



Phillip Crego

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December 20, 2011

MEMO TO MAYOR HAROLD PERRIN

IN RE: LIENS

I wanted to give you an overview of lien collections under city ordinance and state laws.

Currently when the city mows or cleans up a lot and tears down a structure, we forward the amount incurred on to the tax collector. (See Exhibit 1 & 2 for forms). Thereafter, these amounts are assessed as a lien on the affected real property and collected as delinquent taxes. They are also shown as a lien on the real property in the event of sale or mortgage of the property. No costs are incurred via this method. The two major drawbacks are the length of time it can take, five (5) years on average and that sometimes there is a time lag between when the tax books close and when they are reopened. During this period, there is a window of opportunity within which the property can sell and the lien not be picked up on the tax records. (I believe we can close that window if we file a lien notice in miscellaneous land records).

In addition, the lien referenced above can be foreclosed. However, the city would have to incur costs and expenses in order to do this. These include the following:

- 1) Filing fee \$165.00
- 2) Process services (a) \$40.00-\$55.00 per person for in person;(b) mailing restricted delivery \$4.50
- 3) Publication of warning Order \$.65 per word
- 4) Attorney ad Litem \$150.00 approximate.

We have ten years within which to foreclose the lien granted. The advantages are that the money may be collected quicker than a tax lien, but we have to expend the additional money to do so. Further, this presupposes someone else bids on the property in excess of the city's lien. If not, the city can acquire title and then dispose of the property. Attached are the relevant state code provisions (ACA 14-54-901 et seq).

Another means to effectuate the cleanup of property and enforce liens is provided under Jonesboro Code of Ordinances Sec. 5-16-16 through 5-16-20. Again it provides for filing of a lien and judicial foreclosure. However, it also includes citation into District Court for code violations.

The various remedies effectiveness depends, in large effect, on a case by case determination. Issues include, whether known or unknown owner, whether known owners are local or out of state and ultimately what the value of the property is that is affected.
(Jonesboro Code of Ordinances Sec. 5.16.16 through 5.16.20 attached.)

Sincerely,

A handwritten signature in cursive script that reads "Phillip Crego".

Phillip Crego

pv

EX 1



CITY OF JONESBORO

NOTICE OF TAX LIEN

Date: _____

To: _____

RE: _____

Owner: _____

Address: _____

City: _____

Legal Description: _____

Section-Township-Range: _____

Lot/Block: _____

Subdivision: _____

Parcel #: _____

This is a request for a tax lien to be filed on: _____

Amount of Lien: \$ _____

If you have any questions feel free to call me at 933-4658.

Thank you,

Ronnie Shaver
Jonesboro Code Enforcement

Lien Approved by: _____

City Attorney-City of Jonesboro



CITY OF JONESBORO

Date: April 18, 2011

To: Becky Sharp
Ken Saddler

Re: iñ

Need to add the following charges to this.

Property Owner: .
Address:

<u>ITEMS</u>	<u>AMOUNTS</u>
Demolition charges	\$
Landfill Tipping Fees	\$
Title Search	\$
Mailing fees	\$
Asbestos Inspection	\$
Asbestos removal	\$
<u>Filing fees</u>	<u>\$</u>
Total	\$

Thank you,

Ronnie Shaver
Jonesboro Code Enforcement

EXH. 3

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A.C.A. § 14-54-901

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Title 14 Local Government
Subtitle 3. Municipal Government
Chapter 54 Powers Of Municipalities Generally
Subchapter 9 -- Regulation of Unsanitary Conditions

A.C.A. § 14-54-901 (2011)

14-54-901. Municipal authority.

Incorporated towns and cities of the first and second class are empowered to order the owner of lots and other real property within their towns or cities to cut weeds; to remove garbage, rubbish, and other unsightly and unsanitary articles and things upon the property; and to eliminate, fill up, or remove stagnant pools of water or any other unsanitary thing, place, or condition which might become a breeding place for mosquitoes, flies, and germs harmful to the health of the community, after the town or city has provided therefor by an ordinance to that effect.

HISTORY: Acts 1943, No. 100, § 1; A.S.A. 1947, § 19-2325.

