

ORDINANCE NO. 2021-01  
NUISANCE ORDINANCE  
TOWN OF MALVERN, ALABAMA

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AN ORDINANCE REPEALING ORDINANCE #86-3 IN ITS ENTIRETY AND MAKING IT UNLAWFUL TO CAUSE OR PERMIT NUISANCES TO REMAIN UPON PROPERTY WITHIN THE CORPORATE LIMITS TO PROVIDE FOR THE REGULATION AND CONTROL OF THE STORAGE, ACCUMULATION AND DISPOSITION OF JUNK, TRASH, RUBBISH, ABANDONED VEHICLES, WRECKED, DISMANTLED OR UNUSABLE VEHICLES AND BUILDING MATERIALS; THE MAINTENANCE OF BLIGHTED STRUCTURES AND OTHER BLIGHTING FACTORS OR CAUSES OF BLIGHT AND DETERIORATION THEREOF; TO PROVIDE PENALTIES FOR THE VIOLATION THEREOF.

BE IT ORDAINED by the Town Council of the Town of Malvern, Alabama, as follows:

**SECTION 1. Definitions:**

The following words or terms herein shall be deemed to have the meanings set forth below:

- a. The term **"Abate"** to stop, halt, end or terminate.
- b. The term **"Abatement Notice"**, means a written notice issued to a property owner or owners for a nuisance, property maintenance or building code related violation or combination of violations and providing for a specific time period for correction of the violations or to bring the property into compliance.
- c. The term **"Abatement Order"**, means the issuance of a legal order to a property owner or owners to remove or correct a nuisance, property maintenance or building code violation within a specified period of time and further providing for the Town to abate the nuisance at the expense of the property owner whenever the owner fails to comply with abatement within the time period specified.
- d. The term **"Abandoned and junked vehicles, boats, water craft, recreational vehicles, campers or mobile homes, manufactured homes, travel trailers, trailers"** shall include, without limitations, any vehicle, boat, houseboats, mobile home, manufactured home, travel trailer, motorized dwellings, converted buses, converted vans or trailer without a current required license plate, tag or registered current year decal; or one that is inoperable, un-towable, unused, stripped, scrapped, junked, discarded, dismantled, wrecked, on blocks or possessing deflated tires; or one which cannot be traced to a current owner of record.
- e. The term **"Antique or vintage vehicle"**, shall include a vehicle, operative or inoperative, which is being or has been restored and has a valid State of Alabama vintage vehicle license plate attached.
- f. The term **"Blighted Structure"**, shall include, without limitation any dwelling, garage, or outbuilding, storage or accessory building or any factory, shop, store, office building, warehouse or any other structure, or part of a structure, which, because of fire, wind, or other natural disaster, or physical deterioration, is no longer habitable as a dwelling, nor useful for the purpose for which it may have been intended.

g. The term **"Building Material"**, shall include, without limitation, lumber, brick, concrete, or cinder blocks, plumbing materials, electrical wiring or equipment, heating ducts or equipment, shingles, mortar, concrete, or cement, nails, screws, or any other materials used in constructing any structure.

h. The term **"Debris, Rubbish"**, shall include, without limitation the following: Accumulation of rubbish, trash, bushes, refuse, junk, and other abandoned materials, such as pallets, tires, rubber, and other equipment, garden tools, building supplies, toys, glass, metal and any and all forms of trash and rubbish not herein otherwise classified.

i. The term **"Enforcing Official"**, shall mean a police officer, sheriff, state trooper or any employee designated as an authorized agent by the Mayor, as the person or persons to exercise the authority and perform the duties delegated by this Ordinance to the enforcing official.

j. The term **"Junk"**, shall include, without limitation, parts of machinery or motor vehicles, broken and unusable furniture, stoves, refrigerators, freezers, clothes washer and dryer or other appliances, remnants of wood, metal, or any other cast-off material of any kind, whether or not the same could be put to any reasonable use.

