AN ORDINANCE

01-O-1351

BY CITY UTILITIES COMMITTEE

AN ORDINANCE TO AMEND THE CITY OF ATLANTA CODE OF ORDINANCES CHAPTER 74, ARTICLE II "LAND DISTURBING ACTIVITIES" (SECS. 74-36 THROUGH 74-75) SO AS TO ACHIEVE CONSISTENCY WITH THE EROSION AND SEDIMENTATION ACT OF 1975, AS AMENDED, AS FOUND IN CHAPTER 7 OF TITLE 12 OF THE OFFICIAL CODE OF GEORGIA; AND FOR OTHER PURPOSES.

WHEREAS, the Erosion and Sedimentation Act of 1975, codified as O.C.G.A. § 12-7-1, et seq., provides for the establishment and implementation of a statewide comprehensive soil erosion and sedimentation control program to conserve and protect the land, water, air and other resources of this state; and

WHEREAS, House Bill 1426, passed in the 2000 Session of the Georgia General Assembly, effected certain amendments to the Erosion and Sedimentation Act of 1975; and

WHEREAS, the City of Atlanta must comply with the requirements of the Erosion and Sedimentation Act of 1975, as amended and incorporate the said amendments into its Code of Ordinances.

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

SECTION 1. That Article II of Chapter 74 the Code of Ordinances, comprised of Section 74-36 through Section 74-75 and referred to as the "City of Atlanta Land Disturbing Activities Ordinance," is hereby rescinded in its entirety.

SECTION 2. That a new article VII of Chapter 74 of the Code of Ordinances entitled Riparian Buffer Requirements is hereby established.

SECTION 3. In the event that text for the newly created Article VII has not been adopted by the effective date of this ordinance than the provisions of Ordinance 01-0-0709 shall remain in effect until such time that new language or text is adapted.

SECTION 4.That a new Article II of Chapter 74 of the Code of Ordinances, comprised of Section 74-36 through Section 74-45 to be referred to as the "City of Atlanta Soil Erosion and Sedimentation Control Ordinance," be adopted as follows:

Article II. Soil Erosion and Sedimentation Control

Sec. 74-36. Title, authority and findings.

(a) *Title.* This ordinance will be known as the "City of Atlanta Soil Erosion and Sedimentation Control Ordinance."

(b) *Authority.* This ordinance is enacted to implement the Erosion and Sedimentation Act of 1975, O.C.G.A. § 12-7-1, et seq., as amended in the 2000 Session of the Georgia General Assembly.

(c) *Findings.* The Council of the City of Atlanta finds that soil erosion and sediment deposition onto lands and into waters within the watersheds of the City of Atlanta are occurring as a result of a need for improvement in the application of proper soil erosion and sedimentation control practices in land clearing, soil movement, and construction activities and that such erosion and sediment deposition result in pollution of state waters and damage to domestic, agricultural, recreational, fish and wildlife, and other resources uses. It is therefore declared to be the policy of the City of Atlanta and the intent of this ordinance to strengthen and extend the present erosion and sedimentation control activities and programs of the City of Atlanta and to provide for the establishment and implementation of a City-wide comprehensive soil erosion and sedimentation control program to conserve and protect the land, water, air and other resources of the City of Atlanta.

Sec. 74-37. Definitions. *(former Sec. 74-36).*

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

(1) *Best Management Practices (BMP's):* A collection of structural practices and vegetative measures which, when properly designed, installed and maintained, will provide effective erosion and sedimentation control for all rainfall events up to and including a 25-year, 24-hour rainfall event.
(2) *Board:* The Board of Natural Resources.
(3) *Buffer:* The area of land immediately adjacent to the banks of state waters in its natural state of vegetation, which facilitates the protection of water quality and aquatic habitat.
(4) *Commission:* The State Soil & Water Conservation Commission.
(5) *Cut:* A portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below original ground surface to excavated surface. Also known as excavation.
(6) *Department:* The Department of Natural Resources.
(7) *Director:* The Director of the Environmental Protection Division of the Department of Natural Resources.
(8) *District:* The Fulton and/or Dekalb Water Erosion Conservation District.
(9) *Division*: The Environmental Protection Division of the Department of Natural Resources.
(10) *Drainage Structure*: A device composed of a virtually nonerodible material such as concrete, steel, plastic or other such material that conveys water from one place to another by intercepting the flow and carrying it to a release point for storm-water management, drainage control, or flood control purposes.
(11) *Erosion:* The process by which land surface is worn away by the action of wind, water, ice or gravity.

