

CHAPTER 23
STREAM BUFFER PROTECTION ORDINANCE
(Approved and adopted 09-10-2018)
(Amended Per Ordinance O-2021-05, 3-19-2021)

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Section 23-101. Title.

This ordinance shall be known as the City of Hoschton Stream Buffer Protection Ordinance.

Section 23-102. Findings and Purposes.

1. *Findings.* Whereas, the Mayor and Council of the City of Hoschton finds that buffers adjacent to streams provide numerous benefits which include:
 - A. Protecting, restoring and maintaining the chemical, physical and biological integrity of streams and their water resources;
 - B. Removing pollutants delivered into urban stormwater;
 - C. Reducing erosion and controlling sedimentation;
 - D. Protecting and stabilizing stream banks;
 - E. Proving for infiltration of stormwater runoff;
 - F. Maintaining base flow of streams;
 - G. Contributing organic matter that is a source of food and energy for the aquatic ecosystem;
 - H. Providing tree canopy to shade streams and promote desirable aquatic habitat;
 - I. Providing riparian wildlife habitat;
 - J. Furnishing scenic value and recreational opportunity; and
 - K. Providing opportunities for the protection and restoration of green space.
2. *Purposes.* It is the purpose of this ordinance to protect the public health, safety, environment and general welfare; to minimize public and private losses due to erosion, siltation and water pollution; and to maintain stream water quality by provisions designed to:
 - A. Create buffer zones along the streams of the City of Hoschton for the protection of water resources; and
 - B. Minimize land development within such buffers by establishing buffer zone requirements, and by requiring authorization for any such activities.

Section 23-103. Definitions.

1. *Buffer*. Means, with respect to a stream, a natural or enhanced vegetated area (established by Section 23-105 (1)(A)), lying adjacent to the stream.
2. *Impervious Cover*. Any manmade paved, hardened or structural surface regardless of material. Impervious cover includes but is not limited to rooftops, buildings, streets, roads, decks, swimming pools and any concrete or asphalt.
3. *Land Development*. Any land change including but not limited to clearing, grubbing, stripping, removal of vegetation, dredging, grading, excavating, transporting and filling of land, construction, paving and any other installation of impervious cover.
4. *Land Development Activity*. Actions or activities which comprise, facilitate or result in land development.
5. *Land Disturbance*. Any land or vegetation change including but limited to clearing, grubbing, stripping, removal of vegetation, dredging, grading, excavating, transporting and filling of land, that do not involve construction, paving or any other installation of impervious cover.
6. *Land Disturbance Activity*. Those actions or activities which comprise, facilitate or result in land disturbance.
7. *Floodplain*. Any land area susceptible to flooding which would have at least a one (1) percent probability of flooding occurrence in any calendar year based on the basin being fully developed as shown on the current land use plan; i.e., the regulatory flood.
8. *Parcel*. Any plot, lot or acreage shown as a unit on the latest county tax assessment records.
9. *Permit*. The permit issued by the City of Hoschton required for undertaking any land development activity.
10. *Person*. Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, city, county or other political subdivision of the state, any interstate body or any other legal entity.
11. *Protection Area or Stream Protection Area*. With respect to a stream, the combined areas of all required buffers and setbacks applicable to such stream.
12. *Riparian*. Belonging or related to the bank of a river, stream, lake, pond or impoundment.
13. *Setback*. With respect to a stream, the area established by Section 12-105(1)(B) extending beyond any buffer applicable to the stream.
14. *Stream*. Means any stream beginning at:

- A. The location of a spring, seep or groundwater outflow that sustains streamflow;
 - B. A point in the stream channel with a drainage area of 25 acres or more;
 - C. Where evidence indicates the presence of a stream in a drainage area of other than 25 acres, the City of Hoschton may require field studies to verify the existence of a stream.
15. *Stream Bank*. The sloping land that contains the stream channel and the normal flows of the stream.
16. *Stream Channel*. The portion of a watercourse that contains the base flow of the stream.
17. *Watershed*. The land area that drains into a particular stream.

Section 23-104. Applicability.

This ordinance shall apply to all land development activity on property containing a stream protection area as defined in Section 23-103 of this ordinance. These requirements are in addition to, and do not replace or supersede, any other applicable buffer requirements established under state law and approval or exemption from these requirements do not constitute approval or exemption from buffer requirements established under state law or from other applicable local, state or federal regulations.

