

**COUNTY OF DADE  
STATE OF GEORGIA**

**ORDINANCE NO. 04-07-11**

**LAND USE MANAGEMENT CODE OF DADE COUNTY, GEORGIA**

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**WHEREAS,** the Georgia General Assembly has enacted the Georgia Planning Act of 1989 (Georgia Laws, 1989, pp. 1317-1391, Act 634), which among other things provides for local governments to adopt plans and regulations to implement plans for the protection and preservation of natural resources, the environment and vital areas; and

**WHEREAS,** the Georgia Department of Community Affairs has promulgated Minimum Standards and Procedures for Local Comprehensive Planning (Chapter 110-3-2 of Rules of the Georgia Department of Community Affairs) to implement the Georgia Planning Act of 1989, said standards and procedures were ratified by the Georgia General Assembly, and said rules require local governments to describe regulatory measures and land development regulations needed to implement local Comprehensive Plans; and

**WHEREAS,** Article IX, Section II, Paragraph IV of the Constitution of the State of Georgia, provides that the governing authority of the County may adopt plans and exercise the power of zoning; and

**WHEREAS,** the Dade County Board of Commissioners has adopted a Comprehensive Plan in accordance on accordance with the requirements of the Georgia Planning Act of 1989, Rules of the Georgia Department of Community Affairs, and Rules of the Georgia Department of Natural Resources, and said plan has been revised from time to time; and

**WHEREAS,** pursuant to Official Code of Georgia §36-70-3, the governing bodies of counties are authorized to develop, establish, and implement land use regulations which are consistent with the comprehensive plan of the county; and

**WHEREAS,** the Comprehensive Plan specifies a number of goals and policies that are not currently implemented by the County's land use regulations; and

**WHEREAS,** the Board of Commissioners desires to promote the health, safety, welfare, morals, convenience, order, and prosperity of the County and its citizens; and

**WHEREAS,** the Board of Commissioners desires to provide for economically sound and stable land development by assuring the provision in land developments of adequate streets, utilities, services, and traffic access and circulation; and

**WHEREAS,** the Board of Commissioners finds that the regulations contained in this Ordinance are the minimum necessary to accomplish the various public purposes.

**NOW THEREFORE BE IT ORDAINED** by the Board of Commissioners that the following ordinance and its articles and sections are hereby enacted into law.

**§1-1**            **TITLE**

This ordinance shall be known as and may be cited as the Land Use Management Ordinance of Dade County, Georgia.

**§1-2**            **PURPOSE AND INTENT**

The purposes of this Ordinance include but are not limited to the following:

- (a) Implement the comprehensive plan including goals and policies of the County.
- (b) Promote the health, safety, welfare, morals, convenience, order, and prosperity of the citizens in the County.
- (c) Promote responsible growth, lessen congestion in the public streets, secure safety from fire and health dangers, and promote desirable living conditions;
- (d) Prevent the encroachment of incompatible land uses within residential areas, protect property against blight, preserve property values, and promote desirable living conditions and stable neighborhoods;
- (e) Maintain the integrity and individual character of established communities and settlements, and promote desired character in new developments;
- (f) Attain attractive and functional business and employment areas, and to reserve suitable land for industry;
- (g) Protect and preserve sensitive natural areas and vital natural resources and avoid environmental degradation and other undesirable consequences of irresponsible or shortsighted land management; and
- (h) Those additional purposes and intentions as articulated in the various sections of this ordinance.

## **§1-3            DEFINITIONS AND INTERPRETATIONS**

### **§1-3-1        DEFINITIONS**

Except as specifically defined herein, or in other sections of this ordinance containing definitions, all words used in this ordinance have their customary dictionary definitions. Unless otherwise expressly stated, the following words shall have the meaning herein dictated.

Appeal: A request for a review of the Land Use Officer's interpretation of any provision of this ordinance, or a request for a review of an action taken by the Land Use Officer in the application or enforcement of this ordinance.

Building: Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind.

Development: Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or permanent storage of materials; any land-disturbing activity which alters the elevation of the land, removes significant vegetation, or causes structures of any kind to be erected or removed.

Improvement: The physical addition and changes to land that may be necessary to produce usable, desirable and acceptable lots or building sites.

Land Use Officer: That person authorized by the Dade County Board of Commissioners to administer and interpret this ordinance, or authorized designee.

Land use permit: An official authorization issued by the Land Use Officer in accordance with this ordinance to proceed with land disturbance and grading, or to occupy land for a use or activity, or to authorize any other activity regulated by this ordinance.

Occupy: The word "occupy" as applied to any land or building shall be construed to include the words "intended, arranged or designed to be used or occupied."

Used: The word "used" as applied to any land, building or structure shall be construed to include the words "intended, arranged, or designed to be used or occupied."

Variance: A grant of relief from the requirements of this ordinance which permits construction or use in a matter otherwise prohibited by this ordinance, which may be approved in individual cases upon application and applied to specific property where compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to make a profit. A variance is a minimal relaxation or modification of the strict terms of the regulations of this ordinance which are dimensional in nature as applied to specific property.

§1-3-2        **INTERPRETATIONS**

In the interpretation and application of this Ordinance all provisions shall be considered as minimum requirements. Where the literal interpretation is clear to the Land Use Officer, it shall be construed literally. Where the section or subsection has a statement of purpose and intent, the Land Use Officer shall consider said purpose and intent in making the interpretation. Where ambiguity exists the Land Use Officer shall interpret this ordinance in favor of the least restrictive use of property.

§1-4        **APPLICABILITY**

Unless this ordinance clearly indicates otherwise, this ordinance shall apply within the unincorporated limits of Dade County, Georgia.

§1-5        **EXEMPTIONS**

The following uses and activities are hereby exempted from the requirement of Section 1-6 of this ordinance to obtain a Land Use Permit:

- (a) Public buildings, uses, and structures and semi-public uses and structures, along with the land disturbance associated with such buildings and/or uses.

§1-6        **REQUIREMENTS**

It shall be unlawful to erect, move, add to, structurally alter any building or structure, use or occupy or permit the use of any occupancy of any building, structure, land, water or premises, or initiate any land use activity without obtaining any applicable Land Use Permit required by this ordinance.

