

Recommended Amendments to Chapter 3 of Title 14 of the Lenoir City Municipal Code

CHAPTER 3

LENOIR CITY STREAM BUFFER ORDINANCE

SECTION

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14-301. Statutory authorization. Under the authority of the Federal Water Pollution Control Act of 1977 (known as the Clean Water Act), the United States Environmental Protection Agency (EPA) is specifically required to develop and oversee the National Pollutant Discharge Elimination System (NPDES) permit program which requires all communities operating a small municipal separate storm sewer system (MS4) to regulate the discharge of pollutants to the waters of the state. Under the authority of the Tennessee Water Quality Control Act of 1977 the Tennessee Department of Environment and Conservation (TDEC) has interpreted that this mandate includes the regulation of aquatic buffers. The Legislature of the State of Tennessee has in Tennessee Code Annotated, § 6-2-201, delegated the authority to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. (as added by Ord. #2010-1-15-1882, Jan. 2010). The State of Tennessee, via Tennessee Rule 0400-40-10-.04, and with an effective date on March 19, 2024, has required certain provisions regarding the management of Water Quality Riparian Buffers be adopted by municipalities who are required to comply with NPDES MS4 Permit #TNS000000.

14-302. Short title. This chapter will be known as the Lenoir City Stream Buffer Ordinance. (as added by Ord. #2010-1-15-1882, Jan. 2010)

14-303. Need. Stream buffers are naturally vegetated areas that are located along the edge or perimeter of waterways providing a tool for the overall improvement of a stream's water quality and habitat. A properly maintained

stream buffer will slow down and spread-out stormwater runoff, and helps to filter sediment, chemicals and other pollutants that can compromise the integrity of a healthy stream. Further, the trees and other vegetation within a stream buffer provide shade, allowing stormwater runoff that has been heated on roofed and paved areas to cool before reaching the stream. (as added by Ord. #2010-1-15-1882, Jan. 2010)

14-304. Purpose and intent. The purpose and intent of this ordinance is to establish, protect and maintain native vegetation in the riparian areas of the aquatic corridor by implementing specifications for the establishment, protection, and long-term maintenance of stream buffers along identified streams, wetlands, ponds, lakes and springs in or adjacent to new development, modifications to existing development, and/or redevelopment, except as exempted in § 14-306(2) of this ordinance, within the City of Lenoir City.

With the establishment and management of stream buffers, it is intended to improve overall water quality within the City of Lenoir City; to protect the city's identified waterways from being listed on TDEC's 303(d) list of endangered streams, and to ensure compliance with state and federal regulations.

For additional clarification purposes, waterways is a general term used within this ordinance to include the protection of identified wetlands, natural springs and includes those portions of Town Creek and Muddy Creek located within the corporate limits of the City of Lenoir City.

Exclusions to this ordinance are acknowledged as being man-made features; including detention/retention ponds, water gardens, and/or other man-made water features unique to a particular property. If an existing or man-made feature's exclusionary status is questionable, the stormwater administrator is authorized to request supporting data from the property owner or from other sources to assist in a final determination of which is to be made by the stormwater administrator.

Appeals to the stormwater administrator's final determination shall follow the appeal process identified within § 14-313 of this chapter.

14-305. Objective. It is the objective of this ordinance to protect the physical and ecological integrity of waterways within the corporate limits of the City of Lenoir City from surrounding upland activities. Stream buffers protect such integrity in the following ways:

- (1) Filter excess sediment, organic material, nutrients, and other chemicals;
- (2) Minimize the impact of floods;
- (3) Reduce stormwater runoff velocities;
- (4) Protect channel bank areas from scour and erosion;
- (5) Provide shade for cooling adjacent water;
- (6) Provide leaf litter and large woody debris to support aquatic organisms;
- (7) Protect wetlands;
- (8) Protect wildlife habitats.

Aquatic buffers are most effective when stormwater runoff is flowing into and through the buffer as shallow sheet flow, rather than in a concentrated form. Therefore, it is critical that the design of any development include best management practices to produce the above mentioned effect. (as added by Ord. #2010-1-15-1882, Jan. 2010)

14-306. Applicability. This ordinance shall apply to all new developments, modifications to existing developments, and/or redevelopments within the City of Lenoir City.

