

**AN ORDINANCE AMENDING THE FLOYD COUNTY SOLID WASTE ORDINANCE TO CLARIFY REGULATIONS RELATING TO DISPOSAL OF SOLID WASTE AND ESTABLISHING ADDITIONAL PENALTIES FOR CERTAIN VIOLATIONS OF THE ORDINANCE**

**WHEREAS**, pursuant to authority granted by the Code of Virginia, including without limitation §§ 10.1-1400 *et seq.*, 15.2-900 *et seq.*, 15.2-1200, 15.2-1426, 15.2-1427, 15.2-1429 localities are empowered to adopt regulations governing the collection, treatment, storage and disposal of solid waste within their jurisdictions, to protect public health, safety and general welfare and to impose criminal and civil penalties for enforcement of such regulations; and

**WHEREAS**, pursuant to such statutory authority, the Board of Supervisors of Floyd County, Virginia (the "Board") has adopted Chapter 42, of the Code of Floyd County, Virginia; and,

**WHEREAS**, the Board has determined that it is in the best interests of the citizens of the County to modify the aforesaid ordinance as described herein, in order to better protect the public health, safety and welfare, to reduce litter and pollution within the County, to promote the orderly and efficient disposal of solid waste generated within the County, and to prevent the creation of nuisance conditions at the designated solid waste collection sites within the County;

**NOW, THEREFORE, BE IT ORDAINED** by the Board of Supervisors of Floyd County, Virginia, that Section 42-1 of Chapter 42 of the Floyd County Code of Ordinances is hereby amended and readopted to read as follows:

**Sec. 42-1. - Authority.**

This chapter is enacted pursuant to the provisions of the Virginia Waste Management Act, Code of Virginia, § 10.1-1400 *et seq.*, and Code of Virginia, §§ 15.2-900 *et seq.*, 15.2-1200, 15.2-1426, 15.2-1427, 15.2-1429 and other relevant provisions of law for the purpose of providing for the proper treatment and disposal of solid and hazardous waste and for the appropriate siting of solid waste management facilities within the county, in the interest of the public health, safety, and welfare of the citizens and inhabitants of the county.

**AND, BE IT FURTHER ORDAINED** by the Board of Supervisors of Floyd County, Virginia, that Section 42-2 of Chapter 42 of the Floyd County Code of Ordinances is hereby amended and readopted to read as follows

**Sec. 42-2. - Definitions.**

For the purpose of this chapter, the terms or words used in this chapter shall have the same meaning as the same terms or words as defined in the Virginia Waste Management Act, Code of Virginia, § 10.1-1400 *et seq.*, unless a different meaning is required by the context of the use or is expressly provided for. 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:

*Agent* means the person charged by the county board of supervisors for serving as the contact and submittal point for applications and shall be the county administrator or other person designated as such by the county administrator. The Floyd County Sheriff and the Sheriff's deputies shall have authority to enforce this ordinance by issuance of criminal or civil process, in accordance with this Ordinance.

*Applicant* means the person seeking a permit or certificate from the county board of supervisors for the collection, treatment, long-term storage exceeding 90 days, or disposal of solid waste and shall include those persons seeking the approval of the board of supervisors for the operation of a solid waste management facility. The term "applicant" shall include, in addition to the person actually executing the application or the person in whose name the application is made, the actual party-in-interest or parties-in-interest if the party-in-interest is different from the person executing the application or the person in whose name the application is made.

*Application* means the process of seeking a permit or certificate from the board of supervisors for the collection, treatment, long-term storage, or disposal of solid waste, and shall include those persons seeking the approval of the board of supervisors for the establishment or operation of a solid waste management facility. The term "application" shall include all procedures and information required to be submitted to obtain such permit or certificate, regardless of the format which shall be required by the board of supervisors or by the agent for such submittal.

*Board of supervisors* means the board of supervisors of the county.

*Certificate* means the certification from the board that a proposed solid waste management facility complies with all applicable local ordinances pursuant to Code of Virginia, § 10.1-1408.1. Such certification, with appropriate conditions and safeguards, shall constitute the board's approval of the establishment and operation of the solid waste management facility.

*Captive industrial landfill* means a solid waste management facility which accepts nonhazardous solid waste only from a business or industry located on the same site generated as part of an on-site production process. Provided, no captive industrial landfill shall accept for disposal any radioactive or nuclear solid waste.

*Disposal* means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

*Solid waste* means any garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, residential or community activities but does not include solid or dissolved material in domestic sewage; solid or dissolved material in irrigation return flows or in industrial discharges which are sources subject to a permit from the state water control board; or source, special nuclear, or byproduct materials as defined by the Federal Atomic Energy Act of 1954, 42 USC 20011 et seq., as amended.

Solid waste may be further categorized as follows:

*Agricultural solid waste* means all solid waste produced from commercial farming operations or related commercial preparation of farm products for marketing, but does not include waste resulting from agricultural products consumed by the farm household as part of daily household consumption.

*Commercial solid waste* means all solid waste generated by establishments engaged in business operations other than manufacturing. This category includes, but is not limited to, solid waste resulting from the operation of stores, markets, office buildings, restaurants and shopping centers.