§1-7        **PROCEDURES**

The Land Use Officer is hereby authorized to establish administrative procedures for the handling of applications for permits, variances, appeals, and other actions necessary to administer this ordinance, where such procedures are not already fully set forth in this ordinance.

§1-8        **ADMINISTRATION**

It shall be the duty of the duly appointed Land Use Officer to administer and interpret this ordinance. To this end, the Land Use Officer or such person or persons as the Dade County Board of Commissioners may designate, is authorized to prepare

administrative procedures, guidelines, application forms, to tend to other administrative details not inconsistent with the provisions of this ordinance, and to implement the provisions of this ordinance. The Land Use Officer may delegate administrative functions, powers and duties assigned by this ordinance to other staff as may be appropriate, without the need to reflect such delegation by formal action.

## **§1-9            ENFORCEMENT AND PENALTIES**

### **§1-9-1        GENERALLY**

Any action or inaction which violates the provisions of this ordinance or the requirements of an approved site plan or permit may be subject to any or all of the enforcement actions and remedies described in this section.

### **§1-9-2        STOP WORK ORDER**

The Land Use Officer, upon learning or discovering a violation of this ordinance or any approved site plan or permit issued pursuant to this ordinance, may immediately issue a stop work order which shall be posted on the job site and mailed to the applicant shown on the permit or approved site plan. In cases where the Land Use Officer discovers that a violation is clearly imminent, he may issue a “cease and desist” order to prevent such a clearly imminent violation from occurring. Such “cease and desist” order shall have the same effect as a stop work order.

The stop work order shall remain in effect until the applicant or 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 necessary remedial measures to cure such violation or violations.

### **§1-9-3        NOTICE OF VIOLATION**

Prior to or concurrent with the issuance of a Stop Work Order, if the Land Use Officer determines that an applicant or other responsible firm, person or corporation has failed to comply with the terms and conditions of a permit, an approved site plan or the provisions of this ordinance, the Land Use Officer 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 the required permit, the notice of violation shall be served on the owner or the responsible person in charge of the activity being conducted on the site.

### **§1-9-4        CONTENT OF NOTICE OF VIOLATION**

Notices of violation shall contain the following:

- (a) The name and address of the owner or the applicant or the responsible person;
- (b) The address or other description of the site upon which the violation is occurring;
- (c) A statement specifying the nature of the violation;
- (d) A description of the remedial measures necessary to bring the action or inaction into compliance with the permit, the approved site plan or this ordinance and the date for the completion of such remedial action, and a date set forth for completion of remedial measures, after which further enforcement action will be taken; and
- (e) A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed.

In preparing notices of violations, the Land Use Officer is authorized to require, as remedial measures, the restoration of land or property disturbed to its original condition or to undertake mitigation in another location where irreversible damage has occurred.

§1-9-5 FAILURE OF REMEDIAL MEASURES

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 actions or penalties described in this section as appropriate may be taken or assessed against the person to whom the notice of violation was directed.

§1-9-6 SUSPENSION, REVOCATION OR MODIFICATION OF PERMIT

The Land Use Officer may suspend, revoke or modify any permit or approval authorizing an activity or 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 or has otherwise cured the violations described therein, provided such permit may be reinstated (upon such conditions as the enforcement officer may deem necessary) to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.

§1-9-7 WITHHOLDING OF UTILITY SERVICE

The Land Use Officer may request or direct any utility service provider to withhold utility service to any property on which a violation has occurred.

§1-9-8 CITATION

The Land Use Officer shall have authority to issue citations and to prosecute violations before a court of competent jurisdiction. Violations of ordinances in the County may be tried upon citation with or without a prosecuting attorney as well as upon accusations.

§1-9-9 PENALTIES

Any person, firm or corporation violating, neglecting or refusing to comply with any of the provisions of this ordinance, shall be guilty of a misdemeanor and shall be punished as provided in Section 1-19 of the Code of Ordinances of Dade County, Georgia. Each day any violation of this ordinance shall continue shall constitute a separate offense.

§1-9-10 COMPLAINTS

Whenever a violation of this ordinance occurs or is alleged to have occurred, any person may file a written complaint. Such complaint shall state clearly and fully the causes and bases of the complaint and shall be filed with the Land Use Officer. The Land Use Officer shall record properly such complaint, investigate, and take action thereon as may be appropriate to enforce this ordinance.

**§1-10 BOARD OF APPEALS, VARIANCES AND APPEALS**

§1-10-1 BOARD OF APPEALS

A Board of Appeals is hereby established. The Board of Appeals shall adopt rules of procedure as are necessary to carry out the purposes of its authority. The Board shall establish a regular meeting date and time for its meetings; however, meetings shall be held only on an as-needed basis and shall be open to the public. The Board shall appoint a secretary, who shall be the Land Use Officer unless otherwise designated, to record the minutes of its proceedings, showing the action of each board member upon each question. The Board shall keep records of its examinations and other official actions, all of which shall be filed with the County Clerk and be public records. The Land Use Officer shall serve as the advisor to the Board, except in cases of an appeal from a decision of the Land Use Officer. The Board may adjourn any public hearing or meeting in order to obtain additional information, or to serve further notice upon such other property owners as it decides may be interested in the application or appeal; provided, however, that the Board shall act on all applications within 32 days of the date the initial public hearing on the matter was scheduled.

§1-10-2 AUTHORITY TO GRANT VARIANCES

The Board of Appeals is authorized to receive, consider, grant, grant with conditions, or deny applications for variances to the dimensional or other requirements of this code, after a public hearing and after making written findings of fact that the conditions for variances specified herein have been fulfilled. In granting a variance, the Board may impose such requirements and conditions with respect to the location, construction, maintenance and operation of any use or building, in addition to those expressly set forth herein, as may be deemed necessary for the protection of adjacent properties and

the public interest. Decisions of the Board of Appeals shall be final; there shall be no appeal to the Board of Commissioners, but the applicant aggrieved by a decision of the Board of Appeals may pursue appeals to the Courts of proper jurisdiction of the State of Georgia as provided by law.

