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**CITY OF AUSTELL
DESIGN AND CONSTRUCTION STANDARDS
LAND DEVELOPMENT ORDINANCES**

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Article II. Section 5-20. Floodplain Management and Prevention.

Section 5-20. Introduction.

It is hereby determined that:

The flood hazard areas of City of Austell are subject to periodic inundation which may result 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.

Flood hazard areas can serve important stormwater management, water quality, streambank protection, stream corridor protection, wetland preservation and ecological purposes when permanently protected as undisturbed or minimally disturbed areas.

Effective floodplain management and flood hazard protection activities can: (1) protect human life and health; (2) minimize damage to private property; (3) minimize damage to public facilities and infrastructure such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains; and (4) minimize expenditure of public money for costly flood control projects associated with flooding and generally undertaken at the expense of the general public.

Article IX, Section II of the Constitution of the State of Georgia and Section 36-1-20(a) of the Official Code of Georgia Annotated have delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, City of Austell, Georgia, does ordain this ordinance and establishes this set of floodplain management and flood hazard reduction provisions for the purpose of regulating the use of flood hazard areas. It is determined that the regulation of flood hazard areas and the prevention of flood damage are in the public interest and will minimize threats to public health and safety, as well as to private and public property.

Section 5-21. General Provisions.

21.1. Purpose and Intent.

The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare and to minimize public and private losses due to flood conditions in flood hazard areas, as well as to protect the beneficial uses of floodplain areas for water quality protection, streambank and stream corridor protection, wetlands preservation, and ecological and environmental protection by provisions designed to:

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

21.2. Applicability.

This ordinance shall be applicable to all Areas of Special Flood Hazard within the jurisdiction of the City of Austell.

21.3. Designation of Ordinance Administrator.

The Floodplain Administrator is hereby appointed to administer and implement the provisions of this ordinance.

21.4. Basis for Establishing Areas of Special Flood Hazard, Areas of Future-Conditions Flood Hazard and Associated Floodplain Characteristics – Flood Area Maps and Studies.

For the purposes of defining and determining “Areas of Special Flood Hazard,” “Areas of Future-conditions Flood Hazard,” “Areas of Shallow Flooding,” “Base Flood Elevations,” “Floodplains,” “Floodways,” “Future-conditions Flood Elevations,” “Future-conditions Floodplains,” potential flood hazard or risk categories as shown on FIRM maps, and other terms used in this ordinance, the following documents and sources may be used for such purposes and are adopted by reference thereto:

- (1) The Flood Insurance Study, dated September 27, 1991 and August 18, 1992 (for the City of Austell), with accompanying maps and other supporting data and any revision thereto. *[For those land areas acquired by a municipality through annexation, the current effective Flood Insurance Study and data for Cobb County dated August 18, 1992, and the current effective Flood Insurance Study and data for Douglas County, dated March 15, 1984, with accompanying maps and other supporting data and any revision.]*

- (2) Other studies which may be relied upon for the establishment of the base flood elevation or delineation of the base or one-percent (100-year) floodplain and flood-prone areas including:
 - (a) Any flood or flood-related study conducted by the United States Army Corps of Engineers, the United States Geological Survey or any other local, State or Federal agency applicable to the City of Austell; and
 - (b) Any base flood study conducted by a licensed professional engineer which has been prepared by utilizing a Federal Emergency Management Agency approved methodology and approved by the Austell Stormwater Management Department.
- (3) Other studies which may be relied upon for the establishment of the future-conditions flood elevation or delineation of the future-conditions floodplain and flood-prone areas including:
 - (a) Any flood or flood-related study conducted by the United States Army Corps of Engineers, the United States Geological Survey, or any other local, State or Federal agency applicable to the City of Austell; or
 - (b) Any future-conditions flood study conducted by a licensed professional engineer which has been prepared by utilizing a Federal Emergency Management Agency approved methodology and approved by the Austell Stormwater Management Department.
- (4) The repository for public inspection of the Flood Insurance Study, accompanying maps and other supporting data is located in the office of Public Works.

21.5. Compatibility with Other Regulations.

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

21.6. Severability.

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

21.7. Warning and Disclaimer of Liability.

The degree of flood protection required by this ordinance 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 ordinance 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 ordinance shall not create liability on the part of the City of Austell or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

Section 5-22. Definitions.

Accessory Structure or Facility: A structure which is on the same parcel of property as the principal structure and the use of which is incidental to the use of the primary structure.

Addition: Any walled and roofed expansion to the perimeter or height of a building.

Appeal: A request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance.

Area of Future-conditions Flood Hazard: The land area that would be inundated by the one-percent-annual-chance flood based on future-conditions hydrology (100-year future-conditions flood).

Area of Shallow Flooding: A designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater chance of flooding to average depth of one to three feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood Hazard: The land area subject to a one percent or greater chance of flooding in any given year. This includes all floodplain and flood prone areas at or below the base flood elevation designated as Zones A, A1-30, A-99, AE, AO, AH, and AR on the City of Austell's Flood Insurance Rate Map (FIRM).

Base Flood: The flood having a one percent chance of being equaled or exceeded in any given year, also known as the 100-year flood.

Base Flood Elevation: The highest water surface elevation anticipated at any given location during the base flood.

Basement: Any area of a building having its floor subgrade below ground level on all sides.

Building: Same meaning as Structure.

Critical Facility: Any public or private facility, which, if flooded, would create an added dimension to the disaster or would increase the hazard to life and health.

Critical facilities include:

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

Development: Any man-made change to improved or unimproved real estate including but not limited to buildings or other structures, mining, dredging, filling, clearing, grubbing, grading, paving, any other installation of impervious cover, excavation or drilling operations or storage of equipment or materials.

Elevated Building: A non-basement building which has its lowest elevated floor raised above the ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Existing Construction: Any structure for which the “start of construction” commenced before August 30, 1974.

Existing Manufactured Home Park or Subdivision: 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 before August 30, 1974.

Expansion to an Existing Manufactured Home Park or Subdivision: 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).

FEMA: The Federal Emergency Management Agency.

Flood or Flooding: A general and temporary condition of partial or complete inundation of normally dry land areas from:

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

Flood Insurance Rate Map or FIRM: An official map of a community, issued by the Federal Emergency Management Agency, delineating the areas of special flood hazard and/or risk premium zones applicable to the community.

Flood Insurance Study” or “FIS: The official report by the Federal Emergency Management Agency providing an examination, evaluation, and determination of flood hazards and corresponding flood profiles and water surface elevations of the base flood.

Floodplain or Flood-prone Area: Any land area susceptible to flooding.

Floodproofing: 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 or Regulatory Floodway: The channel of a stream, river, or other watercourse and the adjacent areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Functionally Dependent Use: A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes on docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but not include long-term storage or related manufacturing facilities.

Future-conditions Flood: The flood having a one percent chance of being equaled or exceeded in any given year based on future-conditions hydrology. Also known as the 100-year future-conditions flood.

Future-conditions Flood Elevation: The highest water surface elevation anticipated at any given location during the future-conditions flood.

Future-conditions Floodplain: Any land area susceptible to flooding by the future-conditions flood.

Future-conditions Hydrology: The flood discharges associated with projected land-use conditions based on a community’s zoning maps, comprehensive land-use plans, and/or watershed study projections, and without consideration of projected future construction of stormwater management (flood detention) structures or projected future hydraulic modifications within a stream or other waterway, such as bridge and culvert construction, fill, and excavation.

Highest Adjacent Grade: The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

Historic Structure: Any structure that is:

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

Lowest Floor: The lowest floor of the lowest enclosed area, including basement. An unfinished or flood resistant enclosure, useable solely for parking of vehicles, building access, or storage, in an area other than a basement area, 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 ordinance.

Manufactured Home: A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when attached to the required utilities. The term includes any structure commonly referred to as a "mobile home" regardless of the date of manufacture. The term also includes parked trailers, travel trailers and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property. This term does not include a "recreational vehicle".

Mean Sea Level: The datum to which base flood elevations shown on a community's Flood Insurance Rate Map (FIRM) are referenced. For purposes of this ordinance the term is synonymous with National Geodetic Vertical Datum (NGVD) of 1929 or the North American Vertical Datum (NAVD) of 1988.

New Construction: Any structure (see definition) for which the "start of construction" commenced after August 30, 1974.

New Manufactured Home Park or Subdivision: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after August 30, 1974.

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

Permit: The permit issued by the City of Austell to the applicant which is required prior to undertaking any development activity.

Recreational Vehicle: A vehicle which is:

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

Repetitive Loss: Flood-related damages sustained by a structure on two separate occasions during a twelve (12) year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds twenty-five percent of the market value of the structure before the damage occurred.

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

Start of Construction: Includes substantial improvement, and is the date the permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of the structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include initial land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, 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.

Structure: A walled and roofed building (including a gas or liquid storage tank), that is principally above ground, or a manufactured home.

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

Substantial Damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred. This term also includes Repetitive Loss.

Substantial Improvement: Any reconstruction, rehabilitation, addition, or other improvement of a structure taking place during a twelve (12) year prior in which the cumulative cost equals or exceeds fifty (50) percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures, which have incurred “repetitive loss” or “substantial damage”, regardless of the actual repair work performed. This term does not, however, include those improvements of a structured required to comply with existing state or local health, sanitary, or safety code specifications which are the minimum necessary to assure safe living conditions, which have been identified by the Code Enforcement Official. This term does also not include 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 Park or Subdivision: 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: A grant of relief from the requirements of this ordinance.

Violation: The failure of a structure or other development to be fully compliant with the requirements of this ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

Section 5-23. Permit Procedures and Requirements.

23.1. Permit Application Requirements.

No owner or developer shall perform any development activities on a site where an Area of Special Flood Hazard or Area of Future-conditions Flood Hazard is located without first meeting the requirements of this ordinance prior to commencing the proposed activity.

Unless specifically excluded by this ordinance, any landowner or developer desiring a permit for a development activity shall submit to the Austell Stormwater Management Department a permit application on a form provided by the Austell Stormwater Management Department for that purpose.

No permit will be approved for any development activities that do not meet the requirements, restrictions and criteria of this ordinance.

23.2. Floodplain Management Plan Requirements.

An application for a development project with any Area of Special Flood Hazard or Area of Future-conditions Flood Hazard located on the site shall include a floodplain management/flood damage prevention plan. This plan shall include the following items:

- (1) Site plan drawn to scale, which includes but is not limited to:
 - (a) Existing and proposed elevations of the area in question and the nature, location and dimensions of existing and/or proposed structures, earthen fill placement, amount and location of excavation material, and storage of materials or equipment;
 - (b) For all proposed structures, spot ground elevations at building corners and 20-foot or smaller intervals along the foundation footprint, or one foot contour elevations throughout the building site;
 - (c) Proposed locations of water supply, sanitary sewer, and utilities;
 - (d) Proposed locations of drainage and stormwater management facilities;
 - (e) Proposed grading plan;
 - (f) Base flood elevations and future-conditions flood elevations;
 - (g) Boundaries of the base flood floodplain and future-conditions floodplain;
 - (h) If applicable, the location of the floodway; and
 - (i) Certification of the above by a licensed professional engineer or surveyor.
- (2) Building and foundation design detail, including but not limited to:
 - (a) Elevation in relation to mean sea level (or highest adjacent grade) of the lowest floor, including basement, of all proposed structures;
 - (b) Elevation in relation to mean sea level to which any non-residential structure will be floodproofed;
 - (c) Certification that any proposed non-residential floodproofed structure meets the criteria in Section 25.2(2);
 - (d) For enclosures below the base flood elevation, location and total net area of flood openings as required in Section 25.1(5); and
 - (e) Design plans certified by a licensed professional engineer or architect for all proposed structure(s).

- (3) Description of the extent to which any watercourse will be altered or relocated as a result of the proposed development;
- (4) Hard copies and digital files of computer models, if any, copies of work maps, comparison of pre-and post-development conditions base flood elevations, future-conditions flood elevations, flood protection elevations, Special Flood Hazard Areas and regulatory floodways, flood profiles and all other computations and other information similar to that presented in the Flood Insurance Study;
- (5) Copies of all applicable State and Federal permits necessary for proposed development; including but not limited to permits required by Section 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1334; and
- (6) All appropriate certifications required under this ordinance.

The approved floodplain management / flood damage prevention plan shall contain certification by the applicant that all development activities will be done according to the plan or previously approved revisions. Any and all development permits and/or use and occupancy certificates or permits may be revoked at any time if the construction and development activities are not in strict accordance with approved plans.

23.3. Construction Stage Submittal Requirements.

For all new construction and substantial improvements on sites with a floodplain management/flood damage prevention plan, the permit holder shall provide to the Floodplain Administrator a certified as-built Elevation Certificate or Floodproofing Certificate for non-residential construction including the lowest floor elevation or floodproofing level immediately after the lowest floor or floodproofing is completed. A final Elevation Certificate shall be provided after completion of construction including final grading of the site. Any lowest floor certification made relative to mean sea level shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by same. When floodproofing is utilized for non-residential structures, said certification shall be prepared by or under the direct supervision of a licensed professional engineer or architect and certified by same using the Federal Emergency Management Agency's Floodproofing Certificate. This certification shall also include the design and operation/maintenance plan to assure continued viability of the floodproofing measures.

Any work undertaken prior to approval of these certifications shall be at the permit holder's risk. The Floodplain Administrator 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 work being allowed to proceed. Failure to submit certification or failure to make the corrections required hereby shall be cause to issue a stop work order for the project.

23.4. Duties and Responsibilities of the Floodplain Administrator.

Duties of the Floodplain Administrator shall include, but shall not be limited to:

- (1) Review all development applications and permits to assure that the requirements of this ordinance have been satisfied and to determine whether proposed building sites will be reasonably safe from flooding;
- (2) Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334;
- (3) When Base Flood Elevation data or floodway data have not been provided, then the Floodplain Administrator shall require the applicant to obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, state or other sources in order to meet the provisions of Sections 4 and 5;
- (4) 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 and substantially improved structures;
- (5) Review and record the actual elevation, in relation to mean sea level to which any substantially improved structures have been floodproofed;
- (6) When floodproofing is utilized for a non-residential structure, the Floodplain Administrator shall review the design and operation/maintenance plan and obtain certification from a licensed professional engineer or architect;
- (7) Notify affected adjacent communities and the Georgia Department of Natural Resources prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency (FEMA);
- (8) Where interpretation is needed as to the exact location of boundaries of the Areas of Special Flood Hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this ordinance. Where floodplain elevations have been defined, the floodplain shall be determined based on flood elevations rather than the area graphically delineated on the floodplain maps; and,
- (9) All records pertaining to the provisions of this ordinance shall be maintained in the office of the Floodplain Administrator and shall be open for public inspection.
- (10) Coordinate all Flood Insurance Rate Map (FIRM) revisions with the Georgia Department of Natural Resources and the Federal Emergency Management Agency; and

- (11) Review variance applications and make recommendations to the City of Austell Board of Zoning Appeal.

Section 5-24. Standards for Development.

24.1. Definition of Floodplain Boundaries.

- (1) Studied “A” zones, as identified in the Flood Insurance Study, shall be used to establish base flood elevations whenever available.
- (2) For all streams with a drainage area of 100 acres or greater, the future-conditions flood elevations shall be provided by the Austell Stormwater Management Department. If future-conditions elevation data is not available from the Austell Stormwater Management Department, then it shall be determined by a registered professional engineer using a method approved by the Federal Emergency Management Agency (FEMA) and the Austell Stormwater Management Department.

24.2. Definition of Floodway Boundaries.

- (1) The width of a floodway shall be determined from the Flood Insurance Study or Federal Emergency Management Agency (FEMA) approved flood study. For all streams with a drainage area of 100 acres or greater, the regulatory floodway shall be provided by the Austell Stormwater Management Department. If floodway data is not available from the Austell Stormwater Management Department, then it shall be determined by a registered professional engineer using a method approved by Federal Emergency Management Agency (FEMA) and the Austell Stormwater Management Department.

24.3. General Standards.

- (1) No development shall be allowed within the any Area of Special Flood Hazard or Area of Future-conditions Flood Hazard that could result in any of the following:
 - (a) Raising the base flood elevation or future-conditions flood elevation equal to or more than 0.01 foot;
 - (b) Reducing the base flood or future-conditions flood storage capacity;
 - (c) Changing the flow characteristics as to the depth and velocity of the waters of the base flood or future-conditions flood as they pass both the upstream and the downstream boundaries of the development area; or,
 - (d) Creating hazardous or erosion-producing velocities, or resulting in excessive sedimentation.
- (2) Any development within any Area of Special Flood Hazard or Area of Future-conditions allowed under Section 24.3(1) shall also meet the following conditions:

- (a) Compensation for storage capacity shall occur between the average ground water table elevation and the base flood elevation for the base flood, and between the average ground water table elevation and the future-condition flood elevation for the future-conditions flood, and lie either within the boundaries of ownership of the property being developed and shall be within the immediate vicinity of the location of the encroachment. Acceptable means of providing required compensation include lowering of natural ground elevations within the floodplain, or lowering of adjoining land areas to create additional floodplain storage. In no case shall any required compensation be provided via bottom storage or by excavating below the elevation of the natural (pre-development) stream channel unless such excavation results from the widening or relocation of the stream channel;
- (b) Cut areas shall be stabilized and graded to a slope of no less than 2.0 percent;
- (c) Effective transitions shall be provided such that flow velocities occurring on both upstream and downstream properties are not increased or decreased;
- (d) Verification of no-rise conditions (0.01 foot or less), flood storage volumes, and flow characteristics shall be provided via a step-backwater analysis meeting the requirements of Section 24.4;
- (e) Public utilities and facilities, such as water, sanitary sewer, gas, and electrical systems, shall be located and constructed to minimize or eliminate infiltration or contamination from flood waters; and
- (f) Any significant physical changes to the base flood floodplain shall be submitted as a Conditional Letter of Map Revision (CLOMR) or Conditional Letter of Map Amendment (CLOMA), whichever is applicable. The CLOMR submittal shall be subject to approval by the Austell Stormwater Management Department using the Federal Emergency Management Agency (FEMA) Community Concurrence forms before forwarding the submittal package to FEMA for final approval. The responsibility for forwarding the CLOMR to FEMA and for obtaining the CLOMR approval shall be the responsibility of the applicant. Within six months of the completion of development, the applicant shall submit as-built surveys for a final Letter of Map Revision (LOMR).

24.4. Engineering Study Requirements for Floodplain Encroachments.

An engineering study is required, as appropriate to the proposed development activities on the site, whenever a development proposes to disturb any land within the future-conditions floodplain, except for a residential single-lot development on streams without established base flood elevations and floodways. This study shall be prepared by a currently licensed professional engineer and made a part of the application for a permit. This information shall be submitted to and approved by the Austell Stormwater Management Department prior to the approval of any permit which would authorize the disturbance of land located within the future-conditions floodplain. Such study shall include:

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

24.5. Floodway Encroachments.

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

- (1) Encroachments are prohibited, including earthen fill, new construction, substantial improvements or other development within the regulatory floodway, except for activities specifically allowed in (2) below.
- (2) Encroachments for bridges, culverts, roadways and utilities within the regulatory floodway may be permitted provided it is demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the encroachment will not result in any increase to the pre-project base flood elevations, floodway elevations, or floodway widths during the base flood discharge. A licensed professional engineer must provide supporting technical data and certification thereof; and,
- (3) If the applicant proposes to revise the floodway boundaries, no permit authorizing the encroachment into or an alteration of the floodway shall be issued by the Austell Stormwater Management Department until an affirmative Conditional Letter of Map Revision (CLOMR) is issued by the Federal Emergency Management Agency (FEMA) or a no-rise certification is approved by the Austell Stormwater Management Department.

