

## **CHAPTER 109 – NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION**

### **ARTICLE I. – Flood Damage Prevention In General**

#### **Sec. 109-1. - Authorization.**

Article IX, Section II of the Constitution of the State of Georgia and Section 36-1-20(a) of the Official Code of Georgia Annotated have delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Mayor and Council of the City of Summerville, Georgia does ordain this ordinance.

#### **Sec. 109-2 – Findings of Fact**

- 1 The flood hazard areas of Summerville, Georgia are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood relief and protection, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
2. These flood losses are caused by the occupancy in flood hazard areas of uses vulnerable to floods, which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages, and by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities.

#### **Sec. 109-3 – Severability.**

If any section, clause, sentence, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

#### **Secs. 109-4 – 109-18 – RESERVED.**

### **ARTICLE II – FLOODPLAIN MANAGEMENT**

#### **DIVISION 1. - IN GENERAL**

#### **Sec. 109-19. - Definitions.**

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

*"Accessory Structure"* means a structure having minimal value and used for parking, storage and other non-habitable uses, such as garages, carports, storage sheds, pole barns, hay sheds and the like.

*"Addition (to an existing building)"* means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition, which is connected by a firewall or is separated by an independent perimeter load-bearing wall, shall be considered "New Construction".

*"Appeal"* means a request for a review of the City Building Inspector's interpretation of any provision of this ordinance.

*"Area of shallow flooding"* means a designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet, and/or where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

*"Area of special flood hazard"* is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. In the absence of official designation by the Federal Emergency Management Agency, Areas of Special Flood Hazard shall be those designated by the local community and referenced in Section 109-22.

*"Base flood,"* means the flood having a one percent chance of being equaled or exceeded in any given year.

*"Basement"* means that portion of a building having its floor sub grade (below ground level) on all sides.

*"Building,"* means any structure built for support, shelter, or enclosure for any occupancy or storage.

*"Critical Facility"* means any public or private facility, which, if flooded, would create an added dimension to the disaster or would increase the hazard to life and health. Critical facilities include:

- (a) structures or facilities that produce, use, or store highly volatile, flammable, explosive, toxic, or water-reactive materials;
- (b) hospitals and nursing homes, and housing for the elderly, which are likely to contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events;
- (c) emergency operation centers or data storage centers which contain records or services that may become lost or inoperative during flood and storm events; and
- (d) generating plants, and other principal points of utility lines.

*"Development"* means 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, and permanent storage of materials or equipment.

*"Elevated building"* means a non-basement building built to have the lowest floor of the lowest enclosed area elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns, piers, or shear walls adequately anchored so as not to impair the structural integrity of the building during a base flood event.

*"Existing construction"* Any structure for which the "start of construction" commenced before 1985. [i.e., the effective date of the FIRST floodplain management code or ordinance adopted by the community as a basis for that community's participation in the National Flood Insurance Program (NFIP)].

*"Existing Manufactured Home Park or subdivision"* means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and final site grading or the pouring of concrete pads) is completed before 1985. [i.e., the effective date of the FIRST floodplain management regulations adopted by a community].

*"Expansion to an existing manufactured home park or subdivision"* means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed, including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.

*"Flood" or "flooding"* means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (a.) the overflow of inland or tidal waters; or
- (b.) the unusual and rapid accumulation or runoff of surface waters from any source.

*"Flood Hazard Boundary Map (FHBM)"* means an official map of a community, issued by the Federal Insurance Administration, where the boundaries of areas of special flood hazard have been defined as Zone A.

*"Flood Insurance Rate Map (FIRM)"* means an official map of a community, issued by the Federal Insurance Administration, delineating the areas of special flood hazard and/or risk premium zones applicable to the community.

*"Flood Insurance Study"* the official report by the Federal Insurance Administration evaluating flood hazards and containing flood profiles and water surface elevations of the base flood.

*"Floodplain"* means any land area susceptible to flooding.

*"Flood proofing,"* means any combination of structural and non-structural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

*"Floodway"* means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

*"Freeboard"* means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

*"Highest adjacent grade"* means the highest natural elevation of the ground surface, prior to construction, adjacent to the proposed foundation of a building.

*"Historic Structure"* means any structure that is;

- a. Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register:
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district:
- c. Individually listed on a state inventory of historic places and determined as eligible by states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places and determined as eligible by communities with historic preservation programs that have been certified either:
  1. By an approved state program as determined by the Secretary of the Interior, or
  2. Directly by the Secretary of the Interior in states without approved programs.

*"Lowest floor"* means the lowest floor of the lowest enclosed area, including basement. An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of other provisions of this code.

*"Manufactured home"* means a building, transportable in one or more sections, built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

*"Mean Sea Level"* means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this ordinance, the term is synonymous with National Geodetic Vertical Datum (NGVD).

*"National Geodetic Vertical Datum (NGVD)"* as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

*"New construction"* means ANY structure (see definition) for which the "start of construction" commenced on or after 1985 and includes any subsequent improvements to the structure. [\* i.e., the effective date of the FIRST floodplain management ordinance adopted by the community as a basis for community participation in the (NFIP)].

*"New manufactured home park or subdivision"* means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after 1985. [i.e., the effective date of the first floodplain management regulations adopted by a community].

*"North American Vertical Datum (NAVD)"* as corrected in 1988 is a vertical control used as a reference for establishing varying elevations within the floodplain.

*"Recreational vehicle"* means a vehicle, which is:

- a. built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection;
- c. designed to be self-propelled or permanently towable by a light duty truck; and
- d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

*"Start of construction"* means the date the development permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of the structure such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation, and includes the placement of a manufactured home on a foundation. (Permanent construction does not include initial land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of buildings appurtenant to the permitted structure, such as garages or sheds not occupied as dwelling units or part of the main structure. (NOTE: accessory structures

are NOT exempt from any ordinance requirements) For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"Structure" means a walled and roofed building that is principally above ground, a manufactured home, a gas or liquid storage tank.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

"Substantial improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during a 5-year period, in which the cumulative cost equals or exceeds fifty (50) percent of the market value of the structure prior to the "start of construction" of the improvement. NOTE: *The market value of the structure should be (1) the appraised value of the structure prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring.* This term includes structures, which have incurred "substantial damage", regardless of the actual amount of repair work performed.

For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building. The term does not, however, include (1) those improvements of a structure required to comply with existing violations of state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions and which have been identified by the Code Enforcement Official, and not solely triggered by an improvement or repair project, or (2) any alteration of a "historic structure" provided that the alteration will not preclude the structure's continued designation as a "historic structure".

"Substantially improved existing manufactured home parks or subdivisions" is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

"Variance" is a grant of relief from the requirements of this ordinance, which permits construction in a manner otherwise prohibited by this ordinance.

"Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, or other certifications, or other evidence of compliance required by this ordinance is presumed to be in violation until such time as that documentation is provided.

### **Sec. 109-20. - Purpose and Objectives**

The purpose of this article is to protect, maintain and enhance the public health, safety, environment and general welfare and to minimize public and private losses due to flood conditions in specific by provisions designed to:

- (1) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (2) Restrict or prohibit uses which are dangerous to health, safety and property due to flooding or erosion hazards, or which increase flood heights, velocities, or erosion;
- (3) Control filling, grading, dredging and other development which may increase flood damage or erosion;
- (4) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands;
- (5) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters.

The objectives of this ordinance are:

- (1) to protect human life and health;
- (2) to minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;

- (3) to help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas,
- (4) to minimize expenditure of public money for costly flood control projects;
- (5) to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (6) to minimize prolonged business interruptions, and;
- (7) to insure that potential homebuyers are notified that property is in a flood area.

**Sec. 109-21. – Applicability and Compliance**

This ordinance shall apply to all Areas of Special Flood Hazard within the jurisdiction of Summerville, Georgia. No structure or land shall hereafter be located, extended, converted or altered without full compliance with the terms of this ordinance and other applicable regulations.

**Sec. 109-22. - Basis for area of special flood hazard; flood area maps and studies.**

The Areas of Special Flood Hazard identified by the Federal Emergency Management Agency in its Flood Insurance Study (FIS), dated 9-4-85, with accompanying maps and other supporting data and any revision thereto, are adopted by reference and declared a part of this ordinance.

For those land areas acquired by a municipality through annexation, the current effective FIS dated 9-4-85, with accompanying maps and other supporting data and any revision thereto, for Chattooga County are hereby adopted by reference.

Areas of Special Flood Hazard may also include those areas known to have flooded historically or defined through standard engineering analysis by governmental agencies or private parties but not yet incorporated in a FIS.

The Repository for public inspection of the Flood Insurance Study (FIS), accompanying maps and other supporting data is located: office of the Clerk of the City of Summerville.

**Sec. 109-23. – Abrogation and Greater Restrictions.**

This ordinance is not intended to repeal, abrogate, or impair any existing ordinance, easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

**Sec. 109-24. - Warning and disclaimer of liability.**

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur; flood heights may be increased by manmade or natural causes. This article does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the city or by any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.

**Sec. 109-25. – Penalties for Violation**

Failure to comply with the provisions of this ordinance or with any of its requirements, including conditions and safeguards established in connection with grants of variance or special exceptions shall constitute a violation. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$1,000.00 or imprisoned for not more than 30 days, or both, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Summerville from taking such other lawful actions as is necessary to prevent or remedy any violation.

**Sec. 109-26 - Interpretation**

In the interpretation and application of this ordinance all provisions shall be: (1) considered as minimum requirements; (2) liberally construed in favor of the governing body, and; (3) deemed neither to limit nor repeal any other powers granted under state statutes.

**Secs. 109-27- 109-51. - Reserved.**

**DIVISION 2. - ADMINISTRATION AND ENFORCEMENT**

**Sec. 109-52. - Designation of ordinance administrator.**

The City of Summerville Building Inspector or his designee is hereby appointed to administer and implement the provisions of this ordinance.

Duties of the City Building Inspector shall include, but shall not be limited to:

- (1) Review proposed development to assure that the permit requirements of this ordinance have been satisfied.
- (2) Review proposed development to assure that all necessary permits have been received from governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. Require that copies of such permits be provided and maintained on file.
- (3) Review all permit applications to determine whether proposed building sites will be reasonably safe from flooding.
- (4) When Base Flood Elevation data or floodway data have not been provided in accordance with Section 109-22, then the City Building Inspector shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other sources in order to administer the provisions of Article 2, Division 4.
- (5) Review and record the actual elevation in relation to mean sea level (or highest adjacent grade) of the lowest floor, including basement, of all new or substantially improved structures in accordance with Section 109-55.
- (6) Review and record the actual elevation, in relation to mean sea level to which any new or substantially improved structures have been flood-proofed, in accordance with Section 109-55.
- (7) When flood-proofing is utilized for a structure, the City Building Inspector shall obtain certification of design criteria from a registered professional engineer or architect in accordance with Section 109-54, Section 109-114 and Section 109-117.
- (8) Make substantial damage determinations following a flood event or any other event that causes damage to structures in flood hazard areas.
- (9) Notify adjacent communities and the Georgia Department of Natural Resources prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
- (10) For any altered or relocated watercourse, submit engineering data/analysis within six (6) months to the FEMA to ensure accuracy of community flood maps through the Letter of Map Revision process. Assure flood carrying capacity of any altered or relocated watercourse is maintained.
- (11) Where interpretation is needed as to the exact location of boundaries of the Areas of Special Flood Hazard for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the City Building Inspector shall make the necessary interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this Ordinance.
- (12) All records pertaining to the provisions of this ordinance shall be maintained in the office of the City Building Inspector and shall be open for public inspection.

**Sec. 109-53. - Establishment of development permit.**

A Development Permit shall be required in conformance with the provisions of this ordinance PRIOR to the commencement of any Development activities.

**Sec. 109-54. – Permit procedures.**

Application for a Development Permit shall be made to the City of Summerville Building Inspector on forms furnished by the community PRIOR to any development activities, and may include, but not be limited to the following: plans in duplicate drawn to scale showing the elevations of the area in question and the nature, location, dimensions, of existing or proposed structures, earthen fill placement, storage of materials or equipment, and drainage facilities.

Specifically, the following information is required:

Application Stage -

- (a) Elevation in relation to mean sea level (or highest adjacent grade) of the lowest floor, including basement, of all proposed structures;
- (b) Elevation in relation to mean sea level to which any non-residential structure will be flood-proofed;
- (c) Design certification from a registered professional engineer or architect that any proposed non-residential flood-proofed structure will meet the flood-proofing criteria of Section 109-114;
- (d) Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development, and;
- (e) All requirements of Section 109-55 regarding construction stage submissions.

**Sec. 109-55. - Construction stage submittal requirements.**

For all new construction and substantial improvements, the permit holder shall provide to the Administrator an as-built certification of the regulatory floor elevation or flood-proofing level immediately after the lowest floor or flood proofing is completed. Any lowest floor certification made relative to mean sea level shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When flood proofing is utilized for non-residential structures, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same.

Any work undertaken prior to submission of these certifications shall be at the permit holder's risk.

The City Building Inspector shall review the above referenced certification data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being allowed to proceed. Failure to submit certification or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project.

**Sec. 109-56. – Variance procedures.**

- (A) The Mayor and Council as established by the City of Summerville shall hear and decide requests for appeals or variance from the requirements of this ordinance.
- (B) The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the City Building Inspector in the enforcement or administration of this ordinance.
- (C) Any person aggrieved by the decision of the Mayor and Council may appeal such decision to the Superior Court of Chattooga County, as provided in Section 5-4-1 of the Official Code of Georgia Annotated.
- (D) Variances may be issued for the repair or rehabilitation of Historic Structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum to preserve the historic character and design of the structure.
- (E) Variances may be issued for development necessary for the conduct of a functionally dependent use, provided the criteria of this Article are met, no reasonable alternative exists, and the

development is protected by methods that minimize flood damage during the base flood and create no additional threats to public safety.

- (F) Variances shall not be issued within any designated floodway if ANY increase in flood levels during the base flood discharge would result.
- (G) In reviewing such requests, the Mayor and Council shall consider all technical evaluations, relevant factors, and all standards specified in this and other sections of this ordinance.
- (H) Conditions for Variances:
  - (1) A variance shall be issued ONLY when there is:
    - (i) a finding of good and sufficient cause,
    - (ii) a determination that failure to grant the variance would result in exceptional hardship, and;
    - (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
  - (2) The provisions of this Ordinance are minimum standards for flood loss reduction; therefore any deviation from the standards must be weighed carefully. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief; and, in the instance of a Historic Structure, a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building.
  - (3) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation of the proposed lowest floor and stating that the cost of flood insurance will be commensurate with the increased risk to life and property resulting from the reduced lowest floor elevation.
  - (4) The City Building Inspector shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.
- (I) Upon consideration of the factors listed above and the purposes of this ordinance, the Mayor and Council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

**Secs. 109-57—109-86. - Reserved.**

### **DIVISION 3. - DEVELOPMENT STANDARDS**

**Sec. 109-87. - Definition of floodplain boundaries.**

- (a) Studied "A" zones, as identified in the FIS, is used to establish base flood elevations whenever available.
- (b) For all streams with a drainage area of 100 acres or greater, the future-conditions flood elevations are provided by the city. If future-conditions elevation data is not available from the city, then it is determined by a registered professional engineer using a method approved by FEMA and the city.

**Sec. 109-88. - Definition of floodway boundaries.**

The width of a floodway is determined from the FIS or FEMA-approved flood study. For all streams with a drainage area of 100 acres or greater, the regulatory floodway is provided by the city. If floodway data is not available from the city, then it is determined by a registered professional engineer using a method approved by FEMA and the city.

**Sec. 109-89. - General standards.**

- (a) No construction or structures, including grading, filling, cutting or displacement of earth, is allowed within the regulatory floodplain that could result in any of the following:
- (1) Raising the base flood elevation or future-conditions flood elevation equal to or more than 0.01 foot;
  - (2) Reducing the base flood or future-conditions regulatory flood storage capacity;
  - (3) Changing the flow characteristics as to the depth and velocity of the waters of the base flood or future-conditions flood as they pass both the upstream and the downstream boundaries of the property; or
  - (4) Creating hazardous or erosion-producing velocities, or resulting in excessive sedimentation
    - (a) of this section shall also meet the following conditions:
    - (b) Any development within the future-conditions floodplain allowed under subsection
      - (1) Compensation for storage capacity shall occur between the average groundwater table elevation and the base flood elevation for the base flood, and between the average groundwater table elevation and the future-conditions flood elevation for the future-conditions flood, and lie within the boundaries of ownership of the property being developed and is within the immediate vicinity of the location of the encroachment. Acceptable means of providing required compensation:
        - a. Include lowering of natural ground elevations within the floodplain, or lowering of adjoining land areas to create additional floodplain;
        - b. Storage. In no case shall any required compensation be provided via bottom storage or by excavating below the elevation of the top of the natural (predevelopment) stream channel unless such excavation results from the widening or relocation of the stream channel;
      - (2) Cut areas are stabilized and graded to a slope of no less than two percent;
      - (3) Effective transitions are provided such that flow velocities occurring on both upstream and downstream properties are not increased or decreased;
      - (4) Verification of no-rise conditions (0.01 foot or less), flood storage volumes, and flow characteristics are provided via a step-backwater analysis meeting the requirements of section 109-90(2);
      - (5) Public utilities and facilities, such as water, sanitary sewer, gas, and electrical systems, are located and constructed to minimize or eliminate infiltration or contamination from floodwaters; and
      - (6) Any significant physical changes to the base flood floodplain is submitted as a conditional letter of map revision (CLOMR) or conditional letter of map amendment (CLOMA), whichever is applicable. The CLOMR submittal is subject to approval by the city community development department using the community consent forms before forwarding the submittal package to FEMA for final approval. The responsibility for forwarding the CLOMR to FEMA and for obtaining the CLOMR approval is the responsibility of the applicant. Within six months of the completion of construction, the applicant shall submit as-built surveys for a final letter of map revision (LOMR).

**Sec. 109-90. - Engineering study requirements for floodplain encroachments.**

An engineering study is required, as appropriate to the proposed development activities on the site, whenever a development proposes to disturb any land within the future-conditions floodplain, except for a residential single-lot development on streams without established base flood elevations and/or floodways for which the provisions of section 109-116 apply. This study is prepared by a currently registered professional engineer in the state and made a part of the application for a permit. This information is submitted to and approved by the city community development department prior to the approval of any permit which would authorize the disturbance of land located within the future-conditions floodplain. Such study shall include:

- (1) Description of the extent to which any watercourse or floodplain will be altered or relocated as a result of the proposed development;

- (2) Step-backwater analysis, using a method approved by the city community development department. Cross sections (which may be supplemented by the applicant) and flow information will be obtained whenever available. Computations will be shown duplicating FIS results and will then be rerun with the proposed modifications to determine the new base flood profiles and future-conditions flood profiles;
- (3) Floodplain storage calculations based on cross sections (at least one every 100 feet) showing existing and proposed floodplain conditions to show that base flood floodplain and future-conditions floodplain storage capacity would not be diminished by the development;
- (4) The study shall include a preliminary plat, grading plan, or site plan, as appropriate, which shall clearly define all future-conditions floodplain encroachments.

**Sec. 109-91. - Floodway encroachments.**

Located within areas of special flood hazard are areas designated as floodways. A floodway may be an extremely hazardous area due to velocity floodwaters, debris or erosion potential. In addition, floodways must remain free of encroachment in order to allow for the discharge of the base flood without increased flood heights. Therefore, the following provisions shall apply:

- (1) Encroachments are prohibited, including earthen fill, new construction, substantial improvements or other development within the regulatory floodway, except when required for the construction of bridges, culverts, roadways and utilities, provided it is demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the encroachment shall not result in any increase to the pre-project base flood elevations, floodway elevations, or floodway widths during the base flood discharge. A registered professional engineer must provide supporting technical data and certification thereof; and
- (2) If the applicant proposes to revise the floodway boundaries, no permit authorizing the encroachment into or an alteration of the floodway is issued by the city until an affirmative conditional letter of map revision (CLOMR) is issued by FEMA and no-rise certification is approved by the city community development department.

