

**AN ORDINANCE AMENDING AND EXACTING
A CODE FOR THE CITY OF AUSTELL**

**ARTICLE II
FLOODPLAIN MANAGEMENT AND PREVENTION**

BE IT ORDAINED AND IT IS HEREBY ORDAINED that the following Ordinance is adopted and the Code of Ordinances for the City of Austell be amended to include the following sections:

- Section 5-20. Introduction
- Section 5-21. General Provisions
- Section 5-22. Definitions
- Section 5-23. Permit Procedures and Requirements
- Section 5-24. Standards for Developments
- Section 5-25. Provisions for Flood Damage Reduction
- Section 5-26. Variance Procedures
- Section 5-27. Violations, Enforcement, and Penalties

SECTION 5-20. INTRODUCTION

It is hereby determined that:

The flood hazard areas of City of Austell are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood relief and protection, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

Flood hazard areas can serve important stormwater management, water quality, streambank protection, stream corridor protection, wetland preservation and ecological purposes when permanently protected as undisturbed or minimally disturbed areas.

Effective floodplain management and flood hazard protection activities can: (1) protect human life and health; (2) minimize damage to private property; (3) minimize damage to public facilities and infrastructure such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains; and (4) minimize expenditure of public money for costly flood control projects associated with flooding and generally undertaken at the expense of the general public.

Article IX, Section II of the Constitution of the State of Georgia and Section 36-1-20(a) of the Official Code of Georgia Annotated have delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, City of Austell, Georgia, does ordain this ordinance and establishes this set of floodplain management and flood hazard reduction provisions for the purpose of regulating the use of flood hazard areas. It is determined that the regulation of flood hazard areas and the

prevention of flood damage are in the public interest and will minimize threats to public health and safety, as well as to private and public property.

SECTION 5-21. GENERAL PROVISIONS

21.1. Purpose and Intent

The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare and to minimize public and private losses due to flood conditions in flood hazard areas, as well as to protect the beneficial uses of floodplain areas for water quality protection, streambank and stream corridor protection, wetlands preservation, and ecological and environmental protection by provisions designed to:

- (1) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (2) Restrict or prohibit uses which are dangerous to health, safety and property due to flooding or erosion hazards, or which increase flood heights, velocities, or erosion;
- (3) Control filling, grading, dredging, and other development which may increase flood damage or erosion;
- (4) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands;
- (5) Limit the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters; and,
- (6) Protect the stormwater management, water quality, streambank protection, stream corridor protection, wetland preservation, and ecological functions of natural floodplain areas.

21.2. Applicability

This ordinance shall be applicable to all Areas of Special Flood Hazard within the jurisdiction of the City of Austell.

21.3. Designation of Ordinance Administrator

The Floodplain Administrator is hereby appointed to administer and implement the provisions of this ordinance.

21.4. Basis for Establishing Areas of Special Flood Hazard, Areas of Future-Conditions Flood Hazard and Associated Floodplain Characteristics – Flood Area Maps and Studies

For the purposes of defining and determining “Areas of Special Flood Hazard,” “Areas of Future-conditions Flood Hazard,” “Areas of Shallow Flooding,” “Base Flood Elevations,” “Floodplains,” “Floodways,” “Future-conditions Flood Elevations,” “Future-conditions Floodplains,” potential flood hazard or risk categories as shown on FIRM maps, and other terms used in this ordinance, the following documents and sources may be used for such purposes and are adopted by reference thereto:

- (1) The Flood Insurance Study, dated September 27, 1991 and August 18, 1992 (for the City of Austell), with accompanying maps and other supporting data and any revision thereto. *[For those land areas acquired by a municipality through annexation, the current effective Flood Insurance Study and data for Cobb County dated August 18, 1992, and the current effective Flood Insurance Study and data for Douglas County, dated March 15, 1984, with accompanying maps and other supporting data and any revision.]*
- (2) Other studies which may be relied upon for the establishment of the base flood elevation or delineation of the base or one-percent (100-year) floodplain and flood-prone areas including:
 - (a) Any flood or flood-related study conducted by the United States Army Corps of Engineers, the United States Geological Survey or any other local, State or Federal agency applicable to the City of Austell; and
 - (b) Any base flood study conducted by a licensed professional engineer which has been prepared by utilizing a Federal Emergency Management Agency approved methodology and approved by the Austell Stormwater Management Department.
- (3) Other studies which may be relied upon for the establishment of the future-conditions flood elevation or delineation of the future-conditions floodplain and flood-prone areas including:
 - (a) Any flood or flood-related study conducted by the United States Army Corps of Engineers, the United States Geological Survey, or any other local, State or Federal agency applicable to the City of Austell; or
 - (b) Any future-conditions flood study conducted by a licensed professional engineer which has been prepared by utilizing a Federal Emergency Management Agency approved methodology and approved by the Austell Stormwater Management Department.
- (4) The repository for public inspection of the Flood Insurance Study, accompanying maps and other supporting data is located in the office of Public Works.

21.5. Compatibility with Other Regulations

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, statute, easement, covenant, deed restriction or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

21.6. Severability

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

21.7. Warning and Disclaimer of Liability

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur; flood heights may be increased by manmade or natural causes. This ordinance does not imply that land outside the Areas of Special Flood Hazard or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Austell or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

SECTION 5-22. DEFINITIONS

Accessory Structure or Facility: A structure which is on the same parcel of property as the principal structure and the use of which is incidental to the use of the primary structure.

Addition: Any walled and roofed expansion to the perimeter or height of a building.

Appeal: A request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance.

Area of Future-conditions Flood Hazard: The land area that would be inundated by the one-percent-annual-chance flood based on future-conditions hydrology (100-year future-conditions flood).