1. *Grandfather Provisions*. This ordinance shall not apply to the following activities:
 - A. Work consisting of the repair or maintenance of any lawful use of land that is zoned and approved for such use on or before the effective date of this ordinance.
 - B. Existing development and ongoing land disturbance activities including but not limited to existing agriculture, silviculture, landscaping, gardening and lawn maintenance, except that new development or land disturbance activities on such properties will be subject to all applicable buffer requirements.
 - C. Any land development activity that is under construction, fully approved for development, scheduled for permit approval or has been submitted for approval as of the effective date of this ordinance.
 - D. Land development activity that has not been submitted for approval, but that is part of a larger master development plan, such as for an office park or the phased development that has been previously approved within two (2) years of the effective date of this ordinance.
2. *Exemptions*. The following specific activities are exempt from this ordinance. Exemption of these activities does not constitute an exemption for any other activity proposed on a property:
 - A. Activities for the purpose of building one (1) of the following:
 - 1) Stream crossing by a driveway, transportation route or utility line;
 - 2) Public water supply intake or public wastewater outfall structures;
 - 3) Intrusions necessary to provide access to a property;
 - 4) Public access facilities that must be on the water including boat ramps, docks, foot trails leading directly to the river, fishing platforms and overlooks;

- 5) Unpaved foot trails and paths;
 - 6) Activities to restore and enhance stream bank stability, vegetation, water quality and/or aquatic habitat, so long as native vegetation and bioengineering techniques are used.
- B. Public sewer line easements paralleling the creek, except that all easements (permanent and construction) and land disturbance should be at least twenty-five (25) feet from the top of the bank. This includes such impervious cover as is necessary for the operation and maintenance of the utility including but not limited to manholes, vents and valve structures. This exemption shall not be construed as allowing the construction of roads, bike paths or other transportation routes in such easements, regardless of paving material, except for access for the uses specifically cited in Section 23-104(2)(A) above.
 - C. Land development activities within a right-of-way existing at the time this ordinance take effect or approved under the terms of this ordinance.
 - D. Within an easement of any utility existing at the time this ordinance takes effect or approved under the terms of this ordinance, land disturbance activities and such impervious cover as is necessary for the operation and maintenance of the utility, including but not limited to manholes, vents and valve structures.
 - E. Emergency work necessary to preserve life or property. However, when emergency work is performed under this section, the person performing it shall report such work to the City of Hoschton on the next business day after commencement of the work. Within ten (10) days thereafter, the person shall apply for a permit and perform such work within such time period as may be determined by the City of Hoschton to be reasonably necessary to correct any impairment such emergency work may have caused to the water conveyance capacity, stability or water quality of the protection area.
 - F. Forestry and silviculture activities on land that is zoned for forestry, silvicultural or agricultural uses and are not incidental to other land development activity. If such activity results in land disturbance in the buffer that would otherwise be prohibited, then no other land disturbing activity other than normal forest management practices will be allowed on the entire property for three (3) years after the end of the activities that intruded on the buffer.

After the effective date of this ordinance, it shall apply to new subdividing and platting activities.

Any land development activity within a buffer established hereunder or any impervious cover within a setback established hereunder is prohibited unless a variance is granted pursuant to Section 12-105(2) below.

Section 23-105. Land Development Requirements.

1. *Buffer and Setback Requirements.* All land development activities subject to this ordinance shall meet the following requirements:

- A. Any disturbed natural vegetative buffer shall be maintained for fifty (50) feet, measured horizontally on both banks (as applicable) of the stream as measured from the top of the stream bank.

