COUNTY AGENDA REQUEST

Department:	Stormwater Management	Presenter(s):	Vanessa Birrell
Meeting Date:	Thursday, March 22, 2012	Type of Request:	Consent

Wording for the Agenda:

Approval of staff's recommendation to adopt Ordinance 2012-05 approving proposed amendments to Fayette County Code, Chapter 8, Development Regulations, by amending Article XIII, Illicit Discharge and Illegal Connections.

Background/History/Details:

Proposed amendments to Chapter 8, Fayette County Development Regulations Article XIII, Illicit Discharge and Illegal Connections include changing the administrating department to Stormwater Management from Engineering, rearranging content to simplify use and understanding, and clarifying submissions for EPD compliance with the county's municipal separate storm sewer system NPDES permit. At the Board of Commissioners Public Hearing/Workshop held March 8, 2012, staff was instructed to place the proposed amendments on the Board of Commissioners' March 22, 2012 Agenda.

What action are you seeking from the Board of Commissioners?

Approval of staff's recommendation to adopt Ordinance 2012-05 approving proposed amendments to Fayette County Code, Chapter 8, Development Regulations, by amending Article XIII, Illicit Discharge and Illegal Connections.

If this item requires funding, please describe:

Funds are not needed at this time, but will be part of an overall cost to update the Fayette County Code of Ordinances.

Has this request been considered within the past two years?	Yes	If so, when?	March 8, 2012
Is Audio-Visual Equipment Required for this Request?*	No	Backup Provided with Request?	Yes

**** All audio-visual material must be submitted to the County Clerk's Office no later than 48 hours prior to the meeting. It is also your department's responsibility to ensure all third-party audio-visual material is submitted at least 48 hours in advance.***

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

Staff Notes:

STATE OF GEORGIA;
COUNTY OF FAYETTE

ORDINANCE NO. 2012- 05

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, FAYETTE COUNTY, GEORGIA CHAPTER 8, THE FAYETTE COUNTY DEVELOPMENT REGULATIONS, AS AMENDED SPECIFICALLY ARTICLE XIII ILLICIT DISCHARGE AND ILLEGAL CONNECTION TO PROVIDE FOR METHODS FOR PROHIBITING AND ABATING NON-STORMWATER DISCHARGES IN THE COUNTY'S SEPARATE STORM SEWER SYSTEM AND/OR STATE WATERS; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR PENALTIES; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN ADOPTION DATE; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES ALLOWED BY LAW.

WHEREAS, the duly elected governing authority of Fayette County is the Board of Commissioners thereof;

WHEREAS, the governing authority desires to amend the provision that provides for the ethical standards of county officials as allowed by the State of Georgia;

WHEREAS, the health, safety, and welfare of the citizens of Fayette County, Georgia shall be improved and protected by adoption and implementation of this Ordinance.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF FAYETTE COUNTY, GEORGIA AND IT IS HEREBY ORDAINED BY AUTHORITY THEREOF:

Section 1. That Article XIII of Chapter 8 Development Regulations of the Code of Ordinances, Fayette County, Georgia is hereby amended to read as follows:

ARTICLE XIII: ILLICIT DISCHARGE AND ILLEGAL CONNECTION

Section 8-400. Introduction.

It is hereby determined that:

Discharges to Fayette County's municipal separate storm sewer system (MS4) that are not composed entirely of stormwater runoff contribute to increased nonpoint source pollution and degradation of receiving waters;

These non-stormwater discharges occur due to spills, dumping and illegal connections to the county's MS4 and state waters from residential, industrial, commercial or institutional establishments;

These non-stormwater discharges not only impact waterways individually, but geographically dispersed, small volume non-stormwater discharges can have cumulative impacts on receiving waters;

These impacts of non-stormwater discharges adversely affect public health and safety, drinking water supplies, recreation, fish and other aquatic life, property values and other uses of lands and waters;

These impacts can be minimized through the regulation of spills, dumping and discharges into the county's MS4 and state waters;

Localities in the State of Georgia are required to comply with a number of State and Federal laws, regulations and permits which require a locality to address the impacts of stormwater runoff quality and nonpoint source pollution due to improper non-stormwater discharges to the county's MS4;

Therefore, Fayette County adopts this ordinance to prohibit such non-stormwater discharges to the county's MS4 and state waters. It is determined that the regulation of spills, improper dumping and discharges to the county's MS4 and state waters is in the public interest and will prevent threats to public health and safety, and the environment.

Section 8-401. Definitions.

Accidental Discharge. A discharge prohibited by this ordinance that occurs by chance and without planning or thought prior to occurrence.

Clean Water Act. The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) and any subsequent amendments thereto.