Area of Shallow Flooding: A designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater chance of flooding to average depth of one to three feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood Hazard: The land area subject to a one percent or greater chance of flooding in any given year. This includes all floodplain and flood prone areas at or below the base flood elevation designated as Zones A, A1-30, A-99, AE, AO, AH, and AR on the City of Austell's Flood Insurance Rate Map (FIRM).

Base Flood: The flood having a one percent chance of being equaled or exceeded in any given year, also known as the 100-year flood.

Base Flood Elevation: The highest water surface elevation anticipated at any given location during the base flood.

Basement: Any area of a building having its floor subgrade below ground level on all sides.

Building: Same meaning as Structure.

Critical Facility: Any public or private facility, which, if flooded, would create an added dimension to the disaster or would increase the hazard to life and health.

Critical facilities include:

- (a) Structures or facilities that produce, use, or store highly volatile, flammable, explosive, toxic, or water-reactive materials;
- (b) Hospitals and nursing homes, and housing for the elderly, which are likely to contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events;
- (c) Emergency operation centers or data storage centers which contain records or services that may become lost or inoperative during flood and storm events; and
- (d) Generating plants, and other principal points of utility lines.

Development: Any man-made change to improved or unimproved real estate including but not limited to buildings or other structures, mining, dredging, filling, clearing, grubbing, grading, paving, any other installation of impervious cover, excavation or drilling operations or storage of equipment or materials.

Elevated Building: A non-basement building which has its lowest elevated floor raised above the ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Existing Construction: Any structure for which the "start of construction" commenced before August 30, 1974.

Existing Manufactured Home Park or Subdivision: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before August 30, 1974.

Expansion to an Existing Manufactured Home Park or Subdivision: The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FEMA: The Federal Emergency Management Agency.

Flood or Flooding: A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (a) the overflow of inland or tidal waters; or
- (b) the unusual and rapid accumulation or runoff of surface waters from any source.

Flood Insurance Rate Map or FIRM: An official map of a community, issued by the Federal Emergency Management Agency, delineating the areas of special flood hazard and/or risk premium zones applicable to the community.

Flood Insurance Study” or “FIS: The official report by the Federal Emergency Management Agency providing an examination, evaluation, and determination of flood hazards and corresponding flood profiles and water surface elevations of the base flood.

Floodplain or Flood-prone Area: Any land area susceptible to flooding.

Floodproofing: Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway or Regulatory Floodway: The channel of a stream, river, or other watercourse and the adjacent areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Functionally Dependent Use: A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes on docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but not include long-term storage or related manufacturing facilities.

Future-conditions Flood: The flood having a one percent chance of being equaled or exceeded in any given year based on future-conditions hydrology. Also known as the 100-year future-conditions flood.

Future-conditions Flood Elevation: The highest water surface elevation anticipated at any given location during the future-conditions flood.

Future-conditions Floodplain: Any land area susceptible to flooding by the future-conditions flood.

Future-conditions Hydrology: The flood discharges associated with projected land-use conditions based on a community's zoning maps, comprehensive land-use plans, and/or watershed study projections, and without consideration of projected future construction of stormwater management (flood detention) structures or projected future hydraulic modifications within a stream or other waterway, such as bridge and culvert construction, fill, and excavation.

Highest Adjacent Grade: The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

Historic Structure: Any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the United States Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) Individually listed on a state inventory of historic places by states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (d) Individually listed on a local inventory of historic places by communities with historic preservation programs that have been certified either:
 1. By an approved state program as determined by the Secretary of the Interior, or
 2. Directly by the Secretary of the Interior in states without approved programs.

Lowest Floor: The lowest floor of the lowest enclosed area, including basement. An unfinished or flood resistant enclosure, useable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of other provisions of this ordinance.

Manufactured Home: A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when attached to the required utilities. The term includes any structure commonly referred to as a “mobile home” regardless of the date of manufacture. The term also includes parked trailers, travel trailers and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property. This term does not include a “recreational vehicle”.

Mean Sea Level: The datum to which base flood elevations shown on a community’s Flood Insurance Rate Map (FIRM) are referenced. For purposes of this ordinance the term is synonymous with National Geodetic Vertical Datum (NGVD) of 1929 or the North American Vertical Datum (NAVD) of 1988.

New Construction: Any structure (see definition) for which the “start of construction” commenced after August 30, 1974.

New Manufactured Home Park or Subdivision: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after August 30, 1974.

Owner: The legal or beneficial owner of a site, including but not limited to, a mortgagee or vendee in possession, receiver, executor, trustee, lessee or other person, firm or corporation in control of the site.

Permit: The permit issued by the City of Austell to the applicant which is required prior to undertaking any development activity.

Recreational Vehicle: A vehicle which is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by light duty truck; and,
- (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Repetitive Loss: Flood-related damages sustained by a structure on two separate occasions during a twelve (12) year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds twenty-five percent of the market value of the structure before the damage occurred.

Site: The parcel of land being developed, or the portion thereof on which the development project is located.

Start of Construction: Includes substantial improvement, and is the date the permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of the structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include initial land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure: A walled and roofed building (including a gas or liquid storage tank), that is principally above ground, or a manufactured home.

Subdivision: The division of a tract or parcel of land resulting in one or more new lots or building sites for the purpose, whether immediately or in the future, of sale, other transfer of ownership or land development, and includes divisions of land resulting from or made in connection with the layout or development of a new street or roadway or a change in an existing street or roadway.

Substantial Damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred. This term also includes Repetitive Loss.

