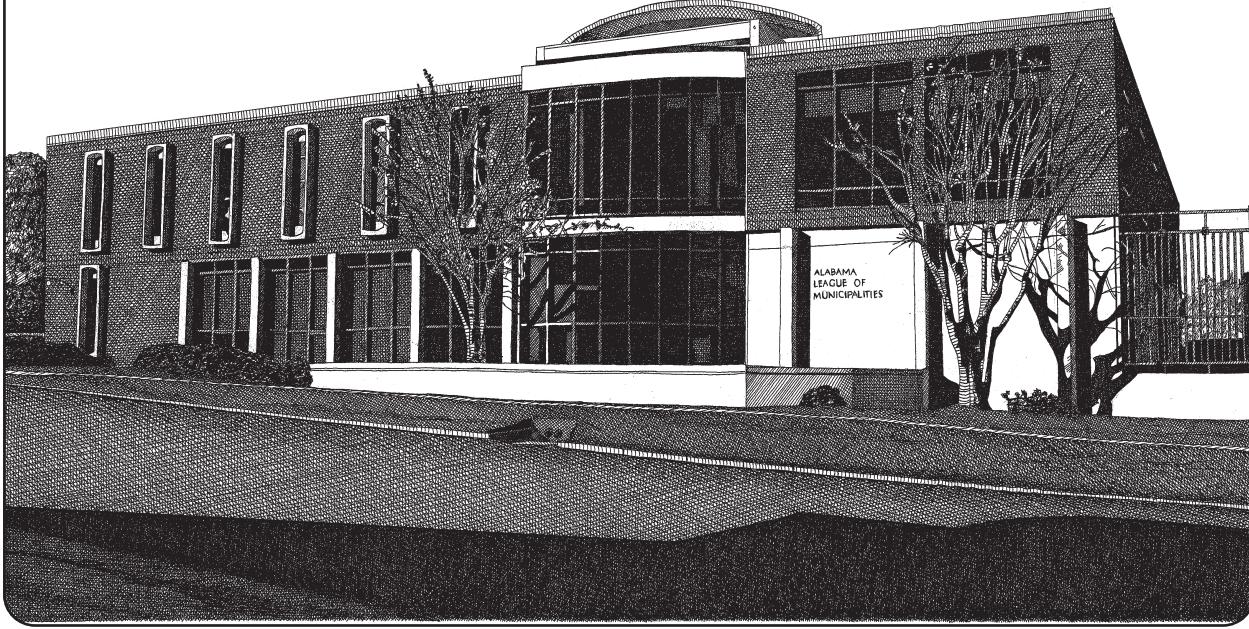


Laws of a Clean City



Prepared by The Alabama League of Municipalities

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Laws of a Clean City

Everyone has heard the adage that “cleanliness is next to Godliness” and that keeping homes and businesses clean is a mark of personal pride and responsibility. Like a home, a town need not be imposingly built in order to be attractive. Of all the things that can be done to make Alabama cities and towns more inviting, the least expensive and most rewarding is simply to keep them clean. But there is little incentive for residents to clean up if the streets are littered, if lots are overgrown with weeds, if buildings need repair, and if abandoned automobiles line the streets.

The primary responsibility for establishing and maintaining a clean community rests with the municipal governing body. Laws must be adopted also to ensure the cleanliness of private property as well.

Scope of City Power

The authority of a municipality to adopt ordinances for the cleanliness of the community rests upon the police power delegated by the Alabama Legislature in the form of general and special grants of power. Section 11-40-10, Code of Alabama 1975, states that “ordinances of a city or town enforcing police or sanitary regulations and prescribing fines and penalties for violations thereof shall have force and effect in the limits of the city or town and on any property or rights of way belonging to the city or town.”

This grant of authority in the police jurisdiction is especially important if a city or town wishes to clean up suburban areas outside the corporate limits. In order for an ordinance adopted after September 1, 2015, to have force and effect in a police jurisdiction of a municipality or town, the municipal governing body must provide a 30-day notice that the ordinance shall be effective in the police jurisdiction. The notice given shall be the same as required for adoption of an ordinance under Section 11-45-8. Additionally, if available at no cost to the municipality, the notice shall be submitted to the Atlas Alabama state website or any successor state-operated website providing information to businesses. No ordinance adopted after September 1, 2015, may be enforced against an individual or entity in the police jurisdiction affected by the ordinance until and unless the municipality has complied with the notice requirements provided for in Section 11-40-10. As of May 9, 2016, the Alabama Department of Revenue has developed a website for posting notices: localtaxunit@revenue.alabama.gov. As to whether submission to this website complies with the law, the League urges municipalities to discuss this with their local attorney.

