

ORDINANCE NO. 572-2021

AN ORDINANCE ESTABLISHING GUIDELINES AND FEES FOR THE CITY OF SPANISH FORT MUNICIPAL COURT PRETRIAL DIVERSION/WITHHELD ADJUDICATION PROGRAM

WHEREAS, the City Council of the City of Spanish Fort, pursuant to the authority granted by *Alabama Code* (1975) § 12-14-90, et seq., desires to implement and establish guidelines for the Pretrial Diversion/Withheld Adjudication Program to be administered through the City of Spanish Fort Municipal Court.

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

SECTION 1. Findings and Purpose.

- (a) Pretrial diversion/withheld adjudication is a voluntary alternative to prosecution which diverts certain offenders from traditional criminal justice processing into a program of supervision and services administered by the City of Spanish Fort Municipal Court (“Municipal Court”).
- (b) The implementation of a pretrial diversion/withheld adjudication program serves a valid public purpose in that it provides certain non-violent offenders the opportunity to avoid a criminal conviction upon completion of certain conditions and requirements.
- (c) The program established herein is not intended to guarantee or grant any offender the right to participate in the program; rather, the purpose of this program is to provide the Municipal Court, in conformity with state law, an additional tool to use in the administration of justice.

SECTION 2. Definitions.

- (a) For the purposes of this Ordinance, the following terms shall have the following meanings:
 - 1. **ADMINISTRATION FEE.** A one-time administrative fee as outlined in Section 5 of this Ordinance which is imposed by the Municipal Court Judge as a condition of participation in the PTD Program. Payment shall be made in accordance with terms and regulations established by the Municipal Court Judge.
 - 2. **CITY.** The City of Spanish Fort, Alabama.
 - 3. **MUNICIPAL COURT.** The City of Spanish Fort Municipal Court.
 - 4. **LAW ENFORCEMENT OFFICER.** Any person who is employed by an agency or department at the federal, state or local level belonging to a traditional federal, state or local agency the purpose of which is to protect the citizens, enforce federal, state and/or local laws, deter crime and assist in bringing violators of the law to justice.
 - 5. **MUNICIPAL PROSECUTOR.** The person or persons hired or contracted by the City to prosecute cases within the Municipal Court.
 - 6. **MUNICIPAL COURT JUDGE.** The Judge of the Municipal Court of the City of Spanish Fort, as appointed by the Spanish Fort City Council, pursuant to *Alabama Code* (1975) § 12-14-30, et seq.
 - 7. **OFFENDER.** A person charged with a criminal offense or violation of a City ordinance, including, but not limited to, any misdemeanor, violation, or traffic offense as those offenses are defined by the *Alabama Code* (1975) or City Ordinance, which was allegedly committed within the jurisdiction of the Municipal Court.

8. PRETRIAL DIVERSION/WITHHELD ADJUDICATION PROGRAM or PTD PROGRAM. A program allowing for the Municipal Court to impose and require certain conditions of behavior and conduct of an offender for a specified period of time. At the completion of the specified period of time, if the offender has met all conditions and terms, and the Municipal Court Judge and Prosecutor certify that all conditions and terms are met, the Offender may have his or her charges reduced, dismissed without prejudice or otherwise mitigated.

SECTION 3. General Provisions.

- (a) Upon the recommendation of the Municipal Judge and the Municipal Prosecutor, and pursuant to *Alabama Code* (1975) § 12-14-90, et seq., the City of Spanish Fort has established and hereby sets for rules and procedures for a Pretrial Diversion/Withheld Adjudication Program.
- (b) All discretionary powers endowed by common law and provided by the statutes and acts of Alabama, or powers or discretion otherwise provided by law for the City of Spanish Fort, shall be retained, and any amendments or other changes to the PTD Program as may be adopted by the Legislature of the State of Alabama and codified in the *Alabama Code* (1975) shall be automatically incorporated into this Ordinance.
- (c) The PTD Program established under this Ordinance shall be under the supervision of the Municipal Judge for the City of Spanish Fort, pursuant to any rules and regulations hereby established by the City Council.
- (d) The City Council, upon the request of the Municipal Judge with prior approval of the Municipal Prosecutor, may contract with any agency, person, or business entity for any service necessary to accomplish the purpose of the PTD Program.
- (e) The City Council does hereby authorize the Municipal Court to assess and collect fees for the administration of the Pretrial Diversion/Withheld Adjudication Program. Any fees collected in connection with the Pretrial Diversion/Withheld Adjudication Program shall be deposited to the City's General Fund.

