

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 1691

By: Calvey

5
6
7 COMMITTEE SUBSTITUTE

8 An Act relating to cities and towns; creating the No
9 Jail for Paint Act; amending 11 O.S. 2011, Section
10 14-111, as amended by Section 2, Chapter 172, O.S.L.
11 2016 (11 O.S. Supp. 2016, Section 14-111), which
12 relates to enforcement of municipal ordinances;
13 updating citation; prohibiting a municipality from
14 criminalizing failure to maintain or clean property;
15 amending 11 O.S. 2011, Sections 22-111, as amended by
16 Section 1, Chapter 136, O.S.L. 2012, 22-112.1 and
17 Section 3, Chapter 326, O.S.L. 2014 (11 O.S. Supp.
18 2016, Sections 22-111 and 22-112.4), which relate to
19 abatement proceedings; requiring certain notices
20 include certain information; prohibiting further
21 abatement procedures if photographic or video
22 evidence is presented and authorizing the
23 municipality to apply to district court to proceed
24 with abatement procedure; limiting costs of certain
necessary expenses; requiring certain private
contracts be awarded on a competitive basis;
specifying amount of interest to accrue on certain
payments; modifying procedure and priority for
property lien; requiring notice for summary
abatement; providing for noncodification; and
providing an effective date.

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

SECTION 1. NEW LAW A new section of law not to be
codified in the Oklahoma Statutes reads as follows:

1 This act shall be known and may be cited as the "No Jail for
2 Paint Act".

3 SECTION 2. AMENDATORY 11 O.S. 2011, Section 14-111, as
4 amended by Section 2, Chapter 172, O.S.L. 2016 (11 O.S. Supp. 2016,
5 Section 14-111), is amended to read as follows:

6 Section 14-111. A. The governing body of a municipality may
7 provide for enforcement of its ordinances and establish fines,
8 penalties, or imprisonment, as authorized by subsections B through D
9 of this section, for any offense in violation of its ordinances,
10 which shall be recoverable together with costs of suit. The
11 governing body may provide that any person fined for violation of a
12 municipal ordinance who is financially able but refuses or neglects
13 to pay the fine or costs may be compelled to satisfy the amount owed
14 by working on the streets, alleys, avenues, areas, and public
15 grounds of the municipality, subject to the direction of the street
16 commissioner or other proper officer, at a rate per day as the
17 governing body may prescribe by ordinance, but not less than Fifty
18 Dollars (\$50.00) per day for useful labor, until the fine or costs
19 are satisfied.

20 B. 1. Except for municipal ordinances related to prostitution
21 and as otherwise provided in this section, cities having a municipal
22 criminal court of record may enact ordinances prescribing maximum
23 fines of One Thousand Two Hundred Dollars (\$1,200.00) and costs or
24 imprisonment not exceeding six (6) months or both the fine and

1 imprisonment, but shall not have authority to enact any ordinance
2 making unlawful an act or omission declared by state statute to be
3 punishable as a felony. Cities having a municipal criminal court of
4 record may enact ordinances prescribing maximum fines of One
5 Thousand Dollars (\$1,000.00) and costs or imprisonment not exceeding
6 six (6) months or both such fine and imprisonment for violations of
7 municipal ordinances regulating the pretreatment of wastewater and
8 regulating stormwater discharges. Cities having a municipal
9 criminal court of record may enact ordinances prescribing maximum
10 fines of One Thousand Two Hundred Fifty Dollars (\$1,250.00) and
11 costs or imprisonment not exceeding six (6) months or both such fine
12 and imprisonment for alcohol-related or drug-related traffic
13 offenses. The court shall remit Fifty Dollars (\$50.00) of each
14 alcohol fine or deferral fee to a fund of the municipality that
15 shall be used to defray costs for enforcement of laws relating to
16 juvenile access to alcohol, other laws relating to alcohol and other
17 intoxicating substances, and traffic-related offenses involving
18 alcohol or other intoxicating substances. The sum of Fifteen
19 Dollars (\$15.00) shall be assessed in every case for violations of
20 municipal ordinances relating to the offense of driving under the
21 influence of alcohol or other intoxicating substance and shall be
22 remitted to the credit of the Oklahoma Impaired Driver Database
23 Revolving Fund created pursuant to Section § 11-902d of ~~this act~~
24 Title 47 of the Oklahoma Statutes.

