

Chapter 14 ENVIRONMENT¹

ARTICLE I. IN GENERAL

Secs. 14-1—14-18. Reserved.

ARTICLE II. FLOOD PREVENTION AND CONTROL

DIVISION 1. GENERALLY

Sec. 14-19. Findings of fact.

- (a) The flood hazard areas of the City 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.
- (b) These flood losses are caused by the occupancy in flood hazard areas of uses vulnerable to floods, which are inadequately elevated, floodproofed, or otherwise unprotected from flood damages, and by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities.

(Code 1997, § 34-102; Ord. of 2-7-2005, § 34-102; Ord. of 3-3-14, § 1)

Sec. 14-20. Statement of purpose.

It is the purpose of this article to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas 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 water 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;

¹State law reference(s)—Conservation and natural resources, O.C.G.A. § 12-1-1 et seq.; water resources, O.C.G.A. § 12-5-1 et seq.; control of soil erosion and sedimentation, O.C.G.A. § 12-7-1 et seq.; control of water pollution and surface water use, O.C.G.A. § 12-5-20; Metropolitan River Protection Act, O.C.G.A. § 12-4-440 et seq.; state Water Quality Control Act, O.C.G.A. § 12-5-20 et seq.; state Surface Mining Act of 1968, O.C.G.A. § 12-4-70 et seq.; Erosion and Sedimentation Act of 1975, O.C.G.A. § 12-7-1 et seq.; local ordinance governing land-disturbing activities, O.C.G.A. § 12-7-4.

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- (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.

(Code 1997, § 34-103; Ord. of 2-7-2005, § 34-103; Ord. of 3-3-2014, § 1)

Sec. 14-21. Objectives.

The objectives of this article are to:

- (1) Protect human life and health;
- (2) 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) 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) Minimize expenditure of public money for costly flood control projects;
- (5) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (6) Minimize prolonged business interruptions; and
- (7) Ensure that potential homebuyers are notified that property is in a flood area.

(Code 1997, § 34-104; Ord. of 2-7-2005, § 34-104; Ord. of 3-3-2014, § 1)

Sec. 14-22. 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:

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 zoning administrator's interpretation of any provision of this article.

Area of shallow flooding means a designated AO or AR Zone on a community's flood insurance rate map (FIRM) with base flood depths from one to three feet, 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 in this article.

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

Base flood elevation (BFE) The elevation shown on the Flood Insurance Rate Map for Zones AE, AH, A1-A30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO, V1-V30 and VE that indicates the water surface elevation resulting from a flood that has a one percent chance of equaling or exceeding that level in any given year.

Basement means that portion of a building having its floor subgrade (below ground level) on all sides.

Building see definition for structure.

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:

- (1) Structures or facilities that produce, use, or store highly volatile, flammable, explosive, toxic, or water-reactive materials;
- (2) 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;
- (3) Emergency operation centers or data storage centers which contain records or services that may become lost or inoperative during flood and storm events; and
- (4) Generating plants, and other principal points of utility lines.

Development means any manmade 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 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 means, for the purposes of determining rates, structures for which the start of construction commenced before February 7, 2005.

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 February 7, 2005.

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 the overflow of inland or tidal waters or 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 or risk premium zones applicable to the community.

Flood insurance study means 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 walls of a building.

Historic structure means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Federal Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) 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;
- (3) 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
- (4) Individually listed on a local inventory of historic places and determined as eligible by communities with historic preservation programs that have been certified either by an approved state program, as determined by the Secretary of the Interior, or 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 "manufactured home" 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.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean sea level means the average height of the sea for all stages of the tide. The term mean sea level is used as a reference for establishing various elevations within the floodplain. For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

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, for the purposes of determining insurance rates, structures for which the start of construction commenced after July 6, 2010, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced after November 2, 2009 and includes any subsequent improvements to such structures.

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 after November 2, 2009.

North American Vertical Datum (NAVD) has replaced the National Geodetic Vertical Datum of 1929 in existing and future FEMA Flood Modernization Maps.

Recreational vehicle means a vehicle, that is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light duty truck, and 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 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. 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. Accessory structures are not exempt from any requirements of this article.

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

Subdivision means the division of a single lot into two or more lots for the purpose of sale or development.

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 50 percent of the market value of the structure before the damage occurred.

Substantial improvement.

- (1) The term substantial improvement means any reconstruction, rehabilitation, addition or other improvement of a structure, taking place during a five-year period, in which the cumulative cost equals or exceeds 50 percent of the market value of the structure prior to the start of construction of the improvement. The market value of the structure should be the appraised value of the structure prior to the start of the initial repair or improvement, or, in the case of damage, the value of the structure prior to the damage occurring. The term substantial improvement includes structures which have incurred substantial damage, regardless of the actual amount of repair work performed.
- (2) For the purposes of this definition, the term 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.
- (3) The term substantial improvement does not, however, include 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 ensure safe living conditions and which have been identified by the Code Enforcement Official, and not solely triggered by an improvement or repair project, or 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 exist when 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 article, which permits construction in a manner otherwise prohibited by this article.

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 article is presumed to be in violation until such time as that documentation is provided.

(Code 1997, § 34-601; Ord. of 2-7-2005, § 34-601; Ord. of 3-3-2014, § 1)

Sec. 14-23. Applicability.

This article shall apply to all areas of special flood hazard within the jurisdiction of the City.

(Code 1997, § 34-201; Ord. of 2-7-2005, § 34-201; Ord. of 3-3-2014, § 1)

Sec. 14-24. Basis for area of special flood hazard.

- (a) The areas of special flood hazard identified by the Federal Emergency Management Agency in its Flood Insurance Study (FIS), dated March 17, 2014, with accompanying maps and other supporting data and any revision thereto, are adopted by reference and declared a part of this article.
- (b) For those land areas acquired by the City through annexation, the current effective FIS and data for the county are hereby adopted by reference and declared a part of this article, with accompanying maps and other supporting data and any revision thereto.
- (c) 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.
- (d) The repository for public inspection of the Flood Insurance Study (FIS), accompanying maps and other supporting data is located: Office of the City Clerk.

(Code 1997, § 34-202; Ord. of 2-7-2005, § 34-202; Ord. of 3-3-2014, § 1)

Sec. 14-25. Establishment of development permit.

A development permit shall be required in conformance with the provisions of this article prior to the commencement of any development activities.

(Code 1997, § 34-203; Ord. of 2-7-2005, § 34-203; Ord. of 3-3-2014, § 1)

Sec. 14-26. Compliance.

No structure or land shall hereafter be located, extended, converted or altered without full compliance with the terms of this article and other applicable regulations.

(Code 1997, § 34-204; Ord. of 2-7-2005, § 34-204; Ord. of 3-3-2014, § 1)

Sec. 14-27. Abrogation and greater restrictions.