SECTION 4. Rules, Regulations and Policies.

The following rules and regulations shall apply to the Pretrial Diversion/Withheld Adjudication Program in the Spanish Fort Municipal Court:

- (a) A holder of a commercial driver's license, an operator of a commercial motor vehicle, or a commercial driver learner permit holder who is charged with a violation of a traffic law in this State and/or City shall not be eligible for a PTD Program pursuant to this Ordinance.
- (b) An Offender charged with any of the following types of offenses without the express written consent of the victim shall be ineligible for admittance to the Pretrial Diversion/Withheld Adjudication Program:
1. Any offense involving violence or aggression resulting in injury to a law enforcement officer.
 2. Any offense involving eluding or attempting to elude a law enforcement officer.
 3. Any offense involving violence, where a weapon was used, or where children under 19 are victims.
- (c) The Municipal Prosecutor may consider an Offender for admittance to the Pretrial Diversion/Withheld Adjudication Program based on any of the following circumstances:
1. Arresting Police Officer approval.
 2. Prior record of offenses/driving offenses.
 3. Assistance provided to law enforcement.

4. The Offender's admission of guilt or remorse.
 5. Negative result on a current drug test for the use of controlled substances.
 6. The Offender's demeanor from time of arrest and up to consideration of his/her application for the Pretrial Diversion/Withheld Adjudication Program.
 7. A determination that the welfare and safety of the citizens of the City and the State of Alabama and the rehabilitation of the Offender will probably be accomplished through the PTD Program.
 8. The Offender appears to pose no substantial threat to the safety and well-being of the community.
 9. It appears the Offender is not likely to be involved in further criminal activity if the Offender complies with all conditions imposed pursuant to the PTD Program.
 10. The Offender will likely respond to rehabilitative treatment or counseling.
 11. The need for restitution for the victim from the Offender outweighs the interests of the State and City for incarceration of the Offender.
- (d) The Municipal Prosecutor may waive any of the standards specified in subsection (c) if special circumstances dictate.
- (e) Such additional rules and terms necessary for the implementation of the Pretrial Diversion/Withheld Adjudication Program as established by the Municipal Judge acting in consultation with the Municipal Prosecutor.

SECTION 5. Application Process.

- (a) Any Offender may apply to the Spanish Fort Municipal Court for admission into the Pretrial Diversion/Withheld Adjudication Program.
- (b) Upon written application by an Offender for admission into the Pretrial Diversion/Withheld Adjudication Program, and prior to admission thereto and as a part of the evaluation process of the Municipal Prosecutor, the Municipal Prosecutor may require the Offender to furnish information concerning past criminal history, education history, work record, family history, medical or psychiatric treatment or care prescribed or received, psychological tests taken, and any other information concerning the Offender which the Municipal Prosecutor believes has a bearing on the decision whether or not the Offender should be admitted to the PTD Program.
- (c) The Municipal Prosecutor may require the Offender to submit to any type of test or evaluation process or interview the Municipal Prosecutor deems appropriate in evaluating the Offender for admittance into the PTD Program. The costs of any test or evaluation shall be paid by the Offender or as otherwise agreed to or provided for by this Ordinance. The Offender shall provide the Municipal Prosecutor written consent to allow the Municipal Prosecutor to receive any educational, work, medical, psychiatric, psychological, or other records deemed necessary by the Municipal Prosecutor for the evaluation process.
- (d) Following the decision of the Municipal Prosecutor to recommend the Offender into the Pretrial Diversion/Withheld Adjudication Program, but prior to entry, the Municipal Prosecutor and the Offender shall enter into a written agreement stating the conditions of the participation of the Offender in the PTD Program. The agreement shall include, but not be limited to, all of the following:
1. A voluntary waiver of the right of the Offender to a speedy trial.

