

ARTICLE 4-1-O

STREAM SETBACKS

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It is the intent of this Article to reasonably regulate Development, uses and activities within identified Steam Corridors and to thereby preserve, conserve, manage disturbance, and attempt to restore the City's natural stream corridors, pursuant to the City's Home Rule authority, Article 12, § 5 of the Kansas Constitution, and in accordance with state and federal statutes and the goals of the City's Comprehensive Plan, so that the following objectives may be achieved:

- A. regulate the land use, location, and engineering of all development within the Stream Corridor to ensure consistency with the intent and objectives of the City's Storm Water and Watershed Management Master Plan, its Stream and Natural Resource Inventory and accepted conservation and Best Management Practices, and to work within the carrying capacity of existing natural resources;
- B. assist in the implementation of pertinent federal, state, and local laws concerning clean water, pollutant discharges, storm and surface water management, erosion and sediment control and flood control;
- C. improve surface and ground water quality by reducing the amount of nutrients, sediment, organic matter, pesticides, and other harmful substances that reach watercourses, wetlands and subsurface and surface water bodies by using scientifically-proven processes including filtration, deposition, absorption, adsorption, plant uptake, and denitrification, and by improving infiltration, encouraging sheet flow and stabilizing concentrated flows;

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D. improve and maintain the safety, reliability, and adequacy of the water supply for domestic, agricultural, and other uses, in addition to supporting recreational uses and sustaining diverse populations of aquatic flora and fauna;

E. preserve and protect areas that intercept storm and surface water runoff, wastewater, subsurface flow and/or deep groundwater flows from upland sources and reduce, to the maximum extent practicable, the effects of the entry of associated nutrients, sediment, organic matter, pesticides, or other pollutants into surface waters, as well as provide wildlife habitat, moderate water temperature in surface waters, attenuate flood flow, and, where appropriate and feasible, provide opportunities for recreational activities;

F. manage Development within floodplains, on land adjacent to stream segments with greater than 15% slopes, and other environmentally sensitive areas to minimize hazards to life, property, and stream features;

G. recognize that natural features contribute to the welfare and quality of life of the City's residents;

H. provide natural, scenic, and recreation areas within and adjacent to Stream Corridors for the community's benefit; and

I. create added value to lands adjacent to Stream Corridors.
(Ord. 4479, Add, 03/26/2002)

Section 4-1-O-2 DEFINITIONS.

In this Article, these words and phrases have the following meaning:

A. **“Best Management Practices or BMPs”**: The utilization of methods, techniques or products that have been demonstrated to be the most effective and reliable in minimizing adverse impacts on water bodies and their adjacent Stream Corridors.

B. **“Clearing”**: Any act by which vegetative cover, structures or surface material is removed, including, but not limited to, surface layer, root mat or topsoil removal.

C. **“Development”**: Any human-made change to improved or unimproved real estate including, but not limited to buildings or other structures, mining, dredging, filling, grading, site clearance, paving, excavation, drilling operations and storage of equipment and materials.

D. **“Development Application or Application”**: All applications required by the City Code as a prerequisite to initiation of development, including, but not limited to, a building permit application.

E. **“Edge of the Stream”**: A line formed by the outer boundary of the stream as delineated by the bankful or channel-forming flow caused by approximately the two-year rainfall event.

F. **“Ephemeral Stream”**: A stream that has flows only in direct response to effective precipitation, i.e. during and immediately following a major storm. Ephemeral streams do not intercept groundwater flow and therefore have no base flow. Instead, ephemeral streams usually contribute to groundwater seepage through their porous channel beds.

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G. **"Enhancement"**: In the context of this Article, a process undertaken to rehabilitate or improve an existing degraded Stream Segment by increasing native plant diversity or removing exotic plant species and increasing water quality, wildlife habitat or erosion controls.

H. **"Erosion"**: The process by which the ground surface is worn away by the action of the wind, water, ice, gravity, or artificial means, and/or land disturbance.

I. **"Filling"**: Any act by which soil, rock, organic material or any other material is deposited, placed, pushed, pulled or transported and includes the conditions that result from that act.

J. **"Floodplain"**: The floodway and floodway fringe as identified by the Federal Insurance Administration through its report entitled "The Flood Insurance Study of the City of Lenexa, Kansas," dated February 1, 1977, or such other designation of the floodplain as is subsequently adopted by the City, and representing the regulated 100-year water surface and corresponding elevations.

