

**Ordinance No. 3414**

**Entitled an Ordinance to amend the Municipal Code of the City of Morristown, Title 14, Chapter 2 – Zoning Ordinance (Chapter 31, Water Quality Buffer Zone) by moving the entire Chapter 31, Water Quality Buffer Zone, to Title 18, Chapter 7.**

CHAPTER 7  
WATER QUALITY BUFFER ZONE

SECTION

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## CHAPTER 7 WATER QUALITY BUFFER ZONE

### 18-701. PURPOSE

The purpose of this section is to define the requirements for water quality buffer zones and to enable the City of Morristown, Tennessee to comply with the requirements of the State of Tennessee's NPDES General Permit for Discharges from Small Municipal Separate Storm Sewer Systems, as authorized by the Tennessee Water Quality Control Act of 1977 (T.C.A. 69-3-101 et seq.) and approved by the United States Environmental Protection Agency under the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (33 U.S.C. 1251, et seq.) and the Water Quality Act of 1987, P.L. 100-4. For the purpose of this section, a water quality buffer zone is a naturally vegetated and pervious streamside buffer free from all clearing, grading, filling, waste dumping, paving, and building activities of nearby site development. Its intent is to protect water supplies by trapping sediment and other pollutants in runoff, stabilize stream banks, minimize flooding impacts, provide shade for cooling adjacent waters, protect riparian wetlands, protect wildlife habitat, and maintain general water quality.

### 18-702. DEFINITIONS

For the purposes of this chapter, the following definitions shall apply:

1. *Floodplain* – For a given flood event, that area of land temporarily covered by water which adjoins a watercourse.
2. *Impervious Area* – Impermeable surfaces, such as pavement or rooftops, which prevent the percolation of water into the soil.
3. *Indigenous* – Having originated in or occurring naturally in a particular region or environment.
4. *Native Vegetation* – Trees, plants, and groundcover that are indigenous to East Tennessee.
5. *Redevelopment* – The alteration of an existing use and/or structure.
6. *Regulated Stream* – All perennial or intermittent stream waterways and wetlands as identified on a 7.5-minute USGS quadrangle map, or as determined by a federal or state agency or the City Engineer.
7. *Runoff* – The water resulting from precipitation that is not absorbed by the soil.
8. *Site Development* – To make an undeveloped or already developed site available for use by physical alteration. Site development includes but is not limited to providing access to a site, clearing of vegetation, grading, earth moving, providing utilities and other services such as parking facilities, stormwater management and erosion control systems, altering land forms, or construction or demolition of a structure on the land.
9. *TDEC* – The Tennessee Department of Environment & Conservation
10. *Vegetation* – Collection of plant life, including trees, shrubs, bushes, and grasses.
11. *Waste* – Decayed wood, sawdust, shavings, fallen bark, fallen leaves, lawn clippings, animal wastes, used or previously applied lime, garbage, trash, refuse, paper products, plastic or metal containers, ashes, offal, discarded paving materials, paint, solvents, chemicals, petroleum or motor vehicle fluids, tires, non-working automobiles, automotive parts, gas tanks, or any other used, uncontained or disposed of material which may enter the stormwater system or be a detriment to the buffer zone's function.

### 18-703. GENERAL PROVISIONS

1. Water quality buffer zones are required for all new site development/redevelopment projects which are adjacent or near to a regulated stream.

2. The water quality buffer zone will extend the length of the regulated stream. The width of the water quality buffer zone may vary, depending upon the following criteria:
  - a. Regulated streams where a floodway profile has been computed, as part of the Flood Insurance Study, shall require a natural buffer zone measured 50 feet horizontally from the center of the low flow channel or the width of the floodway, whichever is greater.
  - b. Regulated streams where a floodway profile has not been computed, as part of the Flood Insurance Study, shall require a natural buffer zone measured 35 feet horizontally from the center of the low flow channel.

For reference, USGS 7.5-minute quadrangle maps can be purchased inexpensively from many map stores or bookstores and may also be viewed in the City's Engineering Department. Flood Insurance Study mapping is available in several forms, such as Flood Insurance Studies (FIS), Flood Insurance Rate Maps (FIRM), and Flood Boundary and Floodway Maps (FBFM). These maps can be viewed or purchased online from the FEMA Map Service Center and are also available for viewing in the City's Engineering Department.

