

ORDINANCE NUMBER O08-01-02

AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF COOKEVILLE, AS ADOPTED BY ORDINANCE NO. 002-12-33, AND AS SINCE AMENDED, TO INSERT A CHAPTER 8 OF TITLE 14, ENTITLED “STREAM BUFFER ZONES”

ORDINANCE NUMBER: O08-01-02
REQUESTED BY: Public Works
Department
PREPARED BY: Public Works
Department
APPROVED AS TO FORM AND
CORRECTNESS:

(City Attorney)
PUBLIC HEARING HELD: _____
PASSED 1ST READING: _____
PASSED 2ND READING: _____
MINUTE BOOK _____, PAGE _____

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COOKEVILLE, TENNESSEE:

Section 1: That the Municipal Code of the City of Cookeville, Tennessee, as adopted by Ordinance No. 002-12-33, and as since amended, be hereby amended so as to insert a Chapter 8 of Title 14 entitled Stream Buffer Zones, to read as follows:

CHAPTER 8

STREAM BUFFER ZONES

SECTION

- 14-801. GENERAL PROVISIONS**
- 14-802. DEFINITIONS**
- 14-803. STANDARDS**
- 14-804. BUFFER ZONE MANAGEMENT AND MAINTENANCE**
- 14-805. EXEMPTIONS**
- 14-806. VARIANCES AND MODIFICATIONS**
- 14-807. ENFORCEMENT**
- 14-808. PENALTIES**
- 14-809. APPEALS**

14-801 GENERAL PROVISIONS

Stream buffer zones serve as natural boundaries between local waterways and development and help to protect resources by filtering pollutants, providing infiltration of stormwater runoff, providing riparian wildlife habitat, stabilizing stream banks and restoring and maintaining the chemical, physical and biological integrity of the water resources.

It is the desire of the City of Cookeville to protect and maintain the native vegetation in riparian areas by the implementation of specifications for the establishment, protection and maintenance of vegetated stream buffers along all stream systems within the City. These provisions apply to all lots which are contiguous with or directly adjoin an intermittent or perennial stream identified as such on the USGS (United States Geologic Survey) map.

14-802 DEFINITIONS

For the purpose of this section, the following definitions shall apply: Words used in the singular shall include the plural, and the plural shall include the singular; words used in the present tense shall include the future tense. The word “shall” is mandatory and not discretionary. The word “may” is permissive. Words not defined in this section shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster’s Dictionary.

- “BMPs” or “Best Management practices” are physical, structural and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water, that have been approved by the City of Cookeville, and that have been incorporated by reference into the City Stormwater ordinances. [Note: see section 14.704(1) for recommended BMP manual.]
- “Channel” means a natural watercourse with a definite bed and banks that conducts flowing water continuously or periodically.
- “Dumping” means the introduction of material into the stream buffer zone which could wash into the stream or otherwise cause contamination of the stream.
- “Filling” means the deposit of earth by artificial means.
- “Grading” means the operation of raising or lowering the ground surface to a predetermined elevation datum.
- “Impervious” means not allowing the passage of water through the surface of the ground or ground covering, or a substantial reduction in the capacity for water to pass through the surface of the ground or ground covering.
- “Intermittent stream” is as shown as a dashed blue line on USGS (United States Geologic Survey) maps, this represents a watercourse which periodically flows in a channel, often referred to as a “blue line stream”.
- “Perennial stream” is as shown as a solid blue line on USGS (United States Geologic Survey) maps, this represents a watercourse which flows on a somewhat perpetual basis in a channel, often referred to as a “blue line stream”.
- “Right-of-way” is land over which a road, railroad, etc. passes.
- “Riparian” relating to, or living on the bank of a river, stream, lake, etc.

- “Stabilize” means to provide adequate measures, vegetative and/or structural, that will prevent erosion from occurring.
- “Stream buffer” means a vegetated area adjacent to a stream bank that has the purpose of controlling erosion, providing riparian habitat, providing a filter for pollution and allowing or encouraging stormwater infiltration.
- “Stripping” means the removal of existing vegetation or soils.