2. An agreement to the tolling, while in the PTD Program, of periods of limitation established by statutes or rules of court.
 3. An agreement to the conditions of the PTD Program established by the Municipal Prosecutor.
 4. If there is a victim of the charged crime, an agreement to the restitution repayment within a specified period of time, and in an amount to be determined by the Municipal Prosecutor, taking into account financial circumstances of the Offender and the victim.
 5. Submission of a written plea of guilty, including a written factual basis for the plea, to the offense charged or agreed upon lesser-included offenses, together with an agreement as to whether the case is to be dismissed upon successful completion of the PTD Program, and an agreement, if there be any, as to the recommended sentence, should a sentence be imposed.
- (e) In addition to those requirements set forth in subsection (d), or as a condition of continued participation in the PTD Program, the Municipal Prosecutor may require the Offender to agree to any of the following terms or conditions:
1. To participate in substance abuse treatment.
 2. To refrain from the use of drugs or alcohol or frequenting places where drugs or alcohol are sold or used.
 3. To not commit any criminal offense.
 4. To refrain from contact with certain named persons or premises.
 5. To maintain or seek employment.
 6. To not violate any laws of any city, county, state, or the United States.
 7. To attend individual, group, financial, chemical addiction, family, mental health, sex offender, traffic safety, substance abuse, truancy, shoplifting, alcohol, financial management, employment, or anger management counseling.
 8. To pay all court costs or fees and obey any other lawful court order associated with the offense or offenses for which the Offender has entered the PTD Program.
 9. To refrain from the possession or use of any deadly weapon or dangerous instrument as defined in *Alabama Code* (1975) Section 13A-1-2.
 10. To pay supervision fees and application fees pursuant to this Ordinance. Supervision shall be monitored through the Municipal Court Office.
 11. To observe curfews or home detention or travel constraints as set out in the agreement signed by the Offender.
 12. To be admitted to a drug or alcohol treatment program on an inpatient or outpatient basis or receive other treatment alternatives for substance abuse.
 13. To submit to periodic or random drug testing as part of the PTD Program and other terms and conditions related to substance abuse as the Municipal Prosecutor may direct.
 14. To waive in writing the right of the Offender to a probation hearing in the event of termination or withdrawal from the PTD Program.
 15. To perform community service.

16. To perform and/or satisfy any other terms or conditions as the Municipal Prosecutor and the Offender may agree to in the above-stated agreement; it being the purpose of this Ordinance to allow the Municipal Prosecutor broad discretion in designing a PTD Program specifically for each Offender and his or her particular circumstances.

17. When applicable, the Offender may be required to pay any additional supervision fees to any non-City agency or entity hired by the City Council and responsible for monitoring and verifying the compliance of the Offender with the terms of the PTD Program set forth by the Municipal Prosecutor. The fees shall be paid by the Offender to the supervising entity in a timely manner.

- (f) An Offender may be assessed a nonrefundable application fee when the Offender is approved for the Pretrial Diversion/Withheld Adjudication Program. The amount of the assessment for participation in the PTD Program shall be in addition to any court costs, fees, and assessments for the Crime Victim's Compensation Fund, Department of Forensic Sciences assessments, drug, alcohol, or anger management treatment required by law, and any costs of supervision, treatment, and restitution for which the Offender may be responsible. A schedule of payments for any of these fees may be established by the Municipal Prosecutor and approved by the Municipal Judge.
- (g) The following application fee shall be applied to Offenders accepted into the PTD Program:
 - 1. Class A Misdemeanor offenses and Driving Under the Influence: One Thousand Dollars (\$1000.00).
 - 2. Class B and Class C Misdemeanors: Five Hundred Dollars (\$500.00).
 - 3. Traffic offenses or municipal violations, excluding DUI's: Three Hundred Dollars (\$300.00).
- (h) The application fee which is a one-time administrative fee required by this Ordinance shall be paid in full pursuant to terms established by the agreement of the Municipal Judge and Municipal Prosecutor and shall be collected by the City of Spanish Fort Magistrate. The Magistrate shall make the deposits in a timely manner, pursuant to requirements established by law.
- (i) Regardless of whether the Offender successfully completes the PTD Program or withdraws from or is terminated from the PTD Program, the Offender will still be liable for and required to pay any and all court costs, fees, restitution, victim's compensation fund assessment, and any and all other fees and assessments, in the same manner as if the Offender had not applied for entry into the PTD Program and had been found guilty of the offense or offenses involved. No court costs, fees or restitution shall be waived or remitted, absent an express agreement to that effect between the Municipal Prosecutor and the Offender, without a finding by the Municipal Judge that the Offender does not have the reasonable ability to pay the same within the reasonably foreseeable future.
- (j) Pretrial Diversion/Withheld Adjudication Program fees as established by this Ordinance may be waived or reduced due to indigency or reduced ability to pay or for other just cause at the discretion of the Municipal Court Judge.

