

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF TATTNALL COUNTY, GEORGIA, TO AMEND ARTICLE V, OF CHAPTER 22, OF THE CODE OF ORDINANCES OF TATTNALL COUNTY, BY STRIKING AND DELETING ARTICLE V IN ITS ENTIRETY AND BY INSERTING A NEW ARTICLE V WITHIN CHAPTER 22, AS MORE SPECIFICALLY SET FORTH AS FOLLOWS:

ARTICLE V, REGARDING TIMBER HARVESTING, CONSISTING OF SECTIONS 22-218 THROUGH 22-227, AND RESERVING SECTIONS 22-228 THROUGH 22-250; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR THE REPEAL OF ALL CONFLICTING ORDINANCES; AND PROVIDING FOR OTHER PURPOSES ALLOWED BY LAW.

Whereas, Tattnall County, Georgia ("Tattnall County") is a body corporate and politic pursuant to Georgia law;

Whereas, the Code of Ordinances of Tattnall County ("Code") authorizes the Board of County Commissioners of Tattnall County (hereinafter referred to as either "Board of County Commissioners of Tattnall County" or "Governing Authority of Tattnall County") to provide for the general health, safety and welfare of the citizens of Tattnall County;

Whereas, timber harvesting operations occur in the unincorporated portions of Tattnall County on a recurring basis;

Whereas, timber harvesting is an important component of the local economy in Tattnall County, providing revenue to landowners, business opportunities, and jobs for local citizens, and thus it is the intent of the Governing Authority of Tattnall County to facilitate this industry while at the same time protecting county infrastructure and the safety of the community;

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

Whereas, it is in the public interest to protect the road system of Tattnall County from damage caused by timber harvesting operations to the extent allowed by state law;

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

Whereas, it is the intent of the Governing Authority of Tattnall County 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 and citizens of Tattall County;

Whereas, Chapter 22 of the Code relates to Timber Harvesting, and the Governing Authority of Tattall County desires to amend same by striking and deleting Article V, under and within Chapter 22, in its entirety; and

Whereas, the Governing Authority of Tattall County further desires to insert a new Article V, under and within Chapter 22, which will consist of Sections 22-218 through 22-227 and will reserve Sections 22-228 through 22-250, thereby promulgating Tattall County's regulations relating to Timber Harvesting.

NOW, THEREFORE, it is hereby ORDAINED by the Governing Authority of Tattall County as follows:

SECTION I

ARTICLE V. - TIMBER HARVESTING

Sec. 22-218. - Purpose.

(a) It is a primary purpose and intent of this Ordinance to ensure that operators engaging in harvesting timber in Tattall County be responsible for any damage beyond normal wear and tear inflicted on the county road system or right-of-way within areas of ingress and egress.

(b) It is also a primary purpose of this article to ensure that the Tattall County Tax Commissioner knows of the timber being harvested, and that the timber taxes are paid to such tax commissioner.

Sec. 22-219. - Applicability.

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).

Sec. 22-220. - Consistency with O.C.G.A. §12-6-24.

Consistent with O.C.G.A. §12-6-24:

(a) No fee shall be charged to provide and submit the notice required by this Ordinance, as set forth with more particularly herein; and

(b) No permit, including a driveway permit, shall be required of the person or firm engaged in a timber harvesting operation as defined by this Ordinance. Persons and firms providing the notice required by this Ordinance shall be required to notify the Commissioner who represents the district of Tattnall County within which timber harvesting operation is to occur, and such person and firm may be required to consult with the Tattnall County officials responsible for roads and public works, all for the purpose of minimizing damage to the county's roads, rights of way and infrastructure, and such persons and firms are urged to follow recommendations from such county officials. Notwithstanding the forgoing, any person or firm conducting the timber harvest operation bears ultimate responsibility for their actions. Moreover, notwithstanding anything in this Ordinance to the contrary, the Governing Authority of Tattnall County is authorized to take any and all legal action necessary, including but not limited to seeking any and all remedies at law or equity, to protect its property and the health, safety and welfare of its citizens.

Sec. 22-221. - Definitions.

The following words, terms or phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Bond means a surety bond written by a company licensed by the state insurance commissioner. The term also includes, at the discretion of an applicant, a cash bond or bank letter of credit.

County road means any and all roads that are part of the road system of Tattnall County, delineated in accordance with O.C.G.A. § 32-4-1, and intended or used for the passage of motor vehicles by the public.