1 2. For violations of municipal ordinances relating to
2 prostitution, including but not limited to engaging in prostitution
3 or soliciting or procuring prostitution, a municipal criminal court
4 of record may enact ordinances prescribing an imprisonment not to
5 exceed six (6) months, and fines as follows: a fine not to exceed
6 Two Thousand Five Hundred Dollars (\$2,500.00) upon the first
7 conviction for violation of any such ordinances, a fine of not more
8 than Five Thousand Dollars (\$5,000.00) upon the second conviction
9 for violation of any of such ordinances, and a fine of not more than
10 Seven Thousand Five Hundred Dollars (\$7,500.00) upon the third or
11 subsequent convictions for violation of any of such ordinances, or
12 both such fine and imprisonment as well as a term of community
13 service of not less than forty (40) nor more than eighty (80) hours.

14 C. Municipalities having a municipal court not of record may
15 enact ordinances prescribing maximum fines pursuant to the
16 provisions of this subsection. A municipal ordinance may not impose
17 a penalty, including fine or deferral fee in lieu of a fine and
18 costs, which is greater than that established by statute for the
19 same offense. The maximum fine or deferral fee in lieu of a fine
20 for traffic-related offenses relating to speeding or parking shall
21 not exceed Two Hundred Dollars (\$200.00). The maximum fine or
22 deferral fee in lieu of a fine for alcohol-related or drug-related
23 offenses shall not exceed Eight Hundred Dollars (\$800.00). For all
24 other offenses, the maximum fine or deferral fee in lieu of a fine

1 shall not exceed Seven Hundred Fifty Dollars (\$750.00). The court
2 shall remit Fifty Dollars (\$50.00) of each alcohol fine or deferral
3 fee to a fund of the municipality that shall be used to defray costs
4 for enforcement of laws relating to juvenile access to alcohol,
5 other laws relating to alcohol and other intoxicating substances,
6 and traffic-related offenses involving alcohol or other intoxicating
7 substances. The ordinances may prescribe costs pursuant to the
8 provisions of Section 27-126 of this title or imprisonment not
9 exceeding sixty (60) days or both the fine and imprisonment;
10 provided, that municipalities having only a municipal court not of
11 record shall not have authority to enact any ordinance making
12 unlawful any act or omission declared by state statute to be
13 punishable as a felony; provided further, that municipalities having
14 a municipal court not of record may enact ordinances prescribing
15 maximum fines of One Thousand Dollars (\$1,000.00) and costs or
16 imprisonment not exceeding ninety (90) days or both such fine and
17 imprisonment for violations of municipal ordinances regulating the
18 pretreatment of wastewater and regulating stormwater discharges. If
19 imprisonment is available for the offense, then that person charged
20 shall have a right to a jury trial.

21 D. Municipalities having both municipal criminal courts of
22 record and municipal courts not of record may enact ordinances,
23 within the authority of this section, for each court.

24

1 E. No municipality may levy a fine or deferral fee in lieu of a
2 fine of over Fifty Dollars (\$50.00) until it has compiled and
3 published its penal ordinances as required in Sections 14-109 and
4 14-110 of this title.

5 F. No municipality may levy a fine of more than Ten Dollars
6 (\$10.00) nor court costs of more than Fifteen Dollars (\$15.00) for
7 exceeding the posted speed limit by no more than ten (10) miles per
8 hour upon any portion of the National System of Interstate and
9 Defense Highways, federal-aid primary highways, and the state
10 highway system which are located on the outskirts of any
11 municipality as determined in Section 2-117 of Title 47 of the
12 Oklahoma Statutes.

13 G. No municipality shall adopt, enforce or threaten to enforce
14 any ordinance or other rule which could result in a criminal penalty
15 for failure of a property owner to maintain or clean the structure
16 or exterior of the property.

