

**Minutes of Town Council meeting on Ordinance number 99-001,
an Ordinance defining nuisances, establishing a procedure for
the abatement of nuisances, and providing penalties for
violations of its provisions**

The Town Council of Elmore, Alabama met in regular meeting at the usual place of holding same on Tuesday, July 6, 1999, at 7:00 P. M. The meeting was called to order by the Mayor, and the Town Clerk called the roll with the following members of the Council answering to their names:

Mayor: Mark Carter

Place #1: Samuel Levis Clifton Place #2: Dawn Thomas

Place #3: James Scott Place #4: Jean Lawrence Place #5:

Absent: Laura Hall

being all the members of the Council.

The Mayor declared a quorum present and the meeting open for the transaction of business.

Mayor Carter motioned to accept 99-001 an Ordinance defining nuisances, establishing a procedure for the abatement of nuisances, and providing penalties for violations of its provision, as presented, stating this was a public safety ordinance for the good of the community, that the ordinance committee had held three public committee meetings and the Council as a whole had discussed the ordinance at three prior meetings.

There being no further discussion, Councilwoman Lawrence seconded the motion.

Mayor Carter asked for a roll call vote. The vote was as follows:

Place # 1: Yea, Place #2: Yea, Place #3: Yea, Place #4: Yea,

Place #5: Absent, Mayor: Yea.

The Mayor then declared the Ordinance was duly adopted and ordered the same be recorded.

C. Mark Carter

Mayor

Dawn M. Carter

Town Clerk

ORDINANCE 99-001
AN ORDINANCE DEFINING NUISANCES, ESTABLISHING A PROCEDURE
FOR THE ABATEMENT OF NUISANCES, AND PROVIDING PENALTIES
FOR VIOLATIONS OF ITS PROVISIONS

BE IT ORDAINED BY THE TOWN COUNCIL OF ELMORE, ALABAMA
AS FOLLOWS:

Section 1: PURPOSE. This ordinance establishes the definitions of nuisances, establishes a procedure for the abatement of nuisances, and provides for penalties for violations of its provisions.

NUISANCES

Section 1- 2: DEFINITION. For the purposes of this chapter the term "nuisance" shall mean anything that unlawfully causes hurt, inconvenience or damage; that class of wrongs that arises from the unreasonable, unwarrantable or unlawful use by a person of his own property, either real or personal, or from his 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; 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.

Section 1-3: NUISANCE UNLAWFUL. It shall be unlawful for any person to permit or maintain the existence of any nuisance on any property under his control.

Section 1-4: TOWN COUNCIL MUNICIPAL HOUSING ABATEMENT BOARD TO ENFORCE ORDINANCE. The Mayor and the Town Council shall, by separate ordinance, appoint a Municipal Housing Abatement Board to enforce the provisions of this ordinances, until such time as the Town establishes the office of building inspector, building official, vector control supervisor, director of public works, fire marshal, health officer, or such other town employees as may be designated by the Town Council. Said separate ordinance provides that in the event no citizens are desirous of volunteering for service on the Municipal Housing Abatement Board, then the Mayor and two (2) council persons shall serve as said Board, pending establishment of any of the aforesaid positions by the Town.

The Municipal Housing Abatement Board, upon resolution of the Town Council, shall inspect any nuisance reported by letter, in person or by telephone, to the Town Council at meetings, or to the Mayor, clerk, or individual member of the Town Council, by any citizen of the Town of Elmore for consideration to abate by the Town Council. The Town Council shall serve as the officer for the Town of Elmore. A majority vote shall be required by Council for the abatement of any nuisance.

Section 1-5: DANGEROUS BUILDINGS, STRUCTURES, AND CONDITIONS. All buildings, structures or conditions which are (1) unsafe, as defined in the 1982 Standard Code for the Elimination or Repair

of Unsafe Buildings, (2) not provided with adequate egress, or (3) which constitute a fire hazard, or (4) are otherwise dangerous to human life, or (5) which in relation to existing use constitute a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence, abandonment, or accumulation of rubbish and debris are hereby declared to be dangerous buildings, structures and conditions. All such dangerous buildings, structures or conditions are hereby declared to be a nuisance. It shall be unlawful to permit any such dangerous building, structure or condition to remain or continue in existence in any place after receiving an order from the Town Council to abate the same by repair, rehabilitation, demolition or removal. It shall be unlawful to occupy any building or structure or permit it to be occupied while it is or remains a nuisance.

