

## Proposed Text Amendment

### Sec. 8-22. Exemptions and Exceptions.

The following activities are exempt from the requirements of this division:

- (a) 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; and 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.
- (b) Public sewer line easements paralleling the stream, 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 this section.
- (c) Land development activities within a right-of-way on the effective date of this article.
- (d) Within an easement of any utility existing at the time this ordinance takes effect or approved under the terms of this article, 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.
- (e) 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 community development director on the next business day after commencement of the work. The community development director after inspection of the emergency work may require the person performing emergency work to correct any impairment such emergency work may have caused to the water conveyance capacity, stability or water quality of the protection area.
- (f) 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.
- ~~(g) Work authorized by or conducted pursuant to the requirements or directives of local, state, and federal departments, agencies and authorities.~~

(h) The following activities are exceptions from the requirements of this division:

~~(i) (a) Where the 100-year floodplain constricts within the buffer and "buffer averaging" is permitted such that the net buffer area is not reduced or the average buffer width conforms to the widths as outlined above (this exception is not applicable to the state mandated 25 foot buffer).~~

~~(j) (b) Where the Community Development Director, or his/her assign(s) determine to allow a variance to the requirements greater than the state mandated 25-foot buffer that is at least protective of natural resources and the environment, or where otherwise allowed pursuant to O.C.G.A. §12-2-8. For the purposes of this section, at least as protective shall mean that there is no net decrease in the square footage of the required buffer that is greater than the state-mandated 25-foot buffer. Any request to allow a variance that would result in a net decrease in the square footage of the required buffer that is greater than the state-mandated 25-foot buffer must be approved by the City of Powder Springs in accordance with Section 8-24 and Article 14 of the Unified Development Code.~~

## **SECTION 8-27. 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. The imposition of any of the penalties described below shall not prevent such equitable relief.

### **a) .Notice of Violation**

If the City of Powder Springs 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 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 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 City of Powder Springs 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).

## **b) 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 Powder Springs 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 Powder Springs 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 Powder Springs 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 City of Powder Springs 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 Powder Springs 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 Powder Springs 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 Powder Springs 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 Powder Springs has taken one or more of the actions described above, the City of Powder Springs 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 Powder Springs may issue a citation to the applicant or other responsible person, requiring such person to appear in City of Powder Springs 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.

#### Section 8-28. ADMINISTRATIVE APPEAL AND JUDICIAL REVIEW

- 1) Administrative Appeal Any person aggrieved by a decision or order of the City of Powder Springs, may appeal in writing within 30 calendar days after the issuance of such decision or order to the Community Development Director or his/her designee of the City of Powder Springs and shall be entitled to a hearing before the Mayor and Council of the City of Powder Springs within 30 days of receipt of the written appeal.
- 2) Judicial Review Any person aggrieved by a decision or order of the City of Powder Springs, after exhausting all administrative remedies, shall have the right to appeal de novo to the Superior Court of Cobb County.