

**--DRAFT ORDINANCE--**

*The purpose of this model ordinance is to provide a mass grading and clear cutting regulation for localities to use. Localities may need to modify or change portions in order to conform the model ordinance to their local circumstances and needs. In order to obtain certification or recertification as a "Local Issuing Authority" localities are required to adopt a new Erosion & Sedimentation Ordinance or amend their current one and submit it to the State of Georgia's Environmental Protection Division for approval by July 1, 2004. During this process it may be worthwhile to consider instituting a mass grading and clear cutting ordinance. Laws and regulations constantly change due to amendments and enactments at the state level or court decisions, and timely legal advice based on current law is essential. You should consult with your city/county attorney before taking any action based on such information.*

*The model ordinance draws from many jurisdictions and ordinances. As such, the parenthesis () following the title of each section indicates the name of the jurisdiction from where the section originated.*

**Short Title.** The following sections are added to [the Local Government Code] and shall be known and may be cited as the "mass grading and clearing ordinance" of the [Local Government] as adopted by Ordinance \_\_\_\_.

**Purpose and Intent. (Olympia, Gig Island)** These regulations are adopted for the following purposes:

- A. To promote the public health, safety, and welfare of the citizens of [Local Government] without preventing the reasonable development of land;
- B. To promote building and site planning practices that are consistent with [the Local Government's] natural topography, soils, and vegetative features while recognizing that certain factors, such as disease, proximity to existing and proposed structures and improvements, interference with utility services, and protection of scenic views may require the removal of certain trees and ground cover;
- C. To encourage site development on public and private property, including cleaning, excavation, and filling in such a manner as to minimize hazards to life, health, and property;
- D. To promote land development practices that result in a minimal disturbance to vegetation and soils;
- E. To minimize surface water and ground water run off and diversion;
- F. To minimize the need for additional storm drainage facilities;
- G. To preserve and enhance [the locality's] physical and aesthetic character by preventing untimely and indiscriminate removal or destruction of trees and ground cover;
- H. To minimize surface water run off and diversion which may contribute to increased turbidity;
- I. To reduce sedimentation in the streams, lakes, rivers, storm sewer systems, and waterways;
- J. To insure prompt development, restoration and replanting and effective erosion control of property after land clearing and mass grading;
- K. To protect fish, wildlife and their habitats and promote the retention and restoration of vegetation;
- L. To implement the goals and objectives of the State of Georgia's Erosion & Sedimentation Control Act;
- M. To allow the reasonable development of land.

**Definitions. (Olympia)** For the purposes of this chapter:

"Administrator" means [the head of the department of the Local Government in charge of administering the ordinance].

"Applicant" means the individual, partnership, or corporation applying for a permit to do work under this chapter, including the property owner, and any employee, agent, consultant or contractor acting on behalf of the applicant, or any successor in interest. **(Bellevue)**

"Application" means an application for a mass grading or clear-cutting permit.

"Building Footprint" means the area within the perimeter of a building measured at the foundation but shall not include driveways, parking lots, open uncovered patios, decks, unroofed structures and unroofed stoops or stairs or roof projections. It shall include all porches, roofed areas and any cantilevered portions of the building. *(Need to check on including/excluding driveways and parking lots)*

"City" or "County" means [fill in name of jurisdiction].

"Clear cutting" means any activity which removes the total vegetative ground cover and/or trees including, but not limited to, root mat removal and/or topsoil removal.

"Cut" means a portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below the original ground surface to excavated surface. Also known as excavation.

**(GA Model E & S Ordinance)**

"Corrective action" means that all soil disturbing activities at the site have been halted and that for unpaved areas not covered by permanent structures, at least 80 percent of the soil surface is uniformly covered in permanent vegetation or equivalent measures (such as the use of rip rap, gabions, permanent mulches, or geotextiles). **(Bartow)**

"Department"/"Agency" means [the department of the Local Government in charge of administering the ordinance].

"Erosion and Sedimentation Control" means practices for the stabilization of erodible or sediment-producing areas by covering soil with: **(Savannah)**

1. Permanent seeding, sprigging or planting producing long-term vegetative cover; or
2. Temporary seeding, producing short term vegetative cover; or
3. Sodding, covering areas with a turf of perennial sod-forming grass.

