

ORDINANCE NO. 200-14

**AN ORDINANCE CONCERNING THE ABATEMENT OF
LITTER AND JUNK PUBLIC NUISANCES**

WHEREAS, the City of Pinson, Alabama (the “City”) is authorized by law to prevent injury or annoyances from anything dangerous or unwholesome, to cause all such nuisances to be abated, and to assess the cost of abating the same against the person creating or maintaining the nuisance;

WHEREAS, the City is authorized by law to maintain the health and cleanliness of the city;

WHEREAS, the City is authorized by law to enact ordinances to ensure good sanitary conditions in public places and private premises;

WHEREAS, the City is authorized by law to require conditions favorable to mosquitoes and other like insects to be abated, or to do such work at the expense of the owner, the same to be a lien on the property to be collected as any other debts are collected or liens enforced;

WHEREAS, the City Council finds that, from time to time, persons within the city deposit trash, rubbish, junk, and/refuse on public and private properties; and that such collections of the same create unhealthy, unclean, unwholesome, and unsanitary conditions that, among other things, are favorable to mosquitoes and other like insects;

WHEREAS, such conditions constitute a threat to the health, safety, and welfare to the citizens of the City and are also impediments to economic development within the City;

WHEREAS, the City Council desires to set forth due process safeguards, policies and procedures for the abatement of such conditions on such properties to the extent that they become public nuisances; and

WHEREAS, the City Council desires that the City employ, alternatively, all tools provided by law to the City for the fixing of costs, creation of liens, making of assessments, and collection of costs associated with abating such conditions when found to be a public nuisance, including but not limited to those found in § 6-5-122; § 11-45-1; § 11-47-117; § 11-47-118; § 11-47-130; § 11-47-131; and § 11-47-140 of the *Code of Alabama*.

THEREFORE, BE IT NOW ORDAINED by the City Council of the City of Pinson, Alabama, as follows:

Section 1. Duties of appropriate municipal official.

(a) The term “appropriate municipal official” as used in this Ordinance shall mean any City official or employee designated by the Mayor to exercise the authority and perform the duties delegated by this Ordinance.

(b) The appropriate municipal official is hereby authorized to enforce all of the provisions of this Ordinance.

Section 2. Definitions.

As used in this Ordinance, the following words have the following meanings:

(a) "Litter" means rubbish, refuse, waste material, garbage, dead animals or fowl, offal, paper, glass, cans, bottles, scrap metal, debris, or any trash of whatever kind and description, and whether or not it is of value. As used herein, “litter” shall also include fallen or cut limbs, tree cuttings, fallen or cut trees, vegetation cuttings, and yard waste. Any agricultural product in its natural state that is unintentionally deposited on a public highway, road, street, or public right-of-way shall not be deemed litter.

(b) “Junk” means any metals, machinery, plumbing fixtures, vehicle part(s) (including but not limited to mechanical parts, auto body parts, engine parts, mufflers, bumpers, truck caps and shells, truck storage boxes, box truck cargo areas, and trailer boxes), boat part(s), trailer part(s), mechanical part(s), rubber tire(s), appliance(s), furniture, machinery, equipment, building material, wire, cable, bearings, valves, pipes, pipe fittings, wood, or other items which are either in a wholly or partially rusted, wrecked, disabled, discarded, dismantled, or inoperative condition.

Section 3. Litter/Junk Nuisances.

Any premises in the city that has a collection of junk and/or litter that presents unsafe, unhealthy, unsanitary or unwholesome conditions and/or creates conditions favorable to

mosquitoes and other like insects is hereby declared to be a public nuisance on account of such litter or junk (referred to in this Ordinance as a "Litter/Junk Nuisance"), and may be abated as provided by this Ordinance.

Section 4. Notice from appropriate municipal official of litter/junk nuisance.

(a) Whenever the appropriate municipal official of the City finds that any building, structure, or premises situated in the City contains a litter/junk nuisance, the appropriate municipal official may, as set forth in this Section 4, give written notice to remedy the litter/junk nuisance. The notice shall reasonably describe the property where the litter/junk nuisance is located, through the use of a street address, legal description, and/or the parcel identification number. The notice shall generally set forth the basis for the appropriate municipal official's finding of a litter/junk nuisance and shall direct the owner(s) to abate and eliminate the litter/junk nuisance within a reasonable time set out in the notice, which time shall not be less than fourteen (14) days of the date of the notice (or if the same cannot be abated within that time to provide the appropriate municipal official with a work plan to accomplish the same, which plan shall be submitted within fourteen (14) days of the making of the notice and shall be subject to the approval of the City Council).

