

WHITE PAPER: DEKALB COUNTY INEFFICIENT PLUMBING FIXTURES REPLACEMENT PLAN (2008)

April 17, 2008 - Revised

On February 5, 2008 DeKalb County passed an ordinance affecting every property in unincorporated areas of the County on which there is a building constructed before January 1, 1993. In general, the purpose of the ordinance is to require all such buildings to be retrofitted with water-conserving plumbing fixtures (sometimes called “low flow” plumbing fixtures) at the time they are sold. Set forth below is an explanation of how the new ordinance will work in question and answer format.

1. Does the ordinance apply to all of DeKalb County or only to part of it?

The ordinance only applies to properties located in unincorporated DeKalb County. If the property is located within a city in DeKalb County, such as Decatur, Chamblee or Lithonia, the ordinance does not apply. If Dunwoody becomes a city later on this year, the ordinance will not apply. However, until that occurs, Dunwoody will remain in unincorporated DeKalb County and as such be subject to the ordinance.

2. When does the ordinance go into effect?

For residential property, the answer is June 1, 2008. Non-residential properties are including apartment complexes are not subject to the new law until January 1, 2009.

3. Does the ordinance apply to all housing in DeKalb County?

No, the ordinance only applies to properties with structures on them that were built before January 1, 1993. After that time, building codes were changed to require the installation of low-flow water devices.

4. What exactly is a water-conserving plumbing fixture?

A water-conserving plumbing fixture means the following: ultra low-flow toilets (ULFTs) that use a maximum of 1.6 gallons per flush; urinals that use a maximum of 1.0 gallons per flush; showerheads that emit a maximum of 2.5 gallons per minute; lavatory faucets that emit a maximum of 2.0 gallons per minute; and kitchen faucets that emit a maximum of 2.2 gallons per minute.

5. What does the ordinance require buyers to do?

Before a buyer can connect to water service from DeKalb County, the buyer must fill out an application and attach a certificate of compliance that all plumbing fixtures are water-conserving fixtures. The certificate must be signed by a home inspector, a licensed plumber or an inspector with DeKalb County’s Department of Watershed Management. The form of the certificate is currently being prepared by the Department of Watershed Management.

The challenge of the ordinance is that most buyers will want water service immediately upon purchasing their properties but may not be able to get it until they have gone through the process of getting properties retrofitted. This means that a typical buyer will either need to request the seller to retrofit the property or will need to arrange for the retrofitting to be done immediately upon the closing of the purchase. The likely effect of this ordinance is that buyers of properties subject to the ordinance will request their home inspectors to inspect all plumbing fixtures in the property to determine if they are all water-conserving plumbing fixtures. If they are not, the broker representing the buyer will likely encourage the buyer to request that the seller retrofit the property in an Amendment to Address Concerns

With Property. A sample special stipulation that can be used in either an Amendment to Address Concerns With Property or a Purchase and Sale Agreement is as follows:

Prior to closing Seller agrees to replace all non-water-conserving plumbing fixtures on the property with water-conserving plumbing fixtures. A water-conserving plumbing fixture shall mean the following: ultra low-flow toilets (ULFTs) that use a maximum of 1.6 gallons per flush; urinals that use a maximum of 1.0 gallons per flush; showerheads that emit a maximum of 2.5 gallons per minute; lavatory faucets that emit a maximum of 2.0 gallons per minute; and kitchen faucets that emit a maximum of 2.2 gallons per minute.

In addition, seller shall provide buyer at or before the closing with the DeKalb County Department of Watershed Management Certificate signed by either a home inspector, licensed Georgia plumber or Department of Watershed Management inspector certifying that the property only contains water-conserving plumbing fixtures.

6. What exactly are sellers required to do under the ordinance?

Sellers of the property subject to the ordinance are required to disclose to buyers before they sign a purchase and sale agreement that 1) the Property is located in unincorporated DeKalb County and contains a residence constructed prior to 1993, and 2) Buyer will be obligated as a condition of applying for water service from DeKalb County to attach to the application a certificate of compliance signed by a home inspector, Department of Watershed Management inspector or licensed plumber certifying that all plumbing fixtures on the Property are water-conserving plumbing fixtures. A sample disclosure statement is attached to the end of this white paper.

7. Does the ordinance apply to non-residential property?

Yes. The ordinance applies to both residential and non-residential property if it contains a structure built prior to January 1, 1993.

8. Are there any exemptions to the law?

Yes. The requirement to retrofit the otherwise subject property does not apply if:

1. The Property is being advertised for foreclosure;
2. Buyer is demolishing the residence after it is purchased; provided, however, that any water service that is being obtained by the Buyer may only be used for demolition or construction related purposes;
3. Buyer is a spouse, child or parent of the Seller (including conveyances during the administration of the estate of such spouse, parent or child);
4. Cost to install the water-conserving plumbing fixtures exceeds one thousand (\$1,000) dollars per toilet in a single family residential building; or
5. The cost to install the water-conserving plumbing fixtures exceeds two thousand (\$2,000) dollars per toilet in a commercial building.

9. Are any funds available to buyers to help them defray the costs of putting in water conserving plumbing fixtures?

At present, the answer to this question is yes. On January 8, 2008, the DeKalb County Department of Watershed Management began a toilet retrofit rebate program for DeKalb County water customers whose homes were built prior to 1993. Under the program, customers who install a 1.6 gallon per flush toilet are eligible for a \$50 rebate and customers who install a 1.28 gallon per flush toilet can get a \$100 rebate. The replacement toilets must have been purchased after January 1, 2008 and there is a rebate limit of three (3) toilets per household.