COUNTY AGENDA REQUEST

Department:	Stormwater Management	Presenter(s):	Vanessa Birrell
Meeting Date:	Thursday, December 13, 2012	Type of Request:	Consent

Wording for the Agenda:

Approval of Ordinance 2012-12 amending the Fayette County Code, Chapter 8, Development Regulations, Article VI, Tree Retention, Protection, and Replacement.

Background/History/Details:

During the November 7, 2012 Board of Commissioners Workshop Meeting, Director of Stormwater Management Vanessa Birrell explained proposed amendments to the Fayette County Code. Those amendments include clarifying the variance process for construction in critical root zones of specimen trees, and the changes are intended to bring the variance process into line with variance processes of Floodplain Management and Watershed Protection development ordinances.

The Board directed staff to place the proposed changes on the next available Consent Agenda.

What action are you seeking from the Board of Commissioners?

Approval of Ordinance 2012-12 amending the Fayette County Code, Chapter 8, Development Regulations, Article VI, Tree Retention, Protection, and Replacement.

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?	Wednesday, November 7, 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	
Approved by Purchasing	Not Applicable	County Clerk's Approval	Yes
Administrator's Approval	Yes		

Staff Notes:

ARTICLE VI. TREE RETENTION, PROTECTION AND REPLACEMENT

(Came into existence on 12/14/89)

Sec. 8-176. Introduction.

It is hereby determined that:

Trees are a valuable asset to the rural/urban environment of Fayette County and can generate such benefits as: the purification of air; moderation of the microclimate; reduction of noise and glare; conservation of energy in terms of heating and cooling; prevention of soil erosion; reduced stormwater management costs; minimization of flood potential; improved water quality; enhancement and stabilization of property values; increased aesthetics; and preservation of the rural character of unincorporated Fayette County.

Therefore, Fayette County adopts this ordinance to provide requirements to protect the rural and wooded character of unincorporated Fayette County through the preservation and replanting of trees when new development occurs.

Sec. 8-177. Definitions.

Certified Arborist. An arborist certified by the International Society of Arboriculture (ISA).

Clearing. An activity that removes or disturbs the vegetative cover including trees.

Critical Root Zone (CRZ). The minimum area beneath a tree which must be left undisturbed. The critical root zone shall be equal to one and one half (1.5) feet of radial distance for every inch of the tree's DBH, with a minimum of eight feet. (Ord. No. 2000-02)

Deciduous Tree. A tree that annually loses leaves.

Dripline. A line on the ground established by a vertical plane extending from a tree's outermost branch tips down to the ground; i.e., the line enclosing the area directly beneath the tree's crown from which rainfall would drip.

Diameter-at-breast-height DBH. Standard measure of existing tree size and is the trunk diameter measured in inches at height of four and one-half (4½) feet above the ground. If a tree splits into multiple trunks below four and one-half (4 ½) feet, then the trunk is measured at its most narrow point beneath the split. A tree that splits into multiple trunk above 4 ½ feet is measured as a single tree at 4 ½ feet.

Erosion, Sedimentation and Pollution Control Plan. A plan required by the Erosion, Sedimentation and Pollution Control Act. O.C.G.A., 12-7-1 et seq., that includes, at a minimum, protections at least as stringent as this ordinance.

Evergreen Tree. Tree that retains its foliage throughout the year.

Existing Density Unit (EDU). A tree density unit assigned for the preservation of existing trees that will remain on site and protected during construction and where one (1) EDU is equivalent to one (1) inch of DBH when the DBH is a minimum size of four (4) inches.

Land-disturbing activity. Any land change which may result in soil erosion from water or wind and the movement of sediment into State water or onto lands within the State, including, but not limited to, clearing, dredging, grading, excavating, transporting and filling of land, other than federal lands.

Land Disturbance Permit. Authorization to conduct a land-disturbing activity under the provisions of Article IX, Soil Erosion, Sedimentation and Pollution Control.

Landscaping. Any additions to the natural features of a plot of ground to restore construction disturbance and to make an area more attractive.

Landscape Areas. An area set aside for the installation and maintenance of ornamental planting materials.

Overstory (Canopy) Tree. Any tree that, under normal forest conditions, will compose the top layer or canopy of vegetation and generally will reach a mature height of greater than 40 feet. Examples include: Oak, Maple, Elm, Bald Cypress, Cryptomeria.

Replacement Density Unit (RDU). A tree density unit assigned to a new tree planted to achieve the site density unit (SDU) and is equivalent to the number of inches of trunk diameter measured at six (6) inches above the ground.

Shrub. A plant with persistent woody stems and a relatively low growth habit, distinguished from a tree by producing several basal stems instead of a single trunk.

Site. That portion of a tract of land that will be dedicated to a proposed development, including the land containing trees that will be counted toward satisfying the requirements of these provisions.

Site Density Unit (SDU). The minimum number of tree density units that must be achieved on a non-residential site after development and is equal to Existing Density Units (EDU) plus Replacement Density Units (RDU.)

Specimen Tree or Stand. Any tree or grouping of trees that is determined to be of high value and qualifies for special consideration for preservation because of its species, size, or historical significance.

Tree. A self-supporting woody perennial plant that, at maturity, has one (1) or more stems or trunks that attain a diameter of at least three (3) inches; a more or less definitely formed crown of foliage; and a height of 10 feet or more.

Tree Density Units (TDU). A unit of measurement for tree density based on the diameter of the tree.

Tree Protection Area. A barrier constructed around trees at construction sites sufficient to prevent damage or injury to tree trunks, limbs, and roots. The tree protection area shall be either the dripline of the tree or the critical root zone of a tree or clusters of trees to be retained, whichever is greater.

Understory Tree. A tree that, under normal forest conditions, grows to maturity beneath overstory trees and will generally reach a mature height of at least 10 feet, but less than 40 feet. Examples include dogwood, red bud, fringe tree, lusterleaf holly, and red cedar. (Ord. No. 2000-02)

Utility. Public or private water or sewer piping systems, water or sewer pumping stations, electric power lines, fuel pipelines, telephone lines or other utilities identified by a local government.

