

10-0-0058

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AN ORDINANCE BY
CITY UTILITIES COMMITTEE

AN ORDINANCE TO AMEND
ARTICLE VII OF CHAPTER 74
ENTITLED "RIPARIAN
BUFFER REQUIREMENTS" (§
74-300 *et seq.*); TO IDENTIFY
THE ADMINISTERING
DEPARTMENT AS
WATERSHED MANAGEMENT;
TO COMPLY WITH THE
REQUIREMENTS OF THE
METROPOLITAN NORTH
GEORGIA WATER PLANNING
DISTRICT ACT; TO
STREAMLINE THE REVIEW
PROCESS AND CLARIFY THE
PUBLIC NOTICE
REQUIREMENTS; AND FOR
OTHER PURPOSES.
ADOPTED BY SUBSTITUTE

APR 19 2010

COUNCIL

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred 01/19/10
 Referred To: CITY UTILITIES
 Date Referred 3/11/10
 Referred To: City Utilities
 Date Referred _____
 Referred To: _____

First Reading
 Committee City Utilities
 Date 04/19/2010
 Chair Richard Buckley
 Referred To _____

Committee City Utilities
 Date 04/19/2010
 Chair Richard Buckley
 Action Fav, Adv Hold (see rev. side)
 Other
 Members _____

Refer To _____

Committee

Date

Chair

Action

Fav, Adv, Hold (see rev. side)

Other

Members

Refer To

Committee

Date

Chair

Action

Fav, Adv, Hold (see rev. side)

Other

Members

Refer To

FINAL COUNCIL ACTION

2nd 1st & 2nd 3rd

Readings

Consent V Vote RC Vote

CERTIFIED

CERTIFIED

APR 19 2010

ATLANTA CITY COUNCIL PRESIDENT

[Signature]

CERTIFIED

APR 19 2010

Frank D. Buchanan
MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED

APR 27 2010

[Signature]
MAYOR

**A SUBSTITUTE ORDINANCE BY
CITY UTILITIES COMMITTEE**

AN ORDINANCE TO AMEND ARTICLE VII OF CHAPTER 74 ENTITLED "RIPARIAN BUFFER REQUIREMENTS" (§ 74-300 *et seq.*); TO IDENTIFY THE ADMINISTERING DEPARTMENT AS WATERSHED MANAGEMENT; TO COMPLY WITH THE REQUIREMENTS OF THE METROPOLITAN NORTH GEORGIA WATER PLANNING DISTRICT ACT; TO STREAMLINE THE REVIEW PROCESS AND CLARIFY THE PUBLIC NOTICE REQUIREMENTS; AND FOR OTHER PURPOSES.

WHEREAS, in May 2001 the Atlanta City Council adopted and the Mayor approved the Riparian Buffer Ordinance in an effort to protect water quality and fulfill the requirements of the Metropolitan River Protection Act; and

WHEREAS, in December 2001, the Atlanta City Council rescinded the May 2001 ordinance and adopted a new Riparian Buffer Ordinance to provide variance procedures for the buffer requirements; and

WHEREAS, the Department of Watershed Management has administered this ordinance since 2002 and any reference to the Department of Public Works should be replaced with the Department of Watershed Management as the department of purview; and

WHEREAS, based upon the last several years of administering the Riparian Buffer Ordinance, it has become apparent that it is in the best interests of the City of Atlanta (City) to provide for a more efficient, transparent, clear, and objective variance process; and

WHEREAS, it is in the best interests of the City to provide for easily applicable definitions of streams that are consistent with State law; and

WHEREAS, since the adoption of ordinance number 01-O-1444 on December 11, 2001, it has been the policy of the City to prohibit the creation of lots that require a stream bank variance from the provisions of Article VII of Chapter 74; and

WHEREAS, the Metropolitan North Georgia Water Planning District Act, O.C.G.A. § 12-5-570 *et seq.* requires that the City of Atlanta adopt and administer the Metropolitan North Georgia Water Planning District's ("District's") Model Stream Buffer Protection Ordinance (2003) or an equally effective stream buffer protection ordinance,

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS AS FOLLOWS:



SECTION 1: That Atlanta City Code § 74-300 entitled “Citation” is hereby amended to read as follows:

Sec. 74-300. Title, Authority, and Purpose.

- (a) *Title.* This article may be cited as the "City of Atlanta Riparian Buffer Ordinance.”
- (b) *Authority.* This article is enacted pursuant to the City's authority under Ga. Const. Art. IX, § II (home rule and supplementary powers); O.C.G.A. § 36-35-1 *et seq.* (municipal home rule powers); Atlanta City Charter §§ 1-102(b), 1-102(c)(42), and 1-102(c)(46); and to implement the requirements of the Metropolitan North Georgia Water Planning District Act, O.C.G.A. § 12-5-570 *et seq.*
- (c) *Purpose.* The purpose of this article is to maintain stream water quality and protect water resources by protecting buffer areas along the streams and wetlands of the City; to minimize development within such buffers by requiring authorization for any development; to provide additional protection for streams and wetlands within the City beyond the buffer areas mandated by the State of Georgia; to minimize public and private losses due to erosion, siltation, and water pollution; and to promote the safety, health, peace, and general welfare of the city and its inhabitants.

SECTION 2: That Atlanta City Code § 74-301 entitled “Purpose and Intent” is hereby amended to read as follows:

Sec. 74-301. Findings and Applicability.

- (a) *Findings.* The City of Atlanta finds that buffers adjacent to streams and wetlands are beneficial to water quality because they:
 - (1) Protect, restore, and maintain the chemical, physical and biological integrity of streams and their water resources;
 - (2) Improve surface water, urban stormwater runoff, and groundwater quality by filtering pollutants, nutrients, sediment, and other contaminants;
 - (3) Reduce erosion and sedimentation;
 - (4) Protect and stabilize stream banks and stream channels;
 - (5) Maintain base flow of streams by aiding in groundwater recharge, and thereby protect dry weather low flows in streams;
 - (6) Contribute organic matter that is a source of food, energy, and habitat for the aquatic ecosystem;



- (7) Provide tree canopy to shade streams and promote desirable aquatic habitat including but not limited to the moderation of water temperature in streams;
- (8) Provide and protect riparian wildlife habitat and wildlife migration corridors;
- (9) Offer educational and recreational opportunities; and
- (10) Protect greenspace.