17 SECTION 3. AMENDATORY 11 O.S. 2011, Section 22-111, as
18 amended by Section 1, Chapter 136, O.S.L. 2012 (11 O.S. Supp. 2016,
19 Section 22-111), is amended to read as follows:

20 Section 22-111. A. A municipal governing body may cause
21 property within the municipal limits to be cleaned of trash and
22 weeds or grass to be cut or mowed in accordance with the following
23 procedure:
24

1 1. At least ten (10) days' notice shall be given to the owner
2 of the property by mail at the address shown by the current year's
3 tax rolls in the county treasurer's office before the governing body
4 holds a hearing or takes action. The notice shall order the
5 property owner to clean the property of trash, or to cut or mow the
6 weeds or grass on the property, as appropriate, and ~~the~~ shall
7 include a physical address and an email address at which the
8 municipal governing body may be contacted and shall include an
9 itemized list of the items to be cleaned and mowed. The notice
10 shall further state that unless such work is performed within ten
11 (10) days of the date of the notice the work shall be done by the
12 municipality and a notice of lien shall be filed with the county
13 clerk against the property for the costs due and owing the
14 municipality. At the time of mailing of notice to the property
15 owner, the municipality shall obtain a receipt of mailing from the
16 postal service, which receipt shall indicate the date of mailing and
17 the name and address of the mailee. However, if the property owner
18 cannot be located within ten (10) days from the date of mailing by
19 the municipal governing body, notice may be given by posting a copy
20 of the notice on the property or by publication, as defined in
21 Section 1-102 of this title, one time not less than ten (10) days
22 prior to any hearing or action by the municipality. If a municipal
23 governing body anticipates summary abatement of a nuisance in
24 accordance with the provisions of subsection B of this section, the

1 notice, whether by mail, posting or publication, shall state: that
2 any accumulations of trash or excessive weed or grass growth on the
3 owner's property occurring within six (6) months from and after the
4 date of this notice may be summarily abated by the municipal
5 governing body; that the costs of such abatement shall be assessed
6 against the owner; and that a lien may be imposed on the property to
7 secure such payment, ~~all without further prior notice to the~~
8 ~~property owner.~~ If the property owner or the property owner's agent
9 presents by mail or email to the municipal governing body at the
10 address listed on the notice a physical or electronic photo or video
11 with the intention of demonstrating substantial compliance with the
12 cleaning and mowing specified in the notice, then the municipal
13 governing body shall not proceed with any further abatement
14 procedures. If the municipal governing body determines that the
15 photo or video does not demonstrate substantial compliance with the
16 cleaning and mowing specified in the notice, the municipal governing
17 body may apply within thirty (30) days after receiving the photo or
18 video to the district court in the county in which the municipality
19 sits for an order declaring substantial compliance has not been met
20 and authorizing the municipal governing body to proceed with the
21 abatement procedures;

22 2. The owner of the property may give written consent to the
23 municipality authorizing the removal of the trash or the mowing of
24

1 the weeds or grass. By giving written consent, the owner waives the
2 owner's right to a hearing by the municipality;

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

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

20 5. The governing body shall determine the actual cost of such
21 cleaning and mowing and any other expenses, provided that other
22 expenses not including cleaning and mowing expenses shall not exceed
23 Fifty Dollars (\$50.00) total, as may be necessary in connection
24 therewith, including the cost of notice and mailing. The municipal

1 clerk shall forward by mail to the property owner specified in
2 paragraph 1 of this subsection a statement of such actual cost and
3 demanding payment. If the cleaning and mowing are done by the
4 municipality, the cost to the property owner for the cleaning and
5 mowing shall not exceed the actual cost of the labor, maintenance,
6 and equipment required. If the cleaning and mowing are done on a
7 private contract basis, the contract shall be awarded to the lowest
8 and best bidder on a competitive basis;

9 6. ~~If payment is~~ Payments not made within thirty (30) days from
10 the date of the mailing of the statement shall bear interest not to
11 exceed the prime rate, as listed in the first edition of *The Wall*
12 *Street Journal* published for each calendar year and as certified to
13 the Administrative Director of the Courts by the State Treasurer on
14 the first regular business day following publication in January of
15 each year, plus two (2) percentage points, then and within the next
16 thirty (30) days, ~~the municipal clerk shall forward a certified~~
17 ~~statement of the amount of the cost to the county treasurer of the~~
18 ~~county in which the property is located and the same shall be levied~~
19 ~~on the property and collected by the county treasurer as other taxes~~
20 ~~authorized by law. Once certified by the county treasurer, payment~~
21 ~~may only be made to the county treasurer except as otherwise~~
22 ~~provided for in this section. In addition the cost and the interest~~
23 ~~thereon shall be a lien against the property from the date the cost~~
24 ~~is certified to the county treasurer, coequal with the lien of ad~~

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

20 7. The municipality may designate by ordinance an
21 administrative officer or administrative body to carry out the
22 duties of the governing body in subsection A of this section. The
23 property owner shall have a right of appeal to the municipal
24 governing body from any order of the administrative officer or

1 administrative body. Such appeal shall be taken by filing written
2 notice of appeal with the municipal clerk within ten (10) days after
3 the administrative order is rendered.

