

168.12 - Streamside Protection Zones

- (A) *Streamside Best Management Practices Manual.* The City of Fayetteville's *Streamside Best Management Practices Manual*, which may be administratively changed by the City Engineer, shall be used in support of this chapter to explain specific objectives and principles.
- (B) *Applicability.* This ordinance shall apply to all land within the streamside protection zones.
- (C) *Establishment of Designated Surface Waters.* The streamside protection zones shall apply to all surface waters meeting any one of the following criteria:
- (1) All surface waters identified on the adopted Protected Streams Map (which may be administratively amended by the City Engineer to reflect applicable surface waters within annexed areas), including any pond, lake or reservoir located within the natural drainage way of said surface water; or
 - (2) Any surface water where a floodway has been established by the Federal Emergency Management Agency (FEMA).
 - (3) Surface waters that would have otherwise been protected, but were outside the City Limits when Ordinance No. 5390 was adopted on March 1, 2011, shall be automatically included as designated surface waters within the requirements of §168.12, Streamside Protection Zones, upon the annexation into Fayetteville of the property on which the surface waters are located.
- (D) *Streamside Protection Requirements.* The streamside protection zones shall be established as follows:
- (1) *Zone 1: Waterside Zone.* The waterside zone shall extend a minimum of 25 feet landward from the top of bank in each direction, measured horizontally on a line perpendicular to the top of bank and includes the surface water.
 - (a) *Steep Slope.* Slope shall be calculated at the upstream and downstream property lines for every property. Properties with more than 100 feet of stream frontage shall require additional slope calculations at 100-foot increments, beginning at the upstream property line and ending at the downstream property line. When slope calculations are equal to or greater than 15%, the width of the waterside zone shall be extended by an additional 20 feet at that point. The boundary width determined at each designated slope measurement point shall be connected by a continuous line to form the boundary of the waterside zone (illustrations available in the Best Management Practices Manual).
 - (2) *Zone 2: Management Zone.* The management zone shall begin at the outer edge of the Waterside Zone and extend landward 25 feet as measured horizontally on a line perpendicular to Zone 1. The combined width of Zones 1 and 2 shall be no less than 50 feet from the top of bank on all sides of the surface water.
 - (a) *Floodway.* Where the floodway extends beyond the edge of the management zone boundary, said boundary shall be adjusted so that the zone consists of the extent of the floodway as designated by the most recently adopted FEMA Flood Insurance Rate Map (FIRM).
 - (3) *Piped Streams.* When reviewing any development, grading or building permit application, the City Engineer may determine that normal streamside protection regulations shall not be applicable to that portion of a stream that has been piped or enclosed within a culvert or similar conduit prior to the adoption of this ordinance.
 - (4) *Daylighting.* Streams enclosed prior to the effective date of this ordinance and subsequently daylighted shall only require a 5-foot setback measured from the established top of bank. Daylighted streams shall be maintained in a natural state by the property owner, who shall also be responsible for monitoring and controlling trash, litter and pollutants.
- (E) *Regulated Uses, Structures and Activities Within the Streamside Protection Zones.*
- (1) The following are permitted within the designated streamside zone, subject to the requirements of this section, the Flood Damage Prevention Code, and all applicable requirements of the City of Fayetteville. Where a use is not listed, but is similar to a permitted use and is in keeping with the purpose of the streamside protection zones, the City Engineer may determine the use to be allowed. All other uses shall be prohibited.
 - (a) *Zone 1: Waterside Zone.* The following may be permitted in the waterside zone, provided the standards of the *Streamside Best Management Practices Manual* shall be followed where applicable and that these uses and any necessary construction is designed and built to minimize the impact upon streamside areas and minimize any

excavation or filling that will only be allowed by express authorization of the City Engineer. All construction, grading, excavation or filling must also fully comply with all necessary local, state and federal permits.

