Mississippi Municipal Attorney Association

January 2026

Municipal Property Cleanup: The Good, the Bad and the Ugly

I. Mississippi Code § 21-19-11

Mississippi Code § 21-19-11 provides a process for municipal property cleanup. This statute establishes two distinct cleanup procedures:

- **Section (1):** General cleanup process for all municipalities
- **Section (2):** Expedited process available only for municipalities with populations over 1,500

II. The Cleanup Process Under Section (1)

A. Initiating the Process

To determine whether property or a parcel of land located within a municipality is in such a state of uncleanliness as to be a menace to the public health, safety, and welfare of the community, a governing authority of any municipality **shall conduct a hearing**, on its own motion, or upon receipt of a petition signed by a majority of the residents residing within 400 feet of any property or parcel of land alleged to be in need of cleaning.
Note: A hearing IS NOT required for a Section (2) cleanup (municipalities over 1,500 population).

B. Notice Requirements

Notice shall be provided to the property owner by:

1. **United States Mail** – Notice must be mailed **two (2) weeks before the date of the hearing** to:
   - The address of the subject property (*except where the land or structure(s) is apparently vacant*), **AND**
   - The address where the ad valorem tax notice for such property is sent by the tax collector

Important Notes:

- This is regular mail, not certified mail
- The obligation is to mail within the required timeframe
- Best practice: Mail to both the property address *and* the tax statement address, even if different
- Don't get caught up in the "apparently vacant" exception – document your mailing to both addresses

2. **Posted Notice** – Notice must be posted for **at least two (2) weeks before the date of the hearing**:
   - **On** the property or parcel of land alleged to be in need of cleaning, **AND**
   - At city hall or another place in the municipality where such notices are posted

Best Practice: Post the notice and document it with photographs and dates.

C. Required Notice Content

Any notice required by this section shall include language that informs the property owner that an adjudication at the hearing that the property or parcel of land is in need of

cleaning will authorize the municipality to reenter the property or parcel of land for a period of two (2) years after final adjudication without any further hearing if notice is posted on the property or parcel of land and at city hall or another place in the municipality where such notices are generally posted at least seven (7) days before the property or parcel of land is reentered for cleaning.
CRITICAL: A copy of the required notice mailed and posted as required by this section **shall be recorded in the minutes** of the governing authority in conjunction with the hearing required by this section.
DO NOT FORGET: This notice MUST be in the minutes!

D. The Hearing and Adjudication

If, at such hearing, the governing authority shall adjudicate the property or parcel of land in its *then condition* to be a menace to the public health, safety, and welfare of the community, the governing authority, if the owner does not do so himself, shall proceed to clean the land, by the use of municipal employees or by contract.

E. What Can Be Cleaned/Removed

Authorized cleanup activities include:

- Cutting grass and weeds
- Filling cisterns
- Securing abandoned or dilapidated buildings
- Removing rubbish, abandoned or dilapidated fences, outside toilets, abandoned or dilapidated buildings, slabs
- **Removing personal property** (which removal of personal property **shall not be subject to the provisions of Section 21-39-21**)
- Removing other debris
- Draining cesspools and standing water

F. Important Clarifications

1. "In Its Then Condition"

This means the condition of the property at the time of the hearing. We require a Staff Report that provides the basis for setting the public hearing, and for cleanups requiring a public hearing, the report should be updated to reflect the current condition at the time of the hearing. Property owners do try to clean up, and any such efforts need to be acknowledged and addressed.

2. What is Section 21-39-21?

Section 21-39-21 governs lost and abandoned property. The clarification that personal property removal under 21-19-11 is *not subject* to 21-39-21 means you do not need to follow the abandoned property statute for items removed during cleanup.
Important: Personal property means *everything that is not real property*. The statute contemplates that removed items are trash to be disposed of, not items to be sold to offset cleanup costs. You are to adjudicate the cost of cleaning, including disposal, and add a penalty.
What if you remove a vehicle with value? First, consider why you're removing it – what made it a menace while also having discernible value? This creates a conflict. If you find yourself with personal property that has value, consider using Section 21-39-21 after removal. The Attorney General's Opinion to Maxey discusses declaring such property abandoned if not claimed within a reasonable time.

3. Personal Property Removal Example

Some communities send letters notifying residents of cleanup dates for bulk items (appliances, furniture, etc.). On the specified date, residents place items at the curb, and the city picks them up. **This is NOT a 21-19-11 action**. The statute requires a showing that the property is a menace to public health, safety, and welfare. Curbside bulk pickup is a service, not a cleanup action under this statute.

G. Costs and Penalties

The governing authority may by resolution:

- **Adjudicate the actual cost of cleaning** the property
- Impose a penalty not to exceed **$1,500.00 or fifty percent (50%) of the actual cost, whichever is more**

Definition of "Cost":

The "cost assessed against the property" means:

- The cost to the municipality of using its own employees to do the work, **OR**
- The cost to the municipality of any contract executed by the municipality to have the work done
- **Plus:** Administrative costs and legal costs of the municipality

Collection:

The cost and any penalty *may* become:

- A civil debt against the property owner, **AND/OR**
- At the option of the governing authority, an assessment against the property

H. Subsequent Cleanups and Cost Limitations

For subsequent cleaning within the **one-year period** after the date of the hearing at which the property was adjudicated in need of cleaning:

Notice Requirements:

- Seven (7) days' notice posted both on the property and at city hall
- No further hearing required

Frequency Limitations:

- **No more than six (6) times in any twelve-month period** with respect to:
- Removing or securing abandoned or dilapidated buildings, slabs, dilapidated fences, and outside toilets
- **No more than twelve (12) times in any twenty-four-month period** with respect to:
- Cutting grass and weeds and removing rubbish, personal property, and other debris

Cost Limitations:

- The expense of cleaning shall **not exceed an aggregate amount of $20,000.00 per year, or the fair market value of the property subsequent to cleaning, whichever is more**
- **Exception:** The aggregate cost of removing **hazardous substances** will be the actual cost of such removal to the municipality and **shall not be subject to the cost limitations** provided in this subsection
- The governing authority may assess the same penalty for each time the property or land is cleaned

I. State Property Exception

Important: The penalty provided shall not be assessed against the State of Mississippi upon request for reimbursement under Section 29-1-145, nor shall a municipality clean a parcel owned by the State of Mississippi without first giving notice.

Upon written authority from the Secretary of State's office, for state-owned properties, a municipality may forgo the notification process prescribed in this subsection and proceed to clean the properties and assess costs as prescribed (except that penalties shall not be assessed against the State of Mississippi).

III. Process for Municipalities Over 1,500 Population

Section (2) of the statute provides an expedited process for municipalities with populations over 1,500. Key differences/points:

- **No hearing required**
- Administrative action possible
- Simplified notice procedures
- Property must be less than one acre.

- Clean up cost cannot exceed $250.00
- Penalty not to exceed $100 or 100% of the clean up cost whichever is more.
- Can include administrative costs not to exceed $50.00.
- Subsequent cleaning within 12 month period permitted. Have to post notice at least 7 days' prior on the land and city hall or other public place.
- Cannot exceed an aggregate of $1,000 per year.
- Limitations regarding state owned property.

IV. Perpetual Care Cemeteries - Section (7)

If private property or a parcel of land located within a municipality is a perpetual care cemetery subject to Section 41-43-1 et seq., the governing authority may use similar provisions to determine if the perpetual care cemetery and all structures on the cemetery are not being properly maintained and have become detrimental to public health and welfare.

"Not Being Properly Maintained" means:

A perpetual care cemetery that shows signs of neglect, including, without limitation:

- Unchecked growth of vegetation
- Repeated and unchecked acts of vandalism
- Unusable entrances and exits
- Excess rubbish or debris
- Disintegration of grave markers or boundaries

Special Provisions for Cemeteries:

- **No penalties** shall be assessed against owners of perpetual care cemeteries
- Municipalities may apply to the Secretary of State for reimbursement from the perpetual care cemetery trust fund
- Reimbursement limited to **actual cleanup costs only**
- Secretary of State may order release of accrued interest or (in limited circumstances) up to **15% of principal**
- May be utilized **no more than once in a four-year period**

Note: We do not have a perpetual care cemetery and I've never used this section. Good luck!

V. Important Case Law

Okhuysen v. City of Starkville, 333 So.2d 573 (Miss. App. 2022).

This case is critical for understanding inspection and entry rights. Key holdings:

1. Article 3, Section 23 of the Mississippi Constitution is considered **more broadly** than the 4th Amendment to the U.S. Constitution. It applies more broadly to persons, houses, and possessions.
2. The protection applies to **all land owned by the person searched**, and thus far, Mississippi courts have never made an "open field exception" or "expectation of privacy" distinction.
3. Inspector committed a **trespass** when he went onto the owner's property without permission, even if he thought he had a good faith right to enter.
4. **Municipal ordinances cannot authorize a search that the Mississippi Constitution prohibits.**
5. Warrant requirement **applies to administrative inspections** intended to verify compliance with municipal health codes or building codes.
6. **Permission for entry should be sought from the owner.** The request for entry should be based on probable cause. In the event permission is denied, the inspector should obtain a warrant from the court.
7. **What about plain view?** What you can see from the street, outside of the house, is fair game. Also, your folks were probably called by neighbors. If neighbors let you onto their property, that may provide additional plain-view observation. (Make sure

you explain that inspectors cannot use cameras to look into someone's house from outside. Anywhere that there is an expectation of privacy is protected.)

8. **Ask permission. If denied, get a warrant. Period.**
9. Check your ordinances and make sure that administrative access provisions are deleted. (Note: We have some in the ordinances I provided. We do not use them, and I need to clean them up.)

Gaffney v. City of Ridgeland, 202 So. 3d 238 (Miss. App. 2016)

(Additional case law and analysis can be referenced in materials.)

VI. Alternative Code Enforcement Tools

A. Nuisance Ordinances (Most Effective Tool)

Most municipalities have nuisance ordinances that complement 21-19-11. Example provisions:

- Defining what constitutes a public nuisance
- Requiring property maintenance
- Prohibiting accumulation of junk, debris, or overgrown vegetation
- Establishing penalties for violations

Our Experience with Nuisance Ordinances:

We send approximately 1,500 letters annually under our nuisance ordinance. Our process:

10. Initial letter with definite timeline for compliance
11. **Over 95%** are addressed without issue from this initial letter
12. For the remainder, we send follow-up correspondence and reach out to understand if it's a matter of "won't do it" or "can't do it"
13. In all but a handful of cases, there's an issue preventing compliance (death, loss of job, sickness, etc.). We work with these folks on a compliance plan
14. For the remainder, we take them to court
15. Of cases where we file charges, **all but about 5%** are resolved before court
16. For the remainder, we have trials and let the court resolve the issue
17. Last year, of 1,500+ letters, we had **fewer than 10 cases that had to be tried**, and of those, we entered into agreed orders and had them resolved within a short period

B. Junkyard Ordinances

Cars are a problem. We define a junkyard as **three or more inoperable vehicles located within 10 feet of each other**. We've used this ordinance effectively.

C. Junked Appliances Ordinance

We have companion ordinances to our nuisance ordinance that prevent the keeping of junked vehicles, appliances, and/or equipment on the premises. This ties into our nuisance ordinance and provides inspection authority (though note the limitations discussed in *Okhuysen v. City of Starkville*).

D. Open Storage Ordinance

Ordinance preventing the open storage of rubbish, salvage materials, junk, or hazardous waste materials, including inoperable vehicles.

E. Section 21-19-21 (Structures Damaged by Fire)

Important note: There is **no notice provision** in this statute, and the Attorney General is uncomfortable with no notice (see Baker opinion).

Also, there is **no way to recoup expenses** as provided in 21-19-11; however, the Attorney General suggests a civil action for actual expenses.

VII. Key Takeaways and Best Practices

18. **Follow the statute meticulously** – especially notice requirements
19. **Document everything** – photos, mailings, postings, minutes
20. **Remember to record notices in the minutes** – this is mandatory!
21. **Respect property rights** – ask permission before entering property, get a warrant if denied
22. **Use nuisance ordinances as your primary tool** – they're more flexible and effective for most situations
23. **Work with property owners** – most compliance issues stem from inability, not unwillingness
24. **Keep up with case law** – especially regarding constitutional protections and inspection rights
25. **Review and clean up your ordinances** – remove provisions that conflict with *Okhuysen*
26. **Maintain good records** – especially for cost recovery purposes
27. **Don't confuse service programs with enforcement actions** – bulk pickup days are not 21-19-11 actions

Questions?

Miss. Code § 21-19-11 Determination that Property Or Parcel of Land Is Menace; Authorized Municipal Employee May Make the Determination that Property Or Parcel of Land Is Menace Under Certain Circumstances; Notification to Property Owner; Hearing; Cleaning Private Property; Cost and Penalty As Assessment Against Property; Appeal; Cleaning Certain Perpetual Care Cemetery Property; Application For Reimbursement For Costs of Cleanup From Perpetual Care Cemetery Trust Fund

Library:	Mississippi Unannotated Code
Edition:	2025
Currency:	Current through the 2025 1st Extraordinary Session
Citation:	Miss. Code § 21-19-11
Year:	2025

Id. vLex Fastcase: VLEX-1067257141

Link: https://fastcase.vlex.com/vid/miss-code--21-1067257141

(1) To determine whether property or parcel of land located within a municipality is in such a state of uncleanliness as to be a menace to the public health, safety and welfare of the community, a governing authority of any municipality shall conduct a hearing, on its own motion, or upon the receipt of a petition signed by a majority of the residents residing within four hundred (400) feet of any property or parcel of land alleged to be in need of the cleaning. Notice shall be provided to the property owner by:

(a) United States mail two (2) weeks before the date of the hearing mailed to the address of the subject property, except where the land or structure(s) is apparently vacant, and to the address where the ad valorem tax notice for such property is sent by the office charged with collecting ad valorem tax; and

(b) Posting notice for at least two (2) weeks before the date of a hearing on the property or parcel of land alleged to be in need of cleaning and at city hall or another place in the municipality where such notices are posted.

Any notice required by this section shall include language that informs the property owner that an adjudication at the hearing that the property or parcel of land is in need of cleaning will authorize the municipality to reenter the property or parcel of land for a period of two (2) years after final adjudication without any further hearing if notice is posted on the property or parcel of land and at city hall or another place in the municipality where such notices are generally posted at least seven (7) days before the property or parcel of land is reentered for cleaning. A copy of the required notice mailed and posted as required by this section shall be recorded in the minutes of the governing authority in conjunction with the hearing required by this section.

If, at such hearing, the governing authority shall adjudicate the property or parcel of land in its then condition to be a menace to the public health, safety and welfare of the community, the governing authority, if the owner does not do so himself, shall proceed to clean the land, by the use of municipal employees or by contract, by cutting grass and weeds; filling cisterns; securing abandoned or dilapidated buildings; removing rubbish, abandoned or dilapidated fences, outside toilets, abandoned or dilapidated buildings, slabs, personal property, which removal of personal property shall not be subject to the provisions of Section 21-39-21, and other debris; and draining cesspools and standing water therefrom. The governing authority may by resolution adjudicate the actual cost of cleaning the property and may also impose a penalty not to exceed One Thousand Five Hundred Dollars ($1,500.00) or fifty percent (50%) of the actual cost, whichever is more. The cost and any penalty may become a civil debt against the property owner, and/or, at the option of the governing authority, an assessment against the property. The "cost assessed against the property" means either the cost to the municipality of using its own employees to do the work or the cost to the municipality of any contract executed by the municipality to have the work done, and administrative costs and legal costs of the municipality. For subsequent cleaning within the one-year period after the date of the hearing at which the property or parcel of land was adjudicated in need of cleaning, upon seven (7) days' notice posted both on the property or parcel of land adjudicated in need of cleaning and at city hall or another place in the municipality where such notices are generally posted, and consistent with the municipality's adjudication as authorized in this subsection (1), a municipality may reenter the property or parcel of land to maintain cleanliness without further notice or hearing no more than six (6) times in any twelve-month period with respect to removing or securing abandoned or dilapidated buildings, slabs, dilapidated fences and outside toilets, and no more than twelve (12) times in any

twenty-four-month period with respect to cutting grass and weeds and removing rubbish, personal property and other debris on the land, and the expense of cleaning of the property, except as otherwise provided in this section for removal of hazardous substances, shall not exceed an aggregate amount of Twenty Thousand Dollars ($20,000.00) per year, or the fair market value of the property subsequent to cleaning, whichever is more. The aggregate cost of removing hazardous substances will be the actual cost of such removal to the municipality and shall not be subject to the cost limitations provided in this subsection. The governing authority may assess the same penalty for each time the property or land is cleaned as otherwise provided in this section. The penalty provided herein shall not be assessed against the State of Mississippi upon request for reimbursement under Section 29-1-145, nor shall a municipality clean a parcel owned by the State of Mississippi without first giving notice. Upon written authority from the Secretary of State's office, for state-owned properties, a municipality may forgo the notification process that is prescribed in this subsection and proceed to clean the properties and assess costs as prescribed in this subsection, except that penalties shall not be assessed against the State of Mississippi.

(2) When the fee or cost to clean property or a parcel of land that is one (1) acre or less does not exceed Two Hundred Fifty Dollars ($250.00), excluding administrative costs, and the property or parcel is located within a municipality having a population over one thousand five hundred (1,500), the governing authority of the municipality may authorize one or more of its employees to determine whether the property or parcel of land is in such a state of uncleanliness as to be a menace to the public health, safety and welfare of the community and the determination made by the authorized municipal employee shall be set forth and recorded in the minutes of the governing authority. Notice of this determination shall be provided to the property owner by:

(a) United States mail seven (7) days before the date of cleaning of the property or parcel of land mailed to the address of the subject property, except where the land or structure(s) is apparently vacant, and to the address where the ad valorem tax notice for such property is sent by the office charged with collecting ad valorem tax; and

(b) Posting notice for at least seven (7) days before the cleaning of the property or parcel of land and at city hall or another place in the municipality where such notices are posted.

Any notice required by this subsection shall include language that informs the property owner that the appropriate municipal official has determined that the property or parcel of land is a menace to the public health, safety and welfare of the community and in need of cleaning and the municipality is authorized to enter the property for cleaning and that the municipality is further authorized to reenter the property or parcel of land for a period of two (2) years after this cleaning without any further hearing or action if notice is posted on the property or parcel of land and at city hall or another place in the municipality where such notices are generally posted at least seven (7) days before the property or parcel of land is reentered for cleaning. A copy of the required notice mailed and posted as required by this subsection shall be recorded in the minutes of the governing authority in conjunction with the determination made by the municipal employee in this subsection (2).

If an authorized municipal employee determines that the condition of property or parcel of land is a menace to the public health, safety and welfare of the community, the governing authority, if the owner does not do so himself, shall proceed to clean the land, by the use of municipal employees or by contract, by cutting grass and weeds; filling cisterns; securing abandoned or dilapidated buildings; removing rubbish, abandoned or

dilapidated fences, outside toilets, abandoned or dilapidated buildings, slabs, personal property, which removal of personal property shall not be subject to the provisions of Section 21-39-21, and other debris; and draining cesspools and standing water therefrom. The governing authority shall by resolution adjudicate the actual cost of cleaning the property under this provision, provided the same does not exceed Two Hundred Fifty Dollars ($250.00) and may also impose a penalty not to exceed One Hundred Dollars ($100.00) or one hundred percent (100%) of the actual cost of cleaning the property, whichever is more. The cost and any penalty imposed may become a civil debt against the property owner, and/or, at the option of the governing authority, an assessment against the property. The "cost assessed against the property" means either the cost to the municipality of using its own employees to do the work or the cost to the municipality of any contract executed by the municipality to have the work done, and additionally may include administrative costs of the municipality not to exceed Fifty Dollars ($50.00). For subsequent cleaning within the one-year period set forth in this subsection (2), upon seven (7) days' notice posted both on the property or parcel of land adjudicated in need of cleaning and at city hall or another place in the municipality where such notices are generally posted, and consistent with the municipal official's determination as authorized in this subsection (2), a municipality may reenter the property or parcel of land to maintain cleanliness without further notice or hearing under this subsection (2) no more than six (6) times in any twelve-month period with respect to removing or securing abandoned or dilapidated buildings, slabs, dilapidated fences and outside toilets, and no more than twelve (12) times in any twenty-four-month period with respect to cutting grass and weeds and removing rubbish, personal property and other debris on the land, and the expense of cleaning of the property shall not exceed an aggregate amount of One Thousand Dollars ($1,000.00) per year under this subsection (2). The governing authority may assess the same actual costs, administrative costs and penalty for each time the property or land is cleaned as otherwise provided in this subsection (2). The penalty provided herein shall not be assessed against the State of Mississippi upon request for reimbursement under Section 29-1-145, nor shall a municipality clean a parcel owned by the State of Mississippi without first giving notice. Upon written authority from the Secretary of State's office, for state-owned properties, a municipality may forgo the notification process that is prescribed in this subsection and proceed to clean the properties and assess costs as prescribed in this subsection, except that penalties shall not be assessed against the State of Mississippi. A determination made by an appropriate municipal employee under this subsection (2) that the state or condition of property or a parcel of land is a menace to the public health, safety and welfare of the community shall not subsequently be used to replace a hearing if subsection (1) of this section is later utilized by a municipality when the prerequisites of this subsection (2) are not satisfied.

(3) If the governing authority declares, by resolution, that the cost and any penalty shall be collected as a civil debt, the governing authority may authorize the institution of a suit on open account against the owner of the property in a court of competent jurisdiction in the manner provided by law for the cost and any penalty, plus court costs, reasonable attorney's fees and interest from the date that the property was cleaned.

(4)

(a) If the governing authority declares that the cost and any penalty shall be collected as an assessment against the property, then the assessment above provided for shall be a lien against the property and may be enrolled in the office of the chancery clerk of the county as other liens

and encumbrances are enrolled, and the tax collector of the municipality shall, upon order of the board of governing authorities, proceed to sell the land to satisfy the lien as now provided by law for the sale of lands for delinquent municipal taxes. The lien against the property shall be an encumbrance upon the property and shall follow title of the property.

(b)

(i) All assessments levied under the provisions of this section shall be included with municipal ad valorem taxes and payment shall be enforced in the same manner in which payment is enforced for municipal ad valorem taxes, and all statutes regulating the collection of other taxes in a municipality shall apply to the enforcement and collection of the assessments levied under the provisions of this section, including utilization of the procedures authorized under Sections 17-13-9(2) and 27-41-2.

(ii) All assessments levied under the provisions of this section shall become delinquent at the same time municipal ad valorem taxes become delinquent. Delinquencies shall be collected in the same manner and at the same time delinquent ad valorem taxes are collected and shall bear the same penalties as those provided for delinquent taxes. If the property is sold for the nonpayment of an assessment under this section, it shall be sold in the manner that property is sold for the nonpayment of delinquent ad valorem taxes. If the property is sold for delinquent ad valorem taxes, the assessment under this section shall be added to the delinquent tax and collected at the same time and in the same manner.

(5) All decisions rendered under the provisions of this section may be appealed in the same manner as other appeals from municipal boards or courts are taken. However, an appeal from a decision of a municipal officer or official shall be made to the governing authority and such appeal shall be in writing, state the basis for the appeal and be filed with the city clerk no later than seven (7) days from the latest date of notice required under this section.

(6) Nothing contained under this section shall prevent any municipality from enacting criminal penalties for failure to maintain property so as not to constitute a menace to public health, safety and welfare.

(7)

(a) If private property or a parcel of land located within a municipality is a perpetual care cemetery subject to Section 41-43-1 et seq., the governing authority of the municipality may proceed pursuant to the same provisions of this section used to determine whether a property is a public health menace to instead determine if the perpetual care cemetery and all structures on the cemetery are not being properly maintained and have become detrimental to the public health and welfare. A perpetual care cemetery that is "not being properly maintained and has become detrimental to the public health and welfare" means a perpetual care cemetery that shows signs of neglect, including, without limitation, the unchecked growth of vegetation, repeated and unchecked acts of vandalism, unusable entrances and exits, excess rubbish or debris, or the disintegration of grave markers or boundaries. Upon notice and opportunity to be heard as provided in subsection (1) of this section, the governing authority of the municipality may adjudicate the property or parcel of land in its then condition to be not properly maintained and detrimental to the public health and welfare, and if the owner does not do so itself, may proceed to clean the property or parcel of land as provided in subsection (1) of this section. When cleaning the property or parcel of land of a perpetual care cemetery pursuant to this subsection (7), the penalty or penalties provided in subsection (1) of this section shall not be assessed against owners of the perpetual care cemeteries.

(b) The governing authority of a municipality that cleans the property or parcel of land of a perpetual care cemetery pursuant to this subsection (7) may make application to the Secretary of State for an order directing the trustee of the perpetual care cemetery trust fund to release accrued interest or principal of the trust fund sufficient to reimburse the municipality for only the actual cleanup costs incurred by the municipality. The application to the Secretary of State shall include a statement by the municipality that all of the requirements of this section have been met.

(c) If the Secretary of State is satisfied that the notice and hearing requirements of this section have been met, and that the application for an order directing the trustee to release accrued interest of the perpetual care cemetery trust fund does not threaten the ability of the trust fund to provide for the care and maintenance of the cemetery, the Secretary of State may order the trustee to release accrued interest of the trust fund sufficient to reimburse the municipality for the actual costs of cleanup performed by the municipality.

(d) If the Secretary of State is satisfied that the notice and hearing requirements of this section have been met, but makes a determination that the accrued interest of the perpetual care cemetery trust fund is insufficient to reimburse the municipality for the actual costs of cleanup performed by the municipality, or that an order to release accrued interest would threaten the ability of the trust fund to provide for the care and maintenance of the cemetery, the Secretary of State may consider an order directing the trustee to reimburse the municipality from the principal of the trust fund. If the Secretary of State determines that an order to the trustee to release principal from the trust fund will not threaten the solvency of the trust fund, the Secretary of State may order the trustee to release principal of the trust fund in an amount sufficient to reimburse the municipality for the actual costs of cleanup performed by the municipality.

(i) The Secretary of State may not order the trustee to release an amount of more than fifteen percent (15%) of principal of the trust fund to reimburse the municipality for the actual costs of cleanup performed by the municipality.

(ii) The provisions of this section may be utilized no more than once in a four-year period.

History: Amended by Laws, 2022, ch. 358, HB 616, 1, eff. 7/1/2022.
Amended by Laws, 2021, ch. 452, SB 2261, 2, eff. 7/1/2021.
Amended by Laws, 2020, ch. 317, HB 444, 1, eff. 7/1/2020.
Amended by Laws, 2018, ch. 376, HB 1114, 1, eff. 7/1/2018.
Amended by Laws, 2014, ch. 372, HB 1096, 1, eff. 7/1/2014.
Amended by Laws, 2014, ch. 473, SB 2353, 1, eff. 4/2/2014.