14-803 STANDARDS FOR BUFFER ZONES

The following standards shall apply for all stream buffer zones:

- A. The vegetated stream buffer shall begin at the edge of the stream bank of the active channel.
- B. The stream buffer shall extend a minimum of fifty feet (50') either side of the stream bank, and shall be of sufficient width and nature to trap and hold sediments. The stream buffer width requirement may be increased if necessary to mitigate the impact of the proposed development on riparian habitat areas.
- C. The vegetative target for the stream buffer is undisturbed native vegetation with woody vegetation (i.e. trees and shrubs) being the dominant plant form along the stream banks.
- D. There shall be no septic systems, permanent structures or impervious cover within the stream buffer zone.

14-804 BUFFER ZONE MANAGEMENT AND MAINTENANCE REQUIREMENTS

The following requirements shall apply for the management and maintenance of stream buffer zones:

- A. The stream buffer zone 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 or activities are not allowed within the buffer zone:
 1. Soil disturbance by grading, stripping or other practices.
 2. Filling or dumping.
 3. Use, storage or application of herbicides, except for spot spraying of noxious weeds or non-native species.
 4. Storage or operation of motorized vehicles, except for maintenance and emergency use approved by the Public Works Department.

EXCLUSION: Any project that has received a State or Federal Permit (including but not limited to Aquatic Resource Alteration Permits (ARAP), 401 or 404 permits) will be excluded from those requirements of this policy that are superceded by requirements of the state or federal permits.

- B. The following structures, practices, and activities are permitted in the buffer zone, with specific design or maintenance features, subject to the review of the Public Works Department.
1. Individual trees within the buffer zone may be removed which are in danger of falling, causing damage to dwellings or other structures, or causing blockages in the stream.
 2. 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 in order to minimize clearing requirements.
 - c. A minimum number of road crossings should be used within each subdivision, and no more than one stream crossing is allowed for every 1000 feet of buffer.
 3. Stormwater management:
 - a. In new development, on-site and non-structural alternatives will be preferred over larger facilities within the stream buffer.
 - b. When constructing stormwater management facilities (i.e. BMPs), the area cleared will be limited to the area required for construction and adequate maintenance access, as outlined in the Tennessee Erosion and Sediment Control Handbook.
 - c. Material dredged or otherwise removed from a BMP shall be stored outside the buffer.
 4. Stream restoration projects, facilities and activities approved by Public Works are permitted within the stream buffer zone.
 5. Water quality monitoring and stream gauging are permitted within the stream buffer zone, as approved by the Public Works Department.

14-805 EXEMPTIONS

These provisions shall apply to all proposed development except for that development which prior to the effective date of this policy:

- A. Is covered by a valid, unexpired plat in accordance with development regulations.
- B. Is covered by a valid, unexpired building permit.

14-806 VARIANCES AND MODIFICATIONS

The Public Works Director may reduce or modify the requirement for a stream buffer zone for projects which will not result in disturbance of the land or where on-site conditions clearly demonstrate that the site is not now occupied by riparian habitat vegetation and would not effectively respond to riparian re-vegetation. An applicant requesting such a waiver shall submit sufficient information to substantiate the request to waive the requirement.

14-807 ENFORCEMENT

- A. Enforcement authority. The director of the Public Works Department (hereafter referred to as director) or his designees shall have the authority to issue notices of violation and citations, and to impose the civil penalties provided in this section.
- B. Notification of violation.
1. Written Notice. Whenever the director finds that any permittee or any other person has violated or is violating this ordinance, the director may serve upon such person written notice of the violation. Within fourteen (14) days of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to the director. Submission of this plan in no way relieves the discharger of liability for any violations occurring before or after receipt of the notice of violation.
 2. Consent Orders. The director is empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the person to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as administrative orders issued pursuant to paragraphs (4) and (5) below.
 3. Show Cause Hearing. The director may order any person who violates this ordinance, to show cause why a proposed enforcement action should not be taken. The hearing shall be before the Public Works director. Notice shall be served on the person specifying the time and place for the meeting, the proposed enforcement action and the reasons for such action, and a request that the violator show cause why this proposed enforcement action should not be taken. The notice of the meetings shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing.