K. **"Intermittent Stream"**: A stream of mixed character, behaving as a perennial stream at certain times of the year and an ephemeral stream at other times. Depending on seasonal conditions these streams may feed to and from the groundwater.

L. **"Grading"**: Any act by which soil is cleared, stripped, moved, leveled, stockpiled, or any combination thereof, and includes the conditions that result from that act.

M. **"Mitigation"**: A negotiated action involving the avoidance, minimization or compensation for possible adverse impacts.

N. **"Native Vegetation"**: Vegetation comprised of plant species that are indigenous to the area in question.

O. **"Public Works Director"**: The individual appointed by the City as the Public Works Director or his/her duly authorized designee.

P. **"Restoration"**: The act of improving, enhancing, and reestablishing a once viable and now degraded Stream Segment to a state in which its stability, functions, and values approach its unaltered state.

Q. **"Routine Repair and Maintenance"**: Any activities directed at preserving an existing allowed use or facility, without expanding the development footprint or site use.

R. **"Slopes"**: The inclined surface of a fill, excavation or natural terrain expressed as a ratio of horizontal distance to vertical distance over a measured inclined surface.

S. **"Stream"**: A body of running water moving over the earth's surface in a channel or bed, such as a creek, rivulet or river that flows at least part of the year, including perennial and intermittent streams. Streams are dynamic in nature and their structure is maintained through build-up and loss of sediment.

T. **"Stream Corridor or Corridor"**: An area established by this Article surrounding an identified Stream Segment, including adjacent floodplains and lands with slope greater than 15%. The Stream Corridor is a protective zone for the adjacent Stream Segment. Three zones, the streamside, middle and outer zones, are located on each side of the Stream Segment. Together, these zones and the Stream Segment compose the Stream Corridor.

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U. **"Stream Order or Order"**: Connotes a streams position within a watershed. First Order streams have no tributaries, typically have small drainage areas and include intermittent and ephemeral streams. Second Order streams are formed by the confluence of two first Order streams. Third Order streams are formed by the confluence of second Order streams. All Order streams referenced in this document are indicated as streams lines on the Johnson County AIMS plainimetric data.

V. **"Stream Segment or Segment"**: Any stream segment identified in the Lenexa Stream and Natural Resource Inventory.

W. **"Stream Types"**:

1. **Type 1**: High-quality naturally occurring channels with little negative conspicuous impact. Erosion and sedimentation is low, water quality indicators are positive and the surrounding riparian zone includes healthy, mature successional woodland or other high-quality environment (e.g. prairie buffer, lightly grazed, grassed, pasture).

2. **Type 2**: Channel with some down or side cutting though constrained by bank and bed composition. Water quality generally is good. The riparian zone is largely intact although typical native plant associations may exhibit some degree of perturbation.

3. **Type 3**: Riparian zone degradation is more noticeable though some remnant plant associations may remain. Overall plant cover tends to be comprised of an immature tree canopy. Restoration potential exists although erosion and sedimentation may be greater than desirable.

4. **Type 4**: Stream corridor exhibits greater impacts, including significant bank erosion and sedimentation indicators. Surrounding riparian zone may be intact but is not representative of a recognized native plant association typically found in a high quality, healthy stream environment.

5. **Type 5**: Stream channel is highly degraded and surrounding riparian zone has become impacted to the point of providing little protection or benefit to stabilization of channel and banks, or to water quality. Erosion and sedimentation indicators are significant and water quality is questionable with noticeable nutrient loading often associated with urban runoff, row-cropped agricultural landscapes, and point source discharges from septic, and sanitary water treatment sites.

X. **"Structure"**: Anything constructed or erected that requires location on the ground or attachment to something having a location on the ground, including, but not limited to signs, conventional television or satellite antennas and excepting customary utility poles, retaining walls and boundary fences.

Y. **"Utility"**: Buildings, structures or any constructed portion of a system that provides for the production, transmission, conveyance, delivery or furnishing of services including, but not limited to, heat, light, water, power, natural gas, sanitary sewer, storm water, telephone and cable television.

Z. **"Variance"**: A variation from a specific requirement in this Title, as applied to a specific piece of property pursuant to Section 4-1-K of this Title.
(Ord. 4479, Add, 03/26/2002)

Section 4-1-O-3 APPLICABILITY.

