



DEPARTMENT OF PUBLIC DEVELOPMENT

Planning Division

PROPOSED TEXT AMENDMENT Unified Development Code Amendment

Staff Report

Planning Commission Public Hearing:	October 27, 2016(Tabled) 6:00pm
	November 17, 2016 6:00pm
Board of Commissioners Public Hearing:	December 19, 2016 6:00pm

Applicant: Jackson County Board of Commissioners

Proposed Change: The Planning Staff requests to make amendments to the Unified Development Code as described in this report.

Explanation of the Request:

The overall intent and purpose of this text amendment is to amend the Unified Development Code to repeal Article 15, "Administration and Enforcement," to repeal Section 107 Interpretation, and to adopt a new Article 22, "Administration, Interpretation and Enforcement.

The adoption of this proposed text amendment would put in place different methods of citations for violations of ordinances as dictated by House Bill 1025 approved by the Georgia General Assembly in 2016 and effective January 1, 2017. The amendment details the ways in which a citation for violating an ordinance concerning the condition of real property can be served. The citation may be served by: leaving a copy of it at the premises where the alleged violation has occurred; mailing a copy of it to the owner of such premises at the address of record maintained by the tax commissioner and tax assessor; and filing a copy of it with the clerk of magistrate court. The amendment is one of several amendments to the unified development code proposed as part of a contracted update. The amendment also deletes unnecessary provisions and adds to the administration, interpretation, and enforcement provisions of the Code. The new article number anticipates and is consistent with the broader code revision effort.

Planning Staff Recommendation: Staff recommends that the Planning Commission recommend *approval* of the attached UDC amendment.

Planning Commission Recommendation: The Planning Commission Board heard and considered this request at their public hearing on October 27, 2016. Nick Bledsoe made a motion to table this amendment to the November 17, 2016 Planning Commission Meeting to give staff time to address concerns of the Planning Commission Board, which is to require all three options of service in a citation of a tract of land that is in violation of the Jackson County Unified Development Code. The motion was seconded by David Ayers. Steve Wittry, David Ayers, Marty Clark, and Nick Bledsoe approved to table this text amendment. (4-0)

JACKSON COUNTY, GEORGIA

**AN ORDINANCE
BY THE BOARD OF COMMISSIONERS
OF JACKSON COUNTY**

An Ordinance of Jackson County, Georgia to Amend the Jackson County Unified Development Code, repealing Article 15, "Administration and Enforcement," and adopting a new Article 22, "Administration, Interpretation and Enforcement;" amending Article 1, "Adoption, Applicability and Interpretation" to amend the title to read "Adoption and Applicability" and to repeal Section 107, "Interpretation;" to repeal conflicting ordinances; to provide for severability; and to provide for an effective date.

WHEREAS, the Constitution of the State of Georgia, approved by the voters of the State in November of 1982, and effective July 1, 1983, provides in Article IX, Section II, Paragraph I thereof, that the governing authority of the county may adopt clearly reasonable ordinances, resolutions and regulations; and

WHEREAS, O.C.G.A. Section 36-1-20 authorizes counties to enact ordinances for protecting and preserving the public health, safety and welfare of the population of the unincorporated areas of the county; and

WHEREAS, in the interests of the health, safety, and general welfare of the citizens of Jackson County, Georgia, the Board of Commissioners of Jackson County desires to amend the Unified Development Code; and

WHEREAS, responsibilities for the administration and enforcement of the Unified Development Code have been restructured and responsibilities reassigned, necessitating an amendment; and

WHEREAS, the Georgia General Assembly in 2016 enacted House Bill 1025, effective January 1, 2017, which amends Article 4 of Chapter 10 of Title 15 of the Official Code of Georgia Annotated, relating to violation of ordinances of counties; so as to change provisions relating to service of accusations of or citations for violations of ordinances under certain circumstances and to provide for judgments when service is perfected under such circumstances; and

WHEREAS, appropriate notice and hearing on the amendments contained herein have been carried out according to general and local law.

