

ORDINANCE NUMBER: 5-24-11

Authorizing City of Rainsville and Its Designees to Enter Private Property For the Purpose of Removal of Storm Debris That Poses a Public Health Nuisance or Danger To Public Health and Safety

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RAINSVILLE, ALABAMA, AS FOLLOWS:

SECTION I. It is the intention of this Ordinance to provide a means for the City of Rainsville, by and through its officials, employees, sub-contractors, agents, and designees, including, but not limited to, the Federal Emergency Management Agency and United States Army Corps Of Engineers, to swiftly and immediately prevent and correct public health hazards and nuisances within the corporate boundaries and police jurisdiction of the City of Rainsville created by, and in the areas of, the storm debris and damage caused by the storms and tornadoes of April, 2011, and any construction of this Ordinance shall be consistent with this intention.

SECTION II. The word "person" as used herein shall include and be applicable to firms, corporations, and associations, as well as to individuals.

SECTION III. Any and all lots, parcels, and places that are privately owned and located within or immediately adjacent to areas within the corporate boundaries and police jurisdiction of the City of Rainsville, Alabama, that have been damaged or affected by the April, 2011, storms and tornadoes, and the debris and damage resulting therefrom (hereinafter "premises") with rubbish, waste, garbage, trash, junk or abandoned vehicles, parts or portions of vehicles, appliances, parts or portions of appliances, standing walls of damaged or destroyed structures, furniture, chemicals, animal carcasses, clothing, bedding, containers, receptacles, equipment, decayed meat, fish, fruits or other food stuffs, medicines, drugs, beverages, and other debris (hereinafter collectively "debris") are hereby declared a public health nuisance and a danger to the public health and safety. See State of Alabama Department of Public Health letter transmitted to Michael Byrne dated May 11, 2011, which declared a Public Health Nuisance emergency, a copy of which is attached hereto as Exhibit 'A'.

SECTION IV. The purpose of this Ordinance is to enact and specifically set out the duty and authority of the City of Rainsville to remove such debris from private property that previously exists pursuant to the laws of the State of Alabama. See the opinion letter of the State of Alabama Attorney General transmitted to Michael Byrne, FEMA Federal Coordinating Officer (FCO) dated May 12, 2011, a copy of which is attached hereto as Exhibit 'B'.

SECTION V. The City Clerk, Police Chief, Administrative Officer of the City under the Zoning Ordinance of the City of Rainsville, Alabama, and any other officer or individual designated for such purposes pursuant to Rainsville Ordinance No. 96-3-6B, other applicable City Ordinance, or the laws of the State of Alabama, shall give notice to

the person in charge or control of, and/or owner of, such premises on which such debris posing a Public Health Nuisance and/or danger or harm to the public health and safety is located.

A. Such notice shall be given in writing to the person in charge or control of such private property and, if such person is not the owner, such notice shall be given to the owner, informing said person that such debris creates a Public Health Nuisance and/or danger or harm to the public health and safety.

B. Such notice shall be personally delivered to the person in control or charge of said premises and, if not the owner, then also to the owner by either personal delivery or by certified mail, return receipt requested, postage prepaid, to the address where the notice for ad valorem taxes for the most recent previous tax year was mailed.

C. If the officer or individual giving such notice is unable, on two (2) attempts, to find present on the premises of such private parcel the person in charge or control of the premises and/or the owner of the parcel, notice shall be given by mailing such written notice to the owner by certified mail, return receipt requested, postage prepaid, to the address where the notice for ad valorem taxes for the most recent previous tax year was mailed and this shall be sufficient and proper notice pursuant hereto.

D. The notice shall describe the nuisance and request the person to whom it is addressed to remove the condition and debris creating the nuisance within five (5) days immediately following the notice date.

