

**ORDINANCE NO. 2018-001
GURLEY NUISANCE ORDINANCE**

AN ORDINANCE REPEALING ORDINANCE 270-02 AND ORDINANCE 2012-004 AND FORBIDDING THE ACCUMULATION OF RUBBISH AND WASTE CONSTITUTING HEALTH HAZARDS OR CAUSING OBNOXIOUS ODOR

BE IT ORDAINED by the Town Council of the Town of Gurley, that Ordinance 270-R2 and 2012-004 superseded and replaced as follows:

Sec. 1.01	Short Title
Sec. 1.02	Purpose
Sec. 1.03	Definitions
Sec. 1.04	Duties of owners or persons in control of real property
Sec. 1.05	Regulations concerning public nuisances on premises
Sec. 2.01	Enforcement
Sec. 2.02	Penalties
Sec. 2.03	Abatement
Sec. 2.04	Severability
Sec. 2.05	Compliance with Other Laws
Sec. 2.06	Conflicts
Sec. 3.01	Effective Date

Sec. 1.01 Short Title

This ordinance shall be known and may be cited as the “Gurley Nuisance Ordinance”.

Sec. 1.02 Purpose

This ordinance is enacted for the purposes, among others, of promoting the health, safety and general welfare of the Town of Gurley, and of establishing reasonable standards for the regulation and control of rubbish and waste, and to protect and enhance the appearance and the quality of life in the town of Gurley. It is the intent of the Council in enacting this ordinance to advance these purposes by giving reasonable consideration to the problems created by the improper accumulation of rubbish and waste, which are not only unsightly, but also create safety and health hazards to children, adults, and property. Additionally, improper rubbish and waste accumulation may impede or divert rainwater runoff, provide breeding grounds and shelter for rodents or other vermin, or constitute a threat of fire to nearby structures.

Sec. 1.03 Definitions

The following words and terms when used in this ordinance shall have the meanings respectively ascribed to them by this section, unless the context thereof clearly indicates otherwise.

(a) *Definitions.* For the purpose of this section, the following terms are defined as hereinafter set forth, to wit:

Administrative official shall mean the Mayor, or other member of the town council designated by the Mayor.

Antique vehicle shall mean an antique or vintage vehicle, operative or inoperative, which is being or has been restored and has a valid State of Alabama vintage vehicle license plate attached.

Approved, enclosed, covered structure shall mean any building, garage, accessory structure, or other structure, having four enclosing walls and a roof, built according to and in compliance with all applicable building, zoning, fire, or other codes of the town.

Automobile graveyard shall mean any establishment or place of business which is duly licensed and operated in accordance with all applicable laws and/or ordinances of the town, and which is maintained, used, or operated for storing, keeping, buying, or selling of wrecked, ruined, damaged, or dismantled motor vehicles or parts thereof.

Commercial property shall mean any lot, tract, parcel, land, or other property located within the town, that is zoned or designated for uses other than residential purposes.

Construction debris shall mean but not be limited to building materials, asphalt, rock, concrete, dirt, curbing, insulation, materials resulting from construction or demolition, etc.

Discarded household furnishings shall mean any furniture, appliance, carpeting, or similar item, intended for indoor residential use, placed outside of an approved, enclosed, covered structure.

Enforcing official shall mean any town employee designated by the mayor, which may include but not be limited to: building inspectors, zoning inspectors, police, town clerk, court clerk, court magistrate, mayor, etc.

Garbage shall mean the animal and/or vegetable waste resulting from the handling, preparation, cooking or consumption of food or food products. This does not include garbage that is properly containerized and stored in such a manner as to prevent it from being blown, deposited, or otherwise scattered by the elements, animals, birds, or by any other means.

Grass and Weeds shall mean any abundance of overgrown weeds or grass within the town, which could be injurious to the general public health, safety and general welfare by; providing breeding grounds and shelter for rodents, snakes, mosquitoes, spiders, or 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, that when mature, could cause the spread of weeds or, when breathed could cause 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 eight (8) inches in height.