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

(Code 1997, § 34-205; Ord. of 2-7-2005, § 34-205; Ord. of 3-3-2014, § 1)

Sec. 14-28. Interpretation.

In the interpretation and application of this article, all provisions shall be considered as minimum requirements, liberally construed in favor of the City, and deemed neither to limit nor repeal any other powers granted under state statutes.

(Code 1997, § 34-206; Ord. of 2-7-2005, § 34-206; Ord. of 3-3-2014, § 1)

Sec. 14-29. 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 hereunder.

(Code 1997, § 34-207; Ord. of 2-7-2005, § 34-207; Ord. of 3-3-2014, § 1)

Sec. 14-30. Penalties for violation.

Failure to comply with the provisions of this article 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 article 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 ten 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 from taking such other lawful actions as are necessary to prevent or remedy any violation.

(Code 1997, § 34-208; Ord. of 2-7-2005, § 34-208; Ord. of 3-3-2014, § 1)

Secs. 14-31—14-48. Reserved.

DIVISION 2. ADMINISTRATION

Sec. 14-49. Designation of administrator.

The Zoning Administrator is hereby appointed to administer and implement the provisions of this article. Recommendations of the Planning Commission shall be subject to approval by the Mayor and City Council.

(Code 1997, § 34-301; Ord. of 2-7-2005, § 34-301; Ord. of 3-3-2014, § 1)

Sec. 14-50. Duties and responsibilities of the administrator.

- (a) Duties of the Zoning Administrator shall include, but not be limited to:
- (1) Review all development permits to ensure that the permit requirements of this article have been satisfied.
 - (2) Review proposed development to ensure 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 USC 1344.
 - (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 this article, then the Zoning Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other sources.
 - (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.
 - (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.
 - (7) Obtain certification of design criteria from a registered professional engineer or architect when flood proofing is utilized for a structure.
 - (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 State 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 and analysis within six months to the FEMA to ensure accuracy of community flood maps through the letter of map revision process. Ensure flood carrying capacity of any altered or relocated watercourse is maintained.
 - (11) Make the necessary interpretation 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). Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
- (b) All records pertaining to the provisions of this article shall be maintained in the office of the City Clerk and shall be open for public inspection.

(Code 1997, § 34-303; Ord. of 2-7-2005, § 34-303; Ord. of 3-3-2014, § 1)

Sec. 14-51. Permit procedures.

Application for a development permit shall be made to the City Planning Commission on forms furnished by the City prior to any development activities, and may include, but not be limited to, 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:

(1) *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 nonresidential structure will be flood proofed;
- c. Design certification from a registered professional engineer or architect that any proposed nonresidential flood proofed structure will meet the flood proofing criteria of this article;
- d. Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development.

(2) *Construction stage.*

- a. For all new construction and substantial improvements, the permit holder shall provide to the Zoning 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 nonresidential structures, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same.
- b. Any work undertaken prior to submission of these certifications shall be at the permit holder's risk.
- c. The City Planning Commission 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.

(Code 1997, § 34-302; Ord. of 2-7-2005, § 34-302; Ord. of 3-3-2014, § 1)

Secs. 14-52—14-75. Reserved.

DIVISION 3. FLOOD HAZARD REDUCTION STANDARDS²

Sec. 14-76. 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;

²Editor's note(s)—An ordinance adopted March 3, 2014, § 1, amended the Code by repealing former div. 3, §§ 14-76—14-81, and adopting a new div. 3, §§ 14-76—14-83 as set out herein. The former div. 3 pertained to similar content and derived from Ord. of 2-7-2005 and the Code of 1997.

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- (3) New construction or substantial improvements of existing structures shall be constructed by methods and practices that minimize flood damage;
 - (4) With regard to elevated buildings:
 - a. 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;
 - b. Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:
 1. 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;
 2. The bottom of all openings shall be no higher than one foot above grade; and
 3. Openings may be equipped with screens, louvers, valves or other coverings or devices, provided they permit the automatic flow of floodwater in both direction.
 - c. So as not to violate the lowest floor criteria of this article, 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
 - d. 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 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 floodwaters into the system;
 - (8) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters;
 - (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 article, shall be undertaken only if the non-conformity is not furthered, extended or replaced.

(Ord. of 3-3-2014, § 1)

Sec. 14-77. Specific standards applicable to all areas of special flood hazard.

In all areas of special flood hazard, the following provisions are required:

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- (1) *New construction or substantial improvements.* Where base flood elevation data are available, new construction 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 this article regarding elevated buildings. 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 foot above the base flood elevation.
 - (2) *Nonresidential construction.* New construction 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 watertight to one 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 required official.
 - (3) *Standards for manufactured homes and recreational vehicles.* Where base flood elevation data are available:
 - a. All manufactured homes placed or substantially improved on individual lots or parcels, in new or substantially improved manufactured home parks or subdivisions, in expansions to existing manufactured home parks or subdivisions, or on a site in an existing manufactured home parks 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 or substantially improved in an existing manufactured home park or subdivision may be elevated so that either the lowest floor of the manufactured home is elevated no lower than one foot above the level of the base flood elevation or 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.
 - d. All recreational vehicles placed on sites must either be on the site for fewer than 180 consecutive days, or 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 meet all the requirements of this article regarding for new construction, including, anchoring and elevation requirements.
 - (4) *Floodways.* Locations within areas of special flood hazard, as provided in this article, are areas designated as floodways. 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, in floodway areas:
 - a. Encroachments are prohibited, including earthen fill, new construction, substantial improvements or other development within the regulatory floodway, unless it is demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the encroachment will 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.

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- b. If subsection (4)a. of this section is satisfied, then any new construction or substantial improvement shall comply with all other applicable flood hazard reduction provisions of this article.

(Ord. of 3-3-2014, § 1)

Sec. 14-78. Standards for areas of special flood hazard (Zones A) with established base flood elevations without designated floodways.

- (a) For locations within the areas of special flood hazard established in this article, 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, then the City Planning Commission shall obtain, review and reasonably utilize any scientific or historic base flood elevation and floodway data available from a federal, state or other source. Only if data are not available from these sources, then the following provisions subsections (a)(2) and (3) of this section shall apply.
 - (2) No encroachments, including structures or fill material, shall be located within an area equal to the width of the stream or 20 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 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 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 this article related to elevated buildings. 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 feet above the highest adjacent grade at the building site.
- (b) The City Planning Commission shall certify the lowest floor elevation level and the record shall become a permanent part of the permit file.

(Ord. of 3-3-2014, § 1)

Sec. 14-79. Standards for areas of special flood hazard (Zones AE) with established base flood elevations without designated floodways.

