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February 26, 2018

COMMITTEE SUBSTITUTE
FOR

SENATE BILL NO. 1107

By: Simpson of the Senate

and

Ownbey of the House

An Act relating to cities and towns; amending 11 O.S. 2011, Sections 22-111, as amended by Section 1, Chapter 136, O.S.L. 2012 and 22-112.1, which relate to abatement proceedings; modifying procedure for municipality to recover certain costs; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 11 O.S. 2011, Section 22-111, as amended by Section 1, Chapter 136, O.S.L. 2012 (11 O.S. Supp. 2017, Section 22-111), is amended to read as follows:

Section 22-111. A. A municipal governing body may cause property within the municipal limits to be cleaned of trash and weeds or grass to be cut or mowed in accordance with the following procedure:

1. At least ten (10) days' notice shall be given to the owner of the property by mail at the address shown by the current year's tax rolls in the county treasurer's office before the governing body

1 holds a hearing or takes action. The notice shall order the
2 property owner to clean the property of trash, or to cut or mow the
3 weeds or grass on the property, as appropriate, and the notice shall
4 further state that unless such work is performed within ten (10)
5 days of the date of the notice the work shall be done by the
6 municipality and a notice of lien shall be filed with the county
7 clerk against the property for the costs due and owing the
8 municipality. At the time of mailing of notice to the property
9 owner, the municipality shall obtain a receipt of mailing from the
10 postal service, which receipt shall indicate the date of mailing and
11 the name and address of the mailee. However, if the property owner
12 cannot be located within ten (10) days from the date of mailing by
13 the municipal governing body, notice may be given by posting a copy
14 of the notice on the property or by publication, as defined in
15 Section 1-102 of this title, one time not less than ten (10) days
16 prior to any hearing or action by the municipality. If a municipal
17 governing body anticipates summary abatement of a nuisance in
18 accordance with the provisions of subsection B of this section, the
19 notice, whether by mail, posting or publication, shall state: that
20 any accumulations of trash or excessive weed or grass growth on the
21 owner's property occurring within six (6) months from and after the
22 date of this notice may be summarily abated by the municipal
23 governing body; that the costs of such abatement shall be assessed
24 against the owner; and that a lien may be imposed on the property to

1 secure such payment, all without further prior notice to the
2 property owner;

3 2. The owner of the property may give written consent to the
4 municipality authorizing the removal of the trash or the mowing of
5 the weeds or grass. By giving written consent, the owner waives the
6 owner's right to a hearing by the municipality;

7 3. A hearing may be held by the municipal governing body to
8 determine whether the accumulation of trash or the growth of weeds
9 or grass has caused the property to become detrimental to the
10 health, benefit, and welfare of the public and the community or a
11 hazard to traffic, or creates a fire hazard to the danger of
12 property;

13 4. Upon a finding that the condition of the property
14 constitutes a detriment or hazard, and that the property would be
15 benefited by the removal of such conditions, the agents of the
16 municipality are granted the right of entry on the property for the
17 removal of trash, mowing of weeds or grass, and performance of the
18 necessary duties as a governmental function of the municipality.
19 Immediately following the cleaning or mowing of the property, the
20 municipal clerk shall file a notice of lien with the county clerk
21 describing the property and the work performed by the municipality,
22 and stating that the municipality claims a lien on the property for
23 the cleaning or mowing costs;

1 5. The governing body shall determine the actual cost of such
2 cleaning and mowing and any other expenses as may be necessary in
3 connection therewith, including the cost of notice and mailing. The
4 municipal clerk shall forward by mail to the property owner
5 specified in paragraph 1 of this subsection a statement of such
6 actual cost and demanding payment. If the cleaning and mowing are
7 done by the municipality, the cost to the property owner for the
8 cleaning and mowing shall not exceed the actual cost of the labor,
9 maintenance, and equipment required. If the cleaning and mowing are
10 done on a private contract basis, the contract shall be awarded to
11 the lowest and best bidder;

12 6. If payment is not made within thirty (30) days from the date
13 of the mailing of the statement, then within the next thirty (30)
14 days, the municipal clerk shall forward a certified statement of the
15 amount of the cost to the county treasurer of the county in which
16 the property is located and the same shall be levied on the property
17 and collected by the county treasurer ~~as~~ when other taxes are
18 collected as authorized by law. Further, as with ad valorem taxes,
19 the county treasurer shall no longer attempt to collect these city
20 liens once seven (7) years have passed from the date they were first
21 certified or should have been certified to the county. Further, no
22 property will be sold at the annual tax resale if the only amount
23 due and owing on the property at the time of resale is a lien
24 created under this section or Section 22-111 of this title. Once

