

AN ORDINANCE TO AMEND ARTICLE II OF CHAPTER 38, BOAZ CODE OF ORDINANCES BY REPEALING SECTION 38-26 THROUGH 38-51 INCLUSIVE, AND REPLACING THE SAME WITH THE FOLLOWING PARAGRAPHS.

This article to be entitled "the Boaz, Alabama, garbage, junk, litter, weed, yard sign and inoperable vehicle ordinance."

SECTION 1. This ordinance amends article II of Chapter 38 of the Code of Ordinances of the City of Boaz, Alabama, by repealing such article and replacing the same with the following:

Sec. 38-26. Definitions.

Abandoned or Inoperable Vehicle. Any vehicle which is in a wrecked, dismantled, partially dismantled, discarded, or otherwise inoperable condition; or 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 forty-eight (48) hours.

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

1. Enclosed within a building on private property; or,
2. Held in connection with a business enterprise, lawfully licensed by the city on property zoned for junkyard, vehicle repair facility, or vehicle storage yard; or,
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.

Approved, Enclosed, Covered Structure. 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 city.

Authorized Private Receptacle. A litter storage and collection receptacle as required and authorized in the appropriate ordinances of this city (refuse collection system).

Automobile Graveyard. Any establishment or place of business which is duly licensed and operated in accordance with all applicable laws and/or ordinances of the city, and which is maintained, used or operated for storing, keeping, buying or selling of wrecked, ruined, damaged or dismantled motor vehicles or parts thereof.

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

Citation. A notice specifying a violation of the provisions of this article which directs the violator to appear in the municipal court to answer the charge.

City. The City of Boaz, Alabama or the area within the corporate limits and police jurisdiction of the City of Boaz, Alabama.

Commercial Property. Any lot, tract, parcel, land, or other property located within the city on which offices, clinics, kennels, shopping or service establishments, or any other commercial enterprises exist, or any property that is located within an area that is zoned other than R-1, R-2, R-3, R-4 or R-5 or designated for uses other than residential purposes by the city.

Corrective Notice. A written notice informing the recipient of a violation of the provisions of this article and specifying a period of time in which to correct the violation.

Dangerous Buildings, Structures and Conditions. All buildings, structures or conditions which are (1) unsafe or unsanitary for human habitation, or (2) not provided with adequate egress, or (3) which constitute a fire hazard, or (4) are otherwise dangerous to human life.

Discarded Household Furnishings. Any furniture, appliance, carpeting, or similar item, intended for indoor residential use, placed outside of an approved, enclosed and covered structure.

Enforcing Official. Any officer of the city police department or 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.

Garbage. Vegetable or animal matter and all refuse matter arising from or produced by, or that attends the preparation, use, cooking, dealing in or storing of bread, meat, fish, fowl, fruit or vegetables, and in general, from food for human consumption, and all other matter, including paper, cartons, boxes and cardboard.

Garbage and/or Rubbish Can. A watertight receptacle or container of substantial construction having a capacity of not more than three hundred (300) gallons, with a tight-fitting lid or cover that has been approved by the commercial vendor supplying garbage pickup services in the City of Boaz as suitable for pick up and dumping by hydraulic lift or hoist or by a single person.

Graffiti. Any unauthorized inscription, word, figure, painting or other defacement that is written marked, etched, scratched, sprayed, drawn, painted or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise deemed a public nuisance by the City Council.

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 a serious fire threat or hazard; or bearing winged or downy seeds, when mature, that cause the spread of seeds and, when breathed, irritation to the throat, lung 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 seeds, other than ornamental plant growth, which exceeds twelve (12) inches in height.

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.

Junk. All metals including but not limited to; any used or second hand parts of machinery; plumbing fixtures, or parts thereof; parts of an automobile, truck, bus, motorcycle, 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 motor vehicles.

Junk or Salvage Yard. Any premises, establishment or place of business which is duly licensed and operated in accordance with all applicable laws and/or ordinances of the city, 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.

Litter. 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, garbage, rubbish, refuse, waste material, paper, cartons, cans, debris, dead animals or fowl, scrap metal, glass, bottles, plastics, trash, wrappings, boxes or cardboard, or any foreign substance of whatever kind and description, whether or not it is of value. The term shall also include any abandoned, unattended or discarded ice box, refrigerator or other container which has an airtight door or lid, snap lock or other device which might be removed from the inside, washer, dryer or any other appliance.

Motor Vehicle. Any vehicle which is self-propelled, and shall include, but not be limited to automobiles, trucks, buses, vans, motorcycles, motor homes, dune-buggies, tractors and motorized recreational or agricultural vehicles.

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.

