

WETLAND ORDINANCE

**AN ORDINANCE FOR THE CITY OF OAK PARK HEIGHTS PERTAINING TO
WETLAND REGULATION AND DEVELOPMENT AND ESTABLISHING
RULES FOR WETLAND PRESERVATION IN LAND DEVELOPMENT**

**THE CITY COUNCIL FOR THE CITY OF OAK PARK HEIGHTS DOES
ORDAIN:**

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406.010	TITLE: This Title shall be known as the <i>CITY OF OAK PARK HEIGHTS WETLANDS ORDINANCE</i> and will be referred to herein as, “this Title.”
406.020	INTENT; PURPOSE
A.	Purpose: The purpose of this section is to recognize, preserve and protect the environmental, aesthetic and hydrologic functions of the city's wetlands by regulating the use of wetlands and their adjacent properties. These functions include, but are not limited to, sediment control, pollution control, filtration, fish and wildlife habitat and aquifer recharge.
B.	Intent: The intent of this section is to protect wetlands to the maximum extent possible while allowing a reasonable use of the property. This section adopts the regulations and standards of the Wetland Conservation Act of 1991 (WCA), Laws of Minnesota 1991, chapter 354, as amended, and the rules adopted pursuant to the WCA.

406.030 **DEFINITIONS**

BUFFER

AREA: An undisturbed or re-established vegetated area in the upland area around the perimeter of a wetland. It is an integral part of protecting the wetland ecosystem through filtering pollutants and providing adjacent habitat.

UPSLOPE

BUFFER
EDGE: For purposes of this ordinance the buffer edge means the edge of the buffer furthest away from the delineated wetland boundary.

ENHANCE: To improve the value of wetlands or wetland buffers with respect to the purposes of this Ordinance.

MANAGE: To control the use of wetland resources consistent with the purposes of this Ordinance. Management of wetlands includes conservation, maintenance and enhancement.

STRUCTURE: A principal building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

VEGETATION

NATIVE: The pre-settlement group of plant species native to the local region that were not introduced as a result of settlement or subsequent human activity.

WETLAND: Lands transitional between terrestrial and aquatic ecosystems, where the water table is usually at or near the surface or the land is covered by shallow water. Consistent with the WCA, wetlands are to be identified and delineated using the methodology set forth in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (Interagency Task Force on Wetland Delineation, 1987). For purposes of this definition, wetlands must have three of the following attributes:

- (1) Contain a predominance of hydric soils;
- (2) Are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions;
- (3) Under normal circumstances support a prevalence of such vegetation.

This definition does not include wetlands created from uplands either: (1) for stormwater storage and management purposes, or (2) by actions not intended to create the wetland and approved, permitted, funded or overseen by a public entity.

WETLAND

EDGE: The line delineating the outer edge of a wetland. This line shall be established by using the 1987 Corps of Engineers (COE) Wetlands Delineation Manual (Environmental Laboratory, 1987).

406.040 **DESIGNATION OF PROTECTED WETLANDS:** All wetlands that fall under the regulation of the Wetland Conservation Act and Department of Natural Resources will be subject to this ordinance.

406.050 **WETLAND DELINEATION:** A wetland delineation must be completed and approved by the City's Engineer prior to the approval of the preliminary plat and/or issuance of a building permit for any development on unplatted land and all new commercial development. Wetland delineations shall be completed for that portion of the wetland located on the subject property. A determination of the total wetland size will be a required submittal to allow the City to apply appropriate buffer width and setback requirements. Estimated wetland boundaries for the wetland area located off the property may be required at the discretion of the City Engineer, where it may affect the width of the buffer. Wetland delineations will expire 3 years from the day they were approved. The property owner is responsible for all costs, as designated in the fee schedule, in obtaining wetland delineation approval. The approved delineation must be done by a qualified professional according to WCA rules and be acceptable to the City designated LGU person and WCA Agent.

406.060 **WETLAND BUFFER AREAS:**

A. This subsection establishes requirements for wetland buffer areas around delineated and protected wetlands. Buffer areas are necessary and beneficial to maintain the health of wetlands. Buffer areas protect the edge of wetlands from erosion while filtering sediment, chemicals and other nutrients from runoff that drains into wetlands. Buffer areas can improve the biological diversity and health of a wetland environment while reducing the adverse impacts of human activities and provide valuable infiltration areas and help slow the runoff into the wetland to prevent large fluctuations in water level, which can negatively impact the biotic communities of the wetland.

