

ORDINANCE NO. 2022-320

AN ORDINANCE REPEALING AND REPLACING
SECTION 1, CHAPTER 9 OF THE MADISON CITY CODE ENTITLED
“General Penalty”

WHEREAS, the City of Madison City Attorney has recommended that the City Council amend the general penalties for criminal offenses and violations in order to have the municipal penalties for said offenses and violations be consistent and include all maximum fines and penalties allowed under Section 11-45-9 of the Code of Alabama (1975); and

WHEREAS the proposed amendment will benefit the public health, safety, and welfare of the residents of the City of Madison by providing the Court with more adequate sentencing ranges for various crimes;

BE IT ORDAINED by the City Council of the City of Madison, Alabama, that the Madison City Code is hereby amended to replace the following provision of the Code:

Section 1. The language contained within Chapter 1, Section 9 entitled “General penalty” of the Madison City Code, from subsection (b) through (j) is hereby repealed by striking the italicized language contained herein:

(b) Unless a higher penalty is otherwise specified, wherever in this Code, or in any ordinance or resolution of the city, or rule, regulation or order promulgated by any officer or agent of the city under authority duly vested in such officer or agent, any act is prohibited or is declared to be unlawful or a misdemeanor or the doing of any act is required or the failure to do any act is declared to be unlawful or a misdemeanor and no specific penalty is provided for the violation thereof, the violation of any such provision of this Code or any such ordinance, resolution, rule, regulation, or order shall be punished by a fine not less than \$1.00 and not exceeding \$500.00 or by imprisonment at hard labor not exceeding six months, or both; provided, however, that any person found to be in violation of Code of Ala. 1975, § 32-5A-191, shall, upon conviction, be punished in accordance with the provisions set out in such Code of Ala. 1975, § 32-5A-191. Each day any violation of this Code or any such ordinance, resolution, rule, regulation or order shall continue shall constitute a separate offense.

(c) Any person who is convicted under subsection (a) of this section shall be punished by fine, not to exceed \$500.00 or by imprisonment at hard labor upon the streets or public works or in the workhouse or house of correction in the city, not exceeding six months, one or both; and in the event any fine or cost is not presently paid, the municipal judge shall sentence the offender, or person, thus in default to work out the fine and costs at hard labor upon the streets or public works or in the workhouse or house of correction of the city, and persons so sentenced to hard labor shall be allowed not less than \$10.00 for each day's service so performed.

(d) Any person committing an offense within the corporate limits of the city which is declared by a law of the state, now existing or hereafter enacted, to be an offense as defined in Code of Ala. 1975, § 13A-1-2, which is not declared by a law of the state to be a felony, misdemeanor or violation, shall, upon conviction, be punished by a fine of not less than \$1.00 nor more than \$500.00, and/or may be imprisoned or sentenced to labor for the city for a period of not exceeding six months, at the discretion of the court trying the case.

(e) Any person committing an offense within the corporate limits of the city which is declared by a law of the state, now existing or hereafter enacted, to be a violation shall, upon conviction, be punished by a fine of not less than \$1.00 nor more than \$200.00, and/or may be imprisoned or sentenced to labor for the city for a period of not exceeding 30 days, or double the pecuniary gain to the defendant or loss to the victim as authorized in Code of Ala. 1975, § 13A-5-12, at the discretion of the court trying the case.

(f) Any corporation found to be in violation shall, upon conviction, be punished by a fine of not less than \$1.00, nor more than \$500.00, at the discretion of the court trying the case.

(g) In all cases where the same offense is made punishable or is created by different clauses or sections of this Code or of an ordinance, the prosecuting officer may elect under which to proceed; but not more than one recovery shall be had against the same person for the same offense, provided that the revocation of a license or permit, or the abatement of a nuisance and the assessment of the cost thereof shall not be considered a recovery or penalty so as to bar the enforcement of any other penalty.

(h) No penalty shall consist of a fine or sentence of imprisonment exceeding the maximum fine and sentence established under state law for the commission of a substantially similar offense.

(i) Whenever a minimum, but not a maximum, fine or penalty is imposed, the court may in its discretion fine the offender the minimum or any sum exceeding the minimum fine or penalty so imposed, but not exceeding the maximum provided in this section.

(j) No provision of this Code or any ordinance designating the duties of any officer or employee shall be so construed as to make such officer or employee liable for any fine or penalty for a failure to perform such duty, unless the intention of the council to impose such fine or penalty on such officer or employee is specifically and clearly expressed in the section creating the duty.

