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2 **STATE OF GEORGIA**
3 **COUNTY OF FULTON**
4 **CITY OF SOUTH FULTON**

5
6 **AN ORDINANCE AMENDING TITLE 14, ENVIRONMENT, OF THE CITY CODE OF**
7 **ORDINANCES; PROVIDING FOR THE PROTECTION OF STREAM BUFFERS WITHIN**
8 **THE CITY; ENHANCING CITYWIDE ENVIRONMENTAL PROTECTIONS AND FOR**
9 **OTHER LAWFUL PURPOSES**

10
11 **(Sponsored by Councilwoman Gilyard)**

12
13 **WHEREAS**, the City of South Fulton ("City") is a municipal corporation duly
14 organized and existing under the laws of the State of Georgia;

15
16 **WHEREAS**, the duly elected governing authority of the City is the Mayor and
17 Council thereof ("City Council");

18
19 **WHEREAS**, Section 1.12(b)(13) of the City Charter authorizes the City to enact
20 environmental regulations for the safety and protection of the City;

21
22 **WHEREAS**, the State of Georgia Environmental Division ("PPD") requires cities
23 throughout Georgia to adopt Municipal Separate Storm Sewer System ("MS4")
24 Ordinances;

25
26 **WHEREAS**, MS4 Ordinances are designed to reduce the discharge of pollutants,
27 mitigate construction site runoff control, detect and eliminate illicit discharge and reduce
28 pollution throughout the City;

29
30 **WHEREAS**, this Ordinance is modeled on EPD MS4 Ordinance stream buffer
31 protection requirements; and

32
33 **WHEREAS**, this Ordinance is in the best interests of the health and general welfare
34 of the City, its residents and general public.

35 **THE COUNCIL OF THE CITY OF SOUTH FULTON HEREBY ORDAINS** as
36 follows:
37

38 **Section 1.** Title 14, Environment, of the City Code of Ordinances is hereby amended
39 by creating a new Chapter 16, Stream Buffer Protection, which shall read as follows:

40
41 **TITLE 14 – ENVIRONMENT**

42 ...

43
44 **CHAPTER 16. – STREAM BUFFER PROTECTION**

45
46 **Sec. 14-16001. – Title**
47

This ordinance shall be known as the “City of South Fulton Stream Buffer Protection Ordinance.”

Sec. 14-16001. – Findings

Whereas, the City of South Fulton finds that buffers adjacent to streams provide numerous benefits including:

- (1) Protecting, restoring and maintaining the chemical, physical and biological integrity of streams and their water resources
- (2) Removing pollutants delivered in urban stormwater
- (3) Reducing erosion and controlling sedimentation
- (4) Protecting and stabilizing stream banks
- (5) Providing for infiltration of stormwater runoff
- (6) Maintaining base flow of streams
- (7) Contributing organic matter that is a source of food and energy for the aquatic ecosystem
- (8) Providing tree canopy to shade streams and promote desirable aquatic habitat
- (9) Providing riparian wildlife habitat
- (10) Furnishing scenic value and recreational opportunity
- (11) Providing opportunities for the protection and restoration of greenspace

Sec. 14-16002. – Purposes

It is the purpose of this Ordinance is to protect the public health, safety, environment and general welfare; to minimize public and private losses due to erosion, siltation and water pollution; and to maintain stream water quality by provisions designed to:

- (1) Create buffer zones along the streams of the City of South Fulton for the protection of water resources; and,
- (2) Minimize land development within such buffers by establishing buffer zone requirements and by requiring authorization for any such activities.

Sec. 14-16003. – Definitions

“Buffer” means, with respect to a stream, a natural or enhanced vegetated area (established by Section 5.1.1 below), lying adjacent to the stream.

“Impervious Cover” means any manmade paved, hardened or structural surface regardless of material. Impervious cover includes but is not limited to rooftops, buildings, streets, roads, decks, swimming pools and any concrete or asphalt.

“Land Development” means any land change, including but not limited to clearing, grubbing, stripping, removal of vegetation, dredging, grading, excavating, transporting and filling of land, construction, paving and any other installation of impervious cover.