#### §1-10-3 VARIANCE APPLICATIONS

A property owner or the property owner's authorized agent may initiate a request for variance by filing an application with the Land Use Officer. The application shall be accompanied by a site plan, drawn to scale, showing the dimensions and arrangement of the proposed development. The Land Use Officer may require other drawings or materials essential to an understanding of the proposed use and variance requested and its relationship to the surrounding properties. A fee shall accompany variance applications as established by the Dade County Board of Commissioners.

#### §1-10-4 CONDITIONS AND CRITERIA FOR GRANTING A VARIANCE

The Board of Appeals, in cases where specifically authorized, may grant a variance only after consideration and adoption of findings of fact that one or more of the following conditions exist and criteria are met:

- (a) There are unusual, exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other property in the same vicinity or use district, and such conditions are not the result of the owner's or occupant's own actions. Such conditions may include topography, unique natural conditions, surroundings of the subject property, or the size or peculiar shape of the lot.
- (b) As a result of such unusual circumstance or conditions, there is an unnecessary hardship or practical difficulty in complying with the provisions of this code.
- (c) The authorization of such variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which property is located, and the variance will be in harmony with the general purposes and intent of the provisions of this code.
- (d) The variance approved is the minimum variance that will make possible the legal use of the land, building or structure.

#### §1-10-7 STAFF INVESTIGATION AND REPORT

The Land Use Officer may make an investigation of all variance applications and may prepare a report thereon, considering applicable criteria specified herein. Said investigation shall if prepared be submitted to the Board of Appeals. Said investigation

shall if prepared be submitted to the Board of Appeals. Said investigation if prepared shall also be made available to the applicant prior to any public hearing scheduled on the matter.

#### §1-10-8 APPEALS OF ADMINISTRATIVE DECISIONS

Any person, who alleges there is an error in, or who is aggrieved by a decision of the Land Use Officer in the administration, enforcement, and/or interpretation of this code, may file an appeal with the County Clerk stating the grounds for such appeal within 15 days from the date of Land Use Officer's decision. The Board of Appeals is hereby authorized to hear and decide said appeals, after proper application, public hearing and adoption of relevant findings of fact.

An appeal from a ruling of the Land Use Officer shall stay all proceedings in furtherance of the action being appealed. The Board may affirm, overrule or modify, in whole or in part, the rulings of the Land Use Officer. In cases where an appeal is granted, the Board shall have all necessary powers of the Land Use Officer and may issue land use permits, or direct the issuance of land use permits not otherwise inconsistent with this code and any other code, resolution, or ordinance adopted by the Dade County Board of Commissioners.

#### §1-10-9 NOTICE AND HEARING

Upon the filing of any complete application with the Land Use Officer, for a variance or for appeal, a public hearing shall be scheduled and notice provided of such public hearing in accordance with this subsection. Prior to acting upon an application for variance or appeal, the Board of Appeals shall convene and conduct a public hearing on the application. The Board of Appeals shall establish its own procedures for conducting public hearings.

For any application for a variance or appeal, a public notice shall be published in a newspaper of general circulation in the local jurisdiction at least 15 days, but not more than 45 days prior to the scheduled public hearing. Such notice shall state the purpose, location, time and date of the public hearing, and the nature of said application. For variance applications, the public notice shall specifically include the location of the property and the provision or provisions of the ordinance proposed to be varied. For appeals, the public notice shall specifically include the action of the Land Use Officer that is the subject of the appeal.

For all variance applications, in addition to the public notice published in a newspaper, the land Use Officer shall post a sign, which shall be not less than 4 square feet in area, in a conspicuous place on said property not less than 15 days prior to the date of the public hearing. Said sign shall contain information concerning the location of the property, the provision or provisions of the ordinance proposed to be varied, and the date, time and location of the public hearing before the Board of Appeals.

§1-10-10     ACTION ON VARIANCES AND APPEALS

The Board of Appeals shall make findings and render a decision in writing within 32 days after conducting the public hearing on the proposed variance or appeal. The Board's Secretary shall notify the applicant, in writing, of its decision within five days after the Board has rendered its decision.

§1-11         LEGAL STATUS PROVISIONS

§1-11-1       CONFLICT WITH OTHER LAWS

Whenever the regulations of this ordinance impose more restrictive standards than are required in or under any other statute or ordinance, the requirements of this ordinance shall govern. Whenever the provisions of any other statute or ordinance require more restrictive standards than are required by this ordinance, the provisions of such more restrictive statute or ordinance shall govern.

§1-11-2       VALIDITY AND SEVERABILITY

Should any section or provision of this ordinance be declared invalid or unconstitutional by any court or competent jurisdiction, such declaration shall not affect the validity of the ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

§1-11-3       REPEAL OF CONFLICTING ORDINANCES

All ordinances and resolutions and parts thereof in conflict herewith are repealed to the extent necessary to give this ordinance full force and effect, except that any ordinances or resolutions repealed by this provision shall not limit or impair the county's authority to enforce such ordinances or resolutions to the extent that violations thereof occurred prior to repeal.

§1-11-4       ADOPTION AND EFFECTIVE DATE

This ordinance is hereby adopted this \_\_\_\_ day of \_\_\_\_\_, 2011, and shall be effective immediately upon its adoption, the public welfare demanding it.

## ARTICLE 2 USE BASED RESTRICTIONS

### §2-1 SPECIAL USE PERMITS REQUIRED – CLASS 1

Land use for certain purposes defined herein shall be unlawful except as provided:

§2-1-1 Class 1 Special Use Permit Required for certain uses; application submission; fee.

- (a) Uses controlled in this subdivision are prohibited unless and until a class 1 special use permit is first obtained from the Land Use Officer.
- (b) An application for a class 1 special use permit shall be submitted to the Land Use Officer in such a manner and on such forms as the Land Use Officer may prescribe and shall be accompanied by an application fee prescribed in the county schedule of fees.
- (c) A class 1 special use permit shall be issued to an applicant on evidence, satisfactory to the Land Use Officer, of compliance with this article and all other applicable provisions of this article.

§2-1-2 Unlawful acts. Without first obtaining and possessing a class 1 special use permit, it shall be unlawful and a violation of this subdivision to:

- (a) Engage in the disposal of any biomedical waste, contaminant, designated hazardous waste, hazardous chemical substance or mixture, hazardous constituent, hazardous waste, municipal solid waste, oil, pesticide, solid waste or special solid waste.
- (b) Construct, install, operate or substantially alter any composting facility, land disposal facility, landfill, municipal solid waste disposal facility, municipal solid waste landfill, private sanitary landfill or incinerator.

