

# Escambia County Litter Ordinance

## No. 2007-1022(4)

BE IT ORDAINED BY THE ESCAMBIA COUNTY COMMISSION AS FOLLOWS:

### Section 1 - Purpose and Authority

Pursuant to the authority granted to the Escambia County Commission under Code of Alabama 1975, § 11-3A-1 et seq. upon approval by its citizens in a referendum held on November 7, 2006, therefore be it ordained by the Escambia County Commission as follows:

The Escambia County Commission finds that it is in the best interest of the citizens of the county to adopt and implement rules and regulations regarding litter in order to protect its citizens from public nuisances relating to public welfare, health and safety within the unincorporated areas of the county. In order to address these concerns and pursuant to the authority granted to the Escambia County Commission under Code of Alabama 1975, § 11-3A-1 et seq., the Escambia County Commission has adopted the following Ordinance on litter on October 22, 2007 at an adjourned regular session of the Escambia County Commission, which adoption is evidenced by Resolution No.2007-1022(4), attached hereto as Addendum A.

### Section 2 -- Jurisdiction

This Ordinance shall only apply within the unincorporated areas of the county, and shall in no way be in effect or in force within the municipal limits of any municipality within the county unless amended with the approval of the appropriate city council and the Escambia County Commission. Additionally, this Ordinance shall in no way affect any protections granted to any persons or businesses pursuant to Code of Alabama 1975, § 6-5-127 or Code of Alabama 1975, § 11-3A-1 et seq.

### Section 3 -- Definitions

For the purpose of this Ordinance, the following terms shall have the following meaning:

Litter -- Rubbish, refuse, waste material, garbage, dead animals or fowl, offal, paper, glass, cans, bottles, trash, scrap metal, debris, or any foreign substance of whatever kind and description, and whether or not it is of value. Any agricultural product in its natural state that is unintentionally deposited on a public highway, road, street, or public right-of-way shall not be deemed litter.

Owner - Any person having an ownership interest in real property, or who leases or manages such property.

Rubbish -- Solid wastes, excluding ashes, consisting of both combustible and noncombustible wastes. Combustible rubbish includes paper, rags, cartons, wood, furniture, rubber, plastics, yard trimmings, leaves and similar materials. Noncombustible rubbish includes glass,

crochery, metal cans, metal furniture and like materials which will not burn at ordinary incinerator temperatures, not less than 1600 degrees Fahrenheit.

Litter or Rubbish Nuisance - An accumulation of litter and/or rubbish which creates a public nuisance as provided in this Ordinance.

Mandatory Solid Waste Collection Program - A program adopted by the county commission pursuant to Code of Alabama 1975, § 22-27-1 et seq. requiring that all residents living in the unincorporated areas of the county subscribe to and pay assessed fees for the solid waste collection program adopted by the county commission, unless properly exempted from participation as authorized under the law.

#### **Section 4 - Establishment of Litter or Rubbish Nuisance**

It shall be unlawful for property owners to allow the accumulation of litter or rubbish in a manner that presents a threat to public welfare, health and safety such that the litter or rubbish constitutes a public nuisance as defined in Code of Alabama 1975, § 6-5-120 and § 6-5-121. Further, it shall be unlawful and shall constitute a public nuisance for any person to fail to subscribe to the mandatory solid waste collection program under the rules and regulation established by the Escambia County Commission pursuant to Code of Alabama 1975, § 22-27-3, unless such person is granted an exception as provided therein.

#### **Section 5 -- Investigation and Enforcement**

The Escambia County Commission shall appoint one or more persons as Ordinance Enforcement Officer [hereinafter "Officer"] charged with the administration and enforcement of the provisions of this Ordinance. This officer may be an employee of the county or may be someone performing these duties under contract with the county commission.

Such officer shall patrol the unincorporated areas of the county on a regular basis in an effort to monitor compliance with this Ordinance by the citizens of the county. Additionally, any citizen with a complaint alleging a violation of one or more of the provisions of this Ordinance may contact the officer and request that the matter be investigated. The officer shall only investigate upon a citizen complaint where sufficient information is provided and where the citizen provides the officer with his or her name, address, and telephone number and agrees to sign a formal written complaint, if requested to do so.

For the purpose of discharging the duties imposed by this Ordinance and to enforce its provisions and abate a nuisance as determined by the Escambia County Commission, the officer is empowered to enter upon any premises upon which litter and/or rubbish exists or upon any premises at which a person is required to participate in a mandatory solid waste collection program but has failed to do so, but only as is necessary to investigate any alleged violation of this Ordinance or to issue notices and citations for any violation.

