

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE PROHIBITING THE ACCUMULATION OF RUBBISH, GARBAGE, LITTER, INOPERATIVE MOTOR VEHICLES, JUNK, AND OTHER NUISANCES WITHIN THE CORPORATE LIMITS OF THE CITY OF WESTOVER, ALABAMA**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WESTOVER, ALABAMA, as follows:**

**Section 1. Definitions.**

The following terms, when used in this article, shall have the meaning ascribed to them in this section:

*Abate:* To stop, halt, end or terminate.

*Antique or vintage vehicle:* A vehicle, operative or inoperative, which is being or has been restored and has a valid State of Alabama vintage vehicle license plate attached.

*Authorized agent:* Any city employee designated by the Mayor, to have enforcement authority under this article.

*Debris:* Those things or conditions existing on private property in the city which are hazardous or detrimental to the public health or safety or which constitute a fire hazard, including conditions which by their unsightly appearance can result in decreasing the value of other properties in the immediate area. Debris includes, but is not limited to, the following: Accumulation of rubbish, trash, refuse, junk, and other abandoned materials, such as pallets and lumber; partially dismantled, nonoperating, wrecked, junked, or discarded motor vehicles, major recreational equipment, semi-trailers, trailers, or construction equipment; motor vehicle parts or other equipment parts, including, but not limited to, tires; and other equipment, garden tools, building supplies, household appliances, toys, or furniture.

*Enclosed area:* Any area composed of at least three (3) solid walls and a solid roof which is inaccessible to public view, except that for the purpose of this article the use of tarpaulins or tarpaulin-type materials in good repair to shield an area from public view shall also be an enclosed area. An enclosed area shall also include an area enclosed by a privacy fence constructed at least five (5) feet high of materials such as wood, vinyl, or comparable material that shields the materials and items housed behind said fence from public view from any street, highway, or right-of-way.

*Inoperative motor vehicle:* A motor vehicle that is unable to move under its own power due to defective or missing parts and which has remained in such condition for a period of not less than seven (7) consecutive days, or a motor vehicle that is not currently licensed and insured for use on public streets.

*Junk:* Worn out, dismantled, inoperable, wrecked, or dilapidate mobile homes, manufactured homes, trailers, vehicles, aircraft or appliances, scrap building materials, metals, rubber, paper, plastic, wood, clothes, machinery parts, or other discarded waste, scrap, or discarded materials of every kind or substance whatsoever, or any scrap or salvage materials.

*Junkyard:* Any premises, establishment, or place of business which is duly licensed and operated in accordance with all applicable laws and ordinances of the City of Westover, Alabama, and which is maintained, operated, or used for the collection, storage or sale of wastepaper, rags or scrap metal or discarded material, or for the collection, dismantling, storage or salvaging of machinery or inoperative vehicles or for the sale of parts thereof.

*Major recreational equipment:* For purposes of this article, major recreational equipment includes travel trailers, camper shells, pickup campers or coaches, motorized dwellings, tent trailers, converted buses or similar devices intended for use as portable recreational housing, boats and boat trailers, amphibious houseboats and the like, and cases or boxes used for transporting recreational equipment, whether occupied by such equipment or not.

*Major repair:* Major repairs include pulling an engine block, repair or replacement of transmissions and front and rear axles, major body repair, dismantling, and similar work associated with automobiles, boats or other motorized vehicles.

*Minor repair:* Minor repairs include routine maintenance such as changing oil and tires; replacement of water pump, alternator, brakes, shocks, oil and air filters, and spark plugs; and similar work associated with automobiles, boats or other motorized vehicles.

*Motor vehicle:* Any style or type of motor driven vehicle used for the conveyance of persons or property. For example, automobiles, trucks, go-carts, golf carts, all-terrain vehicles, motorcycles, race cars, motorized farm and construction equipment, etc.

*Nuisance:* For the purpose of this article, the word "nuisance" is hereby defined as an unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing either:

- (1) Injures or endangers the comfort, repose, health or safety of others; or
- (2) Is offensive to the senses; or
- (3) Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream ditch or drainage; or
- (4) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.

*Owner:* A person, persons, or legal entity listed as current titleholder as recorded in the official property records of Shelby County, Alabama, including the person, persons, or legal entity last assessed for payment of ad valorem taxes on the property at issue.

