

ORDINANCE 2023-XX

AN ORDINANCE OF THE CITY OF OCALA, FLORIDA, CONCERNING LITTER; PROVIDING LEGISLATIVE FINDINGS; AMENDING CHAPTER 34 ARTICLE IX, SECTION 34-201 PROVIDING FOR LITTER DEFINITIONS, REQUIREMENTS, ENFORCEMENT, AND PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Ocala, Florida as follows:

WHEREAS:

- A. It is the intent of the Ocala City Council (hereafter, “the Council”) and this Ordinance to promote a clean, healthy, safe, and attractive community and environment in which to live; and
- B. The Florida Litter Law, Sections 403.413--4135, Florida statutes (2022) contains a legislative finding that a comprehensive illegal dumping, litter, and marine debris control program and prevention program is necessary to protect the beauty and the environment of Florida. The Legislature further finds that the program must be coordinated and capable of having statewide identity and grassroots community support. Sec. 403.4135(1), Florida Statutes (2022); and
- C. Section 403.4135(8), Florida Statutes (2022) provides that this section does not limit the authority of any state or local agency to enforce other laws, rules, or ordinances relating to litter or solid waste management; and
- D. The Council’s intent is that Section 34-201 of the Code of Ordinances, be part of the statewide comprehensive illegal dumping, litter, and marine debris control program, and be consistent with the Florida Litter Law, while at the same time providing for additional regulations deemed beneficial for the City of Ocala.
- E. The Council finds that illegal dumping of litter on public and private property in the city is a serious problem in Ocala/Marion County resulting in unnecessary costs to taxpayers, and adversely affecting the natural beauty and attractiveness of our community as a whole, the effective solution of which requires a broad-based buy-in from the entire community; and

- F. Consistent with the above-referenced statutory provisions, the Board of County Commissioners (hereafter, “the Board”) has created a broad-based Marion County Litter Task Force, comprised of public and private community leaders, to make recommendations for solutions to the Board; and
- G. The Task Force has recommended updating the City’s Code of Ordinances related to litter enforcement, in order to provide enhanced penalties for violators, and otherwise bring the City Code in line with Florida State Statutes; and
- H. Section 403.413(3), Florida Statutes (2022) provides that the city shall determine the training and qualifications of any employee of the City to enforce the provisions of the Florida Litter Law if the designated employee is not a regular law enforcement officer; and
- I. Section 403.4132, Florida Statutes (2022) provides that local governments are encouraged to initiate programs to supplement the existing litter-removal program for public places and highway systems operated by the Department of Transportation. That section further provides that to the extent that funds are available from the department for litter pickup and removal programs beyond those annually available to the Department of Corrections, priority shall be given to contracting with nonprofit organizations for supplemental litter-removal programs that use youth employment programs.

Section 1. The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this ordinance.

Section 2. That Section 34-201 of the Code of Ordinances, City of Ocala, Florida is hereby amended to read as follows:

Sec. 34-201. Litter

- (a) The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
 - (1) Applicable law means any applicable local, state, or federal statute, law, constitution, charter, ordinance, judgment, order, decree, permit, rule, regulation, directive, policy, standard, or similar binding determination, or a judicial or administrative interpretation of any of the same, which are in effect or are enacted, adopted, promulgated, issued, or enforced by a governmental body.
 - (2) Body of water means any significant accumulation of water including any freshwater lake, pond, river, canal, stream, or coastal water.

