

**CITY OF KENNESAW
GEORGIA**

ORDINANCE NO. 2011-04, 2011

**AN ORDINANCE AMENDING THE KENNESAW CODE OF ORDINANCES
CHAPTER 46 "ENVIRONMENT," ARTICLE III "SOIL EROSION AND
SEDIMENTATION CONTROL" AND TO DELETE IN ITS ENTIRETY ARTICLE IX
"STREAM BUFFER PROTECTION"**

**BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF KENNESAW,
COBB COUNTY, GEORGIA, AS FOLLOWS:**

WHEREAS, Chapter 46 "Environment," Article III "Soil Erosion and Sedimentation Control" and Article IX "Stream Buffer Protection," is being amended in its entirety to better serve the City and its citizens; and

WHEREAS, Chapter 46 "Environment," Article III "Soil Erosion and Sedimentation Control" shall be deleted in its entirety from the Code of Ordinances; and

WHEREAS, the Public Hearings were duly advertised in the Marietta Daily Journal on March 4 and 11, 2011.

BE IT FURTHER ORDAINED that this Ordinance shall become effective from and after its adoption and execution by the Mayor, pursuant to Section 2.11 of the City Charter of the City of Kennesaw.

NOW, THEREFORE, BE IT RESOLVED the Kennesaw City Council approves the amendments to Chapter 46 "Environment," Article III "Soil Erosion and Sedimentation" and Article IX "Stream Buffer Protection."

PASSED AND ADOPTED by the Kennesaw City Council on this 21st day of March, 2011.

ATTEST:

CITY OF KENNESAW:

Debra Taylor, City Clerk

Mark Mathews, Mayor

SOIL EROSION, SEDIMENTATION AND POLLUTION CONTROL

DIVISION 1. - GENERALLY

Sec. 46-61.—Title.

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Sec. 46-61. - Title.

This Article or Ordinance shall be known as “City of Kennesaw Soil Erosion, Sedimentation and Pollution Control Ordinance”.

(Ord. No. 2004-36, § 1, 7-6-04)

Sec. 46-62. - Definitions.

The definitions contained in this Section of the following terms shall apply in the interpretation and enforcement of this Article, unless otherwise specifically stated or unless otherwise indicated by the context:

- (a) **Approved Plan.** The term “Approved Plan” means an erosion, sedimentation and pollution control plan approved by the City of Kennesaw.
- (b) **Article or Ordinance.** The terms “Article” or “Ordinance” means the City of Kennesaw Soil Erosion, Sedimentation and Pollution Control Ordinance, as amended.
- (c) **Best Management Practices (BMPs).** The term “Best Management Practices” means and includes 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 occurred.
- (d) **Board.** The term “Board” means the Georgia Board of Natural Resources.
- (e) **Buffer.** The term “Buffer” means the area of land immediately adjacent to the banks of State waters in its natural state of vegetation, which facilitates the protection of water quality and aquatic habit.
- (f) **Business Entity.** The term “Business Entity” means one or more individuals engaging in any activity or activities for a profitable or charitable purpose either individually or through the use of one of the following: a company or corporation, general partnership, joint venture, limited liability company, limited partnership, limited liability partnership, sole proprietorship, trust, unincorporated association, or any other such corporate entity similar in nature or function to any of those previously listed in this Paragraph. The term “Business Entity” does not include a governmental entity, the

United States of America, the State of Georgia, or any political subdivision of any of them.

- (g) **Commission.** The term “Commission” means the Georgia Soil and Water Conservation Commission (“GAWCC”).
- (h) **Certified Personnel.** The term “Certified Personnel” means a person who has successfully completed the appropriate certification course approved by the Georgia Soil and Water Conservation Commission.
- (i) **City.** The term “City” means the City of Kennesaw, a municipal corporation chartered pursuant to the laws of the State of Georgia, any department, board, or commission of the City of Kennesaw, any elected or appointed official, or any employee or designee thereof.
- (j) **County.** The term “County” means Cobb County, Georgia.
- (k) **CPESC.** The term “CPESC” means Certified Professional in Erosion and Sediment Control with current certification by or from Certified Professional in Erosion and Sediment Control Inc., a North Carolina Corporation.
- (l) **CPESC, Inc.** The term “CPESC, Inc.” means Certified Professional in Erosion and Sediment Control, Inc., a North Carolina Corporation.
- (m) **Cut.** The term “Cut” means 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 excavated surface. The term may also be referred to as “Excavation.”
- (n) **Department or DNR.** The terms “Department” or “DNR” mean Georgia Department of Natural Resources.
- (o) **Design Professional.** The term “Design Professional” means a professional licensed by the State of Georgia in the field of engineering, architecture, landscape architecture, forestry, geology, or land surveying; or, a person holding a current CPESC certification.
- (p) **Director.** The term “Director” means the director of the EPD or their authorized representative.
- (q) **District.** The term “District” means the Cobb Soil and Water Conservation District.
- (r) **Division or EPD.** The terms “Division” or “EPD” mean the Environmental Protection Division of the Department of Natural Resources.
- (s) **Drainage Structure.** The term “Drainage Structure” means a device composed of a virtually non-erodible material such as concrete, steel, plastic or other such material that conveys water from one place to another by intercepting the flow and carrying it to a release point for storm-water management, drainage control, or flood control purposes.
- (t) **Erosion.** The term “Erosion” means the process by which land surface is worn away by the action of wind, water, ice, or gravity.
- (u) **Erosion, Sedimentation, and Pollution Control Plan.** The term “Erosion, Sedimentation, and Pollution Control Plan” means a plan required by the Erosion and Sedimentation Act, O.C.G.A. § 12-7-1 *et seq.*, as amended, that includes, as a minimum protections at least as stringent as the State General Permit, Best Management Practices, and requirements outlined in this Article.
- (v) **Fill.** The term “Fill” means a portion of land surface to which soil or other solid material has been added; the depth above the original ground surface or an excavation.
- (w) **Final Stabilization.** The term “Final Stabilization” means all soil disturbing activities at the site have been completed, and that for unpaved areas and areas not covered by permanent structures and areas located outside the waste disposal limits of a landfill cell that has been certified by EPD for waste disposal, One Hundred Percent (100%) of the soil surface is uniformly covered in permanent vegetation with a density of Seventy Percent (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, or perennial vines; or, a crop of

