

1 SB359  
2 168917-3  
3 By Senators Holtzclaw and Orr  
4 RFD: Local Legislation, Madison County  
5 First Read: 15-MAR-16

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9 A BILL  
10 TO BE ENTITLED  
11 AN ACT  
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13 Relating to the City of Madison; to provide for the  
14 abatement of grass or weeds which becomes a nuisance under  
15 certain conditions; to provide for notice to the property  
16 owners; to provide for the assessment of the costs for  
17 abatement when the work is required to be performed by the  
18 city; to provide for the city's collection of the costs  
19 through the addition of the costs to ad valorem taxes; and to  
20 provide for liens on the property under certain conditions.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. This act shall apply only in the City of  
23 Madison.

24 Section 2. An abundance of overgrown grass or weeds  
25 within the city which is injurious to the general public  
26 health, safety, and general welfare by providing breeding  
27 grounds and shelter for rats, mice, snakes, mosquitoes, and

1 other vermin, insects, and pests; or attaining heights and  
2 dryness so as to constitute a serious fire threat or hazard;  
3 or bearing wingy or downy seeds, when mature, that cause the  
4 spread of weeds and, when breathed, irritation to the throat,  
5 lungs, and eyes of the public; or hiding debris, such as  
6 broken glass or metal, which could inflict injury on a person  
7 going upon the property; or being unsightly; or a growth of  
8 grass or weeds, including plants of no value, undesirable, and  
9 usually of rank growth; or grass, shrubs, and undergrowth,  
10 other than ornamental plant growth, which exceeds 12 inches in  
11 height, may be declared to be a public nuisance and abated as  
12 provided in this act.

13 Section 3. (a) For purposes of this act, the  
14 enforcing official shall mean either the mayor or such other  
15 city official or employee as the mayor from time to time may  
16 designate. Whenever, in the opinion of the enforcing official,  
17 a public nuisance exists as described in Section 2, the  
18 enforcing official may serve written notice upon the owner of  
19 the property on which the nuisance is located ordering the  
20 abatement of the nuisance.

21 (b) The notice shall require the owner to complete  
22 abatement of the nuisance within 14 days from the date of the  
23 notice, provided that the enforcing official may allow for  
24 additional time when it is reasonably required due to the  
25 difficulty of the abatement or other unusual factors tending  
26 to necessitate additional time, but in no case more than 28  
27 days from the date of the notice.

1           (c) The written notice shall require the owner to  
2 abate the condition within the time stated in the notice or to  
3 request a hearing before the administrative official to  
4 determine whether the conditions on the property constitute a  
5 public nuisance that should be abated. For purposes of this  
6 act, the administrative official shall mean a person  
7 designated by the city council, but such person shall not be  
8 the same person as the enforcing official. The notice shall  
9 apprise the owner of the facts of the alleged nuisance,  
10 including a description or address of the property, or both,  
11 that provides reasonable notice of its location, the address  
12 of the enforcing official, and shall name the particular date,  
13 time, and place for the hearing before the administrative  
14 official if requested by the owner, which date shall be at  
15 least 10 days after the date of the written notice.

16           (d) The enforcing official shall serve the owner  
17 with the written notice by delivering it to the owner; or by  
18 mailing it to the owner, via first class mail, at the owner's  
19 last known address. Delivery under this subsection means  
20 handing it to the owner, or in a case where the owner is an  
21 impersonal entity to an agent of the entity; or leaving it at  
22 the owner's residence or place of business with a person of  
23 suitable age and discretion residing or employed therein.  
24 Service by mail is complete upon mailing. The enforcing  
25 officer may, but is not required to, rely upon any information  
26 appearing on record in the office of the county revenue  
27 commissioner to establish the identity of an owner of property

1 and to establish the owner's last known address, which, if  
2 utilized, shall be deemed conclusive and sufficient proof of  
3 the same.

4 (e) The written notice shall also be posted at a  
5 conspicuous place on the property on which the nuisance is  
6 located, on or prior to the date of service of the written  
7 notice as described in subsection (d).

8 (f) The enforcing official is authorized, but not  
9 required, to utilize any additional means of providing notice  
10 that the enforcing official deems appropriate. Specifically,  
11 the enforcing official is authorized, but not required, to  
12 provide this additional, optional notice by placement of  
13 notice in a public place or places located within the city, or  
14 by publishing notice in a newspaper of general circulation  
15 published in the city as often and for as long as deemed  
16 appropriate. The additional, optional notice provided for in  
17 this section may be provided in whatever form the enforcing  
18 official deems appropriate.

19 (g) If the owner desires a hearing before the  
20 administrative official, then the owner may request a hearing  
21 by delivering a written notice to the enforcing official  
22 within five days after the date of service of the notice. If  
23 so requested, then the enforcing official's order to abate the  
24 nuisance will be suspended, and the administrative official  
25 will hold a hearing at the time and place specified in the  
26 notice previously issued by the enforcing official or at such  
27 other time and place that may be mutually agreed upon by the

1 administrative official and the owner. The administrative  
2 official may continue the hearing from time to time, upon good  
3 cause shown. At the hearing, any interested party will have  
4 the right to present evidence and testimony. The hearing will  
5 be open to the public, and a record of the proceedings must be  
6 kept as a part of the city's public records. The  
7 administrative official must render a written decision on the  
8 merits of the proposed abatement within five days of the  
9 conclusion of the hearing. The enforcing official shall notify  
10 the owner by personal service or by first class mail of the  
11 written determination of the administrative official. If the  
12 administrative official determines that a nuisance exists and  
13 should be abated, the written determination of the  
14 administrative official shall inform the owner that the owner  
15 must complete the abatement ordered by the enforcing official  
16 within 10 days of the date of the administrative official's  
17 decision, or upon such additional time, but in no case more  
18 than 28 days from the administrative official's determination.  
19 If the administrative official determines that a nuisance does  
20 not exist, then the enforcing official's notice to abate the  
21 nuisance will be null and void, but such determination shall  
22 not bar any subsequent notice concerning the same property.

