



35           **WHEREAS**, although violations of municipal ordinances are typically neither  
36 misdemeanors nor felonies under Florida general law, Florida courts have determined that  
37 municipal ordinances are *criminal in nature* if they authorize criminal penalties such as  
38 incarceration, and such ordinances therefore authorize a full custodial arrest and incidental search.  
39 *See, Hull v. State*, 315 So.3d 144, 145-46 (Fla. 5<sup>th</sup> DCA 2021) and *State v. Coleman*, 320 So.3d  
40 890, 894-895 (Fla. 2d DCA 2021); and

41           **WHEREAS**, Sec. 403.4132, Florida Statutes provides that local governments are  
42 encouraged to initiate programs to supplement the existing litter-removal program for public  
43 places and highway systems operated by the Department of Transportation. That section further  
44 provides that to the extent that funds are available from the department for litter pickup and  
45 removal programs beyond those annually available to the Department of Corrections, priority shall  
46 be given to contracting with nonprofit organizations for supplemental litter-removal programs that  
47 use youth employment programs; and

48           **WHEREAS**, the City Council of the City of Dunnellon determines that adoption of this  
49 Ordinance benefits the public health, safety and welfare of the residents and citizens of the City as  
50 well as visitors to the City of Dunnellon.

51  
52 **LEGISLATIVE UNDERSCORING:** Underlined words constitute additions to the City of  
53 Dunnellon Code of Ordinances, ~~strike through~~ constitutes deletions from the original, and asterisks  
54 (\*\*\*) indicate an omission from the existing text which is intended to remain unchanged.

55  
56           **NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY**  
57 **OF DUNNELLON, FLORIDA AS FOLLOWS:**

58  
59 **SECTION 1:** The “whereas” clauses cited herein are the legislative findings of the City  
60 Council.

61  
62 **SECTION 2:** ‘Chapter 50, Article IV – Littering’ of the City’s Code of Ordinances is hereby  
63 amended as follows:

64  
65 **CHAPTER 50 – SOLID WASTE**

66 \*\*\*

67 **ARTICLE IV. - LITTERING**

68 Sec. 50-91. - Definitions.

69           The following words, terms and phrases, when used in this article, shall have the meanings  
70 ascribed to them in this section, except where the context clearly indicates a different meaning:

71        ~~The following words, terms and phrases, when used in this article, shall have the meaning~~  
72 ~~described to them in this section, except where the context clearly indicates a different meaning:~~

73        Junk means any litter, debris, waste materials of any kind, dead or decaying vegetation or  
74 vegetative refuse, dead animals, used or unserviceable automobile and machinery parts, used and  
75 nonfunctional furniture and appliances, and used and nonfunctional tools, equipment, and  
76 implements, but shall not include compost piles for personal, noncommercial use.

77        Law enforcement officer means any officer of the Florida Highway Patrol, county sheriff's  
78 department, municipal law enforcement department, law enforcement departments of any other  
79 political subdivision, state department of environmental protection, and state fish and wildlife  
80 conservation commission. In addition, and solely for the purpose of this article, the term "law  
81 enforcement officer" means any employee of a municipal department of the city designated by the  
82 department head as a litter enforcement officer. The city council shall determine the training and  
83 qualifications of any employee of the city designated to enforce the provision of this article, if the  
84 designated employee is not a regular law enforcement officer.

85        Litter means includes, but is not limited to, any garbage; garden trash; rubbish; solid waste;  
86 trash refuse; can; glass or plastic bottle; box; container; paper; lighted or unlighted cigarette  
87 or cigar or flaming or glowing material tobacco product; cigarette butts; disposable medical or  
88 other filtration masks of any kind; syringes or drug paraphernalia; tire; appliance; mechanical  
89 equipment or part; building or construction material; tool; machinery; wood; motor vehicle or  
90 motor vehicle part; vessel; aircraft; farm machinery or equipment; sludge from a waste treatment  
91 facility, water supply treatment plant, or air pollution control facility; illegal signs; temporary  
92 political signs still in place sixty days after the last applicable election; or waste substance in any  
93 form resulting from domestic, industrial, commercial, mining, agricultural or government  
94 operations. Any property or other object left unattended in or on any public highway, road, street,  
95 alley, or thoroughfare, on any other public lands, in or on any freshwater lake, river, canal, or  
96 stream within the City, or in or on any private property, without the express or implied permission  
97 of the property owner or official or governing body maintaining control of the place upon which  
98 the property or other object is left unattended, shall be presumed to be "litter" for purposes of this  
99 Chapter. This presumption may be rebutted by competent substantial evidence.

