

RESOLUTION NUMBER: 2002-_____ From: Mayor Gary Richardson [midfieldmayor@bellsouth.net]
Sent: Tuesday, September 25, 2007 4:38 PM
To: pettwaycityhall@bellsouth.net
Subject: Littering Nuisance Ordinance 2007-4

City of Midfield

ORDINANCE NUMBER: 2007-4

AN ORDINANCE ESTABLISHING AND CREATING A "LITTERING NUISANCE" AND PROVIDING FOR THE ABATEMENT OF ANY SUCH NUISANCE

WHEREAS, the Midfield City Council finds and determines that an unsightly "mess" and public health and safety hazard results from the unauthorized deposit of Household, Industrial or Commercial Goods or Items upon Public or Private Property located in the City; and

WHEREAS, the Midfield City Council further finds and determines that such deposit of Goods or Items, for more than seventy-two (72) hours, creates and Offensive Condition and constitutes a "Littering Nuisance" that should be abated by the City, in order to protect the values of surrounding Properties, in order to preserve the appearance and aesthetics of surrounding Properties, and in order to deter and minimize the likelihood that vermin will gather upon or infest said Property.

BE IT THEREFORE RESOLVED by the Midfield City Council as follows:

SECTION 1. ESTABLISHMENT AND DECLARATION OF LITTERING NUISANCE:

It is hereby established and declared that a Littering Nuisance shall be created when any Person shall place upon and/or allow to remain upon Property located in the City of Midfield, Household, Industrial, Commercial Goods or Furnishings, and other Items to remain on Private or Public Property, for longer than seventy-two (72) hours.

SECTION 2. PROHIBITION. It shall unlawful for any Person—without regard to whether said Person is an "Owner" of Property in the City of Midfield—or for the Owner, Care Taker or Possessor of Real Property located in the City of Midfield to place upon and allow to remain upon Property located in the City of Midfield, Household or Commercial Goods or Furnishings, and other Items to remain on Private or Public Property, for longer than seventy-two (72) hours after "Notice of Violation" has been duly issued and given and served.

SECTION 3. DEFINITIONS. For the purpose of interpreting and enforcing this Ordinance, the following words and terms shall have the meanings indicated below:

1. Owner of Real Property shall be any person, including a Landlord, who holds a Deed to either the entire Title of land in question, or who holds any portion thereof, as is established by the records of the Office of the Jefferson County, Alabama Tax Assessor. Owner, as used herein, may refer either to an Owner, as established by Deed or Mortgage; to a lawfully authorized Care Taker of land; or to a lawfully authorized Possessor of land;
2. Care Taker shall be any person given charge to carry out duties in, on, or regarding land in question, if not an Owner or Possessor;
3. Possessor shall be any person, including a Tenant, who is entitled by law to possess or rent land in question. Lawful possession shall be determined by Records that may be available in the Office of the Jefferson County Tax Assessor or the Office of the Jefferson County Probate Court;

4. Household Goods and Furnishings shall mean those Items which are commonly found in Homes or Residential Properties, including but not limited to:

- (a) Clothing;
- (b) Appliances (Stoves, Refrigerators, Washers and Dryers, etc.);
- (c) Sofas and Love Seats, Futons, etc.;
- (d) Chairs, Tables, Chest of Drawers, etc.;
- (e) Toys;
- (f) Tools, Tool Boxes, Tool Implements, etc.; and
- (g) Packing Crates, Boxes, etc.
- (h) Newspapers, Magazines, etc.

5. Industrial or Commercial Goods or Furnishings shall mean those Items, Machines, Tools, or other Implements of a particular Industrial or Commercial Trade or Business that are commonly used in said particular Trade or Business;

6. Private Property shall mean any Property in the City of Midfield that is not owned by the City of Midfield, the Midfield School Board or by any other independently existing Governmental Entity situated in and affiliated with the City of Midfield;

7. Public Property Private Property shall mean any Property in the City of Midfield that is owned by the City of Midfield, the Midfield School Board or by any other independently existing Governmental Entity situated in and affiliated with the City of Midfield;

8. Offending Items, Offending Property or Offending Conditions shall mean any condition or thing existing or placed upon a Property which causes an "Owner" or Property to be in Violation of this Ordinance;

9. Person shall include, but not be limited to refer to any reference herein to: any Individual—whether or not a Representative of a Company, including an "Owner", as defined hereunder—who shall deposit Offensive Items upon Private or Public Property or who shall cause to exist upon Private or Public Property an Offensive Condition; and

10. City shall refer to "The City of Midfield".

SECTION 4. VIOLATIONS AND NOTICE OF VIOLATION.

Where the City shall have determined that an Act prohibited under Sections "1" and "2", above, has been occurred, the City shall issue to the Person or to the Owner, Care Taker and/or Possessor of affected Property located in the City of Midfield a "Notice of Violation".

Action may not be taken against any particular Person or "Owner", concerning any Violation established herein, until and unless:

a). An affected Person or Owner has been served with Notice of the Violation and given an opportunity (72 hours following Service) to remove any offensive Items from his or her Property.

(b). Notice of Violation may be served upon an "Owner" or Person by Certified Mail, Return Receipt Requested, or by Personal Service, with a "Certificate of Service" signed by both the Server and the Owner or Person.

(c). Notice has been served as of the Date shown on a Certified Mail Receipt on or the Date confirmed by the Server on the "Certificate of Service".

SECTION 5. VIOLATION UPON PUBLIC PROPERTY.

