

ORDINANCE NO. 92

**AN ORDINANCE TO DECLARE LITTERING AND ILLEGAL DUMPING
WITHIN THE CITY OF GOSHEN ILLEGAL; TO FIX THE PENALTY FOR
VIOLATION OF THIS ORDINANCE; AND TO DECLARE AN
EMERGENCY AND FOR OTHER PURPOSES**

WHEREAS, the City Council of the City of Goshen deems it advisable to declare littering and illegal dumping within the corporate limits of the City of Goshen illegal and to fix a penalty for violating this ordinance; and

WHEREAS, the promulgation and adoption of this Ordinance is done pursuant to the police power of the City of Goshen.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GOSHEN:

SECTION 1. General Provisions.

(a) It shall be unlawful for any person to release, place, deposit, discard, or otherwise allow garbage, waste, bottles, cans, rubbish, brush, cuttings, clippings, or any other type of solid waste on any outside premises within the City, whether public or private, in such a manner as to cause unsanitary, unsightly, or unhealthy conditions, except at such places as are, have been, or shall be designated by the City and except in accordance with other provisions of the City's ordinances.

(b) It shall be unlawful to drop, deposit, discard, or otherwise dispose of litter upon any public or private property in the City or upon or into any river, lake, pond, or other stream or body of water within the City, unless:

(1) The property has been designated by the Arkansas Department of Environmental Quality as a permitted disposal site;

(2) The litter is placed into a receptacle intended by the owner or tenant in lawful possession of that property for the deposit of litter, if it is deposited in such a manner as to prevent the litter from being carried away or deposited by the elements upon any part of private or public property or waters.

(c) The term "outside premises" shall be defined to include streets, alleys, sidewalks, ditches, yards, driveways, lots, fields, forest, streams, and exterior portions of buildings.

(d) "Litter" means all waste material which has been discarded or otherwise disposed of as prohibited in the City's ordinances, including, but not limited to, convenience food and

beverage packages or containers, trash, garbage, all other product packages or containers, and other post-consumer solid wastes.

SECTION 2. Enforcement.

(a) The Building Official and Marshal shall have the responsibility and authority to enforce this ordinance and both shall have the authority to issue citations to any person, firm or corporation violating any of the provisions of this ordinance. The Building Official, Marshal or their designee may inspect all outside premises and areas to enforce the provisions of this ordinance. Further, the Building Official, Marshal or their designee may abate such conditions pursuant to the provisions contained in the City's ordinances which provide for the abatement of nuisance or unsightly conditions at the expense of the owner of the property on which the offense is detected.

(b) For purposes of this ordinance, each day of activity proscribed as unlawful under this ordinance shall be considered a separate violation for which the party violating the ordinance shall be subject. Any violation may form the basis of a citation to be issued by the Building Official and Marshal or may be enforceable by appropriate civil action and for such may be referred to the City Attorney who shall apply to the appropriate court for relief, seeking either penalties or injunctive relief as permitted by law. Such civil remedy shall include but is not limited to injunctive relief, civil sanctions, attorneys fees and any other costs related to any civil action.

(c) In addition to those penalties and remedies provided for violation of this ordinance, any violation of the City's ordinances which is found on a property or lot which is the site of building construction or improvement, then the holder of such permit shall be issued a stop work order by the Building Official or his designee, and the building/construction permit shall be suspended until such time as the Building Official or his designee has determined that the condition in violation of this section is corrected and abated.

SECTION 3. Penalty.

Any person violating any of the provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250) or imprisoned for not more than ninety (90) days, or both, in the discretion of the court. The court shall also have the discretion to apply the penalties found in the state Litter Control Act, specifically Ark. Code Ann. §8-6-404, as such may be amended from time to time, which penalties include the imposition of community service. All or any portion of the fines, community service, and imprisonment penalties provided by this section may be suspended by the judge if the violator agrees to remove litter from alongside highways and at other appropriate locations within the City for a prescribed period.

SECTION 4. Presumptions.

(a) In the prosecution of this section, the following presumptions shall apply:

(i) If litter is observed leaving a vehicle traveling on a highway or street within the City, it is presumed that the owner, as identified by the license plate, is the driver of that vehicle and the proper person to charge with a violation.

(ii) If the condition resulting from the violation was found on premises owned and/or occupied by the person to whom notice was given, then it shall be presumed that such owner and/or occupant is and was responsible for the condition and violation. If the person to whom notice of the violation was given by the Building Official, Marshal or their designee fails to remove or otherwise correct such condition without notifying the Building Official, Marshal or their designee, of the reason for his failure to do so within three days, then it shall be presumed that such person notified was in fact responsible for such conditions.

(iii) If the condition resulting from the violation was found on property whereon multiple dwelling units exist and the party actually committing the violation cannot with reasonable certainty be determined, then it shall be presumed that the owner of the subject premises, upon being given notice, is the party responsible for ensuring that the condition is removed from the premises.

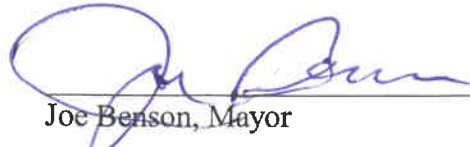
(iv) If the condition resulting from the violation was found on a property or lot which is the site of building construction or improvement, then it shall be presumed that the holder of the building/construction permit for such construction or improvement is and was responsible for the condition. If the person to whom notice of violation was given by the Building Official, Marshal or their designee fails to remove or otherwise correct such condition without notifying the Building Official, Marshal or their designee, of the reason for his failure to do so within three days, then it shall be presumed that such person notified was in fact responsible for such conditions.

(b) The presumptions described in subsection (a) of this section are rebuttable by the person charged and must be rebutted by clear and convincing evidence in order for the person so charged to be exonerated.

SECTION 5. Emergency Clause.

Since there are no current regulations littering and illegal dumping within the City of Goshen, this ordinance is deemed important for the immediate protection and preservation of the public peace, health, safety, and welfare of the citizens of Goshen, Arkansas. Therefore, an emergency is hereby declared and this ordinance shall be and take effect and be in full force immediately upon its passage, approval, and publication.

PASSED AND APPROVED this 10th day of August, 2010.



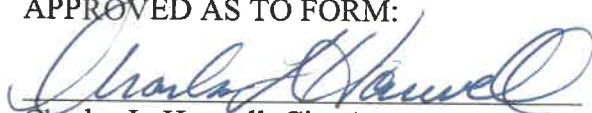
Joe Benson, Mayor

ATTEST:



Sharon Baggett, City Recorder

APPROVED AS TO FORM:



Charles L. Harwell, City Attorney

ROLL CALL VOTE ADOPTING THE ORDINANCE

Names Of Those Voting YEA

Paula Anderson
Joshua Lockhart
Richard Seddon
Andy Bethell

Absent

Brian Buell
Max Poye

Names Of Those Voting NAY

None

ROLL CALL VOTE ADOPTING THE EMERGENCY CLAUSE

Names Of Those Voting YEA

Paula Anderson
Joshua Lockhart
Richard Seddon
Andy Bethell

Absent

Brian Buell
Max Poye

Names Of Those Voting NAY

None