Cite as: Miss. Code § 21-19-11

Source: Codes, 1930, §§ 2456, 2457; 1942, § 3374-171; Laws, 1922, ch. 220; Laws, 1950, ch. 491, § 171; Laws, 1962, ch. 545; Laws, 1964, ch. 498; Laws, 1966, ch. 593, § 1; Laws, 1971, ch. 360, § 1; Laws, 1976, ch. 335; Laws, 1977, ch. 330; Laws, 1985, ch. 350; Laws, 1987, ch. 321; Laws, 1989, ch. 322, § 1; Laws, 1991, ch. 395, § 1; Laws, 1992, ch. 479 § 1; Laws, 2001, ch. 576, § 1; Laws, 2005, ch. 427, § 1; Laws, 2009, ch. 503, § 1; Laws, 2010, ch. 471, § 1, eff. 7/1/2010; Laws, 2010, ch. 475, § 1, eff. 4/1/2010.

Miss. Code § 21-19-20 Proceedings to Demolish Or Seize Abandoned Houses Or Buildings Used For Sale Or Use of Drugs Or Constituting Public Hazard Or Nuisance; Authority to Sell, Transfer, Convey Or Use Abandoned Houses Or Buildings For Suitable Municipal Purposes

Library:	Mississippi Unannotated Code
Edition:	2025
Currency:	Current through the 2025 1st Extraordinary Session
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Year:	2025

Id. vLex Fastcase: VLEX-1063432901

Link: https://fastcase.vlex.com/vid/miss-code--21-1063432901

(1)

(a) A municipality shall institute proceedings to have demolished or seized an abandoned house or building that is used for the sale or use of drugs. In addition, the governing authorities of a municipality may sell, transfer or otherwise convey or use an abandoned house or building for suitable municipal purposes. The local law enforcement authority of the municipality shall have documented proof of drug sales or use in the abandoned property before a municipality may initiate proceedings to have the property demolished or seized.

(b)

(i) A municipality shall institute proceedings under this section to have an abandoned house or building demolished or seized if the governing authority of the municipality determines that the house or building is a menace to the public health and safety of the community and that it constitutes a public hazard and nuisance.
(ii) Upon the receipt of a petition requesting the municipality to demolish or seize an abandoned house or building that constitutes a public hazard and nuisance signed by a majority of the residents residing within four hundred (400) feet of the property, the governing authority of the municipality shall notify the property owner that the petition has been filed and that a date for a hearing on the petition has been set. Notice to the property owner shall be by United States mail, or if the property owner or the owner's address is unknown, publication of the notice shall be made twice each week during two (2) successive weeks in a public newspaper of the county in which the municipality is located; where there is no newspaper in the county, the notice shall be published in a newspaper having a general circulation in the state. The hearing shall be held not less than thirty (30) nor more than sixty (60) days after service or completion of publication of the notice. At the hearing, the governing authority shall determine whether the property is a menace to the public health and safety of the community which constitutes a public hazard and nuisance. If the governing authority determines that the property is a public hazard and nuisance, the municipality shall institute proceedings under subsection (2) of this section to demolish or seize the abandoned house or building.

(2) The municipality shall file a petition to declare the abandoned property a public hazard and nuisance and to have the property demolished or seized with the circuit clerk of the county in which the property or some part of the property is located. All of the owners of the property involved, and any mortgagee, trustee, or other person having any interest in or lien on the property shall be made defendants to the proceedings. The circuit clerk shall present the petition to the circuit judge who, by written order directed to the circuit clerk, shall fix the time and place for the hearing of the matter in termtime or vacation. The time of the hearing shall be fixed on a date to allow sufficient time for each defendant named to be served with process, as otherwise provided by law, not less than thirty (30) days before the hearing. If a defendant or other party in interest is not served for the specified time before the date fixed, the hearing shall be continued to a day certain to allow the thirty-day period specified.

(3) Any cost incurred by a municipality under this section for demolishing or seizing abandoned property shall be paid by the owners of the property.

Cite as: Miss. Code § 21-19-20

Source: Laws, 1995, ch. 343, § 1; Laws, 2005, ch. 427, § 2; Laws, 2008, ch. 521, § 1, eff. 7/1/2008.

Miss. Code § 21-19-21 Enacting Fire Regulations

Library:	Mississippi Unannotated Code
Edition:	2025
Currency:	Current through the 2025 1st Extraordinary Session
Citation:	Miss. Code § 21-19-21
Year:	2025

Id. vLex Fastcase: VLEX-1063432905

Link: https://fastcase.vlex.com/vid/miss-code--21-1063432905

The governing authorities of municipalities shall have the power to establish fire limits, and to regulate, restrain, or prohibit the erection of buildings made of sheet iron, wood, or any combustible material, within such limits as may be prescribed by ordinance, and to provide for the removal of the same at the expense of the owner thereof when erected contrary to the ordinances of the municipality. Such authorities shall have the power to regulate and prevent the storing of green hides and the carrying on of manufactures dangerous in causing or producing fires, injurious to health, or obnoxious or offensive to the inhabitants. Such authorities shall have the power to regulate the storage of powder, pitch, turpentine, resin, hemp, hay, cotton, and all other combustible and inflammable materials, and the storage of lumber in yards or on lots within the fire limits or as may be prescribed by ordinance. Such authorities shall have the power to regulate the use of lights and candles in stables, shops, and other places. Such authorities shall have the power to remove or prevent the construction of any fireplace, chimney, stove, oven, boiler, kettle, or any apparatus used in any house, building, manufactory, or business which may be dangerous in causing or producing fires. Such authorities shall have the power to direct the safe construction of deposits for ashes. Such authorities shall have the power to enter into and examine all dwelling houses, lots, yards, inclosures, and buildings of every description as well as other places, in order to ascertain whether any of them are in a dangerous state. Such authorities shall have the power to take down and remove buildings, walls, and superstructures that may become insecure or dangerous, and to require the owner of insecure or dangerous buildings, walls, and other erections to remove or render the same secure and safe at the cost of the owner of such property. Such authorities shall have the power to regulate and prescribe the manner and order the building of party, parapet, and fire-walls and party-fences, and to regulate and prescribe the construction and building of chimneys, smokestacks, and smoke and hot-air flues.

Cite as: Miss. Code § 21-19-21

Source: Codes, 1892, §§ 2967, 2968, 2969; 1906, §§ 3352, 3363, 3364; Hemingway's 1917, §§ 5849, 5860, 5861; 1930, §§ 2428, 2440, 2441; 1942, §§ 3374-140, 3374-149, 3374-150; Laws, 1938, ch. 331; Laws, 1950, ch. 491, §§ 140, 149, 150, eff. 7/1/1950.

Miss. Code § 21-39-21 Disposition of Lost, Stolen, Abandoned Or Misplaced Personal Property

Library:	Mississippi Unannotated Code
Edition:	2025
Currency:	Current through the 2025 1st Extraordinary Session
Citation:	Miss. Code § 21-39-21
Year:	2025

Id. vLex Fastcase: VLEX-1063433694

Link: https://fastcase.vlex.com/vid/miss-code--21-1063433694

The governing authorities of any municipality, upon the receipt or recovery of any lost, stolen, abandoned or misplaced personal property by the marshal, police or other officers of such municipality, shall cause to be posted, in three (3) public places in the municipality, notice that such property has been received or recovered. Such notice shall contain an accurate and detailed description of such property and, if the governing authorities are advised as to who owns such property, a copy of such notice shall be mailed to such person or persons in addition to being posted as herein required. The owner of such property may recover the same by filing a claim with the governing authorities of the municipality and establishing his right thereto. The governing authorities may require bond of the person claiming the property before delivering same to him. Parties having adverse claims to said property may proceed according to law as now provided by statutes.

If no person claims the property within one hundred twenty (120) days from the date the notice provided for above is given, the governing authorities of the municipality shall cause the same to be sold at public auction to the highest bidder for cash after first posting notice of such sale in three (3) public places in the municipality at least ten (10) days preceding the date of such sale. The notice shall contain a detailed and accurate description of the property to be sold and shall be addressed to the unknown owners or other persons interested in the property to be sold. The notice shall also set forth the date, time and place such sale is to be conducted and shall designate the person who is to make the sale, which person shall be some official designated by the governing authorities of the municipality.

However, lost, stolen, abandoned or misplaced motor vehicles and bicycles may be sold in the manner provided in the preceding paragraph after the expiration of ninety (90) days from their receipt or recovery by the officers of a municipality.

The person or officer designated and making the sale of such property shall promptly upon completion of the sale deliver to the clerk of the municipality a copy of the notice authorizing the sale, a list of the property sold, the amount paid for each item, the person to whom each item was sold, and all monies received from such sale, whereupon, the clerk shall deposit the monies in the general fund of the municipality and shall file the information concerning the sale among the other records of his office.

If, within ninety (90) days after date of the sale provided for above, any person claims to be the owner of the property sold, the governing authorities shall, upon satisfactory proof of ownership, pay to such person the amount for which such property was sold, and the governing authorities of the municipality may require of such person a bond in such cases as they may deem advisable. No action shall be maintained against a municipality or any of its officers or employees or the purchaser at the sale for any property sold hereunder or the proceeds therefrom after the expiration of ninety (90) days from the date of the sale as herein authorized.

A municipality may deduct wrecker and storage fees, not to exceed Five Hundred Dollars ($500.00), from the amount returned to the owner after the sale of property by the municipality. However, a municipality may not deduct wrecker and storage fees from the amount returned to the owner if the owner can prove the property was stolen and notifies the municipality.

Cite as: Miss. Code § 21-39-21

Source: Codes, 1942, § 3374-168; Laws, 1946, ch. 289; Laws, 1950, ch. 491, § 168; Laws, 1968, ch. 553; Laws, 1974, ch. 526; Laws, 1993, ch. 526, § 1; Laws, 2003, ch. 486, § 1, eff. 7/1/2003.

Mayor Alton Shaw

Office of the Attorney General
May 13, 2020

2020 WL 7862386 (Miss.A.G.)

Office of the Attorney General

State of Mississippi
*1
Opinion No. 2020-00019
*1 May 13, 2020

Re: Authority of Town to Remove Dilapidated Building

*1 Mayor Alton Shaw
*1 Town of Wesson
*1 Post Office Box 297
*1 Wesson, Mississippi 39191

Dear Mayor Shaw:
*1 The Office of the Attorney General is in receipt of your request for the issuance of an official opinion.

Question Presented

*1 If it is determined by the Wesson Board of Aldermen, at a hearing conducted in accordance with Miss. Code Ann. Section **21 - 19 - 11** that a property is a menace to public health, safety and welfare, can the dilapidated building located thereon, occupied by the owner as a residence, be removed pursuant to Section **21 - 19 - 11** ?

Background Facts

*1 Approximately two years ago, a residence in the Town of Wesson was destroyed by fire. The occupant of the residence now has moved into an outbuilding or shed on the property and has made it his permanent residence. The building is in extremely poor condition and the municipal governing authorities have received numerous complaints from citizens about its condition.

Brief Response

*1 A municipality may remove dilapidated buildings and structures in accordance with the authority granted by Section **21 - 19 - 11** if it provides due process to the property owner and makes the requisite factual findings upon its official meeting minutes.

Applicable Law and Discussion

*1 Section **21 - 19 - 11** authorizes a municipality to clean-up private property it has determined to be a menace to the public health and safety of the community. Section **21 - 19 - 11** requires notice, a hearing and adjudication to be provided to the property owner as shown below. In pertinent part, Section **21 - 19 - 11** (1) states that:

*1 To determine whether property or parcel of land located within a municipality is in such a state of uncleanliness as to be a menace to the public health, safety and welfare of the community, a governing authority of any municipality shall conduct a hearing, on its own motion, or upon the receipt of a petition signed by a majority of the residents residing within four hundred (400) feet of any property or parcel of land alleged to be in need of the cleaning. Notice shall be provided to the property owner by:

*1 (a) United States mail two (2) weeks before the date of the hearing mailed to the address of the subject property and to the address where the ad valorem tax notice for such property is sent by the office charged with collecting ad valorem tax; and

*1 (b) Posting notice for at least two (2) weeks before the date of a hearing on the property or parcel of land alleged to be in need of cleaning and at city hall or another place in the municipality where such notices are posted.

*1 Any notice required by this section shall include language that informs the property owner that an adjudication at the hearing that the property or parcel of land is in need of cleaning will authorize the municipality to reenter the property or parcel of land for a period of one (1) year after final adjudication without any further hearing if notice is posted on the property or parcel of land and at city hall or another place in the municipality where such notices are generally posted at least seven (7) days before the property or parcel of land is reentered for cleaning. A copy of the required notice mailed and posted as required by this section shall be recorded in the minutes of the governing authority in conjunction with the hearing required by this section.

*2 If, at such hearing, the governing authority shall adjudicate the property or parcel of land in its then condition to be a menace to the public health, safety and welfare of the community, the governing authority, if the owner does not do so himself, shall proceed to clean the land, by

the use of municipal employees or by contract, by cutting grass and weeds; filling cisterns; removing rubbish, abandoned or dilapidated fences, outside toilets, abandoned or dilapidated buildings, slabs, personal property, which removal of personal property shall not be subject to the provisions of Section 21-39-21, and other debris; and draining cesspools and standing water therefrom ....

*2 We have recognized the authority of a municipality, pursuant to Section **21 - 19 - 11** , to remove dilapidated buildings and structures it has determined to be a menace to the public health and safety of the community, provided it has strictly complied with the notice and hearing requirements and made the requisite factual findings. MS AG Op., *Dawes* (August 8, 2008); MS AG Op., *Daughdrill* (April 6, 2007). Thus, if the Board of Aldermen has fulfilled the due process requirements of notice and a hearing and makes an adjudication the building in question is a menace to the public health, safety and welfare of the community, it is authorized under Section **21 - 19 - 11** to remove such dilapidated building from the property.

*2 If this office may be of any further assistance to you, please do not hesitate to contact us.
Sincerely,

*2 Lynn Fitch
*2 Attorney General
*2 By: Avery Mounger Lee
*2 Special Assistant Attorney General

2020 WL 7862386 (Miss.A.G.)

Bruce B. Smith, Esquire

Office of the Attorney General
July 13, 2009

2009 WL 2517272 (Miss.A.G.)

Office of the Attorney General

State of Mississippi
*1
Opinion No. 2009-00411
*1 July 13, 2009

Re: *Removal/Demolition of Abandoned House*

*1 Bruce B. Smith, Esquire
*1 Attorney for City of Magee
*1 Post Office Box 395
*1 Magee, Mississippi 39111

Dear Mr. Smith:
*1 Attorney General Jim Hood received your letter of request and assigned it to me for research and reply.

Issue Presented

*1 You cite Mississippi Code Annotated Sections **21 - 19 - 11** and 21-19-20 (Revised 2007) and ask if a house is abandoned, run-down, dilapidated and falling in, but must be torn down before it can be removed, can the municipal governing authorities proceed under Section **21 - 19 - 11** to demolish the house.

Response

*1 Yes.

Applicable Law and Discussion

*1 Section **21 - 19 - 11** (1) authorizes municipal governing authority, either on its own motion or upon a petition signed by a requisite number of residents residing within four hundred feet of the property in question and upon proper notice to the property owner, conduct a hearing to determine whether or not the property or land is in such a state of uncleanliness as to be a menace to the public health and safety of the community. If at such hearing the governing authority adjudicates that "the property or land in its then condition to be a menace to the public health and safety of the community, the governing authority shall, if the owner does not do so himself, proceed to clean the land, by the use of municipal employees or by contract, by cutting weeds; filling cisterns; removing rubbish, dilapidated fences, outside toilets, **dilapidated buildings** and other debris; and draining cesspools and standing water therefrom." (Emphasis added).

*1 We have previously recognized the authority of municipal governing authorities to proceed under Section **21 - 19 - 11** to demolish dilapidated buildings. *MS AG Op., Alexander (December 6, 2002); MS AG Op., Youngman (June 13, 2003).*

Conclusion

*1 We are of the opinion that municipal governing authorities may proceed under Section **21 - 19 - 11** to demolish an abandoned house provided they make the requisite factual findings and all other requirements of that statute are satisfied.
Sincerely,

*1 Jim Hood
*1 Attorney General
*1 By: Phil Carter
*1 Special Assistant Attorney General

2009 WL 2517272 (Miss.A.G.)

Margaret Murdock, Esq.

Office of the Attorney General
May 15, 2015

2015 WL 3805995 (Miss.A.G.)

Office of the Attorney General

State of Mississippi
*1
Opinion No. 2015-00126
*1 May 15, 2015

Re: Definition or Interpretation of the Word "slab" as Referenced in Mississippi Code Annotated Section 21 - 19 - 11

*1 Margaret Murdock, Esq.
*1 Attorney
*1 City of Gulfport
*1 Post Office Box 1780
*1 Gulfport, Mississippi 39502-1780

Dear Ms. Murdock:
*1 Attorney General Jim Hood has received your request for an opinion and has assigned it to me for research and response.

Issues Presented

*1 You inquire as to what constitutes a "slab" as contemplated in Mississippi Code Annotated Section **21 - 19 - 11** . Specifically, you provide the following:

*1 State law has long provided a process by which municipalities in the State of Mississippi may seek to clean property that has been declared to be a menace to the public health, safety and welfare of the community. The process is found at Section **21 - 19 - 11** . Over the years, amendments to that statute have been adopted, including amendments adopted during the 2014 Session of the Mississippi Legislature (SB 2353 - please see enclosed). Although not specified in the title to SB 2353 of the 2014 Session, the amendments adopted therein included adding the word "slab" to the items that can be removed from property.

*1 As you know, the City of Gulfport was greatly impacted by Hurricane Katrina in August of 2005. While we have made great strides in our clean up and recovery from Katrina, we still have a few areas where improvement is desired. One of these areas is the presence of "slabs" on both commercial and residential lots throughout areas of the city that were most heavily impacted by the storm surge and winds of Katrina.

*1 We seek guidance from your office of just how broadly we can interpret the word "slab" as it was intended in the 2014 amendments. We feel most comfortable including in the definition of "slab" the poured concrete base upon which a structure was constructed. Where we have concern is whether we can include in the definition of "slab" such things as driveways (i.e., a poured concrete driveway), sidewalks, hard surface parking areas, patios, or other similar type structures located on the ground that had nothing really to do with a structure. Any guidance that your office can provide to us as to what is to be included in the definition of "slab" would be most appreciated.

Response

*1 Assuming that a municipality determines that an object is a "slab", it may remove said object in accordance with Section **21 - 19 - 11** .

Applicable Law and Discussion

*1 Section **21 - 19 - 11** of the Mississippi Code Annotated, in pertinent part, states the following:

***

*1 If, at such hearing, the governing authority shall adjudicate the property or parcel of land in its then condition to be a menace to the public health, safety and welfare of the community, the governing authority, if the owner does not do so himself, shall proceed to clean the land, by the use of municipal employees or by contract, **by cutting grass and weeds; filling cisterns; removing rubbish, abandoned or dilapidated fences, outside toilets, abandoned or dilapidated buildings, slabs, personal property**, which removal of personal property shall not be subject to the provisions of Section 21-39-21, and other debris; and draining cesspools and standing water therefrom. The governing authority may by resolution adjudicate the actual cost of cleaning the property and may also impose a penalty not to exceed One Thousand Five Hundred Dollars ($1,500.00) or fifty percent (50%) of the actual cost, whichever is more. The cost and any penalty may become a civil debt against the property owner, and/or, at the option of the governing authority, an assessment against the property. The "cost assessed against the property" means either the cost to the municipality of using its own employees to do the work or the cost to the municipality of any contract executed by the municipality to have the work done, and administrative costs and legal costs of the municipality.

For subsequent cleaning within the one-year period after the date of the hearing at which the property or parcel of land was adjudicated in need of cleaning, upon seven (7) days' notice posted both on the property or parcel of land adjudicated in need of cleaning and at city hall or another place in the municipality where such notices are generally posted, and consistent with the municipality's adjudication as authorized in this subsection (1), a municipality may reenter the property or parcel of land to maintain cleanliness without further notice or hearing no more than six (6) times in any twelve-month period with respect to removing abandoned or dilapidated buildings, slabs, dilapidated fences and outside toilets, and no more than twelve (12) times in any twenty-four-month period with respect to cutting grass and weeds and removing rubbish, personal property and other debris on the land, and the expense of cleaning of the property, except as otherwise provided in this section for removal of hazardous substances, shall not exceed an aggregate amount of Twenty Thousand Dollars ($20,000.00) per year, or the fair market value of the property subsequent to cleaning, whichever is more. The aggregate cost of removing hazardous substances will be the actual cost of such removal to the municipality and shall not be subject to the Twenty Thousand Dollar ($20,000.00) limitation provided in this subsection. The governing authority may assess the same penalty for each time the property or land is cleaned as otherwise provided in this section. The penalty provided herein shall not be assessed against the State of Mississippi upon request for reimbursement under Section 29-1-145, nor shall a municipality clean a parcel owned by the State of Mississippi without first giving notice.

***

*2 (Emphasis ours)

*2 With respect to the term "slab", Section 21-19-11 fails to include a definition. As a result, we must rely on the common and ordinary meaning of the term. Section 1-3-65 of the Mississippi Code Annotated provides:

*2 "All words and phrases contained in the statutes are used according to their common and ordinary acceptation and meaning; but technical words and phrases according to their technical meaning."

*2 As you suggest, the term "slab" is commonly associated with a "poured concrete base upon which a structure was constructed." "Slab" is commonly defined as "a thick plate or slice (as of stone, wood, or bread): as ..., concrete pavement (as a road) ... a flat rectangular architectural element that is usu. formed in a single piece or mass (a concrete foundation) ...". Merriam-Webster's Collegiate Dictionary (10th Ed. 2001).

*2 The intent and purpose of Mississippi Code Annotated Section 21-19-11 is to grant a municipality the authority to clean private property that has been determined to be a menace to the public health and safety of the community. It is apparent that this authority to remove items from the property determined to be a menace was intended to be broad in nature, as evidenced by the number of items listed in relevant portion of

*2 Section **21 - 19 - 11** .

*2 Given the common meaning of "slab" and the intent of Section **21 - 19 - 11** , it is the opinion of this office that "slab" as contemplated in Section **21 - 19 - 11** includes a concrete pouring that forms the foundation of a structure, a driveway, sidewalk, patio, hard surface parking area and other similar hard plates. Whether a particular object constitutes a "slab" is a factual determination to be made by the governing authorities. Assuming that a municipality determines that an object is a "slab", it may remove said object in accordance with Section 21-19-11.

*2 If we may be of further assistance, please advise.
Sincerely,

*2 Jim Hood
*2 Attorney General
*2 By: Leigh Triche Janous
*2 Special Assistant Attorney General

2015 WL 3805995 (Miss.A.G.)

Jeffrey J. Turnage, Esq.

Office of the Attorney General
September 9, 2011

2011 WL 5006018 (Miss.A.G.)

Office of the Attorney General

State of Mississippi
*1
Opinion No. 2011-00335
*1 September 9, 2011

Re: Municipal Offense Tickets/Overgrown Lots and Dilapidated Housing

*1 Jeffrey J. Turnage, Esq.
*1 Attorney, City of Columbus
*1 Post Office Box 1366
*1 Columbus, Mississippi 39703-1366

Dear Mr. Turnage:
*1 Attorney General Jim Hood has received your request for an opinion and has assigned it to me for research and response.

Issues Presented

*1 You inquire as to whether a municipality may proceed against a property owner through municipal court via a municipal ordinance, as opposed to proceeding under Mississippi Code Section **21 - 19 - 11** , in accordance with its authority under the home rule statute, found at Section 21-17-5. Specifically, you ask the following:

*1 I am writing with respect to the prosecution of people in the City of Columbus for allowing their properties to become derelict. As you are aware, the Mississippi Legislature has enacted a statute dealing with overgrown lots and dilapidated housing in Section **21 - 19 - 11** of the Mississippi Code of 1972. The latest amendment to this code section was enacted in the regular session of the 2010 Legislature and became effective in July 2010. As you know, the code section has a fairly detailed procedure on how a governing authority of a municipality can address such conditions on properties located within the municipal boundaries. The procedure allows for a notice and an opportunity to be heard before the mayor and council who then may adjudicate the property to be a menace to the public health, safety and welfare of the community and proceed to clean the land by use of municipal employees and to impose a penalty of up to $1,500 for 50% of actual cost, whichever is greater. If the property owner does not remit the cost incurred by the municipality in cleaning the property as stated in the statute, the governing authority may either sue on the debt or assess the property with a lien against the property and enroll the lien as judgments are enrolled. If the judgment is unpaid by the debtor, the tax collector may proceed to sell the land to satisfy the lien.

*1 A question has arisen as to whether Section **21 - 19 - 11** is the only procedure the city may employ to deal with conditions of overgrowth and dilapidation on private property. Particularly, the city of Columbus has an interest in proceeding against owners of derelict properties through the municipal court via an ordinance passed by the Columbus city council under Article XII of Chapter 20 of the Municipal Code. A copy of this Article is attached to this opinion request letter. As you will see in Section 20-207, the ordinance allows the municipal court to issue a municipal offense ticket for maintaining property in an unsightly, unsafe or unsanitary condition under all laws regulating real property in the city of Columbus including those conditions stated in the ordinance. The city wishes to proceed through the procedures outlined in the Municipal Offense Ticket ordinance in order to save costs of the normal procedure required by proceeding under Section **21 - 19 - 11** , which involves posting the property and mailing a letter to the last known tax address and then setting the matter for hearing before the mayor and council. As you may know, this takes time and money before the violator must cure the condition. It is the city's belief that a much more efficient and effective way to proceed would be under its Municipal Offense Ticket pursuant to "home rule", to wit Section 21-17-5 of the Mississippi Code. We would appreciate your opinion about the propriety of using Chapter 20, Article XII to deal with conditions of overgrowth and dilapidation through the issuance of a Municipal Offense Ticket rather than through Section **21 - 19 - 11** .

*2 Additionally, we would appreciate your opinion about the validity of using the Municipal Offense Ticket for other violations of law not set forth in Section **21 - 19 - 11** which may exist on local landowner's property.

Response

*2 A municipality may not, by ordinance, prescribe another method to be utilized in the cleaning of private property and must comply with the provisions of Section **21 - 19 - 11** when doing so.

