

ORDINANCE NO. 0-006-2008

**CITY OF SOUTHSIDE
COUNTY OF ETOWAH
STATE OF ALABAMA**

AN ORDINANCE TO AMEND ORDINANCE NUMBER 0-0129-92 THAT WAS ADOPTED DECEMBER 28, 1992. AN ORDINANCE REGULATING GRASS AND WEED NUISANCES, BUILDING NUISANCES, ABANDONED VEHICLES AND OTHER NUISANCES; REVISING THE ENFORCEMENT PROCEDURE FOR NUISANCE ABATEMENT.

WHEREAS, Ordinance number 0-129-92 was adopted December 28, 1992 which set regulations regarding grass and weed nuisances, building nuisances, abandoned vehicles and other nuisances; revising the enforcement procedure for nuisance abatement and;

WHEREAS, Ordinance number 0-129-92 needs to be revised the following sections have been amended to the original ordinance.

SECTION 1 - SUB-SECTIONS (i) categories 1-10 have been added to the original ordinance

i) Unsafe building means any building or structure that has any of the following conditions, such that the life, health, property or safety of its occupants or of the general public is endangered:

- (1) Any means of egress or portion thereof is not of adequate size or is not arranged to provide a safe path of travel in case of fire or panic.
- (2) Any means of egress or portion thereof, such as, but not limited to, fire doors, closing devices and fire resistive ratings, is in disrepair or in a dilapidated or nonworking condition such that the means of egress could be rendered unsafe in case of fire or panic.
- (3) The stress in any material, member or portion thereof, due to all imposed loads including dead load, exceeds the stresses allowed in the adopted International Building Code for new buildings.
- (4) The building, structure or portion thereof has been damaged by fire, flood, earthquake, wind or other cause to the extent that the structural integrity of the building or structure is less than it was prior to the damage and is less than the minimum requirement established by the adopted International Building Code for new buildings.
- (5) Any exterior appendage or portion of the building or structure is not securely fastened, attached or anchored such that it is capable of resisting wind, seismic or similar loads as required by the adopted International Building Code for new buildings.
- (6) For any reason the building, structure or portion thereof is manifestly unsafe or unsanitary for the purpose for which it is being used.
- (7) The building, structure or portion thereof, as a result of decay, deterioration or dilapidation, is likely to fully or partially collapse.
- (8) The building, structure or portion thereof has been constructed or maintained in violation of a specific requirement of the construction codes or of a city, county or state law.
- (9) Any building, structure or portion thereof is in such a condition as to constitute a public nuisance.

ORDINANCE NO. 0-129-92

REGULATING GRASS AND WEED NUISANCES, BUILDING NUISANCES,
ABANDONED VEHICLES AND OTHER NUISANCES; REVISING AND
STREAMLINING THE ENFORCEMENT PROCEDURE FOR NUISANCE
ABATEMENT INCLUDING ISSUANCE OF SUMMONS AND COMPLAINTS.

Whereas, the City of Southside is empowered to enact ordinances to protect and promote the general public health and welfare and to improve the order, comfort and convenience of inhabitants; and

Whereas, there exist in the city structures used for residential and nonresidential use which are, or may become in the future, substandard with respect to structure, equipment or maintenance; and

Whereas, conditions such as structural deterioration, lack of maintenance and appearance of exterior of premises, infestation, lack of essential heating or plumbing equipment, lack of maintenance, upkeep of essential utilities and facilities, existence of fire hazards, inadequate provisions for light and air, unsanitary conditions and overcrowding constitute a menace to the health, safety, morals, welfare and reasonable comfort of the inhabitants of the city; and

Whereas, because of lack of maintenance and progressive deteriorations, certain properties have the further effect of creating blighting conditions and initiating slums; and

Whereas, if these conditions are not curtailed and removed, they will grow and spread and necessitate the expenditure of large amounts of public funds to eliminate such conditions; and

Whereas, by timely regulations and restrictions as contained in this ordinance, the growth of slums and blight may be prevented, neighborhoods and property values may be maintained and the desirability and amenability of residential and nonresidential uses and neighborhoods will be enhanced and the public health, safety and welfare protected and fostered; and

