

Ordinance No. 1555-13

Council Members Cleveland, Mitchell and Kelley
(by departmental request)

AN EMERGENCY ORDINANCE

To supplement the Codified Ordinances of Cleveland, Ohio, 1976 by enacting new Sections 351.01 to 351.19 relating to riparian setbacks and wetlands setbacks; and to amend Section 327.99, as amended by Ordinance No. 899-06, passed August 16, 2006, relating to penalties under the Zoning Code.

WHEREAS, flooding is a significant threat to public health and safety and public and private property in the City of Cleveland, and riparian areas and wetlands lessen flood damage by holding runoff and releasing it slowly over time; and,

WHEREAS, streambank erosion in the City of Cleveland is a significant threat to public health and safety and public and private property, and riparian areas and wetlands control runoff and reduces its erosive force; and,

WHEREAS, insufficient control of riparian areas and wetlands can result in significant damage to receiving water resources, impairing the capacity of these resources to sustain aquatic systems and their associated aquatic life use designations; and,

WHEREAS, there is a regional effort to reduce the flooding and erosion and to protect water quality, riparian areas and wetlands and to protect and enhance the water resources of the City of Cleveland, and the City of Cleveland recognizes its obligation as a part of a watershed to reduce flooding and erosion and to protect water quality by controlling runoff within its borders; and,

WHEREAS, to promote public health and safety and sound economic development in the City of Cleveland, it is important to provide homebuilders, developers, and landowners with consistent, technically feasible, and operationally practical standards for storm water management; and,

WHEREAS, Ohio EPA has interpreted Permit No. OHQ00002, effective January 30, 2009, Part II, §5 to require designated communities, including the City of Cleveland, to develop a Storm Water Management Program to address the quality of storm water runoff during and after soil disturbing activities through the use of best management practices such as appropriate policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space, provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; and,

WHEREAS, Article XVIII, Section 3 of the Ohio Constitution grants municipalities the legal authority to adopt rules to abate soil erosion and water pollution by soil sediments; and,

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That the Codified Ordinances of Cleveland, Ohio, 1976, are supplemented by enacting new Sections 351.01 to 351.19 to read as follows:

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Chapter 351 Riparian Setbacks and Wetlands Setbacks

Section 351.01 Purpose

(a) It is determined that the system of wetlands, riparian areas, rivers, streams, and other natural watercourses within the City contributes to the health, safety, and general welfare of the residents. The specific purpose and intent of this chapter is to regulate uses and developments within riparian and wetland areas for the benefit of the City for the following reasons:

- (1) To establish consistent, technically feasible and operationally practical standards to achieve a level of storm water quantity and quality control to minimize damage to public and private property and degradation of water resources from the impacts of flooding, erosion and storm water pollution.
- (2) To reduce flood impacts by absorbing peak flows, slowing the velocity of floodwaters, and regulating base flow.
- (3) To reduce urban storm water pollutants, including pollutants already present in watercourses, especially during periods of high flows, through filtration, settlement, and absorption and transformation of those pollutants in the riparian and wetland setback, before the pollutants enter watercourses.
- (4) To reduce sediment pollution, especially from erosion, by preventing unnecessary stripping of vegetation and loss of soil, especially adjacent to water resources and wetlands.
- (5) To assist in stabilizing the banks of watercourses to reduce bank erosion and the downstream transport of sediments eroded from watercourse banks.
- (6) To preserve to the maximum extent practicable the value of the natural drainage characteristics in the City, including on building sites, minimizing the need for costly engineering solutions to flooding and erosion problems such as the construction, repair, and replacement of enclosed storm drain systems.
- (7) To minimize encroachment on wetlands and watercourse channels and the need for costly engineering solutions such as dams, retention basins, and rip rap armoring, to protect structures and reduce property damage and threats to the safety of residents; and contribute to the scenic beauty and environment of the City preserving the character of the City, the quality of life of the residents of the City, and corresponding property values.
- (8) To reduce the need for costly maintenance and repairs to roads, embankments, sewage systems, ditches, water resources, and wetlands, resulting from inadequate storm water management due to the loss of riparian areas and wetlands.
- (9) To protect and maintain the receiving water's or wetland's physical, chemical, and biological characteristics and, in turn, to maintain its riparian or wetland functions, benefits and values.

