

SB9 INTRODUCED



1 SB9
2 65NR33-1
3 By Senator Coleman-Madison
4 RFD: County and Municipal Government
5 First Read: 05-Feb-24
6 PFD: 03-Jan-24



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SYNOPSIS:

This bill would authorize Class 1 municipalities to petition for judicial in rem foreclosure of municipal code enforcement and nuisance abatement liens on property that is not owner-occupied.

This bill would also authorize Class 1 municipalities to recover the amount of unpaid municipal code and nuisance abatement liens and the cost of municipal code enforcement upon the court-ordered sale of property that is not owner-occupied.

A BILL
TO BE ENTITLED
AN ACT

Relating to Class 1 municipalities; to authorize Class 1 municipalities to enforce local and state building maintenance regulations by judicial in rem foreclosure of municipal code enforcement and nuisance abatement liens on certain property; and to authorize Class 1 municipalities to recover the amount of unpaid municipal code and nuisance abatement liens and the cost of municipal code enforcement upon the court-ordered sale of certain property.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:



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29 Section 1. For purposes of this act, the following
30 terms have the following meanings:

31 (1) INTERESTED PARTY. Any of the following:

32 a. The person who last appears as owner of a particular
33 real property in the office of the judge of probate's property
34 records.

35 b. The current mortgagee of record of the real property
36 or assignee of record of the mortgagee.

37 c. The current holder of a beneficial interest in a
38 deed of trust recorded against the real property.

39 d. A tax certificate holder.

40 e. A tax sale purchaser that holds a deed of purchase
41 in accordance with Section 40-10-29, Code of Alabama 1975.

42 f. A tax lien purchaser that holds a tax lien
43 certificate in accordance with Section 40-10-187, Code of
44 Alabama 1975.

45 g. Any party having an interest in the real property,
46 in whole or in part, legal or equitable, in severalty or as
47 tenant in common, whose identity and address is reasonably
48 ascertainable from the records of the Class 1 municipality or
49 records maintained in the county office of the judge of
50 probate or as revealed by a full title search, consisting of
51 60 years or more.

52 h. An interested party shall not include the holder of
53 the benefit of an easement that burdens the real property, the
54 holder of the benefit or burden of a real covenant that
55 burdens the real property, or the holder of the benefit of a
56 utility easement that burdens the real property.



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57 (2) MINIMUM BID PRICE. The price that equals the
58 redemption amount.

59 (3) MUNICIPAL CODE LIEN. Any lien that has been levied
60 against real property by a Class 1 municipality due to the
61 nonpayment of any fine, penalty, abatement cost, assessment,
62 or enforcement cost incurred by a Class 1 municipality related
63 to the enforcement of state or local housing and building
64 codes or a lien arising from the abatement of nuisances by the
65 Class 1 municipality. The term shall apply only to those liens
66 that arise out of a failure to comply with any of the
67 following or from the failure to comply with a Class 1
68 municipality's ordinances enacted pursuant to the authority
69 granted in any of the following:

70 a. Article 2 of Chapter 40 of Title 11, Code of Alabama
71 1975.

72 b. Sections 11-47-117 and 11-47-118, Code of Alabama
73 1975.

74 c. Sections 11-47-130, 11-47-131, and 11-47-140, Code
75 of Alabama 1975.

76 d. Chapter 53 of Title 11, Code of Alabama 1975.

77 e. Chapter 53B of Title 11, Code of Alabama 1975.

78 f. Article 4 of Chapter 67 of Title 11, Code of Alabama
79 1975.

80 g. Section 45-37A-53, Code of Alabama 1975.

81 (4) MUNICIPAL CODE LIEN PAYOFF. An amount equal to the
82 sum of the following:

83 a. The principal amount of a municipal code lien.

84 b. Interest accrued at the rate of six percent per



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85 annum from the date the municipal code lien was filed in the
86 judge of probate's office unless a different rate and date of
87 accrual is specified by statute.

88 c. Any fees or costs incurred in the collection of a
89 lien under this act including, without limitation, the cost of
90 title examinations and publication of notices.