Whereas, an abundance of overgrown grass and weeds within the city could be injurious to the general public health, safety and general welfare by

- (1) providing breeding grounds and shelter for rats, mice, snakes, mosquitoes, and other vermin, insects and pests; and
- (2) attaining such heights and dryness so as to constitute serious fire threat or hazard; and
- (3) bearing wingy or downy seeds, when mature, that cause the spread of weeds and irritation to the throat, lungs and eyes of the public; and
- (4) hiding debris, such as broken glass or metal, which could inflict injury on any person going upon the property; and
- (5) being unsightly; and

Whereas, the removal and clearance of such overgrown grass and weeds must be accomplished for the overall good and protection of the public as a whole;

Now, Therefore, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY of SOUTHSIDE, ALABAMA, as follows:

Section 1. DEFINITIONS.

- (a) 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 seven (7) business days.

The term includes any boat which is in a wrecked, dismantled, partially dismantled, discarded or otherwise inoperable condition. The term does not include any motor vehicle.

- (1) enclosed within a building on private property;
- (2) held in connection with a business enterprise, lawfully licensed by the City on property zoned for a junkyard, vehicle repair facility or vehicle storage yard;
- (3) in operable condition specifically adapted or designed for operation on drag strips or raceways; or
- (4) retained primarily as an antique collector's item and registered under state law as an antique vehicle.

(b) Building Nuisance: Any nuisance condition involving a residential or nonresidential structure, including remains from demolition, remains from a fire, parts of buildings part of uninhabitable structures.

(c) Enforcing Official: Any official of the City Building Department of any other City employee designated by the Mayor as the person to exercise the authority and perform the duties delegated by this ordinance to the enforcing official. For a grass and weed nuisance the enforcing official may also be any organization (including its employees) or individual with which the City may contract to provide such service.

(d) 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.

(e) 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.

(f) 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.

(g) 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 an 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.

(h) 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 mortgage holder of record.

Section 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 referred to in Section 3. 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 3. Duties of Owner.

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. 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 in this ordinance, except to the extent it may be impracticable to do because of public facilities located thereon.

Section 4. 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 owner of the burdened property continues to control the property, except to the extent that such control interferes with the public use. The public authority does not cut grasses, weeds, and other growth upon rights-of-way or easements, except to the extent necessary for operations 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.

Section 5. General.

(a) GENERAL. It shall be unlawful and a nuisance, in violation of this ordinance, for the owner of any real property situated within the corporate limits of the city to allow such real property to become overgrown with tall grass, or with any weed or plant such as jimson, burdock, ragweed, cocklebur or other weed of like 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 twelve (12) inches or more.

(b) EXCEPTIONS. Excepted from such grass and weed nuisance requirements are:

- (1) Any property which is in its natural condition.
- (2) Any property which is located outside any improved subdivision and is located more than 100 feet from any boundary of any lot or parcel of real estate upon which any dwelling is located, and more than 100 feet from any commercial enterprise. For good cause the enforcing official may reduce the area subject to this ordinance to a lesser distance.
- (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 grass and weeds in violation of the remaining terms of this ordinance.
- (4) Ornamental shrubbery and ground cover, provided that such uses are part of landscaping theme and not

associated with a general deterioration of the property.

Section 6.

An accumulation or storage of debris, refuse, rubbish, brush used building materials, parts of buildings, remains from building demolition, parts of untenable or uninhabitable structures, used machinery, used tires, used vehicles, parts of vehicles, abandoned vehicles, or any other materials which may provide a breeding place for mosquitoes, harmful insects, rodents or snakes, or is so unsightly as to be offensive to the surrounding area is a nuisance in violation of this ordinance.

Section 7.

(a) Whenever in the opinion of the enforcing official a nuisance exist, 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. The notice shall require the owner to comply with this ordinance within the time stated in the notice or to request an administrative hearing before the Director of Planning or other person designated by the Mayor to determine whether there has been a violation. The notice shall apprise the owner of the facts of the alleged nuisance and shall name the particular date, time and place for such hearing if requested. For a building nuisance the notice shall contain the names of all owners and lienholders of the property, a legal description of the property and the nature of the proceeding.

