

ORDINANCE 2017-130

AN ORDINANCE OF THE CITY OF SMITHS STATION, ALABAMA, FOR THE REMOVAL OR REPAIR OF UNSAFE BUILDINGS OR STRUCTURES AS A PUBLIC NUISANCE AS PROVIDED BY STATE LAW REFERENCE CODE OF ALABAMA 1975 §11-53A-1 AND §11-53B 1 THROUGH 16 ET.SEQ.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SMITHS STATION, ALABAMA, AS FOLLOWS:

SECTION 1. Removal of unsafe buildings or structures.

Pursuant to the police power granted in this article, any Class 5 or Class 6 or Class 8 municipality in the State of Alabama that elects to have this article apply to the municipality may, after notice as provided in this article, move or demolish buildings or structures, or parts of buildings or structures, party walls, or foundations when found by a municipal housing code abatement board and by the governing body of the city, to be unsafe to the extent of creating a public nuisance from any cause.

SECTION 2. Legislative findings.

The Legislature finds all of the following:

It is estimated that within the municipalities of the state, there exist several thousand parcels of real property that due to poor design, obsolescence, or neglect, have become unsafe to the extent of becoming public nuisances. Much of this property is vacant or in a state of disrepair and is causing or may cause a blight or blighting influence on the city and the neighborhoods in which the property is located. Such property constitutes a threat to the health, safety, and welfare to the citizens of the state and is an impediment to economic development within the municipality. This threat can be minimized if an incorporated municipality is authorized to repair the affected structures and is able to recover the cost of the repairs. In addition, where the municipality has undertaken the demolition of the structures and has taken a lien on the real property for the cost of the demolition, there has not been an effective method for recovering this assessment. These obligations owed to municipalities have largely been under-performing assets that could be converted to cash, providing the municipalities with much needed revenues.

It is the intent of this chapter to authorize a municipality of the state to proceed with the demolition or repair of a structure based on its own findings, and to set out a method for collecting the assessment liens so imposed.

State law references: Code of Ala. 1975, § 11-53b-1.

ORDINANCE 2017-130

SECTION 3. Demolition or repair upon finding of necessity and notice given.

Upon a finding of necessity by the governing body of any incorporated municipality in the state, after giving notice as provided herein the municipality may demolish or repair a building or structure or parts of buildings and structures, party walls, and foundations which are found by the governing body of the municipality to be unsafe to the extent of being a public nuisance from any cause. The cost of any action taken by the municipality shall be assessed against the property as provided in this chapter.

State law references: Code of Ala. 1975, § 11-53b-2.

SECTION 4. Notice from appropriate city official; failure to comply.

Whenever the appropriate city official, as defined herein, shall find that any building, structure, part of building or structure, party wall, or foundation situated in the city is unsafe to the extent that it is a public nuisance, the official shall give the person or persons, firm, association, or corporation who is the record owner, notice to remedy the unsafe condition of the building or structure by certified or registered mail to the owner's last known address and to the owner at the address of the property. A copy of all notices, orders, and other communications required by this chapter to be given to the owner of the property, or to the owner of an interest in the property, or to the person last assessing the property for state taxes, also shall be given to all mortgagees of record by certified or registered mail to the address set forth in the mortgage, or if no address for the mortgagee is set forth in the mortgage, to the address determined to be the correct address by the person responsible for the notice or other communication. The term "appropriate city official," as used in this chapter, shall mean any building official or deputy and any other municipal official or city employee designated by the mayor or other chief executive officer of the municipality as the person to exercise the authority and perform the duties delegated by this chapter to "appropriate city official."

The notice shall set forth in detail the basis for the appropriate city official's finding and shall direct the owner to take either of the following actions:

- (1) In the case where repair is required, accomplish the specified repairs or improvements within 45 days of the date of the notice or if the same cannot be repaired within that time to provide the appropriate city official with a work plan to accomplish the repairs, which plan shall be submitted within 45 days of the making of the notice and shall be subject to the city's approval.
- (2) In the case where demolition is required, demolish the structure within 45 days of the notice.

The notice shall also state that in the event the owner does not comply within the time specified therein, the repairs or demolition shall be accomplished by the municipality and the cost thereof assessed against the property.

