

ORDINANCE NO. 1735

AN ORDINANCE REPEALING ORDINANCE NUMBER 1430 AND ORDINANCE NUMBER 1550 IN THEIR ENTIRETY; AND TO PROHIBIT THE LEAVING, PLACING OR ABANDONMENT OF WRECKED, DISCARDED OR NONOPERATING VEHICLES UPON THE PUBLIC STREETS AND OTHER PROPERTY WITHIN THE CITY OF TALLADEGA, ALABAMA; TO PROVIDE A PROCEDURE FOR THE DECLARATION OF SUCH VEHICLES AS A PUBLIC NUISANCE; TO PROVIDE A PROCEDURE FOR THE ABATEMENT OF SUCH NUISANCE; TO PROVIDE FOR THE IMPOUNDING AND DISPOSITION OF SUCH VEHICLES; AND TO PROVIDE PENALTIES FOR THE VIOLATION THEREOF. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TALLADEGA, ALABAMA, AS FOLLOWS:

SECTION I. DEFINITIONS. For the purpose of this Ordinance, the following terms shall be defined as follows:

A. **“Abandoned Vehicle”** - a vehicle left on a public street, road or highway or other public property for a continuous period of seven (7) days in such inoperable or dismantled condition that the owner’s intention to relinquish all further rights or interest in it may be reasonably concluded.

B. **“Chief of Police”** - The Chief of the Police of the City of Talladega.

C. **“City”** - The City of Talladega.

D. **“Dismantled Vehicle”** - Any vehicle that is partially or wholly disassembled.

E. **“Inoperative Vehicle”** - Any vehicle that has remained on private property and in view of the general public for fourteen (14) days and is inoperable in that one or more of its major mechanical components, including, but not limited to, engine, transmission, drive train, or wheels, are missing or are not functional, and shall include any unlicensed, uninsured, unregistered vehicle and any disassembled vehicle; or any vehicle in the process of being stripped, dismantled or overhauled or undergoing body work; and any vehicle that is incapable of being used for its designated or intended purpose, or incapable of being moved under its own power. An inoperable motor vehicle shall not be deemed a nuisance if the 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 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 damaged or theft recovered vehicles for insurers, or if the vehicle is kept in an enclosed building completely shielded from the view of individuals on the adjoining properties.

F. **“Property”** - shall mean any real property within the City of Talladega, Alabama, which is not a public street, road or highway or other public property.

G. **“Public Nuisance Vehicle”** - any vehicle, or parts thereof, that is an abandoned vehicle, wrecked vehicle, dismantled vehicle, inoperative vehicle and any vehicle, or parts thereof, that is abandoned, wrecked, dismantled or inoperative that constitutes a public nuisance and the health, safety and general welfare of the citizens of Talladega.

H. **“Vehicle”** - any machine propelled by power other than human power designed to travel along the ground by use of wheels, treads, runners or slides, and transport persons or property or pull machinery and shall include, without limitation, every automobile, motorcycle, mobile trailer, semi-trailer, truck, truck tractor, trailer, tractor, buggy or wagon and any other device that is self-propelled or drawn, in, upon, or by which any person or property is or may be transported or drawn upon a public highway except such as is moved by animal power or used exclusively upon stationary rails or tracks.

SECTION II. ABANDONMENT OF VEHICLES AS PUBLIC NUISANCE.

- A. A public nuisance vehicle is declared a public nuisance.
- B. It shall be unlawful for any public nuisance vehicle to be placed or remain unattended on a public street, road or highway or other public property for a continuous period of not less than seven (7) days. Any police officer of the City of Talladega or Code Enforcement Officer of the City of Talladega who finds a public nuisance vehicle left unattended on a public street, road, or highway or other public property for a period of at least seven (7) days, shall be authorized to cause the public nuisance vehicle to be removed to the nearest garage or other place of safety to be disposed of as hereinafter provided.
- C. It shall be unlawful for any public nuisance vehicle to remain on private property and in view of the general public for more than fourteen (14) days.
- D. It shall be unlawful and is declared a nuisance for any person to restore or repair any motor vehicle in the front yard of any residential building, including, but not limited to, rental residential buildings, boarding houses and apartment buildings. This provision is not intended to and does not prohibit the performance of regular/preventative maintenance.

