

ORDINANCE NO. 08-02-19-420

AN ORDINANCE TO REGULATE AND ABATE PUBLIC NUISANCES

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

§1 - Definitions:

Whenever used in this Ordinance, unless otherwise clearly indicated, the following words and phrases shall have the following meaning:

ABATE: The process to correct a situation deemed to be a public nuisance.

ABANDONED VEHICLE: Any motor vehicle, such as, but not limited to, an automobile, truck, motorcycle, water craft or a recreational vehicle, which is in a wrecked, dismantled, partially dismantled, discarded or otherwise inoperable condition. Also, if it does not have affixed thereto an unexpired license plate, if applicable, and has been parked, stored or left upon any public or private property in the city for a period of time in excess of seven (7) business days.

BUILDING NUISANCE: Any nuisance condition involving a residential or nonresidential structure, including, but not limited to, abandoned structures, remains from demolition, remains from a fire, parts of buildings and parts of uninhabitable structures.

ENFORCING OFFICIAL: Any official of the City of Chelsea designated by the mayor as the person to exercise the authority and perform the duties delegated by this ordinance to the enforcing official.

GRASS OR WEED NUISANCE: Any abundance of overgrown weeds or grass 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 a 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 weeds, other than ornamental plant growth, which exceeds nine (9) inches or more.

INOPERABLE: Any motorized vehicle which is incapable of being used for the manufactured, designed or intended purpose.

JUNK: All metals, whether ferrous or nonferrous, including, but not limited to, any used or secondhand parts of machinery; plumbing fixtures, or parts thereof; parts of

an automobile, truck, bus, motorcycle, water craft, or any other motor vehicle; gas or electrical appliances or fixtures, or parts thereof; household hardware; wire; cable; bearings; valves; pipes and pipe-fittings; building materials; wood; or any other used or secondhand metal articles, including inoperable motor vehicles.

LITTER: All waste material which can be or is subject to being blown from places or scattered by the elements, including but not limited to, paper, cardboard, cartons, boxes; plastics, rags, cloth, fibers and fabrics, leather, polyethylene and polystyrenes.

NATURAL CONDITION: Uncultivated and unseeded land, still in a state of nature. 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: That class of wrongs arising 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 improper, indecent, unsightly or unlawful personal conduct, working an obstruction of or injury to the right of another or of the public, and producing a material annoyance, inconvenience, discomfort or hurt to another person or to the general public.

OWNER OF PROPERTY: Includes the 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, this definition includes any mortgage holder of record.

REAL PROPERTY: Land, in its general usage, including not only the face of the earth, but everything of a permanent nature, including structures.

§2 Nuisance Unlawful:

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 listed in § 3.

§3 Duties of Owner:

(a) It shall be the duty of the owner of any real property located within the city to maintain any grass or weeds growing upon said property in such a manner as not to constitute a nuisance.

(b) The duties and obligations of the owner extend to and include any real property situated within a dedicated right-of-way or easement burdening the property, except to the extent that it may be impracticable to do so because of public facilities located thereon. Such rights-of-way and easements must be maintained by the owner in a

manner consistent with the maintenance of the owner's remaining property and within the requirements of this ordinance, except to the extent it may be impracticable to do so because of public facilities located thereon.

§4 General:

(a) It shall be unlawful and a nuisance, in violation of this ordinance, for the owner of any real property situated in the city limits of Chelsea to allow such real property to become overgrown with tall grass, or with any weed or plant kind, or any weed or plant bearing wingy or downy seeds, or any weed or plant that is otherwise noxious, dangerous, harmful, or poisonous. Overgrown means a height of nine (9) inches or more.

(b) The following exceptions apply:

1. Any property which is in its natural condition.
2. Any cultivated row crops and garden plants in their respective growing seasons. This exception does not permit any crops or gardens to become overgrown with grass and weeds in violation of the remaining terms of this ordinance.
3. Any ornamental shrubbery and ground cover provided that such uses are part of landscaping theme and not associated with a general deterioration of the property.

§5 Enforcing Official; Administrative Hearing; and Compliance Times:

(a) 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.

(b) The enforcing official shall give the owner written notice in person or by first class mail.

(1) 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. It shall be the responsibility of that person to promptly advise the enforcing official of any change of ownership or interest.

(2) The notice shall apprise the owner of the facts of the alleged nuisance and require the owner to comply within the time period stated in the notice according to paragraph 5 of this ordinance.

(3) The notice shall apprise the owner of the particular date, time and place for an administrative hearing to determine if there has been a violation of this ordinance, if the owner so desires.

(4) For a building nuisance, the notice shall contain the names of all owners and lien holders of the property, a legal description of the property and the nature of the proceeding.

(5) The complete abatement of the nuisance must be accomplished in the following time periods unless the enforcing official stipulates additional time, but in no case more than a total of 150 days.

(i) Ten (10) days from the date of notice if it is a grass and weed nuisance.

(ii) One hundred twenty (120) days from the date of notice, if it is a building nuisance.

(iii) Thirty (30) days from the date of notice if it is any other type of nuisance, but not limited to, burned structure and abandoned vehicles.

(iv) 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.