*Construction solid waste* means solid waste which is produced or generated during construction of structures (as defined in the Virginia Uniform Statewide Building Code ). Construction solid waste generally consists of lumber, wire, sheetrock, brick, shingles, glass, pipes, concrete, metal and plastics if the metal or plastics are part of the materials of construction or are empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids are hazardous wastes and not construction wastes, and must be disposed of as hazardous wastes in accordance with this ordinance.

*Demolition solid waste* means that solid waste which is produced by the destruction of structures and their foundations and includes the same materials as construction wastes.

*Hazardous waste* means a solid waste or combination of solid waste which, because of its quantity, concentration or physical, chemical or infectious characteristics may

- 1) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or
- 2) pose a substantial present or potential hazard to human health, the disposal system, or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

The foregoing definition is intended to include any waste now or hereafter designated as such by state or federal agencies with jurisdiction and authority to promulgate and enforce rules and regulations for the handling and disposal of hazardous and other waste.

*Household solid waste* means any solid waste normally produced or derived from single and/or multiple residential households. The term excludes construction solid waste, demolition solid waste, agricultural solid waste, and hazardous waste, regardless of whether such waste was produced from a residential household.

*Industrial solid waste* means all solid waste generated by establishments engaged in manufacturing, including solid waste generated from factories, warehouses, and similar facilities and excluding hazardous waste.

*"radioactive waste or nuclear waste"* shall have the same definition as contained in §10.1-1400 of the Code of Virginia, 1950, as amended.

*Solid waste management facility* means a site used for planned treating, longterm storage exceeding 90 days, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units.

**AND, BE IT FURTHER ORDAINED** by the Board of Supervisors of Floyd County, Virginia, that Section 42-11 of Chapter 42 of the Floyd County Code of Ordinances is hereby amended and readopted to read as follows

Sec. 42-11. - Penalties and enforcement.

(a) The agent, and such other officers as the agent may designate, shall be responsible for enforcing the requirements of this chapter.

(b) Except as otherwise provided in this chapter, first-offense violations of Section 42-31 of this chapter may be enforced as a misdemeanor and subject to a fine of two hundred fifty dollars (\$250.00) or, at the election of the Agent, may be enforced by a civil penalty of two hundred fifty dollars (\$250.00). Enforcement of a first offense as misdemeanor shall preclude enforcement for the same offense by civil penalty, and enforcement of a first offense by civil penalty shall preclude enforcement for the same offense as a misdemeanor. Subsequent violations of section 42-31, and all other violations of this chapter shall be subject to a fine of up to \$2,500.00 and/or up to 12 months imprisonment as provided in Code of Virginia, § 15.2-1429. Each act of illegal dumping or other act in violation of Section 42-31 of this chapter shall constitute a separate offense, and separate violations, even occurring on the same day, shall be punished as separate offenses. Violations of this chapter may also be enforced by a suit for injunctive relief in a state court of competent jurisdiction. Prosecution of either criminal proceedings or suit for a civil penalty shall preclude prosecution of the other proceeding for the same offense. Institution of a suit for injunctive relief only shall not preclude subsequent criminal prosecution or other civil remedies, including civil penalties.

(i) Procedure for imposition of civil penalties.

(A) The officer enforcing this ordinance may bring civil proceedings for enforcement of the civil penalty, and accompanying such process shall be a written notice advising any

person cited for a violation of his right to make an appearance in person or in writing by mail to the Agent prior to the date fixed for trial in general district court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such person shall be informed of his right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court. If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided by law. In any trial for a violation, it shall be the burden of the county to show the liability of the violator by a preponderance of the evidence. An admission of liability or finding of liability shall not constitute a criminal conviction for any purpose.

(B) Any civil penalty assessed pursuant to this chapter shall be paid by the agent into the County Treasury

(c) Nothing in this chapter shall be construed to exempt any person or applicant from any other federal, state, or local regulations required for the establishment, operation, or maintenance of a solid waste management facility.

(d) The agent may direct that any person engaged in solid waste management activities in violation of this chapter or in violation of any certificate issued pursuant to this chapter, to cease and desist the improper activity. If the agent directs that any facility operator that has been issued a certificate cease its operations, the agent shall offer the operator the opportunity for a hearing before the agent within 48 hours to consider whether to continue the cease and desist order pending further administrative or judicial action or corrective action by the owner or operator.

(e) Penalties for specific offenses:

i. Disposing of animal carcasses or parts thereof at bulk container sites, whether the carcass is deposited within a bulk container or left outside of the bulk container shall constitute an offense and be punishable as a misdemeanor and subject to a fine upon conviction of no less than \$500 for a first offense, and not less than \$1,000 for a subsequent offense within one calendar year. This subsection shall not be construed to prohibit disposal of kitchen scraps or other animal parts resulting from preparation of meals for individual households.

ii. Feeding animals in violation of section 42-31 shall constitute an offense punishable as a misdemeanor and subject to a fine upon conviction of no less than \$500 for a first offense and not less than \$1,000 for a subsequent offense within one calendar year.

