

## Chapter 107 STREAM BUFFER PROTECTION (AMENDED 2/8/2024)

### Sec. 107-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Buffer* means, with respect to a stream, a natural or enhanced vegetated area (established by section 107-9(a)(1)), lying adjacent to the stream.

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

*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.

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

*Permit* means the permit issued by the state EPD required for undertaking any land development activity

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

*Protection area, or stream protection area* means, with respect to a stream, the combined areas of all required buffers and setbacks applicable to such stream.

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

*Setback* means, with respect to a stream, the area established by section 107-9(a)(2) extending beyond any buffer applicable to the stream.

*Stream* means any stream, beginning at:

- (1) The location of a spring, seep, or groundwater outflow that sustains streamflow;
- (2) A point in the stream channel with a drainage area of 25 acres or more; or

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- (3) Where evidence indicates the presence of a stream in a drainage area of other than 25 acres, the state EPD may require field studies to verify the existence of a stream.

*Stream bank* means the sloping land that contains the stream channel and the normal flows of the stream.

*Stream channel* means the portion of a watercourse that contains the base flow of the stream.

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

(Code 2010, § 10-10-3)

## **Sec. 107-2. Violations, enforcement and penalties.**

Any action or inaction which violates the provisions of this chapter 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.

- (1) *Notice of violation.* If the state EPD 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 chapter, 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 chapter 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:
- a. The name and address of the owner or the applicant or the responsible person;
  - b. The address or other description of the site upon which the violation is occurring;
  - c. A statement specifying the nature of the violation;
  - d. A description of the remedial measures necessary to bring the action or inaction into compliance with the permit, the approved site plan or this chapter and the date for the completion of such remedial action;
  - e. A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed; and
  - f. A statement that the determination of violation may be appealed to the state EPD by filing a written notice of appeal within 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).
- (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 state EPD 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 state EPD may take any one or more of the following actions or impose any one or more of the following penalties:
- a. *Stop work order.* The state EPD or the city 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

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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.

- b. *Withhold certificate of occupancy.* The city 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.
- c. *Suspension, revocation or modification of permit.* The state EPD 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 state EPD may deem necessary) to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.
- d. *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 state EPD 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 state EPD has taken one or more of the actions described above, the state EPD or the city may impose a penalty not to exceed \$1,000.00 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.
- e. *Criminal penalties.* For intentional and flagrant violations of this chapter, the city may issue a citation to the applicant or other responsible person, requiring such person to appear in the municipal court to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed \$1,000.00 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.

(Code 2010, § 10-10-10)

### **Sec. 107-3. Findings and purposes.**

- (a) *Findings.* Whereas, the city council 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;

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- (9) Providing riparian wildlife habitat;
  - (10) Furnishing scenic value and recreational opportunity;
  - (11) Providing opportunities for the protection and restoration of greenspace.
- (b) *Purposes.* It is the purpose of this chapter 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 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.

(Code 2010, § 10-10-2)

#### **Sec. 107-4. Applicability.**

This chapter shall apply to all land development activity on property containing a stream protection area as defined in section 107-1. These requirements are in addition to, and do not replace or supersede, any other applicable buffer requirements established under state law and approval or exemption from these requirements do not constitute approval or exemption from buffer requirements established under state law or from other applicable local, state or federal regulations.

- (1) Grandfather provisions. This chapter shall not apply to the following activities:
  - a. Work consisting of the repair or maintenance of any lawful use of land that is zoned and approved for such use on or before the effective date of the ordinance from which this chapter is derived.
  - b. Existing development and on-going land disturbance activities including, but not limited to, existing agriculture, silviculture, landscaping, gardening and lawn maintenance, except that new development or land disturbance activities on such properties will be subject to all applicable buffer requirements.
  - c. 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 the ordinance from which this chapter is derived.
  - d. 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 the ordinance from which this chapter is derived.
- (2) Exemptions. The following specific activities are exempt from this chapter. Exemption of these activities does not constitute an exemption for any other activity proposed on a property. Activities for the purpose of building one of the following:
  - a. A stream crossing by a driveway, transportation route or utility line;
  - b. A public water supply intake or public wastewater outfall structures;
  - c. Intrusions necessary to provide access to a property;
  - d. Public access facilities that must be on the water including boat ramps, docks, foot trails leading directly to the river, fishing platforms and overlooks;
  - e. Unpaved foot trails and paths;

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- f. 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;
  - g. 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 subsection (2)a of this section;
  - h. Land development activities within a right-of-way existing at the time the ordinance from which this chapter is derived takes effect or approved under the terms of this chapter;
  - i. Within an easement of any utility existing at the time the ordinance from which this chapter is derived takes effect or approved under the terms of this chapter, 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;
  - j. 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 and the state EPD on the next business day after commencement of the work. Within ten days thereafter, the person shall apply for a permit and perform such work within such time period as may be determined by the state EPD 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;
  - k. 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.
- (3) After the effective date of the ordinance from which this chapter is derived, it shall apply to new subdividing and platting activities.
- (4) 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 107-9(b).

(Code 2010, § 10-10-4)

### **Sec. 107-5. Compatibility with other buffer regulations and requirements.**

This chapter 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 chapter should be considered minimum requirements, and where any provision of this chapter 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.