Hazardous plant shall mean trees, shrubs, ornamental or non-ornamental plant growth, growing or standing on private property that is dead, damaged, deteriorated, decayed or has otherwise become hazardous for any reason that could pose a danger to the property on which it is located, any adjacent property, whether public or private, or to the public in general, by danger of falling, splitting, uprooting, or shedding limbs, or any other reason determined to be a hazard.

Improved subdivision shall mean 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.

Inoperable shall mean incapable of being used for the manufactured, designed or intended purpose.

Inoperable vehicle shall mean any vehicle that is junked, abandoned, discarded, in a state of disassembly, or in the process of being stripped or dismantled, or is inoperable or incapable of being used for its designed or intended purpose. Any vehicle that is not currently licensed as required by law, and that is kept or stored in a manner so as to constitute a health, safety, or fire hazard is also defined as an inoperable vehicle.

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 or furnishings; wire; cable; bearings; valves; pipes and pipe-fittings; building materials; wood; or any other used or secondhand metal articles, including any inoperable motor vehicle(s) that is kept or stored upon the premises in such a manner as to constitute a health, safety, or fire hazard. This definition shall not apply to building materials stored temporarily for use on the same real property within a period of six (6) months, when said materials are neatly stored at least eighteen (18) inches above the ground.

Junk or salvage yard shall mean any premises, establishment, or place of business which is duly licensed and operated in accordance with all applicable laws and/or ordinances of the town, and which is maintained, operated, or used for storing, keeping, or dismantling of junk and salvage, but shall not include the place of business or premises of a scrap processor as herein defined,

Litter shall mean all waste material which can be or is subject to being blown from place to place or scattered by the elements, including, but not limited to, paper; cardboard; cartons; boxes; plastics; rags; cloth; fibers and fabrics; leather; polyethylene; and polystyrenes. This does not include litter that is properly containerized and stored in such a manner as to prevent it from being blown, deposited, or otherwise scattered by the elements, animals, birds, or by any other means.

Natural condition shall mean uncultivated and unseeded land, still in a state of nature. But any growth on land once it has been cleared or plowed is not a natural condition, even though it has not been planted or cultivated by anyone.

Owner or owners of property shall mean any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or person last assessed for payment of ad valorem taxes; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

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

Premises shall mean any lot, yard, plot, tract, parcel, or other piece of land or property located within the town.

Public nuisance shall mean anything that will, or is likely to, constitute a danger, a health hazard or a safety hazard to the public, or which may attract or harbor mosquitoes, flies, or other insects, spiders, rodents, fleas, snakes, or creates an obnoxious odor, or obstructs or renders dangerous for passage any public street, highway, sidewalk or right-of-way. The term “public nuisance” shall include but not be limited to: construction debris, garbage, junk, litter, hazardous plants, overgrown weeds, grass or other vegetation, stumps, brush, stagnant water, animal carcasses, animal waste, exposed accumulation of decayed food or vegetable matter, manure, or hazardous materials.

Residential property shall mean any lot, tract, parcel, land, or other property located within the town, on which single or multifamily structures used as a residence or for human habitation exist, or any property that is located within an area that is zoned for residential uses by the town.

Scrap shall mean other materials or waste, including, but not limited to old cordage, ropes; rubber; bottles and other glass; tin or aluminum cans; buckets; tree branches, tree limbs, tree stumps; or other waste or refuse not otherwise classified herein as junk, litter, or garbage.

Scrap metal yard shall mean any establishment or place of business which is duly licensed and operated in accordance with all applicable laws and/or ordinances of the town, and which is maintained, used, or operated solely for the processing or preparing of scrap metals for re-melting by steel mills and foundries.