91 d. Any attorney fees, filing fees, and court costs
92 incurred in a judicial in rem foreclosure proceeding under
93 this act.

94 e. Any other penalties authorized under state law or
95 pursuant to an ordinance enacted by a Class 1 municipality.

96 (5) OWNER-OCCUPIED. Real property that is lawfully
97 occupied as a principal residence and that is any of the
98 following:

99 a. A homestead as provided in Section 40-9-19, Code of
100 Alabama 1975.

101 b. Exempt from ad valorem taxation under Sections
102 40-9-19.1, 40-9-20, or 40-9-21, Code of Alabama 1975.

103 c. Eligible for, but not yet granted, either of the
104 designations set forth in paragraph a. or b.

105 d. Lawfully occupied by a family member of a deceased
106 individual.

107 (6) REDEMPTION AMOUNT. The sum of the following:

108 a. The full amount of the municipal code lien payoff
109 for each municipal code lien on which a Class 1 municipality
110 is seeking to foreclose under this act.

111 b. Any tax payoff that may be applicable to the
112 property on which the Class 1 municipality is seeking to



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113 foreclose under this act.

114 (7) TAX CERTIFICATE HOLDER. Any of the following:

115 a. A tax sale purchaser that holds a certificate of
116 purchase pursuant to Section 40-10-19, Code of Alabama 1975.

117 b. The state, in the event that it has accepted and
118 recorded a certificate of purchase obtained at a tax sale
119 pursuant to Section 40-10-20, Code of Alabama 1975.

120 c. A county, in the event that a tax lien not sold at a
121 tax lien auction of real property situated in the county is
122 retained by the county pursuant to Section 40-10-199, Code of
123 Alabama 1975.

124 d. Any party to which a certificate of purchase
125 obtained at a tax sale has been assigned pursuant to Section
126 40-10-21, Code of Alabama 1975.

127 e. The purchaser or assignee of a tax lien certificate
128 as provided in Section 40-10-187, Code of Alabama 1975.

129 (8) TAX PAYOFF. All amounts necessary to satisfy any
130 claims for delinquent taxes assessed against the real property
131 on which a Class 1 municipality is seeking to foreclose under
132 this act. These amounts shall include all of the following:

133 a. If the taxes associated with the property are
134 delinquent pursuant to Sections 40-11-4 or 11-51-2, Code of
135 Alabama 1975, but the property has not yet been sold for
136 taxes, then the full amount of delinquent taxes, costs, fees,
137 and charges due to the county tax collector pursuant to
138 Section 40-5-8, Code of Alabama 1975.

139 b. If the property has been sold to the state for
140 taxes, then those amounts required for redemption as provided



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141 in Sections 40-10-83, 40-10-120, 40-10-121, and 40-10-122,
142 Code of Alabama 1975, except that when a Class 1 municipality
143 is the prevailing bidder, the tax payoff amount shall be the
144 lesser of these amounts or the amount provided by Section
145 40-10-132(a)(2), Code of Alabama 1975.

146 c. If the property has been sold for taxes to a party
147 other than the state, then those amounts required for
148 redemption as provided in Sections 40-10-83, 40-10-120,
149 40-10-121, and 40-10-122, Code of Alabama 1975.

150 d. If a tax lien has been sold by a county pursuant to
151 Section 40-10-182, Code of Alabama 1975, then the amount
152 required for redemption pursuant to Section 40-10-193, Code of
153 Alabama 1975.

154 (9) TAXES. The taxes assessed against real property by
155 either the state, the county, or a Class 1 municipality in
156 which the real property is situated which are delinquent
157 pursuant to Sections 40-11-4 or 11-51-2, Code of Alabama 1975,
158 as of the date a proceeding under this act is commenced or at
159 any time before final resolution of the same and shall include
160 any taxes assessed against real property that are unpaid from
161 any previous year and any amounts required for redemption
162 pursuant to Sections 40-10-83, 40-10-120, 40-10-193, or
163 11-51-23, Code of Alabama 1975. As provided in Section
164 11-51-6, Code of Alabama 1975, a lien for taxes shall be
165 superior to all other liens, including municipal code liens.

