

ORDINANCE NO. 2021-326

WHEREAS, House Bill 91 was enacted by the State of Alabama Legislature on April 1, 2021 and signed into law by Governor Kay Ivey as Act No. 2021-138; and,

WHEREAS, Act 2021-138 authorizes the city to implement an alternative method of controlling the growth of weeds and tall grass.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the City of Dothan, Alabama, as follows;

Section 1. Existing Article II, Chapter 106, Weed Control is hereby deleted in its entirety and replaced as follows:

Article II, Weed Control

Sec. 106-31. Purpose of article.

Pursuant to Act 2021-138, this ordinance is created to protect the public health, safety, and welfare. The declared purpose of this article is to prohibit and order the abatement of certain public nuisances within the city of Dothan which are defined by this article.

Sec. 106-32. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Excluded properties means those properties which are in a heavily wooded area, areas in their natural state (i.e., not previously developed in any manner), property under current construction and farm properties. A lot or premises of more than five acres, including subdivisions in which no lots have been sold or occupied, shall be considered farm property, and exempt from cutting or mowing; except that each such designated farm property, when such property is not under cultivation for useful purposes, shall be required to maintain an area of 100 feet from the abutting property lines of abutting residential or business property, which area shall be in compliance with this article.

Owner or owners of property means the legal titleholder, lessee, occupant of property, agent of the legal titleholder or lessee, person in charge, possession, or control of such property.

Private property means real property owned by any individual, partnership, association, syndicate, company, firm, trust, corporation, business, or any entity recognized by law.

Vacant lot means any area of land that either has no structure upon it or has an unoccupied structure, whether that unoccupied structure is business or residential, upon the premises. A vacant lot will encompass adjoining and/or included easements, ditches, and alleyways.

Administrative Official means a person designated by the city manager to hear appeals for the purposes of this act, but the person may not be the same person as the enforcing official.

Enforcing Official means the municipal official or employee the city manager from time to time may designate.

Tax Collecting Official means the county tax collector, county revenue commissioner, or other county ad valorem tax collecting official.

Overgrown lot or parcel means a parcel of land on which there is an abundance of overgrown grass or weeds which is injurious to the general public health, safety, and general welfare. When any of the following conditions are met, the lot or parcel is declared to be a public nuisance:

1. Grass or weeds that provide breeding grounds and shelter for rats, mice, snakes, mosquitoes and other vermin, insects, and pests
2. Grass or weeds regardless of height that attain such dryness so as to constitute serious fire threat or hazard
3. Grass or weeds regardless of height that bear 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
4. The grass or weeds regardless of height that are capable of hiding debris, such as broken glass or metal, which could inflict injury on any person going upon the property.
5. 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 exceeding 12 inches in height.

Sec. 106-33. Notification and enforcement.

- (a) Whenever in the opinion of the city official or any other city employee designated by the city manager, a nuisance exists, the enforcing official shall order the owner of the property on which the nuisance is located to abate the condition.
- (b) The enforcing official shall give the owner written notice in person or by first class mail. The notice shall apprise the owner of the facts of the alleged nuisance and require the condition be abated within the time stated in the notice or to request a hearing before an administrative official of the city designated by the city manager, to determine whether there has been a violation.
- (c) The notice shall be sent to that person shown by the records of the county to have been the last person assessed for payment of ad valorem tax on the property where the nuisance is situated. It shall be the responsibility of that person to promptly advise the enforcing official of a change of ownership or interest in the property.
- (d) The notice shall also be posted in a conspicuous place on the property.
- (e) The notice shall require the owner to complete abatement of the nuisance within 10 days from the date of notice, provided the enforcing official may stipulate additional time, but in no case more than 28 days.
- (f) Said notice shall contain the following:
 - (1) A description of the real property, by street address or otherwise, on which the nuisance exists.
 - (2) A description of the facts of the alleged nuisance and a directive that the nuisance be abated within ten (10) days from the date of the notice or to request a hearing before the administrative official to determine whether there has been a violation.
 - (3) A statement that the cost of labor, value of the use of equipment, advertising expenses, postage, administrative expense, legal expense and materials purchased as a result of the work shall be assessed against the property and may be added to the next regular taxes levied against the property; and
 - (4) A statement that failure to abate the nuisance with ten (10) days from the date of the notice may result in separate criminal prosecution.