Applicable Law and Discussion

*2 Pursuant to its authority under the "home rule" statute, found at Mississippi Code Annotated Section 21-17-5, a municipality is empowered to adopt any order or ordinance with respect to its municipal affairs, property and finances, provided that such order or ordinance is not inconsistent with any provision of the Mississippi Constitution or the Mississippi Code of 1972. Section 21-19-11 of the Mississippi Code

outlines a mechanism for municipalities to use for the cleaning of private property when it has become a menace to the public health and safety of the community. We have previously opined that "the Legislature has clearly spoken, through its construction of Section 21-19-11, on the method in which a municipality is to use when cleaning private property that has become a menace to the public health and safety of the community." MS AG Op., Vann (April 3, 2009). A municipality may not, by ordinance, prescribe another method to be utilized in the cleaning of private property and must comply with the provisions of Section 21-19-11 when doing so. MS AG Op., Miller (June 4, 2004); MS AG Op., Rideout (October 22, 1986). Thus, the municipality must comply with the provisions of Section 21-19-11 when cleaning private property that has become a menace to the health and safety of the community. We also direct your attention to Sections 21-19-20 and 21-19-21 concerning the authority of a municipality to remove buildings or structures that are dangerous or constitute a public hazard or nuisance.

*2 However, the limitations we discuss above address the actual clean up of private property alone and in no way restrict the authority of a municipality to adopt a municipal property maintenance ordinance which seeks to assess criminal penalties for violations of such ordinance. In accordance with its express authority under Mississippi Code Annotated Section 21-13-1, a municipality may include criminal penalty assessments for violations of its municipal ordinances. MS AG Op., McGee (February 3, 2010). In addition, Section 21-19-11(7) specifically permits the assessment of criminal penalties for "failure to maintain property so as not to constitute a menace to public health, safety and welfare." Thus, we find no prohibition barring the municipality from using the proposed Municipal Offense Ticket for violations of municipal ordinances.

*2 If our office may be of further assistance, please advise.
Sincerely,

*2 Jim Hood
*2 Attorney General
*2 By: Leigh Triche Janous
*2 Special Assistant Attorney General

2011 WL 5006018 (Miss.A.G.)

END OF DOCUMENT

Jimmy L. Miller, Esq.

Office of the Attorney General
December 18, 2014

2014 WL 7642361 (Miss.A.G.)

Office of the Attorney General

State of Mississippi
*1
Opinion No. 2014-00477
*1 December 18, 2014

Re: Property Clean Up

*1 Jimmy L. Miller, Esq.
*1 Attorney
*1 City of Marks
*1 Post Office Drawer 209
*1 Marks, Mississippi 38646

Dear Mr. Miller:
*1 Attorney General Jim Hood has received your request for an opinion and has assigned it to me for research and response.

Issues Presented

*1 You inquire as to what actions a municipality should take when operating under Mississippi Code Annotated Section 21-19-11 in an effort to protect itself from adverse consequences. Specifically, you provide the following:

*1 **FIRST QUESTION**: For purposes of making a decision as to whether or not personal property constitutes, as defined above, **personalty** or **junk**, what should the City do, both before and after the cleaning process is completed, to protect itself from adverse consequences?

*1 **SECOND QUESTION**: When Section 21-19-11 uses "remove or removal" or some variation thereof, what must the City do to protect itself from adverse consequences or actions by the owner?

*1 **THIRD QUESTION**: Section 21-19-7, Mississippi Code of 1972, as amended, authorizes the removal of, among other things, personal property, but then says "which removal of personal property shall not be subject to the provisions of Section 21-39-21 ...." On the enclosures, I have highlighted in yellow the language to which my first question appertains. Do the words "shall not be subject to the provisions of" mean that the City can never resort to the provisions of Section 21-39-21 to sell and dispose of abandoned personal property remaining on the land after the clean up process is completed?

*1 **FOURTH QUESTION**: Assuming that **personalty**, as defined above, remains on the land after cleaning, and after Notice to the owner, may the City adjudicate that the **personalty** is abandoned personal property and authorize the sale of the **personalty** under said Code Section 21-39-21?

*1 **FIFTH QUESTION**: Assuming that the City finds **personalty**, as defined above, on the land during the City's clean up process, how must the City proceed as to such **personalty**, i.e., to where, how and by whom must the **personalty** be removed or, alternatively, must that **personalty** merely be left on the land?

*1 **SIXTH QUESTION**: As to **junk** , as defined above, i.e., personal property apparently having no value, may the City remove such **junk** and take it to a proper disposal site or must the City leave such **junk** on the land?

*1 **SEVENTH QUESTION**: Assuming that personal property, whether **personalty** or **junk** , as defined above, remains on the land after the clean up process is concluded, and such personal property, whether **personalty** or **junk** as defined above, appears to create a menace to the public health, safety and welfare of the community, may the City proceed as follows, to-wit:

*1 A. Post Notice on the property and re-enter for further cleaning and thereupon, remove and dispose of the offending personal property; and/or

*2 B. Institute new proceedings under Section 21-19-11, Mississippi Code of 1972, as amended, based upon the personal property and after proper Notice and Adjudication of an existing menace, caused by the personal property, remove and dispose of the offending personal property.

*2 **EIGHT QUESTION**: Finally, and in general, once the menace adjudication has been lawfully made, and the owner takes no appeal concerning that adjudication, what must the City do to lawfully and properly clean the land and remove personal property, whether **personalty** or **junk** , as defined above?

*2 You also submit the following background information to clarify your request:

*2 Throughout the remainder of this request, certain words are defined and as defined, those words are used throughout the remainder of this request. The words so defined and so used are written in bold print. Words not so written have their normal and customary meanings. The bold print words, and the definitions thereof, are as follows:

*2 **PERSONALTY** means personal property which, both before and after the City's clean up process, appears to a reasonable prudent person to either (1) definitely have some value or (2) may have some value; and

*2 **JUNK** means personal property which, either before or after the City's clean up process, appears to a reasonably prudent person to have no value.

*2 After all due and proper Notice and Adjudicatory Hearing, the City adjudicates a piece of property to be in such a state and such a condition as to be a menace to the public health, safety and welfare of the community and, therefore, must be and shall be cleaned pursuant to Section 21-19-11, Mississippi Code of 1972, as amended. After all time for taking an appeal from the City's adjudication has expired and the owner has not taken any such appeal, the City proceeds to clean the property using its employees and equipment. During that clean up process, those employees use and take reasonable precautions to prevent destruction of, and the reduction in value of, personal property.

*2 After all the cleaning is completed, personal property remains on the property. The owner does not remove the personal property, but, instead, leaves the personal property on the land. Thereafter, as indicated above, the time for appeal expires and the owner has taken no appeal.

Response

*2 The municipality must strictly comply with the provisions of Mississippi Code Annotated Section 21-19-11 when cleaning private property that is in such a state of uncleanliness as to be a menace to the public health, safety and welfare of the community. Personal property removed from private property pursuant to Section 21-19-11 is distinct from "lost, stolen, abandoned or misplaced personal property" as contemplated in Section 21-39-21 and may not be disposed of as such at any time, whether during or after the clean up process. Pursuant to Section 21-19-11, it is incumbent upon the municipality, either through the use of its employees or via contract labor, to remove personal property when the landowner has failed to do so. The municipality may re-enter the property to maintain cleanliness, or it may institute new proceedings under Section 21-19-11, should it desire to do so, provided that it strictly complies with the provisions of Section 21-19-11.

Applicable Law and Discussion

*3 Initially, we should note that you include in your request definitions of the terms "personalty" and "junk". In doing so, it appears that you are attempting to make a distinction between certain types of personal property and, as such, are suggesting that a certain type of personal property should be treated differently than other personal property. The terms "personalty" and "" **junk** " are not found in the provisions of Section **21 - 19 - 11** . In fact, Section **21 - 19 - 11** plainly uses the term "personal property", which suggests that all personal property is to be treated the same. Thus, we do not find a distinction between types of personal property as it relates to the provisions of Section **21 - 19 - 11** , and our following comments address personal property in general. However, if the City makes a finding that the property has no value, it may dispose of it as it deems fit.

*3 In response to your first and second inquiries, you inquire as to what actions the municipality should take in an effort to protect it from adverse consequences when cleaning private property. Pursuant to Section 7-5-25, this office is limited to interpreting state laws and is not authorized to make factual determinations nor to opine on matters involving issues of liability. Thus, to the extent that your request involves factual determinations and/or issues of liability, we must decline to respond by way of official opinion. Having said that, the best course of action for a municipality to take, when cleaning up private property, is to strictly comply with the provisions of Section 21-19-11. MS AG Op., Rideout (October 22, 1986). In doing so, we have consistently opined that a municipality must take "reasonable precautions" to prevent the destruction of the value of the personal property. MS AG Op., Richardson (April 11, 2014); MS AG Op., Miller (September 20, 2013); MS AG Op., Maxey (May 19, 2006)(we note that the amendment exempting personal property from the provisions of Section 21-39-21 was enacted after the issuance of this opinion); MS AG Op., Miller (April 15, 1988). Whether a precaution is reasonable or not is a factual determination to be made by the governing authorities, subject to judicial review and is not one that may be made by our office. See MS AG Op., Morgan (May 21, 2004)(determination as to whether reason is reasonable is a factual question in which our office cannot opine); MS AG Op., Thompson (March 26, 1999)(whether length of time is reasonable is a question of fact that this office may not determine); MS AG Op., Cossar (June 9, 1992)(reasonableness of ordinance is a determination to be made by governing authorities subject to judicial review).

*3 With regard to your third and fourth inquiries, Section **21 - 19 - 11** specifically states that personal property removed from private property that is being cleaned by a municipality in accordance with its authority under Section **21 - 19 - 11** is not subject to the provisions of Section 21-39-21. It should be noted that this specific prohibition was added as an amendment to Section **21 - 19 - 11** . Clearly, through the addition of this exemption language, it was the Legislature's intent to specifically restrict a municipality from disposing of said personal property in the manner outlined in Section 21-39-21. Thus, personal property removed from private property pursuant to Section 21-19-11 is distinct from "lost, stolen, abandoned or misplaced personal property" as contemplated in Section 21-39-21.

*4 As to your remaining inquiries, Section 21-19-11 states, in pertinent part, the following:

***

*4 If, at such hearing, the governing authority shall adjudicate the property or parcel of land in its then condition to be a menace to the public health, safety and welfare of the community, the governing authority, **if the owner does not do so himself, shall proceed to clean the land, by the use of municipal employees or by contract, by cutting grass and weeds; filling cisterns; removing rubbish, abandoned**

or dilapidated fences, outside toilets, abandoned or dilapidated buildings, slabs, personal property, which removal of personal property shall not be subject to the provisions of Section 21-39-21, and other debris; and draining cesspools and standing water therefrom. The governing authority may by resolution adjudicate the actual cost of cleaning the property and may also impose a penalty not to exceed One Thousand Five Hundred Dollars ($1,500.00) or fifty percent (50%) of the actual cost, whichever is more. The cost and any penalty may become a civil debt against the property owner, and/or, at the option of the governing authority, an assessment against the property. The "cost assessed against the property" means either the cost to the municipality of using its own employees to do the work or the cost to the municipality of any contract executed by the municipality to have the work done, and administrative costs and legal costs of the municipality. For subsequent cleaning within the one-year period after the date of the hearing at which the property or parcel of land was adjudicated in need of cleaning, upon seven (7) days' notice posted both on the property or parcel of land adjudicated in need of cleaning and at city hall or another place in the municipality where such notices are generally posted, and consistent with the municipality's adjudication as authorized in this subsection (1), **a municipality may reenter the property or parcel of land to maintain cleanliness without further notice or hearing no more than six (6) times in any twelve-month period with respect to removing abandoned or dilapidated buildings, slabs, dilapidated fences and outside toilets, and no more than twelve (12) times in any twenty-four-month period with respect to cutting grass and weeds and removing rubbish, personal property and other debris on the land**, and the expense of cleaning of the property, except as otherwise provided in this section for removal of hazardous substances, shall not exceed an aggregate amount of Twenty Thousand Dollars ($20,000.00) per year, or the fair market value of the property subsequent to cleaning, whichever is more. The aggregate cost of removing hazardous substances will be the actual cost of such removal to the municipality and shall not be subject to the Twenty Thousand Dollar ($20,000.00) limitation provided in this subsection. The governing authority may assess the same penalty for each time the property or land is cleaned as otherwise provided in this section. The penalty provided herein shall not be assessed against the State of Mississippi upon request for reimbursement under Section 29-1-145, nor shall a municipality clean a parcel owned by the State of Mississippi without first giving notice.

* * *

***5** (Emphasis added)

***5** Section 21-19-11 specifically provides that "the governing authority, if the owner does not do so himself, shall proceed to clean the land, by the use of municipal employees or by contract, by cutting grass and weeds; filling cisterns; removing rubbish,...personal property...,and other debris..." Thus, pursuant to Section 21-19-11, it is incumbent upon the municipality, either through the use of its employees or via contract labor, to remove personal property, when the landowner has failed to do so. As previously discussed, the municipality must use reasonable precautions to prevent the destruction of the value of the property. Naturally, any rubbish, debris or other trash would be disposed of accordingly. The determination as to the value of the personal property to be removed is a factual one. In regard to the authority of the municipality to re-enter the premises, it is clear that the municipality may reenter the property to maintain cleanliness, provided that it strictly complies with the provisions of Section 21-19-11. In addition, it may institute new proceedings under Section 21-19-11, should it desire to do so. However, the same restrictions would apply with respect to the disposal of personal property that has been removed in the clean up process. We reiterate that the municipality must strictly comply with the provisions of Section 21-19-11 when cleaning private property that is in such a state of uncleanliness as to be a menace to the public health, safety and welfare of the community.

***5** If we may be of further assistance, please advise.
Sincerely,

***5** Jim Hood
***5** Attorney General
***5** By: Leigh Triche Janous
***5** Special Assistant Attorney General

2014 WL 7642361 (Miss.A.G.)

END OF DOCUMENT

Mr. J. Kirkham Povall

Office of the Attorney General
October 12, 2001

2001 WL 1513793 (Miss.A.G.)

Office of the Attorney General

State of Mississippi
*1
Opinion No. 2001-0641
*1 October 12, 2001

Re: Abandoned vehicles

*1 Mr. J. Kirkham Povall
*1 P. O. Drawer 1199
*1 215 North Pearman Avenue
*1 Cleveland, Mississippi 38732

Dear Mr. Povall:
*1 Attorney General Mike Moore has received your recent letter on behalf of the Town of Boyle and has asked me to respond. Your letter states:

*1 The Town of Boyle has been dealing with numerous property owners who maintain abandoned motor **vehicles** on their private property. In most cases, the motor **vehicles** are abandoned. They are inoperable. They lack current inspection stickers or license plates. They pose a danger for both health and safety. We need your opinion on certain issues relating to the Town's efforts to remove these abandoned **vehicles** to include the following:

*1 1. Does a municipality have a legal right to enter upon private property to seize and remove abandoned **vehicles** ?

*1 2. What procedures regarding notice and/or due process hearing should a municipality follow in seizing abandoned **vehicles** ?

*1 3. To what extent does Section **21 - 19 - 11** , referring to "rubbish and/or debris", provide statutory authority for adoption of such procedures to remove abandoned **vehicles** from private property?

*1 4. Can a municipality remove abandoned **vehicles** from public roadways and streets without affording the owner a due process hearing on such removal?

*1 A municipality, pursuant to its general police powers and Section 21-19-1, is authorized to enact and enforce ordinances for the prevention, abatement and removal of nuisances, including ordinances which prohibit keeping partially dismantled, nonoperating, wrecked, **junked** or discarded **vehicles** on private property. Any such ordinance should contain adequate provisions to ensure that the owner of the property is afforded due process, including reasonable notice and an opportunity to be heard, before **vehicles** are removed from private property. *MS AG Op., Love (December 16, 1985).* **See also** *Price v. City of Junction, TX, 711 F. 2d 582 (5th Cir. 1983)*(upholding city ordinance providing for removal of **junk vehicles** from private property). A municipal ordinance must pass constitutional muster, including requirements of due process. **See** *58 Am Jur 2d Nuisances, Sections 195-212* (discussing requirements of due process in abating nuisances). Miss. Code Ann. Section **21 - 19 - 11** authorizes municipal governing authorities to clean property which has been adjudicated to be a menace to the public health and safety and to assess the cost as a lien against the property after following the procedures in the statute, including giving the owner notice and a opportunity to be heard at a hearing. This Section authorizes governing authorities to clean property by removing rubbish and debris, which may include abandoned or **junk vehicles** . **See also** *MS AG Op., McFatter (July 25, 1991)* (city may dispose of abandoned **vehicles** obtained pursuant to Section **21 - 19 - 11**). Sections 63-23-1 et seq. set forth procedures for the removal of abandoned motor **vehicles** from public property, including public roads, streets and rights-of-way.

*2 If we may be of any further assistance, please let us know.
Sincerely,

*2 Mike Moore
*2 Attorney General
*2 By: Alice Wise
*2 Special Assistant Attorney General

2001 WL 1513793 (Miss.A.G.)

William Maxey, Esq.

Office of the Attorney General
May 19, 2006

2006 WL 1966824 (Miss.A.G.)

Office of the Attorney General

State of Mississippi
*1
Opinion No. 2006-00193
*1 May 19, 2006

Re: Proceedings Pursuant to M.C.A. Section 21 - 19 - 11

*1 William Maxey, Esq.
*1 City Attorney
*1 Post Office Box 157
*1 Coffeeville, Mississippi 38922-0157

Dear Mr. Maxey:
*1 Attorney General Jim Hood has received your request for an official opinion as City Attorney for the Town of Coffeeville and has assigned it to me for research and response.

*1 The Town of Coffeeville has initiated proceedings against a property owner under Section **21 - 19 - 11** of the Mississippi Code of 1972, Annotated, as amended, to clean property that constitutes a menace to the public health and safety of the community. It appears that the property owner is not going to clean the property. It further appears that the property may contain materials such as scrap metal, lumber, bricks, **vehicle** parts and other items that have value.

*1 If the Town of Coffeeville cleans the property pursuant to the above code section, what steps must the Town take regarding accounting for materials, storing materials and disposing of materials? If any of the materials are sold, can the proceeds by applied to the cost of cleaning the property? Your assistance in providing guidance in the above areas is appreciated.

* * * * *

*1 Section **21 - 19 - 11** authorizes municipal governing authorities, upon making appropriate factual findings and the satisfaction of necessary notification requirements, to enter onto private property to remove rubbish, dilapidated buildings and other debris. We have previously opined that this includes the authority to remove abandoned or **junked vehicles** constituting health hazards. MS AG Op., McFatter (July 25, 1991). This would also apply, in the opinion of this office, to building materials, old bricks, scrap metal and **vehicle** parts left on the property which are health hazards.

*1 The Attorney General has opined that when exercising authority under Section **21 - 19 - 11** , a municipality must take reasonable precautions to prevent the destruction of the value of personal property. MS AG Op., Miller (April 15, 1988). We find no authority in Section **21 - 19 - 11** which would authorize the sale of any personal property removed from the parcel for the purpose of mitigating or offsetting the expenses of cleaning the property. (By comparison, please see Miss. Code Ann. Section 43-35-105, which specifically authorizes the sale of materials from the demolition of a structure as a means to offset the expense of the demolition or removal.) This does not mean that a municipality may not dispose of abandoned personal property acquired by virtue of cleaning private property under the provision of Section 21-19-11. In such case, the municipality may utilize the mechanism provided by Section 21-39-21 for disposal of lost, stolen or abandoned personal property. MS AG Op., McFatter, (July 25, 1991). This mechanism requires written notice be mailed to the property owner.

*1 If our office may be of further assistance, please advise.
Sincerely,

*2 Jim Hood
*2 Attorney General
*2 By: Heather P. Wagner
*2 Assistant Attorney General

2006 WL 1966824 (Miss.A.G.)

John D. Sutton, Esq.

Office of the Attorney General
July 14, 2017

2017 WL 3587059 (Miss.A.G.)

Office of the Attorney General

State of Mississippi
*1
Opinion No. 2017-00215
*1 July 14, 2017

Re: Adoption of Municipal Ordinance Prohibiting Conditions Contemplated under Section 21 - 19 - 11

*1 John D. Sutton, Esq.
*1 Attorney
*1 Town of Monticello
*1 Post Office Box 1157
*1 Monticello, Mississippi 39654

Dear Mr. Sutton:
*1 Attorney General Jim Hood received your letter of request and assigned it to me for research and response.

Issue Presented

*1 You inquire as to whether a municipality may adopt an ordinance which would prohibit conditions contemplated under Mississippi Code Annotated Section **21 - 19 - 11** . Specifically, you ask the following:

*1 Despite the provisions and remedies of Section **21 - 19 - 11** of the Mississippi Code, the Town of Monticello continues to have difficulty with properties exhibiting the conditions that Section **21 - 19 - 11** was designed to remedy. So, I was asked if the Town, under home rule, could establish an ordinance that would be enforced by the municipal court system in an attempt to cure at least some of the more egregious property owners in town.

*1 Assuming the Town's governing authorities can make the requisite findings that parcels of real property in town, that are the site of grass and weeds exceeding a certain height, and/or the site of empty cisterns, excessive rubbish, abandoned or dilapidated fences, outside toilets, abandoned or dilapidated buildings, and/or slabs, and that such conditions are detrimental to the health and safety of the neighboring property owners, and other citizens of the Town, and/or that such conditions negatively affect property values in the Town and/or non-conducive to economic development, would such an ordinance be in conflict with any other superior authority that would prevent its enforcement (e.g., a state statute).

*1 If the answer to the above is that such can be passed, would it matter if it was incorporated in the existing Zoning Ordinance or passed as a separate Municipal Ordinance? Also, would an enforcement action under such an ordinance be allowed in conjunction with an enforcement action instituted under Section **21 - 19 - 11** of the Mississippi Code?

***

Response

*1 The municipality may not adopt an ordinance that establishes different standards from those provided in Mississippi Code Annotated Section **21 - 19 - 11** . The Legislature has clearly spoken, through its construction of Section **21 - 19 - 11** , on the method to be used by a municipality when cleaning property that has become a menace to the public health and safety of the community. Based on our response to your first inquiry, your remaining inquiries have been rendered moot.

Applicable Law and Discussion

*1 Pursuant to its authority under Mississippi Code Annotated Section 21-17-5, which is the "home rule" statute, a municipality is authorized to adopt any order or ordinance with respect to its municipal affairs, property and finances, provided that such order or ordinance is not inconsistent with any provision of the Mississippi Constitution or the Mississippi Code of 1972. However, in regard to the cleaning of private property, we have previously opined that "the Legislature has clearly spoken, through its construction of Section **21 - 19 - 11** , on the method in which a municipality is to use when cleaning private property that has become a menace to the public health and safety of the community." MS AG Op., Vann (April 3, 2009). See also, MS AG Op., Turnage (September 9, 2011). Because the Legislature has established a statutory scheme for the cleaning of property that has become a menace to the public health and safety of the community, a municipality may not, by ordinance, prescribe another method to be utilized in the cleaning of private property and must comply with the provisions of Section **21 - 19 - 11** when doing so. MS AG Op., McGee (September 18, 2009); MS AG Op., Miller (June 4, 2004); MS AG Op., Rideout (October 22, 1986).

*2 While a municipality may not adopt an ordinance that is in conflict with the provisions of Section 21-19-11, we did note in our opinion to Jeffrey J. Turnage, dated September 9, 2011, that

*2 [T]he limitations we discuss above address the actual clean up of private property alone and in no way restrict the authority of a municipality to adopt a municipal property maintenance ordinance which seeks to assess criminal penalties for violations of such ordinance. In accordance with its express authority under Mississippi Code Annotated Section 21-13-1, a municipality may include criminal penalty assessments for violations of its municipal ordinances. MS AG Op., McGee (February 3, 2010). In addition, Section 21-19-11(7)[1] specifically permits the assessment of criminal penalties for "failure to maintain property so as not to constitute a menace to public health, safety and welfare."

*2 If our office may be of further assistance, please advise.
Sincerely,

*2 Jim Hood
*2 Attorney General
*2 By: Leigh Triche Janous
*2 Special Assistant Attorney General

Footnotes

1 Now codified at Section 21-19-11(5).

2017 WL 3587059 (Miss.A.G.)

END OF DOCUMENT

Mr. Mark C. Baker

Office of the Attorney General
November 21, 2003

2003 WL 22970544 (Miss.A.G.)

Office of the Attorney General

State of Mississippi
*1
Opinion No. 2003-0615
*1 November 21, 2003

Re: Interpretation of Miss. Code Ann. Section 21 - 19 - 21

*1 Mr. Mark C. Baker
*1 Baker Law Firm, P.C.
*1 Post Office Box 947
*1 Brandon, Mississippi 39043

Dear Mr. Baker:
*1 Attorney General Mike Moore has received your request for an official opinion on behalf of the City of Brandon and has assigned it to me for research and response. Your letter reads as follows:

*1 I am writing this opinion request on behalf of the City of Brandon. Several months ago, a commercial building which was then being used as an automobile repair facility, was substantially damaged by fire. The building has not been used for any business activity since the fire. It is the opinion of the City's Director of Community Development, who is vested with the enforcement of the City's building codes, ordinances and state statutes as applicable to such matters, that what remains of the building is now insecure and dangerous. It is the opinion of the city that what remains of the building must be demolished and the debris removed from the property. I am advised that the cost to complete this demolition and debris removal could exceed $50,000.

*1 In accordance with MCA Section **21 - 19 - 21** , governing authorities of municipalities are empowered, inter alia, "... [t]o take down and remove buildings, walls, and superstructures that may become insecure or dangerous, and to require the owner of insecure or dangerous buildings, walls, and other erections to remove or render the same secure and safe at the cost of the owner of such property."

*1 My questions are these:

*1 1. May the City of Brandon, after first finding what remains of the building is dangerous and insecure as a result of fire damage, enter upon the property and demolish the same and remove the debris therefrom?

*1 2. If so, is the City of Brandon required to hold a hearing to determine same?

*1 3. If the answer to question 2 is in the affirmative, what procedures should be implemented regarding same?

*1 4. If the answer to question 1 is in the affirmative, is the city limited to an amount it may expend to demolish and remove the debris from the property and if so, what provisions apply and what is the limit of expenditure?

*1 5. If the answer to question 1 is in the affirmative, can the City: (a) assess the cost of such demolition and debris removal as a lien which may be enrolled in the office of the Circuit Clerk of the County as other judgments are enrolled, with the tax collector authorized to sell the land to satisfy the lien as now provided by law for the sale of lands for delinquent municipal taxes, or (b) collect the cost as a civil debt; or (c) either (a) or (b); or (d) neither (a) or (b); or (e) collect or recover the same in some other way?