Therefore, the City finds that the protection of the streams, wetlands, and the areas adjacent to them is vital to the safety, health, peace, and general welfare of the city and its inhabitants.

- (b) *Applicability.* This article shall apply to both public and private property within the City. This article shall be administered in its entirety by the Department of Watershed Management unless otherwise specified herein.

SECTION 3: That Atlanta City Code § 74-302 entitled “Definitions” is hereby amended to read as follows:

Sec. 74-302. 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:

- (1) *Authorized encroachment* means development in the buffer authorized by the Commissioner allowing an activity otherwise prohibited by this ordinance.
- (2) *Applicant* means the person who applies for an authorized encroachment and who must be the owner of the real property containing the buffer or an authorized agent of the owner.
- (3) *Best management practices (BMPs)* means a collection of sound conservation and engineering practices, and vegetative measures to prevent or minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the Manual for Erosion and Sediment Control in Georgia, as referenced in § 74-302(16).
- (4) *Buffer* means the area of land lying adjacent to a wetland or stream in which development is prohibited or limited as more particularly set out in § 74-303.
- (5) *City* means City of Atlanta.
- (6) *Commissioner* means the commissioner of the Department of Watershed Management or



a designee.

- (7) *Department* means the Department of Watershed Management or its successor agency.
- (8) *Development* means any human-made change to improved or unimproved property that includes, but is not limited to, construction of buildings or other structures, mining, dredging, filling, clearing and grubbing, clearing, grading, paving, installation of impervious cover, excavation or drilling, storage of equipment or materials, or any construction activity.
- (9) *Effective date* means the date of adoption by City Council and approval by the Mayor of the Riparian Buffer Ordinance on December 11, 2001.
- (10) *EPD* means the Environmental Protection Division of the State of Georgia Department of Natural Resources.
- (11) *Existing lot* means a parcel of land that was both:
 - (i) approved by the Director of the Bureau of Planning or incorporated in the City's official cadastral maps prior to the effective date, or approved later than the effective date but was initiated by an application for subdivision completed and filed on or before May 25, 2001, with all necessary supporting documentation according to the Atlanta City Code, and
 - (ii) recorded in the records of the Clerk of the Superior Court of Fulton or DeKalb County.
- (12) *Extreme hardship* means a unique or special condition more particularly set out in § 74-306(b)(3) proposed by an applicant as grounds for the grant of an authorized encroachment on a new lot.
- (13) *Georgia Stormwater Management Manual* means the guide, First Edition (August 2001 or as updated), published by the Atlanta Regional Commission and adopted by reference in § 74-508 of the Atlanta City Code, and commonly referred to as the "Blue Book." The Georgia Stormwater Management Manual is currently available from the Metropolitan North Georgia Water Planning District (<http://www.northgeorgiawater.com> or <http://www.georgiastormwater.com>).
- (14) *Hardship* means a unique or special condition, more particularly set out in § 74-306(a)(1), and not to include lesser property value by comparison to properties in the vicinity, proposed by an applicant as grounds for the grant of an authorized encroachment.
- (15) *Impervious cover or surface* means any paved, hardened, or structural surface, regardless of material. Impervious cover or surface includes, but is not limited to buildings, rooftops, driveways, streets, roads, parking lots, swimming pools, dams, gaming courts,



decks, any concrete or asphalt, and any other surfaces or structures that will substantially reduce or prevent the infiltration of water.

- (16) *Manual for Erosion and Sedimentation Control in Georgia* means the guide published by the Georgia Soil and Water Conservation Commission specified in O.C.G.A. § 12-7-6(b) and adopted by reference in § 74-40(a) of the Atlanta City Code and commonly referred to as the "Green Book." The Manual for Erosion and Sedimentation and Control in Georgia is currently available from the Georgia Soil and Water Conservation Commission (<http://www.gaswcc.org>).
- (17) *Mitigation* means measures undertaken to protect, restore, or enhance a stream, wetland, or buffer in order to compensate for or reduce the adverse impacts of development within a stream, wetland, or buffer, and more particularly set out in § 74-306(d).
- (18) *New lot* means a parcel of land that:
- (i) was approved by the Director of the Bureau of Planning after the effective date, and was not initiated by an application for subdivision completed and filed on or before May 25, 2001, and;
 - (ii) is recorded in the records of the Clerk of the Superior Court of Fulton or DeKalb County.
- (19) *Normal stream flow* means any stream flow that consists of base flow during any period of the year under normal meteorological conditions. Base flow results from groundwater that enters the stream channel through sub-surface flow and includes spring flows into streams. Base flow does not include surface water entering stream channels immediately after precipitation.
- (20) *On-Site Sewage Management System* means a system that includes a septic tank, absorption field and any other elements intended to be used for management and disposal of sewage on-site, as specified in GA Comp. R. & Regs. § 290-5-26-.02(gg) and as regulated by O.C.G.A. §§ 12-5-20 *et seq.*
- (21) *Stream* means any watercourse that sustains normal stream flow during any period of the year under normal meteorological conditions.
- (22) *Stream Channel* means the portion of a watercourse in a well-defined channel that contains the base flow of the stream.
- (23) *Technical Panel* means at least three Department of Watershed Management staff professionals designated by the Commissioner in accordance with § 74-307 who hold periodic meetings, develop procedures, make determinations, and maintain the public record in order to process applications for authorized encroachments.
- (24) *Waters of the state* means any and all rivers, streams, creeks, branches, lakes, reservoirs,



ponds, drainage systems, springs, wells, and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the state which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation, as provided by O.C.G.A. § 12-7-3(16).