perennial vegetation appropriate for the time of year and region; or, a crop of annual vegetation and seeding of target crop perennials appropriate for the region. Final stabilization applies to each phase of construction.

- (x) **Finished Grade.** The term “Finished Grade” means final elevation and contour of the ground after cutting or filling and conforming to the proposed design.
- (y) **Floodplain.** The term “Floodplain” means any land area susceptible to flooding, which would have at least a One Percent (1%) probability of flooding occurrence in any calendar year based on the basin being fully developed as shown on the current land use plan; *i.e.*, the regulatory flood.
- (z) **Grading.** The term “Grading” means altering the shape of ground surfaces to a predetermined condition; this includes stripping, cutting, filling, stockpiling and shaping or any combination thereof and shall include the land in its cut or filled condition.
- (aa) **Ground Elevation.** The term “Ground Elevation” means original elevation of the ground surface prior to cutting or filling.
- (bb) **Impervious Cover.** The term “Impervious Cover” means any manmade paved, hardened or structural surface regardless of material. Impervious cover includes, but is not limited to, rooftops, buildings, streets, roads, decks, swimming pools and any concrete or asphalt.
- (cc) **Lake.** The term “Lake “ means a body of water One (1) acre or more in surface area, created either by a manmade or natural dam or other means of water impoundment.
- (dd) **Land Development.** The term “Land Development” means any land change, including, but not limited to, clearing, grubbing, stripping, removal of vegetation, dredging, grading, excavating, transporting and filling of land, construction, paving and any other installation of Impervious Cover.
- (ee) **Land Development Activity.** The term “Land Development Activity” means those actions or activities that comprise, facilitate, or result in Land Development.
- (ff) **Land Disturbance Activity or Land Disturbing Activity.** The terms “Land Disturbance Activity” or “Land Disturbing Activity” (or the plural of either of them) means any activity that may result in soil erosion from water and/or wind and the movement of sediments into State waters or onto lands within the State, including, but not limited to, clearing, cutting, dredging, grading, excavating, transporting, and filling of land, but does not include Agricultural Operations as defined in O.C.G.A. § 1-3-3(4.1), as amended.
- (gg) **Larger Common Plan of Development or Sale.** The term “Larger Common Plan of Development or Sale” means a contiguous area where multiple separate and distinct construction activities are occurring or are proposed under one plan of development or sale. For the purposes of this subsection, “plan” means an announcement; 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 or will occur on a specific plot.
- (hh) **Local Governing Authority.** The term “Local Governing Authority” means the Mayor and City Council of the City of Kennesaw.
- (ii) **Local Issuing Authority.** The term “Local Issuing Authority” means the City of Kennesaw, consistent with O.C.G.A. § 12-7-8 (a), as amended.
- (jj) **Local Planning Commission.** The term “Local Planning Commission” means the City of Kennesaw Planning Commission.
- (kk) **Manual.** The term “Manual” means “Manual for Erosion and Sediment Control in Georgia” published by the Georgia Soil and Water Conservation Commission as of January 1 each year.
- (ll) **Metropolitan River Protection Act (“MRPA”).** The term “Metropolitan River Protection Act” means a State statute codified at O.C.G.A. § 12-5-440 *et seq.*, as amended, which

addresses environmental and developmental matters in certain metropolitan river corridors and drainage basins of such river corridors.