k. The term **"Nuisance"**, means anything that unlawfully causes hurt, inconvenience or damage; that class of wrongs that arises from the unreasonable, unwarranted or unlawful use by a person of such person's own property, either real or personal, or from such person's own improper, indecent, unsightly or unlawful personal conduct, working an obstruction of or injury to the right of another or of the public, and producing material annoyance, inconvenience, discomfort or hurt to another person or to the general public; or anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property of another. The term includes a building nuisance an accumulation or storage of debris, refuse, rubbish, brush, used building material, parts of buildings, remains from building demolition, parts of untenable or uninhabitable structures, used machinery, used tires, used vehicles, parts of vehicles, abandoned junk and vehicles, or any other materials which may provide a breeding place for mosquitos, harmful insects, rodents or snakes, or is so unsightly as to be offensive to the surrounding area.

l. The term **"Owner" or "Owner of Property"**, includes legal title holder, or lessee, or occupant of property, or agent of legal title holder or lessee, in charge, possession or control of said property.

m. The term **"Person"**, shall include all natural persons, firms, partnerships, corporations, limited liability companies, all legally recognized entities, and all associations of natural person, incorporated or unincorporated, whether acting by themselves, or by a servant, agent, or employee. All persons who violate any of the provisions of this Ordinance, whether as owner, occupant, lessee, agent, servant, or employee shall, except as herein otherwise provided, be equally liable as principals.

n. The term **"Property"**, means real property within the corporate limits of the Town, including any real property situated within a dedicated right-of-way or easement burdening the subject real property, except to the extent that maintaining such property or removing any nuisance as defined herein may be impracticable to do so because of public facilities located thereon.

o. The term **"Town"**, shall refer to the municipal corporation known as The Town of Malvern, Alabama, and the governing body thereof. The term also refers to all real property located within the corporate limits of the Town of Malvern, Alabama.

## **SECTION 2. Nuisance Unlawful:**

It is hereby determined that the storage or accumulation of debris, rubbish, abandoned and junked vehicles, junk, building materials, blighted structures, by any person upon any private property within the Town of Malvern, shall be unlawful, and prohibited. The storage or accumulation of debris, rubbish, abandoned and junked vehicles, junk, building materials, and blighted structures tends to result in blighted and deteriorated neighborhoods, the spread of vermin and disease, the increase in criminal activity, and therefore is contrary to the public peace, health, safety, and general welfare of the community, and hereby declared a nuisance.

## **SECTION 3. Abandoned and junked vehicles, boats, watercraft, recreational vehicles, campers or mobile homes, manufactured homes, travel trailers, trailers.**

It shall be unlawful and a nuisance for any person to store, or to permit the storage or accumulation of any vehicle, boat, houseboats, mobile home, manufactured home, travel trailer, motorized dwellings, converted buses, converted vans or trailer without a current required license plate, tag or registered current year decal; or one that is inoperable, un-towable, unused, stripped, scrapped, junked, discarded, dismantled, wrecked, on blocks or possessing deflated tires except within a completely enclosed building or upon the premises of a properly licensed or approved junk dealer, junk buyer, dealer in used auto parts, or dealer in second hand goods or junk, that is licensed and approved for business in the Town of Malvern.

## **SECTION 4. Blighted Structure.**

It shall be unlawful and a nuisance for any person to keep or maintain any blighted or vacant structure, dwelling, garage, or outbuilding, storage or accessory building or any factory, shop, store, office building, warehouse or any other structure, or part of a structure, unless the same is kept securely locked, the windows kept glazed or neatly boarded up, and otherwise protected to prevent entrance thereto by unauthorized persons or unless such structure is in the course of construction in accordance to the Alabama State laws.

## **SECTION 5. Building Material.**

It shall be unlawful and a nuisance for any person to store or permit the storage or accumulation of building materials on any private property, except in a completely enclosed building or except where such building materials are part of the stock in trade or business, located on said property, or except where such materials are being used in the construction of a structure on the property in accordance with Alabama state laws.

## **SECTION 6. Debris, Rubbish, Junk.**

It shall be unlawful and a nuisance for any person to store or to permit the storage or accumulation of debris, rubbish, junk, and trash on any private property in the Town of Malvern.

## **SECTION 7. Area of Responsibility:**

It shall be the responsibility of owners, agents, occupants, and lessees to keep their property free of nuisances. Owners, agents, occupants, and lessees whose properties face on municipal streets or right-of-ways shall be responsible for keeping the property free of nuisances to the municipal street or other right-of-way. Owners, agents, occupants, and lessees whose properties face on municipal alleys shall be responsible for keeping the area from the property to the center line of the alley free of nuisances.