**Sec. 109-92. - Maintenance requirements.**

The property owner is responsible for continuing maintenance as may be needed within an altered or relocated portion of a floodplain on his property so that the flood-carrying or flood storage capacity is not diminished. The city may direct the property owner, at no cost to the city, to restore the flood-carrying or flood storage capacity of the floodplain if the owner has not performed maintenance as required by the approved floodplain management plan on file with the city community development department.

**Secs. 109-93—109-112. - Reserved.**

**DIVISION 4. - PROVISIONS FOR FLOOD DAMAGE REDUCTION**

**Sec. 109-113. - General standards.**

In ALL Areas of Special Flood Hazard the following provisions are required:

- (1) New construction and substantial improvements of existing structures shall be anchored to prevent flotation, collapse or lateral movement of the structure;
- (2) New construction and substantial improvements of existing structures shall be constructed with materials and utility equipment resistant to flood damage;
- (3) New construction or substantial improvements of existing structures shall be constructed by methods and practices that minimize flood damage;
- (4) Elevated Buildings - All New construction or substantial improvements of existing structures that include ANY fully enclosed area located below the lowest floor formed by foundation and other exterior walls shall be designed so as to be an unfinished or flood resistant enclosure. The enclosure shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater.

- (a) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:
    - (i) Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
    - (ii) The bottom of all openings shall be no higher than one foot above grade; and,
    - (iii) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwater in both direction.
  - (b) So as not to violate the "Lowest Floor" criteria of this ordinance, the unfinished or flood resistant enclosure shall only be used for parking of vehicles, limited storage of maintenance equipment used in connection with the premises, or entry to the elevated area, and
  - (c) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.
- (5) All heating and air conditioning equipment and components (including ductwork), all electrical, ventilation, plumbing, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
  - (6) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable State requirements for resisting wind forces.
  - (7) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
  - (8) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
  - (9) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding, and;
  - (10) Any alteration, repair, reconstruction or improvement to a structure, which is not compliant with the provisions of this ordinance, shall be undertaken only if the non- conformity is not furthered, extended or replaced.

**Sec. 109-114. – Specific Standards.**

In ALL Areas of Special Flood Hazard the following provisions are required:

- (1) New construction and/or substantial improvements - Where base flood elevation data are available, new construction and/or substantial improvement of any structure or manufactured home shall have the lowest floor, including basement, elevated no lower than one foot above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate equalization of flood hydrostatic forces on both sides of exterior walls shall be provided in accordance with standards of Section 109-113 (4), "Elevated Buildings".
- (2) All heating and air conditioning equipment and components (including ductwork), all electrical, ventilation, plumbing, and other service facilities shall be elevated at or above one (1) foot above the base flood elevation.
- (3) Non-Residential Construction - New construction and/or the substantial improvement of any structure located in A1-30, AE, or AH zones, may be flood-proofed in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be water tight to one (1) foot above the base flood elevation, with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that

the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the official as set forth above and in Section 109-52(6).

- (4) Standards for Manufactured Homes and Recreational Vehicles - Where base flood elevation data are available:
- (a) All manufactured homes placed and/or substantially improved on:
    - (1) individual lots or parcels;
    - (2) in new and/or substantially improved manufactured home parks or subdivisions;
    - (3) in expansions to existing manufactured home parks or subdivisions; or,
    - (4) on a site in an existing manufactured home park or subdivision where a manufactured home has incurred "substantial damage" as the result of a flood,  
  
must have the lowest floor including basement, elevated no lower than one foot above the base flood elevation.
  - (b) Manufactured homes placed and/or substantially improved in an existing manufactured home park or subdivision may be elevated so that either:
    - (i) The lowest floor of the manufactured home is elevated no lower than one foot above the level of the base flood elevation, or
    - (ii) The manufactured home chassis is elevated and supported by reinforced piers (or other foundation elements of at least an equivalent strength) of no less than 36 inches in height above grade.
  - (c) All manufactured homes must be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. (Ref. Section 109-113(6))
  - (d) All recreational vehicles placed on sites must either:
    - (i) Be on the site for fewer than 180 consecutive days.
    - (ii) Be fully licensed and ready for highway use, (a recreational vehicle is ready for highway use if it is licensed, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached structures or additions), or
    - (iii) The recreational vehicle must meet all the requirements for "New Construction", including the anchoring and elevation requirements of Section 109-114(3)(a)(c).
- (5) Floodway - Located within Areas of Special Flood Hazard established in Section 109-22, are areas designated as floodway. A floodway may be an extremely hazardous area due to velocity floodwaters, debris or erosion potential. In addition, the area must remain free of encroachment in order to allow for the discharge of the base flood without increased flood heights. Therefore, the following provisions shall apply:
- (a) Encroachments are prohibited, including earthen fill, new construction, substantial improvements or other development within the regulatory floodway. Development may be permitted however, provided it is demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the encroachment shall not result in any increase in flood levels or floodway widths during a base flood discharge. A registered professional engineer must provide supporting technical data and certification thereof.

- (b) ONLY if Section 109-114(4)(a) is satisfied, then any new construction or substantial improvement shall comply with all other applicable flood hazard reduction provisions of Division 4 Provisions for Flood Hazard Reduction.

**Sec. 109-115. – RESERVED.**

**Sec. 109-116. - Building standards for streams without established base flood elevations and/or floodway (A zones).**

Located within the Areas of Special Flood Hazard established in Section 109-22, where streams exist but no base flood data have been provided (A-Zones), OR where base flood data have been provided but a Floodway has not been delineated, the following provisions apply:

- (1) When base flood elevation data or floodway data have not been provided in accordance with Section 109-22, then the City Building Inspector shall obtain, review, and reasonably utilize any scientific or historic base flood elevation and floodway data available from a Federal, State, or other source, in order to administer the provisions of Division 4 Flood Hazard Reduction. ONLY if data are not available from these sources, then the following provisions (2&3) shall apply:
- (2) No encroachments, including structures or fill material, shall be located within an area equal to the width of the stream or twenty feet, whichever is greater, measured from the top of the stream bank, unless certification by a registered professional engineer is provided demonstrating that such encroachment shall not result in more than a one (1) foot increase in flood levels during the occurrence of the base flood discharge.
- (3) In special flood hazard areas without base flood elevation data, new construction and substantial improvements of existing structures shall have the lowest floor of the lowest enclosed area (including basement) elevated no less than three (3) feet above the highest adjacent grade at the building site. (NOTE: Require the lowest floor to be elevated one foot above the estimated base flood elevation in A-Zone areas where a Limited Detail Study has been completed). Openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with standards of Section 109-113 (4) "Elevated Buildings".
  - (a) All heating and air conditioning equipment and components (including ductwork), all electrical, ventilation, plumbing, and other service facilities shall be elevated no less than three (3) feet above the highest adjacent grade at the building site.

The City Building Inspector shall certify the lowest floor elevation level and the record shall become a permanent part of the permit file.

**Sec. 109-117. - Standards for areas of shallow flooding (AO zones).**

Areas of Special Flood Hazard established in Section 109-22, may include designated "AO" shallow flooding areas. These areas have base flood depths of one to three feet (1'-3') above ground, with no clearly defined channel. The following provisions apply:

- (1) All new construction and substantial improvements of residential and non-residential structures shall have the lowest floor, including basement, elevated to the flood depth number specified on the Flood Insurance Rate Map (FIRM), above the highest adjacent grade. If no flood depth number is specified, the lowest floor, including basement, shall be elevated at least three feet (3) above the highest adjacent grade. Openings sufficient to facilitate the unimpeded movements of flood waters shall be provided in accordance with standards of Section 109-113 (4), "Elevated Buildings".

The City Building Inspector shall certify the lowest floor elevation level and the record shall become a permanent part of the permit file.

- (2) New construction or the substantial improvement of a non-residential structure may be flood-proofed in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be water tight to the specified FIRM flood level plus one (1) foot, above highest adjacent grade, with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or

architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the official as set forth above and as required in Section 109-54(1)(c) and Section 109-55.

- (3) Drainage paths shall be provided to guide floodwater around and away from any proposed structure.

**Sec. 109-118. - Standards for subdivisions.**

- (1) All subdivision and/or development proposals shall be consistent with the need to minimize flood damage;
- (2) All subdivision and/or development proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- (3) All subdivision and/or development proposals shall have adequate drainage provided to reduce exposure to flood hazards, and;
- (4) For subdivisions and/or developments greater than fifty (50) lots or five (5) acres, whichever is less, base flood elevation data shall be provided for subdivision and all other proposed development, including manufactured home parks and subdivisions. Any changes or revisions to the flood data adopted herein and shown on the FIRM shall be submitted to FEMA for review as a Conditional Letter of Map Revision (CLOMR) or Conditional Letter of Map Amendment (CLOMA), whichever is applicable. Upon completion of the project, the developer is responsible for submitting the "as-built" data to FEMA in order to obtain the final LOMR.

**Sec. 109-119. - Standards for critical facilities.**

- (1) Critical facilities shall not be located in the 100-year floodplain or the 500-year floodplain.
- (2) All ingress and egress from any critical facility must be protected to the 500-year flood elevation.

**ARTICLE II - RESERVED**

**Secs. 109-120—109-149. - Reserved.**

**ARTICLE III. - ILLICIT DISCHARGE AND ILLEGAL CONNECTION**

**Sec. 109-150. - General provisions.**

- (a) *Purpose and intent.* The purpose of this article is to protect the public health, safety, environment and general welfare through the regulation of non-storm water discharges to the city separate storm sewer system to the maximum extent practicable as required by federal law. This article establishes methods for controlling the introduction of pollutants into the city separate storm sewer system in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this article are to:
  - (1) Regulate the contribution of pollutants to the storm sewer system by any person;
  - (2) Prohibit illicit discharges and illegal connections to the storm sewer system;
  - (3) Prevent non-storm water discharges, generated as a result of spills, inappropriate dumping or disposal, to the storm sewer system; and
  - (4) Establish legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this article.
- (b) *Compatibility with other regulations.* This article is not intended to modify or repeal any other chapter, rule, regulation, or other provision of law. The requirements of this article are in addition to the requirements of any other chapter,

rule, regulation, or other provision of law, and where any provision of this article imposes restrictions different from those imposed by any other chapter, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

- (c) *Responsibility for administration.* The city community development department shall administer, implement, and enforce the provisions of this article.

### **Sec. 109-151. - Definitions.**

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

*Accidental discharge* means a discharge prohibited by this chapter that occurs by chance and without planning or thought prior to occurrence.

*City separate storm sewer system* means any facility designed or used for collecting and/or conveying storm water, including but not limited to any roads with drainage systems, highways, city streets, curbs, gutters, inlets, catch basins, piped storm drains, pumping facilities, structural storm water controls, ditches, swales, natural and manmade or altered drainage channels, reservoirs, and other drainage structures, and which is:

- (1) Owned or maintained by the city;
- (2) Not a combined sewer; and
- (3) Not part of a publicly owned treatment works.

*Clean Water Act* means the Federal Water Pollution Control Act (33 USC section 1251 et seq.), and any subsequent amendments thereto.

*Construction activity* means activities subject to the Georgia Erosion and Sedimentation Control Act of 1975 (O.C.G.A. § 12-7-1 et seq.) or NPDES general construction permits. These include construction projects resulting in land disturbance. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

*Director* means the director of the city community development department.

*Illegal connection* means either of the following:

- (1) Any pipe, open channel, drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system, regardless of whether such pipe, open channel, drain or conveyance has been previously allowed, permitted, or approved by an authorized enforcement agency; or
- (2) Any pipe, open channel, drain or conveyance connected to the city separate storm sewer system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

*Illicit discharge* means any direct or indirect non-storm water discharge to the city separate storm sewer system, except as exempted in section 109-153.

*Industrial activity* means activities subject to NPDES industrial permits as defined in 40 CFR 122.26 (b)(14).

*National Pollutant Discharge Elimination System (NPDES) storm water discharge permit* means a permit issued by the state EPD under authority delegated pursuant to 33 USC 1342(b) that authorizes the discharge of pollutants to waters of the United states, whether the permit is applicable on an individual, group, or general area wide basis.

*Non-storm water discharge* means any discharge to the storm drain system that is not composed entirely of storm water.

*Pollutant* means anything that causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise);

degreasers; cleaning chemicals; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind.

*Pollution* means the contamination or other alteration of any water's physical, chemical or biological properties by the addition of any constituent and includes, but is not limited to, a change in temperature, taste, color, turbidity, or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

*Premises* means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

*State waters* means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface water and subsurface water, natural or artificial, lying within or forming a part of the boundaries of the state that are not entirely confined and retained completely upon the property of a single person.

*Storm water runoff* or *storm water* means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

*Structural storm water control* means a structural storm water management facility or device that controls storm water runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

**Sec. 109-152. - Violations, enforcement and penalties.**

- (a) *Violations.*
  - (1) It is unlawful for any person to violate any provision or fail to comply with any of the requirements of this article. Any person who has violated or continues to violate the provisions of this article may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.
  - (2) In the event the violation constitutes an immediate danger to public health or public safety, the city community development department is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The community development department is authorized to seek costs of the abatement as provided herein.
- (b) *Notice of violation.* Whenever the city community development department finds that a violation of this article has occurred, the department may order compliance by written notice of violation.
  - (1) The notice of violation shall contain:
    - a. The name and address of the alleged violator;
    - b. The address, when available, or a description of the building, structure or land upon which the violation is occurring, or has occurred;
    - c. A statement specifying the nature of the violation;
    - d. A description of the remedial measures necessary to restore compliance with this article and a time schedule for the completion of such remedial action;
    - e. A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed; and

- f. A statement that the determination of violation may be appealed to the city community development department by filing a written notice of appeal within 30 days of service of notice of violation.
- (2) Such notice may require, without limitation:
- a. The performance of monitoring, analyses, and reporting;
  - b. The elimination of illicit discharges and illegal connections;
  - c. That violating discharges, practices, or operations shall cease and desist;
  - d. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
  - e. Payment of costs to cover administrative and abatement costs; and
  - f. The implementation of pollution prevention practices.
- (c) *Appeal of notice.* Any person receiving a notice of violation may appeal the determination of the city community development department. The notice of appeal must be received within 30 days from the date of the notice of violation. Hearing on the appeal before the director or his designee shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the appropriate authority or designee is final.
- (d) *Enforcement measures after appeal.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within 30 days of the decision of the appropriate authority upholding the decision of the city community development department, then representatives of the department may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It is unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth in this section.
- (e) *Costs of abatement of the violation.* Within 60 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the assessment or to the amount of the assessment within 30 days of such notice. If the amount due is not paid within 30 days after receipt of the notice, or if an appeal is taken within 30 days after a decision on said appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.
- (f) *Civil penalties.* In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten days, or such greater period as the city community development department shall deem appropriate, after the department has taken one or more of the actions described in subsection (e) of this section, the department may impose a penalty not to exceed \$1,000.00 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.
- (g) *Criminal penalties.* For intentional and flagrant violations of this article, the city community development department may issue a citation to the alleged violator requiring such person to appear in municipal court to answer charges for such violation. Upon conviction, such person shall be guilty of a violation of this Code. Each act of violation and each day upon which any act of violation shall occur shall constitute a separate violation of this Code.
- (h) *Violations deemed a public nuisance.* In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this article is a threat to public health, safety, welfare, and environment and is declared and deemed a nuisance, and may be abated by injunctive or other equitable relief as provided by law.
- (i) *Remedies not exclusive.* The remedies listed in this article are not exclusive of any other remedies available under any applicable federal, state or local law and the city community development department may seek cumulative remedies.
- (j) *Recovery of fees and costs.* The city community development department may recover attorney's fees, court costs, and other expenses associated with enforcement of this section, including sampling and monitoring expenses.

**Sec. 109-153. - Prohibitions.**

- (a) *Prohibition of illicit discharges.* No person shall throw, drain, or otherwise discharge, cause, or allow others under his control to throw, drain, or otherwise discharge into the city separate storm sewer system any pollutants or waters containing any pollutants other than storm water.
- (b) *Exemptions.* The following discharges are exempt from the prohibition provision above:
- (1) Water line flushing performed by a government agency, other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising groundwater, groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, natural riparian habitat or wetland flows, and any other water source not containing pollutants;
  - (2) Discharges or flows from firefighting, and other discharges specified in writing by the director as being necessary to protect public health and safety;
  - (3) The prohibition provision above shall not apply to any non-storm water discharge permitted under an NPDES permit or order issued to the discharger and administered under the authority of the state and the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the city separate storm sewer system.
- (c) *Prohibition of illegal connections.* The construction, connection, use, maintenance or continued existence of any illegal connection to the storm sewer system is prohibited.
- (1) This prohibition expressly includes, without limitation, illegal connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
  - (2) A person violates this article if the person connects a line conveying sewage to the storm sewer system, or allows such a connection to continue.
  - (3) Improper connections in violation of this article must be disconnected and redirected, if necessary, to an approved on-site wastewater management system or the sanitary sewer system upon approval of the public works department.
  - (4) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, is located by the owner or occupant of that property upon receipt of written notice of violation from the city community development department requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be completed, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the community development department.

**Sec. 109-154. - Industrial or construction activity discharges.**

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the city community development department prior to allowing discharges to the city separate storm sewer system.

**Sec. 109-155. - Access and inspection of properties and facilities.**

The city community development department is permitted to enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this article.

- (1) If a property or facility has security measures in force that require proper identification and clearance before entry into its premises, the owner or operator shall make the necessary arrangements to allow access to representatives of the city community development department.

- (2) The owner or operator shall allow the city community development department ready access to all parts of the premises for the purposes of inspection, sampling, photography, videotaping, examination and copying of any records that are required under the conditions of an NPDES permit to discharge storm water.
- (3) The city community development department shall have the right to set up on any property or facility such devices as are necessary, in the opinion of the department, to conduct monitoring and/or sampling of flow discharges.
- (4) The city community development department may require the owner or operator to install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to its designees. This sampling and monitoring equipment is maintained at all times in a safe and proper operating condition by the owner or operator at his own expense. All devices used to measure flow and quality is calibrated to ensure their accuracy.
- (5) Any temporary or permanent obstruction to safe and easy access to the property or facility to be inspected and/or sampled is promptly removed by the owner or operator at the written or oral request of the city community development department and shall not be replaced. The costs of clearing such access are borne by the owner or operator.
- (6) Unreasonable delays in allowing the city community development department access to a facility is a violation of this article.
- (7) If the city community development department has been refused access to any part of the premises from which storm water is discharged, and the department is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this article or any order issued hereunder, or to protect the overall public health, safety, environment and welfare of the community, then the community development department may seek issuance of a search warrant from any court of competent jurisdiction.

**Sec. 109-156. - Notification of accidental discharges and spills.**

- (a) Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of pollutants or non-storm water discharges from that facility or operation which is resulting or may result in illicit discharges or pollutants discharging into storm water, the city separate storm sewer system, state waters, or waters of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge.
- (b) Said person shall notify the authorized enforcement agency in person or by phone, facsimile or in person no later than 24 hours of the nature, quantity and time of occurrence of the discharge. Notifications in person or by phone are confirmed by written notice addressed and mailed to the city community development department within three business days of the phone or in-person notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records are retained for at least three years. Said person shall also take immediate steps to ensure no recurrence of the discharge or spill.
- (c) In the event of such a release of hazardous materials, emergency response agencies and/or other appropriate agencies are immediately notified.
- (d) Failure to provide notification of a release as provided above is a violation of this article.

**Secs. 109-157—109-180. - Reserved.**

**ARTICLE IV. - POSTDEVELOPMENT STORM WATER MANAGEMENT FOR NEW DEVELOPMENT AND REDEVELOPMENT**

**Sec. 109-181. - Definitions.**

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

*Applicant* means a person submitting a post development storm water management application and plan for approval.

*Channel* means a natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

*Conservation easement* means an agreement between a landowner and the city or other government agency or land trust that permanently protects open space or green space on the owner's land by limiting the amount and type of development that can take place, but continues to leave the remainder of the fee interest in private ownership.

*Detention* means the temporary storage of storm water runoff in a storm water management facility for the purpose of controlling the peak discharge.

*Detention facility* means a detention basin or structure designed for the detention of storm water runoff and gradual release of stored water at controlled rates.