* * * * *

*1 Section **21 - 19 - 21** reads, in whole, as follows:

*1 The governing authorities of municipalities shall have the power to establish fire limits, and to regulate, restrain, or prohibit the erection of buildings made of sheet iron, wood, or any combustible material, within such limits as may be prescribed by ordinance, and to provide for the removal of the same at the expense of the owner thereof when erected contrary to the ordinances of the municipality. Such authorities shall have the power to regulate and prevent the storing of green hides and the carrying on of manufactures dangerous in causing or producing fires, injurious to health, or obnoxious or offensive to the inhabitants. Such authorities shall have the power to regulate the storage of powder, pitch, turpentine, resin, hemp, hay, cotton, and all other combustible and inflammable materials, and the storage of lumber in yards or on lots within the fire limits or as may be prescribed by ordinance. Such authorities shall have the power to regulate the use of lights and candles in stables, shops, and other places. Such authorities shall have the power to remove or prevent the construction of any fireplace, chimney, stove, oven, boiler, kettle, or any apparatus used in any house, building, manufactory, or business which may be dangerous in causing or producing fires. Such authorities shall have the power to direct the safe construction of deposits for ashes. Such authorities shall have the power to enter into and examine all dwelling houses, lots, yards, inclosures, and buildings of every description as well as other places, in

order to ascertain whether any of them are in a dangerous state. Such authorities shall have the power to take down and remove buildings, walls, and superstructures that may become insecure or dangerous, and to require the owner of insecure or dangerous buildings, walls, and other erections to remove or render the same secure and safe at the cost of the owner of such property. Such authorities shall have the power to regulate and prescribe the manner and order the building of party, parapet, and fire-walls and party-fences, and to regulate and prescribe the construction and building of chimneys, smokestacks, and smoke and hot-air flues. [emphasis added].

*2 By virtue of the plain language of Section **21 - 19 - 21** , the City of Brandon has the authority to enter onto the property to determine if the structure is in an insecure or dangerous condition, and further to remove any structures or parts thereof found to be insecure or dangerous so as to render them safe. Therefore, the answer to your first question is yes.

*2 The language of Section **21 - 19 - 21** gives no instruction with regard to procedures to be used in exercising the authority granted to municipal governing authorities "to take down and remove buildings, walls, and superstructures that may become insecure or dangerous, and to require the owner of insecure or dangerous buildings, walls, and other erections to remove or render the same secure and safe at the cost of the owner of such property." However, we do not believe it was the intent of the Legislature that this authority be exercised without notice to property owners and an opportunity to be heard on the matter, and first giving the property owner the opportunity to take necessary action. In exercising its authority pursuant to Section 21-19-21, the municipality is not specifically required to utilize the same procedures for notice and hearing set forth in established in Section 21-19-11 for cleaning property. It is the opinion of this office that a municipality may enact its own provisions with regard to notice to property owners pursuant to its powers under Section 21-19-21. Those provisions should be in the form of an ordinance. Municipalities may wish to utilize similar notice procedures as are found in Section 21-19-11. As the Mississippi Supreme Court stated in the case of Bond v. City of Moss Point, 240 So.2d 270 (Miss. 1960), "[i]t is a sensible and reasonable rule that where the property owner, after reasonable notice provided for in an ordinance, fails and refuses to either repair or remove an unsafe and unfit building that constitutes a public nuisance, that the municipality can remove it at the owner's expense."

*2 In response to your fourth question, Section 21-19-21 contains no limitation on the amount which may be expended to "take down and remove buildings, walls, and superstructures." The municipality is not limited to the $10,000.00 amount found in Section 21-19-11 for the cleaning of property pursuant to that Section.

*2 Finally, Section 21-19-21 does not dictate the manner in which a municipality can recover the expenses of taking down unsafe structures. Absent any direct authority to assess the cost of the removal as a lien against the property, we are of the opinion that the municipality may not do so. However, nothing would prevent a municipality from pursuing a civil action against the property owner for recovery of the actual expenses of the removal of the structure should it become necessary for the municipality to do so. As a precaution, if the owner fails to remove the structure as directed by the municipality, prior to the expenditure of any funds by the municipality, the municipality may wish to petition a court of competent jurisdiction to either require the property owner to remove the unsafe structure or authorize the municipality to do so at the expense of the property owner.

*3 If our office may be of further assistance, please advise.
Sincerely,

*3 Mike Moore
*3 Attorney General
*3 By: Heather P. Wagner
*3 Assistant Attorney General

2003 WL 22970544 (Miss.A.G.)

202 So.3d 238

Michael B. Gaffney, Appellant
v.
City of Richland, Mississippi, Appellee

NO. 2014-CA-01648-COA

Court of Appeals of Mississippi.

October 4, 2016

LINDSEY MCGEE TURK, FOR APPELLANT.

JOSHUA J. WIENER, DONNA BROWN JACOBS, KATIE B. SNELL, FOR APPELLEE.

BEFORE LEE, C.J., BARNES AND ISHEE, JJ.

LEE, C.J., FOR THE COURT:

FACTS AND PROCEDURAL HISTORY

I. 2002 to 2012

¶ 1. On February 27, 2002, the City of Richland issued a building permit to Michael

[202 So.3d 239]

Gaffney to start building a house at 126 Hemlock Drive in Richland, Mississippi. The permit indicated that it would become void if work or construction did not commence within six months of the date of issuance, or if work was suspended or abandoned for a period of six months at any time after work started. After obtaining the permit, Gaffney began construction.

¶ 2. In a letter dated April 16, 2007—over five years after the issuance of the permit—Gaffney was notified that the building permit was void and was ordered to stop work. Jeff Sims, the building official for the City, testified that he typically received a request for an inspection prior to a builder moving on to the next phase of construction. According to Sims, he had not received such a request from Gaffney in three years. Subsequently, Gaffney applied for a second set of permits, which were issued with the same six-month provisions.

¶ 3. In a letter dated May 5, 2012—over ten years after the issuance of the original building permit—the City notified Gaffney that the second set of permits was void. According to Sims, Gaffney had suspended or abandoned construction again. Aggrieved, Gaffney asked to be heard by the Board of Aldermen.

II. Complaint

¶ 4. In the meantime, in November 2012, the City filed a complaint against Gaffney in the Chancery Court of Rankin County, claiming:

> (1) Gaffney repeatedly failed to complete construction;
>
> (2) Gaffney failed to maintain the property;
>
> (3) The property constituted a danger and/or nuisance under Mississippi Code Annotated section 21–19–11 (Rev. 2015); and
>
> (4) Gaffney breached the terms of the building permits as well as his representations and covenants to the City.

¶ 5. The City requested the following relief:

> (1) Enjoin Gaffney to complete construction within a period of time determined by the chancery court;
>
> (2) In the event Gaffney failed to complete construction, authorization of demolition and removal;
>
> (3) Reasonable attorney's fees and costs; and
>
> (4) Other relief to which the City may be entitled.

III. 2012 to 2014

¶ 6. Notwithstanding the filing of the complaint, on December 18, 2012, the Board passed a resolution allowing Gaffney to obtain new permits and complete construction by April 2, 2013. However, according to the City, Gaffney did not complete construction.

¶ 7. On April 16, 2013, the Board passed another resolution allowing Gaffney an additional sixty days to complete construction. Gaffney was issued new permits, which stated: "Per Resolution of [the] Board ... [April 16, 2013], all construction to be completed no later than [June 16, 2013] in accordance with applicable codes .... No further permits shall be issued." According to the City, Gaffney did not complete construction again. As a result, in September 2013, the City filed an amended complaint in the chancery court.

IV. August 19, 2014 Hearing

¶ 8. Because Gaffney was a pro se litigant, the chancellor granted Gaffney a standing objection to all matters at the August 19, 2014 hearing.

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A. Testimony

¶ 9. An inspection of Gaffney's house took place a few days before the hearing. Sims testified that electrical extension cords and water hoses were being run from the neighboring house to Gaffney's house. Sims also noted the following issues with Gaffney's house: electrical issues; the ditch alongside the house was eroding into the foundation and in need of a retaining wall; an air-conditioning unit blocked egress through a window; the concrete slab lacked flooring; the door landing lacked a staircase; a leak over the dishwasher in the kitchen; broken glass on the floor; clothing in a closet and a bed leaning up against a wall, indicating Gaffney was occupying the house; and an RV outside.

¶ 10. Gaffney testified that the concrete slab would be stained; the leak over the dishwasher was from a small refrigerator sitting on the counter; and the glass on the floor was safety glass. Gaffney also testified that he had never occupied the house.

B. Ruling[1]

¶ 11. The chancery court ordered Gaffney to complete construction no later than 5:00 p.m. on September 5, 2014. Gaffney was ordered to immediately disconnect and remove electrical extension cords and water hoses running from the neighboring property, make arrangements for a temporary power pole, and refrain from occupying the house. The chancery court also indicated that it would award attorney's fees, provided the City submitted claims for such. Finally, Gaffney was advised

> of the potential remedies and relief which the [chancery court] may impose should [Gaffney] fail to comply with the [chancery court's] orders herein, including but not limited to granting the City the right to commence demolition ... and/or such other remedies and relief which the [chancery court] may find in order.

V. October 8, 2014 Hearing

¶ 12. In September 2014, the City filed a motion to hold Gaffney in contempt for failing to comply with the chancery court order. The City also filed a motion for attorney's fees and costs.

¶ 13. In early October 2014, Gaffney filed a motion to continue the hearing. Gaffney also filed a motion to dismiss and strike the City's motion to hold him in contempt. The chancery court denied Gaffney's motion to continue, and a hearing was held on October 8, 2014.

¶ 14. Donald Jones, the building inspector for the City, testified that an inspection was conducted at 5:00 p.m. on September 5, 2014. Jones testified that although there had been some improvements to the house, construction was not complete.

Jones stated that Gaffney removed the extension cords and water hoses and, to his knowledge, Gaffney had not occupied the house. But, according to Jones, a final inspection could not take place because no temporary power pole had been erected and there were no utilities. Jones also testified that there was still no retaining wall.

¶ 15. When the chancery court asked Gaffney if he had finished construction, Gaffney responded, "Yes, I think I have." According to Gaffney, he tried to obtain a temporary power pole, but Entergy did not provide the power pole until a week after the September 5 inspection. And Gaffney testified that utilities were not hooked up because he had to go through the City to get them turned on.

¶ 16. At this point, the hearing was recessed, and another inspection took place. Sims returned from the inspection and testified

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that there were no utilities; there was no retaining wall; there were receptacles without covers, a breaker was missing for the air-conditioning unit; there was improper access to HVAC unit; the water-heater drain was installed improperly; there were no fixtures in a bathroom; and there were personal belongings inside the house. Sims stated: "We would not let anybody move in that house with the electrical issue as it is .... The retaining wall is a big issue." When asked if the house was "anywhere close to being ready for occupancy," Sims stated, "I can say it's close, but it's not there."

¶ 17. Gaffney testified that there was "not that much left to do." He testified that there were only minor issues inside of the house, and the outside of the house was complete but for the retaining wall and the main sewer line.

¶ 18. Ultimately, the chancery court found Gaffney in contempt for failing to complete construction by September 5, 2014, and authorized demolition of the house.[2] The chancery court also awarded the City $8,232.82 in attorney's fees.

VI. Appeal

¶ 19. Gaffney appeals, asserting: (1) the house does not rise to the level of a menace to the public health, safety, and welfare of the community as contemplated by section 21–19–11 ; (2) he was denied a fair trial as a result of the chancellor's conduct throughout the proceedings; and (3) the chancery court erred in awarding attorney's fees to the City.

DISCUSSION

¶ 20. Section 21–19–11(1) provides in part:

> To determine whether property or parcel of land located within a municipality is in such a state of uncleanliness as to be a menace to the public health, safety[,] and welfare of the community, **a governing authority of any municipality shall conduct a hearing** , on its own motion, or upon the receipt of a petition signed by a majority of the residents residing within four hundred (400) feet of any property or parcel of land alleged to be in need of the cleaning.
>
> ....
>
> **If, at such hearing, the governing authority shall adjudicate** the property or parcel of land in its then condition to be a menace to the public health, safety[,] and welfare of the community, the governing authority, if the owner does not do so himself, shall proceed to clean the land, by the use of municipal employees or by contract, by cutting grass and weeds; filling cisterns; removing rubbish, abandoned or dilapidated fences, outside toilets,

> abandoned or dilapidated buildings, slabs, personal property, which removal of personal property shall not be subject to the provisions of Section 21-39-21, and other debris; and draining cesspools and standing water therefrom.

(Emphasis added).

¶ 21. Mississippi Code Annotated section 11–51–75 (Rev. 2012) sets forth the procedure for appeals from judgment or decision by municipal authorities. "[Section 11–51–75] states that the person aggrieved may 'embody the facts, judgment and decision in a bill of exceptions' which will be transmitted to the circuit court acting as an appellate court.' " *Van Meter v. City of Greenwood* , 724 So.2d 925, 928 (¶ 7) (Miss.Ct.App.1998).

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¶ 22. Because the "governing municipal authority" (i.e., the Board) was the appropriate entity to conduct a hearing, with any appeal being to the circuit court, the chancery court lacked jurisdiction over any claim brought under section 21–19–11. *See Pierce v. Pierce* , 132 So.3d 553, 560 (¶ 14) (Miss.2014) ("the issue of subject-matter jurisdiction may be raised at any time in the proceedings, including on appeal.").

¶ 23. Although the chancery court's jurisdiction encompasses relief sought through injunction, issuance of an injunction is an extraordinary relief requiring first a showing of "imminent threat of irreparable harm for which there is no adequate remedy at law." *Heidkamper v. Odom* , 880 So.2d 362, 365 (¶ 11) (Miss.Ct.App.2004). When a statutory scheme exists concerning review of an agency or board's decision, an adequate remedy at law exists, precluding the issuance of injunctive relief. *A – 1 Pallet Co. v. City of Jackson* , 40 So.3d 563, 569 (¶ 22) (Miss.2010).

¶ 24. The City asks this Court to find, separate and apart from section 21–19–11, that a municipality has the authority to impose deadlines for completing construction of a dwelling. Keeping in mind the relief requested by the City and granted by the chancery court, the City is also asking this Court to find that noncompliance with any such deadlines authorizes the municipality to demolish the dwelling.

¶ 25. The City cites to several Mississippi cases for support; however, these cases were brought pursuant to section 21–19–11 or the equivalent thereof. *See Bond v. City of Moss Point* , 240 So.2d 270, 270–71 (Miss.1970) (a local ordinance authorized demolition and removal of dwellings constituting a public nuisance); *Bray v. City of Meridian* , 723 So.2d 1200, 1202–03 (¶ 17) (Miss.Ct.App.1998) ; *Pearson v. City of Louisville* , 2008 WL 4814051 (N.D.Miss. Nov. 4, 2008).

¶ 26. The City also cites to several unpublished opinions from other jurisdictions; however, the claims in these cases were brought pursuant to statute, local ordinance, or a homeowners association's covenants, conditions, and restrictions (CC & R). *See City of Westfield v. Saia* , 73 Mass.App.Ct. 1119, 2009 WL 275768 (Mass.Ct.App. Feb. 6, 2009) (a local ordinance imposed a five-year deadline for the completion of a condominium project); *Ray v. Bd. of Union Twp. Trs.* , 2007 WL 1731434 (Oh.Ct.App. Jun. 18, 2007) (statute and zoning resolutions authorized removal of uncompleted residences); *Nellie Gail Ranch Owners Ass'n v. Colombo,* 2013 WL 6243510 (Cal.Ct.App. Dec. 3, 2013) (a homeowners association's CC & R required completion of a residence within one year); *Urbanski v. City of St. Paul,* 2011 WL 1938189 (Minn. Ct. App. May 23, 2011) (statute and local ordinance authorized nuisance-abatement actions). In the instant case, the City does not cite to any such statute, ordinance, or homeowners association's CC & R.

¶ 27. Accordingly, we reverse the chancellor's judgment and remand this case for the entry of an order of dismissal for lack of subject-matter jurisdiction and failure to state a claim upon which relief can be granted.

¶ 28. **THE JUDGMENT OF THE CHANCERY COURT OF RANKIN COUNTY IS REVERSED, AND THIS CASE IS REMANDED FOR ENTRY OF AN ORDER OF DISMISSAL. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLEE.**

BARNES, ISHEE, FAIR, JAMES, WILSON AND GREENLEE, JJ., CONCUR. IRVING, P.J., AND CARLTON, J., CONCUR IN RESULT

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ONLY WITHOUT SEPARATE WRITTEN OPINION. GRIFFIS, P.J., DISSENTS WITHOUT SEPARATE WRITTEN OPINION.

Notes:

[1] An order incorporating the chancellor's bench ruling was entered on August 28, 2014.

[2] Demolition was to occur no earlier than thirty days from the date of the final judgment in order to allow Gaffney the opportunity to file a notice of appeal to seek a stay of the final judgment.

Okhuysen v. City of Starkville

Decision Date:	11 January 2022
Docket Number:	2020-CA-00662-COA
Citation:	Okhuysen v. City of Starkville, 333 So.3d 573 (Miss. App. 2022)
Parties:	Walter P. OKHUYSEN, Appellant v. The CITY OF STARKVILLE, Mississippi and D. Lynn Spruill, Appellees
Court:	Mississippi Court of Appeals

Id. vLex Fastcase: VLEX-907213131

Link: https://fastcase.vlex.com/vid/okhuysen-v-city-of-907213131

333 So.3d 573

Walter P. OKHUYSEN, Appellant

v.The CITY OF STARKVILLE, Mississippi and D. Lynn Spruill, Appellees

NO. 2020-CA-00662-COA

Court of Appeals of Mississippi.

January 11, 2022

ATTORNEY FOR APPELLANT: GARY GOODWIN, Columbus

ATTORNEY FOR APPELLEES: CHRISTOPHER JAMES LATIMER, Columbus

BEFORE WILSON, P.J., GREENLEE AND WESTBROOKS, JJ.

WILSON, P.J., FOR THE COURT:**[*576]**

¶1. Walter Okhuysen owns a vacant house and property on Garrard Road in Starkville. Following a public hearing, the Starkville Board of Aldermen adjudicated the property to be "in such a state of uncleanliness as to be a menace to the public health, safety and welfare of the community." Miss. Code Ann. § 21-19-11(1) (Rev. 2018). The Board's decision authorized the City to clean up the property if Okhuysen failed to do so himself and to assess Okhuysen for the cleanup costs and a penalty. *See id.* Okhuysen appealed the Board's decision to the circuit court, and the circuit court affirmed. On appeal, Okhuysen argues, inter alia, that the Board's decision must be reversed because it was based on a warrantless search of his property in violation of Article 3, Section 23 of the Mississippi Constitution. For the reasons discussed below, we agree that the City's warrantless search of the property was unconstitutional and that the Board's decision must be set aside. Accordingly, we reverse and render the judgment of the circuit court and the Board's adjudication that the property is a public menace.

FACTS AND PROCEDURAL HISTORY

¶2. In January 2019, Jeff Lyles, a code enforcement officer for the City of Starkville, went onto Okhuysen's vacant property on Garrard Road in Starkville without Okhuysen's permission and without a warrant. Lyles was investigating possible Code violations and took photographs of alleged Code violations. The photos show an abandoned truck and various other debris, junk, scrap materials, and construction materials scattered around the house and throughout a wooded area on the property. The photos also show overgrown vegetation around the house and the surrounding wooded area.

¶3. The City subsequently sent Okhuysen a letter notifying him in general terms that his property was in violation of section 94-27(d) of the City Code.1 The **[*577]** letter stated that Okhuysen had ten days to bring the property into compliance with the City Code and warned that a failure to do so could result in a summons to appear in municipal court and fines, penalties, and other assessments.

¶4. In March 2019, Lyles, in his official capacity, filed a complaint against Okhuysen in municipal court. The complaint alleged that Okhuysen had unlawfully and willfully violated section 94-27(d). The complaint quoted section 94-27(d) at length (*see supra* note 1) but made no specific allegations. In June 2019, Lyles filed an amended complaint, adding a charge that Okhuysen had unlawfully and willfully violated chapter

54, article IV of the City Code, which, subject to certain exceptions, makes it unlawful and a misdemeanor to keep a "junked vehicle" on real property within the city limits. In August 2019, following a trial, the municipal judge found Okhuysen guilty of ordinance violations and fined him $1,000. Okhuysen appealed his conviction to circuit court.

¶5. After Okhuysen appealed his conviction, the City sent him a new letter, again alleging in general terms that his property was in violation of section 94-27(d) of the City Code. This letter again stated that Okhuysen had ten days to bring the property into compliance with the Code and warned that a failure to do so could result in a summons to appear in municipal court and fines, penalties, and other assessments. The letter was largely identical to the letter that the City sent Okhuysen in January 2019 but added the following: "also, subject for 21-19-11 of the City's Code of Ordinances." This addition was actually an inaccurate reference to Mississippi Code Annotated section 21-19-11(1), which authorizes a municipal governing authority to hold a hearing and adjudicate a property "to be a menace to the public health, safety and welfare of the community." Under the statute, if the property is deemed a public menace, and "if the owner does not [clean the land] himself," then the city "shall proceed to clean the land, by the use of municipal employees or by contract." *Id.* Thereafter, the city may "adjudicate the actual cost of cleaning the property and may also impose a penalty not to exceed [$1,500] or fifty percent ... of the actual cost, whichever is more." *Id.* "The cost and any penalty may become a civil debt against the property owner, and/or, at the option of the governing authority, an assessment against the property." *Id.*

¶6. On September 6, 2019, Okhuysen's attorney wrote to the City requesting a detailed list of the issues that needed to be remedied. He asserted that without such detail, Okhuysen could only "guess" as to the alleged violations of the City Code. On September 11, 2019, the City's Community Development Director, Simon Kim, responded with a letter that included a series of photographs depicting the alleged violations. These included photos of an abandoned truck and other debris, junk, scrap materials, and construction materials scattered throughout the yard. The letter also included photos of poison ivy and what Kim perceived to be "excessive growth of weeds and other noxious plants on the land." The letter also stated that the property was "infested with chiggers, mosquitoes, and other harmful insects." In a footnote the letter stated, "This property may be a subject for [Mississippi Code Annotated section] 21-19-11. However, the City is not intending to utilize this instrument at this time through this letter."

¶7. At the October 1, 2019 meeting of the City's Board of Aldermen, Kim recommended that the Board set a public hearing under section 21-19-11 to determine **[*578]** whether Okhuysen's property was a public menace. The Board adopted Kim's recommendation and set the matter for a public hearing before the Board on November 5, 2019. The City posted notice of the hearing at the subject property and at City Hall and sent notice to Okhuysen and his attorney by certified mail.

¶8. Okhuysen and his attorney appeared at the November 5 meeting of the Board of Aldermen. Kim presented the photos included in his letter to Okhuysen and summarized the alleged Code violations. Kim stated that he believed that the property was a public menace under section 21-19-11.

¶9. Okhuysen's attorney reported that the truck on the property had been repaired and would be moved soon. He also argued that the City had never described the alleged Code violations or the conditions constituting a public menace with sufficient specificity. He stated that despite multiple requests, the City had never given Okhuysen a list of specific actions that needed to be taken to clean up the property. Finally, Okhuysen's attorney argued that Lyles, the code enforcement officer, had violated Article 3, Section 23 of the Mississippi Constitution by trespassing and inspecting the property without a warrant. He argued that "the Mississippi Supreme Court has always said [Section] 23 protects all of your property, not just your house [and] not just your curtilage of your house either." One of the aldermen asked the city attorney whether Lyles lawfully went onto Okhuysen's property. The city attorney stated that in his opinion, Lyles

had authority to go onto Okhuysen's property under section 54-107 of the City Code, which states that "the building official or his designees may enter upon private property" to examine vehicles for the purpose of enforcing the Code provisions deeming "junked vehicles" a "public nuisance."

¶10. The Board voted six-to-one to declare the property a menace to the public health, safety, and welfare of the community under section 21-19-11. The Board further directed Kim to give Okhuysen "an additional list specifically defining and enumerating the action[s] the City" would require Okhuysen to take to clean up the property. The Board ordered that Okhuysen would have "until January 5, 2020, to clean the property consistent with the list or the City [would] take steps to clean the property consistent with [section] 21-19-11."

¶11. The following day, Kim sent a letter to Okhuysen. This letter included the same photos and was largely identical to the September 6 letter. However, for each photo and alleged violation, Kim added an instruction to Okhuysen to remove the subject material or vegetation from the property.

¶12. On November 15, 2019, Okhuysen filed a notice of appeal of the Board's decision in the Oktibbeha County Circuit Court. On appeal in the circuit court, Okhuysen argued that the City violated his right to due process of law by failing to provide sufficient pre-hearing notice of the conditions that allegedly made his property a public menace; that the City violated Article 3, Section 23 of the Mississippi Constitution by trespassing on his property and searching his property without his consent and without a warrant; and that the City failed to prove that his property was a public menace under section 21-19-11.

¶13. The circuit court affirmed the Board's decision. The court held that the City complied with the statutory notice requirements and gave Okhuysen sufficient notice of the conditions that made his property a public menace. In addition, the **[*579]** court held that Lyles did not trespass on Okhuysen's property because the City Code authorized him to go onto the property for purposes of inspection and enforcement. Finally, the court held that the Board's decision was supported by substantial evidence and was not arbitrary or capricious. Okhuysen appealed the circuit court's decision, and his appeal was assigned to this Court.

ANALYSIS

¶14. A decision of a municipal governing authority will be reversed if the decision is not supported by substantial evidence, if the decision is arbitrary or capricious, or if the governing authority exceeded its powers or violated a party's constitutional or statutory rights. *Falco Lime Inc. v. Mayor & Aldermen of City of Vicksburg* , 836 So. 2d 711, 721 (¶42) (Miss. 2002). We review issues of law de novo. *Baymeadows LLC v. City of Ridgeland* , 131 So. 3d 1156, 1159 (¶10) (Miss. 2014).

¶15. On appeal, Okhuysen argues that the Board's adjudication of his property as a public menace must be set aside because it was based on evidence obtained in violation of Article 3, Section 23 of the Mississippi Constitution. He argues that Lyles's entry upon and inspection of the property without a warrant or consent violated Section 23. Okhuysen also argues that the Board violated his right to due process of law by not giving him sufficient notice of the conditions that allegedly made his property a public menace, by denying him a "meaningful hearing," and by relying on "un-noticed and/or inapplicable" municipal ordinances as the basis for its adjudication. Finally, he argues that the City failed to prove that his property was a public menace under Mississippi Code Annotated section 21-19-11. For the reasons discussed below, we agree with Okhuysen that the Board's decision must be set aside because it was based on evidence obtained in violation of Section 23 of the Constitution. Because the Board's decision must be reversed for that reason, it is unnecessary to address Okhuysen's remaining issues.

I. Article 3, Section 23 of the Mississippi Constitution protects all land owned by the person searched.

¶16. Section 23 of the Mississippi Constitution provides,

> The people shall be secure in their persons, houses, and possessions, from unreasonable seizure or search; and no warrant shall be issued without probable cause, supported by oath or affirmation, specially designating the place to be searched and the person or thing to be seized.