100

101        Person means any individual, firm corporation, or unincorporated association.

102

103        ~~Sec. 50-92. Penalties; enforcement.~~

104        ~~(a) Any person violating the provisions of this article is guilty of a misdemeanor of the second~~  
105 ~~degree punishable as provided in F.S. § 775.082, or by imposition of a fine not to exceed~~  
106 ~~\$50.00. The court may impose the additional penalty of pickup of litter or performing other~~  
107 ~~labor commensurate with the offense committed.~~

108        ~~(b) It shall be the duty of all law enforcement officers to enforce the provisions of this article.~~

109

110 ~~Sec. 50-93.— Prohibited acts.~~

111 ~~It is unlawful for any person to throw, discard, place, or deposit litter in any manner:~~

112 ~~(1) In or on any public highway, road, street, alley or thoroughfare, including any portion~~  
113 ~~of the right-of-way thereof or any other public lands, except in containers or areas~~  
114 ~~lawfully provided therefor. When any litter is thrown or discarded from a motor vehicle,~~  
115 ~~the owner or operator of the motor vehicle, or both, shall be deemed in violation of this~~  
116 ~~section.~~

117 ~~(2) In or on any freshwater lake, river, or stream or tidal or coastal water of the city. When~~  
118 ~~any litter is thrown or discarded from a boat, the operator or owner of the boat, or both,~~  
119 ~~shall be deemed in violation of this section.~~

120 ~~(3) In or on any private property, unless prior consent of the owner has been given and~~  
121 ~~unless such litter will not cause a public nuisance or be in violation of any other state or~~  
122 ~~local law, rule, or regulation.~~

123

124 Sec. 50-92. - Litter.

125 (a) No person shall dump litter or junk in any manner or amount:

126 1. In or on any public highway, road, street, alley, or thoroughfare, including any portion  
127 of the right-of-way thereof, or any other public lands, except in containers lawfully  
128 provided therefor. When any litter or junk is thrown, blown, bounced or discarded from  
129 a motor vehicle, the operator or owner of the motor vehicle, or both, shall be deemed in  
130 violation of this section; or

131 2. In or on any freshwater lake, river, canal, or stream of the City, including canals. When  
132 any litter or junk is thrown, blown or discarded from any boat or vessel, the operator or  
133 owner of the boat or vessel, or both, shall be deemed in violation of this section; or

134 3. In or on any private property, unless prior consent of the owner has been given and  
135 unless the dumping of such litter or junk by such person will not cause a public nuisance  
136 or otherwise be in violation of any other state or local law, rule, or regulation.

137 (b) No person shall operate any motor vehicle on any street or highway unless such motor  
138 vehicle is constructed, and loaded to prevent any of its load from dropping, sifting,  
139 leaking, spilling, or otherwise escaping; provided, however, that sand or any substance  
140 used to increase traction, or water or other substance used to control dust, may be applied  
141 on a roadway in the cleaning or maintaining of such roadway by a state or local  
142 government agency having such responsibilities.

143 (c) Any motor vehicle transporting litter or other items likely to fall or be blown from such  
144 motor vehicle shall be enclosed, covered, or secured with a close-fitting tarpaulin or other  
145 appropriate cover or load securing device to prevent its contents from blowing, dropping,  
146 or falling from such vehicle.

147 (d) Any person generating, transporting, or receiving litter shall be responsible for ensuring  
148 that such litter is managed, stored, handled, transported, and disposed of in accordance  
149 with the provisions of this chapter.