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Title 14 Local Government

Subtitle 3. Municipal Government

Chapter 54 Powers Of Municipalities Generally

Subchapter 9 -- Regulation of Unsanitary Conditions

A.C.A. § 14-54-902 (2011)

14-54-902. Notice to unknown or nonresident owners.

(a) (1) In case the owner of any lot or other real property is unknown or his or her whereabouts is not known or he or she is a nonresident of this state, then a copy of the written notice under § 14-54-903 shall be posted upon the premises.

(2) Before any action to enforce the lien, the municipal recorder or the city clerk shall make an affidavit setting out the facts as to unknown address or whereabouts of nonresidents.

(b) (1) Thereupon, service of the publication as provided for by law against nonresident defendants may be had.

(2) An attorney ad litem shall be appointed to notify the defendant by certified letter addressed to his or her last known place of residence if it can be found.

(c) Except as provided in subsection (b) of this section, notices required by this subchapter shall be published, mailed, or delivered by the municipal recorder or the city clerk or other person as designated by the governing body of the municipality.

(d) Notwithstanding any other provision of law, after a notice has been issued for a specific violation of an order under § 14-54-901 directing an owner to eliminate a condition on the owner's property, an additional notice for a subsequent violation of that specific violation within the same calendar year shall not be required before the issuance of a citation.

HISTORY: Acts 1943, No. 100, § 3; A.S.A. 1947, § 19-2327; Acts 1989, No. 239, § 2; 2009, No. 503, § 1.

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higher than that permitted by local ordinance.

(b) If the owner or lienholder of any lot or other real property within an incorporated town or city neglects or refuses to remove, abate, or eliminate any condition under an ordinance passed by the city or town as provided in § 14-54-901, after having been given seven (7) days' notice in writing to do so, then the town or city may do whatever is necessary to correct the condition and to charge the cost thereof to the owner of the lots or other real property.

(c) (1) The town or city is given a lien against the property for the costs, including all administrative and collection costs.

(2) The town or city shall file the lien with the circuit clerk no later than one hundred twenty (120) days after the town or city completes the clean-up work on the property.

(3) The town or city may perfect its clean-up lien as a lien against the property if the property:

(A) Contains an unsafe and vacant structure; or

(B) Has been cited as a weed lot.

(4) The clean-up lien amount shall equal costs, including administrative costs, that the city or town incurs to help bring the property into compliance with local ordinances because the owner or lienholder failed to remove or repair an unsafe and vacant structure or failed to correct the conditions that caused the property to become a weed lot within the time required by the notice.

(5) (A) If a court of competent jurisdiction levies fines or penalties against the owner of an unsafe and vacant structure or weed lot for failure to comply with applicable building codes, then the local governing body, by majority vote, from time to time and subject to notice and hearing provided by this section, may secure any outstanding court fines or penalties resulting from the owner's failure to clean up an unsafe and vacant structure or weed lot with a court lien against the property for the full value of all the outstanding fines and penalties.

(B) A court lien does not have first priority status over prior recorded liens and may be imposed in addition to clean-up liens.

(6) (A) Notices shall be sent by regular mail and by certified mail, return receipt requested.

(B) Notice to an owner is sufficient if sent to the owner's address of record with the applicable county treasurer or collector.

(7) (A) If the city or town wishes to secure a priority clean-up lien, it shall provide seven (7) business days' notice to lienholders before undertaking any work at the property.

(B) Notice is sufficient if the notice is sent to the lienholder's address shown in the relevant land records.

(C) Cities and towns are not required to give notices to holders of unrecorded liens or to unrecorded assignees of lienholders.

(D) Any lienholder receiving notice under this section shall send, within seven (7) business days from receipt of the notice, a written response to the city or town indicating whether the owner of the property is in default under the terms of the note or mortgage.

(d) Any notice required under this section may be issued by a:

(C) No more than seven thousand five hundred dollars (\$7,500) to demolish any structures on the property; or

(D) No more than fifteen thousand dollars (\$15,000) for environmental remediation.

HISTORY: Acts 1943, No. 100, § 2; A.S.A. 1947, § 19-2326; Acts 1989, No. 239, § 1; 2005, No. 887, § 1; 2007, No. 854, § 1; 2009, No. 143, § 1; 2011, No. 903, § 1.

