ORDINANCE NO. 17837

AN ORDINANCE introduced by Councilmembers Vanessa Hill, Lisa Stubbs, and Clark Duffy sitting as the Public Health and Safety Committee, relating to best management practices to maintain stream quality within the City of Topeka, specifically the creation of buffer areas adjacent to streams.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. Purpose and Intent.

The purpose of this Ordinance is to create and maintain stream buffers as a best management practice. Stream buffers enhance water quality and provide a method of complying with the City's National Pollution Elimination Discharge permit.

A. Buffers adjacent to waterways provide environmental protection and resource management benefits, which include the following:

1. helping protect the public from flooding;
2. controlling erosion and reducing sedimentation;
3. stabilizing stream banks;
4. removing pollutants delivered in stormwater;
5. restoring and maintaining the chemical, physical and biological integrity of the water resources;
6. providing infiltration of stormwater runoff;
7. providing tree canopy to shade streams and promoting desirable aquatic organisms;
8. providing riparian wildlife habitat;
9. furnishing scenic value and recreational opportunity;
(11) maintaining base flow of streams.

It is the desire of the City of Topeka to protect and maintain the native vegetation in riparian and wetland areas by implementing specifications for the establishment, protection and maintenance of buffer vegetation along waterways within the City limits.

B. The intent of this Ordinance is to establish the minimum acceptable requirements for the design of buffers to protect the waterways of the City of Topeka; to protect the water quality of waterways, reservoirs, lakes, and other significant water resources within the City of Topeka; to protect the City of Topeka riparian and aquatic ecosystems; and to provide for the environmentally sound use of the land resources.

Section 2. Definitions.

Active Channel: The area of the stream channel that is subject to frequent flows and that includes the portion of the channel below where the floodplain flattens.

Best Management Practices (BMPs): Conservation practices or management measures which control flooding, erosion and soil loss, and reduce water quality degradation caused by nutrients, animal wastes, toxins, sediment, and runoff.

Buffer: A vegetated area, including trees, shrubs, and herbaceous vegetation, which exists or is established to protect a stream system, lake, or reservoir.

Development: (1) the improvement of property for any purpose involving building; or (2) the division or subdivision of a tract or parcel of land into two or more parcels; or (3) the combining of any two or more lots, tracts, or parcels of property for any purpose; or (4) the preparation of land for any of the above purposes; or (5) the clearing of trees and vegetation and/or excavation or earthwork on a tract or parcel of land.
Levee: Manmade structure to control, divert, and contain stormwater runoff and flood flows.

Wetlands: Those areas not influenced by tidal fluctuations which are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Non-point Source Pollution: Pollution which is generated by various land use activities rather than from an identifiable or discrete source and is conveyed to waterways through natural processes such as rainfall, storm runoff, or ground water seepage rather than direct discharge.

One Hundred Year Floodplain: The area of land adjacent to a stream that is subject to inundation during a storm event that has a recurrence interval of 100 years.

Pollution: Any contamination or alteration of the physical, chemical, or biological properties of any waters that will render the waters harmful or detrimental to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; livestock, wild animals, birds, fish or other aquatic life.

Streams: Perennial and intermittent watercourses identified through site inspection and United States Geological Survey (USGS) maps and further defined and categorized as follows:

Type I Streams: Type I streams are defined as perennial streams shown as solid blue lines on a United States Geological Survey 7.5-minute series topographical map. The total required buffer width is 100 feet on each side perpendicular to the waterway measured from the outer wet edge of the channel during base flows.
**Type II Streams:** Type II streams are defined as intermittent streams shown as a dashed blue lines on a United States Geological Survey 7.5-minute series topographical map. The total required buffer width is 50 feet on each side perpendicular to the waterway measured from the centerline of the channel.

**Type III Streams:** Type III streams are defined as waterways, dry channels that have a contributing drainage area of 50 acres or greater. The total required buffer width is 30 feet on each side perpendicular to the waterway measured from centerline of waterway.

**Waterways:** Natural or manmade lakes, channels, rivers, streams, and creeks, which store and/or convey stormwater runoff

**Water Pollution Hazard:** A land use or activity that causes a relatively high risk of potential water pollution.

**Section 3. Scope.**

A. This Ordinance shall apply to all proposed development except for that development which meets waiver or variance criteria as outlined hereinafter.

B. This Ordinance shall apply to activities that involve clearing, earthwork, and excavation within the buffer zone as defined herein.

C. Except as provided elsewhere, this Ordinance shall apply to all tracts and parcels of land, structures, and activities that cause or contribute to:

1. Pollution, including non-point source pollution, of the waters of the City of Topeka.
2. Erosion or sedimentation of stream channels.
3. Degradation of aquatic or riparian habitat.

D. This Ordinance shall not apply to development which prior to the effective date of this Ordinance:
(1) Is covered by a plat recorded of record in accordance with subdivision regulations and no further development is anticipated.

(2) Is covered by a valid, unexpired building permit.

(3) Has applied for a building permit.