Scrap processor shall mean any person who is duly licensed and operating in accordance with all applicable laws and/or ordinances of the town, and is engaged primarily in the purchase and collection of scrap metals (e.g. manufacturing by-products, obsolescent machinery, and vehicles) for the specific purpose of processing into scrap materials for the metals recovery industry, such as steel mills, foundries, smelters, and refineries, and having machinery and facilities designed for such processing, and making regular shipments of such materials in the normal course of business.

Stagnant water shall mean any accumulation of water, whether natural or man-made, and shall also apply to water in any type of open pool, container, or vessel, that is not moving, not flowing, is motionless, or is in a foul state from standing. This includes but is not limited to non-engineered ponds (whether man-made or natural), swimming pools, wading pools, ornamental ponds, buckets, non-mounted tires, boats, vessels, or receptacles, etc., which could provide habitat or breeding areas for insects, or attract insects, vermin, or pests. This section is not intended to restrict the use of pools, spas, ornamental ponds etc., provided that they are equipped with the proper operable circulation and filtration systems, or children's wading pools that are being properly maintained and are not creating a nuisance.

Vehicle shall mean any device in, upon or by which any person or property is or may be transported, carried, or drawn from one place to another, and shall include but not be limited to, motor vehicles, boats, boat trailers, utility trailers, horse trailers, bicycles, carts, tractors, or other similar devices.

Sec. 1.04 Duties of owners or persons in control of real property

(a) It shall be the duty of the owner or owners, or any person in control of, or in charge of any real property located within the town, to maintain any weeds, grass, or plant growth growing upon such property in such a manner as not to constitute a nuisance.

(b) The duties and obligations of the owner or person in control extend to and include any real property situated within a dedicated right-of-way or easement burdening the property, except to the extent that it may be impracticable to do so because of public facilities located thereon or a hardship, as to be determined by the enforcing official. Such rights-of-way and easements must be maintained by the owner in a manner consistent with the maintenance of the owner's remaining property and within the requirements in this chapter, except to the extent it may be impracticable to do so because of public facilities located thereon or a hardship, as to be determined by the enforcing official.

(1) The dedication and existence of a right-of-way for a public road or of an easement for drainage or for public utilities represents the grant of only a limited interest in property and does not change the actual ownership of the property upon which the right-of-way or easement is located. The public authority maintains rights-of-way and easements only to the extent necessary to maintain the public facility and to maintain safety. The owner of the burdened property continues to control the property, except to the extent that such control interferes with the public use. The public authority does not cut grass, weeds and other growth upon rights-of-way or easements, except to the extent necessary for operations and safety purposes. All other maintenance is the responsibility of the owner of the property upon which the right-of-way or easement is located.

Sec. 1.05 Regulations concerning public nuisance on premises

(a) It shall be unlawful for any person to commit, create, maintain or permit any public nuisance to exist on premises under their ownership or control, whether located in or adjoining any residential subdivision, whether platted or not, whether vacant or not. This section shall not apply to the following:

- (1) Any property which is in its "natural condition."
- (2) Any property which is located more than one hundred (100) feet from any boundary of any lot or parcel of real estate upon which any dwelling is located, and more than one hundred (100) feet from any commercial enterprise.
- (3) Cultivated row crops and garden plants in their respective growing seasons. This exception applies only to growing crops and garden plants, and shall not be construed to permit any crops or gardens to become overgrown with weeds in violation of the remaining terms of this section.
- (4) Ornamental shrubbery and ground cover, provided that such uses are part of a landscaping theme and are not associated with a general deterioration of the property, are not in an overgrown or unmanaged condition, or are planted, maintained or overgrown so as to encroach over or onto adjacent properties, rights of way or easements.

(b) It shall be unlawful for any person to commit, create, maintain, store or permit to exist on premises under their ownership or control any inoperable vehicle, discarded household furnishings, scrap, or junk, as defined herein. This paragraph shall not apply to the following:

- (1) Materials stored or located on the premises of any junk or salvage yard, scrap metal yard, scrap processor, or automobile graveyard, as defined herein.

