

Meeting Date
<b>October 4, 2016</b>



AGENDA	
Section	New Business
Item No.	<b>VI.D.1</b>

**AGENDA REPORT**  
*BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS*

<b>SUBJECT:</b>	Permission to Advertise Bear Management Ordinance; Legislative Intent; Permission for County Manager or designee to file application for Florida Fish and Wildlife Conservation Commission (FWC) funding
<b>DEPT/OFFICE:</b>	County Attorney (per Board Direction)

**Requested Action:**

Requesting further Board direction on whether to proceed with Bear Management Ordinance and filing an application on or before October 14, 2016 in order to qualify for a share of \$825,000 in Florida Fish and Wildlife Conservation Commission (FWC) funding to implement the ordinance.

**Summary Explanation & Background:**

At the September 20, 2016 the Board decided to defer discussion of a bear management ordinance until the October 4 meeting. During the September 20 meeting, mention was made of \$825,000 in FWC funding available to implement any bear management ordinance that may be adopted by the Board. The County Attorney's Office looked into the matter and discovered the application must be filed with FWC by October 14, 2016. Consequently, the CAO has prepared an ordinance in the event the Board chooses to proceed with the application.

The ordinance will require 10 days notice before adoption, so any application filed with FWC can only include a copy of the proposed ordinance, which cannot come back to the Board for final adoption until October 18.

**LEGISLATIVE INTENT**

The purpose of the Ordinance is to set forth standards and conditions addressing the control, disposal and collection of bear attractants to reduce instances of human encounters with bears with common bear activity. The Ordinance title is set forth below.

**AN ORDINANCE OF BREVARD COUNTY RELATING TO BEAR MANAGEMENT; AMENDING THE BREVARD COUNTY CODE OF ORDINANCES TO INCLUDE A NEW CHAPTER; ESTABLISHING CHAPTER 126 TO ADDRESS CONTROL, DISPOSAL, AND COLLECTION OF ATTRACTANTS IN ORDER TO REDUCE THE INSTANCES OF HUMAN-BEAR ENCOUNTERS AND CONFLICTS; PROVIDING DEFINITIONS; CREATING STANDARDS FOR ATTRACTANT AND REFUSE MANAGEMENT WITHIN THE AREA(S) OF THE COUNTY WITH COMMON BEAR ACTIVITY; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR APPLICATION IN UNINCORPORATED AND INCORPORATED AREAS OF THE COUNTY UNLESS THERE IS A CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.**

Fiscal Impact: N/A

Clerk to the Board instruction:

Exhibits Attached: proposed ordinance

Contract /Agreement (If attached): Reviewed by County Attorney  Yes  No

County Manager's Office Department County Attorney PR

Stockton Whitten, County Manager Scott Knox, County Attorney



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October 5, 2016

MEMORANDUM

TO: Scott Knox, County Attorney

RE: Item VI.D.1., Legislative Intent and Permission to Advertise for Bear Management Ordinance

The Board of County Commissioners, in regular session on October 4, 2016, approved legislative intent and granted permission to advertise for Bear Management ordinance.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

**AN ORDINANCE OF BREVARD COUNTY RELATING TO BEAR MANAGEMENT; AMENDING THE BREVARD COUNTY CODE OF ORDINANCES TO INCLUDE A NEW CHAPTER; ESTABLISHING CHAPTER 126 TO ADDRESS CONTROL, DISPOSAL, AND COLLECTION OF ATTRACTANTS IN ORDER TO REDUCE THE INSTANCES OF HUMAN-BEAR ENCOUNTERS AND CONFLICTS; PROVIDING DEFINITIONS; CREATING STANDARDS FOR ATTRACTANT AND REFUSE MANAGEMENT WITHIN THE AREA(S) OF THE COUNTY WITH COMMON BEAR ACTIVITY; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR APPLICATION IN UNINCORPORATED AND INCORPORATED AREAS OF THE COUNTY UNLESS THERE IS A CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Article VIII, Section 1(g) of the Florida Constitution and Fla. Stat. § 125.01(1), Brevard County (hereinafter the “County”) is authorized to adopt local ordinances not inconsistent with general law or special law; and

**WHEREAS**, pursuant to Chapter 125, Florida Statutes, the County is authorized to adopt local ordinances to ensure the public health, safety, and welfare of its residents; and

**WHEREAS**, the Florida Fish and Wildlife Conservation Commission (hereinafter “FWC”) has determined that more than 4,000 black bears are present throughout the State of Florida; and

**WHEREAS**, the FWC has identified parts of the County, particularly the northern part, as areas where bears are common; and

**WHEREAS**, parts of the County are suffering from an increase in human-bear encounters and conflicts caused by unsecured attractants, including garbage and refuse; and

**WHEREAS**, the FWC has approved a black bear management plan, which identifies the need to develop strategies to address instances of human-bear encounters and conflicts caused by unsecured attractants; and

**WHEREAS**, the Brevard County Board of County Commissioners finds that bears

foraging for food in unsecured garbage cans, refuse containers, and other sources pose a threat to the safety, health, and welfare of the people of this County.