24.6. Maintenance Requirements.

The property owner shall be responsible for continuing maintenance as may be needed within an altered or relocated portion of a floodplain on the property so that the flood-carrying or flood storage capacity is maintained. The Austell Stormwater Management Department may direct the

property owner (at no cost to the City of Austell) to restore the flood-carrying or flood storage capacity of the floodplain if the owner has not performed maintenance as required by the approved floodplain management plan on file with the Austell Stormwater Management Department.

Section 5-25. Provisions for Flood Damage Reduction.

25.1. General Standards.

In all Areas of Special Flood Hazard and Areas of Future-conditions Flood Hazard, the following provisions apply:

- (1) New construction and substantial improvements of structures (residential or non-residential), including manufactured homes, shall not be allowed within the limits of the future-conditions floodplain, unless all requirements of Sections 24.3, 24.4, 24.5, and 24.5 have been met;
- (2) New construction and substantial improvements shall be anchored to prevent flotation, collapse and lateral movement of the structure;
- (3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- (4) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (5) Elevated Buildings - All new construction and substantial improvements that include any fully enclosed area located below the lowest floor formed by foundation and other exterior walls shall be designed so as to be an unfinished or flood resistant enclosure. The enclosure shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater.
 - (a) Designs for complying with this requirement must either be certified by a licensed professional engineer or architect to meet or exceed the following minimum criteria:
 - (i) Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - (ii) The bottom of all openings shall be no higher than one foot above grade; and
 - (iii) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwater in both directions.
 - (b) So as not to violate the “Lowest Floor” criteria of this ordinance, the unfinished and flood resistant enclosure shall solely be used for parking of vehicles, limited storage of maintenance equipment used in connection with the premises, or entry to the elevated area; and,

- (c) The interior portion of such enclosed area shall not be finished or partitioned into separate rooms.
- (6) All heating and air conditioning equipment and components (including ductwork), all electrical, ventilation, plumbing, and other service facilities shall be designed and/or located four (4) feet above the base flood elevation or one (1) foot above the future-conditions flood elevation, whichever is higher, so as to prevent water from entering or accumulating within the components during conditions of flooding;
 - (7) 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;
 - (8) All proposed development shall include adequate drainage and stormwater management facilities per the requirements of the Austell Stormwater Management Department to reduce exposure to flood hazards.
 - (9) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
 - (10) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
 - (11) On-site waste disposal systems shall be located and constructed to avoid impairment to, or contamination from, such systems during flooding;
 - (12) Other public utilities such as gas and electric systems shall be located and constructed to avoid impairment to them, or public safety hazards from them, during flooding;
 - (13) Any alteration, repair, reconstruction or improvement to a structure which is not compliant with the provisions of this ordinance, shall be undertaken only if the non- conformity is not furthered, extended or replaced;
 - (14) If the proposed development is located in multiple flood zones or multiple base flood elevations cross the proposed site, the higher or more restrictive base flood elevation or future condition elevation and development standards shall take precedence;
 - (15) When only a portion of a proposed structure is located within a flood zone or the future-conditions floodplain, the entire structure shall meet the requirements of this ordinance; and
 - (16) Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, shall be reasonably safe from flooding:

- (a) All such proposals shall be consistent with the need to minimize flood damage within the flood-prone areas;
- (b) All public utilities and facilities, such as sewer, gas, electrical, and water systems shall be located and constructed to minimize or eliminate flood damage; and
- (c) Adequate drainage shall be provided to reduce exposure to flood hazards.

25.2. Increased Cost of Compliance.

The National Flood Insurance Program (NFIP) requires the City of Austell to conduct assessments for substantial damage following a flooding event. A building is considered to be substantially damaged when:

“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.”

If a substantially damaged building is rebuilt in violation of this ordinance including not properly elevated or flood-proofed (non-residential buildings only), flood insurance will be significantly higher. In addition, the property owner will not be eligible for an Increased Cost of Compliance claim payment. The National Flood Insurance Program has implemented a new coverage called Increased Cost of Compliance, which is an endorsement to the standard flood insurance policy. It applies to all new and renewed flood insurance policies effective on and after June 1, 1997. Structures that have suffered substantial damage from flooding may be required to elevate, demolish, relocate, or flood proof (non-residential buildings only) the damaged structure upon rebuilding. Through Increased Cost of Compliance coverage, funds are available to the property owner to pay for flood protection measures that meet National Flood Insurance Program standards.

Property owners may file for Increased Cost of Compliance coverage in two instances:

1. If the City of Austell determines that the home or business is damaged by flood two (2) times within a twelve (12) year period to the point that repairs will cost 50 percent or more of the building's pre-damaged market value. This is substantial damage.
2. If the City of Austell determines that the home or business was damaged by a flood two (2) times within a 12 (twelve) year period, where the cost of repairing the flood damage, on average, equaled or exceeded 25 percent of its market value at the time of each flood event. This is repetitive damage. Additionally, there must have been flood insurance claim payments for each of the two flood losses.

25.3 Protection of Floodplain Storage Capacity.

Whenever any portion of a floodplain is authorized for development, the volume of space occupied by the authorized fill or structure below the base flood elevation shall be compensated for and balanced by a hydraulically equivalent volume of excavation taken from below the base flood elevation. All such excavations shall be constructed to drain freely to the watercourse. No area below the waterline of a pond or other body of water can be credited as a compensating excavation.

25.4 Building Standards for Structures and Buildings Within the Future-Conditions Floodplain.

The following provisions, in addition to those in Section 25.1, shall apply:

(1) Residential Buildings

- (a) **New construction.** New construction of principal residential structures shall not be allowed within the limits of the future-conditions floodplain unless all requirements of Sections 24.3, 24.4 and 24.5 have been met. If all of the requirements of Sections 24.3, 24.4 and 24.5 have been met, all new construction shall have the lowest floor, including basement, elevated no lower than four (4) feet above the base flood elevation or one (1) foot above the future-conditions flood elevation, whichever is higher. Should solid foundation perimeter walls be used to elevate the structure, openings sufficient to automatically equalize the hydrostatic flood forces on exterior walls shall be provided in accordance with standards of Section 25.1(5)(a).
- (b) **Substantial Improvements.** Substantial improvement of any principal residential structure shall have the lowest floor, including basement, elevated no lower than four (4) feet above the base flood elevation or one (1) foot above the future-conditions flood elevation, whichever is higher. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to automatically equalize the hydrostatic flood forces on exterior walls shall be provided in accordance with standards of Section 25.1(5)(a).

(2) Non-Residential Buildings

- (a) **New construction.** New construction of principal non-residential structures shall not be allowed within the limits of the future-conditions floodplain unless all requirements of Sections 24.3, 24.4 and 24.5 have been met. If all of the requirements of Section 24.3, 24.4, and 24.5 have been met, all new construction shall have the lowest floor, including basement, elevated no lower than one (1) foot above the base flood elevation or at least as high as the future-conditions flood elevation, whichever is higher. Should solid foundation perimeter walls be used to elevate the structure, openings sufficient to automatically equalize the hydrostatic flood forces on exterior walls shall be provided in accordance with standards of Section 25.1(5)(a). New construction that has met all of the requirements of Sections 24.3, 24.4 and 24.5 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 (1) foot above the base flood elevation, or at least as high as the future-conditions flood elevation, whichever is higher, 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 licensed 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 Floodplain Administrator using the Federal Emergency Management Agency's (FEMA) Floodproofing Certificate along with the design and operation/maintenance plan.

- (b) **Substantial Improvements.** Substantial improvement of any principal non-residential structure located in A1- 30, AE, or AH zones, may be authorized by the Floodplain Administrator to be elevated or floodproofed. Substantial improvements shall have the lowest flood, including basement, elevated no lower than one (1) foot above the base flood elevation or at least as high as the future-conditions flood elevation, whichever is higher. Should solid foundation perimeter walls be used to elevate the structure, opening sufficient to automatically equalize the hydrostatic flood forces on exterior walls shall be provided in accordance with standards of Section 25.1(5)(a). Substantial improvements may be floodproofed in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be watertight to one (1) foot above the base flood elevation, or at least as high as the future-conditions flood elevation, whichever is higher, 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 licensed 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 Floodplain Administrator using the Federal Emergency Management Agency's (FEMA) Floodproofing Certificate along with the design and operation/maintenance plan.

(3) **Accessory Structures and Facilities**

Accessory structures and facilities (for example, barns, sheds, gazebos, detached garages, recreational facilities, and other similar non-habitable structures and facilities) which meet the requirements of Sections 24.3, 24.4, and 24.5 and are permitted to be located within the limits of the future-conditions floodplain shall be constructed of flood-resistant materials and designed to provide adequate flood openings in accordance with Section 25.1(5)(a) and be anchored to prevent flotation, collapse and lateral movement of the structure.

(4) Standards for Recreational Vehicles

All recreational vehicles placed on sites must either:

- (a) Be on the site for fewer than 180 consecutive days and 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
- (b) Meet all the requirements for Residential Buildings - Substantial Improvements (Section 25.2(1)), including the anchoring and elevation requirements.

(5) Standards for Manufactured Homes

- (a) New manufactured homes shall not be allowed to be placed within the limits of the future-conditions floodplain unless all requirements of Sections 24.3, 24.4 and 24.5 have been met. If all of the requirements of Section 24.3, 24.4, and 24.5 have been met, all new construction shall have the lowest floor, including basement, elevated no lower than one (1) foot above the base flood elevation or at least as high as the future-conditions flood elevation, whichever is higher. Should solid foundation perimeter walls be used to elevate the structure, openings sufficient to automatically equalize the hydrostatic flood forces on exterior walls shall be provided in accordance with standards of Section 25.1(5)(a).
- (b) Manufactured homes placed and/or substantially improved in an existing manufactured home park or subdivision shall be elevated so that either:
 - (i) The lowest floor of the manufactured home is elevated no lower than three (3) feet above the level of the base flood elevation, or one (1) foot above the future-conditions flood elevation, whichever is higher; or
 - (ii) The manufactured home chassis is elevated and supported by reinforced piers (or other foundation elements of at least an equivalent strength) of no less than 36 inches in height above grade.
- (c) All manufactured homes must be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement in accordance with standards of Section 25.1(7).

6. Standards for Critical Facilities

- (a) New 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.

25.5. Building Standards for Structures and Buildings Authorized Adjacent to the Future-Conditions Floodplain.

- (1) Residential Buildings: For new construction and substantial improvement of any principal residential building or manufactured home, the elevation of the lowest floor, including basement and access to the building, shall be at least four (4) feet above the base flood elevation or one (1) foot above the future-conditions flood elevation, whichever is higher. Should solid foundation perimeter walls be used to elevate the structure, openings sufficient to automatically equalize the hydrostatic flood forces on exterior walls shall be provided in accordance with standards of Section 25.1(5)(a).
- (2) Non-Residential Buildings: For new construction or substantial improvement of any principal non-residential building, the elevation of the lowest floor, including basement and access to the building, shall be at least one (1) foot above the level of the base flood elevation or at least as high as the future-conditions flood elevation, whichever is higher. Should solid foundation perimeter walls be used to elevate the structure, openings sufficient to automatically equalize the hydrostatic flood forces on exterior walls shall be provided in accordance with standards of Section 5.1(5)(a). Non-residential buildings may be floodproofed in lieu of elevation.

25.6. Building Standards for Residential Single-Lot Developments on Streams Without Established Base Flood Elevations and/or Floodway (A-Zones).

For a residential single-lot development not part of a subdivision that has Areas of Special Flood Hazard, where streams exist but no base flood data have been provided (A-Zones), the Floodplain Administrator shall review and reasonably utilize any available scientific or historic flood elevation data, base flood elevation and floodway data, or future-conditions flood elevation data available from a Federal, State, local or other source, in order to administer the provisions and standards of this ordinance.

If data are not available from any of these sources, the following provisions shall apply:

- (1) No encroachments, including structures or fill material, shall be located within an area equal to twice the width of the stream or fifty (50) feet from the top of the bank of the stream, whichever is greater.
- (2) In special flood hazard areas without base flood or future-conditions flood elevation data, new construction and substantial improvements of shall have the lowest floor of the lowest enclosed area (including basement) elevated no less than three (3) feet above the highest adjacent grade at the building site. Flood openings sufficient to facilitate automatic equalization of hydrostatic flood forces shall be provided for flood prone enclosures accordance with Section 25.1(5)(a).

25.7. Building Standards for Areas of Shallow Flooding (AO-Zones).

Areas of Special Flood Hazard may include designated “AO” shallow flooding areas. These areas have base flood depths of one (1) to three (3) feet above ground, with no clearly defined channel. In these areas the following provisions apply:

- (1) All new construction and substantial improvements of residential and non-residential structures shall have the lowest floor, including basement, elevated to no lower than one (1) foot above the flood depth number in feet 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 (3) feet above the highest adjacent grade. Flood openings sufficient to facilitate automatic equalization of hydrostatic flood forces shall be provided in accordance with standards of Section 25.1(5)(a).
- (2) New construction and substantial improvement of a non-residential structure may be floodproofed in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be water tight to the specified Flood Insurance Rate Map (FIRM) flood level plus one (1) foot above the 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 licensed professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice and shall provide such certification to the Floodplain Administrator using the Federal Emergency Management Agency’s (FEMA) Floodproofing Certificate along with the design and operation/maintenance plan; and
- (3) Drainage paths shall be provided to guide floodwater around and away from any proposed structure.

25.8. Standards for Subdivisions of Land.

- (1) All subdivision proposals shall identify the Areas of Special Flood Hazard and Areas of Future-conditions Flood Hazard therein and provide base flood elevation data and future-conditions flood elevation data;
- (2) All residential lots in a subdivision proposal shall have sufficient buildable area outside of the future-conditions floodplain such that encroachments into the future-conditions floodplain for residential structures will not be required;
- (3) All subdivision plans will provide the elevations of proposed structures in accordance with Section 23.2(2).

Section 5-28. Variance Procedures.

The following variance and appeals procedures shall apply to an applicant who has been denied a permit for a development activity or to an owner or developer who has not applied for a permit because it is clear that the proposed development activity would be inconsistent with the provisions of this ordinance.

- (1) Requests for variances from the requirements of this ordinance shall be submitted to the Austell Stormwater Management Department. All such requests shall be heard and decided in accordance with procedures to be published in writing by the Austell Stormwater Management Department. At a minimum, such procedures shall include notice to all affected parties and the opportunity to be heard.
- (2) Any person adversely affected by any decision of the City of Austell shall have the right to appeal such decision to the Board of Zoning Appeal as established by the City of Austell in accordance with procedures to be published in writing by the Board of Zoning Appeal. At a minimum, such procedures shall include notice to all affected parties and the opportunity to be heard.
- (3) Any person aggrieved by the decision of the Board of Zoning Appeal may appeal such decision to the Superior Court of Cobb County or Douglas County, Georgia, as provided in Section 5-4-1 of the Official Code of Georgia Annotated.
- (4) 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 issued shall be the minimum necessary to preserve the historic character and design of the structure.
- (5) Variances may be issued for development necessary for the conduct of a functionally dependent use, provided the criteria of this Section 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.
- (6) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (7) In reviewing such requests, the Austell Stormwater Management Department and Board of Zoning Appeal shall consider all technical evaluations, relevant factors, and all standards specified in this and other sections of this ordinance.
- (8) Conditions for Variances:
 - (a) A variance shall be issued only when there is:
 - (i) a finding of good and sufficient cause;

- (ii) a determination that failure to grant the variance would result in exceptional hardship; and,
 - (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, or the creation of a nuisance.
- (b) The provisions of this ordinance are minimum standards for flood loss reduction; therefore, any deviation from the standards must be weighed carefully. Variances shall only be issued upon determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (c) Any person 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 resulting from the lowest floor elevation being placed below the base flood elevation will be commensurate with the increased risk to life and property, and that such costs may be as high as \$25.00 for each \$100.00 of insurance coverage provided.
 - (d) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.
- (9) Any person requesting a variance shall, from the time of the request until the time the request is acted upon, submit such information and documentation as the Austell Stormwater Management Department and the Board of Zoning Appeal shall deem necessary to the consideration of the request.
- (10) Upon consideration of the factors listed above and the purposes of this ordinance, the Austell Stormwater Management Department and the Board of Zoning Appeal may attach such conditions to the granting of variances as they deem necessary or appropriate, consistent with the purposes of this ordinance.
- (11) Variances shall not be issued “after the fact.”

Section 5-29. Violations, Enforcement, and Penalties.

Any action or inaction which violates the provisions of this ordinance or the requirements of an approved stormwater management plan or permit may be subject to the enforcement actions outlined in this Section. Any such action or inaction which is continuous with respect to time is deemed to be a public nuisance and may be abated by injunctive or other equitable relief. The imposition of any of the penalties described below shall not prevent such equitable relief.

29.1. Notice of Violation.

If the City of Austell determines that an applicant or other responsible person has failed to comply with the terms and conditions of a permit, an approved stormwater management plan or the provisions of this ordinance, it shall issue a written notice of violation to such applicant or other responsible person. Where a person is engaged in activity covered by this ordinance without having first secured a permit therefore, the notice of violation shall be served on the owner or the responsible person in charge of the activity being conducted on the site.

The notice of violation shall contain:

- (1) The name and address of the owner or the applicant or the responsible person;
- (2) The address or other description of the site upon which the violation is occurring;
- (3) A statement specifying the nature of the violation;
- (4) A description of the remedial measures necessary to bring the action or inaction into compliance with the permit, the stormwater management plan or this ordinance and the date for the completion of such remedial action;
- (5) A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed; and,
- (6) A statement that the determination of violation may be appealed to the Austell Stormwater Management Department by filing a written notice of appeal within thirty (30) days after the notice of.

29.2. Penalties.

In the event the remedial measures described in the notice of violation have not been completed by the date set forth for such completion in the notice of violation, any one or more of the following actions or penalties may be taken or assessed against the person to whom the notice of violation was directed. Before taking any of the following actions or imposing any of the following penalties, the Austell Stormwater Management Department shall first notify the applicant or other responsible person in writing of its intended action, and shall provide a reasonable opportunity, of not less than ten (10) days (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours' notice shall be sufficient) to cure such violation. In the event the applicant or other responsible person fails to cure such violation after such notice and cure period, the Austell Stormwater Management Department may take any one or more of the following actions or impose any one or more of the following penalties.

- (1) **Stop Work Order:** The Austell Stormwater Management Department may issue a stop work order which shall be served on the applicant or other responsible person. The stop work order shall remain in effect until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations

described therein, provided the stop work order may be withdrawn or modified to enable the applicant or other responsible person to take the necessary remedial measures to cure such violation or violations.

- (2) **Withhold Certificate of Occupancy:** The Austell Stormwater Management Department may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.
- (3) **Suspension, Revocation or Modification of Permit:** The Austell Stormwater Management Department may suspend, revoke or modify the permit authorizing the development project. A suspended, revoked or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein, provided such permit may be reinstated (upon such conditions as the Austell Stormwater Management Department may deem necessary) to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.
- (4) **Civil Penalties:** In the event the applicant or other responsible person fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten (10) days, or such greater period as the Austell Stormwater Management Department shall deem appropriate (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours' notice shall be sufficient) after the City of Austell has taken one or more of the actions described above, the Austell Stormwater Management Department may impose a penalty not to exceed \$1,000 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.
- (5) **Criminal Penalties:** For intentional and flagrant violations of this ordinance, the Austell Stormwater Management Department may issue a citation to the applicant or other responsible person, requiring such person to appear in City of Austell Municipal Court to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed \$1,000 or imprisonment for 60 days or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

Adopted: November 4, 2013

Article VI. Section 5-87. Conservation Subdivision / Open Space.**Section 5-87. Purposes.**

- A. To provide for the preservation of greenspace as a nonstructural stormwater runoff and watershed protection measure.
- B. To provide a residential zoning district that permits flexibility of design in order to promote environmentally sensitive and efficient uses of the land.
- C. To preserve in perpetuity unique or sensitive natural resources such as groundwater, floodplains, wetlands, streams, steep slopes, woodlands and wildlife habitat.
- D. To permit clustering of houses and structures on less environmentally sensitive soils which will reduce the amount of infrastructure, including paved surfaces and utility easements, necessary for residential development.
- E. To reduce erosion and sedimentation by minimizing land disturbance and removal of vegetation in residential development.
- F. To promote interconnected greenways and corridors throughout the community.
- G. To promote contiguous greenspace with adjacent jurisdictions.
- H. To encourage interaction in the community by clustering houses and orienting them closer to the street, providing public gathering places and encouraging use of parks and community facilities as focal points in the neighborhood.
- I. To encourage street designs that reduces traffic speeds and reliance on main arteries.
- J. To promote construction of convenient landscaped walking trails and bike paths both within the subdivision and connected to neighboring communities, businesses, and facilities to reduce reliance on automobiles.
- K. To conserve scenic views and reduce perceived density by maximizing the number of houses with direct access to and views of open space.
- L. To preserve important historic and archaeological sites.