- (mm) **Natural Ground Surface.** The term “Natural Ground Surface” means the ground surface in its original state before any grading, cutting, excavation or filling.
- (nn) **Nephelometric Turbidity Units (“NTUs”).** The term “Nephelometric Turbidity Units (“NTUs”) means the numerical units of measure based upon photometric analytical techniques for measuring the light scattered by finely divided particles of a substance in suspension. This technique is used to estimate the extent of turbidity in water in which colloiddally dispersed particles are present.
- (oo) **Notice of Intent (“NOI”).** The terms “Notice of Intent” or “NOI” mean a notice of intent form provided by EPD for coverage under the State General Permit.
- (pp) **Notice of Termination (“NOT”).** The terms “Notice of Termination” or “NOT” means a Notice of Termination form provided by EPD to terminate coverage under the State General Permit.
- (qq) **Operator.** The term “Operator” means the party or parties that have:
 - (1) Operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications; or,
 - (2) Day-to-day operational control of those activities that are necessary to assure 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.
- (rr) **Outfall.** The term “Outfall” means the location where storm water in a discernible, confined and discrete conveyance, leaves a facility or site or, if there is receiving water on site, becomes a point source discharging into that receiving water.
- (ss) **Parcel.** The term “Parcel” means any plot, lot, or acreage shown as a unit on the latest County tax assessment records.
- (tt) **Permit.** The term “Permit” means the permit issued by the City required for undertaking any Land Development Activity under the provisions of this Article.
- (uu) **Person.** The term “Person” means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, state agency, municipality or other political subdivision of the State of Georgia, or any interstate body or any other legal entity.
- (vv) **Phase or Phased.** The terms “Phase” or “Phased” means 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.
- (ww) **Pond.** The term “Pond” means a body of standing water less than One (1) acre in surface area, created either by a natural dam, or other means of water impoundment.
- (xx) **Project.** The term “Project” means the entire proposed development project regardless of the size of the area of land to be disturbed.
- (yy) **Properly Designed.** The term “Properly Designed” means designed in accordance with the design requirements and specifications contained in the Manual in effect 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 through the date of NOI submittal.
- (zz) **Protection Area or Stream Protection Area.** The term “Protection Area” or “Stream Protection Area” means, with respect to a Stream, the combined areas of all required buffers and setbacks applicable to that Stream.
- (aaa) **Qualified Personnel.** The term “Qualified Personnel” means any person who meets or exceeds the educational and training requirements as set forth in, or specified by, O.C.G.A. § 12-7-19 *et seq.*, as amended.

- (bbb) **Riparian.** The term “Riparian” means belonging or related to the bank of a river, stream, lake, pond, or impoundment.
- (ccc) **Roadway Drainage Structure.** The term “Roadway Drainage Structure” means a device such as a bridge, culvert, or ditch, composed of a virtually non-erodible material such as concrete, steel, plastic, or other such material that conveys water under a roadway by intercepting the flow on one side of a traveled way consisting of one or more defined lanes, with or without shoulder areas, and carrying water to a release point on the other side.
- (ddd) **Sediment.** The term “Sediment” means solid material, both organic and inorganic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, ice, or gravity as a product of erosion.
- (eee) **Sedimentation.** The term “Sedimentation” means the process by which eroded material is transported and deposited by the action of water, wind, ice, or gravity.
- (fff) **Setback.** The term “Setback” means, with respect to a Stream, the area established by Section 46-421(2) of the City Ordinances extending beyond any buffer applicable to that Stream.
- (ggg) **Slope.** The term “Slope” means a degree of deviation of surface from the horizontal usually expressed in percent or degree.
- (hhh) **Stabilization.** The term “Stabilization” means the process of establishing an enduring soil cover of vegetation by the installation of temporary or permanent structures for the purpose of reducing to a minimum the erosion process and the resultant transport of sediment by wind, water, ice, or gravity.
- (iii) **State General Permit.** The term “State General Permit” means the National Pollution Discharge Elimination System (“NPDES”) general permit or permits for the control of 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, 33 U.S.C. § 1251, *et seq.*, as amended; and, O.C.G.A. § 12-5-30 (f), as amended.
- (jjj) **State Waters.** The term “State Waters” means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of Georgia that are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation
- (kkk) **Stream.** The term “Stream” means any State waters which:
 - (1) Begins at the location of **a spring, seep, or groundwater** outflow that sustains stream flow; or,
 - (2) Begins at a point in the stream channel with a drainage area of Twenty-five (25) acres or more; or,
 - (3) Where evidence indicates a drainage area of less than Twenty-five (25) acres as verified by the public works department.
- (III) **Stream Bank.** The term “Stream Bank” means the sloping *land* that contains the Stream channel and begins where vegetation is rested by the normal flow of the Stream.
- (mmm) **Stream Channel.** The term “Stream Channel” means the portion of a watercourse that contains the base flow of the Stream.
- (nnn) **Structural Erosion, Sedimentation and Pollution Control Practices.** The term “Structural Erosion, Sedimentation and Pollution Control Practices” means practices for the stabilization of erodible or sediment-producing areas by utilizing the mechanical properties of matter for the purpose of either changing the surface of the land or storing, regulating or disposing of runoff to prevent excessive sediment loss. Examples of Structural Erosion, Sedimentation and Control Practices include, but are not limited to, riprap, sediment basins, dikes, level spreaders, waterways or outlets, diversions, grade

stabilization structures, sediment traps and land grading, etc. Such practices can be found in the most recent edition of the *Manual for Erosion and Sediment Control in Georgia*

