COUNTY DEPARTMENT AGENDA REQUEST

Department:	Planning and Zoning	Presenter(s):	Pete Frisina
Meeting Date:	Thursday, June 24, 2010	Type of Request:	Public Hearing

Wording for the Agenda:

Consideration of Ordinance 2010-07, proposed amendments to the Fayette County Code, Chapter 12 Offenses and Miscellaneous Provisions, by adding Article VII Cemetery, Burial Ground, Human Remains, or Burial Object, in its entirety.

Background/History/Details:

The Fayette County Code does not currently regulate Cemetery, Burial Ground, Human Remains, or Burial Object. The proposed amendments will bring the Code into compliance with State Law and are also in conjunction with the proposed amendments to the Fayette County Subdivision Regulations. On June 2, 2010, the Board of Commissioners instructed staff to advertise the proposed amendments for the June 24, 2010, Public Hearing.

What action are you seeking from the Board of Commissioners?

Adopt Ordinance 2010-07, proposed amendments to the Fayette County Code, Chapter 12 Offenses and Miscellaneous Provisions, by adding Article VII Cemetery, Burial Ground, Human Remains, or Burial Object, in its entirety.

If this item requires funding, please describe:

Not Applicable.

Has this issue come before the Commissioners in the past?	Yes	If so, when?	Wednesday, June 2, 2010
Do you need audio-visual for the presentation?	No	Back-up Material Submitted?	Yes

STAFF USE ONLY

Approved by Finance	Yes	Reviewed by Legal	Yes
Approved by Purchasing	Not Applicable	Approved by County Clerk	Yes
Administrator's Approval	Yes		

Staff Notes:

05/06/10 - BOC Wkshop
06/02/10 - BOC Wkshop
06/24/10 - BOC Public Hearing

TO BE ADDED IN ITS ENTIREY

Fayette County Code

Chapter 12 Offenses and Miscellaneous Provisions

Article VII. Cemetery, Burial Ground, Human Remains, or Burial Object

No cemetery, burial ground, human remains, or burial object shall be knowingly disturbed (OCGA 36-72). When property containing a cemetery or burial ground, is developed, the following is required:

Evidence of ownership of the land on which the cemetery or burial ground is located in the form of a legal opinion based upon a title search;

A report prepared by an archeologist stating the number of graves believed to be present and their locations as can be determined from the use of minimally invasive investigation techniques that do not require a State permit, including remote sensing methods and the use of metal probes;

A survey prepared by a registered surveyor showing the location and boundary in bearings and distances of the cemetery or burial ground based on the aforementioned archeologist's report. The boundary of the cemetery or burial ground shall be staked and offset a minimum of five (5) feet from the location of any grave and the acreage of the cemetery or burial ground shall be provided;

A plan prepared by a genealogist for identifying and notifying the descendants of those buried or believed to be buried in such cemetery. The plan shall be submitted to the Planning and Zoning Department for review and upon approval thereof, the applicant shall implement the plan for notification. The notification shall include a summary of rights under OCGA 36-72 and the contact information for the Planning and Zoning Department;

If those buried or believed to be buried are of aboriginal or American Indian descent, the genealogist, in preparing the notification plan, shall consult with the Council of American Indian Concerns and shall include in the notification plan not only any known descendants of those presumed buried but also any American Indian tribes as defined in OCGA 44-12-260 that are culturally affiliated; and a proposal for mitigation or avoidance of the effects of the planned activity on the cemetery or burial ground. If the proposal includes relocation of any human remains or burial objects, the proposal shall specify the method of disinterment, the location and method of disposition of the

remains, the approximate cost of the process, and the approximate number of graves affected.

Within 15 days after it is satisfied that all reasonable efforts have been made to notify descendants, a Planning Commission Public Hearing shall scheduled. The public hearing shall be advertised once a week for two (2) consecutive weeks immediately preceding the week in which the public hearing. The applicant shall reimburse the County for the cost of the advertisements prior to the public hearing. Within 30 days after the conclusion of the public hearing, the County shall notify the applicant, in writing, of its decision. Issues considered by the Planning Commission shall include:

The presumption in favor of leaving the cemetery or burial ground undisturbed;

The concerns and comments of any descendants of those buried in the burial ground or cemetery and any other interested parties;

The economic or other costs of mitigation;

The adequacy of the applicant's plans for disintennent and proper disposition of any remains or burial objects;

The balancing of the applicant's interest in disinterment with the public's and any descendants interest in the value of the undisturbed cultural and natural environment; and

Any other compelling factors which the governing authority deems relevant.

Should any applicant or descendant be dissatisfied with a decision of the Planning Commission, they may within 30 days of such decision, file an appeal in the Fayette County Superior Court. The applicant shall not resume or begin any development activities until the expiration ofthe time for appeal.

During the development phase, orange protective fencing shall be installed around the cemetery or burial ground along the boundary established by the surveyor. If an unknown cemetery or burial ground is discovered during the development process of property, work shall stop immediately and notice shall be given to the Planning and Zoning Department.

The cemetery or burial ground shall be indicated on a Preliminary Plat, Final Plat, andlor Site Plan, as applicable. A minimum 20 foot access shall be maintained to the cemetery or burial ground either through fee simple ownership or an easement. Any disintennent and disposition of human remains or burial objects shall be supervised, monitored, or carried out by the applicant's archeologist.

Any person who knowingly fails to comply with the provisions of OCGA 36-72 shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction, shall pay a fine of not more than $5,000.00 for each grave site disturbed; provided, however, that any person who knowingly violates the provisions of OCGA 36-72-4 shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction, shall be incarcerated for not more than six (6) months and shall pay a fine not less than $5,000.00 for each grave site disturbed.