RESOLUTION NO. __________

WHEREAS, the City of Dothan abates weed and tall grass as a public nuisance under Alabama Code (1975) Section 11-67-20 et. seq; and

WHEREAS, the City desires to accelerate the process and minimize compliance costs; and,

WHEREAS, the members of the Dothan City Commission are unanimously in favor of legislation that would provide for an alternative procedure for abating tall grass and weeds.

NOW, THEREFORE, BE IT RESOLVED by the Board of City Commissioners of the City of Dothan, Alabama, as follows:

SECTION 1. That the legislative delegation for the City of Dothan, Alabama introduce and support legislation that will provide for an alternative procedure for abating tall grass and weeds.

PASSED, ADOPTED AND APPROVED on _______________________.

ATTEST:

Mayor

Associate Commissioner District 1

Associate Commissioner District 2

Associate Commissioner District 3

Associate Commissioner District 4

Associate Commissioner District 5

Associate Commissioner District 6

BOARD OF CITY COMMISSIONERS
City of Dothan
Staff Report
for
Mayor and City Commissioners

PROJECT TITLE: Revised Weed Abatement Legislation

DEPARTMENT: Planning and Development

DEPARTMENT HEAD: Todd L. McDonald, AICP

REPORT DATE: February 13, 2020 Admin. Meeting Date:

PURPOSE: Approve local legislation to revise weed abatement process.

BACKGROUND: Our existing weed control ordinance is based on the authority provided in Ala Code Sec. 11-67-20 et seq. The legislation authorizes class 5 municipalities to declare weeds and tall grass as a public nuisance and may be abated as provided in the article. The process outlined is lengthy, takes about 6 weeks from being first reported to being cut and requires three separate commission actions. Briefly,
1. Complaint received and verified
2. Owner of record sent courtesy letter with 10 days to comply.
3. Property revisited. If not cut, property is bundled with others and referred to City Clerk to begin the formal abatement process.
4. Commission action calling for a public hearing to determine if the property is a nuisance.
5. City Clerk sends certified notice to owner of proceedings to abate; advertises and posts notice. At this point, even if they cut the grass, costs that accrue for notice, legal advertisement and signage are passed onto the property owner.
6. City Commission holds public hearing.
7. Properties determined to be a nuisance are referred to Public Works to be cut
8. Commission assesses costs to taxes.

We use the QAlert code enforcement system to document reports of overgrown lots. In 2019, we processed 397 complaints of overgrown lots. The commission assessed costs in 71 cases (18%).

DESCRIPTION: The proposed legislation is modeled on legislation previously approved for Class 6 and Class 8 cities in Alabama. Essentially, complaints are processed by staff on a much shorter timeline rather than seeking the approval of the City Commission on three separate occasions. Briefly,
1. Complaint received and verified by the "Enforcing Official".
2. Owner of record sent a notice of violation requiring 10 days to comply. Copy of the NOV also posted on the property.
3. Property revisited. If not cut, property is abated by city forces or by contract forces after the 10\textsuperscript{th} day.
4. Appeals can be filed w/i 5 days of NOV to the Administrative Official.
5. Appeals from the determination of the Administrative Official are to the Circuit Court.
6. Commission assesses costs to taxes.

This process is significantly shorter and is not dependent on the city commission meeting calendar. Notification is still sent to the owner of record and posted on the property but is not advertised. The posting is not an elaborate sign so costs are minimal other than the cost to cut the lot. Code Enforcement staff intends to use independent contractors rather than Public Works staff to minimize abatement time and because the process is much quicker, the repeat offender provision in the current ordinance is not be needed. A comparison follows.

**RECOMMENDATION:** Approve the attached legislation and authorize it for advertisement.

**COST ANALYSIS:** TBD. Draft must be advertised for 4 consecutive weeks.
### Comparison between Existing and Proposed Weed Abatement Processes