1 certified by the county treasurer, payment may only be made to the
2 county treasurer except as otherwise provided for in this section.
3 In addition the cost and the interest thereon shall be a lien
4 against the property from the date the cost is certified to the
5 county treasurer, coequal with the lien of ad valorem taxes and all
6 other taxes and special assessments and prior and superior to all
7 other titles and liens against the property, and the lien shall
8 continue until the cost shall be fully paid. At the time of
9 collection the county treasurer shall collect a fee of Five Dollars
10 (\$5.00) for each parcel of property. The fee shall be deposited to
11 the credit of the general fund of the county. If the county
12 treasurer and the municipality agree that the county treasurer is
13 unable to collect the assessment, the municipality may pursue a
14 civil remedy for collection of the amount owing and interest thereon
15 by an action in person against the property owner and an action in
16 rem to foreclose its lien against the property. A mineral interest,
17 if severed from the surface interest and not owned by the surface
18 owner, shall not be subject to any tax or judgment lien created
19 pursuant to this section. Upon receiving payment, if any, the
20 municipal clerk shall forward to the county treasurer a notice of
21 such payment and directing discharge of the lien; and

22 7. The municipality may designate by ordinance an
23 administrative officer or administrative body to carry out the
24 duties of the governing body in subsection A of this section. The

1 property owner shall have a right of appeal to the municipal
2 governing body from any order of the administrative officer or
3 administrative body. Such appeal shall be taken by filing written
4 notice of appeal with the municipal clerk within ten (10) days after
5 the administrative order is rendered.

6 B. If a notice is given by a municipal governing body to a
7 property owner ordering the property within the municipal limits to
8 be cleaned of trash and weeds or grass to be cut or mowed in
9 accordance with the procedures provided for in subsection A of this
10 section, any subsequent accumulations of trash or excessive weed or
11 grass growth on the property occurring within a six-month period may
12 be declared to be a nuisance and may be summarily abated without
13 further prior notice to the property owner. At the time of each
14 such summary abatement the municipality shall notify the property
15 owner of the abatement and the costs thereof. The notice shall
16 state that the property owner may request a hearing within ten (10)
17 days after the date of mailing the notice. The notice and hearing
18 shall be as provided for in subsection A of this section. Unless
19 otherwise determined at the hearing the cost of such abatement shall
20 be determined and collected as provided for in paragraphs 5 and 6 of
21 subsection A of this section. This subsection shall not apply if
22 the records of the county clerk show that the property was
23 transferred after notice was given pursuant to subsection A of this
24 section.

1 C. The municipal governing body may enact ordinances to
2 prohibit owners of property or persons otherwise in possession or
3 control located within the municipal limits from allowing trash to
4 accumulate, or weeds to grow or stand upon the premises and may
5 impose penalties for violation of ~~said~~ the ordinances.

6 D. As used in this section:

7 1. "Weed" includes but is not limited to poison ivy, poison
8 oak, or poison sumac and all vegetation at any state of maturity
9 which:

- 10 a. exceeds twelve (12) inches in height, except healthy
11 trees, shrubs, or produce for human consumption grown
12 in a tended and cultivated garden unless such trees
13 and shrubbery by their density or location constitute
14 a detriment to the health, benefit and welfare of the
15 public and community or a hazard to traffic or create
16 a fire hazard to the property or otherwise interfere
17 with the mowing of ~~said~~ the weeds,
 - 18 b. regardless of height, harbors, conceals, or invites
19 deposits or accumulation of refuse or trash,
 - 20 c. harbors rodents or vermin,
 - 21 d. gives off unpleasant or noxious odors,
 - 22 e. constitutes a fire or traffic hazard, or
 - 23 f. is dead or diseased.
- 24

1 The term "weed" shall not include tended crops on land zoned for
2 agricultural use which are planted more than one hundred fifty (150)
3 feet from a parcel zoned for other than agricultural use;

4 2. "Trash" means any refuse, litter, ashes, leaves, debris,
5 paper, combustible materials, rubbish, offal, or waste, or matter of
6 any kind or form which is uncared for, discarded, or abandoned;

7 3. "Owner" means the owner of record as shown by the most
8 current tax rolls of the county treasurer; and

9 4. "Cleaning" means the removal of trash from property.

10 E. The provisions of this section shall not apply to any
11 property zoned and used for agricultural purposes or to railroad
12 property under the jurisdiction of the Oklahoma Corporation
13 Commission. However, a municipal governing body may cause the
14 removal of weeds or trash from property zoned and used for
15 agricultural purposes pursuant to the provisions of this section but
16 only if such weeds or trash pose a hazard to traffic and are located
17 in, or within ten (10) yards of, the public right-of-way at
18 intersections.

