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AN ORDINANCE TO AMEND THE 1995 LAND DEVELOPMENT CODE OF THE CITY OF ATLANTA TO NAME PART 13. ENVIRONMENT; TO CREATE AND ADD CHAPTER 2. CITY OF ATLANTA WETLAND PROTECTION ORDINANCE TO PART 13. ENVIRONMENT; AND FOR OTHER PURPOSES.

WHEREAS, wetlands are indispensable and fragile natural resources that serve man and nature through the provision of habitat areas for fish, wildlife and vegetation; water quality maintenance and pollution control; flood and erosion control; natural resource education; scientific study; and open space and recreational opportunities; and

WHEREAS, a considerable number of wetlands have been lost or impaired by draining, dredging, filling, excavating, building, pollution and other acts; and

WHEREAS, the purpose of this ordinance is to establish measures to protect the quality and quantity of present and future wetlands by discouraging development activities that may adversely affect wetlands; and

WHEREAS, the adopted 2001 Comprehensive Development Plan contains Appendix B, Exhibit A, City of Atlanta Wetland Protection Ordinance, in compliance with O.C.G.A. 12-2-8; and

WHEREAS, the City of Atlanta wishes to adopt the City of Atlanta Wetland Protection Ordinance into the Land Development Code.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

Section 1: That the 1995 Land Development Code of the City of Atlanta is hereby amended by naming PART 13. ENVIRONMENT.

Section 2: That the 1995 Land Development Code of the City of Atlanta is hereby amended by adding Chapter 2. CITY OF ATLANTA WETLAND PROTECTION ORDINANCE to Part 13. ENVIRONMENT, which shall read as shown on the attached "Exhibit A."

Section 3: That Chapter 2. CITY OF ATLANTA WETLAND PROTECTION ORDINANCE of this ordinance references the Generalized Wetland Map, which shall be kept on file in the office of the City of Atlanta City Clerk and shall read as shown on the attached "Exhibit B."

Section 4: That Chapter 2. CITY OF ATLANTA WETLAND PROTECTION ORDINANCE shall be included in the Comprehensive Development Plan as proof of compliance with O.C.G.A. 12-2-8 and shall replace the existing ordinance currently known as Appendix B, Exhibit A, of the Comprehensive Development Plan, entitled, "City of Atlanta Wetland Protection Ordinance."

Section 5: That all ordinances and parts of ordinances in conflict herewith are hereby repealed.

Exhibit A
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Chapter 2. CITY OF ATLANTA WETLAND PROTECTION ORDINANCE

Secs. 13-2001. Purpose and Intent.

This Ordinance shall be known as the Wetland Protection Ordinance of the City of Atlanta. The purpose of this Ordinance is to promote wetland protection, while taking into account varying ecological, economic development, recreational and aesthetic values. Activities that may damage wetlands should be located on upland sites to the greatest degree practicable or determined through a permitting process. The objective of this Ordinance is to protect wetlands from alterations that will significantly affect or reduce their primary functions for water quality, floodplain and erosion control, groundwater recharge, aesthetic nature and wildlife habitat.

ARTICLE A. WETLAND PROTECTION DISTRICT

Secs. 13-2002. Wetland Protection District Designation.

This ordinance shall apply to all lands within wetlands located within the jurisdiction of the City of Atlanta, Georgia. The Generalized Wetland Map as amended from time to time, adopted as part of this ordinance, shows the general location of wetlands and should be consulted by persons contemplating activities in or near wetlands. The Generalized Wetland Map, together with all explanatory matters thereon and attached thereto, is hereby adopted by reference and declared to be a part of this ordinance. The Generalized Wetland Map shall be on file in the office of the City of Atlanta City Clerk.

Secs. 13-2003. Wetland Protection District Boundaries.

The Generalized Wetland Map is a general reference document, and wetland boundaries indicated on the map are approximations. The purpose of the Generalized Wetland Map is to alert developers/landowners if they are within proximity to a wetland, which means that there is a high likelihood of the presence of a jurisdictional wetland and a need for the developer/landowner to seek U.S. Army Corps of Engineers guidance as to whether a Section 404 permit will be required prior to any activity. The Generalized Wetland Map does not represent the boundaries of jurisdictional wetlands within the jurisdiction of the City of Atlanta and cannot serve as a substitute for a delineation of wetland boundaries by the U.S. Army Corps. of Engineers, as required by Section 404 of the Clean Water Act, as amended. Any action by the City of Atlanta under this ordinance does not relieve the land owner from federal or state permitting requirements.

ARTICLE B. DEVELOPMENT PERMITS.

Secs. 13-2004. Development Permit Requirements.

No regulated activity will be allowed within the Wetland Protection District without written permission from the City of Atlanta, Georgia in the form of a local development permit. Issuance of a local development permit is contingent on full compliance with the terms of this ordinance and other applicable regulations. All activities that are not identified in Subsection 3.3 below or by other local development ordinances, shall be prohibited without prior issuance of a local development permit. If the area proposed for development is located within 50 feet of the Wetland Protection District boundary, as determined from the Generalized Wetland Map, a U. S. Army Corps of Engineers determination shall be required. If the Corps determines that wetlands are present on the proposed development site and that a Section 404 Permit of letter of Permission is required, a local development permit will be issued only following issuance of the Section 404 Permit or Letter of Permission.