Variance. ***A grant of relief from the CRZ requirements of this ordinance that permits construction in a manner otherwise prohibited by this ordinance.***

Sec. 8-178. General Provisions

(a) Purpose and Intent. The purpose of this ordinance is to establish minimum requirements for tree retention, protection and replacement in Fayette County and to protect the rural and wooded character of Fayette County through the preservation and replanting of trees when new development occurs. It is the intent of this ordinance that all site planning and design for development of land be undertaken with a survey of trees on the property and that the grading, final placement of buildings, structures, and roads, utilities, and other features minimizes the removal of existing trees, and insures aesthetic replacement and distribution.

(b) Applicability**.** This ordinance shall apply to any activity that requires or precedes submittal of a Preliminary Plat, an Erosion, Sedimentation, and Pollution Control Plan, or a site plan as defined in Article II. Non-residential subdivisions without common infrastructure are still required to submit a TPP but are not required to submit TDUs.

(c) Exemptions.

(i) Removal of trees determined to be dead, diseased, or infested as determined by the Georgia Forestry Commission or a Certified Arborist and approved by the Stormwater Management Department.

(ii) Construction of single-family or two-family residential structures, accessory structures, or any minor land-disturbing activities.

(iii) Orchards and tree nurseries in active commercial operation.

(iv) Agricultural operations as exempted in Article IX, Section 8-243.(5).

(v) Public roads, public utilities (as exempted in Article IX, Section 8-243(9-11)), and telecommunication towers.

(vi) Commercial forestry operations, including timber harvesting.
(Ord. No. 2000-02)

(d) Designation of Ordinance. Administrator. The Fayette County Stormwater Management Department shall administer this ordinance.

(e) Compatibility with Other Regulations. This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, statute, easement, covenant, deed restriction 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 impose higher protective standards for human health or the environmental shall control.

(f) 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.

(g) Effective Date. This Ordinance becomes effective upon adoption by the Board of Commissioners.

(h) Technical Standards. Standards for plant selection and installation listed below are incorporated by reference:

(i) "American Standard for Nursery Stock" (ANSI Z60.1-2004)

(ii) "Manual for Woody Landscape Plants" (Michael Dirr, 2009, Stipes)"

(iii) "Principles and Practices of Planting Trees and Shrubs"(Watson and Himelick, 1997, ISA)

(iv) "American National Standards for Tree Care Operations" (ANSI A300)

(v) University of Georgia Cooperative Extension Service Bulletin No. 625 Landscape Plants for Georgia

Sec. 8-179. Tree Retention, Protection and Replacement Requirements.

For all sites with three (3) acres or less, all trees used in the SDU calculation shall be individually inventoried. For all sites over three (3) acres industry standard sampling methods may be used to prepare a tree survey when trees are of such density to make individual tree identification impractical. In such cases the tree surveyor shall show tree stands and provide estimates of size and species on the Tree Protection Plan.

(a) Site Density Requirements. The required tree density for each non-residential site is referred to as the Site Density Unit (SDU). Each property subject to this article shall have a minimum required SDU based on total number of disturbed acres on the project site.

(i) The total SDU required equals Existing Density Units (EDU) plus Replacement Density Units (RDU).

(ii) Property subject to this Article that is greater than or equal to three (3) acres shall have or exceed an average SDU of 100 TDU's per acre.

(iii) Property subject to this Article that is less than three (3) acres shall have or exceed an average SDU of fifty (50) TDU's per acre.

(iv) Credit will be given to trees retained on a property having a DBH of four (4) inches or more.

(v) At least 50 percent of the EDU's per acre must be located outside of any zoning or watershed buffers as referenced in Articles V and VII.

(vi) Palm trees are not acceptable for SDU credit.

(b) Specimen Trees.

(i) Criteria for determination of specimen trees or stands are as follows:

1) Any deciduous canopy tree where the DBH equals or exceeds 24 inches.

2) Any evergreen canopy tree where the DBH equals or exceeds 30 inches.

3) Any understory tree where the DBH equals or exceeds ten (10) inches.

4) Any tree which has significant historical value and can be documented through historical records or otherwise. (Ord. No. 2000-02)

(ii) Removal. Any specimen tree removed without prior approval of the Stormwater Management Department will be replaced by trees equaling two (2) times an inch-for-inch replacement of the tree removed. Size alone will determine whether a tree was of specimen quality if the tree is removed without approval and there is no evidence of its condition. Such action may result in a stop work order issued by the Stormwater Management Department.

Written justification must be given for any specimen tree designated for removal. The Fayette County Stormwater Management Department may require additional information including, but not limited to, a certified arborist's appraisal of the tree's viability and anticipated life span.

Any specimen tree may be removed if it is shown that at least one of the following conditions is met:

1) The location of the tree prevents the opening of reasonable and necessary vehicular traffic lanes.

2) The location of the tree prevents the construction of utility lines or drainage facilities which may not feasibly be relocated.

3) The location of the tree prevents reasonable access to the property, if no alternate exists.

4) The tree is diseased, dead, or dying to the point that repair or restoration is not practical or the disease may be transmitted to other trees.

5) There is no reasonable assurance that if the tree is saved with proper construction precautions, it will continue to live as an asset to the site.

(iii) Preservation. All reasonable efforts should be made to preserve specimen trees and incorporate them into the design of the project. Specimen trees saved by a specifically designed feature of the building, hardscape, or utilities shall be given EDU credit of two (2) inches per inch DBH.

(c) Replacement Tree Requirements.

All trees selected for replacement density units must meet the following requirements:

(i) Trees must be free of disease, injury, or infestation, and must be ecologically compatible with the specifically intended growing area (see Section 8-184), and planted in accordance with standards established by the International Society of Arboriculture.