Such practices are further discussed in the publication Manual for Erosion and Sedimentation Control in Georgia.

"Grading" means altering the shape of ground surfaces to a predetermined condition; this includes stripping, cutting, filling, stockpiling and shaping or any combination thereof and shall include the land in its cut or filled operation. **(GA Model E&S Ordinance)**

"Mass Grading" means the movement of earth by mechanical means to alter the gross topographic features, including elevation and slope, to prepare a site for final grading and construction of facilities, including buildings, parking lots, and roads.

"Permit" means the authorization necessary to conduct a land-disturbing activity under the provisions of this ordinance. **(Bartow)**

"Permit holder" means the individual, partnership, or corporation who has received an approved permit.

"Phasing" means the clearing or grading a parcel of land in distinct phases with the stabilization of each phase before the clearing or grading of the next. **(Darby Creek)**

"Site" means the entire proposed development project regardless of the size of the area of land to be disturbed. **(Bartow)**

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

"Vegetation" shall include grasses, legumes, ground cover, trees, and shrubs. **(GA Manual for Sedimentation and Erosion Control)**

**Administration of Ordinance. (Mendocino County, CA)** It shall be the responsibility of the [Local Government Planning Department or applicable agency] and its [Administrator] to administer and enforce the provisions of this ordinance. The [Administrator], or his or her designee, shall be responsible for the general administration of this ordinance and for the processing of the mass grading and clearing permit applications, the issuance of such permits, and the inspection of mass grading and clearing work.

**Application. (Olympia, Sign Ordinance)**

A. Permit Approval Required. No person, corporation, or other legal entity shall engage in clearing or grading in the [Local Government] without having received an approved permit from the [Administrator].

B. All applications for mass grading or clearing permits shall be submitted for approval to the [Administrator] on an application form provided by the [Administrator] or in accordance with the application specifications established by the [Administrator]. Accompanying such form shall be a general plan which shall include the following information:

1. (a) General vicinity map;
- (b) Property Boundaries indicating the extent and location of proposed grading activities, and relevant physical features of the property (i.e. streams, ravines, etc.);
- (c) Location and dimensions of buffer areas to be maintained or established, and location and description of proposed erosion control devices or structures; and
- (d) Identification and location of all trees and vegetation that are to be retained and protected.

2. At the discretion of the [Administrator], other information as deemed appropriate to this ordinance may be required in instances relating to geological hazard, shoreline protection, tree protection, and replacement or project scope.

3. An application fee of \$50.00 for grading or clearing five acres or less, plus \$10 for each additional acre, or portion thereof. An application shall be deemed incomplete without the accompanying application fee.

C. No work shall commence until permit notice is posted by [the Department] on the subject site for a period of ten business days prior to the commencement of grading activities.

**Permit Submission. (Sign Ordinance)** The mass grading or clearing permit application shall be delivered to [the Department]. All permit applications shall be stamped by the [Administrator] indicating the submission date.

**Completeness. (Sign Ordinance)** Within ten business days of receiving an application for a mass grading or clearing permit, the [Administrator] shall review it for completeness. If the [Administrator] finds it complete, the [Administrator, or his or her designated representative] shall stamp the application indicating the completion [designation] date and the application shall then be processed.

If the [Administrator] finds that it is incomplete, he or she shall, within such ten business day period, send to the Applicant a written notice of the specific ways in which the application is deficient, with appropriate references to the applicable section of the [Local Code], stamp the date of return of the application, and send the written notice by hand delivery or by mailing a notice, by certified mail, return receipt requested, to the address on the permit application. Any subsequent application responding to the notice of deficiency shall be assigned a new submission date when it is received by the [Administrator]. Such application shall be reviewed by The [Administrator] within ten business days for completeness.

**Review and Approval. (Darby Creek)** [The Department] shall review each application for a grading or clearing permit to determine its conformance with the provisions of this ordinance. Within thirty business days after stamping a completion date on an application, [the Department] shall, in writing:

1. Approve the permit application;
2. Approve the permit application subject to such reasonable conditions as may be necessary to enforce the objectives of this regulation, and issue the permit subject to these conditions, providing the applicant an opportunity to comment within ten business days on the reasonable conditions stated; or
3. Disapprove the permit application, indicating the deficiencies and the procedure for submitting a revised application.

