

AMENDMENT TO CHAPTER 62
CITY OF MILLBROOK CODE OF ORDINANCES

1. SECTION 1. Chapter 62 of the City of Millbrook Code of Ordinances is repealed in its entirety and replaced by the following:

ARTICLE 1. IN GENERAL.

Secs 62-1----62-30. Reserved.

ARTICLE II. UNSAFE/DILAPIDATED BUILDINGS, WEEDS, JUNK, AND
ABANDONED VEHICLES

Sec 62-31. Definitions: The following definitions apply to all Sections contained herein. Unless the context clearly requires a different meaning, the words used in this Section will have the meanings set out below:

Abandoned Motor Vehicle means a motor vehicle (as defined in 32-8-2, Code of Alabama) which:

(1) has been left by the owner, or some person acting for the owner, with an automobile dealer, repairman, or wrecker service for repair or for some other reason and has not been called for by the owner or other person within a period of 60 days after the time agreed upon and within 60 days after the vehicle is turned over to a dealer, repairman, or wrecker service when no time is agreed upon, or within 60 days after the completion of necessary repairs.

(2) is left unattended on a public street, road, or highway or other public property for

(3) has been lawfully towed onto the property of another at the written request of a law a period of at least seven days; or left unattended continuously for at least seven days in a business district or a residence district; or if left unattended in a business district that has at least one posted notice in an open and conspicuous place indicating that there is a time limitation on the length of time a motor vehicle may remain parked in the district and the motor vehicle remains unattended for a period of time in excess of that posted on the notice; or left unattended in a business district or residence district that has at least one posted notice indicating that only authorized motor vehicles may park in that district and the owner of the motor vehicle or his or her agent has not received the required authority prior to leaving the motor vehicle unattended; or left unattended on a private road or driveway without the express or implied permission of the owner or lessee of the driveway or their agent. enforcement officer and left there for a period of not less than 60 days without anyone having made claim thereto.

(4) has been abandoned, has an expired license plate, or is inoperable in a parking area on private property maintained by the property owner or his or her agent for use by his or her tenants, residents, or their guests. A vehicle shall be defined as abandoned or inoperable under this subdivision if it has an expired license plate or has remained in the same parking lot for a period of 30 days or more.

Attractive Nuisance means anything on a premises that might attract children into danger or harm; such as, and without limitation, a swimming pool, playground equipment in disrepair,

man-made or natural occurring elements such as fallen trees or other such items that might attract children to climb or play on with a reasonable possibility of harm occurring to them.

Building means any building, structure, part of a building or structure, party wall, foundation used or intended for supporting or sheltering any use or occupancy.

City means the City limits and the Police Jurisdiction of the City of Millbrook, Alabama, except for the control of weeds which is not enforced in the police jurisdiction.

Council or City Council means the City Council of Millbrook, Alabama.

Enclosed Area means any area which is inaccessible to the public view by fencing, shrubbery or otherwise, to a height of six feet.

Enforcing Official means the Chief Building Official (CBO) or the Assistant Building Official of the City and any other person(s) the Mayor or Council may appoint from time to time.

Junk means, materials of little or no value (save for scrap value) and includes, without limitation, such material as metals, whether ferrous or non-ferrous, including, but not limited to, any used or secondhand parts of machinery, plumbing fixtures, or parts thereof; parts of any 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; rags; papers, buildings; wood or any other used or second hand metal articles, including junk vehicles. Junk vehicles are more specifically defined herein.

Junk Vehicles means any motor vehicle, trailer, or semi-trailer that has remained on private property and in view of the general public for at least thirty days and is inoperable in that one or more of its major mechanical components, including without limitation, the engine, transmission, drive train, or wheels, are missing or are not functional, or the vehicle otherwise constitutes a nuisance. An inoperable motor vehicle shall not be deemed a nuisance if the motor vehicle has been rendered temporarily incapable of being driven under its own motor power in order to perform ordinary service or repair operations, or if the motor vehicle is on the premises of a place of business engaged in the wrecking or junking of motor vehicles, or primarily engaged in the storage and sale of theft-recovered vehicles for insurers or if the motor vehicle is kept in an enclosed building or is otherwise completely shielded from the view of individuals on the adjoining private properties, public properties or streets.

Jurisdiction means the City limits and its police jurisdiction, except that procedures utilized for the enforcement of weed control or abatement is limited only to the city limits and does not apply to the police jurisdiction, as prescribed by state law.

Municipality see City.

Nuisance means anything that works hurt, inconvenience or damage to another. The fact that the act done may otherwise be lawful does not keep it from being a nuisance. The inconvenience complained of must not be fanciful or such as would affect only one of a fastidious taste, but it should be such as would affect an ordinary reasonable person. It encompasses *Attractive Nuisance*.