§2-1-3 Application contents.

- (a) An application for a class 1 special use permit must provide the following information:
  - (1) If either the applicant, permit holder or any owner of the proposed use or facility is a corporation, submit proof that any such corporation is in good standing with the state;
  - (2) The names and addresses of all persons having a legal or equitable ownership interest of at least one percent in the business proposing the use;
  - (3) If either the applicant, permit holder or any owner of the proposed use or facility is a corporation, give the names and addresses of all applicable officers and directors;
  - (4) State whether the applicant, permit holder or any owner, director or officer has ever been convicted of a felony and, if so, provide details thereof;
  - (5) State whether the applicant, permit holder, owner or any director or officer has ever been charged, cited or had suit brought against him

for violation of any law, rule, regulation or order relating to the protection of the environment;

- (6) If either the applicant, permit holder or any owner of the proposed use or facility is a corporation, state the name and address of the registered agent for service of process and notices;
  - (7) Submit a detailed list of all judgments and pending litigation, whether or not in the state;
  - (8) Submit copies of all state and federal income tax returns for the owner, applicant and/or the permit holder for the three years preceding the filing of the application;
  - (9) Submit a current audited financial statement, prepared according to generally accepted accounting principles, of the applicant, permit holder and owner, showing assets, liabilities, income, expenditures and a budget for the current year;
  - (10) Submit a detailed list of all facilities that the applicant, owner or permit holder owns, operates or uses, which are similar in character to the use or facility for which the application has been made;
  - (11) State whether or not the applicant, permit holder, owner or any officer or director thereof has ever been denied a permit for a use or facility, or proposed use or facility similar in character to the use or facility for which the application has been made, and if so, provide the details thereof;
  - (12) Provide copies of all necessary applications, permits, licenses and approvals from state and federal environmental regulatory agencies for the use or facility for which the application was made;
  - (13) Submit a plan, drawn to scale, showing the proposed location of the various different uses of the property, boundary lines, dimensions of property, names of owners of abutting properties, location of proposed roads, parking facilities, structures, a topographical map and grading plan, and the type and location of drainage, sewerage, water and other utilities to serve the proposed facility.
- (b) The Land Use Officer may require such other plans, data, specifications, engineering reports, designs and other information it deems necessary, at the cost of the applicant, to make a determination of compliance with this article.

§2-1-4 Initial determination of application.

- (a) Upon receipt of an application for a class 1 special use permit, the Land Use Officer shall, within 45 days, make a determination as to whether the minimum requirements have been met.
- (b) If the Land Use Officer finds that the application, as submitted, shows compliance with the requirements of this subdivision, except that not all required information has been submitted, then it shall notify the applicant of such and request the information in question.

- (c) If the Land Use Officer finds that the application makes a prima facie showing of compliance with the requirements of this subdivision, then §2-1-5 and §2-1-6 shall apply.
- (d) If the Land Use Officer finds that the application as submitted would preclude the issuance of a class 1 special use permit, then the Land Use Officer may deny the application.

§2-1-5. Weighing advantages and disadvantages to public in making final determination on issuance.

- (a) Before a class 1 special use permit can be granted, the Land Use Officer must find, after a public hearing in accordance with §2-1-6, that the public benefits of, and need for, the proposed use or facility are greater than the negative effects upon and risks to the environment, public health and safety.
- (b) The Land Use Officer shall give careful consideration to the reasonably foreseeable negative effects upon and risks to the environment and public health and safety for a use or facility that is or would be located within a significant groundwater recharge area, wetland, or water supply watershed. The Land Use Officer may order such studies and investigations, at the cost of the applicant, as the Land Use Officer may deem necessary to make such determination.

§2-1-6 Notice of application publication; sign posting; hearing.

- (a) Within 15 days after the initial approval of an application, the Land Use Officer shall cause a notice to be published in at least one local newspaper of general circulation in the county, once each week for four consecutive weeks. The notice shall state, at a minimum, that an application for a specified use or facility has been received, the name of the applicant, the date, time and location of a public hearing before the Land Use Officer, and that the hearing shall be held for the purpose of receiving comments and suggestions concerning the location and requirements for the operation of the use or facility.
- (b) Also within 15 days of initial approval of an application, the Land Use Officer shall cause a sign to be posted at or near the main entrance to the proposed site visible from the roadway at said entrance stating substantially the same information as required by subsection (a) of this section.
- (c) The hearing shall be held after the final publication of notice, but no more than 45 days after the first publication.

§2-1-7 Conditions of issuance.

- (a) Each class 1 special use permit may be issued, provided that all of the following conditions are met:
  - (1) Adequate space for off-street parking shall be provided.

- (2) A 750-yard setback buffer distance shall be maintained from the nearest building line of the nearest dwelling.
  - (3) A 500-yard setback buffer distance from the nearest building line of a non-dwelling building structure used for human occupancy (such as businesses, industrial buildings, commercial offices, etc.) must be maintained.
  - (4) A 250-yard setback buffer distance from private property lines shall be maintained for aesthetic reasons.
  - (5) Other provisions of this article (including, but not limited to, type of zoning at the site, setback buffers and screening) applying to the particular use and the type of use shall be complied with.
  - (6) Such use shall not occur within a two-mile radius of the most significant groundwater recharge areas shown on the comprehensive plan.
  - (7) The use shall be consistent with the comprehensive plan for the area.
  - (8) The proposed use must be able to be served by adequate public utilities.
  - (9) Adequate traffic routes and entrances must be established, including consideration of the deterioration of the existing roadway, expenditure of public funds to maintain roadways, adequacy and safety of road intersections, road widths on roads within and leading to the property, pavement conditions (material, thickness, age, etc.), width and length of property boundaries at road access areas and type of vehicles that may be used at the property.
  - (10) The lot size must be sufficient in order to provide the operation space needed for the proposed use to carry out all business related transactions without infringing on setback and other requirements of this article.
  - (11) The owner and/or permit holder must provide adequate screening of the entire premises. The screening must effectively screen the premises on a year-round basis and must be compatible with the facility's surroundings.
- (b) Once the Land Use Officer shall have determined that all of the foregoing requirements have been satisfied, it must further find that the benefits of and need for the proposed use are greater than any possible depreciating effects and damages to the neighboring properties before a class 1 special use permit for such uses can be granted.
- (c) Each class 1 special use permit shall contain such terms and conditions as are deemed necessary by the Land Use Officer to protect the environment, public health and safety. The Land Use Officer may require such testing and construction supervision as it deems necessary to protect the environment and public health and safety.