E. In response to such notice, the person to whom it is addressed shall undertake and do one of the following:

1. Remove the debris that poses the Public Health Nuisance and/or danger or harm to the public health and safety on or before the date that is five (5) days immediately following the date of the notice; or

2. Inform the officer or individual giving the notice that the person to whom the notice is addressed is unable to remove and correct the nuisance within the 5-day time limit and execute, along with all owners of such parcel, a proper Right Of Entry (ROE) with indemnification that allows the City of Rainsville, by and through its officials, employees, sub-contractors, agents, and designees, including, but not limited to, the Federal Emergency Management Agency and United States Army Corps Of Engineers, to enter such premises and remove and correct the nuisance thereon, the form of which ROE will be provided by the City; or

3. Fail and/or refuse to undertake the actions described in subparagraphs "1" and "2" immediately above, in which case, given the

public health and emergent nature of the nuisance, the City, shall have the right to enter upon the premises of such parcel and remove the condition creating such nuisance as described immediately below.

F. In the event the person(s) to whom the notice is given fails to either remove and correct the nuisance within the 5-day time limit or execute a proper ROE permitting the City to enter such premises and remove or correct the nuisance, the City of Rainsville, by and through its officials, employees, sub-contractors, agents, and designees, including, but not limited to, the Federal Emergency Management Agency and United States Army Corps Of Engineers, may enter upon such premises, remove the condition creating such nuisance, and assess to, and collect from, the person(s) to whom said notice was given the cost of such correction and removal, but only after completing the following process:

1. There shall be posted at four (4) conspicuous places within the corporate boundaries of the City of Rainsville a notice concerning such premises and the nuisance or danger to public health and safety located thereupon, with such notice containing the follows:

a. Describing, by address or other sufficient description, the location of such premises;

b. Listing all known names of all persons in control or charge of the premises and the owner of such premises;

c. Describing the debris and nuisance conditions existing upon such premises;

d. Directing the named person(s) to immediately contact the officer or individual giving such notice;

e. Listing the name, address, and telephone number at which such officer or individual giving the notice can be contacted;

f. Listing the date by which the named person(s) must contact such City officer or individual;

g. If such debris and nuisance on such premises includes junk or abandoned vehicles, describing the vehicle as best as conditions permit and listing the address where such vehicle shall be stored upon removal; and

h. Informing such person(s) listed in such notice that in the event such person(s) fail to contact such City officer or individual within the time stated, the City of Rainsville, by and through its officials, employees, sub-contractors, agents, and designees,

including, but not limited to, the Federal Emergency Management Agency and United States Army Corps Of Engineers, may enter upon such premises, correct and remove the debris and conditions creating such nuisance, and assess to, and collect from, the person(s) named in the publication notice the cost of such correction and removal.

2. Upon the completion of such publication notice process, the City of Rainsville, by and through its officials, employees, sub-contractors, agents, and designees, including, but not limited to, the Federal Emergency Management Agency and United States Army Corps Of Engineers, may enter upon such premises, correct and remove the debris and conditions creating such nuisance, and assess to, and collect from, the person(s) named in the publication notice the cost of such correction and removal.

G. In the event debris or other conditions created by the storms and tornadoes of April, 2011, exist on private property and pose such an immediate and imminent risk that the public health, safety, and welfare require entry upon the land and action to remove or correct the nuisance more immediately than compliance with the notice and time provisions described immediately above will allow, the City of Rainsville reserves the right to, pursuant to its Police Power, enter upon such private land to remove or correct the nuisance without complying with the notice and time provisions described immediately above.

SECTION VI. This Ordinance is adopted for use in the specific conditions described above and in addition to, and not in derogation or amendment of, Ordinance Number 96-3-6B.

SECTION VII. If any Section, sub-section, paragraph, clause, provision or portion of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such holding or holdings shall not affect any other section, clause, provision or portion of this Ordinance, which is in itself valid and constitutional.

SECTION IX. This Ordinance shall become effective immediately upon its adoption and publication as required by law.

ADOPTED this 24th day of May, 2011.


DONNIE CHANDLER, Mayor

Attest:


JUDY LEWIS, Clerk

CLERK'S CERTIFICATE

I hereby certify that Ordinance No. 5-24-11 was published on the 25th day of May, 2011, by publication of the same:

in *The DeKalb Advertiser*, a newspaper of general circulation in the City of Rainsville (on the 2nd day of June, 2011); and/or

by posting at Rainsville City Hall, the Rainsville Public Library, the Rainsville Post Office, and Rainsville Foodland (on the 25th day of May, 2011).



JUDY LEWIS, Clerk