“Land Development Activity” means those actions or activities which comprise, facilitate or result in land development.

“Land Disturbance” means any land or vegetation change, including, but not limited to, clearing, grubbing, stripping, removal of vegetation, dredging, grading, excavating, transporting and filling of land, that do not involve construction, paving or any other installation of impervious cover.

“Land Disturbance Activity” means those actions or activities which comprise, facilitate or result in land disturbance.

91 **“Floodplain”** means any land area susceptible to flooding, which would have at least a
92 one percent probability of flooding occurrence in any calendar year based on the basin
93 being fully developed as shown on the current land use plan; i.e., the regulatory flood.

94 **“Parcel”** means any plot, lot or acreage shown as a unit on the latest county tax
95 assessment records.

96 **“Permit”** means the permit issued by the City of South Fulton required for undertaking any
97 land development activity

98 **“Person”** means any individual, partnership, firm, association, joint venture, public or
99 private corporation, trust, estate, commission, board, public or private institution, utility,
100 cooperative, city, county or other political subdivision of the State, any interstate body or
101 any other legal entity.

102 **“Protection Area, or Stream Protection Area”** means, with respect to a stream, the
103 combined areas of all required buffers and setbacks applicable to such stream.

104 **“Riparian”** means belonging or related to the bank of a river, stream, lake, pond or
105 impoundment.

106 **“Setback”** means, with respect to a stream, the area established by Section 5.1.2
107 extending beyond any buffer applicable to the stream.

108 **“Stream”** means any stream, beginning at:

- 109 1. The location of a spring, seep, or groundwater outflow that sustains streamflow; or
- 110 2. A point in the stream channel with a drainage area of 25 acres or more; or
- 111 3. Where evidence indicates the presence of a stream in a drainage area of other than
112 25 acres, the City of South Fulton may require field studies to verify the existence
113 of a stream.

114 **“Stream Bank”** means the sloping land that contains the stream channel and the normal
115 flows of the stream.

116 **“Stream Channel”** means the portion of a watercourse that contains the base flow of the
117 stream.

118 **“Watershed”** means the land area that drains into a particular stream.

119 **Sec. 14-16004. – Applicability**

120 This ordinance shall apply to all land development activity on property containing a stream
121 protection area as defined in Section 3 of this ordinance. These requirements are in
122 addition to, and do not replace or supersede, any other applicable buffer requirements
123 established under state law and approval or exemption from these requirements do not
124 constitute approval or exemption from buffer requirements established under state law or
125 from other applicable local, state or federal regulations.

126 **Sec. 14-16005. – Grandfather Provisions**

127 This ordinance shall not apply to the following activities:

- 128 (1) Work consisting of the repair or maintenance of any lawful use of land that is zoned
129 and approved for such use on or before the effective date of this ordinance.
- 130 (2) Existing development and on-going land disturbance activities including but not
131 limited to existing agriculture, silviculture, landscaping, gardening and lawn
132 maintenance, except that new development or land disturbance activities on such
133 properties will be subject to all applicable buffer requirements.

- (3) Any land development activity that is under construction, fully approved for development, scheduled for permit approval or has been submitted for approval as of the effective date of this ordinance.
- (4) Land development activity that has not been submitted for approval, but that is part of a larger master development plan, such as for an office park or other phased development that has been previously approved within two years of the effective date of this ordinance.

Sec. 14-16006. – Exemptions

The following specific activities are exempt from this ordinance. Exemption of these activities does not constitute an exemption for any other activity proposed on a property.

