

Request for Board of Commissioners' Action

From: Jess Permenter, Building/Zoning Administrator **Date:** December 13, 2019

Subject: Solid Waste Ordinance Update **Item Number:** Work Session Appt.B.

As attempts to punish/prosecute persons that are abusing the collection sites develop, we have discovered that our Solid Waste Ordinance doesn't have the language needed to address all issues of prosecution. Bowen & Jenkins has reviewed our existing ordinance and made the attached recommendations for the necessary updates.

If the Board approves, we will move forward with the required public notice and public hearing for the adoption of the updates to our ordinance.

Motion made by _____

Second made by _____

Any discussion: _____

Votes _____ yes _____ no

Motion carried/ failed

ARTICLE V. - ENVIRONMENTAL COMPLIANCE

Sec. 34-351. - Purpose and objectives of article.

- (a) The purpose of this article is to protect the health, safety, environment and general welfare through the regulation and prevention of litter, waste, tire disposal and burning.
- (b) The objectives of this article are as follows:
 - (1) To provide for uniform prohibition throughout the county of any and all litter on public or private property;
 - (2) To prevent any reduction in the quality of life or aesthetic beauty of the county;
 - (3) To prevent environmental harm to the waters of the county;
 - (4) To preserve air quality of the county;
 - (5) To prevent health risks associated with used tires and scrap tires; and
 - (6) To provide a clean and well-kept environment for the citizens of the county.
- (c) Litter is a nuisance that decreases property values and contributes to the decline of neighborhoods and property values, and should be eliminated. The open burning of certain material emits numerous toxins into the atmosphere and environment that end up being consumed by animals and humans, to the detriment of the public health and welfare, and must be prohibited.

(Ord. of 8-6-2003(1), § 101)

Sec. 34-352. - Applicability of article; conflicts with other laws.

- (a) *Application.* This article shall apply to all public and private property within the county.
- (b) *Conflicts.* This article is not intended to interfere with, abrogate or annul any other ordinance of the county. Where this article conflicts with another ordinance of the county, including, but not limited to, the zoning ordinance or the nuisance ordinance, the stricter or more restrictive ordinance shall control.

(Ord. of 8-6-2003(1), § 102)

Sec. 34-353. - ~~Definitions.~~

(Would like to incorporate these into our definitions)

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

Biomedical waste means pathological waste, biological waste cultures and stocks of infectious agents and associated biologicals, contaminated animal carcasses (body parts, their bedding and other wastes from such animals), sharps, chemotherapy waste, discarded medical equipment and parts, not including expendable supplies and materials which have not been decontaminated, as further defined in Rule 391-3-4-.15 of the department of natural resources, and other such waste materials, in any amount.

Commercial purpose means for the purpose of economic gain.

Discarded materials includes, without limitation, organic or inorganic garbage, rubbish, refuse or trash; discarded debris, hulls, peelings, grass, weeds, ashes, sand, gravel or slag; discarded boxes, papers, bottles, tin cans, metal containers, plastic containers or glass containers; dead animals; discarded tobacco products, tires, appliances, tools, machinery, steel, mechanical equipment or parts; discarded building materials, construction materials, lumber or wood; discarded or abandoned motor vehicles, motor vehicle parts, vessels and aircraft equipment; waste oil; discarded antifreeze, chemicals

and fluids; sludge from a wastewater treatment facility, water supply treatment plant or air pollution control facility; air contaminants from any source or facility; and any other discarded material or substance of every kind and description resulting from domestic, industrial, commercial, mining or governmental operations.

Dump means to throw, discard, place, deposit, discharge, burn or dispose of a substance.

EPD means the state department of natural resources, environmental protection division.

Hazardous substance means any substance listed as a hazardous constituent in regulations promulgated pursuant to the federal act by the administrator of the United States Environmental Protection Agency which are in force and effect on February 1, 1992, codified as Appendix VIII to 40 CFR 261, Identification and Listing of Hazardous Waste.

Hazardous waste means any discarded materials which have been defined as hazardous waste in regulations promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal act which are in force and effect on February 1, 1996, codified as 40 CFR 261.3 and any designated hazardous waste.

Litter means any discarded materials which do not exceed ten pounds in weight or 15 cubic feet in volume, or which are not otherwise defined as *Waste*.