Located within the Areas of Special Flood Hazard established in article 2, section B, where streams with base flood elevations are provided but no floodways have been designated, (Zones AE) the following provisions apply:

- (1) No encroachments, including fill material, new structures or substantial improvements shall be located within areas of special flood hazard, unless certification by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community. The engineering certification should be supported by technical data that conforms to standard hydraulic engineering principles.

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- (2) New construction or substantial improvements of buildings shall be elevated or flood-proofed to elevations established in accordance with article 4, section B.

(Ord. of 3-3-2014, § 1)

Sec. 14-80. Areas of shallow flooding (AO zones).

Areas of special flood hazard established in this article may include designated AO shallow flooding areas. These areas have base flood depths of one to three feet above ground, with no clearly defined channel. The following provisions apply:

- (1) All new construction and substantial improvements of residential and nonresidential 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 above the highest adjacent grade. Openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with standards of this article regarding elevated buildings. The City Planning Commission 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 nonresidential structure may be flood proofed in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be watertight to the specified FIRM flood level plus one 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 herein, and shall provide such certification to the official as provided in this article.
- (3) Drainage paths shall be provided to guide floodwater around and away from any proposed structure.

(Ord. of 3-3-2014, § 1)

Sec. 14-81. Standards for subdivisions.

- (a) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (b) All subdivision proposals shall have public utilities and facilities, such as sewer, gas, electrical and water systems, located and constructed to minimize flood damage.
- (c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (d) For subdivisions and/or developments greater than fifty lots or five 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.

(Ord. of 3-3-2014, § 1)

Sec. 14-82 Standards for critical facilities.

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

(Ord. of 3-3-2014, § 1)

Sec. 14-83. Variance procedure.

- (a) The Mayor and City Council, as established by the Mayor and City Council, shall hear and decide requests for appeals or variance from the requirements of this article.
- (b) The council shall hear and decide appeals when it is alleged an error in any requirement, decision or determination is made by the City Planning Commission in the enforcement or administration of this article.
- (c) Any person aggrieved by the decision of the Mayor and City Council may appeal such decision to the County Superior Court, as provided in O.C.G.A. § 5-4-1.
- (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 City Council shall consider all technical evaluations, relevant factors and all standards specified in this and other sections of this article.
- (h) A variance shall be issued only when there is a finding of good and sufficient cause, a determination that failure to grant the variance would result in exceptional hardship and 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.
- (i) The provisions of this article 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.
- (j) 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.
- (k) The City Clerk shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

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- (l) Upon consideration of the factors listed above and the purposes of this article, the Mayor and City Council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this article.

(Ord. of 3-3-2014, § 1)

Secs. 14-84—14-105. Reserved.

ARTICLE III. SOIL EROSION AND SEDIMENTATION CONTROL

DIVISION 1. GENERALLY

Sec. 14-106. 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 (BMP's) is a collection of structural practices and vegetative measures which, when properly designed, installed and maintained, will provide effective erosion and sedimentation control for all rainfall events up to and including a 25 year, 24 hour rainfall event.

Board means the state board of natural resources, a board operating under the state department of natural resources.

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

Certified personnel means a person who has successfully completed the appropriate certification course approved by the State Soil and Water Conservation Commission.

Commission means the Georgia Soil and Water Conservation Commission (GSWCC).

CPESC means certified professional in erosion and sediment control with current certification by Certified Profession in Erosion and Sediment Control Inc., a corporation registered in North Carolina, which is also referred to as CPESC or CPESC, Inc.

Cut means the portion of land surface or area from which earth has been removed by excavation, that is, the depth below original ground surface to excavated surface. The term "cut" is also known as "excavation."

Department means the state department of natural resources.

Design professional means a professional licensed by this state in the field of engineering, architecture, landscape architecture, forestry, geology or land surveying; or a person that is a certified professional in erosion and sediment control (CPESC) with a current certification by Certified Professional in Erosion and Sediment Control Inc.

Director means the director of the environmental protection division of the department of natural resources.

District means the Upper Ocmulgee River Soil and Water Conservation District.

Drainage structure means a device composed of a virtually nonerodible 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.

Environmental Protection Division (EPD) means the Environmental Protection Division of the Department of Natural Resources.

Erosion means the process by which land surface is worn away by the action of wind, water, ice or gravity.

Erosion, sedimentation and pollution control plan means a plan required by the Erosion and Sedimentation Act, O.C.G.A. ch. 12-7, that includes, as a minimum, protections at least as stringent as the state general permit, best management practices and requirements in this article.

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

Final stabilization means all soil disturbing activities at the site have been completed, and that for unpaved areas and areas not covered by permanent structures and areas located outside the waste disposal limits of a landfill cell that has been certified by EPD for waste disposal, 100 percent of the soil surface is uniformly covered in permanent vegetation with a density of 70 percent or greater, or equivalent permanent stabilization measures (such as the use of riprap, gabions, permanent mulches or geotextiles) have been used. Permanent vegetation shall consist of: planted trees, shrubs, perennial vines; a crop of perennial vegetation appropriate for the time of year and region; or a crop of annual vegetation and a seeding of target crop perennials appropriate for the region. Final stabilization applies to each phase of construction.

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 to a predetermined condition; 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 original elevation of the ground surface 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 this article.

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 purposes 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 surveyor markings, indicating that construction activities may occur on a specific plot.

Local issuing authority means the state environmental protection division.

Metropolitan River Protection Act (MRPA) is state law referenced as O.C.G.A. § 12-5-440 et seq. that addresses environmental and developmental matters in certain metropolitan river corridors and their drainage basins.

Natural ground surface means the ground surface in its original state before any grading, excavation or filling.

Nephelometric turbidity units (NTU) means 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.

NOI means a notice of intent form provided by EPD for coverage under the state general permit.

NOT means a notice of termination form provided by EPD to terminate coverage under the state general permit.

Operator means the parties that have operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications, or day-to-day operational control of those activities that are necessary to ensure compliance with an erosion, sedimentation and pollution control 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 erosion, sedimentation and pollution control plan or to comply with other permit conditions.

Outfall means the location where stormwater in a discernible, confined and discrete conveyance leaves a facility or site or, if there is a receiving water on site, becomes a point source discharging into that receiving water.

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

Person means any individual, 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 this state, any interstate body or any other legal entity.

Phase or phased means subparts or segments of construction projects where the subpart or segment is constructed and stabilized prior to completing construction activities on the entire construction site.

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

Properly designed means designed in accordance with the design requirements and specifications contained in the "Manual for Erosion and Sediment Control in Georgia" (manual) published by the state soil and water conservation commission as of January 1 of the year in which the land-disturbing activity was permitted and amendments to the manual as approved by the commission up until the date of NOI submittal.

Roadway drainage structure means a device such as a bridge, culvert or ditch composed of a virtually nonerodible 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 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 Upper Ocmulgee River Soil and Water Conservation District.