Substantial Improvement: Any reconstruction, rehabilitation, addition, or other improvement of a structure taking place during a twelve (12) year prior in which the cumulative cost equals or exceeds fifty (50) percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures, which have incurred “repetitive loss” or “substantial damage”, regardless of the actual repair work performed. This term does not, however, include those improvements of a structured required to comply with existing state or local health, sanitary, or safety code specifications which are the minimum necessary to assure safe living conditions, which have been identified by the Code Enforcement Official. This term does also not include any alteration of a historic structure, provided that the alteration will not preclude the structure’s continued designation as a historic structure.

Substantially Improved Existing Manufactured Home Park or Subdivision: The repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

Variance: A grant of relief from the requirements of this ordinance.

Violation: The failure of a structure or other development to be fully compliant with the requirements of this ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

SECTION 5-23. PERMIT PROCEDURES AND REQUIREMENTS

23.1. Permit Application Requirements

No owner or developer shall perform any development activities on a site where an Area of Special Flood Hazard or Area of Future-conditions Flood Hazard is located without first meeting the requirements of this ordinance prior to commencing the proposed activity.

Unless specifically excluded by this ordinance, any landowner or developer desiring a permit for a development activity shall submit to the Austell Stormwater Management Department a permit application on a form provided by the Austell Stormwater Management Department for that purpose.

No permit will be approved for any development activities that do not meet the requirements, restrictions and criteria of this ordinance.

23.2. Floodplain Management Plan Requirements

An application for a development project with any Area of Special Flood Hazard or Area of Future-conditions Flood Hazard located on the site shall include a floodplain management/flood damage prevention plan. This plan shall include the following items:

- (1) Site plan drawn to scale, which includes but is not limited to:
 - (a) Existing and proposed elevations of the area in question and the nature, location and dimensions of existing and/or proposed structures, earthen fill placement, amount and location of excavation material, and storage of materials or equipment;
 - (b) For all proposed structures, spot ground elevations at building corners and 20-foot or smaller intervals along the foundation footprint, or one foot contour elevations throughout the building site;
 - (c) Proposed locations of water supply, sanitary sewer, and utilities;
 - (d) Proposed locations of drainage and stormwater management facilities;
 - (e) Proposed grading plan;
 - (f) Base flood elevations and future-conditions flood elevations;

- (g) Boundaries of the base flood floodplain and future-conditions floodplain;
 - (h) If applicable, the location of the floodway; and
 - (i) Certification of the above by a licensed professional engineer or surveyor.
- (2) Building and foundation design detail, including but not limited to:
- (a) Elevation in relation to mean sea level (or highest adjacent grade) of the lowest floor, including basement, of all proposed structures;
 - (b) Elevation in relation to mean sea level to which any non-residential structure will be floodproofed;
 - (c) Certification that any proposed non-residential floodproofed structure meets the criteria in Section 25.2(2);
 - (d) For enclosures below the base flood elevation, location and total net area of flood openings as required in Section 25.1(5); and
 - (e) Design plans certified by a licensed professional engineer or architect for all proposed structure(s).
- (3) Description of the extent to which any watercourse will be altered or relocated as a result of the proposed development;
- (4) Hard copies and digital files of computer models, if any, copies of work maps, comparison of pre-and post development conditions base flood elevations, future-conditions flood elevations, flood protection elevations, Special Flood Hazard Areas and regulatory floodways, flood profiles and all other computations and other information similar to that presented in the Flood Insurance Study;
- (5) Copies of all applicable State and Federal permits necessary for proposed development; including but not limited to permits required by Section 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1334; and
- (6) All appropriate certifications required under this ordinance.

The approved floodplain management / flood damage prevention plan shall contain certification by the applicant that all development activities will be done according to the plan or previously approved revisions. Any and all development permits and/or use and occupancy certificates or permits may be revoked at any time if the construction and development activities are not in strict accordance with approved plans.

23.3. Construction Stage Submittal Requirements

For all new construction and substantial improvements on sites with a floodplain management/flood damage prevention plan, the permit holder shall provide to the Floodplain Administrator a certified as-built Elevation Certificate or Floodproofing Certificate for non-residential construction including the lowest floor elevation or floodproofing level immediately after the lowest floor or floodproofing is completed. A final Elevation Certificate shall be provided after completion of construction including final grading of the site. Any lowest floor certification made relative to mean sea level shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by same. When floodproofing is utilized for non-residential structures, said certification shall be prepared by or under the direct supervision of a licensed professional engineer or architect and certified by same using the Federal Emergency Management Agency's Floodproofing Certificate. This certification shall also include the design and operation/maintenance plan to assure continued viability of the floodproofing measures.

Any work undertaken prior to approval of these certifications shall be at the permit holder's risk. The Floodplain Administrator shall review the above referenced certification data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being allowed to proceed. Failure to submit certification or failure to make the corrections required hereby shall be cause to issue a stop work order for the project.

23.4. Duties and Responsibilities of the Floodplain Administrator

Duties of the Floodplain Administrator shall include, but shall not be limited to:

- (1) Review all development applications and permits to assure that the requirements of this ordinance have been satisfied and to determine whether proposed building sites will be reasonably safe from flooding;
- (2) Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334;
- (3) When Base Flood Elevation data or floodway data have not been provided, then the Floodplain Administrator shall require the applicant to obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, state or other sources in order to meet the provisions of Sections 4 and 5;
- (4) Review and record the actual elevation in relation to mean sea level (or highest adjacent grade) of the lowest floor, including basement, of all new and substantially improved structures;
- (5) Review and record the actual elevation, in relation to mean sea level to which any substantially improved structures have been floodproofed;

- (6) When floodproofing is utilized for a non-residential structure, the Floodplain Administrator shall review the design and operation/maintenance plan and obtain certification from a licensed professional engineer or architect;
- (7) Notify affected adjacent communities and the Georgia Department of Natural Resources prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency (FEMA);
- (8) Where interpretation is needed as to the exact location of boundaries of the Areas of Special Flood Hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this ordinance. Where floodplain elevations have been defined, the floodplain shall be determined based on flood elevations rather than the area graphically delineated on the floodplain maps; and,
- (9) All records pertaining to the provisions of this ordinance shall be maintained in the office of the Floodplain Administrator and shall be open for public inspection.
- (10) Coordinate all Flood Insurance Rate Map (FIRM) revisions with the Georgia Department of Natural Resources and the Federal Emergency Management Agency; and
- (11) Review variance applications and make recommendations to the City of Austell Board of Zoning Appeal.