Section 5-88. General Regulations.

- A. Applicability of Regulations.** This Conservation Subdivision option is available in the a Planned Unit Development subdivision as a use by right. Applicant shall comply with all other provisions of the zoning code and all other applicable laws, except those that are incompatible with the provisions contained herein.

- B. Ownership of Development Site.** The tract of land to be subdivided may be held in single and separate ownership or in multiple ownership. If held in multiple ownership, however, the site shall be developed according to a single plan with common authority and common responsibility.
- C. Housing Density Determination.** The maximum number of lots in the Conservation Subdivision shall be determined by either of the following two methods, at the discretion of the local jurisdiction:
- (1) **Calculation:** The maximum number of lots is determined by dividing the area of the tract of land by the minimum lot size specified in the underlying zoning. In making this calculation, the following shall not be included in the total area of the parcel:
 - a. slopes over 25 percent of at least 5,000 square feet contiguous area;
 - b. the 100-year floodplain;
 - c. bodies of open water over 5,000 square feet contiguous area;
 - d. wetlands that meet the definition of the Army Corps of Engineers pursuant to the Clean Water Act; or,
 - e. anticipated right-of-way needs for roads and utilities.
 - (2) **Yield Plan:** The maximum number of lots is based on a conventional subdivision design plan, prepared by the applicant, in which the tract of land is subdivided in a manner intended to yield the highest number of lots possible. The plan does not have to meet formal requirements for a site design plan, but the design must be capable of being constructed given site features and all applicable regulations.

Section 5-89. Application Requirements.

- A. Site Analysis Map Required.** Concurrent with the submission of a site concept plan, Applicant shall prepare and submit a site analysis map. The purpose of the site analysis map is to ensure that the important site features have been adequately identified prior to the creation of the site design, and that the proposed Open Space will meet the requirements of this article. The preliminary site plan shall include the following features:
- (1) Property boundaries;
 - (2) All streams, rivers, lakes, wetlands and other hydrologic features;
 - (3) Topographic contours of no less than 10-foot intervals;
 - (4) All Primary and Secondary Conservation Areas labeled by type, as described in Section 4 of this Article;

- (5) General vegetation characteristics;
 - (6) General soil types;
 - (7) The planned location of protected Open Space;
 - (8) Existing roads and structures; and,
 - (9) Potential connections with existing greenspace and trails.
- B. Open Space Management Plan Required.** An open space management plan, as described in Section 4, shall be prepared and submitted prior to the issuance of a land disturbance permit.
- C. Instrument of Permanent Protection Required.** An instrument of permanent protection, such as a conservation easement or permanent restrictive covenant and as described in Section 4, shall be placed on the Open Space concurrent with the issuance of a land disturbance permit.
- D. Other Requirements.** The Applicant shall adhere to all other applicable requirements of the underlying zoning and the City of Austell Development Standards.

Section 5-90. Open Space.

- A. Definition.** Open Space is the portion of the conservation subdivision that has been set aside for permanent protection. Activities within the Open Space are restricted in perpetuity through the use of an approved legal instrument.
- B. Standards to Determine Open Space.**
- (1) The minimum restricted Open Space shall comprise at least 40% of the gross tract area.
 - (2) The following are considered Primary Conservation Areas and are required to be included within the Open Space, unless the Applicant demonstrates that this provision would constitute an unusual hardship and be counter to the purposes of this article:
 - a. The regulatory 100-year floodplain;
 - b. Buffer zones of at least 75 ft width along all perennial and intermittent streams;
 - c. Slopes above 25 percent of at least 5,000 square feet contiguous area;
 - d. Wetlands that meet the definition used by the Army Corps of Engineers pursuant to the Clean Water Act;
 - e. Populations of endangered or threatened species, or habitat for such species; and,
 - f. Archaeological sites, cemeteries and burial grounds

- (3) The following are considered Secondary Conservation Areas and should be included within the Open Space to the maximum extent feasible.
 - a. Important historic sites;
 - b. Existing healthy, native forests of at least one acre contiguous area;
 - c. Individual existing healthy trees greater than 8 inches caliper, as measured from their outermost drip line;
 - d. Other significant natural features and scenic view sheds such as ridge lines, peaks and rock outcroppings, particularly those that can be seen from public roads;
 - e. Prime agricultural lands of at least five acres contiguous area; and,
 - f. Existing trails that connect the tract to neighboring areas.
- (4) Above-ground utility rights-of-way and small areas of impervious surface may be included within the protected Open Space but cannot be counted towards the 40 percent minimum area requirement (exception: historic structures and existing trails may be counted). Large areas of impervious surface shall be excluded from the Open Space.
- (5) At least 75 percent of the Open Space shall be in a contiguous tract. The Open Space should adjoin any neighboring areas of Open Space, other protected areas, and non-protected natural areas that would be candidates for inclusion as part of a future area of protected Open Space.
- (6) The Open Space shall be directly accessible to the largest practicable number of lots within the subdivision. Non-adjoining lots shall be provided with safe, convenient access to the Open Space.

C. Permitted Uses of Open Space.

Uses of Open Space may include the following:

- (1) Conservation of natural, archeological or historical resources;
- (2) Meadows, woodlands, wetlands, wildlife corridors, game preserves, or similar conservation-oriented areas;
- (3) Walking or bicycle trails, provided they are constructed of porous paving materials;
- (4) Passive recreation areas;

- (5) Active recreation areas, provided that they are limited to no more than 10 percent of the total Open Space and are not located within Primary Conservation Areas. Active recreation areas may include impervious surfaces. Active recreation areas in excess of this limit must be located outside of the protected Open Space;
- (6) Agriculture, horticulture, silviculture or pasture uses, provided that all applicable best management practices are used to minimize environmental impacts, and such activities are not conducted within Primary Conservation Areas;
- (7) Nonstructural stormwater management practices;
- (8) Easements for drainage, access, and underground utility lines; or
- (9) Other conservation-oriented uses compatible with the purposes of this ordinance.

D. Prohibited Uses of Open Space.

- (1) Golf courses;
- (2) Roads, parking lots and impervious surfaces, except as specifically authorized in the previous sections;
- (3) Agricultural and forestry activities not conducted according to accepted Best Management Practices; and,
- (4) Other activities as determined by the Applicant and recorded on the legal instrument providing for permanent protection.

E. Ownership and Management of Open Space.

- (1) **Ownership of Open Space.** The applicant must identify the owner of the Open Space who is responsible for maintaining the Open Space and facilities located thereon. If a Homeowners Association is the owner, membership in the association shall be mandatory and automatic for all homeowners of the subdivision and their successors. If a Homeowner's Association is the owner, the Homeowners' Association shall have lien authority to ensure the collection of dues from all members. The responsibility for maintaining the Open Space and any facilities located thereon shall be borne by the owner.
- (2) **Management Plan.** Applicant shall submit a Plan for Management of Open Space and Common Facilities ("Plan") that:
 - a. allocates responsibility and guidelines for the maintenance and operation of the Open Space and any facilities located thereon, including provisions for ongoing maintenance and for long-term capital improvements;

- b. estimates the costs and staffing requirements needed for maintenance and operation of, and insurance for, the Open Space and outlines the means by which such funding will be obtained or provided;
 - c. provides that any changes to the Plan be approved by the City of Austell; and,
 - d. provides for enforcement of the Plan.
- (3) In the event the party responsible for maintenance of the Open Space fails to maintain all or any portion in reasonable order and condition, the City of Austell may assume responsibility for its maintenance and may enter the premises and take corrective action, including the provision of extended maintenance. The costs of such maintenance may be charged to the owner, Homeowner's Association, or to the individual property owners that make up the Homeowner's Association, and may include administrative costs and penalties. Such costs shall become a lien on all subdivision properties.

F. Legal Instrument for Permanent Protection.

- (1) The Open Space shall be protected in perpetuity by a binding legal instrument that is recorded with the deed. The instrument shall be one of the following:
- a. A permanent conservation easement in favor of either:
 - (i) a land trust or similar conservation-oriented non-profit organization with legal authority to accept such easements. The organization shall be bona fide and in perpetual existence and the conveyance instruments shall contain an appropriate provision for retransfer in the event the organization becomes unable to carry out its functions; or
 - (ii) a governmental entity with an interest in pursuing goals compatible with the purposes of this ordinance.

If the entity accepting the easement is not the City of Austell, then a third right of enforcement favoring the City of Austell shall be included in the easement;
 - b. A permanent restrictive covenant for conservation purposes in favor of a governmental entity; or,
 - c. An equivalent legal tool that provides permanent protection, if approved. Austell.
- (2) The instrument for permanent protection shall include clear restrictions on the use of the Open Space. These restrictions shall include all restrictions, as well as any further restrictions, the Applicant chooses to place on the use of the Open Space.

Adopted: March 1, 2004

Article VI. Section 5-79. Illicit Discharge and Illegal Connection.**Section 5-79. Introduction.**

It is hereby determined that:

Discharges to the municipal separate storm sewer system that are not composed entirely of stormwater runoff contribute to increased nonpoint source pollution and degradation of receiving waters;

These non-stormwater discharges occur due to spills, dumping and improper connections to the municipal separate storm sewer system from residential, industrial, commercial or institutional establishments.

These non-stormwater discharges not only impact waterways individually, but geographically dispersed, small volume non-stormwater discharges can have cumulative impacts on receiving waters.

The impacts of these discharges adversely affect public health and safety, drinking water supplies, recreation, fish and other aquatic life, property values and other uses of lands and waters;

These impacts can be minimized through the regulation of spills, dumping and discharges into the municipal separate storm sewer system;

Localities in the State of Georgia are required to comply with a number of State and Federal laws, regulations and permits which require a locality to address the impacts of stormwater runoff quality and nonpoint source pollution due to improper non-stormwater discharges to the municipal separate storm sewer system;

Therefore, the City of Austell adopts this Ordinance to prohibit such non-stormwater discharges to the municipal separate storm sewer system. It is determined that the regulation of spills, improper dumping and discharges to the municipal separate storm sewer system is in the public interest and will prevent threats to public health and safety, and the environment.

Section 5-80. General Provisions.**80.1. Purpose and Intent**

The purpose of this Ordinance is to protect the public health, safety, environment and general welfare through the regulation of non-stormwater discharges to the municipal separate storm sewer system to the maximum extent practicable as required by Federal law. This Ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this Ordinance are to:

- (1) Regulate the contribution of pollutants to the municipal separate storm sewer system by any person;

- (2) Prohibit illicit discharges and illegal connections to the municipal separate storm sewer system;
- (3) Prevent non-stormwater discharges, generated as a result of spills, inappropriate dumping or disposal, to the municipal separate storm sewer system; and,
- (4) To establish legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this Ordinance.

80.2. Applicability.

The provisions of this Ordinance shall apply throughout the corporate area of the City of Austell.

80.3. Compatibility with Other Regulations.

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

80.4. Severability.

If the provisions of any section, subsection, paragraph, subdivision or clause of this Ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this Ordinance.

80.5. Responsibility for Administration.

The Public Works Director or his/her designee shall administer, implement, and enforce the provisions of this Ordinance.

Section 5-81. Definitions.

Accidental Discharge: A discharge prohibited by this Ordinance which occurs by chance and without planning or thought prior to occurrence.

Clean Water Act: The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Construction Activity: Activities subject to the Georgia Erosion and Sedimentation Control Act or NPDES General Construction Permits. These include construction projects resulting in land disturbance. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

Degradation: A decline to a lower condition, quality, or level.

Illicit Discharge: Any direct or indirect non-stormwater discharge to the municipal separate storm sewer system, except as exempted in Section 3 of this Ordinance.

Illegal Connection:

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

Industrial Activity: Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit: A permit issued by the Georgia EPD under authority delegated pursuant to 33 USC § 1342(b) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Municipal Separate Storm Sewer System: Any facility designed or used for collecting and/or conveying stormwater, including but not limited to any roads with drainage systems, highways, municipal streets, curbs, gutters, inlets, catch basins, piped storm drains, pumping facilities, structural stormwater controls, ditches, swales, natural and man-made or altered drainage channels, reservoirs, and other drainage structures, and which is:

- a) Owned or maintained by the City of Austell;
- b) Not a combined sewer; and
- c) Not part of a publicly-owned treatment works.

Non-Stormwater Discharge: Any discharge to the storm drain system that is not composed entirely of stormwater.

Person: Except to the extent exempted from this Ordinance, any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, city, county or other political subdivision of the State, any interstate body or any other legal entity.

Pollutant: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind.

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

Premises: Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

State Waters: Any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface and subsurface water, natural or artificial, lying within or forming a part of the boundaries of the State of Georgia which are not entirely confined and retained completely upon the property of a single person.

Stormwater Runoff or Stormwater: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Structural Stormwater Control: A structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

Section 5-82. Prohibitions.

82.1. Prohibition of Illicit Discharges.

No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the municipal separate storm sewer system any pollutants or waters containing any pollutants, other than stormwater.

The following discharges are exempt from the prohibition provision above:

- (1) Water line flushing performed by a government agency, other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or

footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, natural riparian habitat or wetland flows, and any other water source not containing pollutants;

- (2) Discharges or flows from firefighting, and other discharges specified in writing by the Public Works Director as being necessary to protect public health and safety;
- (3) The prohibition provision above shall not apply to any non-stormwater discharge permitted under an NPDES permit or order issued to the discharger and administered under the authority of the State and the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the municipal separate storm sewer system.

82.2. Prohibition of Illegal Connections.

The construction, connection, use, maintenance or continued existence of any illegal connection to the municipal separate storm sewer system is prohibited.

- (1) This prohibition expressly includes, without limitation, illegal connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (2) A person violates this Ordinance if the person connects a line conveying sewage to the municipal separate storm sewer system, or allows such a connection to continue.
- (3) Improper connections in violation of this Ordinance must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the City of Austell.
- (4) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the City of Austell requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be completed, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the City of Austell.

Section 5-83. Industrial or Construction Activity Discharges.

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

Section 5-84. Access and Inspection of Properties and Facilities.

The City of Austell shall be permitted to enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this Ordinance.

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

Section 5-85. Notification of Accidental Discharges and Spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of pollutants or non-stormwater discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants

discharging into stormwater, the municipal separate storm sewer system, State Waters, or Waters of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge. .

Said person shall notify the authorized enforcement agency in person or by phone, facsimile or in person no later than 24 hours of the nature, quantity and time of occurrence of the discharge. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of Austell within three business days of the phone or in person notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years. Said person shall also take immediate steps to ensure no recurrence of the discharge or spill.

In the event of such a release of hazardous materials, emergency response agencies and/or other appropriate agencies shall be immediately notified.

Failure to provide notification of a release as provided above is a violation of this Ordinance.

Section 5-86. Violations, Enforcement and Penalties.

86.1. Violations.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. Any person who has violated or continues to violate the provisions of this Ordinance, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.

In the event the violation constitutes an immediate danger to public health or public safety, the City of Austell is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The City of Austell is authorized to seek costs of the abatement as outlined in Section 7.5.

86.2. Notice of Violation.

Whenever the City of Austell finds that a violation of this Ordinance has occurred, the City of Austell may order compliance by written notice of violation.

A. The notice of violation shall contain:

- (1) The name and address of the alleged violator;
- (2) The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
- (3) A statement specifying the nature of the violation;

- (4) A description of the remedial measures necessary to restore compliance with this Ordinance and a time schedule for the completion of such remedial action;
- (5) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed; and,
- (6) A statement that the determination of violation may be appealed to the City of Austell by filing a written notice of appeal within thirty (30) days of service of notice of violation.

B. Such notice may require without limitation:

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of illicit discharges and illegal connections;
- (3) That violating discharges, practices, or operations shall cease and desist;
- (4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- (5) Payment of costs to cover administrative and abatement costs; and,
- (6) The implementation of pollution prevention practices.

86.3. Appeal of Notice of Violation.

Any person receiving a Notice of Violation may appeal the determination of the City of Austell. The notice of appeal must be received within thirty (30) days from the date of the Notice of Violation. Hearing on the appeal before the City of Austell Mayor and City Council or his/her designee shall take place within fifteen (15) days from the date of receipt of the notice of appeal. The decision of the appropriate authority or their designee shall be final.

86.4. Enforcement Measures After Appeal.

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within ten (10) days of the decision of the appropriate authority upholding the decision of City of Austell, then representatives of the City of Austell may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

86.5. Costs of Abatement of the Violation.

Within ten (10) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the assessment or to the amount of the assessment within ten (10) days of such notice. If the amount due is not paid within thirty (30) days after receipt of the notice, or if an appeal is taken, within thirty (30) days after a decision on said appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

Any person violating any of the provisions of this article shall become liable to the City of Austell by reason of such violation.

86.6. Civil Penalties.

In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten days, or such greater period as the City of Austell shall deem appropriate, after the City of Austell has taken one or more of the actions described above, the City of Austell may impose a penalty not to exceed \$1,000.00 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.

86.7. Criminal Penalties.

For intentional and flagrant violations of this Ordinance, the City of Austell may issue a citation to the alleged violator requiring such person to appear in City of Austell Municipal Court to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed \$1,000.00 or imprisonment for sixty (60) days or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

86.8. Violations Deemed a Public Nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, welfare, and environment and is declared and deemed a nuisance, and may be abated by injunctive or other equitable relief as provided by law.

86.9. Remedies Not Exclusive.

The remedies listed in this Ordinance are not exclusive of any other remedies available under any applicable Federal, State or local law and the City of Austell may seek cumulative remedies.

The City of Austell may recover attorney's fees, court costs, and other expenses associated with enforcement of this Ordinance, including sampling and monitoring expenses.

Adopted: March 1, 2004

Article VI. Section 14-86. Water Supply Watershed Protection.

The Sweetwater Creek Watershed Protection District shall overlay other zoning districts so that all land lying within the Sweetwater Creek Watershed Protection Districts shall also be included in the underlying district. Each parcel of land within the Sweetwater Creek Watershed Protection District shall be subject to the provisions, regulations, and restrictions of both the Sweetwater Creek Watershed Protection District and its underlying district. In the event of a conflict or discrepancy between the requirements of the Watershed Protection overlay and the underlying district, the more stringent shall apply.

Findings of Fact. In order to provide for the health, safety, and welfare of the public and a healthy economic climate within the Sweetwater Creek Watershed, it is essential that the quality of public drinking water be assured. The ability of natural systems to filter storm water runoff can be threatened by unrestricted urban and suburban development. Land disturbing activities associated with development can increase erosion and sedimentation that threatens the storage capacity of reservoirs. In addition, stormwater runoff, particularly from impervious surfaces, can introduce toxicant, nutrients, and sediment into drinking water supplies, making water treatment more complicated, expensive in rendering water resources unusable. Industrial land uses that involve the manufacture, use, transport and storage of hazardous or toxic waste materials result in the potential risk of contamination of nearby public drinking water supplies.