Construction Activity. Activities subject to the Georgia Erosion and Sedimentation Control Act or NPDES General Construction Permits. These include construction projects resulting in land disturbance. Such activities include, but are not limited to, clearing and grubbing, grading, excavating, and demolition.

Illicit Discharge. Any direct or indirect non-stormwater discharge to the county's MS4 and/or state waters, except as exempted in Section 8-403 of this ordinance.

Illegal Connection. Either of the following:

(a) Any pipe, open channel, drain or conveyance, whether on the surface or subsurface, that allows an illicit discharge to enter the MS4 and/or state waters including but not limited to any conveyances that allows any non-stormwater discharge including sewage, process wastewater, and wash water to enter the MS4 and/or state waters, regardless of whether such pipe, open channel, drain or conveyance has been previously allowed, permitted, or approved by an authorized enforcement agency; or

(b) Any pipe, open channel, drain or conveyance connected to the county's MS4 not documented in Fayette County approved plans, maps, or equivalent records and approved by an authorized enforcement agency.

Industrial Activity. Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

Municipal Separate Storm Sewer System (MS4). Any system designed or used for collecting and/or conveying stormwater, including but not limited to any roads with drainage systems, street and roadway, gutters, inlets, catch basins, piped storm drains, pumping facilities, structural controls, ditches, swales, natural and man-made or altered drainage channels, reservoirs, and other drainage structures, and which is:

(a) owned or maintained by Fayette County;

(b) not a combined sewer; and

(c) not part of a publicly-owned treatment works.

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit. A permit issued by the Georgia EPD under authority delegated pursuant to 33 USC § 1342(b) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable to an individual, group, or general area-wide basis.

Non-Stormwater Discharge. Any discharge to the county's MS4 and/or state waters not composed entirely of stormwater.

Owner and/or Operator. The legal or beneficial owner of a site, including but not limited to, a mortgagee or vendee in possession, receiver, executor, trustee, lessee or other person, firm or corporation in control of the site.

Person. Except to the extent exempted from this ordinance, any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, city, county or other political subdivision of the state, any interstate body or any other legal entity.

Pollutant. Any liquid, gas, solid, radioactive, hazardous, or other substance, that, when not used and/or disposed of in accordance with manufacturer's instructions, causes or contributes to pollution. Pollutants include, but are not limited to:

(a) paints, varnishes, and solvents;

(b) petroleum hydrocarbons;

(c) automotive fluids;

(d) cooking grease;

(e) detergents (biodegradable or otherwise);

(f) degreasers;

(g) cleaning chemicals;

(h) non-hazardous liquid and solid wastes and yard wastes;

(i) refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations (that may cause or contribute to pollution);

(j) floatables;

(k) pesticides, herbicides, and fertilizers;

(l) liquid and solid wastes, sewage, fecal coliform and pathogens;

(m) dissolved and particulate metals;

(n) animal wastes;

(o) wastes and residues that result from building construction waste;

(p) concrete and cement; and,

(q) noxious or offensive matter of any kind.

Pollution. The contamination or other alteration of any water's physical, chemical or biological properties by the addition of any constituent and includes but is not limited to; a change in temperature, taste, color, turbidity, or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive, or other pollutant into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

State Waters. Any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, stormwater drainage systems, springs, wells, and other bodies of surface and subsurface water, natural or artificial, lying within or forming a part of the boundaries of the state that are not entirely confined and retained completely upon the property of a single owner, home owner associations, partnership or corporation.

Stormwater Drainage System. A system designed to provide adequate surface drainage that includes inlets, street and roadway gutters, ditches, small channels, swales and underground piping systems.

Stormwater Structural Control. An engineered stormwater management device that controls stormwater runoff and/or changes mitigates the effects of that increased runoff.

Section 8-402. General Provisions.

(a) Purpose and Intent. The purpose of this ordinance is to protect the public health, safety, environment and general welfare through the regulation of non-stormwater discharges to the maximum extent practicable as required by Federal law. This ordinance establishes methods for controlling the introduction of pollutants into the county's MS4 and/or state waters in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are to:

(i) Regulate the contribution of pollutants into the county's MS4 and/or state waters;

(ii) Prohibit illicit discharges and illegal connections into the county's MS4 and/or state waters;

(iii) Prevent non-stormwater discharges, generated as a result of spills and inappropriate dumping or disposal, to the county's MS4 and/or state waters; and,

(iv) To establish legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this ordinance.

(b) Applicability. The provisions of this ordinance shall apply throughout the unincorporated area of Fayette County.

(c) Designation of Ordinance Administrator. The Fayette County Stormwater Management Director shall administer, implement, and enforce the provisions of this ordinance except for issues pertaining to human or animal waste (i.e. sewage) which shall be administered, implemented, and enforced by the Fayette County Environmental Health Department.

(d) Compatibility with Other Regulations. This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance 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.