(ii) At a minimum, four (4) species mixture of different trees, with at least three (3) being deciduous hardwoods should be utilized. (Ord. No. 2000-02).

(iii) No more than thirty (30) percent of replacement trees may be of a single species.

(iv) A fifty percent mix of overstory and understory trees shall be maintained. See Sec, 8-184. (Ord. No. 2000-02)

(v) Trees shall have a minimum caliper requirement of two and one half (2½) inches in diameter as measured at six (6) inches above the ground at time of planting.

(vi) All trees planted to fulfill the replacement tree requirements shall be in place before a Certificate of Occupancy is granted. In the event that the requirements of this Article cannot be met at the time a Certificate of Occupancy is otherwise granted, refer to "Buffer and Landscape Areas," Section 8-162 Performance Surety, in these Development Regulations. (Ord. No. 2000-02)

(vii) All tree planted under the requirements of this Article which do not survive for 24 months after issuance of a Certificate of Occupancy will be replaced as a condition of occupancy. Trees shall be bonded via a maintenance agreement in the amount of (100%) of their replacement cost. Bonds will be released after the 24 month period has passed, and the health of the trees have been certified and accepted by the County. Refer to "Buffer and Landscape Areas," Section 8-163 General Maintenance, in these Development Regulations. (Ord. No. 2000-02)

(viii) See Section 8-160.d.2 and Section 8-161 for suggested tree species. For additional tree species, especially understory (small) trees, see University of Georgia Cooperative Extension Service Bulletin No. 625 Landscape Plants for Georgia.

(d) <u>Tree Protection Requirements.</u>

(i) A tree protection area shall be maintained around all trees and stands of trees to be retained throughout the duration of construction by tree protection fencing.

(ii) The tree protection area of stand-alone trees and stands of trees shall be marked with standard tree protection fencing (orange) or chain-link fencing and "Tree Protection Area" signs. At least two (2) "Tree Protection Area" signs shall be posted at each individual tree protection area. (Ord. No 2000-02)

(iii) All tree protection fencing shall be inspected for proper installation by the Stormwater Management Department during the initial erosion and sediment control inspection.

(iv) During subdivision street construction, land disturbance allowed by a development permit shall be limited to areas needed for street right-of-way, drainage easements, erosion and sediment control practices and utilities. All other areas shall remain undisturbed for tree protection purposes.

(v) If utilities must run through the tree protection area and the running of those utilities will encroach into the critical root zone CRZ of any trees to be saved, the utility must be tunneled at a depth of 24 inches. When feasible, utilities will run along streets, roadways, driveways, or sidewalks. Reasonable efforts shall be made to save as many trees as possible. (Ord. NO. 2000-02)

(vi) If it is determined that irreparable damage has occurred to a tree or trees within a designated tree protection area, as determined by the Fayette County Stormwater Management Department, the Georgia Forestry Commission, or a Certified Arborist, it shall be the responsibility of the developer/builder to remove and replace the tree or trees and guarantee survival after the issuance of the Certificate of Occupancy as references in Section 8-179.c.vii and Article V. (Ord. No. 2000-02)

(e) Tree Protection Plan.

(i) Procedures.

1) The TPP shall be submitted with the Preliminary Plat, Erosion, Sedimentation and Pollution Control Plan or the Site Plan, whichever is the first submittal required by Fayette County Planning and Zoning Department.

2) The Tree Protection Plan shall be prepared by either a licensed Landscape Architect or Forester; Certified Arborist, or other licensed professional of similar design discipline licensed in Georgia.

3) The Stormwater Management Department shall have a maximum of 14 calendar days from the submittal date, or each re-submittal date, for plan review. If the plan is not approved a deficiency checklist will be submitted back to the applicant.

(ii) Submittal.

The Tree Protection Plan shall be submitted on a scale of no less than one (1) inch to 100 feet and shall include project name, design professional's name and contact information, north arrow, graphic scale, and date. The plan should clearly show and label the following:

1) Tree save areas noting the location, size, DBH, dripline, CRZ, and species name (common name) of each tree that will be retained to fulfill the SDU requirements. Five or more trees whose dripline and CRZ combine into one tree protection area may be outlined as a group with the exception of specimen trees.

2) Summary table listing the DBH and species name of each RDU and EDU tree used to obtain the required SDU under "Notes."

3) If a group of trees is outlined on the plan as a tree save area, include a summary table listing the size, DBH and species name of each tree within that group under "Notes."

4) Location of all new replacement trees including species name and DBH that fulfill RDU requirements.

5) Location of any specimen tree designated in a tree protection area including the DBH, CRZ and species name even if contained in a group. If construction is limited to streets, drainage easements and utilities the TPP only needs to show all specimen trees located within 100 feet of the centerline of any right-of-way, or drainage/utility easements. (Ord. No. 2000-02)

6) Location of any specimen trees designated for removal during construction including the size, DBH and species name. See Sec. 8-181.

7) Location, depth and height of all existing and proposed utility lines that could impact any trees.

8) Boundaries of property, buffer and landscaped areas, buildings and structures, vehicle use areas, and other impervious areas. (Ord. No. 2000-02)

9) Calculations for meeting all required site density units under "Notes." If a scientific method is used to determine the site density units, label all sample areas and provide a listing of trees by size and species as based on sampling method requirements.

10) Under "Notes" state the following: "No land disturbance, construction processes, or storage of equipment or materials shall take place within a designated tree protection area in order to prevent direct physical root damage, indirect root damage, and trunk and crown damage. (Ord. No. 2000-02)

Sec. 8-180. Appeals and *Variances.*

The following variance and appeals procedures shall apply to an applicant who has been denied a permit for a development activity or to an owner or developer who has not applied for a permit because it is clear that the proposed development activity would be inconsistent with the provisions of this ordinance.

(a) Requests for variances shall only be given for a reduction in the Critical Root Zone (CRZ).