§2-1-8 Additional fees.

- (a) The owner or operator of any activity or facility requiring a class 1 special use permit, including an activity or facility granted interim status shall pay, as a condition of that permit, fees, in addition to the application fee, sufficient to cover the reasonable costs and expenses of:
  - (1) Reviewing and acting upon any application for a permit or renewal thereof;
  - (2) Implementing and enforcing the terms of the permit;
  - (3) Notices required by this subdivision;
  - (4) Monitoring, investigation and enforcement of activities and facilities requiring permits;
  - (5) Preparing generally applicable regulations and guidance;
  - (6) Modeling, analyses and demonstrations; and
  - (7) All other expenses of the Land Use Officer in connection with this subdivision and related federal, state and local laws, rules, regulations, and orders.
- (b) The fee shall be in the amount of \$5.00 per ton or volume equivalent of substances received by a site or facility for disposal under this subdivision. All fees shall be paid monthly.
- (c) All fees collected under this section shall be paid into the county general fund.

§2-1-9 Duration and renewal.

- (a) Each class 1 special use permit shall have a duration of one year.
- (b) The holder of each class 1 special use permit may seek renewal of the permit by submitting to the Land Use Officer an application for renewal on such forms as may be prescribed by the Land Use Officer not more than 60 nor less than 30 days before the expiration of the permit, along with a fee for renewal in the amount prescribed in the county schedule of fees.
- (c) The Land Use Officer shall conduct such inspections and investigations as it may deem necessary or useful in determining whether to renew a class 1 special use permit.
- (d) The Land Use Officer shall not be required to renew the permit of an activity or facility that is not in substantial compliance with this article and all applicable federal, state, and local laws, rules, regulations and orders.
- (e) In the event the Land Use Officer denies an application for renewal, it shall send written notice of such denial to the permit holder, setting forth in the notice the reason for the action. Such notice shall state that it will become final unless a written request for a hearing is filed with the Land Use Officer within 15 days from the date of said notice. The notice shall be delivered to the permit holder either personally or by certified mail, return receipt requested.

- §2-1-10 Amendment and modification applications.
- (a) Any permit holder may file an application for amendment or modification of a permit with the Land Use Officer. All modifications of existing permits shall be classified by the Land Use Officer as major or minor modifications. Without limiting the generality of the requirements of the previous sentence, all modifications of existing permits to allow vertical or horizontal expansion of existing disposal facilities shall be classified as major permit modifications. Upon receipt of an application for a major permit modification, the procedures of §2-1-5 and §2-1-6 shall be followed. A modification may be granted only in accordance with this article.
  - (b) An application for amendment of a class 1 special use permit shall be submitted on such forms as may be prescribed by the Land Use Officer and shall be accompanied by an application fee prescribed in the county schedule of fees.
- §2-1-11 Financial responsibility.
- (a) No class 1 special use permit shall be issued to any person, and no facility requiring a class 1 special use permit shall be constructed, operated, maintained, modified or sold by any person, unless such person can demonstrate financial responsibility for taking corrective action and for compensating a third party for bodily injury and property damage in an annual aggregate amount of \$5,000,000.00. The required annual aggregate coverage amount does not in any way limit the liability of the owner or the operator. The owner or operator may use any one or a combination of the following mechanisms to demonstrate financial responsibility, to-wit:
    - (1) Surety bond; or
    - (2) Irrevocable letter of credit.
  - (b) An owner or operator must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility until released from the requirements of this section by the Land Use Officer.
- §2-1-12 Exemptions.
- (a) A class 1 special use permit shall not be required for the following persons and activities, provided that federal and state laws are complied with and provided that the activity does not adversely affect the natural resources or public health and safety of the county:
    - (1) Any individual disposing of solid waste originating from his own residence onto land or facilities owned by that individual;
    - (2) Individuals, farmers and other persons using pesticides and fertilizers on land under their ownership or control for the purpose of regulating and promoting plant growth;

- (3) Existing facilities, sites, and activities otherwise requiring a class 1 special use permit, that are owned or operated by the county or the municipal corporations of Trenton, Georgia;
  - (4) Incinerators at retail facilities;
  - (5) Incinerators and composting as used for agricultural purposes or poultry house operations.
- (b) A class 1 special use permit shall not be required for a person disposing of livestock feeding facility wastes from his own facility with a maximum total capacity of 1,000 cattle or 5,000 swine, provided that such activity does not adversely affect the natural resources or public health or safety of the county. If such person shall provide an approved waste disposal system which is capable of properly disposing of the runoff from a ten-year storm, such person shall be further exempt, regardless of total per head capacity. Nothing in this section shall limit the right of any person to use poultry or other animal manure for fertilizer.

§2-1-13 Maintenance and submission of records.

The Land Use Officer may require the holder of a class 1 special use permit to maintain and submit records of the operation and maintenance of the facility concerning any matter material in this article.

§2-1-14 Transferability and assignability.

- (a) All class 1 special use permits, including but not limited to interim status permits, are non-assignable and non-transferable. Any attempt to transfer or assign a class 1 special use permit, including but not limited to an interim status permit, whether temporarily or permanently, and whether or not with reservation of rights, shall be sufficient grounds for revocation of the permit and shall constitute a criminal violation of this article. Any sale, lease or transfer of control of a facility holding a class 1 special use permit or an interim status permit, from the entity possessing the permit or interim status to any other entity, prior to the issuance of a new permit allowing such, shall also be sufficient grounds for revocation of the special use permit or interim status permit and shall also constitute a criminal violation of this article. For purposes of this section, the sale of stock in a corporation owning or possessing a class 1 special use permit or interim status permit shall constitute an assignment or transfer of such permit.
- (b) If the Land Use Officer has cause to believe that a class 1 special use permit has been assigned or transferred, or that a facility requiring a class 1 special use permit has been sold, leased, or has had control over it transferred or that any such activity is about to occur, it may immediately or at any time seek appropriate equitable and injunctive relief.