166 Section 2. (a) This act applies only to Class 1
167 municipalities.

168 (b) This act shall not apply to owner-occupied



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169 property.

170 Section 3. (a) Notwithstanding any law to the contrary,
171 any fees, penalties, and abatement costs imposed against real
172 property for abatement of nuisances or violations of a Class 1
173 municipality's housing and building codes adopted pursuant to
174 state law, other than owner-occupied property, may be enforced
175 in rem as a lien pursuant to this act.

176 (b) Unless otherwise specified by law, municipal code
177 liens may be filed in the judge of probate's office for the
178 county where the real property is situated.

179 (c) Every municipal code lien shall be superior to all
180 other liens except those liens for taxes pursuant to Section
181 11-51-6, Code of Alabama 1975.

182 Section 4. (a) A Class 1 municipality may proceed with
183 judicial in rem foreclosures of municipal code liens in
184 accordance with this act by enacting an ordinance of the
185 governing body of the Class 1 municipality where the real
186 property is situated, which ordinance shall be sufficient
187 authority for use of this act by the Class 1 municipality to
188 enforce its municipal code liens.

189 (b) The ordinance of a Class 1 municipality authorizing
190 and approving the use of this act shall set forth all of the
191 following:

192 (1) The initial effective date for application of these
193 procedures.

194 (2) If the Class 1 municipality elects not to apply
195 these procedures to all real properties as of the same initial
196 effective date, it shall specify all of the following:



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197 a. Which real properties are subject to these
198 procedures.

199 b. The order in which the real properties shall be
200 subject to these procedures.

201 c. The time and manner of determining paragraphs a. and
202 b.

203 (3) The explicit exclusion of owner-occupied properties
204 from the application of the judicial in rem foreclosure
205 procedures authorized under this act.

206 (4) Any other matters related to code enforcement that
207 the Class 1 municipality designates for administrative
208 regulation.

209 (c) The provisions of a Class 1 municipality ordinance
210 and administrative regulations issued pursuant to the
211 ordinance shall not conflict with Sections 5 through 8 of this
212 act.

213 (d) Proceedings in accordance with this act are
214 intended solely to enforce the municipal code lien for real
215 property subject to the lien and shall not constitute an
216 action for personal liability of the owner or owners of the
217 real property to which the lien applies.

218 (e) The rights and remedies provided in this act are
219 available solely to the governmental entities authorized by
220 law to enforce municipal ordinances and shall not extend to
221 any nongovernmental transferee of municipal code liens.

222 (f) A Class 1 municipality that has adopted the
223 provisions of this act by ordinance and that seeks to enforce
224 a municipal code lien through the sale of real property shall



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225 utilize the judicial in rem proceedings authorized under this
226 act as the sole remedy for the enforcement through the sale of
227 real property.

228 (g) The enforcement proceedings authorized under this
229 act may be initiated only by a Class 1 municipality.

230 (h) A municipal code lien shall not include any lien
231 that has previously been certified to the tax collector of the
232 county for inclusion on the property tax bill associated with
233 the real property, such as those liens certified pursuant to
234 Section 11-67-66 or Section 45-37A-53, Code of Alabama 1975,
235 or any other applicable local act.

236 Section 5. (a) (1) After a municipal code lien has been
237 recorded with the office of the judge of probate for the
238 county in which the real property is situated, the governing
239 body of a Class 1 municipality may identify by resolution
240 those properties on which to commence a judicial in rem
241 foreclosure pursuant to this act, provided, however, that
242 those properties the Class 1 municipality identifies as
243 owner-occupied shall not be subject to judicial in rem
244 foreclosure.