- (ooo) **Subdivider.** The term “Subdivider” means a person providing or developing land so as to constitute subdivision.
- (ppp) **Subdivision.** The term “Subdivision” means all divisions of a tract or parcel of land into Two (2) or more lots, building sites, or other divisions for the purpose, whether immediate or future, of sale, legacy, or a new street or a change in an existing street, and includes existing subdivisions, and, where appropriate to the context, relates to the process of subdividing or to the land or area subdivided; however, the term does not include combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to the standards of the City.
- (qqq) **Trout Streams.** The term “Trout Streams” means all Streams or portions of Streams within the watershed designated as trout streams or trout waters 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 *et seq.*, as amended. Streams designated as primary trout waters or primary trout streams are defined as water supporting a self-sustaining population of rainbow, brown or brook trout. Streams designated as secondary trout waters or secondary trout streams 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 or first order trout streams are streams into which no other streams flow except springs.
- (rrr) **Vegetative Erosion and Sedimentation Control Measures.** The term “Vegetative Erosion and Sedimentation Control Measures” means:
 - (1) 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
 - (b) Temporary seeding, producing short-term vegetative cover; or,
 - (c) Sodding, covering areas with a turf of perennial sod-forming grass.
 - (2) Such measures can be found in the then current version of the Manual.
- (sss) **Violation.** The term “Violation” means any breach of the provisions of this Article or Ordinance, including, but not limited to, failure to obtain a Land Disturbance Permit when required, failure to follow BMPs, and violating NTU levels when BMPs were not followed.
- (sss) **Watercourse.** The term “Watercourse” means any natural or artificial watercourse, stream, river, creek, channel, ditch, canal, conduit, culvert, drain, waterway, gully, ravine, or wash in which water flows either continuously or intermittently and which has a definite channel, bed and banks, and including any area adjacent thereto subject to inundation by reason of overflow or floodwater.
- (ttt) **Watershed.** The term “Watershed” means the land area that drains into a particular stream.
- (uuu) **Wetlands.** The term “Wetlands” means 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 such areas.

(Ord. No. 2004-36, § II, 7-6-04)

Sec. 46-63. – Purpose.

- (a) The purpose of this Article or Ordinance is to control erosion and sedimentation by requiring proper provisions for stormwater runoff and the protection of soil surfaces during and after any Land Disturbing Activity so as to promote the safety, public health and general welfare of the people of the City.
- (b) The administration and enforcement of this Article or Ordinance shall be by a certified representative of the City in accordance with the Erosion and Sedimentation Control Act of 1975, O.C.G.A. § 12-7-1 *et seq.*, as amended.

(Ord. No. 2004-36, § III, 7-6-04)

Sec. 46-64. - Exemptions.

This Article or Ordinance shall apply to any Land Disturbing Activity undertaken by any person on any land except for the following:

- (a) Surface mining, as the same is defined in The Georgia Surface Mining Act of 1968, O.C.G.A. § 12-4-72 *et seq.*, as amended;
- (b) Granite quarrying and land clearing for such quarrying;
- (c) Such minor Land Disturbing Activities as home gardens and individual home landscaping, repairs, maintenance work, fences, and other related activities which are typically carried out with hand held equipment and result in minor soil erosion;
- (d) 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 Subsection; provided, however, that construction of any such residence shall conform to minimum requirements as set forth in O.C.G.A. § 12-7-6 *et seq.*, as amended, and this Subsection. For single-family residence construction covered by the provisions of this Subsection, there shall be a buffer zone between the residence and any State Waters classified as Trout Streams pursuant to 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 Streams. For primary Trout Streams, the buffer zone shall be at least Fifty (50) horizontal feet, and no variance to a smaller buffer shall be granted. For secondary Trout Streams, the buffer zone shall be at least Fifty (50) horizontal feet, but the Director may grant variances to no less than Twenty-five (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 Twenty-five (25) horizontal feet, and no variance to a smaller buffer shall be granted. The minimum requirements of O.C.G.A. § 12-7-6 (b) *et seq.*, as amended, and the buffer zones provided by this Section shall be enforced by the City;
- (e) Agricultural Operations as defined in O.C.G.A. § 1-3-3(4.1), as amended, to include raising, harvesting or storing of products of the field or orchard; feeding, breeding or managing livestock (which includes, but is not limited to, cattle, calves, cows, bulls, swine, pigs, hogs, goats, sheep, and rabbits); feeding, breeding or managing fowl or poultry (which includes, but is not limited to, chickens, ducks, gees, hens, and turkeys); producing or storing feed for use in the production of livestock, or fowl or poultry; producing plants, trees, or domesticated animals; the production of aqua culture, horticultural, dairy, livestock, poultry, eggs and apiarian products; and/or, where farm buildings and farm ponds exist;

