

## ORDINANCE NO. 644-2023

### AN ORDINANCE REGULATING LITTERING IN THE CITY OF SPANISH FORT, ALABAMA

**WHEREAS**, the City Council of the City of Spanish Fort, Alabama, recognizes the need for enforcement of ordinances prohibiting littering and providing for penalties for violations of the ordinances within the City of Spanish Fort.

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

#### **SECTION 1. Definitions.**

As used in this Ordinance, the following terms shall have the respective meanings ascribed to them:

*Bulk container:* Any dumpster or stationary storage facility placed for the temporary containerization of solid waste at a place of business, multiple dwelling complex, or industrial or construction site.

*Citation:* A notice charging the violation of this Ordinance which directs anyone in violation to pay the prescribed fine or to appear in municipal court to answer the charges of violation.

*Commercial solid waste:* Man-made solid waste generated by stores, offices, restaurants, cafeterias, shopping centers, fast food establishments, convenience stores and other nonindustrial sources.

*Corrective notice:* A courtesy letter to advise anyone that there may be a violation of this Ordinance which may require corrective action on the part of the recipient of the notice.

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

*Garbage can:* A watertight receptacle or container for temporary storage of putrescible and non-putrescible waste; constructed of substantial metal, plastic or rubber and having a capacity of not less than ten (10) gallons, nor more than thirty (30) gallons, with a tight-fitting lid or cover, a handle on the lid and two (2) handles on the receptacle by which same may be conveniently lifted or moved.

*Household solid waste:* All domestic or residential solid waste that normally originates in a household environment.

*Institution:* Any public or private establishment which educates, instructs or treats for health purposes, or otherwise performs a service or meets a need for the community, city, state, region or nation.

*Institutional solid waste:* Solid waste originating from educational, health care, religious or research facilities.

*Junk:* Any vehicle or vehicle parts, rubber tires, appliances, dilapidated furniture, machinery, equipment, building material or other items which are either in a wholly or partially rusted, wrecked, junked, dismantled or inoperative condition.

*Junked car or other vehicle:* One that does not bear a current Alabama license plate and is not capable of being driven.

*Litter:* All man-made solid waste materials not placed in a proper waste container, including, but not limited to, paper, plastic, garbage, bottles, cans, glass, crockery, scrap metal, construction materials, rubbish, disposable packages or containers which are discarded, thrown or otherwise deposited as prohibited herein.

*Litter receptacle:* A container constructed and placed for use as a depository for litter.

*Premises:* Any dwelling, flat, rooming house, apartment house, hospital, school, hotel, club, restaurant, boarding house, office, eating place, shop, church, place of business, manufacturing establishment, courthouse, jail, community center or other public building.

*Private property:* Property owned by any person as defined herein, including, but not limited to, yards, grounds, driveways, entrance or passage ways, parking areas, any body of water, vacant land and recreation facilities.

*Public property:* Any area that is used or held for use by the public, whether owned or operated by public or private interests, including, but not limited to, highways, streets, street medians, alleys, park recreation areas, sidewalks, rights-of-way, lakes, rivers, streams, drainage ditches or other bodies of water.

*Residence:* Single-family or multiple-family dwelling, townhouse, apartment, condominium, trailer or mobile home, both privately and publicly owned.

*Trash:* Non-putrescible solid wastes consisting of yard clippings, leaves, wood, tree limbs and trunks, furniture, bedding, appliances, paper and cardboard, plastics, wood, wrappings, cans and similar materials.

*Vehicle:* Every device capable of being moved upon a public highway, street or waterway and in, upon or by which any person or property may be transported or drawn upon a public highway, street or waterway. This shall include any watercraft, boat, ship, vessel, barge or other floating craft. This excludes devices moved by human power or used exclusively for agricultural purposes and licensed pursuant to state law which is not operated on any public highway for purposes other than crossing such public highways or along such highway between two (2) tracts of the owner's land.