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<thead>
<tr>
<th>Existing Weed Abatement Process</th>
<th>Proposed Weed Abatement Process</th>
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<tbody>
<tr>
<td>1. Complaint received</td>
<td>1. Complaint received</td>
</tr>
<tr>
<td>2. Complaint verified</td>
<td>2. Complaint verified</td>
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<tr>
<td>3. Owner of record sent notice and given 10 days to cut (courtesy letter).</td>
<td>3. Notice of Violation sent to owners of record by first class mail by enforcing official. Letter explains violation and gives property owner 10 calendar days to abate.</td>
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<td>4. Property re-visited in 10 days to determine if the lot was cut.</td>
<td>4. Notice of Violation posted on property.(^2)</td>
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<td>5. If not, property referred to City Clerk (bundled with others).</td>
<td>5. Any appeal must be filed w/i 5 days of NOV in writing to the Admin. Official. AO determines if a violation exists w/i 5 days. If determined to be in violation, abatement shall be within 10 days from date of the hearing. Additional time may be granted by AO up to 28 days.</td>
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<tr>
<td>6. City Clerk sends certified letter to owner of record notifying them that their property has been declared a public nuisance and that a public hearing will be held to determine if should be abated. The notice must be sent at least 30 days in advance.</td>
<td>6. Appeal from AO decision is to circuit court w/i 10 days. Review conducted based on the record and without a jury. Appeal stays the process.</td>
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<td>7. In the meantime, a legal notice is published twice and a sign posted.(^1)</td>
<td>7. Municipality can abate using city forces or by contract.(^3)</td>
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<tr>
<td>8. Commission holds public hearing to determine if the property is a public nuisance.</td>
<td>8. Cost of abatement is assessed by City Commission resolution to taxes. Notice of the amount assessed sent by City Clerk to the owner of record 5 days in advance of assessment meeting.</td>
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<td>9. Properties declared to be a public nuisance are sent to Public Works Streets Division to be cut.</td>
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<td>10. Commission assesses cost to abate to taxes.</td>
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Total time to abate is @ 6 weeks

Total time to abate @ 2 weeks

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\(^1\) Admin. costs are around $200 (cost of sign is $94 and advertising depend on the number of properties-typically @ $90) in addition to cost of actually cutting the property. That can include labor if the property has a lot of trash or obstacles.

\(^2\) There is no sign or advertising requirement separate from advertising the commission agenda so there would be very little or no admin. costs; even if the property owner cut the weeds after the commission found it to be a public nuisance but before the property was abated. Proposed process requires the notice be posted on site which we would simply staple it to the house.

\(^3\) Planning staff proposes to use contract labor rather that city forces to abate overgrown properties.
SYNOPSIS: This bill would provide an alternative procedure for any Class 5 municipality with a mayor/commission/city manager form of government to abate grass or weeds which become a nuisance and would provide for the assessment and collection of the costs of the abatement when the work is required to be performed by the municipality.

A BILL

TO BE ENTITLED

AN ACT

Relating to any Class 5 municipality with a mayor/commission/city manager form of government; to provide for the abatement of grass or weeds which become a nuisance under certain conditions; to provide for notice to the property owners; to provide for the assessment of the costs for abatement when the work is required to be performed by the municipalities; to provide for the collection by the municipality of the costs through the addition of the costs to ad valorem taxes and for enforcement by the county tax collecting official; and to
provide for liens on the property under certain conditions.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This Act shall only apply to a Class 5 municipality with a mayor/commission/city manager form of government.

Section 2. (a) An abundance of overgrown grass or weeds within the municipality 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 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 a person going upon the property; or being unsightly; or a growth of grass or weeds, including plants of no value, undesirable, and usually of rank growth; or grass, shrubs, and undergrowth, other than ornamental plant growth, which exceeds 12 inches in height, are declared to be a public nuisance and abated as provided in this act.

(b) This act shall not apply to any of the following:
(1) Heavily wooded areas in their natural state which are undeveloped.

(2) Farm properties.

(3) Properties under current construction.

Section 3. For the purposes of this act, the following words have the following meanings:

(1) ADMINISTRATIVE OFFICIAL. A person designated by the city manager to hear appeals for the purposes of this act, but the person may not be the same person as the enforcing official.

(2) ENFORCING OFFICIAL. The municipal official or employee the city manager from time to time may designate.

(3) TAX COLLECTING OFFICIAL. The county tax collector, county revenue commissioner, or other county ad valorem tax collecting official.

Section 4. (a) Whenever in the opinion of the city official or any other city employee designated by the city manager, a nuisance exists, the enforcing official shall order the owner of the property on which the nuisance is located to abate the condition.
(b) The enforcing official shall give the owner written notice in person or by first class mail. The notice shall apprise the owner of the facts of the alleged nuisance and require the condition be abated within the time stated in the notice or to request a hearing before an administrative official of the city designated by the city manager, to determine whether there has been a violation.

(c) The notice shall be sent to that 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.

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

(e) The notice shall require the owner to complete abatement of the nuisance within 10 days from the date of notice, provided the enforcing official may stipulate additional time, but in no case more than 28 days.

(f) A property owner shall have five days in which to request a hearing before the administrative official to appeal the determination of the enforcing official. After the
hearing, the enforcing official shall notify the owner by
personal service or by first class mail of the determination of
the administrative official.

(g) At the hearing, any interested party
shall have the right to present evidence and testimony. The
hearing shall be open to the public, and a record of the
proceedings shall be kept as a part of the public records of the
municipality.