(e) Severability. If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

Section 8-403. Prohibitions.

(a) Prohibition of Illicit Discharges. No person, owner or operator shall throw, drain, or otherwise discharge, cause, or allow others under their control to throw, drain, or otherwise discharge into the county's MS4 and/or state waters any pollutants or waters containing any pollutants.

(b) Exempted Discharges. The following discharges are exempt from the prohibition provision above:

(i) Water line flushing performed by a government agency, other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, natural riparian habitat or wetland flows, and any other water source not containing pollutants;

(ii) Discharges or flows from fire fighting, and other discharges specified in writing by the Fayette County Stormwater Management and/or Environmental Health Department(s) as being necessary to protect public health and safety;

(iii) Non-stormwater discharges permitted under an NPDES permit or order issued to the discharger and administered under the authority of the State and the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or orders and other applicable laws and regulations; written approval has been granted for any discharge to the county's MS4 and/or state waters; and

(iv) Agricultural operations as defined in Section 8-243(5) of Fayette County's Soil Erosion, Sedimentation and Pollution Control Ordinance.

(c) Prohibition of Illegal Connections. The construction, connection, use, maintenance or continued existence of any illegal connection to the county's MS4 and/or state waters is prohibited.

(i) This prohibition expressly includes, without limitation, illegal connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(ii) A person violates this ordinance if the person connects a line conveying sewage to the county MS4 and/or state waters, or allows such a connection to continue.

(iii) Illegal connections in violation of this ordinance must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or other sanitary sewer system upon approval of the Fayette County Environmental Health Department.

(iv) Any drain or conveyance that has not been documented in plans, maps or equivalent, and that is connected to the county's MS4, shall be permitted according to Section 19-100 of the Fayette County Stormwater Management Ordinance or relocated by the owner or occupant of that property upon receipt of written notice of violation from the Fayette County Stormwater Management Department requiring that such locating be completed. Such notice will specify a reasonable period for relocation or permitting of the drain or conveyance to be completed.

Section 8-404. Industrial or Construction Activity Discharges.

Any person, owner, or operator of a facility subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. A copy of the Notice of Intent submitted to the Georgia Environmental Protection Department shall be submitted to Fayette County Stormwater Management Department.

Section 8-405. Access and Inspection of Properties and Facilities.

The Fayette County Stormwater Management Department and/or Environmental Health Department shall be permitted to enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this ordinance.

(a) If a property or facility has security measures in force that requires proper identification and clearance before entry onto premises, the owner and/or operator shall make the necessary arrangements to allow access to representatives of the Fayette County Stormwater Management Department and/or Environmental Health Department(s).

(b) The owner and/or operator shall allow the Fayette County Stormwater Management and/or Environmental Health Department(s) ready access to all parts of the premises for the purposes of inspection, sampling, photography, videotaping, examination and copying of any records that are required under the conditions of an NPDES permit to discharge stormwater.

(c) The Fayette County Stormwater Management and and/or Environmental Health Department(s) shall have the right to set up on any property or facility such devices as are necessary in the opinion of the Fayette County Stormwater Management and and/or Environmental Health Department(s) to conduct monitoring and/or sampling of flow discharges.

(d) The Fayette County Stormwater Management and and/or Environmental Health Department(s) may require the owner or operator to install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to the Fayette County Stormwater Management and/or Environmental Health Department(s). This sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at his/her own expense. All devices used to measure flow and quality shall be calibrated to ensure their accuracy.

(e) Any temporary or permanent obstruction to safe and easy access to the property or facility to be inspected and/or sampled shall be promptly removed by the owner or operator at the written or oral request of the Fayette County Stormwater Management and/or Environmental Health Department(s) and shall not be replaced. The costs of clearing such access shall be borne by the owner.

(f) Unreasonable delays in allowing the Fayette County Stormwater Management and/or Environmental Health Department(s) access to a facility is a violation of this ordinance.

(g) If the Fayette County Stormwater Management and/or Environmental Health Department(s) has been refused access to any part of the premises from which stormwater is discharged, and the Fayette County Stormwater Management and/or Environmental Health Department(s) is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, environment and welfare of the community, then the Fayette County Stormwater Management and/or Environmental Health Department(s) may seek issuance of a search warrant from any court of competent jurisdiction.

Section 8-406. Notification of Accidental Discharges and Spills.

Notwithstanding other requirements of law, as soon as any owner, operator, and/or person responsible for a facility, activity or owner, operation and/or person responsible, has information of any known or suspected release of any non-stormwater discharges from that facility or operation that may result in an illicit discharge into the county's MS4 and/or state waters, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge.

Said person shall notify the authorized enforcement agency in person or by phone, facsimile or in person no later than 24 hours of the nature, quantity and time of occurrence of the discharge. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner and/or operator of such facility, activity, or operation shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years. The owner and/or operator shall also take immediate steps to ensure no recurrence of the discharge or spill.