NOW THEREFORE, be it ordained and resolved by the Board of Commissioners of Jackson County, Georgia, that the Unified Development Code shall be amended as follows:

SECTION 1.

Article 15, "Administration and Enforcement" is repealed in its entirety and replaced with a new Article 22, "Administration, Interpretation, and Enforcement," to read as follows:

"ARTICLE 22 ADMINISTRATION, INTERPRETATION AND ENFORCEMENT

Division I. Administration

- Sec. 2201. Responsible administrator.
- Sec. 2202. Responsibilities of the administrator.
- Sec. 2203. Delegation.
- [Secs. 2203 to 2210 Reserved]

Division II. Interpretation

- Sec. 2211. Use of figures and examples for illustration.
- Sec. 2212. Use of words or phrases.
- Sec. 2213. Relationship to other regulations.
- Sec. 2214. Appeal of interpretation.
- [Secs. 2215 to 2220 Reserved]

Division III. Enforcement

- Sec. 2221. Definitions.
- Sec. 2222. Enforcement generally.
- Sec. 2223. Authority to enter property and inspect.
- Sec. 2224. Notice of violation.
- Sec. 2225. Stop work order.
- Sec. 2226. Cease and desist order.
- Sec. 2227. Violations.
- Sec. 2228. Service of citation.
- Sec. 2229. Referral of violation to County Attorney.
- Sec. 2230. Violation a misdemeanor.
- Sec. 2231. Failure to obtain a development permit for land-disturbing activity.
- Sec. 2232. Civil monetary penalties.
- Sec. 2233. Additional remedies.

Division I. Administration

Sec. 2201. Responsible administrator.

The Director of the Public Development Department of Jackson County shall be appointed by the County Administrator and is responsible for the supervision and execution of all administrative functions of this Development Code, unless otherwise specified. This Development Code shall be administered, interpreted, and enforced by the Public Development Director, who shall have the all of the duties and authority with respect to this Development

Code as provided in the various articles and sections of this development code, and those necessarily implied by said provisions.

Sec. 2202. Responsibilities of the administrator.

Functions and duties of the Public Development Director include but are not limited to the following:

- (a) **Forms, procedures, and guidelines.** Promulgate administrative procedures, guidelines, application forms, and schedules with deadlines and meeting dates for various applications required by this Development Code; and
- (b) **Fee schedule initiation.** Periodically propose and update fee schedules for various applications and permits required by this Development Code. Said fee schedule proposed by the Public Development Director shall not become binding until adopted by the Board of Commissioners by resolution; and
- (c) **Discretionary application processing.** Receive, review and process with or without recommendation all applications filed with the County that require approval of the Board of Commissioners or recommendation or action by the Jackson County Planning Commission, or action by the Jackson County Board of Adjustment, including comprehensive plan amendment, text amendment, to official zoning map amendment (rezoning), overlay district boundary amendment, special use approval, variance, and appeal of an administrative decision; and
- (d) **Administrative application processing.** Receive, review and approve, conditionally approve or deny applications for minor and major subdivisions, boundary line adjustment, lot combination, land-disturbance permit, development permit, site plan or project approval, building permit, and any other procedure of this Development Code that requires an application be filed with Public Development Director and administratively decided by the Director, and
- (e) **Zoning verification.** Issue, upon application and for a fee as may be determined by resolution of the Board of Commissioners, official letters of zoning confirmation and/or certification of zoning compliance; and
- (f) **Inspections program.** Execute a program of inspections of land development, buildings, and property maintenance as required to implement this Development Code. The Public Development Director or designee will periodically inspect the sites of land-disturbing activities for which development permits have been issued to determine if the activities are being conducted in accordance with the approved erosion and sediment control plan and if the measures required in the plan are effective in controlling erosion and sedimentation; and
- (g) **Enforcement program.** Execute a program of enforcement of this Development Code; and other codes assigned to the Public Development Department for enforcement; and