Section 1-6: VEGETATION, GRASS, PLANTS AND WEEDS

(a). Any vegetation, weeds, grass or plants (other than trees, bushes, flowers or other ornamental plants under proper care and cultivation) which have grown to a height of twenty-four inches or more on any lot or tract of land in the town are hereby declared to be a nuisance. It shall be unlawful to permit any such weed, grass or plants to grow or remain in any place after receiving an order from the Town Council to remove the same.

(b). In the case of a large tract of land on which no structure is situated, the provisions of this section shall apply only to those portions of said tract which are within three hundred feet of a structure or a public road, street, avenue, highway or other public right-of-way. The

Town Council may for good cause reduce the area subject to this section to a lesser distance. All portions of such tracts shall be subject to all other provisions of this chapter.

Section 1-7: DEBRIS, RUBBISH, ETC. An accumulation of debris, trash, bush, used building materials, refuse, remains from a building demolition, remains from a fire, parts of buildings or parts of untenable structures on any lot or tract of land in the town is hereby declared to be a nuisance. It shall be unlawful to permit any such accumulation to remain or continue in existence in any place after receiving an order from the Town Council to remove the same.

Section 1-8: MACHINERY, VEHICLES, ETC IN RESIDENTIAL AREA. Storage of used building material, machinery, vehicles, parts of vehicles or any other materials which may provide a breeding place of mosquitoes, harmful insects or rodents, or is so unsightly as to be offensive to the neighborhood in the Town Limits is hereby declared to be a nuisance. It shall be unlawful to permit such storage to continue after receiving an order for the Town Council to remove the same.

Section 1-9: 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 their property to the center line of the alley free of nuisances.

Section 1-10: NOTICE TO ABATE NUISANCE.

(a) Whenever in the opinion of the Municipal Housing Abatement Board finds that a nuisance exists as defined in the chapter or ordinance, the Board shall order the owner, agent, occupant, mortgagee or lessee of the property (to be determined by the town's attorney by conducting a title search of records in the Elmore County Probate Office, if necessary) on which the nuisance is located to abate the same. Abatement shall mean full and complete removal of any nuisance declared under sections 1-5, 1-6, 1-7, or 1-8 of this chapter. Abatement shall mean either repair, rehabilitation, demolition or removal, as shall be determined by the Municipal Housing Abatement Board as the proper remedy, for any nuisance declared under Section 1-4 of this chapter.

(b) The Municipal Housing Abatement Board shall give written notice to the Town Council of its inspection and findings of the existence of the nuisance, and that the Board has provided notice of the nuisance pursuant to paragraph (a) above to the owner, agent, occupant, mortgagee or lessee of the nuisance and the manner in which the nuisance is to be abated.

(c) The Town Council shall pass by majority vote a resolution to the effect of the existence of the nuisance, the manner in which it shall be abated, and shall state the time within which the nuisance must be abated and that the Municipal Housing Abatement Board shall notify the

owner of said nuisance.

(d) Said resolution shall be sent by certified mail to the owner, agent, occupant or lessee, or person shown by the records of the Tax Assessor of Elmore County, Alabama to have been the person last assessed for payment of state, and county ad valorem tax on the property, the existence of the nuisance, with description, manner and time within which the nuisance must be abated.

(e) The resolution shall require the owner, agent, occupant, mortgagee or lessee to complete the abatement of the nuisance within one-hundred twenty days from the date of the notice if it is a nuisance under Section 1-5, and within thirty days if it is a nuisance under Sections 1-6, 1-7, or 1-8; provided, however, the resolution may stipulate a different time but in no case more than 120 days. Such notice shall provide or notice owner, agent, occupant, mortgagee or lessee that same can request a hearing or file objection with the Town Council within sixty days from the date of notice if the notice states action to be taken under 1-5; 30 days if the notice states action is to be taken under 1-6, 1-7, 1-8. The notice shall contain a provision notifying the owner, agent, occupant, mortgagee or lessee that he or she has the right to request a hearing and/or object to the findings of the Municipal Housing Abatement Board not later than sixty days from the date of the notice.

(f) A notice shall be posted on any unsafe building that the Town Council has passed a resolution stating "THIS STRUCTURE IS UNSAFE. ITS USE OR OCCUPANCY HAVE BEEN PROHIBITED BY THE TOWN COUNCIL OF THE TOWN OF ELMORE" and shall be signed and dated. Said sign shall not be removed without permission of the Town Council. No person shall enter

the structure except for the purpose of making the required repairs or demolishing the structure.