**NOW, THEREFORE, BE IT ORDAINED BY THE BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS:**

**Section 1. Incorporation of Recitals.** The abovementioned recitals are hereby incorporated herein by reference.

**Section 2. Intent and Purpose.** The intent and purpose of this Ordinance is to reduce the number of encounters and conflicts between humans and bears caused by unsecured garbage cans, refuse containers, and other sources by establishing rules to address control, disposal, and collection of such attractants within the areas of the County where bears are common.

**Section 3. Creation.** Chapter 126, Brevard County Code, “Brevard County Bear Management Ordinance,” is hereby created to read as follows:

**Sec. 126-1. Authority.** This section is enacted under the authority of Article VIII, Section 1(g) and Chapter 125, Florida Statutes.

**Sec. 126-2. Purpose and intent.** It is hereby declared to be the intent of Chapter 126, Brevard County Code, to reduce the number of encounters and conflicts between humans and bears caused by unsecured refuse containers.

**Sec. 126-3. Definitions.** As used in this Chapter, the below terms are defined as follows:

*Area(s) of common bear activity:* the part(s) of the County that the FWC has identified as having common bear activity.

*Attractant:* any substance that attracts bears or could reasonably be expected to attract bears, such as food products, pet food, compost, feed, etc. Growing plants and/or trees that produce items including, but not limited to, berries, fruit, nuts, and acorns are excluded from this definition.

*Bear resistant commercial refuse container:* a container with a reinforced lid and a latching mechanism, or other County- or State-approved method, that prevents bears

from accessing the container's contents.

*Bear resistant refuse container:* a bear resistant commercial refuse container or bear resistant residential refuse container

*Bear resistant residential refuse container:* a fully enclosed residential refuse container, of sturdy construction, that prevents bears from accessing the container's contents.

*Code enforcement officer:* Employees or agents of Brevard County whose duty it is to enforce the County's Code, or any law enforcement officer as defined in Fla. Stat. § 943.10(1), as amended.

*Commercial property:* all improved property that is used for nonresidential purposes and that utilize a commercial refuse container for the collection of refuse, including commercial, industrial, and multi-family developments.

*Commercial refuse container:* any detachable refuse container that is designed or intended for mechanical pickup, generally referred to as a "dumpster."

*Person:* any individual, partnership, firm, organization, corporation, association, or any other legal entity, whether singular or plural, masculine or feminine, as the context may require.

*Refuse:* any waste that could reasonably attract bears, including, but not limited to, kitchen organic waste, food, food packaging, toothpaste, deodorant, cosmetics, etc.

*Residential property:* all improved property that is used for residential purposes and that utilizes residential refuse containers for the collection of refuse.

*Residential refuse container:* any commonly available light gauge steel, plastic, or galvanized receptacle of a nonabsorbent material, closed at one end and open at the other furnished with a closely fitted top or lid and handle(s) and/or water proof plastic bags of heavy mill construction that can be safely and securely closed.

*Responsible party:* the record owner, tenant, or occupant of any property or business within the area(s) identified as having common bear activity. This definition also includes haulers providing refuse collection service to commercial properties.

*Secured structure:* a designated structure in which refuse is stored in such a manner so as to minimize the attraction of bears and to serve as a bear resistant barrier during the time between refuse disposal and collection.

*Special event:* a use or activity offered to the general public, such as a cultural, recreational, educational, or social event, that is not contemplated in the approved site

plan or other developmental approval, and which is generally consistent with the applicable zoning district.

**Sec. 126-4. Residential refuse disposal within area(s) of common bear activity.**

- (a) Residents within area(s) of common bear activity must secure all refuse from residential properties within: 1) a functioning bear resistant residential refuse container or 2) a house, garage, shed, or other secured structure at all times, with the exception of the placement of residential refuse containers at the designated collection location as permitted by this section.
- (b) Residential refuse containers associated with residential curbside collection services may be placed at the designated collection location on the scheduled collection day no earlier than 5:00 A.M. Residential refuse containers must be removed from the collection location and secured as soon as practicable after collection service has been provided. The aforementioned time restrictions do not apply to bear resistant residential refuse containers.
- (c) Recyclable materials stored outside until scheduled collection day, and/or placed at a designated collection location on scheduled collection day, must be sufficiently free from residue of food and other material(s) so that they are not an attractant to bears.
- (d) Household items that cannot reasonably be considered refuse or an attractant are not required to be secured within a bear resistant residential refuse container or within a house, garage, shed, or other secured structure. If such waste is commingled with refuse or an attractant, it must be secured within a bear resistant residential refuse container or within a house, garage, shed, or other secured structure.
- (e) Responsible parties that choose to utilize bear resistant residential refuse containers as a means to comply with this section shall be responsible for all costs associated there with, including the cost to purchase the bear resistant residential refuse containers and any additional service fee imposed by the refuse hauler.