- (h) **Interpretation.** Interpret the provisions of this Development Code, where uncertainty exists; and
- (i) **Administrative Relief.** It is the intent of this development code that the Public Development Director shall have authority necessary to provide minor relief from the provisions of this Development Code, and to that end the Director is authorized and expected to find solutions within the spirit of this Development Code to exercise administrative variance authority specifically granted in this development code, where warranted; and
- (j) **Commission and board secretary.** Serve as the Secretary to the Planning Commission and the Board of Adjustment; and
- (k) **Other.** Tend to other administrative details not inconsistent with the provisions of this development code, and to implement the provisions of this Development Code; and

Sec. 2203. Delegation.

The Public Development Director may delegate administrative functions, powers, and duties assigned by this Development Code to other staff as may be appropriate, without the need to separately authorize such delegation by formal action, including but not limited to zoning administration, code enforcement, and building permitting and inspections.

[Secs. 2203 to 2210 Reserved]

Division II. Interpretation

Sec. 2211. Use of figures and examples for illustration.

Figures, examples, or explanatory text associated with defined terms or regulatory paragraphs in this Development Code are provided for illustration only and do not limit or change the meaning of the term as defined or the requirements of the regulation as written.

Sec. 2212. Use of words or phrases.

For the purpose of this Development Code, the following shall apply to the use of words and phrases:

- (a) Words used in the present tense include the future tense. Words used in the singular tense include the plural tense, and words used in the plural tense include the singular tense. The masculine person “he” or “his” also means “her” or “hers.”
- (b) References to the “County” and to the Board of Commissioners and any public officials or appointed bodies of the County not otherwise named by political jurisdiction or defined in this Development Code shall always mean Jackson County, Georgia, and its governing body, appointed or employed officials, and appointed bodies.

Article 22, Administration, Interpretation and Enforcement
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- (c) The word “person” is intended to include any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, state agency, municipality or other political subdivision of this State, any interstate body or any other legal entity.
- (d) The words “shall,” “will,” “is to” and “must” are always mandatory and not discretionary, while the word “may” is permissive.
- (e) The word “and” indicates that all of the conditions, requirements or factors so connected must be met or fulfilled, while the word “or” indicates that at least one condition, requirement or factor so connected must be met.
- (f) The term “such as” is intended to introduce one or more examples in illustration of a requirement or point, and is intended to mean “including but not limited to the following.”
- (g) The verbs “zone” and “rezone” have the same meaning and refer to the act of amending the official zoning map or overlay district map through the process established by this Development Code.
- (h) The nouns “zone,” “zoning district” and “district” have the same meaning and refer to the zoning districts and/or overlay districts established by this Development Code.
- (i) The word “day” means a calendar day unless otherwise specified as a work day, excluding official County holidays.
- (j) The word “used” or “occupied” as applied to any land or building shall be construed to include the words “intended,” “arranged,” or “designed to be used or occupied.”
- (k) The term “zoning map” means the official zoning map of Jackson County, Georgia, and may include a single map or a series of maps in sections.
- (l) All words and phrases are to be interpreted within the context of the sentence, paragraph, subsection, section and Article in which they occur.
- (m) Words and phrases not defined in this Development Code shall be construed to have the meaning given by common and ordinary use, the meaning of which may be further clarified by definition of the word or phrase in a dictionary of the English language in current circulation.
- (n) Definitions are clearly identified as such and are located throughout this Development Code in the Articles or Sections to which they most readily refer. All definitions, regardless of location within an Article of this Code, apply equally to the use of such terms throughout the Code. In the case where two definitions conflict, the Director shall determine which definition applies, depending on the specific context.

Sec. 2213. Relationship to other regulations.

The requirements of this Development Code are in addition to the requirements of other ordinances, rules, regulations and other provisions of law, and where any provision of this Development Code imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

Sec. 2214. Appeal of interpretation.

Interpretations of the Director of Public Development may be appealed under the provisions of Sec. 1303, "Appeals of an administrative decision," of this Development Code.

