

ORDINANCE NO. _____

TO CREATE A NEW CHAPTER 19, OF THE CODE OF ORDINANCES OF DADE COUNTY, GEORGIA; TO REQUIRE A SPECIAL USE PERMIT FOR THE USE OF LAND FOR INDUSTRIAL PURPOSES; TO PROVIDE STANDARDS AND PROCEDURES FOR THE ISSUANCE OF SAID PERMITS; TO AMEND CHAPTER 46 OF THE CODE REGARDING SPECIAL USE PERMITS FOR SOLID WASTE FACILITIES; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; TO ESTABLISH SETBACK REQUIREMENTS FOR POULTRY OPERATIONS; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, Dade County, Georgia, does not have a zoning ordinance; and

WHEREAS, the Dade County Board of Commissioners finds that certain industrial uses, while potentially beneficial to the economy of Dade County, have the potential to have substantial negative impacts to the community, public road and utility infrastructure, environment, property values and use and enjoyment of nearby properties; and

WHEREAS, the Dade County Board of Commissioners finds that even positive, desirable or necessary industrial facilities may be a nuisance to the surrounding community if not properly regulated or sited; and,

WHEREAS, the Dade County Board of Commissioners finds that a procedure and standards should be established to properly take into account intended industrial uses of property located within the County prior to the industrial use being established in order prevent or mitigate such nuisances or negative effects; and,

WHEREAS, it is in the best interest of the residents of Dade County, Georgia, that a special use permit be required for industrial uses prior to the development or substantial expansion of such uses;

NOW THEREFORE, BE IT ORDAINED BY THE DADE COUNTY BOARD OF COMMISSIONERS, and IT IS HEREBY ORDAINED by authority thereof as follows:

SECTION ONE

Adopting special use permit ordinance.

A new Chapter 19 of the County Code of Ordinances is hereby adopted, and shall state as follows:

CHAPTER 19- INDUSTRIAL USE OF LAND

Sec. 19-1. Purpose.

It is the purpose and intent of this chapter to require special use permits, and establish procedures and standards for the issuance of special use permits, for the development or substantial expansion of industrial uses of property in the unincorporated portion of Dade County.

Sec. 19-2. Industrial uses defined, exemptions.

(a) *Industrial Use* means, and this ordinance shall apply to any building, structure or land used or developed with the intent to be used for the purpose of the following economic activities:

1. Mining;
2. Subject to the provisions in paragraph (b) below, manufacturing;
3. Subject to the provisions in paragraph (b) below, processing of poultry, beef, pork or other livestock for human or animal consumption;
4. Scrap materials, iron or steel storage or recovery;
5. Recycled materials processing;
6. Utilities;
7. Uses requiring a state or federal permit for collection, transfer or disposal of radioactive equipment or supplies;
8. Uses requiring a state or federal permit for collection, transfer or disposal of solid waste;
9. Uses requiring a state or federal permit for collection, generation, transfer, storage or disposal of hazardous waste;
10. Uses reasonably expected to emit foul or noxious odors that would extend beyond the proposed industrial tract property boundaries;
11. Uses for any industrial activity exceeding more than one acre in size;
12. Uses requiring a state or federal permit for the discharge of wastewater; and
13. Uses requiring a state or federal permit for air quality or emissions.

For a more complete list of uses which are mining or manufacturing, the following Sectors of the 2017 edition of the North American Industry Classification System (NAICS) Codes are hereby

referenced and incorporated as if fully stated herein: mining (Sector 21); utilities (Sector 22); and manufacturing (Sectors 31-33).

- (b) Sections One, Two, and Four, of this ordinance shall not apply to:
- (1) uses which are expressly exempt from local land use regulation by state or federal law;
 - (2) animal dressing facilities provided that the animals are killed off-site, or that no more than thirty animals are killed on site each day; and
 - (4) agricultural farming operations as defined in the following paragraph.