Newspaper. Any newspaper of general circulation as defined by general law, any newspaper duly entered with the post office department of the United States, in accordance with federal statute or regulation, and any newspaper filed and recorded with any recording officer as provided by general

law; and in addition thereto, shall mean and include any periodical or current magazine regularly published with not less than four (4) issues per year, and sold to the public.

Non-motorized Vehicle. Any vehicle that is not self-propelled and shall include but is not limited to, camping trailers, utility trailers, boat trailers, horse trailers and other livestock trailers..

Occupant. As applied to any house, building, store, shop, room, lot or premises, the owner, tenant or other person who, for the time being, is in possession or is in charge or control thereof, either for such persons self or for another, or as agent, officer or employee of a corporation.

Owner of Property. Includes legal title holder, lessee, or occupant of property, or agent of legal title holder or lessee, in charge, possession or control of property. For a building nuisance only, includes any mortgage holder of record.

Park. A park, reservation, playground, swimming pool, recreation center or any other public area in the city, owned or used by the city and devoted to active or passive recreation.

Persons. Any individual, firm, association, limited liability company or corporation.

Premises. Any lot, yard, plot, tract, parcel or other piece of land or property located within the city, and any dwelling, flat, rooming house, apartment house, hospital, school, hotel, club, restaurant, boardinghouse, eating place shop, church, business or place.

Private Premises. Any dwelling, house, building, or other structure, designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenant to such dwelling, house, building or other structure.

Public Property / Public Place. Any real property, including appurtenances thereon, which is owned, maintained, or controlled by the city, or any county, state, or federal governmental entity, and shall include any street, avenue, road, drive, lane, boulevard, alley, sidewalk, highway, park or other property owned, operated, or controlled by the city, or any other public governmental entity for the use, benefit or enjoyment of the general public.

Refuse. All waste (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles and solid market and industrial wastes.

Residential Property. Any lot, tract, parcel, land or other property located within the city upon which exist single or multifamily structures used as a residence or for human habitation, or any property that is located within an area that is zoned for residential uses by the city.

Rubbish. Rubbish includes shrubbery trimmings, tree limbs, tree branches, grass, leaves, stumps, stoves, refrigerators, freezers, sofas, water heaters and other appliances, cardboard cartons, wood, boxes, plastics, rags, bedding, leather, rubber, metals, tin cans, tires and other refuse.

Street Department. A department within of the City of Boaz.

Sanitary Landfill. The place for dumping or disposing of garbage and rubbish, operated by the City of Boaz, Alabama, or any commercial entity or such place or places designated by the county health officer of Marshall County or Etowah County.

Scrap. Other materials or waste, including, but not limited to old cordage, ropes, rubber, bottles and other glass, tin or aluminum cans, buckets, construction debris or other waste or refuse not otherwise classified herein as junk, litter or garbage.

Scrap Metal Yard and/or Processor. Any person, establishment or place of business which is duly licensed and operated in accordance with all applicable laws and/or ordinances of the city, and which is maintained, used or operated solely for the processing or preparing of scrap metals and is engaged primarily in the purchase and collection of scrap metal (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.

State. The State of Alabama.

Trash. All tree and lawn trimmings, leaves, pine straw, trash that has been burned, rocks, bricks, dirt, ashes, lumber, bushes, and demolition-type waste; except this term shall expressly not include any paper, cartons, cardboard, refuse, garbage, litter, rubbish, sludge, liquids, toxic waste or wastes.

Vegetation, Grass, Plants and Weed Nuisance. Any vegetation, weeds, grass or plants (other than trees, bushes, flowers or other ornamental plants or vegetables 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.

Vehicle. Any device in, upon or by which any person or property is or may be transported, carried or drawn from one place to another, including but not be limited to, motor vehicles, boat trailers, utility trailers, horse trailers, bicycles, carts, tractors or other devices.

Waste. Any paper, cartons, cans, litter or other materials which are thrown away or rejected for further use.

Sec. 38-27. Unlawful keeping of garbage or rubbish on premises; inspection of premises.

It shall be unlawful for any person in possession, charge or control of any premises to keep, cause to be kept or allow to be kept on any premises within the corporate limits of the City of Boaz, garbage or rubbish in such manner that it will become offensive or detrimental to health or likely to cause disease. The head of the Street Department or his authorized representatives, or such other duly authorized inspectors as may be designated by the city council of the City of Boaz, are hereby authorized to inspect any premises within the corporate limits of the City of Boaz for the purpose

of ensuring that the requirements of this article are being complied with, and it shall be unlawful for any person to resist or interfere with such representatives by word, deed or act in the performance of such inspection.

Sec. 38-28. Disposal of garbage or rubbish in streets or other public or private property.