A. This Stream Setback Ordinance 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

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current map adopted by the City Council by resolution and as Exhibit A* (copy of Exhibits A and B are available at City Hall or on the City's website at <http://www.ci.lenexa.ks.us/watershed/ordinances.html>) and 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. if platting is not required prior to issuance of a building permit, is covered by a unexpired building permit issued prior to the effective date of this Article, in accordance with Chapter 4 of Title 4 of the City Code.

*As revised on September 2, 2003

B. No Development Application 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.

(Ord. 4590, Amended, 11/25/2003; 4587, Repealed, 10/14/2003, Ord. 4587 repealed Ord. 4579; Ord. 4579, Amended, 09/23/2003; Ord. 4479, Add, 03/26/2002)

Section 4-1-O-4 STREAM CORRIDOR.

Stream Corridor widths have been determined by Stream Order, 1 through 3 and by Type, 1 through 5, as shown in Table 1 below. Type 1 and 2 Stream Segments are categorized as Sensitive Stream Segments, Type 3 Stream Segments are categorized as Restorable Streams and Types 4 and 5 are categorized as Impacted Streams. The location of designated Stream Segments shall be as delineated on Exhibit A**. At all designated Stream Segment locations, the Stream Corridor shall consist of three zones, the Streamside Zone, Middle Zone and Outer Zone. The width of each zone within the Stream Corridor is defined below. See Exhibit B** (copy of Exhibits A and B available at City Hall and on our website at <http://www.ci.lenexa.ks.us/watershed/ordinances.html>) for an illustration of the Stream Corridor, as defined.

Table 1: Minimum Total Stream Corridor Width*

Stream Order	Types 1-2 (Sensitive Streams)	Type 3 (Restorable Streams)	Types 4-5 (Impacted Streams)
1	150 feet	125 feet	100 feet
2	250 feet	200 feet	150 feet
3 +	300 feet	250 feet	200 feet

*Note: Width of the Middle Zone will be expanded, if necessary, to include Floodplains and lands with slope greater than 15%.

**As revised on September 2, 2003.

The general guidelines used to determine the width of the three zones for each of the categories of Stream Segments are as follows:

A. Streamside Zone = 25' from the Edge of the Stream, and measured horizontally from the edge.

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B. Middle Zone = Variable width zone determined by Stream Segment type and Order, and measured horizontally from the outer boundary of the Streamside Zone to the inner boundary of the Outer Zone; *provided however*, that the minimum width of the Middle Zone on each side of the stream shall be at least half of the minimum total width of the Middle Zone as set forth in Table 1. The Middle Zone includes a distance that comprises all lands with slope greater than 15% and Floodplains; *provided that*, these features occur, in part, within the Streamside or Middle Zone.

C. Outer Zone = 25' from the outer boundary of the Middle Zone, measured horizontally from that boundary.

Note: Where manmade ponds interrupt streams, the Stream Corridor as herein defined shall stop at the pond and resume on the other side thereof. Where ponds are removed or filled in as part of development, the stream shall be restored through that area and the Stream Corridor buffer shall be created using the typology for adjacent stream sections.

(Ord. 4590, Amended, 11/25/2003; Ord. 4587, Repealed, 10/14/2003, Ord. 4587 repealed Ord. 4579; Ord. 4579, Amended, 09/23/2003; Ord. 4479, Add, 03/26/2002)

Section 4-1-O-5 PROHIBITIONS.

Any use or activity not identified as permitted by this Article within any Stream Corridor zone is prohibited in all identified Stream Corridors. Mowing or clearing of the Streamside and Middle zones shall be specifically prohibited.

(Ord. 4479, Add, 03/26/2002)

Section 4-1-O-6 REGULATED USES, STRUCTURES AND ACTIVITIES.

A. **General Applicability to Stream Corridor.** No development shall be undertaken on land in a Stream Corridor unless a Development Application has been approved authorizing the applicant to perform the development proposed therein; *provided that*, no Development Application shall be approved unless the development proposed therein is, in all respects, in conformity with the requirements of this Article.

B. Uses and activities permitted in the Streamside Zone.

1. Conservation uses, wildlife sanctuaries, nature preserves, forest preserves, fishing areas, and passive areas of parklands.
2. Unpaved recreational trails and greenways.
3. Education/scientific research.
4. Stream bank stabilization and other storm water BMPs approved by the Public Works Director.
5. Activities associated with the Restoration and Enhancement of Stream Corridors.
6. Excavation and fill required to plant any new trees or vegetation.