19 SECTION 2. AMENDATORY 11 O.S. 2011, Section 22-112.1, is
20 amended to read as follows:

21 Section 22-112.1. A. After a building has been declared
22 dilapidated, as provided in Section 22-112 of this title, and before
23 the commencement of the tearing and removal of a dilapidated
24 building, the governing body of any municipality may authorize that

1 such a building be boarded and secured. However, if the dilapidated
2 building is vacant and unfit for human occupancy, the governing body
3 of any municipality may authorize the structure to be demolished
4 pursuant to Section 22-112 of this title.

5 B. A governing body of any municipality may cause the premises
6 on which an unsecured building is located to be cleaned of trash and
7 weeds in accordance with the provisions of Section 22-111 of this
8 title.

9 C. A governing body of any municipality may cause an unsecured
10 building to be boarded and secured in accordance with the following
11 procedures:

12 1. Before the governing body orders such action, at least ten
13 (10) days' notice that such unsecured building is to be boarded and
14 secured shall be given by mail to any property owners and mortgage
15 holders as provided in Section 22-112 of this title. At the time of
16 mailing of notice to any property owner or mortgage holder, the
17 municipality shall obtain a receipt of mailing from the postal
18 service, which receipt shall indicate the date of mailing and the
19 name and address of the mailee. A copy of the notice shall also be
20 posted on the property to be affected. However, if neither the
21 property owner nor mortgage holder can be located, notice may be
22 given by posting a copy of the notice on the property or by
23 publication as defined in Section 1-102 of this title. Such notice
24 shall be published one time, not less than ten (10) days prior to

1 any hearing or action by the municipality pursuant to the provisions
2 of this section. If a municipal governing body anticipates summary
3 abatement of a nuisance in accordance with the provisions of
4 paragraph 9 of this subsection, the notice shall state: that any
5 subsequent need for boarding and securing the building within a six-
6 month period after the initial boarding and securing of the building
7 pursuant to such notice may be summarily boarded and secured by the
8 municipal governing body; that the costs of such boarding and
9 securing shall be assessed against the owner; and that a lien may be
10 imposed on the property to secure such payment, all without further
11 prior notice to the property owner or mortgage holder;

12 2. The owner of the property may give written consent to the
13 municipality authorizing the boarding and securing of such unsecured
14 building and to the payment of any costs incurred thereby. By
15 giving written consent, the owner waives any right the owner has to
16 a hearing by the municipal governing body;

17 3. If the property owner does not give written consent to such
18 actions, a hearing may be held by the municipal governing body to
19 determine whether the boarding and securing of such unsecured
20 building would promote and benefit the public health, safety or
21 welfare. Such hearing may be held in conjunction with a hearing on
22 the accumulation of trash or the growth of weeds or grass on the
23 premises of such unsecured building held pursuant to the provisions
24 of paragraph 3 of subsection A of Section 22-111 of this title. In

1 making such determination, the governing body shall apply the
2 following standard: the governing body may order the boarding and
3 securing of the unsecured building when the boarding and securing
4 thereof would make such building less available for transient
5 occupation, decrease a fire hazard created by such building, or
6 decrease the hazard that such building would constitute an
7 attractive nuisance to children.

8 Upon making the required determination, the municipal governing
9 body may order the boarding and securing of the unsecured building;

10 4. After the governing body orders the boarding and securing of
11 such unsecured building, the municipal clerk shall immediately file
12 a notice of unsecured building and lien with the county clerk
13 describing the property, stating the findings of the municipality at
14 the hearing at which such building was determined to be unsecured,
15 and stating that the municipality claims a lien on the property for
16 the costs of boarding and securing such building and that such costs
17 are the personal obligation of the property owner from and after the
18 date of filing the notice;

19 5. Pursuant to the order of the governing body, the agents of
20 the municipality are granted the right of entry on the property for
21 the performance of the boarding and securing of such building and
22 for the performance of all necessary duties as a governmental
23 function of the municipality;

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1 6. After an unsecured building has been boarded and secured,
2 the governing body shall determine the actual costs of such actions
3 and any other expenses that may be necessary in conjunction
4 therewith including the cost of the notice and mailing. The
5 municipal clerk shall forward a statement of the actual costs
6 attributable to the boarding and securing of the unsecured building
7 and a demand for payment of such costs, by mail to any property
8 owners and mortgage holders as provided in Section 22-112 of this
9 title. At the time of mailing of the statement of costs to any
10 property owner or mortgage holder, the municipality shall obtain a
11 receipt of mailing from the postal service, which receipt shall
12 indicate the date of mailing and the name and address of the mailee.