(b) Requests for a variance from the CRZ requirements of this ordinance shall be submitted to the Stormwater Management Department. All such requests shall be heard and decided in accordance with procedures to be published in writing by the Stormwater Management Department.

(c) Any person adversely affected by any decision of the Stormwater Management Department shall have the right to appeal such decision to the Fayette County Zoning Board of Appeals as established by Fayette County in accordance with Article IX of the Fayette County Zoning Ordinance. At a minimum, such procedures shall include notice to all affected parties and the opportunity to be heard.

(d) ***Any person aggrieved by the decision of the Fayette County Zoning Board of Appeals may appeal such decision to the Fayette County State Court, as provided in Section 5-4-1 of the Official Code of Georgia Annotated.***

(e) ***In reviewing such requests, the Stormwater Management Department and Fayette County Zoning Board of Appeals shall consider all technical evaluations, relevant factors, and all standards specified in this and other sections of this ordinance.***

(f) ***Variances shall only be considered based on the follow criteria:***

(i) ***Disturbance of the CRZ of less than 30%;***
(ii) ***A reduction in the CRZ based on industry standards less stringent than outlined in this ordinance.***

(g) ***Conditions for Variances:***

(i) ***A variance shall be issued only when all of the following conditions are met:***

1) ***a finding of good and sufficient cause; and***

2) ***a determination that failure to grant the variance would result in exceptional hardship.***

(ii) ***Any person to whom a variance is granted shall be given written notice specifying the difference between the current CRZ(s) requirements and the CRZ(s) requested in the variance.***

(iii) ***The Fayette County Stormwater Management Department shall maintain the records of all appeal actions.***

(iv) ***Any person requesting a variance shall, from the time of the request until the time the request is acted upon, submit such information and documentation as Fayette County Stormwater Management Department and Fayette County Zoning Board of Appeals shall deem necessary to the consideration of the request including, but not limited to, a certified arborist's appraisal of the tree's viability and anticipated life span.***

(v) ***Upon consideration of the factors listed above and the purposes of this Ordinance, Fayette County Stormwater Management Department and the Fayette County Zoning Board of Appeals may attach such conditions to the granting of variances as they deem necessary or appropriate, consistent with the purposes of this Ordinance.***

1) ***Variances shall not be issued "after the fact."***

2) ***At a minimum, a variance request shall include the following information:***

3) ***A site map that includes locations of all streams, wetlands, floodplain boundaries and other natural features, as determined by field survey;***

4)

5) ***A description of the shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;***

6) ***A detailed site plan that shows the locations of all existing and proposed structures and other impervious cover, the limits of all existing and proposed land disturbance, both inside and outside CRZ. The exact area of the CRZ to be affected shall be accurately and clearly indicated;***

7) ***Documentation of unusual hardship should the CRZ be maintained;***

8) ***At least one alternative plan, which does not include CRZ disturbance or reduction, or an explanation of why such a site plan is not possible;***

9) ***A calculation of the total area and length of the proposed intrusion;***

10) ***Proposed mitigation, for the intrusion. If mitigation is not proposed, the request must explain why.***

(vi) ***The following factors may considered in determining whether to issue a variance:***

1) ***The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;***

2) ***The location and extent of the proposed CRZ intrusion; and,***

3) ***Whether alternative designs are possible which require less intrusion or no intrusion;***

4) ***The long-term impacts of the proposed variance; and,***

5) ***Whether issuance of the variance is at least as protective of natural resources and the environment.***

Any applicant who is aggrieved by any decision of the Fayette County Stormwater Management Department relating to the application of this ordinance shall have the right to appeal as provided under Article IX of the Fayette County Zoning Ordinance.

Sec. 8-181. Violations, Enforcement and Penalties.

Any action or inaction which violates the provisions of this ordinance or the requirements of an approved stormwater management application may be subject to the enforcement actions outlines in this Section.

Any such action or inaction, which is continuous with respect to time, is deemed to be a public nuisance and may be abated by injunctive or other equitable relief. The imposition of any of the penalties described below shall not prevent such equitable relief.

(h) Notice-of-Violation. If the Stormwater Management Department determines that an applicant or other responsible person has failed to comply with the terms and conditions of a permit, an approved Stormwater Management Plan or the provisions of this ordinance, it shall issue a written notice of violation to such applicant or other responsible person. Where a person is engaged in activity covered by this ordinance without having first secured a permit, the notice of violation shall be served on the owner of the responsible person in charge of the activity being conducted on the site.

The notice-of-violation shall contain:

(iii) The name and address of the owner or the applicant or the responsible person;

(iv) The address or description of the site upon which the violation is occurring;

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

(vi) A description of the remedial measures necessary to bring the action or inaction into compliance with the permit, the Stormwater Management Action Plan or this ordinance and the date for the completion of such remedial action; and,

(vii) A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed.

(i) Penalties. In the event the remedial measures described in the notice of violation have not been completed by the date set forth for such completion in the notice of violation, any one or more of the following actions or penalties may be taken or assessed against the person to whom the notice of violation was directed. Before taking any of the following actions or imposing any of the following penalties, the Stormwater Management Department shall first notify the applicant or other responsible person in writing of its intended action, and shall provide a reasonable opportunity, of not less than ten (10) days (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24-hours notice shall be sufficient) to cure such violation. In the event the applicant or other responsible person fails to cure such violation after such notice and cure period, the Stormwater Management Department may take one or more of the following action or impose any one or more of the following penalties:

(i) Stop Work Order. The Stormwater Management Department may issue a stop work order that shall be served on the applicant or other responsible person. The stop work order shall remain in effect until the applicant other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein, provided the stop work order may be withdrawn or modified to enable the applicant or other responsible person to take the necessary remedial measures to cure such violation or violations.