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7. Installation of water and wastewater facilities, *provided that*, the owner of the facilities provides information to the City that is sufficient to allow the Public Works Director to determine that the installation of the facilities in Middle Zone is unfeasible. Feasibility will be determined through consideration of factors, such as geology, topography and the presence of unique habitat in the Stream Corridor. When installation of such facilities does occur in the Streamside Zone as herein provided, such installation and construction activities must comply with the recommendations contained in the section titled "Resource Protection and Mitigation Measures" for utility construction contained with the Lenexa Streams Inventory, dated December 10, 2001. Water and wastewater facilities will be permitted to cross the Streamside Zone and Stream as necessary, provided that, the number of crossings is minimized to the greatest extent possible.

8. Public infrastructure.

C. Uses and Activities Permitted in the Middle Zone.

1. All uses and activities permitted in the Streamside Zone.

2. Paved recreational trails.

3. Installation of utilities, including water and wastewater facilities. Such installation shall comply with the recommendations contained in the section titled "Resource Protection and Mitigation Measures" for utility construction contained in the Lenexa Streams Inventory, dated December 10, 2001.

D. Uses and Activities Permitted in the Outer Zone.

1. All uses and activities permitted in the Middle Zone.

2. Passive uses, such as camps, campgrounds, picnic areas and golf courses.

3. Minor recreational structures and surfaces that are ancillary to passive recreational uses as set forth in subparagraph 2 above; *provided that*, the total impervious area created by such structure(s) in residential areas shall not exceed two hundred (200) square feet per single family residential lot. Examples of such permitted structures include, but are not limited to, decks, gazebos, picnic tables, playground equipment and small concrete slabs built to accommodate such permitted structures.

4. Existing agricultural uses that incorporate recognized conservation BMPs.

5. Fences; provided however, that such fences must be constructed so as not to impede floodwaters.

E. Single Family Residential – Rear Yard Allowance

The rear yard of a single-family residential use may extend into the Middle Zone and the Outer Zone; provided, however, that the rear of the actual residential structure may not be located nearer than 20' from the outer edge of the Outer Zone and no ancillary structure may be located in the Middle Zone (only those ancillary structures otherwise permitted by this Title may be located in the Outer zone), and further that any development satisfies the open space and setback requirements of this Article.

F. Uses Subject to Federal and/or State Approval.

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The following in-stream activities are regulated and require approval from United States Corp of Engineers or Environmental Protection Agency, the Kansas Department of Health and Environment or other appropriate federal and state agencies:

1. dredging,
2. filling,
3. excavation,
4. draining, and
5. clearing;

provided that, the requisite state and/or federal approvals are provided to the City.

(Ord. 4590, Amended, 11/25/2003; Ord. 4587, Repealed, 10/14/2003, Ord. 4587 repealed Ord. 4579; Ord. 4579, Amended, 09/23/2003; Ord. 4479, Add, 03/26/2002)

Section 4-1-O-7 ACTIVITIES PERMITTED IN ALL STREAM CORRIDOR ZONES.

The following activities are allowed within all zones of the Stream Corridor:

A. Existing and ongoing agricultural activities. The activities cease to be existing when the area on which they were conducted has been converted to a nonagricultural use or has lain idle for more than five years or so long that modifications to the hydrological regime are necessary to resume agricultural activities, unless the idle land is registered in a federal or state soils conservation program.

B. Maintenance/repair of public right-of-way, streets, public structures.

C. Site investigation work necessary for initial land use applications, such as surveys, soil logs and percolation tests, and special studies as required by this Title; provided, however, that the land must be restored to its pre-investigation condition.

D. Reconstruction, remodeling or maintenance of existing structures, *provided that* the activity does not expand the existing use beyond the previously approved use so as to physically extend into or adversely affect the Stream Corridor. If the use or activity involves a legal non-conforming use, the provisions of Title 4, Chapter 1, Article J of the City's Unified Development Code shall apply.

E. Routine maintenance of existing landscaping within a lot's boundaries, including pruning, removal of diseased trees or other diseased vegetation and replacement of individual plants when necessary to maintain a unified landscape theme.

F. Control of vegetation defined as state noxious weeds by K.S.A. 2-1314 et seq., by the recommended methods or alternative methods established by the State Board of Agriculture, Noxious Weed Division.

G. Emergency action necessary to prevent imminent threat or danger to public health or safety, or to public or private property, or serious environmental degradation may be taken at any time without advance notice to the Public Works Director; *provided that*, the notice, as herein above required, shall be given at the earliest opportunity thereafter.