- (25) *Well* means an excavation or constructed opening into the ground from which groundwater is sought or obtained.
- (26) *Wetlands* means those areas, delineated in accordance with the U.S. Army Corps of Engineers Wetlands Delineation Manual, 1987 as amended, that under normal conditions contain hydric soils, hydrophytic vegetation, and hydrologic conditions reflecting temporary or permanent inundation or saturation by surface or ground water. Wetlands generally include swamps, marshes, bogs, and similar areas and typically support a prevalence of vegetation adapted for life in saturated soil conditions.
- (27) *Wrested vegetation, point of* means that point at the edge of a stream where vegetation has been moved or wrested as a result of normal stream flow or wave action.

SECTION 4: That Atlanta City Code § 74-303 entitled “Application of riparian buffers” is hereby amended to read as follows:

Sec. 74-303. Buffer Requirements.

From and after the effective date of this ordinance, no person shall conduct development within the buffers set out as follows:

- (a) *City of Atlanta Stream Buffer.* Streams shall have a seventy-five (75) foot, natural, undisturbed, vegetative buffer measured perpendicularly and horizontally on both sides of the stream from the point of wrested vegetation.
- (b) *City of Atlanta Wetlands Buffer.* Wetlands shall remain in their natural state and shall have a minimum twenty-five (25) foot, natural, undisturbed, vegetative buffer measured horizontally and perpendicularly on all sides of the wetland (where applicable) from the edge of the wetland as determined and delineated in accordance with §74-401 *et seq* of the Atlanta City Code. Wetlands lying in part or in whole within a stream buffer shall have a buffer that includes the extent of the wetland within the stream buffer, plus the wetland buffer.
- (c) *Water Supply Watershed Buffer.* The Water Supply Watershed Buffer applies to streams that are both tributary to a water supply and within a seven (7) mile radius of the boundary of a reservoir. A map of the Water Supply Watershed Buffer (which currently consists of the Long Island Creek Basin) shall be maintained for public inspection in the Department of Watershed Management. The following buffer requirements shall apply from and after January 13, 2009:



- (1) A natural, undisturbed vegetative buffer shall be maintained for a distance of 100 feet measured perpendicularly and horizontally on both sides of the stream from the point of wretched vegetation.
- (2) No impervious surfaces or on-site sewage management systems shall be constructed within a distance of 150 feet measured perpendicularly and horizontally on both sides of the stream from the point of wretched vegetation.
- (d) *Waters of the State Buffer.* As required by O.C.G.A. § 12-7-6 and §74-43(c)(15) of the Atlanta City Code, waters of the state not otherwise covered by this article shall have a twenty-five (25) foot, natural, undisturbed, vegetative buffer measured perpendicularly and horizontally from the point of wretched vegetation.
- (e) *Measuring of buffers.* For purposes of measuring buffers set out in this section, if wretched vegetation is not present due to a human-made modification, removal, or replacement of the stream bank with a structure (e.g. concrete lining, gabions, retaining wall, or rip rap), the buffer shall be measured from the top of the structure or point of modification or removal.

SECTION 5: That Atlanta City Code § 74-304 entitled “Relationship to erosion and sedimentation requirements” is hereby amended to read as follows:

Sec. 74-304. Stream Crossing Requirements.

Construction or repair of structures that cross streams, including but not limited to those exempt under Section 74-305, shall be subject to the following:

- (a) A hydraulic analysis prepared, signed, and sealed by an engineer registered to practice in the State of Georgia is required for any proposed stream crossing. The analysis shall demonstrate that the proposed crossing will not adversely impact upstream and downstream properties during a 100-year flood; and
- (b) Free-span techniques shall be employed to prevent blockage or constriction of natural drainage ways; and
- (c) Approximately perpendicular crossing angles shall be employed; provided, however, crossings shall be aligned to minimize buffer disturbance to the maximum extent practicable; and
- (d) Best management practices shall be utilized, stream banks shall be properly stabilized, and buffers shall be vegetated in accordance with the City of Atlanta Buffer Revegetation Guidelines.

SECTION 6: That Atlanta City Code § 74-305 entitled “Exemptions” is hereby amended to read as follows:



Sec. 74-305. Exemptions.

Subject to protection of the buffer to the maximum extent practicable and compliance with stream crossing requirements set out in Section 74-304, the construction, operation, and maintenance of the following are exempt from the authorized encroachment requirements of Section 74-306:

- (a) Existing public streets, utilities, and related appurtenances;
- (b) Stream crossings for public or private utility lines, and for streets and stormwater infrastructure and related appurtenances required to be dedicated to the city;
- (c) Public drinking water, public wastewater, and public stormwater infrastructure and related appurtenances and treatment facilities;
- (d) Multi-use trails, pedestrian bridges, and associated appurtenances listed in the City of Atlanta Comprehensive Development Plan; provided, however, § 74-306(d) shall apply;
- (e) A single driveway necessary to provide access to an existing lot;
- (f) Environmental monitoring and remediation activities such as water quality monitoring, stream gauging activities, and soil and groundwater monitoring or remediation;
- (g) Removal of dead, dying, diseased, or hazardous trees; provided, however, no grading or stump removal shall be conducted, and such removal is authorized by the City Arborist pursuant to §158-26 *et seq.* of the Atlanta City Code;
- (h) Removal without replacement of existing impervious cover from the buffer; and
- (i) Activities on owner-occupied, single-family, residential lots to protect, restore, or enhance stream bank stability, vegetation, water quality, or aquatic habitat, or minor land disturbing activities as set out in O.C.G.A. §12-7-17(3); provided, however, no grading shall be conducted.

SECTION 7: That Atlanta City Code § 74-306 entitled “Stream bank variances” is hereby amended to read as follows:

Sec. 74-306. Authorized Encroachments.

The Commissioner may authorize an encroachment to allow development within the buffer upon a showing by the applicant that due to site-specific conditions, the buffer required by this article would result in a hardship or extreme hardship; provided however, the grant of such encroachment shall require mitigation such that post-development conditions are at least as protective of water quality as pre-development conditions.



