

## **Chapter 34**

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#### **ARTICLE I. IN GENERAL**

**Secs. 34-1--34-30. Reserved.**

#### **ARTICLE II. NOISE CONTROL\***

**Sec. 34-31. Loud; unnecessary; unusual.**

It shall be unlawful for any person to make, continue or cause to be made or continued any loud, unnecessary or unusual noise or any noise that unreasonably or unnecessarily annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others in the city. The provisions of this section shall not apply to or be enforced against:

- (1) Any vehicle of the city while engaged in necessary public business.
- (2) Excavations or repairs of streets by or on behalf of the city or state at night when public welfare and convenience renders it impossible to perform such work during the day.
- (3) The reasonable use of amplifiers or loudspeakers in the course of public addresses that are noncommercial in character.

**Sec. 34-32. Enumeration.**

The following acts, among others, shall constitute a violation of this article, but such enumeration shall not be deemed to be exclusive:

- (1) *Horns; signaling devices.*
  - a. The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle on any street or public place in the city except as a danger warning;

- b. The creation of any unreasonably loud or harsh sound by means of any such signaling device and the sounding of any such device for an unreasonable period of time;
  - c. The use of any signaling device, except a police whistle or one operated by hand or electricity;
  - d. The use of any horn, whistle or other device operated by engine exhaust; and
  - e. The use of any such signaling device when traffic is held up for any reason.
- (2) *Radios, phonographs, other machines or devices that produce or reproduce sound.* The using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for convenient hearing for the person who is in the room, vehicle or chamber in which such machine or device is operated and who is a voluntary listener thereto. The operation of any such set, instrument, phonograph, machine or device between the hours of 9:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of 50 feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.
- (3) *Loudspeakers; amplifiers; other devices for production or reproduction of sound for advertising.* The using, operating or permitting to be played, used or operated any radio receiving set, musical instruments, phonograph, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure without a special permit from the city clerk or city council. Announcements over loudspeakers can only be made by the announcer, in person, and without the aid of any mechanical device.
- (4) *Yelling; shouting; hooting; whistling; singing.* Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 9:00 p.m. and 7:00 a.m. or at any time or place so as to annoy or disturb the quiet, comfort or repose of any persons in the vicinity.
- (5) *Animals and birds.* The keeping of any animal or bird that will disturb the comfort or repose of any persons in the vicinity by making long, continual or frequent noise.
- (6) *Steam whistle.* The blowing of any train whistle or steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of fire or danger or upon request of proper city authorities.
- (7) *Exhausts.* The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motorboat or motor vehicle except through a muffler or other

device that will effectively prevent loud or explosive noises therefrom.

- (8) *Defect in vehicle or load.* The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise.
- (9) *Loading; unloading; opening boxes.* The creation of a loud and excessive noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates and containers.
- (10) *Construction or repairing of buildings.* The erection, including excavation, demolition, alteration or repair of any building other than between the hours of 7:00 a.m. and 6:00 p.m. on weekdays, except on urgent necessity in the interest of public health and safety, and then only with a permit from the Butts County Community Development Department, which permit may be granted for a period not to exceed three days or less while the emergency continues and which permit may be renewed by the city council for periods of three days or less while the emergency continues. If the city council determines that the public health and safety will not be impaired by the erection, demolition, alteration or repair of any building or the excavation of streets and highways from 6:00 p.m. to 7:00 a.m., and further determines that loss or inconvenience would result to any party in interest, the city council may grant permission for such work to be done from 6:00 p.m. to 7:00 a.m., upon application made at the time the permit for the work is applied for or during the progress of the work.
- (11) *Schools, courts; churches, hospitals.* The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while they are in session or adjacent to any hospital, and which unreasonably interferes with the work of such institution, or which disturbs or unduly annoys patients in the hospital, provided that conspicuous signs are displayed about such institutions indicating the presence of such institutions.
- (12) *Hawkers; peddlers; vendors.* The shouting and crying of hawkers, peddlers and vendors which disturb the peace and quiet of the neighborhood.
- (13) *Noises to attract attention.* The use of any drum or other instrument or device for the purpose of attracting attention to any performance, show, or sale by creation of noise.
- (14) *Transportation of metal rails, pillars or columns.* The transportation of rails, pillars or columns of iron, steel or other material over and along streets and other public places upon carts, drays, cars, trucks or in any other manner so loaded as to cause loud noises or as to disturb the peace and quiet of such streets or other public places.
- (15) *Piledrivers, hammers, other such appliances.* The operation from 6:00 p.m. to 7:00 a.m. of any piledriver, steam shovel, pneumatic hammer, derrick, steam or electric hoist or other appliance, the use of which is attended by loud or unusual noise without a special permit from the city council.

- (16) *Blowers.* The operation of any noise-creating blower or power fan or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases of fluids, unless the noise from such blower or fan is muffled and such engine is equipped with a muffler device sufficient to deaden such noise.
- (17) *Sound trucks.* The use of mechanical loudspeakers or amplifiers on trucks or other moving or standing vehicles for advertising or other commercial purposes; the use of sound trucks for noncommercial purposes during such hours or in such places or with such volume as would constitute such use a public nuisance.

**Sec. 34-33. Abatement by police officer.**

Upon a valid complaint or actual observance by a police officer, the police officer may take reasonably necessary steps to abate any noise or disturbance.

**Sec. 34-34. Failure to appear for trial; arrest; bond.**

No person accused of a violation of this article shall be arrested prior to trial, but any defendant who fails to appear for trial shall be arrested thereafter on a warrant by the magistrate and required to post a bond for their future appearance.

**Sec. 34-35. Sanctions, penalties and remedies.**

Nothing in this article shall prevent the city council from bringing any civil action for injunction, mandamus or other proceedings to prevent, correct or abate any violation of this article. No sanction, penalty or remedy prescribed in this article shall be considered exclusive of any other remedy, but shall be available in addition to any other sanction, penalty or remedy of law.

**Secs. 34-36--34-70. Reserved.**

**ARTICLE III. NUISANCES\***

**DIVISION 1. GENERALLY**

**Sec. 34-71. Defined.**

A nuisance is anything within the city that causes hurt, inconvenience or damage to another, and the fact that the act done may otherwise be lawful shall not keep it from being a nuisance. The inconvenience complained of shall not be fanciful or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable person. Any such nuisance may be abated as provided in this article.

**Sec. 34-72. Enumeration.**

- (a) The various nuisances described and enumerated in this section shall not be deemed to be

exclusive, but shall be in addition to all other nuisances described and prohibited in this Code.

- (b) Nuisances generally. The following conditions may be declared to be nuisances:
  - (1) Things interfering with peace or comfort. Sounds, animals or things that interfere with the peace or comfort or disturb the quiet of the community.
  - (2) Obnoxious, offensive odors. The emission of obnoxious and offensive odors; the tainting of the air rendering it offensive or unwholesome so as to affect the health or comfort of reasonable persons residing in the neighborhood thereof.
  - (3) Discharging of offensive matter. The placing or throwing or discharging from any house or premises and flow from or out of any house or premises, of any filthy, foul or offensive matter or liquid of any kind, into any street, alley or public place, or upon any adjacent lot or ground.
  - (4) Water pollution. The obstruction or pollution of any watercourse or source of water supply in the city.
  - (5) Emission of dense smoke. The emission of dense smoke from any fire, chimney, engine, oil burner or other agency in the city so as to cause disturbance or discomfort to the public. For the purpose of testing and grading the density of smoke, the Ringelmann Smoke Chart as published and used by the United States Geological Survey shall be the standard for such grading, and smoke shall be defined and declared to be dense when it is of a degree of density of number three on the chart, or greater, for more than six minutes in any one hour, whether such period of time is consecutive or not.
  - (6) Vacant lots. Any vacant lot whereon debris is permitted to accumulate and remain in such a manner as to create a fire hazard or other hazard to the public health, safety and welfare.
  - (7) Nonconforming structures and machines. Any building, business, thing, machine or machinery, erected, repaired, conducted, maintained, operated or used contrary to or in violation of any of the fire and safety regulations of this Code, state law or city ordinance.
  - (8) Animal enclosures. Any enclosure in which any animals are kept, dog kennels or runs and other animal or fowl pens wherein manure, dung, filth or litter is allowed to accumulate.
  - (9) Dead animals. The carcass of any dead animal of any kind on any premises within the city.
  - (10) Unoccupied buildings. Unoccupied buildings that are not properly whitewashed or cleansed.
  - (11) Unsafe vehicles; machinery; equipment or personal property. Unsheltered storage of old, unused, stripped, junked, and other automobiles not in good and safe operating condition, and of any other vehicles, machinery, implements, and/or equipment and personal property of any kind that is no longer safely usable for the purposes for which it was manufactured

for a period of 10 days or more (except in licensed junkyards). The absence of a license plate for the current year and/or the absence of a current motor vehicle registration shall be prima facie evidence that such vehicle is junked.

