

ORDINANCE NO. 246-2006

AN ORDINANCE TO ABATE PUBLIC NUISANCES

WHEREAS, the City Council of the City of Spanish Fort, Alabama, has determined that it is in the best interest of the City to address the existence in the City of unsanitary or hazardous conditions or conditions that may be injurious to the public health, safety, or general welfare, to declare such conditions public nuisances, to require any public nuisances to be abated, and to establish procedures whereby the City may abate public nuisances so as to protect the safety, health, and general welfare of the citizens of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:

SECTION 1. Definitions.

1. **Building Official:** The Building Official is the City Building and Zoning Administrator or deputy or any other municipal official or municipal employee designated by the Mayor to perform the duties specified in this ordinance.

2. **Garbage:** Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, or consumption of food.

3. **Junk:** Worn out or discarded material that has little or no value, including, but not limited to motors, vehicle parts, appliances, appliance parts, dilapidated furniture, machinery, machinery parts, equipment, building materials, or other items which are wholly or partially rusted, wrecked, dismantled, or inoperative.

4. **Rubbish:** All nonputrescible solid wastes, consisting of both combustible and noncombustible wastes, including, but not limited to, paper, cardboard, glass, rags, cartons, wood, rubber, plastics, leaves, yard clippings, crockery, cloth, and metal cans.

5. **Trash:** Trees, tree limbs, refuse and debris generated by lot or land clearing or cleanup, and refuse and debris generated by construction, renovation, or repair work to structures.

SECTION 2. Public Nuisance Declared.

Any acts or conditions within the City that may endanger or impair any person's safety, health, or general welfare, or that may directly or indirectly cause disease are declared public nuisances and are prohibited. Acts and conditions constituting a public nuisance, include, but are not limited to, the following:

1. The accumulation of garbage, rubbish, trash or junk, unless kept or contained in garbage cans or containers maintained for regular collection and removal, for a period of 20 days or more.

2. Any lot or land, which is unfenced, unsecured or unscreened, which contains fallen trees, vegetative debris or other objects or materials that may endanger or impair any person's safety, health or welfare, or which may constitute a fire hazard, or which is favorable to the harboring or breeding of rats, mice, snakes or other vermin, which remains on the lot or land for more than thirty days.

3. The accumulation or storage of lumber or building materials not properly stacked or neatly piled at least twelve inches off the ground.

4. The unsheltered storage of old, unused, stripped, junked and other automobiles not in a good and safe operating condition, and any other vehicles, machinery, implements and/or equipment and personal property of any kind which is no longer safely usable for the purposes for which it was manufactured, for a period of thirty days, with the exception of a duly authorized and licensed junk yard.

5. Any condition that violates any ordinance, code, regulation, or law of the City, County, or State in any manner that creates a condition that threatens the health, safety, or general welfare of persons near the condition.

SECTION 3. Duties of Property Owners, Occupants, Lessees, and Agents.

1. It shall be the duty of every property owner, occupant, lessee, and agent to keep all exterior private property free of any condition that constitutes a public nuisance.

2. Every property owner, occupant, lessee, or agent whose property abuts City streets shall be responsible for keeping sidewalks and City right-of-ways free of any condition that constitutes a public nuisance. If the development of conditions creating a public nuisance on sidewalks and City right-of-ways is beyond the control of the property owner occupant, lessee, or agent, the same shall report the conditions and circumstances to the Building Official.

3. No property owner, occupant, lessee, or agent shall allow another person to maintain a public nuisance on his or her property.

SECTION 4. Notice.

Mailing by registered or certified United States mail, properly addressed and postage prepaid, return receipt requested, constitutes notice whenever notice is required under this Ordinance.

SECTION 5. Duties of the Building Official.

1. The Building Official shall inspect or cause to be inspected any condition about which a complaint is filed by any person to the effect that the condition may constitute a public nuisance.

2. The Building Official shall inspect or cause to be inspected any condition about which the police or fire department of the City reports that the condition probably constitutes a public nuisance.

3. Upon finding that any condition constitutes a public nuisance, the Building Official shall give written notice to the owners of the property on which or abutting which the public nuisance exists and to any occupant, lessee, or agent that is known to the Building Official. The property owners shall be determined from the records of the office of the tax assessor. The notice shall be sent by registered or certified United States mail, return receipt requested, and shall include the following:

- (a) the date of the notice;
- b) an accurate street address or legal description of the property on which or abutting which the public nuisance is located;
- (c) a copy of this ordinance;
- (d) a description of the conditions that constitute the public nuisance;
- (e) an order that the owner must eradicate the conditions constituting the public nuisance;
- (f) a date certain, which shall not be less than thirty (30) days from the date of the notice, by which the owners must comply with the order;
- (g) the time, date, and location of a public hearing before the City Council on the conditions constituting the public nuisance; provided that the date of the public hearing shall not be less than seven (7) days after the date certain provided in subpart (f);
- (h) an order requiring the person receiving the notice to appear at the public hearing specified in subpart (g) and show that the conditions constituting the public nuisance have been eradicated or show cause why the City Council should not order the public nuisance abated and assess the costs thereof against the property;

(i) a provision giving notice that (1) failure to comply with the enclosed orders may result in abatement of the public nuisance by the City, (2) the costs of the abatement shall be assessed against the property and collected as an ad valorem tax, and (3) failure to pay the assessment has the same consequences as failure to pay ad valorem taxes;

(j) a provision giving notice that failure to appear at the public hearing on this matter waives the right to object to the abatement of the public nuisance by the City;

(k) the address and telephone number of the Building Official; and

(l) the address and telephone number of the Clerk of the City of Spanish Fort.