- B. An additional setback shall be maintained for twenty-five (25) feet, measured horizontally beyond the undisturbed natural vegetative buffer in which all impervious cover shall be prohibited. Grading, filling and earthmoving shall be minimized within the setback.
 - C. No septic tanks or septic tank drain fields shall be permitted within the buffer or setback.
2. *Variance Procedures.* Variances from the above buffer and setback requirements may be granted in accordance with the following provisions:
- A. The Hoschton City Council may grant a variance from the buffer and setback requirements established by this ordinance. *(Amended via Ordinance O-2-2021-5 adopted 3/19/2021)*
 - B. Prior to acting upon a variance, the Hoschton City Council shall conduct a public hearing on the application for variance. The City of Hoschton shall give public notice of each such public hearing in a newspaper of general circulation within the City of Hoschton. The City of Hoschton shall post a sign giving notice of the proposed variance and the date, place, and time of the public hearing. The sign shall be posted in such location on the property as to be clearly visible from the primary adjacent road right-of-way. The public hearing shall be conducted in accordance with procedures specified in the Hoschton Zoning Ordinance, Article VIII, "Zoning Amendments and Applications," Section 801 "Procedures for Calling and Conducting a Public Hearing." *(Amended via Ordinance O-2-2021-5 adopted 3/19/2021)*
 - C. At a minimum, a variance request shall include information for variance applications specified by the Hoschton Zoning Ordinance, Article VIII, "Zoning Amendments and Applications," Section 805, "Variances," subsection 6, "Application Requirements." *(Amended via Ordinance O-2-2021-5 adopted 3/19/2021)*
 - D. The basis for deciding upon variances to the stream buffer requirements of this ordinance shall be those criteria for variances specified in the Hoschton Zoning Ordinance, Article VIII, "Zoning Amendments and Applications," Section 805, "Variances," subsection 9, "Criteria for Variances." In addition to said variance criteria, the Hoschton City Council should consider the extent to which the proposed buffer or setback intrusion can be reduced and whether any long-term water quality impacts might result from granting the proposed variance. To these ends, the Hoschton City Council shall be authorized to in may impose conditions of variance approval to mitigate water quality impacts anticipated to result from the proposed development. *(Amended via Ordinance O-2021-5 adopted 3/19/2021).*

Section 23-106. Compatibility with Other Buffer Regulations and Requirements.

This ordinance is not intended to interfere with, abrogate or annul any other ordinance, rule or regulation, statute or other provision of the law. The requirements of this ordinance should be considered minimum requirements, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of the law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

The Grandfather Provisions, Exemptions and Variance Procedures sections of Chapter 23, Stream Buffer Protection, do not apply to this subsection. Applicable exemptions and variances are given below.

1. *Mulberry River Watershed Protection Requirements.* This Section of the Stream Buffer Protection Ordinance is adopted pursuant to Georgia Department of Natural Resources Rules for Environment Planning Criteria for water supply watersheds (O.C.G.A. 391-3-16).
 - A. Stream buffer zone/impervious surface setbacks shall meet minimum criteria for Large Water Supply Watersheds (O.C.G.A. 391-3-16 (6)).
 - 1) Roadways, bridges and drainage structures may encroach upon required buffers and setbacks where such structures are necessary to provide access. Such roadways and bridges shall cross streams perpendicularly where reasonably possible. The number of such stream crossings and associated structures shall be minimized to the greatest extent possible.
 - 2) Limited minor land disturbances such as trails and picnic areas are exempt.
 - B. Lots of records. All lots or parcels of record as of the date of adoption of this ordinance in the Mulberry River Watershed and all lots or parcels which have been submitted by way of preliminary plat and approved by the Planning Commission as of the date of adoption of this ordinance in the Mulberry River Watershed that are made unbuildable by the buffer and setback provisions may still be developed on a case-by-case basis. Requests for development of these lots shall be made to the City of Hoschton as Administrative Variances. If development is allowed, the maximum possible impervious surface setback and stream buffer width, given the configuration of the lot, shall be maintained.
 - C. Limitation on variances. Variances from Subsection 1 (Mulberry River Watershed Protection Requirements) are prohibited except as provided by Subsection 1 (B).

Section 23-107. Reserved. *(deleted per Ordinance O-2021-5)*

Section 23-108. Responsibility.

Neither the issuance of a development permit nor compliance with the conditions thereof, nor with the provisions of this ordinance shall relieve any person from any responsibility otherwise imposed by the law for damage to persona or property; nor shall the issuance of any permit hereunder serve to impose any liability upon the City of Hoschton, its officers or employees, for injury or damage to persons or property.

Section 23-109. Inspection.

The City of Hoschton may cause inspections of the work in the buffer or setback to be made periodically during the course thereof, and shall make a final inspection following completion of the work. The permittee shall assist the City of Hoschton in making such inspections. The City of Hoschton shall have the authority to conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in this ordinance, and for this purpose to enter at reasonable time upon any property, public or private, for the purpose of investigating and inspecting the sites of any land development activities within the protection area.

No person shall refuse entry or access to any authorized representative or agent who request entry for purposes of inspection, and who presents appropriate credentials, nor shall any person

obstruct, hamper or interfere with any such representative while in the process of carrying out official duties.