- (12) Gutters or spouts. Any gutter or spout that conveys filth into any street, lane or alley of the city.
- (13) Stagnant water on premises;
- (14) Depositing trash, garbage, refuse, furniture, or other household goods, etc., on private or public property. The depositing and leaving on private or public property of trash, garbage, refuse, furniture, household goods, scrap building materials, paper, cardboard containers, brick, cement rubbish, tree residue, cans, containers, or any other rubbish and trash which is a menace to public health and safety in the City.
- (15) Accumulation of junk. The retention, storage or accumulation of any automobile / truck, motor vehicle, mechanized equipment / parts, boats, machinery, appliance, scrap metal, or other scrap material on property for a period of ten days or longer that prevents its use for the purpose for which it was originally manufactured so as to affect the visual aesthetics, public health, safety and welfare of reasonable persons residing in the neighborhood or community thereof.
- (16) Prohibited outside storage and use. No person shall permit or allow the outside storage of or use of appliances, household fixtures, furniture, tires, auto and truck parts or similar items designed for indoor use.
- (17) Standards. It shall be a violation of this section for any landowner or person leasing, occupying or having control of any real property, to keep, maintain, deposit or perform or permit on such property the outdoor use, outdoor storage or outdoor placement of household appliances, household furniture, or household furnishings, unless such items are designed for outdoor use and are used on the premises for purposes of the landowner or person leasing, occupying or having control of the property. The term "outdoor" includes a porch. However, the use, storage or placement of household appliances, household furniture or household furnishings on a porch is not prohibited if the porch is completely enclosed by fully intact glass or fully intact screens. A porch is a platform completely covered by a roof located at and attached to or abutting against the entrance to a building.
- (18) Any dead or decaying matter, weeds, vegetation or any fruit, vegetable, animal or rodent upon premises which is odorous or capable of causing disease or annoyance to the inhabitants of the city;
- (19) The generation of smoke and fumes in sufficient amount to cause an odor or annoyance to the inhabitants of the city;
- (20) The pollution of public water or the injection of matter into the sewage system that is damaging thereto;

- (21) Maintaining a dangerous or diseased animal or fowl;
  - (22) Obstruction of a public street, highway or sidewalk without a permit;
  - (23) Loud or unusual noises which are detrimental or annoying to the public, including, without limitation, unusual loud disturbances in or around churches or multiple-family complexes such as loud music and other activities in swimming pool and clubhouse areas;
  - (24) All walls, trees and buildings that may endanger persons or property;
  - (25) Any business or building where illegal activities are habitually and commonly conducted in such a manner as to reasonably suggest that the owner or operator of the business or building was aware of the illegal activities and failed to reasonably attempt to prevent those activities;
  - (26) Unused iceboxes, refrigerators and the like unless the doors, latches or locks thereof are removed;
  - (27) Any trees, shrubbery or other plants or parts thereof which obstruct clear, safe vision on roadways and intersections of the city;
  - (28) Obstruction of a storm water drainage system or drainage easement;
  - (29) The keeping of dilapidated furniture, appliances, machinery, bicycles and other toys, junk, debris or other equipment, including automobiles which are either in a wholly or partially wrecked, junked, dismantled or inoperative condition upon premises which are not completely enclosed within a building;
  - (30) Tall grass, weeds and bushes, other undergrowth, and trash and debris of any type upon the premises of any dwelling unit or other structure, place or vacant lot; and
  - (31) Any other condition constituting a nuisance under state law.
- (c) Nuisances related to dwellings, buildings or structures. The following conditions relating to dwellings, buildings or structures may be declared to be nuisances and shall be governed by the provisions of Chapter 16 of the City of Flovilla Code of Ordinances.
- (1) Any premises, dwelling or other building or structure that:
    - a. Is unfit for human habitation or for commercial, industrial or business occupancy or use;
    - b. Is not in compliance with the applicable state minimum standard codes, any federal, state, county, city or local building, fire, life safety or other codes relative to the safe use of real property and real property improvements or general nuisance law;

- c. Constitutes a hazard to the health, safety and welfare of the people of the city; and
  - d. For which public necessity exists for the repair, closing or demotion of such dwelling, building or structure;
- (2) Any premises, dwelling or other building or structure where there exists a condition or use of real estate that renders adjacent real estate unsafe or inimical to safe human habitation;
- (3) Any premises, dwelling or other building or structure that:
- a. Is unfit for human habitation or for commercial, industrial or business uses due to dilapidation;
  - b. Is not in compliance with applicable codes; and
  - c. Meets at least one of the following additional criteria:
    - 1. Has defects increasing the hazards of fire, accidents or other calamities;
    - 2. Lacks adequate ventilation, light or sanitary facilities;
    - 3. Where other conditions exist rendering such dwellings, buildings or structures unsafe or unsanitary, dangerous or detrimental to the health, safety or welfare;
    - 4. Is otherwise inimical to the welfare of the residents of the city; or
    - 5. Is vacant and/or dilapidated and where drug crimes are being committed;
- (4) Any other condition relating to dwellings, buildings or structures constituting a nuisance under state law.

**Sec. 34-73. Special provisions for old, unused, stripped, junked automobiles.**

(a) Unsheltered storage of old, unused, stripped, junked and other automobiles which are not in good and safe operating condition, and of any other vehicles, machinery, implements, and/or equipment and personal property of any kind that is no longer safely usable for the purposes for which it was manufactured, for a period of 10 days or more (except in licensed junkyards) within the city is a nuisance.

(b) The owner, owners, tenants, lessees and/or occupants of any lot within the city upon which the storage of property is made, and also the owner, owners, and/or lessees of the property involved in such storage shall jointly and severally abate the nuisance by the prompt removal of the property into completely enclosed buildings authorized to be used for such storage purposes, if within the city, or otherwise by removing it to a location without the city.

**Sec. 34-74. Nuisances constituting imminent danger.**

Whenever any condition shall exist which constitutes an immediate and grave hazard to public health and safety requiring immediate action, the condition may be abated or otherwise remedied summarily and without following the procedures set forth in sections 34-76 and 34-80.

**Sec. 34-75. Maintaining or permitting.**

It shall be unlawful for any person to maintain or permit the existence of any nuisance on any property within the city.

**Sec. 34-76. Issuance of summons for abatement.**

Whenever any nuisance exists within the city, or whenever any condition shall exist on any property within the city that is required or subject to be demolished, removed or abated under any of the ordinances of the city, and the owner or other person responsible therefor refuses or fails after reasonable notice to demolish, remove or abate the same, the code enforcement officer having responsibility for the enforcement of the same, may issue a summons and cause the same to be served upon such owner or other person responsible for such condition, describing the condition complained of and specifying the ordinances or parts thereof claimed to be violated thereby, and requiring such person to appear before the magistrate judge at a time, date and place specified therein, to show cause why such condition should not be demolished, removed or abated.

**Sec. 34-77. Jurisdiction to try and abate.**

The magistrate court of Butts County shall have full jurisdiction to try issues concerning the existence and abatement of nuisances existing or occurring within the limits of the city. The magistrate court shall also have jurisdiction, in cases of conviction, to punish persons found guilty of maintaining a nuisance as prescribed in O.C.G.A. §§41-2-5, 41-2-7, 41-2-9.

**Sec. 34-78. Citation; service of process.**

- (a) Contents of citation.
- (1) The citation shall name as respondent(s) the person or persons alleged responsible for maintenance of the public nuisance. Where the alleged public nuisance involves a condition or activity existing upon private property, the owner(s) of such property, and any interested party shall also be named as a respondent.

For purposes of this article, "owner of private property" shall mean the holder of the title in fee simple and holder of every mortgage, deed to secure debt, lien or judgment, as recorded in the title records of the city. "Interested party" shall mean an interested party as defined in O.C.G.A. § 48-4-77 and persons in possession of said property and premises.

- (b) The citation shall plead with specificity all facts necessary to show the existence and location of the alleged public nuisance and its duration or frequency of reoccurrence.
  - (c) The citation shall contain the specific date and time of the hearing before the magistrate court, which hearing shall occur at least 28 days after issuance of the citation.
  - (d) Service of citation.
- (1) A copy of the citation shall be served in one of the following ways:
    - a. Personal service upon each respondent who is a resident of the city. Service shall be perfected at least ten days prior to the date of hearing. If personal service cannot be perfected, service of the citation shall be made utilizing the method set out in subparagraph (b.), (c.) or (d.) below.
    - b. Parties residing outside of the city shall be served by certified mail or statutory overnight delivery, return receipt requested, mailed at least 14 days prior to the date of hearing.
    - c. For persons whose mailing address is unknown, a notice of the date, time and place of the hearing shall be published in the newspaper in which the sheriff's advertisements appear in the county once a week for two consecutive weeks prior to the hearing.
    - d. In the event a party is a minor, estate, an incompetent person, or person laboring under disabilities, the guardian or personal representative of such person shall be served. If such person has no guardian or personal representative, service shall be perfected upon the probate judge of the county of residence, who shall appoint a guardian ad litem for such person.
  - (2) Personal service under this article may be perfected by any code enforcement or law enforcement officer of the city, or any citizen over the age of 18 years specially appointed by the judge of the magistrate court;
  - (3) Proof of service shall be filed with the clerk of the magistrate court prior to the date of hearing.

