

**CITY OF MOODY
ORDINANCE NO. M2009-06-08C**

AN ORDINANCE DEFINING COMMON AREAS AND PROPERTY WITHIN A RECORDED SUBDIVISION FOR THE USE OF STORM WATER DETENTION OR RETENTION PONDS; ESTABLISHING RULES AND REGULATIONS PROHIBITING OVERGROWTH OF WEEDS IMPROPER DUMPING AND ACCUMULATION OF LITTER AND OTHER PROHIBITED OBJECTS; AND PROVIDING PENALTIES FOR VIOLATIONS OF ITS PROVISION.

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

SECTION 1.

Definitions.

For the purpose of this section, the following terms are defined as hereinafter set forth to-wit:

COMMON AREAS: Common areas shall mean any area noted on a recorded final plat within a subdivision as a common area to be maintained by a Homeowners Association. These areas shall include any islands within the dedicated right-of-way and areas around entrance features noted on the final plat as common area.

COMMON AREAS DETENTION OR RETENTION PONDS: Detention pond shall mean a storm water pond designed to detain storm water during a rain event and allow the storm water to slowly leave the detention pond to the receiving stream. Retention pond shall mean a storm water pond designed to retain storm water run off at a normal pool elevation of three feet or more to detain storm water during a rain event and allow the storm water to slowly leave the retention pond to the receiving stream and maintain a common pool elevation.

PRIVACY FENCE: Shall mean any fence which obstructs the view of the items it surrounds. The construction may be of wood, vinyl match material.

DECORATIVE SHRUBBERY AND LANDSCAPING: Shall mean plantings in common areas and landscape medians and around detention and retention ponds.

GARBAGE: Shall mean incapable of being used for the manufactured, designed or intended purpose; and shall also mean putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food, including wastes from markets, storage facilities, handling and sale of produce and other food products and excepting such materials that may be serviced by garbage grinders and handled as household sewage.

IMPROVED SUBDIVISION: A division of a tract of land or acreage into tracts or parcels, and the improvement thereof by construction of streets, water lines and where applicable, sewer lines to serve the subdivided property.

JUNK: Shall mean and include all metals, whether ferrous or nonferrous, including, but not limited to, any used or second hand parts of machinery, plumbing fixtures, or parts thereof, parts of an automobile, truck, bus, motorcycle, water craft, or other motor vehicle, gas or electrical appliances or fixtures, or parts thereof, household hardware, wire, cable, bearings, valves, pipes and pipe-fitting, building materials, wood, or any other used or second hand metal articles.

LITTER: Shall mean all waste material which can be or is subject to being blown from place or scattered by the elements, including but not limited to, paper, cardboard, cartons, boxes, plastics, rags, cloth, fibers and fabrics, leather, polyethylene, polystyrene, and metal cans.

OWNER OR OWNERS OF PROPERTY: Title holder or person having right of possession of real property and includes legal title holder as shown of record in the tax assessor's office, or agent of legal title holder of said property.

PERSON: Shall mean any individual, owner, titleholder, agent, firm corporation, partnership, association, organization, or entity of any kind. It shall include, but not be limited to, any tenant, lessee, manager, operator, occupant, executor, executrix, administrator, guardian, or other person in charge of, care of, possession of, or control of any real or personal property.

RUBBISH: Shall mean nonputrescible solid wastes, excluding ashes, consisting of both combustible and non-combustible wastes. Combustible rubbish includes paper, rags, cartons, wood, furniture, rubber, plastics, yard trimmings, leaves, limbs stumps, and similar materials. Noncombustible rubbish includes glass, crockery, metal cans, metal furniture, and like materials which will not burn at the ordinary incinerator temperatures, not less than 1600 degrees Fahrenheit.

SOLID WASTES: Shall mean all putrescible and nonputrescible discarded materials, except household sewage and livestock and poultry wastes, including but not limited to, garbage, rubbish, ashes, street and highway cleanings, dead animals, including offal, abandoned automobiles and such industrial wastes as are not controlled by other agencies.

WEED NUISANCE: Any abundance of overgrown weeds or grass within the City of Moody, Alabama, which is injurious to the general public health, safety and general welfare by providing breeding grounds and shelter for rats, mice, snakes, mosquitoes and other vermin, insects, and pests: or attaining such heights and dryness so as to constitute a serious fire threat or hazard; or bearing wingy, or downy seeds, when mature, that cause the spread of weeds and when breathed, irritation to the throat, lungs and eyes of the public; or hiding debris, such as broken glass or metal, which could inflict injury on any person going upon the property or being unsightly or any growth of weeds, other than ornamental plant growth, which exceeds twelve inches (12") in height.