It shall be unlawful for any person to sweep, throw or otherwise deposit or cause to be swept, thrown or otherwise deposited, any garbage or rubbish into or on any public street, alley, sidewalk, fountain, park, canal, stream, public water drain, sewer or receiving basin or the property of another person or property which is in the possession of another person within the corporate limits and police jurisdiction of the City of Boaz, or to permit any garbage or rubbish to accumulate in such manner that it may be carried and deposited into or on any of the above places by action of the rain, wind, snow or animals.

Sec. 38-29. Duty to provide containers for disposal of garbage and rubbish.

It shall be the duty of every person in possession, charge or control of any premises where garbage, rubbish or other waste is created or accumulated, at all times to keep or cause to be kept a sufficient number of garbage or rubbish cans for the deposit of garbage, rubbish or other waste to prevent the spreading or scattering of such garbage, rubbish or other waste upon the premises. In the case of multiple dwellings or multiple occupancy, the owner of the premises shall, at all times, keep or cause to be kept a sufficient number of garbage cans (at least one garbage can for each family or other unit) for the deposit of garbage, the lids or covers of such garbage cans shall be kept tightly closed at all times other than when garbage is being deposited or removed.

Sec. 38-30. Restrictions on collection of rubbish, landscaping and construction debris by city; placement for pickup.

(A). Building debris such as scrap lumber, plaster, roofing material, concrete and brickbats resulting from the construction, remodeling or repairs of any building or appurtenances on private property will not be removed by the Street Department. The owner must cause this waste to be privately moved. It shall be the responsibility of all fence companies, roofers, tree surgeons, nurseries and landscape contractors or any individual; or company doing work on private property to remove from the premises all residue and rubbish resulting from such work. The City of Boaz shall not be responsible for the collecting and hauling of rubbish, trash, limbs, brush or other debris from private property preliminary to, during or subsequent to the construction of new buildings of whatever type prior to occupancy. These materials shall be removed by the owner of the property or the contractor responsible for its accumulation.

(B). All rubbish to be removed by the city from private residences shall be placed at the edge of the owner's yard or in an accessible place approved by the Street Department.

Sec. 38-31. Disposal of garbage and rubbish by business establishments.

All business establishments in the City limits of Boaz, Alabama, must dispose of their garbage and rubbish in one of the following methods:

- (1) Regular pickup by a private contractor certified by the Alabama Department of Public Health;
- (2) Any other method approved by the Alabama Department of Public Health.

Sec. 38-32. Location of garbage cans for pickup from residences and business establishments.

All garbage cans and containers to be emptied by the private commercial vendor providing garbage collection services to the city from residences and business establishments shall be placed at places to be determined by such private commercial vendor, such as at the end of driveways or edge of yards, on the days designated by the such private commercial vendor by 6:00 a.m. The container shall be removed by the owner/occupant no later than twenty-four (24) hours from pickup.

Sec. 38-33. Removal of garbage from containers by unauthorized persons.

It shall be unlawful for any person to remove any garbage or other like material from any garbage can or other container within the corporate limits and police jurisdiction of the City of Boaz after it has been placed therein except under the orders of an officer, agent or employee of the sanitation department or by some other authorized person removing the garbage for disposal.

Sec. 38-34. Dumping outside sanitary landfill.

It shall be unlawful for any person to dump or cause to be dumped any garbage upon any property other than a sanitary landfill as defined in section 38-26.

Sec. 38-35. Disposal of dead animals and animal wastes.

(A.) Dead Animals/Unlawful Disposal. It shall be unlawful and a violation of this ordinance punishable as provided in Sec. 38-57 for any person to throw any dead animal or fowl in or upon any street, alley or public place within the City of Boaz.

(B.) Dead Animals/Lawful Disposal.

- (1) It shall be the duty of the owner of any dead animal, or the person upon whose premises a dead animal is found, to dispose of it in a sanitary manner, or provide the carcass to any private person(s) who may operate services for the removal and disposal of dead animals.

(2) It shall be the duty of the owner or person in possession of a dead dog, cat, fowl or other small animal to put such animal in a box, sack or other receptacle before collection by the commercial vendor providing garbage pickup services in the City of Boaz or by an operator of a private animal removal and disposal service.

(C.) *Dead animal carcasses* . Carcasses of animals not buried or otherwise disposed of in a sanitary manner within twenty-four (24) hours after death are hereby declared to be a health nuisance affecting public health.

Sec. 38-36. Garbage collection service.

(A.) The collection, hauling and disposal of garbage and rubbish in residential areas shall be made by a private commercial vendor who has contracted with the City of Boaz to provide such

service no less than one time each week and as necessary or as required except Sundays, legal holidays or during extreme weather conditions. A charge for such residential collection of garbage shall be paid in accordance with the fees and charges established by the City of Boaz.