**Sec. 34-79. Trial procedure; appeal.**

- (a) Trial procedure.
- (1) The burden at trial shall be upon the city to prove the existence of a public nuisance by a preponderance of the evidence. Testimony by any governmental officer, code enforcement officer, public health officer, fire inspector, life safety inspector, or building inspector, based upon physical inspection, that real property or a structure or condition existing upon real property is a health,

safety, or environmental hazard shall constitute prima-facie evidence that such property, structure, or condition constitutes a public nuisance.

- (2) In addition to any penalties available pursuant to chapter 34, section 85, upon finding that a nuisance does exist, the court shall issue an order to the violator and/or the owner, the agent in control of or tenant in possession of the property stating that a nuisance has been found to exist and that the nuisance must be abated within so many hours or days as the judge may deem reasonable, having considered the nature of the nuisance and its effect on the public. The magistrate court is empowered to enforce its judgments by contempt.
- (b) Appeal. Any final judgment entered by the magistrate court under this article is subject to review by certiorari in the superior court of the county, upon application filed within 30 days of the service of said order upon the respondent(s).

### **Sec. 34-80. Order for abatement.**

(a) If the judge at the hearing required by section 34-76 shall determine that a condition does exist as alleged that constitutes a nuisance or a condition which under this Code or the ordinances of the city is required or subject to be demolished, removed or abated, the judge shall issue his order and judgment so finding and shall order the property owner or other person responsible therefor to demolish, remove or abate the condition within a period of time to be fixed by the judge. The order shall provide how the condition is to be abated including, but not limited to, rehabilitation or demolition of any buildings or structures located on the property in question. The order shall further provide that if the property owner or other person responsible therefor shall fail to comply with the order within the time specified, the city shall be authorized to proceed without further notice to demolish, remove or abate such condition and to take whatever action deemed necessary to demolish, remove or abate such condition, and the expense thereof shall be charged against the owner of the property in question and shall be a lien against the property upon which the condition existed, ranking equally with the lien for city taxes.

(b) Execution shall issue for such costs as in the case of county taxes, and the procedure for the enforcement of the execution shall thereafter be the same as in the case of county taxes.

### **Sec. 34-81. Abatement by the city.**

- (a) In any case where the violator and/or owner, agent or tenant fails to abate the nuisance within the time specified by the court, or where the violator and/or owner, agent or tenant cannot be served with notice, or where the nature of the nuisance is such, in the opinion of the judge, that it must be immediately abated, the judge may issue an order to the Sheriff, fire chief or code enforcement official directing the nuisance to be abated.

The Sheriff, fire chief or code enforcement official, in such case, shall keep a record of the expenses and costs of abating the nuisance, and the costs shall be billed against the violator and/or owner, agent or tenant for collection as for city revenues. The total expense, including administrative costs, incurred by the city in abating public nuisances under this article shall constitute a lien upon the property upon which the nuisance was abated.

- (b) When a nuisance is of such magnitude or degree that city equipment and personnel cannot safely or completely abate it, the city may contract with a private contractor to abate the nuisance on the city's behalf.
- (c) City officers and employees, or any city contractor operating under subsection (b) of this section, shall have the right of entry upon real property and shall be immune from prosecution, civil or criminal, for trespass upon real property while in the discharge of their duties in removing or abating any public nuisance under this article.

**Sec. 34-82. Nuisance per se, exceptions; summary abatement.**

Nothing contained in this article shall prevent the mayor from summarily and without notice ordering the abatement of or abating any nuisance that is a nuisance per se in the law or where the case is an urgent one and the health and safety of the public or a portion thereof is in imminent danger.

**Sec. 34-83. Article cumulative.**

The provisions of this article are to be cumulative to any other provisions of this Code. Further, the mere fact that a property condition is lawful under any other law or ordinance provision shall not authorize the maintenance of any condition declared a public nuisance by this article. Similarly, the mere fact that a property condition does not constitute a public nuisance under this article shall not authorize the maintenance of any conditions that violate any other law or ordinance.

**Sec. 34-84. Other powers preserved.**

Nothing in this article shall in any way affect the power and authority of the judge to punish for any violations which the conditions may constitute, nor shall it affect the power and authority of the judge to punish by contempt the failure to comply with his order.

**Sec.34-85. General Penalty**

Whenever in this Code or in any ordinance of the city any act is prohibited or is made or declared to be lawful for an offense, or whenever in such Code or ordinance the doing of an act is required or the failure to do an act is declared to be unlawful, unless otherwise provided by state law, where no specific penalty is provided therefore, the violation of any such provision of this Code or any ordinance shall be punished by a fine not exceeding \$1,000.00, and by imprisonment in the county or county jail not to exceed 60 days. Any one or more of these punishments may be inflicted, and the fines imposed therefore may be collected by execution. Each day any such violation shall continue shall be a separate offense.

**Sec. 34-86--34-100. Reserved.**

## **DIVISION 2. VEGETATION**

### **Sec. 34-101. Certain weeds, grasses and plants declared a nuisance; exemptions.**

(a) Any weeds such as jimson, burdock, ragweed, thistle, cocklebur or other weeds of a like kind found growing in any lot or tract of land in the city, and any weeds, grasses or plants other than trees, brushes, flowers or other ornamental plants, growing to a height exceeding 12 inches anywhere in the city are hereby declared to be a nuisance, subject to abatement as provided in this article.

(b) Garden flowers, vegetables, cultivated agricultural crops, ornamental shrubbery and trees shall not be considered weeds, grass or vegetation within the meaning of this section.

(c) The provisions of this article shall apply only to property located within subdivisions of record in the office of the clerk of the superior court of the county, and to the original city lots. They shall not apply to undeveloped areas of unsubdivided land within the city.

### **Sec. 34-102. Height permitted.**

It shall be unlawful for the owner, lessee, tenant or other person having the possession and control of real property, or responsible for its management, maintenance or upkeep, to permit the growth and accumulation of weeds, grass or other vegetation to a height in excess of 12 inches above the ground.

### **Sec. 34-103. Notice to abate.**

(a) For a violation of this article, the owner of the property shall be given notice to remove such excess growth within seven days from the receipt of the notice. Such notice may be served personally, or may be served by registered or certified mail, or by attaching a copy of the notice to the principal entrance of the dwelling, and shall contain a description of the location of the property upon which such condition exists.

(b) Where notice is given by registered or certified mail, the depositing of such notice in the United States mail by registered or certified mail, return receipt requested, addressed to the owner of the property at the address shown on the latest ad valorem tax return of such owner for such property shall constitute sufficient service of such notice, where the return receipt shall be duly returned signed by the addressee or someone residing on the premises, or where the return receipt or other notification from the federal postal service indicates that the notice was refused, or that there was a refusal to sign the return receipt or that delivery of the notice at such address could not be made.

### **Sec. 34-104. Abatement by city; notice of abatement.**

(a) Upon the failure to comply within the required time by the owner of the property when properly notified pursuant to the provisions of section 34-103, the city is authorized to have the contractor enter upon the property, and the contractor is authorized to enter the same, and cut and remove the weeds, grass and vegetation. The city shall issue a lot cleaning order to the contractor, who shall promptly perform the work and submit his bill to the city. The city shall inspect the work and, if satisfactory, shall approve the bill for payment and forward it to the city for payment.

(b) The city shall promptly send to the owner of the property a statement of account demanding payment thereof on or before a date named in such demand, which shall not be earlier than 15 days nor later than 45 days after payment to the contractor.

(c) If payment under subsection (b) of this section shall not have been made on or before the date named, the city shall issue a notice directed to the owner of the property and signed by the judge, notifying such owner to show cause before the judge at a time and place and on a date named therein why execution should not issue against the property for its approval amount.

(d) If it shall appear at such hearing that the property was in violation of this article, that the notice required of section 34-103 was given, that the work was performed and the cost thereof paid by the city, and that the city has not been reimbursed, execution shall issue for such amount, signed by the judge and shall be executed by the chief of police in the same manner as tax executions are executed.

(e) If the owner of the property is unknown, or cannot be located, the provisions of subsections (b) and (c) of this section shall not apply, but in lieu thereof a notice shall be published once a week for four weeks in a newspaper of general circulation in the county, which notice shall be addressed "To Whom It May Concern," shall describe with reasonable particularity the property involved, a statement of the amount due for the removal of the weeds, grass or other vegetation, and shall notify all persons interested to show cause before the judge at a time and place and on a date named in the notice why execution should not issue in rem against the property for such amount. In such event, subsection (a) of this section will apply, but the execution shall issue against the property in rem.