(12) *Erosion and Sedimentation Control Plan:* A plan for the control of soil erosion and sedimentation resulting from a land disturbing activity. Also known as the "plan".

(13) *Fill:* A portion of land surface to which soil or other solid material has been added; the depth above the original ground.

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

(15) *Grading:* Altering the shape of ground surfaces to a predetermined condition; this includes stripping, cutting, filling, stockpiling and shaping or any combination thereof and shall include the land in its cut or filled condition.

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

(17) *Issuing Authority:* The City of Atlanta, which has been certified by the Director of the Environmental Protection Division of the Department of Natural Resources as an Issuing Authority, pursuant to the Erosion and Sedimentation Act of 1975, as amended, or the Division in those instances where an application for a permit is submitted to the Division.

(18) *Land-Disturbing Activity:* Any activity which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands within the state, including, but not limited to, clearing, dredging, grading, excavating, transporting, and filling of land but not including agricultural practices as described in Sec. 74-38, Paragraph (a)(5).

(19) *Metropolitan River Protection Act (MRPA):* A state law referenced as O.C.G.A. 12-5-440 et seq., which addresses environmental and developmental matters in certain metropolitan river corridors and their drainage basins.

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

(21) *Nephelometric Turbidity Units (NTU):* Numerical units of measure based upon photometric analytical techniques for measuring the light scattered by finely divided particles of a substance in suspension. This technique is used to estimate the extent of turbidity in water in which colloidally dispersed particles are present.

(22) *Permit:* The authorized necessary to conduct a land-disturbing activity under the provisions of this ordinance.

(23) *Person:* Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, state agency, municipality or other political subdivision of this State, any interstate body or any other legal entity.

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

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

(26) *Sediment:* 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.

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

(28) *Soil and Water Conservation District Approved Plan:* An erosion and sedimentation control plan approved in writing by the Fulton soil and water conservation district.

(29) *Stabilization:* The process of establishing an enduring soil cover of vegetation by the installation of temporary or permanent structures for the purpose of reducing to a minimum the erosion process and the resultant transport of sediment by wind, water, ice or gravity.

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

(31) *Structural Erosion and Sedimentation Control Practices:* Practices for the stabilization of erodible or sediment producing areas by utilizing the mechanical properties of matter for the purpose of either changing the surface of the land or storing, regulating or disposing of runoff to prevent excessive sediment loss. Examples of structural erosion and sediment control practices are riprap, sediment basins, dikes, level spreaders, waterways or outlets, diversions, grade stabilization structures, sediment traps and land grading, etc. Such practices can be found in the publication *Manual for Erosion and Sediment Control in Georgia.*

(32) *Trout Streams:* All streams or portions of streams within the watershed as designated by the Game and Fish 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. Streams designated as primary trout waters are defined as water supporting a self-sustaining population of rainbow, brown or brook trout. Streams designated as secondary trout waters are those in which there is no evidence of natural trout reproduction, but are capable of supporting trout throughout the year. First order trout waters are streams into which no other streams flow except springs.

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

a. Permanent seeding, sprigging or planting, producing long-term vegetative cover; or

b. Temporary seeding, producing short-term vegetative cover; or

c. Sodding, covering areas with a turf of perennial sod-forming grass.

Such measures can be found in the publication *Manual for Erosion and Sediment Control in Georgia.*

(34) *Watercourse:* Any natural or artificial watercourse, stream, river, creek, channel, ditch, canal, conduit, culvert, drain, waterway, gully, ravine, or wash in which water flows either continuously or intermittently and which has a definite channel, bed and banks, and including any area adjacent thereto subject to inundation by reason of overflow or floodwater.