Owner means the person or persons, firm, association, corporation or other entity last assessed on the property who is the recorded owner of the property for state taxes according to the county tax assessor records. For purposes of this Chapter the term Owner may include tenants renting single-family dwellings. It also includes the person or persons, firm, association, corporation, or other entity shown on the title of a vehicle.

Person means any natural or legal person including partnerships, corporations, limited liability companies and the like.

Permanent improvements means all repairs, improvements, appurtenances, buildings, and equipment attached to property as fixtures.

Police Jurisdiction means that area extending up to three miles beyond the city limits.

State means the State of Alabama.

Temporary means a reasonable period of time. The exact amount of time for abating any nuisance is given by the Enforcing Official in the Notice prescribed herein. In determining the exact amount of time the Enforcing Official shall take into account the totality of the circumstances; such as and without limitation: the severity of the nuisance, cost factors to remedy the nuisance, previous nuisance complaints, the cooperation of the responsible party, weather conditions and other pertinent facts.

Trailer means a device without motive power designed for carrying persons or property on its own structure and to be drawn by a vehicle, a separate motor or an animal. The term shall include semitrailer, travel trailer or utility trailer.

Unsafe/Dilapidated Building means a building in such disrepair as to be substandard, or unfit for human habitation, and/or a hazard to the public health, safety, and welfare.

Vehicle means any machine propelled by power other than human power, designed to travel on the ground by use of wheels, treads, runners or slides and transports person(s) or property or pull machinery and shall include, without limitation, tractors, buggies and wagons or any parts or portions thereof.

Weeds means an abundance of overgrown grass or weeds within a municipality that is injurious to the general public health, safety, and general welfare by providing breeding grounds and shelter for rats, mice, snakes, mosquitoes, and other vermin, insects, and pests; or attaining heights and dryness that constitute a serious fire threat or hazard; or bearing wingy or downy seeds, when mature, that cause the spread of weeds and, when breathed, irritation to the throat, lungs, and eyes of the public; or hiding debris, such as broken glass or metal, that could inflict injury on a person going upon the property; or being unsightly; or a growth of grass or weeds, other than ornamental plant growth, that exceeds 12 inches in height. By state statute, the control of weeds cannot be enforced in the police jurisdiction of the city.

ARTICLE III. APPOINTMENT, AUTHORITY AND TYPES OF NUISANCES

Sec. 62-32. General.

a. Enforcing Officials. The Building Official, the Assistant Building Official and any other person appointed by the Mayor or Council from time to time, are hereby designated as the Enforcing Officials to exercise the authority and perform the duties delegated by Sections 62-31 through 62-41.

b. Authority. Through the enactment of several statutes, the State of Alabama has invested municipalities with the authority to abate nuisances. The general authority for the

regulation and control of nuisances is derived from Section 6-5-122, Code of Alabama, 1975. Other Alabama Code sections exist for specific nuisances such as dilapidated or unsafe buildings (Section 11-53B-1, et.seq. or Section 11-40-30 et. seq. Code of Alabama, 1975) and overgrown weeds/vegetation (Section 11-67-60, et. Seq. Code of Alabama, 1975). Actions for abatement of nuisances may also be prosecuted through the municipal court as provided herein. Nothing in this Chapter shall prohibit the city from maintaining any action in law or equity that may otherwise be prescribed by state law or other equitable means.

c. Need to Abate Nuisances in General. Nuisances must be abated for a variety of reasons, including without limitation that they: burden the city treasury; contribute to blight; constitute unsafe conditions; promote crime in neighborhoods; invite plundering; attract vagrants; tend to attract children and endanger their lives and/or health; create fire hazards; create health hazards; create and interfere with the enjoyment of and/or reduce the value of private property; and interfere with the comfort and well-being of the public.

Sec. 62-33. Unsafe/Dilapidated Buildings or Conditions Upon the Premises. The existence of unsafe and dilapidated buildings and structures, or other unsafe conditions within the city constitutes a public nuisance and shall be abated as provided in Sections 62-31 through 62-41 of this Chapter. Any person, corporation, partnership, or other entity that allows such condition(s) to exist on their premises shall be in violation of this Section and shall be punished as provided herein.

Sec. 62-34. Junk and Junk Vehicles. The existence of junk, including junk vehicles constitutes a public nuisance and shall be abated as provided in this Sections 62-31 through 62-41 of this Chapter. Any person, corporation, partnership, or other entity that allows such condition(s) to exist on their premises shall be in violation of this Section and shall be punished as provided herein.

(1). The provisions of this Section shall not apply to the repair or servicing of not more than two vehicles or other thing where such is done by the owner of the vehicle or thing on the owner's property. It is further provided the repairs must be completed within a reasonable time as directed by the Enforcing Official but not longer than sixty (60) days commencing at the time the Official first notifies the owner, in writing, that he/she must complete the repair or servicing.