(6) The notice may require the immediate vacation of a building or structure and prohibit its occupation until the required repairs and improvements have been completed, inspected and approved by the enforcing official. In such cases the enforcing official shall post at each entrance to the building or structure, a sign stating "THIS STRUCTURE IS UNSAFE. ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE CITY OF CHELSEA.", or words of similar import, and shall be signed and dated. The sign shall remain until the required repairs and improvements have been made or the structure has been demolished and removed. The sign shall not be removed without the permission of the enforcing official whose name is affixed thereon. No person shall enter the structure except for the purpose of making the required repairs or demolishing the structure.

§6 Hearing before the Nuisance Abatement Committee; Notification of Finding:

(a) A hearing before the Nuisance Abatement Committee (appointed by the mayor) can be requested within five (5) days of the date of the notice from the enforcing official.

(b) If the Committee determines that a nuisance exists, the owner must comply with the initial order issued by the enforcing official with such modifications as may be made by the Committee.

(c) The enforcing official shall notify the owner by personal service or by first class mail of the determination of the Nuisance Abatement Committee.

§7 Failure to Comply with Notice to Abate:

(a) 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 ordinance.

(b) The enforcing official may issue a summons and complaint, as provided in Section 2 , to the owner of the property requiring the owner to appear in the Shelby County Court to answer charges for the violation of this ordinance.

(1) 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.

(2) It shall apprise the owner of the date, time and place at which to appear for court.

(c) All violations of the provisions of this ordinance shall be punishable upon conviction by the following:

(1) A fine in the minimum sum of two hundred fifty dollars (\$250) up to a maximum of five hundred dollars (\$500).

(2) Imprisonment in the County Jail for a term not to exceed six (6) months.

(3) Both such fine and imprisonment; and

(4) An order to abate the nuisance.

(d) The enforcing official may institute the enforcement procedure set forth in paragraph (a) 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.

(e) 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.

(f) If the owner fails, neglects or refuses to comply the notice to abate any other type of nuisance, there shall be a public hearing before the city council. Notice of the hearing shall be given to the owner at least five (5) days in advance by personal service or by first class mail.

(g) After the public hearing, the city council may, by resolution, order the enforcing official to proceed with the work specified in such notice or may order such nuisance demolished or removed, or may find that no nuisance exists. If the owner appears at the public hearing, no further notice of the order of the city council shall be required. If the owner fails to appear, notice of the order of the city council shall be mailed to such person's last known address.

(h) Upon the expiration of ten (10) days from the date of the resolution, the enforcing official shall proceed to carry out the decision of the council.

§8 Assessment of Cost:

(a) Upon completion of the abatement work performed by the city, including work by contractors employed by the city, the enforcing official shall compute the actual expense, including, but not limited to, total wages paid, value of the use of equipment, advertising expense, postage, materials purchase, which was incurred by the city as a result of such work. An itemized statement of such expenses shall be given by first class mail to the last known address of the owner of the property. This notice shall be sent at least five (5) days in advance of the time fixed by the city council to consider the assessment of the cost against the property.

(b) At the time fixed for receiving and considering the statement, the city council shall hear the same, together with any objections which may be raised by the owner whose property is liable to be assessed for the work and thereupon make such modifications in the cost. A resolution shall be adopted stating the cost for the abatement and shall constitute a special assessment against the land and shall constitute a lien on said property. After adoption of the resolution, a copy shall be turned over to the city treasurer who is charged with the collection of assessments. The city treasurer shall charge the assessments against the respective lots and parcels of land. Thereafter, said amounts shall be collected at the same time and in the same manner as ordinary fees are collected.

(c) The city treasurer shall cause a certified copy of the resolution assessing the cost of abatement to be recorded in the Office of the Probate Judge of Shelby County.

(d) Upon payment of the itemized accounts arising under this ordinance, any liens or assessments filed hereunder may be marked "Satisfied" and "Paid in Full" by the city treasurer.

§9 Exceptions:

The following are exempt from the terms of this ordinance:

- (a) Any motor vehicle enclosed within a building on private property;.
- (b) Any motor vehicle held in connection with a business enterprise, lawfully

licensed by the City of Chelsea on property zoned for a junkyard, vehicle repair facility or vehicle storage yard;

(c) Any motor vehicle that is in operable condition specifically adapted or designed for operation on drag strips or raceways; or

(d) Any motor vehicle that is retained primarily as an antique collector's item and is registered under state law as an antique vehicle.

§10 Construction of Ordinance:

This ordinance shall be construed to contain all power granted to municipalities under Section 11-4-10, 11-47-117, 11-47-131, 11-47-140, and 11-48-1 through 11-48-106, *Code of Alabama*, as amended providing for controlling nuisances, sanitation and good public health and safety conditions, and for assessment of public improvement liens.

§11 Severability:

If any part of this ordinance is held invalid by a court of competent jurisdiction, it shall not affect the validity of the remaining parts, which have been adopted separately and independently.

§12 Effective Date:

This ordinance shall take effect upon publication as required by law.

S. Earl Niven, Mayor

James V. Ferguson, Councilmember

Donald E. King, Councilmember

Jeffrey M. Denton, Councilmember

Tony Picklesimer, Councilmember

Juanita J. Champion, Councilmember

ATTEST:

Becky Landers- City Clerk

I, Becky Landers, Clerk of the City of Chelsea, Alabama, hereby certify that the above Ordinance was duly adopted by the Council of the City of Chelsea, Alabama at a regular meeting held on the 4th of March, 2008, and that same has been published in accordance with the law, on the 5th day of March, 2008.

City Clerk