

ORDINANCE NO. 2016-135

**AN ORDINANCE ADOPTING WEED ABATEMENT LEGISLATION PURSUANT TO ACT.
NO 2016-205**

WHEREAS, §11-47-117 of the Code of Alabama (1975) states that all cities have the power to abate nuisances and to assess the costs of abatement against a person who creates or maintains a nuisance; and

WHEREAS, the Alabama Legislature recently passed Act No. 2016-205 (the "Act") as local legislation for the City of Madison, and the Governor signed said Act into law; and

WHEREAS, the Act provides both a process for and certain conditions under which the City of Madison may (1) declare overgrown grass and weeds to be nuisances, (2) abate said nuisances itself or by using a contractor, (3) collect the costs of abatement by adding to a property's ad valorem tax assessment, and (4) attach a weed lien to a property if the property owner fails to pay such costs; and

WHEREAS, the Act supersedes and conflicts with existing provisions of the *Code of Ordinances, City of Madison, Alabama*, and said provisions do not provide an efficient or effective process for the City's grass and weed abatement efforts; and

WHEREAS, the Act provides for the designation of both an enforcing official to initiate proceedings to abate weed nuisances and an administrative official to hear disputes regarding the enforcing officials determination of a public nuisance, and the City Council desires to designate said officials; and

WHEREAS, the City is expected to incur certain administrative expenses due to the enforcement of the Act through this Ordinance; and

WHEREAS, §11-67-68 of the Code of Alabama (1975) entitled "Alternate Abatement Procedures; costs" authorizes the City to adopt a secondary alternate method of weed abatement;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MADISON, ALABAMA, as follows:

Section 1. That Article III, "Weeds," of the *Code of Ordinances, City of Madison, Alabama*, is hereby repealed and replaced in its entirety to read as follows:

"ARTICLE III. Weed Abatement

"Section 22-63. Overgrown grass and weeds as public nuisances.

An 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 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 a person going upon the property; or being unsightly; or a growth of grass or weeds, including plants of no value, undesirable, and usually of rank growth; or grass, shrubs, and undergrowth, other than ornamental plant growth, which exceeds twelve (12) inches in height, may be declared to be a public nuisance and abated as provided in this article.

“Section 22-64. Notice of public nuisance, opportunity for hearing, right to appeal.

- (a) **Authority of enforcing official to serve notice of public nuisance.** For purposes of this ordinance, the enforcing official shall mean either the mayor or such other city official or employee as the mayor from time to time may designate. Whenever, in the opinion of the enforcing official, a public nuisance exists as described in Section 22-63, the enforcing official may serve written notice upon the owner of the property on which the nuisance is located ordering the abatement of the nuisance.
- (b) **Time limit for owner to complete abatement.** The notice shall require the owner to complete abatement of the nuisance within fourteen (14) days from the date of the notice, provided that the enforcing official may allow for additional time when it is reasonably required due to the difficulty of the abatement or other unusual factors tending to necessitate additional time, but in no case more than twenty eight (28) days from the date of the notice.
- (c) **Content of notice & option to request hearing.** The written notice shall require the owner to abate the condition within the time stated in the notice or to request a hearing before the administrative official to determine whether the conditions on the property constitute a public nuisance that should be abated. For purposes of this article, the administrative official shall mean a person designated by the city council, but such person shall not be the same person as the enforcing official. The notice shall apprise the owner of the facts of the alleged nuisance, including a description or address of the property, or both, that provides reasonable notice of its location, the address of the enforcing official, and shall name the particular date, time, and place for the hearing before the administrative official if requested by the owner, which date shall be at least ten (10) days after the date of the written notice.
- (d) **Service of notice.** The enforcing official shall serve the owner with the written notice by delivering it to the owner; or by mailing it to the owner, via first class mail, at the owner's last known address. Delivery under this subsection means handing it to the owner, or in a case where the owner is an impersonal entity to an agent of the entity; or leaving it at the owner's residence or place of business with a person of suitable age and discretion residing or employed therein. Service by mail is complete

upon mailing. The enforcing officer may, but is not required to, rely upon any information appearing on record in the office of the county revenue commissioner to establish the identity of an owner of property and to establish the owner's last known address, which, if utilized, shall be deemed conclusive and sufficient proof of the same.

- (e) **Posting of notice.** The written notice shall also be posted at a conspicuous place on the property on which the nuisance is located, on or prior to the date of service of the written notice as described in subsection (d).

