

**AN ORDINANCE AMENDING CHAPTER 7, ARTICLE 5 OF THE INDEPENDENCE CITY CODE TO DEFINE THE STREAM BUFFER AND SETBACK REQUIREMENTS**

**Whereas, the City Council desires to amend Article 5 of Chapter 7 of the Independence City Code;**

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI AS FOLLOWS:**

**That Chapter 7, Article 5 of the “Code of the City of Independence, Missouri” is hereby amended to read as follows:**

**Section 1.**

**Article 5. Stream Buffer and Setback Ordinance**

**SEC. 7.05.001. POLICY STATEMENT**

A. The purpose of this Article is to protect the health and safety of the community through the preservation of riparian corridors, providing appropriate flood and storm water management systems. The Article is designed to address public safety concerns, such as property damage and loss of life resulting from flooding, and public health concerns, such as the pollution of water resources. This Article emphasizes that the adverse impacts of development on riparian corridors necessitates effective flood control and storm water management practices to protect the community from the loss of healthy ecological systems.

B. The intent of this Article is to establish minimal acceptable requirements for buffers to protect the streams, wetlands, and steep slopes of the City; to improve the water quality of water-courses, reservoirs, lakes, and other significant water resources within the City; to reduce impacts to riparian and aquatic ecosystems; and to provide for the environmentally sound use of land resources. Setback restrictions on development provide for the protection of areas to be designated as stream buffers. Stream buffers provide numerous environmental protection and resource management benefits that can include the following:

1. Restoring and maintaining the chemical, physical, and biological integrity of water resources
2. Removing pollutants delivered from urban stormwater runoff
3. Reducing erosion and sediment entering the stream
4. Reducing future flood hazards
5. Stabilizing stream banks
6. Providing infiltration of stormwater runoff
7. Contributing the 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 organisms
9. Providing riparian wildlife habitat
10. Creating community and neighborhood amenities by furnishing scenic value and recreational opportunity.

C. Stream buffers are an integral part of the City's Storm Water Management Program, as provided for in Chapter 7, Article 8 of this City Code.

SEC. 7.05.002. DEFINITIONS

The following words and phrases, when used in this Article, shall have the meaning set out herein:

**BUFFER** is vegetated area or zone, including trees, shrubs, and herbaceous vegetation, that exists or is established to protect a stream system or other water resource.

**BUFFER PLAN** is a plan approved by the City pursuant to Section 7.05.004 of this Article.

**CONSTRUCTION FENCING** is four foot (4') high orange mesh, or other vibrant color approved by the City, installed as a boundary marker for the outer edge of the middle zone.

**DEVELOPMENT** means any human-made change to improved or unimproved real estate that requires an application or permit to be filed with the City, including but not limited to, buildings, fences and other structures; mining, dredging and drilling operations; grading, site clearance, paving, excavation and filling; storage of equipment and materials.

**DIRECTOR** is the Director of Water Pollution Control or any duly authorized representative.

**MIDDLE ZONE** means the variable width zone that lies between the streamside zone and the outer zone of the stream buffer.

**OUTER ZONE** means the zone that is adjacent to the outer boundary of the middle zone of the stream buffer.

**RECREATIONAL USE** is a pervious facility such as picnic area, playground, soccer, baseball, softball and football fields, paths and trails, excluding parking lots and paved facilities such as tennis and basketball courts.

**STORM SEWER SYSTEM** is the system of conveyance of storm water which includes structures such as pipes, culverts, paved channels, catch basins and storm drains.

**STORM WATER MANAGEMENT PROGRAM** is the program developed by the City to satisfy the requirements of 40 CFR Part 122.26(d) and 10 CSR 20-6, 200(4), as may be amended from time to time.

**STREAM** is a body of running water moving over the earth's surface that flows at least part of the year, such as a creek, rivulet or river. Storm sewer systems and roadside ditches are not considered streams. Streams regulated by this Article are shown on the Stream Map.

**STREAM BANK** is a line formed by the outer boundary of the stream as delineated by the bank-full or channel-forming flow caused by approximately the two-year rainfall event.

**STREAM BUFFER** is the area or zone established to protect a stream system.

**STREAM CORRIDOR** is a stream and the adjacent buffer that is set aside in conformance to this Article and which is substantially preserved in a natural state.

