

STATE OF GEORGIA

COUNTY OF CLAYTON

ORDINANCE NO. 2021-50

AN ORDINANCE TO AMEND THE CODE OF CLAYTON COUNTY, GEORGIA, AS AMENDED, SPECIFICALLY, CODE OF CLAYTON COUNTY, GEORGIA, CHAPTER 86 "SUBDIVISIONS," ARTICLE II "TREE PROTECTION," SECTION 86-72 "TIMBER HARVESTING" TO ENACT A NEW TIMBER HARVESTING ORDINANCE; TO REPEAL CONFLICTING LAWS, ORDINANCES, AND RESOLUTIONS; TO PROVIDE SEVERABILITY; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, timber harvesting operations may occur in the unincorporated portions of Clayton County; and

WHEREAS, while timber harvesting may provide providing revenue to landowners, business opportunities, and jobs for local residents, it is the intent of the Clayton County Board of Commissioners to balance the revenue-producing portions of this industry with protecting county infrastructure and the safety of the community; and

WHEREAS, timber harvesting in many instances requires the use of county-maintained roads in order to transport the product to market; and

WHEREAS, it is in the public interest to protect the county road system from damage caused by timber harvesting operations to the extent allowed by state law; and

WHEREAS, O.C.G.A. §12-6-24 authorizes and establishes the terms and conditions under which this Ordinance may be adopted and enforced; and

WHEREAS, it is the intent of the Clayton County Board of Commissioners to preserve and exercise where appropriate all powers and authority granted to it under state law, including but not limited to O.C.G.A. §32-4-42 and O.C.G.A. §40-6-371, that are not in conflict with O.C.G.A. §12-6-24, in order to protect the health, safety and welfare of the community.

**NOW THEREFORE, BE IT ORDAINED BY THE CLAYTON COUNTY
BOARD OF COMMISSIONERS AND IT IS HEREBY ORDAINED**

Section 1. The Code of Clayton County, Georgia, as amended, is hereby further amended by amending Chapter 86, "Subdivisions," Article II "Tree Protection," to delete Section 86-72 in its entirety and to replace Section 86-72 to read as follows:

Sec. 86-72. – Timber harvesting.

(a) All persons or firms harvesting standing timber in any unincorporated area of Clayton County for delivery as pulpwood, logs, poles, posts, or wood chips to any woodyard or processing plant located inside or outside this state shall provide Notice of such harvesting operations to the Director of Community Development or the designated

agent thereof prior to entering onto the property if possible, but in no event later than twenty-four (24) hours after entering onto the property. Further, such persons shall give Notice of cessation of cutting within twenty-four (24) hours after the job is completed.

- (b) The Notice of harvesting operations required by this Ordinance shall be provided for each separate tract to be harvested. Such Notice shall be made in such form as prescribed by rule or regulation of the Director of the Georgia Forestry Commission, and shall include the following information:
- a. A map of the area which identifies the location of the tract to be harvested and, as to those trucks which will be traveling to and from such tract for purposes of picking up and hauling loads of cut forest products, the main point of ingress to such tract from a public road and, if different, the main point of egress from such tract to a public road. If multiple points of ingress and/or egress will be used, all such points shall be identified;
 - b. A statement as to whether the timber will be removed pursuant to a lump sum sale, per unit sale, or owner harvest for purposes of ad valorem taxation under O.C.G.A. §48-5-7.5;
 - c. The name, address, and daytime telephone number of the timber seller if the harvest is pursuant to a lump sum or per unit sale or of the timber owner if the harvest is an owner harvest; and
 - d. The name, business address, business telephone number, and nighttime or emergency telephone number of the person or firm harvesting such timber.
- (c) Subject to the provisions of subsection (e) below, the Notice required by this Ordinance may be submitted in person, by transmission of an electronic record via telefacsimile or e-mail, or by mail.
- (d) Subject to the provisions of subsection (e) below, upon notification published by the Director of the Georgia Forestry Commission that a state-wide notification website or platform is available for public use, persons or firms wishing to utilize said website or platform to provide the Notice required by this Ordinance may do so at their option, and Clayton County will accept notifications submitted in this manner.
- (e) On and after a date specified and published by the Director of the Georgia Forestry Commission, use of the state-wide notification website or platform shall be mandatory and shall be the sole means of providing the Notice required by this Ordinance; on and after said date submission of the Notice by any of the means listed in subsection (c) above shall cease and will no longer be deemed acceptable or in compliance with this Ordinance.
- (f) The Notice required by this Ordinance shall not be or remain effective unless and until the person or firm providing such Notice has delivered to the Director of Community Development or his or her designee a valid surety bond, executed by a surety corporation authorized to transact business in this state, protecting Clayton County against any damage caused by such person or firm in the amount of \$5,000.00; provided, however, that at the option of the person or firm harvesting timber a valid irrevocable letter of credit issued by a bank or savings and loan association, as defined in O.C.G.A. §7-1-4, in the amount of \$5,000.00 may be provided in lieu of a surety bond. Such bonds or letters of credit shall be subject to the conditions set forth in subsections (g) and (h) of this Ordinance. No more than one bond or letter of credit shall be required from each