(c) 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. The enforcing official shall cause a copy of each building nuisance notice to be recorded in the Office of Probate Judge.

(d) 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 not structure, notice may be posted at any location on the property.

(e) The notice shall require the owner to complete abatement of the nuisance with the following periods, provided the enforcing official may stipulate additional time, but in no case more than a total of 150 days:

- (1) Fourteen (14) days from the date of notice if it is a grass and weed nuisance.
- (2) One Hundred Twenty (120) days from the date of notice if it is a building nuisance.
- (3) 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.

(f) The notice may also 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 SOUTHSIDE, 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 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.

Section 8.

A hearing before the Director of Planning must be requested within five (5) days of the date of the notice by the enforcing official. The enforcing official shall notify the owner by personal service or by first class mail of the determination of the hearing official. If the hearing official determines that a nuisance exists, the owner must comply with the initial order to abate issued by the enforcing official, with such modifications as may be made by the hearing official.

Section 9. 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 Code. The enforcing official may issue a summons and complaint as provided 1, 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 complain, returnable to the Municipal Court, shall be served on the owner by any enforcing official, who shall forthwith appear and make oath 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 oath as to the facts and applying for a warrant with respect to any alleged offense, in lieu of issuing a summons and complaint.

(b) All violations of the provisions of the chapter shall be punishable by:

- (1) A fine in the minimum sum of Two Hundred Fifty Dollars (\$ 250.00) up to a maximum of Five Hundred Dollars (\$ 500.00):
- (2) Imprisonment in the County jail for a tern not to exceed six (6) months.
- (3) Both such fine and imprisonment; and
- (4) An order to abate the nuisance.

(c) 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 of the other procedure, provided the criminal procedure is not used to collect any outstanding civil assessments against the subject property.

(d) 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.

(e) If the owner fails, neglects or refuses to comply with 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.

(f) 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 and shall be published once in a newspaper of general circulation in the city.

(g) Upon the expiration of seven (7) days from the date of the resolution, the enforcing official shall proceed to carry out the decision of the Council,

Section 10. 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 purchased, 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 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 statement as they deem necessary, after which a resolution may assess the cost. The cost stated in the resolution 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 Clerk-Treasurer who is charged with the collection of assessments. The City Clerk-Treasurer shall charge the assessments against the respective lots and parcels of land for municipal purposes. Thereafter said amounts shall be collected at the same time and in the same manner as ordinary municipal assessments are collected, and shall be subject to the same penalties and the same procedure under foreclosure and sale in case of delinquency as provide for ordinary municipal assessments.

(c) The City Clerk-Treasurer shall cause a certified copy of the resolution assessing the cost of abatement to be filed for recording in the Office of the Probate Judge.

(d) If legislation is enacted to allow assessment as taxes and collection by the County Revenue Commissioner, The City Clerk-Treasurer shall forward appropriate documents to obtain collection in that manner.

(e) Satisfaction of Liens. 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 Clerk-Treasurer or by the City Attorney.

Section 11. Construction of Article.

This article shall be construed to contain all power granted to municipalities under Sections 11-40-10, 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.

Section 12.

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.

Section 13.

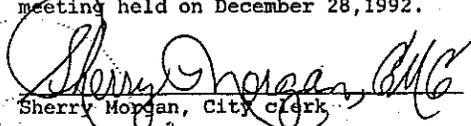
This ordinance shall be effective on the first day of the month that is a least 30 days following publication.

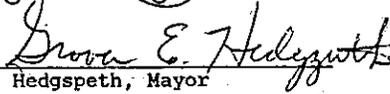
Section 14.

The adoption of this ordinance shall not invalidate any preexisting nuisance abatement enforcement actions. The assessment procedure adopted herein may be utilized for all ongoing enforcement actions that have reached that point in the proceedings. For initial

enforcement actions the enforcing official may proceed under the prior law or may reinstitute proceedings under the provisions of this ordinance. If this ordinance will be followed, notice of the change must be given to the owner.

I hereby certify that the above and foregoing was duly adopted by the City Council of the City of Southside, Alabama at the regular meeting held on December 28, 1992.


Sherry Morgan, City clerk

APPROVED 
Grover E. Hedgspeth, Mayor