

ORDINANCE 2013-002

AN ORDINANCE DEFINING NUISANCES, ESTABLISHING A PROCEDURE FOR THE ABATEMENT OF NUISANCES, AND PROVIDING PENALTIES FOR VIOLATIONS OF ITS PROVISIONS

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

Section 1: PURPOSE. This ordinance establishes the definitions of nuisances, establishes a procedure for the abatement of nuisances, and provides for penalties for violations of its provisions.

NUISANCES

Section 1-2: DEFINITIONS. For the purpose of this chapter term “nuisance” shall mean anything that unlawfully causes hurt, inconvenience or damage; that class of wrongs that arises from the unreasonable, unwarrantable or unlawful use by a person, or entity of his or its own property, either real or personal, or from his or its own improper, indecent, unsightly, or unlawful personal conduct, working an obstruction of or injury to the right of another or to 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.

Section 1-2A Reference to either gender shall include the other gender.

Section 1-3: NUISANCE UNLAWFUL. It shall be unlawful for any person or entity to permit or maintain the existence of any nuisance on any property under his control.

Section 1-4: ENFORCEMENT. The enforcement officer charged with the enforcement of the provisions of this Ordinance shall be the building inspector of the City Of Moulton, and such other persons as may be designated by the City Council.

The enforcement officer may inspect any nuisance reported by letter, in person or by telephone, to the City Council at meetings, or to the mayor, clerk or individual member of the City Council, by any citizen of the City of Moulton, or any situation coming to the attention of the enforcement officer or officers in any other manner. Upon his inspection thereof, the building inspector shall submit a report to the City Council reporting his findings as to whether or not this inspection and report indicates the existence of a nuisance.

Section 1-5: DANGEROUS BUILDINGS, STRUCTURES, AND CONDITIONS.

All buildings, structures or conditions which are (1) unsafe, as defined by the International Building Code, 2003 Edition, as adopted by the City Council of the City of Moulton in Ordinance 114-H, and any amendments thereafter (2) not provided with safe and adequate ingress and egress or (3) constitute a fire hazard, or (4) are otherwise dangerous to human life, or (5) which in relation to existing use constitute a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence, abandonment, or accumulation of rubbish and debris are hereby declared to be dangerous buildings, structures or conditions. All such dangerous buildings, structures or conditions hereby declared to be a nuisance. It shall be unlawful to permit any such dangerous building, structure or condition to remain or continue in existence in any place after receiving an order from the City Council to abate the same by repair, rehabilitation, demolition or removal. It shall be unlawful to occupy any building or structure or permit it to be occupied while it is to remains a nuisance.

Section 1-6: VEGITATION, GRASS, PLANTS, AND WEEDS.

(a). Any vegetation, weeds, grass or plants (other than trees, bushes, flowers or other ornamental plants under proper care and cultivation) which have grown to a height of twelve (12) inches or more on any lot or tract of land in the city limits are hereby declared to be a nuisance. It shall be unlawful to permit any such weed, grass, or plants to grow or to remain in any place after receiving a notice from the building inspector or other authorized city official or from the City Council to remove the same.

(b). In the case of a large tract of land on which no structure is situated, the provisions of this section shall apply only to those portions of said tract which are within three hundred feet of a structure or a public road, street, avenue, highway or other public right-or-way. The City Council may for good cause reduce the area subject to this section to a lesser distance. All portions of such tracts shall be subject to all other provisions of this chapter.

Section 1-7: DEBRIS, RUBBISH, ETC. An accumulation of debris, trash, brush, used building materials, refuse, remains from a building demolition, remains from a fire, parts of buildings or parts of untenable structures on any lot or tract of land in the City Limits is hereby declared to be a nuisance. It shall be unlawful to permit any such accumulations to remain in any place after receiving a notice from the building inspector or other authorized city official or from the City Council to remove the same.

Section 1-8: MACHINERY, VEHICLES, BUILDING MATERIAL ETC. IN THE CITY LIMITS. Storage or maintenance of used building material, machinery, vehicles, parts of vehicles, boats, parts or boats, or any other materials which may provide a breeding place for mosquitoes, harmful insects or rodents, or is so unsightly as to be offensive to a neighborhood

within the City Limits is hereby declared to be a nuisance. It shall be unlawful to permit such storage or maintenance to continue after receiving a notice from the building inspector or other authorized city official or from the City Council to remove the same.

