

KENNESAW LITTER RELATED ORDINANCES

ARTICLE II. COLLECTION, DISPOSAL AND LITTER*

***Editor's note:** Ord. No. 2005-28, § 1, adopted Sept. 6, 2005, combined Arts. II and III into one article to be titled Art. II, Collection, Disposal and Litter. The substantive material from former Art. III is to be retained as it reads herein, excluding § 74-110 which is further amended by this same ordinance.

State law references: Authorization to provide garbage and solid waste collection and disposal, Ga. Const. art. IX, § II, ¶ III(a)(2); Scrap tire disposal restrictions, O.C.G.A. § 12-8-40.1; Litter Control Law, O.C.G.A. § 16-7-40 et seq.; littering highways, O.C.G.A. § 40-6-249.

Sec. 74-106. Intent; applicability, etc.

(a) *Purpose and intent.* The purpose of this article is to protect the public health, safety, environment, and general welfare through the regulation and prevention of litter. The objectives of this article are:

(1) Provide for uniform prohibition throughout the city of any and all littering on public or private property; and,

(2) Prevent the desecration of the beauty and quality of life of the city and prevent harm to the public health, safety, environment, and general welfare, including the degradation of water and aquatic resources caused by litter.

(b) *Applicability.* This article shall apply to all public and private property within the city.

(c) *Compatibility with other regulations.* This article is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The mandatory provisions of this article should be considered minimum requirements, and where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or stringent or impose higher protective standards for human health safety and well being or the environment shall be considered to take precedence.

(d) *Severability.* The mayor and council hereby declare their intention to be that the sections, paragraphs, sentences, clauses and phrases of this ordinance be severable, and if any section, paragraph, sentence, clause or phrase of this ordinance shall be judged, decreed or declared by a court of competent jurisdiction to be invalid or unconstitutional, such unconstitutionality or invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses or phrases of this article since the remainder of the ordinance would have been adopted and enacted by the mayor and council without the inclusion of any such unconstitutional or invalid section, paragraph, sentence, clause or phrase.

(Ord. No. 2004-23, § 1, 6-7-04)

Sec. 74-107. 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:

Litter includes, without limitation, any organic or inorganic waste material, rubbish, refuse,

garbage, trash, hulls, peelings, food items, debris, grass, weeds, ashes, sand, gravel, slag, brickbats, metal, plastic, bottles, tin cans, boxes, tobacco products, tools, mechanical equipment or parts, appliances, building or construction materials, machinery, wood, glass containers, broken glass, dead animals or **intentionally** or unintentionally discarded materials of every kind and description **which are not "waste"** as such term is defined in O.C.G.A., § 16-7-51, paragraph 6.

Public or private property includes, without limitation, the right-of-way of any road or highway; any body of water or watercourse or the shores or beaches thereof; any park, playground, building, refuge, or conservation or recreation area; timberlands or forests; and residential, commercial, industrial, or farm properties including yards, grounds, walks, driveways, porches, steps, vestibules or mailboxes belonging to our appurtenant to any structure.

(Ord. No. 2004-23, § 1, 6-7-04)

Sec. 74-108. Prohibition against littering public or private property or waters.

It shall be unlawful for any person or persons to dump, deposit, throw or leave or to cause or permit the dumping, depositing, failure to secure or losing control of, placing, throwing or leaving of litter on any public or private property in the city or any waters in the city unless:

- (1) The property is designated by the state or by any of its agencies or political subdivisions for the disposal of such litter, and such person is authorized by the proper public authority to use the property for this purpose;
- (2) The litter is placed into a receptacle or container installed on such property; or,
- (3) The person is the owner or tenant in lawful possession of such property, or has first obtained consent of the owner or tenant in lawful possession, or unless the act is done under the personal direction of the owner or tenant, all in a manner consistent with the public welfare and in accordance with the requirements of this article.

(Ord. No. 2004-23, § 1, 6-7-04)

Sec. 74-110. Violations.