(Code 2010, § 10-10-6)

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**Sec. 107-6. Administrative appeal and judicial review. . (AMENDED 2/8/2024)**

- (a) *Administrative appeal.* Any person aggrieved by a decision or order of City staff must request a detailed, written ruling from the Administrator. The Administrator shall return this ruling to the requesting person within thirty (30) days of receipt of the request. Once the Administrator has returned the written ruling, any appeal to the ruling must be made within ten (10) calendar days of the date on the ruling. No variance application shall be processed by the Zoning Administrator/City Staff unless said application complies with all procedural and other requirements of this Code, and the application is found to be complete containing all materials, including payment of fees, supporting materials/documentation and other application requirements specified by the Zoning Administrator. If the variance application does not comply with all application submittal requirements of the Code, then the Zoning Administrator shall reject the application and refuse to process same.

Within a reasonable period of following receipt of a complete application, the Zoning Administrator may forward said application for review by other city departments and external agencies as deemed appropriate by Zoning Administrator, including but not limited to law enforcement, school system, public works, GDOT, County government, legal review, utilities, and others. Comments from city departments/outside agencies shall be submitted to the reviewing body for consideration and become part of the official record. Zoning Administrator to investigate and issue findings and make recommendation.

The City Council will call a special meeting to conduct a public hearing on the request. The special called meeting and public hearing shall provide notice in accordance with OCGA §36-66-4. (AMENDED 2/8/2024)

- (b) *Judicial review.* Any person aggrieved by a decision or order of the city after exhausting all administrative remedies, shall have the right to appeal de novo to the county superior court.

(Code 2010, § 10-10-11)

**Sec. 107-7. Inspections.**

- (a) The state EPD or the city 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 state EPD or the city in making such inspections. The city shall have the authority to conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in this chapter, 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.
- (b) 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.

(Code 2010, § 10-10-9)

**Sec. 107-8. Responsibility.**

Neither the issuance of a development permit nor compliance with the conditions thereof, nor with the provisions of this chapter 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, its officers or employees, for injury or damage to persons or property.

(Code 2010, § 10-10-8)

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## Sec. 107-9. Land development requirements.

- (a) *Buffer and setback requirements.* All land development activity subject to this chapter shall meet the following requirements:
- (1) An undisturbed natural vegetative buffer shall be maintained for 50 feet, measured horizontally, on both banks (as applicable) of the stream as measured from the top of the stream bank. The top of the bank is often a clearer landmark than the edge of the water or the end of vegetation, particularly on intermittent streams. The land forming the bank is also considered part of the buffer for purposes of this chapter.
  - (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.
- (b) *Variance procedures.* Variances from the buffer and setback requirements, as described in subsection (a) of this section, may be granted in accordance with the following provisions:
- (1) Where a parcel was platted prior to the effective date of the ordinance from which this chapter is derived, and its shape, topography or other existing physical condition prevents land development consistent with this chapter, and the city finds and determines that the requirements of this chapter prohibit the otherwise lawful use of the property by the owner, the zoning board of appeals of the city may grant a variance from the buffer and setback requirements hereunder, provided such variance require mitigation measures to offset the effects of any proposed land development on the parcel. The zoning board of appeals may only grant a variance up to 25 feet. The state EPD is the variance authority for any work inside the state mandated buffer.
  - (2) Except as provided above, the zoning board of appeals shall grant no variance from any provision of this chapter without first conducting a public hearing on the application for variance and authorizing the granting of the variance by an affirmative vote of the zoning board of appeals. The city shall give public notice of each such public hearing in a newspaper of general circulation within the county. The city shall require that the applicant post a sign giving notice of the proposed variance and the public hearing. The sign shall be of a size and posted in such a location on the property as to be clearly visible from the primary adjacent road right-of-way. Variances will be considered only in the following cases:
    - a. When a property's shape, topography or other physical conditions existing at the time of the adoption of the ordinance from which this chapter is derived prevents land development unless a buffer variance is granted.
    - b. Unusual circumstances when strict adherence to the minimal buffer requirements in the chapter would create an extreme hardship.Variances will not be considered when, following adoption of the ordinance from which this chapter is derived, actions of any property owner of a given property have created conditions of a hardship on that property.
  - (3) At a minimum, a variance request shall include the following information:
    - a. A site map that includes locations of all streams, wetlands, floodplain boundaries and other natural features, as determined by field survey;
    - b. A description of the shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;

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- c. A detailed site plan that shows the locations of all existing and proposed structures and other impervious cover, the limits of all existing and proposed land disturbance, both inside and outside the buffer and setback. The exact area of the buffer to be affected shall be accurately and clearly indicated;
  - d. Documentation of unusual hardship should the buffer be maintained;
  - e. At least one alternative plan, which does not include a buffer or setback intrusion, or an explanation of why such a site plan is not possible;
  - f. A calculation of the total area and length of the proposed intrusion;
  - g. A stormwater management site plan, if applicable; and
  - h. Proposed mitigation, if any, for the intrusion. If no mitigation is proposed, the request must include an explanation of why none is being proposed.
- (4) The following factors will be considered in determining whether to issue a variance:
- a. The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
  - b. The locations of all streams on the property, including along property boundaries;
  - c. The location and extent of the proposed buffer or setback intrusion;
  - d. Whether alternative designs are possible which require less intrusion or no intrusion;
  - e. The long-term and construction water-quality impacts of the proposed variance; and
  - f. Whether issuance of the variance is at least as protective of natural resources and the environment.

(Code 2010, § 10-10-5)