General Police Power

Of the many grants of power to the city on this subject, the general grant of police power should be considered first. Section 11-45-1, Code of Alabama 1975, states that:

Municipal corporations may from time to time adopt ordinances and resolutions not inconsistent with the laws of the state to carry into effect or discharge the powers and duties conferred by the applicable provisions of this title and to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort, convenience of the inhabitants of the municipality, and may enforce obedience to such ordinances.

This section grants municipalities the power to adopt ordinances and regulations relating to sanitation and cleanliness within the city and its police jurisdiction.

Section 11-45-9 of the Code states that municipal ordinances may impose penalties of fines, imprisonment, hard labor or one or more of such penalties for violation of ordinances. No fine shall exceed \$500 and no sentence of imprisonment or hard labor shall exceed 6 months. The penalty imposed upon a corporation shall consist of the fine only, plus court costs.

A municipality has the authority to enact ordinances, pursuant to its police powers, as long as they are consistent with the laws of the state. *See Congo v. State*, 409 So.2d 475, 477-78 (Ala. Crim. App. 1981). “Whether ordinance is inconsistent with general law of state is to be determined by whether the municipal law prohibits anything which state law specifically permits.” *Congo*, 409 So.2d at 478. Additionally, an “ordinance which merely enlarges upon provision of statute by requiring more restriction than statute requires creates no conflict unless statute limits requirement for all cases to its own terms.” *Id.* at 478.

Dilapidated Buildings

No eyesore is more distressing to the appearance of a community than dilapidated, half-burned, or abandoned structures which gather debris and invites rodents. Cities and towns have the authority to adopt building laws and to abate nuisances. See Section 41-9-166, Code of Alabama 1975 and Section 11-47-117, Code of Alabama 1975. This title gives municipal councils the power to prescribe fire limits; to do all things necessary to prevent conflagrations; to adopt building laws; to employ building inspectors; to condemn buildings, parts of buildings, or structures dangerous to the public and prohibit the use thereof and to abate the same as a nuisance; and to make reasonable charges for plumbing, electrical wiring and food inspections, among many other powers granted to the municipalities through Title 11, Section 47.

A city, or town, also has the statutory right to commence an action in the name of the city to abate or enjoin a public nuisance that is injurious to the health, morals, comfort, or welfare of the community or any portion thereof. Section 6-5-122, Code of Alabama 1975. Section 6-5-120, Code of Alabama 1975, defines a nuisance as

[A]nything 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 man.

In *City of Selma v. Jones*, the court defined a public nuisance as one which damages people who come within its operation, generally giving no right of action to any individual, and must be abated by a process instituted in the name of the state. 79 So. 476 (Ala. 1918); see also, Section 6-5-121, Code of Alabama 1975. A nuisance may consist of conduct that is intentional, unintentional, or negligent. *Tipler v. McKenzie Tank Lines*, 547 So.2d 438 (Ala. 1989).

Additionally, if the owner of a dilapidated structure fails to comply with requests to abate the nuisance within a specified time, then the city or town is authorized to proceed to remove the structure. See Sections 11-40-30 to 11-40-36, Code of Alabama 1975; Sections 11-53A-20 to 11-53A-26, Code of Alabama 1975 (relating to Class 4 municipalities); Section 11-53A-1 to 11-53A-6 of the Code of Alabama 1975 (relating to Class 5, 6, and 8 municipalities); and Sections 11-53B-1 to 11-53B-16 of the Code of Alabama 1975.

This authority is closely allied with the power granted to municipalities by Section 11-47-117, Code of Alabama 1975, which states: "All cities and towns of this state shall have the power to prevent injury or annoyances from anything dangerous or offensive, or unwholesome and to cause all nuisances to be abated and assess the cost of abating the same against the person creating or maintaining the same." However, the better course of action, instead of taking summary action itself, would be for the city to enlist the assistance of the court, because if the court finds that there is no nuisance, after the city has acted, then the city, or town, may be held liable for its actions.