- 150       (e) When a violation of any provision of this section has been observed by any person, and  
151 the litter dumped on a highway, right-of-way, property adjacent to a highway or right-of-  
152 way, private property, or body of water has been ejected from a motor vehicle or vessel,  
153 the owner, operator, or both, of such motor vehicle or vessel, that fact shall constitute  
154 prima facie evidence that the owner, operator, or both, of such motor vehicle or vessel  
155 shall be deemed to be in violation of this section.
- 156       (f) Any article of litter or junk bearing a person's name and postal street address or email  
157 address, phone number, or any other information sufficient to enable the verification of  
158 the identity of such individual, found on the private property of another or on public  
159 property, shall constitute prima facie evidence that the litter or junk is the property of such  
160 person whose name and other identifying information appears thereon, and it shall  
161 constitute prima facie evidence that such person dumped or disposed of such article of  
162 litter or junk. The named individual may be an owner-occupant, or a tenant, of the  
163 designated property, as long as he or she is a current resident of such property. This  
164 presumption shall be rebuttable by competent substantial evidence.
- 165       (g) All law enforcement officers and city code enforcement officers shall enforce the  
166 provisions of this section. Nothing in this section shall provide city code enforcement  
167 officers with the authority to bear arms or to make arrests.
- 168       (h) PENALTIES: Any person who violates the provisions of this section shall be cited as  
169 follows:
- 170           (1) A person who dumps litter in violation of this section shall be guilty of a  
171 noncriminal infraction for a first offense, and subject to a civil penalty of one  
172 hundred fifth dollars (\$150).
- 173           (2) A person who dumps litter in violation of this section, and who has one prior  
174 conviction for dumping litter in violation of this section or in violation of s.  
175 403.413, Florida Statutes, commits a criminal infraction and shall be punished as  
176 follows:
- 177               a. Incarceration in the county jail up to 10 days; and/or
- 178               b. Community service as prescribed by the Florida Litter Law, section  
179 403.413, Florida Statutes, when authorized therein; and
- 180               c. A fine of three hundred dollars (\$300).
- 181           (3) A person who dumps litter in violation of this section, and who has two prior  
182 convictions for dumping litter in violation of this section or in violation of s.  
183 403.413, Florida Statutes, commits a criminal infraction and shall be punished as  
184 follows:
- 185               a. Incarceration in the county jail of not less than 10 days, and up to 30 days;  
186 and/or
- 187               b. Community service as prescribed by the Florida Litter Law, section  
188 403.413, Florida Statutes, when authorized therein; and
- 189               c. A fine of five hundred dollars (\$500).

- 190           (4) A person who dumps litter in violation of this section, and who has three or more  
191           prior convictions for dumping litter in violation of this section or in violation of s.  
192           403.413, Florida Statutes, shall be punished as follows:
- 193                 a. Incarceration in the county jail of not less than 10 days, and up to 60 days;  
194                 and/or
- 195                 b. Community service as prescribed by the Florida Litter Law, section  
196                 403.413, Florida Statutes, when authorized therein; and
- 197                 c. A fine of five hundred dollars (\$500).
- 198           (5) For purposes of this article, “conviction” means a determination of guilty of a  
199           violation of this article as the result of a plea, a trial, or the imposition of a civil fine  
200           under section (1), (2), (3), or (4), regardless of whether adjudication is withheld or  
201           a plea of nolo contendere is entered.
- 202           (6) The moneys collected from the assessed fine shall go into the general revenue fund  
203           of the City to be used for litter control.
- 204           (7) Litter cleanup restitution payment. Separate from, and in addition to, any penalties  
205           provided for violation of the provisions of this Ordinance, the City Council may  
206           mail, serve, or deliver to the violator, an invoice supported by a list of certified  
207           expenses incurred by the City or a City contractor for the cleanup of any litter  
208           dumped by the violator. The violator shall remit payment for such invoice to the  
209           City within 30 days of the date of such invoice. If the invoice is not timely paid,  
210           the City may record a lien on the property of the violator, if the violation and  
211           cleanup related to such property. If the violator dumped the litter on property he or  
212           she did not own, the City shall have a cause of action for recovery of such certified  
213           expenses in the County Court of Marion County, and the violator shall be liable for  
214           all court costs and expenses incurred by the City in obtaining payment of such  
215           invoice.
- 216           (8) Special Litter Enforcement Corridors. The City Council, by Resolution, may  
217           designate certain segments of City roads as Litter Enforcement Corridors as a way  
218           to increase focus on litter and illegal dumping. These road segments are ones that  
219           have a high aesthetic or historic value worth preserving and will be marked with  
220           signs to notify motorists.
- 221           (i) Subject to the limitations contained herein, the City collects litter from the public right-  
222           of-way of collector and arterial roads maintained by the City. The City also collects solid  
223           waste from illegal dumping on such roads. The City is not responsible for collecting litter  
224           or solid waste on other roads or private property. The City Clerk may authorize the City  
225           to collect litter on public roads and public property when required for the public health,  
226           safety and welfare. The extent and frequency of such activities are subject to the City's  
227           budgetary constraints and weather conditions.
- 228           (j) Subject to the limitations contained herein, the City may remove and dispose of litter,  
229           junk, and solid waste that was illegally dumped on a public right-of-way or other public  
230           property and then collected by a civic or community organization during a community  
231           clean-up project. The extent and frequency of the City's activities in support of a  
232           community clean-up project are subject to the City's budgetary constraints and other

