

CITY OF ASHVILLE ORDINANCE 2003-004
NUISANCE ORDINANCE

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

ARTICLE I

SECTION 1. Definitions of Nuisances Generally.

For the purposes of this article, 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 have affixed thereto 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 in 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, 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.

Building nuisance: Any nuisance condition involving a residential or nonresidential structure, including remains from demolition, remains from a fire, parts of buildings, and parts of uninhabitable structures.

Enforcing official: Any official of the city building department or any other city employee designated by the mayor as the person to exercise the authority and perform the duties delegated by this article 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.

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 on the property.

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

Natural condition: Uncultivated and unseeded land, still in a state of nature. But any growth on land, if 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 causes hurt, inconvenience or damage; that class of wrongs that arises from the unreasonable, unwarranted 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.

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 such 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 above under the definition of ownership. 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 a person's duty by notice of the enforcing official or city official designee 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 such property in such a manner as not to constitute a nuisance. The duties and obligations of the owner extend to 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 article, 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 article, 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 amid 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 grass, weeds amid 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. Allowing property to become overgrown prohibited; exceptions.

- (a) Generally. It shall be unlawful and a nuisance, in violation of this article, 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, poison oak, poison ivy, 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 minimum height of (24) 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 sub-division and is located more than one hundred (100) feet from any boundary of any lot or parcel of real estate upon which any dwelling is located, and more than one hundred (100) feet from any commercial enterprise. For good cause, the enforcing official may reduce the area subject to this article to a lesser distance.
 - (3) Cultivated row crops and garden plants in their respective growing seasons. But this exception applies only to growing crops amid 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 article.
 - (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.

SECTION 6. Nuisance described.

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, and 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, is a nuisance in violation of this article.

Sec. 14-26. ENFORCEMENT - Notice to abate nuisance.

- (a) **Notice to abate.** 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) **Method of giving notice; compliance required or request for hearing; contents for building nuisance.** 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 article within the time stated in the notice or to request an administrative hearing before a 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) **To whom sent; change of ownership; recording.** 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 in the property. It shall be unlawful to knowingly fail to notify the enforcing official of any such change of ownership or interest. The enforcing official shall cause a copy of each building nuisance notice to be recorded in the office of the city magistrate.
- (d) **Posting of notice.** The notice shall also be posted in a conspicuous place on the property within three (3) 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.
- (e) **Time for completion of abatement.** 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 one hundred fifty (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;
 - (4) A shorter time may be indicated based if the health, safety, and welfare of the community are placed in jeopardy by the nuisance.
- (f) **Vacation of premises.** 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 ASHVILLE", 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 who's name is affixed thereon. No person shall enter the structure except for the purpose of making the required repairs or demolishing the structure.

SECTION 7. Request for hearing on notice to abate.

A hearing before the designee of the Mayor must be requested by the property owner 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 time of the hearing. If the hearing official determines that a nuisance exists, the owner must comply with the initial order to abate issued by the enforcing official.

SECTION 8. Failure to comply with notice to abate.

- (a) ***Prosecution of violators; issuance of summons and complaints.*** If the owner fails, neglects or refuses to comply with the notice to abate the nuisance, the enforcing official may prosecute such person for a violation of the provisions of this Code. The enforcing official may issue a summons and complaint, as provided under this ordinance, to the owner of the property, requiring the owner to appear in municipal court to answer charges for the violation of this article. 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 oath as to the alleged offense before a judge or magistrate of the municipal court. This provision for the issuance of 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 warrant with respect to any alleged offense, in lieu of issuing a summons and complaint.
- (b) All violations of the provisions of this article 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 municipal jail for a term 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 institution of any 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 may 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 time 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 time owner appears at the public hearing, no further notice of time 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 date of the resolution, the enforcing official shall proceed to carry out the decision of the council.

SECTION 9. Assessment of cost.

- (a) Upon completion of the abatement work performed by the city (including work by contractors employed by time city), the enforcing official 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 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 meeting of 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 time 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 such 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 such amounts shall be collected at the same time, and in time 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 provided for ordinary municipal assessments.

* HOW TO COLLECT THE PROPERTY TAX

- (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 and city magistrate.
- (d) If legislation is enacted to allow assessment of taxes and collection by the county revenue commissioner, the city clerk-treasurer shall forward appropriate documents to obtain collection in that matter.
- (e) **Satisfaction of liens.** Upon payment of the itemized accounts arising under this article, any liens or assessments filed hereunder may be marked "Satisfied" and "Paid in Full" by time city clerk-treasurer or by time city attorney.

SECTION 10. 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 11. All other ordinances or resolution inconsistent with any portion of the foregoing ordinance are hereby declared invalid and are repealed. This Ordinance shall become effective when adopted and published as required by law.


State law references — Authority to abate nuisances, Code of Ala. 1975, §~ 6-5-122 et seq., §~ 11-47-117, 11-47-118; abatement by county health officer, § 22-10-2.

Should any section of this ordinance be stricken as unlawful, the remainder shall remain in full force and effect.

ADOPTED THIS THE 18th DAY OF August, 2003.




Mayor

ATTEST: 
Clerk

POSTED: 08-19-03

TAKEN DOWN: 08-26-03

I, Bertha Wilson, City Clerk of the City of Ashville hereby certify this Ordinance was posted in the following places to-Wit: Ashville Drug Store, St. Clair County Courthouse and the Ashville City Hall in said St. Clair County, Alabama.


Bertha Wilson
City Clerk