- (f) Forestry land management practices, including harvesting; provided, however, that when such exempt forestry practices cause or result in Land Disturbing Activities or other activities otherwise prohibited in a buffer, as established in Section 46-65(c)(15) of this Article, 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 the completion, whether voluntary or involuntary, of those forestry practices;
- (g) Any project carried out under the technical supervision of the Natural Resources Conservation Service ("NRCS") of the United States Department of Agriculture;
- (h) 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 Two Hundred (200) feet of the bank of any State Waters, and for purposes of this Section "State Waters" excludes channels and drainage ways that 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 that involves less than One (1) acre, which involves Land Disturbing Activity, and which is within Two Hundred (200) feet of any such excluded channel or drainage way, must prevent sediment from moving beyond the boundaries of the property on which that project is located and provided, further, that nothing contained in this Article or Ordinance shall prevent the City from regulating any that project which is not specifically exempted by Sections (a), (b), (c), (d), (e), (f), (i), or (j) of this Section;
- (i) Construction or maintenance projects, or both, undertaken or financed in whole or in part, or both, by the Georgia Department of Transportation, the Georgia Highway Authority, or the State tollway authority; or, any road construction or maintenance project, or both, undertaken by any County or municipality; provided, however, that construction or maintenance projects of the Georgia Department of Transportation or the State tollway authority which disturb One (1) or more contiguous acres of land shall be subject to provisions of O.C.G.A. § 12-7-7.1 *et seq.*, as amended; except where the Georgia Department of Transportation, the Georgia Highway Authority, or the State 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 City, the City shall enforce compliance with the minimum requirements set forth in O.C.G.A. § 12-7-6, as amended, as if a permit had been issued, and violations shall be subject to the same penalties as violations by permit holders;
- (j) 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, as amended, 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, as amended, 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 City shall enforce compliance with the minimum requirements set forth in O.C.G.A. § 12-7-6, as amended, as if a permit

had been issued, and violations shall be subject to the same penalties as violations by permit holders;

- (k) Any public water system reservoir.

(Ord. No. 2004-36, § III, 7-6-04)

Sec. 46-65. - 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 this Article and the NPDES General Permit are not met. Therefore, plans for those Land Disturbing Activities which are not exempted by this Article 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 46-65(b) of this Article. 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 Article and the NPDES General Permit.

- (b) **Minimum Requirements/BMPs.**

- (1) Best Management Practices as set forth in this Section and Section 46-65(b) of this Article 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 City or to any other allegation of noncompliance with Subsection (b)(2) of this Section or any substantially similar terms contained in a permit for the discharge of stormwater issued pursuant to O.C.G.A. § 12-5-30(f), as amended, of the "Georgia Water Quality Control Act". As used in this Subsection the terms "Proper Design" and "Properly Designed" mean designed in accordance with the hydraulic design specifications contained in the Manual specified in O.C.G.A. § 12-7-6(b), as amended.
- (2) A discharge of stormwater runoff from disturbed areas where Best Management Practices have not been properly designed, installed, and maintained shall constitute a separate violation of any land-disturbing permit issued by the City or of any State general permit issued by the division pursuant to O.C.G.A. § 12-5-30(f), as amended, of the "Georgia Water Quality Control Act", for each day on which such discharge results in the turbidity of receiving waters being increased by more than Twenty-five (25) NTUs for waters supporting warm water fisheries or by more than Ten (10) NTUs for waters classified as Trout Streams. The turbidity of the receiving waters shall be measured in accordance with guidelines to be issued by the Director. This Subsection shall not apply to any land disturbance associated with the construction of single family homes which are not part of a larger common plan of development or sale unless the planned disturbance for such construction is equal to or greater than Five (5) acres.
- (3) Failure to properly design, install, or maintain Best Management Practices shall constitute a violation of any land-disturbing permit issued by the City or of any State general permit issued by the Division pursuant to O.C.G.A. § 12-5-30(f), as

amended, of the "Georgia Water Quality Control Act" for each day on which such failure occurs.

- (4) The Director may require, in accordance with regulations adopted by the Board, reasonable and prudent monitoring of the turbidity level of receiving waters into which discharges from land disturbing activities occur.
- (5) The City may set more stringent buffer requirements than stated in C.15. and 16., in light of O.C.G.A § 12-7-6 (c)

- (c) **General Design Principles.** The rules and regulations, ordinances, or resolutions adopted pursuant to this Article or Ordinance 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 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 practical 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.*, as amended;
- (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 46-65(b)(2) of this Article;
- (15) Except as provided in Subsection 46-65(b) of this Section, there is established a State mandated 25-foot buffer along the banks of all State waters, as measured horizontally from the point where vegetation has been arrested 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, or where otherwise allowed by the Director pursuant to O.C.G.A. § 12-2-8, as amended, 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 Section, 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 is along an Ephemeral Stream, the buffers of at least Twenty-five (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 Section.

The City mandates an additional Twenty-five (25) feet of undisturbed natural vegetative buffer as measured horizontally beyond the end of the State mandated Twenty-five (25) feet (a combined Fifty (50) feet as measured from both stream banks). In addition, the City mandates an additional area setback be maintained of Twenty-five (25) feet, measured horizontally, beyond the undisturbed natural vegetative buffer (a combined Seventy-five (75) feet as measured from both stream banks), in which all impervious cover shall be prohibited. Within this area, grading, filling and earthmoving shall be limited to hand tool work to minimize disruption within the setback. Use of other equipment within the setback requires prior written approval of the City.

The following requirements shall apply to any such buffer:

- (i). 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 their 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,
- (ii). 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 Twenty-five (25) degrees of perpendicular to the stream; cause a width of disturbance of not more than Fifty (50) feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specification and are implemented:
 - (A) Stream crossings for water lines; or,
 - (B) Stream crossings for sewer lines.