- (3) Citation means a written notice, issued to a person by an officer, that the officer has probable cause to believe the person has committed a civil infraction in violation of a duly enacted ordinance and that the county court will hear the charge.
- (4) Code means the Code of Ordinances of City of Ocala.
- (5) Container means a garbage can, roll cart, dumpster, or similar receptacle that is used for the collection of solid waste.
- (6) Dump means to dump, throw, discard, place, deposit, or dispose of.
- (7) Law enforcement officer means any officer of the Florida Highway Patrol, the county sheriff's department, a municipal law enforcement department, or a law enforcement department of any other political subdivision or agency of the State of Florida. In addition, and solely for the purposes of section 16-91, Law enforcement officer means any employee of the city that is designated by the city manager as a litter enforcement officer, including, but not limited to, a city code enforcement officer, environmental enforcement officer, an employee of the city parks and recreation department, public works department, or an employee whose duty it is to ensure code compliance or to enforce codes and ordinances.
- (8) Litter means includes, but is not limited to, any garbage; rubbish; solid waste; trash; refuse; can; glass or plastic bottle; box; container; paper; tobacco product; cigarette butts; disposable medical or other filtration masks of any kind; syringes or drug paraphernalia; tire; appliance; mechanical equipment or part; building or construction material; tool; machinery; wood; motor vehicle or motor vehicle part; vessel; aircraft; farm machinery or equipment; sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility; illegal signs; temporary political signs still in place sixty days after the last applicable election; or waste substance in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.
- (9) Motor vehicle means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor, or any other vehicle that is powered by a motor.
- (10) Municipality or any like term, means a municipality created pursuant to general or special law authorized or recognized pursuant to S.2 or S.6, Article VIII of the State Constitution and, when s. 403.706(19), Florida Statutes (2022) applies, means a special district or other entity located within Marion County, Florida.
- (11) Owner means a person who owns, leases, or occupies the property.

- (12) Person means any and all persons, natural or artificial, including any individual, firm, venture, or association; any public or private corporation organized or existing under the laws of this state or any other state; any city or county of this state; and any governmental agency of this state or the Federal Government.
- (b) No person shall dump litter in any manner or amount:
- (1) In or on any public highway, road, street, alley, or thoroughfare, including any portion of the right-of-way thereof, or any other public lands, except in containers lawfully provided therefor. When any litter is thrown, blown, bounced, or discarded from a motor vehicle, the operator or owner of the motor vehicle, or both, shall be deemed in violation of this section; or
 - (2) In or on any freshwater lake, river, canal, or stream of the city, including canals. When any litter is thrown, blown, or discarded from any boat or vessel, the operator or owner of the boat or vessel, or both, shall be deemed in violation of this section; or
 - (3) In or on any private property, unless prior consent of the owner has been given and unless the dumping of such litter by such person will not cause a public nuisance or otherwise be in violation of any other state or local law, rule, or regulation.
- (c) No person shall operate any motor vehicle on any street or highway unless such motor vehicle is constructed, and loaded to prevent any of its load from dropping, sifting, leaking, spilling, or otherwise escaping; provided, however, that sand or any substance used to increase traction, or water or other substance used to control dust, may be applied on a roadway in the cleaning or maintaining of such roadway by a state or local government agency having such responsibilities.
- (d) Any motor vehicle transporting litter or other items likely to fall or be blown from such motor vehicle shall be enclosed, covered, or secured with a close-fitting tarpaulin or other appropriate cover or load-securing device to prevent its contents from blowing, dropping, or falling from such vehicle
- (e) Any person generating, transporting, or receiving litter shall be responsible for ensuring that such litter is managed, stored, handled, transported, and disposed of in accordance with the provisions of this chapter and chapter 54.
- (f) When a violation of any provision of this section has been observed by any person, and the litter dumped on a highway, right-of-way, property adjacent to a highway or right-of-way, private property, or body of water has been ejected from

a motor vehicle or vessel, the owner, operator, or both, of such motor vehicle or vessel, that fact shall constitute prima facie evidence that the owner, operator, or both, of such motor vehicle or vessel shall be deemed to be in violation of this section.

(g) Any article of litter bearing a person's name and postal street address or email address, phone number, or any other information sufficient to enable the verification of the identity of such individual, found on the private property of another or on public property, shall constitute prima facie evidence that the litter is the property of such person whose name and other identifying information appears thereon, and it shall constitute prima facie evidence that such person dumped or disposed of such article of litter. The named individual may be an owner-occupant, or a tenant, of the designated property, as long as he or she is a current resident of such property. This presumption shall be rebuttable by competent substantial evidence.