*Occupant:* A person, persons, or legal entity that, through rights of ownership or tenancy, has possession or the use and enjoyment of the subject real property.

*Person:* Any individual, owner, title holder, agent, firm, corporation, partnership, association, organization, or entity of any kind. The term "person" includes, but is not limited to, any tenant, lessee, manager, operator, occupant, executor, executrix, administrator, administratrix, guardian, or other person in charge of, care of, possession of or control of any real or personal property.

*Scrap metal yard:* Any person who is duly licensed and operating in accordance with all applicable laws or ordinances of the City of Westover, Alabama, and is engaged primarily in the purchase and collection of scrap metals (e.g., manufacturing byproducts, obsolescent machinery,

and vehicles) for the specific purpose of processing into scrap materials for the metals recovery industry, such as steel mills, foundries, smelters and refineries, and having machinery and facilities designed for such processing, and making regular shipments of such materials in the normal course of business.

*Semi-trailer:* The non-motorized storage portion of a tractor-trailer rig used to transport goods and merchandise.

*Solid wastes:* All putrescible and non-putrescible discarded materials, except household sewage and livestock and poultry wastes, including, but not limited to, garbage, rubbish, ashes, street and highway cleanings, dead animals, including offal, abandoned motor vehicles, and such industrial wastes as are not controlled by other agencies.

*Street, highway or right-of-way:* The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular traffic.

*Trailer:* A wagon, two (2) or four (4) axles, pulled by a motorized vehicle. For the purpose of this article, trailer can also refer to a house trailer in transit.

*Unauthorized dump:* Any collection of solid wastes either dumped or caused to be dumped or placed on any property either public or private, whether or not regularly used, and not under the control and supervision of any person or agency. An abandoned motor vehicle, large appliance, furniture, bedding, or similar large item of solid waste shall be considered as forming an unauthorized dump within the meaning of this article, but not the careless littering of smaller individual items such as tires, bottles, cans, and the like. The term “unauthorized dump” shall also mean any solid waste disposal site which does not meet the regulatory provisions of the Solid Wastes and Recyclable Materials Management Act (Code of Ala. 1975, § 22-27-1 et seq.) and other regulatory provisions enforced by the Alabama Department of Environmental Management, the United States Environmental Protection Agency or other similar regulatory body.

## **Section 2. Construction.**

This article shall be construed to contain all powers granted to municipalities under §§ 11-40-10, 11-47-117, 11-47-131 and 11-47-140, Ala. Code 1975, and any other applicable provisions of Alabama law, providing for controlling nuisances, sanitation, and good public health and safety conditions.

## **Section 3. Prohibitions; Nuisance declared.**

(a) It shall be unlawful and it is hereby declared to be a nuisance for any person to store or keep or allow to remain for more than seven (7) days outside of any enclosed area of property any debris, junk, or any inoperative motor vehicle that is accessible to children, or which allows for the accumulation of weeds, grass, or other vegetation in and around such debris, junk, or inoperative motor vehicle, or which allows for the collection and accumulation of stagnant water or other conditions where mosquitoes or other insects of like kind are apt to propagate.

(b) The provisions of subsection (a) shall not apply to a duly-licensed scrap metal yard or junkyard which is operating within a properly-zoned district, provided that any materials stored or located on the premises of any junkyard or scrap metal yard are contained within a privacy fence constructed at least five (5) feet high of materials such as wood, vinyl, or comparable material that shields the materials and items housed behind said fence from public view from any street, highway, or right-of-way.

(c) The provisions of subsection (a) shall not apply to a duly-licensed automobile dealer, automobile repair and body shop or garage, or other major recreational equipment repair enterprise that is duly-licensed and operated in compliance with all applicable codes and ordinances of the City of Westover, Alabama, provided that the motor vehicles and said equipment are so located or stored in a manner as to prevent any health, fire, or safety hazard.

(d) No person shall be prevented from storing or keeping any antique or vintage vehicle on private property with the permission of the person having the right to the possession of the property, except that a person having such permission shall be required to conceal by means of buildings, fences, vegetation, terrain, material covering, or other suitable obstruction, any antique or vintage vehicle stored in the open from public view from any street, highway, or right-of-way, and store said antique or vintage vehicle in a manner that prohibits the accumulation of weeds, grass, or other vegetation in and around said vehicle and prohibits the collection and accumulation of stagnant water or other conditions where mosquitoes or other insects of like kind are apt to propagate.