Open burning means any outdoor fire from which the products of combustion are emitted directly into the open air.

Person includes all individuals, corporations, partnerships and other legal entities.

Petroleum products means flammable, toxic or corrosive products obtained from distilling and processing of crude oil, unfinished oils, natural gas liquids, blend stocks and other miscellaneous hydrocarbon compounds, including oil, gasoline, diesel fuel, kerosene and similar products. Lighter fluid properly used to ignite charcoal in a grill or barbecue is not included.

Plastics means a synthetic material made from a wide range of organic polymers such as polyethylene, PVC, nylon, etc.

Public or private property means the right-of-way of any road or highway; any body of water or watercourse or the shores thereof; any park, playground, building, refuge or conservation or recreation area; timberlands or forests; and residential, commercial, industrial or farm properties.

Rubber includes natural and synthetic rubber and means a natural or synthetic elastic polymer (elastomer) with physical properties similar to those of natural rubber.

Treated wood means wood treated by the impregnation or application of chemical solutions or chemical mixtures for the purpose of retarding or preventing deterioration or destruction caused by fire, insects, fungi, bacteria or other wood-destroying organisms.

Waste means the following:

- (1) All discarded materials exceeding ten pounds in weight or 15 cubic feet in volume;
- (2) Any weight or volume of biomedical waste, hazardous waste or hazardous substance; or
- (3) Any amount of discarded material dumped for commercial purposes.

Waters in Bartow County means any lake, river, stream, pond, creek or other body of public or private water located partially or fully within the jurisdictional boundaries of the county.

(Ord. of 8-6-2003(1), § 201)

Cross reference— Definitions generally, § 1-4.

Sec. 34-354. - Enforcement of article; penalties for violations.

(a) *Violations and inspections.*

- (1) *Violations.* It shall be unlawful for any person to violate any provisions or fail to comply with any of the requirements of this article. Any person who has violated or continues to violate the provisions of this article may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise sentenced in a manner provided by law.
- (2) *Inspections.* Any authorized official, including code enforcement officers and law enforcement personnel, shall have the power to conduct such investigations as may be reasonably deemed necessary to carry out the duties as prescribed in this article, and for this purpose, to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of open burning. No person shall refuse entry or access to any authorized official who requests entry for the purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.
- (3) *Citations.* Any authorized official, including code enforcement officers and law enforcement personnel, are authorized to issue citations and otherwise enforce this article. Citations shall be heard in the magistrate court. Citations for violations of this article shall be commenced by the completion, signing and service of a citation, which shall cite the provision of this article that has been violated. The original of the citation shall be personally served upon the violator, his authorized representative or, if a corporation or other legal entity, an officer or representative of the entity. Upon conviction, fines shall be assessed at the amounts specified in subsection (b).
- (4) *Stop work order.* If ongoing construction is taking place under a building permit or land disturbance permit, violation of this article shall authorize issuance of a stop work order in conjunction with the citation and fine, preventing further work or development until such violation is corrected or overturned.
- (5) *Multiple violations.* Each day a violation exists shall be a new violation, subjecting the offender to a new citation. Each separate action or occurrence of any specific provision of this article shall be a separate violation, subjecting the offender to a separate citation. Any offender may be cited with a maximum of ten citations per day.

(b) *Fines.*

- (1) *Schedule.* Fines for violations of this article shall be assessed according to the schedule set forth in subsections (b)(1)a. through (1)d. of this section. As a deterrent to violation, second and subsequent violations by the same offender of any provision of this article, whether violations of the same or different provisions of this article as the initial violation, shall increase the fine owing. However, repeated citations for the same violation on a second and subsequent days shall not count as a subsequent violation, but shall rather be assessed at the same rate as the initial violation. Multiple violations on the same day shall also be assessed at the same level.
 - a. *First violation.* For the first violation of any provision of this article by any violator (whether an individual or corporation), the fine shall be a minimum of \$200.00.
 - b. *Second violation.* For the second violation of any provision of this article (whether the same or different as the first violation) by the same violator (whether an individual or corporation), the fine shall be a minimum of \$400.00.
 - c. *Third and subsequent violations.* For the third and subsequent violation of any provision of this article (whether the same or different as the prior two violations) by the same violator (whether an individual or corporation), the fine shall be a minimum of \$600.00.
 - d. *Aggravating circumstances:* If, in the judgment of the officer issuing the citation, the violation is severe, or other aggravating circumstances exist, such as multiple violations of numerous provisions of this article on the same property, the citation may indicate aggravating circumstances exist, and state those circumstances. The fine shall be doubled in such cases (to a maximum of \$1,200.00 for violations of section 34-355, to a maximum of \$1,000.00 for other violations), if the determination of aggravating circumstances is

