

STATE OF ALABAMA
COUNTY OF DEKALB
CITY OF FORT PAYNE

ORDINANCE NO. 2009-03
NUISANCE ABATEMENT ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT PAYNE, ALABAMA, AS FOLLOWS:

SECTION 1. Definitions. For the purposes of this ordinance, certain terms are defined as follows:

Abandoned Vehicle: Any motor vehicle which:

- (1) is in a wrecked, dismantled, partially dismantled, discarded or otherwise inoperable condition or
- (2) does not have affixed thereto an unexpired license plate. and has been parked, stored or left, whether attended or not, upon any public or private property in the city for a period of time in excess of thirty (30) business days
- (3) including: carts, tractors, mowers, bicycles, or other similar devices
- (4) The term includes any boat which is in a wrecked, dismantled, partially dismantled or otherwise inoperable condition.
- (5) This term does not include any motor vehicle:
 - (a) enclosed within a building or properly fitted vehicular cover on private property, or
 - (b) held in connection with a business enterprise, lawfully licensed by the City on property zoned for junkyard, vehicle repair facility or vehicle storage yard, or
 - (c) retained primarily as an antique collector=s item and registered under state law as an antique vehicle.

Accumulation of Debris, Rubbish, Etc.: An accumulation of storage of debris, refuse, rubbish, brush, used building materials, parts of buildings, remains from building demolition or fire, parts of abandoned or uninhabitable structures, used machinery, used tires, used vehicles, parts of vehicles, or any other materials, including discarded household furniture and appliances, which may provide a breeding place for harmful insects, rodents or snakes, a fire hazard, or is so unsightly as to be offensive to the surrounding area is a nuisance in violation of this ordinance.

Grass or Weed Nuisance: Any abundance of overgrown grass or weeds within the city which is injurious to the general public health, safety and general welfare by providing breeding grounds and shelter for rats, mice, snakes, mosquitoes and other vermin, insects and pests;

or attaining such heights and dryness so as to constitute serious fire threat or hazard; or bearing wingy or downy seeds, when mature, that cause the spread of weeds and, when breathed, irritation to the throat, lungs and eyes of the public: or hiding debris, such as broken glass or metal, which could inflict injury on any person going upon the property: or being unsightly: or any growth of grass or weeds, other than ornamental plant growth, which exceeds 12 inches in height.

Exceptions: Excepted from such grass and weed nuisance requirements are:

- (1) Any property which is in its natural condition.
- (2) Any property zoned R-F (Rural Farm) or AG (Agricultural District).

Maintenance Practices of City: The dedication and existence of a right-of-way for a public road or of an easement for drainage or for public utilities represents the grant of only a limited interest in property and does not change the actual ownership of the property upon which the right-of-way or easement is located. The public authority maintains rights-of-way and easements only to the extent necessary to maintain the public facility and to maintain safety. The owners of the burdened property continue to control the property, except to the extent that such control interferes with the public use. The public authority does not cut grass, weeds, and other growth upon rights-of-way or easement, except to the extent necessary for operation and safety purposes. All other maintenance is the responsibility of the owner of the property upon which the right-of-way or easement is located.

Natural Condition: Uncultivated and unseeded land, still in a state of nature. But any growth on land, once it has been cleared or plowed is not a natural condition, even though it has not been planted or cultivated by anyone.

Nuisance: Anything that unlawfully causes hurt, inconvenience or damage: that class of wrongs that arises from the unreasonable, unwarrantable or unlawful use by a person of such person=s own property, either real or personal, or from such person=s own improper, indecent, unsightly or unlawful personal conduct, working obstruction of or injury to the right of another or of the public, and producing material annoyance, inconvenience, discomfort or hurt to another person or to the general public: anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property of another.

Owner of Property: Includes legal title holder, or lessee, or occupant of property, or agent of legal title holder or lessee, in charge, possession or control of said property. For a building nuisance only, includes any deed holder of record.

Unlawful Nuisance: It shall be unlawful for any person to permit or maintain the existence of any nuisance on any property under such person=s ownership or control. Property under a person=s ownership and control includes those areas referred to as defined in owner of property. A person with a duty to abate any nuisance is liable for separate and distinct offenses for each day the nuisance is allowed to remain after it has become such person=s duty by notice of the enforcing official to abate it.