(e) It shall be unlawful and it is hereby declared to be a nuisance for any person to keep or store upon the premises of any residence, retail store or secondhand store, thrift store, or similar commercial property or establishment, any merchandise, goods, or wares, including but not limited to, gas or electrical appliances, parts thereof; plumbing fixtures or parts thereof; lawn mowers or lawn mower parts; machinery, equipment, utensils or other items displayed for sale to the general public, in such a manner as to constitute a health, safety, or fire hazard, or in a manner that interferes with the comfortable enjoyment of life and property or tends to depreciate the value of the property of others. Outside displaying of merchandise in accordance with applicable laws shall be allowed.

(f) It shall be unlawful and it is hereby declared to be a nuisance for any person in charge of any residential or commercial property to fail to maintain the property free from debris and junk as defined herein, unless said debris and junk is contained and stored in such a manner as to prevent it being seen from the roadway, blown, deposited, or otherwise scattered by the elements, animals, birds, or any other means.

(g) Except as provided herein, it shall be unlawful and it is hereby declared to be a nuisance for any person in charge of any residential or commercial property to dump, to have dumped, or to allow to be dumped any solid waste on any residential or commercial property or to allow or permit such property to be used as an unauthorized dump. The dumping of solid wastes or the existence of an unauthorized dump are hereby declared to be a public nuisance *per se*, a menace to public health, and a violation of this article. A person may dispose of his or own

yard trimmings, leaves, limbs, stumps, wood, and similar materials on his or her own property provided such materials originated on the property on which it is disposed.

(h) It shall be unlawful and it is hereby declared to be a nuisance for any person to allow the accumulation of foul water on any property within the city.

(i) It shall be unlawful and it is hereby declared to be a nuisance and injurious to public health, safety and general welfare for any person to allow or permit any dead animal, carrion, or any filthy or putrescent matter to be or remain on any property within the city or for any other person to leave or otherwise deposit any dead animal, carrion, or any filthy or putrescent matter upon any property within the city.

(j) It shall be unlawful and it is hereby declared to be a nuisance for the owner, occupant, or other person in charge or control of any property within the city to allow more than ten (10) motor vehicle tires to be stored, kept, or allowed to remain in a manner visible from a public street, highway, or right-of-way. Any such person shall be required to conceal said tires from public view from any street, highway, or right-of-way by means of buildings, fences, vegetation, terrain, material covering, or other suitable obstruction. Moreover, any tires stored on any property in the city shall be stored or covered in a way to prevent the accumulation of stagnant water or other conditions where mosquitoes or other insects of like kind are apt to propagate and to prevent the accumulation of weeds, grass, or other vegetation in and around said tires. Any failure to store or cover any tires in such a manner shall be unlawful and declared to be a nuisance.

(k) It shall be the duty of the owner, occupant, or any person in control of or in charge of property located within the City of Westover, Alabama, to maintain said property in compliance with the provisions of this article.

(l) All violations of this article are hereby declared to be a public nuisance and may be abated as provided by applicable law and punished as provided herein.

**Section 4. Tearing down, stripping, etc., of motor vehicles, major recreational vehicles or parts thereof prohibited.**

(a) The tearing down, stripping, junking, major repair, or servicing of motor vehicles, including major recreational vehicles, or parts thereof, is prohibited unless such use is shown to be specifically authorized, permitted, or licensed under this or other ordinances of the city.

(b) This section shall not be construed as prohibiting the occupant of a residence located in or adjacent to a predominantly residential area from performing minor repairs on his or her own motor vehicle, including major recreational vehicles, or parts thereof, if said minor repairs are made within the confines of an enclosed area or on a paved driveway or parking pad between the hours of 7:00 a.m. and 10:00 p.m. and the repairs are completed within seven (7) days.

(c) The creation of frequent, repetitive, or continuous sounds in connection with the starting, operation, repair, rebuilding or testing of any motor vehicle, motorcycle, off-highway vehicle, major recreational vehicle, or internal combustion engine within a residential district, so as to unreasonably disturb or interfere with the peace, comfort and repose of owners or possessors of real property, is hereby prohibited by this article.