§2-1-15 Inspections and investigations.

- (a) The Land Use Officer, or its authorized representatives, upon presentation of credentials, shall have the power to enter at reasonable times upon any

private or public property for the purpose of inspection and investigation of conditions relating to this article.

- (b) The Land Use Officer or its authorized representatives, upon presentation of credentials, shall have a right to enter upon, into or through premises of persons subject to this subdivision, or premises whereon a violation of this subdivision is reasonably believed to be occurring or is reasonably believed to be about to occur, to investigate, take samples, copy all records relating to this subdivision and the purposes thereof, and inspect for compliance with the requirements imposed under this subdivision to determine whether such a violation or threatened violation exists in accordance with the following purposes:
  - (1) For the purpose of determining whether any person subject to the requirements of this subdivision is in compliance with any standard or requirement imposed pursuant to this subdivision;
  - (2) For the purpose of investigating conditions and activities when the Land Use Officer is in possession of information sufficient to form a reasonable belief that a violation of this subdivision is occurring or is about to occur; or
  - (3) For the purpose of determining whether there has been a violation of any of the provisions of this subdivision or any permit issued pursuant thereto.
- (c) Each such inspection or investigation shall be commenced and completed with reasonable promptness. If the Land Use Officer or its authorized representatives obtain any samples prior to leaving the premises, such representatives shall give to the owner, operator, permit holder or agent in charge a receipt describing the sample obtained, and if requested, a portion of each such sample in equal volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, permit holder, or agent in charge.

§2-1-16 Confidential information.

Any information relating to secret processes, devices or methods of manufacture or production obtained by the Land Use Officer or its agents in the administration of this article shall be kept confidential.

§2-1-17 Revocation.

In the event of a violation of any provision or requirement of this subdivision, the Land Use Officer shall issue an order directed to the permit holder specifying the provisions of this subdivision alleged to have been violated and shall direct that necessary corrective action be taken within a reasonable time to be prescribed in the order. Reasonable time shall not be more than 90 days unless this would be unreasonable, and may be less than 90 days if such lesser time is reasonable. The order shall state that it will become final 15 days after the date of such notice unless a request for a hearing is filed within

that time with the Land Use Officer. Such notice shall be delivered to the permit holder either personally or by certified mail, return receipt requested.

§2-1-18 Violations; injunctive relief or writ of mandamus.

Whenever, in the judgment of the Land Use Officer, any person has engaged in or is about to engage in any act or practice which constitutes or would constitute a violation of this subdivision or permit conditions, application may be made to the superior court for an order enjoining such act or practice or for an order requiring compliance with this subdivision or permit conditions. Upon a showing that such person has engaged or is about to engage in any such violative act or practice, a temporary or permanent injunction, restraining order or other order shall be granted without the necessity of showing the lack of an adequate remedy at law.

§2-1-19 Criminal acts; continuing offenses; remedy.

In addition to provisions elsewhere in this division, the following are declared to be crimes:

- (a) It shall be unlawful to engage in any activity requiring a class 1 special use permit, except in such a manner as to conform to and comply with all applicable requirements, rules, regulations and orders established under this subdivision.
- (b) It shall be a criminal violation of this subdivision to furnish false or materially incomplete or misleading information to the Land Use Officer, or a lawful designee of the Land Use Officer, on any application, investigation, or proceeding regarding special use permits.

## **§2-2 SPECIAL USE PERMITS REQUIRED – CLASS 2**

Land use for certain purposes defined herein shall be unlawful except as provided:

§2-2-1 Class 2 Special Use Permit Required for certain uses; application submission; fee.

- (a) Uses controlled in this subdivision are prohibited unless and until a class 2 special use permit is first obtained from the Land Use Officer.
- (b) An application for a class 1 special use permit shall be submitted to the Land Use Officer in such a manner and on such forms as the Land Use Officer may prescribe and shall be accompanied by an application fee prescribed in the county schedule of fees.
- (c) A class 2 special use permit shall be issued to an applicant on evidence, satisfactory to the Land Use Officer, of compliance with this article and all other applicable provisions of this article.

§2-2-2 Unlawful acts. Without first obtaining and possessing a class 2 special use permit, it shall be unlawful and a violation of this subdivision to:

- (a) Own, operate, or maintain a residential drug rehabilitation center, halfway house, or other residential facility designed for the treatment of drug or alcohol dependency; or
- (b) Establish, own, or operate a business which sales or distributes the controlled substance methadone within the unincorporated areas of the county.

§2-2-3 Application contents. An application for a class 2 special use permit must provide that information required by § 2-1-3.

§2-2-4 Initial determination of application.

- (a) Upon receipt of an application for a class 2 special use permit, the Land Use Officer shall, within 45 days, make a determination as to whether the minimum requirements have been met.
- (b) If the Land Use Officer finds that the application, as submitted, shows compliance with the requirements of this subdivision, except that not all required information has been submitted, then it shall notify the applicant of such and request the information in question.
- (c) If the Land Use Officer finds that the application makes a prima facie showing of compliance with the requirements of this subdivision, then §2-2-5 and §2-2-6 shall apply.
- (d) If the Land Use Officer finds that the application as submitted would preclude the issuance of a class 1 special use permit, then it may deny the application. The notice of denial shall state the reason for the denial. The notice shall further state the denial shall become final unless a written request for a hearing is filed with the Land Use Officer within 15 days from the date of said notice. The notice shall be delivered to the applicant either personally or by certified mail, return receipt requested.

§2-2-5. Weighing advantages and disadvantages to public in making final determination on issuance.

- (a) Before a class 2 special use permit can be granted, the Land Use Officer must find, after a public hearing in accordance with §2-2-6, that the public benefits of, and need for, the proposed use or facility are greater than the negative effects upon and risks to the stability of the neighborhoods and surrounding use, environment, public health and safety.
- (b) The Land Use Officer shall give careful consideration to the reasonably foreseeable negative effects upon and risks to the stability of the neighborhoods and surrounding use, environment and public health and safety for the area.