The burden is on the property owners to prove that the abatement of the public nuisance could be accomplished by less drastic means than requested by the municipality. *Conley v. City of Montgomery*, 414 So. 2d 58 (Ala. 1982).

General Health Powers

In Section 11-47-130, Code of Alabama 1975, municipalities have additional grants of general health and quarantine powers, as follows: "All cities and towns in this state shall have the power to maintain the health and cleanliness of the city or town within its limits and within the police jurisdiction thereof." Section 11-47-131 also states that:

In addition to the powers granted to them by the applicable provisions of this title or any other provision of law, all cities and towns of this state shall have the following powers, and the councils or other governing bodies of such cities and towns may provide by ordinance or resolution for the exercise or enforcement of the same:

1. To prevent the introduction of contagious, infectious or pestilential diseases into such cities or towns;
2. To establish and regulate a sufficient quarantine, not inconsistent with laws of the state, in the towns and cities and within the police jurisdiction thereof and to punish any breach of quarantine law;
3. To adopt such ordinances and regulations as the council or other governing body may deem necessary to insure good sanitary condition in public places or in private premises in the cities and towns; and
4. To prescribe the duties and fix the salaries and compensation for such health officials as they may deem necessary.

While a city, or town, has the power to pass reasonable ordinances and resolutions, they do not have the power to regulate them on an arbitrary basis. See *Pritchett v. Nathan Rodgers Constr. & Realty Corp.* 379 So. 2d 545 (Ala. 1975).

Litter Control

Equally distressing to the appearance of a community are streets and roadways littered with paper, wrappings, bottles, cans, and other types of waste. Litter is unsightly, dirty, and, more seriously, it is a health, fire, and safety hazard.

Municipalities may reduce this nuisance by passing an ordinance prohibiting littering on public property and may give notice to an owner of private property to remove litter. If the property owner fails to remove litter, the city may dispose of it and assess costs against the owner.

Additionally, under Section 13A-7-29, Code of Alabama 1975, it is crime to litter. The statute defines littering as:

1. Knowingly deposits in any manner litter on any public or private property or in any public or private waters, having no permission to do so. For purposes of this subdivision, 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. Discharges sewage, oil products, or litter from a watercraft vessel of more than 25 feet in length into a river, inland lake, or stream within the state or within three miles of the shoreline of the state.
4. a. Drops or permits to be dropped or thrown upon any highway any destructive or injurious material and does not immediately remove the same or cause it to be removed; or
b. Removes a wrecked or damaged vehicle from a highway and does not remove glass or other injurious substance dropped upon the highway from such vehicle.

The section goes on to define litter as rubbish, refuse, waste material, garbage, dead animals or fowl, offal, paper, glass, cans, bottles, trash, scrap metal, debris, or any foreign substance of whatever kind and description, whether or not it is of value. Section 13A-7-29, Code of Alabama 1975. The statute makes criminal littering a Class C misdemeanor, and the fines collected for littering will be distributed to the municipal, and/or county, and/or State's General Fund. *See* Section 13A-7-29(c) & (d), Code of Alabama 1975. Section 23-5-7 holds that cities and towns are responsible for erecting signs at suitable intervals in their respective areas of authority, including public parks, which inform the public that it is unlawful to perform the acts prohibited by Section 13A-7-29. *See* Section 23-5-7, Code of Alabama 1975.

Section 32-5A-60 also addresses littering and prescribes that a uniform traffic citation be issued for any violation of that particular section. *See* Section 32-5A-60, Code of Alabama 1975.

Weed Control

A weed-covered lot is a close second to dilapidated buildings for unsightliness, and it is a definite danger as a fire hazard and health menace among other things. Fortunately, authority for all municipalities to control this nuisance is granted specifically in Sections 11-67-60 through 11-67-67, Code of Alabama 1975. In addition, all municipalities have the authority to abate weeds under the general nuisance statutes, Sections 11-47-131 through 11-47-140, Code of Alabama 1975. Under both of the above provisions, the municipality may describe the conditions declared to be a public nuisance and punish the person or persons responsible for the maintenance of such conditions.