The notice shall state (i) that, in the event the owner(s) does not comply within the time specified therein, then the abatement and elimination of the litter/junk nuisance may be accomplished by the City and the cost thereof assessed against the owner(s) (and as a lien on the property, where appropriate); (ii) that the abatement and elimination work must be completed to the appropriate municipal official's satisfaction or else the same may be completed and accomplished by the City, with the cost thereof assessed against the owner(s) (and as a lien on the property, where appropriate); and (iii) that a public hearing as provided for by Section 5(a) shall be held on the finding of the appropriate municipal official at a date, time, and location specified in the notice.

(b) The appropriate municipal official shall give the notice required by Section 4(a) by all of the following means:

(1) By certified or registered mail, properly addressed and postage prepaid, to all of the following persons or entities:

i. The person or persons, firm, association, or corporation last assessing the property for state taxes to the address on file in the Jefferson County Tax Assessor's Office;

ii. In the event that (x) the appropriate municipal official reasonably determines that the cost of the abatement of the litter/junk nuisance will exceed \$750.00, or (y) the abatement will involve entering into a structure or locked fencing/barrier, the record property owner or owners (including any owner or owners of an interest in the property) as shown from a search of the records of the office of the Judge of Probate of Jefferson County, Alabama, at the owner or owners' last known address and at the address of the subject property; and

iii. Any person who is otherwise known to the City Clerk or to the appropriate municipal official to have an interest in the property.

(2) By posting notice of the order, or a copy thereof, within three (3) days of the date of mailing required by Section 4(b)(1), at or within three feet of any entrance to any building or structure on the premises. If there is no entrance, then the notice may be posted at any location on the premises visible from a public right of way.

(c) In addition to the required notice provisions in Section 4(b), the appropriate municipal official may, in his sole discretion, publish a short form of the notice described in Section 4(a) in a publication of general circulation in Jefferson County, Alabama.

(d) In the event that Section 4(b)(1)(ii) is applicable, and the identity or whereabouts of the record property owner(s) cannot be ascertained after a reasonably diligent search, the appropriate municipal official, in addition to complying with the applicable notice provisions in Section 4(b) of this Section, shall issue notice to the unknown or unlocated property owner(s) by publishing a short form of the notice described in Section 4(a) in a publication of general circulation in Jefferson County, Alabama, once a week for four consecutive weeks.

Section 5. Hearings and extensions.

(a) After the time to take action specified in the notice provided for by Section 4(a), but no less than fourteen (14) days from the date the notice is given as provided for by Section 4(a) or the date of the last publication in Section 4(d) (if applicable), whichever is later, if the owner of any property cited hereunder fails to comply with the notice prescribed, the City Council shall hold a public hearing to receive any objections to the finding by the appropriate municipal official of the litter/junk nuisance. A written request for a public hearing is not necessary. At the public hearing, which may be continued from time to time (in order to permit an owner additional time to abate the litter/junk nuisance, in order to receive additional information concerning the property, or for other reason in the discretion of the City Council), the City Council shall also receive any written objections to the finding by the appropriate municipal official. Any such written objection must be submitted to the City Clerk prior to the start of the City Council meeting at which the public hearing is held. No action shall be taken on the finding of the appropriate municipal official until determination thereon is made by the City Council.

(b) After holding the hearing, the City Council may determine whether or not the building, structure, or premises situated in the City is a litter/junk nuisance. If it is determined by the City Council that a building, structure, or premises situated in the City is a litter/junk nuisance, the City Council may order the abatement and elimination of the litter/junk nuisance, at the expense of the City, and assess the expenses of the same to the person creating or maintaining the same (and impose a lien upon the property where allowed by law), as set forth in Sections 6 and 7.

(c) Upon the City Council ordering the abatement and elimination of the litter/junk nuisance, the appropriate municipal official (with such assistance as he/she may deem necessary) may enter upon such premises where the litter/junk nuisance is located and cause the same to be removed and abated.

(d) Nothing in this Ordinance shall prevent the City from reinitiating the proceedings authorized by this Ordinance at any time so long as all the requirements of this Ordinance are satisfied anew.

Section 6. Fixing of costs as final assessment.