SECTION 5-24. STANDARDS FOR DEVELOPMENT

24.1. Definition of Floodplain Boundaries

- (1) Studied “A” zones, as identified in the Flood Insurance Study, shall be used to establish base flood elevations whenever available.
- (2) For all streams with a drainage area of 100 acres or greater, the future-conditions flood elevations shall be provided by the Austell Stormwater Management Department. If future-conditions elevation data is not available from the Austell Stormwater Management Department, then it shall be determined by a registered professional engineer using a method approved by the Federal Emergency Management Agency (FEMA) and the Austell Stormwater Management Department.

24.2. Definition of Floodway Boundaries

- (1) The width of a floodway shall be determined from the Flood Insurance Study or Federal Emergency Management Agency (FEMA) approved flood study. For all streams with a drainage area of 100 acres or greater, the regulatory floodway shall be provided by the Austell Stormwater Management Department. If floodway data is not available from the Austell Stormwater Management Department, then it shall be determined by a registered

professional engineer using a method approved by Federal Emergency Management Agency (FEMA) and the Austell Stormwater Management Department.

24.3. General Standards

- (1) No development shall be allowed within the any Area of Special Flood Hazard or Area of Future-conditions Flood Hazard that could result in any of the following:
 - (a) Raising the base flood elevation or future-conditions flood elevation equal to or more than 0.01 foot;
 - (b) Reducing the base flood or future-conditions flood storage capacity;
 - (c) Changing the flow characteristics as to the depth and velocity of the waters of the base flood or future-conditions flood as they pass both the upstream and the downstream boundaries of the development area; or,
 - (d) Creating hazardous or erosion-producing velocities, or resulting in excessive sedimentation.
- (2) Any development within any Area of Special Flood Hazard or Area of Future-conditions allowed under Section 24.3(1) shall also meet the following conditions:
 - (a) Compensation for storage capacity shall occur between the average ground water table elevation and the base flood elevation for the base flood, and between the average ground water table elevation and the future-condition flood elevation for the future-conditions flood, and lie either within the boundaries of ownership of the property being developed and shall be within the immediate vicinity of the location of the encroachment. Acceptable means of providing required compensation include lowering of natural ground elevations within the floodplain, or lowering of adjoining land areas to create additional floodplain storage. In no case shall any required compensation be provided via bottom storage or by excavating below the elevation of the natural (pre-development) stream channel unless such excavation results from the widening or relocation of the stream channel;
 - (b) Cut areas shall be stabilized and graded to a slope of no less than 2.0 percent;
 - (c) Effective transitions shall be provided such that flow velocities occurring on both upstream and downstream properties are not increased or decreased;
 - (d) Verification of no-rise conditions (0.01 foot or less), flood storage volumes, and flow characteristics shall be provided via a step-backwater analysis meeting the requirements of Section 24.4;

- (e) Public utilities and facilities, such as water, sanitary sewer, gas, and electrical systems, shall be located and constructed to minimize or eliminate infiltration or contamination from flood waters; and
- (f) Any significant physical changes to the base flood floodplain shall be submitted as a Conditional Letter of Map Revision (CLOMR) or Conditional Letter of Map Amendment (CLOMA), whichever is applicable. The CLOMR submittal shall be subject to approval by the Austell Stormwater Management Department using the Federal Emergency Management Agency (FEMA) Community Concurrence forms before forwarding the submittal package to FEMA for final approval. The responsibility for forwarding the CLOMR to FEMA and for obtaining the CLOMR approval shall be the responsibility of the applicant. Within six months of the completion of development, the applicant shall submit as-built surveys for a final Letter of Map Revision (LOMR).

24.4. Engineering Study Requirements for Floodplain Encroachments

An engineering study is required, as appropriate to the proposed development activities on the site, whenever a development proposes to disturb any land within the future-conditions floodplain, except for a residential single-lot development on streams without established base flood elevations and floodways. This study shall be prepared by a currently licensed professional engineer and made a part of the application for a permit. This information shall be submitted to and approved by the Austell Stormwater Management Department prior to the approval of any permit which would authorize the disturbance of land located within the future-conditions floodplain. Such study shall include:

- (1) Description of the extent to which any watercourse or floodplain will be altered or relocated as a result of the proposed development;
- (2) Step-backwater analysis, using a Federal Emergency Management Agency approved methodology approved by the Austell Stormwater Management Department. Cross-sections (which may be supplemented by the applicant) and flow information will be obtained whenever available. Computations will be shown duplicating FIS results and will then be rerun with the proposed modifications to determine the new base flood profiles, and future-conditions flood profiles;
- (3) Floodplain storage calculations based on cross-sections (at least one every 100 feet) showing existing and proposed floodplain conditions to show that base flood floodplain and future-conditions floodplain storage capacity would not be diminished by the development;
- (4) The study shall include a preliminary plat, grading plan, or site plan, as appropriate, which shall clearly define all future-conditions floodplain encroachments.

