

**NEWTON ORDINANCE NO. 4937-17
NORTH NEWTON ORDINANCE NO. 615-17**

A JOINT ORDINANCE OF THE CITIES OF NEWTON, KANSAS AND NORTH NEWTON, KANSAS AMENDING THE CURRENT ZONING ORDINANCES OF THE CITIES OF NEWTON AND NORTH NEWTON, CREATING A NEW ARTICLE XVII. PERTAINING TO STREAM CORRIDOR MANAGEMENT.

BE IT ORDAINED BY THE GOVERNING BODIES OF THE CITIES OF NEWTON, KANSAS, AND NORTH NEWTON, KANSAS:

SECTION 1. Original Article XVII of the Zoning Ordinances of the Cities of Newton, Kansas, and North Newton, Kansas, is hereby amended to read as follows:

ARTICLE XVII. STREAM CORRIDOR OVERLAY DISTRICT

17.1. Purpose and Application

17.1-1. 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, and subsurface and surface water bodies by using scientifically-proven processes including:
 - i. Filtration;
 - ii. Deposition;
 - iii. Absorption;

- iv. Adsorption;
 - v. Plant uptake;
 - vi. Denitrification; and by
 - vii. Improving infiltration;
 - viii. Encouraging sheet flow; and
 - 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, wastewater, 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, moderate water temperature in surface waters, attenuate flood flow, and, where appropriate and feasible, provide opportunities for recreational activities;
 - f. Manage development within floodplains, on land adjacent to stream segments with greater than 15 percent slopes, and other environmentally sensitive areas to minimize hazards to life, property, and stream features;
 - g. Save short and long-term costs by minimizing the installation of costly infrastructure such as pipes;
 - h. Recognize that natural features contribute to the quality of life of the community;
 - i. Provide natural, scenic, and recreation areas within and adjacent to stream corridors for the community's benefit;
 - j. Encourage the infiltration of rainfall to increase groundwater recharge and provide for a water supply more resilient to drought impacts; and
 - k. Create added value to lands adjacent to stream corridors.

17.1-2 Application.

- a. This Article shall apply to all undeveloped land as well as new development within the stream corridor which consists of Sand Creek, Slate Creek and Mud Creek as identified on the most current map of the High Resolution National Hydrography Data Set which is hereby adopted by reference. 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:

- i. Is located within an approved, unexpired preliminary plat or preliminary plan where such approval was given prior to the effective date of this Article; or
 - ii. If platting is not required prior to issuance of a building permit, 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 corridor unless the proposed development is in compliance with the applicable provisions of this Article.

17.2 Stream Corridor Defined

Stream Corridor Width. Stream corridor widths are determined by the size of the drainage area relative to the stream. At all designated stream segment locations, the stream corridor shall consist of inner and outer zones. The width of each zone within the stream corridor is defined below. See Table 17.2, *Minimum Stream Corridor Width*.

Designated Stream Segment	Minimum Buffer Width from Edge of Stream Bank Outwards, Measured Separately in Each Direction
Sand Creek	100 feet
Slate Creek	75 feet
Mud Creek	75 feet

18 Guidelines. The general guidelines used to determine the width of each zone are as follows:

18.1 Inner Zone. The inner zone is defined as that area that is within 20 feet from the edge of the stream bank, measured horizontally from the edge of the stream bank.

18.2 Outer Zone. The outer zone is a variable width zone that is determined by subtracting 20 feet from the required minimum stream corridor width set out in the Table above, and measured horizontally from the outer boundary of the inner zone. The outer zone includes

a distance that comprises all lands with slopes that are greater than 15 percent and include floodplains; provided that these features occur, in part, within the inner or outer zones.

Areas Subject to Flooding. In areas subject to flooding, the buffer width need not coincide with the width of the floodplain. The minimum buffer width shall be no smaller than the width specified in Table 17.2.

17.3 Ponds.

Where manmade ponds interrupt streams, the stream corridor as defined in the previous section, shall stop at the pond and resume on the other side of the pond. Where ponds are removed or filled in as part of development, the stream shall be restored through that area and the stream corridor buffer shall be created using the typology for adjacent stream sections.

17.4 Prohibitions

Any use or activity that is not identified as being permitted by this Division within any stream corridor zone, as set out in the following section, is prohibited in all identified stream corridors. Mowing or clearing of the inner zone shall be specifically prohibited, except in cases of continued agricultural uses or unless approved by the Director of Public Works.

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 in the application; 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.
 - i. Conservation uses, wildlife sanctuaries, nature preserves, forest preserves, fishing areas, and passive areas of parklands.
 - ii. Unpaved 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. Excavation and fill required to plant any new trees or vegetation.
 - vii. Installation of water and wastewater facilities, provided that, the owner of the facilities provides information to the Public Works Department that is sufficient to allow the Public Works Director to determine that the installation of the facilities in the outer zone is infeasible. Feasibility will be determined through consideration of factors, such as geology, topography, and the presence of unique habitats in the stream corridor. 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. Paved recreational trails.
 - iii. Fences; provided however, that such fences must be constructed so as not to impede floodwaters.
 - iv. Installation of utilities, including water and wastewater facilities.
- d. Additional Uses and Activities Permitted in the Outer Zone, with 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 use may extend into the outer zone; provided, however, that the rear of the actual residential structure may not be located nearer than 20 feet from the outer edge 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 (KDHE), or other appropriate federal and state agencies; provided that, the requisite state and/or federal approvals are provided to the City of Newton:
 - i. Dredging;
 - ii. Filling;
 - iii. Excavation;
 - iv. Draining; and
 - v. Clearing.

17.6. Activities Permitted in All Stream Corridor Zones

The following activities are allowed within all zones of the stream corridor:

- a. Agricultural Activities. 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 use 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.
- 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 all or any of the remedies set forth in this Code.

17.8 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. This Ordinance shall not be effective unless it is duly adopted by the governing bodies of both the City of Newton, Kansas, and the City of North Newton, Kansas; and, upon such adoption, this ordinance shall take effect and be in force from and after its publication in THE NEWTON KANSAN, the official newspaper of said Cities.

PASSED AND ADOPTED by the governing body of the City of Newton, Kansas, this 9th day of May, 2017



Barth A. Hague, Mayor

ATTEST:



Denise R. Duerksen, City Clerk

PASSED AND ADOPTED by the governing body of the City of North Newton, Kansas, this 14th day of August, 2017.

Ronald A. Braun
Ron Braun, Mayor

ATTEST:

Patricia S. Redding
Pat Redding, City Clerk