STREAM MAP is the map approved by the City pursuant to Section 7.05.003 of this Article.

STREAM ORDER is a classification system for streams based on stream hierarchy and the position within a watershed. The smaller the stream, the lower its numerical classification: 1) A first order stream has no tributaries, normally originates from springs and/or seeps and has a small drainage area. First order streams are the smallest streams regulated by this Article; the term does not include roadside ditches; 2) Second order streams are formed by the confluence of two first order streams; 3) Third order streams are formed by a confluence of two second order streams; 4) Fourth order streams are formed by a confluence of two third order streams; and 5) For the purpose of this Article, a Fifth order stream is defined as the Little Blue River.

STREAM SETBACK means the specified distance from each side of a stream bank or water resource in which restrictions on development activities and land uses are imposed.

STREAMSIDE ZONE means the twenty-five foot (25') zone adjacent to the stream bank.

VIEW CORRIDOR is one or more areas, not to collectively exceed the lesser of (i) seventy five feet (75') or (ii) forty percent (40%) of the width of any platted lot or parcel which is within a stream buffer, which may be pruned by permit to a level of not less than three feet (3') above the ground to provide aesthetic views of Streams for the owner of such lot or parcel.

WATER POLLUTION HAZARD means any land use or activity that causes a relatively high risk of potential water pollution.

WETLANDS are those areas that are inundated or saturated by surface water 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.

#### SEC. 7.05.003. APPLICABILITY

A. This Article shall apply to all land or new development within the stream corridor, as defined by this Article and applied to designated stream segments identified on the most current map adopted by the City Council by resolution and as Exhibit A incorporated herein by reference. No development shall occur on a parcel of land that is within or partially within the defined stream corridor, except in accordance with this Article; provided, however, that this Article shall not apply to land or to development which:

1. Is on land covered by an approved, unexpired preliminary plat or preliminary plan, where such approval was given prior to the effective date of this Article; or
2. Is covered by an unexpired building permit issued prior to the effective date of this Article, in accordance with City Code, and platting was not required prior to issuance of a building permit.
3. Is the subject of a Federal Clean Water Act Individual 404 Permit, **issued after timely notice of the application for such permit is provided to the City**, that allows a stream to be eliminated. However, if a development obtains a Federal Clean Water Act Individual 404 Permit that allows a stream to be relocated or otherwise altered, this Article will apply to the new stream location.
4. Is being used for agricultural operations. -

B. For the purpose of this Article, the Little Blue Trace Park shall be deemed to be the stream buffer for the Little Blue River and the East Fork of the Little Blue River.

C. No development shall be approved that proposes development on any parcel of land wholly or partially within the defined stream corridor unless the proposed development is in compliance with the applicable provisions of this Article.

D. Except as otherwise provided herein, the Director of the Water Pollution Control Department shall administer, implement and enforce the provisions of this Article. Any powers granted to or duties imposed upon said Director may be delegated by said Director to other City personnel or authorized representatives.

E. The City is authorized to develop administrative policies and guidelines to implement this Article.

F. Stream buffers, as required by this Article, are a part of the City's Storm Water Management Program.

#### SEC. 7.05.004. PLAN REQUIREMENTS

A. A buffer plan approved by the City is required for all projects where development or redevelopment is to occur on property that includes or is adjacent to a stream, except as provided by Sec. 7.05.003. The plan shall set forth an informative, conceptual, and schematic representation of the proposed activity so as to enable the City an opportunity to make a reasonably informed decision regarding the proposed activity.

B. An application for approval of a buffer plan shall be made in writing to the Director of Water Pollution Control and shall be accompanied by a permit application fee of One Hundred Dollars (\$100.00).

C. The delineation of the stream buffer and its component zones shall be shown on any building construction plans, preliminary plat and final plat, as may be required by City Code. The buffer plan shall be submitted in conjunction with the required grading and engineering plans for any development, and the boundaries of the stream buffer shall be clearly delineated on the final grading plan.

