

THE CITY OF GREENBRIER, ARKANSAS

ORDINANCE NO. 06 -2018

AN ORDINANCE PROHIBITING OFFENSIVE PROPERTY NUISANCES, NOISE NUISANCES, AND ANIMAL NUISANCES WITHIN THE CITY OF GREENBRIER; REPEALING PREVIOUS NOISE, ANIMAL AND GENERAL NUISANCE ORDINANCES; AND DECLARING AN EMERGENCY

WHEREAS, the City of Greenbrier, Arkansas has the authority and responsibility to regulate and enforce measures to protect the public peace, security, comfort, public health, safety, and welfare of its citizens, and

WHEREAS, existing ordinances and amendments currently in effect are in need of revision, consolidation, and simplification, and

WHEREAS, all incorporated cities have the authority to control public nuisances under general and specific police powers, including Ark. Code Ann. §14-54-602, 14-54-901, 14-54-1101, and 14-56-203.

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

SECTION 1: DEFINITIONS. As used in this ordinance, the following definitions shall apply.

Property Nuisance. Any circumstance or action conducted or maintained by a person upon his or her property, by either conducting specific actions, or allowing actions to take place, or by their failure to take corrective action upon their property to alleviate prohibited conditions, all of which leads or contributes to any of the following conditions:

- (a) A condition that injures or endangers the comfort, repose, health or safety of others, or
- (b) Offends standards of common decency, or
- (c) If offensive to the senses, or
- (d) Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage, or
- (e) In any way renders other persons insecure in life or the use of property, or

- (f) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.

Noise Nuisance: Any offensive and unnecessary noise, annoying vibration(s), or animal noises, occurring within the city limits or territorial jurisdiction of Greenbrier upon owned or leased property without abatement.

Animal Nuisance: The circumstance of any animal or behavior of animals found to have molested passerby, neighbors, or passing vehicles; attacked other humans or domestic animals; trespassed upon school grounds; repeatedly roamed at large; damaged private or public property; continually barks, whines, or howls, or has made any other noise in an excessive, continuous, or untimely fashion; caused fouling of the air by odor and thereby create unreasonable annoyance; interfered with refuse collection or other service personnel; or defecated upon the property other than property owned by their owner, keeper, or harbored while at-large or while under restraint;

SECTION 2: PROPERTY NUISANCES:

- (a) Property Nuisances, as defined in Section 1, shall be prohibited within the city limits and territorial jurisdiction of the City of Greenbrier.
- (b) Illustrative Enumeration, for purposes of example and illustration only, the following items, conditions, or actions are hereby declared to be and constitute a property nuisance:
 - 1. Noxious weeds and other rank vegetation of any height, or un-mowed grass and/or weeds which is of sufficient height to be unsightly in contrast to the typical landscaping of the area for populated residential areas, or higher than twelve (12) inches for all other areas.
 - 2. Accumulation of rubbish, trash, refuse, junk and other abandoned materials, metals, lumber, or other debris which are abandoned or which appear to be unusable or of similar character and apparently unused for an extended period of time.
 - 3. Any condition which provides harborage for rats, mice, snakes, and other vermin, or which provides a serious but abatable breeding ground for flies, mosquitoes, or other insect pests.
 - 4. Any building or other structure which was designed or constructed for human habitation and is unfit for human habitation, or any structure which is kept in such an unsanitary or unsafe condition that it is a menace to the health of the people residing in the vicinity thereof, or presents more than ordinary dangerous fire hazard in the vicinity where it is located under the circumstances.
 - 5. All disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches.
 - 6. The carcasses of animals or fowl not disposed of within a reasonable time after death.
 - 7. 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.

8. 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.
9. Any accumulation of stagnant water permitted or maintained on any lot or piece of ground.
10. Dense smoke, noxious fumes, gas, soot or cinders in unreasonable quantities.
11. Unfinished, pending, or abandoned exterior construction projects, including bare foundations or crawlspaces, where construction is visibly unfinished, or appears to have been abandoned for a period of more than ninety (90) days without further progress;
12. Abandoning, keeping, or storing of any of the following, within public view, while on the front porch or yard of any residence, commercial establishment or on a vacant lot:
 - a. Any appliances or furniture designed for interior use, including without limitation, refrigerators, freezers, clothes washing machines, clothes dryers, upholstered furniture such as sofas or recliners, and any other like items, unless such items are covered by an opaque covering or tarpaulin.
 - b. Any inoperable motor vehicle, boat, or trailer, or major portion thereof, includes without limitation, engines, transmissions, axles, frames, doors, or any body panels for a period of more than ten (10) days.