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(Ord. 4479, Add, 03/26/2002)

Section 4-1-O-8 NONCONFORMING USES AND STRUCTURES.

Nonconforming situations within the Stream Corridor shall be regulated in conformance with Title 4, Chapter 1, Article J of the City's Unified Development Code; provided, however, that the six month time frame for discontinuance contained in Section 4-1-J-2-B shall not apply to agricultural uses that are following prescribed BMPs for crop management; *provided, further*, that these nonconforming use provisions also shall not apply to the replacement or reconstruction of a structure that is proposed within the Stream Corridor because of environmental problems including, but not limited to, slope failure, erosion or flooding.

(Ord. 4479, Add, 03/26/2002)

Section 4-1-O-9 STREAM CORRIDOR DEVELOPMENT APPLICATION REQUIREMENTS.

A. All persons required to submit a Development Application, pursuant to any section of the City's Unified Development Code, shall, on the otherwise required submittals for that particular type of Development Application, show the exact location of the Stream Corridor and its three zones. Stream Corridor and zone location information must be accurately delineated on a legal property survey. If the proposed use within a Stream Corridor is agriculture-related, an Agriculture Resource Management Plan, including BMPs for erosion, nutrient, fertilizer, herbicide and pesticide control, consistent with the requirements of Kansas Department of Agriculture, also shall be submitted for review.

B. The City will review the location of the Stream Corridor, as shown in the Development Application, to determine whether it is consistent with the defined Stream Corridor for the designated Segment. If a discrepancy arises, the applicant may request that a City representative perform a site visit to view conditions on site with applicant to assist in making this determination. This determination shall be reported to the relevant decision maker as a part of the City staff's comments on the subject Development Application and shall also be reported to the applicant.

C. If the City determines that the locations shown in the Development Application are not consistent with the defined Stream Corridor for the designated segment, as defined and incorporated by this Article, the applicant shall be provided written notice of the inconsistency. The Public Works Director will be responsible for the final determination in cases of disagreement.

D. Any applicant who believes that the Public Works Director has incorrectly determined that the Development Application is inconsistent with the defined Stream Corridor for the designated segment, as defined by this Article, may appeal the decision of the Public Works Director using the procedure set forth in Section 4-1-O-14-B.

(Ord. 4479, Add, 03/26/2002)

Section 4-1-O-10 APPROVAL PROCESS.

All Development Applications covering land partially or wholly included within the Stream Corridor shall be processed, considered and acted upon in accordance with the procedures established in this Title for the type of Development Application submitted.

(Ord. 4479, Add, 03/26/2002)

Section 4-1-O-11 CONDITIONS OF APPROVAL.

The City shall have the authority to attach conditions to the approval of any Development Application as deemed necessary to alleviate adverse impacts on Stream Corridors and to carry out the provisions of this Article.

(Ord. 4479, Add, 03/26/2002)

Section 4-1-O-12 DEVIATIONS FROM REQUIREMENT APPLICABLE TO LANDS WITHIN STREAM CORRIDORS.

A. When considering any Development Application, the City may:

1. approve a reduction in the yard and setback requirements established by the underlying zoning district, of up to 25%, to maintain the width of Stream Corridor; and

2. alter the outer boundary of the Outer Zone of the mapped Stream Corridor allowing the width of the Outer Zone to become narrower than as mapped at some points within the property, that is included in the subject Development Application, to allow for the presence of an existing structure, as long as the Streamside Zone is not altered by the narrowing, and no new structures are built within the Floodplain.

B. The decision to approve or deny a request for a deviation from requirements applicable to lands within Stream Corridor shall be based on the following considerations:

1. sensitivity of the Stream Segment and affected critical habitats;
2. intensity of land use adjacent to the Stream Segment proposed for reduced Stream Corridor width; and
3. impact on Floodplain and stream functions.

C. A Stream Corridor deviation shall not be approved when the reduction would result in the Stream Corridor being narrower than the Floodplain or a width that does not include adjacent land with a slope of greater than 15%.

(Ord. 4479, Add, 03/26/2002)

Section 4-1-O-13 VARIANCE.

If an applicant believes that the requirements of this Article will result in an unnecessary hardship, the applicant may seek a variance through the procedures provided in Section 4-1-K-4-A of this Title.

(Ord. 4479, Add, 03/26/2002)

Section 4-1-O-14 APPEALS.