**Sec. 34-105. Remedies.**

The remedies provided in this article are cumulative of all other remedies the city has for the accomplishment of the objectives set forth in this article. Nothing in this article shall be construed as relieving any person from the obligation to comply with this Code, all ordinances, laws or regulations of the city, or to permit the maintenance by any person of a nuisance, and any nuisance shall be subject to be abated in the manner provided by law.

**Sec. 34-106. Award of contracts for clearing of lots by city.**

Prior to the commencement of each fiscal year, the city shall obtain bids from contractors or other qualified persons for clearing lots of weeds, grass and other vegetation not in excess of two inches in diameter, and for clearing lots of weeds, grass and other vegetation in excess of two inches but not in excess of four inches in diameter, and the city council shall award a contract to the lowest and best bidder, such contract to remain in effect during the ensuing fiscal year.

**Secs. 34-107--34-130. Reserved.**

### **DIVISION 3. MOSQUITO CONTROL**

#### **Sec. 34-131. Nuisance declared.**

A violation of any provision of this division is a nuisance.

#### **Sec. 34-132. Keeping water in which mosquitoes may breed.**

(a) It shall be unlawful to have, keep, maintain, cause or permit within the city, any collection of standing or flowing water in which mosquitoes breed or are likely to breed, unless such collection of water is so treated as to effectually prevent such breeding.

(b) The collections of water prohibited by subsection (a) of this section shall be those contained in ditches, pools, ponds, excavations, holes, depressions, open cesspools, privy vaults, fountains, cisterns, tanks, shallow wells, barrels, troughs (except horse troughs in frequent use), urns, cans, boxes, bottles, tubs, buckets, defective house roof gutters, tanks of flush closets, or other similar water containers.

#### **Sec. 34-133. Treatment of collections of water.**

The method of treatment of any collections of water that are specified in section 34-132 directed toward the prevention of breeding of mosquitoes, shall be approved by the health officer and may be one or more of the following:

- (1) Screening with wire netting of at least 16 meshes to the inch each way, or with any other material that will effectually prevent the ingress or egress of mosquitoes.
- (2) Complete emptying every seven days of unscreened containers together with their thorough drying and cleaning.
- (3) Using a larvicide approved and applied under the direction of the health officer.
- (4) Covering completely the surface of the water with kerosene, petroleum or paraffin oil once every seven days.
- (5) Cleaning and keeping sufficiently free of vegetable growth and other obstructions, and stocking with mosquito-destroying fish.
- (6) Filling and draining to the satisfaction of the health officer, his agent or accredited representative.
- (7) Proper disposal by removal or destruction of tin cans, tin boxes, broken or empty bottles and similar articles likely to hold water.

**Sec. 34-134. Mosquito larvae as evidence of breeding.**

The natural presence of mosquito larvae in standing or running water shall be evidence that mosquitoes are breeding there, and failure to prevent such breeding within three days after notice by the health officer, his authorized agent or representative, shall be deemed a violation of this division.

**Sec. 34-135. Failure to remedy conditions after notice.**

Should the person responsible for conditions giving rise to the breeding of mosquitoes fail or refuse to take necessary measures to prevent the conditions, within three days after due notice has been given to him, the health officer or his authorized agent is hereby authorized to do so, and all necessary costs incurred by him for this purpose shall be a charge against the property owner or other person offending, as the case may be.

**Sec. 34-136. Right of entry of health officer.**

For the purpose of enforcing the provisions of this article, the health officer, or his duly accredited agent under his authority, may at all reasonable times lawfully enter in and upon any premises within his jurisdiction.

**DIVISION 4. YARD SALES**

**Sec. 34-137. Definitions.**

*Yard Sale* means the casual sale of domestic and/or household items, collectables, tools, pets, clothing and other personal property from any location not zoned for retail sales and in compliance with all requirements of this Code relating to retail sales. The term Yard Sale encompasses the sale of personal items by any individual not engaged in the business of retail sales and includes activities commonly referred to as “garage sales”, “rummage sales”, “attic sales”, “moving sales”, or “estate sales”. The term Yard Sale does not encompass the sale of agricultural products.

**Sec. 34-138. Number and length of yard sales.**

No person, firm or corporation shall hold or conduct more than four (4) Yard Sales per year, nor shall any owner or tenant of real property allow or permit more than four (4) Yard Sales per address/lot per year. No person, firm or corporation shall hold or conduct any Yard Sale for more than three (3) consecutive days.

**Sec. 34-139. Administration and enforcement; penalties.**

- (a) The provisions of this article shall be administered by any the county Sheriff and deputies, Butts County Code Enforcement officers or other person officially designated by the City council to enforce the provisions of the Official Code of Butts County, Georgia or this article. The county Sheriff and deputies, Butts County Code Enforcement officers or other person officially designated by the City council are authorized to enter upon private or public property to examine any Yard Sale and to issue any citation for a violation of this article.

Proceedings to enforce this article shall be tried in the county magistrate court. Any person, firm or corporation who pleads guilty, nolo contendere or is convicted of violating the provisions of this article may be sentenced as provided in O.C.G.A. § 36-1-20 or such other general laws as may be in the future enacted to provide for punishment and penalties that may be imposed by the magistrate courts of this State. Any person violating the terms of this Ordinance shall be punished in Magistrate Court by a fee not to exceed *one thousand dollars* (\$1000.00) and/or sixty (60) days in jail for each separate violation. Each day the violation continues shall be considered a separate offense.

- (b) In addition to its right to seek all legal and equitable remedies, City of Flovilla, Georgia, shall have the express right to seek injunctive relief against any person holding or conducting a Yard Sale in violation of this article. Nothing contained in this article shall be construed as granting or vesting in any person or entity other than City of Flovilla, Georgia, its city council or agents, any right of enforcement by legal, equitable or injunctive process.

**Secs. 34-140--34-170. Reserved.**

#### **ARTICLE IV. JUNKED VEHICLES\***

**Sec. 34-171. 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:

*Junked motor vehicle* means any automobile, truck, vehicle or trailer of any kind or type, or contrivance or part thereof, the condition of which is one or more of the following:

- (1) Wrecked;
- (2) Dismantled;
- (3) Partially dismantled;
- (4) Inoperative;
- (5) Abandoned; or
- (6) Discarded.

**Sec. 34-172. Findings.**

Junked motor vehicles are hereby found to create a condition tending to reduce the value of private property; to promote blight and deterioration and invite plundering and vandalism; to create fire hazards; to constitute an attractive nuisance creating a hazard to the health and safety of minors; to create a harborage for rodents and insects; and to be injurious to the health, safety and general welfare; and, when on city

streets, to create a traffic hazard and danger to public safety.

**Sec. 34-173. Supplemental nature of article.**

This article shall not be the exclusive regulation of abandoned, wrecked, dismantled or inoperative vehicles or contrivances within the incorporated limits of the city, but shall be supplemental and in addition to the other regulations and regulatory codes, ordinances, statutes or provisions of law heretofore and hereafter enacted by the city, state or other legal entity or agency having jurisdiction.

**Sec. 34-174. Prohibited parking or standing.**

Any automobile, truck, vehicle or trailer of any kind or type within the definition of a junked motor vehicle as found in section 34-171 shall not be parked or stand on any private property or public roads.

**Sec. 34-175. Declaration of public nuisance; maintenance unlawful; exceptions.**

(a) The presence of any junked motor vehicle on any public property or on any private lot, tract or parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the incorporated area of the city, shall be a public nuisance. It shall be unlawful for any person to cause or maintain such a public nuisance by wrecking, dismantling, partially dismantling, rendering inoperable, abandoning or discarding any motor vehicle on the real property of another, or to suffer, permit or allow junked motor vehicles to be parked, left or maintained on his own real property.

(b) The provisions of subsection (a) of this section shall not apply to:

- (1) A junked motor vehicle on residentially zoned property that is fully enclosed within a building or otherwise obscured from view from the roadway and all adjacent property owners, provided the occupant of the house is in the process of reconditioning or repairing the vehicle;
- (2) A motor vehicle on property occupied, used and properly zoned and licensed for repair, reconditioning and remodeling of motor vehicles in conformance with requirements for an automobile repair garage or other such similar use; or
- (3) A motor vehicle on the premises of a business enterprise operated in a lawful manner, when necessary to the operation of such business enterprise, where properly zoned and licensed for such activities.

**Sec. 34-176. Administration and enforcement; penalties.**

(a) The provisions of this article shall be administered and enforced by the county sheriff and deputies, the building inspector or the county zoning administrator. The county sheriff and deputies, the building inspector or the county zoning administrator are authorized to enter upon private or public property to examine a junked motor vehicle, or obtain information as to the identity of a junked motor vehicle, or to remove or cause the removal of a junked motor vehicle declared to be a nuisance pursuant to this article. When the city has a contract with any person, such person shall be authorized to enter upon

private property or public property to remove or cause a removal of a junked motor vehicle declared to be a nuisance pursuant to this article.