D. A buffer plan shall contain the following information:

1. A location or vicinity map showing the limits of the FEMA-delineated 100-year floodplain.
2. Field-delineated and/or surveyed streams, springs, bodies of water, wetlands (include a minimum of 150 feet into adjacent properties).
3. Labels for the stream buffer zones and any structures ~~and~~ or activities by the zone where they are to be located.
4. A delineation of areas with slope greater than fifteen percent (15%) with the percentage slope shown.

E. Boundary markers shall be installed prior to final approval of the required clearing and grading plan. Construction fencing shall be placed at the outer edge of the middle zone (as defined in Section 7.05.005.C) to delineate the buffer and shall be maintained throughout the construction of the project.

F. All final plats and survey developments prepared for recording shall clearly:

1. Show the extent of any stream buffer on the subject property, including the delineation of the streamside, middle and outer zone;
2. Provide a note to reference any stream buffer stating: "There shall be no clearing, grading, construction or disturbance of vegetation";
3. Provide a note to reference any conservation easements governing all stream buffer areas stating: "Any stream buffer shown hereon is subject to conservation easements that restrict disturbance and use of these areas."
4. The recorded conservation easements are to be referenced by book and page.

#### SEC. 7.05.005. DESIGN STANDARDS FOR STREAM BUFFERS

A. A buffer for a stream shall consist of a strip of land extending along both sides of a stream including its adjacent wetlands, or slopes greater than fifteen percent (15%).

B. The required width for all stream buffers (i.e., the base width) shall be a minimum average of one hundred feet (100') on each side of the stream beginning at the stream bank, with the requirement to expand the buffer depending on the size and type of the stream and the presence of wetlands or slope over fifteen percent (15%).

1. First order streams shall have a minimum average buffer width of one hundred feet (100') on each side.
2. Second order streams shall have a minimum average buffer width of one hundred twenty-five feet (125') on each side.
3. Third order streams shall have a minimum average buffer width of one hundred fifty feet (150') on each side.
4. Fourth order streams shall have a minimum average buffer width of two hundred feet (200') on each side.

C. The stream buffer shall be composed of three distinct zones on each side of the stream, with each zone having its own set of allowable uses and vegetative targets as specified in this Article:

##### 1. Streamside Zone

- a. Protects the physical and ecological integrity of the stream ecosystem with undisturbed vegetation.
- b. Begins at the stream bank of the active channel and extends twenty-five feet (25').
- c. Allowable uses within this zone are highly restricted to low impact recreational uses such as walking, fishing and bird watching;
- d. Stormwater monitoring activities, and utility and road crossings may be allowed when approved by the City.

##### 2. Middle Zone

- a. Protects key components of the stream with mature vegetation adapted to the region and provides distance between upland development and the streamside zone.
- b. Begins at the outer edge of the streamside zone and extends a minimum of fifty feet (50') plus any additional buffer width as specified in Section 7.05.005.B.
- c. For fourth (4th) order streams, the middle zone width may be set at one hundred feet (100') when the outer zone width is extended to seventy-five feet (75'); provided that no permanent structures will be placed in the outer zone.
- d. The middle zone width will be expanded to include lands with slope greater than fifteen percent (15%), where they occur.

e. The middle zone width may be varied across the development to protect specific areas while providing continuity of the buffer, so long as the overall average width of the zone is maintained as required, with the review and approval of the City, except as provided in Sec. 7.05.005.C.2.c.

f. Allowable uses within the middle zone are restricted to recreational uses, utility easements, and stormwater facilities, as approved by the City.

3. Outer Zone

a. Prevents encroachment into the stream buffer and filters runoff from residential and commercial development.

b. Begins at the outward edge of the middle zone and provides a minimum width of twenty-five feet (25') between the middle zone and the nearest permanent structure, except as provided in Sec.7.05.005.2.C.

c. Restricts permanent structures and impervious cover, with the exception of recreational paths, and encourages the planting of appropriate vegetation. The administrative guidelines will include a detailed list of approved plantings.

d. The outer zone may overlap/include any side or rear yard setbacks, as may be required by City Code and it may be fenced.

D. Nothing in this section shall prohibit the placement of structures for the control and monitoring of water quality and water quantity within a stream buffer, as required by the City.