- (d) **Ponds.** When a pond, either new or existing, is incorporated into a development, the developer shall note on the plans if the pond is to be used for sediment control and/or retention during construction. If the pond is to be used for sediment control, the developer will be required to dredge, clean and grass the pond upon completion of construction of the project. Further, sediment control devices shall be required to protect downstream property during construction. If the pond is not completely contained on the owner's property, then it cannot be used to trap sediment.
- (e) **Lakes,** either new or existing, incorporated into a development shall not be used for sediment control and will be classified and used as adjacent property; siltation thereof will be treated as a violation of this Article.
- (f). Hazardous sediment basins and floodwater retention structures shall be fenced and posted to avoid danger to life or property.
- (g). **Maintenance.** All erosion and sedimentation control measures, whether temporary or permanent, shall be maintained by the permittee or exempted person until the areas affected by such measures are permanently stabilized.
- (h) **Other requirements.** Nothing contained in this Article shall prevent the City from adopting rules and regulations, ordinances, or resolutions that contain stream buffer requirements which exceed the minimum requirements of this Section.
- (i) **Land-disturbing activity** for which a permit has been issued results in damage to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this Article or the terms of the permit.

(Ord. No. 2004-36, § V, 7-6-04)

Sec. 46-66. – Application/Permit Process

(a) **General.**

The property owner, developer and designated planners and engineers shall review the general development plans and detailed plans with the City that affect the tract to be developed and the area surrounding it. They shall review the zoning ordinance, stormwater management ordinance, subdivision ordinance, flood damage prevention ordinance, this Article, and other ordinances which regulate the development of land within the jurisdictional boundaries of the City. However, the owner and/or operator are the only parties who may obtain a permit.

(Ord. No. 2004-36, § VIA, 7-6-04)

(b) **Application requirements.**

- (1) No land-disturbing activity within the jurisdictional boundaries of the City without first obtaining a permit from the city 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 City 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 46-66(c) of this Article. 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 this Article will be met. Applications for a permit will not be accepted unless accompanied by Five (5) copies of the soil erosion, sedimentation and pollution control plans. All applications shall contain a

certification stating that the plan preparer or the designee thereof visited the site prior to creation of the plan in accordance with EPD rule 391-3-7-10.

- (3) A fee, in an amount determined by the Mayor and Council will be charged for a land disturbance permit. In addition to the local permitting fees, fees will also be assessed by the division, pursuant to O.C.G.A. § 12-5-23(a)(5), as amended, provided that such fees shall not exceed Eighty and 00/100 Dollars (\$80.00) per acre of land-disturbing activity, and these fees shall be calculated and paid by the primary permittee as defined in the State general permit for each acre of land-disturbing activity included in the planned development or each phase of development. All applicable fees shall be paid prior to issuance of the land disturbance permit. In a jurisdiction that is certified pursuant to O.C.G.A § 12-7-8(a) half of such fees levied shall be submitted to the division; half to the City, by the permittee; except that any and all fees due from an entity which is required to give notice pursuant to § 12-7-17(9)-(10), as amended, shall be submitted in full to the division, regardless of the existence of a local issuing authority in the jurisdiction.
- (4) No permit will be issued unless the City has approved the erosion, sedimentation and pollution control plan, any variances required or allowed pursuant to by Section 46-65(c)(15) of this Ordinance and bonding, if required per Section 46-67(f) of this Article and/or Section 46-82(f) of the Kennesaw City Ordinances, have been obtained. The City has a memorandum of agreement with the district to conduct such reviews and approve plans.
- (5) If a permit applicant has had Two (2) or more violations of previous permits, this article, or of the Erosion and Sedimentation Act of 1975, as amended, within Three (3) years prior to the date of filing of the application under consideration, the City may deny the permit application.
- (6) The City may require the permit applicant to post a bond in the form of government surety, cash, irrevocable letter of credit, or any combination thereof in a minimum amount of One Thousand and 00/100 Dollars (\$1,000.00) and up to, but not exceeding, Three Thousand and 00/100 Dollars (\$3,000.00) per acre or fraction thereof of the proposed land-disturbing activity, prior to issuing the permit as set forth in the Table contained in this Section. If the applicant does not comply with this Article or with the conditions of the permit after issuance, the City may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance with the provisions of this Article and the terms of the permit. Section 46-104 of the Kennesaw City Ordinances provides for hearing and judicial review of any determination or order of the City with respect to alleged permit violations.

1.	Two (2) acres or less with no state waters, no impact	One Thousand and 00/100 Dollars (\$1,000.00) per acre or portion thereof.
2.	Two (2) acres or less with state waters or impact	Two Thousand and 00/100 Dollars (\$2,000.00) per acre or portion thereof.
3.	Any size area over Two (2) acres	Three Thousand and 00/100 Dollars (\$3,000.00) per acre or portion thereof.