(ii) Withhold Certificate-of-Occupancy. The Stormwater Management Department may recommend to the Fayette County Permits and Inspection Department refuse to issue a Certificate-of-Occupancy for the building other improvements constructed or being constructed on the site until the applicant or other responsible person has taken the

remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

(iii) Suspension, Revocation or Modification of Permit. The Stormwater Management Department may suspend, revoke or modify the permit authorizing the land-development project. A suspended, revoked or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice-of-violation(s) or has otherwise cured the violations described therein, provided such permit may be reinstated (upon such conditions as the Stormwater Management Department may deem necessary) to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.

(j) Citations. For intentional and flagrant violations of this ordinance, or in the event the applicant or other responsible person fails to take the remedial measures set forth in previously issued notice-of-violations(s) or otherwise fails to cure the violations within ten days, the Stormwater Management Department may issue a citation to the applicant or other responsible person, requiring such person to appear in State Court of Fayette County to answer charges of 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.

Section 8-176. STATE OF GEORGIA;
COUNTY OF FAYETTE

ORDINANCE NO. 2012-02

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, FAYETTE COUNTY, GEORGIA CHAPTER 8, THE FAYETTE COUNTY DEVELOPMENT REGULATIONS, AS AMENDED SPECIFICALLY ARTICLE VI TREE RETENTION, PROTECTION AND REPLACEMENT; 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 VI of Chapter 8 Development Regulations of the Code of Ordinances, Fayette County, Georgia is hereby amended to read as follows:

ARTICLE VI. TREE RETENTION, PROTECTION AND REPLACEMENT

Sec. 8-176. Introduction.

It is hereby determined that:

Trees are a valuable asset to the rural/urban environment of Fayette County and can generate such benefits as: the purification of air; moderation of the microclimate; reduction of noise and glare; conservation of energy in terms of heating and cooling; prevention of soil erosion; reduced stormwater management costs; minimization of flood potential; improved water quality; enhancement and stabilization of property values; increased aesthetics; and preservation of the rural character of unincorporated Fayette County.

Therefore, Fayette County adopts this ordinance to provide requirements to protect the rural and wooded character of unincorporated Fayette County through the preservation and replanting of trees when new development occurs.

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Deciduous Tree. Any tree which drops its leaves at the end of the growing season. A tree that annually loses leaves.

Dripline. A line on the ground established by a vertical plane extending from a tree's outermost branch tips down to the ground; i.e., the line enclosing the area directly beneath the tree's crown from which rainfall would drip.

Diameter-at-breast-height DBH. Standard measure of existing tree size and is the trunk diameter measured in inches at height of four and one-half (4½) feet above the ground. If a tree splits into multiple trunks below four and one-half (4 ½) feet, then the trunk is measured at its most narrow point beneath the split. A tree that splits into multiple trunk above 4 ½ feet is measured as a single tree at 4 ½ feet.

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Land Disturbance Permit. Authorization to conduct a land-disturbing activity under the provisions of Article IX, Soil Erosion, Sedimentation and Pollution Control.

Landscaping. Any additions to the natural features of a plot of ground to restore construction disturbance and to make an area more attractive.

Landscape Areas. An area set aside for the installation and maintenance of ornamental planting materials

Overstory (Canopy) Tree. Any tree that, under normal forest conditions, will compose the top layer or canopy of vegetation and generally will reach a mature height of greater than 40 feet. Examples include: Oak, Maple, Elm, Bald Cypress, Cryptomeria.

Replacement Density Unit (RDU). A tree density unit assigned to a new tree planted to achieve the site density unit (SDU) and is equivalent to the number of inches of trunk diameter measures at six (6) inches above the ground..

Shrub. A plant with persistent woody stems and a relatively low growth habit, distinguished from a tree by producing several basal stems instead of a single trunk.

Site. That portion of a tract of land that will be dedicated to a proposed development, including the land containing trees that will be counted toward satisfying the requirements of these provisions.

Site Density Unit (SDU). The minimum number of tree density units which must be achieved on a non-residential site after development and is equal to Existing Density Units (EDU) plus replacement Density Units (RDU).

Specimen Tree or Stand. Any tree or grouping of trees that is determined to be of high value and qualifies for special consideration for preservation because of its species, size, or historical significance.

Tree. A self-supporting woody perennial plant that, at maturity, has one (1) or more stems or trunks that attain a diameter of at least three (3) inches; a more or less definitely formed crown of foliage; and a height of 10 feet or more.

Tree Density Units (TDU). A unit of measurement for tree density based on the diameter of the tree.

Tree Protection Area. A barrier constructed around trees at construction sites sufficient to prevent damage or injury to tree trunks, limbs, and roots. The tree protection area shall be either the dripline of the tree or the critical root zone of a tree or clusters of trees to be retained, whichever is greater.

Understory Tree. A tree that, under normal forest conditions, grows to maturity beneath overstory trees and will generally reach a mature height of at least 10 feet, but less than 40 feet. Examples include dogwood, red bud, fringe tree, lusterleaf holly, and red cedar. (Ord. No. 2000-02)

Utility. Public or private water or sewer piping systems, water or sewer pumping stations, electric power lines, fuel pipelines, telephone lines, roads, driveways, bridges, river/lake access facilities, stormwater systems, railroads, or other utilities identified by a local government.

Variance. A grant of relief from the CRZ requirements of this ordinance that permits construction in a manner otherwise prohibited by this ordinance.

Sec. 8-178. General Provisions

(a) Purpose and Intent. The purpose of this ordinance is to establish minimum requirements for tree retention, protection and replacement in Fayette County and to protect the rural and wooded character of Fayette County through the preservation and replanting of trees when new development occurs. It is the intent of this ordinance that all site planning and design for development of land be undertaken with a survey of trees on the property and that the grading, final placement of buildings, structures, and roads, utilities, and other features minimizes the removal of existing trees, and insures aesthetic replacement and distribution.

(b) Applicability**.** This ordinance shall apply to any activity that requires a Preliminary Plat, Erosion, Sedimentation, and Pollution Control Plan or site plan as defined in Article II. Residential

Subdivisions without common infrastructure are still required to submit a Tree Protection Plan but are not required to submit tree density units.