- (1) Activities for the purpose of building one of the following:
- a stream crossing by a driveway, transportation route or utility line;
 - public water supply intake or public wastewater outfall structures;
 - intrusions necessary to provide access to a property;
 - public access facilities that must be on the water including boat ramps, docks, foot trails leading directly to the river, fishing platforms and overlooks;
 - unpaved foot trails and paths;
 - activities to restore and enhance stream bank stability, vegetation, water quality and/or aquatic habitat, so long as native vegetation and bioengineering techniques are used.
- (2) Public sewer line easements paralleling the creek, except that all easements (permanent and construction) and land disturbance should be at least 25 feet from the top of the bank. This includes such impervious cover as is necessary for the operation and maintenance of the utility, including but not limited to manholes, vents and valve structures. This exemption shall not be construed as allowing the construction of roads, bike paths or other transportation routes in such easements, regardless of paving material, except for access for the uses specifically cited in Item 4.2.(1), above.
- (3) Land development activities within a right-of-way existing at the time this ordinance takes effect or approved under the terms of this ordinance.
- (4) Within an easement of any utility existing at the time this ordinance takes effect or approved under the terms of this ordinance, land disturbance activities and such impervious cover as is necessary for the operation and maintenance of the utility, including but not limited to manholes, vents and valve structures.
- (5) Emergency work necessary to preserve life or property. However, when emergency work is performed under this section, the person performing it shall report such work to the City of South Fulton on the next business day after commencement of the work. Within 10 days thereafter, the person shall apply for a permit and perform such work within such time period as may be determined by the City of South Fulton to be reasonably necessary to correct any impairment such emergency work may have caused to the water conveyance capacity, stability or water quality of the protection area.
- (6) Forestry and silviculture activities on land that is zoned for forestry, silvicultural or agricultural uses and are not incidental to other land development activity. If such activity results in land disturbance in the buffer that would otherwise be prohibited, then no other land disturbing activity other than normal forest management practices will be allowed on the entire property for three years after the end of the activities that intruded on the buffer.

After the effective date of this ordinance, it shall apply to new subdividing and platting activities.

Any land development activity within a buffer established hereunder or any impervious cover within a setback established hereunder is prohibited unless a variance is granted pursuant to Section 5.2 below.

Sec. 14-16007. – Buffer and setback requirements

All land development activity subject to this ordinance shall meet the following requirements:

- (1) An undisturbed natural vegetative buffer shall be maintained for 75 feet, measured horizontally, on both banks (as applicable) of the stream as measured from the top of the stream bank.
- (2) An additional setback shall be maintained for 25 feet, measured horizontally, beyond the undisturbed natural vegetative buffer, in which all impervious cover shall be prohibited. Grading, filling and earthmoving shall be minimized within the setback.
- (3) No septic tanks or septic tank drain fields shall be permitted within the buffer or the setback.

Sec. 14-16008. – Variance procedures

Variances from the above buffer and setback requirements may be granted in accordance with the following provisions:

No variance shall be granted to the undisturbed buffer and/or setback requirements contained in this chapter unless the director (or, in the event of an appeal, the board of zoning appeals) determines that a hardship exists and relief, if granted, meets the general purpose and intent of this chapter. There shall be two levels of variance appeals: Level one and secondary.

(a) Variance hardship criteria. Variance requests shall only be considered if a request meets any of the following hardship criteria including the applicant's statement and explanation of the hardship under which a variance is submitted to deviate from the stream buffer protection standards of section 14-7004:

- (1) For public and private properties that have unusual shape or topography of the property at the time of the adoption of this chapter and there is no opportunity for development under any design configuration in accordance with the land use designation assigned to the subject property; or
- (2) For private development projects that involve the construction or repair of a structure which, by its nature, must be located within the buffer. Such structures include dams, docks, boat launches, and stabilization of areas to access water; or
- (3) For public and private projects involving paved foot trails greater than ten feet wide and viewing areas, providing that impacts to the buffer are minimal (at the discretion of the director); or

(4) For public and private projects with buffer and/or setback intrusion that demonstrates that the completed project results in maintained and/or improved water quality downstream; and, yields no increase in storm water runoff.

(b) Variance submittal requirements

(1) Variances from the undisturbed buffer and setback requirements of this chapter may be sought by a property owner by filing an application following the minimum submittal requirements and procedures as set forth in the administrative guidelines for this chapter. An administrative filing fee shall be assessed at the time of application.