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(10) Provide habitat to a wide array of aquatic organisms and wildlife, including but not limited to many that are on Ohio's Endangered and/or Threatened Species listings, by maintaining diverse and connected riparian and wetland vegetation.

(11) To reduce the long-term expense of remedial projects and maintenance projects needed to address problems caused by inadequate storm water management and control.

(b) The following regulations have been enacted to protect the values, services and benefits riparian and wetland areas provide by establishing reasonable management and controls governing structures and uses within a wetland setback and a riparian setback along designated watercourses in the City.

Section 351.02 Scope, Applicability, and Activities Requiring A Permit

(a) Applicability and Compliance:

(1) These regulations shall apply to:

A. All activities, uses and structures on lands and waters that are within the jurisdiction of the City and that contain or are adjacent to designated watercourses or wetlands as defined in these regulations, except for the federally designated navigation channel of the Cuyahoga River and the Lake Erie Waterfront or as otherwise exempted in this chapter.

B. These regulations shall apply to property subdivision/property/parcel split plan approvals, site plan approvals, and land development plan approvals in regulated areas under this chapter.

C. These regulations shall apply to all building permits, which involve activities regulated under this chapter.

(2) Activities Regulated By Permit:

All activities in regulated riparian or wetland areas in this chapter including: filling; excavating; dredging; clear-cutting; grading; construction; removal of peat, sand or gravel; alteration of the water level or water table; disturbance of any surface drainage characteristics, sediment patterns or flood retention characteristics; or any other alteration or use of a riparian or wetland area that is not exempted from the permit requirement under this chapter. Any such activity shall require a permit from the Department of Building and Housing. The Department of Building and Housing will issue no approvals or permits for activities that do not meet the standards and criteria in this chapter or without the applicant's full compliance with the terms of this chapter.

(3) Before any permit or certificate of occupancy is issued, the Director of Building and Housing or the Director's designated representative, shall examine or cause to be examined the application, and any plans and plot plan accompanying the application, to ascertain whether the proposed work and use will conform to the provisions of this Chapter, and all other applicable Codified Ordinances. At least four copies of site, construction, and topography plans and elevations drawn to a measurable scale to the specifications, required to

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determine compliance, are required to be submitted with the application. No permit or certificate of occupancy shall be issued unless the proposed work and use conform to the provisions of all applicable sections of this Chapter and the Cleveland Codified Ordinances.

Section 351.03 Consultation and Coordination With Other Regulatory Agencies

(a) In implementing these regulations the Director of Building and Housing or other City officials may consult with the local county Soil and Water Conservation District (SWCD), state and federal agencies and any other technical experts the Director deems necessary. Any costs associated with such consultations may be assessed to the applicant or his or her designated representative.

(b) The Director may require that a permit applicant obtain any other applicable federal, state, or local regulatory permits needed for a proposed activity before applying for a permit under this chapter.

Section 351.04 Definitions

As used in this chapter:

(a) "Approving Authority" means the official responsible for administering the applicable program(s).

(b) "Best Management Practice (BMP)" With regard to this chapter, BMP means any practice or combination of practices that is determined to be the most effective, practicable (including technological, economic, and institutional considerations) means of preventing or reducing the amount of pollution generated by nonpoint sources of pollution to a level compatible with water quality goals. BMPs may include structural practices, conservation practices and operation and maintenance procedures.

(c) "Certified Professional in Erosion and Sediment Control (CPESC)" means a person that has subscribed to the Code of Ethics and has met the requirements established by the CPESC Council of Certified Professional In Erosion and Sediment Control, Inc. to be a Certified Professional in Erosion and Sediment Control.

(d) "Channel" means a natural stream that conveys water, or a ditch or channel excavated for the natural flow of water.

(e) "Concentrated Storm Water Runoff" means surface water runoff which converges and flows primarily through water conveyance features such as swales, gullies, waterways, channels, or storm sewers, and which exceeds the maximum specified flow rates of filters or perimeter controls intended to control sheet flow.

(f) "Conservation" means the wise use and management of natural resources.

(g) "Damaged or Diseased Trees" means trees that have split trunks, broken tops, heart rot, or insect or fungus problems, that will lead to imminent death or undercut root systems that put the tree in imminent danger of falling or leaning as a

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result of root failure that puts the tree in imminent danger of falling, or any other condition that puts the tree in imminent danger of being uprooted or falling.