24.5. Floodway Encroachments

Located within Areas of Special Flood Hazard are areas designated as floodway. A floodway may be an extremely hazardous area due to velocity flood waters, debris or erosion potential. In addition, floodways must remain free of encroachment in order to allow for the discharge of the base flood without increased flood heights. Therefore the following provisions shall apply:

- (1) Encroachments are prohibited, including earthen fill, new construction, substantial improvements or other development within the regulatory floodway, except for activities specifically allowed in (2) below.
- (2) Encroachments for bridges, culverts, roadways and utilities within the regulatory floodway may be permitted provided it is demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the encroachment will not result in any increase to the pre-project base flood elevations, floodway elevations, or floodway widths during the base flood discharge. A licensed professional engineer must provide supporting technical data and certification thereof; and,
- (3) If the applicant proposes to revise the floodway boundaries, no permit authorizing the encroachment into or an alteration of the floodway shall be issued by the Austell Stormwater Management Department until an affirmative Conditional Letter of Map Revision (CLOMR) is issued by the Federal Emergency Management Agency (FEMA) or a no-rise certification is approved by the Austell Stormwater Management Department.

24.6. Maintenance Requirements

The property owner shall be responsible for continuing maintenance as may be needed within an altered or relocated portion of a floodplain on the property so that the flood-carrying or flood storage capacity is maintained. The Austell Stormwater Management Department may direct the property owner (at no cost to the City of Austell) to restore the flood-carrying or flood storage capacity of the floodplain if the owner has not performed maintenance as required by the approved floodplain management plan on file with the Austell Stormwater Management Department.

SECTION 5-25. PROVISIONS FOR FLOOD DAMAGE REDUCTION

25.1. General Standards

In all Areas of Special Flood Hazard and Areas of Future-conditions Flood Hazard, the following provisions apply:

- (1) New construction and substantial improvements of structures (residential or non-residential), including manufactured homes, shall not be allowed within the limits of the future-conditions floodplain, unless all requirements of Sections 24.3, 24.4, 24.5, and 24.5 have been met;

- (2) New construction and substantial improvements shall be anchored to prevent flotation, collapse and lateral movement of the structure;
- (3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- (4) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (5) Elevated Buildings - All new construction and substantial improvements that include any fully enclosed area located below the lowest floor formed by foundation and other exterior walls shall be designed so as to be an unfinished or flood resistant enclosure. The enclosure shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater.
 - (a) Designs for complying with this requirement must either be certified by a licensed professional engineer or architect to meet or exceed the following minimum criteria:
 - (i) Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - (ii) The bottom of all openings shall be no higher than one foot above grade; and
 - (iii) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwater in both directions.
 - (b) So as not to violate the “Lowest Floor” criteria of this ordinance, the unfinished and flood resistant enclosure shall solely be used for parking of vehicles, limited storage of maintenance equipment used in connection with the premises, or entry to the elevated area; and,
 - (c) The interior portion of such enclosed area shall not be finished or partitioned into separate rooms.
- (6) All heating and air conditioning equipment and components (including ductwork), all electrical, ventilation, plumbing, and other service facilities shall be designed and/or located four (4) feet above the base flood elevation or one (1) foot above the future-conditions flood elevation, whichever is higher, so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (7) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable State requirements for resisting wind forces;

- (8) All proposed development shall include adequate drainage and stormwater management facilities per the requirements of the Austell Stormwater Management Department to reduce exposure to flood hazards.
- (9) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (10) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
- (11) On-site waste disposal systems shall be located and constructed to avoid impairment to, or contamination from, such systems during flooding;
- (12) Other public utilities such as gas and electric systems shall be located and constructed to avoid impairment to them, or public safety hazards from them, during flooding;
- (13) Any alteration, repair, reconstruction or improvement to a structure which is not compliant with the provisions of this ordinance, shall be undertaken only if the non- conformity is not furthered, extended or replaced;
- (14) If the proposed development is located in multiple flood zones or multiple base flood elevations cross the proposed site, the higher or more restrictive base flood elevation or future condition elevation and development standards shall take precedence;
- (15) When only a portion of a proposed structure is located within a flood zone or the future-conditions floodplain, the entire structure shall meet the requirements of this ordinance; and
- (16) Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, shall be reasonably safe from flooding:
 - (a) All such proposals shall be consistent with the need to minimize flood damage within the flood-prone areas;
 - (b) All public utilities and facilities, such as sewer, gas, electrical, and water systems shall be located and constructed to minimize or eliminate flood damage; and
 - (c) Adequate drainage shall be provided to reduce exposure to flood hazards.

25.2. Increased Cost of Compliance

The National Flood Insurance Program (NFIP) requires the City of Austell to conduct assessments for substantial damage following a flooding event. A building is considered to be substantially damaged when:

“damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.”

If a substantially damaged building is rebuilt in violation of this ordinance including not properly elevated or flood-proofed (non-residential buildings only), flood insurance will be significantly higher. In addition, the property owner will not be eligible for an Increased Cost of Compliance claim payment. The National Flood Insurance Program has implemented a new coverage called Increased Cost of Compliance, which is an endorsement to the standard flood insurance policy. It applies to all new and renewed flood insurance policies effective on and after June 1, 1997. Structures that have suffered substantial damage from flooding may be required to elevate, demolish, relocate, or flood proof (non-residential buildings only) the damaged structure upon rebuilding. Through Increased Cost of Compliance coverage, funds are available to the property owner to pay for flood protection measures that meet National Flood Insurance Program standards.

Property owners may file for Increased Cost of Compliance coverage in two instances:

1. If the City of Austell determines that the home or business is damaged by flood two (2) times within a twelve (12) year period to the point that repairs will cost 50 percent or more of the building’s pre-damaged market value. This is substantial damage.
2. If the City of Austell determines that the home or business was damaged by a flood two (2) times within a 12 (twelve) year period, where the cost of repairing the flood damage, on average, equaled or exceeded 25 percent of its market value at the time of each flood event. This is repetitive damage. Additionally, there must have been flood insurance claim payments for each of the two flood losses.