Damage means any and all injury to the road surface, road base or right-of-way of a county road within five hundred feet (500') of any designated entrance or exit from the timber harvesting site, including, but not limited to, the following:

- (1) Diversion of or the filing of any drainage ditch, culvert or pipe parallel to or underneath a county road, so as to restrain or redirect the flow of water;
- (2) The operation of any vehicle, machinery or equipment which gouges, rips, breaks, depresses or otherwise defaces a public road beyond normal wear and tear;
- (3) The continued ingress or egress to and from a county road at a particular location which results in a buildup of rock, gravel, mud, dirt or other materials,

which present hazards to other persons using the county road for authorized purposes;

(4) The creation or erection of any dam, berm, ditch or wall which restrains the natural flow of waters and results in the redirecting of waters onto the road surface of any county road; and

(5) The term does not include normal wear and tear to county roads from use of such roads by an operator in the course of transporting timber or pulpwood harvested in the county.

Enforcement officer means the code enforcement officer of Tattnall County.

Multi-tract operator includes the meanings included in the definition of operator, but, in addition, means an operator who has contracts to cut multiple tracts and will cut such tracts, or will subcontract the cutting of such tracts to one or more independent contract cutters.

Operator means any person, entity, individual, partnership, corporation, association or other organization including the officers, agents and employees thereof carrying out the activities contemplated by this Article.

Repair means the repair of a county road to its condition prior to the occurrence of damage caused by transporting timber harvested in Tattnall County.

Rights-of-way means the shoulder, front slope, ditch, drain and back slope of a county road, whether owned by title or otherwise.

Sec. 22-222. - Enforcement.

(a) Notwithstanding anything in this Ordinance to the contrary, if the operator fails to abide by the terms and conditions of this Ordinance, the enforcement officer may issue an immediate stop work order. If the operator fails to abide by the stop work order, the operator shall pay a penalty up to \$1,000.00 per day for each day the operator proceeds after the delivery of the stop work order, and, in addition, the operator shall pay all expenses that Tattnall County incurs in the enforcement of this Ordinance, including, but not limited to, court costs and reasonable attorney's fees.

(b) The Sheriff of Tattnall County and the Sheriff's deputies are authorized to assist Tattnall County and enforcement officer in the enforcement of this Ordinance.

Sec. 22-223. - Notice.

(a) All persons or firms harvesting standing timber in any unincorporated area of Tattnall 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 Tattnall County, 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. Likewise, such persons or firms shall give notice of cessation of cutting within twenty-four (24) hours after the job is completed.

(b) The notice of harvesting operations (hereinafter "notice") 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:

- (1) 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;
- (2) 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;
- (3) 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
- (4) The name, business address, business telephone number, and nighttime or emergency telephone number of the person or firm harvesting such timber.

(c) Subject to subsection (e) of this Section, 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 subsection (e) of this Section, 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 Tattnall County will accept notifications submitted in this manner.

(e) Notwithstanding anything in this Ordinance to the contrary, 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, and on and after said date, submission of the notice by any of the means listed in subsection (c) of this Section shall cease and will no longer be deemed acceptable or in compliance with this Ordinance.

(f) 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 Governing Authority of Tattnall County within three (3) business days after such change.

(g) Any person or firm that engages in a timber harvesting operation in the unincorporated portion of Tattnall 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 \$500.00 for each violation.

Sec. 22-224. – Surety Bond or Letter of Credit.

(a) 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 Governing Authority of Tattnall County, or its designated agent, a valid bond in the amount of \$5,000.00, which protects Tattnall County against any damage caused by such person or firm; provided 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 shall be provided in lieu of a surety bond. Such bond or letter of credit shall be subject to the any and all conditions as otherwise set forth in this Ordinance. The Governing Authority of Tattnall County shall require no more than one bond or letter of credit from each person or firm harvesting timber, regardless of the number of tracts harvested in Tattnall County by each such person or firm, so long as the bond or letter of credit remains in effect, and such bond or letter of credit shall remain in effect until timber harvesting operations are complete.

(b) The bond or letter of credit required by subsection (a) of this Section shall protect Tattnall County against any damage requiring re-ditching or repair of existing ditch structures or the removal of any harvesting residue, including treetops, 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 Tattnall 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 Tattnall 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 five hundred feet (500') of any point of ingress or egress of the timber harvesting operation. The right of Tattnall County to call such bond or letter of credit in accordance with any provision of this Ordinance shall be in addition to any other remedies available to Tattnall County at law or in equity for damage to county roads or rights of way.

(c) If the person or firm tendering a bond or letter of credit pursuant to the requirements of this Ordinance continues 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.

(d) In the event a bond or letter of credit tendered pursuant to the requirements of this Ordinance is revoked by the surety, bank or savings and loan association, then a valid replacement bond or letter of credit must be delivered to the Governing Authority of Tattnall County 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.

Sec. 22-225. - Multi-tract operators.