Miss. Const. art. 3, § 23. Our Supreme Court has held that the protection afforded by Section 23 "is somewhat broader than" the Fourth Amendment to the United States Constitution because Section 23 protects all of the people's "possessions," not just their "papers" and "effects." *Falkner v. State* , 134 Miss. 253, 257, 261, 98 So. 691, 692-93 (1924). "The term 'possessions' is a very comprehensive term, and includes practically everything which may be owned, and over which a person may exercise control." *Id.* at 257, 98 So. at 692. Thus, in *Falkner* , the Court held that a warrantless search of a wooded area about 300 yards from the landowner's residence violated the landowner's rights under Section 23. *Id.* at 256, 262, 98 So. at 691, 693.

¶17. The Court reached a similar conclusion in *Davidson v. State* , 240 So. 2d 463, 463-64 (Miss. 1970). In *Davidson* , a game warden "noticed a tractor parked by an old abandoned house on land belonging to defendant." *Id.* at 463. The game warden went onto the defendant's property to inspect the tractor's serial number and later determined that the tractor was stolen. **[*580]**

Id. at 463-64. After the defendant was tried and convicted of receiving stolen property, the Supreme Court reversed and rendered the conviction and held that the game warden's search was "illegal" and violated Section 23 because the game warden "committed a trespass when he went upon the [defendant's] lands." *Id.* at 464 ; *see also* *Isaacks v. State* , 350 So. 2d 1340, 1341-45 (Miss. 1977) (holding that officers violated Section 23 by searching an open field approximately one-half mile from the defendant's residence without a valid search warrant).

¶18. In *Arnett v. State* , 532 So. 2d 1003 (Miss. 1988), the Court recognized that the United States Supreme Court had held that the protections of the Fourth Amendment are "not extended to the open fields," i.e., areas of a property outside the home and its curtilage.2 *Id.* at 1009 (quoting *Hester v. United States* , 265 U.S. 57, 59, 44 S.Ct. 445, 68 L.Ed. 898 (1924)). The United States Supreme Court has reasoned that the Fourth Amendment protects "the people in their 'persons, houses, papers, and effects,' " and that the law has long recognized a "distinction between" a person's "house" and surrounding "open fields." *Oliver v. United States* , 466 U.S. 170, 176, 104 S.Ct. 1735, 80 L.Ed.2d 214 (1984) (quoting *Hester* , 265 U.S. at 59, 44 S.Ct. 445). In addition, the United States Supreme Court has concluded that "open fields" are not " 'effects' within the meaning of the Fourth Amendment." *Id.* The Court reasoned that "the term 'effects' is less inclusive than 'property' " and that "[t]he Framers would have understood the term 'effects' to be limited to personal, rather than real, property." *Id.* at 177 & n.7, 104 S.Ct. 1735. The Court also reasoned that a person has no "reasonable expectation of privacy" in an open field. *Id.* at 177-81, 104 S.Ct. 1735.

¶19. In *Arnett* , after discussing the United States Supreme Court's interpretation of the Fourth Amendment, the Mississippi Supreme Court explained that it had interpreted Section 23 of the Mississippi Constitution to provide greater protections. *Arnett* , 532 So. 2d at 1010. The Court had held that Section 23 's protections "applied to *all* the land owned by the person searched, and thus far never made any 'open fields' or 'expectation of privacy' distinction." *Id.* at 1010 (emphasis added) (citing *Isaacks* , 350 So. 2d 1340 ; *Davidson* , 240 So. 2d 463 ; *Helton v. State* , 136 Miss. 622, 101 So. 701 (1924)). The Court emphasized that what was "significan[t]" in *Davidson* was that the game warden "had committed a 'trespass' in going on the lands of the defendant," not whether the defendant had a "reasonable expectation of privacy" in the particular place where the stolen tractor was parked. *Id.* The Court also noted "the slight difference in wording" between the Fourth Amendment, which uses the phrase "persons, houses, papers, and effects,"

and Section 23 of our Constitution, which refers more broadly to "persons, houses, and *possessions* ." *Id.* at 1010 n.1. After making these points, our Supreme Court stated that it would "reserve **[*581]** further examination of the validity of searches without the curtilage of the home under [Section] 23 of our state Constitution to the case presenting such necessity." *Id.* at 1010.3

¶20. Ten years later, the Court addressed a warrantless search of an area outside the curtilage of a home. *Jordan v. State* , 728 So. 2d 1088, 1095-96 (¶¶27-35) (Miss. 1998). In *Jordan* , the defendant (Jordan) filed a motion to suppress evidence found in a wooded area approximately 100 feet from a trailer in which he had been living for two weeks. *Id.* at 1095 (¶27). Jordan did not own the trailer or the property on which the evidence was found, but he argued that wooded area was within the "curtilage of the trailer" and that he "possessed a Fourth Amendment expectation of privacy in the trailer [and its curtilage] due to his status as a guest." *Id.* at 1095 (¶27) & n.1. However, the trial court "found the wooded area behind the trailer was not part of the curtilage of the trailer and Jordan had no standing to contest the search of the area." *Id.* at 1095 (¶27). Our Supreme Court agreed with the trial court and affirmed. *Id.* at 1095-96 (¶¶27, 35).

¶21. It was necessary for Jordan to show that the area in question was within the curtilage of the trailer because he was a mere guest and did not own the property. *See id.* at 1095 n.1. As a guest, he had an expectation of privacy in the trailer and its curtilage and, hence, standing to object to a search of the curtilage. *Id.* However, Jordan had no standing to object to a search of other areas of the property because, under established Mississippi Supreme Court precedent, "a defendant cannot complain of a trespass on the premises of another." *Corry v. State* , 710 So. 2d 853, 855-56 (¶9) (Miss. 1998) ; *accord, e.g.* , *Craft v. State* , 254 Miss. 413, 418-19, 181 So. 2d 140, 142 (1965).

¶22. Similarly, in *Tullos v. State* , 287 So. 3d 1014 (Miss. Ct. App. 2019), the defendant (Tullos) challenged a search that had occurred "in a field" on his grandmother's property. *Id.* at 1015-16 (¶¶2-5). Because Tullos did not own the field, he had to show that he had a "reasonable" or "legitimate expectation of privacy" in the place where the search occurred. *Id.* at 1017-18 (¶¶13, 15). This Court held that Tullos had no such expectation of privacy in an open field owned by his grandmother. *Id.* at 1018-19 (¶¶15-18).

¶23. This case is distinguishable from *Arnett* and *Tullos* because Okhuysen owns the subject property. This distinction is critical because Section 23 protects "*all* the land owned by the person searched." *Arnett* , 532 So. 2d at 1010 (emphasis added). Section 23 makes no exception for "open fields." *Id.* Moreover, the "validity of [a] search" under Section 23 has "never hinged ... on whether or not there was a ‘reasonable expectation of privacy.’ " *Id.* Rather, the primary question under Section 23 is whether the official who conducted the search "committed a ‘trespass’ in going on the lands of the defendant." *Id.* (citing *Davidson* , 240 So. 2d at 464).

¶24. In this case, Lyles committed a trespass when he went onto Okhuysen's land. *Id.* A common-law trespass is **[*582]** simply an entry "upon the land of another without a license or other right for one's own purpose." *Thomas v. Harrah's Vicksburg Corp.* , 734 So. 2d 312, 316 (¶10) (Miss. Ct. App. 1999). The requisite intent for a trespass is "an intention to enter upon the particular piece of land in question, irrespective of whether the actor knows or should know that he is not entitled to enter." *Id.* at (¶8) (quoting Restatement (2d) of Torts § 163 cmt. b (1965)). Indeed, "[a] trespass is committed even if the trespasser has a good-faith belief that he has a right to enter the land." *Reeves v. Meridian S. Ry. LLC* , 61 So. 3d 964, 968 (¶19) (Miss. Ct. App. 2011). By going on Okhuysen's land and inspecting the property without Okhuysen's permission or a warrant, Lyles committed a trespass and violated Section 23 of the Constitution.

¶25. Indeed, the trespass in this case was essentially indistinguishable from the trespass in *Davidson* . As discussed above, in *Davidson* , a game warden "noticed a tractor parked by an old abandoned house on land belonging to defendant." *Davidson* , 240 So. 2d at 463. Although he "did not know who owned the land on

which the tractor was parked," the game warden walked onto the land, "examined the tractor[,] and made a note of its serial number." *Id.* at 463-64. The Supreme Court held that the game warden's simple act of walking onto the defendant's land was a "trespass"—and, thus, his inspection of the tractor was an "illegal" "search"—because the game warden did not have a warrant or the defendant's permission to enter. *Id.* at 464. Likewise in this case, Lyles trespassed on Okhuysen's land—and, thus, his inspection violated Section 23 of the Constitution —because he did not have a warrant or Okhuysen's permission to enter.4

¶26. The City argues that Lyles did not commit a trespass or conduct an unlawful search because municipal ordinances authorized him to enter the property. For example, City Code section 54-107 authorizes a code enforcement officer to "enter upon private property ... to examine vehicles" in order to enforce Code provisions related to junk vehicles. In addition, section 54-74 provides that an officer "shall be immune from prosecution, civil or criminal, for reasonable, good faith trespass upon property while in the discharge of duties" related to mowing standards and overgrown vegetation. However, a municipal ordinance cannot authorize a search that the Mississippi Constitution prohibits. *Cf. City of Boerne v. Flores* , 521 U.S. 507, 519-20, 529, 117 S.Ct. 2157, 138 L.Ed.2d 624 (1997) (holding that Congress cannot alter the meaning of the Constitution). If the City "could define its own powers by altering the ... meaning" of the Mississippi Constitution, then "no longer would the Constitution be 'superior paramount law, unchangeable by ordinary means.' " *Id.* at 529, 117 S.Ct. 2157 (quoting *Marbury v. Madison* , 5 U.S. (1 Cranch) 137, 177, 2 L.Ed. 60 (1803)). The validity of a search must be determined based on Section 23 of the Constitution and Mississippi Supreme Court decisions interpreting it, not by reference to municipal ordinances. Therefore, the City's argument that the search was authorized by the City Code is without merit.**[*583]**

II. Article 3, Section 23 of the Mississippi Constitution prohibits warrantless administrative searches.

¶27. In *Camara v. Municipal Court of City and County of San Francisco* , 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967), the United States Supreme Court held that the Fourth Amendment's warrant requirement applies to administrative inspections intended to verify compliance with municipal health codes or building codes. *Id.* at 534, 87 S.Ct. 1727. The Court rejected the argument that the Fourth Amendment applied only to searches that seek to uncover evidence of a crime. *Id.* at 530-31, 87 S.Ct. 1727. Therefore, the Court held that a provision of a municipal housing code authorizing the warrantless entry and inspection of an apartment was unconstitutional and that the apartment's occupant could not be convicted of refusing to consent to a warrantless inspection. *Id.* at 526-28, 540, 87 S.Ct. 1727.

¶28. The *Camara* Court recognized that "the facts that would justify an inference of 'probable cause' to make an [administrative] inspection are clearly different from those that would justify such an inference where a criminal investigation has been undertaken." *Id.* at 538, 87 S.Ct. 1727 (quoting *Frank v. Maryland* , 359 U.S. 360, 383, 79 S.Ct. 804, 3 L.Ed.2d 877 (1959) (Douglas, J., dissenting)). The Court stated that in most cases, a warrant to inspect could be issued without establishing "probable cause to believe that a particular dwelling contains violations of the minimum standards prescribed by the code being enforced." *Id.* at 534, 87 S.Ct. 1727. The Court held that "routine periodic inspections of all structures" in a geographic area—i.e., "area inspections"—are "reasonable ... within the meaning of the Fourth Amendment." *Id.* at 535-36, 87 S.Ct. 1727. The Court reasoned that because most citizens will consent to such routine inspections, a warrant to enter and inspect a particular dwelling "should normally be sought only after entry is refused." *Id.* at 539, 87 S.Ct. 1727. The Court held that if consent to such a routine inspection is refused, "probable cause to issue a warrant to inspect" can be established by showing that "reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to [the] particular dwelling." *Id.* at 538, 87 S.Ct. 1727.

¶29. The Mississippi Supreme Court followed *Camara* in *Crook v. City of Madison* , 168 So. 3d 930 (Miss. 2015). In *Crook* , the City of Madison had enacted an ordinance, known as the Rental Inspection and

Property Licensing Act (RIPLA), that required landlords to obtain a license for each unit of rental property. *Id.* at 931 (¶1). To obtain a license, the landlord was required to give advance consent to allow the city building inspector to make inspections of the property "when and as needed." *Id.* at 931-33 (¶¶1, 5-6). A landlord (Crook) was convicted in municipal court and again in county court of two counts of renting a property without a license, a misdemeanor, and ordered to pay a fine of $300 on each count. *Id.* at 931-32 (¶¶1, 4). On appeal, Crook argued that RIPLA's advance-consent requirement violated the Fourth Amendment. *Id.* at 932 (¶2). The Supreme Court agreed that RIPLA was unconstitutional because it required the landowner to give advance consent to searches and authorized a judge to issue a warrant without probable cause. *Id.* at 938-39 (¶25). The Court reversed Crook's convictions for renting property without a license because RIPLA unconstitutionally conditioned the license on Crook's advance consent to a search of his property. *Id.* at 939-40 (¶29).

¶30. Based on the Supreme Court's decision in *Crook* , we conclude that **[*584]** Section 23 ’s warrant requirement applies to administrative inspections such as the one at issue in this case. The majority opinion in *Crook* focused on the Fourth Amendment and did not mention Section 23. However, based on the Mississippi Supreme Court's statements that Section 23 generally "provides greater protections" than the Fourth Amendment,5 there is no reason to believe that the Supreme Court would interpret Section 23 more narrowly than the Fourth Amendment with respect to this particular issue. Accordingly, we hold that a warrant was required for the search conducted in this case.

¶31. The City argues that *Crook* and *Camara* are distinguishable because "Okhuysen was not subject to a criminal penalty or criminal sanctions pursuant to [Mississippi Code Annotated section] 21-19-11" and because this is a "civil proceeding." However, the fact that criminal penalties or sanctions have not been imposed in this particular proceeding is not relevant to the question whether the search itself violated Section 23.6 The City never requested Okhuysen's consent to the search, and he would have been subject to prosecution if he had refused to allow a code inspector to enter his property.7 Under *Crook* and *Davidson* , the search was unconstitutional because it was conducted without a warrant and without Okhuysen's consent.

¶32. Whether the exclusion of evidence is an appropriate remedy for the constitutional violation is a separate question, which we address in Part IV of this opinion. *See* *United States v. Verdugo-Urquidez* , 494 U.S. 259, 264, 110 S.Ct. 1056, 108 L.Ed.2d 222 (1990) ("Whether evidence ... should be excluded at trial ... is a remedial question separate from the existence vel non of the constitutional violation."). The fact that this is a civil case may be relevant to that issue. But the warrantless search of Okhuysen's property violated Section 23 of the Constitution regardless of what later proceedings grew out of the search, what evidence was obtained during the search, or what subsequent use was made of that evidence. *Id.* ("[The Fourth Amendment] prohibits unreasonable searches and seizures whether or not the evidence is sought to be used in a criminal trial, and a violation of the Amendment is fully accomplished at the time of an unreasonable governmental intrusion." (quotation marks omitted)).

III. The "plain view" doctrine is inapplicable.

¶33. The dissent seeks to justify the search based on the "plain view" **[*585]** doctrine. But the City has not made this argument—either before the Board of Aldermen, in the circuit court, or in its principal brief or supplemental brief in this Court. We have stated many times that we "will not consider arguments not briefed on appeal." *Neely v. Neely* , 305 So. 3d 164, 174 (¶41) (Miss. Ct. App. 2020), *cert. denied* , 304 So. 3d 1123 (Miss. 2020). As the Supreme Court has explained, "we decline to address an issue that has not been briefed on appeal" because, "[s]imply put, we will not act as an advocate for one party to an appeal." *Rosenfelt v. Miss. Dev. Auth.* , 262 So. 3d 511, 519 (¶27) (Miss. 2018). "The premise of our adversarial system is that appellate courts do not sit as self-directed boards of legal inquiry and research, but essentially

as arbiters of legal questions presented and argued by the parties before them." *Carducci v. Regan* , 714 F.2d 171, 177 (D.C. Cir. 1983). The dissent offers no reason why we should abandon this well-settled rule in this case to make an argument that the City has never even mentioned.

¶34. Moreover, there is no evidence to support the dissent's new plain-view argument. The plain view doctrine holds that "no warrant is required to seize an object in plain view when viewed by an officer from a place he has the lawful right to be, its incriminating character is readily apparent and the officer has a lawful right of access to the evidence." *Johnson v. State* , 999 So. 2d 360, 364 (¶18) (Miss. 2008) (quoting *McKee v. State* , 878 So. 2d 232, 236 (¶9) (Miss. Ct. App. 2004)). The dissent asserts that the doctrine applies in this case because

> the Code violations Lyles initially went to look at and inspect appear from the photographs in the record to be open, obvious, and in plain view from outside the unfenced property (particularly in the late fall and winter prior to the photos being taken in January 2019)—namely, an abandoned truck, junk, scrap metal, and construction materials scattered around the property with overgrown vegetation.

Post at ¶55. The record simply does not support this assertion. The only photo in the record that clearly was taken from outside the property suggests that little of the property is visible from Garrard Road because the property is wooded and fronted by trees. There is one other photo in the record that was taken from either outside or just inside the property. But that photo only shows a truck *of some sort* at a distance. From that vantage point, there was no way for Lyles or anyone else to determine that the truck was a "junked vehicle" within the meaning of the City's ordinance. In other words, the "incriminating character" of the truck was not "readily apparent" from outside the property. *Johnson* , 999 So. 2d at 364 (¶18). Moreover, the remaining photos in the record were taken from inside Okhuysen's property—where Lyles had no "lawful right to be" without a warrant. *Id.* Hence, the plain view doctrine is inapplicable. *Id.* Put simply, the dissent's claim that a variety of Code violations were "in plain view" from outside the property is pure speculation unsupported by anything in the record.

¶35. In addition, at the hearing before the Board of Aldermen, Okhuysen's attorney specifically represented to the Board that none of the allegedly menacing conditions on the property could be seen from Garrard Road or adjacent private property. Counsel stated that all that could be seen from outside the property was a truck parked near the house. Simon Kim—the City's Community Development Director, who presented the request to declare the property a public menace—did not dispute counsel's representations or **[*586]** offer any contrary evidence. Given the City's failure to dispute this point, it would be exceptionally unfair to now make a contrary finding against Okhuysen on appeal—especially a finding based on speculation, not evidence. To do so would not be an exercise of appellate review but a pure and simple appellate ambush.8

¶36. In material respects, this case is no different from *Davidson* , where a game warden "noticed a tractor parked by an old abandoned house on land belonging to [the] defendant" and then "stopped his car, walked on [the] defendant's land, examined the tractor and made a note of its serial number." *Davidson* , 240 So. 2d at 463-64. Although the warden could see a tractor near an abandoned house on the defendant's land, the Supreme Court held that he was required to obtain a warrant before he entered the property because nothing about the tractor suggested it was stolen. *Id.* at 464. Likewise in this case, Lyles may have been able to see a truck of some sort from outside Okhuysen's property, but the mere sight of a truck did not justify his warrantless entry onto the property.

¶37. We also note that by itself, this one photo of the truck could not have justified the Board's finding that the property was "in such a state of uncleanliness as to be a menace to the public health, safety and welfare of the community." Miss. Code Ann. § 21-19-11(1). The photo shows only that there was a truck of some

sort parked on the property.

¶38. In summary, for all the reasons discussed above, the dissent's new plain-view argument is not properly before this Court and simply lacks support in the record.

IV. The Board of Alderman improperly relied on evidence obtained in violation of Article 3, Section 23 of the Mississippi Constitution.

¶39. In *United States v. Janis* , 428 U.S. 433, 96 S.Ct. 3021, 49 L.Ed.2d 1046 (1976), a federal civil tax case, the United States Supreme Court stated that it had "never ... applied [the exclusionary rule] to exclude evidence from a civil proceeding." *Id.* at 447, 96 S.Ct. 3021. However, the Court noted that it had held that the exclusionary rule applied in forfeiture proceedings, which it deemed "quasi-criminal." *Id.* at 447 n.17, 96 S.Ct. 3021 (discussing *One 1958 Plymouth Sedan v. Pennsylvania* , 380 U.S. 693, 85 S.Ct. 1246, 14 L.Ed.2d 170 (1965)). Moreover, the Court also stated that a series of "seminal cases" decided by lower federal courts had applied the exclusionary rule in civil "cases in which the officer committing the unconstitutional search or seizure was an agent of the sovereign that sought to use the evidence." *Id.* at 455-56, 96 S.Ct. 3021.

¶40. The issue before the Court in *Janis* was whether evidence should be excluded from a federal civil tax case on the ground that a state law enforcement officer (i.e., "a criminal law enforcement agent of another sovereign") obtained the evidence in violation of the Fourth Amendment. *Id.* at 434, 459-60, 96 S.Ct. 3021. The Supreme Court held that the exclusionary rule should not be applied in such a case. *Id.* at 457-60, 96 S.Ct. 3021. The Court reasoned that exclusion **[*587]** of the illegally obtained evidence from all criminal trials would be sufficient to achieve the deterrent purpose of the exclusionary rule. *Id.* at 457-58, 96 S.Ct. 3021. The Court further reasoned that the connection between the state law enforcement officer and the federal civil tax case was too attenuated for the exclusionary rule "to provide significant, much less substantial, additional deterrence." *Id.* at 458, 96 S.Ct. 3021. Based on these considerations, the Court held that the "exclusionary rule should not be extended to forbid the use in the civil proceeding of one sovereign of evidence seized by a criminal law enforcement agent of another sovereign." *Id.* at 459-60, 96 S.Ct. 3021. In *Janis* , the Court did not decide whether the exclusionary rule would apply in civil cases (such as the present case) in which a governmental entity seeks to use evidence unconstitutionally obtained by its own agents. *Id.* at 455 & n.31, 96 S.Ct. 3021.

¶41. In *Hughes v. Tupelo Oil Co.* , 510 So. 2d 502 (Miss. 1987), the Mississippi Supreme Court considered whether the exclusionary rule should be applied in a wrongful death suit involving only private parties. *Id.* at 505. In *Hughes* , the decedent was killed when he ran into the path of an eighteen-wheel truck on a highway, and his mother sued the truck driver and the driver's employer. *Id.* at 504. At trial, the defendants sought to prove that the decedent had committed suicide by deliberating running into the truck's path. *Id.* As part of their defense, they attempted to introduce evidence that a blood-alcohol test ordered by a highway patrol officer showed that the decedent's blood-alcohol content was .15%. *Id.* at 505.9 On appeal, the Supreme Court considered whether the trial judge properly excluded that evidence on the ground that the officer lacked authority to order the test under applicable statutes. *Id.* The Court discussed *Janis* 's reasoning that the deterrent effect of applying the exclusionary rule should be balanced "against the societal costs of excluding relevant and reliable evidence." *Id.* The Court concluded that the "exclusion of [the] relevant evidence would have no deterrent effect, since the parties penalized would be [the truck driver and his employer], rather than the officer who ordered the unauthorized test." *Id.* Accordingly, the Court held that the exclusionary rule did not apply in that case. *Id.* However, the Court further stated, "We make no determination of the admissibility of evidence obtained through the wrongful acts of the party seeking its admission, nor do we retreat from our holding that evidence seized by the State in violation of the state and federal constitutions is inadmissible in quasi-criminal proceedings." *Id.* (citing *State, for Use of Kemper*

Cnty. v. Brown , 219 Miss. 383, 68 So. 2d 419 (1953)).10

¶42. Subsequently, in *Accu-Fab & Construction Inc. v. Ladner ex rel. Ladner* , 970 So. 2d 1276, 1283-84 (¶¶20-24) (Miss. Ct. App. 2000), *aff'd* , 778 So. 2d 766 (Miss. 2001),11 this Court addressed the question that the Supreme Court left open in **[*588]** *Hughes* . *Accu-Fab* was also a wrongful death suit involving only private parties. *Id.* at 1278 (¶¶3-4). In that case, a construction worker died of injuries he sustained when he fell through a roof on a work site. *Id.* After he was taken to the hospital, a urine sample was collected to screen for drugs, and he tested positive for marijuana. *Id.* at 1283 (¶¶20-21). The test was not done for purposes of providing treatment but rather was based on an agreement between the hospital and the general contractor to conduct drug tests on the general contractor's employees. *Id.* at (¶21). The general contractor required its own employees to give prior written consent to such drug tests, but the decedent was not an employee of the general contractor and had never consented to a drug test. *Id.* At trial, the defendants—the general contractor and a subcontractor—attempted to introduce the drug test results as evidence that the decedent contributed to his own injuries. *Id.* at (¶20). But the trial judge excluded the evidence, and this Court affirmed on appeal. *Id.* This Court stated that "the question specifically not answered by the [S]upreme [C]ourt in *Hughes* is squarely presented here." *Id.* at 1284 (¶24). This Court then held that evidence should be excluded in a civil case if it was "obtained through the wrongful acts of the party seeking its admission." *Id.* at 1284 (¶¶23-24) (quoting *Hughes* , 510 So. 2d at 505). In addition, this Court held that the trial judge properly excluded the drug test results because neither the general contractor nor the subcontractor "had authority to draw samples, nor to order samples drawn of bodily fluids from the decedent for testing purposes." *Id.*12

¶43. The Mississippi Supreme Court granted certiorari in *Accu-Fab* and affirmed this Court's decision, but it affirmed the exclusion of drug test results on other grounds. *Accu-Fab* , 778 So. 2d at 771-72 (¶22-25). The Supreme Court held that the trial judge properly excluded the evidence because "there was no evidence that [the decedent] was impaired at the time of [the] incident," and no "foundation [was] laid to demonstrate that the drug concentration was sufficient to impair [his] mental and motor skills to even the slightest degree." *Id.* at 772 (¶23). The Court concluded that in the absence of such evidence, the drug tests results would be highly prejudicial and would have no probative value. *Id.* at (¶¶24-25). Because the Supreme Court held that the evidence was properly excluded for those reasons, it did not address this Court's holding that the test results were inadmissible because they were wrongfully obtained. *See id.* at 771-72 (¶¶22-25).