If the municipality follows Sections 11-67-60 through 11-67-67, the municipality should closely follow the notice requirements set out in the Code provisions. It should be noted that the term municipality in Section 11-67-60 does not include the police jurisdiction; therefore, a municipality may not use Sections 11-67-60 through 11-67-67 to abate weeds in the police jurisdiction. Below is a list of steps that should be followed under Sections 11-67-60 through 11-67-67, Code of Alabama 1975:

1. The municipality must pass a resolution declaring the weeds to be a public nuisance and declaring its abatement. The resolution should include the street name under which it is commonly known or give a legal description of the property upon which or in front of which the nuisance exists. One resolution may include multiple properties. Section 11-67-61, Code of Alabama 1975.
2. After the resolution is passed, notice of a public hearing on the matter must be mailed by certified mail, return receipt requested, 21 days prior to the date of the hearing and shall inform the owner of the time, date and place of the hearing and the reason for the hearing. The notice must be mailed to the owner of the property as the information appears on record in the office of the tax assessor. All notices shall carry a list of names of persons or private contractors, or both, who perform the work and are registered with the municipal clerk. The names shall not constitute a recommendation and the failure to include a list shall in no way affect the operation of

this article. Notice must be published in a newspaper of general circulation published in the municipality once a week for two consecutive weeks, or if no newspaper is published in the municipality, notice shall be posted in three public places located in the municipality for at least 21 days prior to the hearing. Section 11-67-62, Code of Alabama 1975.

3. In addition, two signs shall be conspicuously posted on the property at least 7 days prior to the public hearing. The wording of the signs shall not be less than one inch in height and shall be in substantially the following form: Notice is hereby given that on the _____ day of _____, 20____ at _____ A.M./P.M. in the council chamber, the council of the Municipality of _____ will consider a resolution regarding the weeds growing upon or in front of the property _____ Street, in the Municipality of _____, and more particularly described in the resolution, a copy of which is on file in the office of the municipal clerk; and at that time and place will determine whether the weeds constitute a public nuisance which shall be abated by removal of the noxious or dangerous weeds; and, if so, will order the abatement and removal of the nuisance. If abatement and removal are ordered, the cost of abatement and removal shall be assessed upon the lots and lands from which or in front of which the weeds are removed, and the cost shall be added to the next regular bills for taxes levied against the respective lots and lands for municipal purposes. The costs shall be collected at the same time and in the same manner as ordinary municipal taxes are collected. The costs shall be subject to the same commissions and fees and the same procedure for foreclosure and sale in case of delinquency as provided for ordinary municipal taxes. If no objections are filed with the municipal clerk at least five days before the meeting of the council and unless the person appears before the council in person or through his or her representative to show cause, if any, why his or her objection should be sustained, it shall be presumed that the person accepts the notice as fact and waives any rights he or she may have to contest the removal of the weeds and the action of the council shall be final unless good and sufficient cause can be otherwise shown. Reference is hereby made to the resolution, on file in the office of the municipal clerk, for further particulars. Dated this _____ day of _____, 20____. _____ Name of Municipality

City Clerk. Section 11-67-62, Code of Alabama 1975.

4. If objections are filed at the time stated in the notice, the governing body of the municipality must conduct a hearing and hear and consider all evidence, objections and protests regarding the proposed removal of weeds. Upon the conclusion of the hearing, the governing body of the municipality, by resolution, must decide whether a public nuisance exists and, if so, must order it to be removed or abated with respect to any property or part thereof described. Section 11-67-63, Code of Alabama 1975.
5. After the governing body has passed a resolution finding the conditions to be a nuisance and orders its abatement, all employees and agents of the city may enter the property to abate the nuisance. If the governing body uses outside contractors, competitive bidding is not required, and the governing body must adopt a resolution stating the name of the contractors. After the resolution is adopted the contractors may enter the property to abate the nuisance. A property owner may have the weeds removed at his or her own expense provided that the property owner's work commences before the municipal employee or contractor's work. Section 11-67-64, Code of Alabama 1975.
6. Each municipality must keep a report of the costs of abating the nuisance and submit the report to the governing body. Before the report is submitted to the governing body, the report shall be posted outside the governing body's chamber door for at least five days prior to the report along with a notice that states when the report will be submitted to the governing body. Section 11-67-65, Code of Alabama 1975.
7. The governing body must hear the report, together with any objections that may be raised by any of the property owners liable to be assessed for the work of abating the nuisance. The governing body may make amendments to the report as deemed necessary, and a motion or resolution may be passed to accept the report in its final form. The amounts of the cost in the report should be referred to as "weed liens." The liens will constitute a weed lien on the property for the amount of the weed liens. After confirmation of the reports, a copy shall be given to the tax collector or revenue commissioner of the county who, under the "Optional Method of Taxation," is charged with the collection of the municipal taxes pursuant to Article 1, Division 2, Chapter 51, of Title 11. It shall be the duty of the county tax collector or revenue commissioner to add the costs of the respective weed liens to the next regular bills for taxes levied against the respective lots and parcels of land subject to a weed lien, and thereafter, the costs shall be collected 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 collector or revenue commissioner for all costs associated with the foreclosure and sale unless the costs are collected at the time of sale as part of the sale. Section 11-67-66, Code of Alabama 1975.