ORDINANCE 2017-130

The mailing of the notice, properly addressed and postage prepaid, shall constitute notice as required herein. Notice of the order, or a copy thereof, shall, within three days of the date of mailing, also be posted at or within three feet of an entrance to the building or structure, provided that if there is no entrance the notice may be posted at any location upon the building or structure.

If the owner of any property cited hereunder fails to comply with the notice prescribed, the municipality may take either of the following actions:

(1) In the case where repair is required, repair the building at the expense of the municipality and assess the expenses of the repair on the land on which the building stands or to which it is attached.

(2) In the case where demolition is required, demolish the building at the expense of the municipality and assess the expenses of the demolition on the land on which the building stands or to which it is attached. The term "assessment" as used in this chapter shall refer to the cost of repair or demolition as provided herein.

State law references: Code of Ala. 1975, § 11-53b-3.

SECTION 5. Hearing; appeal.

Within 30 days from the date the notice is given, any person, firm, or corporation having an interest in the building or structure may file a written request for a hearing before the governing body of the city, together with that person's objections to the finding by the city official that the building or structure is unsafe to the extent of becoming a public nuisance. The filing of the request shall hold in abeyance any action on the finding of the city official until determination thereon is made by the governing body.

Upon holding the hearing, which shall be held not less than five nor more than 30 days after the request, or in the event no hearing is timely requested, after the expiration of 30 days from the date the notice is given, the governing body of the municipality shall determine whether or not the building or structure is unsafe to the extent that it is a public nuisance.

In the event that it is determined by the governing body that the building or structure is unsafe to the extent that it is a public nuisance, the governing body shall order the building or structure to be repaired or demolished, as the case may be. The repairs or demolition may be accomplished by the municipality by contract for the repairs or demolition. The municipality shall have authority to sell or otherwise dispose of salvaged materials resulting from any demolition hereunder.

ORDINANCE 2017-130

Any person aggrieved by the decision of the governing body at the hearing may, within 10 days thereafter, appeal to the circuit court upon filing with the clerk of the court notice of the appeal and bond for security of costs in the form and amount to be approved by the circuit clerk. Upon filing of the notice of appeal and approval of the bond, the clerk of the court shall serve a copy of the notice of appeal on the clerk of the city and the appeal shall be docketed in the court, and shall be a preferred case therein. The clerk of the city shall, upon receiving the notice, file with the clerk of the court a copy of the findings and determination of the governing body in proceedings and trials shall be held without jury upon the determination of the governing body that the building or structure is unsafe to the extent that it is a public nuisance.

State law references: Code of Ala. 1975, § 11-53b-4.

SECTION 6. Fixing of costs.

Upon demolition or repair of the building or structure, the appropriate city official shall make a report to the governing body of the cost thereof, and the governing body shall adopt a resolution fixing the costs which it finds were reasonably incurred in the demolition or repair and assessing the same against the property; provided, however, the proceeds of any moneys received from the sale of salvaged materials from the building or structure shall be used or applied against the cost of the demolition; and provided further, that any person, firm, or corporation having an interest in the property may be heard at the meeting as to any objection he or she may have to the fixing of such costs or the amounts thereof. The clerk of the municipality shall give notice of the meeting at which the fixing of the costs is to be considered by first-class mail to all entities having an interest in the property whose address and interest is determined from the tax assessor's records on the property or as otherwise known to the clerk. The fixing of the costs by the governing body shall constitute an assessment against the lot or lots, parcel or parcels of land upon which the building or structure was located, and as made and confirmed shall constitute a lien on the property for the amount of the assessment ("the final assessment"). The lien shall be superior to all other liens on the property except liens for taxes, and except for mortgages recorded prior to the creation of the lien for the assessment, and shall continue in force until paid. A certified copy of the resolution fixing the final assessment shall also be recorded in the office of the judge of probate of the county in which the municipality is situated.

State law references: Code of Ala. 1975, § 11-53b-5.

ORDINANCE 2017-130

SECTION 7. Assessment of costs.