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HISTORY: Acts 1943, No. 100, § 4; 1979, No. 339, § 1; 1983, No. 80, § 1; A.S.A. 1947, § 19-2328; Acts 2001, No. 1538, § 1; 2005, No. 887, § 2; 2007, No. 854, § 2.

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 Chapter 54 Powers Of Municipalities Generally
 Subchapter 9 -- Regulation of Unsanitary Conditions

A.C.A. § **14-54-903** (2011)**14-54-903. Refusal of owner to comply.****(a)** As used in this section:

(1) (A) "Clean-up lien" means a lien securing the cost of work undertaken by a town or city to remove, abate, or eliminate a condition in violation of local codes or ordinances.

(B) A clean-up lien may have priority against other lienholders as provided in this section;

(2) "Court lien" means a lien securing the fines or penalties imposed by a court of competent jurisdiction against the owner of an unsafe and vacant structure or weed lot for failure to comply with applicable building codes that have been secured by a court lien by action of the local governing body;

(3) "Priority clean-up lien" means a clean-up lien for work undertaken by a city or town on an unsafe and vacant structure or weed lot that is given priority status over other lienholders following notice and hearing;

(4) "Unsafe and vacant structure" or an "abandoned home or residential property" means:

(A) A structure located on previously platted and subdivided property that is not fit for human habitation and has been declared unsafe and vacant by the city or town in which it is located in violation of an applicable ordinance; or

(B) A home or residential property that is:

(i) Unoccupied;

(ii) In violation of a city safety standard; and

(iii) Located in an area eligible for federal funds under § 14-54-905; and

(5) "Weed lot" means a previously platted and subdivided lot that is vacant or upon which an unsafe and vacant structure is located and that contains debris, rubbish, or grass which is

higher than that permitted by local ordinance.

(b) If the owner or lienholder of any lot or other real property within an incorporated town or city neglects or refuses to remove, abate, or eliminate any condition under an ordinance passed by the city or town as provided in § 14-54-901, after having been given seven (7) days' notice in writing to do so, then the town or city may do whatever is necessary to correct the condition and to charge the cost thereof to the owner of the lots or other real property.

(c) (1) The town or city is given a lien against the property for the costs, including all administrative and collection costs.

(2) The town or city shall file the lien with the circuit clerk no later than one hundred twenty (120) days after the town or city completes the clean-up work on the property.

(3) The town or city may perfect its clean-up lien as a lien against the property if the property:

(A) Contains an unsafe and vacant structure; or

(B) Has been cited as a weed lot.

(4) The clean-up lien amount shall equal costs, including administrative costs, that the city or town incurs to help bring the property into compliance with local ordinances because the owner or lienholder failed to remove or repair an unsafe and vacant structure or failed to correct the conditions that caused the property to become a weed lot within the time required by the notice.

(5) (A) If a court of competent jurisdiction levies fines or penalties against the owner of an unsafe and vacant structure or weed lot for failure to comply with applicable building codes, then the local governing body, by majority vote, from time to time and subject to notice and hearing provided by this section, may secure any outstanding court fines or penalties resulting from the owner's failure to clean up an unsafe and vacant structure or weed lot with a court lien against the property for the full value of all the outstanding fines and penalties.

(B) A court lien does not have first priority status over prior recorded liens and may be imposed in addition to clean-up liens.

(6) (A) Notices shall be sent by regular mail and by certified mail, return receipt requested.

(B) Notice to an owner is sufficient if sent to the owner's address of record with the applicable county treasurer or collector.

(7) (A) If the city or town wishes to secure a priority clean-up lien, it shall provide seven (7) business days' notice to lienholders before undertaking any work at the property.

(B) Notice is sufficient if the notice is sent to the lienholder's address shown in the relevant land records.

(C) Cities and towns are not required to give notices to holders of unrecorded liens or to unrecorded assignees of lienholders.

(D) Any lienholder receiving notice under this section shall send, within seven (7) business days from receipt of the notice, a written response to the city or town indicating whether the owner of the property is in default under the terms of the note or mortgage.