upheld. The court may also impose this determination, after hearing the evidence, and increase the fine accordingly.

- (2) **Maximum fines.** The maximum permissible fine for violations shall be \$1,000.00, except for violations of subsection 34-355(a). The maximum permissible fine for violation of subsection 34-355(a) shall be \$1,200.00 per offense. Furthermore, violations of subsection 34-355(a)(2), pertaining to the illegal dumping of waste, shall be fined at double the above listed amount, to a maximum of \$1,200.00 (i.e., first violation is \$400.00, second is \$800.00, third and subsequent is \$1,200.00).
- (c) **Additional remedies for article violations.**
 - (1) *Superior court.* In addition to or in lieu of any other remedy, any authorized official, appropriate authority or any person who is or would be damaged by such violation, may seek injunctive, mandamus or other appropriate relief in superior court to enjoin or prevent a violation of any provision of this article. Such action may also seek civil fines at the rates specified in subsection (b) for violation of this article, and may additionally seek the costs of restitution, costs of cleanup, attorney's fees and costs, and any other costs associated with the action to enjoin or prevent any violation of any provision of this article. The county shall be entitled to its reasonable attorney's fees and costs for bringing an action in superior court against any violator wherein any relief is granted or fine assessed.
 - (2) *Restitution.* In addition to the fine set out in subsection (b), the violator shall reimburse the county for the reasonable cost of removing the litter, or other costs incurred by the county to mitigate the actions of the violator. Such amount shall be assessed by the magistrate court in addition to any required fine.
 - (3) *Community service.* In the sound discretion of the court, a person convicted of violating subsection 34-355(a) may be required to clean up litter as community service. Such person may be directed to pick up and remove from any public right-of-way (for a distance not to exceed one mile) any litter located thereon. In the alternative, such person may be directed to pick up and remove any litter located on the public or private property (with the owner's permission) upon which he has unlawfully dumped litter. In either case, removal of any litter shall include all litter dumped thereon by any person prior to the date of execution of the sentence, and not just the litter dumped by the violator.
- (d) *Georgia Burn Ban.* The county hereby adopts by reference the restrictions of the Georgia Burn Ban as set forth in Department of Natural Resources Rules, Chapter 391-3-1-.02(5), as amended, which provisions restrict open burning and also contain additional summer burn ban restrictions specific to Bartow County, along with certain exemptions. The foregoing provisions are incorporated herein by reference as if set forth fully, and any future amendments thereto shall automatically be incorporated herein. The Bartow County Fire Chief or their designee shall be authorized to exercise its discretion to approve burning of debris upon specific application.

(Ord. of 8-6-2003(1), art. IV; Ord. of 9-11-2013)

Sec. 34-355. - Regulated and prohibited activities.

- (a) **Littering; illegal dumping.**
 - (1) *Littering.* It shall be unlawful for any person or persons, to dump, deposit, place, throw, or leave, or to cause or permit the dumping, depositing, placing, throwing, or leaving, of litter on any public or private property in Bartow County (including one's own property) or any waters of Bartow County, unless the property is an authorized landfill, and the person disposing of litter is authorized by applicable regulations; or unless the litter is placed into a litter receptacle or container installed on such property. It shall also be a violation of this section to dispose of litter or waste into a litter receptacle or container without permission of the owner, renter or lessor of

the receptacle or container (e.g., disposing of waste into someone else's dumpster or trash can without their permission).