§2-2-6 Notice of application publication; sign posting; hearing.

- (a) Within 15 days after the initial approval of an application, the Land Use Officer shall cause a notice to be published in at least one local newspaper of general circulation in the county, once each week for four

consecutive weeks. The notice shall state, at a minimum, that an application for a specified use or facility has been received, the name of the applicant, the date, time and location of a public hearing before the Land Use Officer, and that the hearing shall be held for the purpose of receiving comments and suggestions concerning the location and requirements for the operation of the use or facility.

- (b) Also within 15 days of initial approval of an application, the Land Use Officer shall cause a sign to be posted at or near the main entrance to the proposed site visible from the roadway at said entrance stating substantially the same information as required by subsection (a) of this section.
- (c) The hearing shall be held after the final publication of notice, but no more than 45 days after the first publication.
- (d) In addition to the notice, posting, and hearing required above, a public hearing shall be held on the proposed action. Such public hearing shall be held at least six months but not more than nine months prior to the date of final action on such zoning decision. Notice of the proposed hearing required by this subsection shall be given by O.C.G.A. § 36-66-4(b) and by publishing in a newspaper of general circulation within the territorial boundaries of Dade County a notice of the hearing at least 15 days and not more than 45 days prior to the date of the hearing. Notice as required by this subsection, both posted and published, shall include a prominent statement that the proposed zoning decision relates to or will allow the location or relocation of a halfway house, drug rehabilitation center, or other facility for treatment of drug dependency. The published notice shall be at least six column inches in size and shall not be located in the classified advertising section of the newspaper.

§2-2-7 Conditions of issuance.

- (a) Each class 2 special use permit may be issued, provided that all of the following conditions are met:
  - (1) Adequate space for off-street parking shall be provided.
  - (2) A 750-yard setback buffer distance shall be maintained from the nearest building line of the nearest residence, daycare center, kindergarten, school or college.
  - (3) A 250-yard setback buffer distance from the nearest building line of a non-dwelling building structure used for human occupancy (such as businesses, industrial buildings, commercial offices, etc.) must be maintained.
  - (4) The use shall be consistent with the comprehensive plan for the area.
  - (5) The proposed use must be able to be served by adequate public utilities.
  - (6) All facilities must provide at least the minimum square footage of bedroom personal space, personal closet space and bathrooms as

required by the State of Georgia for the licensing of drug treatment centers; and

- (7) Comply with The "Rules and Regulations for Drug Abuse Treatment and Education Programs," Chapter 290-4-2 and the "Rules and Regulations for Narcotic Treatment Programs," Chapter 290-9-12 as promulgated by the Georgia Department of Human Resources, and as hereafter amended, and the same is hereby adopted and made a part hereof; and
  - (8) Licensed by the Georgia Department of Human Resources as a drug treatment center.
- (b) Once the Land Use Officer shall have determined that all of the foregoing requirements have been satisfied, it must further find that the benefits of and need for the proposed use are greater than any possible depreciating effects and damages to the neighboring properties before a class 2 special use permit for such uses can be granted.
- (c) Each class 2 special use permit shall contain such terms and conditions as are deemed necessary by the Land Use Officer to protect the environment, public health and safety. The Land Use Officer may require such testing and construction supervision as it deems necessary to protect the environment and public health and safety.

§2-2-8 Additional fees.

- (a) The owner or operator of any activity or facility requiring a class 2 special use permit, including an activity or facility granted interim status, shall pay, as a condition of that permit, fees, in addition to the application fee, sufficient to cover the reasonable costs and expenses of:
- (1) Reviewing and acting upon any application for a permit or renewal thereof;
  - (2) Implementing and enforcing the terms of the permit;
  - (3) Notices required by this subdivision;
  - (4) Monitoring, investigation and enforcement of activities and facilities requiring permits;
  - (5) Preparing generally applicable regulations and guidance;
  - (6) All other expenses of the Land Use Officer in connection with this subdivision and related federal, state and local laws, rules, regulations, and orders.
- (c) All fees collected under this section shall be paid into the county general fund.

§2-2-9 Duration and renewal.

- (a) Each class 2 special use permit shall have a duration of five years.
- (b) The holder of each class 2 special use permit may seek renewal of the permit by submitting to the Land Use Officer an application for renewal on such forms as may be prescribed by the Land Use Officer not more than 12 months nor less than 9 months before the expiration of the permit,

along with a fee for renewal in the amount prescribed in the county schedule of fees.

- (c) The Land Use Officer shall conduct such inspections and investigations as it may deem necessary or useful in determining whether to renew a class 2 special use permit.
- (d) The Land Use Officer shall not be required to renew the permit of an activity or facility that is not in substantial compliance with this article and all applicable federal, state, and local laws, rules, regulations and orders.
- (e) In the event the Land Use Officer denies an application for renewal, it shall send written notice of such denial to the permit holder, setting forth in the notice the reason for the action. Such notice shall state that it will become final unless a written request for a hearing is filed with the Land Use Officer within 15 days from the date of said notice. The notice shall be delivered to the permit holder either personally or by certified mail, return receipt requested.

§2-2-10 Amendment and modification applications.

- (a) Any permit holder may file an application for amendment or modification of a permit with the Land Use Officer. All modifications of existing permits shall be classified by the Land Use Officer as major or minor modifications. Without limiting the generality of the requirements of the previous sentence, all modifications of existing permits to allow vertical or horizontal expansion of existing disposal facilities shall be classified as major permit modifications. Upon receipt of an application for a major permit modification, the procedures of §2-2-5 and §2-2-6 shall be followed. A modification may be granted only in accordance with this article.
- (b) An application for amendment of a class 2 special use permit shall be submitted on such forms as may be prescribed by the Land Use Officer and shall be accompanied by an application fee prescribed in the county schedule of fees.

§2-2-11 Financial responsibility.