A. **Procedure for Appeals From the Effect of the Requirements in this Article.**

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1. An appeal to the Governing Body may be taken by any applicant aggrieved by any decision of the City requiring the applicant to conform to a Development Application covering land included within a Stream Corridor to the requirements of this Article and who alleges that the final decision of the City constitutes a "taking" without just compensation under the 5th Amendment to the United States Constitution or under the Kansas Constitution. On appeal, the burden will be on the appellant to establish, by the preponderance of the evidence:

a. with respect to a requirement, which is imposed as a condition of approval of the Development Application, that the applicant convey to the City an interest in land:

(1) that there is not an essential nexus between the challenged requirement and the public purposes sought to be achieved by the challenged requirement, or

(2) that, through an individualized determination, the challenged condition is not roughly proportionate both in nature and extent to the impact of the Development proposed in the Development Application; and

b. with respect to other requirements imposed by this Article, that:

(1) the requirements result in a denial of all beneficial economic or productive use of the property; or

(2) the requirements constitute a permanent physical occupation or invasion of the applicants property; or

(3) the requirement does not substantially advance a legitimate state interest; or

(4) the burden that the requirement places on the applicant is greater than the benefit that the requirement confers on the general public, considering all of the following and any other relevant factor: (a) the temporal relationship between the effective date of the ordinance and the date the applicant (or if the applicant is not the landowner, the date the landowner) acquired the property that is the subject of the Development Application; (b) the degree of interference created by the challenged requirements with the applicant's reasonable investment-backed expectations that the property could be developed free of the impacts of the challenged requirements; (c) whether, and if so the extent to which, the development proposed by the applicant is prejudicial to the health, safety or general welfare of others or constitutes a nuisance or nuisance-like activity; (d) the extent to which the challenged requirements achieve important public purposes; (e) the economic impact of the challenged requirements on the applicant's (or if the applicant is not the landowner, the landowner's) entire parcel and contiguous parcels commonly owned, as determined through a comparison of the value of this ownership without application of the challenged requirements with its value with application of the challenged requirements; and (f) that applicant is not necessarily entitled to the most profitable use of the property.

2. With respect to all appeals made pursuant to this subsection, the person seeking the appeal shall file a written notice of appeal with the City Clerk within 15 days of the date of the final decision from which the appeal is being taken. The notice shall specifically identify the grounds for the appeal and include all other information required by this Section to be submitted with the notice of appeal. If notice in compliance with all requirements of this Section is not timely filed, all rights to appeal the decision are waived.

3. The City Clerk, immediately upon receipt of the notice, shall transmit to the City Council all the papers constituting the record concerning the action from which the appeal is taken.

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4. A properly effectuated appeal shall stay all proceedings in furtherance of the action from which the appeal is taken.

5. The Governing Body shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as written notice to all interested parties.

6. The Governing Body, after considering all evidence presented by the applicant in support of the appeal and any evidence presented by the City in rebuttal or otherwise presented in relation to the appeal, shall render a written decision in the form of findings of fact and conclusions of law. If the Governing Body determines that applicant has not met the requisite burden of proof, it shall affirm, wholly or partly, the decision from which the appeal was taken. If the Governing Body determines that the applicant has met the requisite burden of proof, it may reverse or modify the decision from which the appeal was taken and make a decision respecting Development Application as it determines is appropriate and in conformity with all applicable laws. In making this new decision, the Governing Body may attach any condition it deems necessary to further the purposes of this Article.

B. Procedures for Appeals of the Stream Corridor Location.

1. An applicant who believes that the Public Works Director has incorrectly determined that the Development Application is inconsistent with the defined Stream Corridor for a designated Stream Segment as provided for by Section 4-1-O-9 of this Article, may appeal the Public Works Director's determination to the Board of Zoning Appeals in conformity with Article 4-1-K of this Chapter.

2. The appeal shall be in writing and a copy shall be simultaneously provided to the Public Works Director. The written appeal shall identify the specific grounds for the appeal, including the exact locations of the Stream Corridor that the applicant disputes. The notice shall also be accompanied by a Stream Corridor Delineation Report. The Report shall include:

- a. a surveyed site plan covering all property that is the subject of the Development Application, which shows the property's topography;
- b. drainage flow on the property;
- c. the location of streams, identified by the Order of tributary and their type (based on flow, width, quality, critical habitat, value and function);
- d. the ordinary high-water mark of the streams;
- e. the three zones of the Stream Corridor as defined in Section 4-1-O-3 of this Article;
- f. a tree and native vegetation inventory;
- g. a delineation of areas with slope greater than 15% (with the percentage slope shown);
- h. critical habitat contiguous to the streams;
- i. drinking water sources on the property;
- j. related water right information for each stream;

k. designation of the Floodplain; and

l. all other information required by the Board of Zoning Appeals to be submitted for its consideration.