3. Acceptable uses for a water quality buffer zone may include, but are not limited to: existing non-polluting uses, yards, picnic areas, walking trails, greenways, minor landscaped areas, wildlife habitat, primitive areas and other non-polluting uses, as well as the installation of public utility improvements, that are approved by the City Engineer.
4. Specifically prohibited uses include, but are not limited to: parking lots, new structures, dumpster storage, grease bin storage, vehicle storage, vehicle maintenance, septic tanks or drain fields, concentrated animal lots or kennels, waste storage, or other uses known to contribute pollutants to waterways.
5. The water quality buffer zone is to be managed and maintained to protect the physical and ecological integrity of the waterway, to reduce flooding potential, and to filter runoff from developed areas. The vegetative target for the water quality buffer zone is undisturbed native vegetation.
  - a. Individual trees within the water quality buffer zone may be removed if in danger of falling or causing damage to dwellings or other structures. In such instances, the root wad or stump should be left in place, where feasible, to maintain soil stability.
  - b. The pruning of native vegetation is allowed provided that the health and function of the vegetation is not compromised. However, only the individual removal of under-story nuisance vegetation (i.e. honeysuckle, kudzu, privet) causing minimal soil disturbance is permitted. On land where the removal of such nuisance vegetation would cause a reduction in the amount of stream canopy by 50% or more, re-vegetation with native plants is required to provide 50% of the previous canopy at a minimum. For areas where such nuisance vegetation removal would cause a reduction in the amount of stream bank vegetation, re-vegetation with native plants is required to meet the previous coverage.
  - c. Minor landscaping is allowed within the water quality buffer zone to repair erosion, damaged vegetation or other problems noted, but must have prior approval by the City Engineer or his/her authorized agents.
  - d. Only native species of vegetation may be used in conjunction with stabilization activities. A guide to selecting native vegetation can be found at [www.tva.com/river/landandshore/stabilization/plantsearch.htm](http://www.tva.com/river/landandshore/stabilization/plantsearch.htm) or obtained from the City of Morristown's Engineering Department.
  - e. The use, storage, or application of pesticides, herbicides, and fertilizers is strictly prohibited within the water quality buffer zone.
  - f. Stream banks along reaches of any regulated stream shall be left in a stabilized condition upon completion of the site development project. No actively eroding bare or unstable vertical stream banks shall remain unless TDEC has determined there is no better alternative. Placement of riprap and other hard armor is only allowed when "green" alternatives, such as bioengineered stabilization, are not feasible. In addition, performing work in and around waters of the state may require coverage under a state

and possibly a federal permit. Contact the nearest TDEC Division of Water Pollution Control environmental assistance center for more information on whether a proposed activity requires a permit.

6. The City Engineer may allow new driveways or road crossings through or across water quality buffer zones on a case-by-case basis. It must be demonstrated that access across the buffer is necessary, and that the water quality buffer zone will not be impacted excessively. In these cases, the driveway or road crossing shall be constructed perpendicular to the stream or buffer with careful detail to protecting trees and vegetation, minimizing site grades, and green landscaping. Therefore, the design of roadways and lots within a development should be aligned such that all streams are either to the rear or the side of individual lots, and not along the front. Note that such stream crossings may require federal, state, and/or local permits.
7. All parties having influence over the condition of the water quality buffer zone must be made aware of its presence in order to preserve its integrity. Therefore, the following minimum measures must be taken:
  - a. Water quality buffer zones must be shown on all site plans and the recorded plat. The buffer should be labeled for “Restricted-Use” and be dimensioned from the centerline of the waterway. Notation shall be provided stating: “There shall be no clearing, grading, construction or disturbance of soil and/or native vegetation except as permitted by the City Engineer.”
  - b. All water quality buffer zones shall hereafter be maintained through the declaration of a protective covenant, which must be approved by the City Engineer. The covenant shall be recorded in the land records and shall run with the land and continue in perpetuity.
  - c. All lease agreements must contain a notation regarding the presence and location of protective covenants for water quality buffer zones, and which shall contain information on the management requirements for the water quality buffer zones for the new resident.
  - d. Prior to construction, a construction layout survey must be performed which includes staking and marking the water quality buffer zone. A combination of stakes and flagging should be used to ensure adequate visibility. On the development side of the buffer, provide erosion and sediment control measures along the exterior edge of the water quality buffer zone to prevent further construction impacts. Temporary stormwater diversions may be required in reducing sediment discharge.
  - e. Permanent boundary markers, in the form of signage provided or approved by the City of Morristown’s Engineering Department, shall be installed prior to the completion of the development activities. Signage is to be posted at the coincidence of the water quality buffer zone edge, each lot line, and at a maximum spacing of 150'. The sign shall contain the message, “Natural Resource Protection Area: This area is reserved for the protection of water quality by limiting pollution, offering shade and bank stabilization, and providing wildlife habitat”.
8. Waivers may be granted for developments that are already covered by a valid, unexpired building permit.
9. When existing or documented flooding problems are present, the City Engineer is authorized to condition the approval of a permit upon compliance with additional requirements, including but not limited to detention, conveyance facilities, or other stormwater management solutions required to reduce the adverse impact of the proposed development on other properties or on the subject development.
10. Where the standards and management requirements of this chapter are in conflict with other laws, regulations, and policies regarding streams, steep slopes, erodible soils, wetlands, floodplains, timber harvesting, land disturbance activities or other environmental protective measures, the more restrictive requirements shall apply.