(d) Any notice required under this section may be issued by a:

(C) No more than seven thousand five hundred dollars (\$7,500) to demolish any structures on the property; or

(D) No more than fifteen thousand dollars (\$15,000) for environmental remediation.

HISTORY: Acts 1943, No. 100, § 2; A.S.A. 1947, § 19-2326; Acts 1989, No. 239, § 1; 2005, No. 887, § 1; 2007, No. 854, § 1; 2009, No. 143, § 1; 2011, No. 903, § 1.

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Title 14 Local Government
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Chapter 54 Powers Of Municipalities Generally
Subchapter 9 -- Regulation of Unsanitary Conditions

A.C.A. § 14-54-904 (2011)

14-54-904. Enforcement of lien for clearance by municipality.

(a) The liens provided for in § 14-54-903 may be enforced and collected at any time within ten (10) years after a lien has been filed in either one (1) of the following manners:

(1) By an action for foreclosure in the circuit court by the city or town, or if the city or town has established a land bank, by a land bank that has been assigned the lien; or

(2) (A) The amount so determined at the hearing, plus ten percent (10%) penalty for collection, shall be certified by the governing body of the municipality to the tax collector of the county where the municipality is located and placed by him or her on the tax books as delinquent taxes and collected accordingly.

(B) The amount, less three percent (3%) thereof, when so collected shall be paid to the municipality by the county tax collector.

(b) (1) (A) In any situation in which a city of the first class or city of the second class issues an order for the removal, repair to return the structure to compliance with minimum building code standards, or razing of a building or house under the provisions of § 14-56-203 and such order is not complied with by the owner of the building or house and the city then removes, repairs, or razes the building or house, a lien is granted and given against the real property for the cost of the removal, repair, or razing.

(B) If the city determines to repair the building or house to meet the minimum building code standards, the city shall comply with all necessary requirements under § 14-58-303 for competitive bidding for purchases of supplies and materials or for contracts for work or labor needed to complete the repairs on the building or house.

(2) The lien granted by this subsection shall also be enforced pursuant to the lien enforcement procedures set forth in subsection (a) of this section.

(c) In all suits brought to enforce the liens described in this section, the reimbursement of costs, including title search fees and reasonable attorney's fees, shall be awarded to the municipality.

HISTORY: Acts 1943, No. 100, § 4; 1979, No. 339, § 1; 1983, No. 80, § 1; A.S.A. 1947, § 19-2328; Acts 2001, No. 1538, § 1; 2005, No. 887, § 2; 2007, No. 854, § 2.

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5.16.13 Waiver. In event the provisions of this chapter prove unusually burdensome and constitute a hardship on any citizen, the Sanitation Committee of the Council, upon finding such to be a fact, may, in writing, signed by a majority of the Committee, authorize officers and employees of the city to waive the fees or the provisions for collection thereof. Request for waiver must be reviewed yearly.

There shall be a separate waiver concerning each individual or corporation and a current list of same shall be maintained by the city collector and Superintendent of Sanitation. Such waiver shall be subject to change or recession by the Sanitation Committee or the City Council at any time. (Sec. 10-13, 1962 Code)

5.16.14 Collector designated; billing; funds. The City Collector and City Water and Light are hereby designated the official collectors of sanitation fees. The fees herein levied and fixed are on a monthly basis and shall be due and payable in advance, provided, however, the City Collector is authorized to levy and collect the fees on a quarterly or three-month basis if, in his judgment, such a plan is more feasible, practical and economical. In any event, the fees shall be due and payable in advance. The amount of the sanitation fee shall be listed on a statement furnished by the collector and mailed to each person owing sanitation fees. The fee shall be fixed according to this chapter with proper amounts to be charged each person receiving a garbage disposal service and a record of same shall be kept by the collector in an office furnished for such purpose. The monthly period and/or quarterly period for each person receiving such service and owing such fee, shall begin on the first day of each month for the monthly period and the first day of each quarter for each quarterly period. The quarterly periods shall begin the first day of January, April, July and October. In case any person begins receiving garbage services after the beginning of the monthly or quarterly period, such person shall be billed for the remainder of such period and thereafter for the full period.