BE IT ORDAINED by the City Council of the City of Madison, Alabama, that the Madison City Code is hereby amended to replace the proceeding provisions of the Code with the following substituted subsections (b) through (j):

(b) Unless a higher penalty is otherwise specified herein, wherever in this Code or in any ordinance or resolution of the city, or rule, regulation or order promulgated by any officer or agent of the city under authority duly vested in such officer or agent, any act is prohibited or is declared to be unlawful or a misdemeanor or the doing of any act is required or the failure to do any act is declared to be unlawful or a misdemeanor and no specific penalty is provided for the violation thereof, the violation of any such provision of this Code or any such ordinance, resolution, rule, regulation, or order shall be punished by a fine not less than one dollar (\$1.00) and not exceeding five hundred dollars (\$500.00) or by imprisonment at hard labor not exceeding twelve months, or both. Each day any violation of this Code or any such ordinance, resolution, rule, regulation or order shall continue shall constitute a separate offense.

(c) Any person found to be in violation of Code of Ala. 1975, § 32-5A-191, shall, upon conviction, be punished in accordance with the provisions set out in such Code of Ala. 1975, § 32-5A-191.

(d) Any person committing an offense within the corporate limits of the city which is declared by a law of the state, now existing or hereafter enacted, to be a Class A misdemeanor shall, upon conviction, be punished by a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000.00), and/or may be imprisoned or sentenced to labor for the city for a period of not exceeding twelve (12) months,

(e) Notwithstanding any other provisions of law, the maximum fine for every person either convicted for violating any of the following misdemeanor offenses or adjudicated as a youthful offender for such shall be

punishable by a fine not exceeding one thousand dollars (\$1,000.00) or by imprisonment at hard labor not exceeding six (6) months, or both:

- (1): Criminal mischief in the second degree;*
- (2): Criminal mischief in the third degree;*
- (3): Tampering with availability of gas, electricity, or water;*
- (4): Possession of traffic sign, notification, destruction, defacement, etc. of traffic sign or traffic control device; defacement of public building or property;*
- (5): Offenses against intellectual property;*
- (6): Theft by fraudulent leasing or rental;*
- (7): Charitable fraud in the third degree;*
- (8): Illegal possession of food stamps in the third degree.*

(f) Any person committing an offense within the corporate limits of the city which is declared by a law of the state, now existing or hereafter enacted, to be a violation shall, upon conviction, be punished by a fine of not less than \$1.00 nor more than \$200.00, and/or may be imprisoned or sentenced to labor for the city for a period of not exceeding thirty (30) days, or double the pecuniary gain to the defendant or loss to the victim as authorized in Code of Ala. 1975, § 13A-5-12, at the discretion of the court trying the case.

(g) Any corporation found to be in violation shall, upon conviction, be punished by a fine of not less than one dollar (\$1.00), nor more than five hundred (\$500.00), at the discretion of the court trying the case.

(h) In all cases where the same offense is made punishable or is created by different clauses or sections of this Code or of an ordinance, the prosecuting officer may elect under which to proceed; but not more than one recovery shall be had against the same person for the same offense, provided that the revocation of a license or permit, or the abatement of a nuisance and the assessment of the cost thereof shall not be considered a recovery or penalty so as to bar the enforcement of any other penalty.

(i) No penalty shall consist of a fine or sentence of imprisonment exceeding the maximum fine and sentence established under state law for the commission of a substantially similar offense.

(j) Whenever a minimum, but not a maximum, fine or penalty is imposed, the court may in its discretion fine the offender the minimum or any sum exceeding the minimum fine or penalty so imposed, but not exceeding the maximum provided in this section.

(k) No provision of this Code or any ordinance designating the duties of any officer or employee shall be so construed as to make such officer or employee liable for any fine or penalty for a failure to perform such duty, unless the intention of the council to impose such fine or penalty on such officer or employee is specifically and clearly expressed in the section creating the duty.

Section 2. If any provision of this ordinance, or the application thereof to any person, thing or circumstances, is held invalid by a court of competent jurisdiction such invalidity shall not affect the provisions or application of this ordinance that can be given effect without the invalid provisions or application, and to this end, the provisions of this code and such amendments and statutes are declared to be severable.

Section 3. No other provisions of the City Code are amended by this Ordinance, unless specifically stated and referenced herein.

Section 4. This ordinance shall become effective immediately upon its adoption and proper publication as required by law.

READ, PASSED AND ADOPTED this 19th day of December 2022.

Ranae Bartlett, City Council President
City of Madison, Alabama

ATTEST:

Lisa D. Thomas, City Clerk-Treasurer
City of Madison, Alabama

APPROVED this ____ day of December 2022.

Paul Finley, Mayor
City of Madison, Alabama