(2) Vehicles being repaired or awaiting repair that are located on the premises of any automobile dealer, automobile repair and body shop or garage, or other vehicle repair enterprise that is duly licensed and operated in compliance with all applicable codes and ordinances of the town, provided said vehicles are so located or stored in a manner as to prevent any health, fire, or safety hazard.

(3) Vehicles and/or vehicle parts housed in an approved, enclosed, covered structure and not viewable from any street, alley, or other public right of way, or any other private premises.

(4) No more than two inoperable vehicles which are parked or stored in a rear yard and which do not pose a health, safety, or fire hazard, and are either concealed from view by a solid privacy fence no less than six (6) feet in height or are completely covered with an opaque cover

(5) Any vehicle retained by the owner for antique or vintage automobile collection purposes, given a written declaration by the owner has been made expressing their intent to bring the vehicle, if inoperable, into operating condition within one year from the date of the declaration.

c) It shall be unlawful and a violation of this section for the owner or owners, or any person in control of or in charge of any real property located within the town, to keep or store upon the premises of any retail store or shop, secondhand store, thrift store, or similar commercial property or establishment, any merchandise, goods, or wares, including but not limited to, gas or electric appliances, parts thereof; plumbing fixtures, or parts thereof; lawn mowers or lawn mower parts; machinery, equipment, utensils, or other items displayed for sale to the general public, in such a manner as to constitute a health, safety, or fire hazard.

d) It shall be unlawful and a violation of this section for the owner or owners, or any person in control of or in charge of any real property located within the town, to keep or store in any area or porch visible from the street or right of way the following:

(1) Household items commonly used indoors such as appliances, pianos, mattresses, or furniture designed for indoor use.

(2) Lawn or commercial equipment, building materials, landscaping or gardening materials, parts/auto parts, scrap items or containers storing any scrap items, or firewood.

Section 2.01 Enforcement.

(a) **Notice to abate:** Enforcement of this ordinance shall be by any enforcing official, including the Mayor, the Administrative Official designated by the Mayor, the Town Clerk or by any law enforcement officer for the Town, who shall issue written notice requiring abatement of the violating condition.

(b) **Persons to Receive Notice:** The notice shall be sent to the person shown by the records of the county to have been the last person assessed for payment of ad valorem tax on the property where the nuisance is situated. It shall be the responsibility of that person to promptly advise the enforcing official of a change of ownership or interest in the property.

(c) **Methods of Notice:** Notice may be given in person or by first class, certified or registered mail, properly addressed and postage prepaid to the address where the notice for ad valorem taxes for the last tax year was mailed. The notice shall direct the person to, within ten days of the personal service or mailing of the notice, remove the materials or abate the condition constituting the violation. The enforcing official may permit additional time upon request in writing from the owner, but in no case more than twenty (20) days total.

(d) **Posting:** The notice shall also be posted in a conspicuous place on the property.

(e) **Appeals:** An appeal may be made by the owner, in writing to the administrative official within five days of the date of the notice. The administrative official shall, within five days of receipt of the appeal, make a determination as to whether a nuisance exists. The enforcing official shall notify the owner by personal service or by first class or certified mail of the determination of the administrative official. If the administrative official determines that a nuisance exists, the owner shall, within 10 days of the personal service or mailing of the notification, comply with the initial order to abate issued by the enforcing official, with modifications as may be made by the administrative official.

(f) **Failure to abate** - If the owner or person in charge of the premises fails to remove the violating materials or condition within the required time, then the enforcing official may issue a citation directing the person to appear in municipal court to answer the charges stated in the citation.

Section 2.02 Penalties.