4. Compliance Order. When the director finds that any person has violated or continues to violate this ordinance, he may issue an order to the violator directing that, following a specific time period, adequate structures, devices, be installed or procedures implemented and properly operated. Orders may also contain such other requirements as might be reasonably necessary and appropriate to address the non-compliance, including the construction of appropriate structures, installation of devices, self-monitoring, and management practices.
 5. Cease and Desist Orders. When the director finds that any person has violated or continues to violate this ordinance, the director may issue an order to cease and desist all such violations and direct those persons in noncompliance to:
 - a. Comply forthwith; or
 - b. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations.
- C. Conflicting standards. Whenever there is a conflict between any standard contained in this ordinance and in the BMP manual adopted by the municipality, the strictest standard shall prevail.

14-808. PENALTIES

- A. Violations. Any person who shall commit any act declared unlawful under this ordinance, who violates any provision of this ordinance, who violates the provisions of any permit issued pursuant to this ordinance, or who fails or refuses to comply with any lawful communication or notice to abate or take corrective action by the Public Works Department, shall be guilty of a civil offense.
- B. Penalties. Under the authority provided in Tennessee Code Annotated section 68-221-1106, the municipality declares that any person violating the provisions of this ordinance may be assessed a civil penalty by the Public Works Department of not less than fifty dollars (\$50.00) and not more than five thousand dollars (\$5,000.00) per day for each day of violation. Each day of violation shall constitute a separate violation.
- C. Measuring civil penalties. In assessing a civil penalty, the director of the Public Works Department may consider:
 1. The harm done to the public health or the environment;
 2. Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;
 3. The economic benefit gained by the violator;

4. The amount of effort put forth by the violator to remedy this violation;
 5. Any unusual or extraordinary enforcement costs incurred by the municipality;
 6. The amount of penalty established by ordinance or resolution for specific categories of violations; and
 7. Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.
- D. Recovery of damages and costs. In addition to the civil penalty in subsection (B) above, the municipality may recover:
1. All damages proximately caused by the violator to the municipality, which may include any reasonable expenses incurred in investigating violations of, and enforcing compliance with, this ordinance, or any other actual damages caused by the violation.
 2. The costs of the municipality's maintenance of stormwater facilities when the user of such facilities fails to maintain them as required by this ordinance.
- E. Other remedies. The municipality may bring legal action to enjoin the continuing violation of this ordinance, and the existence of any other remedy, at law or equity, shall be no defense to any such actions.
- F. Remedies cumulative. The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, that one (1) or more of the remedies set forth herein has been sought or granted.

14-809 APPEALS

Pursuant to Tennessee Code Annotated section 68-221-1106(d), any person aggrieved by the imposition of a civil penalty or damage assessment as provided by this ordinance may appeal said penalty or damage assessment to the Board of Environmental Appeals.

- A. Appeals to be in writing. The appeal shall be in writing and filed with the City Clerk within fifteen (15) days after the civil penalty and/or damage assessment is served in any manner authorized by law.
- B. Public hearing. Upon receipt of an appeal, the Board of Environmental Appeals shall hold a public hearing within thirty (30) days. Ten (10) days prior notice of the time, date, and location of said hearing shall be published in a daily newspaper of general circulation. Ten (10) days notice by registered mail shall also be provided to the aggrieved party, such notice to be sent to the address provided by the aggrieved party at the time of appeal.
- C. Appealing decisions of the Board of Environmental Appeals. Any alleged violator may appeal a decision of the Board of Environmental Appeals pursuant to the provisions of Tennessee Code Annotated, Title 27, Chapter 8.
 1. If a petition for review of such damage assessment or civil penalty is not filed within thirty (30) days after the damage assessment or civil penalty is served in any manner authorized by law, the violator shall be deemed to have consented to the damage assessment or civil penalty, and it shall become final.

Section 2: This Ordinance shall take effect fourteen (14) days from and after its passage, the public welfare requiring it.

THE CITY OF COOKEVILLE, TENNESSEE

Sam Sallee, Mayor

ATTEST:

Cathy McClain, City Clerk