

# Using Municipal Ordinances To Maintain Quality of Life In Cities

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GUEST EXPERT



Credit: Maciek Lulko

**The City of Mobile, Alabama Environmental Court docket** is both unusual and complex. It has evolved from a means to address littering and unsightly yards into a multipurpose docket handling a myriad of issues within the City. This includes tax and revenue violations, residential maintenance and upkeep violations, among others. These issues are addressed through the enforcement of municipal law, specifically municipal ordinances.

The public generally knows that there are two types of law: criminal and civil. In basic terms, criminal law involves a government entity's prosecution of people charged with crimes, and ends in a finding of either guilt or innocence. Civil law

involves private individuals and businesses suing for a wrong committed that produced harm. But very few know that municipal law can act as a hybrid of the two realms of law. For a municipal attorney, the day can vary from prosecuting defendants for violating both state law and municipal ordinances to defending civil suits brought against the municipality, or even filing civil suits on behalf of the municipality. This article explores one unique instance of civil and criminal combining in municipal law in the City of Mobile: The Environmental Court docket. This article will also discuss the challenges that can arise as a result of combining civil and criminal law and best practices for a municipality in enforcing its own municipal ordinances.

## Ordinance Drafting

Much of municipal law centers around the enforcement of municipal ordinances. Municipalities must take care that the ordinances it enacts do not overstep the bounds prescribed by state law. In *Congo v. State*, for example, the Alabama Court of Criminal Appeals wrestled with whether a Huntsville, Alabama municipal ordinance banning public intoxication conflicted with a state statute addressing similar conduct.<sup>1</sup> The appellant argued that the state statute required more than just mere presence in public along with intoxication, which is what the municipal ordinance prohibited. The Court upheld the municipal ordinance, reasoning that an ordinance requiring more than what the state law requires does not in itself deem an ordinance invalid, unless the state law specifically disallows it.<sup>2</sup> The state law for public intoxication does not have such provisions.<sup>3</sup> As the court explained:

Whether an ordinance is inconsistent with the general law of the State is to be determined by whether the municipal law prohibits anything which the State law specifically permits. An ordinance which merely enlarges upon the provision of a statute by requiring more restrictions than the statute requires creates no conflict unless the statute limits the requirement for all cases to its own terms.<sup>4</sup>

Municipal ordinance drafting begins with the local elected officials, usually a city or town council, being made aware of an issue within the city that needs to be addressed. Oftentimes citizens will contact their elected representative, who will create and present a draft of a proposed ordinance to the council for discussion and eventually for a vote. Many councils employ legal counsel of their own to research and draft ordinances to make sure that they do not run afoul of state law or the constitutional rights of citizens. Ordinances set out clear requirements, and prescribe a remedy for violation of the ordinance, be it a monetary fine or incarceration. Once an ordinance is passed, it is recorded and published with a date stating when it will become effective. Once effective, enforcement can take place.

Some ordinances simply adopt state law so that municipal ordinance enforcement officers, not just sworn law enforcement officers, can enforce municipal ordinance violations. In Mobile these matters usually are addressed during the Environmental Court docket that is held once a week in front of a municipal court judge. Though it is called

the “environmental docket”, cases on the docket range from animal cruelty to unauthorized tree mutilation to junk cars littering yards. While different, each of these ordinances address a municipality’s desire to maintain a high standard for quality of life for all citizens, even those on four legs.

One instance of a municipal ordinance adopting a state law is § 7-25 of the City of Mobile Code of Ordinances (1991). This particular code section deals with animal cruelty, defining it as “[a]ny person or corporation committing the offense of cruelty to animals within the corporate limits of the city which is declared by law or laws of the state now existing.”<sup>5</sup> It adopts Ala. Code § 13A-11-14 and § 13A-11-241 (1975), which address the same conduct on a state level.<sup>6</sup> By adopting the state law as a municipal ordinance, the City of Mobile can then task its Animal Control Officers (who are not sworn law enforcement officers) to investigate and charge offenders with violations of the ordinances. This accomplishes several goals. First, it can free up the police department from investigating and responding to such calls. For a municipality as large as the City of Mobile, cases of suspected animal cruelty can quickly overwhelm an already overworked force. Although best practice would be to have tickets issued by sworn law enforcement officers, the use of municipal enforcement offices is a great way to conserve resources. Tight budgets and dwindling resources for many municipalities means only the most egregious cases will likely be addressed by a sworn law enforcement officer. Second, it allows people specifically trained in the handling of all types of animals to respond quickly to the scene to document municipal violations, ensuring the best and safest outcome for both animal and human.