(h) The administrative official shall render
a written decision on the merits of the proposed abatement
within five days of the conclusion of the hearing. The enforcing
official shall notify the owner by personal service or by first
class mail of the written determination of the administrative
official. If the administrative official determines that a
nuisance exists and should be abated, the written determination
of the administrative official shall inform the owner that the
owner must complete the abatement ordered by the enforcing
official within 10 days of the date of the administrative
official's decision, or upon such additional time, but in no
case more than 28 days from the administrative official's
determination. If the administrative official determines that a
nuisance does not exist, then the enforcing official's notice to
abate the nuisance will be null and void, but such determination
shall not bar any subsequent notice concerning the same
property.

Section 5. (a) Any person aggrieved by the
decision of the administrative official at the hearing, within
10 days, may appeal to the circuit court upon filing with the
clerk of the court notice of the appeal and bond for security of
costs in the form and amount to be approved by the circuit
clerk. Upon filing of the notice of appeal and approval of the
bond, the clerk of the court shall serve a copy of the notice of
appeal on the clerk of the municipality and the appeal shall be
docketed in the court and shall be a preferred case therein. The
clerk of the municipality, upon receiving the notice, shall file
with the clerk of the court a copy of the record, findings and
determination of the administrative official in its proceedings.
Any trials shall be held without jury upon the determination of
the administrative official that the weeds are a public
nuisance.

(b) The circuit court shall not itself hear
or accept any further evidence with respect to those issues made
the basis of the appeal. The review shall be conducted by the
court without a jury and shall be confined to the record. The
findings of the administrative official, if supported by
substantial evidence, shall be conclusive on appeal. If upon
such appeal the court finds that the ruling appealed from is
unlawful within the meaning of this Act, it shall have the power
to vacate or modify the same.

Section 6. (a) If the owner fails, neglects, or
refuses to abate the nuisance, or the nuisance is not otherwise
abated, (1) within the time permitted to do so as stated in the
enforcing official's notice, where such notice was not suspended
by the request for a hearing before the administrative official;
or (2) within the time permitted to do so as stated in the
administrative official's written determination, then the
municipality may enter upon the property and abate the nuisance
using its own forces, or it may provide by contract for the
abatement. However, if an appeal has been taken to the circuit
court as provided in Section 5, then the municipality may not
abate the nuisance until the determination or judgment
authorizing abatement becomes final as provided by law.

(b) Upon completion of the abatement work
performed by the municipality, including work by contractors
employed by the municipality, the enforcing official shall
compute the expenses of the municipality for the abatement of
the nuisance, including, but not limited to, cost of labor,
value of the use of the equipment, advertising expenses,
postage, administrative expense, legal expense, and materials
purchased which were incurred by the municipality as a result of
the work. An itemized statement of the expenses shall be given
by first class mail to the last known address of the owner of
the property. This notice shall be sent at least five days in
advance of the time fixed by the municipal council to consider
the assessment of the cost against property.

(c) At the time fixed for receiving and
considering the statement, the municipal governing body shall
hear the same, together with any objections which may be raised
by the owner whose property is liable to be assessed for the
expenses of the municipality for the abatement of the nuisance,
and thereupon make modifications in the statement as deemed
necessary, after which a resolution may assess the cost. The
cost stated in the resolution shall constitute a lien on the
property and shall be referred to as a weed lien on the
property. A weed lien established pursuant to this act is
subject to and subordinate to any mortgage or security interest
recorded prior to the recordation of the weed lien.

(d) A copy of the resolution shall be given
to the county tax collecting official. It shall be the duty of
the county tax collecting official to add the costs of the weed
lien to the next regular bill for taxes levied against the
property subject to the weed lien, and thereafter, the costs
shall be collected and remitted to the municipality at the same
time and in the same manner as ordinary municipal ad valorem
taxes are collected, and shall be subject to the same penalties
and the same procedure under foreclosure and sale in case of
delinquency; provided, however, that if the foreclosure and sale
is the result of a delinquency caused by a weed lien, the
municipality shall reimburse the county tax collecting official
for all costs associated with the foreclosure and sale unless
the costs are collected at the time of sale as part of the sale.

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

Section 7. When a weed lien is made against a lot
or lots or parcel or parcels of land, a subsequent redemption
thereof by a person authorized to redeem, or sale thereof by the
state, shall not operate to discharge, or in any manner affect
the weed lien of the municipality, but a redemptioner or
purchaser at a sale by the state of any lot or lots, parcel or
parcels of land upon which a weed lien has been made, whether
prior to or subsequent to a sale to the state for the nonpayment
of taxes, shall take the same subject to the weed lien.

Section 8. Upon payment of the weed lien, the
city clerk shall notify the county tax collecting official and
may file a notice of satisfaction of weed lien in the records of
the probate court.

Section 9. This act is cumulative in its nature
and in addition to any and all power and authority which a
municipality may have under any other law.

Section 10. This act shall become effective
immediately following its passage and approval by the Governor,
or it’s otherwise becoming law.