(a) Upon the completion of the work to abate and eliminate the litter/junk nuisance, the appropriate municipal official shall make a report to the City Council of the cost thereof by tendering a copy of the report to the City Clerk. The City Clerk shall distribute a copy of the report to the members of the City Council. The City Clerk shall set the report of costs for a public hearing at a meeting of the City Council. The costs may include any and all costs of the City in the work, including but not limited to the costs of collecting and hauling the litter and/or junk, the costs of notices and publications, any title examination fees, and any legal fees.

(b) The City Clerk shall give no less than ten (10) days notice of the meeting at which the fixing of the costs is to be considered by first-class mail to all persons or entities entitled to receive notice under Section 4(b)(1). Notice shall be deemed complete upon mailing.

(c) Any person, firm, or corporation having an interest in the property may be heard at the meeting as to any objection to the fixing of the costs or the amounts thereof.

(d) Following the public hearing, the City Council may adopt a resolution fixing the costs which it finds were reasonably incurred in the work to abate and eliminate the litter/junk nuisance, and in assessing the costs against the person creating or maintaining the same (and/or as against the property as a lien, as may be permitted by law) (“the final assessment”).

Section 7. Final assessment.

(a) The final assessment once made and confirmed by the City Council shall constitute a valid debt and legal obligation as against the person as specified by the City Council. If such person does not pay the obligation, then the City may institute a civil action on the debt in order to collect the same.

(b) In cases where the nuisance is related to items as set forth in § 11-47-140 of the *Code of Alabama*, the final assessment shall also constitute a lien on the property for the amount of the final assessment. In such case, the City Clerk shall file a certified copy of the resolution in the office of the Judge of Probate of Jefferson County.

Section 8. Emergency action.

(a) The appropriate municipal official is hereby authorized to initiate the immediate abatement and elimination of the litter/junk nuisance when in the opinion of the appropriate municipal official such emergency action is required due to imminent danger to property, life, or health; or the obstruction of a sidewalk/public right of way (such as, for example, where a collection of litter and/or junk is strewn such that it is presenting an obstacle to traffic or pedestrians, or is in danger of spreading through wind or rain to other properties or public ways). In the case of emergency action pursuant to this Section 8(a), the appropriate municipal official may promptly cause the abatement and elimination of the litter/junk nuisance. For this purpose, the appropriate municipal official may at once enter the property with such assistance and at such cost as the appropriate municipal official may deem necessary. For this purpose, the appropriate municipal official may temporarily close a public or private way.

(b) Alternatively, the City Council is hereby authorized to, by resolution or motion reflected upon the minutes of its proceedings, order the immediate abatement and elimination of the litter/junk nuisance, as set forth in this subsection, when in the opinion of the City Council such emergency action is required due to imminent danger to property, life, or health; or the obstruction of a sidewalk/public right of way (such as, for example, where a collection of litter and/or junk is strewn such that it is presenting an obstacle to traffic or pedestrians, or is in danger of spreading through wind or rain to other properties or public ways). For this purpose, the City Council may temporarily close a public or private way.

(c) To the extent that the circumstances allow without furthering the risk of the emergency conditions, prior to taking any action, the appropriate municipal official or the City Council as applicable shall attempt to give actual notice of the proposed action to those persons and/or entities identified in Section 4(b)(1) and seek to secure their cooperation.

(d) In the case of any action taken pursuant to this Section 8, the appropriate municipal official shall prepare a declaration of the emergency that shall set forth in detail the reason or reasons for the abatement. The declaration shall describe the property by the street address, the legal description, and/or the parcel identification number.

(e) The appropriate municipal official shall serve, post, and file the declaration as soon as practicable as provided for the service of a notice in Section 4(b). The appropriate municipal official shall also provide the declaration to the City Council by tendering a copy of the report to the City Clerk. The City Clerk shall distribute a copy of the report to the members of the City Council.

(f) The cost of the emergency action may be fixed by the City Council and shall be assessed pursuant to this Ordinance in the same manner provided for non-emergency abatement of a litter/junk nuisance.

Section 9. Enforcement and penalties.

(a) It shall be unlawful for any person, or for any agent, servant or employee of such person, to fail to comply with an order or notice given pursuant to this Ordinance.

(b) It shall be unlawful for any person, or for any agent, servant or employee of such person, to fail or refuse to perform any duty imposed by this Ordinance.

(c) It shall be unlawful for any person, or for any agent, servant or employee of such person, to obstruct or interfere with an appropriate municipal official in carrying out the purposes of this Ordinance.

