

ORDINANCE NO. 1998-11

COMPREHENSIVE PUBLIC NUISANCE ORDINANCE

BE IT ORDAINED BY THE TOWN COUNCIL OF LOXLEY AS FOLLOWS:

SECTION I. REPEAL OF PRIOR ORDINANCES

All ordinances and parts of ordinances that conflict with this ordinance are repealed; Town ordinances 258, 259, 295, 297, 304, 305, and 316 are specifically repealed.

SECTION II. DEFINITIONS

In this ordinance, the following terms shall have the following meanings, unless the context clearly indicates a different meaning is intended:

- A. Animals at Large – An animal that is not restrained, effectively enclosed, nor controlled by use of a leash to prevent its free movement. A dog that is obedient by training or temperament, and that is not vicious nor menacing as defined in this section, is not at large while no more than fifteen feet away from its owner or handler and under his or her voice control.
- B. Animal Owner – Any person that has a property right in the animal, keeps or harbors the animal, has the animal in his or her care, or acts as custodian of the animal, or permits the animal to remain on or about any premises he or she occupies.
- C. Animal Shelter – A place the town designates or uses for the confinement of animals held under the authority of this ordinance.
- D. Animal Suspected of Having Rabies – Any animal displaying symptoms reasonably thought to be caused by infection with the rabies virus, or any animal suspected of coming in contact with an animal suspected of having rabies.
- E. Bite – To seize or nip with teeth or jaws, tearing, piercing, or wounding the skin of the person or animal bitten.
- F. Cat – Any member of the domesticated feline (*felis catus*) family.
- G. Dog – Any member of the domesticated canine (*canis familiaris*) family.

- H. Junk – Worn out or discarded material of little or no value, or any other unsightly debris, the accumulation of which has an adverse effect upon neighborhood or town property values, health, safety, or general welfare.
- I. Junked Vehicle – Any disassembled partially dismantled, non-operating, discarded or wrecked motor vehicle.
- J. Keep – To confine, harbor, or allow to remain.
- K. Knowledge – Information that a person actually has or that a reasonable person exercising due diligence under the circumstances would have.
- L. Person – An individual, firm, partnership, corporation, association, group, company, or organization of any kind.
- M. Premises – Real property within the town limits or police jurisdiction of the Town of Loxley that is not a street.
- N. Responsible Person – Owner of premises maintaining or allowing another person to maintain a nuisance in violation of this ordinance on the premises; or an owner of an animal or property causing or constituting a nuisance in violation of this ordinance.
- O. Restrained – An animal confined within the property limits of its owner by a suitable fence, or securely restricted to the premises by a leash or line affixed to a secure object.
- P. Stray Animal – An animal at large with no known owner.
- Q. Street – The entire width between the boundary lines of every publicly maintained way if any part is open to the use of the public for purposes of vehicular travel.
- R. Vicious Animal – An animal the owner knows to have charged persons or animals in public areas, whether or not the animal has actually bitten or attacked a person or another animal; an animal that has bitten or attacked a person or another animal without adequate provocation or cause; or a dog trained or bred to attack persons or domestic animals.
- S. Vehicle – A machine designed to be propelled by power other than human power and designed to travel along the ground by use of wheels, treads, runners, or slides, and transport persons or property, or pull machinery.

### SECTION III. ACTIONS AND CONDITIONS CONSTITUTING A NUISANCE

A. Nuisance Declared. The Town of Loxley declares a nuisance and unlawful any act or condition within the town that may endanger or impair any person's health, life or property, or that may directly or indirectly cause disease.

B. Act of Nuisance. Acts and conditions constituting a nuisance include:

(1) Animals

(a) Rabies Vaccinations and Tags. Any dog or cat more than three months old that has not been vaccinated against rabies in accordance with the provisions of Alabama Code Section 3-7A-2, or that is not wearing the tag or duplicate tag as provided in Alabama Code Section 3-7A-4 and 3-7A-5. Reference to these provisions of the Alabama Code is made for inclusion as part of this ordinance.

(b) Dogs and Cats in Heat. A dog or cat in heat transmitting a scent causing a disturbance of any dogs or cats on adjoining premises.

(c) Animals at Large or Not Sufficiently Restrained

(i) Dogs. Any dog at large within the town limits or police jurisdiction of Loxley by reason of an owner's failure to provide restraint, or negligence in providing effective restraint.