4 B. If a notice is given by a municipal governing body to a
5 property owner ordering the property within the municipal limits to
6 be cleaned of trash and weeds or grass to be cut or mowed and the
7 property owner fails to try to demonstrate compliance or is found by
8 the district court not to have complied, in accordance with the
9 procedures provided for in subsection A of this section, any
10 subsequent accumulations of trash or excessive weed or grass growth
11 on the property occurring within a six-month period may be declared
12 to be a nuisance and may be summarily abated ~~without further prior~~
13 ~~notice to~~ upon providing the property owner with notice no fewer
14 than seven (7) days prior to the summary abatement. At the time of
15 each such summary abatement the municipality shall notify the
16 property owner of the abatement and the costs thereof. The notice
17 shall state that the property owner may request a hearing within ten
18 (10) days after the date of mailing the notice. The notice and
19 hearing shall be as provided for in subsection A of this section.
20 Unless otherwise determined at the hearing the cost of such
21 abatement shall be determined and collected as provided for in
22 paragraphs 5 and 6 of subsection A of this section. This subsection
23 shall not apply if the records of the county clerk show that the

24

1 property was transferred after notice was given pursuant to
2 subsection A of this section.

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

8 D. As used in this section:

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

12 a. exceeds twelve (12) inches in height, except healthy
13 trees, shrubs, or produce for human consumption grown
14 in a tended and cultivated garden unless such trees
15 and shrubbery by their density or location constitute
16 a detriment to the health, benefit and welfare of the
17 public and community or a hazard to traffic or create
18 a fire hazard to the property or otherwise interfere
19 with the mowing of said weeds,

20 b. regardless of height, harbors, conceals, or invites
21 deposits or accumulation of refuse or trash,

22 c. harbors rodents or vermin,

23 d. gives off unpleasant or noxious odors,

24 e. constitutes a fire or traffic hazard, or

1 f. is dead or diseased.

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

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

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

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

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

20 SECTION 4. AMENDATORY 11 O.S. 2011, Section 22-112.1, is
21 amended to read as follows:

22 Section 22-112.1 A. After a building has been declared
23 dilapidated, as provided in Section 22-112 of this title, and before
24 the commencement of the tearing and removal of a dilapidated

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

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

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

13 1. Before the governing body orders such action, at least ten
14 (10) days' notice that such unsecured building is to be boarded and
15 secured shall be given by mail to any property owners and mortgage
16 holders as provided in Section 22-112 of this title. The notice
17 shall include a physical address and an email address at which the
18 municipal governing body may be contacted and shall include an
19 itemized list of the items to be cleaned, boarded and secured. At
20 the time of mailing of notice to any property owner or mortgage
21 holder, the municipality shall obtain a receipt of mailing from the
22 postal service, which receipt shall indicate the date of mailing and
23 the name and address of the mailee. A copy of the notice shall also
24 be posted on the property to be affected. However, if neither the

1 property owner nor mortgage holder can be located, notice may be
2 given by posting a copy of the notice on the property or by
3 publication as defined in Section 1-102 of this title. Such notice
4 shall be published one time, not less than ten (10) days prior to
5 any hearing or action by the municipality pursuant to the provisions
6 of this section. If a municipal governing body anticipates summary
7 abatement of a nuisance in accordance with the provisions of
8 paragraph ~~9~~ 10 of this subsection, the notice shall state: that any
9 subsequent need for boarding and securing the building within a six-
10 month period after the initial boarding and securing of the building
11 pursuant to such notice may be summarily boarded and secured by the
12 municipal governing body upon providing the property owner with
13 notice no fewer than seven (7) days prior to the boarding and
14 securing; that the costs of such boarding and securing shall be
15 assessed against the owner; and that a lien may be imposed on the
16 property to secure such payment, ~~all without further prior notice to~~
17 ~~the property owner or mortgage holder~~;