(B.) Provided however, there shall be no charge for residents over the age of sixty-five (65) years whose total monthly household income does not exceed eight hundred fifty dollars (\$850.00) per month for one (1) person or fifteen hundred dollars (\$1,500.00) per month jointly for married couples upon their application and proof of income. Occupants of townhouses, condominiums and apartment units may be charged at the same rate as each single-family building unit.

(C.) The city will not provide commercial garbage collection services.

(D.) Bills for all services under this section shall be due and payable during the month following the month in which service is rendered. Statements for services rendered shall be mailed by the Boaz Water Board on its regular billings for water and sewer services, and when so mailed, payment shall be made to the Boaz Water Board of the fee for garbage service. This board shall remit the payments received to the city as agreed between the city and the board.

Sec. 38-37. Sweeping litter into gutters; keeping sidewalks free of litter by abutting owner.

No person shall sweep into or deposit in any gutter, street or other public place within the city the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying property shall keep the sidewalk in front of their premises free of litter.

Sec. 38-38. Vehicle loads or tires causing litter or tracking.

No person shall drive or move any truck or other vehicle within the city unless such vehicle is so constructed or loaded and covered as to prevent any load, contents or litter from being blown or deposited upon any street, alley or other public place or upon any privately owned property.

Sec. 38-39. Litter in parks, lakes, fountains, etc.

No person shall throw or deposit litter in any park, fountain, pond, lake, stream, or any other body of water in a park or elsewhere within the city except in public receptacles and in such manner that the litter will be prevented from being carried or deposited by the elements upon any part of the park or upon any street or other public place. Where public receptacles are not provided, all such litter shall be carried away from the park by the person responsible for its presence and properly disposed of elsewhere as provided herein.

Sec. 38-40. Posting notices without permission from mayor or person appointed by him; removal by city.

(A). No person shall mark or write on, post or otherwise affix, any handbill, sign pointer, banner or balloons upon any public property, public road right-of-way, park, sidewalk, crosswalk, curb, curbstone, street lamppost, hydrant, railroad trestle, electric light, power, telephone or telegraph wire pole, or wire appurtenant thereto, or upon any lighting system, public bridge, drinking fountain, street sign or traffic sign, or upon any tree or any other fixture or appurtenance located on any public road or right-of-way or any public property of any nature.

(B). Any handbill, sign, pointer, banner or balloons found posted or otherwise affixed upon any public property contrary to the provisions of this section shall be removed by the building inspector or any employee of the street department, the police department or any other city employee as deemed necessary. The person, firm, or corporation responsible for any such illegal posting shall be liable for the cost incurred in its removal, and may be fined and punished as provided in Sec. 38-57 for criminal littering.

Sec. 38-41. Prohibition on graffiti.

It shall be unlawful for any person to commit any overt act resulting in or attempting to result in the application of graffiti on any surface, natural or manmade, on public or private property without the express permission of the owner of such property, including but not limited to trees, signs, poles, fixtures, utility boxes, walls, paths, walks, streets, underpasses, overpasses, bridges, trestles, buildings or any other structures or surfaces.

Sec. 38-42. Owner to maintain premises free of litter.

The owner of any private property shall at all times maintain the premises free of litter. This section shall not prohibit the storage of litter in authorized private receptacles for collection nor shall this section prohibit the temporary display of used furniture, clothes or other objects in connection with a yard or garage sale, provided the objects are displayed not more than 48 hours.

Sec. 38-43. Clearing of litter from open private property by city.

(A). *Notice to remove.* The enforcing official, mayor or person designated by the mayor is authorized and empowered to notify the owner, as provided in Sec. 38-47, of any open or vacant private property within the city or the agent of such owner to properly dispose of litter located on such owner's property which is dangerous to public health, safety or welfare. Such notice shall be by registered mail, addressed to the owner at his or her last known address.

(B). *Action upon noncompliance.* Upon the failure, neglect or refusal of any owner or agent so notified to properly dispose of litter dangerous to public health, safety or welfare within seven (7) days after receipt of written notice provided for in subsection (A) above, or within seven (7) days after the date of such notice in the event it is returned to the city because of the inability of the post office department to make delivery thereof; provided it was properly addressed to the last known address of such owner or agent, the enforcing official, mayor or a person designated by the mayor is authorized and empowered to pay for the disposing of such litter or to order its disposal by the city. The owner is subject to punishment as provided in Sec. 38-57.

Sec. 38-44. Use of trash receptacles.