(ii) Cats. Any cat at large known by its owner to habitually damage others' property.

(iii) Stray Animals. Any stray animal within the town limits or police jurisdiction of Loxley.

(iv) Animals Suspected of Having Rabies. Any animal suspected of having rabies, not securely restrained or confined in a manner reasonably certain to prevent contact with persons or animals.

(v) Wild or Vicious Animals. A wild, dangerous, or vicious animal kept, handled, released or not securely restrained, under conditions otherwise endangering the life or health of any person or domestic animal.

- (d) Overturned Garbage on Private Premises. Any garbage an animal scatters or overturns on or adjacent to the premises of another.
- (e) Abandoning Animals in Loxley. Causing or attempting to cause an animal to be abandoned or unlawfully at large with the Loxley town limits or police jurisdiction.
- (f) Noisy Animals. Any animal or group of animals making sounds of a volume or nature disturbing the peace or comfort of persons of ordinary sensibilities in the reasonable use or enjoyment of their property.
- (g) Sanitation of Premises Where Animals are Kept.
  - (i) Any pen, stable, or enclosure where animals are kept in an unsanitary condition that endangers the life or health of any human or animal, including any humans or animals on the premises.
  - (ii) The presence in or about the pen, stable, or enclosure of the live larvae of flies under conditions that permit growth or development of flies is prima facie evidence of a violation of subparagraph (i) above.
  - (iii) All pens, stables, or enclosures where animals are kept in violation of any regulation of the Baldwin County Health Department or not cleaned each day with the residue disposed of in a sanitary manner.
- (2) Weeds. Any growth of weeds more than one foot in height, or any growth of weeds that is favorable to the harboring of rats, mice, snakes, mosquitoes, or other animals or insects of like kind; any large growth of weeds that otherwise may become a fire menace when dry; any growth of weeds that is otherwise noxious or dangerous; or any growth of weeds that bear seeds of a wingy or downy nature.
- (3) Debris and Stagnant Water. Any accumulation of debris, trash, or stagnant water favorable to the harboring or breeding of snakes, rats, mice, mosquitoes, or other vermin.
- (4) Abandoned Vehicles, Junked Vehicles, and Junk.
  - (a) Abandoned Vehicles. Any unattended vehicle left on a street within the town for a period of seven or more consecutive days.

(b) Junked Vehicles

- (i) Any unattended junked vehicle left on any street within town.
- (ii) Any junked vehicle on any premises for a period of seventy-two or more consecutive hours; except: vehicles in enclosed buildings, vehicles being repaired in a diligent manner by a lawfully operated business when repair of the vehicle is necessary to the operation of the business; vehicles located in a junkyard authorized by the Loxley Zoning Ordinance; and vehicles in an appropriate depository maintained by the Town of Loxley.

(c) Junk. The storage or accumulation of junk on any premises unless screened from view of all locations off the premises.

- (5) Compost Piles. Compost piles that spread or harbor disease, emit unpleasant odors or harmful gas, or attract rodents, vermin, or other disease carrying pests, animals, or insects are included in this ordinance. The presence of earthworms in a compost pile does not constitute a nuisance.
- (6) Unsanitary or Harmful Matter Kept on Premises. Harmful or septic material upon any premises, unless such material is retained in sturdy containers or vessels that deny access to humans, insects, and animals.
- (7) Noise. Any sound of a volume disturbing the peace or comfort of persons of ordinary sensibilities in public areas or the reasonable use or enjoyment of their property.
- (8) Other Conditions and Uses of Premises. Any other condition or use of premises or of building exteriors, not specifically mentioned above, that is detrimental to the property of others, that causes or tends to cause substantial diminution in the value of other property in the neighborhood in which the premises are located, or that endangers the life or health of any person, or the peace and comfort of any person of ordinary sensibilities in the reasonable use of his or her property.

SECTION IV. NOTICE AND HEARING TO ABATE NUISANCES

A. Resolution. When the Town Building Official becomes aware of the existence of a nuisance in violation of this ordinance, the Building Official shall prepare a report for the Town Council. The Council may, by resolution, declare the condition of a public nuisance and order it abated. The resolution shall give a legal description or accurate street address of the property on which the nuisance exists and shall generally describe the condition that violates this ordinance. One resolution may include any number of parcels of private property. The Town Clerk shall keep a copy of each resolution on file for public inspection for at least ninety days.