(35) *Wetlands*: Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Sec. 74-38. Applicability of article; exemptions. *(former Sec. 74-37).*

This ordinance shall apply, as provided by O.C.G.A. § 12-7-17, to any land disturbing activity undertaken by any person on any land except for the following:

(a) *Exemptions.*

(1) Surface mining, as the same is defined in O.C.G.A. 12-4-72, "Mineral Resources and Caves Act;"

(2) Granite quarrying and land clearing for such quarrying;

(3) Such minor land-disturbing activities as home gardens and individual home landscaping, repairs, maintenance work, and other related activities which result in minor soil erosion;

(4) The construction of single-family residences, when such are constructed by or under contract with the owner for his or her own occupancy, or the construction of single-family residences not a part of a platted subdivision, a planned community, or an association of other residential lots consisting of more than two lots and not otherwise exempted under this paragraph; provided, however, that construction of any such residence shall conform to the minimum requirements as set forth in Sec. 74-43 of this ordinance. For single-family residence construction covered by the provisions of this paragraph, there shall be a buffer zone between the residence and any state waters classified as trout streams pursuant to Article 2 of Chapter 5 of the Georgia Water Quality Control Act. In any such buffer zone, no land-disturbing activity shall be constructed between the residence and the point where vegetation has been wrested by normal stream flow or wave action from the banks of the trout waters. For primary trout waters, the buffer zone shall be at least **50** horizontal feet, and no variance to a smaller buffer shall be granted. For secondary trout waters, the buffer zone shall be at least **50** horizontal feet, but the Director may grant variances to no less than **25** feet. Regardless of whether a trout stream is primary or secondary, for first order trout waters, which are streams into which no other streams flow except for springs, the buffer shall be at least **25** horizontal feet, and no variance to a smaller buffer shall be granted. The minimum requirements of Sec. 74-73 of this ordinance and the buffer zones provided by this section shall be enforced by the City of Atlanta;

(5) Agricultural operations as defined in O.C.G.A. 1-3-3, "definitions", to include raising, harvesting or storing of products of the field or orchard; feeding, breeding or managing livestock or poultry; producing or storing feed for use in the production of livestock, including but not limited to cattle, calves, swine, hogs, goats, sheep, and rabbits or for use in the production of poultry, including but not limited to chickens, hens and turkeys; producing plants, trees, fowl, or animals; the production of aqua culture, horticultural, dairy, livestock, poultry, eggs and apiarian products; farm buildings and farm ponds;

(6) Forestry land management practices, including harvesting; provided, however, that when such exempt forestry practices cause or result in land-disturbing or other activities otherwise prohibited in a buffer, as established in Sec. 74-43 (c)(15) and (16) of this ordinance, no other land-disturbing activities, except for normal forest management practices, shall be allowed on the entire property upon which the forestry practices were conducted for a period of three years after completion of such forestry practices;

(7) Any project carried out under the technical supervision of the Natural Resources Conservation Service of the United States Department of Agriculture;

(8) Any project involving one and one-tenth acres or less; provided, however, that this exemption shall not apply to any land-disturbing activity within **200** feet of the bank of any state waters, and for purposes of this paragraph, "State Waters" excludes channels and drainageways which have water in them only during and immediately after rainfall events and intermittent streams which do not have water in them year- round; provided, however, that any person responsible for a project which involves one and one-tenth acres or less, which involves land-disturbing activity, and which is within **200** feet of any such excluded channel or

drainageway, must prevent sediment from moving beyond the boundaries of the property on which such project is located and provided, further, that nothing contained herein shall prevent the City of Atlanta from regulating any such project which is not specifically exempted by paragraphs (1), (2,) (3), (4), (5), (6), (7), (9) or (10) of this section;

(9) Construction or maintenance projects, or both, undertaken or financed in whole or in part, or both, by the Department of Transportation, the Georgia Highway Authority, or the State Tollway Authority; or any road construction or maintenance project, or both, undertaken by any county or municipality; provided, however, that such projects shall conform to the minimum requirements set forth in Sec. 74-43 (b) and (c). of this ordinance; provided further that construction or maintenance projects of Department of Transportation or State Tollway Authority which disturb five or more contiguous acres of land shall be subject to provisions of O.C.G.A. 12-7-7.1; and;

(10) Any land-disturbing activities conducted by any electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the Public Service Commission, provided that any such land-disturbing activity shall conform to the minimum requirements set forth in Sec. 74-43 (b) and (c).