25.3 Protection of Floodplain Storage Capacity

Whenever any portion of a floodplain is authorized for development, the volume of space occupied by the authorized fill or structure below the base flood elevation shall be compensated for and balanced by a hydraulically equivalent volume of excavation taken from below the base flood elevation. All such excavations shall be constructed to drain freely to the watercourse. No area below the waterline of a pond or other body of water can be credited as a compensating excavation.

25.4 Building Standards for Structures and Buildings Within the Future-Conditions Floodplain

The following provisions, in addition to those in Section 25.1, shall apply:

(1) Residential Buildings

- (a) New construction. New construction of principal residential structures shall not be allowed within the limits of the future-conditions floodplain unless all requirements of Sections 24.3, 24.4 and 24.5 have been met. If all of the requirements of Sections 24.3, 24.4 and 24.5 have been met, all new construction shall have the lowest floor, including basement, elevated no lower than four (4) feet above the base flood elevation or one (1) foot above the future-conditions flood elevation, whichever is higher. Should solid foundation perimeter walls be used to elevate the structure, openings sufficient to automatically equalize the hydrostatic flood forces on exterior walls shall be provided in accordance with standards of Section 25.1(5)(a).
- (b) Substantial Improvements. Substantial improvement of any principal residential structure shall have the lowest floor, including basement, elevated no lower than four (4) feet above the base flood elevation or one (1) foot above the future-conditions flood elevation, whichever is higher. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to automatically equalize the hydrostatic flood forces on exterior walls shall be provided in accordance with standards of Section 25.1(5)(a).

(2) Non-Residential Buildings

- (a) New construction. New construction of principal non-residential structures shall not be allowed within the limits of the future-conditions floodplain unless all requirements of Sections 24.3, 24.4 and 24.5 have been met. If all of the requirements of Section 24.3, 24.4, and 24.5 have been met, all new construction shall have the lowest floor, including basement, elevated no lower than one (1) foot above the base flood elevation or at least as high as the future-conditions flood elevation, whichever is higher. Should solid foundation perimeter walls be used to elevate the structure, openings sufficient to automatically equalize the hydrostatic flood forces on exterior walls shall be provided in accordance with standards of Section 25.1(5)(a). New construction that has met all of the requirements of Sections 24.3, 24.4 and 24.5 may be flood-proofed in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be watertight to one (1) foot above the base flood elevation, or at least as high as the future-conditions flood elevation, whichever is higher, with walls substantially impermeable to the passage of water and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A licensed professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the Floodplain Administrator using the Federal Emergency Management Agency's (FEMA) Floodproofing Certificate along with the design and operation/maintenance plan.
- (b) Substantial Improvements. Substantial improvement of any principal non-residential structure located in A1- 30, AE, or AH zones, may be authorized by the Floodplain Administrator to be elevated or floodproofed. Substantial improvements shall have the

lowest flood, including basement, elevated no lower than one (1) foot above the base flood elevation or at least as high as the future-conditions flood elevation, whichever is higher. Should solid foundation perimeter walls be used to elevate the structure, opening sufficient to automatically equalize the hydrostatic flood forces on exterior walls shall be provided in accordance with standards of Section 25.1(5)(a). Substantial improvements may be floodproofed in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be watertight to one (1) foot above the base flood elevation, or at least as high as the future-conditions flood elevation, whichever is higher, with walls substantially impermeable to the passage of water and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A licensed professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the Floodplain Administrator using the Federal Emergency Management Agency's (FEMA) Floodproofing Certificate along with the design and operation/maintenance plan.

(3) Accessory Structures and Facilities

Accessory structures and facilities (for example, barns, sheds, gazebos, detached garages, recreational facilities, and other similar non-habitable structures and facilities) which meet the requirements of Sections 24.3, 24.4, and 24.5 and are permitted to be located within the limits of the future-conditions floodplain shall be constructed of flood-resistant materials and designed to provide adequate flood openings in accordance with Section 25.1(5)(a) and be anchored to prevent flotation, collapse and lateral movement of the structure.

(4) Standards for Recreational Vehicles

All recreational vehicles placed on sites must either:

- (a) Be on the site for fewer than 180 consecutive days and be fully licensed and ready for highway use, (a recreational vehicle is ready for highway use if it is licensed, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached structures or additions); or
- (b) Meet all the requirements for Residential Buildings - Substantial Improvements (Section 25.2(1)), including the anchoring and elevation requirements.

(5) Standards for Manufactured Homes

- (a) New manufactured homes shall not be allowed to be placed within the limits of the future-conditions floodplain unless all requirements of Sections 24.3, 24.4 and 24.5 have been met. If all of the requirements of Section 24.3, 24.4, and 24.5 have been met, all new construction shall have the lowest floor, including basement, elevated no lower than one (1) foot above the base flood elevation or at least as high as the future-conditions flood elevation, whichever is higher. Should solid foundation perimeter

walls be used to elevate the structure, openings sufficient to automatically equalize the hydrostatic flood forces on exterior walls shall be provided in accordance with standards of Section 25.1(5)(a).

- (b) Manufactured homes placed and/or substantially improved in an existing manufactured home park or subdivision shall be elevated so that either:
 - (i) The lowest floor of the manufactured home is elevated no lower than three (3) feet above the level of the base flood elevation, or one (1) foot above the future-conditions flood elevation, whichever is higher; or
 - (ii) The manufactured home chassis is elevated and supported by reinforced piers (or other foundation elements of at least an equivalent strength) of no less than 36 inches in height above grade.
- (c) All manufactured homes must be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement in accordance with standards of Section 25.1(7).