(A) *Belonging to City.* It shall be unlawful for any person to remove or cause to be removed from any street or sidewalk in the city any receptacle furnished by the city for the deposit of trash. It shall be unlawful for any person to deface any such receptacle or to cause it to be used in any way which will make it inaccessible for the receipt of trash. It shall be unlawful for any person to place, store or cause to be placed or stored any garbage, litter, refuse, goods, merchandise, lumber, rubbish scrap, trash or other material near any such receptacle in such manner as to interfere with or prevent the use of any such receptacle for the purpose which it is intended to serve.

(B) *Belonging to Private Individuals or Companies.* It shall be unlawful for any person to remove or cause to be removed from any street or sidewalk in the city any receptacle owned by or furnished to any individual or company for the deposit of trash. It shall be unlawful for any person to deface any such receptacle or to cause it to be used in any way which will make it inaccessible for the receipt of trash. It shall be unlawful for any person to place, store or cause to be placed or stored any garbage, litter, refuse, goods, merchandise, lumber, rubbish, scrap, trash or other material in or near any such receptacle which is not owned by or furnished to such person or which interferes with or prevents the use of any such receptacle by for the purpose which it is intended to serve, without the permission of the owner or person who has control over such receptacle. Such use by any unauthorized person may be punished as provided in Sec. 38-57 for criminal littering.

Sec. 38-45. Growth nuisance of weed and vegetation.

Every person owning or having charge of any premises in the city or its police jurisdiction, shall keep the same free of any growth of weeds favorable to the harboring of mosquitoes or other insects of like kind, and every such growth of weeds is hereby declared to be a nuisance, and every such person

who shall allow any such growth of weeds to accumulate on the premises which such person owns or of which he is in charge shall be punished as for any other violation of this ordinance.

Sec. 38-46. Prohibited height specified.

Any growth of weeds more than twelve (12) inches in height shall be deemed favorable to harboring of mosquitoes or insects of like kind within the meaning of this article.

Sec. 38-47. Notice to show cause- Issuance; form.

If the premises are in charge of a person other than the owner, then this notice shall be addressed to such person.

(A) Upon receipt of a complaint or other discovery, that a public nuisance defined by this article exists on any property located in the city and upon completion of the field investigation by the enforcement officer, and determination that a public nuisance exists, the following procedures will apply: the property will be posted with a corrective notice advising the nature of the public nuisance and requesting abatement of the public nuisance pursuant to the requirements of this article within seven (7) days. The posted corrective notice shall read as follows:

NOTICE OF PUBLIC NUISANCE

DATE: _____

NAME OF OWNER _____

ADDRESS OF OWNER _____

Our records indicate that you are the owner(s) or person in control of the following described property in the City of Boaz, Alabama: _____

An inspection of this property discloses and I have found and determined that a public nuisance exists thereon so as to constitute a violation of Ordinance No. 2005-_____ of the City of Boaz, Alabama, "the Boaz, Alabama, garbage, junk, litter, weed and inoperable vehicle ordinance", in that:

You are hereby notified that unless the public nuisance is abated and the condition above described is remedied within seven (7) days from the date hereof, the city will remedy such public nuisance and condition either through use of its own employees or by contracting

for the services of an independent contractor and the cost of the work, plus a charge equal to fifty (50%) percent of the cost of the work to cover city administrative expenses, will be assessed to the property and its owner. If not paid within thirty (30) days after receipt of billing, the invoice amount, plus any advertising cost, will be imposed as a lien on the property.

Within seven (7) days of the date hereof, you may make written request to the city council of the City of Boaz for a hearing before that body for the purpose of showing that the above listed condition does not constitute a public nuisance.

If no objections or requests for hearing are filed with the city clerk within the time period set out hereinabove, it shall be presumed that the person accepts the notice of public nuisance as fact and waives any right that person may have to contest this removal and the action of the city council shall be final unless good and sufficient cause can be otherwise shown.

CITY OF BOAZ, ALABAMA

Enforcing Official

(B). In addition to the notice set out above, a letter of demand will be sent to the property owner or person in control of such property by first class mail. The notification to such person(s) will advise that they have the right to appear before the city council to contest the notice of public nuisance. Written request for a hearing must be received by the City Clerk within seven (7) days after the posting of the aforementioned notice of public nuisance and the date of the letter of demand referred to above. At the hearing before the city council, the property owner or person in control of such property, or their attorney, may introduce such evidence as is deemed necessary, and the City Council shall hear and consider all objections, evidence and protest regarding the proposed removal of litter, rubbish, junk, motor vehicles, garbage, scrap, refuse, grass, weeds or other plant life or other items to which this ordinance is directed. The council may continue the hearing, from time to time. Upon the conclusion of the hearing, the council, by resolution shall decide whether a public nuisance exists, and if so shall order it to be removed or abated with respect to any of the property or part thereof described. The city council, by passage of such resolution, shall be deemed to have acquired jurisdiction to proceed and either to perform, or have performed, the work of removal or abatement with respect to such property or part of thereof. The decision of the governing body on matters relating to the termination of a public nuisance shall be deemed final and conclusive. Upon approval of the resolution finding the condition of the property to be a public nuisance and ordering its abatement, all employees and duly authorized agents of the city are hereby expressly authorized to enter upon public and private property for the purposes of abatement and removal of such violation as set out in the resolution.