SECTION III. RIGHT OF ENTRY FOR INSPECTION. Whenever the Code Enforcement Officer of the City has reasonable cause to believe that a condition prohibited by this Ordinance exists, the Code Enforcement Officer or his duly authorized agent shall have the right to enter upon the private property in question for the purpose of inspecting the property. Reasonable cause may be established by, but is not limited to, the filing of an oral or written complaint with the City.

SECTION IV. IMPOUNDING PUBLIC NUISANCE VEHICLE. The chief administrative officer of the City or his designee, or the Code Enforcement Officer or his duly appointed agent or any police officer of the City of Talladega designated by the Chief of Police is hereby authorized to remove or have removed any public nuisance vehicle left on any public street, road or highway or other public property within the City which reasonably appears to be in violation of this ordinance or appears to be lost, stolen, or unclaimed. The removal of any public nuisance vehicle shall be made by a private towing contractor. Any vehicle so impounded and removed shall be stored in a suitable place provided by the private towing contractor to protect the vehicle from deterioration. A permanent record giving the date of the taking of each vehicle, the place where found and taken, and a description of the vehicle shall be maintained by the Code Enforcement Officer. Any public nuisance vehicle that interferes with or obstructs vehicular traffic on any public street, road or highway may be impounded immediately.

SECTION V. RELEASE FEE.

A. There is hereby levied, established and authorized a release fee of Twenty-five and 00/100 (\$25.00) Dollars upon any public nuisance vehicle impounded under the authority of this ordinance by the chief administrative officer of the City or his designee, the Code Enforcement Officer or his duly appointed agent or any police officer of the City of Talladega designated by the Police Chief, and the City shall have a lien therefor upon the public nuisance vehicle impounded from any public street, road or highway or other public property within the City of Talladega. No public nuisance vehicle shall be released to any claimant therefor unless and until said release fee is paid and the lien hereby established is discharged by the payment of said release fee at the Talladega Police Department. The release fee herein provided shall be in addition to any charge assessed by any private wrecker service participating in the removal and impoundment of said public nuisance vehicle. A receipt for payment of the release fee shall be exhibited to the private towing contractor prior to release of the public nuisance vehicle by the private towing contractor.

B. Any public nuisance vehicle that is impounded, as hereinabove provided, and it is determined that said public nuisance vehicle has been stolen, abandoned as a result of unauthorized use or impounded and towed under the direction of any police officer of the City for the purpose of a criminal investigation shall not be subject to the release fee.

SECTION VI. NOTICE OF PUBLIC HEARING TO APPROVE ABATEMENT OF PUBLIC NUISANCE VEHICLE LOCATED ON PRIVATE PROPERTY AND TO ASSESS COSTS OF ABATEMENT OF NUISANCE.

A. Whenever a condition prohibited by this Ordinance is found to exist on private property within the City, the Code Enforcement Officer shall declare the condition a public nuisance and cause a written notice to be mailed by first class mail to "Occupant" at the address of the property upon which the nuisance exists and to the owner of said property as the information is listed in the records of the Revenue Commissioner of Talladega County, Alabama. If the property is a vacant lot, written notice will be mailed by first class mail to the owner of said property as the information is listed in the ad valorem tax records in the office of the Revenue Commissioner of Talladega County, Alabama.

B. Said notice shall contain the following:

1. A description of the real property, by street address or otherwise, on which the public nuisance vehicle exists;

2. A direction to abate the nuisance occasioned by the public nuisance vehicle within ten (10) days from the date of the notice;
3. A description of the public nuisance vehicle;
4. A statement that unless the nuisance occasioned by the public nuisance vehicle is abated, the City will abate the nuisance and the cost of abatement may be assessed against the property and may be added to the next regular taxes levied against the property;
5. The date and time of the regularly scheduled City Council meeting at which a resolution will be presented to the City Council of the City of Talladega to approve the abatement of the nuisance and authorize assessment of the cost of abatement;
6. A statement regarding the procedure for filing an objection to abatement of the nuisance and assessment of the cost of abatement against the property;
7. A statement that an administrative fee of \$150.00 also shall be assessed upon the property if the nuisance is not abated within ten (10) days of the notice to the owner and may be added to the next regular taxes levied against the property; and
8. A statement that failure to abate the nuisance with ten (10) days from the date of the notice may result in criminal prosecution.

C. In addition, a sign entitled "Notice to Abate Nuisance" shall be conspicuously posted on the property where the nuisance exists notifying the owner/occupant that a nuisance exists and that the City will take action to abate said nuisance if the nuisance is not abated within ten (10) days following the posting of the sign. The Code Enforcement Officer of the City of Talladega shall maintain a record of signs posted on private property including the date of the posting of the sign, the street address of the property where the sign is posted and the name of the person posting the sign.