18 2. If the property owner or the property owner's agent presents
19 by mail or email to the municipal governing body a physical or
20 electronic photo or video demonstrating substantial compliance with
21 the cleaning, boarding and securing specified in the notice, then
22 the municipal governing body shall not proceed with any further
23 abatement procedures. If the municipal governing body determines
24 that the photo or video does not demonstrate substantial compliance

1 with the cleaning, boarding and securing specified in the notice,
2 the municipal governing body may apply within thirty (30) days after
3 receiving the photo or video to the district court in the county in
4 which the municipality sits for an order declaring substantial
5 compliance has not been met and authorizing the municipal governing
6 body to proceed with the abatement procedures;

7 3. The owner of the property may give written consent to the
8 municipality authorizing the boarding and securing of such unsecured
9 building and to the payment of any costs incurred thereby. By
10 giving written consent, the owner waives any right the owner has to
11 a hearing by the municipal governing body;

12 ~~3.~~ 4. If the property owner does not give written consent to
13 such actions, a hearing may be held by the municipal governing body
14 to determine whether the boarding and securing of such unsecured
15 building would promote and benefit the public health, safety or
16 welfare. Such hearing may be held in conjunction with a hearing on
17 the accumulation of trash or the growth of weeds or grass on the
18 premises of such unsecured building held pursuant to the provisions
19 of paragraph 3 of subsection A of Section 22-111 of this title. In
20 making such determination, the governing body shall apply the
21 following standard: the governing body may order the boarding and
22 securing of the unsecured building when the boarding and securing
23 thereof would make such building less available for transient
24 occupation, decrease a fire hazard created by such building, or

1 decrease the hazard that such building would constitute an
2 attractive nuisance to children.

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

5 ~~4.~~ 5. After the governing body orders the boarding and securing
6 of such unsecured building, the municipal clerk shall immediately
7 file a notice of unsecured building and lien with the county clerk
8 describing the property, stating the findings of the municipality at
9 the hearing at which such building was determined to be unsecured,
10 and stating that the municipality claims a lien on the property for
11 the costs of boarding and securing such building and that such costs
12 are the personal obligation of the property owner from and after the
13 date of filing the notice;

14 ~~5.~~ 6. Pursuant to the order of the governing body, the agents
15 of the municipality are granted the right of entry on the property
16 for the performance of the boarding and securing of such building
17 and for the performance of all necessary duties as a governmental
18 function of the municipality;

19 ~~6.~~ 7. After an unsecured building has been boarded and secured,
20 the governing body shall determine the actual costs of such actions
21 and any other expenses, provided that, other expenses not to include
22 boarding and securing shall not exceed Fifty Dollars (\$50.00), that
23 may be necessary in conjunction therewith including the cost of the
24 notice and mailing. The municipal clerk shall forward a statement

1 of the actual costs attributable to the boarding and securing of the
2 unsecured building and a demand for payment of such costs, by mail
3 to any property owners and mortgage holders as provided in Section
4 22-112 of this title. At the time of mailing of the statement of
5 costs to any property owner or mortgage holder, the municipality
6 shall obtain a receipt of mailing from the postal service, which
7 receipt shall indicate the date of mailing and the name and address
8 of the mailee.

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

15 ~~7.~~ 8. When payment is made to the municipality for costs
16 incurred, the municipal clerk shall file a release of lien, ~~but if~~
17 ~~payment attributable to the actual costs of the boarding and~~
18 ~~securing of the unsecured building is.~~ Payments not made within
19 thirty (30) days from the date of the mailing of the statement to
20 the owner of such property, ~~the municipal clerk shall forward a~~
21 ~~certified statement of the amount of the costs to the county~~
22 ~~treasurer of the county in which the property is located. Once~~
23 ~~certified to the county treasurer, payment may only be made to the~~
24 ~~county treasurer except as otherwise provided for in this section.~~