18-704. VARIANCES

1. The Board of Zoning Appeals (BZA) may grant variances for the following:
  - a. Those projects or activities where it can be clearly demonstrated that strict compliance with this chapter will result in severe economic hardship or that unique circumstances make it impracticable to meet some or all of the buffer requirements; or
  - b. Those projects or activities serving a public need where no feasible alternative is available; or
  - c. The repair and maintenance of public improvements where avoidance and minimization of adverse impacts to wetlands and associated aquatic ecosystems have been addressed.
2. When considering a request for a variance, the BZA may require additional information such as, but not limited to, site design, landscape planting, fencing, the placement of signs, and the establishment of water quality best management practices in order to reduce adverse impacts on water quality, streams, and wetlands.
3. When deemed appropriate by the BZA:
  - a. The water quality buffer zone width may be relaxed and permitted to become narrower at some points as long as the width is not reduced to less than twenty (20) feet perpendicular to the center of the low flow channel at any point, and the overall average width of the buffer meets the minimum requirement. For example, if a development had 100' of stream frontage and was required by these provisions to have a 50' water quality buffer zone, but due to topographical hardships could only provide 35' of buffer along half of its frontage, then the required buffer width over the remaining half of the stream frontage would be 65'. Thus, the overall average width of the water quality buffer zone would still be 50'.
  - b. The Board of Zoning Appeals may offer credit for additional density elsewhere on the site in compensation for the loss of developable land due to the requirements of this ordinance. This compensation may increase the total number of dwelling units on the site up to the amount permitted under the base zoning.

18-705. NOTICE OF NON-COMPLIANCE

1. Water quality buffer zones will be inspected periodically by City staff to ensure that they are properly maintained. The property owner shall be responsible for revegetating, at their own expense, re-vegetate the section of the buffer encroached upon at the instruction of the City Engineer, using only native plants. The same types of plants that were removed shall be replaced (ex: five trees were removed, then five trees shall be replanted). New vegetation shall be of ample size, at the judgment of the City Engineer, to best mitigate for the loss of the original trees.
2. Whenever the City Engineer or his representative determines that a violation of any provision of this chapter has occurred, or that work does not have a required plan or permit, or that work does not comply with an approved plan or permit, the City Engineer or his representative may issue a Notice of Non-Compliance to the property owner, utility, facility operator, lessee, contractor, permittee and/or the equipment operator doing work on the site. The Notice of Non-Compliance shall:
  - a. Be in writing.
  - b. Include a description of the property sufficient for identification of where violation has occurred.
  - c. List the violation.
  - d. State the action required.
  - e. Provide a deadline for compliance or to stop work.

## 18-706. MISDEMEANOR AND CIVIL PENALTIES

### 1. Misdemeanor-Unlawful Acts:

It shall be unlawful for any person to violate any provision of this ordinance. Any person found to be in violation of the provisions of this ordinance shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00) for each offense. Each day of failure or refusal to comply with any lawful notice to abate violation of this ordinance shall be deemed a separate offense and punishable accordingly.

### 2. Civil Penalty:

Any person or entity violating the provisions of this ordinance may be assessed a civil penalty by the City of not less than fifty dollars (\$50.00) or more than five thousand dollars (\$5,000.00) per day for each day of violation. Each day of violation shall constitute a separate violation.

### 3. In assessing a civil penalty, the municipality may consider:

- a. The harm done to the public health or the environment.
- b. Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity.
- c. The economic benefit gained by the violator.
- d. The amount of effort put forth by the violator to remedy this violation.
- e. Any unusual or extraordinary enforcement costs incurred by the municipality.
- f. The amount of penalty established by ordinance or resolution for specific categories of violations.
- g. Any equities of the situation that outweigh the benefit of imposing any penalty of damage assessment.

### 4. In addition to the civil penalty in subsection (2) above, the city may recover all damages proximately caused by the violator to the municipality, which may include any reasonable expenses incurred in investigating and enforcing violations of this chapter.

### 5. The city may bring legal action to enjoin the continuing violation of this chapter, and the existence of any other remedy, at law or in equity, shall be no defense to any such actions.

### 6. The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal that one (1) or more of the remedies set forth herein has been sought or granted.

### 7. If a violation of the provisions contained herein occurs during the construction period, all work on the site may be halted for a period of 3-10 working days, depending upon the severity of the violation.

## 18-707. APPEALS

Pursuant to Tennessee Code Annotated §68-221-1106(d), any person aggrieved by the imposition of a civil penalty or damage assessment as provided by this ordinance may appeal said penalty or damage assessment to the municipality's governing body.

### 1. Appeals to be in writing.

The appeal shall be in writing and filed with the Office of the City Administrator within fifteen (15) days after the civil penalty and/or damage assessment is served in any manner authorized by law.

### 2. Public hearing.

Upon receipt of an appeal, the municipality's governing body shall hold a public hearing within thirty (30) days. Ten (10) days prior notice of the time, date and location of said hearing shall be published in a daily newspaper of general circulation. Ten (10) days notice by registered mail shall also be provided to the aggrieved party at the time of appeal. The decision of the governing body of the municipality shall be final.

3. Appealing decisions of the municipality's governing body.

Any alleged violator may seek review of a decision of the municipality's governing body pursuant to the provisions of Tennessee Code Annotated, Title 27, Chapter 8.

Passed on first reading the 15<sup>th</sup> day of March 2011.

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Mayor

ATTEST:

\_\_\_\_\_  
City Administrator

Passed on second and final reading the 5<sup>th</sup> day of April 2011.

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Mayor

ATTEST:

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City Administrator