Whenever the Officer ascertains that litter and/or rubbish is present upon the premises in such manner as to be a public nuisance or that a person is required to participate in a mandatory solid waste collection program but has failed to do so, he or she shall cause a notice of sufficient size and weatherproofing to be placed upon the property. In addition to posting, he or she shall mail such notice by certified mail, return receipt requested, to the

owner of the premises upon which the nuisance exists as shown by the county's real estate tax records (hereinafter "owner") and to the address of the premises upon which the nuisance exists.

The Notice required shall be substantially in the following form:

**"NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED PROPERTY.** This property located at (set forth street address and brief description of property location) is creating a public nuisance in violation of Ordinance No.2007-1022(4) in that:

- It contains litter and/or rubbish and/or
- The owner has not subscribed to the county's mandatory solid waste collection program

Corrective action to abate this nuisance must be taken within ten (10) days from the date of this notice by:

- Removing the litter or rubbish within ten (10) days from the date of this notice and/or
- Properly subscribing to the mandatory solid waste collection program and paying all collection charges due.

If the above-marked corrective action is not taken within ten (10) days from the date of this notice as required under Section 4 of Escambia County Ordinance No.2007-1022(4), a citation for violation of this Ordinance shall be issued to the owner of this property who shall be subject to fines and to administrative fees equal to any costs incurred by Escambia County in the abatement of the nuisance. Any questions regarding this notice should be directed to (insert name telephone number of Ordinance Officer)."

The notice shall not be less than eight (8) inches by ten (10) inches and shall be sufficiently weatherproofed to withstand normal exposure to the elements for a period of ten (10) days.

If the litter or rubbish described in the notice is removed or properly stored within ten (10) days after posting of the notice or if the violation is for failure to subscribe, if the person subscribes to the mandatory solid waste collection program and pays any outstanding charges, there shall be no citation issued and no fines or administrative fees assessed. However, if a second violation of this Ordinance is found on the same property within twelve months from the date of notice of the first violation, the owner of the property upon which the violation is found shall be issued a citation as provided herein and shall not be granted the opportunity to avoid payment of fines and administrative fees by abating the nuisance prior to issuance of the citation.

If, at the end of ten (10) days after posting such Notice, the owner of the property upon which the litter or rubbish described in such notice is located has not removed or properly stored the litter or rubbish or the person has not subscribed to the mandatory solid waste

collection program and paid all charges due, the Officer shall issue a citation to the owner in a form approved by the Escambia County Commission, which citation shall state with specificity:

- a) the alleged violation for which the citation is issued;
- b) a description of the litter or rubbish creating the alleged violation or the failure of the person to subscribe to the mandatory solid waste collection program;
- c) the process and procedures for abatement of the public nuisance and payment of any assessed fines and administrative fees;
- d) information advising that the matter will be presented to the Escambia County Commission for consideration of the alleged violation and fines and administrative fees; and
- e) information regarding the owner's right to appear before the Escambia County Commission when it considers the alleged violation and fines and administrative fees and appeal or contest the issuance of the citation.

Copies of all notices and citations shall be provided to the Escambia County Commission, which shall set a date for action on the citation no less than 45 days following the issuance of the citation. The owner shall be notified by certified mail, return receipt requested, or by personal service, of the date, time and place of the County Commission meeting at which action will be taken. Notice shall also be posted in a public location within the courthouse.

When considering action on the citation, the Officer shall present to the Escambia County Commission all relevant information supporting the citation. The owner of the property, and, if different from the owner, the resident, shall also be given the opportunity to speak and to contest the issuance of the citation should he or she be present at the meeting. Following the receipt of information from the officer as well as from the property owner, the Escambia County Commission shall take action on the citation, finding either that the presence of litter or rubbish on the property, or the failure to subscribe to the mandatory solid waste collection program, constitutes a public nuisance which has not been properly abated or that the citation should be dismissed.

## **Section 6 -- Corrective Action**

If the Escambia County Commission determines that the presence of litter or rubbish, or the failure to subscribe to the mandatory solid waste collection program, constitutes a public nuisance which has not been properly abated, notice of said determination shall be given as provided in Section 7. The owner of the property shall be subject to a fine for the determination of the nuisance of not more than \$150 and an administrative fee equal to the amount expended thus far by the county in enforcing this Ordinance. Following such determination, the following shall apply for the abatement of the continuing nuisance.

1. The owner shall be given thirty (30) days to eliminate the nuisance and avoid the assessment of additional administrative fees equal to the cost of the county abating the nuisance by either:

- a) Subscribing to the mandatory solid waste collection program, if the violation is for the failure to subscribe, or
- b) Removing the litter or rubbish creating the litter or rubbish nuisance to the satisfaction of the Officer

The owner shall notify the Officer immediately of the date on which he or she believes that the nuisance has been abated. The Officer shall then verify that appropriate action has been taken and report this to the Escambia County Commission. Each day in which the violation is not abated as provided herein shall constitute a separate public nuisance and subject the owner to additional fines in the amount of \$150 per day. Upon verification by the Officer that the nuisance has been properly abated, the Officer shall advise the owner of the additional amount due for fines as set out herein, and upon the payment of all assessed fines and administrative fees, the matter shall be closed.