(b) Where this section requires compliance with the minimum requirements set forth in Sec. 74-43 (b) and (c) of this ordinance, Issuing Authorities shall enforce compliance with the minimum requirements as if a permit had been issued and violations shall be subject to the same penalties as violations by permit holders.

Sec. 74-39. Application and permit process. *(former Sec. 74-38).*

(a) *General.* The property owner, developer and designated planners and engineers shall review the general development plans and detailed plans of the City of Atlanta 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 ordinance, and other ordinances which regulate the development of land within the jurisdictional boundaries of the City of Atlanta. However, the property owner is the only party who may obtain a permit.

(b) *Application Requirements:*

(1) No person shall conduct any land- disturbing activity within the jurisdictional boundaries of the City of Atlanta without first obtaining a permit from the City of Atlanta to perform such activity;

(2) The application for a permit shall be submitted to the Bureau of Buildings and must include the applicant's erosion and sedimentation control plan with supporting data, as necessary. Said plans shall include, as a minimum, the data specified in Sec. 74-40 of this ordinance. Soil erosion and sedimentation control plans shall conform to the provisions of Sec. 74-43 (b) and (c) of this ordinance. Applications for a permit will not be accepted unless accompanied by four [4] copies of the applicant's soil erosion and sedimentation control plans.

(3) Immediately upon receipt of an application and plan for a permit, the City of Atlanta shall refer the application and plan to the District for its review and approval or disapproval concerning the adequacy of the erosion and sedimentation control plan. The results of the District review shall be forwarded to the City of Atlanta. No permit will be issued unless the plan has been approved by the District, and any variances required by Sec. 74-43 (c) (15) and (16) and bonding, if required as per Sec.

74-39 (b)(4)(b) have been obtained. Such review will not be required if the City of Atlanta and the District have entered into an agreement which allows the City of Atlanta to conduct such review and approval of the plan without referring the application and plan to the District.

(4) a. If a permit applicant has had two or more violations of previous permits, this ordinance section, or the Erosion and Sedimentation Act, as amended, within three years prior to the date of filing of the application under consideration, the City of Atlanta may deny the permit application.

b. The permit applicant shall submit a Performance Bond by a bonding company licensed and registered in Georgia made payable to the city which shall ensure that all disturbed areas and/or affected areas, due to grading operations, will be stabilized through structural and/or vegetative measures to provide effective soil erosion and sediment control. The bond amount shall be $3,000 per acre for areas of disturbance 1.1 acres and larger and $3,000 minimum for sites under 1.1 acres having cut and/or fill amounts over 500 cubic yards. If the applicant does not comply with this ordinance or with the conditions of the permit after issuance, the City of Atlanta may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance. These provisions shall not apply unless there is in effect an ordinance or statute specifically providing for hearing and judicial review of any determination or order of the City of Atlanta with respect to alleged permit violations. The term of the bond shall extend through the proposed project until one year following its completion. Failure to renew the performance bond, should it expire prior to completion and acceptance of the work by the city, shall be considered grounds for suspending or revoking the permit. *(former Sec. 74-40).*

(b) 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 Atlanta of a completed application, providing variances and bonding are obtained, where necessary.

(2) No permit shall be issued by the City of Atlanta unless the erosion and sedimentation control plan has been approved by the District and the City of Atlanta has affirmatively determined that the plan is in compliance with this ordinance, any variances required by Sec. 74-43 (c) (15) and (16) are obtained, bonding requirements, if necessary, as per Sec. 74-39 (b) (4) (b) are met and all ordinances and rules and regulations in effect within the jurisdictional boundaries of the City of Atlanta are met. If the permit is denied, the reason for denial shall be furnished to the applicant.