SECTION VII. PUBLIC HEARING AND OBJECTIONS TO ABATEMENT OF NUISANCE ON PRIVATE PROPERTY.

A. Filing of timely objection to condition declared a nuisance:

1. The owner, occupant, lessee or person in control of property whereupon a public nuisance vehicle is located may file an objection to the declaration by the City that the condition constitutes a nuisance by notifying in writing the Code Enforcement Officer or his duly appointed agent at least four (4) business days prior to the date of the regular scheduled meeting of the City Council at which the resolution ordering the abatement of the nuisance and assessing the cost of abatement has been scheduled.
2. The owner, occupant, lessee or person in control of said property shall also file the objection to the declaration by the City that the condition constitutes a nuisance by notifying in writing the City Clerk's office at least four (4) business days prior to the date of the regular scheduled meeting of the City Council at which the resolution ordering the abatement of the nuisance and assessing the cost of abatement has been scheduled.

B. The City Council shall hear and consider all evidence, objections, and protests regarding whether or not the condition constitutes a nuisance and whether same should be ordered abated or removed. The City Council may continue the hearing from time to time. Upon the conclusion of the hearing, the City 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 City Council, by passage of a resolution ordering abatement of the public nuisance, 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 City Council on the matter shall be deemed final and conclusive.

C. If a timely objection is not filed with the City Clerk or Code Enforcement Officer or his duly appointed agent or if the owner, occupant, lessee or person in control of the property fails to appear at the hearing, no additional public hearing will be held on an individual property and abatement of the nuisance will proceed and costs of the abatement assessed to the owner of the property as ordered by resolution of the City Council. In such instance, the City 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 City Council shall be deemed final and conclusive.

D. Upon a final decision and resolution of the City Council declaring the public nuisance vehicle to be a public nuisance and ordering the said public nuisance abated and prior to abatement of the public nuisance, the Code Enforcement Officer shall cause a written notice to be mailed by first class mail to the owner, occupant, lessee or person in control of the property informing that person of the decision of the City Council.

SECTION VIII. ADMINISTRATIVE COST OF ABATEMENT.

A. If the nuisance is not abated within ten (10) days of the date of the notice, there shall be an administrative fee of \$150.00, which shall be added to the actual cost for abatement of the nuisance and shall be included in the amount of the lien filed with the appropriate official who is

charged with the collection of taxes or assessments. The administrative fee shall be assessed against the owner of the property even if the nuisance is not ultimately abated by employees of the City or the City's agent. The City may collect the administrative fee through court action or other lawful means; however, no lien may be placed against the owner's property solely to recover administrative costs.

B. If the City initiates the removal and abatement of multiple public nuisance vehicles or nuisance conditions on the same property at the same time, only one administrative fee will be assessed.

SECTION IX: ABATEMENT PROCEDURE 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 criminal prosecution of a violation may occur simultaneously. Neither the initiation of prosecution for violations of this Ordinance nor the imposition of a penalty relieves a responsible party of the duty to abate such nuisance.

SECTION X. PENALTIES.

The violation of this Ordinance shall constitute a criminal misdemeanor. Any person who shall be convicted of violating any provision of this Ordinance shall, upon conviction, be punished by a fine of not less than One Dollar (\$1.00), nor more than Five Hundred Dollars (\$500.00), or by imprisonment in the City Jail for not less than One Hundred Eighty (180) days, or both at the discretion of the Court trying the case. Each day such violation is committed or permitted to continue shall constitute a separate offense, and shall be punishable as such hereunder.

SECTION XI: SEVERABILITY.

All sections of this Ordinance are hereby declared to be severable; and if any word, phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional or invalid by the judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining words, phrases, clauses, sentences, paragraphs, and sections of this Ordinance.

SECTION XII:

Upon adoption of this Ordinance and passage and publication, as provided by law, Ordinance 1430 and Ordinance 1550 of the City of Talladega are repealed.

SECTION XIII.

This Ordinance shall take effective immediately upon its passage and publication as provided by law.

Adopted and approved this 20th day of August, 2012.

Council President Donnie Miller

Councilman Horace Patterson

Councilman Jarvis Elston

Councilman Rick Simpson

Councilman Joe Ballow

Attested to by Elizabeth Cheeks, City Clerk