The municipality shall have the power to assess the costs authorized herein against any lot or lots, parcel or parcels of land purchased by the State of Alabama at any sale for the nonpayment of taxes, and where such an assessment is made against the lot or lots, parcel or parcels of land, a subsequent redemption thereof by any person authorized to redeem, or sale thereof by the state, shall not operate or discharge, or in any manner affect the lien of the city for the assessment, but any redemptioner or purchaser at any sale by the state of any lot or lots, parcel or parcels of land upon which an assessment has been levied, whether prior to or subsequent to a sale by the state for the nonpayment of taxes, shall take the same subject to the assessment.

State law references: Code of Ala. 1975, § 11-53b-6.

SECTION 8. Payment of costs.

The municipality, in ordering any repair or demolition the cost of which or any part thereof is to be assessed against any property in accordance with this chapter, may provide that the same shall be paid in cash within 30 days after the final assessment; provided, however, that if the assessed amount is greater than ten thousand dollars (\$10,000), the property owner may, at his or her election, to be expressed by notifying the municipal official charged with the duty of collecting the assessments in writing within 30 days after the final assessment is determined, pay the final assessment in 10 equal annual installments, which shall bear interest at a rate not exceeding 12 percent per annum. Interest shall begin to accrue upon the expiration of 30 days from the date on which the final assessment is set by the governing body and the interest shall be due and payable at the time and place the assessment is due and payable.

Any person who elects to make installment payments may pay the outstanding balance of the final assessment together with all accrued interest thereon at any time during the installment payment schedule. The first installment shall be payable within 30 days after the final assessment is determined, and all installments thereof shall be payable at the office of the clerk, finance office, or treasurer of the city or town as may be prescribed. Upon full payment of the final assessments and accrued interest thereon, the municipality shall record a satisfaction of the lien in the office of the judge of probate of the county in which the municipality is located.

State law references: Code of Ala. 1975, § 11-53b7.

ORDINANCE 2017-130

SECTION 9 Failure to make payment.

If the property owner fails to pay the assessment lien within 30 days, or having elected to make installment payments, fails to make any installment payment when due, the whole assessment lien shall immediately become due and payable, and the officer designated by the municipality to collect the assessment lien shall proceed to sell the property against which the assessment lien is made to the highest bidder for cash, but in no event less than the amount of the lien plus interest through the date of default. Prior to the sale, notice shall be given by publication once a week for three consecutive weeks in a newspaper published in the municipality or of general circulation therein, setting forth the date and time of the sale and the purpose for which the same is made, together with a description of the property to be sold. If the officer shall fail to advertise and sell any property on which the payments are past due, any taxpayer of the issuing municipality shall have the right to apply for a writ of mandamus requiring the official to take such action to any court of competent jurisdiction, and the court shall, on proof, issue and enforce the writ. **State law references: Code of Ala. 1975, § 11-53b-8.**

SECTION 10. Sale of property upon default.

- (a) Any property owner, notwithstanding his or her default, may pay the assessment lien with interest and all costs if tendered before a sale of the property.
- (b) The cost of any notice and sale resulting from a default on paying an assessment shall constitute a charge against the property to be sold and shall be retained out of the proceeds of the sale.
- (c) The officer making the sale shall execute a deed to the purchaser, which shall convey all the rights, title, and interest which the party against whose property the assessment was made had or held in the property at the date of making the assessment or on the date of making the sale. Any surplus arising from the sale shall be paid to the city or municipal treasurer to be kept as a separate fund by the treasurer for the owner upon the responsibility of his or her official bond. The municipality may, by its agents, purchase real estate sold as provided under this chapter and, in the event of the purchase, the deed for the same shall be made to the municipality.

ORDINANCE 2017-130

- (d) No mistake in the notice of sale in the description of the property or in the name of the owner shall vitiate the assessment or the lien and if for any reason, the sale made by the municipality is ineffectual to pass title, it shall operate as an assignment of the lien, and, upon the request of the purchaser, supplementary proceedings of the same general character as required in this chapter may be had to correct the errors in the proceedings for his or her benefit or the lien so assigned to him or her may be enforced by civil action.

State law references: Code of Ala. 1975, § 11-53b-9.

SECTION 11. Redemption of property.