Exceptions to this ordinance shall include the following:

- (1) Single-family residential lots in existence as of January 2010.
- (2) At time of modification to an existing development and/or redevelopment, the modification cannot encroach closer to the stream top of bank or the floodway than the existing conditions, or per this ordinance, whichever is less.
 - (a) (as added by Ord. #2010-1-15-1882, Jan. 2010)

14-307. Definitions. For the purpose of this chapter, words used in the present tense include the future tense; words in the singular number include the plural number, and words in the plural number include the singular number; the word "shall" is mandatory and not directory; the word "may" is permissive. Any word or term not defined within this title of the Lenoir City Municipal Code or in Chapter 2, Definitions of the Lenoir City Zoning Ordinance shall be construed to be used in this chapter as defined by the latest edition of Webster's Unabridged Dictionary. Any word or term not defined in the city's ordinances or the latest edition of Webster's Unabridged Dictionary shall have the meaning customarily assigned to it.

- (1) Buffer Zone or Water Quality Riparian Buffer is a permanent strip of natural perennial vegetation, adjacent to a stream, river, wetland, pond, or lake that contains dense vegetation made up of grass, shrubs, and/or trees. The purpose of a water quality riparian buffer is to maintain existing water quality by minimizing risk of any potential sediments, nutrients or other pollutants reaching adjacent surface waters and to further prevent negative water quality impacts by providing canopy over adjacent waters.
- (2) Aquatic corridor. An area of land and water which is important to the integrity and quality of a stream, wetland, and spring. An aquatic corridor consists of the actual body of water and the adjacent aquatic buffer.
- (3) Development. Any manmade change, involving construction or reconstruction, to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, grading, clearing, paving, excavation, drilling operations, or other land disturbances.

- (4) Exceptional Tennessee Waters. Surface Waters designated by the State of Tennessee as having the characteristics set forth within Tennessee Rules, Chapter 0400-40-03-.06(4).
- (5) Floodway. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot (1').
- (6) Native vegetation. Indigenous plants to East Tennessee.
- (7) Redevelopment. See "development."
- (8) Stream. Perennial and intermittent watercourses identified through site inspection by TDEC.
- (9) Stormwater administrator. The Building Official for the City of Lenoir City or his or her designated representative, or other representative as appointed by the City Council of Lenoir City.
- (10) TDEC 303(d) list. The list is a compilation of the streams and lakes in Tennessee that are "water quality limited" or are expected to exceed water quality standards in the next two (2) years and need additional pollution controls. Water quality limited streams are those that have one (1) or more properties that violate water quality standards. They are considered impaired by pollution and not fully meeting designated uses. Additionally, the 303(d) List prioritizes impacted streams for specialized studies called Total Maximum Daily Load (TMDL).
- (11) Total Maximum Daily Load (TMDL). TMDL is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. The Clean Water Act, section 303, establishes water quality standards and TMDL programs. In the State of Tennessee, TMDLs are established by TDEC.
- (12) Watercourse. A permanent or intermittent stream or other body of water, either natural or manmade, which gathers or carries surface water.
- (13) Waters with Available Parameters. means any segment of surface waters that has been identified by TDEC as supporting one or more classified uses. Available parameters exist where water quality meets the levels specified in water quality criteria in Rule 0400-40-03-.03.
- (14) Waters with unavailable parameters. Means any segment of surface waters that has been identified by the TDEC as failing to support one or more classified uses. Unavailable parameters exist where water quality is at, or fails to meet, the levels specified in water quality criteria in Rule 0400-40-03-.03, even if caused by natural conditions. In the case of a criterion that is a single response variable or is derived from measurement of multiple response variables, the unavailable parameters shall be the agents causing water quality to be at or failing to meet the levels specified in criteria. Resources to be used in making this determination include biennial compilations of impaired waters,

databases of assessment information, updated GIS coverages (<https://tdeconline.tn.gov/dwr/>), and the results of recent field surveys. GIS coverages of the streams and lakes not meeting water quality standards, plus the biennial list of waters with unavailable parameters, can be found at <https://www.tn.gov/environment/program-areas/wr-water-resources/water-quality/water-quality-reports-publications.html>.