1 ~~At the time of collection the county treasurer shall collect a fee~~
2 ~~of Five Dollars (\$5.00) for each parcel of property and such fee~~
3 ~~shall be deposited to the general fund of the county. The costs~~
4 ~~shall be levied on the property and collected by the county~~
5 ~~treasurer as are other taxes authorized by law. Until fully paid,~~
6 ~~the costs and the interest thereon shall be the personal obligation~~
7 ~~of the property owner from and after the date the notice of~~
8 ~~unsecured building and lien is filed with the county clerk. In~~
9 ~~addition the costs and the interest thereon shall be a lien against~~
10 ~~the property from the date the notice of the lien is filed with the~~
11 ~~county clerk. The lien shall be coequal with the lien of ad valorem~~
12 ~~taxes and all other taxes and special assessments and shall be prior~~
13 ~~and superior to all other titles and liens against the property.~~
14 ~~The lien shall continue until the costs and interest are fully paid.~~
15 ~~If the county treasurer and the municipality agree that the county~~
16 ~~treasurer is unable to collect the assessment, the municipality may~~
17 ~~pursue a civil remedy for collection of the amount owing and~~
18 ~~interest thereon by an action in personam against the property owner~~
19 ~~and an action in rem to foreclose its lien against the property. A~~
20 ~~mineral interest if severed from the surface owner, shall not be~~
21 ~~subject to any tax or judgment lien created pursuant to this~~
22 ~~section. Upon receiving payment, the municipal clerk shall forward~~
23 ~~to the county treasurer a notice of such payment and shall direct~~
24 ~~discharge of the lien shall bear interest not to exceed the prime~~

1 rate, as listed in the first edition of *The Wall Street Journal*
2 published for each calendar year and as certified to the
3 Administrative Director of the Courts by the State Treasurer on the
4 first regular business day following publication in January of each
5 year, plus two (2) percentage points, and the municipality may file
6 a lien with the county clerk in the manner prescribed for other
7 lienholders by law;

8 ~~8.~~ 9. The municipality may designate by ordinance an
9 administrative officer or administrative body to carry out the
10 duties of the governing body specified in subsection C of this
11 section. The property owner or mortgage holder shall have a right
12 of appeal to the municipal governing body from any order of the
13 administrative officer or administrative body. Such appeal shall be
14 taken by filing written notice of appeal with the municipal clerk
15 within ten (10) days after the administrative order is rendered;

16 ~~9.~~ 10. If a municipal governing body causes a structure within
17 the municipal limits to be boarded and secured, any subsequent need
18 for boarding and securing within a six-month period constitutes a
19 public nuisance and may be summarily boarded and secured ~~without~~
20 ~~further prior notice to~~ upon providing the property owner ~~or~~
21 ~~mortgage holder~~ with notice no fewer than seven (7) days prior to
22 the boarding and securing. At the time of each such summary
23 boarding and securing, the municipality shall notify the property
24 owner and mortgage holder of ~~the boarding and securing and the costs~~

1 thereof. The notice shall state that the property owner may request
2 an appeal with the municipal clerk within ten (10) days after the
3 mailing of the notice. The notice and hearing shall be as provided
4 for in paragraph 1 of this subsection. Unless otherwise determined
5 at the hearing the cost of such boarding and securing shall be
6 determined and collected as provided for in paragraphs ~~6~~ 7 and ~~7~~ 8
7 of this subsection;

8 ~~10.~~ 11. A governing body of any municipality may determine that
9 a 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.~~ 12. 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 5. AMENDATORY Section 3, Chapter 326, O.S.L.
11 2014 (11 O.S. Supp. 2016, Section 22-112.4), is amended to read as
12 follows:

13 Section 22-112.4 A. An abandoned building shall constitute a
14 public nuisance because it:

- 15 1. Is detrimental to the public health, safety or welfare of
16 the inhabitants of and visitors to the municipality;
- 17 2. Causes increased municipal regulatory costs and increased
18 municipal police and fire protection costs; and
- 19 3. Devalues abutting and nearby real properties.

20 B. A municipal governing body may abate the public nuisance
21 caused by an abandoned building within the municipal limits in
22 accordance with the following procedures:

- 23 1. At least ten (10) days' notice that an abandoned building is
24 to be abated pursuant to the procedures for abatement set forth in