The [Administrator] shall give notice to the [Applicant] of the decision of the [Locality] by hand delivery or by mailing a notice, by certified mail, return receipt requested, to the address on the permit application on or before the thirtieth business day after the [Administrator's] the stamped completion date on an application. If mailed, notice shall be deemed to have been given upon the date of the mailing in conformity with this section.

If an application is revised and resubmitted, such application shall be assigned a new submission date. If the application is denied because it does not contain the required information or the information is inaccurate or false, a new application shall be submitted to [the Department] with all of the required information and such application shall be assigned a new submission date.

Upon expiration of the thirty-business day period without a decision being issued, [the Applicant] shall be permitted to begin mass grading or clearing activities under this Ordinance. **(Sign Ordinance)**

Upon making a final decision, the [Administrator] shall stamp each application, and the permit if applicable, with a decision date.

If a permit applicant has two or more violations of previous permits of this ordinance or permits of the Erosion & Sedimentation Control Ordinance [Ordinance Number \_\_\_\_] within three years to the date of

filing of the application under consideration, the [Administrator] shall deny the application. (O.C.G.A. § 12-7-7 (f) (1).

**Standards. (Olympia)** All mass grading and clearing on lots shall conform to the following standards and provisions [unless where otherwise recommended in an approved soil engineering, engineering geology, hydrology, tree protection or forest management plan where the alternate procedures will be equal or superior in achieving the purposes of this ordinance]. In addition, the following standards and provisions shall be the governing criteria for the issuance or denial of mass grading and clearing permits under this Ordinance.

A. Grading Regulations.

1. Mass grading operations shall be conducted so as to expose the smallest practical area of soil
2. The grading shall not create or contribute to landslides, accelerated soil creep, settlement and subsidence or hazards associated with strong ground motion and soil liquefaction;
3. The proposal shall contain reasonable provisions for the preservation of natural land and water features, vegetation, drainage and other indigenous natural features of the site;
4. The grading shall not create or contribute to flooding, erosion, or increased turbidity, siltation or other forms of pollution in a watercourse;
5. The grading shall be undertaken in such a manner as to preserve and enhance the [Locality's] aesthetic character. Vegetative screens or buffer strips shall be maintained or reestablished in a timely manner with approved plantings consistent with this ordinance.
6. Development shall be initiated or a vegetative screen or buffer established within twelve months of the date of initiation of mass grading or clearing activities, except in regard to those activities exempt in this ordinance (*twelve months is the number used in the Olympia ordinance and is not required to be the amount of time used by the Local Government*);
7. Mass grading shall not occur on land greater than ten acres (**Charlotte, Issaquah, Mendocino County**);
8. Mass grading shall not occur thirty feet beyond the building envelope;
9. Mass grading activities shall be done in accordance with all applicable federal, state, and local laws, rules, and regulations, including those pertaining to air and water pollution, and noise control.
10. The faces of all slopes shall be prepared and maintained to control erosion. Devices or procedures for erosion protection shall be installed within a week of the initiation of mass grading operations and shall be maintained in operable condition by the owner during the duration of the activity for which the permit was issued.

B. Clear Cutting and Cuts.

1. Cut slopes shall be no steeper than is safe for intended use;
2. The ground surface shall be prepared to receive fill by removing vegetation, nonapproved fill, topsoil, and other unsuitable materials as determined by the [Administrator] and, where the slopes are five-to-one or steeper, by the excavation of relatively level steps into the slope, on which the fill is to be placed;
3. Fill slopes shall not be constructed on natural slopes which are steeper than two-to-one;
4. The slopes of fill surfaces shall be no steeper than is safe for intended use. Fill slopes exceeding five feet in depth shall be no steeper than two horizontal to one vertical, except where approved retaining walls are engineered and installed;
5. When the owner of any parcel shall raise, lower, or alter the level of existing grade of a site by a fill or excavation, he or she shall at his or her own expense protect all adjoining property from encroachment by such fill or from danger of collapse due to such excavation either by erection of engineered retaining wall or by sloping the sides of such fill or excavation entirely within the confines of the site in a manner approved by the [Administrator];
6. Clear cutting shall not occur on land greater than ten acres (**Charlotte, Issaquah, Mendocino County**);