SECTION 2.

- (a.) It shall be unlawful, constitute a public nuisance, and a violation of this section for any person or Homeowner's Association to allow any weeds, grasses or trees to grow over 12" in height in and around all common areas, landscape islands, detention ponds or retention ponds unless the plantings are for decorative shrubbery or landscaping in and around said areas.
- (b.) It shall be unlawful, constitute a public nuisance, and a violation of this section for any person or Homeowner's Association to allow decorative shrubbery or landscaping to grow without proper maintenance or obstruct the traveling public's line of sight within a public right-of-way.
- (c.) It shall be unlawful, constitute a public nuisance, and a violation of this section for any person or Homeowner's Association to allow entrance signs, flagpoles, sprinkler systems, decorative columns or other features installed in common areas to not be properly maintained.
- (d.) It shall be unlawful, constitute a public nuisance, and a violation of this section for any person or Homeowner's Association to allow wooden or chain link fences to be damaged or unsecured to allow the public entry into detention and retention ponds.
- (e.) It shall be unlawful, constitute a public nuisance, and a violation of this section for any person or Homeowner's Association to allow inlet and outlet structures in a detention or retention pond to be damaged or obstructed.
- (f.) It shall be unlawful, constitute a public nuisance, and a violation of this section for any person or Homeowner's association to allow the collection of floating and non floating debris, paper or garbage inside retention or detention pond areas
- (g.) All violations of this ordinance are hereby declared to be a public nuisance and may be abated as provided by applicable law.

SECTION 3. CHIEF OF POLICE TO ENFORCE ORDINANCE: Members of the general public may register complaints with the Chief of Police of the City of Moody, Alabama, or the Police Chiefs designee, who is / are hereby authorized to abate and remove any such nuisance found to exist in the

City of Moody, Alabama, as provided in this ordinance.

SECTION 4 NOTICE TO ABATE AND REMOVE NUISANCE: Whenever a violation of this Ordinance comes to the attention of the Chief of Police or his designee; a notice in writing shall be served upon the occupant of the land where the nuisance exists. Notice shall also be given by certified letter and regular letter upon the owner of the property or his agent, as the information appears on record in the Office of the Tax Assessor. The notice shall notify the occupant and the owner of the property or his agent of the existence of the violation and requesting compliance with the ordinance in the time specified herein.

SECTION 5. NOTICE PROCEDURE: The chief of Police of the City of Moody, or the Chief's Designee shall give notice to the owner and occupant of the premises where the violation is located at least fifteen (15) days before the time of compliance. It shall constitute sufficient notice when a copy of same is posted in a conspicuous place upon the premises on which the violation of the ordinance occurs and copies are mailed to the owner by registered mail as noted in the Tax Assessors Office.

SECTION 6. CONTENT OF NOTICE: The notice shall contain the request for abatement or removal of the violation of the ordinance within the time specified in this ordinance. The notice shall advise that upon failure to comply with the Notice to abate and Remove, the City, or its designee, shall through its own personnel or designated contractors. Companies, enterprises, or individuals, enter upon the premises for the purpose of the abatements or removal with the cost removal levied against the owner and or occupant of the property.

SECTION 7. REQUEST FOR HEARING: The persons to whom the notice are directed, or their duly authorized agents may file a written request for a hearing before the City Council of the City of Moody within fifteen (15) day period of compliance for the purpose of defending the charges by the City.

SECTION 8. PROCEDURE FOR HEARING: The hearing shall be held as soon as practicable after the filing of the request and the persons to whom the notices are directed shall be advised of the time and place of said hearing at least five (5) days in advance thereof. At any such hearing, the City and the persons to whom the notices have been directed may introduce witnesses and evidence as either party deems necessary.

SECTION 9. RIGHT OF ENTRY: If, after hearing by the City Council, it adopts a resolution finding the conditions of the premises to be a nuisance and orderings its abatement, all employees and duly authorized agents (private contractors, companies or individuals) of the City of Moody may enter upon the premises for the purpose of the abatement and removal of the nuisance. The council may at its option authorize and designate private contractors, companies, enterprises, or individuals to abate and remove the nuisance. Those persons so designated may enter upon premises for the purposes of abating and removing the nuisance. Any property owner or Homeowner's Association shall have the right to have any weeds removed or make the necessary corrections at his or her own expense providing the removal is done prior to the commencing of the work by the employees or agents of the City of Moody to do the same.

