

# Ordinance Handbook

Alabama Limited Self-Governance Act

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# Overview of Health and Safety Powers under The Alabama Limited Self-Governance Act

## Regulatory Authority under Limited Self-Governance Act

Counties which have passed a referendum allowing the county commission to exercise certain health and safety powers under the Alabama Limited Self-Governance Act may adopt ordinances to implement rules and procedures for the abatement of the following public nuisances:

- Weeds
- Control of animals
- Litter
- Junkyards
- Noise
- Unsanitary Sewage
- Pollution

*See, Ala. Code § 11-3A-2(a).*

## Limitations on Regulatory Authority

Regulation is limited to the unincorporated areas of the county, except by contract with a municipality or municipal instrumentality. In addition, regulation by the county may not affect any of the following:

- Property, affairs, or powers of any municipal government or municipal or public corporation;
- Construction, maintenance, operation, or removal of any water, sewer, gas, telecommunications, or electric utility facilities, including municipal water and sewer systems;
- Rights granted to agricultural, manufacturing, or industrial plants or to farming operations;
- Business activities of businesses regulated by the federal Surface Transportation Board, Public Service Commission, Department of Agriculture and Industries, or Department of Environmental Management;
- Environmental easements;
- Any use of private property authorized by Alabama's law or Constitution;
- Any mining activities which have been granted a federal or state permit;
- Expansion of municipal utilities into the county as otherwise provided by law.

Additionally, counties are specifically prohibited under *Ala. Code § 11-3A-2(d)* from using any powers to:

- Levy or collect taxes or
- Implement planning and zoning

## Controlling Law

The Limited Self-Governance Act addresses the interplay between the county's authority to regulate and other existing or future state or local laws.

1. The county commission cannot exercise powers on any matter the Legislature has preempted by operation of law.
  - In other words, counties may only regulate in areas where there is no state law regulating a particular issue.
2. The powers shall not be limited or superseded by local law enacted after May 26, 2005.
3. The law is not intended to diminish or preempt any previously-enacted local law. Instead, the law and the previously-enacted local law are to be read together.

*See, Ala. Code § 11-3A-2(c).*

## Authority to Assess Fees and Penalties

Counties have limited power to establish administrative fees under the law.

- Fees can only be charged for administering the powers authorized in the law.
- Fees cannot exceed the actual cost of implementation and enforcement of an ordinance adopted under the law.
- No assessments, rates, fees, or service charge may be imposed unless specifically related to services provided or powers exercised with respect to property.
- There is a specific prohibition against utilizing the powers to levy or collect a tax, so all fees and penalties must be related to services provided.

*See, Ala. Code § 11-3A-3(c) and (d).*

Counties also have limited power to establish and enforce administrative and civil penalties.

- Any fine for violating a county ordinance may not exceed \$150 per day.
- Each day in which there is a violation of the ordinance is considered a separate offense and can produce an additional fine of not more than \$150.
- The total fine for each offense shall not exceed \$5,000.
- All fines are paid into the county general fund earmarked for administration of the ordinances adopted through the Act.

*See, Ala. Code § 11-3A-3(e)*

## Other Enforcement Tools

In addition to the assessment of civil and administrative fines and penalties, the Limited Self-Governance Act authorizes the county to file an action in the circuit court of the county seeking compliance with the law through a civil or equitable action. This means that the county could file the following lawsuits in court:

1. A civil action against the violator to recover unpaid fines and penalties assessed pursuant to an ordinance, or
2. An action for injunctive relief asking the court to require the violator to comply with a certain provision or prohibit certain activity. Examples include the following:
  - Seeking an order requiring the removal of “junk” cars stored in violation of the county’s ordinance.
  - Seeking an order prohibiting a person from operating a junkyard without the proper license or permit required under the ordinance.
  - An action for contempt of a prior court order issued against the violator.

### Other Statutory Provisions

While the Limited Self-Governance Act grants counties broad authority to adopt ordinances in the unincorporated areas of the county related to any or all of the powers enumerated in the law, there are also other statutory provisions addressing many of these areas. These statutes complement the authority granted in the limited self-governance law, and counties should include consideration of other laws in developing programs and regulation under the Limited Self-Governance Act.