Sec. 106-34. Appeals

(a) Appeals from the decision of the enforcing official

- (1) A property owner shall have five days in which to request a hearing before the administrative official to appeal the determination of the enforcing official. After the hearing, the enforcing official shall notify the owner by personal service or by first class mail of the determination of the administrative official.**
- (2) At the hearing, any interested party shall have the right to present evidence and testimony. The hearing shall be open to the public, and a record of the proceedings shall be kept as a part of the public records of the municipality.**
- (3) The administrative official shall render a written decision on the merits of the proposed abatement within five 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 10 days of the date of the administrative official's decision, or upon such additional time, but in no case more than 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 that determination shall not bar any subsequent notice concerning the same property.**

(b) Appeals from the decision of the administration official

- (1) Any person aggrieved by the decision of the administrative official at the hearing, may within 10 days, 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 therein. The clerk of the municipality, upon receiving the notice, shall file with the clerk of the court a copy of the record, findings, and determination of the administrative official in its proceedings. Any trials shall be held without jury upon the determination of the administrative official that the weeds are a public nuisance.**
- (2) The circuit court shall not itself hear or accept any further evidence with respect to those issues made the basis of the appeal. The review shall be conducted by the court without a jury and shall be confined to the record. The findings of the administrative official, if supported by substantial evidence, shall be conclusive on appeal. If upon appeal the court finds that the ruling appealed from is unlawful within the meaning of this act, it shall have the power to vacate or modify the same.**

Section 106-35. Abatement and assessment of costs

- (a) If the owner fails, neglects, or refuses to abate the nuisance, or the nuisance is not otherwise abated, 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 within the time permitted to do so as stated in the administrative official's written determination, then the municipality may enter upon the property and abate the nuisance using its own forces, or it may provide by contract for the abatement. For purposes of this article, compliance with the competitive bid law**

is not required (11-67-25). However, if an appeal has been taken to the circuit court as provided in Section 106-35, then the municipality may not abate the nuisance until the determination or judgment authorizing abatement becomes final as provided by law.

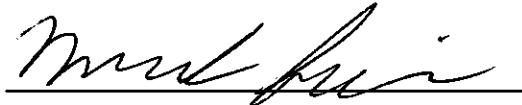
- (b) Upon completion of the abatement work performed by the municipality, including work by contractors employed by the municipality, the enforcing official shall compute the expenses of the municipality for the abatement of the nuisance, including, but not limited to, cost of labor, value of the use of the equipment, advertising expenses, postage, administrative expense, legal expense, and materials purchased which were incurred by the municipality because 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 days in advance of the time fixed by the municipal governing body to consider the assessment of the cost against property.
- (c) At the time fixed for receiving and considering the statement, the municipal governing body shall hear the same, together with any objections which may be raised by the owner whose property is liable to be assessed for the expenses of the municipality for 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. A weed lien established pursuant to this act is subject to and subordinate to any mortgage or security interest recorded prior to the recordation of the weed lien.
- (d) A copy of the resolution shall be given to the county tax collecting official. It shall be the duty of the county tax collecting official 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 municipality 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 collecting official 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) The municipal 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. When a weed lien is made against a lot or lots or parcel or parcels of land, a subsequent redemption hereof 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 municipality, 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 after a sale to the state for the nonpayment of taxes, shall take the same subject to the weed lien. Upon payment of the weed lien, the city clerk shall notify the county tax collecting official and may file a notice of satisfaction of weed lien in the records of the probate court.
- (f) Any owner, occupant, lessee, or person in control of said property shall have the right to *have any nuisance removed at his or her own expense providing the removal is done prior to the commencing of the work by the employees or agents of the municipality to do the removal.*

Section 2. That existing Article III of Chapter 106 Vegetation (Secs. 106-61 & 106-62) is hereby deleted in its entirety.


Section 3. That the City Clerk of the City of Dothan is hereby ordered and directed to cause this ordinance to be published.

Section 4. That this ordinance and the rules, regulations, provisions, requirements, orders, and matters established and adopted hereby shall take effect and be in full force and effect from and after the date of its final passage and adoption.

PASSED, ADOPTED, AND APPROVED ON November 16, , 2021.



Mayor

ATTEST:


City Clerk



Associate Commissioner District 1



Associate Commissioner District 2



Associate Commissioner District 3



Associate Commissioner District 4




Associate Commissioner District 5



Associate Commissioner District 6
BOARD OF CITY COMMISSIONERS

I hereby certify that the above ordinance was published in THE DOTHAN EAGLE, a newspaper of general circulation in the City of Dothan, Alabama, on November 19, 2021.



Wendy Shiver
City Clerk