(c)

NOTICE TO PROPERTY OWNER. Whenever a property nuisance is found to exist within the city limits or territorial jurisdiction, the code enforcement officer or some other duly designated officer shall given written notice to the owner, occupant, landlord, or tenant of the property upon which such nuisance is alleged to exist.

1. The notice shall be either in door-hanger, or business-letter format, dated and signed, with the words "NOTICE OF VIOLATION" in clear bold letters. The notice shall clearly describe the nature and location of the alleged offense(s), and shall state the date upon which the notice is being issued, and contact information for the code enforcement officer or other duly appointed city official issuing said notice.

2. The notice shall instruct that the property owner, tenant, occupant, etc. has ten (10) days from the date of said notice to correct the nuisance conditions, and that following the expiration of ten days, the property owner, tenant, or occupant will be subject to criminal penalties in Greenbrier Municipal Court. The notice shall also instruct that after ten (10) days, the city may take reasonable actions to abate such nuisances and assess the cost thereof against such person.
 3. The written notice shall be delivered to the owner, occupant, landlord, or tenant in such a way to ensure that the notice has been sufficiently and reasonably delivered. Any or all of the following methods may be used at the discretion of the code enforcement officer or duly appointed city official, based on whichever method is believed to be the most likely and efficient manner of contacting the responsible owner or occupant under all circumstances.
 - i. Hand delivery of "door hanger" notice to owner or occupant, with the Code Enforcement officer or city official documenting the date, time, location, and person contacted.
 - ii. US Mail delivery of said notice via both registered and conventional mail, return receipt requested.
 - iii. Posting of notice upon the door or yard of said property, with the Code Enforcement Officer or city official noting and documenting the specific location and date posted of said notice.
- (d) **ENFORCEMENT PROCEDURE.** If, after sufficient notice has been delivered to the owner, occupant, landlord, or tenant, and such property nuisances are not abated or continue to exist after a period of ten (10) days from the delivery of the written notice, the following procedure shall apply:
1. The Code Enforcement Officer or appointed city official shall prepare and sign a written affidavit completely describing (a) the nature of the property nuisance, including the specific location and nature of what constitutes the offensive property nuisance, supported by photographs where possible, (b) a copy of the written notice of property nuisance, and a description of the dates and method(s) used to deliver said notice to the property owner, occupant, landlord, or tenant.

2. The City Attorney shall issue a summons to the property owner, occupant, landlord, or tenant to appear in Faulkner County District Court to enter a plea of guilty or not-guilty to violation of this Ordinance.
 3. **CITY ABATEMENT – OWNER NOTIFIED.** If at the end of the ten (10) day period of abatement described above, if the property nuisance continues to exist, and if the owner, occupant, landlord, or tenant has been properly served with the written Notice of Property Nuisance, the City may take reasonable actions to abate such nuisance and asses the cost thereof against such person. All costs incurred by the City in the abatement of such property nuisances shall constitute a lien against the property upon which the nuisance existed, and shall be filed, proven, and collected as provided for under the law.
 4. **CITY ABATEMENT – OWNER UNKNOWN.** If the Code Enforcement Officer has exhausted all reasonable methods to deliver the Property Nuisance Notice to the Owner, Occupant, Landlord, or Tenant, and no notice is able to be delivered, or if the owner is unknown after all reasonable efforts have been made to locate the owner, the City Council may conduct a public hearing on the matter and authorize whatever abatement is reasonable necessary to correct said property nuisance. All costs incurred by the City in the abatement of such property nuisances shall constitute a lien against the property upon which the nuisance existed, and shall be filed, proven, and collected as provided for under the law.
- (e) **PENALTIES.** Any person found to be in violation of this ordinance shall be guilty of a misdemeanor and punished with a fine not to exceed \$250 for each distinct and separate violation. This penalty is punitive in nature and shall be applied by the District Court, and is separate from any court cost or costs assessed by the City to abate such nuisances as described above where necessary.

