

(Published in the Topeka Metro News June 21, 2010)

ORDINANCE NO. 19430

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., concerning stream buffers, amending City of Topeka Code §§ 17.10.020, 17.10.060, 18.35.150 and 18.35.200 and specifically repealing said original sections and creating new § 18.40.150.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA:

Section 1. That section 17.10.020, Definitions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Definitions.

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

Active channel means 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) means 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 means a vegetated area, including trees, shrubs, and herbaceous vegetation, which exists or is established to protect a stream system, lake, or reservoir.

Development means:

- (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 means a manmade structure to control, divert, and contain stormwater runoff and flood flows.

Non-point source pollution means 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 means 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 means 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 means perennial and intermittent watercourses identified through site inspection, drainage study, or ~~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 seven and one-half-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 seven and one-half-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 means natural or manmade lakes, channels, rivers, streams, and creeks, which store and/or convey stormwater runoff

Water pollution hazard means a land use or activity that causes a relatively high risk of potential water pollution.

Section 2. That section 17.10.060, Buffer establishment, management, and maintenance, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Buffer establishment, management, and maintenance.

(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 provided, however, this prohibition shall not prevent a property owner from trimming or cutting overgrown vegetation, removing dead vegetation or replacing 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 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.~~

117 ~~(f) An offer of dedication of a buffer area to the city shall not be interpreted to~~
118 ~~mean that this automatically conveys to the general public the right of access to this~~
119 ~~area.~~

120 ~~(g) Buffers situated adjacent to public streets add value to neighborhoods. In~~
121 ~~order to provide an incentive to locate buffers adjacent to public streets, the city will~~
122 ~~allow the dedicated right of way width as contained in the city's design criteria adjacent~~
123 ~~to the improved street to be included within the outer zone of the stream buffer. Also,~~
124 ~~the city may through its platting process accept the dedication of buffer areas located~~
125 ~~adjacent to streets and maintain the same as public property.~~

126 Section 3. That section 18.35.150, Contents, of The Code of the City of
127 Topeka, Kansas, is hereby amended to read as follows:

128 **Contents.**

129 The contents of the preliminary plat shall include the following:

- 130 (a) Vicinity map showing geographical location of the proposed subdivision.
- 131 (b) The proposed name of the subdivision (the name shall not duplicate or
132 closely resemble the name or names of any existing subdivision).
- 133 (c) The location of the boundary lines in relation to the quarter section corner.
- 134 (d) The names and addresses of the developer, surveyor, landscape architect
135 or architect who prepared the plat.
- 136 (e) The scale of the plat shall be one inch equals 200 feet or larger.
- 137 (f) Date of preparation and north point.

- (g) Location, width and name of platted street or other public ways, railroads and utility rights-of-way, parks and other public open spaces and permanent buildings within or adjacent to the proposed subdivision.
- (h) All existing sewers, water mains, gas mains, culverts or other underground installations within the proposed subdivision or immediately adjacent thereto, showing pipe size, grades and location.
- (i) Names of adjacent subdivisions, and owners of adjacent parcels of unsubdivided land.
- (j) Topography with contour intervals of not more than five feet (referred to USGS datum), also location of watercourses, bridges, wooded areas, lakes, ravines, approximate acreage and such other features as may be pertinent to the subdivision.
- (k) The location and width of proposed streets, roadways, highways, pedestrian ways and easements.
- (l) The location and character of all proposed utility lines, including sewers (storm and sanitary), water, gas, telephone and power lines. Where new public streets or rights-of-way are proposed, a preliminary street plan which shall have cross section and profile data of the existing conditions and of the proposed improvements. The preliminary street plan shall be reviewed by the city or county engineer for compliance with the uniform standards. The reviewing engineer shall submit a statement to the secretary of the planning commission prior to the public hearing, indicating that the preliminary street plan meets with uniform standards or setting

161 forth the provisions necessary to meet the uniform standards. If a sewage
162 treatment plant or other type of individual or community sewage disposal
163 system is to be installed or constructed to serve all or certain portions of
164 the proposed subdivision, the general plan for such community type
165 sewage treatment or disposal system shall be shown and so identified on
166 the proposed plat.

167 (m) Layout, numbers and approximate dimensions of all lots, and the number
168 or letter of each block.

169 (n) Location and size of proposed parks, playgrounds, churches or school
170 sites, or other special uses of land to be considered for dedication to
171 public use or reservation by deed of covenant for the use of all property
172 owners in the subdivision and the conditions of such dedication or
173 reservation.