[Secs. 2215 to 2220 Reserved]

Division III. Enforcement

Sec. 2221. Definitions.

Occupancy: The purpose for which a building or portion thereof is utilized or occupied.

Occupant: Any individual living or sleeping in a building, or having possession of a space within a building.

Operator: Any person who has charge, care or control of a structure or premises which is let or offered for occupancy.

Owner: Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

Person: An individual, corporation, partnership or any other group acting as a unit.

Sec. 2222. Enforcement generally.

- (a) Any action or inaction that violates the provisions of this Development Code or the requirements of an approved plan or permit may be subject to the enforcement actions outlined in this division.
- (b) Any action or inaction that violates the provisions of this Development Code or the requirements of an approved plan or permit and that is continuous with respect to time is deemed a public nuisance and may be abated by injunctive or other equitable relief. The imposition of any of the penalties described in this Division shall not prevent such equitable relief.

Sec. 2223. Authority to enter property and inspect.

- (a) Representatives of the Public Development Department (including the Director, Building Official and Code Enforcement Officer) shall have the power to conduct such investigations as may reasonably be deemed necessary to assure or compel compliance with the requirements and provisions of this Development Code, and for that purpose are authorized to enter at reasonable times upon any property for the purpose of investigation and inspection.
- (b) No person shall refuse entry or access to any authorized representative or agent of the County 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.

Sec. 2224. Notice of violation.

- (a) If, through inspection, it is deemed that a person engaged in land-disturbing activities or engaged in a land use has failed to comply with this Development Code generally, or has failed to comply with an approved plan or permit, or with conditions of rezoning approval or development permit conditions, or with any other provisions of this Development Code, a written notice to comply shall be served upon that person responsible for the violation, and the property owner, if different, and the occupant of the property if different.
- (b) The notice shall set forth the section or sections of this Development Code which have been violated and the measures necessary to achieve compliance and shall state the time within which such measures must be completed. If the person responsible fails to comply within the time specified, he shall be deemed in violation of this Development Code.
- (c) Any person found to be in violation of this Development Code shall be deemed to have forfeited any required performance bond if required to post one under the provisions of this Development Code.

Sec. 2225. Stop work order.

- (a) Whenever the Director or designee finds any work regulated by this Development Code being performed in a manner contrary to the provisions of this Development Code the Director or designee is authorized to issue a stop work order.
- (b) A stop work order shall be issued in writing and shall be given to the owner of the property, to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order and the conditions under which the cited work is authorized to resume.
- (c) All stop work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred.

- (d) Where an emergency exists, the code official shall not be required to give written notice prior to stopping the work.
- (e) Any person who shall continue to work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable for a fine or penalties as prescribed in this Division and as otherwise provided or prescribed by law.

Sec. 2226. Cease and desist order.

The Director or designee shall order discontinuance of illegal use of land, buildings or structures; removal or relocation of illegal buildings or structures or of illegal additions, alterations or structural changes; discontinuance of illegal work being done; or shall take any other appropriate or necessary action to ensure compliance with or to prevent violation of the provisions of this Development Code.

Sec. 2227. Violations.

- (a) Upon continuing noncompliance, or initially in the case of an immediate threat to the public health or safety, the Director or designee shall have authority to prosecute violations in court.
- (b) Prosecutions for violations of any provision of this Unified Development Code shall be upon citation as provided in O.C.G.A. Code Section 15-10-63 or upon accusation by the county attorney or such other attorney as the county governing authority may designate.

Sec. 2228. Service of citation.

- (a) A citation for or accusation of a violation of an ordinance concerning the condition of real property shall be served by all of the following:
 - 1. Posting a copy of it on the door of the premises where the alleged violation occurred; and
 - 2. Mailing a copy of it by registered or certified mail or statutory overnight delivery to the owner of such premises at the address of record maintained by the applicable tax commissioner. The certificate of mailing to the accused shall constitute prima-facie evidence of compliance with this requirement; and
 - 3. Filing a copy of it with the clerk of magistrate court.
- (b) Service of a citation shall not be authorized until there has been at least one attempt at personal service on the accused at the address of record of the accused as maintained by the applicable tax commissioner or of the accused's registered agent as maintained by the Secretary of State, provided that such attempt at personal service shall only be required if the accused resides or has a registered agent in this state.