E. This Ordinance shall apply to all development of existing platted parcels occurring after the effective date of this Ordinance where the impervious surface increases by 50% or more; or where the redevelopment of an existing platted parcel contains 1/8 of a mile or more of a type I, II, or III stream; or where the platted parcel is adjacent to 1/8 of a mile or greater of a type I, II, or III stream.

Section 4. Plan Requirements.

A. A plan approved by the Director of the Public Works Department or designee is required for all development within the buffer zone as defined herein.

B. The plan shall contain an informative, conceptual, and schematic representation of the proposed development activity by means of maps, graphs, charts, or other written or drawn documents so as to enable an informed decision regarding the proposed development activity.

C. The plan shall contain the following specific information:

(1) a location or vicinity map to include maximum 2 feet contour intervals and scale of no greater than 1 inch = 100 feet.

(2) Field delineated streams, springs, seeps, bodies of water, wetlands, and waterway buffer zones.

(3) Limits of the ultimate 100 year floodplain as shown in the most accurate information available as determined by the City of Topeka.
Public Works Department. FEMA maps and stormwater basin studies will be used to determine accuracy.

D. A buffer plan shall be submitted in conjunction with the required grading plan for any development, and the buffer should be clearly delineated on the final grading plan.

E. Boundary markers will be installed by the applicant prior to commencing clearing and grading operations. Markers will be placed at the outside edge of the buffer zone prior to the start of any activity adjacent to the buffer zone. Markers shall be clearly visible and shall be spaced at a maximum of 100 feet. The markers shall be joined by marking tape or fencing.

Section 5. Design Standards for Buffers.

A. A buffer for a stream system shall consist of a strip of land extending along both sides of a stream and its adjacent wetlands, floodplains, or slopes. The buffer width shall be adjusted to include contiguous sensitive areas, such as steep slopes or erodible soils, where development or disturbance may adversely affect water quality, streams, wetlands, or other waterbodies.

B. The buffer shall begin at the edge of the waterway for Type I and at the centerline of the channel for Type II and Type III waterways. The edge of the waterway is the outer wet edge of the channel during base flow or where the edge of vegetation occurs.

C. The specific width for all buffers (i.e., the base width) is relative to the type of waterway being protected with the requirement to expand the buffer depending on:

(1) 100 year floodplain); (2) wetlands or critical areas.

Type I waterway buffer widths shall be modified if there are steep slopes adjacent to the waterway that drain into the system. Specific adjustments are as follows:

<table>
<thead>
<tr>
<th>Percent Slope</th>
<th>Width Adjustment to Buffer</th>
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</thead>
</table>

VYORD/BufferAreasAdjacenttoStreams 05/01/02
D. Water Pollution Hazards. The following land uses and/or activities are designated as potential water pollution hazards and must be set back from any stream or waterbody by the distance indicated below:

1. storage and use of hazardous substances: 300 feet;
2. above or below ground petroleum storage facilities: 300 feet;
3. drainfields from on-site sewage disposal and treatment system: 200 feet;
4. raised septic systems: 500 feet;
5. solid waste landfills or junkyards: 600 feet;
6. confined animal feedlot operations: 500 feet.

E. The buffer shall be composed of two distinct areas: streamside area and outer area. Each area has allowable uses and vegetative targets as follows:

**WATERWAY BUFFERS**

<table>
<thead>
<tr>
<th>STREAMSIDE AREA</th>
<th>OUTER AREA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TYPE</strong></td>
<td><strong>I</strong></td>
</tr>
<tr>
<td>WIDTH</td>
<td>50 feet</td>
</tr>
<tr>
<td>VEGETATION</td>
<td>Native vegetation</td>
</tr>
<tr>
<td>USES</td>
<td>Flood Control, Utility corridors</td>
</tr>
<tr>
<td>FOOT PATHS</td>
<td>Foot paths, road crossings</td>
</tr>
<tr>
<td>FUNCTION</td>
<td>Protect the physical and ecological</td>
</tr>
</tbody>
</table>

A. The buffer, including wetlands and floodplains, shall be managed to enhance and maximize the unique value of these resources. Management includes specific limitations on alteration of the natural conditions of these resources. The following practices and activities are prohibited within the buffer, except with written approval by the Director of the Public Works Department or designee.

(1) Clearing of existing vegetation.
(2) Grading, stripping, or other soil disturbing practices.
(3) Filling or dumping.
(4) Draining the buffer area by ditching, underdrains, or other systems.
(5) Use, storage, or application of pesticides, except for the spot spraying of noxious weeds or non-native species consistent with recommendations of the Shawnee County Soil Conservation District.
(6) Housing, grazing, or other maintenance of livestock.
(7) Storage or operation of motorized vehicles, except for maintenance and emergency use.

B. The following structures, practices, and activities are permitted in the buffer, with specific design or maintenance features, subject to the review of the Director of the Department of Public Works of the City of Topeka or designee.

(1) Roads, bridges, paths, and utilities.
(2) Stream restoration projects, facilities and activities are permitted within the forest buffer.
(3) Water quality monitoring and stream gauging are permitted within the buffer.