All funds collected by the sanitation department for services rendered shall be placed in a separate account to be known as "Sanitation Account No. 1" and said funds shall be used for the exclusive use and benefit of said department. Any transfer of funds from said account for use other than sanitation shall require a majority vote of the City Council. (Ord. No. 1191, Sec. 1.)

5.16.15 Reservation of power in City Council. The City Council shall have the power to reduce or increase the fees herein listed for said service by resolution adopted at any regular meeting of the Council and set fees therefore. (Sec. 10-16, 1962 Code)

5.16.16 Weeds to be cut, etc., removal of trash etc., from lots; stagnant water. It shall be unlawful for any person owning any lot or real property within the city of Jonesboro, Arkansas, to allow weeds to grow thereon to a greater height of more than twelve (12) inches or to become unsightly or unsanitary, or to allow garbage, rubbish, rotting or dead limbs or trees and other unsafe, unsightly or unsanitary articles and things to accumulate on such lots and real property or to fail to eliminate, fill up or remove stagnant pools of water or other unsanitary things or conditions which might become a breeding place for mosquitoes, flies and germs harmful to the health of the community. (Ord. No. 3326, Sec. 1.)

5.16.17 Notice to remove; removal by city. If the owner or occupant of any lot or real property in the city of Jonesboro shall permit any weeds, grass, garbage, rubbish, rotting or dead limbs or trees or other thing or condition existing upon the property within 150 feet of dwelling or structure to become unsafe, unsightly, or unsanitary or maintain a condemned structure on the property, the City Code Enforcement Officer is hereby authorized to issue a summons in person or by written notice citing the owner and/or occupant for violation of the provisions of 5.16.16 of the Jonesboro Municipal Code. The fine for such violation shall be not less than Fifty Dollars (\$50.00) nor greater than Five Hundred Dollars (\$500.00) as to be determined by the District Court Judge. (Ord. No. 3435, Sec. 1.)

5.16.18 Statement of costs The Code Enforcement Officer, acting on behalf of the city of Jonesboro, is authorized to assess a property a fee of One Hundred Dollars (\$100.00) to cover the cost of administering the removal and correction of conditions described in 5.16.17 of the Municipal Code. This fee shall be in addition to the actual cost of the work involved in correcting the conditions and is to be in addition to any fines imposed by the District Court. (Ord. No. 3426, Sec. 1.)

5.16.19 Suit to collect expenses; penalty. If the expense so incurred in removing and correcting the condition has not been paid within ten (10) days after the posting or serving of the notice, the City Attorney is directed to file suit in the name of the city of Jonesboro, Arkansas, in the Chancery Court in the Western District of Craighead County, Arkansas, against the owner and ask for judgment for the expense so incurred and the same be declared and fixed as a lien on the property involved, the land to be sold under such terms as the court may direct to satisfy the judgment lien. In case the owner of the property is unknown, the suit shall be against the land.

If the whereabouts of the owner is unknown or if the owner is a nonresident of the state, before the suit is instituted, the Clerk shall make an affidavit setting out the facts of such nonresident, unknown owner, and unknown whereabouts. Such affidavit shall be attached to the pleadings and the cause and constructive service of summons in the case shall be had as now provided by law against nonresident defendants, an attorney ad litem shall be appointed by the court to notify the defendant by registered letter, addressed to his last-known address if the same can be found, otherwise as the court may direct. The suit herein provided for must be instituted within eighteen (18) months after the work has been done, removing and/or correcting the conditions as herein authorized.

In addition to the above remedy requirements and procedures, every person convicted of a violation of any provision of Section 5.16.16 through 5.16.19 shall be fined not to exceed One Hundred Dollars (\$100.00) for the first offense and Two Hundred Fifty Dollars (\$250.00) for subsequent offenses within a year's time. (Ord. No. 1552, Secs. 5-6.)