1 this section shall be given to the owner of the property before the
2 governing body holds a hearing. A copy of the notice shall be sent
3 by mail to the property owner at the address shown by the current
4 year's tax rolls in the office of the county treasurer. Written
5 notice shall also be sent by mail to any mortgage holder as shown by
6 the records in the office of the county clerk to the last-known
7 address of the mortgage holder. At the time of mailing of notice to
8 any property owner or mortgage holder, the municipality shall obtain
9 a receipt of mailing from the postal service, the receipt of which
10 shall indicate the date of mailing and the name and address of the
11 mailee. The notice shall include a physical address and an email
12 address at which the municipal governing body may be contacted.
13 However, if neither the property owner nor mortgage holder can be
14 located, notice may be given by posting a copy of the notice on the
15 property and by publication as defined in Section 1-102 of ~~Title 11~~
16 ~~of the Oklahoma Statutes~~ this title. Such notice shall be published
17 once not less than ten (10) days prior to any hearing or action by
18 the municipality pursuant to the provisions of this section. If the
19 property owner or the property owner's agent presents by mail or
20 email to the municipal governing body a physical or electronic photo
21 or video demonstrating that the property has not been abandoned
22 after the date the notice was mailed but before any hearing or
23 action by the municipality pursuant to the provisions of this
24 section, then the municipal governing body shall not proceed with

1 any further abatement procedures. If the municipal governing body
2 determines that the photo or video does not demonstrate that the
3 property has not been abandoned, the municipal governing body may
4 apply within thirty (30) days after receiving the photo or video to
5 the district court in the county in which the municipality sits for
6 an order declaring the property has been abandoned and authorizing
7 the municipal governing body to proceed with the abatement
8 procedures;

9 2. A hearing shall be held by the governing body to determine
10 if the property is an abandoned building as defined by this section;

11 3. Pursuant to a determination that the building is an
12 abandoned building, the governing body may order the agents of the
13 municipality to pursue abatement of the public nuisance caused by
14 the building and shall order the municipal clerk to place the
15 building on an abandoned building list to be maintained by the
16 clerk. At any time after such determination and order, the agents
17 of the municipality may cause the public nuisance to be abated as
18 authorized in this section, and such abatement may continue until
19 such time as the building is removed from the abandoned building
20 list in accordance with the procedures set forth in subsection C of
21 this section;

22 4. Abatement of an abandoned building by the municipality may
23 include any or all of the following:
24

- 1 a. any lawful municipal regulatory or municipal police
2 and fire protection action in relation to the
3 abandoned building or the owner of such building
4 necessary or appropriate for the protection of
5 inhabitants in and visitors to the municipality. Upon
6 receipt of any necessary warrant to authorize such
7 action, the agents of the municipality are granted the
8 right of entry onto the property for the performance
9 of any such action as a governmental function of the
10 municipality,
- 11 b. the quarterly assessment against the property on which
12 the abandoned building is located and against the
13 owner of the abandoned building of the actual costs of
14 any municipal regulatory action taken in relation to
15 the abandoned building or the owner of such building
16 as authorized above,
- 17 c. the assessment against the property on which the
18 abandoned building is located and against the owner of
19 the abandoned building of the actual costs of any
20 municipal police or fire protection action taken in
21 relation to the abandoned building or the owner of
22 such building as authorized above, and
- 23 d. an assessment for any other actual expenses incurred
24 by the municipality in relation to the abandoned

1 building, including, but not limited to, the costs of
2 notices, mailings and publications;
3 provided, that the total of all costs and expenses assessed that are
4 not related to the boarding and securing of the abandoned property
5 shall not exceed Fifty Dollars (\$50.00) total;

6 5. After the determination that a building is an abandoned
7 building, and before commencement of any of the abatement actions
8 authorized by paragraphs 3 and 4 of this subsection, the municipal
9 clerk shall file a notice of lien with the county clerk describing
10 the property, the findings of the governing body at the hearing, and
11 stating that the municipality claims a lien on the property for all
12 abatement costs and that such costs shall also constitute the
13 personal obligation of the property owner from and after the date of
14 filing of the notice;

15 6. From and after the determination that a building is an
16 abandoned building, and continuing until such time as the building
17 is removed from the abandoned building list in accordance with the
18 procedures set forth in subsection C of this section, the municipal
19 clerk shall determine the actual quarterly abatement costs for the
20 abatement procedures authorized by this section. After such
21 determination, the municipal clerk shall mail a statement of the
22 actual quarterly abatement costs for the abatement procedures
23 authorized by this section to the property owner and demand the
24 payment of such costs by the owner. In addition, a copy of the