## **SECTION 8. Right of Entry for Inspection.**

Where there is reasonable cause to suspect the existence of any nuisance provided herein, the enforcing official(s) of the town are hereby authorized to enter or upon any premises within corporate limits of the town. It shall be unlawful for any person to interfere, hinder, or refuse to allow said enforcing official(s) to enter upon private property for inspection. Reasonable cause may be established by, but is not limited to, the filing of an oral or written complaint with the town.

## **SECTION 9. Notice to Abate Nuisance.**

a. Whenever the accumulation of debris, rubbish, junk, abandoned and junked vehicles, boats, water craft, recreational vehicles, campers or mobile homes, manufactured homes, travel trailers, trailers, building material, and the maintenance of blighted structures are found to be maintained on any private property within the Town of Malvern, the authorized enforcing official declares the condition a public nuisance and cause a written notice to be mailed by certified mail to the "occupant" at the address of the property on which the nuisance exists and to the owner of said property as the information is listed in the records of the tax accessor or revenue commissioner. If the property is a vacant lot, written notice will be mailed by certified mail to the owner of said property as the information is listed in the records of the tax assessor or revenue commissioner.

b. Abatement shall mean full and complete removal of any nuisance declared under section 3, 4, 5 and 6 of this Ordinance. Abatement shall mean either repair, rehabilitation, demolition, or removal, as shall be determine by the town council as the proper remedy, for any nuisance declared under Section 2 of this Ordinance.

## **SECTION 10. Contents of Notice.**

The issued notice under the provisions of the Ordinance shall contain:

1. An order to correct the violation and complete abatement of the nuisance with the following periods, provided the Enforcing Official may stipulate additional time, but in no case more than a total of 150 days:
  - a. Twenty-one (21) days from the date of notice if it is a debris, rubbish, and junk nuisance.
  - b. Thirty (30) days from the date of notice if it is abandoned and junked vehicles, boats, watercraft, recreational vehicles, campers or mobile homes, manufactured homes, travel trailers, trailers nuisance under section 3 of this Ordinance.
  - c. One Hundred Twenty (120) days from the date of notice if it is a blighted structure nuisance as declared under Section 4 of this Ordinance.
2. The location of the violation, if the same is stationary.
3. A statement of the nature of the violation
4. A statement of acts necessary to correct the violation.
5. A statement that the failure to abate the nuisance within the period indicated, on said notice, may result in criminal prosecution and the imposition of fines and costs.

## **SECTION 11. Penalty for Failure to Correct Violation.**

All violations of the provisions of this Ordinance shall be punishable by penalty. Upon the failure of the owner and/or property owner upon whom written notice was mailed, pursuant to the provisions of this Ordinance to correct the violation within the time prescribed by the notice or to submit a written plan within fourteen (14) days for the satisfactory correction thereof, the person shall be guilty, and penalties shall be imposed as follows:

1. 1<sup>st</sup> offense - \$ 50.00 each day \*\*  
2<sup>nd</sup> offense - \$100.00 each day \*\*  
3<sup>rd</sup> offense - \$250.00 each day \*\*  
4<sup>th</sup> offense - \$500.00 each day \*\*
2. Imprisonment in the County Jail for a term not to exceed three (3) months
3. Both such fine and imprisonment; and
4. An Order to abate the nuisance.

\*\* After expiration of the Notice to Abate Nuisance, each day a violation of this Ordinance continues to exist constitutes a separate violation.

## **SECTION 12. Notice of Public Hearing to Approve Abatement and Assessed Costs.**

1. Whenever a condition prohibited by this Ordinance is found to exist on private property within the Town, the Enforcing Official authorized by the town shall declare the condition a public nuisance and cause a written notice to be mailed by certified mail to the owner and or owner of property at the address of the property on which the nuisance exists and to the owner of said property as the information is listed in the records of the tax assessor or revenue commissioner. If the property is a vacant lot, written notice will be mailed by certified mail to the owner of said property as the information is listed in the records of the tax assessor or revenue commissioner.