B. Buffer areas regulated by this section are areas of vegetative cover that are upland of the wetland edge, and that occur in a natural condition or are restored to a natural condition. Buffer areas consist of native vegetation such as shrubbery and/or trees and/or native grasses and/or forbs (flowers) that are not mowed, fertilized or manicured in any manner.

- C. Wetland buffer areas must be created or existing buffer areas must be maintained around all delineated wetlands in the following situations:
1. When wetlands are required to be replaced or restored;
 2. When new development occurs. For purposes of this subsection, new development means:
 - a. Any subdivision that creates a new lot that has no principal use on it; Construction of a principal use on an existing vacant parcel of land;
 - b. Issuance of a building permit for any development on unplatted land and all new commercial development.
 3. When redevelopment occurs. For purposes of this subsection redevelopment means the removal of the principal use of more than 50 percent of its market value and reconstruction on the same property. This requirement does not apply if construction is the result of more than 50 percent of the building being damaged by an involuntary force, such as fire, wind, or vandalism;
 4. When the city requires a buffer as part of a variance, conditional use permit, or a site plan review; or
 5. When grading or construction is proposed that requires a city permit and the proposed activity could potentially impact the quality of the wetland by increasing hard surface run off, altering existing drainage, or impacting an existing buffer.
- D. Buffer area widths will be based on the wetland size and whether it is a DNR protected water.

Wetland Size Width of Buffer Area From the Delineated Wetland Boundary

0-3 acres	15 feet
Greater than 3	25 feet
DNR protected Water (including wetlands, lakes and streams)	35 feet

- E. In cases of new development or redevelopment the city may require that vegetation in the wetland buffer be installed prior to the issuance of the certificate of occupancy. The city may waive this requirement in lieu of a cash escrow or letter of credit equal to 150 percent of the cost to install the required buffer.
- F. The city may allow the disturbance of an existing buffer or created buffer areas during the course of construction activity. This disturbance must be kept to a minimum, soils must be decompacted to a level that will accommodate root growth, and the buffer area must be re-established as required by the city. The city will determine the amount of allowable disturbance. The city may require a cash escrow or letter of credit equal to 150 percent of the cost to re-establish the buffer to its original condition.
- G. The city may require buffer area planting and maintenance when the city determines that there is inadequate vegetation in the buffer area to meet the intent of this section. The city may require a cash escrow or letter of credit equal to 150 percent of the estimated cost of the vegetation and installation. The escrow or letter of credit must be valid for up to three years and may be used by the city to replace any vegetation that dies. The escrow can be released by the city if the City Engineer approves the buffer vegetation.
- H. The affected property owner or homeowner association that is responsible for the maintenance must:
1. Maintain and repair damage to buffer areas from such activities as mowing, cutting, grading or other prohibited activities, unless mowing is approved by the city as a buffer management strategy. Permission must be obtained from the city before implementing buffer management strategies, which may include mowing, burning, and the use of herbicides.
 2. Be responsible for maintaining only the permitted vegetation in the buffer area and must remove all noxious weeds and invasive, non-native species such as European buckthorn;
 3. Ensure that all soil surfaces in the buffer area are planted with the permitted vegetation and that there is no open soil surface that may result in erosion.

406.070 **ACCEPTABLE BUFFER STRIPS:**

- A. Continuous dense layer of perennial grasses that have been uncultivated or unbroken for at least (10) consecutive years, or
- B. Has an over story of trees and/or shrubs with a herbaceous layer that has been uncultivated or unbroken for at least ten (10) consecutive years and does not contain bare or disturbed soil that is greater then 10%, or
- C. If it meets the qualifications of A and B above and is not determined to be unacceptable based on the criteria under Section 8, Unacceptable Buffer Strips.

406.080 **UNACCEPTABLE BUFFER STRIPS:** Unacceptable buffer strips are described below. The City's designated official shall determine if a wetland buffer is acceptable at the time of the wetland boundary review. If determined to be unacceptable, the applicant must submit a landscaping plan that utilizes native species to the city's designated official for review and approval.

