

ORDINANCE NO. 5073-22

AN ORDINANCE OF THE CITY OF NEWTON, KANSAS AMENDING THE CURRENT ZONING ORDINANCES OF THE CITY OF NEWTON REVISING ARTICLE XVII. PERTAINING TO STREAM CORRIDOR MANAGEMENT.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF NEWTON, KANSAS:

SECTION 1. Original Article XVII of the Zoning Ordinance of the City of Newton, Kansas is hereby amended to read as follows:

ARTICLE XVII. STREAM CORRIDOR OVERLAY DISTRICT

17.1. Purpose.

It is the purpose of this Article to reasonably regulate development, uses and activities within identified stream corridors and to thereby preserve, conserve, manage disturbance, and attempt to restore natural stream corridors in accordance with state and federal statutes, so that the following objectives may be achieved:

- a. Regulate the land use, location, and engineering of all development within the stream corridors to ensure consistency with the intent and objectives of accepted conservation and Best Management Practices (BMPs), prevent further degradation of water resources, 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, subsurface, and surface water bodies by using scientifically proven processes including:
 - i. Filtration;
 - ii. Deposition;
 - iii. Absorption;
 - iv. Adsorption;
 - v. Plant uptake;
 - vi. Denitrification;
 - vii. Improving infiltration;
 - viii. Encouraging sheet flow;

- ix. Stabilizing concentrated flows.
- 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, 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, attenuate flood flow, and, where appropriate and feasible, provide opportunities for recreational activities;
- f. Manage development within floodplains, on land adjacent to stream segments, and other environmentally sensitive areas to minimize hazards to life, property, and nature;
- g. Recognize that natural features contribute to the quality of life of the community;
- h. Provide natural, scenic, and recreation areas within and adjacent to stream corridors for the community's benefit;
- i. Encourage the infiltration of rainfall to increase groundwater recharge and provide for a water supply more resilient to drought impacts;
- j. Create added value to lands adjacent to stream corridors.

17.2. Application.

- a. This Article shall apply to all undeveloped land as well as new development within the stream corridors of Sand Creek, Mud Creek, Slate Creek, and Jester Creek. 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 is covered by an unexpired building permit issued prior to the effective date of this Article, in accordance with rules and regulations governing building permits.
- b. No development application shall be approved that proposes development on any parcel of land wholly or partially within the defined stream corridors unless the proposed development is in compliance with the applicable provisions of this Article.
- c. Stream corridors, as defined below, shall be delineated on all preliminary and final plats to be submitted after the effective date of this Article to indicate where development would be prohibited.

17.3. Stream Corridor Definition.

A stream corridor is an area established by this Article surrounding an identified stream segment and is a protective buffer for that segment. The corridor consists of an inner zone and an outer zone measured outward from the top edge of each stream bank. The width of each zone within the stream corridor is defined below in Table 17.3, *Stream Corridor Width*.

Stream	Inner Zone	Outer Zone	Total Buffer Width from Each Edge of Stream Bank
Sand Creek	25 feet	75 feet	100 feet
Mud Creek	25 feet	50 feet	75 feet
Slate Creek	25 feet	50 feet	75 feet
Jester Creek	25 feet	50 feet	75 feet

- a. Inner Zone. The inner zone is defined as the area which is within 25 feet from the edge of the stream bank, measured horizontally from the top edge of each stream bank.
- b. Outer Zone. The outer zone is defined as the area measured horizontally from the outer boundary of the inner zone to the width specified in Table 17.3. The total buffer width need not coincide with the width of the floodplain.
- c. The edge of stream banks and the stream corridor buffers are included as layers in the City of Newton GIS-based mapping to show approximate locations.

17.4. Prohibitions

Any use or activity that is not identified as being permitted by this Article within any stream corridor zone, as set out in the following section, is prohibited in all identified stream corridors. Septic tanks, septic drain fields, and sewage lagoons shall be specifically prohibited within the stream corridors. Mowing or clearing of the inner zone shall be prohibited, except in cases of continued agricultural uses or unless approved by the Director of Public Works. Only pesticides, herbicides, and fertilizers which are formulated and approved for use near waterways shall be applied within the stream corridor and shall be applied in strict conformance with manufacturer's instructions.

17.5. 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 is, in all respects, in conformity with the requirements of this Article.