(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 of Atlanta, as to all or any portion of the land affected by the plan, upon finding that the holder or his successor in the title is not in compliance with the approved erosion and sedimentation control plan or that the holder or his successor in title is in violation of this ordinance. A holder of a permit shall notify any successor in title to him as to all or any portion of the land affected by the approved plan of the conditions contained in the permit. *(former Code Sec. 74-45).*

(5) No permit shall be issued unless the applicant provides a statement by the tax collector or tax commissioner of the county in which the property for which the permit is requested lies and by the official responsible for the collection for municipal taxes for the city, if applicable, certifying that all ad valorem taxes levied against the property and due and owing have been paid.

Sec. 74-40. Plan Requirements. *(former Sec. 74-39).*

(a) Plans must be prepared to meet the minimum requirements as contained in Sec. 74-43 (b) and (c) of this ordinance. 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 ordinance. The plan for the land-disturbing activity shall consider the interrelationship of the soil types, geological and hydrological characteristics, topography, watershed, vegetation, proposed permanent structures including roadways, constructed waterways, sediment control and storm water management facilities, local ordinances and State laws.

(b) *Data Required for Site Plan:*

(1) Narrative or notes, and other information: Notes or narrative to be located on the site plan in general notes or in erosion and sediment control notes.

(2) Description of existing land use at project site and description of proposed project.

(3) Name, address, and phone number of the property owner.

(4) Name and phone number of 24-hour local contact who is responsible for erosion and sedimentation controls.

(5) Size of project, or phase under construction, in acres.

(6) Activity schedule showing anticipated starting and completion dates for the project. Include the statement in **bold letters**, that "the installation of erosion and sedimentation control measures and practices shall occur prior to or concurrent with land-disturbing activities."

(7) Stormwater and sedimentation management systems-storage capacity, hydrologic study, and calculations, including off-site drainage areas.

(8) Vegetative plan for all temporary and permanent vegetative measures, including species, planting dates, and seeding, fertilizer, lime, and mulching rates. The vegetative plan should show options for year-round seeding.

(9) Detail drawings for all structural practices. Specifications may follow guidelines set forth in the *Manual for Erosion and Sediment Control in Georgia.*

(10) Maintenance statement - "Erosion and sedimentation control measures will be maintained at all times. Additional erosion and sedimentation control measures and practices will be installed if deemed necessary by onsite inspection."

(c) Maps, drawings, and supportive computations shall bear the signature/seal of a registered or certified professional in engineering, architecture, landscape architecture, land surveying, or erosion and sedimentation control. The certified plans shall contain:

(1) Graphic scale and north point or arrow indicating magnetic north.

(2) Vicinity maps showing location of project, existing streets and drainage paths within one [1] mile of the project.

(3) Boundary line survey.

(4) Delineation of disturbed areas within project boundary.

(5) Existing and planned contours, with an interval in accordance with the following:

Map Scale	Ground Slope	Contour Interval, ft.
1 inch = 100 ft.	Flat 0-2%	0.5 or 1
or larger scale	Rolling 2-8%	1 or 2

	Steep 8% +	2, 5 or 10

(6) Adjacent areas and features areas such as streams, lakes, residential areas, etc. which might be affected should be indicated on the plan.
(7) Proposed structures or additions to existing structures and paved areas.
(8) Delineate the **State** and **City** horizontal buffers adjacent to state waters required by Secs. 74-43 (c) (15) and 74-43 (d), respectively, and the specified buffer width in MRPA areas.
(9) Delineate the specified horizontal buffer along designated trout streams (the Chattahoochee River within the City of Atlanta) required by Sec. 74-43 (c) (16).
(10) Location of erosion and sedimentation control measures and practices using coding symbols from the *Manual for Erosion and Sediment Control in Georgia*, Chapter 6.

(d) Maintenance of all soil erosion and sedimentation control practices, whether temporary or permanent, shall be at all times the responsibility of the property owner.

Sec. 74-41. Inspection and Enforcement.