SECTION 10. LIABILITY OF OWNER OR OCCUPANT: Upon the failure of the owner or occupant of premises to comply with the provisions of the Ordinance, the owner or occupant of the property will be liable for the Assessed Costs as outlined in Section 10. A lien shall be placed upon the property for the amount of such costs.

SECTION 11. ASSESSMENT OF COSTS.

- (A) Upon completion of the work ordered by the City Council, the Chief of Police and designated representative shall compute the actual expense, including, but not limited to, total wages paid, value of the use of equipment, advertising expenses, postage, materials purchased, which were incurred by the City of Moody, Alabama, as a result of such work. An itemized statement of such expenses shall be mailed to the last known address of the owner, agent, occupant or lessee of the premises. It shall constitute sufficient delivery when a copy of same is posted in a

conspicuous place upon the premises on which the violation of this ordinance occurs and copies are mailed to the owner by registered mail as noted in the Tax Assessors Office.

- (B) In the event the owner, agent, occupant or lessee shall fail or refuse for a period of twenty-eight (28) days to pay off and discharge the expenses, the Chief of Police and designated representative shall report such failure to the City Council at the next regular meeting following the expirations, of that period.
- (C) The City Council may cause the actual expense of such work to be levied as a special assessment against the premises. The owner, agent, occupant or lessee may appear at the next City Council meeting held after receiving the statement of expenses to show cause why such assessment shall not be levied. After the meeting, the City Council may, by resolution, assess all or part of such expense against the property.
- (D) Any assessment against premises under this section shall not be final until seven (7) days after adoption by the City Council. Once the assessment has become final, the City Clerk shall have such resolution recorded in the Office of the Judge of Probate of St. Clair County, Alabama.

SECTION 12. COLLECTION OF ASSESSMENT: REMEDY OF CITY

- (A) In the event owner, agent, occupant or lessee shall fail or refuse to discharge the assessment after a period of twenty-eight (28) days from the date the assessment was made final, the City may commence an action in any court of competent jurisdiction to recover said expense.
- (B) In addition to remedies otherwise provided for herein the Chief of Police and designated representative may cause an action to be instituted to enjoin or abate any nuisance.

SECTION 13. CONTINUING OFFENSES: In all cases, the person whose duty is to abate any nuisance shall be liable for separate and distinct offenses for each day the nuisance is allowed to remain after it has become his duty by Notice of the Chief of Police and designated representative to abate it.

SECTION 14. PENALTY FOR VIOLATIONS: In addition to any other remedy provided for this Ordinance, any violation of any section or provision of this Ordinance is a misdemeanor offense and the violator may be charged with such and punished by a fine of not more than Five Hundred (\$500.00) Dollars for each offense. Additionally, after conducting a hearing, the Municipal Judge, if he finds a violation of this ordinance, shall so declare and shall make an order requiring compliance with the ordinance within a time specified by the Municipal Judge. Should the owner or occupant fail to comply with the Order of the Municipal Judge, the City or its agents may enter upon the premises for the purpose of the abatement and removal of the nuisance as provided in Section 8 hereof.

SECTION 15. CONSTRUCTION: This Ordinance shall be construed to contain all power granted to Municipalities under Sections 11-4010, 11-47-117, 11-47-131 and 11-47-140 Code of Alabama, 1975 providing for controlling nuisances, sanitation and good public health and safety conditions.

SECTION 16. REPEALED: All ordinance of the City of Moody, Alabama, which is inconsistent with this Ordinance, are hereby repealed.

SECTION 17. SEPARABILITY AND SEVERABILITY: If any section, sentence, clause, phrase, or part of this Ordinance is for any reason declared to be unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such decision shall not affect any remaining sections, sentences, clauses, phrases, or parts of this Ordinance.

SECTION 18. PUBLISHING AND EFFECTIVE DATE: The City Clerk shall cause this Ordinance to be immediately published by posting copies thereof in three (3) public places within the City, one of which shall be in the office of the Mayor, and two (2) other public places, and after such posting, which after such

posting, which posting and publication, is in accordance with the provisions of Section 11-45-8. Code of Alabama, 1975, this Ordinance shall take effect.

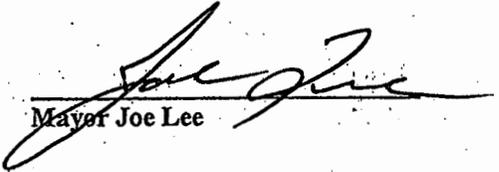
SECTION 19. This Ordinance shall become effective upon its adoption and publication and remain in effect unless repealed by the Council.

ORDAINED AND ADOPTED THIS 8TH DAY OF JUNE 2009.

Attest:



CITY CLERK



Mayor Joe Lee