(b) Proceedings to enforce this article shall be tried in the county magistrate court. Any person who pleads guilty, nolo contendere or is convicted of violating the provisions of this article, shall be punished as provided in O.C.G.A. § 36-1-20 or such other general laws as may be in the future enacted to provide for punishment and penalties that may be imposed by the magistrate courts of this state. Any person violating the terms of this Ordinance shall be punished in Magistrate Court by a fee not to exceed *one thousand dollars* (\$1000.00) and/or sixty (60) days in jail for each separate violation. Each day the violation continues shall be considered a separate offense.

**Sec. 34-177. Notice to remove; service; removal.**

(a) When the county sheriff (or his lawful deputy), the building inspector or the county zoning administrator shall deem a public nuisance to exist, he shall issue a notice to the parties stated in this article, and such notice shall:

- (1) Be in writing;
- (2) Specify the public nuisance and its location; and
- (3) Request the public nuisance to be abated within ten days from the notice.

(b) If, after a diligent search has been made, the county sheriff or any authorized agent shall be unable to determine the owner of the junked motor vehicle, he may serve such notice by attaching the notice to the junked motor vehicle. This shall constitute service upon the owner of the junked motor vehicle.

(c) Removal of the junked motor vehicle from the premises prior to the expiration of the ten-day notice shall be considered compliance with the provisions of this article, and no further action shall be taken against the owner of the junked motor vehicle or the owner or occupier of the premises.

**Secs. 34-178--34-210. Reserved.**

**ARTICLE V. SOIL EROSION AND SEDIMENTATION CONTROL\***

**Sec. 34-211. Title.**

This ordinance will be known as “The City of Flovilla Soil Erosion, Sedimentation and Pollution Control Ordinance.”

**Sec. 34-212. Definitions.**

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

**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.

**Board:** The Board of Natural Resources.

**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.

**Certified Personnel:** A person who has successfully completed the appropriate certification course approved by the Georgia Soil and Water Conservation Commission.

**Commission:** The Georgia Soil and Water Conservation Commission (GSWCC).

**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.

**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.

**Department:** The Georgia Department of Natural Resources (DNR).

**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.

**Director:** The Director of the Environmental Protection Division or an authorized representative.

**District:** The Towaliga Soil and Water Conservation District.

**Division:** The Environmental Protection Division (EPD) of the Department of Natural Resources.

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

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

**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 34-214.C. of this ordinance.

**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.

**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.

**Finished Grade:** The final elevation and contour of the ground after cutting or filling and conforming to the proposed design.

**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.

**Ground Elevation:** The original elevation of the ground surface prior to cutting or filling.

**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 34-213, Paragraph 5.

**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.

**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.

**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.

**Natural Ground Surface:** The ground surface in its original state before any grading, excavation or filling.

**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.

**NOI:** A Notice of Intent form provided by EPD for coverage under the State General Permit.

**NOT:** A Notice of Termination form provided by EPD to terminate coverage under the State General Permit.

**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.

**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.

**Permit:** The authorization necessary to conduct a land-disturbing activity under the provisions of this ordinance.

**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.

**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.

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

**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.

**Roadway Drainage Structure:** A device such as a bridge, culvert, or ditch, composed of a virtually nonerodible material such as concrete, steel, plastic, or other such material that conveys water under a roadway by intercepting the flow on one side of a traveled roadway consisting of one or more defined lanes, with or without shoulder areas, and carrying water to a release point on the other side.

**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.

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

**Soil and Water Conservation District Approved Plan:** An erosion, sedimentation and pollution control plan approved in writing by the Towaliga Soil and Water Conservation District.

**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.

**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.

**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.

**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*.

**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](http://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.

**Vegetative Erosion and Sedimentation Control Measures:** Measures for the stabilization of erodible or sediment-producing areas by covering the soil with:

- a. Permanent seeding, sprigging or planting, producing long-term vegetative cover, or
- b. Temporary seeding, producing short-term vegetative cover; or
- c. 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*.

**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.

**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.

### **Sec. 34-213. 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 Local Issuing Authority;
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 34-214.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 Local Issuing Authority 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 city 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 Local Issuing Authority, the Local Issuing Authority shall enforce compliance with the minimum requirements set forth in O.C.G.A. 12-7-6 as if a permit had been issued, and violations shall be subject to the same penalties as violations by permit holders;

10. Any land-disturbing activities conducted by any electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the Public Service Commission, any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television system as defined in O.C.G.A. 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power; except where an electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the Public Service Commission, any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television system as defined in O.C.G.A. 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case the Local Issuing Authority shall enforce compliance with the minimum requirements set forth in O.C.G.A. 12-7-6 as if a permit had been issued, and violations shall be subject to the same penalties as violations by permit holders; and
11. Any public water system reservoir.

**Sec. 34-214. 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 34-214 B. & 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/ BMPs**

1. Best management practices as set forth in Section 34-214 B. & 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 a local Issuing Authority 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 a Local Issuing Authority 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 City Council, reasonable and prudent monitoring of the turbidity level of receiving waters into which discharges from land disturbing activities occur.
  5. The LIA may set more stringent buffer requirements than stated in section 34-214 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, regrading 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 34-214 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 34-214 B. & 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.

## **Sec. 34-215. Application/Permit Process**

### **A. GENERAL.**

The property owner, developer and designated planners and engineers shall design and review before submittal the general development plans. The Local Issuing Authority shall review the tract to be developed and the area surrounding it. They shall consult the zoning ordinance, storm water 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 Local Issuing Authority. 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 city without first obtaining a permit from the Butts County Community Development Department 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 the Butts County Community Development Department 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 34-215 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 34-214 B. & C. of this ordinance will be met. Applications for a permit will not be accepted unless accompanied by two (2) 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. 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.
4. Immediately upon receipt of an application and plan for a permit, the Local Issuing Authority shall refer the application and plan to the District for its review and approval or disapproval concerning the adequacy of the erosion, sedimentation and pollution control plan. The District shall approve or disapprove a plan within 35 days of receipt. Failure of the District to act within 35 days shall be considered an approval of the pending plan. The results of the District review shall be forwarded to the Local Issuing Authority. No permit will be issued unless the plan has been approved by the District, and any variances required by Section 34-214 C. 15. & 16. has been obtained, all fees have been paid, and bonding, if required as per Section 34-215 B.6., have been obtained. Such review will not be required if the Local Issuing Authority and the District have entered into an agreement which allows the Local Issuing Authority to conduct such review and approval of the plan without referring the application and plan to the District. The Local Issuing Authority with plan review authority shall approve or disapprove a revised Plan submittal within 35 days of receipt. Failure of the Local Issuing Authority with plan review authority to act within 35 days shall be considered an approval of the revised Plan submittal.
5. If a permit applicant has had two or more violations of previous permits, this 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.
6. The Local Issuing Authority may require the permit applicant to post a bond in the form of government security, cash, irrevocable letter of credit, or any combination thereof up to, but not exceeding, \$3,000.00 per acre or fraction thereof of the proposed land-disturbing activity, prior to issuing the permit. If the applicant does not comply with this section or with the conditions of the permit after issuance, the Local Issuing Authority may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance. These provisions shall not apply unless there is in effect an ordinance or statute specifically providing for hearing and judicial review of any determination or order of the Local Issuing Authority with respect to alleged permit violations.

### C. PLAN REQUIREMENTS

1. Plans must be prepared to meet the minimum requirements as contained in Section 34-214 B. & 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 forty-five (45) days after receipt by the Local Issuing Authority of a completed application, providing variances and bonding are obtained, where necessary and all applicable fees have been paid prior to permit issuance. The permit shall include conditions under which the activity may be undertaken.
2. No permit shall be issued by the Local Issuing Authority unless the erosion, sedimentation and pollution control plan has been approved by the District and the Local Issuing Authority has affirmatively determined that the plan is in compliance with this ordinance, any variances required by Section 34-214 C. 15. & 16. are obtained, bonding requirements, if necessary, as per Section 34-215 B. 6. are met and all ordinances and rules and regulations in effect within the jurisdictional boundaries of the Local Issuing Authority are met. If the permit is denied, the reason for denial shall be furnished to the applicant.
3. Any land-disturbing activities by a local issuing authority 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 local issuing authority.
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 the Local Issuing Authority, as to all or any portion of the land affected by the plan, upon finding that the holder or his successor in the title is not in compliance with the approved erosion and sedimentation control plan or that the holder or his successor in title is in violation of this 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).
7. No permit shall be issued unless the applicant provides a statement by the tax commissioners office certifying that all ad valorem taxes levied against the property and due and owing have been paid.