An authorized encroachment may be granted in accordance with the following:

- (a) *Existing lots of record.* In addition to the requirements set out in (c) and (d) of this subsection, the following shall apply to authorized encroachments on existing lots of record (as defined herein):
 - (1) The Commissioner may grant an authorized encroachment subject to the requirements of this ordinance when literal enforcement of the required buffer would result in a hardship, and no alternative to an authorized encroachment exists; and
 - (2) No authorized encroachment shall be granted to an existing lot of record that is not single- or two-family residential that allows for development less than or equal to 50 feet from a stream measured in accordance with § 74-303 of this ordinance.
- (b) *New Lots of Record.* In addition to the requirements set out in (c) and (d) of this subsection, the following shall apply to authorized encroachments on new lots of record (as defined herein):
 - (1) No authorized encroachment shall be granted to a new lot of record to achieve greater than the minimum total developable area for a property's zoning classification.
 - (2) No authorized encroachment shall be granted to a new lot of record to achieve greater than the minimum development requirements of a commercial lot.
 - (3) No authorized encroachment shall be granted to a new lot of record except in the case of an extreme hardship. An extreme hardship shall be based upon on a showing by the applicant (set out more particularly in § 74-308) that no reasonable alternative for compliance exists and denial of such authorized encroachment would result in one of the following:
 - (i) non-compliance with applicable state or federal regulatory law, including, in particular, the Americans with Disabilities Act of 1990; or
 - (ii) severe and unavoidable hazard to public health or safety; or
 - (iii) severe and unavoidable harm to the environment;provided, however, neither lesser property value by comparison to properties in the vicinity, nor compliance with this or other applicable ordinances shall constitute grounds for extreme hardship.
- (c) *All Lots of Record.* The following are applicable to all authorized encroachments.
 - (1) Authorized encroachments shall not be granted that reduce the buffer to a width



less than the minimum standards established by O.C.G.A. §§ 12-2-8, 12-7-6, or federal law.

- (2) Authorized encroachments shall not be granted for a distance, location, or activity that is greater than necessary to alleviate a hardship or extreme hardship imposed by a strict application of this article.
 - (3) Actions of a property owner that have created a hardship or extreme hardship shall not constitute grounds for granting an authorized encroachment.
 - (4) The granting of a zoning variance shall not create a right to an exemption under § 74-305 or the grant of an authorized encroachment under § 74-306.
 - (5) Authorized encroachments shall not be granted for wells, on-site sewage management systems, detention ponds, or underground stormwater detention facilities, except upon a showing by the applicant of an extreme hardship as set out in § 74-306(b)(3).
 - (6) Authorized encroachments shall not be granted for impervious gaming courts.
 - (7) Authorized encroachments shall be designed to maximize the area of the buffer where sheet flow discharge of stormwater occurs. The sheet flow of stormwater through the entire buffer shall be the goal of the design. However, where redirection of stormwater is necessary for drainage control, vegetated swales shall be utilized where practicable.
- (d) *Mitigation.* Mitigation shall be required as a condition for the grant of an authorized encroachment in order to ensure that post-development conditions are at least as protective of water quality as pre-development conditions. Mitigation shall be proposed by the applicant in accordance with guidance prepared by the Department of Watershed Management that shall include, at a minimum, the following options:
- (1) Stormwater quality improvement measures or stormwater quantity reduction measures as specified by the Georgia Stormwater Management Manual;
 - (2) Stream or wetland restoration;
 - (3) Buffer revegetation as specified in the City of Atlanta Buffer Revegetation Guidelines, which shall be maintained by the Department of Watershed Management and available for public inspection;
 - (4) Reduction of run-off beyond pre-development levels;
 - (5) Removal of existing impervious surfaces; or
 - (6) Buffer compensation.



SECTION 8: That Atlanta City Code § 74-307 entitled “Criteria to be considered for granting a stream bank variance” is hereby amended to read as follows:

Sec. 74-307. Technical Panel.

The Commissioner shall designate a Technical Panel for the review and processing of applications for authorized encroachments. The Technical Panel shall be comprised of at least three staff professionals in the Department of Watershed management certified by the Georgia Soil and Water Conservation Commission pursuant to O.C.G.A. § 12-7-19 in the field of pollution, erosion, and sedimentation control at the plan reviewer level (Level II). Technical Panel members shall serve for a period of two (2) years renewable by the Commissioner, and should have expertise in the following areas: stream buffer revegetation, erosion and sedimentation control, stream and wetland restoration, mitigation (as defined herein), and riparian habitat restoration. The Technical Panel shall meet not less than once monthly, shall develop procedural rules, maintain a docket, and make records available for review upon request.

SECTION 9: That Atlanta City Code § 74-308 entitled “General procedures for stream bank variance applications” is hereby amended to read as follows:

Sec. 74-308. Contents of an Application for an Authorized Encroachment.

- (a) Applicants shall apply for an authorized encroachment on a form supplied by the Department and in a format specified by the Department. An application shall include, at a minimum, the following showings by the applicant:
- (1) documentation that the lot was recognized by the City either on or before the effective date of this ordinance (as defined herein), or after the effective date of this ordinance;
 - (2) a written description of the project, including details of the buffer disturbance
 - (3) documentation of hardship or extreme hardship should the authorized encroachment application be denied;
 - (4) alternative plans which attempt to meet the same development goals as the original site plan while preventing buffer intrusion, and an explanation of why the alternative development is not feasible;
 - (5) demonstration that impact to the stream buffer will be minimized and that impact only occurs to the extent necessary to remove a hardship or extreme hardship;
 - (6) signature of the applicant; and