- (c) When service is perfected as provided in this section and the accused fails to appear for trial, an in rem judgment and lien against the real property shall be the exclusive penalty.
- (d) Prosecutions for violations of ordinances upon citations shall be commenced by the completion, signing, and service of a citation by any agent of the county who is authorized by the county governing authority to issue citations.

Sec. 2229. Referral of violation to County Attorney.

Any violation alleged under this Development Code may be referred by the Director or designee to the County Attorney for investigation, citation and enforcement.

Sec. 2230. Violation a misdemeanor.

Violation of any provision of this Development Code, including violation of conditions of approval established in connection with grants of variance or zoning changes, shall constitute a misdemeanor.

Sec. 2231. Failure to obtain a development permit for land-disturbing activity.

If any person commences any land-disturbing activity requiring a land-disturbance or development or permit as prescribed in this Development Code without first obtaining said permit, the person shall be subject to revocation of his authorization for the conduct of a business and associated work activities within the jurisdictional boundaries of the County.

Sec. 2232. Civil monetary penalties.

- (a) Any person violating any provision of this Code, permitting or plan conditions or stop work order shall be liable for a civil penalty or fine not to exceed \$2,500.00 per day, but in no event less than \$300.00.
- (b) There shall be a minimum penalty of \$300.00 per day for each violation involving the construction of a single-family dwelling by or under contract with the owner for his or her own occupancy; and there shall be a minimum penalty of \$1,000.00 per day for each day for each any other violation.
- (c) Each day the violation continues shall constitute a separate offense.
- (d) Any civil penalties imposed pursuant to this Code shall be payable to the County, shall commence on the date of issuance of any stop work order, cease and desist order or other notice of noncompliance and shall not be affected by the filing of any appeal.
- (e) Any civil penalty imposed pursuant to this Article may, at the discretion of the County, be waived or reduced if, in the discretion of the County, the violator has taken sufficient and timely curative and corrective action.

- (f) No land-disturbance or development permits, inspections, building permits or certificate of occupancies, will be granted to any person who has an outstanding fine for violating this Code.
- (g) Any person who violates any provisions of this Code, the rules and regulations adopted pursuant hereto, or any permit condition or limitation established pursuant to this Code or who negligently or intentionally fails or refuses to comply with any final or emergency order of the Director or designee issued as provided in this Code shall be liable for a civil penalty not to exceed \$2,500.00 per day.

Sec. 2233. Additional remedies.

Nothing contained in this Division shall prevent the County from taking such other lawful actions as are necessary to prevent or remedy any violation, such as injunction, mandamus or other appropriate action.

[Secs. 2234 to 2240 Reserved.]

SECTION 2.

Article 1, "Adoption, Applicability and Interpretation, is hereby amended in title to "Adoption and Applicability" and Section 107, "Interpretation" is hereby deleted.

SEVERABILITY

It is the express intent of the Jackson County Board of Commissioners that this Ordinance be consistent with both federal and State law. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

CONFLICTING ORDINANCES REPEALED

Any and all Ordinances or parts of Ordinances in conflict herewith shall be, and the same are, hereby repealed to the extent of such conflict.

EFFECTIVE DATE

This Ordinance shall become effective on January 1, 2017.

PASSED AND ADOPTED this ___ day of _____, 2016, the public health, safety, and welfare demanding it.

JACKSON COUNTY BOARD OF COMMISSIONERS:

Tom Crow, Chairman

Jim Hix, Commissioner, District 1

Chas Hardy, Commissioner, District 2

Ralph Richardson, Jr., Commissioner, District 3

Dwain Smith, Commissioner, District 4

Attest:

Clerk to the Board

Approved as to form:

County Attorney