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Honorable James E. Turnbach
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Municipalities – Public Nuisance – Demolition – Etowah County

The City of Glencoe is not required to adopt the provisions of sections 11-53A-1 through 11-53A-6 of the Code of Alabama to demolish structures it determines are unsafe.

Dear Mr. Turnbach:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Glencoe.

QUESTION

Must the City of Glencoe ("City") adopt the provisions of sections 11-53A-1 through 11-53A-6 of the Code of Alabama to demolish structures that the City determines constitute a nuisance to public safety?

FACTS AND ANALYSIS

According to your request, the City, a class 8 municipality, has adopted an ordinance incorporating the International Property Maintenance Code ("IPMC") as its procedure for the demolition of unsafe structures. The IPMC is published by the International Code Commission and is used by numerous Alabama municipalities to govern due-process procedures for abating public nuisances, including, where necessary, the demolition of structures determined to be a nuisance to public health or safety. A municipality may adopt a standard code, such as the IPMC, by

reference to that code without the need for setting out the entire text of the code in the municipal ordinance. ALA. CODE § 11-45-8(c) (Supp. 2012).

"[I]t is settled that in the exercise of the police power, a state may take, damage, or destroy private property without compensation, when the public necessity, the public health, or the public safety require it be done." *Ashe v. City of Montgomery*, 754 F. Supp.2d 1311, 1315 (M.D. Ala. 2010). Section 11-47-117 of the Code of Alabama grants authority to a municipality to remove personal property in an abatement proceeding. *Id.* "A city is authorized to demolish blight, nuisance, or dangerous conditions and assess the cost of such action against the landowner pursuant to section 11-47-117 of the Code of Alabama." Opinion to Honorable Clay Tinney, Counsel, City of Roanoke, dated February 29, 2012, A.G. No. 2012-041 at 3. Such authority, however, is limited, and a municipality must comply with due-process safeguards. *Ellis v. City of Montgomery*, 460 F. Supp. 2d 1301, 1304 (M.D. Ala. 2006).

Sections 11-53A-1 through 11-53A-6 of the Code provide a statutory procedure for Class 5, 6, and 8 municipalities to demolish unsafe structures. The City, however, is reluctant to adopt these provisions because the procedure provided for therein requires the establishment of a "housing code abatement board" to be comprised of citizens appointed by the governing body of the municipality. ALA. CODE § 11-53A-2 (2008). Pursuant to the statute, each member of the governing body of the municipality appoints one member to the board. *Id.* Due to the difficulty in recruiting a sufficient number of interested citizens to fill the "housing code abatement board," it is the desire of the City to continue to follow its ordinance adopting the provisions of the International Property Maintenance Code rather than the provisions of sections 11-53A-1 through 11-53A-6 of the Code.

In addition to the general powers in sections 11-47-117 of the Code, this Office has recognized numerous alternative provisions of the Code that authorize municipalities to demolish buildings and structures determined to be unsafe. *See, e.g.* opinion to Honorable Dan Williams, Mayor, City of Athens, dated August 15, 2007, A.G. No. 2007-124 (sections 11-53B-1 through 11-53B-16 and sections 11-40-30 through 11-40-36 provide alternative methods for a municipality to demolish unsafe structures); opinion to Honorable Rolen Burr, Mayor, Town of Brookside, dated March 7, 1983, A.G. No. 83-00211 (section 11-43-59 authorizes a municipality to adopt building codes and to condemn buildings determined to be unsafe).

Similar to the statute examined in the *Williams* opinion, section 11-53A-6 states that "[t]his article (sections 11-53A-1 through 11-53A-6) shall be cumulative in its nature, and in addition to any and all power and authority which any city may have under any other law." ALA. CODE § 11-53A-6 (2008). Accordingly, sections 11-53A-1 through 11-53A-6 of the Code merely provide another alternative statutory procedure that a municipality may utilize to demolish unsafe structures.

Therefore, it is the opinion of this Office that the City is not required to adopt the provisions of sections 11-53A-1 through 11-53A-6 of the Code. The City, under sections 11-47-117 and 11-45-8 of the Code may, by ordinance, adopt the IPMC as the City's procedure for condemning unsafe buildings provided that the IPMC provides adequate due-process safeguards.

CONCLUSION

The City of Glencoe is not required to adopt the provisions of sections 11-53A-1 through 11-53A-6 of the Code of Alabama to demolish structures it determines are unsafe.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

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