245 (2) A Class 1 municipality shall not file a petition
246 for judicial in rem foreclosure pursuant to this act for a
247 period of six months following the date upon which the
248 municipal code lien is recorded in the office of the judge of
249 probate. A petition for judicial in rem foreclosure may
250 include any other municipal code lien that has been filed
251 against the subject property prior to the date the petition is
252 filed. After enforcement proceedings have commenced, the



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253 enforcement proceedings may be amended to include any
254 subsequently arising municipal code liens and, if applicable,
255 any taxes.

256 (b) If the property on which a Class 1 municipality is
257 seeking to foreclose is subject to taxes, then at least 60
258 days prior to the filing of the petition the Class 1
259 municipality shall notify all other taxing entities within the
260 jurisdiction of the Class 1 municipality and the state of its
261 intention to file a petition for judicial in rem foreclosure
262 of the real property on which a municipal code lien exists.
263 Upon notification, the county tax collector shall provide the
264 tax payoff amount.

265 (c) A Class 1 municipality shall initiate an action to
266 foreclose a code enforcement lien pursuant to this act by
267 filing a petition with the clerk of the circuit court for the
268 judicial circuit in which the real property is situated. The
269 petition shall be substantially identical in form and content
270 to the form provided in subsection (j). The case shall be
271 docketed in the circuit court by the clerk where it shall be a
272 preferred case. The circuit court in which a petition is filed
273 under this subsection shall immediately set the date, time,
274 and place for a hearing on the petition.

275 (d) Upon filing the petition, a Class 1 municipality
276 shall record an appropriate lis pendens in the office of the
277 judge of probate of the county in which the real property is
278 situated. The lis pendens shall include all of the following
279 information pertaining to the real property:

280 (1) The legal description.



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281 (2) The tax identification number of the real property.

282 (3) The street address if available.

283 (4) A statement that the property is subject to
284 judicial in rem foreclosure proceedings under this act.

285 (5) A statement that those proceedings may extinguish
286 any legal interests in the property.

287 (e) The petition shall be filed against the real
288 property to which the recorded municipal code lien pertains
289 and shall provide all of the following pertaining to the real
290 property:

291 (1) The identity of the Class 1 municipality.

292 (2) A legal description.

293 (3) The tax identification number of the property.

294 (4) The street address if available.

295 (5) A description of the municipal code lien that is
296 being foreclosed.

297 (6) The principal amount of the municipal code lien and
298 any applicable interest and penalties.

299 (7) The principal amount of any additional municipal
300 code liens against the property and any applicable interest
301 and penalties in accordance with subsection (a).

302 (8) The year or years for which the taxes are
303 delinquent, if any.

304 (9) The principal amount of the taxes and any interest
305 and penalties.

306 (10) The tax payoff amount.

307 (11) A statement that upon final sale in accordance
308 with this section and payment of any applicable tax payoff



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309 amount, an interested party's rights of redemption under
310 Chapter 10 of Title 40, Chapter 51 of Title 11, Section
311 11-53B-10, or Section 11-48-54, Code of Alabama 1975, shall be
312 extinguished.

313 (12) The names and addresses of all interested parties
314 to whom copies of the petition shall be sent pursuant to
315 subsection (f).

316 (13) A deraignment of title for a period of at least 60
317 years before filing the complaint, unless the court otherwise
318 directs, setting forth the book and page of the records where
319 any instrument affecting the title may be recorded.

320 (f) (1) A Class 1 municipality shall mail copies of the
321 petition by both certified mail, return receipt requested, and
322 by regular mail to all interested parties whose identities and
323 addresses are reasonably ascertainable.

324 (2) Copies of the petition shall also be mailed by
325 first-class mail to the real property address to the attention
326 of the occupants of the property, if any.

327 (3) In addition, notice shall be physically posted on
328 the real property and shall include the following statement:
329 "THIS PROPERTY IS SUBJECT TO A JUDICIAL IN REM FORECLOSURE
330 ACTION AND MAY BE TRANSFERRED TO [NAME OF CLASS 1
331 MUNICIPALITY] OR ANOTHER PARTY. PERSONS WITH INFORMATION
332 REGARDING THE CURRENT OWNER OF THE PROPERTY ARE REQUESTED TO
333 CONTACT [NAME OF CLASS 1 MUNICIPALITY]."

