ORDINANCE O-05-23

AN ORDINANCE AMENDING CHAPTER 16, ARTICLE VII OF THE CODE OF WALKER COUNTY, GEORGIA REGARDING TIMBER OPERATIONS; TO PROVIDE FOR AN EFFECTIVE DATE; TO REPEAL ANY AND ALL CONFLICTING ORDINANCES AND PARTS OF ORDINANCES; TO PROVIDE FOR SEVERABILITY; AND TO PROVIDE FOR OTHER PURPOSES

WHEREAS, the Walker County Board of Commissioners ("Board") is the governing authority for Walker County, Georgia; and

WHEREAS, timber harvesting operations occur in the unincorporated portions of Walker County on a recurring basis; and

WHEREAS, timber harvesting is an important component of the local economy in Walker County, providing revenue to landowners, business opportunities, and jobs for local residents; it is the intent of the Governing Authority of Walker County to facilitate this industry while at the same time 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 Board 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by the Board of Commissioners of Walker County that Chapter 16, Article VII of the Code of Walker County, Georgia is repealed and replaced with the following:

[The body of the Code begins on the next page]

Section 16-594. Requirement to provide Notice.

All persons or firms harvesting standing timber in any unincorporated area of Walker 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 Governing Authority of Walker County or the designated agent thereof prior to entering onto the property if possible, but in no event later than 24 hours after entering onto the property. Further, such persons shall give Notice of cessation of cutting within 24 hours after the job is completed.

Sec. 16-595. Information to include in Notice.

The Notice of harvesting operations required by this Article 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 ingress 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.

Sec. 16-596. State-wide notification website.

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 Article.

Sec. 16-597. Surety bond or letter of credit.

a) The Notice required by this Article shall not be or remain effective unless and until the person or firm providing such Notice has delivered to the Governing Authority of Walker County or its designated agent a valid surety bond, executed by a surety corporation authorized to transact business in this state, protecting Walker 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 Sections 16-597 and 16-598 of this Article. 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.

b) The bond or letter of credit required by Section 16-597(a) of this Article shall protect Walker 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 Walker County to call such bond or letter of credit in accordance with the provisions of Section 16-598 of this Article 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.

Sec. 16-598. Procedure for claiming damage.

When damage results from a person or firm's harvesting activities, the Governing Authority of Walker County shall make and provide a written claim to the person or firm causing the damage within 30 business days after the Governing Authority becomes aware of the damage. Such claim may be given in person or by email or mail. The claim shall describe the damage in detail and, in compliance with Section 16-599(a) of this Article, give the person or firm the opportunity to repair such damage within 30 days of the notification; provided, however, the county shall be authorized to repair the damage immediately if the Governing Authority or its 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 Governing Authority of Walker County or its 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 Article.

Sec. 16-599. Response to damage claim.

Within 30 days of receipt of the written claim described in Section 16-598, the person or firm against whom the claim is submitted may:

(a) Repair such damage at his or its own expense with the approval and supervision of the Governing Authority of Walker County or its designee. When repairs are completed to the satisfaction of the governing authority or its designee, the governing authority or

its 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.

(b) In the event of inclement weather or other factors preventing repair of the damage, request a 30 day extension to repair the damage from the Governing Authority of Walker County, provided that no extensions shall exceed 90 days from the date the claim was tendered. Approval of any extension shall be at the discretion of the Governing Authority of Walker County or its designee.

(c) Appeal the claim to the Magistrate Court of Walker 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 30 days of the written appeal and issue a ruling within ten days of such hearing. Any such appeal shall toll the 30 day period, or any extension thereof, required by Section 16-598 of this Article. 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 Governing Authority of Walker County 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.

(d) In the event the person or firm against whom the claim has been submitted fails to take any of the actions allowed under subsections (a), (b) or (c) 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.

Sec. 16-600. Expiration of bond.

If the person or firm tendering a bond or letter of credit pursuant to the requirements of this Article 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.

Sec. 16-601. Revocation of bond.

In the event a bond or letter of credit tendered pursuant to the requirements of this Article is revoked by the surety or bank, then a valid replacement bond or letter of credit must be delivered to the Governing Authority of Walker County within five 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.

Sec. 16-602. Change in Notice facts.

Submission of the Notice required by this Article 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 Governing Authority of Walker County within three business days after such change.

Sec. 16-603. Failure to provide notice.

Any person or firm that engages in a timber harvesting operation in the unincorporated portion of Walker County without complying with the Notice requirements of this Article shall be subject to a citation and trial, and upon conviction shall be fined in an amount not to exceed $1,500.00 for each violation.

Sec. 16-604. Application of Article.

This Article 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).

Sec. 16-605. Notice precludes permit.

Consistent with O.C.G.A. §12-6-24:

> (a) no fee shall be charged to provide and submit the Notice required by this Article; and
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> (b) 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 Article 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 foregoing, the person or firm conducting the timber harvest operation bears ultimate responsibility for their actions, and nothing in this Article shall preclude the Governing Authority of Walker County from taking any and all legal action necessary to protect its property and the health, safety and welfare of its citizens.

2.

This ordinance is effective immediately upon its adoption.

3.

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

4.

The provisions of this Ordinance are severable. If any section, clause, part, sentence, or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity or effectiveness of the remaining portions of this Ordinance.

PASSED AND ADOPTED this 28th day of September, 2023.

ATTEST:

Jessica Staton

Jessica Staton, Deputy Clerk

WALKER COUNTY, GEORGIA

Shannon K Whitfield

SHANNON K. WHITFIELD, Chairman

The foregoing Ordinance received a motion for approval from Commissioner Ashew, second by Commissioner Stultz, and upon the question the vote is 4 ayes, 0 nays to adopt the Ordinance.