**SECTION 2. Enforcement procedures—Issuance of citation or corrective notice; fines in summary disposition.**

(a). When any police officer or other employee of the City designated by law or ordinance as an enforcement officer finds any violation of any provision of this Ordinance which such officer or employee is authorized and required to enforce, such person may issue, on forms provided by the City, a citation and deliver it to the person in violation directing such person to appear in the municipal court or other court of competent jurisdiction at a time and a date stated therein to answer to the charges for the violation, which shall be stated in such citation. Such police officer or enforcement officer is further authorized to swear out warrants or execute affidavits of complaints charging persons with violation of this Ordinance, without first having issued a citation for such violation.

(b). Any employee of the City designated by the mayor or council may issue corrective notices to persons found to be in violation of any provision of this Ordinance. The issuance of such corrective notice is not necessary for the prosecution of violations of this Ordinance.

(c). If the violation is a first violation of such provision of this Ordinance by the person cited, such person, in lieu of appearing in the municipal court at the time and on the date stated in the citation, may pay a fine of fifty dollars (\$50.00) stated in the citation plus the cost of court within ten (10) days from the date of such citation at the office of the municipal court clerk for the use of the City and other agencies as designated by law; except, however, that commercial establishments, institutions and construction sites may pay a fine of not less than five hundred dollars (\$500.00) stated on the citation plus the cost of court within ten (10) days from the date of such citation at the office of the municipal court clerk for the use of the City and other agencies as designated by law.

**SECTION 3. Failure to comply with notice.**

Any person who has been served such corrective notice in accordance with the provision of this Ordinance who shall neglect or refuse or fail to fully comply with the corrective notice so ordered within the time frame so ordered therein shall be in violation of this Ordinance.

**SECTION 4. Owner's and generator's responsibility.**

(a). Any person owning or occupying property within the City who generates litter shall be responsible for ensuring that such litter is managed, stored and handled in accordance with the provisions of this Ordinance.

(b). The owners or occupants of all residential units and commercial establishments shall be responsible for compliance with this Ordinance.

**SECTION 5. Cleaning litter or junk from open private property.**

(a). The City is hereby authorized and empowered to notify the owner of any open or vacant private property within the City, or the agent of such owner, to properly dispose of litter or junk located on such owner's property. Such notice shall be by certified mail, with return receipt requested, addressed to such owner at such owner's last known address as the same appears on the records in the office of the county revenue commissioner.

(b). The failure, neglect or refusal of any owner so notified to properly dispose of litter or junk within ten (10) days after the receipt of the notice provided for in this section shall constitute a violation of this Ordinance. In addition to all other available remedies, the City is specifically authorized to institute an action in the circuit court to abate any public nuisance created by litter or junk located on

any open or vacant property within the City, and the costs of such proceeding and the removal of such litter or junk shall be assessed against the owner's property.

(c). Subsection (a) of this section shall not apply to licensed junk dealers or establishments engaged in the repair, rebuilding, reconditioning or salvaging of equipment, provided that the work area is screened from public view by a fence, hedge, wall or similar device of sufficient height to provide a visual buffer and which otherwise complies with all applicable laws, ordinances, rules and regulations.

#### **SECTION 6. Penalties.**

(a). Any person found guilty of violating any provision of this Ordinance may be fined in an amount not to exceed five hundred dollars (\$500.00) for a first violation. Any person found guilty of a subsequent violation of this Ordinance may be fined in an amount not to exceed five hundred dollars (\$500.00) or up to the amount authorized by state law, whichever is greater, and may be imprisoned up to six (6) months. Each day a violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.

(b). Any person found guilty of violating any provision of this Ordinance may be, in the discretion of the court, sentenced to pick up litter or take other remedial action to comply with the terms of this Ordinance in lieu of, or in addition to, a fine or imprisonment.