- (a). The City shall be authorized to immediately enter upon its own Property for the purpose removing Offending Items or Offending Conditions.
- (b). If the City shall determine who placed upon its Property any particular Offensive Items or who created any particular Offending Conditions upon its Right-of-Ways, in its Roads and Streets, or upon/in any other Public Property, the City shall cite such Person, as provided herein.
- (c). Due Process and Opportunity to Defend and Be Heard. If any Person cited hereunder shall refuse to accept a Certified Mail Receipt or refuses to sign a "Certificate of Service", such fact shall be noted in the City's file on this matter and further proceedings may be made against the Owner by citing the Person with a Non-Traffic Citation and forwarding the matter to the Midfield Municipal Court for prosecution, applying the range of Penalties and Sentence provided herein.

SECTION 6. VIOLATION UPON PRIVATE PROPERTY.

- (a). Service and Acknowledgment of Service. Service and Acknowledgment of Service, prior to Entry onto or upon Private Property, is Required, in the absence of prior Court Authorization to enter such Property for the purpose of abating a Littering Nuisance. The City shall only be authorized to enter upon Private Property after Notice has been duly issued and served, as provided herein, that being 72 hours following duly served and acknowledged Notice of Violation.
- (b). Due Process and Opportunity to Defend and Be Heard. If any Person or "Owner" cited hereunder cannot be located for Service of the "Notice of Violation" or if an affected Person or "Owner" shall refuse to accept attempted Service by Certified Mail Receipt or shall refuse to sign a "Certificate of Service", such fact shall be noted in the City's Record for this matter and further proceedings may be made against an affected Person, "Owner" or Property by filing a Nuisance Petition, pursuant to Section 6-5-120 of the Code of Alabama (1975), as amended, with the Bessemer Division of the Jefferson County Circuit Court seeking to enter upon the Private Property for the purpose of abating a Littering Nuisance by removing the Offending Conditions or Items existing or placed on the affected Private Property.

SECTION 7. NOTICE OF VIOLATION AND DOCUMENTATION OF VIOLATION.

- (a). Contents. Notices of Violation issued by the City of Midfield shall contain, at least, the following information:
 - (i). Date on which an Offensive Condition existing upon property was reported or the date on which Offensive Items were noted existing upon Property;
 - (ii). Date of any Notice of Violation Issued;
 - (iii). Date of Service or Attempted Service of any Notice of Violation;
 - (iv). The Name and Position of the Person authorized to serve any particular Notice of Violation on behalf of the City;
 - (v). The Street Address of the Property on which Offending Items or Conditions were noted by the City;
 - (vi). A Complete and Detailed Description of each and every Item, Good or Condition that has created a Nuisance upon any particular Property located in the City of Midfield.

** Provided that, if the materials causing a Littering Nuisance are in such a condition that a description of individual items cannot reasonably be given, the City Official making the Report for the Nuisance Complaint shall give such Description as shall be feasible and reasonable.

**In such case, the City Official making the Report for the Nuisance Complaint shall include in his/her Report the inability to give more specific Details and the reason for such inability.

(vii). Reference to this Ordinance as the basis for issuance to any particular “Owner” or Person a “Notice of Violation”.

(b). Documentation of Violation Of Which Notice is Given.

(i). A thorough, written Report shall be made of any Offending Conditions, Items or Goods existing upon Property, which have cause any particular Property to be in violation of this “Littering Nuisance” Ordinance;

(ii). Pictures that clearly reflect the location of the Property, the Property Address—if visible—and the Offending Conditions or Offending Items existing upon any particular Property cited as being in violation of this “Littering Nuisance”

(iii). The Names and Addresses of any Witnesses or Complainants concerning the Offending Conditions existing upon any particular Property cited as being in violation of this “Littering Nuisance” Ordinance.

SECTION 8. PENALTIES FOR NUISANCE AND ORDINANCE VIOLATION:

Any Person who knowingly violates this “Littering Nuisance” Ordinance and who is convicted of or held liable for violating said Ordinance—by either the Jefferson County Circuit Court or by the Midfield Municipal Court, whichever Authority may have jurisdiction over any given Littering Nuisance. Charge may be sentenced to a Jail Term of a maximum of six (6) months and a Fine up to Five Hundred Dollars (\$ 500.00), at the discretion of the Judge hearing the Charge.

SECTION 9. SEVERABILITY. The Provisions of this Ordinance are hereby deemed to be “severable”. If any Section, Subsection, Sentence, Clause, Phrase or Portion of this Ordinance is—for any reason—held invalid or unconstitutional, by any Court of competent jurisdiction—such Portion shall be deemed a separate, distinct and independent Provision and such adverse Judicial Holding shall not affect the validity of the remaining, unaffected Provisions hereof.

SECTION 10. CUMULATIVE. The Provisions of this Ordinance are hereby deemed “cumulative”, and are in addition to any other Procedure which may presently be authorized by law to permit the accomplishment of the Objectives herein stated.

SECTION 11. EFFECTIVE DATE. This Ordinance shall take effect Sixty (60) Days following its Adoption and Publication by Posting at Three (3) Locations within the Corporate Limits of the City of Midfield.

DONE and ADOPTED on this _____ Day of _____ 2007.

ATTEST:

APPROVED AND TRANSMITTED:

CEDRIC M. BROWN, CITY CLERK

GARY R. RICHARDSON, MAYOR

CERTIFICATE OF THE CITY CLERK

I, _____, City Clerk of the City of Midfield, Alabama, for the sole purpose of administering implementing the above and foregoing Ordinance, is a true and correct copy of Ordinance 2007-4____, adopted and approved by the City Council of the City of Midfield, Alabama at its _____ Meeting held on the _____ day of _____ 2007 as same is represented in the Recorded Minutes.

Moreover, I hereby certify that the above and foregoing Ordinance was published by Posting same at the following three (3), or more, locations: Midfield City Hall, the Midfield Library, and the Midfield Post Office.

Certified and acknowledged on this _____ day of _____ 2007.

City Clerk