8. In Act 2014-303, the Alabama Legislature gave municipalities the authority to adopt its own alternate procedures to abate overgrown grass and weeds as a public nuisance once it follows the notice process in Sections 11-67-60 through 11-67-67 on the property the first time. As such, when property on which overgrown grass or weeds have been previously abated or abatement has been attempted through the process of posting notice on the property pursuant to Sections 11-67-60 through 11-67-67, a municipality may pass an ordinance adopting a different abatement procedure for subsequent abatements. Section 11-67-68, Code of Alabama 1975.

Class 5, 6 or 8 municipalities have additional authority to abate weeds using Sections 11-67-20 through 11-6728, Code of Alabama 1975. A municipality may use the provisions found in Section 11-67-20 et seq. and Section 11-67-60 et seq., Code of Alabama, 1975, to require abutting landowners of an unopened street in a subdivision to either cut or maintain weeds up to the centerline of the unopened street. This may be done at the owner's expense, or the city may assess the owner for the costs of the removal as provided in the statute. The city may also use the statutes to require abutting landowners of opened and paved streets in a subdivision to cut or maintain weeds in the street right-of-way between the lot line and the paved surface of the street or to pay an assessment for the costs of the city doing the work as prescribed in the statute.

"An ordinance which declares as a nuisance and requires the abatement of weeds above a height certain is a reasonable exercise of the police power." *See generally McQuillen Municipal Corporations*, 3d ed., § 24.90, 659, 660; *see also City of Montgomery v. Norman*, 816 So.2d 72 (Ala. Crim. App. 1999).

The authority to abate weeds should **not** be regarded as self-executing. A municipality is charged with adopting an ordinance setting out requirements which property owners must meet in the maintenance of their lots. The ordinance should prescribe procedures which will be followed for the city or town to abate the condition at the expense of the property owner if the owner fails to maintain the property.

It should be noted that the primary duty to keep properties within the regulations rests with the property owner. While some ordinances mention aesthetic considerations along with public health and sanitation as the basis of the regulation, **the real authority is based on the protection of public health and safety.**

Under the authority of the general provisions found in Section 11-67-1, Code of Alabama 1975, all municipalities may abate conditions existing on private property in violation of such ordinances. Such work by the municipality is done at the expense of the property owner, and the charge constitutes a lien enforceable at law, which is properly referred to as a "weed lien."

Abandoned Vehicles

The authority to remove abandoned vehicles is found in the Abandoned Vehicles Act. Sections 32-13-1 et seq., Code of Alabama 1975. An abandoned motor vehicle is defined in Section 32-13-1 as a motor vehicle:

(1) that has been unclaimed as provided in Section 32-8-84 for not less than 30 calendar days from the date the notice was sent to the owner and lienholder of record, or if no owner or lienholder of record could be determined, has been unclaimed for not less than 30 calendar days. The term "abandoned motor vehicle" also includes any attached aftermarket equipment installed on the motor vehicle that replaced factory installed equipment.