#### **SECTION 7. Littering generally.**

(a). It shall be unlawful for any person to drop, deposit, discard or otherwise dispose of litter in or upon any public or private property within the City, including, but not limited to, any street, median, right-of-way, sidewalk, park, vacant or occupied lot or body of water, except in public receptacles or in authorized private receptacles provided for public use, or in an area designated by the state department of environmental management as a permitted disposal site.

(b). No person shall throw or deposit upon or alongside any highway, road, street, or public right-of-way any bottle, glass, nails, tacks, wire, cans, cigarettes, cigars, containers of urine, or any other substance likely to injure any person, animal or vehicle upon or alongside the highway, road, street or public right-of-way.

(c). Any person who throws, drops, or permits to be thrown or dropped, upon any highway, road, street, or public right-of-way any destructive or injurious material shall immediately remove the material or cause it to be removed.

(d). Any person removing a wrecked or damaged vehicle from a highway, road, street, or public right-of-way shall remove any glass or other injurious substance dropped upon the highway from the vehicle.

(e). No person shall throw or drop litter from a motor vehicle upon or alongside any highway, road or street, or public right-of-way.

#### **SECTION 8. Indiscriminate dumping or discarding of litter, junk and solid waste.**

It shall be unlawful for any person to discard or dump along any street, street median or road, on or off the right-of-way, any household or commercial solid waste or junk on any private or public property unless disposed of in receptacles provided for public use for the deposit of such material, or in an area designated by the state department of environmental management as a permitted disposal site. Any person charged with a violation of this section shall be required to appear in court to answer such charges, and upon conviction, shall be fined a minimum of one hundred dollars (\$100.00) and shall be subject to any other penalties provided in this Ordinance; except that commercial establishments, institutions and industrial or construction sites pay a minimum fine of five hundred dollars (\$500.00) for a violation of this section and shall be subject to any other penalties provided in this Ordinance.

#### **SECTION 9. Escape of load from uncovered vehicles; clearance of glass, etc.**

(a). It shall be unlawful for any person to haul garbage, paper, trash, sand, gravel, wet cement, construction materials, other loose materials or waste, unless the truck or vehicle is covered, secured or sealed to the extent that there will be no loss or spillage during haulage to cause littering of streets and highways or cause a nuisance or hazard to the public health; except however, that the deposit of sand or other substance to increase traction or water or other substance applied on a street or roadway in the cleaning or maintenance of such street or roadway by the government agency having such responsibilities shall not come within the prohibition.

(b). Any person operating a vehicle from which any glass, nails or other sharp objects have fallen or escaped which could cause an obstruction or damage a vehicle or otherwise endanger travelers on such public property shall immediately cause the public property to be cleared of such objects and shall pay any costs thereof.

(c). Whoever willfully and knowingly operates, owns, or causes to be operated on any public

highway, road, street, or public right-of-way a motor vehicle so loaded with gravel, rock, slag, or bricks, in any manner or in any condition that the contents of the vehicle spill out and cause it to be deposited upon the highway, road, street, or public right-of-way is guilty of a Class B misdemeanor pursuant to Section 13A-7-29, the criminal littering statute.

(d). No vehicle shall be driven or moved on any highway unless the vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining the roadway.

(e). Whoever willfully and knowingly operates, owns, or causes to be operated on a public highway, road, street, or public right-of-way, a motor vehicle in any manner or in any condition that litter is caused or allowed to be deposited upon the highway, road, or street or public right-of-way, is guilty of a Class B misdemeanor pursuant to Section 13A-7-29, the criminal littering statute.

(f). Any agricultural product in its natural state that is unintentionally deposited upon a highway, road, street, or public right-of-way does not constitute litter for purposes of this section.

#### **SECTION 10. Freedom from litter of areas surrounding commercial establishments and institutions.**

(a). It shall be the duty of each proprietor and each operator of any business, industry or institution to keep the adjacent and surrounding area clear and free of litter generated by the proprietor or operator. These areas include, but are not restricted to, public and private sidewalks, City rights-of-way, roads, alleys, grounds, parking lots, loading and unloading areas and all vacant lots which are owned or leased by such establishment or institution.