233 factors. Although the City supports community clean-up projects, the City does not  
234 remove or dispose of materials collected during a clean-up on private property.

235 (k) In any proceeding brought under this article, including civil and criminal proceedings, a  
236 photograph of the litter or junk that is the subject of the proceeding, may be deemed  
237 competent substantial evidence of the litter or junk and may be admissible in the  
238 prosecution to the same extent as if the litter or junk were introduced into evidence. Such  
239 photograph shall be taken by, or at the direction of, a law enforcement officer or other  
240 person responsible for enforcement of this Article. After litter or junk is photographed, it  
241 may be destroyed or otherwise disposed of by the person who took or directed the taking  
242 of the photograph.

243 (l) Litter Presumption. Any property or other object left unattended in or on any public  
244 highway, road, street, alley, or thoroughfare, on any other public lands, in or on any  
245 freshwater lake, river, canal, or stream of the City, or in or on any private property,  
246 without the express or implied permission of the property owner or official or governing  
247 body maintaining control of the place upon which the property or other subject is left  
248 unattended, shall be presumed to be “litter” for purposes of this Article and Chapter. This  
249 presumption may be rebutted by competent substantial evidence.

251 **SECTION 3. CONFLICTS.** In any case where a provision of this Ordinance is found to be in  
252 conflict with a provision of any other ordinance of this City, the provision which establishes the  
253 higher standards for the promotion and protection of the health and safety of the people shall  
254 prevail.

256 **SECTION 4. SEVERABILITY.** If any section, subsection, sentence, phrase, word, or portion of  
257 this Ordinance is determined to be invalid, unlawful, or unconstitutional, said determination shall  
258 not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase,  
259 word, or portion of this Ordinance not otherwise determined to be invalid, unlawful, or  
260 unconstitutional.

262 **SECTION 5. CODIFICATION.** The provisions of this Ordinance shall be codified as and  
263 become and be made a part of the City of Dunnellon Code of Ordinances. The sections of this  
264 Ordinance may be renumbered or re-lettered to accomplish such intention and the word  
265 “Ordinance,” or similar words, may be changed to “Section,” “Article,” or other appropriate word.  
266 The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

268 **SECTION 6. EFFECTIVE DATE.** This Ordinance shall become effective immediately upon  
269 adoption.

271 **Upon motion duly made and carried,** the foregoing ordinance was adopted on the first reading  
272 on the \_\_\_\_ day of \_\_\_\_\_ 2022.

274 **Upon motion duly made and carried,** the foregoing ordinance was adopted on the second and  
275 final reading on the \_\_\_\_ day of \_\_\_\_\_ 2022.

276  
277 Ordinance Posted on the City’s website on October 6, 2022. Public hearing advertised on the City’s  
278 website on \_\_\_\_\_ and advertised in the Riverland News on \_\_\_\_\_.

279  
280  
281

\_\_\_\_\_  
William P. White, Mayor

282  
283 Attest:

284

285 \_\_\_\_\_

286 Amanda L. Odom, CMC

287 City Clerk

288

289 Approved as to Form:

290

291 \_\_\_\_\_

292 Andrew J. Hand, City Attorney

293

294

295 **CERTIFICATE OF POSTING**

296

297 **I HEREBY CERTIFY** that copies of the foregoing Ordinance were posted at City Hall, the  
298 Chamber of Commerce, and Dunnellon Library, in the City of Dunnellon, Florida, and on the  
299 City’s Official Website this 6th day of October 2022.

300

301 \_\_\_\_\_

302 Amanda L. Odom, CMC

303 City Clerk