#### **Section 5. Outdoor storage of certain items.**

(a) No mud, dirt, sand, gravel, concrete or such materials shall be deposited in any manner that the material would flow into a public storm drain or watercourse, or public right-of-way, and the material shall be removed as quickly as is feasible, but in no event less than twenty-four (24) hours from the time deposited.

(b) No debris or junk, including, but not limited to, trash, paper, wood, plant cuttings and other vegetation, shall be spilled onto the street, highway, or right-of-way, or any sidewalk.

(c) No motor vehicles or other materials associated with business activity shall be stored on or in any street, highway, or right-of-way.

(d) No debris, junk, or items of business inventory, including, but not limited to, equipment, motor vehicles, furniture, or the like shall be placed in such a manner as to unlawfully obstruct the free passage or use in the customary manner of any street, highway, or right-of-way, navigable waterway, public park or space, lane, or sidewalk unless specifically authorized under other ordinances of the city.

#### **Section 6. Inspections.**

Authorized agents of the city are hereby authorized to enter into or upon any premises where there is a reasonable cause to suspect the existence of any nuisance as provided herein. It shall be unlawful for any person to interfere, hinder, or refuse to allow said agent to enter upon private property for inspection. Reasonable cause may be established by, but is not limited to, the filing of an oral or written complaint with the city.

#### **Section 7. Notice.**

(a) Whenever the city finds that any person has violated or is in violation of this article, or any prohibition, limitation, or requirement contained herein, the city shall give written notice to the owner, occupant, or such person in possession stating the nature of the violation and requiring the abatement of said nuisance as provided herein.

(b) Any employee of the city who is designated by the Mayor as a Code Enforcement Officer is hereby authorized to issue the notice required herein and to issue a citation or summons to persons found by him or her to be in violation of this article.

**Section 8. Contents of notice.**

The issued notice under the provisions of this article shall contain:

- (1) An order to correct the violation within twenty-one (21) days from the date of said notice.
- (2) The location of the violation, if the same is stationary.
- (3) A statement of the nature of the violation.
- (4) A statement of acts necessary to correct the violation.
- (5) A statement that the failure to abate the nuisance within twenty-one (21) days from the date of the notice may result in criminal prosecution and the imposition of fines and costs.

**Section 9. Service of notice.**

The notice required under this article shall be given by certified mail, return receipt requested, personal service, or by any other method of service available pursuant to Rule 4 of the Alabama Rules of Civil Procedure. The notice shall be sent to the occupant of the property on which the violation is alleged to exist and the person shown by the records of the tax assessor to have been the last person assessing said property for payment of ad valorem taxes. In addition, said notice shall be posted in a conspicuous place upon the property on which the violation of this article is alleged to exist.

**Section 10. Failure to correct violation; misdemeanor declared.**

Upon the failure of the person upon whom notice was served pursuant to the provisions of this article to correct the violation within the time prescribed by the notice or to submit a written plan for the satisfactory correction thereof within the 21 day period, the person shall be guilty of a misdemeanor and the duly designated agent of the city shall proceed to issue to said person a non-traffic citation or a misdemeanor warrant, if appropriate.

**Section 11. Penalties.**

Any person convicted of violating any provision of this article shall be punished by a fine in an amount not exceeding five hundred dollars (\$500.00), or imprisonment of not more than six (6) months, or both such fine and imprisonment, at the discretion of the court trying the case.

**Section 12. Each violation a separate offense.**

Each day of violation of this article (after 21 day notice has been served) is a separate offense. In all cases, the person whose duty is to abate any nuisance shall be liable for separate and distinct offenses for each day the nuisance is allowed to remain after notice to abate it.

**Section 13. Severability.**

All sections of this ordinance are hereby declared to be severable; and if any word, phrase, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional or invalid by the judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining words, phrases, clauses, sentences, paragraphs, and sections of this ordinance.

**Section 14. Repeal of conflicting ordinances.**

Any Ordinances, or any provisions thereof, in conflict with this Ordinance shall be and are hereby repealed on the effective date of this Ordinance.

**Section 15. Effective date.**

This Ordinance shall become effective upon approval, passage and publication as required by law.

**ADOPTED AND APPROVED** this 20th day of November 2018.

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