Section 32-13-1, Code of Alabama 1975, through Section 32-13-11, Code of Alabama 1975, applies to private property of any nature, including residential and business lots, when such property is located in a business or residential district. A peace officer is authorized to remove an abandoned motor vehicle upon finding that it has been unattended on a public street, road, or highway for at least 48 hours. Section 32-13-2(a), Code of Alabama 1975. The officer must cause the vehicle to be removed to the nearest garage or other place of safety. *Id.* That officer will not be liable, unless he is grossly negligent, for removing the vehicle. Section 32-13-2(b). The person who removes the vehicle at the direction of the officer has a lien on the motor vehicle for a reasonable fee for the removal and storage. Section 32-13-2(b). The officer is required to give written notice to both the Alabama Law Enforcement Agency of the removal within five calendar days. Section 32-13-2(c). The notice must include a complete description of the motor vehicle identification number and the license number. *Id.* An owner or lessee or his or her agent of property on which an unclaimed motor vehicle is located can, remove the vehicle and has a lien on it. Section 32-13-2(d).

After the vehicle is lawfully removed or towed, it may be sold at public auction. Section 32-13-3, Code of Alabama 1975. Section 32-13-3 gives municipalities, as well as, any person or entity in possession of the motor vehicle the authority to sell an abandoned vehicle in order to satisfy a statutory lien they have on the vehicle for its towing and storage. *See Allstate Ins. Co. v. Reeves*, 440 So. 2d 1086 (Ala.Civ.App. 1983). However, *Allstate* also held that the code section does not permit someone who is towing the vehicle at the request of a police officer neither the right to retain the vehicle for his or her own personal use, nor to receive pay, except a reasonable towing and storage fee, from the proceeds of the sale. *Id.* Additionally, a person who repairs the vehicle and sells it at public auction passes title clear of any lien which may have existed under another code section. *Bryce v. Hosp. Credit Union, Inc. v. Warrior Dodge, Inc.*, 276 So.2d 602 (Ala. Civ. App. 1973).

Notice must be given by publication once a week for two successive weeks in a newspaper of general circulation in the county in which the sale is to be held, provided the vehicle is registered in the county. In counties in which no newspaper is published, notice shall be given by posting notice in a conspicuous place at the courthouse. The first publication or posting, as the case may be, must be at least 30 days before the date of sale. Section 32-13-3(b)(1), Code of Alabama 1975. The notice must advise of

1. the name and address of the current owner and lienholder of record, if any, as reflected on the current title or registration record of state,
2. the contact information for the person or entity filing the notice, the motor vehicle's identification number, year, make and model,
3. the date, time and location of the auction.

The auction/sale is required by law to occur where the vehicle is located. The Department of Revenue, within five calendar days of receipt of the notice of public auction, is charged with sending a motor vehicle interest termination notice to the current owner and lienholder of record, if any, as disclosed on the notice of public auction. The motor vehicle interest termination notice advises the owner and lienholder of record, if any, that their interest in the motor vehicle, upon its sale, will be terminated pursuant to this chapter, and personal property and items contained in the motor vehicle will be disposed of in a manner determined by the person or entity conducting the sale. The notice is required to include all the information provided in the notice of public auction as well as the owner or other interested party's appeal rights, pursuant to Sections 32-13-4 and 40-2A-8, Code of Alabama 1975, to contest the proposed sale of the motor vehicle.

Upon payment of the sales price, the purchaser of the abandoned motor vehicle is entitled to, and the person or entity making the sale must issue, a bill of sale for the abandoned motor vehicle, free and clear of all liens, security interests, and encumbrances, in a form as prescribed by the department. Further, each person or entity who sells a motor vehicle pursuant to this chapter, for three years from the date of the sale, shall maintain all of the following:

- a. Copies of the notices sent pursuant to subsection (d) of Section 32-8-84, Code of Alabama 1975, to the previous motor vehicle owner and lienholder of record, along with evidence that the notices were sent by certified mail.
- b. Any associated National Motor Vehicle Title Information System (NMVTIS) records and owner and lienholder records received from any state pursuant to subsection (d) of Section 32-8-84, Code of Alabama 1975.
- c. Any other records as required by the department.

It is vital to understand that if the person or entity making the sale of the motor vehicle failed to provide proper notices as required, the sale of the abandoned vehicle shall be void and the current owners, registrants, secured parties, and lienholders of record, if any, for the motor vehicle shall retain their ownership, security interests, liens, and interests in the motor vehicle.