Stabilization means the process of establishing an enduring soil cover of vegetation by the installation of temporary or permanent structures 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 (NPDES) general permit or permits for stormwater runoff from construction activities as is 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, reservoirs, ponds, drainage systems, 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.

Structural erosion and sedimentation control practices means practices for the stabilization 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 excessive sediment loss. Examples of

structural erosion and sediment control practices are riprap, sediment basins, dikes, level spreaders, waterways or outlets, diversions, grade stabilization structures, sediment traps and land grading, etc. Such practices can be found in the Manual for Erosion and Sediment Control in Georgia, published by the state soil and water conservation commission.

Surface mining shall have the meaning provided in O.C.G.A. § 12-4-72 of the Mineral Resources and Caves Act.

Trout streams means all streams or portions of streams within the watershed 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 those 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.

Vegetative erosion and sedimentation control measures means measures for the stabilization of erodible or sediment-producing areas by covering the soil with permanent seeding, sprigging or planting, producing long-term vegetative cover; or temporary seeding, producing short-term vegetative cover; or sodding, covering areas with a turf of perennial sod-forming grass. Such measures can be found in the Manual for Erosion and Sediment Control in Georgia, published by the state soil and water conservation commission.

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 thereto 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.

(Ord. of 7-12-2010(01), § 2(35-102))

Sec. 14-107. Exemptions.

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

- (1) Surface mining;
- (2) Granite quarrying and land clearing for such quarrying;
- (3) Minor land-disturbing activities as home gardens and individual home landscaping, repairs, maintenance work, fences and other related activities which result in minor soil erosion;
- (4) Construction of single-family residences, when constructed by or under contract with the owner for his own occupancy, or the construction of single-family residences not a part of a platted subdivision, a planned community or an association of other residential lots consisting of more than two lots and not otherwise exempted under this subsection; provided, however, that:
 - a. Construction of any such residence shall conform to the minimum requirements as set forth in this article;
 - b. For single-family residence construction covered by the provisions of this subsection, there shall be 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 shall be constructed 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;

- c. For primary trout waters, the buffer zone shall be at least 50 horizontal feet, and no variance to a smaller buffer shall be granted. For secondary trout waters, the buffer zone shall be at least 50 horizontal feet, but the director may grant variances to no less than 25 feet;
 - d. 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 shall be at least 25 horizontal feet, and no variance to a smaller buffer shall be granted. The minimum requirements of this article and the buffer zones provided by this section shall be 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, chickens, hens and turkeys; producing plants, trees, fowl or animals; the production of aqua culture, horticultural, dairy, livestock, poultry, eggs and apiarian products; 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, no other land-disturbing activities, except for normal forest management practices, shall be 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 resources conservation service of the federal department of agriculture;
 - (8) Any project involving 1 ½ acres or less; provided, however, that this exemption shall not apply to any land-disturbing activity within 200 feet of the bank of any state waters, and for purposes of this subsection, state waters excludes channels and drainageways that have water in them only during and immediately after rainfall events and intermittent streams which do not have water in them year-round. Any person responsible for a project which involves 1 ½ acres or less, which involves land-disturbing activity, and which is within 200 feet of any such excluded channel or drainageway, must prevent sediment from moving beyond the boundaries of the property on which such project is located. Nothing contained herein shall prevent the issuing authority from regulating any such project that is not specifically exempted by 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 state highway authority or the state tollway authority; or any road construction or maintenance project, or both, undertaken by any county or municipality; provided, however, that such projects shall conform to the minimum requirements set forth in this article and provided further that construction or maintenance projects of department of transportation or state tollway authority that disturb five or more contiguous acres of land shall be subject to provisions of O.C.G.A. § 12-7-7.1, except where the department of transportation, the state highway authority, or the state road and tollway 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 shall be submitted to the local issuing authority, the local issuing authority shall enforce compliance with the minimum requirements set forth in O.C.G.A. § 12-7-6 as if a permit had been issued, and violations shall be subject to the same penalties as violations by permit holders;

(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 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 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 local issuing authority shall enforce compliance with the minimum requirements set forth in O.C.G.A. § 12-7-6 as if a permit had been issued, and violations shall be subject to the same penalties as violations by permit holders; and

(11) Any public water system reservoir.

(Ord. of 7-12-2010(01), § 2(35-103))

Sec. 14-108. Liability.

- (a) Neither the approval of a plan under the provisions of this chapter, nor the compliance with provisions of this chapter shall relieve any person from the responsibility for damage to any person or property otherwise imposed by law nor impose any liability upon the local issuing authority or district for damage to any person or property.
- (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 chapter or the terms of the permit.
- (c) No provision of this article shall permit any persons to violate the 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.

(Ord. of 7-12-2010(01), § 2(35-110))

Sec. 14-109. Education and certification.

- (a) 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 environmental protection division and the stakeholder advisory board created pursuant to O.C.G.A. § 12-7-20.
- (b) For each site on which land-disturbing activity occurs, each entity or person acting as either a primary, secondary or tertiary permittee, as defined in the state general permit, shall have, as a minimum, one person who is in responsible charge of erosion and sedimentation control activities on behalf of the entity or person and meets the applicable education or training certification requirements developed by the commission present on site whenever land-disturbing activities are conducted on that site. A project site shall herein be defined as any land-disturbance site or multiple sites within a larger common plan of development or sale permitted by an owner or operator for compliance with the state general permit.
- (c) Persons or entities involved in projects not requiring a state general permit but otherwise requiring certified personnel on site, may contract with certified persons to meet the requirements of this chapter.

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- (d) If a state general permittee who has operational control of land-disturbing activities for a site has met the certification requirements of O.C.G.A. § 12-7-19(b)(1), then any person or entity involved in land-disturbing activity at that site and operating in a subcontractor capacity for such permittee shall meet those educational requirements specified in O.C.G.A. § 12-7-19(b)(4) and shall not be required to meet any educational requirements that exceed those specified in the paragraph.

(Ord. of 7-12-2010(01), § 2(35-108))

Secs. 14-110—14-131. Reserved.

DIVISION 2. MINIMUM STANDARDS

Sec. 14-132. General provisions.

- (a) Excessive soil erosion and resulting sedimentation can take place during land-disturbing activities if requirements of the chapter and the NPDES general permit are not met. Therefore, plans for those land-disturbing activities which are not exempted by this chapter shall contain provisions for application of soil erosion, sedimentation and pollution control measures and practices. The provisions shall be incorporated into the erosion, sedimentation and pollution control plans.
- (b) Soil erosion, sedimentation and pollution control measures and practices shall conform to the minimum requirements of this division. 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.
- (c) Measures shall be installed to prevent or control erosion, sedimentation and pollution during all stages of any land-disturbing activity in accordance with requirements of this article and the NPDES general permit.