- (f) **Additional notice optional.** The enforcing official is authorized, but not required, to utilize any additional means of providing notice that the enforcing official deems appropriate. Specifically, the enforcing official is authorized, but not required, to provide this additional, optional notice by placement of notice in a public place or places located within the city, or by publishing notice in a newspaper of general circulation published in the city as often and for as long as deemed appropriate. The additional, optional notice provided for in this section may be provided in whatever form the enforcing official deems appropriate.

- (g) **Hearing notice & procedure.** If the owner desires a hearing before the administrative official, then the owner may request a hearing by delivering a written notice to the enforcing official within five (5) days after the date of service of the notice. If so requested, then the enforcing official's order to abate the nuisance will be suspended, and the administrative official will hold a hearing at the time and place specified in the notice previously issued by the enforcing official or at such other time and place that may be mutually agreed upon by the administrative official and the owner. The administrative official may continue the hearing from time to time, upon good cause shown. At the hearing, any interested party will have the right to present evidence and testimony. The hearing will be open to the public, and a record of the proceedings must be kept as a part of the city's public records. The administrative official must render a written decision on the merits of the proposed abatement within five (5) days of the conclusion of the hearing. The enforcing official shall notify the owner by personal service or by first class mail of the written determination of the administrative official. If the administrative official determines that a nuisance exists and should be abated, the written determination of the administrative official shall inform the owner that the owner must complete the abatement ordered by the enforcing official within ten (10) days of the date of the administrative official's decision, or upon such additional time, but in no case more than twenty eight (28) days from the administrative official's determination. If the administrative official determines that a nuisance does not exist, then the enforcing official's notice to abate the nuisance will be null and void, but such determination shall not bar any subsequent notice concerning the same property.

- (h) **Appeal of hearing determination.** Any person aggrieved by the decision of the administrative official at the hearing, within ten (10) days from receipt of the determination by the administrative official, may appeal to the circuit court upon filing with the clerk of the court notice of the appeal and bond for security of costs in the form and amount to be approved by the circuit clerk. Upon filing of the notice of appeal and approval of the bond, the clerk of the court shall serve a copy of the notice of appeal on the clerk of the municipality and the appeal shall be docketed in the court and shall be a preferred case. The clerk of the municipality shall, upon receiving the notice, file with the clerk of the court a copy of the finding and determination of the administrative official in its proceedings. Any trials shall be held without a jury upon the determination of the administrative official that the weeds are a public nuisance.

“Section 22-65. City’s authority to abate nuisance, assess costs, attach liens.

- (a) **Authority to abate.** If the owner fails, neglects, or refuses to abate the nuisance, or the nuisance is not otherwise abated, (1) within the time permitted to do so as stated in the enforcing official's notice, where such notice was not suspended by the request for a hearing before the administrative official; or (2) within the time permitted to do so as stated in the administrative official's written determination, then the city may enter upon the property and abate the nuisance using its own forces, or it may provide by contract for the abatement. However, if an appeal has been taken to the circuit court as provided in Section 22-64(h), then the city may not abate the nuisance until the determination or judgment authorizing abatement becomes final as provided by law.
- (b) **Computation & notice of abatement expenses.** Upon completion of the abatement work performed by the city, including work by contractors employed by the city, the enforcing official shall compute the city's expenses in causing the abatement of the nuisance, including, but not limited to, cost of labor, value of the use of the equipment, advertising expenses, postage, administrative expense, legal expense, and materials purchased, which were incurred by the city as a result of the work. An itemized statement of the 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 property.
- (c) **Council approval of abatement expenses & weed lien.** 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 city's expenses in causing the abatement of the nuisance, and thereupon make modifications in the statement as deemed necessary,

after which a resolution may assess the cost. The cost stated in the resolution shall constitute a lien on the property, and shall be referred to as a weed lien on the property.

- (d) **Weed lien collection.** A copy of the resolution shall be given to the county revenue commissioner. It shall be the duty of the revenue commissioner to add the costs of the weed lien to the next regular bill for taxes levied against the property subject to the weed lien, and thereafter, the costs shall be collected and remitted to the city at the same time and in the same manner as ordinary municipal ad valorem taxes are collected, and shall be subject to the same penalties and the same procedure under foreclosure and sale in case of delinquency; provided, however, that if the foreclosure and sale is the result of a delinquency caused by a weed lien, the municipality shall reimburse the county tax collector or revenue commissioner for all costs associated with the foreclosure and sale unless the costs are collected at the time of sale as part of the sale.