Secs. 13-2005. Permit Requirements within the Wetland District Setback.

Prior to issuance of any development permit for activity within 50 feet of a wetland, the applicant must include, with the site plans for the proposed action, documentation that the following post-development conditions will prevail at the site:

(a) The rate of stormwater runoff, volume of stormwater runoff, and peak runoff from the site will not exceed pre-development levels.

(b) The amount of the following pollutants carried within runoff from the site will not exceed pre-development conditions: (1) phosphorus; (2) nitrogen; (3) zinc; (4) lead. In addition, biological oxygen demand (BOD) and turbidity (TSS) shall not exceed pre-development levels.

(c) In addition to other fees assessed, the applicant is liable for costs incurred during the evaluation of the performance standards evaluation.

Secs. 13-2006. Permissible Uses (Uses as of Right).

The following uses shall be allowed as of right within a wetland to the extent that they are not prohibited by any other ordinances or law, including laws of trespass, and provided they do not require structures, grading, fill, draining or dredging except as provided herein.

(a) Conservation or preservation of soil, water, vegetation, fish and other wildlife provided they do not affect waters of Georgia or of the United States in such a way that would require an individual 404 Permit.

(b) Outdoor passive recreational activities, including fishing, bird watching, hiking, boating, horseback riding and canoeing.

(c) Forestry practices applied in accordance with best management practices approved by the Georgia Forestry Commission and as specified in Section 404 of the Clean Water Act.

(d) The continued cultivation of agricultural crops. Agricultural activities shall be subject to best management practices approved by the Georgia Department of Agriculture.

(e) The pasturing of livestock as allowed, provided that riparian wetlands are protected, that soil profiles are not disturbed and that approved agricultural Best Management Practices are followed.

(f) Education, scientific research and nature trails.

(g) Temporary Emergency Permit. A temporary emergency permit can be issued by the City of Atlanta for the following reasons:

(1) Maintenance or repair of lawfully located roads or structures and of facilities used in the service of the public to provide transportation, electric, gas, water, telephone, telegraph, telecommunication or other services, provided that such roads, structures or facilities are not materially changed or enlarged and written notice prior to the commencement of work has been given to the City of Atlanta and provided that the work is conducted using best management practices to ensure that flow and circulation patterns and chemical and biological characteristics of the wetland are not impaired and that any adverse effect on the aquatic environment will be minimized.

(2) Temporary water-level stabilization measures associated with ongoing silvicultural operations.

(3) Limited ditching, tilling, dredging, excavating or filling done solely for the purpose of maintaining or repairing existing drainage systems necessary for the cultivation of agricultural crops, provided that the maintenance or repair activity does not result in the impairment, alteration or loss of wetlands not previously subject to agricultural and silvicultural use.

(4) Limited excavating and filling necessary for the repair and maintenance of piers, walkways, nature trails, observation decks, wildlife management

shelters, boathouses or other similar water-related structures, provided that they are built on pilings to allow unobstructed flow of water and preserve the natural contour of the wetland.

Secs. 13-2007. Site Plans.

Applications for a local development permit for properties included in the Generalized Wetland Protection District shall include a site plan, drawn at a scale of 1" = 50 ft with the following information:

(a) A map of all planned excavation and fill, including calculations of the volume of cut and fill involved, cross-sectional drawings showing existing and proposed grades. Elevations, horizontal scale and vertical scale must be shown on the cross-sectional drawings.

(b) A map of wetland boundaries occurring within the site must be provided. This boundary may be included on other maps provided by the applicant.

(c) Location, dimensions and area of all impervious surfaces, both existing and proposed, on the site and adjacent to the site for a distance of 50 feet.

(d) The orientation and distance from the boundaries of the proposed site to the nearest bank of an affected perennial stream or water body.

(e) Elevations of the site and adjacent lands within 200 feet of the site at contour intervals of no greater than two feet; and no greater than one foot for slopes less than or equal to two percent.

(f) Location and detailed design of any spill and leak collection systems designed for the purpose of containing accidentally released hazardous or toxic materials.

(g) All proposed temporary disruptions or diversions of local hydrology.

Secs. 13-2008. Activities to comply with site plan.

All development activities or site work conducted after approval of the site plan shall conform with the specifications of said site plan. The site plan may be amended only with the approval of the City of Atlanta, Georgia. The City of Atlanta may require additional information deemed necessary to verify compliance with the provisions of this ordinance or to evaluate the proposed use in terms of the purposes of this ordinance.

Secs. 13-2009. Filing Fee.

At the time of the application, the applicant shall pay a filing fee specified by the City of Atlanta. Filing fees up to a maximum of $1,000 may be required to evaluate the

application. This fee may be used to retain expert consultants who will provide services pertaining to functional assessment, mitigation and wetland boundary determinations as deemed necessary by the City of Atlanta.