- (i) Open space uses that are primarily passive in character including: preserves, fishing areas and docks, parkland, and natural trails.
 - (ii) Streambank restoration or stabilization.
 - (iii) Water quality monitoring, education and scientific studies.
 - (iv) Revegetation and reforestation.
 - (v) Dam maintenance.
 - (vi) Paved trails or other impervious surfaces not exceeding 12 feet in width when the City Engineer determines that there is no practical and feasible alternative. Such area may not be used to park vehicles.
 - (vii) Stream crossings, including driveways, roadways, trails, or railroads when the City Engineer determines there is no practical and feasible alternative.
 - (viii) Maintenance and upgrades of existing utility facilities.
 - (ix) New utility facilities when the City Engineer determines there is no practical and feasible alternative.
 - (x) Management of lawns and gardens.
 - (xi) Removal of dead vegetation, pruning for reasons of public safety, removal of invasive species.
 - (xii) Application of any fertilizer, herbicide, pesticide, or insecticide shall be allowed only if their harmful effect on water quality is prevented by ensuring no over-application or misapplication occurs.
 - (xiii) Maintenance of drainage capacity in the channel including tree and sediment removal.
 - (xiv) New stormwater conveyances when the City Engineer determines that there is no practical and feasible alternative.
- (b) *Zone 2: Management Zone.*
- (i) New stormwater conveyances when the City Engineer determines that there is no practical and feasible alternative and provided the standards of the *Streamside Best Management Practices Manual* shall be followed.
 - (ii) All uses within the waterside zone with the exception of stormwater conveyances, provided that compliance with the standards of the *Streamside Best Management Practices Manual* are not required but encouraged.
 - (iii) Accessory structures without a foundation and no larger than 150 square feet, including storage sheds, playground equipment, gazebos, decks, etc.
 - (iv) Active recreational uses.
- (2) Establishment of the following uses/activities after the effective date of this ordinance shall be prohibited in both streamside protection zones, except where necessary to allow an activity permitted by subsection (E)(1).
- (a) Grading, dredging, dumping, filling, or similar construction activities.
 - (b) Landfills, junkyards, salvage yards.
 - (c) Clearing of non-invasive woody vegetation.
 - (d) Storage of hazardous materials or chemicals unless within waterproof containers and within a structure.
 - (e) Parking lots.
 - (f) Buildings and accessory structures with a building footprint larger than 150 square feet.
 - (g) Parking or storage of motor vehicles.
 - (h) Septic systems and/or lateral lines.
 - (i) In-ground pools.
 - (j) Animal feedlots or kennels.
 - (k) Housing, grazing or other maintenance of livestock.

(l) Land application of biosolids.

(F) *Existing Land Use Exemptions.* The following activities and structures are allowed to continue within the streamside protection zones, provided that the provisions of the Flood Damage Prevention Code and all other applicable regulations shall be enforced.

(1) *Existing Uses.* Existing uses shall be permitted to continue in their present state, but may not be enlarged, extended, or moved within the streamside protection zones. A use or activity shall be existing if it is present and ongoing within the streamside protection zones as of the effective date of this ordinance or the effective date of annexation for areas outside the city limits when Ordinance No. 5390 was adopted on March 1, 2011. Uses and activities cease to be existing under the following conditions:

(a) *Agricultural and Animal Husbandry 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 eighteen (18) consecutive months.

(b) *All Other Uses.* This ordinance shall apply when an existing use is converted to another use.

(2) *Existing Principal Structures.*

(a) *Reconstruction Within Existing Footprint.* Existing principal structures as of the effective date of this ordinance may be redeveloped or reconstructed within the same footprint.

(b) *Minor Alterations.* Minor alterations or additions to an existing structure, such as an awning or deck, shall also be permitted, provided the modifications do not extend more than 10 feet further toward the surface water than the original foundation of the principal structure, and do not extend into the waterside zone.

(c) *Berm to Prevent Flooding.* If a principal structure has suffered flooding from a stream, the owner may construct a berm to protect the principal structure if approved by the City Engineer as to the berm's location, size and composition. Revegetation of the disturbed area and berm shall be in accordance with the *Best Management Practices Manual*.

(3) *Emergencies.* Actions taken under emergency conditions, either to prevent imminent harm or danger to persons, or to protect property from imminent danger of fire, violent storms, or other hazards.

(G) *Development Application Procedures.*

(1) All persons required to submit an application pursuant to Chapter 166 of the city's Unified Development Code shall also show the location and type of surface water, the top of bank, Zone 1: Waterside Zone and Zone 2: Management Zone boundaries, and slope, when any portion of the property being developed falls within the streamside protection zones. The same shall also be identified for building, moving, demolition and grading permits.

(2) An applicant may request that the city's Floodplain Administrator perform a site visit to view conditions on site with the applicant to assist in making a determination of top of bank location and widths of the waterside zone and management zone.

(3) A final determination of any boundary shall be made by the City Engineer or designated representative, where there is question as to its location or width.

(H) *Streamside Protection Measures and Construction.*

(1) Prior to any land clearing or soil disturbing activity, the streamside protection zone boundaries shall be clearly delineated on site by the applicant, and such delineation shall be maintained throughout construction activities.

(2) A site inspection followed by periodic inspections during construction will be conducted by the City Engineer or designated representative to ensure compliance with the streamside protection zone ordinance.

(3) Streamside protection zones shall be protected from construction activity except where necessary to allow an activity permitted by subsection (E)(1). To prevent impacts, construction vehicle access is prohibited in the streamside protection zones except at permitted crossings. Storage of construction vehicles, materials, debris, spoils or equipment is prohibited in the streamside protection zones. Before commencing any construction activity, the applicant shall install silt fencing on

the site at the outer edge of the management zone or as directed by the City Engineer. The City Engineer may require other protective measures based upon the individual characteristics of the site and the proposed construction methods. If the required barriers surrounding the streamside protection zones are not adequately maintained during construction, the City Engineer shall prescribe remedial measures, and may issue a stop work order in accordance with §153.07. All remedial measures shall be completed within the specified amount of time and shall be considered prior to granting final plat approval or issuing a certificate of occupancy.

(Ord. No. 5390, 3-1-11; Ord. No. 6410 §§1, 2, 2-2-21; Ord. No. 6446, §10(Exh. E), 6-15-21)