- (a) No class 2 special use permit shall be issued to any person, and no facility requiring a class 1 special use permit shall be constructed, operated, maintained, modified or sold by any person, unless such person can demonstrate financial responsibility for taking corrective action and for compensating a third party for bodily injury and property damage in an annual aggregate amount of \$1,000,000.00. The required annual aggregate coverage amount does not in any way limit the liability of the owner or the operator. The owner or operator may use any one or a combination of the following mechanisms to demonstrate financial responsibility, to-wit:
  - (1) Surety bond; or
  - (2) Irrevocable letter of credit.

- (b) An owner or operator must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility until released from the requirements of this section by the Land Use Officer.

§2-2-12 Maintenance and submission of records.

The Land Use Officer may require the holder of a class 2 special use permit to maintain and submit records of the operation and maintenance of the facility concerning any matter material in this article.

§2-2-13 Transferability and assignability.

- (a) All class 2 special use permits, including but not limited to interim status permits, are non-assignable and non-transferable. Any attempt to transfer or assign a class 2 special use permit, including but not limited to an interim status permit, whether temporarily or permanently, and whether or not with reservation of rights, shall be sufficient grounds for revocation of the permit and shall constitute a criminal violation of this article. Any sale, lease or transfer of control of a facility holding a class 2 special use permit or an interim status permit, from the entity possessing the permit or interim status to any other entity, prior to the issuance of a new permit allowing such, shall also be sufficient grounds for revocation of the special use permit or interim status permit and shall also constitute a criminal violation of this article. For purposes of this section, the sale of stock in a corporation owning or possessing a class 2 special use permit or interim status permit shall constitute an assignment or transfer of such permit.
- (b) If the Land Use Officer has cause to believe that a class 2 special use permit has been assigned or transferred, or that a facility requiring a class 2 special use permit has been sold, leased, or has had control over it transferred or that any such activity is about to occur, it may immediately or at any time seek appropriate equitable and injunctive relief.

§2-2-14 Inspections and investigations.

- (a) The Land Use Officer, or its authorized representatives, upon presentation of credentials, shall have the power to enter at reasonable times upon any private or public property for the purpose of inspection and investigation of conditions relating to this article.
- (b) The Land Use Officer or its authorized representatives, upon presentation of credentials, shall have a right to enter upon, into or through premises of persons subject to this subdivision, or premises whereon a violation of this subdivision is reasonably believed to be occurring or is reasonably believed to be about to occur, to investigate, take samples, copy all records relating to this subdivision and the purposes thereof, and inspect for compliance with the requirements imposed under this subdivision to determine whether such a violation or threatened violation exists in accordance with the following purposes:

- (1) For the purpose of determining whether any person subject to the requirements of this subdivision is in compliance with any standard or requirement imposed pursuant to this subdivision;
  - (2) For the purpose of investigating conditions and activities when the Land Use Officer is in possession of information sufficient to form a reasonable belief that a violation of this subdivision is occurring or is about to occur; or
  - (3) For the purpose of determining whether there has been a violation of any of the provisions of this subdivision or any permit issued pursuant thereto.
- (c) Each such inspection or investigation shall be commenced and completed with reasonable promptness. If the Land Use Officer or its authorized representatives obtain any samples prior to leaving the premises, such representatives shall give to the owner, operator, permit holder or agent in charge a receipt describing the sample obtained, and if requested, a portion of each such sample in equal volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, permit holder, or agent in charge.

§2-2-15 Revocation.

In the event of a violation of any provision or requirement of this subdivision, the Land Use Officer shall issue an order directed to the permit holder specifying the provisions of this subdivision alleged to have been violated and shall direct that necessary corrective action be taken within a reasonable time to be prescribed in the order. Reasonable time shall not be more than 90 days unless this would be unreasonable, and may be less than 90 days if such lesser time is reasonable. The order shall state that it will become final 15 days after the date of such notice unless a request for a hearing is filed within that time with the Land Use Officer. Such notice shall be delivered to the permit holder either personally or by certified mail, return receipt requested.

§2-2-16 Violations; injunctive relief or writ of mandamus.

Whenever, in the judgment of the Land Use Officer, any person has engaged in or is about to engage in any act or practice which constitutes or would constitute a violation of this subdivision or permit conditions, application may be made to the superior court for an order enjoining such act or practice or for an order requiring compliance with this subdivision or permit conditions. Upon a showing that such person has engaged or is about to engage in any such violative act or practice, a temporary or permanent injunction, restraining order or other order shall be granted without the necessity of showing the lack of an adequate remedy at law.

§2-2-17 Criminal acts; continuing offenses; remedy.

- (a) Notwithstanding provisions elsewhere in this division, the following are declared to be crimes:

- (1) It shall be unlawful to engage in any activity requiring a class 2 special use permit, except in such a manner as to conform to and comply with all applicable requirements, rules, regulations and orders established under this subdivision.
  - (2) It shall be a criminal violation of this subdivision to furnish false or materially incomplete or misleading information to the Land Use Officer, or a lawful designee of the Land Use Officer, on any application, investigation, or proceeding regarding special use permits.
- (b) At the discretion of the presiding judge, a violator of this subdivision may be given a reasonable length of time to rectify or correct the violation.

**PROPOSED AND FIRST READING** took place on the 3<sup>rd</sup> day of March 2011.

**SECOND READING AND ADOPTION** took place on the \_\_\_ day of \_\_\_\_\_ 2011.

**BOARD OF COMMISSIONERS  
DADE COUNTY, GEORGIA**

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**TED M. RUMLEY  
CHAIRPERSON / COUNTY EXECUTIVE**

(COUNTY SEAL)

**ATTEST:**

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**DON TOWNSEND  
COUNTY CLERK**

## CLERK'S CERTIFICATE

I, Don Townsend, County Clerk of Dade County Board of Commissioners, do hereby certify that the foregoing Ordinance constitutes a true and correct copy of the Ordinance, adopted on March 3, 2011 and April 7, 2011, by the Dade County Board of Commissioners. After due notice was given in accordance with law; and the Commission being duly called and assembled, at which a quorum was present, the Dade County Board of Commissioners did adopt the attached Ordinance, the original appearing as a public record in the Minute Book of said Commission which is in my custody and control.

Given under my hand and the Seal of Dade County this 7<sup>th</sup> day of April 2011.



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DON TOWNSEND, Clerk  
Dade County  
Board of Commissioners