*Developer* means a person who undertakes land development activities.

*Development* means a land development or land development project.

*Director* means the director of the city community development department.

*Drainage easement* means an easement appurtenant or attached to a tract or parcel of land allowing the owner of adjacent tracts or other persons to discharge storm water runoff onto the tract or parcel of land subject to the drainage easement.

*Erosion and sedimentation control plan* means a plan that is designed to minimize the accelerated erosion and sediment runoff at a site during land disturbance activities.

*Extended detention* means the detention of storm water runoff for an extended period, typically 24 hours or greater.

*Extreme flood protection* means measures taken to prevent adverse impacts from large low-frequency storm events with a return frequency of 100 years or more.

*Flooding* means a volume of surface water that is too great to be confined within the banks or walls of a conveyance or stream channel and that overflows onto adjacent lands.

*Green space* or *open space* means permanently protected areas of the site that are preserved in a natural state.

*Hotspot* means an area where the use of the land has the potential to generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in storm water.

*Hydrologic Soil Group (HSG)* means a natural resource conservation service classification system in which soils are categorized into four runoff potential groups. The groups range from group A soils, with high permeability and little runoff produced, to group D soils, which have low permeability rates and produce much more runoff.

*Impervious cover* means a surface composed of any material that significantly impedes or prevents the natural infiltration of water into soil. The term "impervious cover" includes, but is not limited to, rooftops, buildings, streets and roads, and any concrete or asphalt surface.

*Industrial storm water permit* means a National Pollutant Discharge Elimination System (NPDES) permit issued to an industry or group of industries that regulates the pollutant levels associated with industrial storm water discharges or specifies on-site pollution control strategies.

*Infiltration* means the process of percolating storm water runoff into the subsoil.

*Inspection and maintenance agreement* means a written agreement providing for the long-term inspection and maintenance of storm water management facilities and practices on a site or with respect to a land development project, which when properly recorded in the deed records constitutes a restriction on the title to a site or other land involved in a land development project.

*Jurisdictional wetland* means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

*Land development* means any land change, including, but not limited to, clearing, digging, grubbing, stripping, removal of vegetation, dredging, grading, excavating, transporting and filling of land, construction, paving, and any other installation of impervious cover.

*Land development activities* mean those actions or activities that comprise, facilitate or result in land development.

*Land development project* means a discrete land development undertaking.

*New development* means a land development activity on a previously undeveloped site.

*Nonpoint source pollution* means a form of water pollution that does not originate from a discrete point such as a sewage treatment plant or industrial discharge, but involves the transport of pollutants such as sediment, fertilizers, pesticides, heavy metals, oil, grease, bacteria, organic materials and other contaminants from land to surface water and groundwater via mechanisms such as precipitation, storm water runoff, and leaching. Nonpoint source pollution is a byproduct of land use practices such as agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

*Nonstructural storm water management practice or nonstructural practice* means any natural or planted vegetation or other nonstructural component of the storm water management plan that provides for or enhances storm water quantity and/or quality control or other storm water management benefits, and includes, but is not limited to, riparian buffers, open and green space areas, overland flow filtration areas, natural depressions, and vegetated channels.

*Off-site facility* means a storm water management facility located outside the boundaries of the site.

*On-site facility* means a storm water management facility located within the boundaries of the site.

*Overbank flood protection* means measures taken to prevent an increase in the frequency and magnitude of out-of-bank flooding (i.e., flow events that exceed the capacity of the channel and enter the floodplain), and that are intended to protect downstream properties from flooding for the two-year through 25-year frequency storm events.

*Owner* means the legal or beneficial owner of a site, including, but not limited to, a mortgagee or vendee in possession, receiver, executor, trustee, lessee or other person in control of the site.

*Permit* means the permit issued by the city to the applicant that is required for undertaking any land development activity.

*Post development* refers to the time period, or the conditions that may reasonably be expected or anticipated to exist, after completion of the land development activity on a site as the context may require.

*Pre-development* refers to the time period, or the conditions that exist, on a site prior to the commencement of a land development project and at the time that plans for the land development of a site are approved by the plan approving authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first item being approved or permitted shall establish predevelopment conditions.

*Project* means a land development project.

*Redevelopment* means a land development project on a previously developed site, but excludes ordinary maintenance activities, remodeling of existing buildings, resurfacing of paved areas, and exterior changes or improvements which do not materially increase or concentrate storm water runoff, or cause additional nonpoint source pollution.

*Regional storm water management facility or regional facility* means storm water management facilities designed to control storm water runoff from multiple properties, where the owners or developers of the individual properties may assist in the financing of the facility, and the requirement for on-site controls is either eliminated or reduced.

*Runoff* means storm water runoff.

*Site* means the parcel of land being developed, or the portion thereof, on which the land development project is located.

*Storm water better site design* means nonstructural site design approaches and techniques that can reduce a site's impact on the watershed and can provide for nonstructural storm water management. The term "storm water better site design" includes conserving and protecting natural areas and green space, reducing impervious cover and using natural features for storm water management.

*Storm water management* means the collection, conveyance, storage, treatment and disposal of storm water runoff in a manner intended to prevent increased flood damage, stream bank channel erosion, habitat degradation and water quality degradation, and to enhance and promote the public health, safety and general welfare.

*Storm water management facility* means any infrastructure that controls or conveys storm water runoff.

*Storm water management measure* means any storm water management facility or nonstructural storm water practice.

*Storm water management plan* means a document describing how existing runoff characteristics will be affected by a land development project and containing measures for complying with the provisions of this article.

*Storm water management system* means the entire set of structural and nonstructural storm water management facilities and practices that are used to capture, convey and control the quantity and quality of the storm water runoff from a site.

*Storm water retrofit* means a storm water management practice designed for a currently developed site that previously had either no storm water management practice in place or a practice inadequate to meet the storm water management requirements of the site.

*Storm water runoff* means the flow of surface water resulting from precipitation.

*Structural storm water control* means a structural storm water management facility or device that controls storm water runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow of such runoff.

*Subdivision* means the division of a tract or parcel of land resulting in one or more new lots or building sites for the purpose, whether immediately or in the future, of sale, other transfer of ownership or land development, and includes divisions of land resulting from or made in connection with the layout or development of a new street or roadway or a change in an existing street or roadway.

#### **Sec. 109-182. - Purpose and intent.**

The purpose of this article is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post development storm water runoff and nonpoint source pollution associated with new development and redevelopment. It has been determined that proper management of post development storm water runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, environment and general welfare of the public, and protect water and aquatic resources. This article seeks to meet that purpose through the following objectives:

- (1) Establish decision-making processes surrounding land development activities that protect the integrity of the watershed and preserve the health of water resources;
- (2) Require that new development and redevelopment maintain the predevelopment hydrologic response in their post development state as nearly as practicable in order to reduce flooding, stream bank erosion, nonpoint source pollution and increases in stream temperature, and maintain the integrity of stream channels and aquatic habitats;
- (3) Establish minimum post development storm water management standards and design criteria for the regulation and control of storm water runoff quantity and quality;
- (4) Establish design and application criteria for the construction and use of structural storm water control facilities that can be used to meet the minimum post development storm water management standards;
- (5) Encourage the use of nonstructural storm water management and storm water better site design practices, such as the preservation of green space and other conservation areas, to the maximum extent practicable. Coordinate site design plans, which include green space, with the county's green space protection plan;
- (6) Establish provisions for the long-term responsibility for and maintenance of structural storm water control facilities and nonstructural storm water management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety; and
- (7) Establish administrative procedures for the submission, review, approval and disapproval of storm water management plans, and for the inspection of approved active projects, and long-term follow up.

#### **Sec. 109-183. - Violations, enforcement and penalties.**

Any action or inaction which violates the provisions of this article or the requirements of an approved storm water management plan or permit, may be subject to the enforcement actions outlined in this section. Any such action or inaction that is

continuous with respect to time is deemed to be a public nuisance and may be abated by injunctive or other equitable relief. The imposition of any of the penalties described in subsection (2) of this section shall not prevent such equitable relief.

- (1) *Notice of violation.* If the city community development department determines that an applicant or Other responsible person has failed to comply with the terms and conditions of a permit, and approved storm water management plan the provisions of this article, it shall issue a written notice of violation to such applicant or other responsible person. Where a person is engaged in activity covered by this article without having first secured a permit therefor, the notice of violation is served on the owner or the responsible person in charge of the activity being conducted on the site. The notice of violation shall contain:
- 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 storm water management plan or this article and the date for the completion of such remedial action;
  - e. A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed; and
  - f. A statement that the determination of violation may be appealed to the city community development department by filing a written notice of appeal within 30 days after the notice of violation (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours' notice shall be sufficient).
- (2) *Penalties.* 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 of the following actions or penalties may be taken or assessed against the person to whom the notice of violation was directed. Before taking any of the following actions or imposing any of the following penalties, the city community development department shall first notify the applicant or other responsible person in writing of its intended action, and shall provide a reasonable opportunity, of not less than ten days (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours' notice is sufficient), to cure such violation. In the event the applicant or other responsible person fails to cure such violation after such notice and cure period, the city community development department may take any one or more of the following actions or impose any one or more of the following penalties:
- a. *Stop work order.* The city community development department may issue a stop work order that is served on the applicant or other responsible person. 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 the necessary remedial measures to cure such violation or violations.
  - b. *Withhold certificate of occupancy.* The city community development department may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site until 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.
  - c. *Suspension, revocation or modification of permit.* The city community development department may suspend, revoke or modify the permit authorizing the 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 city may deem necessary) to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.
  - d. *Civil penalties.* In the event the applicant or other responsible person fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten days, or such greater period as the city community development department shall deem appropriate (except that, in the event the violation constitutes an immediate danger to public health or public safety, 24 hours' notice is sufficient) after the city has taken one or more of the actions described above, the department may impose a

penalty not to exceed \$1,000.00 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.

- e. *Criminal penalties.* For intentional and flagrant violations of this article, the city community development department may issue a citation to the applicant or other responsible person, requiring such person to appear in municipal court to answer charges for such violation. Upon conviction, such person shall be guilty of a violation of this Code. Each act of violation and each day upon which any act of violation shall occur shall constitute a separate violation of this Code.

**Sec. 109-184. - Applicability.**

- (a) This article is applicable to all land development, including, but not limited to, site plan applications, subdivision applications, and grading applications, unless exempt pursuant to subsection (b) of this section. These standards apply to any new development or redevelopment site that meets one or more of the following criteria, or as otherwise required by the director:
  - (1) New development that involves the creation of 5,000 square feet or more of impervious cover, or that involves other land development activities of 5,000 square feet or more;
  - (2) Redevelopment that includes the creation, addition or replacement of 5,000 square feet or more of impervious cover, or that involves other land development activity of 5,000 square feet or more;
  - (3) Any new development or redevelopment, regardless of size, that is defined by the director to be a hotspot land use; or
  - (4) Land development activities that are smaller than the minimum applicability criteria set forth in subsections (a)(1) and (2) of this section, if such activities are part of a larger common plan of development, even though multiple, separate and distinct land development activities may take place at different times on different schedules.
- (b) The following activities are exempt from this article:
  - (1) Agricultural or silvicultural land management activities within areas zoned for these activities; and
  - (2) Repairs to any storm water management facility or practice deemed necessary by the director.

**Sec. 109-185. - Designation of administrator.**

The director or a designee is hereby appointed to administer and implement the provisions of this article.

**Sec. 109-186. - Compatibility with other regulations.**

This article is not intended to modify or repeal any other chapter, rule, regulation or other provision of law. The requirements of this article are in addition to the requirements of any other chapter, rule, regulation or other provision of law, and where any provision of this article imposes restrictions different from those imposed by any other chapter, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

**Sec. 109-187. - Storm water design manual.**

The city will utilize the policy, criteria and information including technical specifications and standards in the latest edition of the Georgia Storm water Management Manual and any relevant city addenda (or equivalent city storm water management design manual) for the proper implementation of the requirements of this article. The manual may be updated and expanded periodically, based on improvements in science, engineering, monitoring and local maintenance experience.

**Sec. 109-188. - Permit—Required; application requirements.**

- (a) No owner or developer shall perform any land development activities without first meeting the requirements of this article prior to commencing the proposed activity.

- (b) Unless specifically exempted by this article, any owner or developer proposing a land development activity shall submit to the city community development department a permit application on a form provided by the city for that purpose.
- (c) Unless otherwise exempted by this article, a permit application is accompanied by the following items in order to be considered:
  - (1) Storm water concept plan and consultation meeting certification in accordance with section 109-190;
  - (2) Storm water management plan in accordance with section 109-191;
  - (3) Inspection and maintenance agreement in accordance with section 109-191(c)(11), if applicable;
  - (4) Performance bond, if applicable; and
  - (5) Permit application and plan review fees in accordance with section 109-193.

**Sec. 109-189. - Same—Application procedure.**

- (a) Applications for land development permits are filed with the city community development department.
- (b) Permit applications shall include the items set forth in section 109-188(c). Two copies of the storm water management plan and the inspection maintenance agreement, if applicable, is included.
- (c) The city community development department shall inform the applicant whether the application, storm water management plan and inspection and maintenance agreement are approved or disapproved.
- (d) If either the permit application, storm water management plan or inspection and maintenance agreement are disapproved, the city community development department shall notify the applicant of such fact in writing. The applicant may then revise any item not meeting the requirements hereof and resubmit the same, in which event this subsection and subsection (c) of this section shall apply to such resubmittal.
- (e) Upon a finding by the city community development department that the permit application, storm water management plan and inspection and maintenance agreement, if applicable, meet the requirements of this article, the city community development department may issue a permit for the land development project, provided all other legal requirements for the issuance of such permit have been met.
- (f) Notwithstanding the issuance of the permit, in conducting the land development project, the applicant or other responsible person is subject to the following requirements:
  - (1) The applicant shall comply with all applicable requirements of the approved plan and this article and shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan;
  - (2) The land development project is conducted only within the area specified in the approved plan;
  - (3) The city community development department is allowed to conduct periodic inspections of the project;
  - (4) No changes may be made to an approved plan without review and written approval by the city community development department; and
  - (5) Upon completion of the project, the applicant or other responsible person shall submit the engineer's report and certificate and as-built plans required by section 109-196.

**Sec. 109-190. - Storm water concept plan and consultation meeting.**

- (a) *Discussion of post development storm water management.* Before any storm water management permit application is submitted, it is recommended that the landowner or developer shall meet with the city community development department for a consultation meeting on a concept plan for the post development storm water management system to be utilized in the proposed land development project. This consultation meeting shall take place at the time of the preliminary plan of subdivision or other early step in the development process. The purpose of this meeting is to

discuss the post development storm water management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential ideas for storm water management designs before the formal site design engineering is commenced.

- (b) *Information to be submitted.* To accomplish this goal, the following information is included in the concept plan that is submitted in advance of the meeting:
- (1) *Existing conditions; proposed site plans.* Existing conditions and proposed site layout sketch plans which illustrate, at a minimum, existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys (when available); boundaries of existing predominant vegetation and proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.
  - (2) *Natural resources inventory.* A written or graphic inventory of the natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, topography, wetlands, and other native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as wetlands, lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development.
  - (3) *Storm water management system concept plan.* A written or graphic concept plan of the proposed post development storm water management system including: preliminary selection and location of proposed structural storm water controls; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of proposed stream channel modifications, such as bridge or culvert crossings. Local watershed plans, the city green space projection plan (if applicable), and any relevant resource protection plans will be consulted in the discussion of the concept plan.

**Sec. 109-191. - Storm water management plan requirements.**

- (a) The storm water management plan shall detail how post development storm water runoff will be controlled or managed and how the proposed project will meet the requirements of this article, including the performance criteria set forth in section 109-195.
- (b) This plan is in accordance with the criteria established in this section and must be submitted with the stamp and signature of a professional engineer (PE) licensed in the state, who must verify that the design of all storm water management facilities and practices meet the submittal requirements outlined in the submittal checklists found in the storm water design manual.
- (c) The storm water management plan must ensure that the requirements and criteria in this article are being complied with and that opportunities are being taken to minimize adverse post development storm water runoff impacts from the development. The plan shall consist of maps, narrative, and supporting design calculations (hydrologic and hydraulic) for the proposed storm water management system. The plan shall include all of the information required in the storm water management site plan checklist found in the storm water design manual. This includes:
  - (1) The common address and legal description of the site.
  - (2) Vicinity map.
  - (3) Existing conditions hydrologic analysis. The existing condition hydrologic analysis for storm water runoff rates, volumes, and velocities, which shall include: a topographic map of existing site conditions with the drainage basin boundaries indicated; acreage, soil types and land cover of areas for each subbasin affected by the project; all perennial and intermittent streams and other surface water features; all existing storm water conveyances and structural control facilities; direction of flow and exits from the site; analysis of runoff provided by off-site areas upstream of the project site; and methodologies, assumptions, site parameters and supporting design calculations used in analyzing the existing conditions site hydrology. For redevelopment sites, predevelopment conditions are modeled using guidelines established by the director for the portion of the site undergoing land development activities.
  - (4) Post development hydrologic analysis. The post development hydrologic analysis for storm water runoff rates, volumes, and velocities, which shall include: a topographic map of developed site conditions with the

post development drainage basin boundaries indicated; total area of post development impervious surfaces and other land cover areas for each subbasin affected by the project; calculations for determining the runoff volumes that need to be addressed for each subbasin for the development project to meet the post development storm water management performance criteria in section 109-195; location and boundaries of proposed natural feature protection and conservation areas; documentation and calculations for any applicable site design credits that are being utilized; methodologies, assumptions, site parameters and supporting design calculations used in analyzing the existing conditions site hydrology. If the land development activity on a redevelopment site constitutes more than 50 percent of the site area for the entire site, then the performance criteria in section 109-195 must be met for the storm water runoff from the entire site.

- (5) Storm water management system. The description, scaled drawings and design calculations for the proposed post development storm water management system, which shall include: A map and/or drawing or sketch of the storm water management facilities, including the location of nonstructural site design features and the placement of existing and proposed structural storm water controls, including design water surface elevations, storage volumes available from zero to maximum head, location of inlet and outlets, location of bypass and discharge systems, and all orifice/restrictor sizes; a narrative describing how the selected structural storm water controls will be appropriate and effective; cross section and profile drawings and design details for each of the structural storm water controls in the system, including supporting calculations to show that the facility is designed according to the applicable design criteria; a hydrologic and hydraulic analysis of the storm water management system for all applicable design storms (including stage-storage or outlet rating curves, and inflow and outflow hydrographs); documentation and supporting calculations to show that the storm water management system adequately meets the post development storm water management performance criteria in section 109-195; drawings, design calculations, elevations and hydraulic grade lines for all existing and proposed storm water conveyance elements including storm water drains, pipes, culverts, catchbasins, channels, swales and areas of overland flow; and where applicable, a narrative describing how the storm water management system corresponds with any watershed protection plans and/or local green space protection plan.
- (6) Post development downstream analysis. A downstream peak flow analysis that includes the assumptions, results and supporting calculations to show safe passage of post development design flows downstream. The analysis of downstream conditions in the report shall address each and every point or area along the project site's boundaries at which runoff will exit the property. The analysis shall focus on the portion of the drainage channel or watercourse immediately downstream from the project. This area shall extend downstream from the project to a point in the drainage basin where the project area is ten percent of the total basin area. In calculating runoff volumes and discharge rates, consideration may need to be given to any planned future upstream land use changes. The analysis is in accordance with the storm water design manual.
- (7) Construction-phase erosion and sedimentation control plan. An erosion and sedimentation control plan in accordance with the Georgia Erosion and Sedimentation Control Act of 1975 (O.C.G.A. § 12-7-1 et seq.) or NPDES permit for construction activities. The plan shall also include information on the sequence/phasing of construction and temporary stabilization measures and temporary structures that will be converted into permanent storm water controls.
- (8) Landscaping and open space plan. A detailed landscaping and vegetation plan describing the woody and herbaceous vegetation that will be used within and adjacent to storm water management facilities and practices. The landscaping plan must also include: the arrangement of planted areas, natural and green space areas and other landscaped features on the site plan; information necessary to construct the landscaping elements shown on the plan drawings; descriptions and standards for the methods, materials and vegetation that are to be used in the construction; density of plantings; descriptions of the stabilization and management techniques used to establish vegetation; and a description of who will be responsible for ongoing maintenance of vegetation for the storm water management facility and what practices will be employed to ensure that adequate vegetative cover is preserved.
- (9) Operations and maintenance plan. Detailed description of ongoing operations and maintenance procedures for storm water management facilities and practices to ensure their continued function as designed and constructed or preserved. These plans will identify the parts or components of a storm water management facility or practice that need to be regularly or periodically inspected and maintained, and the equipment and skills or training necessary. The plan shall include an inspection and maintenance schedule, maintenance tasks, responsible parties for maintenance, funding, access and safety issues. Provisions for the periodic

review and evaluation of the effectiveness of the maintenance program and the need for revisions or additional maintenance procedures are included in the plan.