(h) "Designated Watercourse" means a watercourse that is contained within, flows through, or borders the City and meets the criteria set forth in these regulations.

(i) "Deteriorated Structure" means a structure which has sustained substantial damage from any origin and which the cost of restoring the structure to its before-damaged condition would be equal to, or greater than 50% of, the market value of the structure before the damage occurred.

(j) "Development Area" means any tract, lot, or parcel of land, or combination of tracts, lots or parcels of land, which are in one ownership, or are contiguous and in diverse ownership, where earth disturbing activity is to be performed.

(k) "Ditch" means an excavation, either dug or natural, for the purpose of drainage or irrigation, and having intermittent flow.

(l) "Dumping" means the grading, pushing, piling, throwing, unloading or placing of soil or other material.

(m) "Earth Disturbing Activity" means any grading, excavating, filling, or other alteration of the earth's surface where natural or man-made ground cover is destroyed.

(n) "Erosion" means the process by which the land surface is worn away by the action of water, wind, ice, or gravity.

(o) "Existing" means in existence at the time of the passage of this chapter and these regulations.

(p) "Federal Emergency Management Agency ("FEMA)" means the agency with overall responsibility for administering the National Flood Insurance Program.

(q) "Grading" means earth disturbing activity such as excavation, stripping, cutting, filling, stockpiling, or any combination thereof.

(r) "Impervious Cover" means any surface that cannot effectively absorb or infiltrate water. This includes, but is not limited to, roads, streets, parking lots, rooftops, and sidewalks.

(s) "Intermittent Stream" means a natural channel that may have some water in pools, but where surface flows are non-existent or interstitial (flowing through sand and gravel in stream beds) for periods of one week or more during typical summer months.

(t) "Larger Common Plan of Development or Sale" means a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan.

(u) "Landslide" means the rapid mass movement of soil and rock material downhill under the influence of gravity in which the movement of the soil mass occurs along an interior surface of sliding.

(v) "Local County SWCD" means the Cuyahoga County Soil and Water Conservation District.

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(w) "National Wetlands Inventory Map" means wetland maps that were created by the U.S. Fish and Wildlife Service and the U.S. Department of Interior.

(x) "Natural Resources Conservation Service (NRCS)" means an agency of the United States Department of Agriculture, formerly known as the Soil Conservation Service (SCS).

(y) "NPDES Permit" means a National Pollutant Discharge Elimination System Permit issued by Ohio EPA under the authority of the USEPA, and derived from the Federal Clean Water Act.

(z) "Noxious Weed" means any plant species defined by the Ohio Department of Agriculture as a "noxious weed" and listed as such by the Department. For the purposes of this regulation, the most recent version of this list at the time of application of these regulations shall prevail.

(aa) "Ohio EPA" means the Ohio Environmental Protection Agency.

(bb) "Ohio Wetlands Inventory Map" means wetland maps that were created by the Natural Resources Conservation Service, USDA, and the Ohio Department of Natural Resources.

(cc) "Ordinary High Water Mark" means the point of the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark by erosion, destruction or prevention of woody terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.

(dd) "Outfall" means an area where water flows from a structure such as a conduit, storm sewer, improved channel or drain, and the area immediately beyond the structure which is impacted by the velocity of flow in the structure.

(ee) "Person" means any individual, corporation, partnership, joint venture, agency, unincorporated association, municipal corporation, township, county, state agency, the federal government, or any combination thereof.

(ff) "Perennial Stream" means a natural channel that contains water throughout the year, except possibly during periods of extreme drought.

(gg) "Professional Engineer" means a person registered in the State of Ohio as a Professional Engineer, with specific education and experience in water resources engineering, acting in strict conformance with the Code of Ethics of the Ohio Board of Registration for Engineers and Surveyors.

(hh) "Qualified Forester" means any forester employed by the Ohio Department of Natural Resources, Division of Forestry, or any person attaining the credential of Certified Forester as conferred by the Society of American Foresters.

(ii) "Qualified Wetland Professional" means an individual qualified and competent in the areas of botany, hydric soils, and wetland hydrology, and is acceptable to the Director of Building and Housing as meeting these qualifications.