¶44. Thus, in *Accu-Fab* , this Court held that evidence should be excluded in a civil case if it was "obtained through the wrongful acts of the party seeking its admission." *Accu-Fab* , 970 So. 2d at 1284 (¶¶23-24) (quoting **[*589]** *Hughes* , 510 So. 2d at 505). Indeed, the dissent and partial dissent in *Accu-Fab* did not dispute that proposition as a matter of law; rather, they questioned only the factual premise that the defendants had engaged in any wrongful conduct. *See supra* note 12. In addition, the Mississippi Supreme Court did not disturb or criticize this Court's holding on this issue but rather decided that the drug test results were inadmissible for other reasons. *Accu-Fab* , 778 So. 2d at 771-72 (¶22-25). Thus, this Court's holding in *Accu-Fab* remains good law on this point. Accordingly, in this case, evidence that the City obtained in violation of Okhuysen's rights under Section 23 of the Mississippi Constitution should not have been admissible and used against Okhuysen.13

¶45. Even if this Court had not addressed the issue in *Accu-Fab* , we would conclude that the exclusionary rule should be applied in a case such as this one, where the City has initiated a statutory proceeding against a citizen based on evidence that the City's own code enforcement officer obtained in violation of the Mississippi Constitution. In *Janis* , the United States Supreme Court reasoned that the exclusionary rule would have little, if any, deterrent effect because there was only a "highly attenuated" connection between the local police officers who unlawfully obtained the evidence and the federal civil tax proceeding in which the evidence was used. *Janis* , 428 U.S. at 457-58, 96 S.Ct. 3021. The Supreme Court recognized that a

different question would be presented if federal agents had conducted or participated in the search in any way. *Id.* at 455 & n.31, 96 S.Ct. 3021. Unlike *Janis* , this is a case initiated by the same city department that conducted the unconstitutional search. Indeed, the same city department initiated both civil and criminal actions against Okhuysen, both based on the same unconstitutional search and the same alleged conditions on Okhuysen's property. The exclusionary rule should be applied in this proceeding because there is a clear and direct connection between the unconstitutional search and the proceeding. The City should not have been able to declare Okhuysen's property a public menace based on evidence that the City's own agent obtained in violation of the Mississippi Constitution.14

V. The City has never argued that the "good faith" exception to the exclusionary rule applies, so we do not address the issue.

¶46. The dissent also asserts that the "good faith" exception to the exclusionary rule applies and justifies the Board's decision in this case.15 However, **[*590]** the City has never mentioned the good faith exception—either in the circuit court or in its principal brief or supplemental brief in this Court. Rather, the City has argued only that the exclusionary rule does not apply because this is a civil case.16 As noted above, we ordinarily decline to address issues that the parties themselves have not raised or briefed. *See supra* ¶33 & n.8. There is no reason for us to depart from that rule here. Indeed, in this case, there are good reasons to apply our rule against raising and deciding issues sua sponte. In *Eaddy v. State* , 63 So. 3d 1209 (Miss. 2011), our Supreme Court stated that it had "no duty to address ... the good-faith exception" because "the State's brief [did] not address [the] Court's precedent on that exception." *Id.* at 1214-15 (¶¶21-22). A number of other courts have similarly held that the government waives the good faith exception when it fails to raise and brief the issue.17 As the Nebraska Supreme Court put it, "requiring the State to raise the good faith issue at the appellate level does not place an onerous burden on the State," and "the State's failure to present the good faith theory deprives [the opposing party] of the opportunity to respond." *Tompkins* , 723 N.W.2d at 349. Moreover, it is unclear how the good faith exception would apply in this case,18 and neither party has had the opportunity to address the issue because the City did not raise it. For these reasons, we decline to address the potential applicability of the good faith exception to a situation such as this.

VI. The Board's decision declaring Okhuysen's property a public menace must be reversed and rendered.

¶47. The Board's decision to declare Okhuysen's property a public menace was based on evidence (photographs) obtained by the City in violation of Okhuysen's rights under Section 23 of the Mississippi Constitution. The City should not have been able to use that evidence against Okhuysen in this civil proceeding, and therefore the Board's decision declaring Okhuysen's property a public menace cannot stand.

CONCLUSION

¶48. Article 3, Section 23 of the Mississippi Constitution protects the entirety of **[*591]** Okhuysen's property, not just the house and curtilage. *Arnett* , 532 So. 2d at 1010. Post- *Arnett* , the Mississippi Supreme Court has not altered or overruled any of its prior precedents under Section 23. Therefore, we are bound to hold that the warrantless search of Okhuysen's property without his consent violated Section 23. We also hold that Section 23 applies to administrative searches such as the inspection conducted by the code enforcement officer in this case. *Crook* , 168 So. 3d at 935-36 (¶17). Finally, we hold that the exclusionary rule applies in a proceeding such as this. This case was initiated by the same department of the same governmental entity that conducted the unconstitutional search. Thus, there is a direct connection between the unconstitutional search and the attempted use of the evidence. Moreover, although this proceeding is civil in nature, the statute under which it is brought authorizes the City to assess a penalty, and the City also initiated parallel criminal proceedings based on the same search. Under these circumstances, we hold that the

City may not use evidence that it obtained from the unconstitutional search. Without the unconstitutionally obtained evidence, the decision of the Board of Alderman declaring Okhuysen's property a public menace under Mississippi Code Annotated section 21-19-11 cannot stand. Accordingly, the judgment of the circuit court and the decision of the Board must be reversed and rendered in favor of Okhuysen.

¶49. Our holdings in this case should not impose any significant burden on cities. A city may enforce its ordinances or initiate proceedings under section 21-19-11 based on any conditions on a property that can be observed from a public street or from the property of an adjacent landowner who has given consent. *Cf., e.g.* , *Hartfield v. State* , 209 Miss. 787, 793, 48 So. 2d 507, 508-09 (1950) (explaining that an officer does not violate Section 23 simply by making observations from "a place he has a right to be—such as a public place"). In addition, "most citizens [will] allow inspections of their property without a warrant." *Camara* , 387 U.S. at 539, 87 S.Ct. 1727. If consent is refused, a warrant may be obtained by showing that a search is part of a routine "area inspection" defined by "reasonable legislative or administrative standards." *Crook* , 168 So. 3d at 936 (¶18) (quoting *Camara* , 387 U.S. at 538, 87 S.Ct. 1727). Alternatively, a warrant may be obtained "upon a showing ... that probable cause exists to believe that a zoning violation will be discovered upon inspection of the premises." *Town of Bozrah v. Chmurynski* , 303 Conn. 676, 36 A.3d 210, 215 (2012) (discussing the showing required for a warrant when "the proposed search is not part of a periodic or area inspection program"). In any event, this is not a new requirement, as both *Camara* and *Crook* previously established that a warrant is required for an administrative search. *Camara* , 387 U.S. at 534, 87 S.Ct. 1727 ; *Crook* , 168 So. 3d at 935-36 (¶17). The search in this case was conducted without a warrant, and therefore the Board's decision and the judgment of the circuit court must be reversed and rendered.

¶50. **REVERSED AND RENDERED.**

GREENLEE, WESTBROOKS, McDONALD, LAWRENCE, McCARTY, SMITH AND EMFINGER, JJ., CONCUR. CARLTON, P.J., DISSENTS WITH SEPARATE WRITTEN OPINION. BARNES, C.J., NOT PARTICIPATING.

CARLTON, P.J., DISSENTING:

¶51. I dissent because I find no error in the Board's relying on the evidence obtained by City Code Inspector Lyles in **[*592]** adjudicating Okhuysen's property to be a "menace to the public health, safety and welfare of the community." Miss. Code Ann. § 21-19-11(1) (Supp. 2018). As the majority acknowledges, a municipality's decision will not be reversed by this Court "unless [the municipality's] decision is arbitrary, capricious, discriminatory, or is illegal, or without a substantial evidentiary basis." *Baymeadows LLC v. City of Ridgeland* , 131 So. 3d 1156, 1159 (¶10) (Miss. 2014). In accordance with this standard of review, I find that the City had substantial evidence before it in support of its determination. I would therefore affirm the circuit court's order affirming the Board's decision and dismissing Okhuysen's appeal.19

¶52. The majority finds that the Board's decision "must be set aside because it was based on evidence obtained in violation of Section 23 of the [Mississippi] Constitution." Maj. Op. at ¶15. I respectfully dissent. As detailed below, I find that the evidence Lyles obtained should not be subject to the exclusionary rule in this civil proceeding. Further, even if it were, the evidence should be excepted from the exclusionary rule under the circumstances present here.

¶53. The purpose of section 21-19-11 is to protect the community from property "in such a state of uncleanliness as to be a menace to the public health, safety[,] and welfare of the community" and to provide a means for cleaning up the property. Miss. Code Ann. § 21-19-11. The statute is enforced through a civil proceeding, and the costs allowed by the statute become either a "civil debt" or "tax lien" against the

property. *Id.* The statute imposes no criminal sanctions.

¶54. Detailed city ordinances have been promulgated relating to nuisance abatement, including the investigation and clean-up of property as described in section 21-19-11. City Code section 54-75 specifically "authoriz[es] and empower[s]" code enforcement inspectors "to identify violations of this division," and, as the majority recognizes, "section 54-107 authorizes a code enforcement officer to 'enter upon private property ... to examine vehicles' in order to enforce Code provisions related to junk vehicles." Maj. Op. at ¶26. Additionally, City Code section 54-74 provides that an inspector "shall be immune from prosecution, civil or criminal, for reasonable, good faith trespass upon property while in the discharge of duties" under the nuisance provisions.

¶55. As a resident and property owner in the City of Starkville, Okhuysen is charged with the knowledge of section 21-19-11, the City ordinances, and what constitutes a violation. *See Garrison v. State* , 950 So. 2d 990, 993 (¶7) (Miss. 2006) ("It is a familiar rule that ignorance of the law excuses no one, or that every person is charged with knowledge of the law."). And in this case, the Code violations Lyles initially went to look at and inspect appear from the photographs in the record to be open, obvious, and in plain view from outside the unfenced property (particularly in the late fall and winter prior to the photos being taken in January 2019)—namely, an abandoned truck, junk, scrap metal, and construction materials scattered around the property with overgrown vegetation.

¶56. I recognize that Okhuysen asserts that the junk could not be seen from outside the property and that his lawyer made this representation at the hearing before the Board. But neither Okhuysen, nor any neighbor, testified at the hearing, and the arguments of counsel are just that—arguments, not evidence. **[*593]**

Long v. Vitkauskas , 287 So. 3d 171, 178 (¶31) (Miss. 2019) (stating that "argument of counsel does not suffice as evidence when facts are at issue"); *Massey v. Oasis Health & Rehab of Yazoo City LLC* , 269 So. 3d 1242, 1255 (¶35) (Miss. Ct. App. 2018) ("[A]rguments of counsel are not evidence." (quoting *One 1970 Mercury Cougar v. Tunica County* , 115 So. 3d 792, 796 (¶20) (Miss. 2013))). And contrary to the majority's assertion that the City "did not dispute counsel's representations or offer contrary evidence" on this point, Maj. Op. at ¶35, I find that the opposite is true. Namely, the photographs in the record speak for themselves and show a clear line of sight from outside the property into the unfenced property (and the junk on the property) during the late fall and winter when there is little understory or other foliage that may otherwise make it less visible in spring or summer. Okhuysen offered no evidence to rebut this evidence, nor did the Board express any agreement with the representations made by Okhuysen's counsel. Rather, the Board based its decision on the record, which included the photographs. In sum, the Board had substantial evidence before it to support its determination that Okhuysen's property was in violation of section 21-19-11.

¶57. In reviewing these circumstances, I find that the evidence Lyles obtained should not be subject to the exclusionary rule in this civil proceeding. In *Hughes v. Tupelo Oil Co.* , 510 So. 2d 502, 505 (Miss. 1987), the Mississippi Supreme Court found that the exclusionary rule did not apply to exclude improperly obtained evidence in a civil proceeding. In so holding, the supreme court explicitly stated, "We make no determination of the admissibility of evidence obtained through the wrongful acts of the party seeking its admission[.]" *Id.* To date, the supreme court has not spoken on this precise issue.

¶58. To be sure, in *Accu-Fab & Construction Inc. v. Ladner ex rel. Ladner* , 970 So. 2d 1276 (Miss. Ct. App. 2000), involving a civil wrongful-death action, this Court addressed the question left open by the supreme court, namely, the admissibility of evidence in a civil proceeding purportedly obtained by "the wrongful acts of the party seeking its admission." *Id.* at 1283-84 (¶¶23-24) (citing *Hughes* , 510 So. 2d at 505). The Court affirmed the trial court's excluding drug-test evidence as inadmissible based upon its finding that the parties seeking its admission were without "authority to draw samples ... [or] to order

samples drawn of bodily fluids from the decedent for testing purposes." *Id.* at 1284 (¶24).

¶59. The supreme court granted certiorari and affirmed this Court's decision, but the supreme court did not address whether the exclusionary rule applied to the evidence acquired based upon the purported "wrongful acts" of the parties seeking its admission. *Accu-Fab & Const. Inc. v. Ladner* , 778 So. 2d 766, 771-72 (¶¶22-25) (Miss. 2001), *overruled on other grounds by Mack Trucks Inc. v. Tackett* , 841 So. 2d 1107, 1115 (¶28) (Miss. 2003). Rather, the supreme court affirmed the exclusion of the drug-test results on other grounds. *Id.* Thus, no supreme court decision has applied the exclusionary rule in a civil proceeding, and I find no basis for doing so here.

¶60. But even if the exclusionary rule were applicable in civil proceedings based upon the "wrongful acts of the party seeking its admission[,]" I find no "wrongful acts" on Lyles's part in obtaining the evidence at issue in this case. Applying the "plain view" doctrine by analogy and the "good faith" exception to the exclusionary rule to the instant case illustrates my point.**[*594]**

¶61. The "plain view" doctrine is an exception to the warrant requirement and provides that an officer may "seize an object in plain view if the officer can see it from a place he has a lawful right to be, the object's 'incriminating character is readily apparent[,] and the officer has a lawful right of access to the evidence.' " *Hoskins v. State* , 172 So. 3d 1242, 1248 (¶12) (Miss. Ct. App. 2015) (quoting *McKee v. State* , 878 So. 2d 232, 236 (¶9) (Miss. Ct. App. 2004)). As addressed above, the City Code enforcement inspector obtained the subject photos of objects that were in "plain view" from outside Okhuysen's property, and the "incriminating character" of the abandoned truck, junk, scrap metal, and construction materials on Okhuysen's unfenced property was "readily apparent" from outside the property.

¶62. As to the third prong of the "plain view" test—the inspector's "lawful right of access" to the evidence—I find that the "good faith" exception to the exclusionary rule applies. As an initial matter, no Mississippi case has found unconstitutional a warrantless inspection in a "purely civil" proceeding[20] such as this one, especially when the evidence at issue and its incriminating nature were in plain view from outside the defendant's property.[21] As such, Lyles had no reason to know his entry onto Okhuysen's property in such a situation could constitute a trespass. This is particularly true because Lyles entered Okhuysen's property to obtain the photographs "acting in objectively reasonable reliance" on the ordinances authorizing him to do so. *See White v. State* , 842 So. 2d 565, 571 (¶15) (Miss. 2003) (quoting *United States v. Russell* , 960 F.2d 421, 423 (5th Cir. 1992)).

¶63. In short, I find that Lyles's conduct was not "wrongful." On the contrary, the offending junk on Okhuysen's property was in plain view and Lyles entered Okhuysen's property as authorized by the City ordinances allowing him to do so under the defined and limited circumstances present here. Lyles entered Okhuysen's property in order to enforce a statute that was enacted to protect the "public health, safety and welfare of the community," Miss. Code Ann. § 21-19-11, and Okhuysen is charged with the knowledge of the applicable law and what constitutes a violation.[22] I **[*595]** find that to exclude the evidence under these circumstances "will not further the ends of the exclusionary rule in any appreciable way," *White* , 842 So. 2d at 571 (¶14) (quoting *United States v. Leon* , 468 U.S. 897, 920, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984)), but instead would likely serve only to deter City Code enforcement inspectors and "make [them] less willing to do [their] duty." *Id.* This clearly is not the purpose of the exclusionary rule. For these reasons, I respectfully dissent.

1 Section 94-27(d) provides:

> (d) *Accumulations of refuse; noxious vegetation; unlawful dumping.* The existence of excessive accumulation or untended growth of weeds, undergrowth or other dead, or living plant life; or

> stagnant water, rubbish, garbage, refuse, debris, trash, including but not limited to household furnishings, and all other objectionable, unsightly or unsanitary matter upon any lot, tract, parcel of land, or the streets adjacent to the land, within the city be it uncovered or under open shelter, to the extent and in the manner that such lot, tract or parcel of land is or may reasonably become infested or inhabited by rodents, vermin or wild animals, or may furnish a breeding place for mosquitoes, or threatens or endangers the public health, safety or welfare, or may reasonably cause disease, or adversely affect and impair the economic welfare of adjacent property, or any other objectionable, unsightly substance or material tending by its existence and/or accumulation to endanger or adversely affect the health, safety, lives and/or welfare of the citizens of the city, is hereby prohibited and declared to be a public nuisance and unlawful.
>
> It shall be unlawful for any person to cause or permit junk, scrap metal, scrap lumber, wastepaper products, discarded building materials, or any abandoned parts, machinery or machinery parts, garbage, trash or other waste materials to be in or upon any yard, garden, lawn, outbuildings or premises owned, rented, leased or otherwise occupied by him/her in the city unless in connection with a business enterprise lawfully situated and licensed for the same.
>
> It shall be unlawful for the owners or occupants of any land or premises in the city to permit the excessive growth of weeds and other noxious plants on the land.
>
> It shall be unlawful for any person to cause or permit dumping of refuse, waste, trash or garbage on abandoned or vacant property anywhere in the city unless the site has been posted by the city as an approved dump site.

2 "The curtilage of a dwelling is a space necessary and convenient, habitually used for family purposes and for the carrying on of domestic employment; it is the yard, garden or field which is near to and used in connection with the dwelling." *Id.* at 1008 (brackets omitted) (quoting 68 Am. Jur. 2d *Searches and Seizures* § 20 (1973)); *see also* *United States v. Dunn* , 480 U.S. 294, 301, 107 S.Ct. 1134, 94 L.Ed.2d 326 (1987) (stating that courts generally should consider "four factors" to determine whether an area is within the curtilage of a home: "the proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by").

3 In *Arnett* , narcotics officers obtained a search warrant for the defendant's residence "and the curtilage of the residence." *Id.* at 1005. When they executed the warrant, they found 600 pounds of marijuana in a "storm shed" near the defendant's residence. *Id.* at 1006. The defendant argued that the shed was not covered by the warrant because it was outside "the curtilage of the residence." *Id.* However, the Supreme Court held that the shed was within the curtilage of the residence and, hence, covered by the search warrant. *Id.* at 1009. Accordingly, it was unnecessary for the Court to determine whether a search of the shed would have been valid without a warrant. *Id.* at 1010.

4 If this case were governed solely by the Fourth Amendment, Okhuysen likely would not prevail because it would be difficult for him to show that he had any reasonable expectation of privacy in the wooded areas on this property. *See* *Jordan* , 728 So. 2d at 1095-96 (¶¶27-35). However, as explained above, Section 23 of the Mississippi Constitution and its warrant requirement have been interpreted to protect "*all* the land owned by the person searched"—with no exception for "open fields" and without regard to whether the landowner had an "expectation of privacy." *Arnett* , 532 So. 2d at 1010.

5 *Buford v. State* , 323 So. 3d 500, 504 (¶10) (Miss. 2021) ("Section 23 of the Mississippi Constitution provides greater protections to our citizens than those found within the United States Constitution." (quoting *Graves v. State* , 708 So. 2d 858, 861 (Miss. 1997))); *see also* *Arnett* , 532 So. 2d at 1010 & n.1 ; *Falkner* ,

134 Miss. at 261, 98 So. at 693.

6 As noted above, Okhuysen *was* convicted of a misdemeanor and fined in the related case that the City brought against him in municipal court. Okhuysen appealed his conviction to circuit court. The case was still pending in circuit court at the time of the public hearing before the Board of Aldermen. The record in this case does not reflect any subsequent developments in that case.

7 Section 54-74 of the City Code provides that "[n]o person shall oppose, obstruct or resist any code inspector or any person authorized by the code enforcement inspector in the discharge of his duties as provided in this division." Section 1-10 provides that "[w]henever in this Code or in any ordinance of the city an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, ... and no specific penalty is provided therefor, the violation of any such provision or the failure to perform any such act shall be punished by a fine not exceeding $1,000.00 or by imprisonment not to exceed 90 days, or both such fine and imprisonment, in the discretion of the court."

8 *Cf. Sanders v. State* , 678 So. 2d 663, 669-70 (Miss. 1996) (explaining that the Court "will not consider issues raised for the first time in an appellant's reply brief" because "[a]ppellants cannot be allowed to ambush appellees in their [r]ebuttal [b]riefs, thereby denying the appellee an opportunity to respond to the appellant's arguments"); *Triplett v. State* , 264 So. 3d 808, 816 (¶¶27-28) (Miss. Ct. App. 2018) (explaining that "we do not address issues that were not raised at trial" because it deprives the parties of an opportunity to make a record on those issues).

9 The defendants also offered evidence that the decedent had attempted suicide in a similar manner only two to three months prior to his death and had expressed suicidal thoughts shortly before his death. *Id.* at 504-05.

10 In *Brown* , the Court applied the exclusionary rule in a forfeiture proceeding involving a car used to transport whiskey. *Brown* , 219 Miss. at 386-87, 68 So. 2d at 419-20. More recently, our Supreme Court again applied the exclusionary rule in a civil forfeiture action in *State ex rel. Mississippi Bureau of Narcotics v. Canada* , 164 So. 3d 1003, 1006-09 (¶¶10-20) (Miss. 2015).

11 The Supreme Court's decision in *Accu-Fab* was later overruled on unrelated grounds in *Mack Trucks Inc. v. Tackett* , 841 So. 2d 1107, 1114-15 (¶¶27-28) (Miss. 2003).

12 In dissent, Chief Judge McMillin argued that the drug test results should have been admitted because there was no evidence of wrongdoing by either defendant. *Accu-Fab* , 970 So. 2d at 1289 (¶¶53-54) (McMillin, C.J., joined by Southwick, P.J., dissenting). In his view, the record showed only that the hospital conducted the drug test under the mistaken assumption that the decedent was an employee of the general contractor, and there was no evidence that either defendant made any misrepresentations to the hospital. *Id.* In addition, in an opinion concurring in part and dissenting in part, Judge Irving "agree[d] with the majority that misconduct on the part of the proponent of the evidence in obtaining the evidence should preclude its admission." *Id.* at 1291 (¶62) (Irving, J., joined by King, P.J., concurring in part and dissenting in part). However, Judge Irving also agreed with Judge McMillin that there was insufficient evidence to support a finding of wrongdoing by either defendant. *Id.*

13 In holding that the exclusionary rule applies in this case, we do not suggest that Lyles's warrantless inspection of the property was "wrongful" in the sense that he had an evil motive or malicious intent. *Accu-Fab* , 970 So. 2d at 1284 (¶¶23-24) (quoting *Hughes* , 510 So. 2d at 505). We simply hold that the evidence was wrongfully obtained in the sense that it was obtained in violation of Section 23 of the Constitution.

14 The dissent asserts that the exclusion of evidence in this context will not promote the purposes of the exclusionary rule but instead will "likely serve only to deter City Code enforcement inspectors and make

them less willing to do their duty." *Post* at ¶63 (quotation marks and brackets omitted). However, our decision does not "deter" anything other than the warrantless entry onto private property without the owner's consent, which is prohibited by Section 23 of the Mississippi Constitution. On the other hand, if we failed to enforce Section 23 in code enforcement proceedings such as this, there would be little incentive for code enforcement officers to comply with the Constitution's warrant requirement.

15 In *United States v. Leon* , 468 U.S. 897, 922-23, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), the United States Supreme Court held that the exclusionary rule does not apply when an officer conducts a search in an objectively reasonable (i.e., "good faith") reliance on a facially valid search warrant issued by a neutral magistrate, even if the warrant is later found to be invalid. The Mississippi Supreme Court subsequently adopted "the *Leon* good faith exception." *White v. State* , 842 So. 2d 565, 572 (¶¶19-20) (Miss. 2003) (holding that the exception applied to evidence obtained by an officer who relied in good faith on a telephonic search warrant that was later declared invalid).

16 The dissent asserts that "the City essentially asserted in its supplemental brief that such an exception should apply by pointing out that Lyles's conduct was authorized by the applicable ordinances ...." *Post* at n.22. We respectfully disagree. Although the City quoted an ordinance that contains the phrase "good faith," the City has never mentioned the good faith exception to the exclusionary rule nor discussed any relevant caselaw applying that exception to the exclusionary rule.

17 *See, e.g.* , *United States v. Lara* , 815 F.3d 605, 612-13 (9th Cir. 2016) ; *United States v. Wurie* , 728 F.3d 1, 13-14 (1st Cir. 2013) ; *United States v. Ford* , 184 F.3d 566, 578 n.3 (6th Cir. 1999) ; *State v. Tompkins* , 272 Neb. 547, 723 N.W.2d 344, 347-49 (2006) ; *State v. Hicks* , 282 Kan. 599, 147 P.3d 1076, 1089 (2006).

18 *See Eaddy* , 63 So. 3d at 1215 (¶24) (stating that the Mississippi Supreme Court's decision in "*White* does not sanction the good-faith exception where the officer is mistaken about the suspect's general right to be free from unreasonable searches").

19 I find the other assignments of error Okhuysen raises on appeal are without merit.

20 *See* Miss. Att'y Gen. Op., 2004-0173, 2004 WL 1638727, *Miller* , at *1 (June 4, 2004) ("The procedures set out in Section 21-19-11 are purely civil.").

21 In *Davidson v. State* , 240 So. 2d 463, 463-64 (Miss. 1970), for example, the defendant was convicted of receiving stolen property, namely, a tractor. The game warden spotted a tractor on the defendant's property, entered the property *to inspect the tractor's serial number* (i.e., the serial number was not visible without the game warden entering the defendant's property), and a warrant was issued to search the defendant's headquarters based on that serial number. *Id.* The supreme court found that under these circumstances (not present in the instant case), the game warden committed a trespass when he went upon the defendant's land and obtained the tractor's serial number, and thus, the ensuing search was also illegal. *Id.* at 464. *Crook v. City of Madison* , 168 So. 3d 930 (Miss. 2015), concerned the defendant's criminal convictions under the Rental Inspection and Property Licensing Act (RIPLA), *id.* at 931 (¶1), and RIPLA's lack of a valid warrant provision. *Id.* at 940 (¶30). The supreme court held that RIPLA's inspection provisions were unconstitutional, recognizing that "although RIPLA has a warrant provision, that provision allows a warrant to be obtained 'by the terms of the Rental License, lease, or rental agreement,' which is a standard less than probable cause." *Id.* at 932 (¶2). These circumstances are not present in the instant case.

22 The majority declines to address the "good faith" exception to the exclusionary rule because the City did not raise it. Maj. Op. at ¶46. But the City essentially asserted in its supplemental appellate brief that such an exception should apply by pointing out that Lyles's conduct was authorized by the applicable ordinances and

provided Lyles with immunity from "prosecution, civil or criminal, for reasonable, good faith trespass upon property while in the discharge of duties" under the nuisance provisions of City Code section 54-74.