- (10) Maintenance access easements. The applicant must ensure access from public right-of-way to storm water management facilities and practices requiring regular maintenance at the site for the purpose of inspection and repair by securing all the maintenance access easements needed on a permanent basis. Such access is sufficient for all necessary equipment for maintenance activities. Upon final inspection and approval, a plat or document indicating that such easements exist is recorded and shall remain in effect even with the transfer of title of the property.
- (11) Inspection and maintenance agreements. Unless an on-site storm water management facility or practice is dedicated to and accepted by the city community development department as provided in section 109-192, the applicant must execute an easement and an inspection and maintenance agreement binding on all subsequent owners of land served by an on-site storm water management facility or practice in accordance section 109-192.
- (12) Evidence of acquisition of applicable local and nonlocal permits. The applicant shall certify and provide documentation to the city community development department that all other applicable environmental permits have been acquired for the site prior to approval of the storm water management plan.

**Sec. 109-192. - Storm water management inspection and maintenance agreements.**

- (a) Prior to the issuance of any permit for a land development activity requiring a storm water management facility or practice hereunder and for which the city community development department requires ongoing maintenance, the applicant or owner of the site must, unless an on-site storm water management facility or practice is dedicated to and accepted by the city community development department, execute an inspection and maintenance agreement, and/or a conservation easement, if applicable, that is binding on all subsequent owners of the site.
- (b) The inspection and maintenance agreement, if applicable, must be approved by the city community development department prior to plan approval, and recorded in the deed records upon final plat approval.
- (c) The inspection and maintenance agreement shall identify by name or official title the person responsible for carrying out the inspection and maintenance. Responsibility for the operation and maintenance of the storm water management facility or practice, unless assumed by a governmental agency, shall remain with the property owner and shall pass to any successor owner. If portions of the land are sold or otherwise transferred, legally binding arrangements are made to pass the inspection and maintenance responsibility to the appropriate successors in title. These arrangements shall designate for each portion of the site the person to be permanently responsible for its inspection and maintenance.
- (d) As part of the inspection and maintenance agreement, a schedule is developed for when and how often routine inspection and maintenance will occur to ensure proper function of the storm water management facility or practice. The agreement shall also include plans for annual inspections to ensure proper performance of the facility between scheduled maintenance and shall also include remedies for the default thereof.
- (e) In addition to enforcing the terms of the inspection and maintenance agreement, the city community development department may also enforce all of the provisions for ongoing inspection and maintenance in section 109-197.
- (f) The city community development department, in lieu of an inspection and maintenance agreement, may accept dedication of any existing or future storm water management facility for maintenance, provided such facility meets all the requirements of this article and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

**Sec. 109-193. - Application review fees.**

The fee for review of any storm water management application is based on the fee structure established by the city community development department and is made prior to the issuance of any building permit for the development.

**Sec. 109-194. - Modifications for off-site facilities.**

- (a) The storm water management plan for each land development project shall provide for storm water management measures located on the site of the project, unless provisions are made to manage storm water by an off-site or regional facility. The off-site or regional facility must be located on property legally dedicated for the purpose, must be designed and adequately sized to provide a level of storm water quantity and quality control that is equal to or

greater than that which would be afforded by on-site practices and there must be a legally obligated entity responsible for long-term operation and maintenance of the off-site or regional storm water facility. In addition, on-site measures are implemented, where necessary, to protect upstream and downstream properties and drainage channels from the site to the off-site facility.

- (b) A storm water management plan must be submitted to the city community development department that shows the adequacy of the off-site or regional facility.
- (c) To be eligible for a modification, the applicant must demonstrate to the satisfaction of the director that the use of an off-site or regional facility will not result in the following impacts to upstream or downstream areas:
  - (1) Increased threat of flood damage to public health, life, and property;
  - (2) Deterioration of existing culverts, bridges, dams, and other structures;  
Accelerated stream bank or streambed erosion or siltation;
  - (3) Degradation of in-stream biological functions or habitat; or
  - (4) Water quality impairment in violation of the state water quality standards, and/or violation of any state or federal regulations.

**Sec. 109-195. - Post development storm water management performance criteria.**

The following performance criteria are applicable to all storm water management plans, unless otherwise provided for in this article:

- (1) *Water quality.* All storm water runoff generated from a site is adequately treated before discharge. It will be presumed that a storm water management system complies with this requirement if:
  - a. It is sized to treat the prescribed water quality treatment volume from the site, as defined in the Georgia Storm water Management Manual;
  - b. Appropriate structural storm water controls or nonstructural practices are selected, designed, constructed or preserved, and maintained according to the specific criteria in the Georgia Storm water Management Manual; and
  - c. Runoff from hotspot land uses and activities identified by the city community development department are adequately treated and addressed through the use of appropriate structural storm water controls, nonstructural practices and pollution prevention practices.
- (2) *Stream channel protection.* Protection of stream channels from bank and bed erosion and degradation is provided by using all of the following three approaches:
  - a. Preservation, restoration and/or reforestation (with native vegetation) of the applicable stream buffer;
  - b. Twenty-four-hour extended detention storage of the one-year, 24-hour return frequency storm event;
  - c. Erosion prevention measures such as energy dissipation and velocity control.
- (3) *Overbank flooding protection.* Downstream overbank flood and property protection is provided by controlling (attenuating) the postdevelopment peak discharge rate to the predevelopment rate for the 25-year, 24-hour return frequency storm event. If control of the one-year, 24-hour storm under subsection (1) of this section is exempted, then peak discharge rate attenuation of the two-year through the 25-year return frequency storm event must be provided.
- (4) *Extreme flooding protection.* Extreme flood and public safety protection is provided by controlling and safely conveying the 100-year, 24-hour return frequency storm event such that flooding is not exacerbated.
- (5) *Structural storm water controls.* All structural storm water management facilities are selected and designed using the appropriate criteria from the Georgia Storm water Management Manual. All structural storm water controls must be designed appropriately to meet their intended function. For other structural storm water controls not included in the Georgia Storm water Management Manual, or for which pollutant removal rates have not been provided, the

effectiveness and pollutant removal of the structural control must be documented through prior studies, literature reviews, or other means and receive approval from the city community development department before being included in the design of a storm water management system. In addition, if hydrologic or topographic conditions, or land use activities warrant greater control than that provided by the minimum control requirements, the city may impose additional requirements deemed necessary to protect upstream and downstream properties and aquatic resources from damage due to increased volume, frequency, and rate of storm water runoff or increased nonpoint source pollution loads created on the site in question. Applicants shall consult the Georgia Storm water Management Manual for guidance on the factors that determine site design feasibility when selecting and locating a structural storm water control.

- (6) *Storm water credits for nonstructural measures.* The use of one or more site design measures by the applicant may allow for a reduction in the water quality treatment volume required under subsection (1) of this section. The applicant may, if approved by the city community development department, take credit for the use of storm water better site design practices and reduce the water quality volume requirement. For each potential credit, there is a minimum set of criteria and requirements that identify the conditions or circumstances under which the credit may be applied. The site design practices that qualify for this credit and the criteria and procedures for applying and calculating the credits are included in the Georgia Storm water Management Manual.
- (7) *Drainage system guidelines.* Storm water conveyance facilities, which may include but are not limited to culverts, storm water drainage pipes, catchbasins, drop inlets, junction boxes, headwalls, gutters, swales, channels, ditches, and energy dissipaters, are provided when necessary for the protection of public right-of-way and private properties adjoining project sites and/or public rights-of-way. Storm water conveyance facilities that are designed to carry runoff from more than one parcel, existing or proposed, shall meet the following requirements:
  - a. Methods to calculate storm water flows are in accordance with the storm water design manual;
  - b. All culverts, pipe systems and open channel flow systems are sized in accordance with the storm water management plan using the methods included in the storm water design manual; and
  - c. Design and construction of storm water conveyance facilities are in accordance with the criteria and specifications found in the storm water design manual.
- (8) *Dam design guidelines.* Any land disturbing activity that involves a site that proposes a dam shall comply with the Georgia Safe Dams Act of 1978 (O.C.G.A. § 12-5-370 et seq.) and Rules for Dam Safety as applicable.

**Sec. 109-196. - Construction inspections of post development storm water management system.**

- (a) *Inspections to ensure plan compliance during construction.* Periodic inspections of the storm water management system construction is conducted by the staff of the city community development department or conducted and certified by a professional engineer who has been approved by the city community development department. Construction inspections shall utilize the approved storm water management plan for establishing compliance. All inspections are documented with written reports that contain the following information:
  - (1) The date and location of the inspection;
  - (2) Whether construction is in compliance with the approved storm water management plan;
  - (3) Variations from the approved construction specifications; and
  - (4) Any other variations or violations of the conditions of the approved storm water management plan.

If any violations are found, the applicant is notified in writing of the nature of the violation and the required corrective actions.

- (b) *Final inspection and as-built plans.* Upon completion of a project, and before a certificate of occupancy is granted, the applicant is responsible for certifying that the completed project is in accordance with the approved storm water management plan. All applicants are required to submit actual "as-built" plans for any storm water management facilities or practices after final construction is completed. The plan must show the final design specifications for all storm water management facilities and practices and must be certified by a professional engineer. A final inspection by the city community development department is required before the release of any performance securities can occur.

**Sec. 109-197. - Ongoing inspection and maintenance of storm water facilities and practices**

- (a) *Long-term maintenance inspection of storm water facilities and practices*
- (1) Storm water management facilities and practices included in a storm water management plan which is subject to an inspection and maintenance agreement must undergo ongoing inspections to document maintenance and repair needs and ensure compliance with the requirements of the agreement, the plan and this article.
  - (2) A storm water management facility or practice is inspected on a periodic basis by the responsible person in accordance with the approved inspection and maintenance agreement. In the event that the storm water management facility has not been maintained and/or becomes a danger to public safety or public health, the city community development department shall notify the person responsible for carrying out the maintenance plan by registered or certified mail to the person specified in the inspection and maintenance agreement. The notice shall specify the measures needed to comply with the agreement and the plan and shall specify the time within which such measures are completed. If the responsible person fails or refuses to meet the requirements of the inspection and maintenance agreement, the city community development department, may correct the violation as provided in subsection 109-197(4) hereof.
  - (3) Inspection programs by the city community development department may be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in storm water management facilities; and evaluating the condition of storm water management facilities and practices.
- (b) *Right-of-entry for inspection.* The terms of the inspection and maintenance agreement shall provide for the city to enter the property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter a property when it has a reasonable basis to believe that a violation of this article is occurring or has occurred and to enter when necessary for abatement of a public nuisance or correction of a violation of this article.
- (c) *Records of maintenance activities.* Parties responsible for the operation and maintenance of a storm water management facility shall provide records of all maintenance and repairs to the city community development department.
- (d) *Failure to maintain.* If a responsible person fails or refuses to meet the requirements of the inspection and maintenance agreement, the city community development department, after 30 days' written notice (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours' notice is sufficient), may correct a violation of the design standards or maintenance requirements by performing the necessary work to place the facility or practice in proper working condition. The city community development department may assess the owners of the facility for the cost of repair work that is a lien on the property, and may be placed on the ad valorem tax bill for such property and collected in the ordinary manner for such taxes.

**Secs. 109-198—109-218. - Reserved.**

**ARTICLE V. - STREAM BUFFER PROTECTION**

**Sec. 109-219. - Definitions.**

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

*Buffer* means, with respect to a stream, a natural or enhanced vegetated area lying adjacent to the stream. \\

*Director* means director of the city community development department.

*Floodplain* means any land area susceptible to flooding, which would have at least a one percent probability of flooding occurrence in any calendar year based on the basin being fully developed as shown on the current land use plan, i.e., the regulatory flood.

*Impervious cover* means any manmade paved, hardened or structural surface regardless of material. The term "impervious cover" includes but is not limited to rooftops, buildings, streets, roads, decks, swimming pools and any concrete or asphalt.

*Land development* means any land change, including, but not limited to, clearing, grubbing, stripping, removal of vegetation, dredging, grading, excavating, transporting and filling of land, construction, paving and any other installation of impervious cover.

*Land development activity* means those actions or activities that comprise, facilitate or result in land development.

*Land disturbance* means any land or vegetation change, including, but not limited to, clearing, grubbing, stripping, removal of vegetation, dredging, grading, excavating, transporting and filling of land, that do not involve construction, paving or any other installation of impervious cover.

*Land disturbance activity* means those actions or activities that comprise, facilitate or result in land disturbance.

*Parcel* means any plot, lot or acreage shown as a unit on the latest county tax assessment records.

*Permit* means the permit issued by the city community development department required for undertaking any land development activity.

*Protection area or stream protection area* means, with respect to a stream, the combined areas of all required buffers and setbacks applicable to such stream.

*Riparian* means belonging or related to the bank of a river, stream, lake, pond or impoundment.

*Setback* means, with respect to a stream, the area established by section 109-225 extending beyond any buffer applicable to the stream.

*Stream* means any stream, beginning at:

- (1) The location of a spring, seep, or groundwater outflow that sustains stream flow;
- (2) A point in the stream channel with a drainage area of 25 acres or more; or
- (3) Where evidence indicates the presence of a stream in a drainage area of other than 25 acres, the city community development department may require field studies to verify the existence of a stream.

*Stream bank* means the sloping land that contains the stream channel and the normal flows of the stream.

*Stream channel* means the portion of a watercourse that contains the base flow of the stream.

*Watershed* means the land area that drains into a particular stream.

**Sec. 109-220. - Findings and purposes.**

- (a) *Findings.* The community development department of the city finds that buffers adjacent to streams provide numerous benefits, including:
  - (1) Protecting, restoring and maintaining the chemical, physical and biological integrity of streams and their water resources.
  - (2) Removing pollutants delivered in urban storm water.
  - (3) Reducing erosion and controlling sedimentation.
  - (4) Protecting and stabilizing stream banks.
  - (5) Providing for infiltration of storm water runoff.
  - (6) Maintaining base flow of streams.
  - (7) Contributing organic matter that is a source of food and energy for the aquatic ecosystem.

- (8) Providing tree canopy to shade streams and promote desirable aquatic habitat.
  - (9) Providing riparian wildlife habitat.
  - (10) Furnishing scenic value and recreational opportunity.
  - (11) Providing opportunities for the protection and restoration of green space.
- (b) *Purposes.* The purpose of this article is to protect the public health, safety, environment and general welfare; to minimize public and private losses due to erosion, siltation and water pollution; and to maintain stream water quality by provisions designed to:
- (1) Create buffer zones along the streams of the city for the protection of water resources and
  - (2) Minimize land development within such buffers by establishing buffer zone requirements and by requiring authorization for any such activities.

**Sec. 109-221. - Violations, enforcement and penalties.**

- (a) *Violations.* Any action or inaction which violates the provisions of this article or the requirements of an approved site plan or permit may be subject to the enforcement actions outlined in this section. Any such action or inaction that is continuous with respect to time is deemed to be a public nuisance and may be abated by injunctive or other equitable relief. The imposition of any of the penalties described in subsection (c) of this section shall not prevent such equitable relief.
- (b) *Notice of violation.*
- (1) If the city determines that an applicant or other responsible person has failed to comply with the terms and conditions of a permit, an approved site plan or the provisions of this article, it shall issue a written notice of violation to such applicant or other responsible person. Where a person is engaged in activity covered by this article without having first secured the appropriate permit therefor, the notice of violation is served on the owner or the responsible person in charge of the activity being conducted on the site.
  - (2) The notice of violation shall contain:
    - 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 article and the date for the completion of such remedial action;
    - e. A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed; and
    - f. A statement that the determination of violation may be appealed to the city by filing a written notice of appeal within 30 days after the notice of violation (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours' notice is sufficient).
- (c) *Penalties.* 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 of the following actions or penalties may be taken or assessed against the person to whom the notice of violation was directed. Before taking any of the following actions or imposing any of the following penalties, the city shall first notify the applicant or other responsible person in writing of its intended action, and shall provide a reasonable opportunity, of not less than ten days (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours' notice is sufficient, to cure such violation. In the event the applicant or other responsible person fails to cure such violation after such notice and cure period, the city may take any one or more of the following actions or impose any one or more of the following penalties:

- (1) *Stop work order.* The city community development department may issue a stop work order that is served on the applicant or other responsible person. 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.
- (2) *Withhold certificate of occupancy.* The city may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site until 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.
- (3) *Suspension, revocation or modification of permit.* The city may suspend, revoke or modify the permit authorizing the 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 city may deem necessary) to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.
- (4) *Civil penalties.* In the event the applicant or other responsible person fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten days (or such greater period as the city shall deem appropriate) (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours' notice is sufficient) after the city has taken one or more of the actions described above, the city may impose a penalty not to exceed \$1,000.00 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.
- (5) *Criminal penalties.* For intentional and flagrant violations of this article, the city may issue a citation to the applicant or other responsible person, requiring such person to appear in (appropriate municipal, magistrate or recorder's) court to answer charges for such violation. Upon conviction, such person shall be guilty of a violation of this Code. Each act of violation and each day upon which any act of violation shall occur shall constitute a separate violation of this Code.

**Sec. 109-222. - Applicability.**

- (a) *Generally.* This article shall apply to all land development activity on property containing a stream protection area as defined in section 109-219. These requirements are in addition to, and do not replace or supersede, any other applicable buffer requirements established under state law and approval or exemption from these requirements do not constitute approval or exemption from buffer requirements established under state law or from other applicable local, state or federal regulations.
- (b) *Grandfathered provisions.* This article shall not apply to the following activities:
  - (1) Work consisting of the repair or maintenance of any lawful use of land that is zoned and approved for such use on or before the effective date of the ordinance from which this article is derived.
  - (2) Existing development and ongoing land disturbance activities including but not limited to existing agriculture, silviculture, landscaping, gardening and lawn maintenance, except that new development or land disturbance activities on such properties will be subject to all applicable buffer requirements.
  - (3) Any land development activity that is under construction, fully approved for development, scheduled for permit approval or has been submitted for approval as of the effective date of the ordinance from which this article is derived.
  - (4) Land development activity that has not been submitted for approval, but that is part of a larger master development plan, such as for an office park or other phased development that has been previously approved within two years of the effective date of the ordinance from which this article is derived.
- (c) *Exemptions.* The following specific activities are exempt from this article. Exemption of these activities does not constitute an exemption for any other activity proposed on a property.

- (1) Activities for the purpose of building one of the following:
  - a. A stream crossing by a driveway, transportation route or utility line;
  - b. Public water supply intake or public wastewater outfall structures;
  - c. Intrusions necessary to provide access to a property;
  - d. Public access facilities that must be on the water including boat ramps, docks, foot trails leading directly to the river, fishing platforms and overlooks;
  - e. Unpaved foot trails and paths;
  - f. Activities to restore and enhance stream bank stability, vegetation, water quality and/or aquatic habitat, so long as native vegetation and bioengineering techniques are used.
- (2) Public sewer line easements paralleling the creek, except that all easements (permanent and construction) and land disturbance should be at least 25 feet from the top of the bank. This includes such impervious cover as is necessary for the operation and maintenance of the utility, including but not limited to manholes, vents and valve structures. This exemption shall not be construed as allowing the construction of roads, bike paths or other transportation routes in such easements, regardless of paving material, except for access for the uses specifically cited in subsection (c)(1) of this section.

Land development activities within a right-of-way existing at the time this article takes effect or approved under the terms of this article.