SEC. 7.05.006. BUFFER MANAGEMENT AND MAINTENANCE

A. The stream 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 restricted within Zones 1 and 2 of the stream buffer, except with approval by the City:

1. Clearing of existing vegetation
2. Soil disturbance by grading, stripping, or other practices
3. Filling or dumping
4. Drainage by ditching, underdrains, or other systems
5. Use, storage, or application of pesticides, except for spot spraying of noxious weeds or non-native species consistent with recommendations of the City.
6. Housing, grazing, or other maintenance of livestock
7. Storage or operation of motorized vehicles, except for maintenance and emergency use approved by the City.

B. The following structures, practices, and activities are permitted in the stream buffer, with specific design or maintenance features, subject to the review of the City:

1. Roads, bridges, paths, and utilities:
  - a. The right-of-way should be the minimum width needed to allow for maintenance access and installation.
  - b. The angle of the crossing shall be perpendicular to the stream or buffer to minimize clearing requirements.
  - c. The minimum number of road crossings should be used within each subdivision, and no more than one crossing is allowed for every one thousand feet (1,000') of buffer.
2. Stream restoration projects, facilities, mitigation and activities approved by the City are permitted within the stream buffer, in accordance with the City's Riparian Corridor Management Plan.
3. Water quality monitoring and stream gauging are permitted within the stream buffer.

4. Individual trees within the stream buffer in danger of falling, causing damage to dwellings or other structures, or causing blockage of the stream, may be removed with approval of the City.

5. View Corridors may be created through the stream buffer by permit.

C. Timber cutting techniques may be undertaken within the stream buffer under the advice and guidance of the City if necessary to preserve the buffer from extensive pest infestation, disease infestation, or threat from fire.

D. Vegetation Control: The stream buffer will be subject to nuisance controls, however the streamside zone and middle zone are exempt from City Code provisions that require mowing.

#### SEC.7.05.007. OWNERSHIP AND RESPONSIBILITY FOR STREAM BUFFERS

A. The stream buffer areas must be established and recorded by the developer or property owner through one or more of the following methods to provide for the preservation of the buffer area in perpetuity:

1. A drainage or conservation easement; or
2. Inclusion in a development common area; or
3. Dedication to the City of Independence with the City's acceptance.

B. Developments and projects must be designed so that all established stream buffers are accessible to facilitate inspection, maintenance and other activities.

#### SEC.7.05.008. VIOLATIONS

A. The City shall have the authority to issue orders to any person to immediately cease and desist violations of any provision of this Article, of any approved Buffer Plan or of any consent orders entered into with the City under this Section and to immediately correct said violations.

B. When any person is violating, or has violated, any provision of this Article or of an approved Buffer Plan, the City may issue to that person a notice of violation.

1. A notice of violation shall be in writing, shall describe the nature of the violation, including a reference to the provision within this Article that has been violated, and shall set a reasonable time for correction of the violation.
2. A person receiving a notice of violation shall submit to the City an explanation of the violation and a plan for the correction thereof within ten (10) days after receipt of the notice, unless otherwise specified in the notice. The plan shall include specific actions which will be taken to remedy the violation. Submission of this plan shall not relieve said person of liability for any violations occurring before or after receipt of the notice of violation, nor other violations not addressed in the notice.
3. The City may enter into Consent Orders, assurances of voluntary compliance or other similar documents establishing an agreement with the any person. The agreement may include specific action to be taken by said person to correct the noncompliance within a specified time period.

C. The City may petition the Circuit Court for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the Buffer Plan, order, or other requirements imposed by this Article.

D. Any person who violates any provision of this Article, or any order issued by the City hereunder, shall be subject to the following:

1. Stop work orders, or denial of applications for, or suspension or revocation of any license or permit issued by the City of Independence.
2. Prosecution in Municipal Court with fines of up to Five Hundred Dollars (\$500.00). Each day that a violation continues shall be deemed a separate offence.
3. Recovery of the costs to restore and repair buffer areas.
4. Civil action for injunctive relief and recovery of costs, including legal fees.