### **Sec. 34-216. Inspection and Enforcement**

- A. The Butts County Community Development Department will periodically inspect the sites of land-disturbing activities for which permits have been issued to determine if the activities are being conducted in accordance with the plan and if the measures required in the plan are effective in controlling erosion and sedimentation. Also, the Local Issuing Authority shall regulate primary, secondary and tertiary permittees as such terms are defined in the state general permit. Primary permittees shall be responsible for installation and maintenance of best management practices where the primary permittee is conducting land-disturbing activities. Secondary permittees shall be responsible for installation and maintenance of best management practices where the secondary permittee is conducting land-disturbing activities. Tertiary permittees shall be responsible for installation and maintenance where the tertiary permittee is conducting land-disturbing activities. If, through inspection, it is deemed that a person engaged in land-disturbing activities as defined herein has failed to comply with the approved plan, with permit conditions, or with the provisions of this 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. The Local Issuing Authority must amend its ordinances to the extent appropriate within twelve (12) months of any amendments to the Erosion and Sedimentation Act of 1975.
- C. The Butts County Community Development Department 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 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 city or municipality for the purpose of improving the effectiveness of the city'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 city 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 city or municipality in writing. The governing authority of any city 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 city or municipality does not take necessary corrective action within 90 days after notification by the division, the division shall revoke the certification of the city or municipality as a Local Issuing Authority.

### **Sec. 34-217. 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 Local Issuing Authority.

#### **B. STOP-WORK ORDERS**

1. For the first and second violations of the provisions of this ordinance, the Director or the Local Issuing Authority shall issue a written warning to the violator. The violator shall have five days to correct the violation. If the violation is not corrected within five days, the Director or the Local Issuing Authority shall issue a stop-work order requiring that land-disturbing activities be stopped until necessary corrective action or mitigation has occurred; provided, however, that, if the violation presents an imminent threat to public health or waters of the state or if the land-disturbing activities are conducted without obtaining the necessary permit, the Director or the Local Issuing Authority shall issue an immediate stop-work order in lieu of a warning;
2. For a third and each subsequent violation, the Director or the Local Issuing Authority shall issue an immediate stop-work order; 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 the Local Issuing Authority 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 the Local Issuing Authority 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 34-215 B. 6. The Local Issuing Authority may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance.

#### D. MONETARY PENALTIES

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 city ordinances, any magistrate court or any other court of competent jurisdiction trying cases brought as violations of this ordinance under city 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.

### **Sec. 34-218. 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.

### **Sec. 34-219. Administrative Appeal Judicial Review**

#### **A. ADMINISTRATIVE REMEDIES**

The suspension, revocation, modification or grant with condition of a permit by the Local Issuing Authority upon finding that the holder is not in compliance with the approved erosion, sediment and pollution control plan; or that the holder is in violation of permit conditions; or that the holder is in violation of any ordinance; shall entitle the person submitting the plan or holding the permit to a hearing before the City council within thirty (30) days after receipt by the Local Issuing Authority of written notice of appeal.

#### **B. JUDICIAL REVIEW**

Any person, aggrieved by a decision or order of the Local Issuing Authority, after exhausting his administrative remedies, shall have the right to appeal denovo to the Superior Court of Butts County.

### **Sec. 34-220. Effectivity, Validity and Liability**

A. EFFECTIVITY

This ordinance shall become effective on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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 Local Issuing Authority or 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 there under or pollute any Waters of the State as defined thereby.

**Secs. 34-221—34-330. Reserved.**

**ARTICLE VI. AQUIFER RECHARGE AREA PROTECTION\***

**Sec. 34-331. Title of the article, findings, and objectives.**

(a) *Title of article.* This article shall be known as the Aquifer Recharge Area Protection Ordinance of City of Flovilla, Georgia.

(b) *Findings of fact.* In order to provide for the health, safety, and welfare of the public and a healthy economic climate within the city and surrounding communities, it is essential that the quality of public drinking water be insured. For this reason, it is necessary to protect the subsurface water resources that City of Flovilla, Georgia and surrounding communities rely on as sources of public water. Groundwater resources are contained within aquifers, which are permeable, rock strata occupying vast subsurface regions. These aquifers are replenished by infiltration of stormwater runoff in zones of the surface known as aquifer recharge areas.

Aquifers are susceptible to contamination when unrestricted development occurs within significant aquifer recharge areas. It is, therefore, necessary to manage land use within aquifer recharge zones in order to ensure that pollution threats are minimized.

(c) *[Adoption of aquifer recharge protection ordinance.]* The Georgia Department of Natural Resources and the Georgia Department of Community Affairs have determined that each local government with "significant groundwater recharge areas" (identified on the Ground Water Pollution Susceptibility Map of Georgia Hydrologic Atlas #20) must adopt an Aquifer Recharge Protection Ordinance under the requirements of House Bill 215, Georgia's 1989 Growth Strategies Legislation and the rules promulgated thereunder.

(d) *Objectives.* The objectives of this article are:

- (1) Protect groundwater by prohibiting land uses that generate dangerous pollutants in recharge areas;
- (2) Protect groundwater by limiting density of development; and,
- (3) Protect groundwater by reducing adverse effects on groundwater from the development that occurs within the recharge area.
- (4) Comply with the requirements of the Georgia 1989 Growth Strategies Legislation.

### **Sec. 34-332. Definitions.**

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

*Aquifer* means a layer or formation of rock beneath the earth's surface that bears significant amounts of groundwater.

*Aquifer recharge area* (synonymous with groundwater recharge area) means an area of the earth's surface where water infiltrates the ground, thereby replenishing the groundwater supplies within an aquifer.

*Aquifer recharge area district* means all lands within incorporated City of Flovilla which are indicated as "most significant groundwater recharge areas . . ." on the Ground-Water Pollution Susceptibility Map of Georgia.

*City council* means the City Council of Flovilla, Georgia.

*Building inspector* means the Butts County Building Inspection Department.

*Development permit* shall include: (1) building permits excepting those exempted in section 34-235(3) of this article, (2) rezone applications, (3) preliminary and final subdivision plat applications, (4) conditional use permit applications and (5) variance applications.

*Pollution susceptibility* means the relative vulnerability of an aquifer to pollution from chemical spills, leaching of pollutants from dump sites, or other human activities.

*Pollution susceptibility map(s)* mean maps prepared by the Georgia Department of Natural Resources (DNR) that show the relative susceptibility of aquifers to pollution. Pollution susceptibility maps categorize the land areas of the state into areas of high, medium, and low groundwater pollution potential.

*Significant aquifer recharge areas* mean areas mapped by DNR in Hydrologic Atlas 18 (1989 Edition). Mapping of recharge areas is based on outcrop area, lithology (chemical nature and form of the rock), soil type, and thickness, slope, density of lithologic contacts, geologic structure, presence of "karst" topography (sinkholes, caves, and fissures associated with limestone and other carbonate rock), and potentiometric surfaces.

**Sec. 34-333. Establishment of an Aquifer Recharge Area District.**

An Aquifer Recharge Area District is hereby established which shall correspond to all lands within the jurisdiction of City of Flovilla, Georgia that are mapped as significant recharge areas by the Georgia Department of Natural Resources in Hydrologic Atlas 18, (1989 Edition) and are indicated as "most significant groundwater recharge areas" on the Ground-Water Pollution Susceptibility Map Georgia.

**Sec. 34-334. Determination of pollution susceptibility.**

Each recharge area shall be determined to have a pollution susceptibility of high, medium, or low based on the ground water pollution susceptibility map of Georgia. Said map is hereby adopted and made a part of this article.

**Sec. 34-335. Permit requirements and enforcement.**

No building permit, rezoning request, or subdivision plan may be approved by City of Flovilla or its designee unless the permit, request or plan is in compliance with the aquifer protection standards listed in section 34-336.

- (1) *Enforcement.* City of Flovilla or its designee, their agent, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this article and may take or cause to be made such examination, surveys, or sampling as City of Flovilla or its designee deems necessary.
  - a. The Butts County Zoning Administrator, Butts County code Enforcement Officer and the Butts County Building Inspector are hereby designated respectively as the administrator and enforcement officer for this article.
  - b. The county building inspector or designee shall have authority to enforce this article; issue permits thereunder; and address violations or threatened violations thereof by issuance of violation notices, administrative orders, and civil and criminal actions. All costs, fees, and expenses in connection with such actions may be recovered as damages against the violator.

- c. Law enforcement officials or other officials having police powers shall have authority to assist the county building inspector or designee in enforcement.
- d. Any person who commits, takes part in, or assists in any violation of any provision of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided by law. Each violation of this act shall be a separate offense, and, in the case of a continuing violation, each day's continuance shall be deemed to be a separate and distinct offense.
- e. The county building inspector or designee shall have the authority to issue cease and desist orders in the event of any violation of this article. Cease and desist orders may be appealed to a court of competent jurisdiction, as identified in section 34-337.
- f. When a building or other structure has been constructed in violation of this article, the violator shall be required to remove the structure or bring said structure into compliance with this article.
- g. When removal of vegetative cover, excavation or fill has taken place in violation of this article, the violator shall be required to restore the affected land to its original contours and to restore vegetation, as far as practicable.