B. Notice

(1) Mail. Before the passage of the resolution, the Town Clerk shall give notice of a public hearing on the matter to the owner of the premises on which the nuisance is located. The Town Clerk shall give the notice by either personal notice by service through a town law enforcement officer or by certified mail, return receipt requested, mailed at least (20) days before the date of the hearing to the owner of the premises at the mailing address as it appears on record in the office of the Tax Assessor.

(2) Newspaper. In the event the owner of the premises cannot be found the Town Clerk shall publish the notice once a week for two consecutive weeks in a newspaper published in the county and normally read by all segments of the population. The first notice shall be published at least fourteen days before the date of the scheduled hearing.

(3) Sign. In the event notice must be made by publication in a newspaper, the Town shall conspicuously post the notice on a sign on the premises containing the nuisance at least seven days prior to the time for hearing objections by the Town Council. The wording of the signs shall not be less than one inch in height.

C. Form of Notice. The notice mailed or given by publication in the newspaper, shall be in substantially the following form:

NOTICE TO ABATE NUISANCE

Notice is hereby given that on the \_\_\_\_\_ day of \_\_\_\_\_(month), \_\_\_\_\_ (year) at \_\_\_\_\_ a.m./p.m. in the Council chamber, the Council of the Town of Loxley will consider a resolution regarding the condition upon or abutting the property located at \_\_\_\_\_(address), in the Town of

Loxley, and more particularly described in a proposed resolution, a copy of which is on file in the office of the Town Clerk. At that time and place, the Town Council will determine whether the condition constitutes a public nuisance that shall be abated. If the Council determines the condition constitutes a nuisance, it shall order the abatement and removal of the nuisance, and the costs of abatement and removal shall be assessed upon the lots and lands from which or in front of which the nuisance is removed. The costs shall be added to the next regular bills for taxes levied against the respective lots and lands for municipal purposes. The amounts shall be collected at the same time and in the same manner as ordinary municipal taxes are collected. The amounts shall be subject to the same commissions and fees and the same procedure for the foreclosure and sale in case of delinquency as provided for ordinary municipal taxes.

If no objections are filed with the Town Clerk at least five days before the meeting of the Council, and unless the person appears before the Council in person or through his or her representative to show cause, if any, why his or her objection should be sustained, it shall be presumed that the person accepts the notice as fact and waives any rights he or she may have to contest the removal of the nuisance and the action of the Council shall be final unless good and sufficient cause can be otherwise shown.

Reference is hereby made to the resolution, on file in the office of the Town Clerk, for further particulars.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ (month), \_\_\_\_\_ (year).

Town of Loxley

By: \_\_\_\_\_  
Town Clerk

- D. Hearing. At the time and on the date specified in the notice prescribed in subsection B, the Town Council shall hear any objections to the Town Council's previous finding that a condition constitutes a nuisance. The Council will then make a final determination whether the condition constitutes a nuisance in violation of this ordinance. If the Council finds that the condition violates this ordinance, it shall order the nuisance abated.
- E. Exception. The procedures prescribed in this section shall not apply to nuisances requiring immediate action as set forth in Section V of this ordinance.

## SECTION V. NUISANCE REQUIRING IMMEDIATE ACTION

- A. Notice and Hearing Not Required. A Town Agent or Official discovering that any of the following nuisances exists in violation of this ordinance will notify the responsible person that the nuisance exists. The Town Agent or Official shall then allow the person to immediately remove or abate the nuisance. However, if the Town Agent or Official cannot find the person by efforts and within an amount of time reasonable under the circumstances, or if the person cannot or refuses to immediately abate the nuisance, the Town Agent or Official shall, without a hearing or further notice, cause the nuisance to be immediately removed or abated. The nuisances requiring immediate action are:
1. Animals without a rabies vaccination tag.
  2. Animals suspected of having rabies.
  3. Dogs or cats in heat causing a disturbance
  4. Garbage overturned or scattered by an animal, on or adjacent to the premises of another.
  5. Wild, dangerous, or vicious animals not sufficiently confined or restrained
  6. Stray animals within the town limits or police jurisdiction of Loxley.
  7. Dogs or cats unlawfully at large.
  8. Noisy animals
  9. Abandoned vehicles on streets for seven or more days
  10. Junked vehicles on streets
  11. Loud noises
  12. Any nuisance so menacing to the public health, peace, or safety that is must be summarily abated.
- B. Report. The Town Agent or Official causing the abatement of a nuisance shall make an itemized written report of all reasonable costs of abatement.
1. Notice to the Person Impounding. The Town Agent or Official shall deliver a copy of the report to the place the removed animal or property is impounded. No owner of an animal or property impounded shall recover

the animal or property without first paying all costs of abatement as described in the report.