(c) Exemptions.

(i) Trees determined to be dead, diseased, or infested as determined by the Georgia Forestry Commission or a Certified Arborist and approved by the Stormwater Management Department.

(ii) Orchards and tree nurseries in active commercial operation.

(iii) Agricultural operation as defined in Article IX.

(iv) Non-residential subdivisions development projects without common infrastructure.

(v) Public roads as exempted in Article IX, Section 8-243(9).

(vi) Public utilities, as exempted in Article IX, Section 8-243(10–11), including telecommunication towers.

(vii) Commercial forestry operations, including timber harvesting.

(viii) Residential and non-residential subdivision development projects are exempt from Tree Density Requirements, but are required to submit a TPP.(Ord. No. 2000-02)

(d) Designation of Ordinance. Administrator. The Fayette County Stormwater Management Department shall administer this ordinance.

(e) Compatibility with Other Regulations. This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, statute, easement, covenant, deed restriction 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 impose higher protective standards for human health or the environmental shall control.

(f) 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.

(g) Effective Date. This Ordinance becomes effective upon adoption by the Board of Commissioners.

(h) Technical Standards. Standards for plant selection and installation listed below are incorporated by reference:

(i) "American Standard for Nursery Stock" (ANSI Z60.1-2004)

(ii) "Manual for Woody Landscape Plants" (Michael Dirr, 2009, Stipes)"

(iii) "Principles and Practices of Planting Trees and Shrubs"(Watson and Himelick, 1997, ISA)

(iv) "American National Standards for Tree Care Operations" (ANSI A300)

(v) University of Georgia Cooperative Extension Service Bulletin No. 625 Landscape Plants for Georgia

Sec. 8-179. Tree Retention, Protection and Replacement Requirements.
For all sites with three (3) acres or less, all trees used in the SDU calculation shall be individually inventoried. For all sites over three (3) acres industry standard sampling methods may be used to prepare a tree survey when trees are of such density to make individual tree identification impractical. In such cases the tree surveyor shall show tree stands and provide estimates of size and species on the Tree Protection Plan.

(a) Site Density Requirements. The required tree density for each non-residential site is referred to as the Site Density Unit (SDU). Each property subject to this article shall have a minimum required SDU based on total number of disturbed acres on the project site.

(i) The total SDU required equals Existing Density Units (EDU) plus Replacement Density Units (RDU).

(ii) Property subject to this Article that is greater than or equal to three (3) acres shall have or exceed an average SDU of 100 TDU's per acre.

(iii) Property subject to this Article that is less than three (3) acres shall have or exceed an average SDU of fifty (50) TDU's per acre.

(iv) Credit will be given to trees retained on a property having a DBH of four (4) inches or more.

(v) At least 50 percent of the EDU's per acre must be located outside of any zoning or watershed protection buffers as referenced in Articles V and VII.

(vi) Palm trees are not acceptable for SDU credit.

(b) Specimen Trees.

(i) Criteria for determination of specimen trees or stands are as follows:

1) Any deciduous canopy tree whose DBH equals or exceeds twenty-four (24) inches.

2) Any evergreen canopy tree whose DBH equals or exceeds thirty (30) inches.

3) Any understory tree whose DBH equals or exceeds ten (10) inches.

4) Any tree which has significant historical value and can be documented through historical records or otherwise. (Ord. No. 2000-02)

(ii) Removal. Any specimen tree removed without prior approval of the Stormwater Management Department will be replaced by trees equaling two (2) times an inch-for-inch replacement of the tree removed. Size alone will determine whether a tree was of specimen quality if the tree is removed without approval and there is no evidence of its

condition. Such action may result in a stop work order issued by the Stormwater Management Department.

Written justification must be given for any specimen tree designated for removal. The Fayette County Stormwater Management Department may require additional information including, but not limited to, a certified arborist's appraisal of the tree's viability and anticipated life span.

Any specimen tree may be removed if it is shown that at least one of the following conditions is met:

1) The location of the tree prevents the opening of reasonable and necessary vehicular traffic lanes.

2) The location of the tree prevents the construction of utility lines or drainage facilities which may not feasibly be relocated.

3) The location of the tree prevents reasonable access to the property, if no alternate exists.

4) The tree is diseased, dead, or dying to the point that repair or restoration is not practical or the disease may be transmitted to other trees.

5) There is no reasonable assurance that if the tree is saved with proper construction precautions, it will continue to live as an asset to the site.

(iii) Preservation. All reasonable efforts should be made to preserve specimen trees and incorporate them into the design of the project. Specimen trees saved by a specifically designed feature of the building, hardscape, or utilities shall be given EDU credit of two (2) inches per inch DBH.

(c) Replacement Tree Requirements.

All trees selected for replacement density units must meet the following requirements:

(i) Trees must be free of disease, injury, or infestation, and must be ecologically compatible with the specifically intended growing area (see Section 8-184), and planted in accordance with standards established by the International Society of Arboriculture.

(ii) At a minimum, four (4) species mixture of different trees, with at least three (3) being deciduous hardwoods should be utilized. (Ord. No. 2000-02).

(iii) No more than thirty (30) percent of replacement trees may be of a single species.

(iv) A fifty percent mix of overstory and understory trees shall be maintained. See Sec, 8-184. (Ord. No. 2000-02)

(v) Trees shall have a minimum caliper requirement of two and one half (2½) inches in diameter as measured at six (6) inches above the ground at time of planting.