(h) All law enforcement officers shall enforce the provisions of this section. All park rangers, code enforcement officers, environmental officers, and parking enforcement officers are authorized to issue citations and initiate prosecutions.

(i) Pursuant to Section 403.413(7), Florida Statutes (2022), all employees of the city whose duty it is to ensure code compliance or to enforce codes and ordinances are hereby designated and authorized to enforce the provisions of the Florida Litter Law. Nothing in this section shall provide such employees with the authority to bear arms or to make arrests.

(j) Pursuant to Sec. 403.413(3), Florida Statutes (2022), the Ocala City Manager is directed to develop, in consultation with the Ocala Police Department and the State Attorney for the Fifth Judicial Circuit, policies providing for the training and qualifications of all city employees who are designated to enforce this Ordinance, who are not law enforcement officers, and to present those policies to the Council for ratification within 90 days of the adoption of this Ordinance.

(k) Any person who violates the provisions of this section shall be cited as follows:

(1) *Civil penalties:* Any person who litters in violation of this section is guilty of a noncriminal infraction, punishable by a civil penalty of one hundred fifty dollars (\$150.00) for the first conviction, three hundred dollars (\$300.00) for the second conviction and five hundred dollars (\$500.00) for the third and all subsequent convictions. For purposes of this paragraph, "conviction" means a determination of guilty that is the result of a plea, a trial, or the imposition of a civil fine, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

(2) *Additional penalties:*

a. The second and all subsequent convictions for violations

of the provisions of this section shall, in addition to the above fines, be punishable by:

1. Incarceration in the county jail of up to ten (10) days; and/or
 2. Perform litter pick-up or other community service as prescribed by the Florida Litter Law, section 403.413(6)(b), Florida Statutes (2022), when authorized therein. Payment of the fine prescribed by paragraph (1), above, does not eliminate the requirement for such litter pick-up service for violators who are physically able to perform such service.
- (3) The amounts of money collected from the assessed fine shall go into the general revenue fund of city to be used for litter control.
- (4) *Litter cleanup restitution payment.* Separate from, and in addition to, any penalties provided for violation of the provisions of this Ordinance, the Council may mail, serve, or deliver to the violator, an invoice supported by a list of certified expenses incurred by the city or a city contractor for the cleanup of any litter dumped by the violator. The violator shall remit payment for such invoice to the City of Ocala Public Works Department within 30 days of the date of such invoice. If the invoice is not timely paid, the Council may record a lien on the property of the violator, if the violation and cleanup are related to such property. If the violator dumped the litter on property he or she did not own, the city shall have a cause of action for recovery of such certified expenses in the County Court of Marion County, and the violator shall be liable for all court costs and expenses incurred by the city in obtaining payment of such invoice.
- (5) *Special Litter Enforcement Corridors.* The city, by resolution, may designate certain segments of city roads as Litter Enforcement Corridors as a way to increase focus on litter and illegal dumping. These road segments are ones that have a high aesthetic or historic value worth preserving and will be marked with signs to notify motorists.

(1) Subject to the limitations contained herein, the public works department collects litter from the public right-of-way of collector and arterial roads maintained by the city. The public works department also collects solid waste from illegal dumping on such roads. The public works department is not responsible for collecting litter or solid waste on other roads or private property. The city manager may authorize the public works department to collect litter on public roads and public property when required for public health, safety, and welfare. The extent and

frequency of such activities are subject to the city's budgetary constraints and weather conditions.

(m) Subject to the limitations contained herein, the public works department may remove and dispose of litter, junk, and solid waste that was illegally dumped on a public right-of-way or other public property and then collected by a civic or community organization during a community clean-up project. The extent and frequency of the city's activities in support of a community clean-up project are subject to the city's budgetary constraints and other factors. Although the city supports community clean-up projects, the city does not remove or dispose of materials collected during a clean-up on private property unless authorized by the city manager.

Section 3. Severability Clause: Should any provision or section of this ordinance be held by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be unconstitutional or invalid.

Section 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 5. This ordinance shall take effect upon approval by the Mayor or becoming law without such approval