- (a) Any real property heretofore or hereafter sold for the satisfaction of an assessment lien imposed thereon by the governing body of a municipality may be redeemed by the former owner, or his or her assigns, or other persons authorized to redeem property sold for taxes by the state, within two years from the date of the sale by depositing with the officer designated by the municipality to collect the assessments the amount of money for which the lands were sold, with interest thereon at the rate of 12 percent per annum from the date of the sale through the date of the payment.
- (b) In addition to any other requirements set forth in this section, the proposed redemptioner must pay or tender the purchaser or his transferee all insurance premiums paid or owed by the purchaser with accrued interest on the payments computed from the date the premiums were paid at 12 percent per annum through the date of payment.
- (c) In addition to any other requirements set forth in this section, the proposed redemptioner must pay or tender to the purchaser or his transferee the value of all permanent improvements made on the property determined in accordance with this section. As used herein "permanent improvements" shall include, but not be limited to, all repairs, improvements, and equipment attached to the property as fixtures. The proposed redemptioner shall make written demand upon the purchaser of a statement of the value of all permanent improvements made on the property since the assessment sale. In response to written demand made pursuant to this section, the purchaser shall within 10 days from the receipt of the demand, furnish the proposed redemptioner with the amount claimed as the value of the permanent improvements, and within 10 days after receipt of the response, the proposed redemptioner either shall accept the value so stated by the purchaser, or disagreeing therewith, shall appoint a referee to ascertain the value of the permanent improvements. The proposed redemptioner shall in writing (i) notify the purchaser of his or her disagreement as to the value;

ORDINANCE 2017-130

and (ii) inform the purchaser of the name of the referee appointed by him or her. Within 10 days after the receipt of the notice, the purchaser shall appoint a referee to ascertain the value of the permanent improvements and advise the proposed redemptioner of the name of the appointee. The two referees shall, within 10 days after the purchaser has appointed his or her referee, meet and confer upon the award to be made by them. If they cannot agree, the referees shall at once appoint an umpire, and the award by a majority of the body shall be made within 10 days after the appointment of the umpire and shall be final between the parties.

- (d) If the proposed redemptioner fails or refuses to nominate a referee as provided in subsection (c), he or she shall pay the value put upon the improvements by the purchaser. If the purchaser refuses or fails to appoint a referee, as provided in subsection (c), the purchaser shall forfeit his or her claim to compensation for the improvements. The failure of the referees or either of them to act or to appoint an umpire shall not operate to impair or forfeit the right of either the proposed redemptioner or the purchaser in the premises. In the event of failure without fault of the parties to affect an award, the appropriate court shall proceed to ascertain the true value of the permanent improvements and enforce the redemption accordingly.
- (e) In addition to all other payments provided hereunder, the proposed redemptioner shall also pay interest to the purchaser on the value of all permanent improvements computed from the date the improvements were made at the rate of 12 percent per annum through the date of the payment.

State law references: Code of Ala. 1975, § 11-53b-10.

SECTION 12. Extension of redemption.

The fixed two-year period of redemption allowed by Section 11-53B-10 for the redemption of any property heretofore or hereafter sold for the satisfaction of any assessment lien may be extended to a date 60 days after the date of the certificate of warning to redeem provided for in Section 11-53B-12, but in no event for a longer period than six years from the date of such sale.

State law references: Code of Ala. 1975, § 11-53b-11.

ORDINANCE 2017-130

SECTION 13. Certificate of warning to redeem.

At any time after an assessment sale deed has been recorded in the office of the judge of probate of the county in which the property therein described lies and after expiration of the fixed two-year period of redemption allowed by Section 11-53B-10, any person may apply to the judge of probate for the certificate of warning to redeem, which references the recorded volume and page number of the deed to be recorded in the real estate records, in substantially the following form: "I hereby certify that on or prior to the date of this certificate, I mailed a certified copy of the deed here recorded, together with notice that the same is here recorded, and a warning to redeem to each of the one or more persons other than the grantee in said deed, to whom the property therein described was last finally assessed for ad valorem taxation at the address of each such person as shown by said ad valorem tax assessment records. This ___ day of ___, 2___, Judge of Probate, ___ County, Alabama."

State law references: Code of Ala. 1975, § 11-53b-12.