(b). All construction and demolition contractors, owners or agents shall provide on-site receptacles for loose debris, paper, building materials waste, scrap building materials and other litter products to prevent scattering of such materials by wind or rain if such materials are not otherwise properly disposed of on a daily basis.

(c). It is a violation of this Ordinance for any private property owner, tenant, occupant, lessee or agent to grant permission to any person to dispose of litter on such person's property.

(d). All commercial establishments shall store their litter in tightly covered containers so as to eliminate wind-driven debris and unsightly litter in and about their establishments. The number and size of containers necessary for each establishment shall be as required to maintain a clean, neat and sanitary premises. Spillage or overflow around containers shall immediately be cleaned up as it occurs.

#### **SECTION 11. Keeping residential property clean—General.**

It shall be the duty of each residential property owner and tenant to keep all exterior private property free of litter generated by the property owner or tenant. These areas shall include, but not be restricted to, sidewalks, alleys, driveways, yards, grounds, fences, walls and property lines, public and privately owned storm drains and vacant lots within the City.

#### **SECTION 12. Disposal of garbage.**

Disposal of garbage by single-family dwellings, duplexes, townhouses and condominiums shall be as follows:

(1). All household garbage shall be stored in tightly closed metal, rubber or plastic cans or in heavy-duty plastic garbage bags so as to prevent scattering of garbage by wind, water, traffic or scavenging animals.

(2). All household garbage generated by residences provided with common litter receptacles (dumpsters, etc.) shall be placed within such receptacles so as to prevent scattering of garbage by wind or rain.

#### **SECTION 13. Disposal of trash in residential areas.**

(a). All trash, as defined in Section 1 of this Ordinance, must be placed at curbside in accordance with current policies, rules and regulations of the City.

(b). Scrap, lumber, plaster, roofing, concrete, brick and sanding dust, resulting from the construction, repair, remodeling, removal or demolition of any building on any private property will not be removed by the City. All such material shall be removed by the owner or the contractor responsible for the accumulation of same before, during or after construction.

(c). It shall be the responsibility of any person doing work on private property to remove from the premises all residue and rubbish resulting from such work.

**SECTION 14. Keeping sidewalks and right-of-way clean and mown.**

Each owner, agent, occupant or lessee whose property abuts City streets shall be responsible for keeping sidewalks and City right-of-way strips between sidewalk and street mown and free of litter generated from their property.

**SECTION 15. Sweeping litter into street.**

It shall be unlawful to sweep, deposit or push litter or leaves or grass onto streets where it will be washed into the City storm drains. Such litter and leaves or grass shall be deposited in a proper receptacle which shall be tightly covered or tied to prevent scattering before pick-up.

**SECTION 16. Litter receptacles—Deposits restricted.**

It shall be unlawful to deposit any items except litter in any receptacle placed for public use as a depository for litter.

**SECTION 17. Providing and placement.**

(a). Any person owning or operating any establishment or public place shall at such person's own expense be responsible for providing, placing and the regular maintenance of litter receptacles adequate to contain the litter generated at such establishment.

(b). Any person owning or operating any trailer or mobile home park or apartment or condominium complex within which the residents thereof are provided with common litter receptacles, shall at such person's own expense be responsible for providing, placing and the regular maintenance of such common litter receptacles which shall be adequate to contain the litter generated therein.

**SECTION 18. Standards.**

Litter receptacles purchased and placed in compliance with this Ordinance shall meet the following minimum standards:

(1). Construction of such quality as to maintain original shape when placed at an outdoor location and reasonably resistant to rust and corrosion.

(2). Constructed and designed or covered in such a manner as to prevent or preclude blowing of litter from the receptacle.