(2) *Permit review and site plan requirement.* Applications for a development permit within the aquifer recharge area district shall include a site plan, with the exception of certain exempted activities identified in section 34-335(3). The following information is required for all site plans:

- a. A map shall be drawn to a scale of 1" = 50' or other appropriate scale as determined by the city, showing all planned improvements including the width, depth, and length of all existing and proposed structures, roads, water courses, and drainage ways; water, waste water, and storm water facilities; and utility installations.
- b. Location, dimensions and area of all impervious surfaces, both existing and proposed, on the site.
- c. The orientation and distance from the boundaries of the proposed site to the nearest bank of an affected perennial stream or water body.
- d. Elevations of the site and adjacent lands within 200 feet of the site at contour intervals of no greater than five feet.
- e. Location and detailed design of any spill and leak collection systems designed for the purpose of containing accidentally released hazardous or toxic materials.
- f. Calculations of the amount of cut and fill proposed and cross-section drawings showing existing and proposed grades in areas of fill or excavation. Elevations,

horizontal scale, and vertical scale, and vertical scale must be shown on cross-sectional drawings.

- g. Activities to comply with site plan. All development activities or site work conducted after approval of the site plan shall conform with the specifications of said site plan. Significant changes to the site plan, that would alter the amount and velocity of storm water runoff from the site, increase the amount of impervious surface within the development, alter the overall density of development, result 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 proposed, can be amended only with the approval of the city. Minor changes, such as realignment of other infrastructure, to meet unexpected conditions, are exempted from this requirement.

(3) *Exemptions to site plan requirements.* The following activities and developments are exempt from the requirement for detailed site plans:

- a. Single family detached homes constructed within a subdivision of fewer than five parcels.
- b. Repairs to a facility that is part of a previously approved and permitted development.
- c. Construction of minor structures, such as sheds, or additions to single-family residences.

(4) *Review procedures.* The application shall be made to the county zoning administrator and will be reviewed within 60 days or in accordance with established review procedures for the type of development being constructed, whichever is greater. The review period shall include the preparation of findings (approval or disapproval) by the city zoning administrator. The applicant may request written notification of the findings of the county zoning administrator. If the review process is not completed within 60 days or in accordance with established review procedures for the type of development being considered, whichever is greater, the application is considered to be approved for the purposes of this article. Decisions of the county zoning administrator may be appealed to the city council.

(5) *Duration of permit validity.*

- a. If construction described in the development permit has not commenced within 12 months from the date of issuance, the permit shall expire.
- b. If construction described in the development permit is suspended or abandoned after work has commenced, the permit shall expire 12 months after the date that work ceased.
- c. Written notice of pending expiration of the development permit may be issued by the county building inspector.

(Ord. of 3-1-1999(2), § 4)

**Sec. 34-336. Aquifer protection standards.**

- (a) For all pollution susceptibility areas, new solid waste disposal facilities must have synthetic liners and leachate collection systems.
- (b) New agricultural waste impoundments shall meet the following requirement:
  - (1) For areas of low susceptibility, a SCS approved liner shall be provided if the site exceeds 50 acre-feet.
- (c) No land disposal of hazardous waste shall be permitted within any significant aquifer recharge area.
- (d) For all Significant aquifer recharge areas, the handling, storage, and disposal of hazardous materials must take place on an impermeable surface having spill and leak protection approved by the Georgia Department of Natural Resources, Environmental Protection Division (EPD).
- (e) For all significant aquifer recharge areas, new aboveground chemical or petroleum storage tanks larger than 650 gallons must have secondary containment for 110 percent of tank volume or 110 percent of the largest tanks in a cluster of tanks.

**Sec. 34-337. Judicial review.**

- (a) *Jurisdiction.* All final decisions of the city council concerning denial, approval, or conditional approval of a permit shall be reviewable in the Butts County Superior Court provided, however, that such appeal is filed within ten calendar days from the date of the decision of the city council.
- (b) *Alternative actions.* Based on these proceedings and the decision of the court, the city may, within the time specified by the court, elect to:
  - (1) Institute negotiated purchase or condemnation proceedings to acquire an easement or fee interest in the applicants's land,
  - (2) Approve the permit application with lesser restrictions or conditions (i.e., grant a variance); or,
  - (3) Institute other appropriate actions ordered by the court that fall within the jurisdiction of the city.

**Sec. 34-338. Amendments.**

These regulations may, from time to time, be amended in accordance with procedures and requirements in the general statutes and as new information becomes available.

**Sec. 34-339. Assessment relief.**

Assessors and boards of assessors shall consider the requirements of these regulations in determining the fair market value of land.

**Secs. 34-340--34-375. Reserved.**

**ARTICLE VII. WETLAND PROTECTION\***

**Sec. 34-376. Findings and purpose.**

(a) *Findings of fact.* The wetlands within the city are indispensable and fragile natural resources with significant development constraints due to flooding, erosion, and soils limitations. In their natural state, wetlands serve man and nature. They provide habitat areas for fish, wildlife, and vegetation; water quality maintenance and pollution control; flood control; erosion control; natural resource education; scientific study; open space; and recreational opportunities. In addition, the economic well-being of many communities within the State of Georgia.

Nationally, a considerable number of these important natural resources have been lost or impaired by draining, dredging, filling, excavating, building, pollution, and other acts. Piecemeal or cumulative losses will, over time, destroy additional wetlands. Damaging or destroying wetlands threatens public safety and the general welfare.

The Georgia Department of Natural resources and the Georgia Department of Community Affairs have determined that each local government with classified wetlands located in its jurisdiction must adopt a Wetlands Protection Ordinance under the requirements of House Bill 215, Georgia's 1989 Growth Strategies Legislation and the rules promulgated thereunder.

It is therefore necessary for City of Flovilla, Georgia to ensure maximum protection for wetlands by discouraging development activities in wetlands that may adversely affect wetlands.

(b) *Title and purpose.* This article shall be known as the Wetland Protection Ordinance of City of Flovilla, Georgia. The purposes of this article are to promote wise use of wetlands and protect wetlands, while taking into account varying ecological, economic development, recreational, and aesthetic values. Activities which may damage wetlands should be located on upland sites to the greatest degree practicable as determined by a permitting process. The objective of this article is to protect wetlands from alterations which will significantly affect or reduce their primary functions for water quality, flood plain and erosion control, ground water recharge, aesthetic nature, and wildlife areas and to comply with the requirements of state law related to wetland protection.

## Sec. 34-377. Definitions.

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

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

*Generalized wetland map* means the generalized wetland map shall be a subset of the U.S. Department of Interior national wetlands inventory maps.

*Hydric soils* means soils that form as a result of saturated soils conditions. A list of these soils is maintained by the Soil Conservation Service.

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

*Jurisdictional determination* means an official, written statement or map signed by the U.S. Army Corps of Engineers.

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

*Regulated activity* means any activity which will, or which may reasonably be expected to, result in the discharge of dredged or fill material into waters of the United States excepting those activities exempted in section 34-279(b) of this article and exempted in Section 404 of the Federal Clean water Act.

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

*Temporary emergency permit* means a temporary permit that may be issued in certain circumstances specified herein.

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

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

*Wetland protective district* means all wetlands within the jurisdiction of the city which are indicated on the Generalized Wetland Map as "wetlands providing significant wildlife habitat and/or which may be

subject to extensive mitigation".

### **Sec. 34-378. Wetland protection district.**

(a) *Wetland protection district.* This article shall apply to all wetlands within the Wetland Protection District as defined herein and located within the jurisdiction of the city. The generalized wetland map, adopted as part of this article, shows the general location of wetlands and of the wetland protection district and should be consulted by persons contemplating activities in or near wetlands before engaging in a regulated activity. The generalized wetland map, together with all explanatory matter thereon and attached thereto, is hereby adopted by reference and declared to be a part of this article. The generalized wetland map shall be on file in the office of the county zoning administrator.

(b) *Wetland protection district boundaries.* The generalized wetlands map is a general reference document and wetland boundaries indicated on the map are approximations. The purpose of the generalized wetland map is to alert developers/landowners if they are within proximity to a wetland, which means that there is a high likelihood of the presence of a jurisdictional wetland and a need for the developer/landowner to seek U.S. Army Corps of Engineers guidance as to whether a Section 404 Permit will be required prior to any activity. The generalized wetland map does not necessarily represent the exact boundaries of jurisdictional wetlands within the jurisdiction of the city and cannot serve as a substitute for a delineation of wetland boundaries by the U.S. Army Corps of Engineers, as required by Section 404 of the Clean Water Act, as amended. Any local government action under this article does not relieve the landowner from federal or state permitting requirements.

### **Sec. 34-379. Local development permits.**

(a) *Local development permit requirements.* No regulated activity will be allowed within the wetland protection district without written permission from the city or its designee in the form of a local development permit. Issuance of a local development permit is contingent on full compliance with the terms of this article and other applicable regulations. All activities that are not exempted in section 34-379(b) below or by other local development ordinances, shall be prohibited without prior issuance of a local development permit. If the area proposed for development is located within 50 feet of the wetland protection district boundary, as determined from the generalized wetland map, a U.S. Army Corps of Engineers determination shall be required. If the Corps of Engineers determination shall be required. If the Corps determines that wetlands are present and that a Section 404 Permit or letter of permission is required, a local development permit or letter of permission is required, a local development permit will be issued only following issuance of the Section 404 Permit or letter of permission.