(vi) All trees planted to fulfill the replacement tree requirements shall be in place before a Certificate of Occupancy is granted. In the event that the requirements of this Article cannot be met at the time a Certificate of Occupancy is otherwise granted, refer to "Buffer and Landscape Areas," Section 8-162 Performance Surety, in these Development Regulations. (Ord. No. 2000-02)

(vii) All tree planted under the requirements of this Article which do not survive for 24 months after issuance of a Certificate of Occupancy will be replaced as a condition of occupancy. Trees shall be bonded via a maintenance agreement in the amount of (100%) of their replacement cost. Bonds will be released after the 24 month period has passed, and the health of the trees have been certified and accepted by the County. Refer to "Buffer and Landscape Areas," Section 8-163 General Maintenance, in these Development Regulations. (Ord. No. 2000-02)

(viii) See Section 8-160.d.2 and Section 8-161 for suggested tree species. For additional tree species, especially understory (small) trees, see University of Georgia Cooperative Extension Service Bulletin No. 625 Landscape Plants for Georgia.

(d) Tree Protection Requirements.

(i) A tree protection area shall be maintained around all trees and stands of trees to be retained throughout the duration of construction by tree protection fencing.

(ii) The tree protection area of stand-alone trees and stands of trees shall be marked with standard tree protection fencing (orange), chain-link fencing, stakes, and/or continuous engineering tape and "Tree Protection Area" signs. At least two (2) "Tree Protection Area" signs shall be posted at each individual tree protection area. (Ord. No 2000-02)

(iii) All tree protection fencing shall be inspected for proper installation by the Stormwater Management Department during the initial erosion and sediment control inspection.

(iv) During subdivision street construction, land disturbance allowed by a development permit shall be limited to areas needed for street right-of-way, drainage easements, erosion and sediment control practices and utilities. All other areas shall remain undisturbed for tree protection purposes.

(v) If utilities must run through the tree protection area and the running of those utilities will encroach into the critical root zone CRZ of any trees to be saved, the utility must be tunneled at a depth of 24 inches. When feasible, utilities will run along streets, roadways, driveways, or sidewalks. Reasonable efforts shall be made to save as many trees as possible. (Ord. NO. 2000-02)

(vi) If it is determined that irreparable damage has occurred to a tree or trees within a designated tree protection area, as determined by the Fayette County Stormwater Management Department, the Georgia Forestry Commission, or a Certified Arborist, it shall be the responsibility of the developer/builder to remove and replace the tree or trees and guarantee survival after the issuance of the Certificate of Occupancy as references in Section 8-179.c.vii and Article V. (Ord. No. 2000-02)

(e) Tree Protection Plan.

(i) Procedures.

1) The TPP shall be submitted with the Preliminary Plat, Erosion, Sedimentation and Pollution Control Plan or the Site Plan, whichever is the first submittal required by Fayette County Planning and Zoning Department.

2) The Tree Protection Plan shall be prepared by either a licensed Landscape Architect or Forester; Certified Arborist, or other licensed professional of similar design discipline licensed in Georgia.

3) The Stormwater Management Department shall have a maximum of 14 calendar days from the submittal date, or each re-submittal date, for plan review. If the plan is not approved a deficiency checklist will be submitted back to the applicant.

(ii) Submittal.

The Tree Protection Plan shall be submitted on a scale of no less than one(1) inch to 100 feet and shall include project name, design professional's name and contact information, north arrow, graphic scale, and date. The plan should clearly show and label the following:

1) Tree save areas noting the location, size, DBH, dripline, CRZ, and species name (common name) of each tree that will be retained to fulfill the SDU requirements. Five or more trees whose dripline and CRZ combine into one tree protection area may be outlined as a group with the exception of specimen trees.

2) Summary table listing the DBH and species name of each RDU and EDU tree used to obtain the required SDU under "Notes."

3) If a group of trees is outlined on the plan as a tree save area, include a summary table listing the size, DBH and species name of each tree within that group under "Notes."

4) Location of all new replacement trees including species name and DBH that fulfill RDU requirements.

5) Location of any specimen tree designated in a tree protection area including the DBH, CRZ and species name even if contained in a group. If construction is limited to streets, drainage easements and utilities the TPP only needs to show all specimen trees located within 100 feet of the centerline of any right-of-way, or drainage/utility easements. (Ord. No. 2000-02)

6) Location of any specimen trees designated for removal during construction including the size, DBH and species name. See Sec. 8-181.

7) Location, depth and height of all existing and proposed utility lines.

8) Boundaries of property, buffer and landscaped areas, buildings and structures, vehicle use areas, and other impervious areas. (Ord. No. 2000-02)

9) Calculations for meeting all required site density units under "Notes." If a scientific method is used to determine the site density units, label all sample areas and provide estimates of trees by size and species as based on sampling method requirements.

10) Under "Notes" state the following: "No land disturbance, construction processes, or storage of equipment or materials shall take place within a designated tree protection area in order to prevent direct physical root damage that occurs during site clearing and grading and can cause transport or feeder roots to be cut, torn, or removed; indirect root damage caused from grade changes; and trunk and crown damage caused by direct contact with land clearing machinery or galling of adjacent trees." (Ord. No. 2000-02)

Sec. 8-180. Appeals and Variances

The following variance and appeals procedures shall apply to an applicant who has been denied a permit for a development activity or to an owner or developer who has not applied for a permit because it is clear that the proposed development activity would be inconsistent with the provisions of this ordinance.

(a) Requests for variances shall only be given for a reduction in the Critical Root Zone (CRZ).

(b) Requests for a variance from the CRZ requirements of this ordinance shall be submitted to the Stormwater Management Department. All such requests shall be heard and decided in accordance with procedures to be published in writing by the Stormwater Management Department.

(c) Any person adversely affected by any decision of the Stormwater Management Department shall have the right to appeal such decision to the Fayette County Zoning Board of Appeals as established by Fayette County in accordance with Article IX of the Fayette County Zoning Ordinance. At a minimum, such procedures shall include notice to all affected parties and the opportunity to be heard.

(d) Any person aggrieved by the decision of the Fayette County Zoning Board of Appeals may appeal such decision to the Fayette County State Court, as provided in Section 5-4-1 of the Official Code of Georgia Annotated.