334 (g) If a Class 1 municipality finds reason to believe
335 that the real property is owner-occupied after the filing of
336 the petition, the Class 1 municipality shall immediately seek



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337 dismissal of its petition.

338 (h) Within 30 days after filing the petition, a Class 1
339 municipality shall cause a notice of the filing to be
340 published once each week for three consecutive weeks in a
341 newspaper of general circulation in the county in which the
342 property is located. The notice shall specify the name and
343 address of the Class 1 municipality and the following
344 pertaining to the real property:

345 (1) The legal description.

346 (2) The tax identification number.

347 (3) The street address if available.

348 (4) A description of any applicable municipal code lien
349 that is being foreclosed.

350 (5) The principal amount of any municipal code lien and
351 any interest and penalties.

352 (6) The applicable period of tax delinquency, if any.

353 (7) The principal amount of taxes, if any.

354 (8) Upon deposit by the court of any tax payoff amounts
355 with the appropriate parties, any rights of redemption
356 accorded to interested parties under Chapter 10 of Title 40,
357 Chapter 51 of Title 11, Section 11-53B-10, or Section
358 11-48-54, Code of Alabama 1975, are extinguished.

359 (9) The date and place of the filing of the petition.

360 (i) If the identity of some or all of the individuals
361 who may have an interest in the real property are unknown, or
362 if they are minors or individuals of unsound mind, the court
363 shall appoint a guardian ad litem to represent and defend the
364 interests of the unknown, minors, or incompetent parties in



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365 the action.

366 (j) The municipality, by ordinance, may adopt forms to
367 implement and administer this section.

368 Section 6. (a) (1) A Class 1 municipality shall request
369 that a judicial hearing on the petition occur not earlier than
370 30 days nor later than 90 days following the filing of the
371 petition.

372 (2) At the judicial hearing, any interested party shall
373 have the right to be heard and to contest the delinquency of
374 the municipal code lien, the adequacy of the proceedings, the
375 classification of the real property as owner-occupied, and the
376 amount of the tax payoff.

377 (b) If the court determines that the information set
378 forth in the petition is accurate, the court shall render its
379 judgment and shall order all of the following:

380 (1) The municipal code lien is delinquent.

381 (2) The amounts of any additional municipal code liens
382 and taxes described in the petition are delinquent.

383 (3) Proper notice has been given to all interested
384 parties.

385 (4) The property is not owner-occupied.

386 (5) The property as described in the petition be sold
387 in accordance with the provisions of this act.

388 (6) The sale shall become final and binding immediately
389 after the sale is conducted in accordance with Section 8.

390 (c) The order of the court shall provide that the real
391 property be sold free and clear of all liens, claims, and
392 encumbrances other than all of the following:



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393 (1) Rights of redemption provided under federal law.

394 (2) Taxes assessed against the property that are due
395 but not yet delinquent as of the date of the court's order.

396 (3) Any easement that burdens the property, any real
397 covenant that burdens the property, and any utility easement
398 that benefits the property as of the date of the filing of the
399 municipal code lien on which the Class 1 municipality is
400 seeking to foreclose under this act.

401 (d) If at any point in the proceedings the court
402 determines that the real property is owner-occupied, then the
403 Class 1 municipality shall seek immediate dismissal of the
404 proceedings.

405 Section 7. (a) At any point prior to the conclusion of
406 the sale described in Section 8(a), any interested party may
407 redeem the real property from the sale by payment of the
408 redemption amount. Payment shall be made to the Class 1
409 municipality. Following receipt of the redemption payment, the
410 Class 1 municipality shall file for dismissal of the
411 proceedings.

412 (b) In the event that the owner of the real property
413 pays the redemption amount, the proceedings shall be
414 dismissed, and the rights and interests of all interested
415 parties shall remain unaffected.