1 statement shall be mailed to any mortgage holder at the address
2 provided for in paragraph 1 of this subsection. At the time of
3 mailing of the statement of costs to any property owner or mortgage
4 holder, the municipal clerk shall obtain a receipt of mailing from
5 the postal service, the receipt of which shall indicate the date of
6 mailing and the name and address of the mailee; and

7 7. When full payment is made to the municipal clerk for actual
8 abatement costs incurred and billed in accordance with paragraph 6
9 of this subsection, the municipal clerk shall send the property
10 owner and any mortgage holder by mail a receipt for such payment,
11 ~~but if payment attributable to the actual quarterly costs of such~~
12 ~~abatement is.~~ Payments not made within six (6) months from the date
13 of the mailing of the statement to the owner of such property shall
14 bear interest not to exceed the prime rate, as listed in the first
15 edition of *The Wall Street Journal* published for each calendar year
16 and as certified to the Administrative Director of the Courts by the
17 State Treasurer on the first regular business day following
18 publication in January of each year, plus two (2) percentage points,
19 and a lien in the actual amount of the abatement shall be filed
20 against the abandoned building with the county clerk in the manner
21 prescribed for other lienholders by law. Until finally paid, the
22 costs and the interest thereon shall be the personal obligation of
23 the property owner from and after the date the notice of lien was
24 filed ~~with the county clerk.~~ In addition, the costs and the

1 interest thereon shall be a lien against the property from the date
2 the notice of lien was filed with the county clerk. ~~The lien shall~~
3 ~~be coequal with the lien of ad valorem taxes and all other taxes and~~
4 ~~special assessments and shall be prior and superior to all other~~
5 ~~titles and liens against the property. The lien shall continue~~
6 ~~until the cost is fully paid. A mineral interest, if severed from~~
7 ~~the surface interest and not owned by the surface owner, shall not~~
8 ~~be subject to any lien created pursuant to this section. Upon~~
9 receiving full payment, the municipal clerk shall forward to the
10 county clerk a notice of discharge of the lien.

11 C. Any owner or mortgage holder of any building determined by
12 the governing body of the municipality to be an abandoned building
13 pursuant to this section may petition the governing body in writing
14 at any time after such determination for removal of such building
15 from the abandoned building list maintained by the municipal clerk.
16 Any such petition shall be filed with the municipal clerk. Within
17 thirty (30) days after such petition is filed with the municipal
18 clerk, the governing body shall hold a hearing to determine if the
19 building is no longer an abandoned building. Upon such a
20 determination, the governing body shall order the building removed
21 from the abandoned building list. The municipal clerk shall comply
22 with such order by removing the building from the abandoned building
23 list; provided, the real property on which the abandoned building is
24 located and the owner of such building shall remain liable for

1 payment of any and all abatement costs incurred by the municipality
2 prior to the determination and order by the governing body that the
3 building should be removed from the abandoned building list. Upon
4 full payment of any costs certified against the property, the
5 municipal clerk shall file a release of the notice of the lien in
6 the county clerk's office within ten (10) days after receiving such
7 payment.

8 D. The governing body may designate, by ordinance, an
9 administrative officer or administrative body of the municipality to
10 carry out any or all of the duties of the governing body specified
11 in this section. The property owner shall have the right of appeal
12 to the governing body from any order of the administrative officer
13 or administrative body. Such appeal shall be taken by filing a
14 written notice of appeal with the municipal clerk within ten (10)
15 days after the administrative order is delivered or mailed to the
16 owner at the address shown in the county treasurer records.

17 E. For purposes of this section:

18 1. "Abandoned building" means any building located within the
19 municipality that is not currently occupied and has been declared
20 unsecured or dilapidated pursuant to Section 22-112 or 22-112.1 of
21 ~~Title 11 of the Oklahoma Statutes~~ this title and remains in such
22 condition; and

23 2. "Owner" means the owner of record as shown by the most
24 current tax roles of the county treasurer.

1 F. The provisions of this section shall not apply to any
2 property zoned and used for agricultural purposes.

3 G. The officers, employees or agents of the municipality shall
4 not be liable for any damages or loss of property due to the
5 abatement of the public nuisance caused by an abandoned building
6 performed pursuant to the provisions of this section or as otherwise
7 provided by law.

8 SECTION 6. This act shall become effective November 1, 2017.

9

10 56-1-7232 AMM 03/01/17

11

12

13

14

15

16

17

18

19

20

21

22

23

24