- (3) Within an easement of any utility existing at the time this article takes effect or approved under the terms of this article, land disturbance activities and such impervious cover as is necessary for the operation and maintenance of the utility, including but not limited to manholes, vents and valve structures.
  - (4) Emergency work necessary to preserve life or property. However, when emergency work is performed under this section, the person performing it shall report such work to the city on the next business day after commencement of the work. Within ten days thereafter, the person shall apply for a permit and perform such work within such time period as may be determined by the city to be reasonably necessary to correct any impairment such emergency work may have caused to the water conveyance capacity, stability or water quality of the protection area.
  - (5) Forestry and silviculture activities on land that is zoned for forestry, silvicultural or agricultural uses and are not incidental to other land development activity. If such activity results in land disturbance in the buffer that would otherwise be prohibited, then no other land disturbing activity other than normal forest management practices will be allowed on the entire property for three years after the end of the activities that intruded on the buffer.
  - (6) After the effective date of the ordinance from which this article is derived, it shall apply to new subdividing and platting activities.
- (c) *Prohibited.* Any land development activity within a buffer established hereunder or any impervious cover within a setback established hereunder is prohibited unless a variance is granted pursuant to section 109-225(b).

**Sec. 109-223. - Administrative appeal and judicial review.**

- (a) *Administrative appeal.* Any person aggrieved by a decision or order of the city community development department may appeal in writing within 30 days after the issuance of such decision or order to the director of the department and is entitled to a hearing before the city council within 30 days of receipt of the written appeal. Once established by the city council, the board of appeals of the city shall hear such appeals.
- (b) *Judicial review.* Any person aggrieved by a decision or order of the city, after exhausting all administrative remedies, shall have the right to appeal de novo to the superior court of the county.

**Sec. 109-224. - Inspections.**

- (a) The department of community development may cause inspections of the work in the buffer or setback to be made periodically during the course thereof and shall make a final inspection following completion of the work. The permittee shall assist the department in making such inspections. The department of community development shall have the authority to conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in this article, and for this purpose to enter at reasonable time upon any property, public or private, for the purpose of investigating and inspecting the sites of any land development activities within the protection area.
- (b) No person shall refuse entry or access to any authorized representative or agent who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out official duties.

**Sec. 109-225. - Land development requirements.**

- (a) *Buffer and setback requirements.* All land development activity subject to this article shall meet the following requirements:
  - (1) An undisturbed natural vegetative buffer is maintained for 50 feet, measured horizontally, on both banks (as applicable) of the stream as measured from the point of wrested vegetation.
  - (2) An additional setback is maintained for 25 feet, measured horizontally, beyond the undisturbed natural vegetative buffer, in which all impervious cover is prohibited. Grading, filling and earthmoving is minimized within the setback.
  - (3) No septic tanks or septic tank drain fields are permitted within the buffer or the setback.
- (b) *Variance procedures.* Variances from subsection (a) of this section may be granted in accordance with the following provisions:
  - (1) Where a parcel was platted prior to the effective date of the ordinance from which this article is derived, and its shape, topography or other existing physical condition prevents land development consistent with this article, and the city finds and determines that the requirements of this article prohibit the otherwise lawful use of the property by the owner, the city council may grant a variance from subsection (a) of this section, provided such variance requires mitigation measures to offset the effects of any proposed land development on the parcel. Once established by the city council, the board of appeals may grant a variance from subsection (a) of this section, provided such variance requires mitigation measures to offset the effects of proposed land development on the parcel.
  - (2) Except as provided in subsection (b)(1) of this section, and until such time as the city council establishes the board of appeals, the city council shall grant no variance from any provision of this article without first conducting a public hearing on the application for variance and authorizing the granting of the variance by an affirmative vote of the city council. Once established by the city council, the board of appeals shall grant no variance from any provision of this article without first conducting a public hearing on the application for variance and authorizing the granting of the variance by an affirmative vote of the board of appeals. The city shall give public notice of each such public hearing in a newspaper of general circulation within the city. The city shall require that the applicant post a sign giving notice of the proposed variance and the public hearing. The sign is of a size and posted in such a location on the property as to be clearly visible from the primary adjacent road right-of-way.
  - (3) Variances will be considered only in the following cases:
    - a. When a property's shape, topography or other physical conditions existing at the time of the adoption of the ordinance from which this article is derived prevents land development unless a buffer variance is granted.
    - b. Unusual circumstances when strict adherence to the minimal buffer requirements in this article would create an extreme hardship. Variances will not be considered when, following adoption of the ordinance from which this article is derived, actions of any property owner of a given property have created conditions of a hardship on that property.

- (4) At a minimum, a variance request shall include the following information:
- a. A site map that includes locations of all streams, wetlands, floodplain boundaries and other natural features, as determined by field survey;
  - b. A description of the shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
  - c. A detailed site plan that shows the locations of all existing and proposed structures and other impervious cover, the limits of all existing and proposed land disturbance, both inside and outside the buffer and setback. The exact area of the buffer to be affected is accurately and clearly indicated;
  - d. Documentation of unusual hardship should the buffer be maintained;
  - e. At least one alternative plan, which does not include a buffer or setback intrusion, or an explanation of why such a site plan is not possible;
  - f. A calculation of the total area and length of the proposed intrusion;
  - g. A storm water management site plan, if applicable; and
  - h. Proposed mitigation, if any, for the intrusion. If no mitigation is proposed, the request must include an explanation of why none is being proposed.
- (5) The following factors will be considered in determining whether to issue a variance:
- a. The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
  - b. The locations of all streams on the property, including along property boundaries;
  - c. The location and extent of the proposed buffer or setback intrusion;
  - d. Whether alternative designs are possible which require less intrusion or no intrusion;
  - e. The long-term and construction water quality impacts of the proposed variance; and
  - f. Whether issuance of the variance is at least as protective of natural resources and the environment.

**Sec. 109-226. - Compatibility with other buffer regulations and requirements.**

This article is not intended to interfere with, abrogate or annul any other chapter, rule or regulation, statute or other provision of law. The requirements of this article should be considered minimum requirements, and where any provision of this article imposes restrictions different from those imposed by any other chapter, rule, regulation or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment is considered to take precedence. Additional standards that apply and will be enforced by the city are as follows:

DNR Part 5 Criteria for small (under 100 square miles) water supply watersheds:

- a. Authorized under O.C.G.A. § 12-2-8, these criteria require 100-foot undisturbed buffers and 150-foot setbacks on all perennial streams within seven miles upstream of a public water supply reservoir or public water supply intake.
- b. Beyond seven miles, the required buffer is 50 feet and the required setback is 75 feet. Equivalent protection measures can be adopted with approval from the state department of community affairs and the department of natural resources (DCA and DNR).

Other such state and federal regulations as may be adopted from time to time. While the requirements of this article are intended to apply to all streams in the city, special conditions may exist that require greater protection. Nothing in this article should be construed as preventing the establishment of wider and/or more restrictive buffers and setbacks as required under any other existing or future legislation. In addition, nothing in this article should be

construed as preventing the establishment of wider buffers for purposes of protecting green space, preserving habitat or other goals that may not be specifically mandated by legislation.

**Sec. 109-227. - Additional information requirements for development on buffer zone properties.**

- (a) Any permit applications for property requiring buffers and setbacks hereunder must include the following:
- (1) A site plan showing:
    - a. The location of all streams on the property;
    - b. Limits of required stream buffers and setbacks on the property;
    - c. Buffer zone topography with contour lines at no greater than five-foot contour intervals;
    - d. Delineation of forested and open areas in the buffer zone;
    - e. Detailed plans of all proposed land development in the buffer and of all proposed impervious cover within the setback.
  - (2) A description of all proposed land development within the buffer and setback.
  - (3) Any other documentation that the city may reasonably deem necessary for review of the application and to ensure that the buffer zone ordinance is addressed in the approval process.
- (b) All buffer and setback areas must be recorded on the final plat of the property following plan approval.

**Sec. 109-228. - Responsibility.**

Neither the issuance of a development permit nor compliance with the conditions thereof, nor with the provisions of this article shall relieve any person from any responsibility otherwise imposed by law for damage to persons or property; nor shall the issuance of any permit hereunder serve to impose any liability upon the city, its officers or employees, for injury or damage to persons or property.

**Secs. 109-229—109-248. - Reserved.**

**ARTICLE VI – SOIL EROSION, SEDIMENTATION AND POLLUTION CONTROL**

**DIVISION 1. - GENERALLY**

**Sec. 109-249. - Authority and title of article.**

This article is adopted pursuant to the authority and mandate of the Georgia Erosion and Sedimentation Act of 1975 (O.C.G.A § 12-7-1 et seq.). A memorandum of agreement authorizes the city as a local issuing authority. As a local issuing authority, the city is certified to provide and maintain an erosion control program which includes, but is not limited to, development plan review, permitting and erosion control enforcement. This article will be known as "The Summerville Soil Erosion and Sedimentation Control Article of 2011."

**Sec. 109-250. - Definitions.**

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

*Best management practices (BMPs)* means a collection of structural practices and vegetative measures will, when properly designed, installed and maintained, will provide effective erosion and sedimentation control. The term "properly designed" means designed in accordance with hydraulic design specifications contained in the Manual for Erosion and Sediment Control in Georgia.

*Board* means the state board of natural resources.

*Board of appeals* means the board appointed by the city council that hears appeals of stop work orders.

*Buffer* means the area of land immediately adjacent to the banks of state waters in its natural state of vegetation that facilitates the protection of water quality and aquatic habitat.

*Commission* means the state soil and water conservation commission.

*Cut* means a portion of land surface or area from which earth has been removed or will be removed by excavation (the depth below the original ground surface to the excavated surface).

*Department* means the city department of community development.

*Development* means the alteration of property for any purpose involving building, subdividing, and/or the preparation of land for any of the above purposes. The term "development" includes, but is not limited to, providing utilities, access, parking, storm water management, sewage disposal systems, and/or construction of a structure.

*Development sequence* means the sequence of activities to be completed, in order, during the development of a land disturbance project as per approved construction plans.

*Director* means the director, or his designees, of the city department of community development.

*Director DPW* means the director of the department of public works or his designee.

*Director, EPD* means the director of the environmental protection division of the state department of natural resources.

*District* means the county soil and water conservation district.

*Division* means the environmental protection division of the state department of natural resources.

*Drainage structure* means a device composed of a virtually non-erodible material such as concrete, steel, plastic, or other such material that conveys water from one place to another by intercepting the flow and carrying it to a release point for storm water management, drainage control, or flood control purposes.

*EPD* means the environmental protection division of the state department of natural resources.

*Erosion and sedimentation control manual* means a field manual produced by the state soil and water conservation commission that illustrates vegetative and structural best management practices (BMPs), and their use for land disturbing activities.

*Erosion and sediment control plan* means a plan for the control of soil erosion and sedimentation resulting from land disturbance activity to be maintained until project completion, that is designed to minimize soil erosion, protect state waters and prevent off-site sedimentation. Also known as the plan.

*Fill* means a portion of land surface to which soil or other solid material has been added; the depth above the original ground surface or elevation.

*Finished grade* means the final elevation and contour of the ground after cutting or filling and conforming to the proposed design.

*Grading* means altering the shape of ground surfaces. This includes stripping, cutting, filling, stockpiling, and shaping or any combination thereof, and shall include the land in its cut or filled condition.

*Ground elevation* means the elevation of the ground surface as measured from sea level prior to cutting or filling.

*Land disturbing activity* means any activity which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands within the state, including, but not limited to, clearing, dredging, grading, excavating, transporting, and filling of land but not including agricultural practices as described in section 109-253.

*Larger common plan of development or sale* means a contiguous area where multiple separate and distinct construction activities are occurring under one plan of development or sale. For the purpose of this definition, the term "plan" means an announcement; piece of documentation such as a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, or computer design; or physical demarcation such as boundary signs, lot stakes, or survey marking, indicating that construction activities will occur on a specific plot.

*Local issuing authority* means the governing authority of any county or municipality that is certified pursuant to O.C.G.A. 12-7-8(a).

*Natural ground surface* means the original site topography/ground surface prior to land disturbance activities.

*Nephelometric turbidity units (NTUs)* means the numerical units of measure based upon photometric analytical techniques for measuring the light scattered by finely divided particles of a substance in suspension. This technique is used to estimate the extent of turbidity in water in which colloiddally dispersed particles are present.

*Notice to comply* means the enforcement action based on noncompliance through failure to either properly install or maintain BMPs, where sediments remain within the boundaries of the property. This enforcement action provides the violator five days to achieve compliance.

*Official notice* means a posting of a notice to comply or stop work order on a property that is noncompliant or in violation.

*100-year floodplain* means land in the floodplain subject to a one percent or greater statistical occurrence probability of flooding in any given year.

*Operator* means the person that has:

- (1) Operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications; or
- (2) Day-to-day operational control of those activities that there are necessary to ensure compliance with a storm water pollution prevention plan for the site or other permit conditions, such as a person authorized to direct workers at a site to carry out activities required by the storm-water pollution prevention plan or to comply with other permit conditions.

*Permit* means the authorization necessary to conduct a land disturbing activity under the provisions of this article.

*Person* means any individual, owner, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, state agency, municipality, or other political subdivision of the state, any interstate body, or any other legal entity.

*Phased development* means the development of tracts in maximum of 25-acre increments.

*Project* means the entire proposed development project, regardless of the size of the area of land to be disturbed.

*Qualified personnel* means any person who meets or exceeds the education and training requirements of O.C.G.A. § 12-7-19.

*Re-inspection fee* means a fee assessed to the developer/owner/operator or responsible party for re-inspecting the project if requested by the developer/owner/operator or responsible party prior to the end of the compliance period, provided that upon that re-inspection the project remains out of compliance.

*Retaining wall* means a constructed wall of concrete, masonry, reinforced concrete, cribbing, treated timbers, gabions, stone dry wall, riprap or other durable material, installed to stabilize cut or fill slopes where maximum permissible slopes of earth are not obtainable.

*Roadway drainage structure* means a device such as a bridge, catchbasin, culvert, or ditch, composed of a virtually non-erodible material such as concrete, steel, plastic, or other such material that conveys water under a roadway by intercepting the flow on one side of a traveled way (public or private) consisting of one or more defined lanes, with or without shoulder areas, and carrying water to a release point on the other side.

*Sediment* means solid material, both organic and inorganic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, ice, or gravity as a product of erosion.

*Sedimentation* means the process by which eroded material is transported and deposited by the action of water, wind, ice, or gravity.

*Soil and water conservation district approved plan* means an erosion and sedimentation control plan approved in writing by the county soil and water conservation district.

*Stabilization* means the process of establishing an enduring soil cover by the installation of temporary or permanent structures or vegetation for the purpose of reducing to a minimum the erosion process and the resultant transport of sediment by wind, water, ice, or gravity.

*State general permit* means the National Pollution Discharge Elimination System general permit or permits for storm water runoff from construction activities as now in effect or as may be amended or reissued in the future pursuant to the state's authority to implement the same through federal delegation under the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. and O.C.G.A. § 12-5-30(f).

*State waters* means any and all rivers, streams, creeks, branches, lakes, ditches, reservoirs, ponds, drainage system, springs, wells, and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the state which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation.

*Stop work order* means enforcement action that ceases all work on site or a portion of the site.

*Structural erosion and sedimentation control measures* means practices for the stabilizing of erodible or sediment-producing areas by utilizing the mechanical properties of matter for the purpose of either changing the surface of the land or storing, regulating, or disposing of runoff to prevent sediment loss. Examples of structural erosion and sediment control measures are riprap, sediment basins, dikes, level spreaders, waterways, outlets, diversions, grade stabilization structures, sediment traps, and sediment barriers, etc. Such measures as defined in the publication Manual for Erosion and Sediment Control in Georgia.

*Trout streams* means all streams or portions of streams as designated by the game and fish division of the state department of natural resources under the provisions of the Georgia Water Quality Control Act, O.C.G.A. § 12-5-20 et seq. Streams designated as primary trout waters are defined as water supporting a self-sustaining population of rainbow, brown, or brook trout. Streams designated as secondary trout waters are those in which there is no evidence of natural trout reproduction, but are capable of supporting trout throughout the year. First order trout waters are streams into which no other streams flow except springs.

*Turbidity* means a measure of clarity of a water sample.

*Underbrush* means any small shrubs, ground cover, or similar plants growing beneath the canopy of mature trees.

*Vegetative erosion and sedimentation control* means practices for the stabilization of erodible or sediment-producing areas by covering the soil with:

- (1) Permanent seeding, sprigging, or planting, producing long-term vegetative cover;
- (2) Temporary seeding, producing short-term vegetative cover, or,
- (3) Sodding; covering areas with a turf of perennial sod-forming grass. Such practices can be found in the Erosion and Sediment Control Manual.

*Watercourse* means any natural or artificial watercourse, stream, river, creek, channel, ditch, canal, conduit, culvert, drain, waterway, gully, ravine, or wash in which water flows either continuously or intermittently and which has a definite channel, bed, and banks, and including any area adjacent there to subject to inundation by reason of overflow or floodwater.

*Wetlands* means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

State law reference— Similar provisions, O.C.G.A. § 12-7-3.

### **Sec. 109-251. - Intent.**

It is the intent of this article to establish soil erosion and sedimentation control minimum requirements, standards, and enforcement procedures for land disturbance activities in order to conserve and protect the environment, public health, and the general welfare of the citizens of the city.

**Sec. 109-252 – Penalties and incentives.**

*Failure to obtain a permit for land disturbing activity.* If any person commences any land disturbing activity requiring a land disturbing permit, as prescribed in this article, without first obtaining said permit, the person is subject to revocation of his business license, work permit, or other authorization to conduct any business and associated work activities within the jurisdictional boundaries of the city. Failure to comply may result in a citation being issued to appear in state magistrate court which may result in monetary fines.

- (a) *Stop work orders and notice to comply.*
  - (1) On development and residential land disturbance sites for the first and second violations of the provisions of this article, the director shall post an official notice to comply and as a courtesy issue a written letter. The violator shall have five days to correct the violation. If the violation is not corrected within five days, the director shall issue a stop work order requiring the land disturbance activity be stopped until necessary corrective action or mitigation has occurred; provided, however, that, if the violation presents an imminent threat to public health or waters of the state or if the land disturbing activities are conducted without obtaining the necessary permit, the director shall issue an immediate stop work order in lieu of notice to comply. For the third and each subsequent violation, the director shall issue an immediate stop work order.
  - (2) All stop work orders are in effect until the necessary corrective action has occurred.
  - (3) It is unlawful for any representative of the owner to remove an official notice to comply or stop work posting. If this action is observed by a county representative, the owner will be responsible for any and all possible fines. Upon issuance of a stop work order, the director or representative shall post official notice at such locations on the project site as deemed appropriate. Such posted official notice is prominently displayed on the owner's property until the stop work order is rescinded by the director, at which time said posted notice will be removed by the director or representative. When a violation in the form of taking action without a permit, failure to maintain a stream buffer, or significant amounts of sediment, as determined by the director or his designee, have been or are being discharged into state waters and where best management practices have not been properly designed, installed, and maintained, a stop work order is issued by the director or his designee. All such stop work orders are effective immediately upon issuance and is in effect until the necessary corrective action or mitigation has occurred. Such stop work orders shall apply to all land disturbing activity on the site with the exception of the installation and maintenance of temporary or permanent erosion and sediment controls.
- (b) *Re-inspection and fees.* If a re-inspection is requested prior to the end of a compliance period and the site is found to remain out of compliance upon inspection, the director shall assess a re-inspection fee. The re-inspection fee is in the amount determined from time to time by the city council. Such fees (to cover administrative, field inspections, and transportation costs) must be satisfied prior to the issuance of a final erosion inspection or a certificate of occupancy.
- (c) *Bond forfeiture.* If, through inspection, it is determined that a person engaged in land disturbing activities has failed to comply with the approved plan and permit, an official notice to comply is posted on the site and a letter will be issued as a courtesy. The notice shall set forth the measures necessary to achieve compliance with the plan and shall state the time within which such measures must be completed. If the person engaged in the land disturbing activity fails to comply within the time specified, he shall be deemed in violation of this article and, in addition to other penalties, are deemed to have forfeited his performance bond, if required to post one under the provisions of section 109-278. The city may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site and bring it into compliance.
- (d) *Noncompliance.* Noncompliance with this article is dealt with as follows: Any person found to be in noncompliance with any provision of this article is served official notice by the department of community development. The offender shall, within the period of time stated in the notice, take all necessary action to gain compliance and shall permanently cease such noncompliance.
- (e) *Monetary penalties.* Any person who violates any provisions of this article, or any permit condition or limitation established pursuant to this article or who intentionally fails or refuses to comply with any final or emergency order of the director issued as provided in this article is liable for a civil penalty not to exceed \$2,500.00 per day. Notwithstanding any limitation of law as to penalties which can be assessed for violations of city ordinances, any magistrate court or any other court of competent jurisdiction trying cases brought as violations of this article is authorized to impose penalties for such violations not to exceed \$2,500.00 for each violation. Each day during which violation or failure or refusal to comply continues is a separate violation.