person or firm harvesting timber, regardless of the number of tracts harvested in the county for so long as the bond or letter of credit remains in effect. The bond or letter of credit required herein shall be valid only for the calendar year in which it was delivered.

- (g) The bond or letter of credit required by subsection (f) of this Ordinance shall protect Clayton County against any damage requiring re-ditching or repair of existing ditch structures or the removal of any harvesting residue, including tree tops, debris, logs, pulpwood and other materials, placed in or around the county's rights of way caused by such person or firm tendering the bond or letter of credit. The proceeds of such bond or letter of credit shall be available to reimburse the county for any cost incurred to repair such damages or remove such debris in or around the county's rights of way. The proceeds of such bond or letter of credit shall also be available to reimburse the county for any costs incurred to maintain or repair county roads damaged by the ingress or egress of motor vehicles engaged in the harvest operations located within 500 feet of any point of ingress or egress of the timber harvesting operation. The right of Clayton County to call such bond or letter of credit in accordance with the provisions of subsection (h) of this Ordinance shall be in addition to any other remedies available to the county at law or in equity for damage to county roads or rights of way.
- (h) When damage results from a person or firm's harvesting activities, the Director of Community Development shall make and provide a written claim to the person or firm causing the damage within thirty (30) business days after the Director of Community Development becomes aware of the damage. Such claim may be given in person, by telefacsimile, email or mail. The claim shall describe the damage in detail and, in compliance with subsection (i)(1) of this Ordinance, give the person or firm the opportunity to repair such damage within thirty (30) days of the notification; provided, however, the County shall be authorized to repair the damage immediately if the Director of Community Development or his or her designee determines the conditions present a threat to public safety, health or welfare and, upon making such repairs, shall present to the person or firm and the issuer of the applicable bond or letter of credit an itemized list of expenses incurred as a claim against the responsible party and the issuer of its bond or letter of credit. Upon the issuance of a claim as provided in this Section, the Director of Community Development or his or her designee shall notify the issuer of the bond or letter of credit that a claim has been made and will be resolved or adjudicated according to the terms of this Ordinance.
- (i) Within thirty (30) days of receipt of the written claim described in subsection (h), the person or firm against whom the claim is submitted may:
- (1) Repair such damage at his or its own expense with the approval and supervision of the Directors of the Department of Transportation and Development and the Department of Community Development or their designees. When repairs are completed to the satisfaction of these Directors, the Director of Community Development or his or her designee shall provide a written notification of satisfactory completion within five business days to the responsible person or firm and to the surety issuing the bond or the bank issuing the letter of credit, thereby terminating the claim.
 - (2) In the event of inclement weather or other factors preventing repair of the damage, request a thirty (30) day extension to repair the damage from the Director of Community Development, provided that no extensions shall exceed

ninety (90) days from the date the claim was tendered. Approval of any extension shall be at the discretion of the Director of Community Development or his or her designee.