For purposes of this section, agricultural farming operations means a bona fide farming operation whose primary purpose is the production of agricultural products including but not limited to crops, fruits, Christmas trees, forestry, vegetables, ornamental or flowering plants, dairy, livestock, poultry (except as specifically provided in Section 3 below), swine, and all other forms of agricultural products having a domestic or foreign market. When performed on the farm, "agriculture", "agricultural", and "farming" also include the marketing and selling of agricultural products, agri-tourism, the storage and use of materials for agricultural purposes, sorting, storage, and other activities performed to add value to crops and agricultural items produced on the farm, and similar activities incident to the operation of a farm. Included with this definition is the operation, equipment operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings on the farm, including building and structure repair, replacement, expansion, and construction incident to the farming operation. Agricultural farming operations specifically do not include slaughterhouses or processing of poultry, beef, pork or other livestock for human or animal consumption that do not meet the definition in (b)(2) above.

Sec. 3 – Establishment of Special Use Permit Board.

There is hereby established the Special Use Permit Board comprised of five members, to be appointed by the Board of Commissioners. Each member so appointed by the Board of Commissioners shall serve at the pleasure of the Board of Commissioners and until the member's successor is duly appointed. The Board of Commissioners shall designate a member of the Special Use Permit Board to serve as the chairperson thereof.

Any vacancies on the Special Use Permit Board shall be filled by appointment by the Board of Commissioners. The Special Use Permit Board shall appoint its own clerk. The Special Use Permit

Board members shall be appointed for terms of four years. The members of the Special Use Permit Board shall be residents of Dade County for at least one year and shall be at least 21 years of age. Members shall be chosen from different areas of the County, and shall be selected with the intention of representing a broad cross-section of academic and vocational backgrounds, interests, and areas of expertise. The chairperson-county executive and each district commissioner of the county governing authority shall nominate one person from such commissioner's district to serve on the authority, such nomination being subject to approval by majority vote of the county governing authority. The initial appointment by the chairperson/county executive shall serve an initial term of office beginning on the date of his or her appointment and ending December 31, 2021. The initial appointment by the county governing authority from District 1 shall serve an initial term of office beginning on the date of his or her appointment and ending December 31, 2021. The initial appointment by the county governing authority from District 2 shall serve an initial term of office beginning on the date of his or her appointment and ending December 31, 2022. The initial appointment by the county governing authority from District 3 shall serve an initial term of office beginning on the date of his or her appointment and ending December 31, 2023. The initial appointment by the county governing authority from District 4 shall serve an initial term of office beginning on the date of his or her appointment and ending December 31, 2024. Such successors to the initial members under this subsection shall serve terms of office of four years and until a successor is appointed and qualified. The Board of Commissioners may appoint additional non-voting members from time to time as deemed needed or necessary. Members shall not be eligible to serve consecutive terms on the Special Use Permit Board.

The Special Use Permit Board shall be the designee of the Dade County Board of Commissioners to receive, investigate, and duly consider the applications for permits under this chapter, and to otherwise administer the terms of this ordinance. The Special Use Permit Board shall establish rules and regulations governing the Special Use Permit Board consistent with the provisions of this ordinance. A quorum required for all meetings shall be deemed to be a majority of the Board members then serving. Decisions shall be decided by a majority of those members present. The Special Use Permit Board shall meet at such times as may be deemed necessary or appropriate, and meetings shall be open to the public except as may be expressly provided by the Georgia Open Meetings Law. The Special Use Permit Board clerk shall serve as secretary, and shall make a full

and complete record of proceedings consistent with the Georgia Open Meetings Law, and shall retain original applications and copies of all relevant documents.

The Special Use Permit Board may delegate the initial investigation of the application to, and may receive recommendations from, the Dade County Code Enforcement Officer or his or her designee, and such other persons as selected by the Special Use Permit Board and as approved by the Dade County Board of Commissioners.

Sec. 19-3. Industrial Use- Special Use Permits Required

(a) No person or entity shall develop a new industrial use or substantially expand an existing industrial use without first obtaining a special use permit from the Special Use Permit Board. For purposes of this ordinance, substantially expand an existing facility means to increase the developed square footage of a lawfully-existing facility by more than 25% in a one-year period. A special use permit shall be issued to an applicant on evidence, satisfactory to the Special Use Permit Board, of compliance with all applicable provisions of this article. Any application that is granted by the Special Use Permit Board shall be subject to additional conditions that the Board deems appropriate to mitigate any undesirable effects of the new or expanded industrial use.

(b) No special use permit shall be issued by Dade County until the applicant has shown, to the satisfaction of the Special Use Permit Board that all Federal, State, and County regulations and ordinances will be complied with in developing the land for an industrial use and that the location in question is appropriate for the intended use in light of the standards and criteria in this chapter. No land disturbance permit, building permit, subdivision approval or other development approval required for the industrial use shall be approved or issued until the special use permit has been issued by the Special Use Permit Board.