(3). Be serviced frequently enough to prevent spillage from overflow and to prevent offensive odor.

(4). Be maintained sufficiently to present an acceptable appearance.

**SECTION 19. Removal.**

(a). The removal of litter from receptacles placed at public parks, beaches, fishing areas and other public recreation sites shall be the responsibility of those state and local agencies now performing litter removal services.

(b). The removal of litter from receptacles placed on private property which are used by the public shall remain the duty of the owner or operator of such private property.

**SECTION 20. Liability of Owner or Operator of Vehicle or Trailer Used in Littering**

(a). The City of Spanish Fort hereby finds and determines that littering within the City is a threat to the health, well-being and safety of the residents of the City. As a result, the City has determined to utilize any permissible technological means available to reduce the incidence of littering. Therefore, the City has established a policy and procedure set forth in this section to impose liability on the owner of a vehicle in any instance where the image of the operator or occupant of such vehicle is captured digitally or otherwise recorded throwing or depositing litter from such vehicle upon any street or other public place within the City or upon private property.

(b). The owner of a vehicle shall be liable for a civil penalty imposed pursuant to this section if such vehicle is used or operated with the permission of the owner; express or implied, in any instance where a recorded image is obtained showing the operator or occupant throwing or depositing litter from such vehicle upon any street or other public place within the City or upon private property.

(c). A notice of liability shall be sent by the police officer or other enforcement officer by certified class mail to each person alleged to be liable as an owner of a vehicle in violation of this Ordinance. A notice of liability shall contain the name and address of the person to be liable for the violation as the owner; the registration of the vehicle involved in such violation, the location where the violation occurred, the date and time of such violation. Further, the notice of liability shall advise the person charged of the court or tribunal having jurisdiction to adjudicate the liability of the violation and the time in which he or she may contest the liability alleged in the notice and that a failure to contest the notice in the manner and time proscribed shall be deemed an admission of liability.



(d). Sworn certificate, municipal offense ticket or summons as prima facie evidence. A certificate, municipal offense ticket or summons sworn to or affirmed by the police officer or enforcement officer primarily responsible for enforcing the provisions of this chapter based upon a review of the recorded images shall be prima facie evidence of the facts contained therein. Any recorded images shall be available for inspection in any proceeding commenced in a court of competent jurisdiction to adjudicate the liability of such violation.

(e). Defenses.

(1) An owner shall have a valid defense to an allegation of liability under this section if the vehicle in question had been reported to a police department or agency as stolen prior to the time the violation occurred, and had not been recovered by the time the violation occurred. For the purposes of asserting this defense, it shall be sufficient that a certified copy of the police report on the stolen vehicle be sent by first class mail to the court or tribunal having jurisdiction to adjudicate the liability of the violation.

(2) An owner who is a lessor of a vehicle to which a notice of liability is issued shall not be liable for the violation, provided that he or she sends to the court or tribunal having jurisdiction to adjudicate the liability of the violation a copy of the rental, lease or other such contract covering such vehicle on the day of the violation, with the name and address of the lessee clearly legible, within 30 days after receiving notice of such violation. Failure to send such information within the 30 days shall render the owner liable for the penalty prescribed in this chapter. When the lessor complies with the provisions of this subsection, the lessee of such vehicle on the date of the violation shall be deemed to be the owner of such vehicle for the purposes of this article.

(3) No owner of a vehicle shall be subject to a monetary fine under this chapter if the operator of such vehicle was operating the vehicle without the consent of the owner at the time of the violation. However, there shall be a rebuttable presumption that the operator of such vehicle was operating the vehicle with the consent of the owner at the time the violation occurred.

(f) Nothing in this section shall preclude the police officer or any other code or law enforcement officer from taking such other action in connection with violations of any other applicable rules, regulations, statutes or laws.