(4) Individual trees within the buffer may be removed with prior approval from the Water Pollution Control Division.

C. Fences constructed within the buffer zone must be of an open, split rail or wood plank type design. Metal fencing may be added but only as an attachment to an acceptable wood fence design. Added metal fencing may not exceed the height of the wood fence. Screening material of any kind is prohibited. No fencing of any kind may extend into the 100 year floodplain area.

D. All plats prepared for recording shall clearly:

(1) Show the extent of any buffer on the subject property by metes and bounds.

(2) Label the buffer.

(3) Provide a note stating, "There shall be no clearing, grading, construction or disturbance of vegetation except as approved by the Director of the Department of Public Works or designee."

(4) Provide a note stating, "Any buffer shown hereon is subject to protective covenants which may be found in the land records and which restrict disturbance and use of these areas."

E. All buffer areas shall be established and managed through a declaration of protective covenant which is required to be submitted for approval by the Topeka/Shawnee County Metropolitan Planning Commission. The covenant shall be recorded with the plat of record and shall run with the land and continue in perpetuity.
F. An offer of dedication of a buffer area to the City of Topeka shall not be interpreted to mean that this automatically conveys to the general public the right of access to this area.

G. Buffers situated adjacent to public streets add value to neighborhoods. In order to provide an incentive to locate buffers adjacent to public streets, the City will allow the dedicated right of way width as contained in the City’s design criteria adjacent to the improved street to be included within the outer zone of the stream buffer. Also, the City may through its platting process accept the dedication of buffer areas located adjacent to streets and maintain the same as public property.

Section 7. Enforcement Procedures.

A. The Director of the Department of Public Works or designee is authorized and empowered to enforce the requirements of this Ordinance in accordance with the procedures of this section.

B. If, upon inspection or investigation, the director or his/her designee is of the opinion that any person has violated any provision of this Ordinance, he/she shall with reasonable promptness issue a correction notice to the person. Each such notice shall be in writing and shall describe the nature of the violation, including a reference to the provision within this Ordinance, which has been violated. In addition, the notice shall set a reasonable time for the abatement and correction of the violation. Failure to abate or correct the violation or seek a waiver or variance, as may be applicable, will render the person ineligible for future building permits or for city approvals until such time as the violation is abated, corrected or resolved by waiver or violation as may be applicable.

C. Any person who violates any provision of this Ordinance may be liable for any costs or expenses incurred as a result thereof by the City.
Section 8. Waivers/Variances.

A. The Director of Public Works or designee may grant a waiver for the following:

(1) Those projects or activities serving a public need where no feasible alternative is available.

(2) The repair and maintenance of public improvements where avoidance and minimization of adverse impacts to wetlands and associated aquatic ecosystems have been addressed.

(3) Those developments which have had buffers applied in conformance with previously issued requirements.

B. Variances for development may be granted if deemed appropriate by the Director of Public Works or designee:

(1) The buffer width of a Type I, II, or III stream may be reduced and the buffer permitted to become narrower at some points as long as the average width of the buffer meets the minimum requirement. This averaging of the buffer may be used to allow for the presence of an existing structure or to recover a lost lot, as long as the streamside area is not disturbed by the narrowing, and no new structure is built within the 100 year floodplain.

(2) Subject to Topeka/Shawnee County Metropolitan Planning Commission approval, additional density elsewhere on the site may be allowed to counterbalance in the loss of developable land due to the requirements of this Ordinance.
C. The applicant shall submit a written request for a wavier or variance to the
Director of Public Works or designee. The application shall include specific reasons
justifying the variance and any other information necessary to evaluate the proposed
variance request. The Director of Public Works may require an alternatives analysis that
clearly demonstrates that no other feasible alternatives exist and that minimal impact will
occur as a result of the project or development.

D. In granting a request for a wavier, the Director of Public Works may require
site design, landscape planting, fencing, the placement of signs, and the establishment of
water quality best management practices in order to reduce adverse impacts on water
quality, streams, wetlands, and floodplains.

Section 9. Conflict With Other Regulations.
Where the standards and management requirements of this buffer Ordinance are in
conflict with other laws, regulations, and policies regarding streams, steep slopes, erodible
soils, wetlands, floodplains, timber harvesting, land disturbance activities, or other
environmental protective measures, the more restrictive shall apply.

Section 10. Severability.
If any part or parts of this Ordinance shall be held unconstitutional, invalid, or
otherwise unenforceable by any court of competent jurisdiction, such decision shall not
affect the validity of the remaining provisions of this Ordinance.

Section 11. This Ordinance shall take effect and be in force from and after its
passage, approval and publication in the official city newspaper.
PASSED and APPROVED by the City Council ____________

MAY 21 2007

Harry Pelker, Mayor

ATTEST:

Eric E. Walker
Iris E. Walker, City Clerk

APPROVED AS TO FORM AND LEGALITY
DATE 5/11/07 BY E.E.
TO BE CODIFIED _X_
NOT TO BE CODIFIED _

SEAL OF TOPEKA
CAPITAL CITY INCORPORATED
FEB. 14, 1857
KANSAS