Sec. 62-35. Weeds/Vegetation: Overgrown grass or weeds prohibited and declared a nuisance.

a. It shall be unlawful and declared a nuisance and injurious to public health, safety and general welfare for any occupant, owner, lessee, or person in control of any property within the city or any occupant, owner, lessee or person in control whose property abuts city streets to allow an abundance of overgrown grass or weeds to exist if any of the following conditions are met: (1) the grass or weeds provide breeding grounds and shelter for rats, mice, snakes, mosquitoes and other vermin, insects and pests; (2) the grass or weeds attain such heights and dryness so as to constitute serious fire threat or hazard; (3) the grass or weeds 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 are capable of hiding debris, such as broken glass or metal, which could inflict injury on any person going upon the property; (5) the grass or weeds are unsightly; or (6) if not grown as ornamental plant growth, the grass or weeds exceed 12 inches in height. Said property shall include, but not be limited to, sidewalks, state or city rights-of-way of any nature, alleys, parking lots, driveways, grounds, fences, walls, property lines, privately owned storm drains, and vacant lots within the city. The foregoing

item (6) is meant to include maintaining rights-of-way from the owner(s)/developer(s) property line to the pavement or curb that adjoins their property.

b. Certain Property Exempted:

(1) An individual lot or premises of more than five acres, shall be considered farm property and exempt from cutting or mowing the entire property except that the owner/developer shall be required to cut and maintain a perimeter area of 15 feet from the property lines of all abutting, developed residential or business properties, or any state/city rights-of-way.

(2) In the case of subdivisions, the developer must maintain all unoccupied lots beginning when 75% of the subdivision is occupied. Prior to the 75% of occupation the developer shall be required to cut and maintain a perimeter area of 15 feet from the property lines of all abutting, occupied lots, business properties, or any state/city road.

c. The above stated conditions shall be abated as provided in Sections 62-31 through 62-41 of this Chapter. Any person, corporation, partnership, or other entity that allows such items to exist on their premises shall be in violation of this Section and shall be punished as provided herein.

Sec. 62-36. Abandoned Vehicles. Abandoned vehicles are declared to be a public nuisance. Any person, corporation, partnership, or other entity that allows such items to exist on their premises shall be in violation of this Section and shall be punished as provided herein.

ARTICLE IV. ACTIONS TO BE TAKEN

Sec. 62-37. Criminal Action for Abatement of Nuisance. Although the Municipal Court's jurisdiction is limited to providing for fines, imprisonment (or both) and does not include any injunctive relief (such as the abatement of a nuisance) said court does have jurisdiction for prosecution of a breach of all municipal ordinances (Section 12-14-1(b), Code of Alabama, 1975) and may order that any violator of Sections 62-33 through 62-36 of this Chapter be fined, imprisoned, or both, and may order restitution in order for the city to recoup any expenses involved in the abatement of such violation. A criminal action is the least time-consuming, and therefore the preferred method for abating a nuisance. However, circumstances may dictate that an action in civil court shall be taken, as in the instance (without limitation) of an absentee landowner.

a. Whenever an Enforcing Official discovers any nuisance upon premises located in the city limits or police jurisdiction of the city (except control of weeds which is not enforced in the police jurisdiction), and prior to the issuance of a Court Summons, said official shall initially cause to be issued to the owner or person in charge of said premises notice that said person is in violation of this article. Notwithstanding the previous sentence if, in the opinion of the Enforcing Official, immediate action is required to protect the safety and welfare of the public these preliminary notices need not be issued, or the time for compliance may be reduced. This action shall rarely be used and may not be lightly or arbitrarily made. The Enforcing Official must have an articulately rational reason for taking such swift action. Notice shall be perfected by personal delivery to the violator, or by first class mail addressed to the responsible party. If the responsible party cannot be located, the Notice shall be placed on each accessible doorway of the home/building, as well as upon the property in a reasonably visible area. Notice shall be on city letterhead in substantially the following form:

THIS SPACE INTENTIONALLY LEFT BLANK

City Letterhead
NOTICE

To: *Name*
Address

You are hereby notified that you are maintaining the following described nuisance in violation of one or more of the following Section(s) of the Code of Ordinances City of Millbrook, Alabama. SECTION 62-33 SECTION 62-34 SECTION 62-35 SECTION 62-36 (Circle applicable Sections) to wit:

This nuisance must be corrected by the following action(s)

These actions must be completed within _____ days of the date of this Notice. If not corrected within this time a complaint will be filed in the Millbrook Municipal Court for violation of the above stated Code section.

The official whose name appears below will inspect the premises on the next business day following the scheduled completion date shown above. If necessary corrections have been made no further action will be taken. If you have any questions please call the undersigned at the phone number shown below.