Section 23-110. Violations, Enforcement and Penalties.

Any action or inaction which violates the provisions of this ordinance or the requirements of an approved site plan or permit may be subject to the enforcement actions outlines in this Section. Any such action or inaction which is continuous with respect to time is deemed to be a public nuisance and may be abated by injunctive or other equitable relief. The imposition of any of the penalties described below shall not prevent such equitable relief.

1. *Notice of Violation.* If the City of Hoschton determines that an applicant or other responsible person has failed to comply with the terms and conditions of a permit, an approved site plan or the provisions of this ordinance, it shall issue a written notice of violation to such applicant or other responsible person. Where a person is engaged in activity covered by this ordinance without having first secured the appropriate permit therefore, the notice of violation shall be served on the owner or the responsible person in charge of the activity being conducted on the site. The notice of violation shall contain:
 - A. The name and address of the owner or the applicant or the responsible person;
 - B. The address or other description of the site upon which the violation is occurring;
 - C. A statement specifying the nature of the violation;
 - D. A description of the remedial measures necessary to bring the action or inaction into compliance with the permit, the approved site plan or this ordinance and the date for the completion of such remedial action;
 - E. A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed; and
 - F. A statement that the determination of violation may be appealed to the City of Hoschton by filing a written notice of appeal within thirty (30) days after the notice of violation (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours' notice shall be sufficient).

2. *Penalties.* In the event the remedial measures described in the notice of violation have not been completed by the date set forth for such completion in the notice of violation, any one or more of the following actions or penalties may be taken or assessed against the person to whom the notice of violation was directed. Before taking any of the following actions or imposing any of the following penalties, the City of Hoschton shall first notify the applicant or other responsible person in writing of its intended action, and shall provide a reasonable opportunity, of not less than ten days (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours' notice shall be sufficient) to cure such violation. In the event the applicant or other responsible person fails to cure such violation after such notice and cure period, the City of Hoschton may take any one or more of the following actions or impose any one or more of the following penalties:
 - A. *Stop Work Order* – The City of Hoschton may issue a stop work order which shall be served on the applicant or other responsible person. The stop work order shall remain in effect until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein, provided the stop work order may be withdrawn or modified to enable the applicant or other responsible person to take necessary remedial measures to cure such violation or violations.

- B. *Withhold Certificate of Occupancy* – The City of Hoschton may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.
- C. *Suspension, Revocation or Modification to Permit* – The City of Hoschton may suspend, revoke or modify the permit authorizing the land development project. A suspended, revoked or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice of violation, or has otherwise cured the violations described therein, provided such permit may be reinstated (upon such conditions as the City of Hoschton may deem necessary) to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.
- D. *Civil Penalties* – In the event the applicant or other responsible person fails to take the remedial measures set forth in the notice of violation, or otherwise fails to cure the violations described therein within ten days (or such greater period as the City of Hoschton shall deem appropriate except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours' notice shall be sufficient) after the City of Hoschton has taken one or more of the actions described above, the City of Hoschton may impose a penalty not to exceed \$1,000 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.
- E. *Criminal Penalties* – For intentional and flagrant violations of this ordinance, the City of Hoschton may issue a citation to the applicant or other responsible person requiring such person to appear in the Municipal Court of the City of Hoschton to answer charges for such violation. Upon conviction, such person shall be punishable by a fine not to exceed \$1,000 or imprisonment for 60 days or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

Section 23-111. Administrative Appeal and Judicial Review.

- 1. Administrative Appeal. Any person aggrieved by an administrative decision or order of the City of Hoschton in the administration or interpretation of this ordinance, may appeal said administrative decision in accordance with the Hoschton Zoning Ordinance, Article VIII, "Zoning Amendments and Applications," Section 806, "Appeals of Administrative Decisions." (*Amended via Ordinance O-2021-5 adopted 3/19/2021*).
- 2. Judicial Review. Any person aggrieved by a decision or order of the City Council, after exhausting all administrative remedies, shall have the right to appeal to a court of proper jurisdiction as provided by law. (*Amended via Ordinance O-2021-5 adopted 3/19/2021*)

Section 23-112. Severability.

If any article, section, subsection, paragraph, clause, phrase or provision of this ordinance shall be adjudged invalid or held unconstitutional, such decision shall not affect or invalidate the remaining portions of this ordinance.