Section 1-9: JUNKED, INOPERABLE OR ABANDONED VEHICLES.

(a) **PROHIBITED:** It shall be unlawful for any person in charge or control of any premises located in the City of Moulton, whether such person is the tenant, owner, or occupant, lessee or otherwise, to allow any junked or inoperable vehicle to remain on the property longer than 10 calendar days after written notices are served upon such person. If such person cannot be found after a reasonable search, then the notice shall be posted upon the vehicle by city or state law enforcement officer or health officer, building inspector or such other persons as may be designated by the City Council or by U.S. Mail, notifying such person to remove such vehicle or vehicles from the premises. The city may also utilize other available provisions of law.

(b) **EXCEPTIONS.** This article shall not apply to any vehicle in an enclosed building or to any vehicle on the premises of a licensed junk dealer or similar business when the keeping of such vehicle is necessary to the operation of such licensed business.

(c) **UNOCCUPIED VEHICLES.** It shall be unlawful for any vehicle to be parked on a public street in the City of Moulton for a continuous period of more than forty-eight hours and is hereby declared to be an obstruction to traffic and a public nuisance, and any police officer of the City of Moulton is hereby authorized to remove such vehicle or to cause such vehicle to be removed and impounded at a location designated by the City for such purposes.

(d) **AUTHORITY TO IMPOUND.** Whenever any police officer of the City of Moulton shall find upon any public street, public parking lot or public alley of the city, or within the municipal limits, any vehicle which he has reasonable cause to believe to be lost, stolen or

abandoned, or any vehicle which is, or likely to become, an obstruction upon the public way, or to be without proper protection by reason of the person in charge of the control thereof having been arrested or incarcerated, or any truck or trailer left standing, whether attended or unattended, such officer shall have authority immediately to remove such vehicle or cause such vehicle to be removed to, and impounded at a location designated by the City for such purposes.

(e) LIEN ON IMPOUNDED VEHICLES. The City of Moulton shall have a lien on each impounded vehicle for the amount of costs of removing and storing such vehicle.

Section 1-10: AREA OF RESPONSIBILITY. It shall be the responsibility of owners, agents, occupants and lessees to keep their property free of nuisances. Owners, agents, occupants and lessees whose properties face on municipal streets or right-of-ways shall be responsible for keeping the property free from nuisances to the municipal street or other right-of-way. Owners, agents, occupants and lessees whose properties face on municipal alleys shall be responsible for keeping the area from their property to the center line of the alley free of nuisances and obstructions.

Section 1-11: NOTICE TO ABATE NUISANCE.

(a) Whenever the enforcement officer, shall find that a nuisance exists as defined in this ordinance, or by State Law, the official shall give the person or persons, firms, associations, corporations, or other entities who are the record owners, or if unknown to the person or persons last assessing the property for state taxes, notice to abate the nuisance, by certified or registered mail to the owner's last known address and to the owner at the address and to the owner at the address of the property. A copy of all notices, orders and other communications required by this Ordinance to be given to the owner of the property, or to the owner of an interest in a property, or to the person last assessing the property for the state taxes, also shall be given to the occupant

or lessee of the nuisance, if known and to all mortgagees of the record by certified or registered mail to the address set forth in the mortgage or if no address for the mortgage is set forth in the mortgage , to the address determined to be the correct address by the person responsible for the notice or other communications. Abatement shall mean full and complete removal of any nuisance declared under Sections 1-5, 1-6, 1-7, and 1-8 of this ordinance and the proper remedy of any nuisance declared herein and cited pursuant to Section 1-4 shall mean either repair, rehabilitation, demolition or removal and shall be determined by the City Building Inspector or other person or persons designated as enforcement officer or officers or by the City Council.

(b) The enforcement officer shall give written notice to the City Council of his inspection and findings of the existence of the nuisance, and that he has provided notice of the nuisance pursuant to paragraph (a) above to the owner , agent, occupant, mortgagee or lessee of the nuisance and the manner in which the nuisance is to be abated.