Date: _____ / _____
Printed Name _____ Signature _____
Enforcing Officer _____ Phone No. _____

b. If the condition(s) cited is/are not corrected by the time provided above, the Enforcing Official may file a Complaint in the municipal court and a Summons to appear in said court issued.

c. In addition to seeking a Summons the Enforcing Official may have the nuisance abated at the city's expense and request restitution of that amount in the Municipal Court case.

d. If the person responsible for the upkeep of the premises cannot be located, or if for any reason(s) the above procedures prove impractical, the Enforcing Official may seek abatement through the office of the City Attorney for possible civil action.

Sec. 62-38. Civil Action Procedures. Under the authority of Section 6-5-122, Code of Alabama, 1975 the City may commence a civil action to abate or enjoin public nuisances which are injurious to the health, morals, comfort or welfare of the community. If, after giving Notice to the violator the nuisance cited has not been abated within the prescribed time, the Enforcing Official shall consult with the City Attorney and together they shall determine which of the several courses of action provided by state law (including criminal prosecution) shall be utilized to abate the nuisance.

a. **Unsafe/Dilapidated Buildings or Conditions on Premises.** The City Attorney may recommend, without limitation, the use of Section 11-53B-1, et.seq. or Section 11-40-30 et. seq. Code of Alabama, 1975.

b. **Control of Trash, Junk and Junk Vehicles.** For civil actions involving trash, junk and junk vehicles, such complaints must be brought before the city council who shall conduct a thorough investigation into the matter. If circumstances warrant, the council will then adopt a resolution setting out the facts that justify the declaration of a public nuisance and authorizing the city attorney to file suit in the circuit court of the appropriate county, as authorized by Section 6-5-122, Code of Alabama, 1975.

c. **Weeds.** Sections 11-67-60 through 11-67-67, Code of Alabama 1975 prescribes a civil procedure to follow in ridding the city of weeds. This civil action can only be enforced within the city limits and are not applicable to the police jurisdiction.

d. **Conditions Menacing Health.** For conditions which menace health, as enumerated in Section 22-10-1, Code of Alabama, 1975, the Enforcing Official shall refer same to the Elmore County Board of Health for appropriate action.

Sec. 62-39. Abandoned Vehicles. The procedure to be followed to abate the nuisance of abandoned vehicles shall be as prescribed in Section 32-13-1, et.seq., Code of Alabama, 1975.

Sec. 62-40. Interference with inspection or enforcement; refusal to allow entry.

It shall be unlawful and a violation of this Chapter for any person to interfere with, hinder, or refuse to allow a city official to enter upon private property for inspection of, or for the purpose of identifying, or obtaining any information concerning the presence of a nuisance.

Sec. 62-41. Penalty

a. Infractions of the provisions of this Chapter shall be considered a “violation” hereof and on conviction the violator shall be subject to punishment as provided in Section 1-8 of this Code. Each day of violation shall be deemed a separate offense.

b. If adjudicated guilty of any violation(s) of this Article, the first day of the offense shall commence on the day following the time period shown on the Notice to abate the nuisance.

c. The municipal court may also order restitution to the city for its costs associated with the abatement of nuisances.

SECTION 2. All other sections or provisions of the Code of Ordinances of the City of Millbrook, Alabama not specifically amended herein remain in full force and effect.

SECTION 3. Should any section or provision of this Ordinance be held invalid, such holding shall not affect the validity of any other section or provision hereof which is not of itself invalid.

SECTION 4. This Ordinance shall become effective upon its adoption and publication as required by law.

ADOPTED AND APPROVED THIS ____ DAY OF _____

Fred Watts
Council President

ATTEST:

Teresa Mercer
City Clerk

APPROVED:

VETOED:

Al Kelley
Mayor

Al Kelley
Mayor

CERTIFICATE AS TO APPROVAL OR VETO BY MAYOR

I, the undersigned City Clerk of the City of Millbrook, Alabama do hereby certify that the above and foregoing Ordinance was duly approved/vetoed by the Mayor of the City of Millbrook on the ____ day of _____.

Teresa Mercer
City Clerk

CERTIFICATE AS TO COUNCIL’S ACTION FOLLOWING MAYOR’S VETO

I, Fred Watts, as President of the City Council of the City of Millbrook, AL hereby certify that on the ____ day of _____, 20__ that the council voted to sustain/override the Mayor’s veto of this Ordinance.

FRED WATTS
Council President

ATTESTED BY:

Teresa Mercer
City Clerk

PUBLISHING

I, the undersigned City Clerk of the City of Millbrook, Alabama do hereby certify that the above and foregoing Ordinance has been published by posting in three public places in the City of Millbrook as required by law and note it was subsequently published in the Millbrook Independent.

Teresa Mercer
City Clerk