- (1) The following minimum penalties are imposed:
  - a. Conducting land disturbance activities without a land disturbance permit or building permit (first offense), \$250.00 for each violation or each day on which a violation exists.
  - b. Conducting land disturbance activities without a land disturbance permit or building permit (second or subsequent offense), \$1,000.00.
  - c. Lack of proper installation or maintenance of structural/vegetative best management practices, \$250.00 per violation.
  - d. Working under a stop work order (first offense), \$500.00.
  - e. Working under a stop work order (second or subsequent offense), \$1,500.00.
- (2) Upon violation of the provisions of this article, the city is entitled to take such remedial action as the director deems necessary to ensure compliance, and the violator shall reimburse the city for any cost or expense associated with such compliance efforts and the city is entitled to place a lien on the property to secure payment and reimbursement for these expenses.
- (3) The director of the department of community development has the primary responsibility for the enforcement of this article.
- (4) Persons designated by the director are hereby authorized to issue official notices, citations, and/or summons charging violations under this article, returnable to the state or municipal court of the city, or any other court of competent jurisdiction.

**Sec. 109-253. - Exemptions to article.**

This article shall apply to any land disturbing activity undertaken by any person on any land except for the following:

- (1) Surface mining, as the same is defined in O.C.G.A. §12-4-72;
- (2) Granite quarrying and land clearing for such quarrying;
- (3) Such minor land disturbing activities as home gardens and individual home landscaping, repairs, maintenance work, fences and other related activities that result in minor soil erosion;
- (4) The construction of single-family residences when such construction disturbs less than one acre and is not a part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and not otherwise exempted under this section; provided, however, that construction of any such residence shall conform to the minimum requirements as set forth in this subsection and section 109-295;
  - a. For single-family residence construction covered by provisions of this subsection, there is a buffer zone between the residence and any state waters classified as trout streams pursuant to the Georgia Water Quality Control Act (O.C.G.A. § 12-5-20 et seq.). In any such buffer, no land disturbing activity shall be constructed between the residence and the point where vegetation has been wrested by normal streams flow or wave action from the banks of the trout waters;
  - b. For primary trout waters, the buffer zone is at least 50 horizontal feet, and no variance to a smaller buffer is granted. For secondary trout waters, the buffer zone is at least 50 horizontal feet, but the director, EPD, may grant variances to no less than 25 feet, except as otherwise provided by law. Regardless of whether a trout stream is primary or secondary, for first order trout waters, which, are streams into which no other streams flow except for springs, the buffer is at least 25 horizontal feet, and no variance to smaller buffer is granted;

The minimum requirements of section 109-295 and the buffer zones provided by this section are enforced by the issuing authority;
- (5) Agricultural operations, as defined in O.C.G.A. § 1-3-3, to include raising, harvesting, or storing of products of the field or orchard; feeding, breeding, or managing livestock or poultry; producing or storing feed for use in the production of livestock including, but not limited to, cattle, calves, swine, hogs, goats, sheep, and

rabbits or for use in the production of poultry, including but not limited to chicken, hens and turkeys; producing plants, trees, fowl, or animals; the production of aquaculture, horticultural, dairy, livestock, poultry, eggs, and apiarian products; and farm buildings and farm ponds;

- (6) Forestry land management practices, including harvesting; provided, however, that when such exempt forestry practices cause or result in land disturbing or other activities otherwise prohibited in a buffer, as established in sections 109-295(c)(15) and (16), no other land disturbing activities, except for normal forest management practices, are allowed on the entire property upon which the forestry practices were conducted for a period of three years after completion of such forestry practices;
- (7) Any project carried out under the technical supervision of the Natural Resource Conservation Service of the United States Department of Agriculture;
- (8) Any project involving disturbance of one acre or less; provided, however, that this exemption shall not apply to any land disturbing activity within a larger common plan of development or sale with a planned disturbance equal to or greater than one acre or within 200 feet of the bank of any state waters, and for purposes of this subsection, state waters excludes channels and drainage ways which have water in them only during and immediately after rainfall events and intermittent streams which do not have water in them year round; provided, however, that any person responsible for a project which involves one acre or less, which involves land disturbing activity, and which is within 200 feet of any such excluded channel or drainage way, must prevent sediment from moving beyond the boundaries of the property on which such project is located and provided, further, that nothing herein shall prevent the local issuing authority from regulating any such project which is not specifically exempted by subsections (1), (2), (3), (4), (5), (6), (7), (9), or (10) of this section;
- (9) Construction or maintenance projects, or both, undertaken or financed, in whole or in part, or both, by the department of transportation, the Georgia Highway Authority, or the state road and toll way authority; or any road construction or maintenance project, or both, undertaken by any county or municipality; provided, however, that construction or maintenance projects of the department of transportation or state road and toll way authority which disturb one or more contiguous acres of land is subject to provisions of O.C.G.A. § 12-7-7.1; except where the department of transportation, the Georgia Highway Authority, or the state road and toll way authority is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case a copy of a notice of intent under the state general permit is submitted to the county, the county shall enforce compliance with the minimum requirements set forth in O.C.G.A. § 12-7-6 and section 109-295 as if a permit had been issued, and violations are subject to the same penalties as violations by permit holders; copies of any plans approved under such statute is provided to the director;
- (10) Any land disturbing activities conducted by any electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the public service commission, any utility under the regulatory jurisdiction of the federal Energy Regulatory Commission, any cable television system as defined in O.C.G.A. § 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power, except where an electric membership corporation or municipal electric system or any public utility under the regulatory jurisdiction of the public service commission, any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television system as defined in O.C.G.A. § 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case the county shall enforce compliance with the minimum requirements set forth in O.C.G.A. § 12-7-6 and section 109-295 as if a permit had been issued and violations are subject to the same penalties as violations by permit holders; and
- (11) Any public water system reservoir.

State law reference— Similar provisions, O.C.G.A. § 12-7-17.

**Sec. 109-254. - Compliance with other standards and civil liability.**

- (a) Neither the approval of a plan under the provisions of this article, nor the compliance with provisions of this article shall relieve any person from responsibility for damage to any person or property otherwise imposed by law.

- (b) The fact that a land disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this article or the terms of the permit.
- (c) No provision of this article shall permit any person to violate the Georgia Erosion and Sedimentation Act of 1975 (O.C.G.A. § 12-7-1 et seq.), the Georgia Water Quality Control Act (O.C.G.A. § 12-5-20 et seq.) or the rules and regulations promulgated and approved thereunder or pollute any waters of the state as defined thereby.

**Sec. 109-255. - County construction; compliance with article.**

All engineering and construction involving land disturbance performed by or on behalf of the city and under the direction of the department of public works or any other the city's entity, whether such engineering or construction is being accomplished on existing and proposed public land or on public easement, shall comply with the requirements of sections 109-295 and 109-252.

**Sec. 109-256. - Education and certification.**

All persons involved in land development design, review, permitting, construction, monitoring, or inspection or any land disturbing activity shall meet the education and training certification requirements, dependent on their level of involvement with the process, as developed by the commission in consultation with the division and the stakeholder advisory board created pursuant to O.C.G.A. § 12-7-20.

**Secs. 109—257—109-273. - Reserved.**

**DIVISION 2. - ADMINISTRATION AND ENFORCEMENT**

**Sec. 109-274. - Inspection and enforcement of article.**

- (a) The director will periodically inspect the sites of land disturbing activities for which permits have been issued to determine if the activities are being conducted in accordance with the approved plan, permit and this article and to determine if the measures required in the plan are effective in controlling soil erosion and sedimentation. Also, the city shall regulate both primary and secondary permittees as such terms are defined in the state general permit. Primary permittees are responsible for installation and maintenance of best management practices where the primary permittee is conducting land disturbing activities. Secondary permittees are responsible for installation and maintenance of best management practices where the secondary permittee is conducting land disturbing activities. If, through inspection, it is deemed that a person engaged in land disturbing activities as defined herein has failed to comply with the approved plan, with permit conditions, or with the provisions of this article, an official notice is posted on site, and as a courtesy a written notice to comply shall also be served upon that person, except for working without a permit or working under a stop work order, which warrant immediate citation. The notice shall set forth the measures necessary to achieve compliance and shall state the time within which such measures must be completed. If the person engaged in the land disturbing activity fails to comply with the corrective measures specified in the posted official notice within the time specified, he is found in violation of this article, and the director may take such additional enforcement actions as he deems appropriate.
- (b) The director shall have the power to conduct such investigation as the director may deem reasonably necessary to carry out duties as prescribed in this article, and for this purpose shall have the power to enter at reasonable times upon any property, public or private, for the purposes of investigation and inspection of the sites of land disturbance or building activities.
- (c) No person shall refuse entry or access to any authorized representative or agent of the city, the commission, the district, or division who requests entry for the purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such representative while in the process of carrying out his official duties including, but not limited to, the review of reports, studies, calculations, drawings, revisions, practices, actions and bonds.
- (d) A copy of a current approved plan is kept on the site until project completion or issuance of certificate of occupancy.
- (e) The district or the commission or both shall periodically review the actions of counties and municipalities which have been certified as local issuing authorities pursuant to O.C.G.A. § 12-7-8(a). The districts or the commission, or both, may provide technical assistance to any county or municipality for the purpose of improving the effectiveness of the county's or municipality's erosion and sedimentation control program. The district or the commission shall notify the division and request investigation by the division if any deficient or ineffective legal program is found.

- (f) The city council shall promulgate rules and regulations setting forth the requirements and standards for certification and the procedures for decertification of a local issuing authority. The division may periodically review the actions of counties and municipalities that have been certified as local issuing authorities pursuant to O.C.G.A. § 12-7-8 (a). Such review may include, but not be limited to, review of the administration and enforcement of a governing authority's chapter and review of conformance with an agreement, if any, between the district and the governing authority. If such review indicates that the governing authority of any county or municipality certified pursuant to O.C.G.A. § 12-7-8(a) has not administered or enforced its chapters or has not conducted the program in accordance with any agreement entered into pursuant to O.C.G.A. § 12-7-7(e), the division shall notify the governing authority of the county or municipality in writing. The governing authority of any county or municipality so notified shall have 30 days within which to take the necessary corrective action to retain certification as a local issuing authority. If the county or municipality does not take necessary corrective action within 30 days after notification by the division, the division may revoke the certification of the county or municipality as a local issuing authority.

**Sec. 109-275. - Land disturbance application/permit process.**

- A. *Generally.* The property owner, developer, and designated planners and engineers shall review the general development plans and detailed plans of the city that affect the tract to be developed and the area surrounding it. They shall review the zoning resolution, storm water management ordinance, subdivision ordinance, flood damage prevention resolution, this article, and other ordinance which regulate the development of land within the jurisdictional boundaries of the city. However, the property operator is the only party who may obtain a permit.
- B. *Application requirements.*
- (1) Prior to any land disturbing activity, the property in question must be part of an approved and recorded legal lot of record (exemption plat, minor plat, or final plat). Additionally, no land disturbing activity, including grading, excavating, filling, and/or foundation work, shall be conducted within the city, until a land disturbance permit or a building permit (for those projects not requiring a land disturbance permit under this article) shall have been issued by the director allowing such activity, pursuant to the provisions herein provided. If a project is to be developed in phases, then a separate land disturbance permit or building permit is required for each phase not to exceed 25-acre increments and the development sequence should be followed on all projects issued a land disturbance permit.
  - (2) No person shall conduct any land disturbing activity within the jurisdictional boundaries of the city without first obtaining a permit from the city department of community development or its successor to perform such activity.
  - (3) Each retaining wall to be constructed over four feet in height must be permitted through the city community development department prior to construction. For all retaining wall permits, the owner of the property containing the proposed wall shall complete an owner's indemnification agreement. For all retaining wall permits for walls over six feet in height, a professional engineer shall design and certify the wall, and shall complete an engineer's indemnification agreement for each wall to be permitted.
  - (4) All developments, construction, improvements, utilities, and demolitions that occur within the boundaries of the incorporated limits of the city that disturb more than 5,000 square feet of land shall be required to submit an application for a land disturbance permit.
  - (5) The application for a permit shall be submitted to the department of community development and must include the applicant's erosion and sedimentation control plan with supporting data, as necessary. Said plans shall include, as a minimum, the data specified in subsection (c) of this section. Soil erosion and sedimentation control plans shall conform to the provisions of section 109-295(b) and (c) of this article. Applications for a permit will not be accepted unless accompanied by the specified number of copies of the applicant's soil erosion and sedimentation control plans and a physical address of the property owner (post office box not acceptable). All applications shall contain a certification stating that the plan preparer or the designee thereof visited the site prior to creation of the plan or that such a visit was not required in accordance with rules and regulations established by the board.
  - (6) A minimum fee, as set by the city council, shall be charged for each acre, or fraction thereof, of the project area.
  - (7) In addition to the city's permitting fees, fees also will be assessed pursuant to O.C.G.A. § 12-5-23, and these fees shall be calculated and paid by the primary permittee as defined in the state general permit for each

acre of land disturbing activity included in the planned development or each phase of development. All applicable fees shall be paid prior to issuance of the land disturbance permit. Half of such fees levied shall be submitted to the division; except that any and all fees due from an entity which is required to give notice pursuant to O.C.G.A. § 12-7-17 shall be submitted in full to the division.

- (8) The permit applicant shall be required to post a bond in the form of government security, cash, irrevocable letter of credit, or any combination thereof prior to issuing the permit. The bond amount shall be determined as established by the department. If the applicant does not comply with this article or with the conditions of the permit after issuance, the city may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land disturbing activity and bring it into compliance. These corrective actions may include, but are not limited to, de-silting detention ponds, water bodies, storm water facilities, roadways, installing a fence with locking device, reestablishing damaged buffers, and similar or related actions. If a permit applicant has had two or more outstanding violations of previous permits, this article, or the Erosion and Sedimentation Act of 1975 (O.C.G.A. § 12-7-1 et seq.) within three years prior to the date of filing of the application under consideration, the city may deny the permit application.
- (9) If applicable, immediately upon receipt of an application and plan for a permit, the city shall refer the application and plan to the district for its review and approval or disapproval concerning the adequacy of the erosion and sedimentation control plan. The district shall approve or disapprove a plan within 35 days of receipt. Failure of the district to act within 35 days shall be considered an approval of the pending plan. The results of the district review shall be forwarded to the city. No permit will be issued unless the plan has been approved by the district, and any variances required by section 109-295(c)(14) or (15) and bonding, if required as per subsection (b)(8) of this section, have been obtained. Such review will not be required if the city and the district have entered into an agreement which allows the city to conduct such review and approval of the plan without referring the application and plan to the district.

C. *Plan requirements.* Refer to the city erosion and sedimentation control plan administrative guidelines for procedures and requirements concerning the review and approval of construction plans.

D. *Permits and development activity.*

- (1) Permits are issued or denied as soon as practicable but in any event not later than 45 days after receipt by the city of a completed application, provided that any necessary variances have been obtained, bonding has been provided, and specifications developed and maintained by the department of public works and permitted by the department of community development have been met.
- (2) No permit is issued by the city unless the erosion and sedimentation control plan has been approved by the district or by the city, and unless the city has affirmatively determined that the plan is in compliance with this article, any variances required by section 109-295(c)(15) and (16) are obtained, bonding requirements, if necessary, as per subsection (b)(7) of this section are met, and all ordinances and rules and regulations in effect within the jurisdictional boundaries of the city are met. If the permit is denied, the reason for denial is furnished to the applicant.
- (3) If the tract is to be developed in phases, then a separate permit is required for each phase to include the development sequence.
- (4) The permit may be suspended, revoked, or modified by the city, as to all or any portion of the land affected by the plan, upon finding that the holder or his successor in title is not in compliance with the approved erosion and sedimentation control plan or that the holder or his successor in title is in violation of this article. A holder of a permit shall notify any successor in title to him of the conditions contained in the permit as to all or any portion of the land affected by the approved plan.
- (5) Sedimentation basins shall not be allowed in state waters or other perennially flowing streams.
- (6) The permittee shall ensure that engineering and construction on any land within the city is carried out in such a manner as to protect neighboring persons and property from damage or loss resulting from storm water runoff, soil erosion, or deposition upon private property or public streets or water-transported silt or debris.
- (7) The director during field inspections may require revisions, addendum, and modifications that address any and all features to ensure compliance with this section and any permit issued hereunder.

- (8) It shall constitute noncompliance with this section to engage in land disturbance activity involving clearing, grading, timber harvesting, or grubbing without a permit, which activity may immediately warrant citation.
- (9) Design and installation of properly functioning detention facilities, including outflow and overflow control devices, are the responsibility of the owner. If any erosion control devices are damaged or destroyed during grading or construction, all construction processes shall cease until the devices are restored to their functioning capability. The owner, through application for grading or construction permits, accepts the responsibility of maintenance of the control devices.
- (10) The owner and operator is responsible for the maintenance of the storm drainage facilities during grading, construction, and for a 15-month period following the final approval of the completed project. Maintenance will be construed to include preserving the enclosing walls or impounding embankment or the detention basin and sedimentation ponds, in good condition; ensuring structural soundness, functional adequacy, and freedom from sediment of all drainage structures; and rectifying any unforeseen erosion problems.
- (11) The developer shall provide stabilization by covering the soil with: permanent seeding, sprigging, or pivoting, producing long-term vegetative cover, temporary seeding producing short-term vegetative cover, sodding or covering areas with a turf of perennial sod forming grass; and security fences for safety purposes at detention facilities as prescribed by and prior to approval by the city.

State law reference— Permits for land disturbing activities, O.C.G.A. § 12-7-7, 12-7-9.

**Sec. 109-276. - Progress report required.**

- (a) *Inspection and evaluation of installation in the BMPs.* The licensed professional referenced in the administrative guidelines or his representative as approved by the director shall ensure, inspect and evaluate the installation of BMPs within one week after the initial construction activities commence and the initial-phase BMPs have been installed. All deficiencies are corrected within two business days after inspection, and a written report with a summary of corrective measures taken is submitted to the director within three days after inspection. This report is the responsibility of the owner or developer and is prepared by a professional licensed to practice such activity within state, as stipulated in the city soil erosion and sediment control administrative guidelines. The report shall record the quality and progress of the work required to show full compliance with the provisions of this section, including compliance with or adherence to vegetative practices. In order to ensure full compliance with the approved construction plans, final approval will be withheld until as-built drawings, prepared by a professional engineer or land surveyor licensed to practice such work in state, have been submitted and accepted by the director. The director shall withhold the occupancy permit until full compliance has been achieved.
- (b) *Additional reporting requirements.* Applicants/owners/operators shall provide the director with a copy of any monitoring results submitted to EPD regarding the National Pollutant Discharge Elimination System (NPDES). Reports are in a format as prescribed by EPD. A copy of the notice of intent that has been sent to EPD in compliance with the permit requirements must be presented to the department of community development prior to the issuance of any land disturbance permit.

**Sec. 109-277. - Administrative appeal; judicial review.**

- (a) *Administrative remedies.* The issuance of a stop work order, as well as the suspension, revocation, modification, or grant with condition of a permit by the city upon finding that the holder is not in compliance with the approved erosion and sediment control plan; or that the holder is in violation of permit conditions; or that the holder is in violation of this section shall entitle the person submitting the plan or holding the permit to a hearing before the city council within 30 days after receipt by the director of written request for appeal.
- (b) *Judicial review.* Any person aggrieved by a decision or order of the city, after exhausting his administrative remedies, shall have the right to appeal de novo to the superior court of the county.