(c) The notice shall set forth the basis for the appropriate city official's finding and shall direct the owner to take and of the following actions:

1. In the case where repair, improvement, or removal is required, accomplish specified repairs, improvements or removal within (30) days of the date of the notice or if the same cannot be accomplished within that time, to provide the enforcement officer with a work plan to accomplish the repairs, which plan shall be submitted within 30 days of the marking of the notice and shall be subject to the city's approval.
2. In the case where demolition is required, demolish a structure within 30 days of notice or if the same cannot be accomplished within that time, to provide the enforcement officer with a work plan to accomplish the

demolition, which plan shall be submitting within 30 days of the making of the notice and shall be subject to the city's approval.

3. Otherwise abate the nuisance as directed.

The notice shall also state that in the event the owner does not comply within the time specified therein, abatement, repair, or demolition may be accomplished by the municipality and the costs thereof assessed against the property.

(d) The mailing of the notice, properly addressed and postage prepaid shall constitute notice as required herein. In those cases in which repairs or demolition have been ordered with respect to a building, a copy of the order shall, within 3 days of the mailing, also be posted on the property and shall not be removed pending compliance with this ordinance.

Section 1-12. FAILURE TO COMPLY WITH NOTICE TO ABATE.

If the owner of any property cited hereunder fails to comply with a notice as prescribed, the municipality may take any of the following actions:

- (a.) In the case where repair is required, repair the building at the expense of the municipality and expenses of the repair of the land which the building stands or to which it is attached.
- (b.) In the case where demolition is required, demolish the building at the expense of the municipality and assess the expenses of the demolition of the land which the building stands or to which it is attached. The term "assessment" as used in this chapter shall refer to the cost of repair or demolition as provided herein.
- (c.) Otherwise abate the nuisance as ordered and assess the expenses of the abatement on the land on which the nuisance existed.

Section 1-13: ADMINISTRATIVE HEARING.

Within 30 days from the date the notice is given, and person, firm, or corporation, or entity having a legal interest in the building or structure or property on which the nuisance is located may file a written request for a hearing before the governing body of the city, together with that person's objections to the finding by the city enforcement officer that a nuisance exists. The filing of the request shall hold in abeyance any action on the finding of the city enforcement officer until determination thereon is made by the City Council.

Upon holding the hearing, which shall be held not less than 5 nor more than 30 days after the request, or for cases involving Section 1-5 of this ordinance, in the event no hearing is timely requested, after the expiration of 30 days from the date notice is given, the governing body of the municipality shall determine whether or not the findings of the enforcement official constitute a public nuisance. In all other cases, failure to timely request a hearing, shall be deemed to constitute an admission by the interested parties that the enforcements officer's findings are correct and enforcement of the abatement order shall proceed as if the Council had held a hearing and made a finding of the existence of a nuisance.

At said hearing, the owner, agent, occupant, mortgagee or lessee shall present its reasons as to why the decision of the enforcement officer should not be followed, as well as present evidence to the City Council as to any objection which said owner, agent, occupant, mortgagee, lessee had to the findings of the City Building Inspector.

The City Council shall then, after presentation of the evidence and argument of the owner, agent, occupant, mortgagee or lessee of the property, as well as after receiving evidence from the enforcement officer, make a finding to uphold the enforcement officer's findings and

determine that a nuisance exists as defined herein, or find in favor of the owner, agent, occupant, mortgagee, or lessee that a nuisance does not exist.

In the event that it is determined by the City Council that a nuisance exists, The City Council shall order the building or structure to be repaired or demolished, or the nuisance otherwise abated as provided herein specifying both the method of abatement and time allowed for abatement.

In the event that the nuisance is not abated in the manner and time prescribed, abatement may be accomplished by the municipality by contract or otherwise. The municipality shall have authority to sell otherwise dispose of salvage materials resulting from any abatement hereunder.

Section 1-14: APPEAL.

Any person aggrieved by the City Council at the hearing, may, within 10 days thereafter, appeal to the Circuit Court of Lawrence County, Alabama upon filing with the Clerk of the Circuit 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 a notice of appeal and approval of the bond the Clerk of the Circuit Court shall serve a copy of appeal on the Clerk of the City of Moulton and the appeal shall be docketed in the Circuit Court.