Purposes. The purpose of the water supply watershed protection district regulation is to establish measures to protect the quality and quantity of the present and future water supply for the City of East Point, Georgia. Also, to minimize the transport of pollutants and sediments to the water supply, and maintain the yield of the water supply watersheds.

District Delineation. The protected water supply watershed protection districts are hereby designated, and shall consist of the land areas that drain to the public water supply intake or water supply reservoir. The boundaries of these districts are defined by the ridge lines of the respective watersheds and the boundary of a radius seven (7) miles upstream of the respective public water supply intakes. The area encompassed by the Official City Limits Boundary of the City of Austell is located within the large water supply watershed (263 square miles) for the City of East Point, Georgia. Portions of the City of Austell are located within a seven (7) mile radius upstream of the water supply intake for the City of East Point, Georgia. Therefore, the Water Supply Watershed Protection District is that portion of the City of Austell that is located within the East Point Inner Protection Zone located within a seven (7) mile radius upstream of the water supply intake for the East Point, Georgia.

Definitions.

1. **Buffer:** A natural or enhanced vegetated area with no or limited minor land disturbances. Specific buffer uses may be approved by the City of Austell consistent with these criteria.
2. **Corridor:** All land within the buffer areas and other setback areas specified in the Ordinance.

3. **Impervious Surface:** A man-made structure or surface, which prevents the infiltration of storm water into the ground below the structure or surface. Examples are buildings, roads, driveways, parking lots, decks, swimming pools, or patios.
4. **Perennial Stream:** A stream, which flows through the whole years as indicated on a USGS Quad map.
5. **Reservoir Boundary:** The edge of a water supply reservoir defined by its normal pool level.
6. **Stream Bank:** The sloping land that contains the stream channel and the normal flows of the stream.
7. **Utility:** Public or private water or sewer piping systems, water or sewer pumping stations, electric power lines, fuel pipelines, telephone lines, roads, driveways, bridges, river/lake access facilities, storm water systems and railroads or other utilities identified by a local government.
8. **Water Supply Reservoirs:** A governmental owned impoundment of water for the primary purpose of providing water to one or more governmental owned public drinking water systems.
9. **Water Supply Watershed:** The area of land upstream of a governmental owned public drinking water intake.
10. **Water Supply Watershed Protection Plan:** A land use plan prepared and adopted by local governments for the protection of the quality of drinking water obtained from the watershed.

Permitted Uses.

All uses allowed in the underlying zoning districts as established by the City of Austell Zoning Ordinance except for those listed in Prohibited Uses below, are permitted in the Water Supply Watershed Protection District, subject to the following conditions and standards:

1. Natural Buffer and Impervious Surface Requirements within the East Point Inner Protection Zone
 - A. A buffer shall be maintained for a distance of one hundred (100) feet on both sides of the stream as measured from the top of the stream bank.
 - B. No impervious surface shall be constructed within a one hundred and fifty (150) foot setback area on both sides of the stream as measured from the stream banks.
 - C. Septic tanks and septic tank drainfields are prohibited within a one hundred and fifty (150) foot setback area on both sides of the stream as measured from the stream banks.

2. Natural Buffer and Impervious Surface Requirements outside the East Point Inner Protection Zone
 - A. A natural vegetative buffer shall be maintained for a distance of fifty (50) feet on both sides of a perennial stream as measured from the top of the stream bank.
 - B. No impervious surface shall be constructed within a seventy-five (75) feet setback area on both sides of the stream as measured from the top of the stream bank.
 - C. Septic tanks and septic tank drainfields are prohibited within a seventy-five (75) foot setback area on both sides of the stream as measured from the stream banks.

Exemptions.

The following uses are exempt from the stream corridor buffer and setback requirements if they meet the stipulated conditions:

1. Utilities
 - A. Utilities shall be located as far as reasonably possible from the stream bank, and shall not impair the quality of the drinking water stream.
 - B. Utilities shall be installed and maintained without changing the integrity of the buffer and setback areas, as much as possible.
2. Forestry and Agricultural Activities
 - A. Agricultural activities involving the planting and harvesting of crops are exempted if they conform to the best management practices established by the Georgia Department of Agriculture.
 - B. Silviculture activities must conform to the best management practices established by the Georgia Forestry Commission.
3. Existing Use
 - A. Any land use within the Sweetwater Creek Water Supply Watershed existing prior to the adoption of the original Water Supply Watershed Protection Ordinance on June 1, 1998 by the City of Austell implementing this plan is exempt. Any undeveloped lot which is part of a subdivision plat recorded prior to the adoption of these regulations by the City of Austell implementing this ordinance, shall also be exempted from these provisions and provided such activities shall not impair the quality of the drinking water stream as authorized by Georgia Department of Natural Resources Rules for Environmental Planning Criteria, Chapter 391-3-16.

Site Plan Requirements.

Except for the exemptions listed below all forms of development within the Watershed Protection District shall be required to have a site plan submitted and approved according to this ordinance before any re-zoning requests or building permits may be approved or any land disturbing activity may take place. Each site plan submitted shall include the following:

1. A site plan drawn to scale and showing all planned improvements including width, depth, and length of all existing and proposed structures, roads, water courses, drainage ways, water, wastewater, and storm water facilities, and utility installations.
2. Location, dimensions, and area of all impervious surfaces, both existing and proposed, on the site.
3. The orientation and distance from the boundaries of the proposed site to the nearest back of an affected perennial stream or body of water.
4. Elevations of the site and adjacent lands within one-hundred (100) feet of the site at contour intervals of no greater than five (5) feet.
5. Erosion and Sedimentation Control Plan.
6. Any facility in the process of expanding shall provide location and detailed design of any spill and leak collection systems designed for the purpose of containing accidentally released hazardous or toxic waste.
7. Any non-compliance to this Ordinance shall be stated and addressed on the site plan.

Activity Compliance.

All development activities or site work conducted after approval of the site plan shall conform to the specifications of said site plan. Significant changes to the site plan that would alter the amount and velocity of stormwater runoff from the site, increase the amount of impervious surface within the development, alter the overall density of development, results in a considerable increase in the amount of excavation, fill, or removal of vegetation during construction, or otherwise result in an alteration of the overall appearance of the development as proposed, can be amended only with the approval of the Public Works Director, Floodplain Administrator, or his or her designee. Minor changes such as realignment of streets or minor alterations to drainage structures and other infrastructure to meet unexpected conditions are exempted from this requirement.

Exemptions from Site Plan Requirement.

1. Repairs to a facility that is part of a previously approved and permitted development.
2. Construction of minor structures such as sheds, or additions to single-family residences.

Prohibited Uses With The Water Supply Watershed Protection District.

1. All sanitary landfills with or without synthetic liners are leachate collection systems.
2. Any facility using hazardous materials.
3. Automobile salvage yards.

Penalties.

Any person violating any provisions of this Ordinance shall be liable for a monetary penalty of \$250.00 per day, per violation, but not to exceed \$1,000.00 per day, per violation, as authorized by O.C.G.A. §36-1-20(b). Each day during which the violation or failure or refusal to comply continues shall constitute a separate violation.

Adopted: June 1, 1998

Article VII. Section 5-91. Stream Buffer Protection.**Section 5-92. Findings and Purposes.****92.1. Findings.**

Whereas, the Mayor and City Council of the City of Austell finds that buffers adjacent to streams provide numerous benefits including:

- (1) Protecting, restoring and maintaining the chemical, physical and biological integrity of streams and their water resources
- (2) Removing pollutants delivered in urban stormwater
- (3) Reducing erosion and controlling sedimentation
- (4) Protecting and stabilizing stream banks
- (5) Providing for infiltration of stormwater runoff
- (6) Maintaining base flow of streams
- (7) Contributing organic matter that is a source of food and energy for the aquatic ecosystem
- (8) Providing tree canopy to shade streams and promote desirable aquatic habitat
- (9) Providing riparian wildlife habitat
- (10) Furnishing scenic value and recreational opportunity
- (11) Providing opportunities for the protection and restoration of greenspace

92.2. Purposes

It is the purpose of this Ordinance is to protect the public health, safety, environment and general welfare; to minimize public and private losses due to erosion, siltation and water pollution; and to maintain stream water quality by provisions designed to:

- (1) Create buffer zones along the streams of the City of Austell for the protection of water resources; and,
- (2) Minimize land development within such buffers by establishing buffer zone requirements and by requiring authorization for any such activities.

Section 5-93. Definitions.

Buffer: With respect to a stream, a natural or enhanced vegetated area (established by Section 5-95.1(1) below), lying adjacent to the stream.

Impervious Cover: Any manmade paved, hardened or structural surface regardless of material. Impervious cover includes but is not limited to rooftops, buildings, streets, roads, decks, swimming pools and any concrete or asphalt.

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

Land Development Activity: Those actions or activities which comprise, facilitate or result in land development.

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

Land Disturbance Activity: Those actions or activities which comprise, facilitate or result in land disturbance.

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

Parcel: Any plot, lot or acreage shown as a unit on the latest county tax assessment records.

Permit: The permit issued by the City of Austell required for undertaking any land development activity

Person: Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, city, county or other political subdivision of the State, any interstate body or any other legal entity.

Protection Area or Stream Protection Area: With respect to a stream, the combined areas of all required buffers and setbacks applicable to such stream.

Riparian: Belonging or related to the bank of a river, stream, lake, pond or impoundment.

Setback: With respect to a stream, the area established by Section 5-95.1. (2) extending beyond any buffer applicable to the stream.

Stream: Any stream, beginning at:

1. The location of a spring, seep, or groundwater outflow that sustains streamflow; or
2. A point in the stream channel with a drainage area of 25 acres or more; or
3. Where evidence indicates the presence of a stream in a drainage area of other than 25 acres, the City of Austell may require field studies to verify the existence of a stream.

Stream Bank: The sloping land that contains the stream channel and the normal flows of the stream.

Stream Channel: The portion of a watercourse that contains the base flow of the stream.

Watershed: The land area that drains into a particular stream.

Section 5-94. Applicability.

This Ordinance shall apply to all land development activity on property containing a stream protection area as defined in Section 5-93 of this Ordinance. These requirements are in addition to, and do not replace or supersede, any other applicable buffer requirements established under state law and approval or exemption from these requirements do not constitute approval or exemption from buffer requirements established under state law or from other applicable local, state or federal regulations.

94.1. Grandfather Provisions.

This Ordinance shall not apply to the following activities:

- (1) Work consisting of the repair or maintenance of any lawful use of land that is zoned and approved for such use on or before the effective date of this Ordinance.
- (2) Existing development and on-going land disturbance activities including but not limited to existing agriculture, silviculture, landscaping, gardening and lawn maintenance, except that new development or land disturbance activities on such properties will be subject to all applicable buffer requirements.
- (3) Any land development activity that is under construction, fully approved for development, scheduled for permit approval or has been submitted for approval as of the effective date of this Ordinance.
- (4) Land development activity that has not been submitted for approval, but that is part of a larger master development plan, such as for an office park or other phased development that has been previously approved within two years of the effective date of this Ordinance.

94.2. Exemptions.

The following specific activities are exempt from this Ordinance. Exemption of these activities does not constitute an exemption for any other activity proposed on a property.

- (1) Activities for the purpose of building one of the following:
 - a stream crossing by a driveway, transportation route or utility line;
 - public water supply intake or public wastewater outfall structures;
 - intrusions necessary to provide access to a property;
 - public access facilities that must be on the water including boat ramps, docks, foot trails leading directly to the river, fishing platforms and overlooks;
 - unpaved foot trails and paths;
 - activities to restore and enhance stream bank stability, vegetation, water quality and/or aquatic habitat, so long as native vegetation and bioengineering techniques are used.
- (2) Public sewer line easements paralleling the creek, except that all easements (permanent and construction) and land disturbance should be at least 25 feet from the top of the bank. This includes such impervious cover as is necessary for the operation and maintenance of the utility, including but not limited to manholes, vents and valve structures. This exemption shall not be construed as allowing the construction of roads, bike paths or other transportation routes in such easements, regardless of paving material, except for access for the uses specifically cited in Item 5-94.2.(1), above.
- (3) Land development activities within a right-of-way existing at the time this Ordinance takes effect or approved under the terms of this Ordinance.
- (4) Within an easement of any utility existing at the time this Ordinance takes effect or approved under the terms of this Ordinance, land disturbance activities and such impervious cover as is necessary for the operation and maintenance of the utility, including but not limited to manholes, vents and valve structures.
- (5) Emergency work necessary to preserve life or property. However, when emergency work is performed under this section, the person performing it shall report such work to the (review and permitting authority) on the next business day after commencement of the work. Within 10 days thereafter, the person shall apply for a permit and perform such work within such time period as may be determined by the (review and permitting authority) to be reasonably necessary to correct any impairment such emergency work may have caused to the water conveyance capacity, stability or water quality of the protection area.
- (6) Forestry and silviculture activities on land that is zoned for forestry, silvicultural or agricultural uses and are not incidental to other land development activity. If such activity results in land disturbance in the buffer that would otherwise be prohibited, then no other land disturbing activity other than normal forest management practices will be allowed on the entire property for three years after the end of the activities that intruded on the buffer.

After the effective date of this Ordinance, it shall apply to new subdividing and platting activities.

Any land development activity within a buffer established hereunder or any impervious cover within a setback established hereunder is prohibited unless a variance is granted pursuant to Section 5-95.2 below.

Section 5-95. Land Development Requirements.

95.1. Buffer and Setback Requirements.

All land development activity subject to this Ordinance shall meet the following requirements:

- (1) An undisturbed natural vegetative buffer shall be maintained for 50 feet, measured horizontally, on both banks (as applicable) of the stream as measured from the top of the stream bank.
- (2) An additional setback shall be maintained for 25 feet, measured horizontally, beyond the undisturbed natural vegetative buffer, in which all impervious cover shall be prohibited. Grading, filling and earthmoving shall be minimized within the setback.
- (3) No septic tanks or septic tank drain fields shall be permitted within the buffer or the setback.

95.2. Variance Procedures.

Variations from the above buffer and setback requirements may be granted in accordance with the following provisions:

- (1) Where a parcel was platted prior to the effective date of this Ordinance, and its shape, topography or other existing physical condition prevents land development consistent with this Ordinance, and the City of Austell finds and determines that the requirements of this Ordinance prohibit the otherwise lawful use of the property by the owner, the Mayor and City Council of the City of Austell may grant a variance from the buffer and setback requirements hereunder, provided such variance require mitigation measures to offset the effects of any proposed land development on the parcel.
- (2) Except as provided above, the Mayor and City Council of the City of Austell shall grant no variance from any provision of this Ordinance without first conducting a public hearing on the application for variance and authorizing the granting of the variance by an affirmative vote of the Mayor and City Council of the City of Austell shall give public notice of each such public hearing in a newspaper of general circulation within the City of Austell. The City of Austell shall require that the applicant post a sign giving notice of the proposed variance and the public hearing. The sign shall be of a size and posted in such a location on the property as to be clearly visible from the primary adjacent road right-of-way.

Variations will be considered only in the following cases:

- a. When a property's shape, topography or other physical conditions existing at the time of the adoption of this Ordinance prevents land development unless a buffer variance is granted.
- b. Unusual circumstances when strict adherence to the minimal buffer requirements in the Ordinance would create an extreme hardship.

Variations will not be considered when, following adoption of this Ordinance, actions of any property owner of a given property have created conditions of a hardship on that property.

(3) At a minimum, a variance request shall include the following information:

- a. A site map that includes locations of all streams, wetlands, floodplain boundaries and other natural features, as determined by field survey;
- b. A description of the shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
- c. A detailed site plan that shows the locations of all existing and proposed structures and other impervious cover, the limits of all existing and proposed land disturbance, both inside and outside the buffer and setback. The exact area of the buffer to be affected shall be accurately and clearly indicated;
- d. Documentation of unusual hardship should the buffer be maintained;
- e. At least one alternative plan, which does not include a buffer or setback intrusion, or an explanation of why such a site plan is not possible;
- f. A calculation of the total area and length of the proposed intrusion;
- g. A stormwater management site plan, if applicable; and,
- h. Proposed mitigation, if any, for the intrusion. If no mitigation is proposed, the request must include an explanation of why none is being proposed.

(4) The following factors will be considered in determining whether to issue a variance:

- a. The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
- b. The locations of all streams on the property, including along property boundaries;
- c. The location and extent of the proposed buffer or setback intrusion;

- d. Whether alternative designs are possible which require less intrusion or no intrusion;
- e. The long-term and construction water-quality impacts of the proposed variance; and,
- f. Whether issuance of the variance is at least as protective of natural resources and the environment.

Section 5-96. Compatibility with Other Buffer Regulations and Requirements.

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

Section 5-97. Additional Information Requirements for Development on Buffer Zone Properties.

Any permit applications for property requiring buffers and setbacks hereunder must include the following:

- (1) A site plan showing:
 - a. The location of all streams on the property;
 - b. Limits of required stream buffers and setbacks on the property;
 - c. Buffer zone topography with contour lines at no greater than five (5)-foot contour intervals;
 - d. Delineation of forested and open areas in the buffer zone; and,
 - e. Detailed plans of all proposed land development in the buffer and of all proposed impervious cover within the setback;
- (2) A description of all proposed land development within the buffer and setback; and,
- (3) Any other documentation that the (review and permitting authority) may reasonably deem necessary for review of the application and to insure that the buffer zone Ordinance is addressed in the approval process.

All buffer and setback areas must be recorded on the final plat of the property following plan approval.

Section 5-98. Responsibility.

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

Section 5-99. Inspection.

The City of Austell may cause inspections of the work in the buffer or setback to be made periodically during the course thereof and shall make a final inspection following completion of the work. The permittee shall assist the City of Austell in making such inspections. The City of Austell shall have the authority to conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in this Ordinance, and for this purpose to enter at reasonable time upon any property, public or private, for the purpose of investigating and inspecting the sites of any land development activities within the protection area.

No person shall refuse entry or access to any authorized representative or agent who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out official duties.

Section 5-100. Violations, Enforcement and Penalties.

Any action or inaction which violates the provisions of this Ordinance or the requirements of an approved site plan or permit may be subject to the enforcement actions outlined in this Section. Any such action or inaction which is continuous with respect to time is deemed to be a public nuisance and may be abated by injunctive or other equitable relief. The imposition of any of the penalties described below shall not prevent such equitable relief.

100.1. Notice of Violation.

If the City of Austell determines that an applicant or other responsible person has failed to comply with the terms and conditions of a permit, an approved site plan or the provisions of this Ordinance, it shall issue a written notice of violation to such applicant or other responsible person. Where a person is engaged in activity covered by this Ordinance without having first secured the appropriate permit therefor, the notice of violation shall be served on the owner or the responsible person in charge of the activity being conducted on the site.

The notice of violation shall contain:

- (1) The name and address of the owner or the applicant or the responsible person;
- (2) The address or other description of the site upon which the violation is occurring;
- (3) A statement specifying the nature of the violation;

- (4) A description of the remedial measures necessary to bring the action or inaction into compliance with the permit, the approved site plan or this Ordinance and the date for the completion of such remedial action;
- (5) A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed; and,
- (6) A statement that the determination of violation may be appealed to the City of Austell by filing a written notice of appeal within thirty (30) days after the notice of violation (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours' notice shall be sufficient).

100.2. Penalties.

In the event the remedial measures described in the notice of violation have not been completed by the date set forth for such completion in the notice of violation, any one or more of the following actions or penalties may be taken or assessed against the person to whom the notice of violation was directed. Before taking any of the following actions or imposing any of the following penalties, the City of Austell shall first notify the applicant or other responsible person in writing of its intended action, and shall provide a reasonable opportunity, of not less than ten days (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours' notice shall be sufficient) to cure such violation. In the event the applicant or other responsible person fails to cure such violation after such notice and cure period, the City of Austell may take any one or more of the following actions or impose any one or more of the following penalties.