SECTION 2. It shall be unlawful:

- (1) for any person owning or occupying property within the city to fail to keep such premises in a clean and sanitary condition; or fail to keep accessory buildings well ventilated and cleaned and free from all filth and water that would be offensive or liable to cause disease.
- (2) for any person owning or in charge of real property in the city to permit their premises, whether or not vacant, to accumulate debris, rubbish or is likely to constitute a fire, health hazard or nuisance by raising or harboring mosquitoes, flies, rats, fleas, snakes; the outside use of indoor furniture on porches which may harbor vectors and constitute a fire hazard or the decaying of such accumulations so as to create an obnoxious odor.
- (3) for any person to leave in any place accessible to children whether in a building, on the premises of a building, or upon an unoccupied lot any abandoned wells, shafts, basements, or excavations; abandoned, unattended or discarded motor vehicle, appliance or other container of any kind, including any garbage or trash container, which is large enough to enclose a human being, which has a snap lock or other device without first removing the snap lock or doors there from, or providing a device which will allow the doors to be readily opened from inside the container; any structurally unsound fences or structures; or any lumber, trash, fences, debris or vegetation which may prove a hazard for inquisitive minors. Any public nuisance, including overcrowding a room with occupants, unsanitary sewage or plumbing, uncleanliness, or whatever is dangerous to human life or detrimental to health.
- (4) for any person in charge or control of any property within the city, whether as owner, tenant, occupant, lessee, or otherwise, to allow any partially dismantled, inoperable, wrecked, junked, or discarded vehicle to remain on such property for a period of more than thirty (30) days. Prohibiting the parking, storage, repair or dismantling thereof on public or private property or public right-of-way; except that this section shall not apply with regard to a vehicle in an enclosed building; a vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the city or on private property in connection with the business of a licensed vehicle dealer or junkyard. (Junkyards are currently permitted within the City Limits in zone M-2 of the Zoning Ordinance for the City of Fort Payne and must be duly licensed); a vehicle in operable condition specifically adapted or designed for operation on drag strips or raceways: or retailed primarily as an antique collector=s item and registered under state law as an antique vehicle.
- (5) for any person in charge or control of any property within the city to allow any damage to an adjoining property, public or private roads, drives, sidewalks, drainage ditches, or drainage structures caused by land disturbing activities such as: obstruction of drainage ways, erosion of land, deterioration of paved surfaces, or sedimentation. Best management practice as required by A.D.E.M. shall be used to contain sediment. In the event that sedimentation and litter escapes onto adjoining property, roadways, drainage structures etc. it shall be promptly removed, in the interest of the public=s

welfare and safety, the debris may be removed by city forces and the cost of such clean up charged to the person responsible for the land-disturbing activity.

- (6) for any person in charge or control of any property within the city to resist or ignore notification to demolish or rehabilitate an unsafe or dilapidated building, as defined in the *2003 International Property Maintenance Code* and is a menace to the City of Fort Payne and is a nuisance under the laws of the State of Alabama.
- (7) for any persons engaged in or by construction firms to allow the depositing of construction materials and/or debris on city streets or property. This is not to mean the delivering of construction material, but the littering of streets or property with construction material or debris while entering or leaving construction sites or while traveling on city streets. This is to include the construction site; the tracking or spilling of mud, dirt, and debris or construction material on city streets. Commercial tree trimmers and landscapers are required to remove and properly dispose of all limbs and trees cut by them or may be charged as responsible for trash and debris.

SECTION 3. Enforcement by City.

- (1) Whenever in the opinion of the enforcing official a nuisance exists, the official shall order the owner of the property on which the nuisance is located to abate the condition.
- (2) The enforcing official shall give the owner written notice in person or by first class mail. The notice shall require the owner to comply with this ordinance within the time stated in the notice.
- (3) The notice shall be sent to that person shown by the records of the county tax collector to have been the last person assessed for payment of ad valorem tax on the property where the nuisance is situated.
- (4) The notice shall also be posted in a conspicuous place on the property, preferably within three feet of an entrance to the building or structure. If there is no entrance or no structure, notice may be posted at any location on the property.
- (5) The notice shall require the owner to complete abatement of the nuisance within the following periods, provided the enforcing official may stipulate additional time, but in no case more than a total of 150 days:
 - (a) Fourteen (14) days from the date of notice if it is a grass and weed nuisance.
 - (b) One Hundred Twenty (120) days from the date of notice if it is a building nuisance.
 - (c) Thirty (30) days from the date of notice if it is any other type of nuisance including, but not limited to, burned structures and abandoned vehicles.
 - (d) If an owner has been notified within the preceding twelve (12) months that the