7. Clear cutting shall not occur thirty feet beyond the building footprint;
8. Cut and fill slopes shall be provided with surface and subsurface drainage as necessary to retain slope stability;
9. The faces of all slopes shall be prepared and maintained to control erosion. Devices or procedures for erosion protection shall be installed within a week of the initiation of clear cutting or cut operations and shall be maintained in operable condition by the owner during the duration of the activity for which the permit was issued. *(Local governments have the option to choose which period of time for the installation of devices or procedures. "Within a week" was the time chosen to include in this model ordinance.)*

C. Approval. A mass grading or clearing permit application shall be approved by the [Administrator] if it meets the requirements of this ordinance.

D. Appeal of Administrator's Permit Application Denial. **(Olympia, Fulton County TDR Ordinance)** Any person or persons aggrieved by a permit application denial of the [Administrator] may, within thirty business days of such action, file a notice of appeal, in writing, setting forth plainly and fully why the decision is in error, with the Board of Zoning Appeals. The Board of Zoning Appeals shall hear and determine the matter and may affirm, modify or disaffirm the [Administrator's] decision within thirty (30) business days of the filing of notice of appeal. Upon appeal to the [Board of Zoning Appeals] there is a presumption of correctness of the [Administrator's] decision which shall be overcome by the appealing party.

E. Appeal of Board of Zoning Appeals Decision **(Olympia, TDR Ordinance)** Any appeal of, or other legal challenge to, the [Board of Zoning Appeals'] final decision regarding a mass grading or clearing permit application shall be pursued by petition for writ of certiorari filed with the Superior Court of [ ] within thirty business days of the date of the [Board of Zoning Appeals] decision. The Applicant's petition and all other initial filings with the Superior Court shall be served upon the named defendants/respondents in accordance with O.C.G.A. § 9-11-4.

1. Upon filing such appeal, the Clerk of Superior Court shall give immediate notice thereof to the [Board of Zoning Appeals and the Administrator]. Within thirty business days of such notice, the [Board of Zoning Appeals] shall cause to be filed with the Clerk of the Superior Court a certified copy of the proceedings before the [Board of Zoning Appeals] and the decision of the [Board of Zoning Appeals].
2. Upon appeal there is a presumption of correctness of the [Board of Zoning Appeals] decision which shall be overcome by the appealing party.

**Exceptions.** The following shall be exempt from the provisions of this chapter:

- A. The activities which are exempted in the Georgia Erosion & Sedimentation Control Act.
- B. Grading and clearing in emergency situations involving immediate danger to life or property or substantial fire hazards; **(Olympia, Gig Island)**
- C. Removal of diseased, dead, or dying trees upon written verification by a qualified arborist or landscape architect or landscape contractor which states that removal of the trees is essential for the protection of life, limb, or property and which statement is filed with the Department; **(Gig Island)**
- D. Agricultural operations on existing farmed areas, as defined in the Georgia Erosion and Sedimentation Control Act;
- E. Routine maintenance activities, including tree removal, required to control vegetation on road and utility rights-of-way. **(Bainbridge Island)**

**Violation and Penalty. (Olympia, Charlotte, Sign Ordinance)**

A. Notice. Any person who shall violate any provision of this ordinance or of any permit shall receive notice by hand delivery, fax or mailing by certified mail, return receipt requested, to such person at

address listed on the permit application, indicating that they shall correct the violation within ten business days of the hand delivered, faxed, or mailed notice.

B. If the violation is not eliminated within the required ten business days as provided for above, any permit holder violating the provisions of this chapter or failing to comply with any of the requirements shall be guilty of a misdemeanor and shall, upon conviction thereof, be punishable by a fine or not more than \$2,500.00 per day. Each day such violation continues shall be considered a separate, distinct offense. Such persons shall also be liable for court costs and reasonable attorney fees incurred by the local jurisdiction.

