

ORDINANCE NO. 87-01

AN ORDINANCE CONSOLIDATING ORDINANCES NUMBER 80-1, 80-4, 83-1, and 86-02: ESTABLISHING A COMPREHENSIVE SOLID WASTE COLLECTION AND DISPOSAL POLICY FOR HOLMES COUNTY FLORIDA: EMPOWERING THE BOARD OF COUNTY COMMISSIONERS TO GRANT FRANCHISES FOR COLLECTING, REMOVING, DISPOSING OF GARBAGE AND WASTE IN UNINCORPORATED AREAS OF THE COUNTY: PROHIBITING THE CARRYING ON OF THE BUSINESS OF COLLECTING, REMOVING, AND DISPOSING OF GARBAGE AND WASTE, EXCEPT IN ACCORDANCE WITH THIS ORDINANCE: PROHIBITING DUMPING OR DISPOSAL OF GARBEGE OR LITTER IN ANY PUBLIC PLACE OR RIGHT OF WAY OR ON PRIVATE LAND OF ANOTHER IN HOLMES COUNTY, FLORIDA: PROHIBITING TRESPASS OF ENTRY INTO SWAY CARS OF LANDFILLS: PROHIBITING THE DUMPING BY BUSINESS OR PRIVATE COLLECTORS INTO SWAY CARS OR OTHER RECEPTACLES PROVIDED BY HOLMES COUNTY: PROVIDING FOR THE ASSESSMENT OF FEES FOR THE DISPOSAL OF MATERIALS AT THE COUNTY LANDFILLS; RESTRICTING THE TYPES OF AND RE-QUIRING CONTAINERIZATION FOR GARBAGE THAT MAY BE PLACED IN RECEPTALES AND SWAY CARS PROVIDED BY HOLMES COUNTY; RESTRICTING THE TYPES OF GARBAGE THAT MAY BE DELIVERED OR DEPOSITED IN RECEPTACLES OR SWAY CARS; PROVIDING FOR INFERENCES; PROVIDING FOR EXEMPTIONS; PROVIDING FOR EN-FORCEMENT AND PENALTIES; PROVIDING FOR REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Holmes County, Florida, on behalf of the residents of Holmes County, are required by law to implement a comprehensive policy for the colleciton, control, and disposal of solid waste and litter; and

WHEREAS, the adequate regulation of the collection and disposal of solid waste and the control of litter have a direct effect on the general health, welfare and safety of the residents of Holmes County;

NOW THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Holmes County, Florida, that:

1. Short Title: This ordinance shall be known as and may be referred to as the "Holmes County Solid Waste and Litter Ordinance".
2. Definitions:
 - (a) "Litter" means refuse, rubbish, or abandoned material of any kind, including, but not limited to, garbage, trash, cans, bottles, containers, paper, lighted or unlighted cigarettes or cigars, timber to timber by-products or material, flaming or glowing material, glass scrap metals, plastic, rubber, yard trash, tar paper, demolition materials or the remaining demolition or destruction operation or project, masonry, animal remains, fish or seafood remains, or other comparable trash items.
 - (b) "Enforcement Agency" means the Holmes County Sheriff's Department, all other law enforcement agencies, and any other employee, employees or

independent contractor employed by Holmes County and designated by the Board by resolution or ordinance as a litter or solid waste enforcement officer.

(c) "Person" means any natural person, partnership, firm corporation or company, whether incorporated or not.

3. Franchises: The Board of County Commissioners is hereby authorized and empowered to grant franchises and require a performance bond in such districts of the County as may be designated by the Board lying outside the boundaries of any municipality to persons applying therefore, for the purpose of collecting, removing and/or disposing of garbage and waste in such districts for compensation or any other valuable consideration. Said franchises may be exclusive or non-exclusive and shall be upon such terms and conditions as the Board shall prescribe, but shall not exceed the term of five years and may be amended or changed by the Board at any time at its discretion.

4. Prohibitions:

(a) It shall be unlawful for any person to carry on the business of collecting, removing and/or disposing of garbage and waste in any unincorporated area of Holmes County without first obtaining a franchise authorized by the Ordinance.

(b) It shall be unlawful for any person, whether franchised or not, to collect or dispose of garbage in violation of the ordinance.

(c) It shall be unlawful for any person, whether franchised or not, who is in the business, a business of collecting, removing or disposing of garbage, waste or trash to throw, place, deposit or cause to be thrown, placed or deposited, any garbage, waste, trash, junk, or other material (collected or removed in the course of the business) into any sway car provided by Holmes County. All garbage, waste, trash, junk and other material collected by any person (whether franchised or not) who is in the business, collecting removing or disposing of garbage, waste or trash within any area of Holmes County, whether incorporated or not, shall not dispose of or deposit any garbage, waste or trash on any lands in Holmes County, except at sites or location permitted by the State of Florida Department of Environmental Regulation to receive and dispose of garbage, waste or trash.