A multi-tract operator may post a single bond, on an annual basis, for the cutting of timber in Tattnall County. However, either the multi-tract operator, or his subcontractors, remains obligated to apply for a permit for each and every cutting each separate operator performs in Tattnall County, and the subcontractor and the multi-tract operator shall be individually and jointly bound to the county for the faithful compliance with the terms of this Ordinance. A contractual relationship between the multi-tract operator and any subcontractor do not insulate either from the faithful performance of the duties required by this Ordinance or from the application of the enforcement provisions by Tattnall County against either or both parties. The multi-tract operator shall furnish to the Governing Authority of Tattnall County written authorization for a subcontractor to make application under the multi-tract bond and, to cut a tract in Tattnall County under the multi-tract bond, or the multi tract operator shall make the application in person.

Sec. 22-226. - Damage to county roads.

It shall be unlawful for any operator engaged in timber harvesting activities or operations, including but not limited to, transporting forest products over county roads, to damage county roads or county rights-of-way at points of ingress or egress in Tattnall county.

Sec. 22-227. - Claims Involving Harvesting Activities.

(a) When damage results from a person or firm's harvesting activities, the enforcement officer shall make and provide a written claim to the person or firm causing the damage within thirty (30) days after the Governing Authority of Tattnall County 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, as otherwise required by this Ordinance, give the person or firm the opportunity to repair such damage within thirty (30) days of the notification; provided that, Governing Authority of Tattnall County shall be authorized to repair the damage immediately if it, 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 Tattnall 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 Ordinance.

(b) Within thirty (30) days of receipt of the written claim described in subsection (a), 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 Governing Authority of Tattnall County or its designee. When repairs are completed to the satisfaction of the Governing Authority of Tattnall County or its designee, it, or its designee, shall provide a written notification of satisfactory completion within five (5) business days to the responsible person or firm and to the surety issuing the bond or the bank or savings and loan association 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 Governing Authority of Tattnall County, 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 Governing Authority of Tattnall County or its designee; or

(3) Appeal the claim to the Magistrate Court of Tattnall 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 court will hear evidence and arguments within thirty (30) days of the written appeal and issue a ruling within ten (10) days of such hearing. Any such appeal shall toll the thirty (30) day period, or any extension thereof, required by subsection (a) of this Section. If the court rules in favor of the person or firm against whom the claim was made, Tattnall County shall have no right to recover any proceeds of the bond or letter of credit, and judgment shall be entered against Tattnall County. If the court rules in favor of Tattnall County, the court shall determine the amount of damages to which Tattnall County is entitled to recover and enter judgment accordingly. The Governing Authority of Tattnall 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 Tattnall 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.

(c) In the event the person or firm against whom the claim has been submitted fails to take any of the actions allowed under subsections (b)(1), (b)(2) or (b)(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.

Secs. 22-228 through 22-250. -- Reserved.

SECTION II

A. It is hereby declared to be the intention of the governing authority of Tattnall County that all sections, paragraphs, sentences, clauses, and phrases of this Ordinance are or were, upon their enactment, believed by said governing authority to be fully valid, enforceable, and constitutional.

B. It is hereby declared to be the intention of Governing Authority of Tattnall County that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause, or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause, or phrase of this Ordinance. It is hereby further declared to be the intention of said governing authority that, to the greatest extent allowed by law, no section, paragraph, sentence, clause, or phrase of this Ordinance is mutually dependent upon any other section paragraph, sentence, clause, or phrase of this Ordinance.

C. In the event that any section, paragraph, sentence, clause, or phrase of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional, or

otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of said governing authority that such invalidity, unconstitutionality, or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional, or otherwise unenforceable any of the remaining sections, paragraphs, sentences, clauses, or phrases of the Ordinance and that, to the greatest extent allowed by law, all remaining sections, paragraphs, sentences, clauses, or phrases of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

SECTION III

All provisions of the Code of Ordinances of Tattall County or parts thereof that are in conflict herewith are hereby expressly repealed.

SECTION IV

This Ordinance shall be codified and shall become effective upon its adoption in a manner consistent with the laws of the State of Georgia and the ordinances, regulations, and rules of Tattall County.

SECTION V

It is the intention of the Governing Authority of Tattall County, and it is hereby ordained, that the provisions of this Ordinance shall become and be made part of the Code of Ordinances of Tattall County, and the sections of this Ordinance may be renumbered to accomplish such intention.

SECTION VI

The effective date of this Ordinance shall be the date of its approval by the Governing Authority of Tattall County.

So approved and ordained by the Governing Authority of Tattall County, Georgia, this 5th day of April, 2021.

Board of County Commissioners of Tattall County, Georgia

By: Jackie Trim
Jackie Trim, Chairman

Attest: Shelia R. Mills
County Clerk