4. Upon finding that any condition is a public nuisance, the Building Official shall post the notice provided pursuant to Section 5.3 in a conspicuous location on the property. In addition, the Building Inspector shall post the following notice, with the word NOTICE typed in print at least one inch in height, in a conspicuous location on the premises:

NOTICE

THE BUILDING OFFICIAL OF THE CITY OF SPANISH FORT HAS FOUND CONDITIONS CONSTITUTING A PUBLIC NUISANCE ON THIS PROPERTY. IT IS UNLAWFUL TO REMOVE THIS NOTICE UNTIL THE CONDITIONS HAVE BEEN ERADICATED. IF YOU HAVE ANY QUESTIONS OR CONCERNS, CONTACT THE BUILDING OFFICIAL AT <ADDRESS> <PHONE NUMBERS>

All notices required to be posted on the property pursuant to this subsection shall be posted within three days after mailing the notice provided pursuant to Section 5.3.

5. Provide a copy of the notice provided pursuant to Section 5.3 to the City Council.

6. Upon determination by the City Council that a condition constitutes a public nuisance and upon the City Council's resolution ordering that the condition is to be abated, the Building Official shall maintain records concerning the costs of the abatement.

SECTION 6. Hearing by the City Council; Determination by the City Council as to a Public Nuisance.

1. The City Council shall hold a hearing on the conditions found to be a public nuisance by the Building Official. The hearing shall be held at the time, date, and location specified in the Building Official's notice as provided for in Section 5.3 of this Ordinance. The City Council shall hear testimony under oath offered by the Building Official or persons with knowledge and any interested party entitled to receive notice under Section 5.3 of this Ordinance regarding the conditions constituting a public nuisance. The City Council may hear testimony under oath from any other party who desires to be heard on the subject. Failure of any interested party to appear at the hearing or to present written objections, filed with the City Clerk at least five days prior to the hearing, waives that party's right to challenge the City Council's determination on the subject.

2. The City Council shall make a determination as to whether the conditions constitute a public nuisance. Upon determining that the conditions constitute a public nuisance, the City Council shall make written findings to that effect and by resolution order the abatement of the public nuisance. A copy of the findings and resolution, along with a copy of this Ordinance shall be sent by registered or certified United States mail, return receipt requested, to all parties entitled to notice under Section 5.3 of this Ordinance. One resolution may address any number of public nuisances and any number of properties upon which or abutting which public nuisances are determined to exist.

SECTION 7. Abatement.

1. Abatement of the public nuisance may be accomplished by the use of City resources and personnel, or the City may enter into a contract with a private contractor to perform the work of abating the public nuisance.

2. Any property owner has the right to eradicate the conditions constituting the public nuisance at the property owner's expense prior to the City or its agents commencing work.

SECTION 8. Costs of Abatement; Hearing; Assessment.

1. Upon completion of the abatement, the Building Official shall report the costs of the abatement to the City Council. The City Council shall set a date for a hearing on determining the costs of the abatement, and notice of the hearing, along with a copy of the Building Official's report, shall be mailed at least fourteen (14) days prior to the date of the hearing by certified or registered United States mail, return receipt requested, to the interested parties entitled to receive notice under Section 5.3 of this Ordinance. At the hearing to determine the costs of the abatement, any owner shall be heard. The City Council shall adopt a resolution fixing the reasonable costs incurred in the abatement and assessing the costs against the lands upon which or abutting which the public nuisance was located.

2. The fixing of the costs by the City Council shall constitute a special assessment against the lot or lots, parcel or parcels of land upon which or abutting which the public nuisance was located. The special assessment thus made and confirmed shall constitute a lien on the property for the amount of the assessment. The lien shall be superior to all other liens on the property, except liens for taxes, and shall continue in force until paid. A certified copy of the resolution shall be filed in the Office of the Judge of Probate of Baldwin County, Alabama. Upon filing, the tax collector or revenue commissioner of Baldwin County shall add the amount of the lien to the ad valorem tax bill on the property and shall collect the amount as if it were a tax and remit the amount to the City of Spanish Fort.

SECTION 9. Penalties.

1. Any party who is responsible for compliance with any order made pursuant to this Ordinance who fails to comply with such order is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than ten (\$10.00) dollars nor more than five hundred dollars (\$500.00). Each day's violation of the provisions of this Ordinance shall constitute a separate punishable offense.

2. Any person removing any notice posted pursuant to the provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than ten (\$10.00) dollars nor more than five hundred dollars (\$500.00).

SECTION 10. Duties of the City Attorney.

1. The City Attorney or his or her designee or the Municipal Court Prosecutor may prosecute any party who is responsible for compliance with any order made pursuant to this Ordinance who fails to comply with such order.

2. The City Attorney may take any legal action that is necessary to carry out the provisions of this Ordinance.

SECTION 11. Emergency Cases.

In cases where it reasonably appears that a condition constituting a public nuisance poses an immediate danger to the life or safety of any person, the Building Official shall report such facts to the City Council, and the City Council shall cause the immediate abatement of the condition. The costs of the emergency abatement shall be determined and assessed as provided for in Section 8 of this Ordinance.

SECTION 12. Authority to Enter Upon Private Property.

The Building Official may enter upon private property to carry out any duty set forth in this Ordinance. If the City Council finds under Section 6.2 that any condition is a public nuisance or if Section 11 applies, the employees or agents of the City may enter upon private property for the purpose of abating the public nuisance.

SECTION 13. Severability.

If any part, section, or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect.

ADOPTED AND APPROVED this ____ day of _____, 2006.

Joseph C. Bonner
Mayor

ATTEST:

Mary Lynn Williams, MMC
City Clerk