**Secs. 109-278—109-294. - Reserved.**

**DIVISION 3. - STANDARDS AND REQUIREMENTS**

**Sec. 109-295. - Minimum requirements.**

- (a) *General provisions.* Soil erosion and resulting sedimentation can take place during land disturbing activities. Therefore, plans for those land disturbing activities that are not excluded by this section shall contain provisions for

application of soil erosion and sedimentation control measures and practices. The provisions are incorporated into the erosion and sedimentation control plans. Soil erosion and sedimentation control measures and practices conform to the minimum requirements of this subsection and subsection (c) of this section. The application of measures and practices shall apply to all features of the site, including street and utility installations, drainage facilities and other temporary and permanent improvements. Measures are installed to prevent or control erosion and sedimentation pollution during all stages of any land disturbing activity.

(b) *Minimum requirements.*

- (1) Best management practices as set forth in this subsection and subsection (c) of this section is required for all land disturbing activities. Proper design, installation, and maintenance of BMPS shall constitute a complete defense to any action by the director or to any other allegation of noncompliance with subsection (b)(2) of this section or any substantially similar terms contained in a permit for the discharge of storm water issued pursuant to O.C.G.A. § 12-5-30(f). As used in this subsection, the terms "proper design" and "properly designed" mean designed in accordance with the hydraulic design specifications contained in the Manual for Erosion and Sediment Control in Georgia specified in O.C.G.A. § 12-7-6(b).
- (2) A discharge of storm water runoff from disturbed areas where BMPs have not been properly designed, installed, and maintained shall constitute a separate violation of any land disturbing permit issued by The city or of any state general permit issued by the division, pursuant to O.C.G.A. § 12-5-30(f) for each day on which such discharge results in the turbidity of receiving waters being increased by more than 25 nephelometric turbidity units for waters supporting warm water fisheries or by more than ten nephelometric turbidity units for waters classified as trout waters. The turbidity of the receiving waters is measured in accordance with guidelines issued by the director, EPD. This subsection shall not apply to any land disturbance associated with the construction of single-family homes that are not part of a larger common plea of development or sale unless the planned disturbance for such construction is equal to or greater than five acres.
- (3) Failure to properly design, install, or maintain BMPs shall constitute noncompliance with any land disturbing permit issued by the city or of any state general permit issued by the division pursuant to O.C.G.A. § 12-5-30(f) for each day on which such failure occurs. When such noncompliance is identified by the director, official notice will be posted on that property.
- (4) The director may require, in accordance with regulations adopted by the board, reasonable and prudent monitoring of the turbidity level of receiving waters into which discharges from land disturbing activities occur as outlined by the national pollution discharge elimination system requirements.

(c) *Rules and regulations governing land disturbing activities.* The rules and regulations, ordinances, or resolutions adopted pursuant to this article for the purpose of governing land disturbing activities shall require, as a minimum, protections at least as stringent as the state general permit and BMPs, including sound conservation and engineering practices to prevent and/or minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the Manual for Erosion and Sediment Control in Georgia, published by the state soil and water conservation commission as of January 1 of the year in which the land disturbing activity was permitted, as well as the following:

- (1) Proper erosion control measures must be installed along site boundaries prior to stripping of vegetation, regarding, and other development activities as deemed by the director to minimize erosion and prevent soil erosion from leaving the site.
- (2) Cut-fill operations must be kept to a minimum.
- (3) Development plans must conform to topography and soil type so as to minimum erosion potential.
- (4) Natural vegetation that is beyond the permitted limits of land disturbance is retained, and whenever feasible, natural vegetation is retained, protected and supplemented.
- (5) Disturbed soil is stabilized by the close of each business day for utilities, and within five to ten days of initial land disturbance for other commercial/residential sites.
- (6) Temporary vegetation or mulching is employed to protect all exposed areas (especially steep cuts and/or banks, etc.) during development.

- (7) Permanent vegetation and structural erosion control measures are installed upon achieving final grade.
- (8) Sediment in runoff water must be trapped by the use of debris basins, sediment basins, sediment barriers, construction exits or similar BMPs as outlined in the Erosion and Sediment Control Manual until the disturbed area is stabilized. As used in this subsection, a disturbed area is stabilized when it is brought to a condition of continuous compliance with the requirements of this section, and the Soil Erosion and Sedimentation Control Act of 1975 (O.C.G.A. § 12-7-1 et seq.).
- (9) Adequate provisions must be provided to minimize damage from surface water to the cut face of excavations or the sloping surface of fills.
- (10) In cases where cuts and fills endanger adjoining properties, sound engineering practices or methods are employed to protect those adjoining properties.
  - a. All slopes are stabilized immediately and shall remain so for a period of no less than one year from the issuance of the project's final certificate of occupancy and/or the recording of a final plat.
  - b. All slopes greater than or equal to 3H:1V must be permanently stabilized with structural or vegetative BMPs.
  - c. A plan must be submitted to demonstrate that all slopes associated with fill/cut sections have been adequately designed to be stabilized structurally (such as retaining walls) or vegetatively (erosion mat/blanket, tree bark mulch, etc.). Such analysis, reports, or design shall be prepared and approved by a certified design professional.
- (11) Fills may not encroach upon natural watercourses or constructed channels.
- (12) Migrated soil materials or soil materials displaced by mechanical means from land disturbing sites to adjacent watercourses, such as lakes, ponds, streams and creeks etc., must be remediated. The remedial work is conducted as per a remedial plan approved by the city.
- (13) Grading equipment must cross flowing streams by means of temporary or permanent bridges or culverts except when such methods are not feasible, provided, in any case, those crossings are kept to a minimum.
- (14) Land disturbing activity plans for erosion and sedimentation control shall include provisions for treatment or control of any source of sediments and adequate sedimentation control facilities to retain sediments on-site or preclude sedimentation of adjacent waters beyond the levels specified in subsection (b)(2) of this section.
- (15) Land disturbing activities shall not be conducted within 25 feet of the banks of any state waters, as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, except where the director, EPD determines to allow a variance that is at least as protective of natural resources and the environment where otherwise allowed by the director, EPD pursuant to O.C.G.A. § 12-2-8, or where a drainage structure or a roadway drainage structure must be constructed, provided that adequate erosion control measures are incorporated in the project plans and specifications are implemented; provided, however, that buffers of at least 25 feet established pursuant to the Georgia Water Quality Control Act (O.C.G.A. § 12-5-20 et seq.) shall remain in force unless a variance is granted by the director, EPD as provided in this subsection. The following requirements shall apply to any such buffer:
  - a. No land disturbance activities are conducted within a buffer and a buffer shall remain in its natural, undisturbed state of vegetation until all land disturbing activities on the construction site are completed, except as otherwise provided by this subsection.
  - b. Temporary structural best management practices are required to be removed at the completion of project. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the streambed; provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his own occupancy, may thin or trim underbrush in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the streambed.

- c. Except as otherwise described in this section, there is established a 25-foot buffer along the banks of all state waters, as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, except where the director, EPD determines to allow a variance that is at least as protective of natural resources and the environment, where otherwise allowed by the director, EPD pursuant to O.C.G.A. § 12-2-8, or where drainage structures or a roadway drainage structure must be constructed, provided that adequate erosion control measures are incorporated in the project plans and specifications, and are implemented; provided, however, the east 25 feet established pursuant to the Metropolitan River Protection Act (O.C.G.A. § 12-5-440 et seq.) shall remain in force unless a variance is granted by director, EPD as provided in this subsection.
  - d. The buffer shall not apply to the following land disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within 25 degrees of perpendicular to the stream; cause a width of disturbance of not more than 50 feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented:
    - 1. Stream crossings for water lines; or
    - 2. Stream crossings for sewer lines.
- (16) There is established a 50-foot buffer as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, along the banks of any state waters classified as trout streams pursuant to the Georgia Water Quality Control Act (O.C.G.A. § 12-5-20 et seq.), except where a roadway drainage structure must be constructed; provided, however, that small springs and streams classified as trout streams which discharge an average annual flow of 25 gallons per minute or less shall have a 25-foot buffer or they may be piped, at the discretion of the landowner, pursuant to the terms of a rule providing for a general variance promulgated by the board, so long as any such pipe stops short of the downstream landowner's property and the landowner complies with the buffer requirement for any adjacent trout streams. For single-family residence construction covered by the provisions of this subsection, there is a buffer zone between the residence and any state waters classified as trout streams pursuant to the Georgia Water Quality Control Act, O.C.G.A. § 12-5-20 et seq. In any such buffer zone, no land disturbing activity is conducted between the residence and the point where vegetation has been wrested by normal stream flow or wave action from the banks of the trout waters. For primary trout waters, the buffer zone is at least 50 horizontal feet, and no variance to a smaller buffer is granted. For secondary trout waters, the buffer zone is at least 50 horizontal feet, but the director, EPD may grant variances to no less than 25 feet. Regardless of whether a trout stream is primary or secondary, for first order trout waters, which are streams into which no other streams flow except for springs, the buffer is at least 25 horizontal feet, and no variance to a smaller buffer is granted. The minimum requirements of subsection (b) of this section and section 109-274 and the buffer zones provided by this section are enforced by the director. The director, EPD may grant a variance from such buffer to allow land disturbing activity, provided that adequate erosion control measures are incorporated in the project plans and specifications and are implemented. The following requirements shall apply to such buffer:
- a. No land disturbance activities are conducted within a buffer and a buffer shall remain in its natural, undisturbed state of vegetation until all land disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the streambed; provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetation cover remains to protect water quality and aquatic habitat and natural canopy is left in sufficient quality to keep shade on the streambed; and
  - b. The buffer shall not apply to the following land disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within 25 degrees of perpendicular to the stream; cause a width of disturbance of not more than 50 feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented:
    - 1. Stream crossings for water lines; or
    - 2. Stream crossings for sewer lines.

- (d) *Adoption of additional requirements.* Nothing contained in this article shall prevent any local issuing authority from adopting rules and regulations, ordinances, or resolutions which contain stream buffer requirements in subsections (b) and (c) of this section.
- (e) *Property injury not evidence of standards violation.* The fact that land disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided in this article or terms of the permit.
- (f) *Additional requirements.* Where the director finds, through inspection, that property owners have been adversely affected due to violations clearly identified by the director, or that the approved current plans do not adequately address the features of the site, the director can require additional BMPs, drawings, and revisions to comply with the minimum requirements as outlined in this section.

**Sec. 109-296. - Residential construction.**

Notwithstanding any other provisions of this article, the construction of single-family detached dwellings is subject to the following rules:

- (1) *Building permit.* No land disturbing activity or other work (including moving and demolition) shall commence on a project until the owner or the contractor undertaking the work shall have applied for, and been issued, a land disturbance permit or building permit by the director. The owner/contractor shall prominently display on site the building permit, a signed erosion and sedimentation control agreement and approved site plan in full public view, until issuance of certification of occupancy. Demolition projects are required to install BMPs where necessary to prevent erosion. Failure to install BMPs shall constitute noncompliance with this article.
- (2) *Notice to comply.* The director shall issue a notice to comply for failure to either install or maintain best management practices (BMPs), even though sediments remain contained within the boundaries of the property by the use of debris basins, sediment basins, sediment barriers, and construction exits in accordance with this section. Subsequently, a stop work order is issued if compliance with a notice to comply is not achieved by the end of the specified compliance period of five days.
- (3) *Stop work order.* The director or representative shall issue an order to cease all work ("stop work order") on a project covered by this section if any work on that project is proceeding without a land disturbance permit or building permit, or when silt, mud, or other waterborne debris leave the property boundary, or (if such a permit has been issued) it is found by the director or representative that all or any portion of the project remains out of compliance with any requirements of section 109-295(b) or (c), any other provision of this article or any other city regulation or requirement after the specified compliance period or a site has been in violation at least two prior occurrences, to include any applicable fines and penalties. All other requirements of section 109-252(b) also apply to projects covered by this section.

**Secs. 109-297—109-360. - Reserved.**

**ARTICLE VII. - TREE CONSERVATION**

**Sec. 109-361. - Purpose.**

A. The purpose of this article is to recognize the importance of trees to the environment within the city for the purposes of health and welfare, beauty, safety, history, and general well-being, and to promote:

- 1. Tree conservation;
- 2. The increase, renewal, and proliferation of trees and the tree canopy; and
- 3. The protection of existing trees.

This article is designed to provide reasonable minimum standards regarding the preservation, planting, protection and maintenance of trees within the city.

B. The city further recognizes benefits derived from the conservation, proliferation, and renewal of trees and increased canopy including but not limited to:

1. The improvement of air quality by providing filtration of dust and fumes;
  2. The conservation of energy and mitigation of the urban heat island effect through shading and transpiration;
  3. The reduction of storm water runoff and flooding by dissipating rainfall and absorbing moisture;
  4. The reduction of soil erosion, and improved water quality;
  5. The improvement of habitat for desirable wildlife by providing diversity for food, shelter, and nesting sites;
  6. The reduction of health risks to residents due to improved environmental conditions;
  7. The improvement of community aesthetics and quality of life by having a diverse environment;
  8. The reduction of ambient noise levels;
  9. The mitigation of conditions in areas of vehicular use by providing buffering and shading; and
  10. The general enhancement of economic value to properties.
- C. The requirement of a high level of quality in the maintenance and development of land is consistent with community standards and the economic necessity of maintaining the city as a desirable place to live and conduct business.

**Sec. 109-362. - Definitions.**

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

*Administrative standards* means the administrative standards and best management practices for the city urban forest prepared in conjunction with this article and which, as they exist and may be amended from time to time.

*Boundary tree* means a tree 18 inches (dbh) or larger located on a property adjacent to a permitting property whose critical root zone or canopy extends into that permitting property.

*Buffer tree* means a tree 18 inches (dbh) or larger located in the minimum required yards/setbacks of any property.

*Buildable area* means the area of a lot within a given zoning district located outside the minimum required yards/setbacks of any property.

*Caliper* means the trunk diameter measurement of nursery stock trees measured at six inches above the ground up to and including four inches caliper size and 12 inches above the ground for larger trees.

*Canopy requirements* means the percentage of tree canopy coverage as set forth in the canopy requirements table contained in exhibit A to the ordinance from which this article is derived and which is included herein as section 109-375. For the purposes of this article, the canopy percentage on any property is the square footage of the total existing tree canopy on a property, divided by the total square footage of the permitting property.

*Canopy tree* means a large or medium tree with a crown size and shape that will typically provide at maturity significant shade and beneficial effects on temperature, air quality, water quality, and other environmental conditions. A canopy tree is also referred to as a "shade tree."

*Certified arborist* means an arborist certified by the International Society of Arboriculture as possessing the minimum level of competency required to practice arboriculture.

*City arborist* means the individual authorized by the director of the department of community development to administer and enforce the requirements and standards as set forth in this article.

*Critical root zone* means the minimum rooting volume of a tree necessary to sustain the tree's life, generally defined by the tree's drip line or 1.25 feet for every inch (dbh), the greater value is used, to a depth of three feet.

*Damaged tree* means a tree which has damage to any of its parts, including the roots, root buttress, trunk, or branches.

*Destroyed tree* means a tree which has damage to any of its parts causing, as determined by the city arborist, the tree's survival beyond three growing seasons to be unlikely.

*Diameter at breast height (dbh)* means the diameter of a tree's trunk measured at 4.5 feet above the ground. For multi-trunk trees, the diameter is measured at the narrowest point beneath the point of attachment of the multiple trunks.

*Ecological compatibility* means the suitability and functionality of a given tree species for its growing site based on its potential size, slope, exposure, soil, and drainage preferences; growth and structural characteristics; and use in the landscape.

*Hazardous tree* means a tree where the tree is at risk for failure because it is dead or structurally defective, and where that failure could result in personal injury or property damage.

*Land disturbance permit* means a permit issued by the city department of community development that authorizes the commencement of alteration or development of a given tract of land or the commencement of any land disturbing activity.

*Landmark tree* means:

- (1) Hardwood tree 27 inches (dbh) or larger;
- (2) Pine tree 30 inches (dbh) or larger, provided that said pine tree is not located within 30 feet of any structure; or
- (3) Dogwood or redbud tree ten inches (dbh) or larger being in fair or better condition.

*Protected tree* means a tree 18 inches (dbh) or larger, other than a landmark tree or buffer tree, in fair or better condition.

*Qualified professional* means any individual possessing a degree in forestry, urban forestry, landscape architecture, or horticulture, having been trained by the city in the implementation of this article, and tree protection in building construction. The city arborist shall certify and maintain a list of qualified professionals.

*Site/tree conservation plan (STCP)* means a plan as required in section 109-366.

*Tree* means a self-supporting woody plant material capable of reaching a minimum (dbh) of six inches and a height of 15 feet.

*Tree canopy* means the square footage of the aggregate of the canopy of all trees contained on a property.

*Tree protection zone* means the area of a lot for a given zoning district defined by the minimum required yards and the critical root zone of any protected tree.

*Tree removal permit* means a permit as required pursuant to this article issued by the city arborist for land disturbance or the removal of trees.

**Sec. 109-363. - Tree removal permit—Required for tree removal or destruction.**

- A. The removal or destruction of any landmark tree shall require a tree removal permit pursuant to section 109-364(A).
- B. Any land disturbing activity or construction activity, including, but not limited to, grading, digging, soil disturbance or other activity which could result in damage to root structure in the critical root zone of any boundary tree, shall require a tree removal permit pursuant to section 109-364(B) of this division.
- C. The removal or destruction of any landmark tree, protected tree or buffer area on residential property devoted to single-family or duplex residential use shall require compliance with section 109-365.
- D. The removal or destruction of:
  1. Any protected tree on property devoted to other than single-family or duplex residential use; or
  2. Any landmark tree, protected tree or buffer tree in conjunction with activity requiring the issuance of a building permit (other than a building permit for a deck, open air patio, fence, or interior renovations), demolition permit, land disturbance permit, or erosion and grading permit by the city; shall require a tree removal permit in compliance with section 109-366.

- E. All permit requirements as set forth herein is deemed cumulative with the most restrictive category being operative regarding any particular application.
- F. A hazardous tree may be removed without a tree removal permit; provided, however, should the hazardous tree otherwise meet the requirements of being a tree protected under the terms of this article, including but not limited to a landmark tree, buffer tree, boundary tree, or protected tree, the owner of the property shall immediately notify the city arborist of the removal of the tree and provide documentation that the removed tree was a hazardous tree as defined herein. Should it be determined that any tree so removed was not a hazardous tree, the provisions of this article is applied regarding the removal of such tree.
- G. Nothing in this article shall prohibit or restrict normal tree maintenance (including the removal of dead wood and branches or limbs which endanger life or property); provided, however, that no tree protected herein is limbed, topped or pruned in a manner so as to deprive the tree of continued viability.

**Sec. 109-364. - Same—Landmark tree/boundary tree.**

**A. *Landmark trees.***

- 1. A tree removal permit allowing the destruction or removal of a landmark tree pursuant to this section is permitted only if the city arborist determines that the removal of said landmark tree is warranted based upon:
  - a. The size and configuration of the property;
  - b. The physical condition of the landmark a tree;
  - c. The tree canopy of common areas appurtenant to the property; or
  - d. Other factors creating undue hardship for the applicant including but not limited to: pedestrian or vehicle traffic on or adjacent to the property; the configuration of buildings, structures and utilities on or adjacent to the property; cost effectiveness of potential alternatives to tree removal; whether the tree contributes to meeting any of the requirements set forth in this article or other requirements set forth by the city; or generally recognized good forestry practices.
- 2. All landmark trees removed pursuant to subsection (A)(1) of this section shall be replaced by the planting of new trees on the property of a comparable species and with a canopy potential of 150 percent of the canopy of the landmark tree to foster the enhancement of the tree canopy. If, however, the city arborist determines that replacement is not practical based upon the factors set forth in subsection (A)(1) of this section, payment may be made into the city tree bank in lieu of replacement planting. The compensation for the lost tree canopy is calculated on a square foot lost/replaced basis as set forth in the canopy and cost assignment table contained in exhibit A to the ordinance from which this article is derived and which is included herein as section 109-375.
- 3. A tree removal permit shall not be issued hereunder until both:
  - a. Payment of any required amounts have been received by the city tree bank, and
  - b. The city has been provided adequate assurances of any required canopy replacement.