6. Standards for Critical Facilities

- (a) New critical facilities shall not be located in the 100-year floodplain or the 500-year floodplain.
- (b) All ingress and egress from any critical facility must be protected to the 500-year flood elevation.

25.5. Building Standards for Structures and Buildings Authorized Adjacent to the Future-Conditions Floodplain

- (1) Residential Buildings: For new construction and substantial improvement of any principal residential building or manufactured home, the elevation of the lowest floor, including basement and access to the building, shall be at least four (4) feet above the base flood elevation or one (1) foot above the future-conditions flood elevation, whichever is higher. Should solid foundation perimeter walls be used to elevate the structure, openings sufficient to automatically equalize the hydrostatic flood forces on exterior walls shall be provided in accordance with standards of Section 25.1(5)(a).
- (2) Non-Residential Buildings: For new construction or substantial improvement of any principal non-residential building, the elevation of the lowest floor, including basement and access to the building, shall be at least one (1) foot above the level of the base flood elevation or at least as high as the future-conditions flood elevation, whichever is higher. Should solid foundation perimeter walls be used to elevate the structure, openings sufficient to automatically equalize the hydrostatic flood forces on exterior walls shall be provided in accordance with standards of Section 5.1(5)(a). Non-residential buildings may be floodproofed in lieu of elevation.

25.6. Building Standards for Residential Single-Lot Developments on Streams Without Established Base Flood Elevations and/or Floodway (A-Zones)

For a residential single-lot development not part of a subdivision that has Areas of Special Flood Hazard, where streams exist but no base flood data have been provided (A-Zones), the Floodplain Administrator shall review and reasonably utilize any available scientific or historic flood elevation data, base flood elevation and floodway data, or future-conditions flood elevation data available from a Federal, State, local or other source, in order to administer the provisions and standards of this ordinance.

If data are not available from any of these sources, the following provisions shall apply:

- (1) No encroachments, including structures or fill material, shall be located within an area equal to twice the width of the stream or fifty (50) feet from the top of the bank of the stream, whichever is greater.
- (2) In special flood hazard areas without base flood or future-conditions flood elevation data, new construction and substantial improvements of shall have the lowest floor of the lowest enclosed area (including basement) elevated no less than three (3) feet above the highest adjacent grade at the building site. Flood openings sufficient to facilitate automatic equalization of hydrostatic flood forces shall be provided for flood prone enclosures accordance with Section 25.1(5)(a).

25.7. Building Standards for Areas of Shallow Flooding (AO-Zones)

Areas of Special Flood Hazard may include designated “AO” shallow flooding areas. These areas have base flood depths of one (1) to three (3) feet above ground, with no clearly defined channel. In these areas the following provisions apply:

- (1) All new construction and substantial improvements of residential and non-residential structures shall have the lowest floor, including basement, elevated to no lower than one (1) foot above the flood depth number in feet specified on the Flood Insurance Rate Map (FIRM), above the highest adjacent grade. If no flood depth number is specified, the lowest floor, including basement, shall be elevated at least three (3) feet above the highest adjacent grade. Flood openings sufficient to facilitate automatic equalization of hydrostatic flood forces shall be provided in accordance with standards of Section 25.1(5)(a).
- (2) New construction and substantial improvement of a non-residential structure may be floodproofed in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be water tight to the specified Flood Insurance Rate Map (FIRM) flood level plus one (1) foot above the highest adjacent grade, with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A licensed professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice and shall provide such certification to the Floodplain Administrator using the Federal Emergency Management

Agency's (FEMA) Floodproofing Certificate along with the design and operation/maintenance plan; and

- (3) Drainage paths shall be provided to guide floodwater around and away from any proposed structure.

25.8. Standards for Subdivisions of Land

- (1) All subdivision proposals shall identify the Areas of Special Flood Hazard and Areas of Future-conditions Flood Hazard therein and provide base flood elevation data and future-conditions flood elevation data;
- (2) All residential lots in a subdivision proposal shall have sufficient buildable area outside of the future-conditions floodplain such that encroachments into the future-conditions floodplain for residential structures will not be required;
- (3) All subdivision plans will provide the elevations of proposed structures in accordance with Section 23.2(2).

SECTION 5-28. VARIANCE PROCEDURES

The following variance and appeals procedures shall apply to an applicant who has been denied a permit for a development activity or to an owner or developer who has not applied for a permit because it is clear that the proposed development activity would be inconsistent with the provisions of this ordinance.

- (1) Requests for variances from the requirements of this ordinance shall be submitted to the Austell Stormwater Management Department. All such requests shall be heard and decided in accordance with procedures to be published in writing by the Austell Stormwater Management Department. At a minimum, such procedures shall include notice to all affected parties and the opportunity to be heard.
- (2) Any person adversely affected by any decision of the City of Austell shall have the right to appeal such decision to the Board of Zoning Appeal as established by the City of Austell in accordance with procedures to be published in writing by the Board of Zoning Appeal. At a minimum, such procedures shall include notice to all affected parties and the opportunity to be heard.
- (3) Any person aggrieved by the decision of the Board of Zoning Appeal may appeal such decision to the Superior Court of Cobb County or Douglas County, Georgia, as provided in Section 5-4-1 of the Official Code of Georgia Annotated.
- (4) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure, and the variance issued shall be the minimum necessary to preserve the historic character and design of the structure.