SECTION 6: Approval by Municipal Court Judge.

- (a) Upon full compliance with the application procedure by Offender, the application, written recommendation of the Municipal Prosecutor, and the written agreement between the Municipal Prosecutor and the Offender shall be submitted to the Municipal Court Judge, presiding over the affected case of the Offender, for approval by the Municipal Court Judge.
- (b) Upon admittance to the Pretrial Diversion/Withheld Adjudication Program by the Municipal Court Judge, the Offender shall enter a plea of guilty to the charge or charges involved, and

the Offender's case(s) shall be placed on an administrative docket until such time as the Offender has completed all requirements of the Pretrial Diversion/Withheld Adjudication Program agreement. Imposition of any sentence shall be deferred until such time as the Offender completes the Pretrial Diversion/Withheld Adjudication Program or is terminated from the PTD Program.

- (c) If the Offender's application for participation in the Pretrial Diversion/Withheld Adjudication Program is not approved by the Municipal Court, any money paid by the Offender in satisfaction of the application fee shall be refunded to the Offender after deducting therefrom any actual expenses incurred by the Municipal Prosecutor or any agency or service provider in furtherance of the application and evaluation process.
- (d) Upon approval of the agreement, admittance of the Offender into the Pretrial Diversion/Withheld Adjudication Program and acceptance of the Offender's guilty plea, the imposition of any sentence shall be deferred until such time as the Offender completes the terms of the Pretrial Diversion/Withheld Adjudication agreement, withdraws from the Pretrial Diversion/Withheld Adjudication Program, or is terminated from the Pretrial Diversion/Withheld Adjudication Program.
- (e) In the event the Offender withdraws or is terminated from the PTD Program, the Municipal Court Judge shall impose appropriate punishment in the same manner as with any plea of guilty or finding of guilty and shall not be bound by the terms of agreement as to what punishment to impose. The application fee is nonrefundable.
- (f) Upon successful completion of the PTD Program and all terms thereof by the Offender, the Municipal Magistrate or Municipal Prosecutor shall by written notification to the Municipal Court Judge inform the Municipal Court that the Offender has completed the Pretrial Diversion/Withheld Adjudication Program. Upon receipt of said notice, the Municipal Court Judge shall dismiss the case pursuant to the rules and regulations established by this Ordinance.

SECTION 7: Breach of Pretrial Diversion/Withheld Adjudication Program Agreement.

- (a) After any violation of any Pretrial Diversion/Withheld Adjudication Program terms or conditions, or upon any breach of any Pretrial Diversion/Withheld Adjudication Program agreement by the Offender, the Municipal Prosecutor may, upon order of the Municipal Court Judge, do any of the following:
 - 1. Continue the agreement with or without modification.
 - 2. Seek to have the Municipal Court Judge impose interim sanctions in the form of a finding of contempt of court; the imposition of a fine in an amount within the discretion of the Municipal Court Judge and not to exceed the jurisdictional limits of the Court; and/or the imposition of a term of incarceration not to exceed the jurisdiction of the Municipal Court.
 - 3. Terminate the Offender from the Pretrial Diversion/Withheld Adjudication Program; or,
 - 4. Require the Offender to adopt a new agreement as a condition of continued participation.
- (b) The Municipal Prosecutor, with the written consent of the Municipal Judge, may waive a violation for good cause shown as to why the Offender should stay in the PTD Program.

SECTION 8. Repealer Clause.

Any ordinance heretofore adopted by the City Council of the City of Spanish Fort, Alabama, which is in conflict with this Ordinance is hereby repealed to the extent of such conflict.

SECTION 9. Severability Clause.

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 notwithstanding such holding.

SECTION 10. Effective Date.

This Ordinance shall become effective immediately upon its adoption or as otherwise required by state law.

ADOPTED AND APPROVED this _____ *day of January, 2021.*

Michael M. McMillan
Mayor

ATTEST:

Rebecca A. Gaines
City Clerk