(g). To the extent permitted by law, an owner or operator of a motor vehicle or trailer is liable and responsible for illegal dumping of garbage, litter, waste or trash and for all costs, penalties and fines relating to the illegal dumping when the owner's and/or operator's motor vehicle or trailer is used with the express or implied permission of the owner or operator, irrespective of whether the owner or operator knew or should have known of the intended or actual use of the vehicle in violation of this Ordinance.

(h). The owner or operator of a motor vehicle or trailer whose vehicle or trailer is used in violation of this Ordinance and whose vehicle is captured by photographic or video surveillance shall be liable for a civil fine of \$100.00, plus court costs. Photographic or video evidence shall constitute a rebuttable presumption of a violation of this Ordinance.

(i). No civil action for littering based on evidence that creates a rebuttable presumption under Section 21(b) shall be brought against a person by or on behalf of the City unless he or she has been given written notice by a designee of the City that the City has photographic or video evidence that the owner or operators motor vehicle or trailer was used in violation of this Ordinance, and that, under Section 21(b), there is a rebuttable presumption that he or she allowed the use of the vehicle. The notice shall advise the person that littering is subject to a civil fine and may be classified as a misdemeanor and shall provide that, unless the person can present satisfactory information or evidence to rebut the presumption to the designee of the City within 15 days from the date of the notice, an action for civil and/or criminal littering may be filed against him or her in the appropriate court. If the person responds to the notice and presents information or evidence to the designee of the governing body, the designee shall review the information or evidence presented and make a determination as to whether or not an action should be brought against the person for civil or criminal littering. The designee shall provide written notice to the person of his or her determination, and if the intent is to proceed with an action for civil or criminal littering, the notice shall be sent before any action is filed. The police officer or designee obtain a summons from the city magistrate setting the hearing that shall be served on the owner/operator.

## **SECTION 21. Responsibility of waste matter creator or generator for illegally dumped material.**

(a). All persons creating or generating garbage, litter, waste or trash are responsible for seeing that it is disposed of in the manner provided by law. Persons disposing of garbage, litter, waste or trash must ensure that it is not illegally dumped. This responsibility includes not giving garbage, litter, waste or trash to a person for disposal who is not authorized to legally dispose of garbage, litter, waste or trash. For purposes of this Ordinance, any series of items found in the garbage, trash or other discarded material including, but not limited to, bank statements, utility bills, bank card bills and other financial documents, clearly bearing the name of a person shall constitute a rebuttable presumption that the person whose name appears on the material knowingly deposited the litter. Advertising, marketing and campaign materials and

literature shall not be sufficient to constitute a rebuttable presumption of criminal littering under this subsection.

(b). No action for criminal littering based on evidence that creates a rebuttable presumption under Section 21(a) shall be brought against a person by or on behalf of the City unless he or she has been given written notice by a designee of the City that items found in an accumulation of garbage, trash or other discarded materials contain his or her name and that, under Section 21(a), there is a rebuttable presumption that he or she knowingly deposited the litter. The notice shall advise the person that criminal littering is a Class B misdemeanor and shall provide that, unless the person can present satisfactory information or evidence to rebut the presumption to the designee of the City within 15 days from the date of the notice, an action for criminal littering may be filed against him or her in the appropriate court. If the person responds to the notice and presents information or evidence to the designee of the governing body, the designee shall review the information or evidence presented and make a determination as to whether or not an action should be brought against the person for criminal littering. The designee shall provide written notice to the person of his or her determination, and if the intent is to proceed with an action for criminal littering, the notice shall be sent before any action is filed.

**SECTION 22. Repealer Clause.**

This Ordinance shall not repeal any other ordinances but shall be cumulative in effect and provide additional rules, regulations and remedies.

**SECTION 23. 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 24. Effective Date.**

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

***ADOPTED and APPROVED this 2<sup>nd</sup> day of October 2023.***

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Michael M. McMillan  
Mayor

ATTEST:

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Rebecca A. Gaines  
City Clerk