## Ordinance Enforcement and Prosecution

Enforcing ordinances enacted by a municipality requires municipal code officers and law enforcement officers to understand and uphold the principles of Due Process at every stage, from the investigation to the charging instrument, and throughout the prosecution thereof.

As with any law, the first step in making sure enforcement and prosecution of a municipal ordinance violation is proper is to put the citizens of the municipality and others on notice as to what the law is in that municipality. Any ordinance that is enacted must be published. Once published, the citizens of that municipality are deemed to be on notice as to what conduct is or is not allowed.





Once a municipal enforcement officer or sworn law enforcement officer determines that there is probable cause to believe that a violation has taken place, they are tasked with properly notifying the citizen of such violation through a charging instrument. Three types of instruments used in Mobile Municipal Court include a Municipal Offense Ticket (MOT), a Uniform Nontraffic Citation and Complaint (UNTCC) and a Criminal Complaint and Summons. MOTs and Summons /Complaints can be used by sworn law enforcement or municipal enforcement officers, whereas UNTCCs can only be issued by sworn law enforcement officers. With each of these, the officer must detail which ordinance was violated and how. They must also notify the offender when to appear in court to address the violation or how they can pay the fine and necessary court costs in lieu of a court appearance. Ideally, the charging instrument tracks the language of the statute to include the elements of the offense needed to prove the offense and satisfy Due Process. Charging instruments must also be clear and concise; it is not necessary and sometimes detrimental to put more than what is necessary to prove the violation.

### Who to Charge

Not only can citizens be charged with violations of municipal ordinances but businesses can as well. Serving business with a notice of violation of a municipal ordinance can be tricky, but there are best practices.

If a business is found to be in violation of an ordinance, the charging instrument shall be written to the registered agent of the business. In Alabama, that information can be found on the Secretary of State's Business Entity search option on its website. Often, the registered agent does not live within the city limits of the municipality. In that case, best practice is to serve notice on the business itself, either a manager or owner if one can be located. There are plenty of instances when, after exhausting all efforts to serve notice to an offending party, the civil law realm of municipal law must step in. Property owners and business can be brought before the city or town council to be declared nuisances, which then allows for other avenues to be explored, such as placing liens on property.





## Conclusion

Municipalities of all sizes must take care to ensure ordinances enacted do not overstep the bounds prescribed by state law or the ordinance could be deemed invalid. Counsel for municipalities must be sure to inform municipal ordinance officers on the best practices for notifying citizens of a violation of a municipal ordinance through the charging instruments available to them, keeping in mind principles of Due Process. Lastly, there must be a holistic approach to prosecuting businesses in violation of municipal ordinances, to include not only criminal liability, but civil liability as well. The Environmental Docket does that by having both a prosecutor and a judge who understands the challenges of this quasi-criminal area of law. The end goal is to ensure that ordinances enacted by a municipality address the needs and concerns of that municipality's citizens, giving them a greater role in the stewardship of the place they call home. 🐾

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## Endnotes

1. 409 So.2d 475 (Ala.Ct.Crim.App 1981).
2. *Id.* at 478 (“In the case before us, Huntsville’s ordinance does not contravene a State law; it does not, by its terms, prohibit something which the corresponding State statute affirmatively allows”).
3. Ala. Code § 13A-11-10 (1975).
4. *Congo v. State*, 409 So.2d 475, 478 (Ala.Ct.Crim.App. 1981).
5. § 7-25 City of Mobile Code of Ordinances (1991).
6. Ala. Code § 13A-11-14(a): A person commits the crime of cruelty to animals if, except as otherwise authorized by law, he or she recklessly or with criminal negligence: (1) Subjects any animal to cruel mistreatment; or (2) Subjects any animal in his or her custody to cruel neglect; or (3) Kills or injures without good cause any animal belonging to another.  
Ala. Code § 13A-11-241: (a) A person commits the crime of cruelty to a dog or cat in the first degree if he or she intentionally tortures any dog or cat or skins a domestic dog or cat or offers for sale or exchange or offers to buy or exchange the fur, hide, or pelt of a domestic dog or cat. (b) A person commits the crime of cruelty to a dog or cat in the second degree if he or she, in a cruel manner, overloads, overdrives, deprives of necessary sustenance or shelter, unnecessarily or cruelly beats, injures, mutilates, or causes the same to be done.