Finally, if the current certificate of title to a motor vehicle sold pursuant to Abandoned Motor Vehicles Act is designated a salvage certificate of title, or if the records of the department indicate an application for a salvage certificate of title has previously been received, the new certificate of title issued by the department shall also be a salvage certificate of title. The purchaser of a salvage abandoned motor vehicle shall not be permitted to register the vehicle or operate it upon the highways of this state until such time as the vehicle is restored by a licensed rebuilder and inspected by the department as required by Section 32-8-87, Code of Alabama 1975, and a rebuilt Alabama certificate of title is issued.

If a person knows the name of the owner of the car in question and they fail to comply with Section 32-13-4, then it constitutes a wrongful taking and an illegal assumption of ownership. *Global Fed. Credit Union v. Walker*, 679 So.2d 1075 (Ala. Civ. App. 1996). [NOTE: this decision is before the comprehensive changes to the Abandoned Motor Vehicle Act.]

The current owner, registrants, secured parties, and lienholders of record of a motor vehicle prior to the sale, may contest the sale of the motor vehicle by filing a notice of appeal with the Alabama Tax Tribunal, or in the circuit court in the county where the sale is scheduled to occur. If no application for a hearing is timely made, the motor vehicle

and any personal property or items contained in the vehicle may be disposed in a manner determined by the person or entity conducting the sale. If the application for a hearing is timely made, the Alabama Tax Tribunal or circuit court will conduct a hearing to determine if the motor vehicle is abandoned and that proper notice was issued. Section 32-13-4, Code of Alabama 1975.

The person or entity making the sale has the right to reject any bid if the amount is unreasonably low. They also have the right to continue the sale from time to time if no bidders are present. Section 32-13-5, Code of Alabama 1975.

Under Section 32-13-6, the person or entity who makes the sale must deduct a reasonable cost for repair from the proceeds, towing and storage, as well as all reasonable expenses incurred in connection with the sale. They must then pay the balance to the license plate issuing official of the county in which the sale is made to be distributed to the general fund of the County. Section 32-13-6, Code of Alabama 1975.

Arguably, the abandoned motor vehicle act is not the only section of law granting authority to remove an abandoned vehicle. Section 11-47-117, Code of Alabama 1975, states: "All cities and towns of this state shall have the power to prevent injury or annoyances from anything dangerous or offensive, or unwholesome, and to cause all nuisances to be abated and assess the cost of abating the same against the person creating or maintaining the same."

Additionally, authority is found in Section 11-47-116, Code of Alabama 1975, which states: "All municipalities are hereby authorized to provide by ordinance for the taking up and storing of abandoned and stolen personal property found within the police jurisdiction and to sell the same ..." See the Appendix for complete statute.

The power of a city to impound a vehicle is based upon the theory that a dismantled, junked, or abandoned vehicle on public or private property constitutes an attractive nuisance for children and endangers their safety; provides harborage for rodents and other animals, constituting a menace to public health; creates a traffic hazard; and endangers the public safety. **Before relying on Sections 11-47-117 and 11-47-116, Code of Alabama 1975, please consult carefully with your city attorney. The Department of Revenue will not issue clear title to abandoned motor vehicles sold under the authority of these two sections due to concerns over due process. It is therefore advisable that abandoned automobiles only be sold by following the procedures of the abandoned motor vehicle act.**

Conclusion

On the subject of cleanliness and attractiveness of a community, one human trait is needed to achieve success – a sense of personal responsibility by each citizen. Everyone must be involved throughout the year so that the city or town is never less than what it should be. Establishing and maintaining a clean, healthful, and attractive community can be accomplished with sustained and active involvement.

For more information on the issues presented in this article, please contact the League Legal Department.



The Alabama League of Municipalities was organized in 1935 and has served since that time as the recognized voice of the cities and towns of Alabama. Through the years, the League has grown steadily and now serves 450 member municipalities. This voluntary membership brings officials of cities and towns together in a fellowship of public service which strengthens and guides local government in a progressive, responsible fashion.

The League conducts continuing studies of the legislative, administrative and operational needs, problems and functions of Alabama's municipal governments; holds conferences and meetings at which views and experiences of officials may be exchanged; encourages in the people of Alabama a sympathetic appreciation of the duties, responsibilities and rights of both municipal government and the citizen; and works to secure enactment of legislation which will enable all cities and towns to perform their functions more efficiently and effectively. The primary purpose of the League is to promote understanding of municipal government and administration in Alabama and thereby advance the welfare of the people of this state. ■