- (2) *Illegal dumping of waste.* Dumping, throwing, discarding, discharging or burning waste, or more than ten pounds or 15 cubic feet of litter at one time in one location, shall constitute unlawful waste dumping, and shall subject any person convicted to fines pursuant to subsection 34-354(b), except that the listed fine shall be doubled, to a maximum of \$1,200.00 per violation, per day.
 - (3) *Improper loading.* No person shall operate any motor vehicle with a load on or in such vehicle unless the load on or in such vehicle is secured to prevent the dropping or shifting of such materials onto the roadway, including, but not limited to, loads of waste or litter.
 - (4) *Covering litter, waste and debris.* No vehicle shall be driven or moved on any public road without a proper cover, tarpaulin, cargo net or other tie down sufficient to prevent escape onto the roadway, road right-of-way or roadside ditches of litter or any other waste or debris, including gravel and other construction material. This includes all commercial and privately-owned vehicles and trailers, including dump trucks, roll-off containers, and pick-ups. Escape of such litter, waste or other debris onto the roadway, road-right-of-way or roadside ditches shall be a violation of this section. However this Code section shall not prohibit the necessary spreading of any substance in public road as a part of maintenance or construction operations.
 - (5) *Littering or dumping from vehicle.* Whenever litter or waste is thrown, deposited, dropped or dumped, whether intentionally or unintentionally, from any motor vehicle, boat, airplane or other conveyance onto any public or private property in the county or any waters in the county, unless the property is an authorized landfill, and the person disposing of the litter or waste is authorized by applicable regulations, it shall constitute prima facie evidence that the operator of the conveyance has violated this article. Any spillage of waste or litter shall be immediately cleaned and removed by the person spilling the waste or litter.
 - (6) *Identifiable litter or waste.* Whenever any litter or waste is dumped, deposited, thrown or left on public or private property is discovered to contain any documents which display the name of a person thereon in such a way as to indicate that the article belongs or belonged to such person, it shall be a rebuttable presumption that such person has violated this article.
 - (7) *Clean premises.* Any person owning or occupying any private property, including of a commercial, industrial or residential nature, shall be required to keep such property free of litter and waste, and to ensure all litter and waste is placed in proper litter or waste containers or receptacles. Persons owning businesses shall be required to keep the sidewalks, service alleys and parking areas of their businesses free from litter and waste.
 - (8) *Multiple violators.* Every person involved in illegal littering or illegal dumping of waste shall be subject to citation under this article, including persons operating vehicles, and persons actively disposing of or dumping litter or waste.
- (b) *Scrap tires: state regulations adopted by reference.*
- (1) The most current provisions of the Georgia Department of Natural Resources, Environmental Protection Division, Rules and Regulations chapter 391-3-4-.19, relating to scrap tire management, as amended from time to time, are incorporated in this section by reference as if such provisions were set forth in this section in their entirety. Violations of such provisions shall be prosecutable under the provisions of this article, and shall be assessed fines pursuant to the schedule in subsection 34-354(b), to a maximum fine of \$1,000.00 per violation, per day.
 - (2) In addition to the proceeding state regulations incorporated by reference, the county also adopts the following requirements, that shall replace and/or supplement any corresponding requirements in the state department of natural resources, environmental protection division regulations: All scrap tires, used tires and new tires shall be required to be stored in an enclosed building or garage. Outdoor storage is prohibited, as is storage under a tarpaulin or open-sided shelter.

(c) *Open burning.* No person shall cause, suffer, allow or permit open burning of the following materials in any area of the county:

- (1) Treated wood;
- (2) Plastics;
- (3) Rubber (including tires);
- (4) Petroleum products; and
- (5) Any products, items or things containing any of the above materials.

(d) *Open burning in dangerous conditions.* The fire chief of the county shall be authorized to ban all open burning of all types, including camp fires, bonfires, and any other open burning, when atmospheric, environmental, drought or other dangerous conditions of any type warrant such ban by creating significant risk of fire. Such ban, once declared, shall continue until lifted. Such ban can be imposed county-wide or limited to a specified area or areas or limited in other ways. Such ban shall not include fire department training fires, nor cooking with typical grills or smokers. The fire marshal or county code enforcement officers shall be authorized to enforce this provision by issuance of citation under the penalties of section 1-19.

(Ord. of 8-6-2003(1), art. III; Ord. of 8-4-2004; Ord. of 10-28-2016, § I; Ord. of 4-12-2017.)

Secs. 34-356—34-430. - Reserved.