- (1) **Stop Work Order** - The City of Austell may issue a stop work order which shall be served on the applicant or other responsible person. The stop work order shall remain in effect until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein, provided the stop work order may be withdrawn or modified to enable the applicant or other responsible person to take necessary remedial measures to cure such violation or violations.
- (2) **Withhold Certificate of Occupancy** - The City of Austell may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.
- (3) **Suspension, Revocation or Modification of Permit** - The City of Austell may suspend, revoke or modify the permit authorizing the land development project. A suspended, revoked or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein, provided such permit may be reinstated (upon such conditions as the City of Austell may deem necessary) to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.

- (4) **Civil Penalties** - In the event the applicant or other responsible person fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten days (or such greater period as the City of Austell shall deem appropriate) (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours notice shall be sufficient) after the City of Austell has taken one or more of the actions described above, the City of Austell may impose a penalty not to exceed \$1,000.00 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.
- (5) **Criminal Penalties** - For intentional and flagrant violations of this Ordinance, the City of Austell may issue a citation to the applicant or other responsible person, requiring such person to appear in Austell Municipal Court to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed \$1,000.00 or imprisonment for 60 days or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

Section 5-101. Administrative Appeal and Judicial Review.

101.1 Administrative Appeal.

Any person aggrieved by a decision or order of City of Austell, may appeal in writing within thirty (30) days after the issuance of such decision or order to the Public Works Director of the City of Austell and shall be entitled to a hearing before the Mayor and City Council of the City of Austell within fifteen (15) days of receipt of the written appeal.

101.2. Judicial Review.

Any person aggrieved by a decision or order of City of Austell, after exhausting all administrative remedies, shall have the right to appeal de novo to the Superior Court of Cobb County.

Section 5-102. Severability.

If any article, section, subsection, paragraph, clause, phrase or provision of this Ordinance shall be adjudged invalid or held unconstitutional, such decision shall not affect or invalidate the remaining portions of this Ordinance.

Severability. This Ordinance abolishes all previous resolutions or ordinances as it relates to the Water Supply Watershed Protection for the Sweetwater Creek Watershed and any conflicting portion of the Code of Ordinances of the Zoning Ordinance.

Adopted: March 1, 2004

Article VII. Section 14-99. Litter Control.**Section 14-99. General Provisions.****99.1. Purpose and Intent.**

The purpose of this Ordinance is to protect the public health, safety, environment, and general welfare through the regulation and prevention of litter. The objectives of this Ordinance are to:

- (1) Provide for uniform prohibition throughout the City of Austell of any and all littering on public or private property; and,
- (2) Prevent the desecration of the beauty and quality of life of the City of Austell and prevent harm to the public health, safety, environment, and general welfare, including the degradation of water and aquatic resources caused by litter.

99.2. Applicability.

This Ordinance shall apply to all public and private property within the City of Austell.

99.3. Compatibility with Other Regulations.

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

99.4. Severability.

If the provisions of any article, section, subsection, paragraph, subdivision or clause of this Ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this Ordinance.

Section 14-100. Definitions.

Litter: Any organic or inorganic waste material, rubbish, refuse, garbage, trash, hulls, peelings, debris, grass, weeds, ashes, sand, gravel, slag, brickbats, metal, plastic, and glass containers, broken glass, dead animals or intentionally or unintentionally discarded materials of every kind and description which are not "waste" as such term is defined in O.C.G.A., §16-7-51, paragraph 6.

Public or Private Property: The right-of-way of any road or highway; any body of water or watercourse or the shores or beaches thereof; any park, playground, building, refuge, or conservation or recreation area; timberlands or forests; and residential, commercial, industrial, or farm properties.

Section 14-101. Prohibition against Littering Public or Private Property or Waters.

It shall be unlawful for any person or persons to dump, deposit, throw or leave or to cause or permit the dumping, depositing, placing, throwing or leaving of litter on any public or private property in the City of Austell jurisdiction or any waters in the jurisdiction unless:

- (1) The property is designated by the State or by any of its agencies or political subdivisions for the disposal of such litter, and such person is authorized by the proper public authority to use such property;
- (2) The litter is placed into a receptacle or container installed on such property; or,
- (3) The person is the owner or tenant in lawful possession of such property, or has first obtained consent of the owner or tenant in lawful possession, or unless the act is done under the personal direction of the owner or tenant, all in a manner consistent with the public welfare.

Section 14-102. Vehicle Loads Causing Litter.

No person shall operate any motor vehicle with a load on or in such vehicle unless the load on or in such vehicle is adequately secured to prevent the dropping or shifting of materials from such load onto the roadway.

Section 14-103. Violations, Enforcement and Penalties.

103.1. Violations.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. Any person who has violated or continues to violate the provisions of this Ordinance, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise sentenced in a manner provided by law.

103.2. Evidence.

- (1) Whenever litter is thrown, deposited, dropped or dumped from any motor vehicle, boat, airplane, or other conveyance in violation of this Ordinance, it shall be prima facie evidence that the operator of the conveyance has violated this Ordinance.
- (2) Except as provided in subsection (1), whenever any litter which is dumped, deposited, thrown or left on public or private property in violation of this Ordinance is discovered to contain any article or articles, including but not limited to letters, bills, publications or other

writing which display the name of the person thereon in such a manner as to indicate that the article belongs or belonged to such person, it shall be a rebuttable presumption that such person has violated this Ordinance.

103.3. Penalties.

Any person who violates this Ordinance shall be guilty of a violation and, upon conviction thereof, shall be punished as follows:

- (1) By a fine of not less than \$200.00 and not more than \$1,200.00; and
- (2) In addition to the fine set out in subsection 1 above, the violator shall reimburse the City of Austell for the reasonable cost of removing the litter when the litter is or is ordered removed by the City of Austell; and
- (3) (A) In the sound discretion of the court, the person may be directed to pick up and remove from any public street or highway or public right-of way for a distance not to exceed one mile any litter he has deposited and any and all litter deposited thereon by anyone else prior to the date of execution of sentence; or
(B) In the sound discretion of the court, the person may be directed to pick up and remove any and all litter from any public property, private right-of-way, or with prior permission of the legal owner or tenant in lawful possession of such property, any private property upon which it can be established by competent evidence that he has deposited litter. Pick up and removal shall include any and all litter deposited thereon by anyone prior to the date of execution of sentence; and,
- (4) The court may publish the names of persons convicted of violating this Ordinance.

103.4. Enforcement.

All law enforcement agencies, officers and officials of this state or any political subdivision thereof, or any enforcement agency, officer or any official of any commission of this state or any political subdivision thereof, are hereby authorized, empowered and directed to enforce compliance with this article.

Adopted: March 1, 2004

Article III. Section 5-46. Soil Erosion, Sedimentation, and Pollution Control.**Section 5-46. Title.**

This ordinance will be known as the “City of Austell, Georgia Soil Erosion, Sedimentation, and Pollution Control Ordinance.”

Section 5-47. Definitions.

The following definitions shall apply in the interpretation and enforcement of this ordinance, unless otherwise specifically stated:

1. **Best Management Practices (BMPs):** These include 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 Commission as of January 1 of the year in which the land-disturbing activity was permitted.
2. **Board:** The Board of Natural Resources.
3. **Buffer:** 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.
4. **Certified Personnel:** A person who has successfully completed the appropriate certification course approved by the Georgia Soil and Water Conservation Commission.
5. **Commission:** The Georgia Soil and Water Conservation Commission (GSWCC).
6. **CPESC:** 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.
7. **Cut:** A portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below original ground surface to the excavated surface. Also known as excavation.
8. **Department:** The Georgia Department of Natural Resources (DNR).
9. **Design Professional:** A professional licensed by the State of Georgia 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.
10. **Director:** The Director of the Environmental Protection Division or an authorized representative.

11. **District:** The Cobb County Soil and Water Conservation District.
12. **Division:** The Environmental Protection Division (EPD) of the Department of Natural Resources.
13. **Drainage Structure:** A device composed of a virtually non-erodible material such as concrete, steel, plastic or other such material that conveys water from one place to another by intercepting the flow and carrying it to a release point for storm water management, drainage control, or flood control purposes.
14. **Erosion:** The process by which land surface is worn away by the action of wind, water, ice or gravity.
15. **Erosion, Sedimentation, and Pollution Control Plan:** A plan required by the Erosion and Sedimentation Act, O.C.G.A. Chapter 12-7, that includes, as a minimum protections at least as stringent as the State General Permit, best management practices, and requirements in section 5-49 C. of this ordinance.
16. **Fill:** A portion of land surface to which soil or other solid material has been added; the depth above the original ground surface or an excavation.
17. **Final Stabilization:** 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% of the soil surface is uniformly covered in permanent vegetation with a density of 70% or greater, or equivalent permanent stabilization measures (such as the use of rip rap, 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.
18. **Finished Grade:** The final elevation and contour of the ground after cutting or filling and conforming to the proposed design.
19. **Grading:** 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.
20. **Ground Elevation:** The original elevation of the ground surface prior to cutting or filling.
21. **Land-Disturbing Activity:** Any activity which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands within the state, including, but not limited to, clearing, dredging, grading, excavating, transporting, and filling of land but not including agricultural practices as described in Section 5-48, Paragraph 5.

22. **Larger Common Plan of Development or Sale:** A contiguous area where multiple separate and distinct construction activities are occurring under one plan of development or sale. For the purposes of this paragraph, “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.
23. **Local Issuing Authority:** The governing authority of any county or municipality which is certified pursuant to subsection (a) O.C.G.A. 12-7-8.
24. **Metropolitan River Protection Act (MRPA):** A state law referenced as O.C.G.A. 12-5-440 et.seq. which addresses environmental and developmental matters in certain metropolitan river corridors and their drainage basins.
25. **Natural Ground Surface:** The ground surface in its original state before any grading, excavation or filling.
26. **Nephelometric Turbidity Units (NTU):** 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 or suspended particles are present.
27. **NOI:** A Notice of Intent form provided by EPD for coverage under the State General Permit.
28. **NOT:** A Notice of Termination form provided by EPD to terminate coverage under the State General Permit.
29. **Operator:** The party or parties that have: (A) operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications; or (B) 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.
30. **Outfall:** The location where storm water 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.
31. **Permit:** The authorization necessary to conduct a land-disturbing activity under the provisions of this ordinance.

32. **Person:** 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 the State of Georgia, any interstate body or any other legal entity.
33. **Phase or Phased:** Sub-parts or segments of construction projects where the sub-part or segment is constructed and stabilized prior to completing construction activities on the entire construction site.
34. **Project:** The entire proposed development project regardless of the size of the area of land to be disturbed.
35. **Properly Designed:** Designed in accordance with the design requirements and specifications contained in the “Manual for Erosion and Sediment Control in Georgia” (Manual) published by the Georgia 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.
36. **Roadway Drainage Structure:** A device such as a bridge, culvert, or ditch, composed of a virtually non-erodible material such as concrete, steel, plastic, or other such material that conveys water under a roadway by intercepting the flow on one side of a traveled roadway consisting of one or more defined lanes, with or without shoulder areas, and carrying water to a release point on the other side.
37. **Sediment:** Solid material, both organic and inorganic, that is in suspension, is being transported, or has been moved from its site of origin by wind, water, ice, or gravity as a product of erosion.
38. **Sedimentation:** The process by which eroded material is transported and deposited by the action of water, wind, ice or gravity.
39. **Soil and Water Conservation District Approved Plan:** An erosion, sedimentation and pollution control plan approved in writing by the Cobb County Soil and Water Conservation District.
40. **Stabilization:** 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.
41. **State General Permit:** The National Pollution Discharge Elimination System (NPDES) general permit or permits for storm water 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 U.S.C. Section 1251, et seq., and subsection (f) of Code Section 12-5-30.

42. **State Waters:** 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 Georgia which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation.
43. **Structural Erosion, Sedimentation, and Pollution Control Practices:** 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 and sediment traps, etc. Such practices can be found in the publication *Manual for Erosion and Sediment Control in Georgia*.
44. **Trout Streams:** All streams or portions of streams within the watershed as designated by the Wildlife Resources Division of the Georgia Department of Natural Resources under the provisions of the Georgia Water Quality Control Act, O.C.G.A. 12-5-20, in the rules and regulations for Water Quality Control, Chapter 391-3-6 at www.gaepd.org. Streams designated as primary trout waters are defined as water supporting a self-sustaining population of rainbow, brown or brook trout. Streams designated as secondary trout waters are those in which there is no evidence of natural trout reproduction, but are capable of supporting trout throughout the year. First order trout waters are streams into which no other streams flow except springs.
45. **Vegetative Erosion and Sedimentation Control Measures:** 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 publication *Manual for Erosion and Sediment Control in Georgia*.

46. **Watercourse:** 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.
47. **Wetlands:** Those areas that are inundated or saturated by surface or ground water 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.

Section 5-48. Exemptions.

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

1. Surface mining, as the same is defined in O.C.G.A. 12-4-72, “The Georgia Surface Mining Act of 1968”.
2. Granite quarrying and land clearing for such quarrying;
3. Such minor land-disturbing activities as home gardens and individual home landscaping, repairs, maintenance work, fences, and other related activities which result in minor soil erosion;
4. The construction of single-family residences, when such construction disturbs less than one (1) acre and is not a part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one (1) acre and not otherwise exempted under this paragraph; provided, however, that construction of any such residence shall conform to the minimum requirements as set forth in O.C.G.A. 12-7-6 and this paragraph. For single-family residence construction covered by the provisions of this paragraph, there shall be a buffer zone between the residence and any state waters classified as trout streams pursuant to Article 2 of Chapter 5 of the Georgia Water Quality Control Act. 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. 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. 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 subsection (b) of O.C.G.A. 12-7-6 and the buffer zones provided by this paragraph shall be enforced by the Austell Public Works, an agency of the City of Austell,;
5. Agricultural operations as defined in O.C.G.A. 1-3-3, “definitions”, 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, as established in paragraphs (15) and (16) of Section 5-49 C. of this ordinance, 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 (3) years after completion of such forestry practices;
7. Any project carried out under the technical supervision of the Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture;
 8. Any project involving less than one (1) acre of disturbed area; provided, however, that this exemption shall not apply to any land-disturbing activity within a larger common plan of development or sale with a planned disturbance of equal to or greater than one (1) acre or within 200 feet of the bank of any state waters, and for purposes of this paragraph, "State Waters" excludes channels and drainage ways which have water in them only during and immediately after rainfall events and intermittent streams which do not have water in them year-round; provided, however, that any person responsible for a project which involves less than one (1) acre, which involves land-disturbing activity, and which is within 200 feet of any such excluded channel or drainage way, must prevent sediment from moving beyond the boundaries of the property on which such project is located and provided, further, that nothing contained herein shall prevent the Austell Public Works, an agency of the City of Austell, from regulating any such project which is not specifically exempted by paragraphs 1, 2, 3, 4, 5, 6, 7, 9, or 10 of this section;
 9. Construction or maintenance projects, or both, undertaken or financed in whole or in part, or both, by the Department of Transportation, the Georgia Highway Authority, or the State Road and Tollway Authority; or any road construction or maintenance project, or both, undertaken by any county or municipality; provided, however, that construction or maintenance projects of the Department of Transportation or the State Road and Tollway Authority which disturb one 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 Georgia 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 Austell Public Works, an agency of the City of Austell and 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 Austell Public Works,

an agency of the City of Austell, 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.

Section 5-49. Minimum Requirements for Erosion, Sedimentation, and Pollution Control Using Best Management Practices.

A. General Provisions

Excessive soil erosion and resulting sedimentation can take place during land-disturbing activities if requirements of the ordinance and the NPDES General Permit are not met. Therefore, plans for those land-disturbing activities which are not exempted by this ordinance 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. Soil erosion, sedimentation and pollution control measures and practices shall conform to the minimum requirements of Section 5-49 B. and C. of this ordinance. The application of measures and practices shall apply to all features of the site, including street and utility installations, drainage facilities and other temporary and permanent improvements. Measures 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 ordinance and the NPDES General Permit.

B. Minimum Requirements / Best Management Practices

1. Best management practices as set forth in Section 5-49 B. and C. of this ordinance 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 paragraph (2) of this subsection or any substantially similar terms contained in a permit for the discharge of storm water issued pursuant to subsection (f) of O.C.G.A. 12-5-30, 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 subsection (b).
2. A discharge of storm water 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 the Austell Public Works, an agency of the City of Austell, or of any state general permit issued by the Division pursuant to subsection (f) of O.C.G.A. 12-5-30, 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 twenty-five (25) nephelometric turbidity units for waters supporting warm water fisheries or by more than ten (10) 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 paragraph 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 (5) acres.

3. Failure to properly design, install, or maintain best management practices shall constitute a violation of any land-disturbing permit issued by Austell Public Works, an agency of the City of Austell, or of any state general permit issued by the Division pursuant to subsection (f) of Code Section 12-5-30, the “Georgia Water Quality Control Act”, for each day on which such failure occurs.
 4. The Director may require, in accordance with regulations adopted by the Board, reasonable and prudent monitoring of the turbidity level of receiving waters into which discharges from land disturbing activities occur.
 5. The Austell Public Works, an agency of the City of Austell, may set more stringent buffer requirements than stated in C.15. and 16., in light of O.C.G.A. § 12-7-6 (c).
- C. 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 Georgia 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, re-grading 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 run-off 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 paragraph, 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;
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 Section 5-49 B. 2. of this ordinance;
15. Except as provided in paragraph (16) of this subsection, there is established a 25 foot buffer along the banks of all state waters, as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, except where the Director 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 ground-water table year round; for which ground water 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 25 feet established pursuant to part 6 of Article 5, Chapter 5 of Title 12, the "Georgia Water Quality Control Act", shall remain in force unless a variance is granted by the Director as provided in this paragraph. 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 or her 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: (i) Stream crossings for water lines; or (ii) Stream crossings for sewer lines; and
16. There is established a 50 foot buffer as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, along the banks of any state waters classified as “trout streams” pursuant to Article 2 of Chapter 5 of Title 12, the “Georgia Water Quality Control Act”, 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 or her 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: (i) Stream crossings for water lines; or (ii) Stream crossings for sewer lines.

- D. 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 Section 5-49 B. and C. of this ordinance.
- E. 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 ordinance or the terms of the permit.

Section 5-50. Application and Permit Process.

A. General

The property owner, developer and designated planners and engineers shall design and review before submittal the general development plans. Austell Public Works, an agency of the City of Austell, 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 ordinance, and any other ordinances, rules, regulations or permits, which regulate the development of land within the jurisdictional boundaries of the City of Austell. However, the owner and/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 of Austell, Georgia without first obtaining a permit from Austell Public Works, an agency of the City of Austell, Georgia, 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 Austell Public Works, an agency of the City of Austell, Georgia and must include the applicant's erosion, sedimentation and pollution control plan with supporting data, as necessary. Said plans shall include, as a minimum, the data specified in Section 5-50 C. of this ordinance. 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 Section 5-49 B. and C. of this ordinance will be met. Applications for a permit will not be accepted unless accompanied by six (6) copies 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.
3. A fee in the amount of \$40.00 shall be charged for each acre or fraction thereof in the project area.