(a) The City of Atlanta 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. If, through inspection, it is deemed that a person engaged in land-disturbing activities as defined herein has failed to comply with the approved plan, with permit conditions, or with the provisions of this ordinance, a written notice to comply shall be served upon that person. The notice shall set forth the measures necessary to achieve compliance and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he or she shall be deemed in violation of this ordinance.

(b) The City of Atlanta shall have the power to conduct such investigations as it may reasonably deem necessary to carry out duties as prescribed in this ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigation and inspecting the sites of land-disturbing activities.

(c) No person shall refuse entry or access to any authorized representative or agent of the City of Atlanta, 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.

(d) The Districts or the Commission or both shall periodically review the actions of counties and municipalities which have been certified as Issuing Authorities pursuant to O.C.G.A. 12-7-8 (a). The Districts or the Commission or both may provide technical assistance to any county or municipality for the purpose of improving the effectiveness of the county's or municipality's erosion and sedimentation control program. The Districts or the Commission shall notify the Division and request investigation by the Division if any deficient or ineffective local program is found.

(e) The Division may periodically review the actions of counties and municipalities which have been certified as Issuing Authorities pursuant to O.C.G.A. 12-7-8 (a). Such review may include, but shall not be limited to, review of the administration and enforcement of a governing authority's ordinance

and review of conformance with an agreement, if any, between the district and the governing authority. If such review indicates that the governing authority of any county or municipality certified pursuant to O.C.G.A. 12-7-8 (a) has not administered or enforced its ordinances or has not conducted the program in accordance with any agreement entered into pursuant to O.C.G.A. 12-7-7 (d), the Division shall notify the governing authority of the City of Atlanta in writing. The governing authority of any county or municipality so notified shall have 30 days within which to take the necessary corrective action to retain certification as an Issuing Authority. If the county or municipality does not take necessary corrective action within 30 days after notification by the division, the division may revoke the certification of the county or municipality as an Issuing Authority.

Sec. 74-42. Stop work and penalties.

(a) *Failure To Obtain A Permit For Land-Disturbing Activity*

If any person commences any land-disturbing activity requiring a land-disturbing permit as prescribed in this ordinance without first obtaining said permit, the person shall be subject to revocation of his business license, work permit or other authorization for the conduct of a business and associated work activities within the jurisdictional boundaries of the City of Atlanta.

(b) *Stop-Work Orders.*

(1) *Warning.* For the first and second violations of the provisions of this ordinance, the Director or the City of Atlanta shall issue a written warning to the violator. The violator shall have five days to correct the violation. If the violation is not corrected within five days, the Director or the City of Atlanta shall issue a stop-work order requiring that land-disturbing activities be stopped until necessary corrective action or mitigation has occurred;

(2) *Imminent threat and/or no permit.* If the violation presents an imminent threat to public health or waters of the state or if the land-disturbing activities are conducted without obtaining the necessary permit, the Director or the City of Atlanta shall issue an immediate stop-work order in lieu of a warning.

(3) *Subsequent violation.* For a third and each subsequent violation, the Director or the City of Atlanta shall issue an immediate stop work order; and;

(4) *Effectivity.* All stop-work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred.

(c) *Bond Forfeiture.*

If, through inspection, it is determined that a person engaged in land-disturbing activities has failed to comply with the approved plan, a written notice to comply shall be served upon that person. The notice shall set forth the measures necessary to achieve compliance with the plan and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this ordinance and, in addition to other penalties, shall be deemed to have forfeited his performance bond, if required to post one under the provisions of Sec. 74-39 (b) (4) b. The City of Atlanta 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. *(former Sec. 74-44)*

(d) *Monetary Penalties.*

(1) Except as provided in paragraph (2) of this subsection, any person who violates any provisions of this ordinance, the rules and regulations adopted pursuant hereto, or any permit condition or limitation established pursuant to this ordinance or who negligently or intentionally fails or refuses

to comply with any final or emergency order of the Director issued as provided in this ordinance shall be liable for a civil penalty not to exceed $2,500.00 per day. For the purpose of enforcing the provisions of this ordinance, notwithstanding any provisions in any City charter to the contrary, municipal courts shall be authorized to impose penalty not to exceed $2,500.00 for each violation. Notwithstanding any limitation of law as to penalties which can be assessed for violations of county ordinances, any magistrate court or any other court of competent jurisdiction trying cases brought as violations of this ordinance under county ordinances approved under this ordinance shall be authorized to impose penalties for such violations not to exceed $2,500.00 for each violation. Each day during which violation or failure or refusal to comply continues shall be a separate violation.