(C). The council may, at its option, authorize private contractors, companies, enterprise or individuals to abate and remove the public nuisance on behalf of the city. The council, by resolution, shall designate the contractors, companies, enterprises or individuals who may perform such work. Those persons so designated are authorized to enter upon public and private property for the purpose of abating or removing such nuisance.

(D). If no objections or requests for hearing are filed with the City Clerk within the time period set out hereinabove, it shall be presumed that the person receiving such corrective notice accepts the notice of public nuisance as fact and waives any right that person may have to contest the removal of litter, rubbish, junk, motor vehicles, garbage, scrap, refuse, grass, weeds or other plant life or other items to which this ordinance is directed and the action of the city council shall be final unless good and sufficient cause can be otherwise shown.

Sec. 38-48. Cost of abatement.

(A). *Accounting of cost.* The enforcement officer shall keep an account of the cost of abating or removing such nuisance of each separate lot or parcel of land where the work is being done by city employees or by duly authorized private contractor, company, enterprise, or individual, shall render an itemized report in writing to the city clerk of the city showing the cost of removing the nuisance on each separate lot, provided, that before the report is submitted to the city clerk, a copy of the same shall be posted for at least five (5) days prior thereto at the city hall of the city.

(B). *Assessment.* The city clerk, upon receipt of the cost of abatement from the enforcement officer and after posting of the same as provided in subsection (a) above, shall request that the city council adopt a resolution assessing such costs. The city council is hereby authorized to assess against the property made the basis of the previous notice of public nuisance and abatement work pursuant to this article, the actual cost to the city of such abatement, plus the sum of fifty (50%) percent of such costs to reimburse the city for actual cost of abatement of the nuisance plus such administrative costs which shall constitute a lien against the property. Notice of the lien in such form as the city council shall determine shall be filed in the office of the judge of probate of the county and recorded as other liens are recorded.

(C). *Collection; lien.* Upon receipt of the resolution setting out the cost of abatement and administrative costs associated with the abatement of the public nuisance as provided for in subsection (B) above, the city clerk shall also file with the tax collector of the county, a copy of such resolution and the county Revenue Commissioner will collect the nuisance abatement costs and lien under the optional method of taxation pursuant to Section 11-51-40 through Section 11-51-74, Code of Alabama, 1975, as it presently exists or is hereinafter amended. The lien shall be added to the next regular bill of taxes levied against such property and shall be collected in the same manner as ordinary municipal ad valorem taxes and shall be subject to the same penalties and procedures under foreclosure and sale in the case of delinquency as provided by law.

Sec. 38-49. Penalty.

In addition to the rights of notice of public nuisance and abatement as provided for herein and the reimbursement of costs and liens associated therewith, as an additional remedy and penalty, any police officer of the city, or other person who is hereby authorized, may cause a complaint to be filed in the municipal court alleging a violation of any provision of this article against any person found to be in violation of this article, which complaint shall be heard and tried in the municipal court in the manner as other violations of municipal ordinances of this city. Any person in violation of any of the provisions of this article, in addition to any other public nuisance abatement provisions provided hereinabove, shall, upon conviction, be deemed guilty of a misdemeanor and shall be punished as provided in section 38-57 hereof. Each day in which a violation occurs or continues shall be deemed a separate offense.

Sec. 38-50. Vegetation on public way - To be keep clear.

All persons occupying a residence or business in the city or who own vacant property in the city, which is located on a street or alley or both, are required to keep the sidewalk, street and alley adjacent to their residence, place of business or property free from all weeds and other vegetation unless such property has been approved by the City Council for the planting of wild flowers or such property is zoned AG.

Sec. 38-51. Scrap and Junk in general.

(A). *Residential property.* It shall be unlawful and a violation of this ordinance for any tenant or owner of property to store or keep upon the premises of any residential lot, apartment building or complex, trailer court or other tract of land or lot used for residential purposes, any inoperable vehicle, scrap or junk, as defined herein, unless it is housed in an approved, enclosed and covered structure so as not to be viewable from any public way or any other private property and in such a manner as to prevent a health, fire or safety hazard as defined by the laws of the state and the ordinances of the city.