4. In addition to the local permitting fees, fees will also be assessed pursuant to paragraph (5) subsection (a) of O.C.G.A. 12-5-23, 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 subsection (a) of O.C.G.A. 12-7-8 half of such fees levied shall be submitted to the Division; except that any and all fees due from an entity which is required to give notice pursuant to paragraph (9) or (10) of O.C.G.A. 12-7-17 shall be submitted in full to the Division, regardless of the existence of a Local Issuing Authority in the jurisdiction.
5. Immediately upon receipt of an application and plan for a permit, Austell Public Works, an agency of the City of Austell, 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 Section 5-49 C. 15. and 16. has been obtained, all fees have been paid, and bonding, if required as per Section 5-50 B. 7., 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. Austell Public Works, an agency of the City of Austell, with plan review authority shall approve or disapprove a revised Plan submittal within 35 days of receipt. Failure of Austell Public Works, an agency of the City of Austell, with plan review authority to act within 35 days shall be considered an approval of the revised Plan submittal.
6. If a permit applicant has had two or more violations of previous permits, this ordinance 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.
7. Austell Public Works, an agency of the City of Austell, 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 section or with the conditions of the permit after issuance, the Austell Public Works, an agency of the City of Austell, 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 Austell Public Works, an agency of the City of Austell, with respect to alleged permit violations.

C. Plan Requirements

1. Plans must be prepared to meet the minimum requirements as contained in Section 5-49 B. and C. of this ordinance, 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 ordinance. 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 storm water 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 or her level of involvement with the process, as developed by the Commission and in consultation with the Division and the Stakeholder Advisory Board created pursuant to O.C.G.A. 12-7-20.
2. Data Required 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.

D. Permits

1. Permits shall be issued or denied as soon as practicable but in any event not later than 45 days after receipt by Austell Public Works, an agency of the City of Austell, 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.
2. No permit shall be issued by Austell Public Works, an agency of the City of Austell, unless the erosion, sedimentation and pollution control plan has been approved by the District and Austell Public Works, an agency of the City of Austell, has affirmatively determined that the plan is in compliance with this ordinance, any variances required by Section 5-49 C. 15. and 16. are obtained, bonding requirements, if necessary, as per Section 5-50 B. 7. are met and all ordinances and rules and regulations in effect within the jurisdictional boundaries of the City of Austell are met. If the permit is denied, the reason for denial shall be furnished to the applicant.
3. Any land-disturbing activities by the City of Austell shall be subject to the same requirements of this ordinance, and any other ordinances relating to land development, as are applied to private persons and the division shall enforce such requirements upon the City of Austell.
4. If the tract is to be developed in phases, then a separate permit shall be required for each phase.

5. The permit may be suspended, revoked, or modified by Austell Public Works, an agency of the City of Austell, 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 ordinance. 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.
6. The LIA 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).

Section 5-51. Inspection and Enforcement.

- A. Austell Public Works, an agency of the City of Austell, Georgia, 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, Austell Public Works, an agency of the City of Austell, 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 ordinance, 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 ordinance.
- B. Austell Public Works, an agency of the City of Austell, must amend its ordinances to the extent appropriate within 12 months of any amendments to the Erosion and Sedimentation Act of 1975.
- C. Austell Public Works, an agency of the City of Austell, Georgia, shall have the power to conduct such investigations as it may reasonably deem necessary to carry out duties as prescribed in this ordinance, 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 Local Issuing Authority, the Commission, the District, or Division who requests entry for the purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his or her 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 Division and request investigation by the Division if any deficient or ineffective local program is found.
- F. The Division may periodically review the actions of counties and municipalities which have been certified as Local Issuing Authorities pursuant to Code Section 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 Division shall notify the governing authority of the county or municipality in writing. The governing authority of any county or municipality so notified shall have 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 division, the division shall revoke the certification of the county or municipality as a Local Issuing Authority.

Section 5-52. 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 ordinance without first obtaining said 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 of Austell.

B. Stop Work Orders

1. For the first and second violations of the provisions of this ordinance, the Director or the Austell Public Works, an agency of the City of Austell, 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 Austell Public Works, an agency of the City of Austell, 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 Austell Public Works, an agency of the City of Austell, shall issue an immediate stop-work order in lieu of a warning;

2. For a third and each subsequent violation, the Director or Austell Public Works, an agency of the City of Austell, shall issue an immediate stop-work order; and;
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 Austell Public Works, an agency of the City of Austell, or by the Director or his or her 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 Austell Public Works, an agency of the City of Austell, or by the Director or his or her 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 ordinance 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 5-50 B. 7. Austell Public Works, an agency of the City of Austell, 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

1. Any person who violates any provisions of this ordinance, or any permit condition or limitation established pursuant to this ordinance, or who negligently or intentionally fails or refuses to comply with any final or emergency order of the Director issued as provided in this ordinance shall be liable for a civil penalty not to exceed \$2,500.00 per day. For the purpose of enforcing the provisions of this ordinance, 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 ordinance under county ordinances approved under this ordinance 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.

Section 5-53. 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 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 said 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 ordinance.
- D. If a state general permittee who has operational control of land-disturbing activities for a site has met the certification requirements of paragraph (1) of subsection (b) of O.C.G.A. 12-7-19, 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 paragraph (4) of subsection (b) of O.C.G.A. 12-7-19 and shall not be required to meet any educational requirements that exceed those specified in said paragraph.

Section 5-54. Administrative Appeal Judicial Review.

A. Administrative Remedies

The suspension, revocation, modification or grant with condition of a permit by Austell Public Works, an agency of the City of Austell, 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 Council of the City of Austell, Georgia within 30 days after receipt by Austell Public Works, an agency of the City of Austell, of written notice of appeal.

B. Judicial Review

Any person, aggrieved by a decision or order of the Austell Public Works, an agency of the City of Austell, after exhausting his administrative remedies, shall have the right to appeal denovo to the Superior Court of Cobb County, Georgia.

Section 5-55. Effectivity, Validity, and Liability

A. Effectivity

This ordinance is approved and shall become effective upon adoption by the Mayor and City Council.

B. Validity

If any section, paragraph, clause, phrase, or provision of this ordinance shall be adjudged invalid or held unconstitutional, such decisions shall not affect the remaining portions of this ordinance.

C. Liability

1. Neither the approval of a plan under the provisions of this ordinance, nor the compliance with provisions of this ordinance shall relieve any person from the responsibility for damage to any person or property otherwise imposed by law nor impose any liability upon the Austell Public Works, an agency of the City of Austell, or the District for damage to any person or property.
2. 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 ordinance or the terms of the permit.
3. No provision of this ordinance shall permit any persons to violate the Georgia Erosion and Sedimentation Act of 1975, the Georgia Water Quality Control Act or the rules and regulations promulgated and approved hereunder or pollute any Waters of the State as defined thereby.

Adopted: May 3, 2010

Article VIII. Section 5. Post-Development Stormwater Management for New Development and Re-Development.**Section 5-103. Introduction.**

It is hereby determined that:

- a. Land development projects and other land use conversions, and their associated changes to land cover, permanently alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, which in turn increase flooding, stream channel erosion, and sediment transport and deposition;
- b. Land development projects and other land use conversions can also contribute to increased nonpoint source pollution and degradation of receiving waters;
- c. The impacts of post-development stormwater runoff quantity and quality can adversely affect public safety, public and private property, drinking water supplies, recreation, fish and other aquatic life, property values and other uses of lands and waters;
- d. These adverse impacts can be controlled and minimized through the regulation of stormwater runoff quantity and quality from new development and redevelopment projects by the use of structural and nonstructural measures, such as the conservation or restoration of open space and greenspace areas;
- e. Localities in the State of Georgia are required to comply with a number of both State and Federal laws, regulations, and permits which require a locality to address the impacts of post-development stormwater runoff quality and nonpoint source pollution; and
- f. Therefore, the City of Austell has established this set of regulations governing the management of post-development stormwater runoff and the ongoing maintenance of stormwater control systems for the purpose of protecting local water resources from runoff rates and volumes, post-construction soil erosion and sedimentation, stream channel erosion, and nonpoint source pollution associated with post-development stormwater runoff.”

Section 5-104. Purpose and Intent.

- a. The purpose of this Article is to protect, maintain and enhance the public health, safety, environment, and general welfare by establishing minimum requirements and procedures to control the adverse effects of post-development stormwater runoff and nonpoint source pollution associated with new development and redevelopment by focusing on the types of frequently occurring storm events that generate the most water quality impacts.

- b. Proper management of post-development stormwater runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, environment and general welfare of the public, and protect water and aquatic resources. This ordinance seeks to meet those purposes through the following objectives:
1. Establish decision-making processes surrounding land development activities that protect the integrity of the watershed and preserve the health of water resources;
 2. Establish post-construction stormwater management and site planning and design criteria to protect natural resources from the direct impacts of the land development process, and to preserve and/or restore natural hydrologic conditions on development sites;
 3. Encourage the use of nonstructural stormwater management methodologies, stormwater better site design practices, peak rate and/or runoff reduction, and the preservation of greenspace and other conservation areas by establishing minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
 4. Establish design and application criteria for the construction and use of structural stormwater control facilities that meet the minimum post-development stormwater management standards;
 5. Coordinate site design plans with the City of Austell's greenspace protection plan;
 6. Establish provisions for the long-term responsibility for operation, inspection, maintenance, and repair of private structural stormwater control facilities and threat to public safety or the environment;
 7. Establish administrative procedures for the submission, review, approval and disapproval of stormwater management plans, and for the inspection of approved active projects, and long-term compliance; and
 8. Protect public health and safety by reducing the risk of localized flooding and reducing the amount of runoff entering public rights of way.

Section 5-105. Definitions.

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

Applicant: A person submitting a post-development stormwater management application and plan for approval.

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

Conservation Easement: An agreement between a land owner and the City of Austell, other government agency, or land trust that permanently protects open space or greenspace on the owner's land by limiting the amount and type of development that can take place, but continues to leave the remainder of the fee interest in private ownership.

Demolition: The removal of an existing building, structure, or other impervious surface.

Detention: The temporary storage of stormwater runoff in a stormwater management facility for the purpose of controlling the peak discharge.

Detention Facility: A detention basin or structure designed for the detention of stormwater runoff and gradual release of stored water at controlled rates.

Developer: A person who undertakes land development activities.

Development: A land development or land development project.

Director: The Director of Austell Public Works or his/her designee.

Drainage Easement: An easement appurtenant or attached to a tract or parcel of land allowing the owner of adjacent tracts or other persons to discharge stormwater runoff onto the tract or parcel of land subject to the drainage easement.

Erosion, Sedimentation, and Pollution Control Plan: A plan that is designed to minimize the accelerated erosion and sediment runoff at a site during land disturbance activities.

Extended Detention: The detention of stormwater runoff for an extended period, typically 24 hours or greater.

Extreme Flood Protection: Measures taken to prevent adverse impacts from large low-frequency storm events with a return frequency of 100 years or more.

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

Grading: Altering ground surfaces to specified elevations, dimensions and slopes; this includes, but is not limited to, stripping, cutting, filling, stockpiling and shaping or any combination thereof and includes the land in its cut or filled condition.

Greenfield: Land in its natural condition.

Greenspace: Permanently protected areas of the site that are preserved in a vegetated state.

Green Infrastructure: An interconnected natural system and/or engineered system that strengthens and mimics natural hydrologic functions and processes through the use of plants and soil to slow, filter, evapotranspire, and infiltrate stormwater runoff close to its source; or the capture and reuse of stormwater runoff.

High Risk Operation: An area where the use of the land has the potential to generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater as consistent with facilities operating under a Standard Industrial Code or requiring coverage under the Georgia General National Pollution Discharge Elimination System Stormwater Permit for Discharges from Industrial Activities or as identified as a highly visible pollutant source per the City of Austell's Stormwater Management Plan developed in accordance with the requirements of the City of Austell's National Pollution Discharge Elimination System Municipal Separate Storm Sewer System permit.

Hotspot: An area with, or having potential for a high level of pollution and/or contamination within a larger area of low adverse environmental impact or normal environmental quality.

Hydrologic Soil Group: A Natural Resource Conservation Service classification system in which soils are categorized into four runoff potential groups. The groups range from group A soils, with high permeability and little runoff produced, to group D soils, which have low permeability rates and produce much more runoff.

Impervious Cover: A surface composed of any material that significantly impedes or prevents the natural percolation of water into soil, which includes, but is not limited to, rooftops, buildings, streets and roads, and standard concrete or asphalt surface.

Industrial Stormwater Permit: A National Pollutant Discharge Elimination System permit issued to an entity which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

Inspection and Maintenance Agreement: A written agreement providing for the long-term inspection and maintenance of stormwater management facilities and practices on a site or with respect to a land development project, which, when properly recorded in the deed records of the Superior Court of Cobb County or Douglas County, whichever is applicable, constitutes a restriction on the title to a site or other land involved in a land development project.

Jurisdictional Wetland: An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation, as determined by the United States Army Corps of Engineers.

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

Land Development Activities: Those actions or activities which comprise, facilitate, or result in land development.

Land Development Project: A discrete land development undertaking.

National Pollutant Discharge Elimination System Permit: The applicable national pollutant discharge elimination system permit issued by the Georgia State Environmental Protection Division and in effect at the time of application for a post-development stormwater plan approval.

New Development: A land development activity on a previously undeveloped site.

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

Nonstructural Stormwater Management Practice: Any natural or planted vegetation or other nonstructural component of the stormwater management plan that provides for or enhances stormwater quantity and/or quality control or other stormwater management benefits and includes, but is not limited to, riparian buffers, open and greenspace areas, overland flow filtration areas, natural depressions, and vegetated channels.

Off-site Facility: A stormwater management facility located outside the boundaries of the site.

On-site Facility: A stormwater management facility located within the boundaries of the site.

Overbank Flood Protection: Measures taken to prevent an increase in the frequency and magnitude of out-of-bank flooding (for example, flow events that exceed the capacity of the channel and enter the floodplain), and that are intended to protect downstream properties from flooding up to the 25-year frequency storm events.

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

Percolation: The process of absorption of stormwater runoff into the subsoil.

Permit: The permit issued by Austell Public Works to the applicant which is required for undertaking any land development activity.

Person: Except to the extent exempted from this ordinance, any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, city, county, or other political subdivision of the State, any interstate body, or any other legal entity.

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

Pre-Development: The time period, or the conditions that exist, on a site prior to the commencement of a land development project and at the time that plans for the land development of a site are approved by the City of Austell. Where phased development or plan approval occurs, which includes but is not limited to demolition, preliminary grading, roads and utilities, the existing conditions at the time prior to issuance of the first project-related approval or permit shall represent pre-developed conditions, in accordance with Section 5-113(d).

Project: the portion of the proposed development in terms of the area of land to be disturbed.

Q: The peak rate of discharge.

Redevelopment: A land development project or addition on a previously developed site.

Regional Stormwater Management Facility: Stormwater management facilities designed to control stormwater runoff from multiple properties, where the owners or developers of the individual properties may assist in the financing of the facility, and the requirement for site-specific on-site controls may be either eliminated or reduced.

Responsible Party: The owner or owner's agent.

Runoff: The flow of surface water resulting from precipitation.

Runoff Reduction: The interception, evapotranspiration, infiltration or capture and reuse of stormwater runoff.

Single Family Residential: The development or redevelopment of a lot containing a single one or two family dwelling as defined in.

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

Stormwater Better Site Design: Nonstructural site design approaches, practices and techniques that can reduce a site's impact on the watershed and can provide for nonstructural stormwater management. Stormwater better site design includes conserving and protecting natural areas and greenspace, reducing impervious cover and using natural features for stormwater management.

Stormwater Management: The collection, retention, detention, conveyance, storage, treatment and disposal of stormwater runoff in a manner intended to prevent increased flooding, streambank channel erosion, habitat degradation and water quality degradation, and to enhance and promote the public health, safety and general welfare.

Stormwater Management Facility: Any infrastructure that controls or conveys stormwater runoff.

Stormwater Management Measure: Any stormwater management facility or nonstructural stormwater practice.

Stormwater Management Plan: The document(s) describing how existing runoff characteristics will be affected by a land development project and containing measures for complying with the provisions of this ordinance.

Stormwater Management Site Plan: An engineering drawing depicting how and where stormwater management facilities and practices will be installed on the site.

Stormwater Management System: The entire set of structural and nonstructural stormwater management facilities and practices that are used to capture, convey and control the quantity and quality of the stormwater runoff from a site.

Stormwater Retrofit: A stormwater management practice designed for a currently developed site that previously had either no stormwater management practice in place or a practice inadequate to meet the stormwater management requirements of the site.

Structural Stormwater Control: A structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release, or the velocity of flow of such runoff.

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

Section 5-104. Applicability.

a. Development and Redevelopment. This Article shall apply to all development and redevelopment, except single family residential development, unless exempt pursuant to Section 5-104(d). The standards found in this Article apply to any new development or redevelopment site that meets one or more of the following:

1. New development that involves the creation of any impervious cover; or
2. New development that involves land development activities of one disturbed acre or more;
or

3. Redevelopment that involves land development activity of one disturbed acre or more;
or
 4. Redevelopment that includes the creation, addition, or demolition and replacement of 500 square feet or more of impervious cover; or
 5. Demolition that leaves in place more than 500 square feet of impervious cover within the area of demolition, unless building permit application for replacement structure or use which includes appropriate stormwater management is in place.
- b. Single Family Residential. Section 5-113(a), Section 5-113(b), Section 5-115, and Section 5-116 of this Article shall apply to a single family residential development, unless exempt pursuant to Section 5-104(d). For the purposes of this Article, a single family residential development shall include the following:
1. Development or redevelopment of any site involving the construction of a single- family residence; or
 2. Addition or modification that involves the creation, addition, or demolition and replacement of 1,000 square feet or more of impervious cover to any single family residential site.

A single family residential development shall not include development or redevelopment of a site intended to be developed as a larger common plan of development or sale as defined in Section 22-1 of the City of Austell's Comprehensive Zoning Ordinance.

- c. High risk operation and hotspot. This Article shall apply to any new development or redevelopment, regardless of size, that meets the definition of Hotspot or High Risk Operation, which includes, but is not limited to, fueling stations or industrial facilities with potential for runoff pollution.
- d. Exemptions. The following activities are exempted from Sections (a), (b) and (c) above, but shall be subject to the minimum requirements in Section 5-116:
1. Agricultural or silvicultural land management activities within properly zoned agricultural areas resulting in less than 1,000 square feet of impervious surface;
 2. Regrading or reshaping existing athletic fields or public parks resulting in less than 1,000 square feet of new impervious surface;
 3. Installations, repairs, or modifications to storm drains, drainage structures, storm water management facilities, or other drainage facilities to improve drainage capabilities;
 4. Installations, repairs, or modifications to sanitary sewer facilities to expand or improve sanitary sewer service capabilities;

5. Work specifically related to the installation, repair, or maintenance of utility service connections, including but not limited to sewer, water, electric, telephone, and gas, to existing facilities;
6. Installations of dumpster pads with drains connected to sanitary sewers;
7. Installations or modifications to existing structures to accommodate Americans with Disability Act requirements, including but not limited to elevator shafts, handicapped access ramps and parking, and enlarged entrances or exits;
8. Installations or modifications to existing structures to address health and safety issues or compliance with City of Austell Code of Ordinance requirements, including but not limited to fire escapes, stairways, and additional exits;
9. Installations to existing structures of incidental mechanical or electrical equipment placed on areas of previously existing impervious surfaces;
10. Installation of hardscape less than 5,000 square feet, such as uncovered parking, pedestrian, or patio areas, which utilize pervious pavement or other appropriate infiltration techniques;
11. Incidental maintenance or repair of existing impervious paved surfaces which impact less than 1,000 square feet;
12. Overlays or resurfacing of existing impervious paved surfaces;
13. Any work permitted in the public rights of way such as the installations of sidewalks, driveway aprons, and street cuts, or projects on private property necessitated by activities in the public rights of way;
14. Sidewalks or trails 15 feet wide or less where runoff is directed via sheet flow toward vegetated areas at least twice as wide as the paved area, provided that the potential for erosion is adequately addressed;
15. Stream bank stabilization or restoration activities, or activities solely for the purpose of environmental remediation;
16. Replacement of an existing driveway to access a single family residential development; or
17. Any minor work which in the professional judgment of the Director, or his/her designee, is deemed in the best interest of the City of Austell.