(2) The following penalties shall apply to land-disturbing activities performed in violation of any provision of this ordinance, any rules and regulations adopted pursuant hereto, or any permit condition or limitation established pursuant to this ordinance;

a. There shall be a minimum penalty of $250.00 per day for each violation involving the construction of a single–family dwelling by or under contract with the owner for his or her own occupancy; and;

b. There shall be a minimum penalty of $1,000.00 per day for each violation involving land-disturbing activities other than as provided in subsection (a) of this paragraph. *(former Sec. 74-47).*

Sec. 74-43. Minimum Requirements For Erosion And Sedimentation Control Using Best Management Practices.

(a) *General Provisions.*

Excessive soil erosion and resulting sedimentation can take place during land-disturbing activities. Therefore, plans for those land-disturbing activities which are not excluded by this ordinance shall contain provisions for application of soil erosion and sedimentation control measures and practices. The provisions shall be incorporated into the erosion and sedimentation control plans. Soil erosion and sedimentation control measures and practices shall conform to the minimum requirements of Sec. 74-43 (4) (b) and (c) of this ordinance. The application of measures and practices shall apply to all features of the site, including street and utility installations, drainage facilities and other temporary and permanent improvements. Measures shall be installed to prevent or control erosion and sedimentation pollution during all stages of any land-disturbing activity.

(b) *Minimum Requirements/BMP's.*

(1) Best management practices as set forth in Sec. 74-43 (4) (b) and (c) of this ordinance shall be required for all land-disturbing activities. Proper design, installation, and maintenance of best management practices shall constitute a complete defense to any action by the Director or to any other allegation of noncompliance with paragraph (2) of this subsection or any substantially similar terms contained in a permit for the discharge of stormwater issued pursuant to subsection (f) of O.C.G.A. 12-5-30, the "Georgia Water Quality Control Act". As used in this subsection the terms "proper design" and "properly designed" mean designed to control soil erosion and sedimentation for all rainfall events up to and including a 25-year, 24-hour rainfall event.

(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 of Atlanta or by the Division or of any general permit for construction activities issued by the Division pursuant to subsection (f) of O.C.G.A. 12-5-30, the "Georgia Water Quality Control Act", for each day on which such discharge

control facilities to retain sediments on-site or preclude sedimentation of adjacent waters beyond the levels specified in Sec. 74-43 (b) (2) of this ordinance;

(15) *State waters buffer required by O.C.G.A. § 12-7-6:* Except as provided in paragraph (16) of this subsection, there is established a **25** foot buffer along the banks of all state waters, as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, except where the Director determines to allow a variance that is at least as protective of natural resources and the environment, where otherwise allowed by the Director pursuant to O.C.G.A. 12-2-8, or 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; provided, however, the buffers of at least **25** feet established pursuant to part 6 of Article 5, Chapter 5 of Title 12, the "Georgia Water Quality Control Act", shall remain in force unless a variance is granted by the Director as provided in this paragraph. The following requirements shall apply to any such buffer: No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural, undisturbed state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; provided, however, that any person constructing a single family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; and

(16) *Trout stream buffer required by O.C.G.A. § 12-7-6:* There is established a **50** foot buffer as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, along the banks of any state waters classified as "trout streams" pursuant to Article 2 of Chapter 5 of Title 12, the "Georgia Water Quality Control Act", except where a roadway drainage structure must be constructed; provided, however, that small springs and streams classified as trout streams which discharge an average annual flow of 25 gallons per minute or less shall have a **25** foot buffer or they may be piped, at the discretion of the landowner, pursuant to the terms of a rule providing for a general variance promulgated by the Board, so long as any such pipe stops short of the downstream landowner's property and the landowner complies with the buffer requirement for any adjacent trout streams. The Director may grant a variance from such buffer to allow land-disturbing activity, provided that adequate erosion control measures are incorporated in the project plans and specifications and are implemented. The following requirements shall apply to such buffer: No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural, undisturbed, state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed: provided, however, that any person constructing a single–family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed;