(b) *Permissible uses (use as a right).* The following uses shall be allowed as a right within the wetland protection district to the extent that they are not prohibited by any other article or law and provided they do not require structures, grading, fill, draining, or dredging except as provided herein.

- (1) Operations conducted during normal silvicultural activities, including minor dredge and fill associated with road construction, harvesting, and reforestation practices provided they meet the performance standards and road construction best management practices required under Section 404 of the Clean Water Act.

- (2) Conservation or preservation of soil, water, vegetation, fish, and other wildlife, provided they do not affect waters of Georgia or of the United States in such a way that would require an individual 404 Permit.
- (3) Outdoor passive recreational activities, including fishing, bird watching, hiking, boating, horseback riding, and canoeing.
- (4) Forestry practices applied in accordance with best management practices approved by the Georgia Forestry Commission.
- (5) The cultivation of agricultural crops. Agricultural activities shall be subject to best management practices approved by the Georgia Department of Agriculture.
- (6) The pasturing of livestock provided that riparian wetlands are protected, that soil profiles are not disturbed and that approved best management practices are followed.
- (7) Education, scientific research, and nature trails.
- (8) Temporary emergency permit. A temporary emergency permit can be issued by the city or its designee for the following reasons:
  - Maintenance or repair of lawfully located roads or structures and of facilities used in the service of the public to provide transportation, electric, gas, water, telephone, telegraph, telecommunication or other services, provided that such roads, structures, or facilities are not materially changed or enlarged and that, prior to the commencement of work, written notice has been given to the city or its designee and provided that the work is conducted using best management practices to ensure that flow and circulation patterns, and chemical and biological characteristics of the wetland are not impaired and that any adverse effect on the aquatic environment will be minimized.
  - Temporary water level stabilization measures associated with silvicultural operations, provided that they are necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on the conduct of silvicultural activities if not corrected.
  - Limited ditching, tilling, dredging, excavating, or filling done solely for the purpose of maintaining or repairing existing drainage systems necessary for the cultivation of agricultural crops, provided that the maintenance or repair activity does not result in the impairment, alteration, or loss of wetlands not previously subject to agricultural and silvicultural use under the terms and provisions of section 34-379(b).
  - Limited excavating and filling necessary for the repair and maintenance of piers, walkways, nature trails, observation decks, wildlife management shelters, boathouses, or other similar water-related structures, provided that they are built on pilings to allow unobstructed flow of water and preserve the natural contour of the wetland.
- (c) *Site plans.* Applications for a development permit within the generalized wetland protection

district shall include a site plan, drawn at a scale of 1" = 50', (the city may approve a different scale where necessary to clearly provide the required information) with the following information:

- (1) A map of all planned excavation and fill, including calculations of the volume of cut and fill involved, cross-sectional drawings showing existing and proposed grades. Elevations, horizontal scale, vertical scale must be shown on the cross-sectional drawings.
- (2) Location, dimensions and area of all impervious surfaces, both existing and proposed, on the site and adjacent to the site for a distance of  $\pm 200$  feet.
- (3) The orientation and distance from the boundaries of the proposed site to the nearest bank of an affected perennial stream or water body.
- (4) Elevations of the site and adjacent lands within 200 feet of the site at contour intervals of no greater than two feet.
- (5) Location and detailed design of any spill and leak collection systems designed for the purpose of containing accidentally released hazardous or toxic materials.
- (6) All purpose temporary disruptions or diversions of local hydrology.

(d) *Activities to comply with site plan.* All development activities or site work conducted after approval of the site plan shall conform with the specifications of said site plan. The site plan may be amended only with the approval of the city or its designee. The city may require a bond up to the larger of \$5,000.00 or \$1,000.00 per acre of project area and with surety and conditions sufficient to secure compliance with the conditions and limitations set forth in the permit. The particular amount and conditions of the bond shall be consistent with the purposes of this article. In the event of a breach of condition of any such bond, the city or its designee may collect such bond or institute an action in a court of competent jurisdiction upon such bond and prosecute the same to judgement and execution.

(e) *Filing fee.* At the time of the application, the applicant shall pay a filing fee specified by the city or its designee. Filing fees up to the larger of \$500.00 or \$100.00 per acre may be required to evaluate the application. This fee may be used to retain expert consultants who will provide services pertaining to functional assessment and mitigation measures as deemed necessary by the city or its designee. In any case, the following fees shall not be less than the amount necessary for evaluation of the application in a manner consistent with the intent of this article.

(f) *Enforcement authority.* The Butts County Community Development is hereby established as the administrator of this article.

(g) *Review procedures.* The application shall be made to the county zoning inspection department and will be reviewed within 60 days or in accordance with established review procedures for the type of development being considered, whichever is greater. The review period shall include the preparation of findings (approval or disapproval) by the Butts County Community Development Department. The applicant will receive written notification of the findings thereof. If the review process is not completed within the time period specified herein, the application is considered to be approved for the

purposes of this article.

(h) *Appeals.* Decisions on permit application made by the city zoning and inspection department may be appealed to the city council. The appeal must be made within ten days of the decision rendered by the city zoning and inspection department. A public hearing shall be held for appeals. Public announcement of the hearing may be printed in local newspapers at least 15 but no more than 45 days prior to the hearing. Any person may offer testimony at the hearing. The decision of the city council may be appealed to a court of competent jurisdiction, as discussed in section 34-382.

(i) *Duration of permit validity.*

- (1) If construction described in the development permit has not commenced within 12 months from the date of issuance, the permit shall expire.
- (2) If construction described in the development permit is suspended or abandoned after work has commenced, the permit shall expire 12 months after the date that work ceased.
- (3) Written notice of the pending expiration of the development permit may be issued by the Butts County Community Development Department.

#### **Sec. 34-380. Monitoring and enforcement.**

(a) The city council or their designee, their agent, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this article and may take or cause to be made such examinations, surveys, or sampling as the city council or their designee deems necessary.

- (1) The Butts County Community Development Department shall have authority to enforce this ordinance; issue permits thereunder; and address violations or threatened violations thereof by issuance of violation notices, administrative orders, and civil and criminal actions. All costs, fees, and expenses in connection with such actions may be recovered as damages against the violator.
- (2) Law enforcement officials or other officials having police powers shall have authority to assist the Butts County Community Development Department in enforcement.
- (3) The Butts County community Development Department shall have authority to issue cease and desist orders in the event of any violation of this article. Cease and desist orders may be appealed to a court of competent jurisdiction, as identified herein.

(b) The city council or their designee may require a bond as set forth in section 34-379 and with surety and conditions sufficient to secure compliance with the conditions set forth in the permit. The particular amount and the conditions of the bond shall consistent with the purpose of this article.

### **Sec. 34-381. Penalties.**

(a) Any person who commits, takes part in, or assists in any violation of any provision of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided by law. Each violation of this act shall be a separate offense, and, in the case of a continuing violation, each day's continuance shall be deemed to be a separate and distinct offense.

(b) When a building or other structure has been constructed in violation of this article, the violator may be required to remove the structure, at the discretion of the city council or their designee.

(c) When removal of vegetative cover, excavation or fill has taken place in violation of this article, the violator may be required to restore the affected land to its original contours and restore vegetation, as far as practicable, at the discretion of the city council or their designee.

(d) If the city council or their designee discovers a violation of this article that also constitutes a violation of the provisions of the Clean Water Act as amended, the city council or their designee may issue written notification of the violation to the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers and the landowner.

(e) Suspension, revocation. The city council or their designee may suspend or revoke a permit if it finds that the applicant has not complied with the conditions or limitations set forth in the permit or has exceeded the scope of the work set forth in the permit. The city council or their designee may cause notice of its denial, issuance, conditional issuance, revocation, or suspension of a permit to be published in a newspaper having a broad circulation in the area where the wetland is located.

### **Sec. 34-382. Judicial review.**

(a) *Jurisdiction.* All final decisions of the city council or their designee concerning denial, approval, or conditional approval of a special permit shall be reviewable in the Butts County Superior Court.

(b) *Alternative actions.* Based on these proceedings and the decision of the court, the city council or their designee may, within the time specified by the court, elect to:

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

### **Sec. 34-383. Amendments.**

These regulations and the generalized wetland map may from time to time be amended in accordance with procedures and requirements in the general statutes and as new information concerning

wetland locations, soils, hydrology, flooding, or botanical species peculiar to wetlands become available.

**Sec. 34-384. Assessment relief.**

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

This ordinance shall take effect and be in force from and after the date of its adoption.

SO ADOPTED AND ORDAINED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Scott Chewning, Mayor

\_\_\_\_\_  
Catherine Watson, Mayor-Pro-Tem

\_\_\_\_\_  
Willie Morgan

\_\_\_\_\_  
Letha Kinard

\_\_\_\_\_  
Glorine Thurman

\_\_\_\_\_  
Thomas Douglas

ATTEST:

\_\_\_\_\_  
Annie Mitchell, City Clerk