2. If the nuisance is not abated by the owner within thirty (30) days of the date of the Notice required in Section 7, the Officer may enter upon the premises and remove and immediately dispose of all items constituting the nuisance as determined by the Escambia County Commission. An administrative fee equal to the cost of such abatement, plus the fine of \$150 per day with the maximum fine of \$5000 from the date of the determination of the nuisance to the date of its abatement shall be assessed against the property owner.

All fines and administrative fees shall be paid to the administrator of Escambia County who shall provide the Officer with verification of all payments made.

In addition to all other remedies available pursuant to this Ordinance, in the event that an owner who has been assessed fines and administrative fees for the violation of any provision of this Ordinance fails to pay such fines and administrative fees due within thirty (30) days of issuance, the officer may, on behalf of the county, bring action in the Circuit Court of Escambia County, Alabama, against the owner for injunctive relief and/or the unpaid fines and administrative fees.

## **Section 7 - Notice of Nuisance Determination**

If the Escambia County Commission determines that the presence of litter or rubbish constitutes a public nuisance as provided in Section 5, written notice to that effect shall be mailed, certified mail, return receipt requested, to the owner and to the address of the premises upon which the nuisance exists, which notice shall advise each of the following:

- 1) That the Escambia County Commission has determined that the presence of litter or rubbish on the property or the failure to subscribe to the mandatory solid waste collection program constitutes a public nuisance which has not been abated;
- 2) A description of the litter or rubbish constituting the nuisance;
- 3) That the property owner has thirty (30) days from the date of the notice to eliminate the nuisance under the procedures set out in Section 6;

- 4) That additional administrative fines and penalties shall be assessed as set out in Section 6;
- 5) That if the property owner fails to eliminate the nuisance within thirty (30) days, the Officer may enter onto the premises to remove and immediately dispose of all items constituting the nuisance as determined by the Escambia County Commission;
- 6) That in the event the Officer removes and disposes of the nuisance, the property owner will be assessed an administrative fee equal to the cost of abatement in addition to other assessed fines and fees; and
- 7) The name, address, and telephone number of the Officer to contact with regard to the abatement of the nuisance or any other matters contained in the notice.

### **Section 8 -- Records**

It shall be the duty of the Officer to keep, or cause to be kept, accurate and detailed records of:

- a) The date and method of disposition of all litter or rubbish coming into the officer's custody;
- b) All incidents and investigations conducted under this Ordinance, including but not limited to, all notices and citations issued, all correspondence to and from persons noticed or cited under this Ordinance, and minutes of all county commission proceedings relevant to any and all notices and citations issued; and
- c) All monies collected and expended in the administration and enforcement of this program.

All such records shall be open to the public for inspection at reasonable times, shall be available to such persons responsible for similar records of the county, and shall be audited in the same manner as other county records are audited.

### **Section 9 -- Effective Date**

This ordinance shall become effective on January 1, 2008.

“Addendum A”

RESOLUTION

**WHEREAS**, the Legislature of Alabama authorized the Escambia County Commission to address the abatement of certain nuisances, including litter nuisances, through the passage of Act 2005-200; and

**WHEREAS**, the voters of Escambia County further authorized the Escambia County Commission to address said nuisances by approving the application of the provisions of Act 2005-200 within Escambia County, at a referendum held on November 7, 2006; and

**WHEREAS**, the Escambia County Commission recognizes the dangers posed to the public health, safety, and welfare of the citizens of Escambia County by the improper accumulation of litter; and

**WHEREAS**, it is the desire of the Escambia County Commission to improve the quality of life of the citizens of Escambia County.

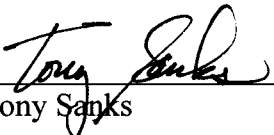
**NOW, THEREFORE, BE IT RESOLVED AND ORDERED**, by the Escambia County Commission that Ordinance No. 2007-1022(4) is hereby approved and made to be effective January 1, 2008.

**DONE**, this the 22<sup>nd</sup> day of October, 2007.

\* \* \* \* \*

I, Tony Sanks, County Administrator of Escambia County, Alabama, hereby certify the foregoing to be a true and correct copy of a Resolution adopted by the Escambia County Commission, assembled in an adjourned regular session held on the 22<sup>nd</sup> day of October, 2007.

Given under my hand and the seal of the Escambia County Commission, this the 22<sup>nd</sup> day of October, 2007.

  
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Tony Sanks