15 So.3d 483
John Thelbert WHITLEY, Appellant,
v.
CITY OF BRANDON, Mississippi, Appellee.
No. 2008-CA-00066-COA.
Court of Appeals of Mississippi.
May 5, 2009.
Rehearing Denied August 18, 2009.

[15 So.3d 484]

Harry Jones Rosenthal, attorney for appellant.

Mark C. Baker, Jarrod Watkins Taylor, Brandon, attorneys for appellee.

Before MYERS, P.J., GRIFFIS and ISHEE, JJ.

ISHEE, J., for the Court.

¶ 1. On December 14, 2007, the Chancery Court of Rankin County entered a judgment finding John Whitley to be in violation of the City of Brandon's (the City) ordinances and granting an injunction in favor of the City. The injunction required Whitley to remove all offending vehicles from his property and to refrain from storing any more such vehicles on his property. Aggrieved by the judgment, Whitley appeals. He asserts the following alleged points of error:

I. The chancellor erred in failing to recognize Whitley's right to continue a nonconforming use of his property after the City's annexation.

II. The chancellor erred in failing to recognize Whitley's rights under the Right to Farm Statute, and the City's nuisance ordinance is unconstitutionally vague.

III. The chancellor erred in refusing to allow Whitley to post a supersedeas bond staying enforcement of the judgment pending the outcome of the present appeal.

Finding no error, we affirm the chancellor's judgment.

FACTS AND PROCEDURAL HISTORY

¶ 2. In May 2007, the City completed its annexation of certain property, which included Whitley's property located along Highway 471. A number of inoperable motor vehicles, in various states of repair, were located on Whitley's property. The City notified Whitley via certified letter that he was in violation of city zoning ordinances by parking inoperable and unlicensed motor vehicles on his residential property and not in his driveway. Whitley was given thirty days to comply with the ordinances, and when he failed to come into compliance, the City cited him for three violations. For his violations, the City of Brandon Municipal Court fined Whitley $1,500 plus costs of $288. He then appealed to the County Court of Rankin County.

¶ 3. The City later filed a complaint for injunctive relief in the county court, asking that the court order Whitley to remove the offending vehicles. Whitley objected to jurisdiction in county court, and the case was transferred to the Chancery Court of Rankin County. During the trial, the City offered testimony that the vehicles on Whitley's property were, for the most part, inoperable junk vehicles. The evidence included a number of photographs depicting the condition of the vehicles. The problem, according to Robbie Powers, with the City's code enforcement division, was that Whitley's property was zoned residential, but Whitley maintained forty-six "inoperable, unlicensed, untagged vehicles." Powers noted that several of the vehicles were dismantled or wrecked. He described them as "basically, abandoned in a pasture." Additionally, the City offered testimony that storing the number of vehicles that Whitley did, which were in that condition, would decrease the property value in the surrounding properties. Further testimony

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indicated that the inoperable vehicles could lead to health issues, environmental issues, and vandalism on or around the property.

¶ 4. In a bench ruling on the matter, the chancellor noted that Whitley had been found criminally liable for violating the city ordinances and had been ordered to pay a fine. The chancellor then found that: (1) injunctive relief was appropriate because there was no other adequate remedy at law; (2) the City proved a nuisance based on the potential for irreparable harm or injury; and (3)Whitley was in violation of the city ordinances that, in part, prohibited the storage of inoperative and unlicensed motor vehicles on residential property. The chancellor ordered Whitley to remove all pickups and passenger vehicles on his property, along with the dump trucks and tractor trailers. Excepted from the injunction were a white Chevrolet pickup truck and any vehicle with a current inspection sticker and license tag. Also excepted from the injunction were a forklift, a cattle trailer, a farm tractor, and a front-end loader, provided that each of the vehicles had a current inspection sticker and tag. Whitley timely appealed from this judgment.

¶ 5. After Whitley filed his appeal from the chancellor's judgment, the City filed a Motion for Contempt, Permission to Enter Property and Execute on Judgment and Related Relief. Whitley provided a cost estimate to remove the offending vehicles of $1,250, quoted by ACE Auto Sales. It would cost an additional $300 per month to store the vehicles. The chancellor found Whitley to be in contempt and ordered him to comply with the prior judgment by February 29, 2008. Having continuously failed to comply with orders to remove the offending vehicles, the chancellor authorized the Sheriff of Rankin County to incarcerate Whitley until he came into compliance with the judgment of December 14, 2007. Whitley was in jail for eight days, during which time the vehicles were removed from his property.[1]

STANDARD OF REVIEW

¶ 6. This Court gives deference to the findings of a chancellor and will not disturb those findings unless they are manifestly wrong, unsupported by substantial evidence, or were the result of the application of an erroneous legal standard. *Keener Props., L.L.C. v. Wilson,* 912 So.2d 954, 956(¶ 3) (Miss.2005). However, this Court will review questions of law under a de novo standard. *Id.*

DISCUSSION

I. Right to Continue a Nonconforming Use

¶ 7. Whitley begins by arguing that he, his father, and his grandfather had used the property in question for farming for more than one hundred years prior to it being annexed by the City. He further argues that he used the various vehicles that he stored on the property as storage for his farming equipment and supplies.

¶ 8. Section 2004 of the City's Code of Ordinances provides that a lawful nonconforming use of land may continue so long as the use remains lawful. Regarding a party's right to continue a nonconforming use, the supreme court has stated the following:

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> The nature of the right to a non-conforming use is a property right. It has been held that the right to continue a non-conforming use, once established and not abandoned, runs with the land. It has been held by some courts that any ordinance which takes away that right in an unreasonable manner, or in a manner not grounded in the public welfare is invalid.

Barrett v. Hinds County, 545 So.2d 734, 737 (Miss.1989) (internal citations omitted).

¶ 9. Amanda Tolsted, the community development and planning director for the City, testified on behalf of the City. She said that Whitley's property was zoned for low density residential use, and she said that Whitley's use of the property was agricultural. According to Tolsted, the agricultural use was nonconforming, but she saw no indication that "the inoperable vehicles and the junked cars" were part of any agricultural use of the property. She admitted that

some pieces of equipment on the property could be used for agricultural reasons but not the "junked inoperable vehicles."

¶ 10. Whitley cites no authority indicating that he should be allowed to maintain a nuisance following rezoning or annexation as he would be allowed to continue a nonconforming use of his land. From the record, it is clear that the chancellor took great care in examining the vehicles, and he allowed Whitley to keep any vehicles that were usable in his farming operation. The judgment also makes it clear that the only vehicles that had to be removed were the inoperable and unlicensed vehicles.

¶ 11. Ultimately, we find no violation of Whitley's right to continue his nonconforming use of the land. The inoperable and junked vehicles were a nuisance as defined in the City's ordinance, and their removal was to benefit the public welfare. The nonconforming-use ordinance allowed for the continuation of a lawful nonconforming use; however, a nuisance is not a lawful nonconforming use. Therefore, we find no merit to this issue.

II. Whitley's Rights Under the Right to Farm Statute and the City's Nuisance Claim

¶ 12. Next, Whitley argues that the City's nuisance ordinance was unconstitutionally vague and that it was, therefore, improper to enforce the ordinance against him. He also continues to make the argument that he should have been allowed to continue his nonconforming use—a farming operation.

¶ 13. We see nothing in the record to indicate that the City attempted to preclude Whitley from carrying on his farming operations. Any assertion by Whitley to the contrary is without merit. As previously noted, Tolsted testified that the farming qualified as a nonconforming use.

¶ 14. "A governmental enactment is impermissibly vague where it fails to provide persons of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits." *Mayor of Clinton v. Welch,* 888 So.2d 416, 421(¶ 27) (Miss.2004) (citing *Hill v. Colorado,* 530 U.S. 703, 732, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000)). A statute may also be impermissibly vague "if it authorizes or even encourages arbitrary and discriminatory enforcement." *Hill,* 530 U.S. at 732, 120 S.Ct. 2480 (citing *City of Chicago v. Morales,* 527 U.S. 41, 56, 119 S.Ct. 1849, 144 L.Ed.2d 67 (1999)).

¶ 15. In citing Whitley for maintaining a nuisance, the chancellor found that Whitley was in violation of section 34-21(1) of the City's Code of Ordinances.[2] Section

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34-21 provides that a nuisance is an act, omission, condition, or thing that "[i]njures or endangers the comfort, repose, health or safety of others...." Section 34-22 of the City's Code of Ordinances further provides a nonexclusive list of examples that constitute nuisances. Applicable to Whitley were the following nuisance examples of nuisances: (1) "Noxious weeds and other rank vegetation"; (2) "Accumulations of rubbish, trash, refuse, junk and other abandoned materials, metals, lumber or other things"; (3) "Any condition which provides harborage for rats, mice, snakes and other vermin"; and (4) "Any accumulation of stagnant water permitted or maintained on any lot or piece of ground." Furthermore, the chancellor noted testimony that there had been several occasions of vandalism concerning Whitley's vehicles. For example, vehicle doors had been removed, and their windows and windshields had been smashed.

¶ 16. During cross-examination, Tolsted reiterated the nuisances for which Whitley had been cited. According to Tolsted:

The nuisance is the breeding ground for the vermin. It's the pollutants that leak into the ground. It's the—it poses a risk for anyone who comes onto that property because the—the glass and the engine parts—whether they're invited or not invited on the property, it's a risk for anyone,

and that type of accumulation of junk, it attracts vandalism.

¶ 17. George Guest, who was admitted as an expert in engineering, testified that, with regard to keeping inoperable vehicles, there were concerns with "fuel, oil, antifreeze, sometimes there's asbestos in the brakes, mercury in the light switches, ... hydraulic fluids, those type [of] items." He was also concerned with any leaching into the soil of water that comes off these vehicles and any runoff from Whitley's property that could affect the City's water.

¶ 18. We see no merit to Whitley's argument that the nuisance ordinance, specifically section 34-21(1), is unconstitutionally vague. We do not address subsections (2) or (3) because the chancellor did not address those and did not find that Whitley had violated them. The ordinance at issue provided a reasonable person an ordinary opportunity to understand the prohibited conduct. Furthermore, an illustrative list of potential nuisances is included in the City's code at section 34-22. This issue is without merit.

III. Supersedeas Bond

¶ 19. Rule 62(c) of the Mississippi Rules of Civil Procedure provides the standard by which a party may request that a court stay an injunction pending an appeal. Rule 62(c) provides as follows:

When an interlocutory or final judgment has been rendered granting ... an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of an appeal from such judgment upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party. The power of the court to make such an order is not terminated by the taking of the appeal.

The comment to Rule 62(c) provides that an application for a stay under Rule 62(c) goes to the discretion of the court. M.R.C.P. 62(c) cmt.

¶ 20. In the present case, the chancellor ordered the City to pay the cost of having the offending vehicles removed, with Whitley to pay the cost of storing the

[15 So.3d 488]

vehicles. The chancellor also imposed the condition that if Whitley succeeded on appeal, the City would reimburse Whitley for the storage costs.

¶ 21. We find that the chancellor properly exercised his discretion in refusing to stay the injunction pending the appeal. At the same time, the chancellor granted Whitley an adequate remedy in case he prevailed on appeal. The chancellor had already determined that the vehicles on Whitley's property posed a threat to the environment and to anyone who entered the property. We see no reason why the chancellor should have stayed the injunction in light of these findings, especially considering that the City would have been responsible for the expenses of moving and storing the vehicles if Whitley had succeeded on appeal. Accordingly, we find that this issue is without merit.

¶ 22. **THE JUDGMENT OF THE CHANCERY COURT OF RANKIN COUNTY IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.**

KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR.

Notes:

1. It is unclear from the record how the vehicles were eventually removed from Whitley's property. Whitley claims in his appellate brief that the City removed the vehicles. However, the City denies that it retained ACE Auto Sales to remove the vehicles, and it further denies that anyone

affiliated with the City entered upon Whitley's property to remove the vehicles.

2. The chancellor specifically refused to address whether Whitley was in violation of subsections 34-21(2)-(3) because of what the chancellor saw as a subjective vagueness present in those subsections.

NOTICE PURSUANT TO MCA 21-19-11(2)

PROPERTY ADDRESS: _____

OWNER: _____

PARCEL/PPIN #: _____

NOTICE MAILED TO:

_____

_____

_____

(Address of property or parcel of land)

_____

_____

_____

(Address where ad valorem tax notices for the subject property or parcel of land are sent)

_____

_____

_____

Be advised that the governing authority of the City of _____, having a population over one thousand five hundred (1500), has authorized _____ and/or his designee to determine whether the property or parcel of land is in such a state of uncleanliness as to be a menace to the public health, safety and welfare of the community when the fee or cost to clean property or a parcel of land that is one (1) acre or less does not exceed Two Hundred Fifty Dollars ($250.00), excluding administrative costs.

The particular condition(s) as determined by the authorized municipal employee existing as of the date of this notice is:

_____

_____

_____

_____

_____

_____

(Attach additional sheets if necessary).

Be advised that by this correspondence a determination has been made that the condition of property or parcel of land as described is a menace to the public health, safety and welfare of the community, and as such the governing authority of the City, if the owner does not do so himself, on or before _____, ____, 20____, shall proceed to clean the land, by the use of municipal employees or by contract, by cutting grass and weeds, filling cisterns. removing rubbish, abandoned or dilapidated fences, outside toilets, abandoned or dilapidated buildings, slabs, personal property, which removal of personal property shall not be subject to the provisions of Section 21-39-21, and other debris; and draining cesspools and standing water therefrom.

YOU ARE ADVISED THAT AN ADJUDICATION AT THE HEARING THAT THE PROPERTY OR PRACEL OF LAND IS IN NEED OF CLEANING WILL AUTHORIZE THE MUNICIPALITY TO REENTER THE PROPERTY OR PARCEL OF LAND FOR A PERIOD OF TWO (2) YEARS AFTER THE FINAL ADJUDICATION WITHOUT ANY FURTHER HEARING IF NOTICE IS POSTED ON THE PROPERTY OR PARCEL OF LAND AND AT CITY HALL OR ANOTHER PLACE IN THE MUNICIPALITY WHERE SUCH NOTICES ARE GENERALLY POSTED AT LEAST SEVEN (7) DAYS BEFORE THE PROPERTY OR PARCEL OF LAND IS REENTERED FOR CLEANING. A COPY OF THE REQUIRED NOTICE MAILED AND POSTED AS REQUIRED BY MCA SECTION 21-19-11(2)(a)&(b) SHALL BE RECORDED IN THE MINUTES OF THE GOVERNING AUTHORITY IN CONJUNCTION WITH THE HEARING REQUIRED BY SAID SECTION.

Thereafter, the governing authority shall by resolution adjudicate the actual cost of cleaning the property under this provision, provided the same does not exceed Two Hundred Fifty Dollars ($250.00) ***and may also impose a penalty not to exceed One Hundred Dollars ($100.00) or one hundred percent (100%) of the actual cost of cleaning the property, whichever is more.*** The cost and any penalty imposed may become a civil debt against the property owner, and/or, at the option of the governing authority, an assessment against the property. The "cost assessed against the property" means either the cost to the municipality of using its own employees to do the work or the cost to the municipality of any contract executed by the municipality to have the work done and additionally may include administrative costs of the municipality not to exceed Fifty Dollars ($50.00). For subsequent cleaning within the one-year period, upon seven (7) days' notice posted both on the property or parcel of land adjudicated in need of cleaning and at city hall or another place in the municipality where such notices are generally posted, and consistent with the municipal official's determination as authorized, a municipality may reenter the property or parcel of land to maintain cleanliness without further notice or hearing no more than six (6) times in any twelve-month period with respect to removing abandoned or dilapidated buildings, slabs, dilapidated fences and outside toilets, and no more than twelve (12) times in any twenty-four-month period with respect to cutting grass and weeds and removing rubbish, personal property and other debris on the land, and the expense of cleaning of the property shall not exceed an aggregate amount of One Thousand Dollars ($1,000.00) per year. The governing authority may assess the same actual costs, administrative costs, and penalty for each time the property or land is cleaned as otherwise provided. The penalty provided herein shall not be assessed against the State of Mississippi upon request for

reimbursement under Section 29-1-145, nor shall a municipality clean a parcel owned by the State of Mississippi without first giving notice. Upon written authority from the Secretary of State's office, for state-owned properties, a municipality may forgo the notification process that is prescribed in this subsection and proceed to clean the properties and assess costs as prescribed in this subsection, except that, penalties shall not be assessed against the State of Mississippi. A determination made by an appropriate municipal employee under this subsection (2) that the state or condition of property or a parcel of land is a menace to the public health, safety and welfare of the community shall not subsequently be used to replace a hearing if Section 21-19-11(1) is later utilized by a municipality when the prerequisites of Section 21-19-11(2) are not satisfied.

An appeal of this decision may be made to the governing authority of the City and such appeal shall be in writing, state the basis for the appeal and be filed with the city clerk no later than seven (7) days from the latest date of notice required under MCA 21-19-11(2).

For any questions, please call _____ for the City at _____.

This the _____ day of _____ 202____.

_____

_____
Signature

_____
Name Title

****

A copy of this notice shall be recorded in the minutes of the governing authority in conjunction with MCA Section 21-19-11 (2).

At least seven (7) days before the date of cleaning, this notice is required to be posted on the property or parcel of land identified herein AND at city hall or such other place in the municipality where such notices are posted AND is required to be mailed, via United States Mail, postage prepaid, to the address of the property or parcel of land identified herein *except where the land or structure(s) is apparently vacant*, AND to the address where the ad valorem tax notice for the property or parcel of land identified herein is sent by the office charged with collecting ad valorem taxes for the subject property or parcel of land identified herein.

This Notice was posted on the subject property on: _____
By: _____

This Notice was posted at city hall on: _____
By: _____

This Notice was mailed via United States Mail, postage prepaid, to each address identified above on: _____
By: _____

NOTICE PURSUANT TO MCA 21-19-11(1) (1972 AS AMENDED)

PROPERTY ADDRESS: _____

OWNER: _____

PARCEL/PPIN #: _____

NOTICE MAILED TO:

_____

_____

_____

(Address of property or parcel of land)

_____

_____

_____

(Address where ad valorem tax notices for the subject property or parcel of land are sent)

PLEASE TAKE NOTICE THAT on its own motion, the City of _____, Mississippi will hold a hearing on the _____ day of _____, _____, at ___:__0 o'clock p.m., at the City of _____ City Hall, Board Room, _____, to determine whether or not the above described property or parcel of land is in such a state of uncleanliness as to be a menace to the public health, safety and welfare of the community.

The particular condition complained existing as of the date of this notice is:

_____
_____
_____
_____
_____
_____
_____

(Attach additional sheets if necessary).

If, at such hearing, the governing authority shall adjudicate the property or parcel of land in its then condition to be a menace to the public health, safety and welfare of the community, the governing authority, if the owner does not do so himself, shall proceed to clean the land, by the use of municipal employees or by contract, by cutting grass and weeds; filling cisterns; removing rubbish, abandoned or dilapidated fences, outside toilets, abandoned or dilapidated buildings, slabs, personal property, which removal of personal property shall not be subject to the

provisions of Section 21-39-21, and other debris; and draining cesspools and standing water therefrom. YOU ARE ADVISED THAT AN ADJUDICATION AT THE HEARING THAT THE PROPERTY OR PRACEL OF LAND IS IN NEED OF CLEANING WILL AUTHORIZE THE MUNICIPALITY TO REENTER THE PROPERTY OR PARCEL OF LAND FOR A PERIOD OF TWO (2) YEARS AFTER THE FINAL ADJUDICATION WITHOUT ANY FURTHER HEARING IF NOTICE IS POSTED ON THE PROPERTY OR PARCEL OF LAND AND AT CITY HALL OR ANOTHER PLACE IN THE MUNICIPALITY WHERE SUCH NOTICES ARE GENERALLY POSTED AT LEAST SEVEN (7) DAYS BEFORE THE PROPERTY OR PARCEL OF LAND IS REENTERED FOR CLEANING. A COPY OF THE REQUIRED NOTICE MAILED AND POSTED AS REQUIRED BY MCA SECTION 21-19-11(1)(B) SHALL BE RECORDED IN THE MINUTES OF THE GOVERNING AUTHORITY IN CONJUNCTION WITH THE HEARING REQUIRED BY SAID SECTION.

The governing authority may by resolution adjudicate the actual cost of cleaning the property and may also impose a penalty not to exceed One Thousand Five Hundred Dollars ($1,500.00) or fifty percent (50%) of the actual cost, whichever is more. The cost and any penalty may become a civil debt against the property owner, and/or, at the option of the governing authority, an assessment against the property. The "cost assessed against the property" means either the cost to the municipality of using its own employees to do the work or the cost to the municipality of any contract executed by the municipality to have the work done, and administrative costs and legal costs of the municipality. For subsequent cleaning within the one-year period after the date of the hearing at which the property or parcel of land was adjudicated in need of cleaning, upon seven (7) days' notice posted both on the property or parcel of land adjudicated in need of cleaning and at city hall or another place in the municipality where such notices are generally posted, and consistent with the municipality's adjudication, a municipality may reenter the property or parcel of land to maintain cleanliness without further notice or hearing no more than six (6) times in any twelve-month period with respect to removing abandoned or dilapidated buildings, slabs, dilapidated fences and outside toilets, and no more than twelve (12) times in any twenty-four-month period with respect to cutting grass and weeds and removing rubbish, personal property and other debris on the land, and the expense of cleaning of the property, except as otherwise provided for removal of hazardous substances, shall not exceed an aggregate amount of Twenty Thousand Dollars ($20,000.00) per year, or the fair market value of the property subsequent to cleaning, whichever is more. The aggregate cost of removing hazardous substances will be the actual cost of such removal to the municipality and shall not be subject to the Twenty Thousand Dollar ($20,000.00) limitation. The governing authority may assess the same penalty for each time the property or land is cleaned.

If the governing authority declares, by resolution, that the cost and any penalty shall be collected as a civil debt, the governing authority may authorize the institution of a suit on open account against the owner of the property in a court of competent jurisdiction in the manner provided by law for the cost and any penalty, plus court costs, reasonable attorney's fees and interest from the date that the property was cleaned.

If the governing authority declares that the cost and any penalty shall be collected as an assessment against the property, then the assessment above provided for shall be a lien against the property and may be enrolled in the office of the chancery clerk of the county as liens and encumbrances are enrolled, and the tax collector of the municipality shall, upon order of the board of governing authorities, proceed to sell the land to satisfy the lien as now provided by law for the sale of lands for delinquent municipal taxes. The lien against the property shall be an encumbrance upon the property and shall follow title of the property.

(i) All assessments levied under the provisions hereof shall be included with municipal ad valorem taxes and payment shall be enforced in the same manner in which payment is enforced for municipal ad valorem taxes, and all statutes regulating the collection of other taxes

in a municipality shall apply to the enforcement and collection of the assessments levied under the provisions of this section, including utilization of the procedures authorized under Sections 17-13-9(2) and 27-41-2.

(ii) All assessments levied under the provisions hereof shall become delinquent at the same time municipal ad valorem taxes become delinquent. Delinquencies shall be collected in the same manner and at the same time delinquent ad valorem taxes are collected and shall bear the same penalties as those provided for delinquent taxes. If the property is sold for the nonpayment of an assessment under this section, it shall be sold in the manner that property is sold for the nonpayment of delinquent ad valorem taxes. If the property is sold for delinquent ad valorem taxes, the assessment under this section shall be added to the delinquent tax and collected at the same time and in the same manner.

All decisions rendered under the provisions of this section may be appealed in the same manner as appeals from other action of municipal governing authorities are taken.

For any questions, please call _____, the _____ for the City at _____.

This the _____ day of _____, _____.

_____

Name Title

****

A copy of this notice shall be recorded in the minutes of the governing authority in conjunction with the hearing required by MCA Section 21-19-11 (1972 as amended).

Notice shall be provided to the property owner by:

(a) United States mail two (2) weeks before the date of the hearing mailed to the address of the subject property AND to the address where the ad valorem tax notice for such property is sent by the office charged with collecting ad valorem tax; and

(b) Posting notice for at least two (2) weeks before the date of a hearing on the property or parcel of land alleged to be in need of cleaning and at city hall or another place in the municipality where such notices are posted.

This Notice was posted on the subject property on: _____
By: _____

This Notice was posted at city hall on: _____
By: _____

This Notice was mailed via United States Mail, postage prepaid, to each address identified above on: _____
By: _____

RESOLUTION RE: CLEAN-UP OF _____ (TAX PARCEL #_____, PPIN#_____), _____, MISSISSIPPI (MCA 21-19-11(1))

BE IT RESOLVED by the Mayor and Board of Aldermen of the City of _____, that on the ____ day of _____, 20___, at ___:00 o'clock p.m. at the _____ City Hall, Regular Meeting Room, _____, Mississippi, a Public Hearing was held to determine whether or not the parcel of property identified above, is in such a state of uncleanliness as to be a menace to the public health and safety of the community.

BE IT FURTHER RESOLVED that a notice of said Public Hearing was provided in accordance with MCA Section 21-19-11(1). A copy of the notice, as posted and provided, is appended to the Minutes and incorporated herein.

BE IT FURTHER RESOLVED that at said hearing the governing authority, having received information from the _____ Department relative to the condition of the improvements located on the subject parcel and the general condition of the property, which is appended to the Minutes and incorporated herein, did adjudicate such parcel of land in its then condition to be a menace to the public health and safety of the community and directed that the same be cleaned up by the use of municipal employees or by contract, by cutting grass and weeds; filling cisterns; removing rubbish, abandoned and dilapidated fences, outside toilets, abandoned or dilapidated buildings, slabs, personal property, which removal of personal property shall not be subject to the provisions of Section 21-39-21, and other debris; and draining cesspools and standing water therefrom, in accordance with MCA Section 21-19-11, and as generally outlined in the information including the case file provided by the _____Department, all of which is appended hereto and incorporated herein by reference, and that assessments and costs be assessed and taxed against the property in accordance with said statute.

SO RESOLVED this the _____ day of _____, 202____.

_____
MAYOR

ATTEST:

_____
CITY CLERK

RESOLUTION AND ORDER ADJUDICATING THE COST OF CLEANING OF PROPERTY LOCATED AT _____, (TAX PARCEL #_____, PPIN#_____), _____, MISSISSIPPI AND ASSESSING SAID COSTS AGAINST SAID PROPERTY (MCA 21-19-11(1)

BE IT RESOLVED that the Mayor and Board of Aldermen of the City of _____, Mississippi, on the ____ day of _____ 202___, at ___:00 o'clock p.m. at the _____ City Hall, Regular Meeting Room, _____, _____, Mississippi, held a Public Hearing pursuant to MCA Section 21-19-11 (1972 as amended) with respect to that certain real property and improvements located at _____ (hereinafter sometimes referred to as "the subject property").