(Ord. of 7-12-2010(01), § 2(35-104(A)))

Sec. 14-133. Best management practices required.

- (a) Best management practices as set forth in this section shall be required for all land-disturbing activities. Proper design, installation and maintenance of best management practices shall constitute a complete defense to any action by the director or to any other allegation of noncompliance with this subsection or any substantially similar terms contained in a permit for the discharge of stormwater issued pursuant to O.C.G.A. § 12-5-30(f) a part of the Georgia Water Quality Control Act. 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).
- (b) A discharge of stormwater runoff from disturbed areas where best management practices have not been properly designed, installed and maintained shall constitute a separate violation of any land-disturbing permit issued by a local issuing authority or of any state general permit issued by the EPD pursuant to O.C.G.A. § 12-5-30(f), part of the Georgia Water Quality Control Act, 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 shall be measured in accordance with guidelines to be issued by the director. This subsection shall not apply to any land disturbance associated with the construction of single family homes which are not part of a larger common plan of development or sale, unless the planned disturbance for such construction is equal to or greater than five acres.

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- (c) Failure to properly design, install or maintain best management practices shall constitute a violation of any land-disturbing permit issued by a local issuing authority or of any state general permit issued by the EPD pursuant to O.C.G.A. § 12-5-30(f), part of the Georgia Water Quality Control Act, for each day on which such failure occurs.
 - (d) 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.
 - (e) The local issuing authority may set more stringent buffer requirements than stated in this section, in light of O.C.G.A. § 12-7-6(c).
- (Ord. of 7-12-2010(01), § 2(35-104(B)))

Sec. 14-134. Minimum protections.

The rules and regulations, ordinances or resolutions adopted pursuant to O.C.G.A. § 12-7-1 et seq., for the purpose of governing land-disturbing activities, shall require, as a minimum, protections at least as stringent as the state general permit; and best management practices, including sound conservation and engineering practices to prevent and 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) Stripping of vegetation, regarding and other development activities shall be conducted in a manner so as to minimize erosion;
- (2) Cut-fill operations must be kept to a minimum;
- (3) Development plans must conform to topography and soil type so as to create the lowest practicable erosion potential;
- (4) Whenever feasible, natural vegetation shall be retained, protected and supplemented;
- (5) The disturbed area and the duration of exposure to erosive elements shall be kept to a practicable minimum;
- (6) Disturbed soil shall be stabilized as quickly as practicable;
- (7) Temporary vegetation or mulching shall be employed to protect exposed critical areas during development;
- (8) Permanent vegetation and structural erosion control practices shall be installed as soon as practicable;
- (9) To the extent necessary, sediment in runoff water must be trapped by the use of debris basins, sediment basins, silt traps or similar measures 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 O.C.G.A. § 12-7-1 et seq.;
- (10) Adequate provisions must be provided to minimize damage from surface water to the cut face of excavations or the sloping of fills;
- (11) Cuts and fills may not endanger adjoining property;
- (12) Fills may not encroach upon natural watercourses or constructed channels in a manner so as to adversely affect other property owners;

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- (13) Grading equipment must cross flowing streams by means of bridges or culverts except when such methods are not feasible, provided, in any case, that such crossings are kept to a minimum;
- (14) Land-disturbing activity plans for erosion, sedimentation and pollution 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 this section;
- (15) There is established a 100-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 determines to allow a variance that is at least as protective of natural resources and the environment, where otherwise allowed by the director pursuant to O.C.G.A. § 12-2-8, 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, and are implemented; or along any ephemeral stream. As used in this provision, the term "ephemeral stream" means a stream: that under normal circumstances has water flowing only during and for a short duration after precipitation events; that has the channel located above the groundwater table year round; for which groundwater is not a source of water; and for which runoff from precipitation is the primary source of water flow, unless exempted as along an ephemeral stream, the buffers of at least 100 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 the director as provided in this subsection. The following requirements shall apply to any such buffer:
- a. No land-disturbing activities shall be 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 stream bed; 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 vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; 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;
- (16) There is established a 100-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 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. The director 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-disturbing activities shall be 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 stream bed; 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 vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; 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.

(Ord. of 7-12-2010(01), § 2(35-104(C); Ord. of 4-1-2024(1))

Sec. 14-135. More stringent regulations may be adopted.

Nothing contained in O.C.G.A. § 12-7-1 et seq. shall prevent any local issuing authority from adopting rules and regulations, ordinances, or resolutions which contain stream buffer requirements that exceed the minimum requirements in sections 14-133 and 14-134.

(Ord. of 7-12-2010(01), § 2(35-104(D)))

Sec. 14-136. Injury does not constitute proof or presumption of violation of standards.

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 for in this chapter or the terms of the permit.

(Ord. of 7-12-2010(01), § 2(35-104(E)))

Secs. 14-137—14-155. Reserved.

DIVISION 3. PERMIT PROCEDURE

Sec. 14-156. Application/permit process.

- (a) *Generally.* The property owner, developer and designated planners and engineers shall design and review before submittal the general development plans. The local issuing authority shall review the tract to be developed and the area surrounding it. They shall consult the zoning ordinance, stormwater management

ordinance, subdivision ordinance, flood damage prevention ordinance, this chapter and any other ordinances, rules, regulations or permits which regulate the development of land within the jurisdictional boundaries of the City. However, the owner or operator are the only parties who may obtain a permit.