growth of grass or weeds violates this article, the enforcing official is authorized to give written notice to the owner to appear in court at a time and place to be fixed in the notice and then and there show cause why the growth of grass or weeds should not be declared a nuisance. The enforcing official is authorized to proceed to cause the cutting and removal of the grass and weeds to the extent of the violation. The City is authorized to do such work and assess the cost of such work to the owner along with any collection and or legal fees incurred.

SECTION 4. Failure to Comply.

If the owner fails neglects or refuses to comply with the notice to abate the nuisance, the enforcing official may proceed to prosecute said person for a violation of the provisions of this Code. The enforcing official may issue a summons and complaint to the owner of the property, requiring the owner to appear in Municipal Court to answer charges for the violation of this ordinance. The summons and complaint shall name the party charged, the address of the property where the alleged violation is located, and the nature of the offense or violation. It shall also apprise the owner of the date, time and place at which to appear for court. The summons and complaint, returnable to the Municipal Court, shall be served on the owner by any enforcing official, who shall forthwith appear and make oaths as to the alleged offense before a judge or magistrate of the municipal court. This provision for the issuance of a summons or complaint to Municipal Court shall not prevent any enforcing official from appearing before a Municipal Court judge or magistrate and making oaths as to the facts and applying for a warrant with respect to any alleged offense, in lieu of issuing a summons and complaint.

- (1) The enforcing official may institute the enforcement procedure set forth above and those set out below. The institution of one procedure does not preclude the subsequent or simultaneous institution of the other procedure, provided the criminal procedure is not used to collect any outstanding civil assessments against the subject property.
- (2) If the owner fails neglects or refuses to comply with the notice to abate a grass or weeds nuisance, the enforcing official shall cause the cutting of the offending grass or weeds.
- (3) Should the owner or any person in charge of the premises subject to the conditions described in this ordinance fail or refuse to abate such nuisances or to remove said abandoned appliances, furniture, rubbish, wrecked or non-operating vehicles upon being notified to do so as herein provided, the city is hereby authorized to do such work at the expense of the owner of such property, the cost thereof shall be a lien upon the property as any other debts are collected or liens enforced.
- (4) Each day the owner or person in charge of any premises shall allow such unsanitary conditions or nuisance to continue, after having received ten (10) days written notice to abate same, shall constitute a separate offense, and upon conviction thereof such owner or person in charge shall be punished as herein provided.

SECTION 5. Penalties. All violations of the provision of this chapter shall be punishable by:

- (1) A fine in the minimum sum of fifty dollars (\$50.00) up to a maximum of Five Hundred Dollars (\$500.00),
- (2) Imprisonment in the municipal jail for a term not to exceed six (6) months, or
- (3) Both such fine and/or imprisonment; and
- (4) An order to abate the nuisance.

SECTION 6. Severability.

That each and every provision of this ordinance is hereby declared to be an independent provision and the holding of any provision hereof to be void and invalid shall not affect any other provision hereof, and it is hereby declared that the other provisions of this ordinance would have been enacted regardless of any provision which might have been held invalid. This ordinance does not change or attempt to change the adoption of the *2003 International Property Maintenance Code*.

SECTION 7. This Ordinance does not apply to property zoned RF (Rural Farm District) or AG (Agriculture District).

SECTION 8. Effective Date.

This Ordinance shall become effective upon its adoption and publication.

DONE this 7th day of April, 2009.

CITY OF FORT PAYNE BY:

ATTEST:

Richard L. Pridmore
Council President

James C. McGee, CMC
City Clerk

[Seal]

TRANSMITTED TO THE MAYOR of the City of Fort Payne on the 8th day of April, 2009.

James C. McGee, CMC
City Clerk

APPROVED:

ATTEST:

William H. Jordan
Mayor

James C. McGee, CMC
City Clerk

Date of Mayor's approval: _____