BE IT FURTHER RESOLVED that the subject property was duly posted and notice of the Public Hearing was properly provided in accordance with MCA Section 21-19-11 (1972 as amended). The Minutes of the meeting and the action of the board in relation thereto are incorporated herein by reference.

BE IT FURTHER RESOLVED that at said hearing the governing authority did adjudicate such parcel of land in its then condition to be a menace to the public health and safety of the community and directed that the same be cleaned up by the use of municipal employees or by cutting weeds; filling cisterns; removing rubbish, dilapidated fences, outside toilets, dilapidated buildings, and other debris including abandoned and inoperable vehicles; and draining cesspools and standing water therefrom.

BE IT FURTHER RESOLVED that the conditions existing on the subject property which caused it to be a menace to the public health and safety of the community as described at the hearing were remediated by the City, at a total cost to the City of $_____, which amount, is hereby assessed against the subject property.

BE IT FURTHER RESOLVED that in accordance with MCA Section 21-19-11 a penalty of $1,500.00 or 50% percent of the actual cost incurred, whichever is more, may be assessed by the City in addition to the actual clean-up costs and that the total penalty assessed in this matter is $_____.

BE IT FURTHER RESOLVED that in accordance with MCA Section 21-19-11, the cost and any penalty may become a civil debt against the property owner, and/or, at the option of the governing authority, an assessment against the property.

BE IT FURTHER RESOLVED that the City does hereby assess against the subject property the total sum of $_____ as clean-up costs and penalties and in accordance with said statute, the assessment herein determined shall be a lien against the subject property and shall be enrolled in the office of the Chancery Clerk of _____ County, Mississippi as other liens and encumbrances are enrolled, and the Tax Collector of _____ County, Mississippi, who by inter-local agreement serves as the tax collector for the City of Brandon, shall proceed to sell the land to satisfy the lien, as now provided by law for the sale of lands for delinquent municipal taxes. The lien against the property shall be an encumbrance upon the property and shall follow title of the property.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF _____, MISSISSIPPI as follows:

1. The actual costs of cleaning the subject property located is $_____and that a penalty is imposed in the amount of $_____ for a total assessment of costs and penalties of $ _____ .

2. An assessment in the total sum of $_____ is hereby levied and shall be a lien against the subject property.

3. A copy of this Resolution and Order shall be enrolled in the office of the Chancery Clerk of _____ County, Mississippi as other liens and encumbrances are

enrolled and the _____ County Tax Collector is hereby ordered to proceed to sell said land to satisfy said lien as is now provided for by law for the sale of lands for delinquent municipal taxes.

4. And further, the cost and penalty may be collected as a civil debt as allowed by law against the owner of the property in a court of competent jurisdiction in the manner provided by law for the cost and any penalty, plus court costs, reasonable attorney's fees and interest from the date that the property was cleaned.

SO RESOLVED AND ORDERED this the _____ day of 202___.

_____
MAYOR

ATTEST:

_____
CITY CLERK

RESOLUTION AND ORDER ADJUDICATING THE COST OF CLEANING OF PROPERTY LOCATED AT _____, (TAX PARCEL #_____, PPIN#_____), _____, MISSISSIPPI AND ASSESSING SAID COSTS AGAINST SAID PROPERTY (MCA SECTION 21-19-11(2))

BE IT RESOLVED that by authority of the Mayor and Board of Aldermen of the City of _____, Mississippi, the _____ made the determination that such parcel of land in its then condition to be a menace to the public health and safety of the community and directed that the same be cleaned up by the use of municipal employees or by cutting weeds; filling cisterns; removing rubbish, dilapidated fences, outside toilets, dilapidated buildings, and other debris including abandoned and inoperable vehicles; and draining cesspools and standing water therefrom.

BE IT FURTHER RESOLVED that the conditions existing on the subject property which caused it to be a menace to the public health and safety of the community as described at the hearing were remediated by the City, at a total cost to the City of $_____, which amount, is hereby assessed against the subject property.

BE IT FURTHER RESOLVED that in accordance with MCA Section 21-19-11 a penalty of $100.00 or 100% percent of the actual cost incurred, whichever is more, may be assessed by the City in addition to the actual clean-up costs and that the total penalty assessed in this matter is $_____.

BE IT FURTHER RESOLVED that in accordance with MCA Section 21-19-11, the cost and any penalty may become a civil debt against the property owner, and/or, at the option of the governing authority, an assessment against the property.

BE IT FURTHER RESOLVED that the City does hereby assess against the subject property the total sum of $_____ as clean-up costs and penalties and in accordance with said statute, the assessment herein determined shall be a lien against the subject property and shall be enrolled in the office of the Chancery Clerk of Rankin County, Mississippi as other

liens and encumbrances are enrolled, and the Tax Collector of _____ County, who by inter-local agreement serves as the tax collector for the City, shall proceed to sell the land to satisfy the lien as now provided by law for the sale of lands for delinquent municipal taxes. The lien against the property shall be an encumbrance upon the property and shall follow title of the property.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF _____, MISSISSIPPI as follows:

1. The actual costs of cleaning the subject property located is $_____ and that a penalty is imposed in the amount of $_____ for a total assessment of costs and penalties of $_____.

2. An assessment in the total sum of $_____ is hereby levied and shall be a lien against the subject property.

3. A copy of this Resolution and Order shall be enrolled in the office of the Chancery Clerk of _____ County, Mississippi and the _____ County Tax Collector is hereby ordered to proceed to sell said land to satisfy said lien as is now provided for by law for the sale of lands for delinquent municipal taxes.

4. And further, the cost and penalty may be collected as a civil debt as allowed by law against the owner of the property in a court of competent jurisdiction in the manner provided by law for the cost and any penalty, plus court costs, reasonable attorney's fees and interest from the date that the property was cleaned.

SO RESOLVED AND ORDERED this the _____ day of 202___.

_____
MAYOR

ATTEST:

_____
CITY CLERK

ARTICLE II. NUISANCES[1]

DIVISION 1. GENERALLY

Sec. 34-21. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Nuisance means any act, omission, condition or thing that:

(1) Injures or endangers the comfort, repose, health or safety of others;

(2) Offends decency;

(3) Is offensive to the senses;

(4) Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage;

(5) In any way renders other persons insecure in life or the use of property;

(6) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others; or

(7) Any place as defined in this section in or upon which lewdness, assignation or prostitution is conducted, permitted, continued or exists or any other place as defined in this section in or upon which a controlled substance as defined in MCA 1972, § 41-29-105, is unlawfully used, possessed, sold or delivered and the personal property and contents used in conducting or maintaining any such place for any such purpose. One single act of unlawful cohabitation, lewdness or possession, use, sale or delivery of a controlled substance about such property shall not come within the terms of this definition.

Place means and includes any building, erection or structure, or any separate part or portion thereof or the ground itself.

Cross reference(s)—Definitions generally, § 1-2.

State law reference(s)—Nuisance defined, MCA 1972, § 95-3-1.

Sec. 34-22. Illustrative enumeration.

The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property of any of the following items, conditions or actions is hereby declared to be and constitute a nuisance;

---

[1]Cross reference(s)—Gatherings of birds as nuisance situation, § 14-112; sanitation nuisances, § 66-8; junked vehicles, appliances and equipment, § 66-9.

State law reference(s)—Abatement of nuisances generally, MCA 1972, § 21-19-1; cleaning private property, MCA 1972, § 21-19-11.

provided, however, that this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:

(1) Noxious weeds and other rank vegetation.

(2) Accumulations of rubbish, trash, refuse, junk and other abandoned materials, metals, lumber or other things.

(3) Any condition which provides harborage for rats, mice, snakes and other vermin.

(4) Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation, or kept in such an insanitary condition that it is a menace to the health of people residing in the vicinity thereof, or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located.

(5) All unauthorized noises and vibrations, including animal noises.

(6) All obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches.

(7) The carcasses of animals or fowl not disposed of within a reasonable time after death.

(8) The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, creamery or industrial wastes or other substances.

(9) Any building, structure or other place or location where any activity which is in violation of local, state or federal law is conducted, performed or maintained.

(10) Any accumulation of stagnant water permitted or maintained on any lot or piece of ground.

(11) Dense smoke, noxious fumes, gas, soot or cinders in unreasonable quantities.

Sec. 34-23. Prohibited.

It shall be unlawful for any person to cause, permit, maintain or allow the creation or maintenance of a nuisance.

(Ord. of 8-7-84, § 1)

Sec. 34-24. Notice to abate—Issuance.

Whenever a nuisance is found to exist within the city or within the city's extraterritorial jurisdiction, the county health department or a duly designated officer of the city shall give written notice to the owner or occupant of the property upon which such nuisance exists or upon the person causing or maintaining the nuisance.

(Ord. of 8-7-84, § 2)

Sec. 34-25. Same—Contents.

The notice to abate a nuisance issued under the provisions of this article shall contain:

(1) An order to abate the nuisance or to request a hearing within a stated time, which shall be reasonable under the circumstances.

(2) The location of the nuisance, if such nuisance is stationary.

(3) A description of what constitutes the nuisance.

(4) A statement of actions necessary to abate the nuisance.

(5) A statement that if the nuisance is not abated as directed and no request for hearing is made within the prescribed time, the city will abate such nuisance and assess the cost thereof against such person.

Sec. 34-26. Same—Service.

The notice to abate a nuisance shall be served as any other legal process may be served pursuant to law.

(Ord. of 8-7-84, § 2)

State law reference(s)—Issuance of notice, MCA 1972, § 21-19-11.

Sec. 34-27. Abatement by city.

Upon the failure of the person upon whom notice to abate a nuisance was served pursuant to the provisions of this article to abate such nuisance, the county health department or a duly designated officer of the city shall proceed to abate such nuisance and shall prepare a statement of costs incurred in the abatement thereof.

(Ord. of 8-7-84, § 2)

Sec. 34-28. City's costs declared lien.

Any and all costs incurred by the city in the abatement of a nuisance under the provisions of this article shall constitute a lien against the property upon which such nuisance existed, which lien shall be filed, proven and collected as provided for by law. Such lien shall be notice to all persons from the time of its recording, and shall bear interest at the legal rate thereafter until satisfied.

(Ord. of 8-7-84, § 3)

Sec. 34-29. Enforcement.

In addition to any other provisions or authority of this chapter, or otherwise provided for by law, any person, including but not limited to the owner(s), leasee(s), officers of any corporation, partners in any partnership or members of any limited liability company or other possessors in interest of any building or premises or part thereof where any violation of this chapter shall occur, shall be guilty of a misdemeanor and shall be liable for a fine of not more than $1,000.00 and/or 30 days in jail, or both and each day such violation shall be permitted to exist shall constitutes a separate offense.

(Ord. of 12-16-03(1), § 1)

Secs. 34-30. Reserved.

Sec. 18-61. Adoption.

The following codes, with amendments and subject to identified modifications, amendments and exclusions, as provided herein, are hereby adopted by reference as though they were copied herein fully and pertain to activities occurring within the City of Brandon, Mississippi.

1. The International Building Code, 2018 Edition, with amendments. Subject to the following:
    a. Delete Chapter 13 Energy Efficiency.
    b. Section 101.1 replace "Name of Jurisdiction" with "The City of Brandon, Mississippi".
    c. Delete Section 103 Department of Building Safety.
    d. Delete Section 113 Board of Appeals.
    e. Table 506.2 add note "j: Group R-1 shall not be allowed to be Type III, IV, or V construction".
    f. Section 1612.3 replace "Insert Name of Jurisdiction" with "The City of Brandon, Mississippi" and replace "Insert Date of Issuance" with "June 9, 2014".
    g. Adopt Appendix E Supplementary Accessibility Requirements.
    h. Adopt Appendix F Rodent Proofing.
2. The International Residential Code, 2018 Edition, with amendments. Subject to the following:
    a. Section R101.1 replace "Name of Jurisdiction" with "The City of Brandon, Mississippi".
    b. Delete Section R103 Department of Building Safety.
    c. Section R105.2 delete Building: #1.
    d. Delete Section R112 Board of Appeals.
    e. Table R301.2(1) Climatic and Geographic Design Criteria, insert:

Ground Snow Load:	5 lbs. psf	
Wind Speed:	115 mph	
Topographic Effects:	No	
Special Wind Region:	No	
Seismic Category:	B	
Weathering:	Moderate	
Frost Line Depth:	2 inches	
Termite:	Very heavy	
Winter Design Temp:	25°F	
Ice Barrier Required:	No	
Flood Hazards:	Map Number	Date
	28121C0183F	June 9, 2014
	28121C0184F	June 9, 2014
	28121C0191F	June 9, 2014
	28121C0192F	June 9, 2014
	28121C0193F	June 9, 2014
	28121C0194F	June 9, 2014
	28121C0205F	June 9, 2014
	28121C0211F	June 9, 2014
	28121C0215F	June 9, 2014
	28121C0220F	June 9, 2014

	28121C0335F	June 9, 2014
	28121C0355F	June 9, 2014
Air Freezing Index:	150	
Mean Annual Temp:	64°	

f. Section R313.2 replace "shall be installed in one- and two-family dwellings" with "shall not be required in one- and two-family dwellings."

g. Section P2603.5.1 replace "Number" with "12 inches (304 mm)" and replace "Number" with "12 inches (304 mm.)".

h. Adopt Appendix E Manufactured Housing Used as Dwellings.

i. Adopt Appendix F Radon Control Methods.

j. Adopt Appendix J Existing Buildings and Structures.

3. The International Mechanical Code, 2018 Edition, with amendments. Subject to the following:

a. Section 101.1 replace "Name of Jurisdiction" with "The City of Brandon, Mississippi".

b. Delete Section 103 Department of Mechanical Inspection.

c. Section 106.5.2 replace "Jurisdiction to Insert Appropriate Schedule" with "See Brandon Code of Ordinances, Article II, Section 18-34 Permit Fees".

d. Section 106.5.3 replace "Specify Percentage" with "50%" and replace "Specify Percentage" with "50%".

e. Section 108.4 replace "Specify Offense" with "Misdemeanor" and replace "Amount" with "$1,000.00" and replace "Number of Days" with "90 days".

f. Section 108.5 replace "Amount" with "$500.00" and replace "Amount" with "$500.00".

g. Delete Section 109 Means of Appeal.

4. The International Plumbing Code, 2018 Edition, with amendments. Subject to the following:

a. Section 101.1 replace "Name of Jurisdiction" with "The City of Brandon, Mississippi".

b. Delete Section 103 Department of Plumbing Inspection.

c. Section 106.6.2 replace "Jurisdiction to Insert Appropriate Schedule" with "See Brandon Code of Ordinances, Article II, Section 18-34 Permit Fees".

d. Section 106.6.3 replace "Specify Percentage" with "50%" and replace "Specify Percentage" with "50%".

e. Section 108.4 replace "Specify Offense" with "Misdemeanor" and replace "Amount" with "$1,000.00" and replace "Number of Days" with "90 days".

f. Section 108.5 replace "Amount" with "$500.00" and replace "Amount" with "$500.00".

g. Delete Section 109 Means of Appeal.

h. Section 305.4.1 replace "Number" with "12 inches (304 mm)" and replace "Number" with "12 inches (304 mm)".

i. Section 903.1 replace "Number" with "6 inches (152 mm)".

5. The International Fuel Gas Code, 2018 Edition, with amendments. Subject to the following:

a. Section 101.1 replace "Name of Jurisdiction" with "The City of Brandon, Mississippi".

b. Delete Section 103 Department of Inspection.

c. Section 106.6.2 replace "Jurisdiction to Insert Appropriate Schedule" with "See Brandon Code of Ordinances, Article II, Section 18-34 Permit Fees".

d. Section 106.6.3 replace "Specify Percentage" with "50%" and replace "Specify Percentage" with "50%".

e. Section 108.4 replace "Specify Offense" with "Misdemeanor" and replace "Amount" with "$1,000.00" and replace "Number of Days" with "90 days".

f. Section 108.5 replace "Amount" with "$500.00" and replace "Amount" with "$500.00".

g. Delete Section 109 Means of Appeal.

h. Section 310.1 insert "All gas systems shall be bonded".

6. The International Fire Code, 2018 Edition, with amendments. Subject to the following:

a. Section 101.1 replace "Name of Jurisdiction" with "The City of Brandon, Mississippi".

b. Delete Section 109 Board of Appeals.

c. Section 110.4 replace "Specify Offense" with "Misdemeanor" and replace "Amount" with "$1,000.00" and replace "Number of Days" with "90 days".

d. Section 112.4 replace "Amount" with "$500.00" and replace "Amount" with "$500.00".

e. Section 507.5.5 insert "and fire sprinkler risers".

f. Section 903.2.3 Group E, revise to read "An automatic sprinkler system shall be provided for all Group E occupancies" and delete 1, 2, and 3.

g. Section 903.2.6 Group I remove the exceptions.

h. Add new Section 903.7 "Group B. An approved automatic sprinkler system shall be provided throughout buildings containing Group B occupancy where one of the following conditions exists:

1. Where a Group B fire area exceeds 10,000 total gross floor area.

2. Where a Group B is located three or more stories above plane or one story below plane".

i. Add new Section 1203.2.19 "Group R-1 occupancy. Emergency stand-by power shall be provided in all R-1 which are two or more stories in height to power at least one elevator, emergency lights, exit signs, fire alarm system, and automatic sprinkler system fire pumps".

j. Section 903.2.1.1 Group A-1 item number 1 replace "12,000 square feet" with "10,000 square feet".

k. Section 903.2.1.3 Group A-3 item number 1 replace "12,000 square feet" with "10,000 square feet".

l. Section 903.2.1.4 Group A-4 item number 1 replace "12,000 square feet" with "10,000 square feet".

m. Section 903.2.4 Group F-1 item number 1 replace "12,000 square feet" with "7,500 square feet".

n. Section 903.2.7 Group M item number 1 replace "12,000 square feet" with "10,000 square feet".

o. Section 903.2.9 Group S-1 item number 1 replace "12,000 square feet" with "10,000 square feet total gross floor area".

p. Section 903.2.9.1 Repair garages item number 1 replace "12,000 square feet" with "4,000 square feet total gross floor area".

q. Section 903.2.9.1 Repair garages item number 2 replace "12,000 square feet" with "4,000 square feet total gross floor area".

r. Add new Section 903.2.10.2 "Group U Miscellaneous. An automatic sprinkler system shall be provided throughout all buildings 10,000 or more square feet gross floor area".

s. Adopt Appendix B Fire-Flow Requirements for Buildings.

t. Adopt Appendix C Fire Hydrant Locations and Distribution.

u. Adopt Appendix D Fire Apparatus Access Roads.

v. Adopt Appendix E Hazard Categories.

w. Adopt Appendix F Hazard Ranking.

7. The International Property Maintenance Code, 2018 Edition, with amendments. Subject to the following:

a. Section 101.1 replace "Name of Jurisdiction" with "The City of Brandon, Mississippi".

b. Delete Section 103 Department of Property Maintenance Inspection.

c. Delete Section 111 Means of Appeal.

d. Section 112.4 replace "Amount" with "$500.00" and replace "Amount" with "$500.00".

e. Section 302.4 replace "Jurisdiction to Insert Height in Inches" with "12 inches (104 mm)".

f. Add "Section 302.4.1 Vegetation planted and maintained for landscaping purposes or for erosion control shall be exempt from the requirements of this Section".

g. Add "Section 302.4.2 Vegetation located beyond fifty feet (50') from the back of curb or edge of pavement on a lot over one acre that is in a natural state shall be exempt from the requirements of this Section".

h. Add "Section 302.4.3 Vegetation located on an unimproved, cleared lot shall be maintained to prohibit vegetation over 24 inches in height".

i. Add "Section 302.7.1 Mailboxes. All mailboxes shall be maintained structurally sound and in good repair, to include the box, post, and all attachments".

j. Section 302.8 Motor vehicles. Add "(including lawn mowers, and other motorized equipment)".

k. Add "Section 302.8.1 Minor repairs (changing oil, air filter replacement, spark plugs, brakes, tires, shocks, etc.) and servicing (car washing, detailing, accessory installation, audio installation, etc.) are permitted in the residentially zoned districts. Minor repairs of any vehicle performed other than within a fully enclosed building shall not exceed a seventy-two (72) hour period of time".

l. Add "Section 302.8.2 Minor repairs, major repairs and servicing as stated are only permitted on vehicles registered to the property owner or tenant of the said property on which the repairs or servicing are conducted. Vehicle repair and servicing shops are prohibited within any residential district".

m. Add "Section 302.10 Construction Projects. The following conditions shall be prohibited in residentially zoned districts:

i. Construction projects that are on-going for more than six (6) months and in which active work has not occurred. Construction projects with a valid building permit may request a time extension due to extenuating circumstances.

ii. Storage of construction, repair, or maintenance materials or equipment that are not associated with an active construction project or building permit.

iii. Construction debris, building materials, and refuse remaining on property for more than thirty (30) days.

iv. Stockpiles of dirt, sand, gravel, rock, mulch in excess of fourteen (14) days.

v. Construction projects shall be maintained and shall be free of garbage and rubbish".

n. Add "Section 302.11 Maintenance of Right-of-Way. It is the responsibility of the property owner to keep any alley or adjoining street right-of-way that abuts the owner's property mowed and free of trash and debris including edging, weed eating, and excess clipping removal. Excess clippings shall not be left, blown, or disposed of in the street or in storm sewer drains. The maintenance responsibility of waterways and ditches located within the right-of-way shall be subject to the dedication language on filed deeds, agreements, plats, or easements associated with the property".

o. Add "Section 302.12 Demolition and Reconstruction. Any property that is damaged or destroyed by fire or other acts of nature shall be demolished or repairs or reconstruction must begin within six (6) months of the damage or destruction".

p. Add "Section 302.13 Garage or Carport. All materials, equipment, or other items of personal property shall not be stored inside a carport to the extent that such storage prevents the use of a carport for the parking of the number of motor vehicles for which the carport is designed. Garages used for the accumulation or storage of personal property that are visible from public view shall be kept closed at all times except during ingress and egress from the garage. Concrete blocks, lumber, buckets, and other accumulations of items shall be stored in a storage building, garage, or behind a fence or wall out of public view".

q. Section 304.14 replace "Date" with "January 1" and replace "Date" with "December 31".

r. Add "Section 308.4 Garbage or Refuse Containers. Garbage or refuse containers shall be stored out of public view except when placed for collection or when stored in an open carport or garage. Garbage or refuse containers shall be returned to the storage location not later than 8:00 am the day following collection".

s. Add "Section 402.4 Exterior Lights. It shall be unlawful for any exterior light to shine directly toward an adjacent property".

t. Section 602.3 replace "Date" with "October 1" and replace "Date" with "April 15".

u. Section 602.4 replace "Date" with "October 1" and replace "Date" with ''April 15".

v. Add "Section 704.8 All multi-family units and single-family rental units shall have at least one fire extinguisher rated as 2:A 10:BC. This fire extinguisher shall be mounted and kept in a conspicuous and easily accessible location and shall be kept in a good working condition at all times".

8. The National Electrical Code, 2017 Edition.

9. The International Swimming Pool and Spa Code, 2018 Edition.

10. The International Existing Building Code, 2018 Edition.

a. Section 101.1 replace "Name of Jurisdiction" with "The City of Brandon, Mississippi".

A copy of each code with appendices thereto as set forth herein shall be certified by the mayor and the city clerk and shall be filed as a permanent record in the office of said clerk.

(Code 1982, §§ 8-10—8-16; Ord. of 12-6-94; Ord. of 9-2-97; Ord. of 12-7-04(1), § 1; Ord. of 7-1-08(1), § 1; Ord. of 7-1-08(2), Exh. A; Ord. of 5-18-15, § 1; Ord. of 6-15-15, § 1; Ord. of 8-7-17(1), § 1; Ord. of 8-6-18, § 1; Ord. of 7-19-21(1) , § 1)

Sec. 66-9. Junked vehicles, appliances and equipment.

It shall be unlawful for any person in possession, charge or control of any residential or nonpermitted business premises to keep, cause to be kept, or allow the keeping on any premises within the city junked vehicles, appliances and/or equipment. The depositing, keeping or causing to be deposited or kept on any residential or nonpermitted business premises within the city junked vehicles, appliances, and/or equipment is likewise declared a public nuisance. The police department and supervisory employees of the department of sanitation, including the zoning and building administrator are hereby authorized to inspect any premises in the city for the purpose of enforcing the requirements of this section.

(Ord. of 10-19-93, § 12-16)

Cross reference(s)—Nuisances generally, § 34-21 et seq.

2.11 Obstructions causing health or safety hazard prohibited.

No rubbish, salvage materials, junk or hazardous waste materials including inoperable vehicles and parts and any combustible matter, shall be openly stored, allowed to accumulate or kept in the open, and no weeds and other growth shall be allowed to go uncut within any district when the same shall be determined by the appropriate city official (the building inspector, fire chief, or other authorized city employee) or health official to constitute a menace to the public health and/or safety.

Sec. 58-71. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Junkyard means any place where three or more automobiles not in operating condition are located within ten feet of each other.

(Code 1982, § 9-51)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 58-72. Location restricted.

It shall be unlawful for any person to operate a junkyard within 200 yards of U.S. Highway No. 80 or Mississippi Highway Nos. 18, 468 and 471, in the city.

(Code 1982, § 9-50)

Sec. 66-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Collector, professional, private, means a private business engaged in the collection and disposal of refuse for a profit.

Collector, special private means a private business or individual engaged in the collection and disposal of refuse for purposes other than a profit.

Container means plastic or chemically-treated paper sacking of at least ten gallons, but not to exceed a 35-gallon capacity. Plastic containers must be at least two mils thickness and both plastic sacking and chemically-treated paper sacking must be of such design to permit secure closure when filled.

Garbage means waste foodstuffs of vegetable or animal origin, together with other incidental admixtures.

Junked appliances and equipment means all ice boxes, refrigerators, stoves, washing machines, hot water tanks, and any type equipment in a state of disrepair and rendered inoperative.

Junked or abandoned vehicles means any vehicle which is in a state of disrepair and incapable of being moved under its own power or rendered inoperative by reason of the lack of essential parts, such as wheels, motor, radiator, or other essential components; but shall not include antique vehicles, as hereinafter provided.

Public view means an area capable of observance by persons from any public way.

Public way means any street, alley or similar parcel of land essentially unobstructed from the ground to the sky, which is deeded, dedicated or otherwise permanently appropriated to the public for public use.

Rubbish means the waste materials from normal household or living conditions other than garbage, but not to include garden, lawn or tree trimmings, leaves or waste materials from building construction or repair.

Superintendent means the superintendent of sanitation for the city as appointed by the mayor and board of aldermen.

(Ord. of 10-19-93, § 12-1; Ord. of 6-6-11, § 1)

Cross reference(s)—Definitions generally, § 1-2.