(jj) "Redevelopment" means the demolition or removal of existing structures or land uses and construction of new ones.

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(kk) "Retention Basin" means a storm water management pond that maintains a permanent pool of water. These storm water management ponds include a properly engineered/designed volume dedicated to the temporary storage and slow release of runoff waters.

(ll) "Riparian Area" means the area adjacent to watercourses that if naturally vegetated and/or appropriately revegetated and appropriately sized, limits erosion, reduces flood flows, and/or filters and settles out runoff pollutants, or which performs other functions consistent with the purposes of these regulations.

(mm) "Riparian Setback" means those lands within the City that are alongside streams, and which fall within the area defined by the criteria set forth in these regulations.

(nn) "Sediment" means solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by wind, water, gravity or ice, and has come to rest on the earth's surface either on dry land or in a body of water.

(oo) "Sediment Control" means the limiting of sediment being transported, by controlling erosion or detaining sediment-laden water, and allowing the sediment to settle out.

(pp) "Sediment Pollution" means failure to use management or conservation practices to control wind or water erosion of the soil and to minimize the degradation of water resources by soil sediment in conjunction with land grading, excavating, filling, or other soil disturbing activities on land used or being developed for commercial, industrial, residential, or other purposes.

(qq) "Sensitive Area" means an area or water resource that requires special management because of its susceptibility to sediment pollution or because of its importance to the wellbeing of the surrounding communities, region, or the state and includes, but is not limited to, the following:

- (1) Ponds, wetlands or small lakes with less than five acres of surface area;
- (2) Small streams with gradients less than ten feet per mile with average annual flows of less than 3.5 feet per second containing sand or gravel bottoms.
- (3) Drainage areas of a locally designated or an Ohio designated Scenic River.
- (4) Riparian and wetland areas.

(rr) "Sheet Flow" means water runoff in a thin uniform layer or rills and which is of a small enough quantity to be treated by sediment barriers.

(ss) "Silviculture" means the theory and practice of controlling forest establishment, composition and growth.

(tt) "Slip" means a landslide as defined under "Landslides."

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(uu) "Sloughing" means a slip or downward movement of an extended layer of soil resulting from the undermining action of water or the earth disturbing activity of man.

(vv) "Soil" means unconsolidated erodible earth material consisting of minerals and/or organics.

(ww) "Soil Conservation Service, USDA" means the federal agency now titled the "Natural Resources Conservation Service," which is an agency of the United States Department of Agriculture.

(xx) "Soil Disturbing Activity" means clearing, grading, excavating, filling, or other alteration of the earth's surface where natural or human made ground cover is destroyed and which may result in, or contribute to, soil erosion and sediment pollution.

(yy) "Soil Erosion and Sediment Control" means a written and/or drawn soil erosion and sediment pollution control plan to minimize erosion and prevent off-site sedimentation throughout all earth disturbing activities on a development area.

(zz) "Soil Erosion and Sediment Control Practices" means conservation measures used to control sediment pollution and includes structural practices, vegetative practices and management techniques.

(aaa) "Soil Survey" means the official soil survey produced by the Natural Resources Conservation Service, USDA in cooperation with the Division of Soil and Water Conservation, ODNR and the local Board of County Commissioners.

(bbb) "Storm Water Conveyance System" means all storm sewers, channels, streams, ponds, lakes, etc., used for conveying concentrated storm water runoff, or for storing storm water runoff.

(ccc) "Stream" means a body of water running or flowing on the earth's surface, or a channel in which such flow occurs. Flow may be seasonally intermittent.

(ddd) "Substantial Damage" means damage of any origin sustained by a structure and the cost of restoring the structure to its before damaged condition would be equal to, or greater than, 50% of the market value of the structure before the damage occurred.

(eee) "USEPA" means the United States Environmental Protection Agency.

(fff) "100-Year Floodplain" means any land susceptible to being inundated by water from a base flood. The base flood is the flood that has a one percent (1%) or greater chance of being equaled or exceeded in any given year. For the purposes of this regulation, the 100-year floodplain shall be defined by FEMA or a site-specific Floodplain Delineation in conformance with standard engineering practices and the standards and criteria in the City's Floodplain Management Ordinance at Chapter 3167.