The Clerk of the City shall, upon receiving notice, file with the Clerk of the Circuit Court a copy of the findings and determination of the City Council and proceedings and trial shall be held without jury, as provided by Section 11-53B-4, Code of Alabama, 1975, upon the determination of the City Council that a public nuisance exists as described in this ordinance.

Section 1-15: FIXING OF COSTS.

Upon demolition, or repair of the building or structure, or otherwise abating the nuisance, the City enforcement officer shall make a report to the City Council of the cost thereof, and the City Council shall adopt a resolution fixing the costs which it finds were reasonably incurred in the demolition or repair or abatement and assessing the same against property; provided, however, the proceeds of any monies received from the sale of salvaged materials from the building or structure shall be used or applied against the cost of the demolition; and provided further, that any person, firm, or corporation having an interest in the property may be heard at the meeting as to any objection he, she, or it may have to the fixing of such costs of the amounts thereof. The City Clerk shall give notice of the meeting at which the fixing of the cost is to be considered by first-class mail to all entities having and interest in the property whose address and interest is determined from the Revenue Commissioner's records on the property or as otherwise known to the Clerk. The fixing of the cost by the governing body shall constitute an assessment against a lot or lots, parcel or parcels of land upon which the building or structure or nuisance was located; and as made and confirmed shall constitute a lien on the property for the amount of the assessment ("the final assessment"). The lien shall then be superior to all other liens on the property except liens for taxes, and except for mortgages recorded prior to the creation of the lien for the assessment, and shall continue in force until paid. A certified copy of the resolution fixing the final assessment shall be recorded in the Office of the Judge of the Probate of Lawrence County, Alabama and delivered to the Office of the Revenue Commissioner of Lawrence County, Alabama.

Section 1-16: COLLECTION OF ASSESSMENT; REMEDY OF CITY

(a) Said assessment shall be communicated to the Revenue Commissioner of Lawrence County, Alabama specified above to be collected pursuant to Section 11-53B-5 et seq., Code of Alabama, 1975.

(b) The City of Moulton, in ordering any repair, demolition, or other abatement, the cost of which part thereof is to be assessed against any property in accordance with this ordinance and state law, may provide that the same shall be paid in cash within 30 days after the final assessment; provided, however, that if the assessed amount is greater than \$10,000.00, the property owner may, at his or her election, to be expressed by notifying the City Clerk, in writing within 30 days after the final assessment is determined, pay the final assessment in 10 equal annual installments, which shall bear interest at a rate not exceeding 12% per annum. Interest shall began to accrue upon the expiration of 30 days from the date on which the final assessment is set by the city council and the interest shall be due and payable at the time and place the assessment is due and payable.

Any person or entity that elects to make installment payments may pay the outstanding balance of the final assessment together with all accrued interest thereon at any time during the installment payment schedule. The first installment shall be payable within 30 days after the final assessment is determined, and all installments thereof shall be payable at the office of the City Clerk, or as the City Council may otherwise prescribe. Upon full payment of the final assessment and accrued interest thereon, the City of Moulton shall record a satisfaction of the lien in the Office of the Judge of Probate of the Lawrence County.

Section 1-17: FAILURE TO MAKE PAYMENT.

If the property owner fails to pay the assessment lien within 30 days, or having elected to make installment payments, fails to make any installment payments when due, the whole assessment lien shall immediately become due and payable, and the city clerk shall proceed to sell the property against which the assessment lien is made to the highest bidder for cash, but in no event less than the amount of the lien, plus interest through the date of default. Prior to the sale, notice shall be given by publication once a week for 3 consecutive weeks in a newspaper published in the municipality or of general circulation therein, setting forth the date and time of the sale and the purpose for which the same is made, together with a description of the property to be sold. If the officer shall fail to advertise and sell any property on which the payments are past due, any tax-payer of the City of Moulton shall have the right to apply for a writ of mandamus requiring the official to take such action to any court of competent jurisdiction, and the Court shall, on proof, issue and enforce the writ.

Section 1-18: SALE OF PROPERTY UPON DEFAULT.