- (5) Variances may be issued for development necessary for the conduct of a functionally dependent use, provided the criteria of this Section are met, no reasonable alternative exists, and the development is protected by methods that minimize flood damage during the base flood and create no additional threats to public safety.
- (6) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (7) In reviewing such requests, the Austell Stormwater Management Department and Board of Zoning Appeal shall consider all technical evaluations, relevant factors, and all standards specified in this and other sections of this ordinance.
- (8) Conditions for Variances:
 - (a) A variance shall be issued only when there is:
 - (i) a finding of good and sufficient cause;
 - (ii) a determination that failure to grant the variance would result in exceptional hardship; and,
 - (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, or the creation of a nuisance.
 - (b) The provisions of this ordinance are minimum standards for flood loss reduction; therefore, any deviation from the standards must be weighed carefully. Variances shall only be issued upon determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (c) Any person to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation of the proposed lowest floor and stating that the cost of flood insurance resulting from the lowest floor elevation being placed below the base flood elevation will be commensurate with the increased risk to life and property, and that such costs may be as high as \$25.00 for each \$100.00 of insurance coverage provided.
 - (d) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.
- (9) Any person requesting a variance shall, from the time of the request until the time the request is acted upon, submit such information and documentation as the Austell Stormwater Management Department and the Board of Zoning Appeal shall deem necessary to the consideration of the request.

(10) Upon consideration of the factors listed above and the purposes of this ordinance, the Austell Stormwater Management Department and the Board of Zoning Appeal may attach such conditions to the granting of variances as they deem necessary or appropriate, consistent with the purposes of this ordinance.

(11) Variances shall not be issued “after the fact.”

SECTION 5-29. VIOLATIONS, ENFORCEMENT, AND PENALTIES

Any action or inaction which violates the provisions of this ordinance or the requirements of an approved stormwater management plan or permit may be subject to the enforcement actions outlined in this Section. Any such action or inaction which is continuous with respect to time is deemed to be a public nuisance and may be abated by injunctive or other equitable relief. The imposition of any of the penalties described below shall not prevent such equitable relief.

29.1. Notice of Violation

If the City of Austell determines that an applicant or other responsible person has failed to comply with the terms and conditions of a permit, an approved stormwater management plan or the provisions of this ordinance, it shall issue a written notice of violation to such applicant or other responsible person. Where a person is engaged in activity covered by this ordinance without having first secured a permit therefore, the notice of violation shall be served on the owner or the responsible person in charge of the activity being conducted on the site.

The notice of violation shall contain:

- (1) The name and address of the owner or the applicant or the responsible person;
- (2) The address or other description of the site upon which the violation is occurring;
- (3) A statement specifying the nature of the violation;
- (4) A description of the remedial measures necessary to bring the action or inaction into compliance with the permit, the stormwater management plan or this ordinance and the date for the completion of such remedial action;
- (5) A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed; and,
- (6) A statement that the determination of violation may be appealed to the Austell Stormwater Management Department by filing a written notice of appeal within thirty (30) days after the notice of.

29.2. Penalties

In the event the remedial measures described in the notice of violation have not been completed by the date set forth for such completion in the notice of violation, any one or more of the following actions or penalties may be taken or assessed against the person to whom the notice of violation was directed. Before taking any of the following actions or imposing any of the following penalties, the Austell Stormwater Management Department shall first notify the applicant or other responsible person in writing of its intended action, and shall provide a reasonable opportunity, of not less than ten (10) days (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours notice shall be sufficient) to cure such violation. In the event the applicant or other responsible person fails to cure such violation after such notice and cure period, the Austell Stormwater Management Department may take any one or more of the following actions or impose any one or more of the following penalties.

- (1) **Stop Work Order:** The Austell Stormwater Management Department may issue a stop work order which shall be served on the applicant or other responsible person. The stop work order shall remain in effect until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein, provided the stop work order may be withdrawn or modified to enable the applicant or other responsible person to take the necessary remedial measures to cure such violation or violations.
- (2) **Withhold Certificate of Occupancy:** The Austell Stormwater Management Department may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.
- (3) **Suspension, Revocation or Modification of Permit:** The Austell Stormwater Management Department may suspend, revoke or modify the permit authorizing the development project. A suspended, revoked or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein, provided such permit may be reinstated (upon such conditions as the Austell Stormwater Management Department may deem necessary) to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.
- (4) **Civil Penalties:** In the event the applicant or other responsible person fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten (10) days, or such greater period as the Austell Stormwater Management Department shall deem appropriate (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours notice shall be sufficient) after the City of Austell has taken one or more of the actions described above, the Austell Stormwater Management Department may impose a penalty not to exceed \$1,000

(depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.

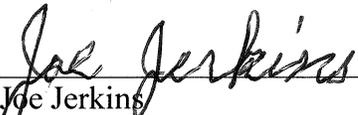
- (5) **Criminal Penalties:** For intentional and flagrant violations of this ordinance, the Austell Stormwater Management Department may issue a citation to the applicant or other responsible person, requiring such person to appear in City of Austell Municipal Court to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed \$1,000 or imprisonment for 60 days or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

ADOPTED by the City Council of the City of Austell this 4th day of November 2013.

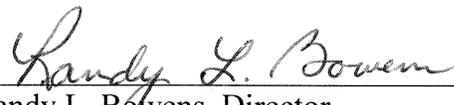
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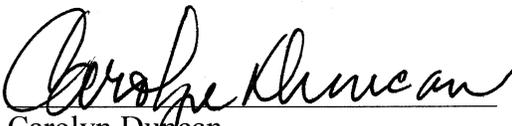
M. Scott Kimbrough
City Attorney



Joe Jerkins
Mayor



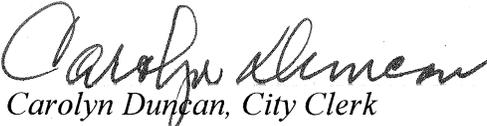
Randy L. Bowens, Director
Public Works



Carolyn Duncan
City Clerk



Duane R. Demeritt, CFM
Floodplain Administrator
Floodplain and Stormwater Management

Certified By: 
Carolyn Duncan, City Clerk

Date: Monday, November 4, 2013

