns, manages, operates or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued for the premises on which the violation occurred.

(F) *Jurisdiction.*

This section is not applicable nor enforceable in federal, state or county buildings including all facilities owned or operated by the University of Arkansas.

(G) *Effective date.*

This ordinance shall take effect on February 1, 2004

(Ord. No. 3584, 12-17-91; Code 1991, §95.05; Ord. 4512, 09-02-03)

95.06-95.98 Reserved

95.99 Penalty

- (A) Any person failing to comply with an order as described by §95.01 shall, upon conviction, be punished by a fine of not less than \$10.00 nor more than \$100.00.
- (B) Whoever violates §95.04 shall be punished by a fine of not more than \$500.00 or double that sum for each repetition of such offense, or violation; provided, no penalty shall be greater or less than the penalty provided for the same or a similar offense under the laws of the state. The penalty for allowing the continuation thereof shall not exceed \$250.00 for each day that the same is unlawfully continued.
- (C) There is hereby created the office of Code Compliance Officer. Code Compliance Officers shall be hired by the Mayor or his designated representative and shall perform the duties and exercise the powers set forth in this chapter.
- (D) Code Compliance Officers are hereby authorized to issue citations to any person violating the provisions of §§95.01-95.04 or § 173.08(A) of the Code of Fayetteville, provided that their authority is expressly limited to removing or causing the removal of unsanitary or unsightly things, or to correcting or causing the correction of unsafe or unsanitary conditions on the property in question.
- (E) It shall be unlawful for any person to interfere or forcibly attempt to interfere with a Code Compliance Officer in the performance of his or her duties.

(Code 1965, §§1-5, 11-1; Ord. No. 1303, 5-28-62; Ord. No. 1721, 12-15-69; Ord. No. 2128, 7-15-75; Code 1991, §95.99; Ord. 4510, 08-19-03)