Section 1-11: FAILURE TO COMPLY WITH NOTICE TO ABATE

(a) In case the owner, agent, occupant, mortgagee or lessee shall fail, neglect or refuse to comply with the notice to abate the nuisance, and/or request a hearing or object to the Municipal Housing Abatement Board's notice within sixty days from the date thereof for a violation for which notice is given under 1-5; thirty days if the notice is given under 1-6, 1-7, 1-8, the Town Council shall hold a public hearing authorizing the abatement of the nuisance by the Town Council and also before levying an assessment on the property.

(b) Notice of the public hearing to determine whether the Town Council should order to abate the nuisance shall be given by causing a notice of such hearing to be sent by certified mail to the owner, agent, occupant, mortgagee or lessee at least ten days before the date of such hearing. The hearing shall be held within sixty days from the date of finding of the Municipal Housing Abatement Board for a violation for which notice is given under 1-5; 30 days for a violation for which notice is given under 1-6, 1-7, 1-8. Such notice shall also be posted in three public places in the Town, one place being the U.S. Post Office, at least five days prior to the hearing, and shall be published in a general publication newspaper one time, not less than ten days prior to the hearing.

(d) After the public hearing the Town Council may by resolution order the Elmore Volunteer Fire Department to proceed with the work specified in such notice or may order such nuisance demolished or

removed, or the Town Council may contract with persons, firms, partnerships, corporations or other legal entity to perform, correct, repair, or abate the nuisance. Nothing contained herein shall require any repairs to be made. The Town may elect to abate by demolishing any nuisance. If the owner, agent, occupant, mortgagee or lessee of the property shall appear at the public hearing, no further notice of the order of the Town Council shall be required. If the owner, agent, occupant, mortgagee or lessee fails to appear, notice of the order of the Town Council shall be mailed to the last known address and shall be posted for five days in three public places, one of which is the U.S. Post Office, in the Town of Elmore.

(e) Upon the expiration of seven days from the date of posting under subsection (d), or seven days from the date of the order if notice by posting is not required, the Town Council or its designated representative or agent shall proceed to carry out the order of the Town Council.

Section 1-12: ADMINISTRATIVE HEARING, APPEAL.

(a) Any owner, agent, occupant, mortgagee or lessee receiving notice of the nuisance and the Municipal Housing Abatement Board's findings of the nuisance and the manner of its abatement may, not later than sixty days after the date of the notice for a violation for which notice is given under 1-5; 30 days for a violation alleged under 1-6, 1-7, 1-8, request an administrative hearing and/or object to the findings of the Municipal Housing Abatement Board by mailing a request for a hearing and/or objection in writing to the findings of the Municipal Housing Abatement Board to the Clerk of the Town of Elmore. Failure of any owner, agent, occupant, mortgagee or lessee to notify the clerk in writing

requesting a hearing and/or objection to the findings of the Municipal Housing Abatement Board within sixty days from the date of the notice sent for a violation for which notice is sent under 1-5; 30 days for a violation for which notice is sent under 1-6, 1-7, 1-8, waives any and all rights to an administrative hearing.

(b) When an owner, agent, occupant, mortgagee or lessee notifies the Clerk of the Town of Elmore in writing of the request for a hearing and/or objection to the Municipal Housing Abatement Board's findings, the Clerk shall notify the Mayor and Town Council forthwith of said request for hearing and/or objection and the Mayor and Town Council shall set a date for an administrative hearing within not less than ten and no more than sixty days after the date that the request in writing is made for the hearing and/or objection for a violation for which notice is given under 1-5; 30 days for a violation for which notice is given under 1-6, 1-7, 1-8.

Notice of the hearing before the Town Council shall be published one time in a newspaper of general circulation in the Town not less than ten days prior to the hearing. Additionally, the Town Clerk shall cause notice of the hearing to be posted in three public places, one of which shall be the U. S. Post Office, one being the Town Hall in the Town of Elmore, no later than ten days prior to the hearing.

(c) At said hearing, the owner, agent, occupant, mortgagee or lessee shall present its reasons as to why the decision of the Municipal Housing Abatement Board should not be followed, as well as present evidence to the Town Council as to any objection which said owner, agent, occupant, mortgagee or lessee has to the findings of the Municipal Housing Abatement Board's findings.