(c) If an application for special use permit is filed for a proposed use that is a development of regional impact (DRI) as defined by state law and regulation, the Special Use Permit Board will delay processing the application until the DRI review process is complete.

(d) Any person or entity which develops or operates an industrial use which is required by this ordinance to have a special use permit without first obtaining said permit shall be in violation of

this ordinance and subject to separate citation for each day that the industrial use is actively under development or in operation without a special use permit. Any violation of the provisions of this article shall constitute a misdemeanor and shall be punishable by penalties and costs as set forth in section 1-19 of the Code of Ordinances of Dade County, Georgia. Further, the County or the Special Use Permit Board may seek to abate the nuisance or seek temporary, interlocutory or permanent injunctive relief or other relief provided by law.

Sec. 19-4. Procedure for issuance of special use permit; standards and criteria; decision.

(a) *Application.* Each applicant for a special use permit shall apply by submitting to the County Clerk a written application on forms approved by the Board of Commissioners, and shall pay an application fee in the amount of \$250.00. All questions and information requested on the application form shall be filled in and subscribed to by all applicants under oath by the owner or occupant of the proposed site to be developed for industrial use, if an individual, or by an authorized officer if a corporate entity. A site plan drawn to scale by a Georgia-licensed surveyor or engineer showing the proposed industrial use may be required if deemed necessary by the Special Use Permit Board.

(b) *Notice of public hearing.* Within 45 days of application being filed, the Special Use Permit Board shall conduct a public hearing on the application prior to making its final decision to approve or deny the application. Notice of the public hearing shall be published in the legal organ of the County once, at least 15 prior to the date of the public hearing. Said notice shall state the time, place, and purpose of the hearing, and shall identify the property, its location, and the intended industrial use of the property. At least 15 days prior to the hearing at which the special use permit is proposed, the same information shall be posted on a sign conspicuously located on the subject property. At least 15 days prior to the public hearing, each owner of real property located within 1500 feet to the proposed building or use as measured by a straight line distance shown by the records maintained by the County tax assessor shall be notified of such public hearing by mail addressed to each property owner.

(c) *Conduct of public hearing.* At said hearing, Special Use Permit Board staff shall introduce the application and present data and analysis of the application. The applicant requesting the special use permit shall then be allowed to speak and present data, evidence and witnesses regarding the subject of the application. The Board Chair shall then open the floor to other interested persons. Proponents and opponents of the proposed special use permit shall be allowed at least five minutes per person and at least fifteen minutes per side to speak and present data and evidence regarding the subject of the application. The Board Chair may allow proponents or opponents additional time if the circumstances of the particular application require it, provided that equal additional time will be afforded to both sides. In addition to oral presentations, proponents and opponents may submit written data and evidence to the Board.

(d) *Standards and criteria.* In considering whether to grant a special use permit, the Board shall consider the following:

1. the existing land uses of the subject property, nearby properties, and properties reasonably to be impacted the industrial use;
2. the suitability of the subject property for its current use;
3. whether the proposed industrial use will be suitable in view of the use and development of adjacent and nearby properties;
4. whether the proposed industrial use will adversely affect the existing use or usability of adjacent or nearby properties;
5. whether the proposed industrial use is one which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools;
6. whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the proposed industrial use;
7. whether the proposed industrial use will be detrimental to the natural environment, including water quality and resources, air quality and wildlife;
8. whether any negative effects from the proposed industrial use can be mitigated by reasonable and appropriate conditions of approval;
9. whether the proposed industrial use will reasonably be expected to have a detrimental impact to property values of adjacent or nearby properties; and

10. what benefits and burdens will the proposed use have on the Dade County and regional economy?

(e) *Decision.* Within sixty days of the public hearing, the Special Use Permit Board may table the matter to a future meeting, deny the application, grant the application, or grant the application with conditions reasonably designed to mitigate any negative effects from the proposed industrial use. If the Board fails to take such action within the time provided, the application shall be referred to the Board of Commissioners to take any and all actions consistent with this ordinance. A denial of an application shall state the reasons for the denial, and shall advise the applicant of potential remedial actions, if any, which may be taken to bring the application into compliance with this ordinance. The final decision, including any conditions, shall be reduced to writing, delivered to the applicant, and kept on file in the records of the County Clerk. The Special Use Permit Board may record such final decision in the deed records maintained by the clerk of the superior court to provide future purchasers of the property notice of any conditions of an approved special use.