(a) *Violations.* It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this article. **Any person who violates, has violated or continues to violate the provisions of this article, may be subject to an enforcement action or such penalties as are outlined in this article, or may be restrained by injunction or otherwise sentenced in a manner provided by law.**

(b) *Evidence.*

(1) Whenever litter is **thrown, deposited, dropped or dumped from any motor vehicle, boat, airplane, or other conveyance in violation of this article, it shall be prima facie evidence that the operator of the conveyance has violated this article.**

(2) Except as provided in subsection (1), whenever any litter which is dumped, deposited, thrown or left on public or private property in violation of this ordinance is discovered to contain any article or articles, including but not limited to letters, bills, publications or other writing which display the name of the person thereon in such a manner 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.

(3) Newspapers or printed materials which are distributed, deposited or place at no cost to the recipient thereof on public or private property and which, after a reasonable time for retrieval by the intended recipient, are allowed to lay, accumulate or disintegrate on or in such property or curbs and drainage ditches shall constitute litter. Any publisher of such materials must within 48 hours retrieve the same from private or residential properties upon notice from either the owner or inhabitant of any such private property or from the city. Failure to comply with this retrieval requirement shall constitute a violation of this article. Newspapers and printed materials which constitute litter as specified in this subparagraph, on public property or curbs and drainage ditches are a violation of this article and the publisher of such material(s) shall be subject to the penalties enumerated in this section.

(Ord. No. 2004-23, § 1, 6-7-04; Ord. No. 2005-28, §§ 2, 4, 9-6-05)

Editor's note: Ord. No. 2005-28, § 4, adopted Sept. 6, 2005, moved the material found in former subsection (d) of § 74-110 to § 74-112 to read as set out herein.

Sec. 74-111. Penalties.

Any person or entity violating any provision of this article shall upon conviction thereof or pleas thereto be punished as prescribed by section 1-11.

(Ord. No. 2005-28, § 3, 9-6-05)

Sec. 74-112. Enforcement.

All law enforcement agencies, officers and officials of this state or any political subdivision thereof, or any enforcement agency, officer or any official of any commission of this state or any political subdivision thereof, are hereby authorized, empowered and directed to enforce compliance with this article.

(Ord. No. 2005-28, § 4, 9-6-05)

Sec. 1-11. General penalty.

Whenever in this Code or in any ordinance of the city any act is prohibited or is made or declared to be unlawful or an offense, or whenever in such Code or ordinance the doing of an act is required or the failure to do an act is declared to be unlawful, unless otherwise provided by state law, where no specific penalty is provided therefor, **the violation of any such provision of this Code or any ordinance shall be punished by a fine not exceeding \$1,000.00, and by imprisonment in the city or county jail not to exceed six months, and to work on the city streets and public works not exceeding 60 days.** Any one or more of these punishments may be inflicted, and the fines imposed therefor may be collected by execution. Each day any such violation shall continue shall be a separate offense.

(Code 1986, § 1-1-8)

State law references: Violations of the dangerous dog control, O.C.G.A. § 4-8-28; imposition of additional penalty for certain drug offenses, O.C.G.A. § 15-21-100; imposition of additional penalty for offense of driving under the influence of alcohol or drugs, O.C.G.A. § 15-21-112; additional penalty to be imposed in criminal and traffic cases to provide training to law enforcement officers and prosecuting officials, O.C.G.A. § 15-21-73; additional penalty assessments for jail construction and staffing, O.C.G.A. § 15-21-93; punishment for misdemeanors generally, O.C.G.A. § 17-10-3; deposit of drivers license for violations of laws pertaining to traffic and motor vehicles, O.C.G.A. § 17-6-11; limitations on home rule powers of municipalities with respect to duplication of state criminal offenses, O.C.G.A. § 36-35-6(a)(2); confinement of violators of municipal ordinances, O.C.G.A. § 36-30-8; payments to peace officers annuity and benefit fund from revenues collected from fines and fees, O.C.G.A. § 47-17-60 et seq.; alternative

punishments for violations involving a traffic offense, O.C.G.A. § 17-10-3(e); authorization of municipal courts to impose any punishment up to the maximum specified by general law, O.C.G.A. § 36-32-1(c); jurisdiction of municipal courts over misdemeanor traffic offenses, O.C.G.A. § 40-13-21(a).

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