The Town Council shall then, after presentation of the evidence and argument of the owner, agent, occupant mortgagee or lessee of the property, as well as in receiving evidence from the Municipal Housing Abatement Board, shall make a finding to uphold the Municipal Housing Abatement Board's findings and determine whether the building or structure is unsafe to the extent that it creates a public nuisance or find in favor of the owner, agent, occupant, mortgagee or lessee that the building is not unsafe nor does the building or structure create a public nuisance, in the case of a violation for which notice was given under 1-5. Should the Town Council make a finding that the building or structure is unsafe and that said building or structure is to be demolished and removed within thirty days following the date of the Town Council's determination. If the notice of violation pertains to Sections 1-6, 1-7, 1-8, then the Town Council may order the nuisance abated, removed, cut or take other action consistent with this article to abate, remove and otherwise remedy the nuisance.

(d) If any owner, agent, occupant, mortgagee or lessee is in disagreement with the findings of the Town Council, said person may appeal the decision of the Town Council within thirty days after the date of the determination by the Town Council, by appealing to the Circuit Court of Elmore County, Alabama by filing with the Clerk of the Circuit Court of Elmore County, Alabama, notice of the appeal and a bond for security of costs in the form and amount approved by the Circuit Clerk. Upon filling of the notice of appeal and bond for security of costs, the Town Council shall suspend its order providing for the abatement of the nuisance, demolition and/or removal of the same, pending the appeal and

outcome of the same in Circuit Court.

Section 1-13: MUNICIPAL HOUSING ABATEMENT BOARD. The Municipal Housing Abatement Board may consist of private citizens appointed to the Board, or if none volunteer to serve on said Board, the Board may consist of the Mayor and Town Council members. Furthermore, the Town of Elmore may contract with private contractors for the purpose of demolishing, abating, removing, cutting, cleaning or otherwise remedying the nuisance. This section authorizes the entry by any member of the Municipal Housing Abatement Board, private citizens, comprising membership of the Board, Mayor and Council Members (if applicable), as well as any private contractors, volunteer firemen, etc., hired by the Town for abating the nuisance, onto the real property being investigated for the first purpose of examining and inspecting the exterior of any building and/or structure to ascertain whether said building and/or structure falls within the provisions of 1-5 hereof, and/or for the purpose of establishing whether a nuisance exists under the provisions of 1-6, 1-7, or 1-8 hereof. Said authorized personnel shall not have permission and right of entry to the interior of any building and/or structure without first having obtained prior written consent of the owner and/or occupant thereof. Additionally, this section authorizes the entry onto real property by any of the aforesaid members, private contractors, and/or volunteer firemen for the purpose of demolishing, burning, cutting, cleaning and otherwise abating and/or removing any nuisance in accordance with the provisions of this ordinance.

Section 1-14: ASSESSMENT OF COST.

(a) The Town will keep accurate records of all costs associated with demolishing the building including any contract work for the demolition, attorney fees, recording fees, certified mail fees, title search fees, and other costs and expenses incurred in connection with abatement of the nuisance.

(b) Once the building is destroyed or demolished, the Town shall pass a resolution fixing the cost of demolition and removal, as well as for all costs, expenses and fees associated with demolishing said building after deduction and/or crediting the value of any salvaged materials after the sale of said salvaged materials.

The Town Clerk shall notify the owner, agent, occupant, mortgagee or lessee of the costs so established, as well as provide in said notice a date for a hearing to establish a lien for special assessments based upon the fixed costs so established. The notice shall be provided five days prior to the date set for the hearing by publishing the notice in a newspaper of general publication one time fifteen days prior to the hearing. In the event no objection is made at the hearing, the fixed costs shall become a special assessment by finding and resolution made thereof by the Town Council, and shall constitute a lien on the real property being the subject of the assessment. 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 ordinances.

(c) In the event the owner, agent, occupant or lessee shall fail or refuse for a period of twenty-eight days to pay off and discharge the

expenses, the Town Clerk shall report to the Town Council at the next regular meeting following the expiration of that period and a resolution passed to record the lien so established, providing the owner, agent, occupant, mortgagee or lessee with notice thereof.

(d) Any assessment against property under this section shall not be final until seven days after the adoption by the Town Council. Once the assessment has become final, the Town Clerk shall have such resolution recorded in the office of the Judge of Probate of Elmore County.