416 (c) In the event of a redemption payment by any
417 interested party other than the owner, the party making the
418 payment shall possess a lien on the real property for the full
419 amount of the payment, which lien shall have the same priority
420 as the municipal code lien described in Section 3(c). The



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421 lienholder shall have the right to enforce the lien as
422 permitted to the holder of any lien under existing law. The
423 lienholder shall not otherwise succeed to the rights of the
424 Class 1 municipality or tax certificate holder.

425 Section 8. (a) Following the hearing and order of the
426 court in accordance with Section 7, the court shall cause a
427 sale of the real property to be advertised and conducted by
428 the court in a manner similar to the procedure described in
429 Section 40-10-15, Code of Alabama 1975. The sale shall not
430 occur earlier than 45 days following the date of the order of
431 the court.

432 (b) (1) Except as otherwise authorized by law, the
433 minimum bid price for the sale of the real property shall be
434 the redemption amount.

435 (2)a. In the absence of any bid higher than the minimum
436 bid price, the court or its designee shall bid in for the
437 property on behalf of the Class 1 municipality or its designee
438 in an amount equal to the minimum bid price, causing the Class
439 1 municipality to become the purchaser at the sale pursuant to
440 Section 7.

441 b. A bid in on behalf of the Class 1 municipality or
442 its designee shall be tendered as a credit bid for the portion
443 of the minimum bid price equal to the municipal code lien
444 payoff. If the minimum bid price bid in by the Class 1
445 municipality includes a tax payoff amount, the Class 1
446 municipality shall tender the amount of the tax payoff to the
447 court, which, together with the municipal code lien payoff,
448 shall satisfy the full amount of the minimum bid price.



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449 (c) No party that has an interest in the real property
450 at the time the petition for foreclosure is filed pursuant to
451 Section 5 or owner of the real property within the corporate
452 limits of the Class 1 municipality who has any outstanding
453 municipal code lien or unremediated citation for violation of
454 the state and local codes and ordinances shall be eligible to
455 purchase property at the foreclosure sale.

456 (d) Payment of the winning bid shall be due immediately
457 after the sale is conducted. The proceeds of the foreclosure
458 sale shall be distributed in the following manner:

459 (1) If the purchaser is a party other than the Class 1
460 municipality, the court or its designee shall deposit with the
461 Class 1 municipality the amount of the proceeds equal to the
462 municipal code lien payoff, less any costs incurred or fees
463 charged by the office of the judge of probate.

464 (2) If the purchaser is the Class 1 municipality, then
465 the Class 1 municipality shall tender to the court an amount
466 equal to any costs incurred by the court that are included in
467 the amount of the municipal code lien payoff.

468 (3) If the minimum bid price includes a tax payoff
469 amount, the court shall deposit the amounts paid with the
470 appropriate parties in accordance with Sections 40-5-10,
471 40-10-128, 40-10-129, and 40-10-193, Code of Alabama 1975, and
472 any applicable local laws.

473 (4) In the event that the foreclosure sale price
474 exceeds the minimum bid price, the surplus shall be
475 distributed by the court to the interested parties, including
476 the owner, as their interests appear and in the order of



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477 priority in which their interests exist.

478 (e) Upon deposit by the court of any tax payoff amounts
479 with the appropriate parties as described in subdivision
480 (d) (3), any and all rights of redemption accorded to
481 interested parties under Chapter 10 of Title 40, Chapter 51 of
482 Title 11, Section 11-53B-10, or Section 11-48-54, Code of
483 Alabama 1975, are extinguished.

484 (f) From and after the moment of the sale, the sale
485 shall be final and binding.

486 (g) Within 90 days following the date of the sale, the
487 court shall cause to be executed a deed to the real property
488 identified in the petition. Upon execution, the court shall
489 cause the deed to be recorded with the office of the judge of
490 probate.

491 (h) Within 90 days following the date of the sale, the
492 Class 1 municipality shall file a report of the sale with the
493 clerk of the circuit court, which report shall identify
494 whether a sale took place, the foreclosure sale price, and the
495 identity of the purchaser.

496 (i) The municipality by ordinance, may adopt forms to
497 implements and administer this section.

498 Section 9. This act shall become effective on October
499 1, 2024.