While certainly not a complete list, some examples of state statutes to consider are as follows:

- Ala. Code, § 11-80-10 – Junkyards
- Ala. Code, § 22-27-1 et seq. – Solid Waste Nuisances
- Title 3 of Ala. Code – Animal Control Laws
- Ala. Code, § 13A-7-29 – Criminal Littering

# Developing and Adopting Ordinances under The Alabama Limited Self-Governance Act

## Suggested Steps

### Develop a Plan and Policy

Before the county can begin to draft and implement an ordinance implementing one of the powers authorized by the Limited Self-Governance Act, very careful and detailed planning must take place. The ordinance is, in effect, a “law” applicable in the unincorporated areas of the county, and must be written with that in mind. Therefore, counties will not be able to simply draw an “outline” or “overview” of what it wants to accomplish. Instead, each and every detail of the program must be addressed in the ordinance.

To do this properly, the county must make decisions about each aspect of the ordinance: what to regulate; how to regulate; what personnel and monies should be assigned to administration and enforcement. Additionally, the county must be very careful to make sure that its ordinance complies with all requirements of the law and does not violate any of the prohibitions or limitations set out in the law.

In addition to researching the authority granted under the Limited Self-Governance Act, the county may also need to study other state laws addressing the same subject as proposed ordinances. For example, prior to adopting an ordinance on animal control, the county should review Title 3 of the Code of Alabama, which contains the general laws relating to animals. And if the county is considering an ordinance to regulate junkyards, it should study *Ala. Code § 11-80-10*, which also provides some authority for county regulation of junkyards.

In order to ensure proper enforcement of its ordinance, the county will need to assign its administration and enforcement to specific personnel in the county, and establish a detailed process for issuing citations and collecting fines and penalties. This office will be responsible for notifying alleged violators of the citation, informing them how to make payment of the fees, and providing information on how to appeal to the county commission. This office will also be responsible for collecting fees and keeping accurate records of same, and for bringing court action against violators when necessary or applicable.

It will be very important to involve the county attorney in this process to provide legal and technical assistance in how to set up the program and how to draft the ordinance. Other county personnel may also be essential to the discussion (e.g., the county engineer and/or solid waste officer should help develop programs addressing litter or junkyards; the county license inspector can help develop citations and procedures for issuance and payment of fines).

## Example: Animal Control Ordinance

To help counties work through this process, a sample ordinance (using animal control as an example) is available at <http://selfgov.net/county-resources/>. What follows is a discussion of the types of questions and answers which should be considered and examined by the county in developing its program and its ordinance.

### Draft the Ordinance

Once the framework for the ordinance has been developed, the county will need to actually draft the ordinance prior to its approval. As noted above, involvement of the county attorney will be crucial here.

There is at least one web site ([www.municode.com](http://www.municode.com)) which is a good source for finding sample ordinances which the county can use as a starting point. There are surely others. It would also be a good idea to check with counties that have adopted ordinances under the Limited Self-Governance Act or municipalities in the county that they may have adopted ordinances on a particular issue. Drafting something in line with what municipalities in the county are doing will provide some consistency for the citizens.

### Statutory Ordinance Requirements

When drafting the ordinance, there are several requirements in the Limited Self-Governance Act which counties must be careful to include.

#### 1. **Style of Ordinance**

Pursuant to *Ala. Code § 11-3A-3(a)*, all ordinances adopted under the Limited Self-Governance Act shall be adopted in the following style:

“Be it ordained by the \_\_\_\_\_ County Commission as follows:” followed by each provision contained in the ordinance.

#### 2. **Notice of Violation**

Pursuant to *Ala. Code § 11-3A-2(c)*, all ordinances must provide a process for notifying persons when they are cited for violation of the ordinance.

#### 3. **Appeal Rights**

*Ala. Code § 11-3A-2(c)* also requires that all ordinances include procedures for a person cited for violation of an ordinance to contest the issuance of the citation through appeal to the county commission.

It is recommended that, for consistency, the county commission adopt one set of notice and appeal procedures which can be used for all ordinances adopted under the Limited Self-Governance Act. These procedures should be included as a part of each ordinance adopted. The county may also want to post or prepare a separate policy setting out the general rules for notice and appeal which will be utilized by the county in its exercise of these health and safety powers.