SECTION 14. Application for entry of certificate.

At the time of application for entry of the certificate of warning to redeem, the applicant shall deliver to the judge of probate three certified copies of the recorded deed and shall pay to the judge of probate a fee of one dollar (\$1). Copies of the deed need not include any certificate of acknowledgment. The applicant shall also deliver to the judge of probate a certified copy of the ad valorem tax assessment records of the county containing the name of the person or persons other than the grantee in the deed to whom the property described in the deed was last finally assessed for ad valorem taxation, together with the address of each person as shown by the tax assessment records, or an affidavit that there is no one else. The judge of probate shall promptly mail to each person at such address one of the aforesaid certified copies of the deed, together with an attached warning to redeem in substantially the following form: "Take notice that there is recorded in my office in Deed Book ___ at page ___ a deed of which the attached is a correct copy. You are warned that unless you, or those claiming under you, take prompt steps to redeem from those claiming under the deed, all rights of redemption may be lost. This ___ day of ___, 2___, Judge of Probate, ___ County, Alabama."

Promptly upon or after mailing the notice or notices and certified copy or copies of the deed, it shall be the duty of the judge of probate to record in the real estate records the signed and dated certificate of warning substantially as prescribed by Section 11-53B-12. At the expiration of 60 days after the date of the certificate all rights to redeem from the sale shown by the deed shall cease and desist.

State law references: Code of Ala. 1975, § 11-53b-13.

ORDINANCE 2017-130

SECTION 15. Redemption effected.

Redemption may be effected after expiration of the fixed two-year period of redemption allowed or provided by Section 11-53B-10 and before the extended period of redemption has expired in the same manner and at the same redemption price as is provided in Section 11-53B-10; provided, that if the judge of probate has made the certificate of warning to redeem as provided in Section 11-53B-12, said redemption price shall be increased by one dollar (\$1).

State law references: Code of Ala. 1975, § 11-53b-14.

SECTION 16. Emergency action.

Notwithstanding any other provisions of this chapter, a municipality shall have authority to enact, and may by ordinance authorize, the appropriate city official to initiate immediate repair or demolition of a building structure when, in the opinion of the official so designated, such emergency action is required due to imminent danger of structural collapse endangering adjoining property, the public right of way, or human life or health. The cost of the emergency action shall be fixed by the municipal governing body and shall be assessed as provided in the ordinance, or, if such ordinance does not provide a method of assessment, as provided by this chapter.

State law references: Code of Ala. 1975, § 11-53b-15.

SECTION 17. Severability.

Each and every provision of this ordinance is hereby declared to be an independent provision and the holding of any provision hereof to be void and invalid for any reason shall not affect any other provision hereof, and it is hereby declared that the other provisions of this ordinance would have been enacted regardless of any provision which might have been held invalid.

Now Therefore be it Ordained by the City Council of Smiths Station, Alabama, that this Ordinance becomes Effective Immediately upon Adoption and Approval pursuant to §11-45-8, Code of Alabama 1975, as amended.


All City Ordinances or parts thereof in conflict to the provisions of this Ordinance, in as much as they conflict are hereby repealed as provided by law.

ORDINANCE 2017-130

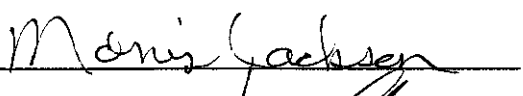
ADOPTED AND APPROVED on the 11 day of April, 2017.




Mayor F.L. "Bubba" Copeland



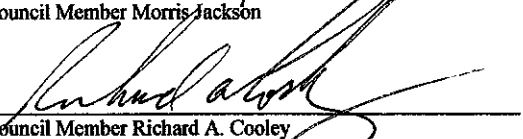
Council Member George Stringer



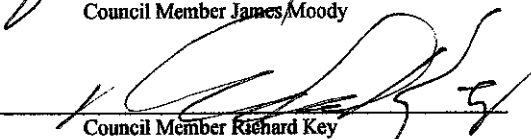
Council Member Morris Jackson



Council Member James Moody



Council Member Richard A. Cooley



Council Member Richard Key

Attested:



Scott E. Johnston, City Clerk

SEAL:

