

ORDINANCE NO.: 050802

AN ORDINANCE DEFINING REAL PROPERTY AND OTHER PUBLIC NUISANCES, ESTABLISHING A PROCEDURE FOR THE ABATEMENT OF SAID NUISANCES, AND PROVIDING PENALTIES FOR VIOLATIONS OF ITS PROVISIONS.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WILSONVILLE, ALABAMA AS FOLLOWS:

SECTION 1.

(a) Definitions.

For the purpose of this section, the following terms are defined as hereinafter set forth, to-wit:

APPROVED, ENCLOSED, COVERED STRUCTURE: Shall mean any building, garage, accessory structure, or other structure, having four enclosing walls and a roof, built according to and in compliance with all applicable building, zoning, fire, or other codes of the Town of Wilsonville, Alabama.

AUTOMOBILE GRAVEYARD: Shall mean any establishment or place of business which is duly licensed and operated in accordance with all applicable laws and/or ordinances of the Town of Wilsonville, Alabama, and which is maintained, used, or operated for storing, keeping, buying, or selling of wrecked, ruined, damaged, or dismantled motor vehicles or parts thereof.

COMMERCIAL PROPERTY: Shall mean any lot, tract, parcel, land, or other property located within the Town of Wilsonville, Alabama, that is zoned or designated for uses other than residential purposes.

GARBAGE: Shall mean the animal and/or vegetable putrescible waste resulting from the handling, preparation, cooking or consumption of food or food products.

IMPROVED SUBDIVISION: A division of a tract of land or acreage into tracts or parcels, and the improvement thereof by construction of streets, water lines and, where applicable, sewer lines to serve the subdivided property.

INOPERABLE: Shall mean incapable of being used for the manufactured, designed or intended purpose.

INOPERABLE VEHICLE: Shall mean any vehicle not currently licensed; in a state of disassembly; in the process of being stripped, dismantled, or overhauled; or undergoing body work; or any other condition that renders the vehicle inoperable or incapable of being used for its designed or intended purpose.

JUNK: Shall mean and include 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 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.

JUNK OR SALVAGE YARD: Shall mean any premises, establishment, or place of business which is duly licensed and operated in accordance with all applicable laws and/or ordinances of the Town of Wilsonville, Alabama, and which is maintained, operated, or used for storing, keeping, or dismantling of junk and salvage, but shall not include the place of business or premises of a scrap processor as herein defined.

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LITTER: Shall mean all waste material which can be or is subject to being blown from place to place 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. 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.

OWNER OR OWNERS OF PROPERTY: Title holder or person having right of possession of real property and includes legal title holder as shown of record in the tax assessor's office, or agent of legal title holder of said property.

PERSON: Shall mean any individual, owner, title holder, agent, firm, corporation, partnership, association, or organization of any kind. It shall include, but not be limited to, any tenant, lessee, manager, operator, occupant, executor, executrix, administrator, guardian, or other person in charge of, care of, possession of, or control of any real or personal property.

PREMISES: Shall mean any lot, yard, plot, tract, parcel, or other piece of land or property located within the Town of Wilsonville, Alabama.

RESIDENTIAL PROPERTY: Shall mean any lot, tract, parcel, land, or other property located within the Town of Wilsonville, Alabama, on which single or multifamily structures used as a residence or for human habitation exists, or any property that is located within an area that is zoned for residential uses by the Town of Wilsonville, Alabama.

SCRAP: Shall mean other materials or waste, including, but not limited to old cordage, ropes; rubber; bottles and other glass; tin or aluminum cans; buckets; tree branches, tree limbs, tree stumps; or other waste or refuse not otherwise classified herein as junk, litter, or garbage.

SCRAP METAL YARD: Shall mean any establishment or place of business which is duly licensed and operated in accordance with all applicable laws and/or ordinances of the Town of Wilsonville, Alabama, and which is maintained, used, or operated solely for the processing or preparing of scrap metals for re-melting by steel mills and foundries.

SCRAP PROCESSOR: Shall mean any person who is duly licensed and operating in accordance with all applicable laws and/or ordinances of the Town of Wilsonville, Alabama, and is engaged primarily in the purchase and collection of scrap metallics (e.g. manufacturing by-products, obsolescent machinery, and vehicles) for the specific purpose of processing into scrap materials for the metals recovery industry, such as steel mills, foundries, smelters, and refineries, and having machinery and facilities designed for such processing, and making regular shipments of such materials in the normal course of business.

VEHICLE: Shall mean any device in, upon or by which any person or property is or may be transported, carried, or drawn from one place to another, and shall include but not be limited to, motor vehicles, boat trailers, utility trailers, horse trailers, bicycles, carts, tractors, or other devices.

WEED NUISANCE: Any abundance of overgrown weeds or grass within the Town of Wilsonville, Alabama, 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 12" in height.

(b) It shall be unlawful and constitute a nuisance for the owner or owners of any real property situated within the Town of Wilsonville, Alabama, to allow such real property to become overgrown with weeds or grass so as to constitute a weed nuisance as herein defined.

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(c) It shall be the duty of the owner or owners of any real property located within the Town of Wilsonville, Alabama, to maintain any weeds growing upon said property in such a manner as not to constitute a weed nuisance as herein defined.

(d) This section shall not apply to the following:

1. Any property which is in its "natural condition."

2. Any property which is located outside any improved subdivision and also is located more than 100' from any boundary of any lot or parcel of real estate upon which any dwelling is located, and more than 100' from any commercial enterprise.

3. Cultivated row crops and garden plants in their respective growing seasons. But this exception applies only to growing crops and garden plants, and shall not be construed to permit any crops or gardens to become overgrown with weeds in violation of the remaining terms of this ordinance.

4. Ornamental shrubbery and ground cover, provided that such uses are part of a landscaping theme and not associated with a general deterioration of the property.

(e) All weed nuisances may be declared to be a public nuisance by the governing body of the Town and thereafter abated at the cost of the owner as provided in Article 2 of Chapter 67 of Title 11 of the Code of Alabama, 1975, using the procedures provided therein and/or the procedures provided herein.

(f) It shall be unlawful and a violation of this section for any person to store or keep upon the premises of any residential or commercial property, within the Town of Wilsonville, Alabama, any inoperable vehicle, scrap, or junk, as defined herein, unless the same is housed in an approved, enclosed, covered structure. This paragraph shall not apply to the following:

1. Materials stored or located on the premises of any junk or salvage yard, scrap metal yard, scrap processor, or automobile graveyard, as defined herein.

2. Vehicles being repaired or awaiting repair that are located on the premises of any automobile dealer, automobile repair and body shop or garage, or other vehicle repair enterprise that is duly licensed and operated in compliance with all applicable codes and ordinances of the Town of Wilsonville, Alabama, provided said vehicles are so located or stored in a manner as to prevent any health, fire, or safety hazard.

(g) It shall be unlawful and a violation of this section to keep or store upon the premises of any retail store or shop, secondhand store, thrift store, or similar commercial property or establishment, any merchandise, goods, or wares, including but not limited to, gas or electric appliances, parts thereof; plumbing fixtures, or parts thereof; lawn mowers or lawn mower parts; machinery, equipment, utensils, or other items displayed for sale to the general public, in such a manner as to constitute a health, safety, or fire hazard.

(h) It shall be unlawful and a violation of this section for any person in charge of any residential or commercial property to fail to maintain the property free from litter and garbage as herein defined, unless said litter and garbage is containerized and stored in such a manner as to prevent it from being blown, deposited, or otherwise scattered by the elements, animals, birds, or any other means.

(i) It shall be the duty of the owner, or any person in control of or charge of property located within the Town of Wilsonville, Alabama, to maintain said property in compliance with the provisions of this section, free of any inoperable vehicles, scrap, junk, garbage, or litter as herein defined.

Section 2. CHIEF OF POLICE TO ENFORCE ORDINANCE. Members of the general public may register complaints with the Chief of Police of the Town of Wilsonville, Alabama, if there is a person designated for and filling such position at the time, or a

representative designated by Resolution of the Town Council, who are hereby authorized to abate any such nuisance found to exist in the Town of Wilsonville, Alabama.

Section 3. NOTICE TO ABATE NUISANCE.

(a) Whenever in the opinion of the Chief of Police, if there is a person designated for and filling such position at the time, or other representative designated by Resolution of the Town Council, a real property nuisance exists as defined in this Ordinance or other applicable law or Ordinance, he/she shall order the owner, agent, occupant, or lessee of the property on which the nuisance is located, to abate the same. Abatement shall mean full and complete removal of any nuisance declared under this Ordinance, or under other applicable laws or Ordinances.

(b) The Chief of Police, if there is a person designated for and filling such position at the time, and designated representative, shall give written Notice to the owner, agent, occupant, or lessee, of the existence of the nuisance, shall describe the particulars which make it a nuisance, shall order the manner in which it shall be abated, and shall state the time within which the nuisance must be abated. Unless otherwise provided, a period of fourteen (14) days shall be deemed an adequate time in which to abate the nuisance.

(c) Said Notice shall be sent by certified mail to that person shown by the records of the Tax Assessor of Shelby County, Alabama, to have been the person last assessed for payment of State, County, and Town Ad Valorem Tax on the property where the nuisance is situated.

(d) Said Notice shall also be posted in a conspicuous place on the property.

(e) Where service of said Notice by certified mail has been attempted but the return receipt shows a failure of service, the Notice shall be published once in a publication of general circulation in the Town or, at option of Town, by posting in three conspicuous public places within the Town, one of which shall be at the office of the mayor and two other public places.

(f) The Notice shall state that if the nuisance is not abated within the stated time, the Chief of Police, if there is a person designated for and filling such position at the time, and designated representative may institute legal proceedings against the owner, agent, occupant, or lessee for violation of this Ordinance.

Section 4. APPEALS FROM NOTICE TO ABATE. Any person receiving Notice of a nuisance and an Order to abate the same from the Chief of Police, if there is a person designated for and filling such position at the time, and designated representative, may appeal the Order to the Town Council of the Town of Wilsonville, Alabama, by written Notice filed with the Town Clerk within seven (7) days of the date of such Notice. No appeal filed later than seven (7) days after the Notice shall be considered, unless the Chief of Police, if there is a person designated for and filling such position at the time, and designated representative consents.

Section 5. FAILURE TO COMPLY WITH NOTICE TO ABATE.

(a) In case the owner, agent, occupant or lessee shall fail, neglect or refuse to comply with the Notice to abate the nuisance, the Chief of Police, if there is a person designated for and filling such position at the time, and designated representative may proceed to prosecute said person for violation of the provisions of this Ordinance or other applicable laws and ordinances.

(b) In case the owner, agent, occupant or lessee shall fail, neglect or refuse to comply with the Notice to abate the nuisance, the Chief of Police, if there is a person designated for and filling such position at the time, and designated representative shall notify the Town Council of such fact. The Town Council shall make the matter an order of business at a public hearing before authorizing the abatement of the nuisance by the Chief of Police, if there is a person designated for and filling such position at the time, and designated representative, and also before levying an assessment on the property.

(c) Notice of the public hearing to determine whether the Town Council should order the Chief of Police, if there is a person designated for and filling such position at the time, and

designated representative to abate the nuisance shall be given by causing a Notice of such hearing to be sent by certified mail at least ten (10) days before the date of such hearing, or Notice being served personally upon the owner, agent, occupant or lessee. Where service of said Notice has been attempted by certified mail and the return receipt shows a failure of service, or an attempt at personal service has been unsuccessful, then the Notice shall be published once in a publication of general circulation in the Town, or, at option of Town, by posting in three conspicuous public places within the Town, one of which shall be at the office of the mayor and two other public places.

(d) After the public hearing, the Town Council may by resolution, order the Chief of Police, if there is a person designated for and filling such position at the time, and designated representative to proceed with the work specified in such Notice in order to abate the nuisance. If the owner, agent, occupant or lessee of the property shall appear at the public hearing, no further Notice of the order of the Town Council shall be required. If the owner, agent, occupant or lessee fails to appear, Notice of the order of the Town Council shall be mailed to his last known address.

(e) Upon the expiration of ten (10) days from the date of mailing the order under subsection (d), or ten (10) days from the date of the order if Notice by mailing is not required, the Chief of Police, if there is a person designated for and filling such position at the time, and designated representative or agent, shall proceed to carry out the order of the Town Council.

Section 6. APPEAL OF DECISION OF TOWN COUNCIL. The owner, agent, occupant or lessee may appeal the decision of the Town Council in any court of competent jurisdiction.

Section 7. ASSESSMENT OF COSTS.

(a) Upon completion of the work ordered by the Town Council, the Chief of Police, if there is a person designated for and filling such position at the time, and designated representative, shall compute the actual expense, including, but not limited to, total wages paid, value of the use of equipment, advertising expenses, postage, materials purchased, which were incurred by the Town of Wilsonville, Alabama, as a result of such work. An itemized statement of such expenses shall be mailed to the last known address of the owner, agent, occupant or lessee of the property.

(b) In the event the owner, agent, occupant or lessee shall fail or refuse for a period of twenty-eight (28) days to pay off and discharge the expenses, the Chief of Police, if there is a person designated for and filling such position at the time, and designated representative shall report such failure to the Town Council at the next regular meeting following the expiration of that period.

(c) The Town Council may cause the actual expense of such work to be levied as a special assessment against the property. The owner, agent, occupant or lessee may appear at the next Town Council meeting held after receiving the statement of expenses to show cause why such assessment shall not be levied. After the meeting, the Town Council may, by resolution, assess all or part of such expense against the property.

(d) Any assessment against property under this section shall not be final until seven (7) days after adoption by the Town Council. Once the assessment has become final, the Town Clerk shall have such resolution recorded in the office of the Judge of Probate of Shelby County, Alabama.

Section 8. COLLECTION OF ASSESSMENT: REMEDY OF TOWN.

(a) In the event the owner, agent, occupant or lessee shall fail or refuse to discharge the assessment after a period of twenty-eight (28) days from the date the assessment was made final, the Town may commence an action in any court of competent jurisdiction to recover said expenses.

(b) In addition to remedies otherwise provided for herein the Chief of Police, if there is a person designated for and filling such position at the time, and designated representative may cause an action to be instituted to enjoin or abate any nuisance.

Section 9. CONTINUING OFFENSES. In all cases, the person whose duty it is to abate any nuisance shall be liable for separate and distinct offenses for each day the nuisance is allowed to remain after it has become his duty by Notice of the Chief of Police, if there is a person designated for and filling such position at the time, and designated representative to abate it.

Section 10. OWNER NOTIFICATION. If the violator of any section of any provision of this Ordinance is anyone other than the owner, all Notices required to be provided to such violator(s) shall also be provided to the owner.

Section 11. PENALTY FOR VIOLATIONS. In addition to or in substitution of any section or provision of this Ordinance, any violation of any section or provision of this Ordinance is a misdemeanor offense and the violator may be charged with such and punished by a fine of not more than Five Hundred (\$500.00) Dollars for each offense.

Section 12. CONSTRUCTION. This Ordinance shall be construed to contain all power granted to municipalities under Sections 11-40-10, 11-47-117, 11-47-131, and 11-47-140, Code of Alabama, 1975, providing for controlling nuisances, sanitation and good public health and safety conditions.

Section 13. REPEALED. All Ordinances of the Town of Wilsonville, Alabama, which are inconsistent with this Ordinance, are hereby repealed.

Section 14. SEPARABILITY AND SEVERABILITY. If any section, sentence, clause, phrase, or part of this Ordinance is for any reason declared to be unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such decision shall not affect any remaining sections, sentences, clauses, phrases, or parts of this Ordinance.

Section 15. PUBLISHING AND EFFECTIVE DATE. The Town Clerk shall cause this Ordinance to be immediately published by posting copies thereof in three (3) public places within the Town, one of which shall be in the office of the Mayor, and two (2) other public places, and after such posting, which posting and publication is in accordance with the provisions of Section 11-45-8, Code of Alabama, 1975, this Ordinance shall take effect.

Section 16. This Ordinance shall become effective upon its adoption and publication, and remain in effect unless repealed by the Council.

PASSED AND ADOPTED this the 12th day of September, 2005.

Rosemary C. Liveoak
Mayor: Rosemary C. Liveoak

ATTEST:

Kay M. Ray
Town Clerk: Kay M. Ray