- (e) **Filing of weed lien.** The city clerk may also cause a certified copy of the resolution showing the weed lien to be filed for recording in the office of the judge of probate.

“Section 22-66. Subsequent property owners take subject to weed lien.

When a weed lien is made against a lot or lots or parcel or parcels of land, a subsequent redemption thereof by a person authorized to redeem, or sale thereof by the state, shall not operate to discharge, or in any manner affect the weed lien of the city, but a redemptioner or purchaser at a sale by the state of any lot or lots, parcel or parcels of land upon which a weed lien has been made, whether prior to or subsequent to a sale to the state for the nonpayment of taxes, shall take the same subject to the weed lien.

“Section 22-67. Provisions of weed abatement ordinance cumulative.

This ordinance is cumulative in its nature and in addition to any and all power and authority which the city may have under any other law.

“Sections 22-68—22-91. Reserved.”

Section 2. That the City Council hereby authorizes the Mayor to designate the Director of Building as the “enforcing official,” pursuant to Section 3(a) of the Act, codified herein as §22-64(a) of the *Madison City Code*.

Section 3. That the City Council hereby designates the Construction Board of Appeals as the “administrative official,” pursuant to Section 3(c) of the Act, codified herein as §22-64(c) of the *Madison City Code*.

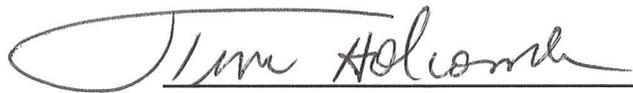
Section 4. That pursuant to §11-67-68 of the Code of Alabama (1975) entitled "Alternate Abatement Procedures; costs," which states that any city that adopts a procedure for weed abatement pursuant to local law may for subsequent abatements follow the procedures provided in the local law or adopt different subsequent abatement procedures, the City hereby elects to use §302.4 of the *International Property Maintenance Code*, as adopted by Chapter 8 of the *Code of Ordinances, City of Madison, Alabama*, as an alternate subsequent weed abatement procedure.

Section 5. That pursuant to the Act and Section 22-65 of the *Madison City Code* as codified herein, each authorizing the collection of administrative fees in addition to other costs of abatement, Appendix A, "Fee Schedule," of the *Code of Ordinances, City of Madison, Alabama*, is hereby amended to include an administrative fee of **two hundred forty seven dollars (\$247.00)**, the "Weed Abatement Administrative Fee." The Weed Abatement Administrative Fee represents the estimated and reasonable costs of labor, mileage, and materials for the City's staff to investigate and process a complaint.

BE IT FURTHER ORDAINED that if any word, clause, phrase, sentence, paragraph, or provision of this Ordinance shall be invalidated by a court of competent jurisdiction, such invalidity shall not affect any other word, clause, phrase, sentence, paragraph, or provision hereof; and

BE IT FURTHER ORDAINED that this Ordinance, after its adoption and proper publication as provided by law, shall be effective as of July 1, 2016.

READ and ADOPTED this 13th day of June, 2016.



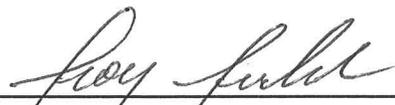
Tim Holcombe, Council President
City of Madison, Alabama

ATTEST:



Melanie A. Williard, City Clerk-Treasurer
City of Madison, Alabama

APPROVED this 14th day of June, 2016.



Troy Trulock, Mayor
City of Madison, Alabama

Ordinance/Resolution Adoption Action Form

Document Number: 2016-135

- 1. Date Introduced: May 24, 2016
Minutes No.: 2016-10-RG

- 2. Date Approved: June 13, 2016
Minutes No.: 2016-11-RG

Votes of Council

Council Member	Absent	Aye	Nay	Abstain
Holcombe		X		
Smith		X		
Klein		X		
Potter		X		
Overcash		X		
Clark		X		
Ondocsin		X		

- 4. Date signed by President/
Pro Tempore of Council: June 13, 2016

- 5. Date signed by Mayor: June 14, 2016
If vetoed by Mayor, further Council action: n/a

- 6. Publication Date: June 22, 2016
Newspaper: Madison County Record

- 7. Effective Date: July 1, 2016

Distribution: Construction Board of Appeals file, Municipal Code Corporation,
Library