In the event of such a release of hazardous materials, emergency response agencies and/or other appropriate agencies shall be immediately notified.

Failure to provide notification of a release as provided above is a violation of this ordinance.

Section 8-407. Violations, Enforcement and Penalties.

(a) Violations. It shall be unlawful for any owner and/or person to violate any provision or fail to comply with any of the requirements of this ordinance. Any person who has violated or continues to violate the provisions of this ordinance, may be subject to enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.

In the event the violation constitutes an immediate danger to public health or public safety, the Fayette County Stormwater Management and/or Environmental Health Department(s) is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The Fayette County Stormwater Management and/or Environmental Health Department(s) are authorized to seek costs of the abatement as outlined in Section 8-407D.

(b) Notice-of-Violation. Whenever the Fayette County Stormwater Management Department and/or Environmental Health Department(s) find that a violation of this ordinance has occurred, the Fayette County Stormwater Management and/or Environmental Health Department(s) may order compliance by written Notice-of-Violation.

The Notice-of-Violation shall contain:

(i) The name and address of the alleged violator;

(ii) The address when available or a description of the building structure or land upon which the violation is occurring or has occurred;

(iii) A statement specifying the nature of the violation;

(iv) A description of the remedial measures necessary to restore compliance with this ordinance and a time schedule for the completion of such remedial action; and,

Such notice may require without limitation:

(i) The performance of monitoring, analyses, and reporting;

(ii) The elimination of illicit discharges and illegal connections;

(iii) That violating discharges, or operations shall cease and desist;

(iv) The abatement of remediation of stormwater pollution or contamination hazards and the restoration of any affected property;

(v) Payment of costs to cover administrative, abatement, and remediation costs; and

(vi) The implementation of pollution prevention practices.

(c) Abatement Measures. If the violation has not been corrected pursuant to the requirements set forth in the Notice-of-Violation, then representatives of the Fayette County Stormwater Management and/or Environmental Health Department(s) may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

(d) Costs of Abatement of the Violation. Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The Fayette County Stormwater Management and/or Environmental Health Department(s) may recover attorney's fees, court costs, and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses. The property owner may file a written protest objecting to the assessment or to the amount of the assessment within 15 days of such notice. Written appeals shall be made to the Board of Commissioners or a party appointed thereby. If the amount due is not paid within thirty (30) days after receipt of the notice, or if an appeal is taken, within thirty (30) days after a decision on said appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

(e) Citations. For intentional and flagrant violations of this ordinance, and/or in the event the alleged violator fails to take the remedial measures set forth in the Notice-of-Violation or otherwise fails to cure the violations described therein within ten days, or such greater period as the Fayette County Stormwater Management and/or Environmental Health Department(s) shall deem appropriate, the Fayette County Engineering and/or Environmental Health Department may issue a citation to the alleged violator requiring such person to appear in the State Court for Fayette County to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed $1,000 or imprisonment for 60 days or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

(f) Violations Deemed a Public Nuisance. In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this ordinance is a threat to public, health, safety, welfare, and environment and is declared and deemed a nuisance, and may be abated by the injunctive or other equitable relief as provided by law.

(g) Remedies Not Exclusive. The remedies listed in this ordinance are not exclusive or any other remedies available under any applicable Federal, State or local law and the Fayette County Stormwater Management and/or Environmental Health Department(s) may seek cumulative remedies.

Section 2. That the preamble of this Ordinance shall be considered to be and is hereby incorporated by reference as if fully set out herein.

Section 3. a. It is hereby declared to be the intention of the Board of Commissioners that all Sections, paragraphs, sentences, clauses and phrases of this Article are and were, upon their enactment, believed by the Board of Commissioners to be fully valid, enforceable and constitutional.

b. It is hereby declared to be the intention of the Board of Commissioners that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Board of Commissioners that, to the greatest extent allowed by law, no Section, paragraph, sentence, clause or phrase of this Article is mutually dependent upon any other Section, paragraph, sentence, clause or phrase of this Article.

c. In the event that any phrase, clause, sentence, paragraph or section of this Article shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Board of Commissioners that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or Sections of the Article and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and Sections of the Article shall remain valid, constitutional, enforceable, and of full force and effect.

Section 4. All ordinances or resolutions and parts of ordinances or resolutions in conflict herewith are hereby expressly repealed.

Section 5. The effective date of this Ordinance shall be the date of adoption unless otherwise specified herein.

It is so ordained this 22nd day of March, 2012.

BOARD OF COMMISSIONERS
FAYETTE COUNTY, GEORGIA

_____
Herbert E. Frady, Chairman

ATTEST:

_____
Carol Chandler, County Clerk