(b) *Application requirements.*

- (1) No person shall conduct any land-disturbing activity within the jurisdictional boundaries of the City without first obtaining a permit from the Environmental Protection Division (EPD) to perform such activity and providing a copy of notice of intent submitted to EPD if applicable.
- (2) The application for a permit shall be submitted to EPD and must include the applicant's erosion, sedimentation and pollution control plan with supporting data, as necessary. The plans shall include, as a minimum, the data specified in section 14-180. Erosion, sedimentation and pollution control plans, together with supporting data, must demonstrate affirmatively that the land disturbing activity proposed will be carried out in such a manner that the provisions of sections 14-133 and 14-134 will be met. Applications for a permit will not be accepted unless accompanied by a sufficient number of copies as may be specified of the applicant's erosion, sedimentation and pollution control plans. All applications shall contain a certification stating that the plan preparer or the designee thereof visited the site prior to creation of the plan in accordance with EPD Rule 391-3-7-.10 (Ga. Comp. Rules and Regs. 391-3-7-.10).
- (3) In addition to the local permitting fees, fees will also be assessed pursuant to O.C.G.A. § 12-5-23(a)(5), provided that such fees shall not exceed \$80.00 per acre of land-disturbing activity, 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. In a jurisdiction that is certified pursuant to O.C.G.A. § 12-7-8(a), half of such fees levied shall be submitted to the EPD; 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(9) or (10) shall be submitted in full to the EPD, regardless of the existence of a local issuing authority in the jurisdiction.
- (4) Immediately upon receipt of an application and plan for a permit, the local issuing authority shall refer the application and plan to the district for its review and approval or disapproval concerning the adequacy of the erosion, sedimentation and pollution 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 local issuing authority. No permit will be issued unless the plan has been approved by the district, and any variances required by sections 14-135 and 14-136 have been obtained, all fees have been paid, and bonding, if required as per section 14-133 have been obtained. Such review will not be required if the local issuing authority and the district have entered into an agreement which allows the local issuing authority to conduct such review and approval of the plan without referring the application and plan to the district. The local issuing authority, with plan review authority, shall approve or disapprove a revised plan submittal within 35 days of receipt. Failure of the local issuing authority with plan review authority to act within 35 days shall be considered an approval of the revised plan submittal.
- (5) If a permit applicant has had two or more violations of previous permits, this section, or the Erosion and Sedimentation Act, as amended, within three years prior to the date of filing the application under consideration, the local issuing authority may deny the permit application.
- (6) The local issuing authority may require the permit applicant to post a bond in the form of government security, cash, irrevocable letter of credit, or any combination thereof, up to, but not exceeding, \$3,000.00 per acre or fraction thereof of the proposed land-disturbing activity, prior to issuing the permit. If the applicant does not comply with this division or with the conditions of the permit after issuance, the local issuing authority 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 provisions shall not apply unless there is in effect an ordinance or statute specifically providing for hearing and judicial review of any determination or order of the local issuing authority with respect to alleged permit violations.

(Ord. of 7-12-2010(01), § 2(35-105(A), (B)))

Secs. 14-157—14-179. Reserved.

DIVISION 4. PLAN REQUIREMENTS

Sec. 14-180. Minimum requirements.

- (a) Plans must be prepared to meet the minimum requirements as contained in sections 14-133 and 14-134, or through the use of more stringent, alternate design criteria which conform to sound conservation and engineering practices. The "Manual for Erosion and Sediment Control in Georgia" is hereby incorporated by reference into this chapter. The plan for the land-disturbing activity shall consider the interrelationship of the soil types, geological and hydrological characteristics, topography, watershed, vegetation, proposed permanent structures, including roadways, constructed waterways, sediment control and stormwater management facilities, local ordinances and state laws. Maps, drawings and supportive computations shall bear the signature and seal of the certified design professional. Persons involved in land development design, review, permitting, construction, monitoring or inspections or any land disturbing activity shall meet the education and training certification requirements, dependent on his level of involvement with the process, as developed by the commission and in consultation with the EPD and the Stakeholder Advisory Board created pursuant to O.C.G.A. § 12-7-20.
- (b) Data required a for site plan shall include all the information required from the appropriate erosion, sedimentation and pollution control plan review checklist established by the commission as of January 1 of the year in which the land-disturbing activity was permitted.

(Ord. of 7-12-2010(01), § 2(35-105(C)))

Sec. 14-181. Permits.

- (a) Permits shall be issued or denied as soon as practicable but in any event not later than 45 days after receipt by the local issuing authority of a completed application, providing variances and bonding are obtained, where necessary, and all applicable fees have been paid prior to permit issuance. The permit shall include conditions under which the activity may be undertaken.
- (b) No permit shall be issued by the local issuing authority unless the erosion, sedimentation and pollution control plan has been approved by the district and the local issuing authority has affirmatively determined that the plan is in compliance with this chapter, any variances required by section 14-134(15) and (16) are obtained, bonding requirements, if necessary, as per section 14-156(b)(6) 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 shall be furnished to the applicant.
- (c) Any land-disturbing activities by a local issuing authority and the City shall be subject to the same requirements of this chapter, and any other ordinances relating to land development, as are applied to private persons and the EPD shall enforce such requirements upon the local issuing authority and the City.
- (d) If the tract is to be developed in phases, then a separate permit shall be required for each phase.

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- (e) The permit may be suspended, revoked or modified by the local issuing authority, as to all or any portion of the land affected by the plan, upon finding that the holder or his successor in the 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 chapter. A holder of a permit shall notify any successor in title to him as to all or any portion of the land affected by the approved plan of the conditions contained in the permit.
 - (f) The local issuing authority may reject a permit application if the applicant has had two or more violations of previous permits or the Erosion and Sedimentation Act permit requirements within three years prior to the date of the application, in light of O.C.G.A. § 12-7-7(f)(1).

(Ord. of 7-12-2010(01), § 2(35-105(D)))

Secs. 14-182—14-198. Reserved.

DIVISION 5. ADMINISTRATION AND ENFORCEMENT

Sec. 14-199. Inspection and enforcement.

- (a) The district 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 plan and if the measures required in the plan are effective in controlling erosion and sedimentation. Also, the local issuing authority shall regulate primary, secondary and tertiary permittees as such terms are defined in the state general permit. Primary permittees shall be responsible for installation and maintenance of best management practices where the primary permittee is conducting land-disturbing activities. Secondary permittees shall be responsible for installation and maintenance of best management practices where the secondary permittee is conducting land-disturbing activities. Tertiary permittees shall be responsible for installation and maintenance where the tertiary 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 chapter, a written notice to comply shall be served upon that person. 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 within the time specified, he shall be deemed in violation of this chapter.
- (b) The City must amend its ordinances to the extent appropriate within 12 months of any amendments to the Erosion and Sedimentation Act of 1975.
- (c) The environmental protection division shall have the power to conduct such investigations as it may reasonably deem necessary to carry out duties as prescribed in this chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigation and inspecting the sites of land-disturbing activities.
- (d) No person shall refuse entry or access to any authorized representative or agent of the City, the commission, the district or EPD 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.
- (e) The district or the commission, or both, shall semi-annually 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 District 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, sedimentation and pollution control

program. The district or the commission shall notify the EPD and request investigation by the EPD if any deficient or ineffective local program is found.

- (f) The EPD may 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). Such review may include, but shall not be limited to, review of the administration and enforcement of a governing authority's ordinance 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 ordinances or has not conducted the program in accordance with any agreement entered into pursuant to O.C.G.A. § 12-7-7(e), the EPD shall notify the governing authority of the county or municipality in writing. The governing authority of any county or municipality so notified shall have 90 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 90 days after notification by the EPD, the EPD shall revoke the certification of the county or municipality as a local issuing authority.

(Ord. of 7-12-2010(01), § 2(35-106))

Sec. 14-200. Penalties and incentives.