- (7) a site plan that depicts the physical characteristics of the property, including, at a minimum, the following:
- (i) waters of the state, streams, wetland delineation, floodplain boundaries, other natural features, and all buffers as determined by a field survey;
 - (ii) property boundaries, size, existing and proposed topography, slopes, soil types, vegetation, and other relevant physical characteristics of the property;
 - (iii) locations of both existing and proposed structures, utilities, stormwater facilities, impervious surfaces, and the boundaries of the area of soil disturbance both inside and outside of the buffer. The area of the buffer to be impacted shall be accurately and clearly delineated, and shall show the total area and length of buffer disturbance;
 - (iv) erosion and sedimentation control measures in accordance with the Manual for Erosion and Sediment Control in Georgia to prevent the migration of sediment into streams, wetlands, or waters of the state;
 - (v) 100 year flood components for all streams with elevations and contour locations as they cross the property. Where 100 year flood elevations have been determined by the Federal Emergency Management Agency Flood Insurance Rate Maps, or where other studies deemed acceptable by the Department exist, those elevations shall be used. In areas that have not been studied by the Federal Emergency Management Agency as shown on Flood Insurance Rate Maps, the Commissioner may require a 100 year flood study prepared in accordance with Atlanta City Code Chapter 74, Article V, and prepared by a professional engineer or hydrogeologist currently licensed in the State of Georgia;
 - (vi) proposed mitigation for the buffer disturbance in accordance with §74-306(d).
- (b) The Commissioner may require other information deemed necessary to evaluate an application including, but not limited to, engineering analysis of stream dynamics, cross sections and profiles, details of proposed mitigation, and modifications to site plans.
- (c) The applicant shall certify that all information provided in the application and all supporting documentation is true and correct. The omission or misrepresentation of material fact in connection with the application shall be grounds for denial.

SECTION 10: That Atlanta City Code § 74-309 entitled “Contents of an application for stream bank variance” is hereby amended to read as follows:



Sec. 74-309. Technical Review.

Within thirty (30) days of receipt of a substantially complete application, the Technical Panel shall conduct a technical review, which shall include, at a minimum, an evaluation of the following:

- (a) Whether the application meets the requirements of § 74-308 and provides sufficient information to proceed with review;
- (b) Whether the application contains a disqualifying characteristic that makes the applicant ineligible for an authorized encroachment;
- (c) Whether the proposed encroachment is on a wetland, 100-year floodplain, or other location that is inappropriate for development;
- (d) Whether the property owner has demonstrated a hardship or an extreme hardship;
- (e) Whether, in light of the showings by the applicant required by § 74-308, the applicant has demonstrated that the location and extent of the proposed buffer encroachment has been minimized;
- (f) Whether alternative designs are possible which require less intrusion or no intrusion;
- (g) Whether, in light of the mitigation proposed by the applicant in accordance with § 74-306(d), the post-development conditions will be at least as protective of water quality as pre-development conditions;
- (h) Whether the proposed development meets all other requirements of this ordinance; and
- (i) Whether the property to be affected by the authorized encroachment has no reasonable use given, but not limited to, the current zoning if the authorized encroachment is denied.

Upon completion of technical review, the Technical Panel shall either request modifications, or notify the applicant that technical review is complete and that the applicant may proceed with public notice as required by §74-310, or in the event compliance with the applicable criteria is not possible, deny the application for authorized encroachment.

SECTION 11: That Atlanta City Code § 74-310 entitled “Advertisement, posting and mailing of notice of application” is hereby amended to read as follows:

Sec. 74-310. Public Notice of Application, Public Comment, and Maintenance of Public Record.

A public notice and comment period is required as a condition for the grant of an authorized encroachment. The purpose of public notice and comment is to provide an opportunity for



comment on the proposed encroachment, and to provide the Technical Panel with relevant information consistent with the requirements of this ordinance. The applicant shall complete the following public notice requirements upon notification by the Technical Panel that technical review is complete:

- (a) *Public Notice and Comment Period.* The public notice and comment period shall be thirty (30) consecutive calendar days from the date the sign(s) required by § 74-310(b)(3) is(are) posted.

Comments shall be submitted to the attention of the Riparian Buffer Technical Panel in the Department of Watershed Management. Comments shall be timely and must identify the application to which they pertain. Public comments shall be made part of the application file.

- (b) *Notice Requirements.* The applicant shall notify the public of the application for an authorized encroachment in accordance with this section. The Commissioner is authorized to develop standards and procedures for posting of notice, which shall, at a minimum, include the following:

- (1) The applicant shall notify all owners of real property adjoining the stream or wetland for a distance of two-hundred (200) feet upstream and five-hundred (500) feet downstream as measured from the property line contiguous to the stream or wetland that an authorized encroachment is being requested. The notice shall be sent via certified mail return receipt requested, shall contain both a copy of the application and the information listed in § 74-310(c), and shall be postmarked the same date the sign(s) required by § 74-310(b)(3) is(are) posted; and
- (2) The applicant shall notify the chairperson of the NPU in which the subject property is located that an authorized encroachment is being requested. The notice shall be sent via certified mail return receipt requested, shall contain both a copy of the application and the information listed in § 74-310(c), and shall be postmarked the same date the sign(s) required by § 74-310(b)(3) is(are) posted; and
- (3) The applicant shall post at least one (1) sign on the property for which the authorized encroachment is being sought in a format as determined by the Department or in accordance with the following specifications:
 - (i) Post one (1) sign adjacent to each street the property abuts for every six-hundred (600) feet of frontage;
 - (ii) The sign shall contain the words "Stream Buffer Encroachment" in letters not less than three (3) inches high;
 - (iii) The sign shall be legible and posted in a conspicuous place on the property



so it can be easily viewed from the public street on which the property fronts;

- (iv) The sign shall be at least one and one half (1.5) feet by two (2) feet;
 - (v) The sign shall contain all information in § 74-310(c); and
 - (vi) The sign shall remain in place for a minimum of thirty (30) consecutive calendar days.
- (c) *Notice Contents.* The notice required by this section shall include the following information:
- (1) the property address where the encroachment is being proposed;
 - (2) the scope of the proposed encroachment;
 - (3) the authorized encroachment application number;
 - (4) the location where plans may be reviewed and the date by which comment may be submitted as set out in §74-310(a); and
 - (5) the current address and contact information, including phone number, for the Riparian Buffer Technical Panel, Department of Watershed Management.
- (d) *Certification.* Upon completion of public notice and comment period, the applicant shall certify to the Technical Panel that all public notification requirements have been fulfilled and shall provide documentation of compliance including, but not limited to, dated photographs of the sign(s), copies of required letters, and certified mail return receipts.