(Ord. No. 2004-36, § VIB, 7-6-04)

(c) **Plan requirements.**

- (1) Plans must be prepared to meet the minimum requirements as contained in Sections 46-65(b) and (c) of this Article. Conformance with the minimum requirements may be attained through the use of design criteria in the current issue of the *Manual for Erosion and Sediment Control in Georgia*, published by the State soil and water conservation commission as a guide; 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 Article as though fully set forth here. The plan for the land-disturbing activity shall consider the interrelationship of the soil types, geological and hydrological characteristics, topography, watershed, vegetation, proposed permanent structures including roadways, constructed waterways, sediment control and stormwater management facilities, City ordinances and State laws. Maps, drawings and supportive computations shall bear the signature and seal of the 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 their level of involvement with the process, as developed by the Commission and in consultation with the Division and the Stakeholders Advisory Board created pursuant to O.C.G.A. § 12-7-20, as amended.
- (2) Data required for site plan shall include all information required from the appropriate Erosion, Sedimentation and established by Commission as of January 1 the year in which the land-disturbing activity was permitted.

(Ord. No. 2004-36, § VIC, 7-6-04)

(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 City of a completed application, provided that variances and bonding are or have been 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) The City shall issue no permit unless the City has approved the erosion, sedimentation and pollution control plan and has affirmatively determined that the plan is in compliance with this Article, and any variances required or allowed pursuant to by Section 46-70(a)(3) of this Article are or have been obtained, bonding requirements, if necessary, as per Section 46-66(b)(6) of this Kennesaw City Ordinances are met and all ordinances and rules and regulations in effect within the jurisdictional boundaries of the City are met. If the permit is denied, the reason for denial shall be furnished to the applicant in writing within Five (5) business days of the denial.
- (3) If the tract is to be developed in phases, then a separate permit shall be required for each phase.
- (4) The permit may be suspended, revoked, or modified by the City, as to all or any portion of the land affected by the plan, upon finding that the holder or his successor in the title is not in compliance with the approved erosion, sedimentation and pollution control plan or that the holder or his successor in title is in violation of this Article. A holder of a

permit shall notify any successor in title to him as to all or any portion of the land affected by the approved plan of the conditions contained in the permit.

- (5) Neither the issuance of the permit nor compliance with the conditions thereof, nor with the provisions of this Article shall relieve any permittee of any responsibility otherwise imposed by law for damage to persons or property; nor shall the issuance of any permit pursuant to this Article serve to impose any liability upon the City, its City Council, Mayor board members or employees, for injury or damage to persons or property. The permit issued pursuant to this Article does not relieve the applicant of the responsibility of complying with any other City or County ordinance or State or Federal law.
- (6) A permit issued by the City shall specify any special conditions under which the land-disturbing permit may be undertaken.
- (7) No permit shall be issued unless the applicant provides a statement by Cobb County Tax Commissioner or their designee, certifying that all ad valorem taxes levied against the property and due and owing have been paid.
- (8) Any land-disturbing activities by the City shall be subject to the same requirements of this Article, and any other ordinances relating to private persons and the Division(s) shall enforce such requirements upon the City.

(Ord. No. 2004-36, § VID, 7-6-04)

Sec. 46-67. - Inspection and enforcement.

- (a) The City 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 City shall regulate both primary and secondary 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 permittee engaged in land-disturbing activities as defined in this Article has failed to comply with the approved plan, with permit conditions, or with any of the provisions of this Article, a written notice to comply shall be served upon that permittee. 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 permittee engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this Article.
- (b) The City must amend its Article to the extent appropriate within Twelve (12) months from and after the effective date of any amendments to the Erosion and Sedimentation Act of 1975.
- (c) The City shall have the power to conduct such investigations as it may reasonably deem necessary to carry out duties as prescribed in this Article, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigation and inspecting the sites of land-disturbing activities.
- (d) No person shall refuse entry or access to any authorized representative or agent of the City, the commission, the district, or 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.

(Ord. No. 2004-36, § VII, 7-6-04)

Sec. 46-68. - 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 Article without first obtaining said permit, that person shall be subject to revocation of his work permit within the jurisdictional boundaries of the City.
- (b) ***Stop-Work Orders.***
 - (1) For the first and second violations of any of the provisions of this Article, the City shall issue a written warning to the violator. The violator shall have Three (3) days to correct the violation. If the violation is not corrected within Three (3) days, the City shall issue a stop-work order requiring that land-disturbing activities be stopped until Twenty-four (24) hours after 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 City shall issue an immediate stop-work order in lieu of a warning;
 - (2) For a third and each subsequent violation, the City 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 Twenty-four (24) hours after 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 City or their representative, 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 City. All such stop work orders shall be effective immediately upon issuance and shall be in effect until Twenty-four (24) hours after the necessary corrective action or mitigation has occurred. Such stop work orders shall apply to all land-disturbing activity within the affected area 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 permittee engaged in land-disturbing activities has failed to comply with the approved soil erosion, sedimentation and pollution control plan, a written notice to comply shall be served upon that permittee. 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 permittee engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this article and, in addition to other penalties, shall be deemed to have forfeited his performance bond, if required to post one under the provisions of Section 46-66(b)(6) of the Kennesaw City Ordinances. The City may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance.
- (d) ***Monetary penalties.***