- (a) *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 chapter without first obtaining the permit, the person shall be subject to revocation of his business license, work permit or other authorization for the conduct of a business and associated work activities within the jurisdictional boundaries of the City.
- (b) *Stop-work orders.*
- (1) For the first and second violations of the provisions of this chapter, the director or the local issuing authority shall issue a written warning to the violator. The violator shall have five days to correct the violation. If the violation is not corrected within five days, the director or the local issuing authority shall issue a stop-work order requiring that land-disturbing activities 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 or the local issuing authority shall issue an immediate stop-work order in lieu of a warning.
 - (2) For a third and each subsequent violation, the director or the local issuing authority shall issue an immediate stop-work order.
 - (3) All stop-work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred.
 - (4) 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 local issuing authority or 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 shall be issued by the local issuing authority or by the director or his designee. All such stop-work orders shall be effective immediately upon issuance and shall be 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.
- (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, a written notice to comply shall be served upon that person. 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 chapter and, in addition to other penalties, shall be deemed to have forfeited his performance bond, if required to post one under the provisions of section 14-156(b)(6). The local issuing authority 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.

- (d) *Monetary penalties.* Any person who violates any provisions of this chapter, or any permit condition or limitation established pursuant to this chapter, or who negligently or intentionally fails or refuses to comply with any final or emergency order of the director issued as provided in this chapter, shall be liable for a civil penalty not to exceed \$2,500.00 per day. For the purpose of enforcing the provisions of this chapter, notwithstanding any provisions in any city charter to the contrary, Municipal Courts shall be authorized to impose penalty not to exceed \$2,500.00 for each violation. Notwithstanding any limitation of law as to penalties which can be assessed for violations of county ordinances, any magistrate court or any other court of competent jurisdiction trying cases brought as violations of this article under county ordinances approved under this article shall be 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 shall be a separate violation.

(Ord. of 7-12-2010(01), § 2(35-107))

Secs. 14-201—14-223. Reserved.

DIVISION 6. APPEAL AND REVIEW

Sec. 14-224. Administrative appeal; judicial review.

- (a) *Administrative remedies.* The suspension, revocation, modification or grant with condition of a permit by the local issuing authority upon finding that the holder is not in compliance with the approved erosion, sediment and pollution control plan; or that the holder is in violation of permit conditions; or that the holder is in violation of any ordinance; shall entitle the person submitting the plan or holding the permit to a hearing before the Mayor and City Council within 15 days after receipt by the local issuing authority of written notice of appeal.
- (b) *Judicial review.* Any person aggrieved by a decision or order of the local issuing authority, after exhausting his administrative remedies, shall have the right to appeal de novo to the Superior Court of Newton County.

(Ord. of 7-12-2010(01), § 2(35-109))

Secs. 14-225—14-241. Reserved.

ARTICLE IV. WETLANDS PROTECTION

Sec. 14-242. Purpose and intent.

The purpose of this article is to promote wetland protection, while taking into account varying ecological, economic development, recreational and aesthetic values. Activities that may damage wetlands should be located on upland sites to the greatest degree practicable as determined through a permitting process. The objective of

this article is to protect wetlands from alterations that will significantly affect or reduce their primary functions for water quality, floodplain and erosion control, groundwater recharge, aesthetic nature and wildlife habitat.

(Code 1997, ch. 38(intro.))

Sec. 14-243. 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:

Clean Water Act means the federal Water Pollution Control Act, commonly referred to as the Federal Clean Water Act, 33 USC 1251 et seq.

Functions means the beneficial roles that wetlands serve, including: storage, conveyance and attenuation of floodwater and stormwater; protection of water quantity and quality and reduction of erosion; habit for wildlife, including rare, threatened and endangered species; food chain support for a wide variety of wildlife and fisheries; educational, historical and archeological value protection: and scenic, aesthetic and recreational amenities.

Generalized wetland map means wetlands identified on the U.S. Department of the Interior, fish and wildlife service, national wetlands inventory maps.

Hydric soils means soils that form as a result of saturated soil conditions. A list of these soils is maintained by the soil conservation service.

Hydrophytic vegetation means macrophytic plants tolerant of or dependent on saturated soil condition.

Jurisdictional determination means an official, written statement or map signed by the U.S. Army Corps of Engineers or, in the case of coastal marshlands, the state department of natural resources.

Jurisdictional wetland means a wetland area that meets the definitional requirements for wetlands as determined by the U.S. Army Corps of Engineers.

Regulated activity means any activity which will or which may reasonably be expected to, result in the discharge of dredged or fill material into waters of the United States excepting these activities exempted in section 14-246 and exempted in Section 404 of the Federal Clean Water Act.

Silviculture means the art of producing, reproducing and growing a forest of distinctive stands of trees.

Temporary emergency permit means a temporary permit that may be issued in certain circumstances specified in section 14-247.

Wetland means an area that is inundated or saturated by surface water or groundwater at a frequency and distribution sufficient to support, and under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation. Wetlands generally include swamps, marshes, bogs and similar areas.

Wetland delineation means the establishment of wetland boundaries by a representative of the U.S. Army Corps of Engineers or an authority designated by the Corps.

(Code 1997, § 38-101)

Sec. 14-244. Relationship to zoning.

The Wetland Protection District shall comprise an overlay zone that supplements and is indicated on the city zoning map.

(Code 1997, § 38-102)

Sec. 14-245. Local development permit requirements.

- (a) No regulated activity will be allowed within the wetland protection district without written permission from the Mayor and City Council in the form of a local development permit. Issuance of a local development permit is contingent on full compliance with the terms of this article and other applicable regulations. All activities that are not identified in section 14-246 or by other local development ordinances shall be prohibited without prior issuance of a local development permit.
- (b) If the area proposed for development is located within 50 feet of the wetland protection district boundary, as determined from the generalized wetland map. A U.S. Army Corps of Engineers determination shall be required. If the Corps determines that wetlands are present on the proposed development site and that a section 404 permit or letter of permission is required, a local development permit will be issued only following issuance of the section 404 permit or letter of permission.

(Code 1997, § 38-103)

Sec. 14-246. Permitted uses.

- (a) The activities listed in this section are exempted from section 404 regulations provided they do not have impacts on a navigable waterway that would necessitate acquisition of an individual 404 permit. However, under section 10 (33 USC 403) of the Rivers and Harbors Act, 33 USC 401 et seq., a permit may be required in some circumstances.
- (b) The following uses shall be allowed as of right within a wetland protection district to the extent that they are not prohibited by any other ordinance or law, including laws of trespass, and provided they do not require structures, grading, fill, draining or dredging, except as provided herein.
 - (1) Conservation or preservation of soil, water, vegetation, fish and other wildlife, provided it does not affect waters of state or of the United States in such a way that would require an individual 404 permit.
 - (2) Outdoor passive recreational activities, including fishing, bird watching, hiking, boating, horseback riding and canoeing.
 - (3) Forestry practices applied in accordance with best management practices approved by the state forestry commission and as specified in section 404 of the Clean Water Act.
 - (4) The cultivation of agricultural crops. Agricultural activities shall be subject to best management practices approved by the state department of agriculture.
 - (5) The pasturing of livestock, provided that riparian wetlands are protected, that soil profiles are not disturbed and that approved agricultural best management practices are followed.
 - (6) Education, scientific research and nature trails.