### Public Notice of Proposed Ordinance

Once the county has developed and drafted a proposed ordinance, public notice of the proposed ordinance shall be given for a period of not less than 30 days prior to the county commission meeting at which the ordinance will be considered. Notice must be given in the following manner:

1. Posting notice at the courthouse and any other place the commission deems appropriate.
2. Publication in all newspapers in the county authorized to publish legal advertisements.
  - This notice must appear at least twice beginning three weeks prior to the county commission meeting at which the proposed ordinance will be addressed.
3. All notices shall state the date, time, and location of the meeting at which the proposed ordinance will be considered.
4. All notices must also advise where copies of the proposed ordinance may be obtained for review, but need not include the text of the ordinance.

*See, Ala. Code § 11-3A-3(b).*

### County Commission Consideration of Proposed Ordinance

Following proper notice of the proposed ordinance as drafted, the county commission will be ready to consider and vote on its adoption.

1. The vote on approval of a proposed ordinance must be taken at a regularly scheduled meeting of the county commission.
  - In other words, the commission cannot vote on this issue at a specially called meeting.
2. The county commission may, at its discretion, hold a separate public hearing on the adoption of any proposed ordinance.
  - A separate hearing is **not** required under the law.
  - The commission cannot vote on the proposed ordinance at a separately called public hearing, if one is held.

*See, Ala. Code § 11-3A-3(a).*

### Retention of Ordinances

All ordinances adopted under the Limited Self Governance Act shall be kept in a separate book maintained in the county commission office for that purpose. Additionally, if the county maintains a website, all such ordinances shall be available through the website.

All ordinances must be available for public inspection at all times.

*See, Ala. Code § 11-3A-3(a).*

## Preparation of Ordinances

The most important aspect of adopting ordinances, and the most difficult, will be actually drafting the ordinance. The Association staff has drafted the Sample County Animal Control Ordinance (available at <http://selfgov.net/county-resources/>) to demonstrate for counties how an ordinance should be drawn once all details of the program have been developed. Additionally, in an effort to offer some guidance in how the program should be developed, some of the thought process used in developing the sample is outlined below. It is recommended that the county commission follow a procedure like the one below before drafting an ordinance on any of the subjects authorized in the law:

**1. What authority does the county have to address nuisances related to animals?**

The law grants counties the power to provide for the public welfare, health, and safety related to control of animals and animal nuisances. Does this include dogs running at large, loud barking, rabies control, spay and neuter programs, registration of animals?

The law does provide some protection to farm operations, so any regulation must be careful not to infringe on those rights. Additionally, *Ala. Code § 3-5-1 et seq.* is the state law regarding animals running at large, so it should be reviewed to ensure that the county ordinance does not conflict with the provisions of that law.

**2. What will be the purpose and scope of the animal control program?**

The complaints received from citizens related to dogs and other animals are generally related to animals running loose throughout the county and loud barking. The ordinance should clearly cover these areas, but should it go farther? Perhaps the program can be expanded at some point to address these issues, but since the stated complaints of citizens surround noise and running at large, this ordinance will only address these problems, particularly since there is already a state law regarding rabies control.

**3. Who will be responsible for enforcement of this ordinance?**

In order for this program to be effective, there will need to be a person or persons assigned as the animal control officer to oversee and enforce the program. This needs to be a county employee or individual under contract with the county to ensure that compliance with the ordinance is aggressively pursued and that the program is operated under supervision of the commission. It may also be helpful to enter into an agreement with the sheriff's office to seek some assistance from deputies, but the commission needs to have control of the program, and there needs to be staff specifically assigned to this program.

**4. What activities will be regulated and how?**

The purpose of this program will be to prohibit animal owners from allowing their animals to run at large in the county and to require that their animals do not disturb other citizens to the extent of creating a nuisance through barking, running loose on the property of others,



etc. The ordinance will need to set out what activities are prohibited and “unlawful” and will need to define what will constitute a nuisance which will subject the owner to penalties. See Sections 6, 7, 8, and 9 of the sample ordinance.

**5. How will the activities be regulated?**

In order to obtain compliance with the provisions of the ordinance, there should be penalties for violation. The Limited Self-Governance Act authorizes counties to assess civil penalties and fees for violation of any ordinance established. The ordinance needs to clearly set out what actions can result in penalties and fees, and how and when those fees will be assessed. The law does place limitations on the amount of penalty which can be assessed. Therefore, all penalties and fees must be set with these limitations in mind.