Any person aggrieved by act or omission of the Special Use Permit Board with respect to proceedings under this article may appeal to the Board of Commissioners of Dade County by filing such appeal with the County Clerk of Dade County within fifteen (15) days of the decision or action. Such appeal shall be based upon the record previously considered by, and submitted to the Special Use Permit Board. The Board of Commissioners may affirm the decision of the Special Use Permit Board, reverse the decision, or remand the decision back to the Special Use Permit Board for further investigation or proceedings. The decision of the Board of Commissioners may be further appealed to the Dade County Superior Court in the manner provided by general law provided such appeal is filed with the Dade County Superior Court Clerk within thirty (30) days of the final decision of the Dade County Board of Commissioners. If the applicant/licensee does not file an appeal to the Board of Commissioners or to the Dade County Superior Court within the periods provided, then the decision of the of the Special Use Permit Board or Board of Commissioners of Dade County shall be final. Any party to the appeal may refer this matter to the Alternative Dispute Resolution office of the Lookout Mountain Judicial Circuit. An application that has been denied may not be re-filed until one year following the date of a final action rejecting the application. This one year limitation is not intended to apply to applications or circumstances that are materially different from the previous application.

SECTION TWO

Amending Chapter 46 of the County Code to remove conflicting provisions.

It is the intent of the Board of Commissioners that the existing special use permit procedure currently in Chapter 46 of the County Code and applying the solid waste facilities be repealed such that the provisions of the new foregoing Chapter 19 shall apply to industrial uses engaged in solid waste handling and disposal instead. Therefore, Articles I and II of Chapter 46 of the County Code is hereby amended and restated on **Exhibit A** attached hereto. Articles III and IV of Chapter 46 shall remain in place without amendment.

SECTION THREE

Special set back requirements for commercial poultry operations

It shall be a violation of this ordinance to construct, maintain or utilize in the unincorporated area of Dade County any commercial poultry operation, poultry yard or building, or other improvement for the purpose of housing, raising, producing, processing, or selling poultry, within 200 feet from all property boundary lines, or within 500 feet from dwellings, stream, spring, creek, tributary, or other waters of the state. These set-back restrictions shall not apply to any commercial poultry operation in existence at the time of the adoption of this ordinance.

For purposes of this section, “commercial poultry operation” shall mean any structure or facility designed to confine, house, or process three hundred or more chickens or turkeys at one time. “Poultry yard or building” shall mean every enclosure, shed, or structure used to house or confine chickens, turkeys, and other fowl used for commercial poultry operation purposes. “Poultry” mean species of the avian family which are or may be raised for the purpose of providing food or transportation, or being resold or bred, including without limitation chicken and turkey.

SECTION FOUR

Legal status provisions

A. Severability If any section, provision, sentence, or clause of this Ordinance shall be declared invalid or unconstitutional, or if the provisions of any part of this Ordinance as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such invalidity shall not be construed to affect portions of this Ordinance not so held to be invalid, or to

affect the application of this Ordinance to other circumstances not to held to be invalid. It is hereby declared as the intent of the Dade County Board of Commissioners that this Ordinance would have been adopted and approved had such invalid portion not been included herein.

B. Effective Date This ordinance shall become effective upon its adoption. The moratorium adopted by the Board of Commissioners by Resolution R-37-19 on August 21, 2019, and amended by Resolution R-58-19 on December 5, 2019, is hereby REPEALED.

C. General Repealer Any and all ordinance or resolutions, or parts of ordinances or resolutions, which are inconsistent with this Ordinance and not expressly addressed herein are hereby repealed. Notwithstanding the foregoing, nothing in this ordinance is intended to amend or modify the restrictions and regulations on fracking and fracking-related activities as found in Chapter 30, Section 50 et seq., of the County Code.

SO ORDAINED this ____ day of _____, 2020, by the Dade County Board of Commissioners.

**BOARD OF COMMISSIONERS
DADE COUNTY, GEORGIA**

By: _____
Ted M. Rumley
Chairperson-County Executive

Attest:

By: _____
Don Townsend
County Clerk