2. Said notice shall contain the following:

- a. A description of the real property, by street address or otherwise, on which the nuisance exists.
- b. A direction to abate the nuisance within 10 days from the date of the notice.
- c. A description of the nuisance.
- d. A statement that unless the nuisance is abated, the Town will abate the nuisance and the cost of abatement may be assessed against the person creating and maintain said nuisance.
- e. The date of the regularly scheduled Town Council meeting, which shall be no earlier than fourteen (14) days from the date the notice is mailed, in which a resolution will be presented to the Town Council to approve the abatement of the nuisance and authorize assessment of the cost of abatement; and
- f. A statement regarding the procedure for filing an objection to abatement of the nuisance and assessment of the cost of abatement against the property.

3. In addition, a sign entitled "Notice to Abate Nuisance" shall be conspicuously posted on the property where the nuisance exists notifying the occupant/property owner that a nuisance exists and that the Town will take action to abate said nuisance if the nuisance is not abated within ten days. The notice shall give the date the Town Council will meet to approve the abatement of the nuisance and assessment of costs and that the property owner can file an objection to said abatement and

assessment of costs with the Municipal Clerk's office at least four (4) business days prior to said hearing. The notice must be posted at least fourteen (14) days prior to the Town Council meeting in which the hearing will be conducted.

### **SECTION 13. Public Hearing and Objections to Abatement of Nuisance.**

1. If the owner, occupant, or person in control of said property wishes to contest the nuisance abatement and assessment of costs, then the owner, occupant, or person in control of said property shall file an objection to the declaration of nuisance by the town that the condition constitutes a nuisance by notifying in writing the Municipal Clerk's office at least four (4) business days prior to the date of the regular scheduled meeting of the Town Council for which the resolution ordering the abatement of the nuisance and assessing the cost of abatement has been scheduled.
2. The Town Council shall hear and consider all evidence, objections, and protests regarding whether or not the condition constitutes a nuisance and whether same shall be ordered, abated, or removed. The Town Council may continue the hearing from time to time. Upon the conclusion of the hearing, the Town Council shall decide whether a public nuisance exists and, if so, shall order it to be removed or abated with respect to any property or part thereof described. The Town Council, by passage of the resolution, shall be deemed to have acquired jurisdiction to proceed and to perform or have performed the work of removal or abatement with respect to the property or part thereof. The decision of the Town Council on the matter shall be deemed final and conclusive.
3. If a timely objection is not filed with the Municipal Clerk's office or if the owner, occupant or person in control of the property fails to appear at the hearing, notice of the order by the Town Council shall be mailed to the last known address and shall be posted for five (5) days in three public places, one being the Town Hall in the Town of Malvern at expiration of seven (7) days from the first date of posting, no additional public hearing will be held regarding that property and abatement of the nuisance will proceed and cost of the abatement assessed. In such instance, the Town Council shall be deemed to have acquired jurisdiction to proceed and either to perform or have performed the work of removal or abatement with respect to the property or part thereof and the decision of the Town Council shall be deemed final and conclusive.

### **SECTION 14. Abatement of Nuisance.**

After the Town Council passes a resolution finding the conditions of the property to be a nuisance and ordering its abatement, all employees and duly authorized agents of the municipality may enter upon the private property to abate the nuisance. Further, the Town Council may authorize a registered nuisance abatement agent or other private contractors, companies, enterprises, or other individuals to abate and remove the nuisance. Those nuisance abatement agents or other persons so designated may enter upon private property for purposes of abating or removing the nuisance. Any property owner shall have the right to have the nuisance removed at his or her own expense provided the removal is done prior to the commencing of the work by the Town of its duly appointed agents.