(d) It shall be unlawful for any person to throw, discard, place or deposit litter, garbage, waste, or trash in any manner or amount:

(1) in or on any public highway, road, street, alley, or thoroughfare or any portion of any right-of-way thereof, or in or on any public lands, except in containers of areas lawfully provided therefore: or

(2) in or on any private property, unless prior consent of the record owner of that property has been obtained and said litter will neither constitute a public nuisance nor otherwise be in violation of any state or local law, this or nay other ordinance, rule of regulation.

(3) When any litter is thrown or discharged from any motor vehicle being operated or located on any public or private right-of-way within Holmes County, the operator of such motor vehicles who shall allow or permit such throwing or discharge shall be deemed to have violated this section. Any owner, lessee, or driver of any vehicle from which any litter or other materials have fallen, blown, leaked, sifted, thrown, discharged, or otherwise escaped from the vehicle shall immediately cause the litter or material on public property (without prior consent) to be removed and shall pay and be responsible for the cost of removal and clean-up in a civil action brought for that purpose.

(e) It shall be unlawful for any person, and no person shall, enter into, trespass in, or cause permit, encourage, allow or authorize another to enter into or trespass in, any sway car or landfill provided for Holmes County or by any other person for the receipt of trash or garbage. It shall be unlawful for any person, and no person shall, remove, or cause permit, encourage, allow, or authorize to be removed, any item object, garbage, trash (or any other matter previously deposited into any such sway car or landfill) from any such wsay care or landfill. For the purposes of this ordinance, "entry" and "trespass" shall be deemed to include, but not be limited to, the introduction of any portion of the body of any other device or object into sway car or landfill, for any purpose other than the depositing thereinto of trash, garbage, or other items to be disposed of.

(f) It shall be unlawful for any person to and no person shall, place or deposit into any sway car or other receptacle for trash provided by Holmes County for trash collection any garbage, trash, or other object unless the same may be wholly contained within a garbage bag, box or other non-metallic container no larger than thirty gallons in volume. It shall be unlawful for any person to, and no person shall, deposit, place, insert, or otherwise allow to be deposited or placed into any sway car or other trash receptacle, any material size, or object other than household garbage, waste, litter or yard trash and garbage, containerized as required above. All other materials to be disposed in Holmes County shall be delivered for appropriate disposal only to Holmes County Landfill Site, or as otherwise allowed by this ordinance.

(g) It shall be unlawful for any person, firm, corporation, partnership, governmental body or any other legal entity, to dispose of or store hazardous materials within Holmes County, Florida, without first obtaining a permit from the Board of County Commissioner of Holmes County, Florida.

(h) It shall be unlawful for any person, firm, corporation, partnership, governmental body or any other legal entity, to dispose of any industrial waste generated outside of Holmes County, Florida, within the boundaries of Holmes County, Florida.

5. Inferences:

(a) Proof that the name of any persons found on litter or other written material contained in litter deposited unlawfully on any public highway, road, street, alley or throughfare, including any portion of the right-of-way thereof, or any other public or private lands (without prior consent) shall give rise to an inference that said litter was discharged or placed, or allowed to be discharged or placed, thereon by said person in violation of Paragraph 4 above.

(b) Proof that a minor has physically entered into or is physically within a sway car or landfill shall give rise to an inference that the parent or adult vested with legal or actual physical custody of the minor at the time caused permitted, encouraged, allowed, or authorized the minor's entry into or presence within the sway care or landfill, in violation of this ordinance.

6. Exemptions:

(a) This ordinance shall not apply to the disposal of garbage by feeding or delivering such garbage for feeding to animals when such act is accomplished other wise in accordance with the laws in the state of Florida.

(b) This Ordinance shall not apply to persons or business entities who have been granted salvage rights in writing by the said Board of County Commissioners.

7. The Board of County Commissioners shall be authorized by the resolution adopted at any regular Board meeting to adopt a schedule of fees (generally referred to as tipping or disposal fees) to be charged to any person, municipality or other governmental entity for the disposing or depositing of garbage, waste or trash at any Holmes County Landfill site (or at such other facility or locations as Holmes County may operate or own for that purpose, now or in the future).

8. Enforcement: The enforcement of this ordinance shall be the duty and responsibility of any and all enforcement agencies, as defined above, operating within Holmes County, Florida.

9. Penalties: Violations of this ordinance shall be prosecuted in the same manner as misdemeanors are prosecuted, in the name of the state of Florida by the prosecuting attorney.