174 (o) Building setback lines with dimensions.

175 (p) Indication of any lots for which uses other than residential are proposed by
176 the subdivider.

177 (q) A statement, on the plat, as to how lots will be sewered.

178 (r) Any stream buffer easements as required by this title.

179 Section 4. That section 18.35.200, Contents, The Code of the City of Topeka,
180 Kansas, is hereby amended to read as follows:

181 **Contents.**

182 The final plat shall show and contain the following information:

- 183 (a) Name of subdivision (not to duplicate or closely resemble the name of any
184 existing subdivision).
- 185 (b) Location of section, township, range, county and state, including the
186 descriptive boundaries of the subdivision based on an accurate traverse,
187 giving angular and linear dimensions which must mathematically close;
188 the allowable area of closure on any portion of the plat shall be one (1)
189 foot in five thousand (5,000).
- 190 (c) The locations of monuments shall be shown and described on the final
191 plat; locations of such monuments shall be shown in reference to existing
192 official monuments or the nearest established street lines, including the
193 true angles and distances to such reference points or monuments.
- 194 (d) The location of lots, streets, public highways, alleys, parks and other
195 features, with accurate dimensions in feet and decimals of feet, with the
196 length of radii or area of all curves, and with all other information
197 necessary to reproduce the plat on the ground; dimensions shall be shown
198 from all angle points and points of curve to lot lines.
- 199 (e) Lots shall be clearly designated by number or letter; the area of each lot
200 shall be indicated in terms of square footage either in tabular form or
201 within the lot boundaries on the plat.
- 202 (f) Blocks shall be lettered clearly in the center of the block.
- 203 (g) The exact location, width and name of all streets to be dedicated.
- 204 (h) Location and width of all easements to be dedicated.

- (i) Boundary lines and description of the boundary lines of any area, other than streets and alleys, which are to be dedicated or reserved for public use.
- (j) Name and address of the developer and the surveyor or engineer making the plat.
- (k) Scale of plat (scale to be shown graphically and in feet per inch), date and north point.
- (l) Formal dedication for all easements.
- (m) Formal dedication of all streets, alleys and all other public areas not previously dedicated.
- (n) The names and signatures of the owners of the property, duly acknowledged and notarized, shall appear on the original and copies submitted.
- (o) Any stream buffer easements as required by this title.

Section 5. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section to be numbered 18.40.150, which said section reads as follows:

Stream buffers.

(a) Purpose. The creation and maintenance of stream buffers benefits the environment by protecting water quality and riparian ecosystems. This article shall, to the greatest extent possible incorporate the City's stream buffer requirements contained in section 17.10.010, et seq. of this code.

(b) Definitions. The terms, words and phrases used in this article shall have the meanings ascribed to them in section 17.10.020 of this code.

228 (c) Plat requirements.

229 (1) All plats prepared for recording shall clearly:

230 a. Show the extent of any buffer on the subject property by
231 metes and bounds.

232 b. Label the buffer.

233 c. Provide a restriction stating, "There shall be no clearing,
234 grading, construction or disturbance of vegetation except as permitted
235 under section 17.10.060 of this code or as approved by the public works
236 director or his or her designee."

237 (2) The public works director and planning director may mutually adopt
238 administrative guidelines that more specifically illustrate text and graphics to be
239 contained on the plat as referenced in this subsection.

240 (3) A dedication of a stream buffer area to the city shall not be
241 interpreted to mean that this conveys to the general public the right of access to
242 this area.

243 (4) Stream buffers situated adjacent to public streets add value to
244 neighborhoods. In order to provide an incentive to locate buffers adjacent to
245 public streets, the city will allow the dedicated right of way width as contained in
246 the city's design criteria adjacent to the improved street to be included within the
247 outer zone of the stream buffer. Also, the city may through its platting process
248 accept the dedication of buffer areas located adjacent to streets and maintain the
249 same as public property.

Section 6. That original §§ 17.10.020, 17.10.060, 18.35.150 and 18.35.200 of The Code of the City of Topeka, Kansas, are hereby specifically repealed.

Section 7. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

Section 8. All ordinances, resolutions or rules, or portions thereof, inconsistent with the provisions of this ordinance are hereby rescinded or repealed.

Section 9. Should any section, clause or phrase of this ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

PASSED AND APPROVED by the Governing Body June 15, 2010.

CITY OF TOPEKA, KANSAS

ATTEST:

William W. Bunten, Mayor

Brenda Younger, City Clerk