- A. It has 30% or more of its vegetation composed of undesirable plant species (including, but not limited to reed canary grass, common buckthorn, purple loosestrife, leafy spurge, bull thistle, and other noxious weeds), or
- B. Has bare or disturbed soil that is greater then 10% of the area, or
- C. Contains turf grass (Kentucky bluegrass) that is greater then 10% of the area.

406.090 **PERMITTED USES:**

- A. Disturbance or work within the wetland buffer areas cannot be done unless it is for one of the following uses:
 - 1. Native vegetation, provided that no change is made to the ground elevation;
 - 2. Wildlife and nature preserves;
 - 3. Docks and reasonable access to the wetland, poles that are less than two feet in diameter to be used for boardwalks and bridges;
 - 4. Public and private flood control structures, ponding and drainage facilities and associated accessory appurtenances;
 - 5. Environmental monitoring or control facilities, including those related to water quality and wildlife regulation;

6. Overhead utility poles and lines that are less than two feet in diameter, underground utility lines and distribution equipment, light poles, traffic signals, traffic regulatory signs, mailboxes and other equipment that provide an essential public service;
7. Structures if the city determines that a particular structure will protect the wetland from erosion;
8. Maintenance of an existing public or private lawfully located road, structure, or facility, including, without limitation, drainage facilities, water conveyance structures, dams, fences or trails, and any facility used to provide transportation, electric, gas, water, telephone, telegraph, telecommunication, or other services;
9. Maintenance of an existing farm or stock pond, irrigation ditch, fence, or drainage system;
10. Weed control consistent with state and county laws; and
11. Continuation of existing agricultural practices, such as cultivation and harvesting of hay or pasturing of livestock or change of agricultural practices which has no greater impact on wetland function;
12. Impervious trails (no wider than 8-feet or as approved by city) if upslope of wetland by a minimum of 15 feet;
13. If authorized by the City Engineer for floodwater storage or water quality benefits;

406.100

STANDARDS FOR DELINEATED WETLANDS, BUFFER AREAS, AND NEIGHBORING LANDS: The following standards apply to all land adjoining a delineated wetland, wetland buffer areas, and to neighboring lands:

- A. Protection of wetlands and wetland buffer areas.
 1. Except as modified or regulated by the standards of this subsection, all requirements of the underlying zoning district apply.
 2. No structures are allowed in the wetland buffer area.

3. Activities including, but not limited to, building, paving, mowing, cutting, filling, dumping, yard waste disposal or fertilizer application are prohibited in the buffer areas. Mowing may be permitted when approved by the city as a buffer management strategy. However, invasive non-native vegetation, such as European buckthorn and noxious weeds, may be removed.
4. Before grading or construction near a wetland overlay district or buffer area, the owner or contractor must place and maintain erosion control fencing on the upland side of the perimeter of the wetland overlay district or wetland buffer area, which ever is more restrictive, or as required by the city. This fencing must remain in place and be maintained by the owner until all development activities that may affect the wetland and the wetland buffer area have been finished and adequate vegetative cover has been established. It is the responsibility of the ultimate property owner to remove the silt fence once vegetation has been established.
5. All hard surface runoff must be treated in accordance with the requirements of the city and the appropriate watershed district. Treatment may include site retention, skimmers, weirs or sedimentation ponds of appropriate scale. Structures and ponds serving this purpose must be properly maintained and serviced by the property owner.
6. Discharge into the wetlands must occur at a rate no greater than allowed by the City Engineer in accordance with the city's water resources management plan and the appropriate watershed district requirements.
7. Developers and property owners will be responsible for erecting wetland and buffer markers at the upslope edge of the buffer. The city will provide artwork and verbiage for the sign.
8. Wetland fill impacts will not be allowed to accomplish the fulfillment of the buffer width and setback requirements. Buffer Mitigation requirements are provided in Section 15.

406.110

WETLAND SETBACKS

All buildings (principal and accessory), must be set back at least 20 feet from the upslope edge of the wetland buffer.