(B). *Commercial property.*

(1). It shall be unlawful and a violation of this article for any tenant or owner of property to store or keep upon commercial property within the city any inoperable vehicle, scrap or junk, as defined herein, unless it is housed in an approved, enclosed and covered structure.

(2). Every junk and salvage yard, scrap metal processing yard, or automobile graveyard, as defined in this ordinance, shall be enclosed, except for entrances and exits, with a solid or otherwise nontransparent vertical wall or fence of minimum height of eight (8) feet measured from ground level at any point. Entrances and exits shall not be wider or more numerous than is reasonably necessary for the conducting of business. This requirement may be waived and/or modified as to any side or

portion of these premises which are adequately screened by natural objects, plantings, structures or other appropriate means so as not to be visible from public adjacent property. No fence shall be required along a railroad right-of-way where it is not necessary to discourage trespass by children or vagrants.

(3). It shall be unlawful and a violation of this article 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 and parts thereof; plumbing fixtures or parts thereof; lawn mowers or lawn mower parts; machinery, equipment, implements, utensils, or other items displayed for sale to the general public, unless housed in an approved, enclosed and covered structure, or enclosed by a solid or otherwise nontransparent vertical wall or fence that is a minimum of seven (7) feet in height measured from ground level so as not to be viewable from adjacent public ways or from adjacent residential property, and is stored in such a manner as to prevent any health, safety or fire hazard.

(C). *Exceptions.*

(1). Excepted from the requirements of paragraph (B)(1) of this section are:

(a). Materials stored or located on the premises of any junk and salvage yard, scrap metal processing yard or automobile graveyard, as defined herein that is duly licensed and operated in compliance with all applicable codes and ordinances of the city.

(b). Vehicles being repaired or awaiting repair that are located on the premises of any automobile repair shop, auto body repair shop or other vehicle repair enterprise that is duly licensed and operated in compliance with all applicable codes and ordinances of the city, provided these vehicles are so located or stored in a manner as to prevent any health, fire or safety hazard.

(2). Excepted from the requirements of paragraph (B)(3) of this section are:

(a). Materials, goods, and/or supplies which are normally stored, displayed or kept outside on the premises of building supply companies, lumber yards, plumbing supply companies, nurseries and similar commercial establishments so long as they are stored in such a manner as to prevent overgrowth with grass and/or weeds, the harboring of rats, mice, insects, reptiles and other vermin, so as to prevent any health, fire or safety hazard. These items shall not encroach on any public road right of way.

(b). Merchandise, goods, or supplies displayed on the premises of duly licensed retail or commercial sales establishments for the purpose of

temporary special promotional sales, so long as they are displayed in a manner to prevent any health, fire or safety hazard while so displayed. Displays under this section shall be permitted only two times per calendar year not to exceed sixty (60) days in any display period.

(c). Automobiles, trucks, boats, tractors, agricultural or industrial equipment, lawn and garden equipment, and other vehicles displayed on the premises of establishments that are duly licensed for the sale of such items.

(d). Building materials located on premises where a valid permit is in existence for construction or repairs.

(D). *Requests for extension of time.* Any person receiving written notice of any violation of this ordinance, or their duly authorized agent, may, within seven (7) days following the date of issue of such notice, request an extension of the date. This request must be in writing and must state the location of the property, the date of the notice of violation of this article and the official notice number. The request must also state the hardship or reason for the request and the amount of time that is requested. No request for an extension filed later than seven (7) days after the date of this notice shall be acted upon without consent of the ordinance officer, mayor or other designated person.

Sec.38-52 . Public Property

(A). *Inoperable motor vehicles on public property.* It shall be unlawful and a violation of this article for any person to abandon, place, leave, store, or park any inoperable motor vehicle owned by or in possession or control of that person upon any public property in the city for more than forty-eight (48) hours. Notice to remove such inoperable motor vehicle from the public right-of-way within forty-eight (48) hours shall be placed upon the vehicle or served upon the last known owner of record. If the vehicle is not removed from the public right-of-way within forty-eight (48) hours, the city may cause the vehicle to be removed and impounded at a depository designed for such purpose. The city shall have a lien upon the vehicle that is impounded. The lien shall be for the amount of the cost of the removal and impoundment plus such reasonable amount as may be charged for storing the vehicle. For the purpose of this article, any motor vehicle located on public property without a current and proper license plate shall be deemed abandoned and improperly stored.

