

1 SB84  
2 164370-1  
3 By Senator Melson (N & P)  
4 RFD: Local Legislation  
5 First Read: 03-MAR-15

2

3

4

5

6

7

8

9

A BILL

10 TO BE ENTITLED

11 AN ACT

12

13 Relating to the City of Athens; to provide for the  
14 abatement of grass or weeds which becomes a nuisance under  
15 certain conditions; to provide for notice to the property  
16 owners; to provide for the assessment of the costs for  
17 abatement when the work is required to be performed by the  
18 city; to provide for the city's collection of the costs  
19 through the addition of the costs to ad valorem taxes; and to  
20 provide for liens on the property under certain conditions.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. This act shall apply only in the City of  
23 Athens.

24 Section 2. An abundance of overgrown grass or weeds  
25 within the city which is injurious to the general public  
26 health, safety, and general welfare by providing breeding  
27 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, may be declared to be a public nuisance and abated as provided in this act.

Section 3. (a) For purposes of this act, the enforcing official shall mean either the mayor or such other city official or employee as the mayor from time to time may designate. Whenever, in the opinion of the enforcing official, a public nuisance exists as described in Section 2, the enforcing official may serve written notice upon the owner of the property on which the nuisance is located ordering the abatement of the nuisance.

(b) The notice shall require the owner to complete abatement of the nuisance within 14 days from the date of the notice, provided that the enforcing official may allow for additional time when it is reasonably required due to the difficulty of the abatement or other unusual factors tending to necessitate additional time, but in no case more than 28 days from the date of the notice.

(c) The written notice shall require the owner to abate the condition within the time stated in the notice or to request a hearing before the administrative official to determine whether the conditions on the property constitute a public nuisance that should be abated. For purposes of this act, the administrative official shall mean a person designated by the city council, but such person shall not be the same person as the enforcing official. The notice shall apprise the owner of the facts of the alleged nuisance, including a description or address of the property, or both, that provides reasonable notice of its location, the address of the enforcing official, and shall name the particular date, time, and place for the hearing before the administrative official if requested by the owner, which date shall be at least 10 days after the date of the written notice.

(d) The enforcing official shall serve the owner with the written notice by delivering it to the owner; or by mailing it to the owner, via first class mail, at the owner's last known address. Delivery under this subsection means handing it to the owner, or in a case where the owner is an impersonal entity to an agent of the entity; or leaving it at the owner's residence or place of business with a person of suitable age and discretion residing or employed therein. Service by mail is complete upon mailing. The enforcing officer may, but is not required to, rely upon any information appearing on record in the office of the Limestone County Revenue Commissioner to establish the identity of an owner of

1 property and to establish the owner's last known address,  
2 which, if utilized, shall be deemed conclusive and sufficient  
3 proof of the same.

4 (e) The written notice shall also be posted at a  
5 conspicuous place on the property on which the nuisance is  
6 located, on or prior to the date of service of the written  
7 notice as described in subsection (d).

8 (f) The enforcing official is authorized, but not  
9 required, to utilize any additional means of providing notice  
10 that the enforcing official deems appropriate. Specifically,  
11 the enforcing official is authorized, but not required, to  
12 provide this additional, optional notice by placement of  
13 notice in a public place or places located within the city, or  
14 by publishing notice in a newspaper of general circulation  
15 published in the city as often and for as long as deemed  
16 appropriate. The additional, optional notice provided for in  
17 this section may be provided in whatever form the enforcing  
18 official deems appropriate.

19 (g) If the owner desires a hearing before the  
20 administrative official, then the owner may request a hearing  
21 by delivering a written notice to the enforcing official  
22 within five days after the date of service of the notice. If  
23 so requested, then the enforcing official's order to abate the  
24 nuisance will be suspended, and the administrative official  
25 will hold a hearing at the time and place specified in the  
26 notice previously issued by the enforcing official or at such  
27 other time and place that may be mutually agreed upon by the

1 administrative official and the owner. The administrative  
2 official may continue the hearing from time to time, upon good  
3 cause shown. At the hearing, any interested party will have  
4 the right to present evidence and testimony. The hearing will  
5 be open to the public, and a record of the proceedings must be  
6 kept as a part of the city's public records. The  
7 administrative official must render a written decision on the  
8 merits of the proposed abatement within five days of the  
9 conclusion of the hearing. The enforcing official shall notify  
10 the owner by personal service or by first class mail of the  
11 written determination of the administrative official. If the  
12 administrative official determines that a nuisance exists and  
13 should be abated, the written determination of the  
14 administrative official shall inform the owner that the owner  
15 must complete the abatement ordered by the enforcing official  
16 within 10 days of the date of the administrative official's  
17 decision, or upon such additional time, but in no case more  
18 than 28 days from the administrative official's determination.  
19 If the administrative official determines that a nuisance does  
20 not exist, then the enforcing official's notice to abate the  
21 nuisance will be null and void, but such determination shall  
22 not bar any subsequent notice concerning the same property.

23 (h) Any person aggrieved by the decision of the  
24 administrative official at the hearing, within 10 days from  
25 receipt of the determination by the administrative official,  
26 may appeal to the circuit court upon filing with the clerk of  
27 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. The clerk of the municipality shall, upon receiving the notice, file with the clerk of the court a copy of the finding and determination of the administrative official in its proceedings. Any trials shall be held without a jury upon the determination of the administrative official that the weeds are a public nuisance.

Section 4. (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 city 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 subsection (h) of Section 3, then the city 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 city, including work by contractors employed by the

city, the enforcing official shall compute the city's expenses in causing 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 city 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 city council to consider the assessment of the cost against property.

(c) At the time fixed for receiving and considering the statement, the city council shall hear the same, together with any objections which may be raised by the owner whose property is liable to be assessed for the city's expenses in causing 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.

(d) A copy of the resolution shall be given to the Limestone County Revenue Commissioner. It shall be the duty of the revenue commissioner 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 city 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 collector or revenue commissioner 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 city 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 5. 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 city, 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 6. This act is cumulative in its nature and in addition to any and all power and authority which a city may have under any other law.

Section 7. The provisions of this act are severable.  
If any part of this act is declared invalid or

1 unconstitutional, that declaration shall not affect the part  
2 which remains.

3 Section 8. This act shall become effective  
4 immediately following its passage and approval by the  
5 Governor, or its otherwise becoming law.