2. The Town Agent or Official shall deliver a copy of the report to the Town Council for approval to charge the responsible person for the costs of abatement as reported.
  - (a) If the Council approves the full amount reported, it shall send a copy of the report, with a demand for payment of the approved amount to be paid to the Town of Loxley at the Town Hall.
  - (b) If the Council rejects the charges, or approves only a portion of the charges:
    - (i) If the responsible person has not paid the charges as set forth in the original report, the Town Clerk shall notify the person impounding the animal or property of the correct amount due. The Town Clerk shall also send a bill demanding payment of the approved amount, to be paid to the Town of Loxley at the Town Hall.
    - (ii) If the responsible person has paid the charges of abatement, the Town Council shall refund the difference between the amount approved by the Council and the amount paid by the responsible person, plus interest.

## SECTION VI. ABATEMENT

- A. Authority to Enter Upon Private Property. If the Council finds at the public hearing that a nuisance exists and orders its abatement, or if no hearing is required under Section V above, any employees or duly authorized agents of the Town may enter upon private property for abatement of the nuisance.
- B. Authority to Hire Contractors. The Council may, by resolution, authorize private contractors, companies, enterprises, or individuals to abate and remove nuisances. Those persons may enter upon private property for purposes of abating or removing the nuisance.
- C. Authority to Impound Animals. To abate any violations of Section III(B)(1) of this ordinance, an animal control officer may confine; humanely trap; remove; return to its owner; and/or impound in an animal shelter any animal causing, constituting, or contributing to the nuisance. If the owner's identity and location can be found by reasonable efforts, the animal control officer taking

any animal to the animal shelter will immediately notify the owner that his or her animal has been impounded.

1. Retrieval of Impounded Animals. The owner may retrieve his or her impounded animal upon payment of all costs of rabies immunizations, if required; costs of capture, confinement and care of the animal; and all costs of abatement of each nuisance the animal caused or constituted. Upon payment of the costs of abatement, the animal shelter shall notify the Town Council that the debt has been satisfied and shall forward payment to the Town Council.
  2. Sale or Destruction of Animals. If the owner does not retrieve the animal within seven days, the animal shelter may sell, give away, or humanely destroy and dispose of any animal impounded. However, an animal that has bitten a human being may be destroyed immediately by order of the county health officer, as provided in Alabama Code Section 3-7A-9.
- D. Authority to Remove, Impound, and Sell Vehicles. To abate any violations of Section III(B)(4) of this ordinance, authorized officials, agents, or contractors may abate nuisances by towing or otherwise removing the vehicle constituting the nuisance and impounding it in a safe place.
1. Lien, Right to Sell Vehicle. The authorized official, agent, or contractor may have a lien on, or sell any vehicle impounded, towed, or otherwise removed under the provisions of this ordinance as provided in Title 32, Chapter 13 of the Alabama Code.
  2. Right to Redeem. The owner of any vehicle or other property towed, removed, or impounded may redeem the vehicle or property upon payment of all reasonable costs and fees for the removal, transport, storage, and other costs of abatement.
- E. Authority to Remove Property Constituting a Nuisance. To abate any other nuisances in violation of this ordinance, authorized officials, agents, or contractors may remove and sell or otherwise dispose of personal property, where reasonably necessary to abate the nuisance.

#### SECTION VII: ACCOUNT OF COSTS OF ABATEMENT

- A. Exception. The procedures set forth in this section do not apply to the nuisances delineated in Section V.
- B. Report. The Building Official shall keep an account of the costs of abating or removing nuisances from each separate lot and make a written itemized report.