(d) It shall be unlawful for any person, or for any agent, servant or employee of such person, to obstruct or interfere with an abatement action ordered pursuant to this Ordinance by remaining upon the premises or in such proximity to the premises and at such a time and location where the work cannot be accomplished without endangering the life, health, safety, or general welfare of himself or another person.

(e) It shall be unlawful for any person, or for any agent, servant or employee of such person, to mutilate, destroy, tamper with, or remove a notice posted pursuant to Section 4(b)(2) or Section 8(e).

(f) It shall be unlawful for any person who has received a notice pursuant to Section 4 or a declaration pursuant to Section 8 to sell, transfer, mortgage, lease, encumber, or otherwise dispose of such building, structure, or premises that is the subject of notice to another until such person shall first furnish the grantee, transferee, mortgagee, or lessee a true copy of the notice served pursuant to Section 4 or the declaration served pursuant to Section 8 and shall furnish to the City building official a signed and notarized statement from the grantee, transferee, mortgagee, or lessee acknowledging the receipt of the notice served pursuant to Section 4 or the declaration served pursuant to Section 8 and fully accepting the responsibility without condition for making the corrections or repairs required by such notice served pursuant to Section 4 or Section 8.

(g) A violation of this Section shall be punishable by a fine not to exceed the sum of five hundred (\$500) for each offense, and if a willful violation, by imprisonment, not to exceed six months, or both, at the discretion of the court trying the same. Each day shall constitute a separate offense.

(h) The penalties and remedies provided by this Ordinance shall not apply to the City or any official (elected or appointed), agent, officer, or employee of the City who is administering this Ordinance or otherwise performing its, his, or her official duties.

Section 10. Civil remedies.

The continued or recurrent performance of any act or acts deemed unlawful under Section 9 of this Ordinance is hereby declared to be detrimental to the health, safety, comfort and convenience of the public and is a nuisance. The City, as an additional or alternative remedy, may institute injunctive proceedings in a court of competent jurisdiction to abate the same or proceed as otherwise authorized under law to address nuisances.

Section 11. No effect on immunities.

This Ordinance is adopted only to provide a service for the public as a whole, and is not for the benefit of any individual person or entity. By the adoption of this Ordinance, the City and its agents, officers, and employees accept no duty for the benefit (intended or unintended) of any person, including but not limited to any owner, mortgagee, lien holder, landlord, tenant, occupant, roomer, invitee of any type, trespasser, or any of their agents, officers, or employees. Any duty alleged to arise under this Ordinance on the part of the City or any of its agents, officers, or employees for the benefit of any person is hereby expressly rejected. The City and its agents, officers, and employees hereby expressly reserve all applicable immunities existing under any doctrine, authority, or law (whether under the common law, statute, or otherwise). Save for the powers and remedies that this Ordinance gives to the City and to its agents, officers, and employees who are administering this Ordinance or otherwise performing its, his, or her official duties, this Ordinance does not create any private cause of action for the benefit of any person.

Section 12. Cumulative effect.

This Ordinance is cumulative in nature and is in addition to any power and authority that the City may have under any other law.

Section 13. Severability.

The provisions, sections, paragraphs, sentences, clauses, phrases, and parts thereof of this Ordinance are severable, and if any provision, section, paragraph, sentence, clause, phrase, or part thereof of this Ordinance shall be declared unconstitutional or invalid by a court of competent jurisdiction, then such ruling shall not affect any other provision, section, paragraph, sentence, clause, phrase, or part thereof, since the same would have been enacted by the City Council without the incorporation of any such unconstitutional or invalid provision, section, paragraph, sentence, clause, phrase, or part thereof.


Section 14. Effective Date.

This Ordinance shall become effective upon its adoption as provided by law.

ADOPTED this the 6th day of August, 2020.


HOYT SANDERS, MAYOR

ATTEST:

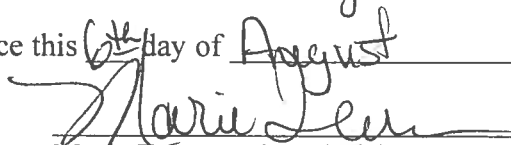

MARIE TURNER, CITY CLERK/TREASURER

CERTIFICATION OF CITY CLERK/TREASURER

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, Marie Turner, City Clerk/Treasurer of the City of Pinson, Alabama, do hereby certify that the above and foregoing is a true and correct copy of an Ordinance duly adopted by the City Council of the City of Pinson, Alabama, on the 6th day of Aug., 2020.

Witness my hand and seal of office this 6th day of August, 2020.


Marie Turner, City Clerk/Treasurer