SECTION 12: That Atlanta City Code § 74-311 entitled “Processing of stream bank variance applications” is hereby amended to read as follows:

Sec. 74-311. Processing of Applications for Authorized Encroachments.

- (a) *Public Comment.* Following the receipt of certification of completion of public notice, the Technical Panel shall determine whether public notice was completed in accordance with § 74-310.
- (b) *Determination.* After due consideration of public comments, the Technical Panel shall issue a determination within thirty (30) days after receipt of certification of completion of public notice and comment period and notify the applicant of the determination in writing. The Technical Panel may make findings of fact and conclusions to support its determination. The Technical Panel may take any of the following actions on an application for an authorized encroachment:



- (1) Issue the authorized encroachment as requested in the application;
 - (2) Issue an authorized encroachment with written, site-specific conditions necessary to ensure conformity to the requirements and stated intent of this article; or
 - (3) Deny the application.
- (c) *Expiration.* An application shall expire when there has been no activity on the application for a period of 180 days. With respect to an application not approved for issuance of an authorized encroachment, "no activity" shall mean that the applicant has not responded to the Technical Panel's notification that additional information or corrections are required before further processing of the application can take place.
- (d) *Term.* An authorized encroachment may be transferred to subsequent property owners; provided, however, changes to the site plan as set out in §74-308(a)(7) require resubmission of the application. The authorized encroachment shall expire if a building permit is not issued for the proposed encroachment within thirty (30) months of the date the encroachment is granted.

SECTION 13: That Atlanta City Code § 74-312 entitled "Advertisement, posting and mailing of notice of decision" is hereby amended to read as follows:

Sec. 74-312. Notice of Disposition.

- (a) Following the grant of an authorized encroachment, the applicant shall notify each of the following parties of the Technical Panel's determination under §74-311(b) via certified mail return receipt requested within ten (10) calendar days of receipt of notice:
- (1) All property owners notified pursuant to § 74-310(b)(1); and
 - (2) The chairperson of the NPU in which the subject property is located.
- (b) The notice required by §74-312(a) above shall state the Technical Panel's determination, the location where the application and related records are available for inspection, and the deadline for appeal as set out in §74-313(a).

SECTION 14: That Atlanta City Code § 74-313 entitled "Judicial review of decisions of commissioner on stream bank variances" is hereby amended to read as follows:

Sec. 74-313. Appeal.

- (a) Within thirty (30) days of the date of issuance of a determination by the Technical Panel, aggrieved or adversely affected parties may file an appeal with the Commissioner. Such appeal shall be in writing and shall include a copy of the Technical Panel's determination.



Appellants shall submit a copy of the appeal to the Technical Panel. Upon receipt of an appeal and for good cause, the Commissioner may suspend the authorized encroachment pending review. Within thirty (30) days after receipt of an appeal, the Commissioner shall make a determination and notify the appellant.

- (b) The Commissioner's determination may be appealed to the superior court of the county where the subject property is located. Such appeal shall be filed within thirty (30) days of the date of issuance of the Commissioner's determination as provided in O.C.G.A. § 5-4-1 and will be reviewed under the standard provided by O.C.G.A. § 50-13-19 (h).

SECTION 15: That Atlanta City Code § 74-314 entitled "Relationships to O.C.G.A. § 12-2-8" is hereby amended to read as follows:

Sec. 74-314. Relationships to Other Laws and Regulations.

- (a) *Relationship to O.C.G.A. §§ 12-2-8 and 12-7-6.*
 - (1) The City of Atlanta Stream Buffer shall overlay the state waters buffer recognized by § 74-43(c)(15) of the Atlanta City Code, and created by O.C.G.A. §§ 12-2-8 and 12-7-6. If an applicant applies to EPD for a state waters buffer variance under O.C.G.A. § 12-7-6, the applicant must also apply with the city for an authorized encroachment, and these applications may be considered concurrently.
 - (2) No provision of this article shall be interpreted as relaxing or exempting any requirement of O.C.G.A. §§ 12-2-8 or 12-7-6. The Commissioner shall not grant an authorized encroachment to stream buffers otherwise regulated by the Environmental Protection Division, Department of Natural Resources, State of Georgia pursuant to O.C.G.A. § 12-2-8 absent the grant of a stream buffer variance from EPD.
 - (3) Receiving a stream buffer variance from EPD from the operation of O.C.G.A. § 12-7-6 is not grounds for the Commissioner to grant a similar authorized encroachment.
- (b) *Relationship to the Metropolitan River Protection Act.* No provision of this article shall be interpreted as relaxing or exempting any requirement of the Metropolitan River Protection Act, O.C.G.A. § 12-5-453. Further, the requirements of this Article are intended to fulfill the requirements of the Metropolitan River Protection Act, O.C.G.A. § 12-5-453, which mandate that local jurisdictions adopt regulations governing the use of all land which is in the drainage basin of any tributary flowing into the Chattahoochee River Corridor (2,000 foot Chattahoochee River Corridor), which at a minimum, include buffer areas of adequate width as determined by local governing authorities along all flowing streams in the drainage basin of any tributary, in which buffer areas there shall be no development.



(c) *Relationship to Chapter 74 Article VIII of the Atlanta City Code (Wetland Protection Regulation).*

- (1) The Commissioner shall not grant an authorized encroachment allowing development in a wetland under the jurisdiction of the United States Army Corps of Engineers pursuant to § 404 of the Clean Water Act absent the grant of a United States Army Corps of Engineers permit.
 - (2) No section of this ordinance shall be interpreted as relaxing or exempting any requirements of § 74-401 *et seq.* of the Atlanta City Code, § 404 of the Clean Water Act, or any jurisdictional wetland disturbance permitting procedures under the jurisdiction of the United States Army Corps of Engineers.
 - (3) The City of Atlanta Wetland Buffer shall overlay any buffers or other protections that may be required by Federal law. If an applicant applies to the Department of the Army for a wetland disturbance permit, the applicant must also apply with the city for an authorized encroachment, and these applications may be considered concurrently. Receiving a United States Army Corps of Engineers permit is not grounds for the Commissioner to grant a similar authorized encroachment.
- (d) *Relationship to O.C.G.A. § 12-5-570 et seq.* The Water Supply Watershed Buffer is adopted, effective January 13, 2009, pursuant to O.C.G.A. § 12-5-570 *et seq.* and GA Comp. R. & Regs. §§ 391-3-16.01 *et seq.*

As required by O.C.G.A. § 12-5-570 *et seq.*, from and after January 13, 2009, new facilities located within seven (7) miles of a water supply intake or water supply reservoir that handle hazardous materials of the types and amounts determined by the Department of Natural Resources, State of Georgia, shall perform their operations on impermeable surfaces having spill and leak collection systems as prescribed by the Department of Natural Resources, State of Georgia.