(B). *Non-motorized vehicles on public property.* It shall be unlawful and a violation of this article for any person to abandon, place, leave, store or park any non-motorized vehicle owned by or in possession or control of that person upon any public property in the city. Notice to remove the non-motorized vehicle from the public right-of-way within forty-eight (48) hours shall be attached to the vehicle or served upon the owner, if know. If the vehicle is not removed from the public right-of-way within forty-eight (48) hours, the enforcement officer, or his authorized agent, may issue a citation to any person who refuses or fails to comply with the provisions of this section of this article, and/or may cause the vehicle to be removed and impounded at a depository designed for such purpose. The city shall have a lien upon the vehicle that is impounded. The lien shall be for the amount of the cost

of the removal and impoundment plus such reasonable amount as may be charged for storing the vehicle. This section shall apply, but not be limited to, boat trailers, utility trailers and camping trailers.

Sec.38-53. Abandoned refrigerators and other containers; removal of doors and locks required.

It shall be unlawful for any person to leave or permit to remain outside of any dwelling, building or other structure, or within any unoccupied or abandoned building, dwelling or other structure or on any premises under such person's control, in a place accessible to children, any abandoned, unattended or discarded icebox, refrigerator or other container which has an airtight door or lid, snap lock or other locking device which might not be released from the inside, without first removing the lid or door, snap lock or other locking device from such icebox, refrigerator or container.

Sec. 38-54. Dangerous buildings, structures and conditions.

Prohibition. It shall be unlawful and a violation of this article for any person to allow to be maintained a dangerous building, structure or conditions as defined herein on any lot, parcel or tract of land in the city.

Sec. 38-55. Fencing.

In order to protect the property rights and values, public health, safety, morals and general welfare of all citizens, fences located upon property zoned for residential or business use must be kept in good repair and if of a type other than chain link must be properly painted or preserved. The owner shall repair, paint, remove or otherwise attend to any fence if it becomes unsightly or a menace to public safety, health or welfare. Fences constructed of light gauge wire such as chicken coop wire, barbed wire or other flimsy material are prohibited. Fencing for dog pens shall be located at the rear of the residence or property.

Sec. 38-56. Duties of owners.

It shall be the duty of the owner or any person in control of or in charge of property located within the city to maintain their property in compliance with the provisions of this article, free of any inoperable vehicles, junk, scrap, garbage or litter as herein defined.

Sec. 38-57. Criminal littering.

(A). A person commits the crime of criminal littering if he or she engages in any of the following acts:

- (1). Knowingly deposits in any manner litter on any public or private property or in any public or private water, having no permission to do so. For this purpose, items found in an accumulation of garbage, trash, or other discarded material including, but

not limited to, bank statements, utility bills, bank card bills, and other financial documents, clearly bearing the name of a person shall constitute a rebuttable presumption that the person whose name appears thereon knowingly deposited the litter. Advertising, marketing and campaign materials and literature shall not be sufficient to constitute a rebuttable presumption of criminal littering under this subsection.

(2). Negligently deposits in any manner, glass or other dangerously pointed or edged objects on or adjacent to water to which the public has lawful access for bathing, swimming or fishing; or on or upon a public highway, or within the right of way thereof.

(3) (1). Drops or permits to be dropped or thrown upon any highway any destructive or injurious material and does not immediately remove it or cause it to be removed; or

(2). Removes a wrecked or damaged vehicle from a highway and does not remove glass or other injurious substance dropped from the vehicle upon the highway.

(B). Litter is defined under Section 38-26 hereof.

(C). It is no defense under subsection (A)(3) hereof that the person did not intend or was unaware of the act charged.

(D). Criminal littering is a Class C misdemeanor. The fine for the conviction of Criminal Littering shall not be less than Two Hundred Fifty Dollars (\$250) nor more than Five Hundred Dollars (\$500) for each conviction.

Sec. 38-58. Failure to comply.

(A). If any person, upon receipt of the notice set forth in Section 38-47 of this article fails, neglects or refuses to comply with the notice to abate the nuisance, the enforcing official may proceed to prosecute the person for a violation of the provisions of this code.

(B). All violations of the provisions of this ordinance shall be punishable by:

(1). A fine in the amount of not less than Two Hundred Fifty (\$250) Dollars but not more than Five Hundred Dollars (\$500); or,

(2). Imprisonment in the municipal jail for a term not to exceed one hundred eighty (180) days; or,

(3). Both fine and imprisonment; and,

(4). An order to abate the nuisance.

(C). The enforcing official may institute the enforcement procedure set forth above. The institution of one procedure shall not preclude the subsequent or simultaneous institution of the other procedure provided the criminal procedure shall not be used to collect any outstanding civil assessments against the subject property.

Sec. 38-59. 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 2. This Ordinance shall become effective on the _____ day of _____, 2005, or upon its publication as required by law.

PASSED AND ADOPTED THE _____ DAY OF _____, 2005.

Tim Walker, Mayor

Attest:

Barbara C. Walden, City Clerk/Treasurer