Secs. 13-2010. Administration.

The Department of Public Works is hereby established as the administrator of this Ordinance.

Secs. 13-2011. Review Procedures.

The application shall be made to the Department of Public Works and will be reviewed within 60 days. The review period shall begin upon determination by the Department of Public Works that the application submitted is complete. The review period shall include the preparation of findings (approval or disapproval) by the Department of Public Works. The applicant will receive written notification of the findings of the City of Atlanta.

Secs. 13-2012. Duration of Permit Validity.

(a) If construction described in the development permit has not commenced within 12 months from the date of issuance, the permit shall expire.

(b) If construction described in the development permit is suspended or abandoned after work has commenced, the permit shall expire 12 months after the date that work ceased.

(c) Written notice of the pending expiration of the development permit shall be issued by the City of Atlanta.

ARTICLE C. MONITORING AND ENFORCEMENT

Secs. 13-2013. Monitoring and Enforcement.

(a) The Department of Public Works its agent, officers or employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this ordinance and may take or cause to be made such examinations, surveys or sampling as the Department of Planning Development and Neighborhood Department of Public Works deems necessary.

(1) All enforcement and monitoring activities conducted by the Department of Public Works shall be preceded by written notification to the landowner. Said notification shall be issued at least 10 days prior to the activities specified in the notification.

(2) The Department of Public Works shall have authority to enforce this ordinance; issue permits hereunder; and address violations or threatened violations hereof by issuance of violation notices, administrative orders and civil and criminal actions. All costs, fees and expenses in connection with such actions may be recovered as damages against the violator.

(3) Law enforcement officials or other officials having police powers shall have authority to assist the Department of Public Works in enforcement.

(4) The Department of Public Works shall have authority to issue cease and desist orders in the event of any violation of this ordinance. Cease and desist orders may be appealed to a court of competent jurisdiction, as identified in Section 6.

(b) The City of Atlanta may require a bond in an amount of $5,000 or 10% of the total improvement cost, or whichever is greater and with surety and conditions sufficient to secure compliance with the conditions set forth in the permit. The particular amount and the conditions of the bond shall be consistent with the purposes of this ordinance. In the event of a breach of any condition of any such bond, the City of Atlanta may institute an action in a court of competent jurisdiction upon such bond and prosecute the same to judgment and execution.

ARTICLE D. PENALITIES.

Secs. 13-2014. Penalties.

(a) Any person who commits, takes part in or assists in any violation of any provision of this Ordinance may be fined not more than $1,000; for continuing violation, each day's continuance shall be deemed to be a separate and distinct offense.

(b) When a building or other structure has been constructed in violation of this Ordinance, the violator may be required to remove the structure at the discretion of the City of Atlanta.

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

(d) If the City of Atlanta discovers a violation of this ordinance that also constitutes a violation of any provisions of the Clean Water Act as amended, the City of Atlanta shall issue written notification of the violation to the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers and the landowners.

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

ARTICLE E. JUDICIAL REVIEW.

Secs. 13-2015. Jurisdiction.

All final decisions of the City of Atlanta concerning denial, approval or conditional approval of any permit issued pursuant to this Chapter, shall be reviewable in the Fulton County Superior Court.

Secs. 13-2016. Alternative Actions

Based on these proceedings and the decision of the court, the City of Atlanta may, within the time specified by the court, elect to:

(a) Institute negotiated purchase or condemnation proceedings to acquire an easement or fee interest in the applicant's land;

(b) Approve the permit application with lesser restrictions or conditions; or

(c) Institute other appropriate actions ordered by the court that fall within the jurisdiction of the Department of Public Works.

ARTICLE F. AMENDMENTS.

Secs. 13-2016. Amendments.

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

ARTICLE G. ASSESSMENT RELIEF.

Secs. 13-2017. Assessment Relief.

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

ARTICLE H. SEPARABILITY AND ABROGATION.

Secs. 13-2018. Separability and Abrogation.

All sections and subsections of this ordinance are considered separate and distinct. Should any section, subsection, paragraph or part of this ordinance be declared by a court of jurisdiction to be invalid for any reason, it shall not invalidate any other section, subsection, paragraph of part of this ordinance. All ordinances and regulations on conflict with this ordinance are hereby repealed.

ARTICLE I. DEFINITIONS.

Secs. 13-2019. Definitions.

For purposes of interpreting this Chapter 2 of Part 13, the following definitions shall apply:

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

(b) *Generalized Wetland Map* means a map showing the general locations of wetlands within the jurisdiction of the City of Atlanta.

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

(d) *Hydrophytic Vegetation* means macrophytic plants tolerant of or dependent on saturated soil conditions.

(e) *Jurisdictional Determination* means an official, written statement or map signed by the U.S. Army Corps of Engineers or, in the case of coastal marshlands, the Georgia Department of Natural Resources.

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

(g) *Temporary Emergency Permit* means a temporary permit that may be issued in certain circumstances specified in Subsection 3.3.7.

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

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

(j) *Wetland Protection District* means all wetlands within the jurisdiction of the City of Atlanta and shown on the Generalized Wetland Map.