- (15) Waterways. Any stream, wetland, or spring.
- (16) Wetlands. An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetland determination shall be made by the Army Corp of Engineers and/or the Tennessee Department of Environment and Conservation. (as added by Ord. #2010-1-15-1882, Jan. 2010)

14-308. Riparian buffer width requirements.

(1) Riparian buffers must meet the following minimum standards:

- (a) Stormwater discharges should enter the water quality riparian buffer as sheet flow, not as concentrated flow, where site conditions allow.
- (b) Riparian buffers must have the following minimum widths, unless site specific conditions necessitate alternative widths, as described in § 14-306 of this Chapter:

	Average Buffer Width (feet)	Minimum Buffer Width (feet)	Notes
Waters with available parameters for siltation or habitat alteration or unassessed waters	30	15	The criteria for the width of the buffer zone can be established on an average width basis at a project, as long as the minimum width of the buffer zone is more than the required minimum width at any measured location. If the new development or redevelopment site encompasses both sides of a stream, buffer averaging can be
Exceptional Tennessee Waters or waters with unavailable parameters for siltation or habitat alteration.	60	30	

			applied to both sides, but must be applied independently.
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(c) The predominant vegetation within the minimum buffer width area should be trees. The remaining riparian buffers may be composed of herbaceous cover in accordance with § 14-309 of this Chapter.

(d) Buffers shall be measured horizontally, on both banks (as applicable) of all streams, from the top of the stream bank, also referred to as the “ordinary high water mark”.

14-309. Design standards for stream buffers.

(1) The vegetative target is a mature strip of undisturbed native vegetation (either original or re-established) that can provide erosion control to the stream, leaf litter, wood debris, delineated wetland and springs.

If streams, wetlands, or springs do not have an established vegetative buffer, then a planting plan shall be required. Such a planting plan shall be submitted to the Lenoir City Planning Office for approval and shall comply with the following:

- (a) All planting plans shall be drawn at a scale of not less than 1" = 20' for small tracts and 1" = 50' for large tracts on 24" x 36" sheets.
- (b) A minimum of two (2) complete sets of planting plans shall be submitted at the time of application.
- (c) The planting plan shall include a "plant schedule" which lists the number and common and botanical name(s) of all existing and proposed plantings. The "plant schedule" shall also list the height, spread, and where applicable, the caliper of all new plantings at the time of planting.

(2) Establishment of a vegetated aquatic buffer must adhere to the following conditions and must be shown on the planting plan:

- (a) Stream banks must be planted with native vegetation that represents both woody (trees and shrubs) and herbaceous species as determined by a landscape architect. Density shall depend on the re-vegetation technique to be used and existing site conditions.
- (b) No trees shall be planted in a utility district easement.
- (c) No species may comprise more than one-third (1/3) of the total planted trees or shrubs.
- (d) Seedling/trees must be guaranteed at a seventy-five percent (75%) survivorship.
- (e) Invasive species must be removed and managed.

(as added by Ord. #2010-1-15-1882, Jan. 2010)

14-310. Management and maintenance of stream buffers.

- (1) Management of the stream buffer includes specific limitation on alteration of the natural conditions.

The following practices and activities are restricted within the stream buffer, except with prior approval by the Lenoir City Planning Office and/or as approved and permitted by an appropriate state and/or federal agency:

- (a) Clearing or grubbing of existing vegetation; and
- (b) Use, storage, or application of pesticides, herbicides, and fertilizers.

- (2) The following structures, practices, and activities are permitted in the stream buffer subject to the prior approval by the Lenoir City Planning Office and the following specific design or maintenance features:

- (a) Crossings provided the following criteria are followed:
 - (i) The width should be the minimum width needed to allow for maintenance access and installation;
 - (ii) The crossing shall be at an angle that minimizes clearing requirements; and
 - (iii) The minimum number of crossings should be used within each development.
- (b) Trails provided the design and location are approved by the Lenoir City Planning Office. Trails should prevent or minimize the generation of pollutants. If trails are constructed of impervious materials the buffer width must be increased by the width of the trail.
- (c) Public utilities provided the following criteria are followed:
 - (i) The width should be the minimum width needed to allow for maintenance access and installation; and
 - (ii) The crossing should be at an angle that minimizes clearing requirements.
- (d) Individual trees within the stream buffer may be removed if in danger of falling, causing damage to dwellings or other structures, causing blockage of the stream, standing in the path of a proposed water or sewer main, or the roots of the tree are penetrating or in danger of penetrating a sewer line at a joint or pipe connection. However, the root wad or stump should be left in place, where feasible, to maintain soil stability.