#### SEC. 7.05.009. APPEALS.

A. If a buffer plan is denied, the applicant shall first request reconsideration by the Director. Failure to request reconsideration within thirty (30) days shall be deemed a waiver of the appeal process. Such request shall be in writing and shall state with specificity why the buffer plan has been incorrectly denied. In reconsideration, the Director shall determine whether the code was incorrectly interpreted in evaluating the buffer plan and shall also have the authority to grant variances to the code if:

1. The development has had buffer(s) applied in conformance with previously issued requirements.
2. The development has slopes or special geological conditions, such as bluffs or rock outcroppings, or existing structures, in which case the middle and outer zone widths may be reduced at some points so long as the average width of the buffer throughout the development meets the minimum requirement and the stream side zone is not reduced.
3. The development has special hydrologic conditions, due to its position within a watershed, in which case the middle and outer zone widths may be reduced.
4. The development will provide compensatory mitigation to cause and effect restoration, including but not limited to the utilization of best management practices and restorative techniques to compensate for reduction of the middle and outer zones widths, that accommodate the development plan.

B. Appeals to the Board of Adjustment may be made by any person aggrieved or affected by any decision of the Director of Water Pollution Control. Such appeal shall be made within a reasonable time as provided by the rules of the Board by filing with the Director of Water Pollution Control a notice of appeal specifying the grounds thereof. The Director of Water Pollution Control to whom the appeal is submitted shall forthwith transmit to the Board all the papers constituting the record of the action appealed. An appeal stays all proceedings in furtherance of the action appealed from unless the Director of Water Pollution Control, from whom the appeal is taken, certifies to the Board of Adjustment that after the notice of appeal shall have been filed, a stay would cause immediate peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order that may be granted by the Board of Adjustment or a court of jurisdiction on application and notice to the Director of Water Pollution Control and due cause is shown.

C. The Board of Adjustment shall fix a time for the hearing of the appeal within thirty days following its receipt, give public notice thereof by publication one time in a newspaper of local circulation in Independence not less than five (5) and not more than fifteen (15) days prior to the date of said hearing, and decide the same within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney.

D. The Board of Adjustment as created by the Charter of the City of Independence shall take action only in reference to a specific development when it has determined that a Buffer Plan has been incorrectly denied, or when it has determined that this Article has been incorrectly interpreted, or when the appellant proves undue and unnecessary hardship due to a provision or provisions herein contained as applied to a specific development. Upon determination of incorrect action by the

Director of Water Pollution Control or of undue or unnecessary hardship, the Board may issue a variance signed by the chairman. A copy of the variance shall be sent to the Director of Water Pollution Control, who shall approve the Buffer Plan including the terms of the variance. In no case shall the Board of Adjustment issue a variance reducing the required width of the stream buffer to less than one hundred feet (100') on each side of the stream beginning at the stream bank. The Board of Adjustment must make findings based on evidence presented to it in each specific case that:

1. The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in this Article; and
2. The plight of the owner is due to unique circumstances.

E. For purposes of implementing the above rules, the Board shall, in making its determination as to whether there are practical difficulties or particular hardships, take into consideration the extent to which the following facts favorable to the applicant have been established by the evidence:

1. The particular physical surroundings, shape, or topographical condition of the specific property involved would result in a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
2. The conditions on which the petition for a variance is based would not be applicable, generally, to other developments;
3. The purpose of the variance is not based exclusively upon a desire to make more money out of the property;
4. The alleged difficulty or hardship has not been created by any person presently having an interest in the property; and
5. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.

F. The Board of Adjustment may impose such conditions and restrictions upon the development benefited by a variance as may be necessary to comply with the standards set out in this section, to reduce or minimize the injurious effect of such variance upon other property in the neighborhood, and to better carry out the general intent of this Article.

#### SEC. 7.05.010. CONFLICT WITH OTHER REGULATIONS

Where the standards and management requirements of this Article 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.

SEC. 7.05.011 – 7.05.999 RESERVED.

**Section 2.** That all other parts and provisions of the City Code not in conflict herewith shall remain in full force and effect unless previously or subsequently amended or repealed.

PASSED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, BY THE CITY COUNCIL  
OF THE CITY OF INDEPENDENCE, MISSOURI.

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Presiding Officer of the City Council of  
The City of Independence, Missouri

ATTEST:

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City Clerk

APPROVED AS TO FORM AND LEGALITY

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City Counselor

REVIEWED BY:

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City Manager