- (e) *Relationship to Chapter 74 Article II of the Atlanta City Code (Soil Erosion and Sedimentation Control).* Erosion and sedimentation control best management practices as set forth in Chapter 74 Article II of this Code shall be implemented to prevent the migration of any sediment into a stream, wetland, waters of the state, or buffer, if such practices are not already required by this or other ordinances.
- (f) *Relationship to Plat Approval Process for Lot Creation.* No new lot shall be created, and the Commissioner shall not approve any preliminary or final subdivision plat, that requires an authorized encroachment in order to comply with minimum lot development requirements as set out in § 74-306(b)(1) or § 74-306(b)(2), or in Parts 15 and 16 of the City of Atlanta Land Development Code. In addition, the following requirements shall apply:
- (1) All riparian buffers shall be shown on the plat;



- (2) For any new development, the riparian buffer shall be physically delineated in accordance with City of Atlanta Buffer Revegetation Guidelines.
- (g) *Conflict with Other Laws.* No section of this ordinance shall be interpreted as relaxing or exempting any requirements of Chapter 74 Article II, Chapter 74 Article VI, or Chapter 158 Article II of the Atlanta City Code. In the event of a conflict between or among any provisions of this article, or any other laws, regulations, or policies, the requirements that are most protective of water quality shall apply. Violation of this Article shall not preclude the prosecution of a violation of other sections of this Code which may apply.
- (h) *Liability.* Neither the issuance of a building permit nor compliance with this article shall relieve any person from civil liability to any person or property otherwise imposed by law, or constitute the assumption of such liability.

SECTION 16: That Atlanta City Code § 74-315 entitled “Nonconformities” is hereby amended to read as follows:

Sec. 74-315. Nonconformities.

Structures, or impervious surfaces, existing as of the effective date of this ordinance, and as amended, shall be deemed existing nonconforming for the purposes of this ordinance. No structure or impervious surface shall be horizontally expanded to occupy greater land area inside the buffer; altered in a manner that changes the quantity, velocity, or quality of stormwater runoff; or moved in whole or in part to any other portion of the buffer without an authorized encroachment. Any replacement or reconstruction activity within the buffer shall occur within the original footprint or shall require compliance with the provisions of this article. No authorized encroachment is required by this article for repairs, restoration, and renovation performed upon existing structures and impervious surfaces which are considered to be existing nonconforming as of the effective date of this ordinance.

SECTION 17: That Atlanta City Code § 74-316 entitled “Buffer management and maintenance” is hereby amended to read as follows:

Sec. 74-316. Buffer Management and Maintenance.

- (a) In the event that development is conducted within twenty-five (25) feet of any buffer, the buffer shall be physically protected by placing currently approved tree protection fencing at the buffer boundary or the limits of construction, whichever is more protective of the buffer. If an authorized encroachment has been granted, the limits of the encroachment shall be similarly delineated.
- (b) The owner of the property containing a buffer as defined herein shall be responsible for maintenance of the buffer and shall inspect the buffer periodically for evidence of degradation in regard to the purposes listed in § 74-301 and compliance with all other



provisions of this article. Corrective actions shall be taken by the owner in a manner to ensure compliance with the terms of this article.

SECTION 18: That Atlanta City Code § 74-317 entitled “Enforcement procedures” is hereby amended to read as follows:

Sec. 74-317. Enforcement.

The Commissioner is authorized to enforce the requirements of this Article in accordance with the procedures set forth in this Section.

- (a) Any person who conducts development within a buffer that is in violation of this Code shall be subject to the general penalty set out in § 1-8 (a fine not exceeding \$1,000.00, imprisonment for a term not exceeding six months, or any combination thereof) and shall be required to restore or remove the unpermitted encroachment and revegetate the area per the City of Atlanta Buffer Revegetation Guidelines. Each day during which violation or failure to comply continues shall be a separate violation.
- (b) *Notice of violation.* If the City of Atlanta determines that a person has failed to comply with any provision of this article, it may issue a written notice of violation to such applicant or other responsible person. Such notice shall be in writing and shall be served on the applicant, owner, or the responsible person in charge of the activity being conducted on the site.
- (c) *Stop work orders.* The Commissioner of the Department of Watershed Management, and the Commissioner of the Department of Planning and Community Development, and the Commissioners' designee(s) are each authorized to issue stop work orders to any person that violates any provision of this Article. Stop work orders may include a specific area and activity, or the entire site and all activities. Stop work orders are effective immediately and shall remain in effect until the necessary corrective actions or remedial measures have occurred. Stop work orders shall state the conditions under which the work may be resumed.
- (d) *Refusal to issue certificates of occupancy or completion.* The Commissioner of the Department of Planning and Community Development or said Commissioner's designee is authorized to refuse to issue certificates of occupancy or completion for the building or other improvements constructed or being constructed on a site until the owner or responsible person has taken the remedial measures as set forth in the notice of violation or stop work order, or has otherwise corrected the violations described therein.
- (e) *Suspension, revocation, or modification of building permit.* If the City of Atlanta determines that an applicant or other responsible person has failed to comply with any provision of this article or with the terms and conditions of an authorized encroachment, the Commissioner of the Department of Planning and Community Development or said



Commissioner's designee may suspend, revoke or modify the building permit that was issued authorizing the development, and following implementation of remedial measures or mitigation to protect water quality, may reinstate the building permit.