(f) Except as otherwise provided by law, all fines and fees payable for violations of this Chapter shall be paid into the County Treasury and dedicated for solid waste mitigation purposes.

**AND, BE IT FURTHER ORDAINED** by the Board of Supervisors of Floyd County, Virginia, that Section 42-31 of Chapter 42 of the Floyd County Code of Ordinances is hereby amended and readopted to read as follows

Sec. 42-31. - Use of bulk containers.

(a) *Use by county residents and authorized persons only.* No person shall deposit or cause to be deposited solid waste within any disposal container or bulk container located at a "green box" station maintained by the county except residents of the county and those persons who own real property in the county, provided that only solid waste generated within Floyd County may be disposed at such sites. Persons residing in "short term rentals" within the county shall be authorized to dispose of household solid waste generated at such short term rental, provided that a paid receipt is provided evidencing an active stay in such short term rental, and further provided that such short term rental is properly registered for such purpose in accordance with all ordinances of the county. The board of supervisors may authorize any person to use the green box stations by resolution subject to those terms and conditions stated in any such resolution. Any such resolution may provide for the issuance of a permit or permits to authorize the use of green box stations.

(b) *Notice posted on or near bulk containers.* In addition to all other requirements of this chapter, the bulk containers shall be used in compliance with the notices posted on or near the container. Disregarding a posted notice shall constitute an offense punishable in accordance with this chapter.

(c) *Depositing unacceptable items in bulk containers.* Green boxes and bulk containers shall be used only for the deposit of household solid waste. It shall be unlawful for any person to deposit in a green box or bulk container any non-household solid waste except as designated in this chapter. It shall be unlawful to leave any items of solid waste at green box or bulk container locations outside of such containers, regardless of whether such items would otherwise be permissible to deposit within such container. It shall likewise be unlawful to deposit in a green box or bulk container any of the following items:

- (1) Any item too large to fit in the green box or bulk container;
- (2) Discarded building materials, including construction waste and demolition waste;
- (3) Trees, leaves, grass, clippings, and brush;
- (4) Manure;
- (5) Household appliances;
- (6) Furniture, including indoor and outdoor furniture;
- (7) Tires;
- (8) Mattresses and boxsprings;
- (9) Carpet;
- (10) Cardboard boxes too large to fit in the green box or bulk container;
- (11) Automotive parts or machinery with oil or fuel reservoirs;
- (12) Commercial solid waste;
- (13) Industrial solid waste;
- (14) Agricultural solid waste and animal carcasses;
- (15) Hazardous waste; and

(16) Explosives.

Those commercial establishments that have made privately owned property available for the placement of green boxes or bulk containers may use such green box or bulk container for the deposit of nonhazardous commercial solid waste.

(d) *Scavenging*. It shall be unlawful for any unauthorized person to scavenge or otherwise remove any discarded solid waste from or about any bulk container.

(e) *Ashes*. It shall be unlawful to place ashes or live coals in bulk containers unless the ashes or coals are extinguished and are cold.

(f) *Feeding animals*. It shall be unlawful to feed or leave food for any animals at any bulk container site, including feral or stray cats, dogs or other domestic animals or wildlife.

(g) It shall be unlawful to place hazardous waste in any green box/bulk waste container or other receptacle, or to deposit the same in any collection or disposal area or facility not lawfully authorized to accept such waste. It shall be unlawful to place any hazardous waste at the county transfer station except with specific authorization to do so as part of county-sponsored "household" hazardous waste collection events.

**AND, BE IT FURTHER ORDAINED** by the Board of Supervisors of Floyd County, Virginia, that Section 42-56 of Chapter 42 of the Floyd County Code of Ordinances is hereby amended and readopted to read as follows

**Sec. 42-56. - Acceptance of waste not required.**

The county shall not be required to accept for transfer or disposal any solid waste, hazardous waste, or other materials delivered or deposited at the transfer station or any green box station. The county may, from time to time, sponsor events to collect and dispose of certain types of hazardous waste generated in small quantities such as cleaning products commonly used in individual households, but the county shall not be required to conduct such events and shall not be required to accept any hazardous waste at any time if the county determines in its sole discretion not to do so.

**AND, BE IT FURTHER ORDAINED** by the Board of Supervisors of Floyd County, Virginia, that all other provisions in Chapter 42 of the Floyd County Code of Ordinances not specifically amended herein shall remain in full force and effect.

This ordinance shall become effective     August 22    , 2023.

This Ordinance was duly adopted this 22nd of August 2023.

	Aye	Nay
Joe D. Turman	<u>  x  </u>	___
Jerry W. Boothe	<u>  x  </u>	___
Kalinda Bechtold	<u>  x  </u>	___
Linda DeVito Kuchenbuch	<u>  x  </u>	___
Levi Cox	<u>  x  </u>	___

I, LINDA S. MILLSAPS, HEREBY ATTEST THAT THIS IS A TRUE AND ACCURATE COPY OF SAID ORDINANCE.

  
Linda S. Millsaps  
County Administrator