C. Any person who commits, participates in, assists or maintains such violation may be found guilty of a separate offense and suffer the penalties as set forth in subsection B of this section.

D. In addition to the penalties set forth in subsection B of this section, any violation of the provisions of this ordinance is declared to be a public nuisance and may be abated through proceedings for injunctive or similar relief in Superior Court or other court of competent jurisdiction.

E. Upon determination that a violation of a provision of this ordinance has occurred, the [Administrator] shall withhold issuance of other permits from the [city or county], including but not limited to permits for building construction and water and sewer hookup, for the affected property until corrective action is taken by the responsible party. However, if mitigating circumstances exist and a reasonable commitment for corrective action is made, the [Administrator] may issue permits. Such corrective action may include:

1. Restoration of surface vegetation with plant material similar in character and extent as existed prior to the unauthorized clearing;
2. Implementation of drainage and erosion control measures;
3. Replanting of trees to replace those lost through unauthorized clearing.

F. Appeal of Violation. **(Olympia)** A notice of violation issued pursuant to this section constitutes a determination from which an administrative appeal may be taken by filing notice of appeal with the [Board of Zoning Appeals] within five business days of service of notice of violation. Such appeals may be heard by the Board of Zoning Appeals. The scheduling of the procedure for the conduct of hearings for violation shall be governed by (Appeals of Zoning Decisions Procedure in Local Ordinance).

**Permit Expiration. (Gwinnett, Sign Ordinance)** A permit authorizing grading or clearing shall expire and become null and void unless activities are *commenced within 60 business days* of issuance of the permit or if activities lapse for a period exceeding 14 business days. Any permit granted shall expire one year from the date of issuance. Any site for which the grading or clearing permit expires shall be stabilized by the [Applicant] to prevent erosion within a ten day period. Upon a showing of good cause, a permit may be extended by the [Administrator] for one six month period. No refunds will be made for permit fees paid for permits that expired due to the failure to commence activities or lapse and abandonment of activities.

The [Administrator] shall notify the permit holder of the permit expiration and send the written notice by hand delivery or by mailing a notice, by certified mail, return receipt requested, to the address on the permit application.

**Variance. (Sign Ordinance, UGA Model Riparian Ordinance)** A variance may be granted upon application for an individual case of undue hardship, when such variance will not be contrary to the public interest or the purpose of this ordinance. The request for a variance shall meet all of the following conditions:

1. There exists extraordinary and exceptional conditions pertaining to the property in question resulting from its size, shape, or topography that are not applicable to other lands or structures in the area.
2. A literal interpretation of the provision of this Ordinance would deprive [the Applicant] of rights commonly enjoyed by other similar properties.
3. Granting the variance requested would not confer upon the property of [the Applicant] any significant privileges that are denied to other similar properties.
4. The requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or the general welfare.
5. The special circumstances are not the results of actions of [the Applicant].
6. The variance requested is the minimum variance which will make possible the logical use of the land.

The application for a variance shall be filed with the Board of Zoning Appeals. The application shall contain

1. The existing site conditions;
2. The needs and purpose of the proposed project;
3. The justification for seeking the variance.

Any appeal of the [Board of Zoning Appeals'] final decision regarding a variance application shall be pursued by petition for writ of certiorari filed with the Superior Court of [name of County] within thirty business days of the date of the [Board of Zoning Appeals] decision.

**Severability. (Bartow)** If any paragraph, subparagraph, sentence, clause, phrase, or any portion of this ordinance be declared invalid or unconstitutional by a court of competent jurisdiction, or if any provision of any part of this ordinance as applied to any particular situation or set of circumstances be declared invalid, or unconstitutional, such invalidity shall not be construed to affect the remaining portions of this ordinance not so held to be invalid, or the application of this ordinance or other circumstances not so held to be invalid.

**Enacting Clause/Effective Date. (Charlotte)** This Ordinance shall be effective upon adoption.

\*Note: In addition to drawing from the ordinances of various jurisdictions, some sections were based on the Sing Ordinance Guidance document produced by the University of Georgia Land Use Clinic. Those sections are recognized as (Sign Ordinance).