- (3) All final plats and site plans shall:

- (a) Show the extent of any aquatic buffer on the subject property and be labeled as "stream buffer";
- (b) Provide a plat note to reference any stream buffer stating, "There shall be no clearing, grading, construction or disturbance of soil and/or native vegetation except as permitted by the Lenoir City Planning Office."
- (c) Provide a plat note to reference any protective covenants

governing all aquatic buffers.

- (4) All stream buffers must be protected during development activities. Prior to the initiation of development activities, ensure adequate visibility of the aquatic buffer by staking, flagging, or fencing.
- (5) Stream buffers shall be left in a stabilized condition upon completion of the development. The vegetative condition of the entire stream buffer must be monitored and landscaping or stabilization performed to repair erosion, damaged vegetation, or other problems identified.

Invasive species must be removed and managed. Only native vegetation may be used in conjunction with stabilization activities. Property owners shall remain responsible for maintaining the aquatic buffer. Where any tree or shrub which was required as part of an approved planting plan is removed, such tree or shrub shall be replaced with an equivalent tree(s) or shrub(s) approved by city staff.

Subsequent city permits, such as land disturbance, grading, building, and sign permits, may be withheld if, after written notification, the required stream buffer or stream buffer to be preserved is not properly maintained.

All landscaping or stabilization activities within the stream buffer must have prior approval by the Lenoir City Planning Office. In addition, performing work in and around waters of the state may require coverage under a State of Tennessee or possibly a federal permit. (as added by Ord. #2010-1-15-1882, Jan. 2010)

14-311. Water pollution hazards. The following land uses and/or activities are designated as potential water pollution hazards and must be set back from any water body by the distance indicated below:

- (1) Non-residential storage of hazardous substances -- One hundred fifty feet (150');
- (2) Non-residential above or below ground petroleum storage facilities -- One hundred fifty feet (150');
- (3) Drain-fields from on-site sewage disposal and treatment system (i.e., septic systems) -- One hundred feet (100');
- (4) Subsurface discharges from wastewater treatment plant -- One hundred feet (100'), or as regulated by other state or federal agencies, whichever is greater;
- (5) Land application of biosolids -- One hundred feet (100'), or a distance as required by 40 CFR 503, whichever is greater.

(as added by Ord. #2010-1-15-1882, Jan. 2010)

14-312. Violation and enforcement. It shall be unlawful for any person, corporation or entity to violate or fail to comply with any provisions of this ordinance. Each day a violation is allowed to continue shall constitute a separate offense.

In determining the severity of the penalty for a violation, the stormwater administrator shall consider the following conditions:

- (1) The degree and extent of the harm to the natural resources, to the public health, or to the public or private property resulting from the violation;
- (2) The duration and gravity of the violation;
- (3) The effect on ground or surface water quality;
- (4) The cost of rectifying the damage;
- (5) The amount of money saved by noncompliance;
- (6) Whether the violation was committed willfully or intentionally;
- (7) The cumulative effect of other enforcement actions applied for the same offense;
- (8) The prior record of the violator in complying or failing to comply with the stormwater quality management program;
- (9) The costs of enforcement to the City of Lenoir City. (as added by Ord. #2010-1-15-1882, Jan. 2010)

14-313. Appeals. The board of codes enforcement appeals shall serve as the appellate body for this ordinance and have the power to hear and decide appeals to this ordinance.

The appeal shall be in a written request submitted to the stormwater administrator within ten (10) days of a written notice of violation. The appeal shall be heard in the same manner as all other appeals filed to the board of codes enforcement appeals, and as identified by its ordinance of establishment. (as added by Ord. #2010-1-15-1882, Jan. 2010)

14-314. Conflict with other regulations. Where the standards and management requirements of this stream buffer ordinance are in conflict with other laws, regulations, or ordinances or other environmental protective measures, the more restrictive requirements shall apply. (as added by Ord. #2010-1-15-1882, Jan. 2010)