(e) In reviewing such requests, the Stormwater Management Department and Fayette County Zoning Board of Appeals shall consider all technical evaluations, relevant factors, and all standards specified in this and other sections of this ordinance.

(f) Variances shall only be considered based on the follow criteria:

(i) Disturbance of the CRZ of less than 30%;
(ii) A reduction in the CRZ based on industry standards less stringent than outlined in this ordinance.

(g) Conditions for Variances:

(i) A variance shall be issued only when all of the following conditions are met:

1) a finding of good and sufficient cause; and

2) a determination that failure to grant the variance would result in exceptional hardship.

(ii) Any person to whom a variance is granted shall be given written notice specifying the difference between the current CRZ(s) requirements and the CRZ(s) requested in the variance.

(iii) The Fayette County Stormwater Management Department shall maintain the records of all appeal actions.

(iv) Any person requesting a variance shall, from the time of the request until the time the request is acted upon, submit such information and documentation as Fayette County Stormwater Management Department and Fayette County Zoning Board of Appeals shall deem necessary to the consideration of the request including, but not limited to, a certified arborist's appraisal of the tree's viability and anticipated life span.

(v) Upon consideration of the factors listed above and the purposes of this Ordinance, Fayette County Stormwater Management Department and the Fayette County Zoning Board of Appeals may attach such conditions to the granting of variances as they deem necessary or appropriate, consistent with the purposes of this Ordinance.

1) Variances shall not be issued "after the fact."

2) At a minimum, a variance request shall include the following information:

3) A site map that includes locations of all streams, wetlands, floodplain boundaries and other natural features, as determined by field survey;

4)

5) A description of the shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;

6) A detailed site plan that shows the locations of all existing and proposed structures and other impervious cover, the limits of all existing and proposed land disturbance, both inside and outside CRZ. The exact area of the CRZ to be affected shall be accurately and clearly indicated;

7) Documentation of unusual hardship should the CRZ be maintained;

8) At least one alternative plan, which does not include CRZ disturbance or reduction, or an explanation of why such a site plan is not possible;

9) A calculation of the total area and length of the proposed intrusion;

10) Proposed mitigation, for the intrusion. If mitigation is not proposed, the request must explain why.

(vi) The following factors may considered in determining whether to issue a variance:

1) The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;

2) The location and extent of the proposed CRZ intrusion; and,

3) Whether alternative designs are possible which require less intrusion or no intrusion;

4) The long-term impacts of the proposed variance; and,

5) Whether issuance of the variance is at least as protective of natural resources and the environment.

Any applicant who is aggrieved by any decision of the Fayette County Stormwater Management Department relating to the application of this ordinance shall have the right to appeal as provided under Article IX of the Fayette County Zoning Ordinance.

Sec. 8-181. Violations, Enforcement and Penalties.

Any action or inaction which violates the provisions of this ordinance or the requirements of an approved stormwater management application may be subject to the enforcement actions outlines in this Section. Any such action or inaction, which is continuous with respect to time, is deemed to be a public nuisance and may be abated by injunctive or other equitable relief. The imposition of any of the penalties described below shall not prevent such equitable relief.

(h) Notice-of-Violation. If the Stormwater Management Department determines that an applicant or other responsible person has failed to comply with the terms and conditions of a permit, an approved Stormwater Management Plan or the provisions of this ordinance, it shall issue a written notice of violation to such applicant or other responsible person. Where a person is engaged in activity covered by this ordinance without having first secured a permit, the notice of violation shall be served on the owner of the responsible person in charge of the activity being conducted on the site.

The notice-of-violation shall contain:

(iii) The name and address of the owner or the applicant or the responsible person;

(iv) The address or description of the site upon which the violation is occurring;

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

(vi) A description of the remedial measures necessary to bring the action or inaction into compliance with the permit, the Stormwater Management Action Plan or this ordinance and the date for the completion of such remedial action; and,

(vii) A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed.

(i) Penalties. In the event the remedial measures described in the notice of violation have not been completed by the date set forth for such completion in the notice of violation, any one or more of the following actions or penalties may be taken or assessed against the person to whom the notice of violation was directed. Before taking any of the following actions or imposing any of the following penalties, the Stormwater Management Department shall first notify the applicant or

other responsible person in writing of its intended action, and shall provide a reasonable opportunity, of not less than ten (10) days (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24-hours notice shall be sufficient) to cure such violation. In the event the applicant or other responsible person fails to cure such violation after such notice and cure period, the Stormwater Management Department may take one or more of the following action or impose any one or more of the following penalties:

(i) Stop Work Order. The Stormwater Management Department may issue a stop work order that shall be served on the applicant or other responsible person. The stop work order shall remain in effect until the applicant other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein, provided the stop work order may be withdrawn or modified to enable the applicant or other responsible person to take the necessary remedial measures to cure such violation or violations.

(ii) Withhold Certificate-of-Occupancy. The Stormwater Management Department may recommend that the Fayette County Permits and Inspection Department refuse to issue a certificate of occupancy for the building other improvements constructed or being constructed on the site until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

(iii) Suspension, Revocation or Modification of Permit. The Stormwater Management Department may suspend, revoke or modify the permit authorizing the land-development project. A suspended, revoked or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice-of-violation(s) or has otherwise cured the violations described therein, provided such permit may be reinstated (upon such conditions as the Stormwater Management Department may deem necessary) to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.

(j) Citations. For intentional and flagrant violations of this ordinance, or in the event the applicant or other responsible person fails to take the remedial measures set forth in previously issued notice-of-violations(s) or otherwise fails to cure the violations within ten days, the Stormwater Management Department may issue a citation to the applicant or other responsible person, requiring such person to appear in State Court of Fayette County to answer charges of 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.

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 13th DAY OF December, 2012.

BOARD OF COMMISSIONERS
FAYETTE COUNTY, GEORGIA

_____
Herbert E. Frady, Chairman

ATTEST:

_____
Floyd Jones, County Clerk