Section 5-105. Designation of Ordinance Administrator.

The Director of Austell Public Works, or his/her designee, is hereby appointed to administer and implement the provisions of this Article.

Section 5-106. Reserved.**Section 5-107. Reserved.****Section 5-108. Stormwater Design Manual.**

Austell Public Works will utilize the policy, criteria and information, including technical specifications and standards, in the Georgia Stormwater Management Manual, the applicable sections of the Coastal Stormwater Supplement and any relevant rules, regulations, or policies of the City of Austell including pertinent sections of the City of Austell Code of Ordinances, or procedures of Austell Public Works in effect at the time of application for the proper implementation of the requirements of this ordinance. The manual may be updated and expanded periodically based on improvements in science, engineering, monitoring and local maintenance experience.

Section 5-109. Permit Procedures and Requirements.

- a. No owner or developer shall perform any land development activities without first meeting the requirements of this Article prior to commencing the proposed activity.
- b. Any owner or developer proposing a land development activity shall obtain a building permit or other appropriate approval from the City of Austell.
- c. A permit application shall be accompanied by the following items in order to be considered:
 - a. Stormwater consultation meeting certification in accordance with Section 5-110;
 - b. Stormwater management plan in accordance with Section 5-111;
 - c. Inspection and maintenance agreement in accordance with Section 5-117;
 - d. Performance bond in accordance with Section 5-118, if applicable; and
 - e. Permit application and plan.
- d. The approved stormwater management plan shall obligate the responsible party to accomplish all land clearing, construction, development and drainage in accordance with the stormwater management plan. Any and all permits for development activities may be revoked at any time if the construction of stormwater management facilities is not conducted in strict accordance with approved plans.
- e. Applicant or responsible party shall obtain all state and federal permits required for the proposed development activity in addition to the plans and permits required by Austell Public Works.

- f. Austell Public Works shall inform the applicant or responsible party whether the application, stormwater management plan and inspection and maintenance agreement are approved or disapproved. If either the permit application, stormwater management plan or inspection and maintenance agreement are disapproved, Austell Public Works shall notify the applicant of such fact in writing. The applicant may then revise any item not meeting the requirements hereof and resubmit the same.
- g. Upon a finding by Austell Public Works that the permit application, stormwater management plan and inspection and maintenance agreement meet the requirements of this ordinance, the Austell Public Works may issue a permit for the land development project, provided all other legal requirements for the issuance of such permit have been met.
- h. Notwithstanding the issuance of the permit, in conducting the land development project, the applicant or responsible party shall be subject to the following requirements:
 - a. The applicant or responsible party shall comply with all applicable requirements of the approved plan and this ordinance and shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan;
 - b. The land development project shall be conducted only within the area specified in the approved plan;
 - c. Austell Public Works shall be allowed access to the site for inspection and enforcement; and
 - d. No changes may be made to an approved plan without review and written approval by Austell Public Works.
- i. Upon completion of the project, the applicant or responsible party shall submit the stormwater engineer's certification and as-built plan as required by Section 5-119(b). If the as-built differs substantially from the approved plan but is still acceptable to Austell Public Works, then the applicant or responsible party shall update the recorded inspection and maintenance agreement upon approval of Austell Public Works."

Section 5-110. Stormwater Consultation Meeting.

- a. When a development, redevelopment or demolition of a site that meets at least one of the applicability criteria found in Section 5-104(a) is proposed, the owner, developer, engineer, or agent shall participate in a consultation meeting with Austell Public Works to discuss the post-development stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and ideas for stormwater management designs utilizing green infrastructure and runoff reduction techniques. The owner, developer, engineer, or agent shall receive a consultation meeting certification at the conclusion of the consultation meeting.

This consultation meeting shall be held prior to approval of a preliminary plat or the submittal of an application for a permit in accordance with the following procedure:

1. Austell Public Works shall schedule a consultation meeting within five (5) business days from the date a written meeting request is received.
 2. Failure of Austell Public Works to schedule a consultation meeting within the time required by this section shall waive the requirements of Section 5-110(a) and a copy of the written meeting request submitted to Austell Public Works by the owner, developer, engineer, or agent attached to the permit application shall meet the requirement of the consultation meeting certification in Section 5-109(c)(1).
 3. If no consultation meeting is requested or attended by the owner, developer, engineer, or agent prior to the submittal of a permit application, Austell Public Works may delay review of the permit application until such meeting is held; provided however that when the land development activity involves only an application for the erection of a structure governed by City of Austell Comprehensive Zoning ordinance, the requirements of Section 5-109(c)(1) and Section 5-110(a) shall not apply.
- b. To assist Austell Public Works' review of the land development project and to assist the applicant or responsible party with the creation of a stormwater management plan, the following information should be submitted prior to or at the time of the consultation meeting:
1. Existing conditions / proposed site plans. Existing conditions and proposed site layout sketch plans, which shall illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys; boundaries of existing predominant vegetation and proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas, and other impervious surfaces.
 2. Infiltration rates. Infiltration rates shall be determined by soil surveys, on-site soil analysis, or percolation test. If a site has been previously developed or graded or contains urban soil types, a percolation test is required.
 3. Natural resources inventory. A written or graphic inventory of the natural resources in existence prior to the commencement of the project. This inventory shall address resources both on the site and in the surrounding area that is or may be impacted by the project. This inventory shall also include a description of soil conditions, forest cover, topography, wetlands, and other native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as wetlands, lakes, ponds, floodplains, stream buffers and other setbacks, including but not limited to drinking water well setbacks and septic setbacks. Particular attention should be paid to environmentally sensitive features that present constraints for development.

4. Stormwater management system concept plan. A written or graphic concept plan of the proposed post-development stormwater management system that identifies the scope and magnitude of the project and related stormwater requirements, and identifies how stormwater better site design techniques will be used to reduce the need for structural stormwater controls. The plan shall also include: preliminary selection and location of proposed structural stormwater controls; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of proposed stream channel modifications, such as bridge or culvert crossings.

Section 5-111. Submittal Requirements for Stormwater Management Plans.

- a. The stormwater management plan shall detail how post-development stormwater runoff will be controlled or managed and how the proposed project will meet the requirements of this ordinance, including the performance criteria set forth in Section 5-113.
- b. This plan shall be in accordance with the criteria established in this section and must be submitted with the stamp and signature of a Professional Engineer licensed in the State of Georgia, who must verify that the design of all stormwater management facilities and practices meet the submittal requirements outlined in the Georgia Stormwater Management Manual, the Coastal Stormwater Supplement, and the City of Austell's submittal requirements for commercial and single-family residential development. Plans and studies shall be presented in a format that itemizes each of the requirements in Section 5-111(c), including performance criteria set forth in Section 5-113.
- c. The stormwater management plan must ensure that the requirements and criteria in this ordinance are being complied with and that opportunities are being taken to minimize adverse post-development stormwater runoff impacts from the development. The plan shall consist of maps, narrative, and supporting design calculations (hydrologic and hydraulic) for the proposed stormwater management system. The plan shall include all of the applicable design requirements and forms found in the Georgia Stormwater Management Manual, the Coastal Stormwater Supplement, and the City of Austell's submittal requirements for commercial and single-family residential development. This includes but is not limited to the following:
 1. Common address and legal description of site;
 2. Vicinity map;
 3. Existing conditions/proposed site plans. Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys; boundaries of existing predominant vegetation and proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces;

4. Infiltration rates. Infiltration rates shall be determined by soil surveys, on-site soil analysis, or a percolation test. If site has been previously developed or graded or contains urban soil types, a percolation test is required;
5. Natural resources inventory. A written or graphic inventory of the natural resources in existence prior to the commencement of the project. This inventory shall address resources both on the site and in the surrounding area that is or may be impacted by the project. This inventory shall also include a description of soil conditions, forest cover, topography, wetlands, and other native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as wetlands, lakes, ponds, floodplains, stream buffers and other setbacks, including but not limited to drinking water well setbacks and septic setbacks. Particular attention should be paid to environmentally sensitive features that present constraints for development;
6. Existing conditions hydrologic analysis. The existing condition hydrologic analysis for stormwater runoff rates, volumes, and velocities, in accordance with the Georgia Stormwater Management Manual, which shall include: a topographic map of existing site conditions with the drainage basin boundaries indicated; acreage, soil types and land cover of areas for each sub-basin affected by the project; all perennial and intermittent streams and other surface water features; all existing stormwater conveyances and structural control facilities; direction of flow and exits from the site; analysis of runoff provided by off-site areas upstream of the project site; and methodologies, assumptions, site parameters and supporting design calculations used in analyzing the existing conditions site hydrology. For redevelopment sites, predevelopment conditions shall be modeled using the established guidelines in Section 5-113;
7. Post-development hydrologic analysis. The post-development hydrologic analysis for stormwater runoff rates, volumes, and velocities, which shall be calculated in accordance with the Georgia Stormwater Management Manual, and include: a topographic map of developed site conditions with the post-development drainage basin boundaries indicated; total area of post-development impervious surfaces and other land cover areas for each sub-basin affected by the project; calculations for determining the runoff volumes that need to be addressed for each sub-basin for the development project to meet the post-development stormwater management performance criteria in Section 5-113; location and boundaries of proposed natural feature protection and conservation areas; documentation and calculations for any applicable site design credits that are being utilized; and methodologies, assumptions, site parameters and supporting design calculations used in analyzing the existing conditions site hydrology. For a subdivision of land or planned development, post-development runoff volumes, rates, and velocities shall be calculated based on the built out conditions of the entire parcel to be subdivided, regardless of future ownership of individual lots. Estimates of impervious surfaces shall be made based on maximum allowable lot coverage in accordance with the City of Austell's Comprehensive Zoning ordinance when meeting the performance criteria in Section 5-113 (c) through Section 5-113 (i). The developer of said subdivided parcel may provide the Runoff Reduction/Water Quality measures in accordance with Section 5-113 (a) and Section 5-113 (b) for individual lots and must be reflected accordingly on the final plat;

8. Stormwater management system. The description, scaled drawings and design calculations for the proposed post-development stormwater management system, which shall include: a map and/or drawing or sketch of the stormwater management facilities, including the location of nonstructural site design features and the placement of existing and proposed structural stormwater controls, including design water surface elevations, storage volumes available from zero to maximum head, location of inlet and outlets, location of bypass and discharge systems, and all orifice/restrictor sizes; a narrative describing how the selected structural stormwater controls will be appropriate and effective; cross-section and profile drawings and design details for each of the structural stormwater controls in the system, including supporting calculations to show that the facility is designed according to the applicable design criteria; a hydrologic and hydraulic analysis of the stormwater management system for all applicable design storms (including stage-storage or outlet rating curves, and inflow and outflow hydrographs); documentation and supporting calculations to show that the stormwater management system adequately meets the post-development stormwater management performance criteria in Section 5-113; drawings, design calculations, elevations and hydraulic grade lines for all existing and proposed stormwater conveyance elements including stormwater drains, pipes, culverts, catch basins, channels, swales and areas of overland flow; and where applicable, a narrative describing how the stormwater management system corresponds with any watershed protection plans, TMDL implementation plans, and/or local greenspace protection plan;
9. Post-development downstream analysis. A downstream peak flow analysis which includes the assumptions, results and supporting calculations to show safe passage of post-development design flows downstream. The analysis of downstream conditions in the report shall address each and every point or area along the project site's boundaries at which runoff will exit the property. The analysis shall focus on the portion of the drainage channel or watercourse immediately downstream from the project. This area shall extend downstream from the project to a point in the drainage basin where the project area is ten percent of the total basin area. In calculating runoff volumes and discharge rates, consideration may need to be given to any planned future upstream land use changes. The analysis shall be in accordance with the stormwater design manual;
10. Construction phase erosion, sedimentation, and pollution control plan. An erosion, sedimentation, and pollution control plan in accordance with the City of Austell Soil Erosion, Sedimentation, and Pollution Control ordinance, the Georgia Erosion and Sedimentation Control Act, and any National Pollutant Discharge Elimination System permit for construction activities. The plan shall also include information on the sequence/phasing of construction and temporary stabilization measures and temporary structures that will be converted into permanent stormwater controls. Prior to the approval of the stormwater management plan, the applicant or responsible party shall submit a proposed staged construction and inspection control schedule for approval; otherwise, the construction and inspection control schedule will be for the entire drainage system. No stage work related to the construction of stormwater management facilities or Best Management Practices shall proceed until the next proceeding stage of work, according to the sequence specified in the approved staged construction and inspection control

schedule, as inspected and approved. Runoff reduction and water quality measures shall be installed in the final phase of construction to prevent clogging;

11. Stormwater landscaping plan. A detailed landscaping and vegetation plan describing the woody and herbaceous vegetation that will be used within and adjacent to stormwater management facilities and practices. The landscaping plan must also include: the arrangement of planted areas, natural and greenspace areas and other landscaped features on the site plan; information necessary to construct the landscaping elements shown on the plan drawings; descriptions and standards for the methods, materials and vegetation that are to be used in the construction; density of plantings; descriptions of the stabilization and management techniques used to establish vegetation; and a description of who will be responsible for ongoing maintenance of vegetation for the stormwater management facility and what practices will be employed to ensure that adequate vegetative cover is preserved;
12. Operations and maintenance plan. Detailed description of ongoing operations and maintenance procedures for stormwater management facilities and practices to ensure their continued function as designed and constructed or preserved. This plan will identify the parts or components of a stormwater management facility or practice that need to be regularly or periodically inspected and maintained, and the equipment and skills or training necessary. The plan shall include a narrative describing how stormwater management system is designed to function, including capture, runoff control, water quality treatment, channel protection and flood protection, a narrative describing ongoing operations and maintenance procedures for all stormwater management facilities and practices as shown on the Stormwater Management Site Plan, an inspection and maintenance schedule, description of maintenance tasks, identification of responsible parties for ongoing maintenance, description of funding source, and a review of access and safety issues. Provisions for the periodic review and evaluation of the effectiveness of the maintenance program and the need for revisions or additional maintenance procedures shall be included in the plan;
13. Maintenance access easements. The applicant or responsible party must ensure access from public right-of-way to stormwater management facilities and practices requiring regular maintenance at the site for the purpose of inspection and repair by securing all the maintenance access easements needed on a permanent basis. Such access shall be sufficient for all necessary equipment for maintenance activities. Such easements shall be reflected in all plats and surveys;
14. Inspection and maintenance agreements. The owner must execute an inspection and maintenance agreement binding on all subsequent owners of land served by an on-site stormwater management facility or practice in accordance with Section 5-117; and
15. Evidence of acquisition of applicable local and non-local permits. The applicant or responsible party shall certify and provide documentation to Austell Public Works that all applicable environmental permits have been acquired for the site prior to approval of the site development and stormwater management plan.

Section 5-112. Off-Site Facilities.

- a. The stormwater management plan for each land development project shall provide for stormwater management measures located on the site of the project, unless provisions are made to manage stormwater by an off-site or regional stormwater management facility. The off-site or regional stormwater management facility, if applicable, must comply with the following:
 1. The off-site or regional stormwater management facility must be located on property legally dedicated for the purpose;
 2. The off-site or regional stormwater management facility must be designed and adequately sized to provide a level of stormwater quantity and quality control that is equal to or greater than that which would be afforded by on-site practices;
 3. There must be a legally-obligated entity responsible for long-term operation and maintenance of the off-site or regional stormwater facility; and
 4. On-site measures shall be implemented, where necessary, to protect upstream and downstream properties and drainage channels from the site to the off-site facility.
- b. A stormwater management plan that shows the adequacy of the off-site or regional stormwater management facility must be submitted to Austell Public Works.
- c. To be eligible for a modification, the applicant must demonstrate to the satisfaction of Austell Public Works that the use of an off-site or regional stormwater management facility will not result in the following impacts to upstream or downstream areas:
 1. Increased threat of flood damage to public health, life, and property;
 2. Deterioration of existing culverts, bridges, dams, and other structures;
 3. Accelerated streambank or streambed erosion or siltation;
 4. Degradation of in-stream biological functions or habitat; or
 5. Water quality impairment in violation of state water quality standards, and/or violation of any state or federal regulations.

Section 5-113. Performance Criteria for Stormwater Management.

For new developments, the following performance criteria shall be applied to the area of the site impacted by the proposed work. For redevelopment, the following performance criteria shall be applied to the area of the site impacted by the proposed work, provided that the impacted area does not exceed 35 percent of the previously developed area. If the impacted area exceeds 35 percent of the previously developed area, the following performance criteria shall be applied to the entire development, including the previously developed area:

- a. Stormwater runoff reduction. The stormwater runoff volume generated by the first 1.0” of rainfall shall be retained on-site in order to help maintain pre-development site hydrology and help protect the local watershed from several indirect impacts of the land development process, including decreased groundwater recharge, decreased base flow and degraded water quality. A stormwater management system is presumed to comply with this criteria if:
 1. It includes green infrastructure practices that provide for the interception and evapotranspiration, infiltration, or capture and reuse of stormwater runoff, that have been selected, designed, constructed and maintained in accordance with the information presented in the latest edition of the Georgia Stormwater Management Manual and applicable sections of the Coastal Stormwater Supplement; or constitutes an alternative practice responsibly designed and documented by the engineer to reproduce the intent of the Georgia Stormwater Management Manual and applicable sections of the Coastal Stormwater Supplement; and
 2. It is designed to provide the amount of stormwater runoff reduction from the runoff generated by the first 1.0” of rainfall as specified in the latest edition of the Georgia Stormwater Management Manual and applicable sections of the Coastal Stormwater Supplement.
- b. Water quality protection. All stormwater runoff generated from a site shall be adequately treated before discharge. It will be presumed that a stormwater management system complies with this requirement if it satisfies the stormwater runoff reduction criteria in Section 5-113(a). However, if any of the stormwater runoff volume generated by the first 1.0” of rainfall cannot be reduced or retained on the development site, due to site characteristics or constraints, such as, a high water table, surface bedrock, contaminated soils, low soil infiltration rates, or the presence of a High Risk Operation or Hotspot, the remaining volume shall be increased by a multiplier of 1.2 and shall be intercepted and treated in one or more stormwater management practices that provide at least an 80 percent reduction in total suspended solids loads in accordance with the following criteria:
 1. The practice shall be sized to treat the prescribed water quality treatment volume from the site, as defined in the Georgia Stormwater Management Manual;
 2. Appropriate structural stormwater controls or nonstructural management practices are selected, designed, constructed or preserved, and maintained according to the specific criteria in the Georgia Stormwater Management Manual and applicable sections of the

Coastal Stormwater Supplement; or constitutes an alternative practice responsibly designed and documented by the engineer to reproduce the intent of the Georgia Stormwater Management Manual and applicable sections of the Coastal Stormwater Supplement; and

3. Runoff from a High Risk Operation or Hotspot land use activity identified by Austell Public Works is adequately treated and addressed through the use of appropriate structural stormwater controls, nonstructural management practices and pollution prevention practices.
- c. Stream channel protection. Protection of stream channels from bank and bed erosion and degradation shall be provided by using all of the following approaches:
1. Preservation, restoration and/or reforestation with native vegetation of the applicable stream buffer pursuant to the City of Austell Stream Buffer ordinance.
 2. 24-hour extended detention storage of the one-year, 24-hour return frequency storm event; and
 3. Erosion prevention measures such as energy dissipation and velocity control.

For redevelopment projects that create, add, or demolish and replace less than 5,000 square feet of impervious surface and meet the performance criteria of Section 5-113 (a) and Section 5-113 (b), stream channel protection is not required.

- d. Overbank flooding protection. For new development (greenfield), overbank flood and property protection shall be provided by attenuating the post-development peak discharge rate to the pre-development rate up to the 25-year, 24-hour return frequency storm event.