(17) The project shall be posted with a sign approved by the Commissioner and visible both to the street and site workers to notify the public of the Erosion and Sedimentation Control Ordinance and City of Atlanta Soil Erosion Hotline telephone number; and

(d) *City of Atlanta Riparian Buffer:* See Article VII of Chapter 74 entitled Riparian Buffer Requirements.

Sec. 74-44. Validity and Liability. *(former Sec. 74-48).*

(a) *Validity.*
If any section, paragraph, clause, phrase, or provision of this ordinance shall be adjudged invalid or held unconstitutional, such decisions shall not effect the remaining portions of this ordinance.

(b) *Liability.*

1. Neither the approval of a plan under the provisions of this ordinance, nor the compliance with provisions of this ordinance shall relieve any person from the responsibility for damage to any person or property otherwise imposed by law nor impose any liability upon the City of Atlanta or District for damage to any person or property.
2. The fact that a land-disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this ordinance or the terms of the permit.
3. No provision of this ordinance shall permit any persons to violate the Georgia Erosion and Sedimentation Act of 1975, the Georgia Water Quality Control Act or the rules and regulations promulgated and approved there under or pollute any Waters of the State as defined thereby.

Sec. 74-45. Administrative Appeal And Judicial Review. *(former Sec. 74-74).*

(a) *Administrative remedy:* Prior to any suspension, revocation or modification of any permit, the permit holder shall receive written notice of such proposed action and shall be given the opportunity to show cause why such permit should not be suspended, revoked, or modified by the City of Atlanta. The City of Atlanta acting by and through its Commissioner of Public Works shall review the permit application, the reasons submitted by the permit holder for determining such permit holder not be in violation, and shall issue a decision in writing, if such decision to suspend, revoke or modify the permit is affirmed, setting forth the reasons for doing so.

(b) *Judicial Review:* Any person aggrieved by such decision, after exhausting his or her administrative remedies, shall have the right to appeal to the Superior Court of the county wherein which such land disturbing occurred or is proposed to occur, for review of such written decision.

(c) The review process for new permits, as well as that for suspension, modification, and revocation of permits described in this section, will be conducted by the city, unless the district, has not reached an agreement with the city which would authorize the city to conduct such review and approval of the plan without referring the application and plan to the district. In the absence of such authorization, review will be conducted by the district. *(former Sec. 74-38(h)).*

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE _____**GREG PRIDGEION**_____
(For review & distribution to Execution Management)

Commissioner's Signature: _____ Director's Signature _____

From: Origination Dept. **PUBLIC WORKS** **Contact (name):** Ben Taube x 5232 or
David W. Peters x 6073

Committee(s) Purview: City Utilities Committee Committee Deadline: August 27, 2001

Committee(s) Meeting Dates: September 11, 2001 City Council Meeting Date: September 17, 2001

CAPTION:

An ordinance to amend the City of Atlanta Code of Ordinances Chapter 74, Article II "Land Disturbing Activities" (Secs. 74 – 36 through 74 – 75) so as to achieve consistency with the Erosion and Sedimentation Act of 1975, as amended, as found in Chapter 7 of Title 12 of the official Code of Georgia.

BACKGROUND/PURPOSE/DISCUSSION:

The purpose of this ordinance is to improve the control of Erosion and Sedimentation by requiring proper provisions for the protection of soil surfaces during and after any land disturbing activity so as to promote improved water quality and public health for the general welfare of the people of the City of Atlanta.

FINANCIAL IMPACT (If Any):

Mayor's Staff Only

Received by Mayor's Office: 8/24/01 _____ Reviewed by: _____
(date) (initials) (date)

Submitted to Council: _____

Action by Committee: Approved _____ Adverse _____ Held _____ Amended _____

Substitute _____ Referred _____ Other _____