(a) Any person who shall violate any of the terms or provisions of any of this Ordinance, or fails to comply with any of the requirements thereof, shall be guilty of a misdemeanor, punishable by a fine of not less than One Hundred Dollars (\$100.00), nor more than Five Hundred Dollars (\$500.00), and may, in addition, be sentenced to not more than six (6) months in jail, or both. Each day that said violation continues shall constitute a separate offense for purposes of this ordinance.

(b) **Subsequent offenses:** If such person allows the same unlawful condition to reoccur on a second or more occasion within a two-year period, the enforcing official, the Mayor, the Administrative Official designated by the Mayor, the Town Clerk or any law enforcement officer for the Town may issue a summons and complaint to such person without prior written notice. For purposes of this section, each recurrence shall be considered the beginning of a new two-year period.

(c) **Other Laws:** If conduct constituting a violation of this ordinance also constitutes an offense under another law, the person may be prosecuted under all applicable laws.

Section 2.03 Abatement

(a) **Abatement by Town:** Should the premises owner or the person in charge or control of the premises on which there exists a condition in violation of this ordinance fail or refuse to abate the condition within the time set out in Section 2.01 of this ordinance, then the Town is authorized to abate the condition at the expense of the owner of the property.

(b) **Emergency Abatement:** Nothing in this section shall prevent the Town, without notice or other process, from immediately abating any condition that poses an imminent and serious hazard to human life or safety. Abatement under this section shall be at the expense of the owner of the property.

(c) **Notice of Expenses:** Upon completion of the abatement work performed by the town, including work by contractors employed by the town, the enforcing official shall compute the actual expenses, at a minimum amount of \$100.00, including, but not limited to, total wages paid, value of the use of equipment, advertising expenses, postage, and materials purchased, which were incurred by the town as a result of the work. An itemized statement of the expenses (“Statement”) shall be given by first class or certified mail to the last known address of the owner of the property.

(d) **Resolution:** The enforcing official shall provide a copy of the Statement to the Town Council for consideration. The owner shall be notified at least five days in advance by certified or first-class mail of the time fixed by the Town Council to consider the Statement. The Town Council shall review and consider the Statement, together with any objections which may be raised by the owner, and thereupon make modifications in the Statement as they deem necessary, after which the Council may assess the costs. The Council shall adopt a resolution setting out the costs and directing that the costs shall be paid to the town clerk’s office by a date set by the council, not to be more than thirty (30) days from the date of the resolution. A copy of the resolution shall be provided by first class or certified mail to the last known address of the owner of the property. If the costs are not paid by the required date, the resolution shall be recorded in the office of the Judge of Probate of Madison County, and shall constitute a lien upon the property, which shall be collected as any other debts are collected or liens enforced.

Section 2.04 Severability

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, void or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Town Council of the Town of Gurley declares that it would have passed this law, and each section, subsection, clause or

phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional, void or invalid.

Section 2.05 Compliance with Other Laws

In addition to the requirements of this Ordinance, all nuisance removal must comply with the requirements of all applicable planning and safety laws and ordinances, as well as any applicable state and federal laws.

Section 2.06 Conflicts

This Ordinance shall be deemed cumulative with and supplemental to any and all statutes of the State of Alabama regarding the subject matter hereof and to be subordinate to same and in no manner intended to supersede any such statutes of the State of Alabama. Any provision hereof in conflict with any provision of any State statute shall be construed so as to be in harmony with the same where possible and otherwise to be subordinate to and superseded by the provisions of such State statute.

Section 3.01 Effective Date

This ordinance shall be effective upon its adoption and publication as required by law.

READ, APPROVED, AND ADOPTED AT A REGULARLY SCHEDULED MEETING OF THE TOWN COUNCIL OF THE TOWN OF GURLEY, ALABAMA, ON THIS 1ST DAY OF MAY, 2018

/s/ Robert Sentell
Robert Sentell
Mayor and Presiding Officer of the Town Council,
Town of Gurley, Alabama

ATTEST:

/s/ Tawnie Bryant
Town Clerk