(2) In the event that a concept plan or rezoning application (which includes a stream that is subject to this chapter) is in the review process (where upon the concept plan or rezoning application has not yet been approved by a City action) and, wherein the applicant is seeking relief from the stream buffer protection standards as described in this chapter, the concept plan shall not be approved by the City until either:

a. The applicant shows the required stream buffer protection standards on the subject rezoning application and concept plan without any reduction or deviation, or

b. A variance to the stream buffer protection standards has been granted and the rezoning application and concept plan reflects the intent and design of the relief from the required stream buffer protection standards

(3) Notwithstanding any other provision of this section, above, no relief to the undisturbed buffer and setback area protection requirements shall be allowed on any USGS Blueline streams on all land within a small supply watershed protection area. In addition, notwithstanding any other provision of this section, the minimum standards, rules, and regulations of the Metropolitan River Protection Act (O.C.G.A. § 12-5-440 et seq.) the Georgia Erosion and Sedimentation Act (O.C.G.A. § 12-7-1, et seq.), and the Georgia Planning Act Part V Environmental Planning Criteria (O.C.G.A. § 12-2-8(b) are applicable and supersede this chapter if and when a conflict exists.

(4) Notwithstanding any of the provisions of this section, land disturbing activities related to or involving forestry shall comply with the latest edition of the "Best Management Practices for Forested Wetlands in Georgia" and "Recommended Best Management Practices for Forestry in Georgia." Land disturbing activities related to or involving agriculture shall comply with the latest edition of the "Agricultural Best Management Practices for Protecting Water Quality in Georgia."

(c) Level one variance. A level one variance is a hardship-based appeal subject to the director's decision. This process is governed by the criteria established in subsection 14-7006(a) and allows applicants to petition the City to consider one of

the following requests. Considering the merit of the application including all facts and the information provided, the director may approve or disapprove the request with or without conditions for the following:

(1) Reduce a maximum of 15 feet of the setback area and reduce a maximum of 25 feet of the undisturbed buffer.

(2) Construction of storm water retention or detention facilities within the undisturbed buffer area and stream channel excluding all USGS Blueline streams, where water quality-related facilities shall not be allowed in the stream. Notwithstanding any other provision of this subsection, no in-stream detention/retention shall be allowed in a FEMA designated A or AE flood zone, unless first approved by FEMA.

(d) Secondary variance. A secondary variance is a hardship based-appeal subject to the zoning board of appeals decision. This process is governed by criteria established in subsection 14-7006(a) and allows applicants to petition the City to consider one of the following below requests. During the secondary variance procedure residents will be notified of the proposed impact in accordance with the City zoning resolution requirements. Considering the merit of the application including all facts and the information provided, the zoning board of appeals may approve or disapprove the request with or without conditions for the following:

(1) Reduction of the setback area or undisturbed buffer greater than the distances specified in this chapter;

(e) Judicial review.

(1) Appeal of a level one variance decision. The director's determination and decision shall conclude the Level One variance. Any person may appeal a Level One variance decision of the director to the zoning board of appeals. An appeal of the director's decision shall be filed in writing within 30 days after the final decision of the director.

(2) Appeal of secondary variance decision. Any person may appeal the zoning board of appeals' decision to the Fulton County Superior Court. The decision of the zoning board of appeals constitutes a final City of South Fulton action. An appeal of this decision shall be filed in writing within 30 days after the final decision of the zoning board of appeals.

Sec. 14-16009. – Compatibility with other buffer regulations and requirements

This ordinance is not intended to interfere with, abrogate or annul any other ordinance, rule or regulation, statute or other provision of law. The requirements of this ordinance should be considered minimum requirements, 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 provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

Sec. 14-160010. – Additional information requirements for development on buffer zone properties

Any permit applications for property requiring buffers and setbacks hereunder must include the following:

- (1) A site plan showing:
 - (a) The location of all streams on the property;
 - (b) Limits of required stream buffers and setbacks on the property;
 - (c) Buffer zone topography with contour lines at no greater than five (5)-foot contour intervals;
 - (d) Delineation of forested and open areas in the buffer zone; and,
 - (e) Detailed plans of all proposed land development in the buffer and of all proposed impervious cover within the setback;
- (2) A description of all proposed land development within the buffer and setback; and,
- (3) Any other documentation that the City of South Fulton may reasonably deem necessary for review of the application and to insure that the buffer zone ordinance is addressed in the approval process.

All buffer and setback areas must be recorded on the final plat of the property following plan approval.