**B. *Boundary trees.***

- 1. No land disturbing activity or construction activity, including, but not limited to, grading, digging, soil disturbance or other activity resulting in damage to root structure in the critical root zone of any boundary tree, is permitted should the city arborist determine that the activity will deprive the boundary tree of continued viability.
- 2. Should the city arborist determine that it is uncertain whether the proposed land disturbance or construction activity will deprive the boundary tree of continued viability, and that there is not a sufficient basis to prohibit the activity under subsection (B)(1) of this section, a tree removal permit allowing the activity is issued only after compliance with section 109-367.
- 3. Should the city arborist determine that the proposed land disturbance or construction activity will not deprive the boundary tree of continued viability, a tree removal permit is issued.

**Sec. 109-365. - Same—Residential use.**

A tree removal permit pursuant to this section is issued only upon compliance with the following:

- A. *Required documentation.* In conjunction with an application pursuant to this section, the applicant shall submit to the city arborist documentation (e.g., photographs, drawings, or similar documentation deemed acceptable by the city arborist) showing the location of all existing trees on the property. Such documentation shall show the location, species, and approximate caliper size of all existing trees noting with specificity the landmark trees, protected trees and buffer trees which are proposed to be removed pursuant to this section.
- B. *Landmark trees.* The removal of landmark trees pursuant to the section is in accordance with section 109-364(A)(1) and (2).
- C. *Protected trees.*
  - 1. If:
    - a. The applicant has submitted the documentation required by subsection (A) of this section to the city arborist not less than two business days prior to the proposed removal of protected trees; and
    - b. The removal or destruction of the protected trees, in conjunction with all tree removal being conducted, will not cause the tree canopy on the property to fall below the canopy requirements;
    - c. No tree removal permit is required.
  - 2. For the removal or destruction of protected trees on property not meeting the canopy requirements, or property on which the removal or destruction of the protected tree, in conjunction with all tree removal being conducted, will cause the tree canopy to fall below the canopy requirements, the applicant shall, at its election, provide for mitigation of all lost tree canopy below the canopy requirements by:
    - a. Replacing the lost tree canopy through planting trees on the property of comparable species and canopy potential; or
    - b. Payment into the city tree bank for the lost tree canopy. The compensation for the lost tree canopy is calculated on a square foot lost/replaced basis as set forth in the canopy and cost assignment table contained in exhibit A to the ordinance from which this article is derived and which is included herein as section 109-375.
- D. *Buffer trees.*
  - 1. The removal or destruction of buffer trees is permitted only if the city arborist determines that the removal of said buffer tree is warranted based upon:
    - a. The size and configuration of the property;
    - b. The physical condition of the buffer tree;
    - c. The tree canopy of common areas appurtenant to the property; or
    - d. Other factors creating undue hardship for the applicant including but not limited to:
      - (1) Pedestrian or vehicle traffic on or adjacent to the property;
      - (2) The configuration of buildings, structures and utilities on or adjacent to the property;
      - (3) Cost effectiveness of potential alternatives to tree removal; whether the tree contributes to meeting any of the requirements set forth in this article or other requirements set forth by the city; or
      - (4) Generally recognized good forestry practices.

2. For removal or destruction of buffer trees approved pursuant to subsection (4)a of this section, which removal or destruction, in conjunction with all tree removal being conducted, will not cause the tree canopy to fall below the canopy requirements, a tree removal permit shall be issued.
3. For removal or destruction of buffer trees approved pursuant to subsection (D)(1) of this section, on property not meeting the canopy requirements, or property on which the removal or destruction of the buffer tree, in conjunction with all tree removal being conducted, will cause the tree canopy to fall below the canopy requirements, the applicant shall, at its election, provide for mitigation of all lost tree canopy below the canopy requirements by:
  - a. Replacing the lost tree canopy through planting trees on the property of comparable species and canopy potential, or
  - b. Payment into the Summerville tree bank for the lost tree canopy. The compensation for the lost tree canopy is calculated on a square foot lost/replaced basis as set forth in the canopy and cost assignment table contained in exhibit A to the ordinance from which this article is derived and which is included herein as section 109-375.

F. *Payment/assurances required.* A tree removal permit shall not be issued hereunder until both:

1. Payment of any required amounts have been received by the city tree bank; and
2. The city has been provided adequate assurances of any required canopy replacement.

**Sec. 109-366. - Same—Site/tree conservation plan required.**

A tree removal permit pursuant to this section shall only be issued upon compliance with the following:

A. *Site/tree conservation plan required.*

1. In conjunction with an application pursuant to this section, the applicant shall submit a site/tree conservation plan (STCP) prepared by a qualified professional for review by the city arborist. The approval of the STCP by the city's department of community development is required prior to the issuance of a tree removal permit pursuant to this section.
2. The STCP shall document: the species (dbh), critical root zone and location of all existing trees and critical root zones on the property; the location, species, and caliper size of all proposed mitigation planting trees; and the location of all proposed building construction and land development activities, including grading, drainage, proposed utility locations and all proposed tree protection measures.
3. The STCP shall document all trees proposed for removal.
4. The STCP shall document the calculation of the tree canopy on the property prior to and following the implementation of the tree removal/replacement activity as set forth in the STCP.
5. The STCP shall document standard details for tree protection and tree planting set in compliance with the administrative standards.
6. The STCP shall document compliance with the parking and landscape requirements in compliance with the administrative standards.

B. *Landmark trees.*

1. The destruction or removal of landmark trees pursuant to this section is permitted only if said landmark tree is:
  - a. Located within the building footprint of the proposed construction as permitted by the city; or
  - b. Outside of the permitted building footprint, and the sandy spring arborist determines that the permitted land disturbance or construction activity will require the removal of said landmark tree based on section 109-368.

2. All landmark trees removed pursuant to subsection (B)(1) of this section is replaced by the planting of new trees on the property of a comparable species and with a canopy potential of 150 percent of the canopy of the landmark tree to foster the enhancement of the tree canopy. If, however, the city arborist determines that replacement is not practical based upon:
  - a. The size and configuration of the property;
  - b. The tree canopy of common areas appurtenant to the property; or
  - c. Other factors creating undue hardship for the applicant including but not limited to: pedestrian or vehicle traffic on and adjacent to the property; the configuration of buildings, structures and utilities on or adjacent to the property; cost effectiveness of potential replacement; whether the tree contributes to meeting any of the requirements set forth in this article or other requirements set forth by the city; or generally recognized good forestry practices; payment may be made into the Summerville tree bank in lieu of replacement planting. The compensation for the lost tree canopy is calculated on a square foot lost/replaced basis as set forth in the canopy and cost assignment table contained in exhibit A to the ordinance from which this article is derived and which is included herein as section 109-375.

C. *Boundary trees.* The STCP shall document the protection of boundary trees in accordance with section 109-364(b).

D. *Protected trees.*

1. The removal or destruction of protected trees, where said removal or destruction in conjunction with all proposed removal or destruction as set forth in the STCP will not cause the tree canopy to fall below the canopy requirements, is permitted.
2. The removal or destruction of protected trees on property not meeting the canopy requirements, or property on which all proposed removal or destruction of as set forth in the STCP will cause the tree canopy to fall below the canopy requirements, is permitted only if said protected tree is:
  - (a) Located within the building footprint of the proposed construction as permitted by the city; or
  - (b) Outside of the permitted building footprint, and the city arborist determines that the permitted land disturbance or construction activity will require the removal of said protected tree based on section 109-368.
3. All trees removed pursuant to subsection (D)(2) of this section are replaced by the planting of new trees on the property of a comparable species and canopy potential. If, however, the city arborist determines that replacement is not practical based upon:
  - (a) The size and configuration of the property;
  - (b) The tree canopy of common areas appurtenant to the property; or
  - (c) Other factors creating undue hardship for the applicant including but not limited to: pedestrian or vehicle traffic on and adjacent to the property; the configuration of buildings, structures and utilities on or adjacent to the property; cost effectiveness of potential replacement; whether the tree contributes to meeting any of the requirements set forth in this division or other requirements set forth by the city; or generally recognized good forestry practices; payment may be made into the city tree bank in lieu of replacement planting. The compensation for the lost tree canopy below the canopy requirements is calculated on a square foot lost/replaced basis as set forth in the canopy and cost assignment table contained in exhibit A to the ordinance from which this article is derived and which is included herein as section 109-375.

E. *Buffer trees.*

1. The removal or destruction of buffer trees is permitted only if the city arborist determines that the removal of said buffer tree is warranted based upon:
  - (a) The size and configuration of the property;

- (b) The condition of the buffer tree;
  - (c) The tree canopy of common areas appurtenant to the property; or
  - (d) Other factors creating undue hardship for the applicant including but not limited to: pedestrian or vehicle traffic on or adjacent to the property; the configuration of buildings, structures and utilities on or adjacent to the property; cost effectiveness of potential alternatives to tree removal; whether the tree contributes to meeting any of the requirements set forth in this division or other requirements set forth by the city; or generally recognized good forestry practices.
2. For removal or destruction of buffer trees approved pursuant to subsection (E)(1) of this section, which removal or destruction, in conjunction with all tree removal set forth in the STCP, will not cause the tree canopy to fall below the canopy requirements, a tree removal permit is issued.
  3. For removal or destruction of buffer trees approved pursuant to subsection (E)(1) of this section, on property not meeting the canopy requirements, or property on which the removal or destruction of the buffer tree, in conjunction with all tree removal set forth in the STCP, will cause the tree canopy to fall below the canopy requirements, all buffer trees is replaced by the planting of a new trees within the minimum required yards/setback of the property of a comparable species and canopy potential. if, however, the city arborist determines that replacement is not practical based upon the factors set forth in subsection (E)(1) of this section, payment may be made into the Summerville tree bank in lieu of replacement planting. the compensation for the lost tree canopy below the canopy requirements is calculated on a square foot lost/replaced basis as set forth in the canopy and cost assignment table contained in exhibit A to the ordinance from which this article is derived and which is included herein as section 109-375.
- F. *Payment/assurances required.* A tree removal permit/STCP approval shall not be issued hereunder until both:
1. Payment of any required amounts have been received by the city tree bank; and
  2. The city has been provided adequate assurances of any required canopy replacement.
- G. *Permit fee incentive.* Any applicant required to submit and receive an approved STCP pursuant to this section, who shall present a plan which increases the existing tree canopy on the property above the tree canopy existing at the time of the submission of the STCP where said increase of the tree canopy is not required pursuant to any provision of this division or other law or development standard, shall receive a credit against the permit fees required to be paid for the project defined in the STCP in an amount equal to one-third of the value of the increased tree canopy as calculated on a square foot lost/replaced basis as set forth in the canopy and cost assignment table contained in exhibit A to the ordinance from which this article is derived and which is included herein as section 109-375. Such reduction of fees, however, shall not exceed 50 percent of the amount of the permit fees required for the project as defined in the STCP.
- H. *Field verification.*
1. The qualified professional submitting the STCP shall field verify the accuracy of the STCP prior to submittal.
  2. A qualified professional shall certify successful compliance with the terms of the approved STCP to the city prior to issuance of a certificate of occupancy for the permitted property.
  3. The city arborist shall validate submitted STCPs for field accuracy, and compliance as he deems appropriate.
  4. In addition to all other provisions of this division and where allowed by law, submission of an inaccurate STCP or inaccurate certification of compliance with an STCP shall cause the submitting qualified professional to be removed from the approved list maintained by the city arborist for a period of not less than 90 days.

**Sec. 109-367. - Boundary tree protection.**

- A. Prior to the issuance of a tree removal permit pursuant to this section, funds are deposited into an account established by the city in an amount determined by the city arborist to be sufficient to offset the removal and replacement costs of the boundary tree. Notice is provided to the property owner whose property contains the

boundary tree which notice shall include notice of the deposited funds and a copy of the boundary tree provisions of this article.

- B. In establishing the escrow amount required pursuant to subsection A this section, the proposed replacement tree upon which payment is computed is a comparable species and size potential to the boundary tree, is ecologically compatible with the intended growing site, and at maturity shall fully mitigate the loss of the entire canopy area of the boundary tree.
- C. For the purposes of the article, credit will be granted to applicants for the entire tree canopy of a boundary tree protected hereunder.
- D. At any time prior to a determination authorizing the return of the escrow funds to the applicant pursuant to subsection (e) of this section, if the property owner whose property contains the boundary tree (petitioner) contends that the permitted activity has caused the boundary tree to fail to survive or be in a state of irreversible decline, the petitioner may petition the city arborist for the payment of the escrow funds to be utilized for the removal and replacement of the boundary tree. Upon receipt of such petition, notice of the petition is provided to the applicant hereunder at the address provided at the time of the tree removal permit application, or at any alternative address subsequently designated by the applicant to the city arborist in writing, via first class and certified mail, within 30 days of mailing of the notice, the city arborist shall make a determination as to whether the boundary tree has failed to survive or is in a state of irreversible decline due to the permitted activity. Notice of the decision is provided to the petitioner and the applicant by certified and first class mail as set forth this subsection. Either party may appeal the city arborist's determination pursuant to section 109-373. Should the city arborist determine that the boundary tree failed to survive or is in a state of irreversible decline due to the permitted activity, and no appeal has been timely filed, or the applicant has fully exhausted his or her appellate rights, the escrow funds is paid to the petitioner to offset any costs incurred in removal and replacement of the boundary tree. The petitioner's rights pursuant to this section may not be exercised more than one time in any 18-month period.
- E. After three years from the date of the payment of the escrow funds, unless otherwise disbursed pursuant to subsection D of this section, the applicant shall have the right to petition the city arborist for the return of all escrow funds held for the boundary tree. Should an applicant file a petition hereunder, notice of the applicant's petition is provided to the property owner whose property contains the boundary tree by first class and certified mail at the address of the property containing the boundary tree, and at the address set forth in the tax digest regarding the property. Within 30 days of mailing of the notice, the city arborist shall make a determination as to whether the boundary tree has failed to survive or is in a state of irreversible decline due to the permitted activity. notice of the decision is provided to the applicant and the property owner by certified and first class mail as set forth above. Either party may appeal the city arborist's determination pursuant to section 109-373. Should the city arborist determine that the boundary tree has not failed to survive or is not in a state of irreversible decline due to the permitted activity, and no appeal has been timely filed, or the property owner has fully exhausted his appellate rights, the escrow funds shall be paid to the applicant.
- F. Any funds not collected by either an affected property owner or the applicant within a period of four years of the establishment of the escrow fund is deposited in the city tree bank and is utilized for the purposes as authorized thereunder.
- G. No party hereunder is entitled to receive interest on any escrow funds required pursuant to these provisions of this article.

**Sec. 109-368. - Tree removal and replacement in conjunction with tree removal permit.**

The removal or destruction of any tree where approval is required pursuant to this section shall only be approved by the city arborist, if the following conditions are met:

- A. Unavoidable site modifications resulting from grading, utility work, and construction activities will result in destruction or irreparable damage to the tree; and
- B. Site plan modifications to prevent destruction or irreparable damage to the tree are impossible or unduly burdensome on the applicant.

**Sec. 109-369. - Potentially damaged trees; escrow of funds.**

- A. Where the city arborist determines that due to approved construction or land disturbance activity an applicant may remove a tree pursuant to the terms of this division, and the applicant is required to pay for the lost tree canopy of

the removed tree, the applicant may, at its election, propose alternative construction methods to attempt to preserve the continued viability of the tree. Should the city arborist determine that the proposed alternative construction methods shall reasonably result in the survival of the tree, that portion of the funds required to be paid for the lost tree canopy of the tree pursuant to this article shall be paid into an escrow fund maintained by the city.

- B. After three years from the date of the payment of the escrow funds, the applicant shall have the right to petition the city arborist for the return of all escrow funds held for the protection of the tree. Within 30 days of the petition, the city arborist shall make a determination as to whether the tree has failed to survive or is in a state of irreversible decline due to the permitted activity. Should the city arborist determine that the tree has not failed to survive or is not in a state of irreversible decline, the funds are paid to the applicant. Should the city arborist determine that the tree has failed to survive or is in a state of irreversible decline, the funds shall be paid into the city tree bank.
- C. Any funds not collected within a period of four years of the establishment of the escrow fund is deposited in the city tree bank and be utilized for the purposes as authorized thereunder.
- D. No party hereunder is entitled to receive interest on any escrow funds required pursuant to this provision.

**Sec. 109-370. - Establishment of the Summerville Tree Bank.**

- A. There is hereby established a city tree bank for the maintenance and disbursement of funds required to be paid pursuant to the terms of this article.
- B. Where it is determined by the city arborist that payment into the city tree bank is required hereunder, the required funds is paid to the city tree bank prior to issuance of any related permit.
- C. Funds maintained in the city tree bank is administered by the director of community development pursuant to the rules and regulations regarding said funds as established by the council for the purposes of community ecological education and increasing and maintaining tree canopy in public spaces in the city.

**Sec. 109-371. - Enforcement.**

- A. The city manager or his designee shall enforce to the terms of this article.
- B. No certificate of occupancy is issued on any property without compliance with the terms of this article.
- C. Examples of violations shall include, but not be limited to:
  - 1. Land disturbance or building construction without a permit.
  - 2. Improperly installed or maintained tree protection.
  - 3. The removal of applicable trees prior to the issuance of a permit.
  - 4. Non-approved encroachment of tree protection zones.
  - 5. Other violations of the terms, provisions and standard of this article established herein.
- D. Notices of violations, the issuance of stop work orders and citations are in accordance with this Code.
- E. Where it is deemed necessary, the director of the department of community development shall require sureties to assure compliance to the terms, conditions and standards of this article.

**Sec. 109-372. - Fines and penalties.**

- A. Any person, firm, corporation or other entity violating any of the provisions of this article is guilty of a violation of this Code. Each act of violation and each day upon which any act of violation shall occur shall constitute a separate violation of this Code.
- B. Each owner of any property wherein a violation exists is jointly and severally responsible for said violation.
- C. Removal of a tree protected under the terms of this article without compliance with the terms hereof shall result in an assessment for the replacement of the lost canopy in the amount of three times the value of the lost tree canopy,

calculated in accordance with the canopy and cost assignment table contained in exhibit A to the ordinance from which this article is derived and which is included herein as section 109-375, being assessed against the person causing the removal of the tree.

**Sec. 109-373. - Appeals.**

- A. Any applicant under this article aggrieved by an action of the city arborist, or any adjacent property owner directly impacted by a decision hereunder, may appeal and be heard by the city board of appeals in accordance with the rules and regulations as set forth by this Code, and such board.
- B. All appeals, pursuant to this section, must be filed in writing with the city community development department within 30 days from the date of the decision or action from which the aggrieved party appeals. All appeals must be filed on forms which can be obtained at the city community development department.
- C. Appeals shall only be granted for errors of interpretation, application, or where the unique natural features of the site are such that it is impractical or impossible to apply the terms, conditions or standards of these regulations resulting in an undue hardship to the property owner.
- D. Any person aggrieved by an action of the city board of appeals as it relates to this article may appeal within 30 days to the county superior court by writ of certiorari.

**Sec. 109-374. - Severability and conflicts.**

in the event that one or more of the provisions contained herein shall, or in the administrative standards incorporated herein, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this article, but this article is construed as if such invalid, illegal or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause the actions contemplated herein to be unreasonable.

**Sec. 109-375. - Exhibit A.**

TABLE 1.  
CANOPY REQUIREMENTS PER LAND USE

Land Use	Canopy Requirement (% of total lot area or subdivision area)
Residential	30
Nonresidential Other	40
Commercial	40
Industrial	40

TABLE 2.  
CANOPY AND COST ASSIGNMENT

Tree Size	Canopy (sq. ft.)	Canopy Credits	Dimensions (approx.)	Cost @ \$375/credit	Trees per acre @ 50% Canopy	Minimum size at planting
Small	250	1	16 X 16	\$375.00	87	1.5"
Medium	500	2	22.5 X 22.5	\$750.00	43.6	2 to 2.5"
Large	1000	4	31.5 X 31.5	\$1500.00	21.7	2 to 2.5"