- (3) *Appeal the claim to the Magistrate Court of Clayton County. Any such appeal must name the issuer of the bond or letter of credit as a party, who shall be served with all pleadings in the action and shall have the right to appear. The Magistrate Court will hear evidence and arguments within thirty (30) days of the written appeal and issue a ruling within ten days of such hearing. Any such appeal shall toll the thirty (30) day period, or any extension thereof, required by subsection (h) of this Ordinance. If the Magistrate Court rules in favor of the person or firm against whom the claim was made, the County shall have no right to recover any proceeds of the bond or letter of credit, and judgment shall be entered against the County. If the Magistrate Court rules in favor of the County, the court shall determine the amount of damages to which the County is entitled to recover and enter judgment accordingly; the Director of Community Development, subject to approval by the Board of Commissioners, shall be authorized to call the bond or letter of credit and recover from the proceeds thereof an amount equal to the judgment entered by the court, up to the total amount of the bond or letter of credit. The portion of any judgment entered in favor of the County that exceeds the amount of the bond or letter of credit shall be subject to collection by any additional remedies at law or equity.*
- (4) *In the event the person or firm against whom the claim has been submitted fails to take any of the actions allowed under subsections (1), (2) or (3) of this Section within the time required therein, such person or firm shall be deemed to have waived any and all rights to contest the call of the bond or letter of credit.*
- (j) *If the person or firm tendering a bond or letter of credit pursuant to the requirements of this Ordinance continues its timber harvesting operation beyond the calendar year in which the bond or letter of credit was issued, the person or firm continuing the timber harvesting operation shall tender a new bond or letter of credit within five (5) business days after the first day of the new calendar year.*
- (k) *In the event a bond or letter of credit tendered pursuant to the requirements of this Ordinance is revoked by the surety or bank, then a valid replacement bond or letter of credit must be delivered to the Director of Community Development within five (5) business days after the date of revocation in order for timber harvesting operations to continue. In addition, if the person or firm tendering the bond or letter of credit caused its revocation, the amount of the bond or letter of credit required shall be increased to \$7,500 after the first revocation, and \$10,000 after a second revocation caused by the person or firm tendering the bond or letter of credit. The maximum amount of the bond or letter of credit shall not exceed \$10,000.*
- (l) *Submission of the Notice required by this Ordinance shall authorize the person or firm submitting same to undertake the timber harvesting operation described in the Notice and shall remain in effect until such time as the person or firm gives Notice that the harvesting operation is complete; provided, however, that any change in the facts required to be provided for purposes of such Notice, including but not limited to a*

change in the scope or extent of the operation, must be reported to the Director of Community Development within three business days after such change.

- (m) Any person or firm that engages in a timber harvesting operation in the unincorporated portion of Clayton County without complying with the Notice requirements of this Ordinance shall be subject to a citation and trial, and upon conviction shall be fined in an amount not to exceed \$1,000.00 for each violation.*
- (n) This Ordinance applies to activities which qualify as forestry land management practices or agricultural operations under O.C.G.A. §12-7-17 (5) and (6) on land that is zoned for or used for forestry, silvicultural or agricultural purposes. It shall not authorize land disturbing activities incidental to development in conflict with the limitations set forth in O.C.G.A. §12-7-17 (6).*
- (o) Consistent with O.C.G.A. §12-6-24:
 - (1) no fee shall be charged to provide and submit the Notice required by this Ordinance; and*
 - (2) no permit, including a driveway permit, shall be required of the person or firm engaged in a timber harvesting operation as defined by said Code section. Persons and firms providing the Notice required by this Ordinance may be asked to consult with county officials responsible for roads and public works for the purpose of minimizing damage to the county's roads, rights of way and infrastructure, and are urged to follow recommendations from county officials. Notwithstanding the forgoing, the person or firm conducting the timber harvest operation bears ultimate responsibility for their actions, and nothing in this Ordinance shall preclude the Governing Authority of Clayton County from taking any and all legal action necessary to protect its property and the health, safety and welfare of its citizens.**


Section 2. All laws, ordinances and resolutions, or parts thereof, which conflict with the provisions of this Ordinance are hereby repealed.

Section 3. If this Ordinance in whole or in part is determined to be unconstitutional by any court of competent jurisdiction, such unconstitutionality shall not affect the remainder of this enactment, and such remainder shall remain in full force and effect.


Section 4. This Ordinance shall become effective immediately upon its approval by the Board of Commissioners.

SO ORDAINED, this the 2 day of March, 2020.

CLAYTON COUNTY BOARD OF COMMISSIONERS




JEFFREY E. TURNER, CHAIRMAN



SONNA GREGORY, VICE CHAIR



GAIL HAMBRICK, COMMISSIONER



FELICIA FRANKLIN, COMMISSIONER



DEMONT DAVIS, COMMISSIONER

ATTEST:



BRENDA B. JAMES, CLERK