(Code 1997, § 38-104)

Sec. 14-247. Temporary emergency permit.

A temporary emergency permit can be issued by the Mayor and City Council for the following reasons:

- (1) Maintenance or repair of lawfully located roads or structures and of facilities used in the service of the public to provide transportation, electric, gas, water, telephone, telegraph, telecommunications or other services, provided that such roads, structures or facilities are not materially changed or enlarged and written notice prior to the commencement of work has been given to the Mayor and City Council

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- or its designee and provided that the work is conducted using best management practices to ensure that flow and circulation patterns and chemical and biological characteristics of the wetland are not impaired and that any adverse effect on the aquatic environment will be minimized.
- (2) Temporary water-level stabilization measures associated with ongoing silvicultural operations, provided that they are necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on the conduct of silvicultural activities if not corrected.
 - (3) Limited ditching, tilling, dredging, excavating or filling done solely for the purpose of maintaining or repairing existing drainage systems necessary for the cultivation of agricultural crops, provided that the maintenance or repair activity does not result in the impairment, alteration or loss of wetlands not previously subject to agricultural and silvicultural use under the terms and provisions of section 14-246.
 - (4) Limited excavating and filling necessary for the repair and maintenance of piers, walkways, nature trails, observation decks, wildlife management shelters, boathouses or other similar water-related structures, provided that they are built on pilings to allow unobstructed flow of water and preserve the natural contour of the wetland.
- (Code 1997, § 38-105)

Sec. 14-248. Site plans.

Applications for a local development permit within the generalized Wetland Protection District shall include a site plan, drawn at a scale of one inch equals 50 feet, with the following information:

- (1) A map of all planned excavation and fill, including calculations of the volume of cut and fill involved, cross-sectional drawings showing existing and proposed grades. Elevations, horizontal scale and vertical scale must be shown on the cross-sectional drawings.
 - (2) A map of any wetland boundaries occurring within the site must be provided. This boundary may be included on other maps provided by the applicant.
 - (3) Location, dimensions and area of all impervious surfaces, both existing and proposed, on the site and adjacent to the site for a distance of 200 feet.
 - (4) The orientation and distance from the boundaries of the proposed site to the nearest bank of an affected perennial stream or water body.
 - (5) Elevations of the site and adjacent lands within 200 feet of the site at contour intervals of no greater than two feet; and no greater than one foot or slopes less than or equal to two percent.
 - (6) Location and detailed design of any spill and leak collection systems designed for the purpose of containing accidentally released hazardous or toxic materials.
 - (7) All proposed temporary disruptions or diversions of local hydrology.
- (Code 1997, § 38-106)

Sec. 14-249. Activities to comply with site plan.

- (a) All development activities or site work conducted after approval of the site plan shall conform with the specifications of the site plan. The site plan may be amended only with approval of the Mayor and City Council. The Mayor and City Council may require additional information deemed necessary to verify compliance with the provisions of this article or to evaluate the proposed use in terms of the purposes of this article.

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- (b) The City may require a bond up to the larger of \$5,000.00 or \$1,000.00 per acre of project area and with surety and conditions sufficient to secure compliance with the conditions and limitations set forth in the permit. The particular amount and conditions of the bond shall be consistent with the purposes of this article. In the event of a breach of condition of any such bond, the City or its designee may collect such bond or institute an action in a court of competent jurisdiction upon such bond and prosecute the same to judgment and execution.

(Code 1997, § 38-107)

Sec. 14-250. Permit.

- (a) *Application.* Application shall be made pursuant to application shall be made on the form prescribed by the City Council. At the time of the application, the applicant shall pay a filing fee as specified by the Mayor and City Council. Filing fees up to the larger of \$500.00, or \$100.00 per acre, may be required to evaluate the application. This fee may be used to retain expert consultants who will provide services pertaining to functional assessment, mitigation and wetland boundary determinations as deemed necessary by the Mayor and City Council.
- (b) *Duration of permit.*
- (1) If construction described in the development permit has not commenced within 12 months from the date of issuance, the permit shall expire.
 - (2) If construction described in the development permit is suspended or abandoned after work has commenced, the permit shall expire 12 months after the date that work ceased.
 - (3) Written notice of the pending expiration of the development permit shall be issued by the Mayor and City Council.
- (c) *Penalties.*
- (1) When a building or other structure has been constructed in violation of this section, the violator may be required to remove the structure at the discretion of the Mayor and City Council.
 - (2) When removal of vegetative cover, excavation or fill has taken place in violation of this section, the violator may be required to restore the affected land to its original contours and to restore vegetation, as far as practicable, at the discretion of the Mayor and City Council.
 - (3) If the Mayor and City Council discover a violation of this article that also constitutes a violation of any provision of the Clean Water Act, they shall issue written notification of the violation to the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers and the landowner.
- (d) *Suspension, revocation.* The Mayor and City Council may suspend or revoke a permit if it finds that the applicant has not complied with the conditions or limitations set forth in the permit or has exceeded the scope of the work set forth in the permit. The Mayor and City Council shall cause notice of denial, issuance, conditional issuance, revocation or suspension of a permit to be published in a daily newspaper having a broad circulation in the area where the wetland is located.

(Code 1997, § 38-108)

Sec. 14-251. Judicial review.

Alternative actions. Based on these proceedings and the decision of the court, the Mayor and City Council may, within the time specified by the court, elect to:

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- (1) Institute negotiated purchase or condemnation proceedings to acquire an easement or fee interest in the applicant's land;
 - (2) Approve the permit application with lesser restrictions or conditions (i.e., grant a variance); or
 - (3) Institute other appropriate actions ordered by the court that fall within the jurisdiction of the Mayor and City Council.

(Code 1997, § 38-109)

Sec. 14-252. Map amendment.

These regulations and the generalized wetland map may from time to time be amended in accordance with procedures and requirements in the general statutes and as new information concerning wetland locations, soils, hydrology, flooding or plant species peculiar to wetlands becomes available.

(Code 1997, § 38-110)

Sec. 14-253. Relief assessment.

Assessors and boards of assessors shall consider wetland regulations in determining the fair market value of land. Any owner of an undeveloped wetland who has dedicated an easement or entered into a conservation program with the government or a nonprofit organization restricting activities in a wetland shall have that portion of land assessed consistent with those restrictions. Such landowner shall also be exempted from special assessment on the wetland to defray the cost of municipal improvements such as sanitary sewers, storm sewers and water mains.

(Code 1997, § 38-111; Ord. of 8-2-1999)