- C. Notice. The Building Official shall post a copy of the report at the Town Hall. The Building Official shall attach to the posted report notice of the date and time the report will be submitted to the Town Council for confirmation. The report and notice shall remain posted at the Town Hall door during the five days preceding the date of the hearing.
- D. Hearing. At the time and date announced in the posted notice, the Building Official shall submit the report to the Town Council for confirmation. After hearing any objections, the Town Council shall vote to confirm or reject the submitted report.
- E. Notice to Responsible Person. If the Council confirms the report, the Town Clerk shall send a copy of the report by U.S. Mail to the owner of the premises where the nuisance is maintained, or to the owner of the animal or property causing or constituting the nuisance, by delivery to the owner's residence by a town law enforcement officer, or at the mailing address on record in the office of the Tax Assessor. The report shall include a description of the measures taken and expenses incurred in abating the nuisance.

#### SECTION VIII: COSTS AND PENALTIES

- A. Costs. After delivering or mailing the report to the responsible person as required under Section VII, the Town Council shall add the reasonable costs of abatement and removal of the nuisance to the next regular bills for taxes levied against the respective lots and lands for municipal purposes. The amounts shall be collected at the same time and in the same manner as ordinary taxes are collected.
- B. Right of Responsible Person to Abate Nuisance. Any owner of property, premises or animals containing or causing a nuisance shall have the right to remove and abate the nuisance at his or her expense prior to the commencing of work to remove the nuisance by those persons authorized by the Town of Loxley.
- C. Citation. When an official or authorized agent of Loxley finds a violation of this ordinance, and is reasonably certain of the identity of the person or persons responsible, he or she shall notify a law enforcement officer. The officer shall issue a citation to each person directing the person to appear in the municipal court, under charges and at a time and date set forth in the citation. It shall be a Class C Misdemeanor for any person to fail to appear in court at the time and place stated in the citation. If the municipal judge finds the accused caused, created, or maintained a nuisance in violation of this

ordinance, the judge will convict the person of a Class C Misdemeanor and assess a fine consistent with the following minimum and maximum limits:

	<u>Minimum Penalty</u>	<u>Maximum Penalty</u>
Rabies Vaccination and Tag	\$25.00	\$100.00
Unrestrained Animals Suspected of Having Rabies	\$50.00	\$200.00
Dogs and Cats in Heat Not Properly Confined	\$25.00	\$100.00
Dog or Cat at Large in Violation of this Ordinance	\$15.00	\$100.00
Scattered Garbage on or Adjacent to Premises of Another	\$25.00	\$100.00
Wild, Dangerous, Vicious Animal not Securely Restrained	\$100.00	\$500.00
Abandoning or Attempting to Abandon Animals	\$50.00	\$100.00
Noisy Animals	\$25.00	\$100.00
Unsanitary Conditions of Animal Pen	\$50.00	\$250.00
Weeds	\$50.00	\$500.00
Debris or Stagnant Water	\$50.00	\$500.00
Abandoned or Junked Vehicles on Street	\$50.00	\$500.00
Junk or Junked Vehicles on Premises	\$50.00	\$500.00
Compost Piles in Violation of this Ordinance	\$50.00	\$500.00
Unsanitary or Harmful Matter on Premises	\$50.00	\$500.00
Loud Noises	\$25.00	\$250.00
Other Nuisances	\$25.00	\$500.00

- D. Affidavit Required. Notwithstanding the procedures set forth in paragraph C, no officer or agent of Loxley will issue a citation for a violation of Section III(B)(1) unless:
1. A complainant signs a sworn affidavit confirming the violation occurred;  
or
  2. A police officer issuing the citation personally witnesses the violation.
- F. Continuing Nuisances. Each day a person allows a nuisance to remain after it has become his or her duty to remove or abate it shall constitute a separate offense.

#### SECTION IX: INTERFERENCE

Any person intentionally interfering with any enforcement, prevention, or abatement measures taken under the provisions of this ordinance will be subject to punishment under Alabama Code Section 13A-10-2 (Obstructing Governmental Operations, A Class A Misdemeanor).

#### SECTION X: CUMULATIVE EFFECT

The provisions of this ordinance are cumulative in nature and should not be interpreted to restrict any other municipal power or authority.

#### SECTION XI: SEVERABILITY

The provisions of this ordinance are severable. If any provision of this ordinance or its application to any person or circumstance is held to be invalid, that invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application.

#### SECTION XII: EFFECTIVE DATE

This ordinance shall take effect upon adoption and publication as required by law.

ADOPTED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

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Mayor, Town of Loxley