For redevelopment, overbank flood and property protection shall be provided by reducing the peak discharge rate up to the 25-year, 24-hour storm event in accordance with the following formula:

$$\frac{\%PIC}{2} = \%PDRR$$

PIC = Pre-development Impervious Cover

PDRR = Peak Discharge Rate Reduction

For sites where previous demolition has removed impervious surfaces, pre-development peak discharge rate calculations and percentage of impervious coverage shall be calculated based on pre-demolition conditions. For sites that have been demolished and have remained fallow and stabilized with vegetation for a minimum of 5 years, they shall be considered as having pre-development conditions of 20% impervious cover for purposes of calculating peak discharge rate reduction.

For land development permitted post-2004 and served by appropriate stormwater management facilities, subsequent redevelopment of the same area is not required to further reduce the peak discharge rate, provided that the site continues to meet the reduction previously achieved.

For redevelopment projects that create, add, or demolish and replace less than 5,000 square feet of impervious surface and meet the performance criteria of Section 5-113(a) and Section 5-113 (b), overbank flooding protection is not required.

- e. Extreme flooding protection. Extreme flood and public safety protection shall be provided by attenuating and safely conveying the 100-year, 24-hour return frequency storm event without any increase in peak discharge rate, such that flooding is not exacerbated.

For redevelopment projects that create, add, or demolish and replace less than 5,000 square feet of impervious surface and meet the performance criteria of Section 5-113 (a) and Section 5-113 (b), extreme flooding protection is not required.

- f. Structural stormwater controls.

- 1. All structural stormwater management facilities shall be selected and designed using the appropriate criteria from the Georgia Stormwater Management Manual and applicable sections of the Coastal Stormwater Supplement. All structural stormwater controls must be designed appropriately to meet their intended function. For other structural stormwater controls not included in the Georgia Stormwater Management Manual, or for which pollutant removal rates have not been provided, the effectiveness and pollutant removal of the structural control must be documented through prior studies, literature reviews, or other means and receive approval from Austell Public Works before being included in the design of a stormwater management system. In addition, if hydrologic or topographic conditions, or land use activities warrant greater control than that provided by the minimum control requirements, Austell Public Works may impose additional requirements deemed necessary to protect upstream and downstream properties and aquatic resources from damage due to increased volume, frequency, and rate of stormwater runoff or increased nonpoint source pollution loads created on the site in question.

- 2. Applicant or responsible party shall consult the Georgia Stormwater Management Manual for guidance on the factors that determine site design feasibility when selecting and locating a structural stormwater control.

- g. Stormwater credits for nonstructural measures. The applicant or responsible party may take credit for the use of stormwater better site design practices and reduce the water quality volume and runoff reduction requirements. The site design practices that qualify for this credit and the criteria and procedures for applying and calculating the credits are included in the Georgia Stormwater Management Manual and applicable sections of the Coastal Stormwater Supplement.

- h. Drainage system guidelines. Stormwater conveyance facilities, which may include but are not limited to culverts, stormwater drainage pipes, catch basins, drop inlets, junction boxes, headwalls, gutter, swales, channels, ditches, and energy dissipaters shall be provided when necessary for the protection of public right-of-way and private properties adjoining project sites and/or public rights-of-way. Stormwater conveyance facilities that are designed to carry runoff from more than one parcel, existing or proposed, shall meet the following requirements:
1. Methods to calculate stormwater flows shall be in accordance with the Georgia Stormwater Management Manual;
 2. All culverts, pipe systems and open channel flow systems shall be sized in accordance with the stormwater management plan, pursuant to Section 5-111, using the methods included in the Georgia Stormwater Management Manual; and
 3. Design and construction of stormwater conveyance facilities shall be in accordance with the criteria and specifications found in the Georgia Stormwater Management Manual and applicable sections of the Coastal Stormwater Supplement.
- i. Rules for dam safety and any other applicable federal, state, or local requirement. Any land development activity that involves a site which proposes a dam shall comply with the Georgia Safe Dams Act and Rules for Dam Safety as applicable.

Section 5-114. High Risk Operation and Hotspot Requirements.

In addition to the provisions of this Article, developments and redevelopments that meet the definition of High Risk Operation or Hotspot shall meet the following criteria:

- a. No portion of the area of risk shall bypass the stormwater management system;
- b. At a minimum, treatment method must be as specified in the Georgia Stormwater Management Manual and be designed for the specific pollutant of risk; and
- c. The Director may, at his/her discretion, create additional and specific policies regarding these types of operations.

Section 5-115. Single Family Residential Plan Requirements.

In addition to the requirements in Sections 5-113(a), 5-113(b), and 5-116, single family residential developments not otherwise exempt from this Article, under Section 5-104(d), shall submit a grading plan and an erosion, sediment, and pollution control plan to Austell Public Works identifying the following:

- a. Existing and proposed ground contours and elevations;
- b. Sanitary and storm sewers, structures and easements;

- c. configuration and finished floor elevations for existing and proposed building structures;
- d. Location, configuration and finished elevations for existing and proposed paved areas;
- e. Erosion and sediment control practices in conformance with the Manual for Erosion and Sediment Control in Georgia, Chapter 6; and
- f. Plan shall be signed and sealed by State of Georgia registered architect, landscape architect, engineer or land surveyor.

Section 5-116. Minimum Requirements.

For all development and redevelopment activities, including single family residential and those which are otherwise exempt from this Article, the following minimum requirements shall apply:

- a. Lots and buildings shall be developed in a manner to ensure that storm water exiting individual parcels or lots under post-developed conditions does not adversely impact the adjacent parcels or lots as a result of concentrated flows, flooding, erosion, or deposits of silt or sediment;
- b. The stormwater discharge from a downspout, cistern, or any water collection device shall be located a distance of no less than 10 feet from common property line and oriented so direction of concentrated flow is not toward the adjacent property line;
- c. Discharge from any downspout described in (a) must be dissipated, infiltrated, or diverted such that flows will not be concentrated; and
- d. No person shall erect, construct, or otherwise permit any obstruction that prevents the natural or contained flow of water to any component of the stormwater system of the City of Austell, unless such obstruction is allowed as part of a permit approved pursuant to this article.

Section 5-117. Stormwater Management Inspection and Maintenance.

- a. Prior to the issuance of any permit for a land development activity requiring a stormwater management facility or practice hereunder for which Austell Public Works requires ongoing maintenance, the owner or responsible party shall execute an inspection and maintenance agreement. Such agreement shall be submitted prior to the issuance of any such permit and shall be binding on all appropriate successors in title of the site.

Inspection and maintenance agreements may terminate or be amended by subsequent development approved by Austell Public Works. Any applicant for development will be required to obtain an inspection and maintenance agreement for all proposed and existing stormwater management facilities on the property.

- b. The inspection and maintenance agreement must be approved by Austell Public Works; and upon approval, recorded in the deed records of the Superior Court of Cobb County or Douglas County, whichever is applicable, prior to issuance of permit.
- c. Responsibility for the operation and maintenance of the stormwater management facility or practice shall remain with the property owner and shall pass to any successor in title. If portions of the site are sold or otherwise transferred, the inspection and maintenance responsibility shall pass to the appropriate successor in title. Such transfers shall designate for each portion of the site, the responsible party to be permanently responsible for its inspection and maintenance and shall be recorded in the deed records for the property. The inspection and maintenance agreement shall identify by name or official title the person responsible for carrying out the inspection and maintenance.
- d. Where a stormwater maintenance facility exists on any property to be subdivided, including, but not limited to, subdivisions, planned developments, multi-family developments, or mixed use developments, the facility shall be owned in accordance with the following:
 1. If a property owners' association is created, in accordance with the Georgia Property Owners' Association Act (O.C.G.A. § 44-3-220, et seq.), the stormwater maintenance facility shall be treated as a common area, and the following provisions, at a minimum, shall be included in the property owners' association's bylaws or covenants:
 - a. Governance by the Georgia Property Owners' Association Act (O.C.G.A. § 44-3-220, *et seq.*) or a successor to that Act that grants lien rights to the association for maintenance expenses and tax obligations;
 - b. Automatic compulsory membership in the property owners' association of all lot purchasers and their successors in title;
 - c. A fair and uniform method of assessment and collection/payment for dues, maintenance, and related costs;
 - d. Perpetual and continued inspection and maintenance liability for the required stormwater facility;
 - e. Filing of all required covenants, declarations, and restrictions with the Clerk of the Superior Court of Cobb County or Douglas County, whichever is applicable; and
 - f. Prior arrangements for the transfer of ownership of the stormwater maintenance facility in fair and equal parts to all lot owners in the case of the property owners' association dissolving.
 2. If a property owners association is not created, the stormwater maintenance facility shall be owned by all appropriate successors in title to the land in the development sold or otherwise transferred. Costs associated with the inspection and maintenance of the stormwater facility shall be assessed equitably among all of the lots in the development.

- e. The inspection and maintenance agreement shall comply with the requirements of Austell Public Works and include, at a minimum, a description of the property, appropriate details of the stormwater management plan, an operations and maintenance plan, and a plan for annual inspection.
- f. In addition to enforcing the terms of the inspection and maintenance agreement Austell Public Works may also enforce all of the provisions for ongoing inspection and maintenance in Section 5-120 of this Article.
- g. Prior to the issuance of any permit for a land development activity requiring a stormwater management facility or practice hereunder, the owner or responsible party shall execute an indemnification and hold harmless agreement, in a form provided by Austell Public Works, which shall state at a minimum, that the owner or responsible party shall indemnify and hold harmless the City of Austell or Austell Public Works for any up-stream or down-stream damages due to structural, design, installation, maintenance or any other failure of the stormwater management facility.”

Section 5-118. Performance and Maintenance Bonds.

Bonding requirements shall be in parallel with those included for Erosion Control Application Requirements, pursuant to Section 5-50 B. 7. Prior to release of the bond, all stormwater facilities shall be intact and functioning as designed and in accordance with this Article.

Section 5-119. Construction Inspections of Post-Development Stormwater Management System.

- a. Inspections to ensure plan compliance during construction. Periodic inspections of the stormwater management system construction shall be conducted by the staff of Austell Public Works or conducted and certified by a professional engineer who has been approved by Austell Public Works. Construction inspections shall utilize the approved stormwater management plan for establishing compliance.
 - 1. All inspections shall be documented with written reports that contain the following information:
 - a. The date and location of the inspection;
 - b. Whether construction is in compliance with the approved stormwater management plan;
 - c. Variations from the approved construction specifications; and
 - d. Any other variations or violations of the conditions of the approved stormwater management plan.

2. If any violations are found, the responsible party shall be notified in writing of the nature of the violation and the required corrective actions.
- b. Final inspection and as built plans. Upon completion of a project, and prior to final inspection or issuance of a certificate of occupancy, the applicant or responsible party is responsible for certifying that the completed project is in accordance with the approved stormwater management plan. All applicants or responsible parties are required to submit an electronic format as determined by Austell, and a paper and electronic format of the actual “as built” plans for any stormwater management facilities or practices after final construction is completed. The plan must show the as built configuration for all stormwater management facilities and practices and must be certified by a professional engineer. A final inspection by Austell Public Works is required before the release of any performance securities can occur.

Section 5-120. Ongoing Inspection and Maintenance of Stormwater Facilities and Practices.

- a. Absence of an inspection and maintenance agreement. The absence of an inspection and maintenance agreement shall not relieve the owner or responsible party from performing proper maintenance and inspection of the stormwater management facility. If the owner or responsible party fails or refuses to meet the requirements of this ordinance, the Austell Public Works may correct the violation as provided in Section 5-120(e) hereof.
- b. Pre-existing facilities. For facilities constructed prior to the effective date of this ordinance, the owner or responsible party shall perform proper maintenance of the stormwater management facility as required by the indemnification agreement. If the owner or responsible party fails or refuses to meet the requirements of this ordinance, Austell Public Works may correct the violation as provided in Section 5-120(e) hereof.
- c. Maintenance inspection of storm water facilities and practices. The following shall apply to all sites regardless of the existence of an inspection and maintenance agreement:
 1. Stormwater management facilities and practices included in a stormwater management plan must undergo ongoing inspections to document maintenance and repair needs and ensure compliance with the requirements of the agreement, the plan and this Article.
 2. A stormwater management facility or practice shall be inspected on a periodic basis by the owner or responsible party. Such inspection shall be conducted in accordance with the approved inspection and maintenance agreement pursuant to Section 5-117, or, in the absence of an inspection and maintenance agreement, in accordance with the requirements of this Article. In the event that the stormwater management facility has not been maintained and/or becomes a danger to public safety or public health, the Austell Public Works shall notify the party responsible for carrying out the maintenance plan by registered or certified mail, or by delivery in person of a notice of violation to the person specified in the inspection and maintenance agreement. The notice shall specify the measures needed to comply with the agreement and the plan and shall specify the time within which such measures shall be completed. Failure of Austell Public Works to provide such notice shall not relieve the owner or responsible party from performing proper maintenance and

inspection of the stormwater management facility. If the owner or responsible party fails or refuses to meet the requirements of the inspection and maintenance agreement, Austell Public Works may correct the violation as provided in Section 5-120(e) hereof; and

3. An annual inspection shall be performed and attested to by a qualified professional (certified Level II Georgia Soil and Water Conservation Commission Specialist) with results reported to Austell Public Works. Any deficiencies noted in either operation or maintenance of the facility must be included in the report along with the proposed remedies required and a time table for their implementation. If substantial deficiencies are found, a follow-up inspection to confirm correction of said deficiencies shall be performed and reported to Austell Public Works.
 4. Inspection programs by Austell Public Works may be established on any reasonable basis, including but not limited to routine inspections, random inspections, inspections based upon complaints or other notice of possible violations, and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to reviewing maintenance and repair records, sampling discharges, surface water, groundwater, and material or water in stormwater management facilities, and evaluating the condition of stormwater management facilities and practices.
- d. Records of maintenance activities. Parties responsible for the operation and maintenance of a stormwater management facility shall maintain records of all maintenance and repairs and provide copies to Austell Public Works upon request.
 - e. Failure to maintain. If an owner or responsible party fails or refuses to meet the requirements of the inspection and maintenance agreement or indemnity agreement, Austell Public Works, after 30 days written notice (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours' notice shall be sufficient), may correct a violation of the design standards or maintenance requirements by performing the necessary work to place the facility or practice in proper working condition. Austell Public Works may assess the owner of the facility for the cost of repair work which shall be a lien on the property, and may be placed on the ad valorem tax bill for such property and collected in the ordinary manner for such taxes.

Section 5-121. Notice of Violation.

- a. Notice of violation. If Austell Public Works determines that an owner or responsible party has failed to comply with the terms and conditions of a permit, an approved stormwater management plan, inspection and maintenance agreement, indemnity agreement, or any provision of this Article, it shall issue a written notice of violation to such owner or other responsible party. Where a person is engaged in activity covered by this Article without having first secured a permit therefor, the notice of violation shall be served on the owner or the responsible party in charge of the activity being conducted on the site. The notice of violation shall contain:

1. The name and address of the owner or the applicant or the responsible party;
2. The address or other description of the site upon which the violation is occurring;
3. A statement specifying the nature of the violation;
4. A description of the remedial measures necessary to bring the action or inaction into compliance with the permit, the stormwater management plan or this ordinance and the date for the completion of such remedial action;
5. A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed; and
6. A statement that the determination of violation may be appealed to the municipal court by filing a written notice of appeal within 30 days after the notice of violation (except, that in the event the violation constitutes an immediate danger to public health or public safety, or where a person is taking action without a required permit, such a notice of violation must be appealed within 24 hours).

Section 54-122. Enforcement.

- a. Any action or inaction which violates the provisions of this Article or the requirements of an approved stormwater management plan or permit, may be subject to the enforcement actions outlined in this section. Any such action or inaction which is continuous with respect to time may be abated by injunctive or other equitable relief. The imposition of any of the penalties described in Section 5-123 may be in addition to and shall not prevent such equitable relief.
- b. All development and redevelopment activities, including single family residential development, shall comply with the following:
 1. Lots and buildings shall be developed in a manner to ensure that storm water exiting individual parcels or lots under post-developed conditions does not adversely impact the adjacent parcels or lots as a result of concentrated flows, flooding, erosion, or deposits of silt or sediment;
 2. The stormwater discharge from a downspout, cistern, or any water collection device shall be located a distance of no less than 10 feet from common property line and oriented so direction of concentrated flow is not toward the adjacent property line;
 3. Discharge from any downspout described in (a) must be dissipated, infiltrated, or diverted such that flows will not be concentrated; and
 4. No person shall erect, construct, or otherwise permit any obstruction that prevents the natural or contained flow of water to any component of the stormwater system of the City of Austell, unless such obstruction is allowed as part of a permit approved pursuant to this article.

Failure to comply with the requirements of this subsection shall be a violation of this Article subject to the enforcement provisions and penalties outlined in this Article.

- c. Right-of-entry for inspection. Austell Public Works may enter the property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter a property when it has a reasonable basis to believe that a violation of this ordinance is occurring or has occurred and to enter when necessary for abatement of a public nuisance or correction of a violation of this ordinance.

Section 5-123. Penalties.

- a. Penalties. In the event the remedial measures described in the notice of violation have not been completed within the time provided in the notice of violation for appeal to the municipal court, any one or more of the following actions or penalties may be taken or assessed against the person to whom the notice of violation was directed.
- b. Notice. Upon expiration of the notice, Austell Public Works may notify the person in violation of its intent to seek penalties and of any other enforcement to be taken under this section. Before taking any of the following actions or imposing any of the following penalties, Austell Public Works shall first notify the owner or other responsible party in writing of its intended action, and shall provide not more than 72 hours (except, that in the event the violation constitutes an immediate danger to public health or public safety, or taking action without a required permit 24 hours' notice shall be provided) to cure such violation. In the event the owner or other responsible party fails to cure such violation after such notice and cure period, Austell Public Works may take any one or more of the following actions or impose any one or more of the following penalties:
 1. Stop work order. Austell Public Works may issue a stop work order which shall be served on the owner or other responsible party. It shall stop all activities at the site except for the work required to remedy the violation or violations. The stop work order shall remain in effect until the owner or other responsible party has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein.
 2. Withhold certificate of occupancy. Austell Public Works shall notify Austell Community Development to refuse the issuance of a certificate of occupancy for the building or other improvements constructed or being constructed on the site until the owner or other responsible party has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

3. Suspension, revocation or modification of permit. Austell Public Works may suspend, revoke, or modify the permit authorizing the land development project. A suspended, revoked or modified permit may be reinstated after the owner or other responsible party has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein. Suspension, revocation or modification of a permit shall not prohibit the responsible party from taking the necessary remedial measures to cure the violations.
 4. Civil penalties. In the event the owner or other responsible party fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within the time provided in the notice of violation, or such greater period as Austell Public Works shall deem appropriate after Austell Public Works has taken one or more of the actions described above, Austell Public Works may issue a citation for the violation of this Article and impose a penalty not to exceed \$2,500.00 per violation, depending on the severity of the violation, for each day the violation remains unremedied after receipt of the notice of violation.
 5. Criminal penalties. For intentional and flagrant violations of this ordinance, Austell Public Works may issue a citation to the owner or other responsible party, requiring such person to appear in municipal court to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed \$1,000.00 or imprisonment for 60 days or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense. Imposition of criminal penalties shall be a separate and distinct action from the imposition of civil penalties pursuant to subsection (4) of this section.
 6. Liability. Implementation of this section does not reduce liability under any other applicable state or federal law, rule, or requirement.
- c. Remedies not exclusive. The remedies listed in this Article are not exclusive of any other remedies available under any applicable federal, state or local law. Each remedy listed in this subsection may be sought and imposed for each day of violation and Austell Public Works may seek cumulative remedies.

Adopted: January 5, 2015