5.16.20 Minimum requirements for weeds, vines, grass or low-hanging limbs.

- A. In addition to the requirements and procedures set forth in sections above, it shall be unlawful for any person to have, keep, maintain, cause or permit within the

city any weeds, vines, grass or low-hanging limbs on vacant lots, ditch banks or railroad rights-of-way or improved property in such a manner as to foster the harboring or breeding of mosquitoes. Weeds, grass or vines on such property as specified in this section shall be cut when same attain a height of twelve (12) inches and vines and low-hanging limbs shall be cut when the same are shown to foster the harboring and breeding of mosquitoes. The presence of grass or weeds or vines of more than twelve (12) inches in height on such property shall be prima facie evidence that mosquitoes are breeding there and/or being harbored therein. Failure to cut such weeds and grass or vines shall be prima facie evidence of violation of this section and punishable as prescribed herein. All lands within the city limits cultivated to growing crops shall be exempt from this section, but only the area actually cultivated is appraised to be growing crops.

- B. Any person responsible for conditions described in the foregoing section who shall fail to take necessary measures to prevent the same after five (5) days notice given by the City Code Enforcement Officer is subject to having said conditions removed at the direction of the City Code Enforcement Officer and all necessary costs incurred by the city for this purpose shall be charged against the property owner, the person in possession or any other person in violation as the case may be, and a lien filed against said property as authorized in A.C.A. 14-54-903-904. For purposes of this and other penalties provided herein, official record of ownership at the county tax assessors or county collector's office shall constitute prima facie proof of ownership.
- C. Every person convicted of a violation of any provision of this section shall be fined not to exceed One Hundred Dollars (\$100.00) for the first offense and two Hundred Fifty Dollars (\$250.00) for subsequent offenses, within a year's time. (Ord. No. 1402, Secs. -3.)

5.16.21 Unlawful storage. It shall be unlawful for the owner or occupant of a commercial and/or residential building structure or property to utilize the premises of such property for the open storage of any icebox, refrigerator, stove, tires, building material, paper, building rubbish and/or similar unsightly and unsanitary items. (Ord. No. 2124, Sec. 1)

5.16.22 Responsibility for maintenance. It shall be the duty and responsibility of every such owner or occupant to keep the premises of such commercial and/or industrial property clean and to remove all such items from the premises. (Ord. No. 2124, Sec. 2)

5.16.23 Violations. Any owner or occupant that fails to remove all such previously listed and/or similar items after written notice to do so from the Office of the City Code Enforcement Officer, within seven (7) days after receipt of said notice, shall be in violation of this ordinance and shall be notified of said violation as described in 5.16.17 of this chapter. (Ord. No. 2171, Sec. 2.)

CHAPTER 5.20

PUBLIC HEALTH

Sections:

- 5.20.01 Nuisances against public health
- 5.20.02 Swimming pools - Definition
- 5.20.03 Enclosure required
- 5.20.04 Bathers with communicable diseases; spitting, etc.
- 5.20.05 Duty of sexton, undertaker, etc.

5.20.01 Nuisances against public health. It shall be a misdemeanor for any person, whether owner or tenant, to fail promptly to remove or abate any nuisance, source of foulness, offensive odors, or cause of sickness hazardous to public health upon order of the Code Enforcement Officer. (Sec. 12-1, 1962 Code)

5.20.02 Swimming pools - Definition.

- A. Family pool is a swimming pool used or intended to be used solely by the owner, operator or lessee thereof and his family, and by his friends invited to use it without payment or any fee.
- B. Swimming pool is a body of water, fifteen (15) inches or more in depth in an artificial or semi-artificial receptacle or container located indoors or outdoors used or intended to be used for public, semi-public or private swimming by adults or children or both adults and children whether or not any charge or fee is imposed upon such adults and children and shall include all swimming pools operated and maintained in conjunction with or by clubs, motels, hotels and community associations.
- C. The word shall as used herein is mandatory and not merely directory. (Ord. No. 1365, Sec. 3, 6-18-73)

5.20.03 Enclosure required.

- A. Every outdoor pool or family pool shall be completely surrounded by a fence or wall of a non-climbable type of construction not less than four (4) feet in height, which shall be so constructed as not to have openings, holes or gaps larger than two (2) inches in any horizontal dimension nor four (4) inches in any vertical dimension, except for doors and gates; and, if a picket fence is erected or maintained, the horizontal dimensions shall not exceed two (2) inches. A dwelling house or accessory building may be used as part of such enclosure.