**6. Who will be responsible for compliance with the law?**

For an effective policy and program, it will be important to set out clearly who is required to comply with the provisions of the ordinance and who will be subject to fines and penalties. In order to accomplish this, it will be necessary to specify persons responsible for the proper care and restraint of animals, i.e., the “owner”. To ensure that the ordinance covers all persons who may be caring for the animal, that term should be defined. There are probably other terms which should be specifically defined to make clear what meaning they will have for the purposes of the ordinance. In drafting the ordinance, consider what other terms will need to be given a specific definition.

**7. Who will collect the penalties and fees and how will they be collected?**

The law requires that a violator be given notice of the violation, so a citation should be issued to a person charged with violation of the ordinance. This will be done by the animal control officer. In order to meet “due process” concerns, the citation should include all relevant information about the charge – what the charge is, when payment is due, how to pay it, rights to appeal and risk of court action for the failure to pay.

Since the animal control officer will operate the program, payment should be made to that office, and accurate records of all charges, investigations, and payments must be kept as required by the law.

**8. How to address animals running at large?**

There will be circumstances where an animal is found running at large and the owner or keeper is not readily known. However, since one of the main goals of the program is to try to abate the nuisance of animals roaming around, the animal control officer should have the authority to take loose animals “into custody”. This will require the county to either create an animal shelter or enter into a contract with a private entity to house the animals.

When animals are taken into custody, the county will need to provide some notice and opportunity for the owner to come forward to claim the animal, and when that happens, the owner should be cited for violation of the ordinance. The ordinance will also need to address what action to take in the event the owner does not come forward within a reasonable time to claim the animal.

**9. Should the county recoup the costs for boarding animals?**

The Limited Self-Governance Act grants counties limited authority to charge fees and penalties for “services”, but they must be specifically related to the service and must be earmarked for the administration of the ordinance. A reasonable “boarding fee” should be charged, but should be related to actual cost of boarding the animal.

**10. How to address a violators’ right to appeal?**

The Limited Self-Governance Act requires that a person charged with a violation of any regulation or ordinance adopted by the county be granted the right to appeal to the county commission. For consistency’s sake and to the extent possible, the county may want to develop one set of rules to use for appeal of any of its ordinances, but to ensure that anyone charged has adequate notice of his or her rights, the appeal process should be outlined in the ordinance and should be included in all notices given to the alleged violator.

**11. What if the administrative process fails?**

In addition to the administrative remedies, the Limited Self-Governance Act authorizes the county to file action in the circuit court of the county to enforce the ordinance. While this can be time-consuming and costly, it may be necessary in the event the violator refuses to pay the fines assessed and/or refuses to abate the nuisance in ways such as continuing to let the animal run loose or not adjusting the animal’s behavior to prevent barking or other problems.

The ordinance will need to set out the circumstances under which the county will take the matter to court, such as within so many days of the failure to pay or if the owner is cited three times for the same violation. The ordinance will also need to carefully provide for notice and due process in this event.

**12. Other Issues or concerns?**

There may be many other issues or concerns that the county will want to analyze and decide in adopting ordinances, and the issues will depend, in part, on the health and safety power that the commission is considering. A few examples:

- If the county wanted to implement a more detailed animal control program which included monitoring for proper immunization, it would need to establish procedures which included requiring any animal owner to register his or her animal with the office of animal control and provide proof of immunization. This could include setting fees to cover the cost of administering that portion of the program.

- While not an issue for this animal control ordinance, if the county is considering the regulation of junkyards, it will very likely want to impose a license or permit to operate a junkyard, and will need to consider every aspect of the licensing.
- If the county proposes an ordinance for the abatement of weeds or litter, it will likely want a program similar to those found in municipalities, where the county will, after proper notice to the owner, mow the grass or clean up the litter pile, and then proceed against the owner to recoup the cost of abating the nuisance in addition to assessing fines and penalties for violating the ordinance
- If the county is trying to address unsanitary sewage, it will probably need to develop a program that includes cooperation and participation from the county health department, and may need to take early action to proceed to court for injunctive relief to force abatement of the problem