(a) Any person found guilty of violating Paragraph 4D above shall be punished by a civil penalty in an amount not to exceed the actual cost of removal and clean-up of the litter or garbage deposited in violation of Paragraph 4D, or by the performance of community service work not to exceed 40 hours, or both; or by a criminal fine not to exceed \$500.00 or by imprisonment in the county jail for a term not to exceed 60 days, or both. If the sentencing court finds that the violator has previously been found guilty of a violation of this ordinance, then the violator shall be punished by the imposition of a criminal fine not to exceed \$500.00 or by the imprisonment in the county jail for a term not to exceed 60 days or both. Any fines assessed pursuant to this ordinance or pursuant to Florida Statute Section 403.413 shall be placed in the general revenue fund of Holmes County.

(b) Any person violating any provision of this Ordinance other than Paragraph 4D above shall be deemed guilty of a second degree misdemeanor and punished as provided by law.

10. Repealer: All other ordinances or portions of ordinances in force at the time this ordinance becomes effective which are in conflict with any provisions thereof shall be deemed to be and are repealed to the extent of any such conflict, otherwise to remain in full force and effect.

Ordinance Numbers 80-1, 80-4, 83-1, 86-02, 86-03, and 86-06 are expressly repealed, provided that should any portion of this ordinance be declared invalid for any reason by any court, then the provisions of the prior ordinances to the same effect shall be reinstated as law to the extent that they are not in conflict with the remaining portion of this ordinance.

11. Severability: If any sections, subsection, paragraph, sentence, clause, or phrase of this ordinance is held for any reason to be unconstitutional, void, or invalid, the validity of the remaining portions of said ordinance shall not be affected thereby. Nothing in the ordinance shall be construed to affect any suit or proceeding now pending in any court, or any rights accrued, or existing under any act or ordinance repealed hereby.

12. Effective Date: This ordinance shall take effect upon receipt of official acknowledgement from the office of the Secretary of State of Florida that the said ordinance has been filed in the office.

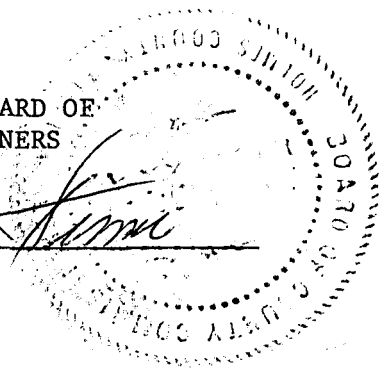
189

THE FOREGOING ORDINANCE WAS ADOPTED BY A VOTE OF 4 to 0
by the Board of County Commissioners, Holmes County, Florida, after due notice
and publication, in the regular meeting on February 16, 1987.

DONE THIS the 16th day of February, 1987 in regular session
in Bonifay, Florida.

HOLMES COUNTY BOARD OF
COUNTY COMMISSIONERS

BY: *Rene Kinn*
Chairman



ATTEST:

Cody Pab (SEAL)
Clerk

THOMAS GERALD HOLLEY
ATTORNEY AT LAW
102 EAST CHURCH AVENUE
P.O. BOX 268
CHIPLEY, FLORIDA 32428

OFFICE (904) 638-4317

FAX (904) 638-3768

November 28, 1995

Board of County Commissioners
Holmes County, Florida
P.O. Box 397
Bonifay, Florida 32425

RE: City Environmental vs. Holmes County-Federal Court Case

Dear Commissioners:

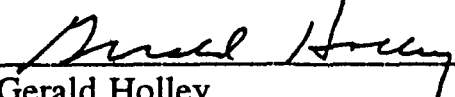
The Federal Court for the Northern District of Florida has entered a Summary Judgment declaring that Holmes County Ordinances Nos. 83-06, 87-01 and 89-01 are unconstitutional in that they violate the Commerce Clause of the Federal Constitution.

This ruling was not unexpected because the Federal Circuit Court of Appeals in Atlanta had previously entered a ruling right on point, saying that it was unlawful to prohibit the flow of solid waste across state and county lines.

Our only argument was that the Plaintiff lacked judicial standing to attack the ordinances because Plaintiff did not have a landfill in Holmes County, and that Holmes County had made no threat to enforce the ordinances against Plaintiff. This argument was seriously weakened when two County Commissioners testified in their depositions that they would seek to enforce the ordinances against the Plaintiff.

This ruling has no bearing on the outcome of the other two pending cases,
and no bearing on whether or not City Environmental gets the right to operate a
landfill in Holmes County.

Yours very truly,



Gerald Holley

GH/rh

cc: Cody Taylor

All Commissioners