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(Published in the Topeka Metro News MAY 29 2002)

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;

27 (11) maintaining base flow of streams.

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

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

37 **Section 2. Definitions.**

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

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

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

45 **Development:** (1) the improvement of property for any purpose involving building;  
46 or (2) the division or subdivision of a tract or parcel of land into two or more parcels; or  
47 (3) the combining of any two or more lots, tracts, or parcels of property for any purpose; or  
48 (4) the preparation of land for any of the above purposes; or (5) the clearing of trees and  
49 vegetation and/or excavation or earthwork on a tract or parcel of land.

50           **Levee:** Manmade structure to control, divert, and contain stormwater runoff and  
51 flood flows.

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

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

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

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

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

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

73           **Type II Streams:** Type II streams are defined as intermittent streams shown as a  
74 dashed blue lines on a United States Geological Survey 7.5-minute series topographical  
75 map. The total required buffer width is 50 feet on each side perpendicular to the waterway  
76 measured from the centerline of the channel.

77           **Type III Streams:** Type III streams are defined as waterways, dry channels that  
78 have a contributing drainage area of 50 acres or greater. The total required buffer width is  
79 30 feet on each side perpendicular to the waterway measured from centerline of waterway.

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

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

84           **Section 3. Scope.**

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

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

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

91                   (1)    Pollution, including non-point source pollution, of the waters of the  
92                                City of Topeka.

93                   (2)    Erosion or sedimentation of stream channels.

94                   (3)    Degradation of aquatic or riparian habitat.

95           D.     This Ordinance shall not apply to development which prior to the effective  
96 date of this Ordinance:

- 97 (1) Is covered by a plat recorded of record in accordance with subdivision  
98 regulations and no further development is anticipated.
- 99 (2) Is covered by a valid, unexpired building permit.
- 100 (3) Has applied for a building permit.

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

106 **Section 4. Plan Requirements.**

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

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

113 C. The plan shall contain the following specific information:

- 114 (1) a location or vicinity map to include maximum 2 feet contour intervals  
115 and scale of no greater than 1 inch = 100 feet.
- 116 (2) Field delineated streams, springs, seeps, bodies of water, wetlands,  
117 and waterway buffer zones.
- 118 (3) Limits of the ultimate 100 year floodplain as shown in the most  
119 accurate information available as determined by the City of Topeka

120 Public Works Department. FEMA maps and stormwater basin studies  
121 will be used to determine accuracy.

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

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

129 **Section 5. Design Standards for Buffers.**

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

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

138 C. The specific width for all buffers (*i.e.*, the base width) is relative to the type of  
139 waterway being protected with the requirement to expand the buffer depending on:  
140 (1) 100 year floodplain); (2) wetlands or critical areas.

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

143 Percent Slope Width Adjustment to Buffer

144	0 to 14%	No change
145	15% to 25%	Add 25 feet
146	Greater than 25%	Add 50 feet

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

- 150 (1) storage and use of hazardous substances: 300 feet;
- 151 (2) above or below ground petroleum storage facilities: 300 feet;
- 152 (3) drainfields from on-site sewage disposal and treatment system:  
 153 200 feet;
- 154 (4) raised septic systems: 500 feet;
- 155 (5) solid waste landfills or junkyards: 600 feet;
- 156 (6) confined animal feedlot operations: 500 feet.

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

**WATERWAY BUFFERS**

160	<b>STREAMSIDE AREA</b>			<b>OUTER AREA</b>		
161	<b>TYPE I</b>	<b>TYPE II</b>	<b>TYPE III</b>	<b>TYPE I</b>	<b>TYPE II</b>	<b>TYPE III</b>
162	WIDTH 50 feet	25 feet	15 feet	50 feet	25 feet	15 feet
163	VEGETATION	Native vegetation			Native vegetation or managed lawn (type 2 or 3).	
164	USES	Flood Control, Utility corridors			Biking/hiking paths, flood control,	
165					detention/retention structure,	
166		Foot paths, road crossings			utility corridors, Stormwater BMP's,	
167					residential yards, landscape areas.	
168	FUNCTION	Protect the physical and ecological			Protect key components of the stream	

169 integrity of the stream ecosystem and filter and slow velocity of water runoff.

170 **Section 6. Buffer Establishment, Management, and Maintenance.**

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

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

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

- 189 (1) Roads, bridges, paths, and utilities.
- 190 (2) Stream restoration projects, facilities and activities are permitted  
191 within the forest buffer.

192 (3) Water quality monitoring and stream gauging are permitted within the  
193 buffer.

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

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

201 D. All plats prepared for recording shall clearly:

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

204 (2) Label the buffer.

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

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

211 E. All buffer areas shall be established and managed through a declaration of  
212 protective covenant which is required to be submitted for approval by the Topeka/Shawnee  
213 County Metropolitan Planning Commission. The covenant shall be recorded with the plat  
214 of record and shall run with the land and continue in perpetuity.

215 F. An offer of dedication of a buffer area to the City of Topeka shall not be  
216 interpreted to mean that this automatically conveys to the general public the right of access  
217 to this area.

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

224 **Section 7. Enforcement Procedures.**

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

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

237 C. Any person who violates any provision of this Ordinance may be liable for any  
238 costs or expenses incurred as a result thereof by the City.

239           **Section 8. Waivers/Variances.**

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

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

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

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

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

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

258                   (2)   Subject to Topeka/Shawnee County Metropolitan Planning  
259 Commission approval, additional density elsewhere on the site may  
260 be allowed to counterbalance in the loss of developable land due to  
261 the requirements of this Ordinance.

263 C. The applicant shall submit a written request for a wavier or variance to the  
264 Director of Public Works or designee. The application shall include specific reasons  
265 justifying the variance and any other information necessary to evaluate the proposed  
266 variance request. The Director of Public Works may require an alternatives analysis that  
267 clearly demonstrates that no other feasible alternatives exist and that minimal impact will  
268 occur as a result of the project or development.

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

273 **Section 9. Conflict With Other Regulations.**

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

278 **Section 10. Severability.**

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

282 **Section 11.** This Ordinance shall take effect and be in force from and after its  
283 passage, approval and publication in the official city newspaper.

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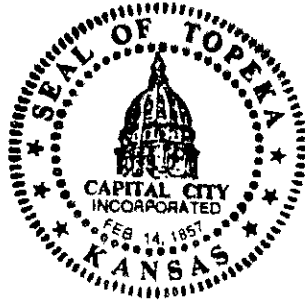
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PASSED and APPROVED by the City Council MAY 21 2007

Garry Felker  
Garry Felker, Mayor

ATTEST:

Iris E. Walker  
Iris E. Walker, City Clerk



APPROVED AS TO FORM AND LEGALITY
DATE <u>5/1/02</u> BY <u>ew</u>
TO BE CODIFIED <u>X</u>
NOT TO BE CODIFIED _____