13 If a municipality boards and secures any unsecured building, the
14 cost to the property owner shall not exceed the actual cost of the
15 labor, materials and equipment required for the performance of such
16 actions. If such actions are done on a private contract basis, the
17 contract shall be awarded to the lowest and best bidder;

18 7. When payment is made to the municipality for costs incurred,
19 the municipal clerk shall file a release of lien, but if payment
20 attributable to the actual costs of the boarding and securing of the
21 unsecured building is not made within thirty (30) days from the date
22 of the mailing of the statement to the owner of such property, the
23 municipal clerk shall forward a certified statement of the amount of
24 the costs to the county treasurer of the county in which the

1 property is located. Once certified to the county treasurer,
2 payment may only be made to the county treasurer except as otherwise
3 provided for in this section. At the time of collection the county
4 treasurer shall collect a fee of Five Dollars (\$5.00) for each
5 parcel of property and such fee shall be deposited to the general
6 fund of the county. The costs shall be levied on the property and
7 collected by the county treasurer ~~as are~~ when other taxes are
8 collected as authorized by law. Further, as with ad valorem taxes,
9 the county treasurer shall no longer attempt to collect these city
10 liens once seven (7) years have passed from the date they were first
11 certified or should have been certified to the county. Further, no
12 property will be sold at the annual tax resale if the only amount
13 due and owing on the property at the time of resale is a lien
14 created under this section or Section 22-111 of this title. Until
15 fully paid, the costs and the interest thereon shall be the personal
16 obligation of the property owner from and after the date the notice
17 of unsecured building and lien is filed with the county clerk. In
18 addition the costs and the interest thereon shall be a lien against
19 the property from the date the notice of the lien is filed with the
20 county clerk. The lien shall be coequal with the lien of ad valorem
21 taxes and all other taxes and special assessments and shall be prior
22 and superior to all other titles and liens against the property.
23 The lien shall continue until the costs and interest are fully paid.
24 If the county treasurer and the municipality agree that the county

1 treasurer is unable to collect the assessment, the municipality may
2 pursue a civil remedy for collection of the amount owing and
3 interest thereon by an action in personam against the property owner
4 and an action in rem to foreclose its lien against the property. A
5 mineral interest if severed from the surface owner, shall not be
6 subject to any tax or judgment lien created pursuant to this
7 section. Upon receiving payment, the municipal clerk shall forward
8 to the county treasurer a notice of such payment and shall direct
9 discharge of the lien;

10 8. The municipality may designate by ordinance an
11 administrative officer or administrative body to carry out the
12 duties of the governing body specified in subsection C of this
13 section. The property owner or mortgage holder shall have a right
14 of appeal to the municipal governing body from any order of the
15 administrative officer or administrative body. Such appeal shall be
16 taken by filing written notice of appeal with the municipal clerk
17 within ten (10) days after the administrative order is rendered;

18 9. If a municipal governing body causes a structure within the
19 municipal limits to be boarded and secured, any subsequent need for
20 boarding and securing within a six-month period constitutes a public
21 nuisance and may be summarily boarded and secured without further
22 prior notice to the property owner or mortgage holder. At the time
23 of each such summary boarding and securing, the municipality shall
24 notify the property owner and mortgage holder of the boarding and

1 securing and the costs thereof. The notice shall state that the
2 property owner may request an appeal with the municipal clerk within
3 ten (10) days after the mailing of the notice. The notice and
4 hearing shall be as provided for in paragraph 1 of this subsection.
5 Unless otherwise determined at the hearing the cost of such boarding
6 and securing shall be determined and collected as provided for in
7 paragraphs 6 and 7 of this subsection;

8 10. A governing body of any municipality may determine that a
9 building is unsecured and order that such building be boarded and
10 secured in the manner provided for in this subsection even though
11 such building has not been declared, by the governing body, to be
12 dilapidated; and

13 11. For the purposes of this subsection:

14 a. "boarding and securing" or "boarded and secured" means
15 the closing, boarding or locking of any or all
16 exterior openings so as to prevent entry into the
17 structure,

18 b. "unsecured building" shall mean any structure which is
19 not occupied by a legal or equitable owner thereof, or
20 by a lessee of a legal or equitable owner, and into
21 which there are one or more unsecured openings such as
22 broken windows, unlocked windows, broken doors,
23 unlocked doors, holes in exterior walls, holes in the
24 roof, broken basement or cellar hatchways, unlocked

1 basement or cellar hatchways or other similar
2 unsecured openings which would facilitate an
3 unauthorized entry into the structure, and

4 c. "unfit for human occupancy" means a structure that due
5 to lack of necessary repairs is considered
6 uninhabitable and is a hazard to the health, safety,
7 and welfare of the general public.

8 D. The provisions of this section shall not apply to any
9 property zoned and used for agricultural purposes.

10 SECTION 3. This act shall become effective November 1, 2018.

11 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT
12 February 26, 2018 - DO PASS AS AMENDED
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