23 (h) Any person aggrieved by the decision of the  
24 administrative official at the hearing, within 10 days from  
25 receipt of the determination by the administrative official,  
26 may appeal to the circuit court upon filing with the clerk of  
27 the court notice of the appeal and bond for security of costs

1 in the form and amount to be approved by the circuit clerk.  
2 Upon filing of the notice of appeal and approval of the bond,  
3 the clerk of the court shall serve a copy of the notice of  
4 appeal on the clerk of the municipality and the appeal shall  
5 be docketed in the court and shall be a preferred case. The  
6 clerk of the municipality shall, upon receiving the notice,  
7 file with the clerk of the court a copy of the finding and  
8 determination of the administrative official in its  
9 proceedings. Any trials shall be held without a jury upon the  
10 determination of the administrative official that the weeds  
11 are a public nuisance.

12 Section 4. (a) If the owner fails, neglects, or  
13 refuses to abate the nuisance, or the nuisance is not  
14 otherwise abated, (1) within the time permitted to do so as  
15 stated in the enforcing official's notice, where such notice  
16 was not suspended by the request for a hearing before the  
17 administrative official; or (2) within the time permitted to  
18 do so as stated in the administrative official's written  
19 determination, then the city may enter upon the property and  
20 abate the nuisance using its own forces, or it may provide by  
21 contract for the abatement. However, if an appeal has been  
22 taken to the circuit court as provided in subsection (h) of  
23 Section 3, then the city may not abate the nuisance until the  
24 determination or judgment authorizing abatement becomes final  
25 as provided by law.

26 (b) Upon completion of the abatement work performed  
27 by the city, including work by contractors employed by the

1 city, the enforcing official shall compute the city's expenses  
2 in causing the abatement of the nuisance, including, but not  
3 limited to, cost of labor, value of the use of the equipment,  
4 advertising expenses, postage, administrative expense, legal  
5 expense, and materials purchased, which were incurred by the  
6 city as a result of the work. An itemized statement of the  
7 expenses shall be given by first class mail to the last known  
8 address of the owner of the property. This notice shall be  
9 sent at least five days in advance of the time fixed by the  
10 city council to consider the assessment of the cost against  
11 property.

12 (c) At the time fixed for receiving and considering  
13 the statement, the city council shall hear the same, together  
14 with any objections which may be raised by the owner whose  
15 property is liable to be assessed for the city's expenses in  
16 causing the abatement of the nuisance, and thereupon make  
17 modifications in the statement as deemed necessary, after  
18 which a resolution may assess the cost. The cost stated in the  
19 resolution shall constitute a lien on the property, and shall  
20 be referred to as a weed lien on the property.

21 (d) A copy of the resolution shall be given to the  
22 county revenue commissioner. It shall be the duty of the  
23 revenue commissioner to add the costs of the weed lien to the  
24 next regular bill for taxes levied against the property  
25 subject to the weed lien, and thereafter, the costs shall be  
26 collected and remitted to the city at the same time and in the  
27 same manner as ordinary municipal ad valorem taxes are



1 collected, and shall be subject to the same penalties and the  
2 same procedure under foreclosure and sale in case of  
3 delinquency; provided, however, that if the foreclosure and  
4 sale is the result of a delinquency caused by a weed lien, the  
5 municipality shall reimburse the county tax collector or  
6 revenue commissioner for all costs associated with the  
7 foreclosure and sale unless the costs are collected at the  
8 time of sale as part of the sale.

9 (e) The city clerk may also cause a certified copy  
10 of the resolution showing the weed lien to be filed for  
11 recording in the office of the judge of probate.

12 Section 5. When a weed lien is made against a lot  
13 or lots or parcel or parcels of land, a subsequent redemption  
14 thereof by a person authorized to redeem, or sale thereof by  
15 the state, shall not operate to discharge, or in any manner  
16 affect the weed lien of the city, but a redemptioner or  
17 purchaser at a sale by the state of any lot or lots, parcel or  
18 parcels of land upon which a weed lien has been made, whether  
19 prior to or subsequent to a sale to the state for the  
20 nonpayment of taxes, shall take the same subject to the weed  
21 lien.

22 Section 6. This act is cumulative in its nature and  
23 in addition to any and all power and authority which a city  
24 may have under any other law.

25 Section 7. The provisions of this act are severable.  
26 If any part of this act is declared invalid or

1       unconstitutional, that declaration shall not affect the part  
2       which remains.

3                 Section 8. This act shall become effective  
4       immediately following its passage and approval by the  
5       Governor, or its otherwise becoming law.