Section 1-15: COLLECTION OF ASSESSMENT; REMEDY OF TOWN

(a) In the event the owner, agent, occupant or lessee shall fail or refuse to discharge the assessment after a period of twenty-eight days from the date the assessment was made final, the town may commence an action in any court of competent jurisdiction to recover said expenses.

(b) In addition to remedies otherwise provided for herein, the Town Council may cause an action to be instituted to enjoin or abate any nuisance.

Section 1-16: CONTINUING OFFENSES In all cases the person whose duty it 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 MHAB and/or Town Council to abate it.

Section 1-17: PENALTY FOR VIOLATIONS.

Any violation of any section or provision of this chapter may be punished by a fine of not less than fifty dollars nor more than five hundred dollars for each violation, plus costs of court. This shall be in addition to any

assessment of costs available to the Town as provided hereinabove in the ordinance.

Section 1-18: CONSTRUCTION.

This chapter 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, providing for controlling nuisances, sanitation and good public health and safety conditions.

Section 2: ADOPTION OF STANDARD CODE FOR THE
ELIMINATION OR REPAIR OF UNSAFE BUILDINGS.

(a) The Town Council of Elmore adopts the *Standard Code For The Elimination Or Repair of Unsafe Buildings*, 1982 edition as published by the Southern Building Code Congress International as its standard for all building built after the date of this ordinance.

(b) The Town Council of Elmore shall consider all buildings inhabited in the Town Limits of Elmore on the date this ordinance becomes law, safe in so far as they are in a livable condition at the signing of this ordinance into law. Upon vacation, it shall be at the discretion of the Town Council's interpretation of the Standard Code for the Elimination or Repair of Unsafe Buildings as to whether the building shall be considered safe at any future date.

Section 3: REPEALER. All provisions of the Code of the Town of Elmore or ordinances which are inconsistent with this ordinance are hereby repealed.

Section 4: SEPARABILITY. It is the intention of the Town

Council of Elmore that each separate provision of this ordinance shall be deemed independent of all other provisions herein, and it is the further intention of the Town Council that if any provision of this ordinance be declared invalid, all other provisions shall remain valid and enforceable.

Section 5: PENDING PROCEEDINGS. Nothing in this ordinance shall be construed to affect any suit or proceeding now pending in any court, or any rights acquired or liability incurred, nor any cause or causes of action accrued or existing, under any code section or ordinance hereby repealed, nor shall any right or remedy of any character be lost, impaired or affected by this ordinance.

Section 6: EFFECTIVE DATE. This ordinance shall take effect upon posting as required by law.

ADOPTED AND APPROVED this 6th day of July, 1999.

C. Mark Carter
MAYOR

ATTEST:

Dwight M. Carter
TOWN CLERK

STATE OF ALABAMA

COUNTY OF ELMORE

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I, **Gwen M. Carter**, hereby certify that I am **Clerk of the Town of Elmore**; that I have in my possession the books and records of such municipality, including the minute book in which are recorded the minutes of the meetings of the Council thereof, and that the foregoing is a true and correct copy of an ordinance of such Council which was duly and legally adopted by it on the **6th** day of **July, 1999**, and approved by the Mayor thereof on the **6th** day of **July, 1999**, and that such ordinance has been duly recorded in the ordinance book kept for that purpose by such municipality.

IN WITNESS WHEREOF, I hereunto affix my signature as Clerk of such municipality, and the seal thereof, on this the **6th** day of **July, 1999**.

Gwen M. Carter

Clerk.

STATE OF ALABAMA

COUNTY OF ELMORE

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I, **Gwen M. Carter**, hereby certify that I am **Clerk of the Town of Elmore**; that I have in my possession the books and records of such municipality, including the minute book in which are recorded the minutes of the meetings of the Council thereof, and that the foregoing is a true and correct copy of an ordinance of such Council which was duly and legally adopted by it on the **6th** day of **July, 1999**, and approved by the Mayor thereof on the **6th** day of **July, 1999**, and was published by posting copies in three public places within the limits of such municipality on the **6th** day of **July, 1999**, one of which places was at the Post Office therein.

IN WITNESS WHEREOF, I hereunto affix my signature as Clerk of such municipality, and the seal thereof, on this the **6th** day of **July, 1999**.

Gwen M. Carter

Clerk.