- (f) *Suspension, revocation, or modification of authorized encroachment.* If the City of Atlanta determines that an applicant or other responsible person has failed to comply with the requirements of an authorized encroachment, the Commissioner may suspend, revoke or modify the authorized encroachment, and following implementation of remedial measures or mitigation to protect water quality, may reinstate the authorized encroachment.
- (g) *Restoration or Removal of Encroachment.* From and after the effective date of this ordinance, development within a buffer that is in violation of this ordinance shall constitute a nuisance per se and shall be unlawful. The Solicitor or City attorney is authorized to file such actions as may be necessary to remedy the encroachment in the buffer, including petition for a restraining order, injunction, abatement, or any other appropriate legal action or proceeding in a court of competent jurisdiction to prevent, restrain, or abate an unlawful use or activity.

SECTION 19: That Atlanta City Code § 74-318 entitled “Liability” is hereby amended to read as follows:

Sec. 74-318. Reserved.

SECTION 20: That Atlanta City Code § 74-319 entitled “Conflict with other regulations” is hereby amended to read as follows:

Sec. 74-319. Reserved.

SECTION 21: That Atlanta City Code § 74-320 entitled “Relationship to Metropolitan River Protection Act” is hereby amended to read as follows:

Sec. 74-320. Reserved.

SECTION 22: That Atlanta City Code § 74-321 entitled “Severability” is hereby amended to read as follows:

Sec. 74-321. Severability.

Should any section, subsection, clause, or provision of this article be declared to be invalid, such decision shall not affect the validity of this article in whole or any part thereof other than the part so declared to be invalid.

SECTION 23. That this ordinance hereby amends Section 3, and replaces Section 6 and 7 of



the Riparian Buffer Requirements ordinance adopted December 11, 2001 (01-O-1444) with the codified sections herein.

SECTION 24. That this ordinance shall be effective upon approval by the Mayor or upon its becoming law without the Mayor's approval.

SECTION 25. That all existing ordinances or parts of ordinances in conflict with this ordinance shall be waived to the extent of the conflict.

A true copy,

ADOPTED by the Atlanta City Council
APPROVED by Mayor Kasim Reed

APR 19, 2010
APR 27, 2010

Rhonda Davenport Johnson
Municipal Clerk

RCS# 164
4/19/10
3:14 PM

Atlanta City Council

REGULAR SESSION

CONSENT I

EXCEPT 10-O-0491, 10-O-0474

ADOPT

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 2
EXCUSED: 0
ABSENT 1

| | | | |
|-----------|-------------|-----------|-------------|
| Y Smith | Y Archibong | Y Moore | Y Bond |
| Y Hall | Y Wan | Y Martin | NV Watson |
| Y Young | Y Shook | Y Bottoms | Y Willis |
| B Winslow | Y Adrean | Y Sheperd | NV Mitchell |

CONSENT I

| | | 04-19-10 |
|---------------------------------|---------------------------------|----------------------------------|
| ITEMS ADOPTED ON CONSENT | ITEMS ADOPTED ON CONSENT | ITEMS ADVERSED ON CONSENT |
| 1. 10-O-0473 | 36. 10-R-0541 | 45. 10-R-0552 |
| 2. 10-O-0475 | 37. 10-R-0543 | 46. 10-R-0553 |
| 3. 10-O-0058 | 38. 10-R-0544 | 47. 10-R-0554 |
| 4. 10-O-0310 | 39. 10-R-0546 | 48. 10-R-0555 |
| 5. 10-O-0311 | 40. 10-R-0547 | 49. 10-R-0556 |
| 6. 10-O-0312 | 41. 10-R-0548 | 50. 10-R-0557 |
| 7. 10-O-0500 | 42. 10-R-0549 | 51. 10-R-0558 |
| 8. 10-O-0408 | 43. 10-R-0550 | 52. 10-R-0559 |
| 9. 10-O-0499 | 44. 10-R-0551 | 53. 10-R-0560 |
| 10. 10-O-0465 | | 54. 10-R-0561 |
| 11. 10-O-0466 | | 55. 10-R-0562 |
| 12. 10-O-0469 | | 56. 10-R-0563 |
| 13. 10-O-0470 | | 57. 10-R-0564 |
| 14. 10-R-0497 | | 58. 10-R-0565 |
| 15. 10-R-0332 | | 59. 10-R-0566 |
| 16. 10-R-0596 | | 60. 10-R-0567 |
| 17. 10-R-0525 | | 61. 10-R-0568 |
| 19. 10-R-0597 | | 62. 10-R-0569 |
| 20. 10-R-0602 | | 63. 10-R-0570 |
| 21. 10-R-0526 | | 64. 10-R-0571 |
| 22. 10-R-0527 | | 65. 10-R-0572 |
| 23. 10-R-0528 | | 66. 10-R-0573 |
| 24. 10-R-0529 | | 67. 10-R-0574 |
| 25. 10-R-0530 | | 68. 10-R-0575 |
| 26. 10-R-0531 | | 69. 10-R-0576 |
| 27. 10-R-0532 | | 70. 10-R-0577 |
| 28. 10-R-0533 | | 71. 10-R-0578 |
| 29. 10-R-0534 | | 72. 10-R-0579 |
| 30. 10-R-0535 | | 73. 10-R-0580 |
| 31. 10-R-0536 | | 74. 10-R-0581 |
| 32. 10-R-0537 | | 75. 10-R-0582 |
| 33. 10-R-0538 | | 76. 10-R-0583 |
| 34. 10-R-0539 | | 77. 10-R-0584 |
| 35. 10-R-0540 | | 78. 10-R-0585 |
| | | 79. 10-R-0586 |
| | | 80. 10-R-0587 |
| | | 81. 10-R-0588 |
| | | 82. 10-R-0589 |
| | | 83. 10-R-0590 |
| | | 84. 10-R-0591 |
| | | 85. 10-R-0592 |
| | | 86. 10-R-0593 |