SECTION 3: NOISE NUISANCES

- (a) Noise nuisances, as defined in Section 1, shall be prohibited within the city limits and territorial jurisdiction of the City of Greenbrier.
- (b) As Illustrative enumeration, for purposes of example and illustration only, the following items, conditions, or actions are hereby declared to be and constitute a noise nuisance, if deemed by law enforcement to be likely to be disturbing to the public, or upon the complaint of any neighbor under the circumstances.
1. All unnecessary or unauthorized noises including offensive animal noises occurring at any time of day or night.
 2. The keeping of any animal or fowl, including dogs, cats, roosters, or livestock, which cause frequent or long continued noise, barking, howling, crowing, etc. so as to disturb the peace or comfort of any person in the vicinity, at any time of day or night.
 3. The sounding of any horn or device on any automobile, motorcycle, bus, or other vehicle not in motion, except as a danger signal, at any unreasonable period of time.
 4. The playing of any radio, television, musical instrument; public address system, stereo, or other music amplification device in such a manner, or at such a volume, particularly during the hours between 11:00 PM and 7:00 AM, as to disturb the quiet or comfort of persons in any office, hospital, dwelling, hotel, or other type of residence. The operation of any such instrument, machine, or device between said hours of 11:00 PM and 7:00 AM in such a manner as to be plainly audible at a distance of fifty (50) feet from the building, structure, or vehicle in which it is located shall be prima facie evidence of violation of this ordinance.
 5. Singing, shouting, yelling, revelry, parties, whistling, etc. upon public streets or in private property between the hours of 11:00 PM and 7:00 AM, or at any time and place so as to annoy or disturb the quiet or comfort of persons in any office, hospital, or dwelling, or any persons in the vicinity.
 6. Construction work, automotive repair, demolition, logging, the use of power tools, hammering, lawn-mowing, racing or "revving" of engines, or operation of other loud

machinery or machinery causing heavy vibrations between the hours of 11:00 PM and 7:00 AM, or at any time and place so as to unreasonably annoy or disturb the quiet or comfort of persons in the vicinity.

7. Un-repaired vehicles. The use of any automobile, motorcycle, or other vehicle so out of repair or so loaded as to create loud and unnecessary grating, grinding, rattling, or other noise.
8. Discharge of fireworks between the hours of 11:00 PM and 7:00 AM.
9. Discharging of firearms or gunfire, where such conduct is also prohibited by Ordinance No. 01-2015.
10. Noises near schools, churches, courts, city meeting etc. The creating of any excessive and unnecessary noise on any street adjacent to any school, church, court session, city meeting, etc. which unreasonably interferes with the working sessions thereof.

(c) **Enforcement procedure.** The Chief of Police, Code Enforcement Officer and deputized members of the police department are authorized to issue immediate citations for violations of this ordinance when directly observed. Officers are also authorized with discretion to issue verbal or written warnings for noise nuisance violations where appropriate. In situations where law enforcement does not directly observe said violations, the City Attorney may issue a warning letter or court summons based on sworn citizen affidavit(s) and supporting proof of citizen complaints, such as recordings, etc.

(d) **Exceptions.** It is the expressed purpose of the City Council that this section shall not apply or be enforced in the following circumstances:

- i. Sirens, horns, or speakers from emergency public responders during an active emergency response situation.
- ii. Construction to public bridges, public streets or public highways during the nighttime, when such scheduling is determined to be in the best interest of safety and public convenience to be conducted during the night instead of daytime.
- iii. Reasonable use of amplifiers or loudspeakers at noncommercial public events, including sporting events at public schools, or community-sponsored festivals.

iv. Necessary warning signals given by any vehicle for purposes of motor vehicle safety.

v. Lawful discharge of firearms necessary for protection, safety, self defense, or defense of any person or property.

(e) **PENALTIES.** Any person found to be in violation of this ordinance shall be guilty of a misdemeanor and punished with a fine not to exceed \$250 for each distinct and separate violation. This penalty is punitive in nature and shall be applied by the District Court to any person found guilty of such offense.