- b. Uses and Activities Permitted in the Inner Zone, subject to the approval of the Director of Public Works.
 - i. Conservation uses, wildlife sanctuaries, wetlands, nature preserves, forest preserves, fishing areas, and passive areas of parklands.
 - ii. Recreational trails and greenways.
 - iii. Education and scientific research.
 - iv. Stream bank stabilization and other stormwater Best Management Practices (BMPs).
 - v. Activities associated with the restoration and enhancement of stream corridors.
 - vi. Planting of approved vegetation.
 - vii. Installation of private water and wastewater facilities; provided that, the owner of the facilities sufficiently demonstrates to the Director of Public Works that the installation of the facilities within the outer zone is unfeasible. Water and wastewater facilities will be permitted to cross the inner zone and stream as necessary, provided that the number of crossings is minimized to the greatest extent possible.
 - viii. Public infrastructure.

- c. Uses and Activities Permitted in the Outer Zone.
 - i. All uses and activities permitted in the Inner Zone.
 - ii. Fences; provided however, that such fences must be constructed so as not to impede floodwaters.
 - iii. Installation of utilities, including water and wastewater facilities.

- d. Additional Uses and Activities Permitted in the Outer Zone, subject to the approval of the Director of Public Works.
 - i. Passive uses, such as camps, campgrounds, picnic areas, and golf courses.
 - ii. Minor recreational structures and surfaces that are ancillary to passive recreational uses; provided that the total impervious area created by such

structures in residential areas shall not exceed 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.

- e. Single Family Residential Rear Yard Allowance. The rear yard of a single-family residential property may extend into the outer zone; provided, however, that the rear of the actual residential structure may not be located within any portion of the outer zone.
- f. Uses Subject to Federal and/or State Approval. The following in-stream activities are regulated and require approval from the United States Army Corp of Engineers (USACE) or the Kansas Department of Health & Environment (KDHE), or other appropriate federal and state agencies; provided that, the requisite federal and/or state approvals are also provided to the City of Newton:
 - i. Dredging;
 - ii. Filling;
 - iii. Excavation;
 - iv. Draining;
 - v. Clearing.

17.6. 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. Maintenance and repair of the public right-of-way, streets, and public infrastructure.
- c. Site Investigation. Site investigation work necessary for initial land use applications, such as surveys, soil logs and percolation tests, and special studies as required by this Article; provided, however, that the land must be restored to its pre-investigation condition.
- d. Reconstruction. Reconstruction, remodeling, or maintenance of existing structures, provided that the activity does not expand the existing use beyond the previously approved footprint so as to physically extend into or adversely affect the stream corridor.
- e. Maintenance of Landscaping. Routine maintenance of existing landscaping including pruning, removal of diseased trees or other diseased vegetation, and replacement of individual plants when necessary to maintain a unified landscape theme.

- f. Vegetation Control. 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. Generally, selective (spot) chemical spraying for noxious weeds is acceptable, but non-selective chemical spraying is prohibited.
- g. Emergency Actions. 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 required by this Article, shall be given at the earliest opportunity after the emergency action.

17.7. Enforcement.

The Director of Public Works is authorized and empowered to enforce the requirements of this Article. In doing so, the Director of Public Works shall have all the enforcement powers and may employ any or all of the remedies set forth in this Code, including levying fines.

17.8. Penalties for Violation.

Violation of the provisions of this ordinance or failure to comply with any of its requirements shall constitute an unclassified violation. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500.00, and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

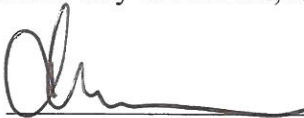
17.9. Abrogation and Greater Restrictions.

It is not intended that this Article repeal, abrogate, or impair any existing regulations, easements, covenants, or deed restrictions. However, where this Article imposes greater restrictions, the provisions of this Article shall prevail.

SECTION 2. Ordinance No. 4937-17 is hereby repealed.


SECTION 3. This Ordinance shall take effect and be in force from and after its publication in THE NEWTON KANSAN, the official newspaper of said City.

PASSED AND ADOPTED by the governing body of the City of Newton, Kansas, this 24th day of May, 2022



Clinton McBroom, Mayor

ATTEST:



Denise R. Duerksen, City Clerk