## **SECTION 15. Assessment of Cost.**

1. The Town will keep accurate records of all costs associated with abatement of the nuisance performed by the Town (including work by contractors employed by the Town). The Enforcing Official shall compute the actual expenses, including, but not limited to, total wages paid, value of the use of equipment, attorney fees, recording fees, postage fees, title search fees, and other costs and expenses incurred in connection with abatement of the nuisance.
2. Upon completion of the abatement, and actual expenses have been computed, the Town shall pass a resolution fixing the cost of the abatement of the nuisance.
3. The Municipal Clerk shall notify the owner, occupant, or person in control of said property by certified mail, of the costs established, as provided for hereinabove. This notice shall be sent at least five (5) days in advance of the time fixed by the Town Council to consider the assessment of the cost against the Property for abatement of the nuisance.
4. At the time fixed for receiving and considering the statement of costs and expenses, the Town Council shall hear the same, together with any objections which may be raised by the owner, or person in control of said property whose liability is to be assessed for the work, and thereupon make such modifications in the statement as the Town Council shall deem necessary and appropriate, after which it may by resolution assess the costs. In the event that no objection is made at time fixed by the Town Council, or the owner or person in control of said property fails to appear, the cost stated in the resolution shall constitute a special assessment against the property and shall constitute a lien against the real property being the subject of the assessment.
5. A certified copy of the resolution shall be sent by certified mail to the last address listed and assessed for ad valorem taxes and a certified copy shall be published in the manner as prescribed for municipal resolutions. The Municipal Clerk shall commence collection of the assessments.

## **SECTION 16. Collection of Assessment.**

1. In the event the owner, occupant, or person in control of said property shall fail or refuse for a period of twenty-eight (28) days to pay off and discharge the expenses, the Municipal Clerk shall report to the Town Council at the next regular meeting following the expiration of that period.
2. The Municipal Clerk shall cause a certified copy of the resolution passed assessing the cost of abatement of the nuisance to be filed for recording in the Office of the Judge of Probate in the county in which the Property is located. Upon a filing, the tax collector shall add the amount of the lien to the ad valorem tax bill on the property and shall collect the amount as if it were a tax. Thereafter, said amounts shall be collected at the same time and in the same manner as ordinary municipal assessments are collected, and shall be subject to the same penalties and the same procedure under foreclosure and sale in case of delinquency as provided for ordinary municipal assessments.

## **SECTION 17. Abatement Procedures Separate from Penalty.**

The requirement to abate a nuisance is not a penalty for violating this Ordinance, but is an additional remedy. Abatement proceedings and prosecution of a violation may occur simultaneously. Neither the initiation of prosecution for violations of this Ordinance nor the imposition of a penalty shall relieve a responsible party or property owner of the duty to abate the nuisance.

## **SECTION 18. Construction.**

This Ordinance shall be construed to contain all power granted to municipalities under section 11-40-10, 11-47-117, 11-47-131, 11-47-140, 11-53A-1-6, and 11-53A-22-26, *Code of Alabama* 1975, and any other applicable provisions of Alabama law providing for controlling nuisances, sanitation and good public health and safety condition.

## **SECTION 19 Severability.**

If any provision or section of this Ordinance is found to be in conflict with any other provision or section of the Ordinance or with any local, state, or federal law or regulation, the more stringent standard shall apply. The invalidity, unconstitutionality, or illegality of any provision or section of this Ordinance shall not have any effect upon the validity, constitutionality, or legality of any other provision or section of this Ordinance and all remaining provisions or sections of this Ordinance shall remain fully valid, binding, and enforceable to the fullest extent of the law.

## **SECTION 20. Repeal:**

All other Ordinances, and parts of Ordinances, in conflict with this Ordinance to the extent of such conflict and no further are hereby repealed.

## **SECTION 21. Effective Date.**

This Ordinance shall become effect after five (5) days from the date it is posted in accordance with *Ala. Code* 11-45-8 (1975), as amended.

APPROVED AND ADOPTED THIS THE 13<sup>TH</sup> DAY OF JULY 2021.

By: \_\_\_\_\_

Tom Vickers, Mayor

ATTEST: \_\_\_\_\_

Louise Couture, Municipal Clerk



**CERTIFICATION:**

I, Louise Couture, as Municipal Clerk of the Town of Malvern, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance No. 2021-01 is a true and correct copy of such Ordinance that was duly adopted by the Town Council of the Town of Malvern on the 13<sup>th</sup> day of July, 2021, as same appears in the official records of said Town.

Posted at Town Hall of Malvern, Alabama, Slocomb Post Office and Sawyers Produce this the 15<sup>th</sup> day of July, 2021.

A handwritten signature in cursive script that reads "Louise Couture".

Louise Couture, MMC  
Municipal Clerk