Sec. 14-160011. – Responsibility

Neither the issuance of a development permit nor compliance with the conditions thereof, nor with the provisions of this ordinance shall relieve any person from any responsibility otherwise imposed by law for damage to persons or property; nor shall the issuance of any permit hereunder serve to impose any liability upon the City of South Fulton, its officers or employees, for injury or damage to persons or property.

Sec. 14-160012. – Inspection

The City of South Fulton may cause inspections of the work in the buffer or setback to be made periodically during the course thereof and shall make a final inspection following completion of the work. The permittee shall assist the City of South Fulton in making such inspections. The City of South Fulton shall have the authority to conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in this ordinance, and for this purpose to enter at reasonable time upon any property, public or private, for the purpose of investigating and inspecting the sites of any land development activities within the protection area.

No person shall refuse entry or access to any authorized representative or agent who requests entry for 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 official duties.

Sec. 14-160013. – Violations, enforcement and penalties

Any action or inaction which violates the provisions of this ordinance or the requirements of an approved site 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.

Sec. 14-160014. – Notice of violation

If the City of South Fulton determines that an applicant or other responsible person has failed to comply with the terms and conditions of a permit, an approved site 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 the appropriate permit therefor, 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 approved site 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 City of South Fulton by filing a written notice of appeal within thirty (30) days after the notice of violation (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours notice shall be sufficient).

Sec. 14-160015. – 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 City of South Fulton 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 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 City of South Fulton 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 City of South Fulton 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 necessary remedial measures to cure such violation or violations.
- (2) **Withhold Certificate of Occupancy** – The City of South Fulton 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 City of South Fulton may suspend, revoke or modify the permit authorizing the land 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 City of South Fulton 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 days (or such greater period as the City of South Fulton 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 South Fulton has taken one or more of the actions described above, the City of South Fulton 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 City of South Fulton may issue a citation to the applicant or other responsible person, requiring such person to appear in the appropriate municipal, magistrate or recorder's 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.

Sec. 14-160016. – Administrative appeal

Any person aggrieved by a decision or order of the City of South Fulton, may appeal in writing within 10 days after the issuance of such decision or order to the Code Enforcement Officer of the City of South Fulton and shall be entitled to a hearing before the designated appeals body of the City of South Fulton within 10 days of receipt of the written appeal.

Sec. 14-160017. – Judicial review

Any person aggrieved by a decision or order of the City of South Fulton, after exhausting all administrative remedies, shall have the right to appeal as allowed by law.

Section 2. It is hereby declared to be the intention of the City Council that: (a) All sections, paragraphs, sentences, clauses and phrases of this Ordinance are or were, upon their enactment, believed by the City Council to be fully valid, enforceable and constitutional.

(b) To the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. No section, paragraph,

sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Resolution.

(c) In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the City Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance.

Section 3. All Ordinance and Resolutions in conflict herewith are hereby expressly repealed.

Section 4. The City Attorney, City Clerk and contracted City Codifier are authorized to make non-substantive formatting and renumbering edits to this ordinance for proofing, codification, and supplementation purposes. The final version of all ordinances shall be filed with the clerk.

Section 5. The effective date of this Ordinance shall be on the date as set forth under Sec. 3.21 of the City Charter unless provided otherwise by applicable local, state and/or federal law.

The foregoing Ordinance No. 2020-xxx was moved for approval by Councilmember

_____ The motion was seconded by Councilmember _____, and being put to a vote, the result was as follows:

	AYE	NAY
William "Bill" Edwards, Mayor	_____	_____
Carmalitha Gumbs, Mayor Pro Tem	_____	_____
Catherine Foster Rowell	_____	_____
Helen Zenobia Willis	_____	_____
Gertrude Naeema Gilyard	_____	_____
Corey Reeves	_____	_____
khalid kamau	_____	_____
Mark Baker	_____	_____

THIS ORDINANCE so adopted this _____ day of _____ 2020. **CITY OF SOUTH FULTON, GEORGIA.**

WILLIAM "BILL" EDWARDS, MAYOR

ATTEST:

S. DIANE WHITE, CITY CLERK

APPROVED AS TO FORM:

EMILIA C. WALKER, CITY ATTORNEY