SECTION 4: ANIMAL NUISANCES:

- (a) Animal nuisances, as defined in Section 1, shall be prohibited within the city limits and territorial jurisdiction of the City of Greenbrier.
- (b) As Illustrative enumeration, for purposes of example and illustration only, the following items, behaviors, or actions by animals and/or their owners, keepers, harborers, shall be prohibited and subject to a fine, if deemed by the District Court to constitute an nuisance based on the complaint of law enforcement or sworn affidavits of members of the public:
1. Animals which molest passersby or passing vehicles in an aggressive or potentially violent manner.
 2. Animals which attack or injure humans or other domestic animals when unprovoked.
 3. Animals which trespass on the grounds of a public school, church, nursing home, or day care facility.
 4. Animals which are repeatedly at large in the general public and not properly confined by a leash, fence, or walls.
 5. Animals which cause damage to private or public property, including other animals or livestock.
 6. Animals which bark, whine, howl, or make any other noise in an excessive, continuous, or untimely fashion at any time of day or night.
 7. Animals which foul the air by odor and therefore create unreasonable annoyance
 8. Animals which interfere with public residential services such as refuse collection, utility meter readers, mail or package delivery, etc.
 9. Animals which defecate upon property other than property owned by the animal's owner, keeper, or harbinger while at-large or under restraint.
- (c) **PENALTIES.** Any person found to be in violation of this ordinance shall be guilty of a misdemeanor and punished with a fine not to exceed \$250 for each distinct and separate violation. This penalty is punitive in nature and shall be applied by the District Court to any person found guilty of such offense, and shall be separate from any

court costs, damages, restitution or compensation ordered to be paid by the defendant to the victim as restitution by the District Court.

SECTION 5: Repeal of previous Ordinances. Because this Ordinance incorporates and amends previous ordinances regulating the same topics, the following are hereby repealed:

1. Ordinance No. 01-1996 is repealed in its entirety.
2. Ordinance No. 16-1996 is repealed in its entirety.
3. Ordinance No. 10-2003 is repealed in its entirety.
4. Ordinance No. 17-2005 is repealed in its entirety.
5. Ordinance No. 01-2006 is repealed in its entirety.
6. Ordinance No. 07-2007 is repealed in its entirety.
7. All other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 6: This ordinance is necessary for the protection of the public peace, health and safety and an emergency is hereby declared to exist, and this ordinance shall be in full force and effect from and after its passage and approval. The changes above shall be effective as of: _____.

PASSED:

8/6/18
Date

APPROVED:

Sammy J Hartwick
Sammy Joe Hartwick, Mayor

ATTEST:

Kyle McKinney
Kyle McKinney, City Recorder

Prepared by Dustin Chapman, City Attorney

AFFIDAVIT OF POSTING OF ORDINANCE NO. 06-2018

I, the undersigned Affiant, having been properly sworn, do hereby state under oath that, while acting in the capacity of employee or official of the City of Greenbrier, and pursuant to the direction of the City Administration and the City's current "Posting" Ordinance, I have personally posted a true, correct, and legible copy of the above-designated City Ordinance at the following locations on the dates and at the times indicated:

1. Tires For Less, Inc. at 110 S. Broadview, on August 8, 2018, at 8:19 am/pm
2. Double B's Conoco at 4 N. Broadview, on August 8, 2018, at 8:27 am/pm
3. Same Ole Joe's Pizza at 44 S. Broadview, on August 8, 2018, at 8:28 am/pm
4. Satterfield's Station at 104 S. Broadview, on August 8, 2018, at 8:15 am/pm
5. American Drugs & Herbs at 1 E. Main St., on August 8, 2018 at 8:30 am/pm

EXECUTED this 8 day of August, 2018.

Chad McMiller
Printed Name of Affiant

Chad McMiller
Signature of Affiant

ACKNOWLEDGMENT

STATE OF ARKANSAS
COUNTY OF FAULKNER

BE IT REMEMBERED That on this date came before the undersigned Notary Public, duly commissioned and acting within and for the County aforesaid Chad McMiller satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who, after having been properly placed sworn, subscribed the same under oath, acknowledging that he/she executed the same for the consideration and purposes therein mentioned and set-forth.

WITNESS my hand and seal as such Notary Public, this 13th day of August, 2018.

My Commission expires: 12/16-2023
(SEAL)