- (1) Any person who violates any provisions of this Article, or any of the rules or regulations adopted pursuant to this Ordinance, or any permit condition or limitation imposed or established pursuant to this Article, or who negligently or intentionally fails or refuses to comply with any final or emergency order of the City or otherwise issued as provided in this Article shall be liable for a civil penalty in the following amounts at a minimum depending on the severity of the violation(s) but not to exceed Two Thousand Five Hundred and 00/100 Dollar (\$2,500.00) per day per violation for each day that any such violation remains unremediated after receipt of the order or notice of violation. Each day during which any such violation or failure or refusal to comply with an order continues shall constitute a separate violation.
- (2) For the purpose of enforcing the provisions of this Article, and notwithstanding any provisions in the City Charter to the contrary, the Municipal Court shall be authorized to impose a fine not to exceed Two Thousand and 00/100 Dollars (\$2,500.00) for each violation of this Article to be determined by the court based on the circumstances of the violation including the number of violations within the preceding Twelve-month period. The Court may in its discretion impose a sentence of imprisonment not to exceed Sixty (60) days in jail or a monetary penalty as specified hereinabove or both.
- (3) The following penalties shall apply to land-disturbing activities performed in violation of any provision of this Article, any rules and regulations adopted pursuant to this Article, or any permit condition or limitation established pursuant to this Article. Notwithstanding any limitation of law as to penalties which can be assessed for violations of City ordinances, any magistrate court or any other court of competent jurisdiction trying cases brought as violations of this Article under City ordinances approved under this Article shall be authorized to impose penalties for such violations not to exceed Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) for each violation. Each day during which a violation or failure or refusal to comply continues shall be a separate violation. Notwithstanding the above:
 - (i). There shall be a minimum penalty of Two Hundred Fifty and 00/100 Dollars (\$250.00) per day for each violation involving the construction of a single-family dwelling by or under contract with the owner for their own occupancy; and
 - (ii) There shall be a minimum penalty of One Thousand and 00/100 Dollars (\$1,000.00) per day for each violation involving land-disturbing activities.
- (4) Any person who violates any provisions of this Article, the rules and regulations adopted under this Article, or who negligently or intentionally fails or refuses to comply with any final or emergency order issued as provided in the Article, may be held liable for a sentence of imprisonment not to exceed Sixty (60) days in jail or monetary penalty of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) per day, or both.

(Ord. No. 2004-36, § VIII, 7-6-04)

Sec. 46-69. - Education and Certification.

- (a) Persons involved in land development design, review, permitting, construction monitoring, inspections or any land-disturbing activity shall meet the education and training certification requirements, dependent on their involvement with the process as

developed by the Commission in consultation with the Division and the Stakeholders Advisory Board created pursuant to O.C.G.A. § 12-7-20, as amended.

- (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 minimum One (1) person who is in 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. The term "Project Site" means 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 Article.
- (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.

(Ord. No. 2004-36, § IX, 7-6-04)

Sec. 46-70. - Administrative Appeal and Judicial Review.

(a) ***Administrative remedies.***

- (1) The suspension, revocation, modification or grant with condition of a permit by the City upon finding that the holder is not in compliance with the approved erosion, 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 permittee submitting the plan or holding the permit to a hearing before the Mayor and City Council within Twenty-one (21) days after receipt by the City Clerk of written notice of appeal.
- (2) Variances involving the first Twenty-five (25) feet of undisturbed natural vegetative buffer, as measured horizontally from both stream banks, can only be granted by the Director of the Environmental Protection Division of the Georgia Department of Natural Resources. Appeals must be directed to that office with a copy provided to the City environmental specialist.
- (3) Variances involving the second 25-foot (25 to 50 feet) of undisturbed natural vegetative buffer as measured horizontally from both stream banks, and activity within the third 25-foot buffer (area where no impervious cover may be installed) can be granted by the Mayor and City Council of the City. Variances will only be considered in cases of practical difficulty or necessary hardships as outlined in the variance procedures described in the Kennesaw Code of Ordinances, Chapter 46, Article IV. All requirements described in Chapter 46, Article IV must be met and the request filed with the Planning and Zoning Department to be heard by Mayor and City Council.

- (b) **Judicial review.** Any person, aggrieved by a decision or order of the City, after exhausting their administrative remedies, shall have the right to appeal *de novo* to the Superior Court of Cobb County.

(Ord. No. 2004-36, § X, 7-6-04)

Sec. 46-71. – Effective Date, Validity/Severability and Liability.

- (a) **Effective Date.** This Article shall become effective on the _____ day of _____, 20____.
- (b) **Validity/Severability.** The Mayor and City Council of the City declare their intention to be that the sections, paragraphs, sentences, clauses and phrases of this Article be severable, and if any section, paragraph, sentence, clause or phrase of this Article be judged, decreed or declared by a court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect or invalidate any of the remaining sections, paragraphs, sentences, clauses or phrases of this article since the remainder of this Article would have been adopted and enacted by the Mayor and City Council without the inclusion of any such unconstitutional or invalid section, paragraph, sentence, clause or phrase.
- (c) **Liability.**
- (1) Neither the approval of a plan under the provisions of this Article, nor the compliance with provisions of this Article shall relieve any person from the responsibility for damage to any person or property otherwise imposed by law nor impose any liability upon the City or district for damage to any person or property.
 - (2) That a land-disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this Article or the terms of the permit.
 - (3) No provision of this Article 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 under either of those Acts or pollute any waters of the State as defined thereby.

(Ord. No. 2004-36, § XI, 7-6-04)