(a) Any property owner, notwithstanding his or its default, may pay the assessment lien with interest and all cost tendered before sale of the property.

(b) The cost of any notice and sale resulting from a default on paying an assessment shall constitute a charge against the property to be sold shall be retained out of the proceeds of the sale.

(c) The officer making the sale shall execute a deed to the purchaser, which shall convey all the rights, title and interest which the party against whose property assessment was made, had or held in the property at the date of making this assessment or on the date of making

the sale. Any surplus arising for the sale shall be paid to the City Clerk to be kept as a separate fund by the Clerk for the owner upon responsibility of his or its official bond. The municipality may, by its agents, purchase real estate sold as provided under this chapter and in the event of the purchase, the deed for the same shall be made to the municipality.

(d) No mistake in the notice of the sale and the description of the property or in the name of the owner shall vitiate the assessment of the lien and if for any reason, the sale made by the municipality is ineffectual to pass title, it shall operate as an assignment of the lien, and, upon the request of the purchaser, supplementary proceedings of the same general character as required in this chapter may be had to correct the errors in the proceedings for his or her benefit or the lien so assigned to him or her may be enforced by civil action.

Section 1-19: REDEMPTION OF PROPERTY.

Any real property heretofore or hereafter sold for the satisfaction of an assessment lien imposed thereon by the governing body of a municipality may be redeemed by the former owner, or his or her assigns, or other persons authorized to redeem property sold for taxes by the State, within 2 years from the date of the sale by depositing with the City Clerk the amount of money for which the lands are sold, with interest thereon at the rate of 12% per annum from the date of the sale through the dates of payment. Redemption of the property shall be by procedure as described herein and shall be governed by Sections 11-35-10, 11, 12, 13 and 14, Code of Alabama, 1975.

Section 1-20: CONTINUING OFFENSES. In all cases the person whose duty it is to abate any nuisance shall be liable for separate and distinct criminal offences for each day the

nuisance is allowed to remain after it has become his duty by notice of the enforcement officer or the City Council to abate said nuisance.

Section 1-21: PENALTY FOR VIOLATION. Any violation of any section or provision of this ordinance shall, upon conviction or adjudication of guilty, be punished by a fine of not less than \$50.00 and not more than \$500.00 or by a jail sentence of up to six (6) months or by both fine and imprisonment, plus court costs. This shall be in addition to any assessment of costs available to the City as provided in this ordinance.

Section 1-22: In addition to remedies otherwise provided for herein, the City Council may cause an action to be instituted to enjoin or abate any nuisance.

Section 1-23: CONSTRUCTION. This ordinance shall be construed to contain all powers granted to municipalities under sections 11-40-10, 11-47-117, 11-47-131, 11-47-140, 11-53B-1- through 16 and 11-67-60 through 67 Code of Alabama 1975.

Section 1-24: REPEALER. All provisions of ordinances of the City of Moulton, or other ordinances which are inconsistent with this ordinance to include 113-J and 114-I are hereby repealed.

Section 1-25: SEPARABILITY. It is the intention of the City of Moulton that each separate provision of this ordinance shall be deemed independent of all other provisions herein, and it is the further intuition of the City Council that if any provision of this ordinance be declared invalid, all other provisions shall remain valid and enforceable.

Section 1-26: PENDING PROCEEDINGS. Nothing in this Ordinance shall be construed to affect any such suit or proceeding now pending in any court, or rights acquired or

liability incurred, or any cause of action required or existing, under any act or ordinance hereby repealed.

Section 1-27: EMERGENCY ACTION. Notwithstanding any other provisions of this ordinance, the City of Moulton hereby authorizes the appropriate city official to initiate immediate repair or demolition of a building structure when, in the opinion of the official, such emergency action is required due to eminent danger of structural collapse endangering adjoining property, the public right-of-way, or human life or health. The cost of emergency action shall be fixed by the City Council and shall be assessed as provided in this Ordinance.

Section 1-28: This Ordinance shall take effect upon its adoption and publication as provided by law.

ADOPTED and APPROVED this 17th day of June, 2013.

Ray Alexander, Mayor

ATTEST:

Shirley Gilley