3. On appeal, the burden will be on the appellant to establish, by clear and convincing evidence, that the Development Application is consistent with the defined Stream Corridor for that designated Stream Segment, as defined by this Article.

4. The Board of Zoning Appeals, after considering all evidence presented by the applicant in support of the appeal and any evidence presented by the City in rebuttal or otherwise presented in relation to the appeal, shall render a written decision. If the Board of Zoning Appeals determines that applicant has not met the requisite burden of proof, it shall affirm, wholly or partly, the decision of the Public Works Director. If the Board of Zoning Appeals determines that the applicant has met the requisite burden of proof, it may reverse or modify the decision of the Public Works Director and make a decision respecting Development Application as it determines is appropriate. In making this new decision, the Board of Zoning Appeals may attach any condition it deems necessary to further the purposes of this Article.

(Ord. 4479, Add, 03/26/2002)

Section 4-1-O-15 APPEAL TO DISTRICT COURT.

Any person or persons jointly or severally aggrieved by any final decision on appeal may present to the District Court of Johnson County, Kansas, a petition duly verified appealing the decision. The petition shall set forth that the decision is illegal, in whole or in part, and specify the ground of its illegality. The petition shall be presented to the court within thirty (30) days after the decision is issued or it shall be barred.

(Ord. 4479, Add, 03/26/2002)

Section 4-1-O-16 NOTIFICATION; RECORDATION.

The following title and plat notification requirements concerning stream corridors and associated development and use restrictions shall be required.

A. **Notice on Title.** The owner of any property within a Stream Corridor, upon the approval of a Development Application covering property containing a Stream Corridor (which does not involve the approval of a final plat) shall record a notice of presence for each Stream Corridor with the Johnson County Register of Deeds. This recording shall contain notice of the Stream Corridor, the application of this Article to the property, and the limitations on actions in or affecting such Stream Corridor. The applicant must submit proof that the notice has been legally recorded before the final approval for development is issued. The notice shall run with the land and failure to provide this notice to any purchaser prior to transferring any interest in the property shall be in violation of this Article. The notice shall be substantially as set forth below:

STREAM CORRIDOR NOTICE

Legal Description:

City Code of Lenexa, Kansas

Present Owner:

Notice: This property is located within or contains the following Stream Corridor, as defined and regulated in the City of Lenexa, Kansas' Code Article 4-1-O:

Restrictions on the use or alteration of land within the Stream Corridor may apply.

Application #___ filed on (Date).

Signature of owner(s).

Notarization:

*State of Kansas }
Johnson County }*

On this day personally appeared before me to me known to be the individual(s) described in and who executed the within and foregoing instrument and acknowledged that they freely and voluntarily signed the same for the uses and purposes therein stated.

Given under my hand and official seal this day of ____.

Notary Public in and for the state of Kansas, residing at ____.

B. Notice on Plat. For all subdivision proposals within the Stream Corridor, the applicant shall include a notice on the face of the plat. The notice shall be substantially as set forth below:

Notice: This site lies within a protected Stream Corridor, as defined and regulated in City of Lenexa, Kansas Code, Article 4-1-O.

Restrictions on the use or alteration of the Stream Corridor may apply.
(Ord. 4479, Add, 03/26/2002)

Section 4-1-O-17 ENFORCEMENT.

The Public Works Director is authorized and empowered to enforce the requirements of this Article in accordance with the procedures set forth in Section 4-1-L-3 of this Chapter. In doing so, the Public Works Director shall have all the enforcement powers and may employ all or any of the remedies set forth in Sections 4-1-L-2 and 4-1-L-4 of this Chapter.
(Ord. 4479, Add, 03/26/2002)

Section 4-1-O-18 ABROGATION AND GREATER RESTRICTIONS.

It is not intended that this Article repeal, abrogate, or impair any existing regulations, easements,

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covenants of deed restrictions. However, where this Article imposes greater restrictions, the provisions of this Article shall prevail.
(Ord. 4479, Add, 03/26/2002)