**Sec. 126-5. Commercial refuse disposal within area(s) of common bear activity.** Within area(s) of common bear activity, all commercial properties are required to place refuse within a bear resistant commercial refuse container. Bear resistant commercial refuse containers must remain secured at all times except when loading or unloading the refuse, and the area around the container must be kept clean of attractants and debris. If the container is damaged in a manner that would permit bear access to its contents, the damage must be reported to the company responsible for maintenance of the container and repaired within 48 hours after the damages is discovered. Commercial property collection service customers will be responsible for any cost associated with compliance with this requirement.

**Sec. 126-6.** *Special event refuse disposal within area(s) of common bear activity.* Within the area(s) of common bear activity, special events that occur outdoors must be kept free from the accumulation of refuse. Refuse must be collected from the grounds and must be secured within the appropriate bear resistant refuse container or a secured structure, or removed from the area to an appropriate disposal site at the close of each day's activities.

**Sec. 126-7.** *Construction site refuse disposal within area(s) of common bear activity.* Within the area(s) of common bear activity, all construction sites must have a designated secure container to receive refuse. The designated container must be an appropriate bear resistant refuse container or secured structure. The designated containers are to remain secured at all times except when loading or unloading refuse. If the container is damaged in a manner that would permit bear access to its contents, the damage must be reported to the company responsible for maintenance of the container and repaired within 48 hours after the damages is discovered. Construction site collection service customers will be responsible for any cost associated with compliance with this requirement.

**Sec. 126-8.** *Compactors within area(s) of common bear activity.* Any outdoor trash compactor receiving refuse must be kept inaccessible to bears. Compactor doors must be kept closed and latched at all times, except when load or unloading refuse, to prevent access by bears. The area around the compactor must be kept clean or attractants and debris. If the container is damaged in a manner that would permit bear access to its contents, the damage must be reported to the company responsible for maintenance of the container and repaired within 48 hours after the damages is discovered. Commercial property collection service customers will be responsible for any cost associated with compliance with this requirement.

**Sec. 126-9. *Feeding bears prohibited.*** No person shall intentionally or unintentionally feed/provide food to bears in within Brevard County. Any person who leaves or stores any attractant in a manner that creates, or would reasonably be expected to create, a lure or enticement for bears will be considered in violation of this Ordinance.

**Sec. 126-10. *Enforcement and Penalties.*** Any responsible party found to be in violation of this Ordinance may be subject to any applicable enforcement mechanisms available to the County, including Fla. Stat. § 125.69 and Brev. Ord. Sec. 1-7. Each violation hereunder will be deemed a separate offense and a separate offense will be deemed committed on each day during or on which a violation occurs or continues.

**Sec. 126-11. *Applicability.*** This Ordinance will apply in both the unincorporated and incorporated areas of the County, provided that any provision of this Ordinance in conflict with a municipal ordinance will not be effective.

**Sec. 126-12. *Time period for compliance.***

- (a) Residential properties within an area of common bear activity must comply with the refuse disposal requirements outlined above within thirty (30) days of the date of adoption of this Ordinance.
- (b) Commercial properties within an area of common bear activity must comply with the refuse disposal requirements outlined above within sixty (60) days of the date of adoption of this Ordinance.
- (c) All construction sites within an area of common bear activity must comply with the refuse disposal requirements outlined above within thirty (30) days of the date of adoption of this Ordinance.
- (d) Haulers providing refuse collection service to commercial properties shall make bear resistant refuse containers available within sixty (60) days of the date of adoption of this Ordinance.
- (e) All other provisions of this Ordinance shall become operative upon the effective date of the Ordinance enacting this Ordinance or identifying an area of common bear activity.

**Sec. 126-13. *Severability.*** If any provision of this Ordinance or the application thereof is held invalid or otherwise unenforceable, said provision shall not affect other portions or

applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

**Sec. 126-14. *Conflicting provisions.*** In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other Federal, State, or County law, rule, or regulation, the more restrictive shall apply.

**Sec. 126-15. *Inclusion in code.*** It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made part of the Brevard County Code of Ordinances; and that the sections of this Ordinance may be renumbered or re-lettered and that the word "Ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

**Sec. 126-16. *Effective date.*** A certified copy of this ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of its enactment.

**DONE, ORDERED, AND ADOPTED** by the Brevard County Board of County Commissioners, this \_\_\_\_\_ day of October, 2016.

ATTEST:

  
\_\_\_\_\_  
Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS  
BREVARD COUNTY, FLORIDA

  
\_\_\_\_\_  
Jim Barfield, Chairman  
(As approved by the Board on 10/4, 2016)