- A. Use exceptions to the 20-foot setbacks include: play structures and uncovered porches. Patio slabs, driveways and parking lots may extend within 10 feet of the buffer edge if approved by the City Engineer. In some cases depending on the amount of impervious surface created, the City Engineer may require treatment from a driveway or parking lot before it enters the wetland or buffer.
- B. A setback from the buffer line is not required for overhead utility poles and lines that are less than two feet in diameter, underground utility lines and distribution equipment, light poles, traffic signals, traffic regulatory signs, mailboxes, and other equipment that provides an essential public service.
- C. A setback is not required for fences or retaining walls. However, they may not be located within the buffer area unless approved by the City Engineer.
- D. An existing structure, driveway or parking area meeting the required setback from a city-designated wetland boundary or buffer area is considered a legal nonconforming development if a later wetland delineation or implementation of a wetland buffer shows that the wetland or its buffer is closer than the required setback.

406.120 **ALTERATION OF THE WETLANDS:** No alteration of wetlands or a wetland buffer is allowed without a wetlands alteration permit, subject to the approval of the City Council. Activities that constitute an alteration regulated by this section include:

- A. Placement of any material, including, without limitation, any soil, sand, gravel, mineral, aggregate, organic material, or water;
- B. Construction, installation, or placement of any obstruction, or the erection of a building or structure;
- C. Removal, excavation, or dredging of solid material of any kind, including, without limitation, any soil, sand, gravel, mineral, aggregate, or organic material unless approved by the city for wetland enhancement or floodwater storage purposes;
- D. Removal of any existing vegetation or any activity, which will cause any loss of vegetation in a wetland unless it is part of a wetland restoration activity approved by the City Engineer, or is removal of dead or diseased trees;
- E. Alteration of the water level or water table by any means, including, without limitation, draining, ditching, trenching, impounding, or pumping; and

- F. Disturbance of existing surface drainage characteristics, sedimentation patterns, flow patterns, or flood retention characteristics by any means, including, without limitation, grading and alteration of existing topography.

Alterations do not include wetland planting or the selective clearing or pruning of trees or vegetation that are dead, diseased, noxious weeds or similar hazards.

406.130 **PUBLIC CONTROL OF WETLANDS:**

- A. The City Council may require that the owner of any property affected by this ordinance must record wetland and buffer area easements or restrictive covenants within the property's chain of title. These easements or covenants must describe the boundaries of the wetland setback and buffer area and prohibit any building, paving, mowing (unless approved as a management strategy), cutting, filling, dumping, yard waste disposal or fertilizer application within the wetland and the buffer area. The owner or developer must record these easements or covenants with the final plat, with deeds from a lot division or, if no subdivision is involved, before the city issues a grading permit or building permit for an affected property. The applicant must submit evidence that the easement or covenant has been submitted to the county for recording.
- B. If the City Council does not require an easement or covenant, the city may record a notice of the wetland and buffer area requirements against the property. The property owner must still comply with the requirements of this section.

406.140 **WETLAND BUFFER MARKERS:**

- A. When new development or redevelopment results in residential or a business use, the developer must place markers at the upslope buffer edge with a minimum spacing of 75 feet or of one per lot.
- B. The marker shall consist of a four-inch square treated post, installed to a height of four feet above grade and set at least 42 inches into the ground.
- C. Bolt or screw sign to post.
- D. Proposed locations of signs shall be shown on grading or site plan. In general, the location of signs shall capture the portion of the buffer that extends the furthest upslope into the lot. The plan that shows the location of the sign shall be provided to the City Engineer for review and approval.
- E. Artwork and verbiage shall face principal living (structure).

F. Artwork will be provided by the city, however the source of sign is at the discretion of the project sponsor.

406.150 **WETLAND BUFFER MITIGATION:** If an authorized regulatory authority (DNR, City) approves a wetland permit that impacts wetlands, the applicant will be required to replace the buffer on the fill slope. The applicant will not be allowed to increase the proposed fill to accommodate the required buffer. In instances where a 25 foot buffer is required and could result in impact to the wetland, the City Engineer may allow the applicant to reduce the width of the buffer to a minimum of 15 feet if the overall average of the buffer is still met along the wetland. A variance will be required if a buffer width minimum or average cannot be met.

When a wetland is completely filled, the buffer area requirement associated with the size of the wetland that was filled will be required for the replacement wetlands unless replacement is occurring adjacent to a larger wetland. In this case, the buffer area requirement for the larger wetland will apply. A landscaping plan for the buffer replacement site will be required. The landscape plan shall utilize native species and be submitted to the City's Engineer for review and approval.

Ordinance Adopted by City Council: January 13, 2004