(ggg) "Watercourse" means any natural, perennial, or intermittent lake, pond, channel, stream, river, creek or brook with a defined bed and bank or shore.

(hhh) "Water Resources" means all streams, lakes, ponds, wetlands, water courses, waterways, drainage systems, and all other bodies or accumulations of surface water, either natural or artificial, which are situated wholly or partly within, or border

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upon this state, or are within its jurisdiction, except those private waters that do not combine or affect a junction with natural surface waters.

(iii) "Wetland" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally includes, but are not limited to lands and waters meeting this definition and otherwise often referred to as swamps, marshes, bogs, wetland meadows, ephemeral and tributary streams, vernal pools, reservoirs, ponds, lakes and the land under water bodies.

(jjj) "Wetland, Ohio EPA Category 2 Wetlands" means those wetlands classified by the Ohio EPA as Category 2 wetlands under OAC 3745-1-54 (C)(2), or current equivalent Ohio EPA classification, under generally accepted wetland functional assessment methods acceptable to the U.S. Army Corps of Engineers and Ohio EPA at the time of application of this regulation.

(kkk) "Wetland, Ohio EPA Category 3 Wetlands" means those wetlands classified by the Ohio EPA as Category 3 wetlands under OAC 3745-1-54(C)(3), or current equivalent Ohio EPA classification, under generally accepted wetland functional assessment methods acceptable to the U.S. Army Corps of Engineers and Ohio EPA at the time of application of this regulation.

(lll) "Wetland Setback" means those lands within the City that fall within the area defined by the criteria set forth in these regulations.

(mmm) "Winter" means October 1st to April 1st of each year.

Section 351.05 Establishment of Designated Watercourses and Riparian Setbacks

(a) Designated watercourses shall include those watercourses meeting any one of the following criteria:

- (1) All watercourses draining an area greater than ½ square mile, or
- (2) All watercourses draining an area less than ½ square mile and having a defined bed and bank.
- (3) In determining if watercourses have a defined bed and bank, the City may consult with a representative of the local county SWCD or other technical experts as necessary.

(b) Riparian setbacks on designated watercourses are established as follows:

- (1) A minimum of 300 feet on each side of all watercourses draining an area greater than 300 square miles.
- (2) A minimum of 120 feet on each side of all watercourses draining an area greater than 20 square miles and up to and including 300 square miles.
- (3) A minimum of 75 feet on each side of all watercourses draining an area greater than one half square mile and up to and including 20 square miles.

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(4) A minimum of 25 feet on each side of all watercourses draining an area less than one half square mile and having a defined bed and bank as determined above.

(c) Riparian Setback Map:

(1) The City shall use the map "Water Features of the City of Cleveland" produced by the City Planning Commission as the map identifying designated watercourses and their riparian setbacks. Nothing in this chapter shall prohibit the City from amending the map from time to time as may be necessary.

(2) At the time of application of this regulation, if any discrepancy is found between the map "Water Features of the City of Cleveland" and the criteria for designated watercourses, riparian setbacks, or wetland setbacks as set forth in these regulations, the criteria set forth in these regulations shall prevail.

(3) In reviewing and interpreting the maps, the City may consult with a representative of the local county SWCD and other technical experts as necessary.

(d) The following conditions shall apply in riparian and wetland setbacks:

(1) Riparian and wetland setbacks shall be measured in a perpendicular and horizontal direction outward from the ordinary high water mark of each designated watercourse and defined wetland boundary.

(2) Except as otherwise provided in this regulation, riparian and wetland setbacks shall be preserved in their natural state, except that non-conforming structures and non-conforming uses existing at the time of passage of this regulation may be continued in their existing state as determined in the these regulations. Riparian setbacks shall be established and marked in the field prior to any soil disturbing or land clearing activities.

(3) Where the 100-year floodplain is wider than a riparian setback on either or both sides of a designated watercourse, the minimum riparian setback shall be extended to the outer edge of the 100-year floodplain. The 100-year floodplain shall be defined by FEMA and federal floodplain regulations and the City's Flood Plain Management Ordinances at Chapter 3167.

(4) Where a wetland is identified within a minimum riparian setback, the minimum riparian setback width shall be extended to the outermost boundary of the wetland. In addition, wetlands shall be protected to the extent detailed in these regulations.

(5) Wetlands shall be delineated by a site survey approved by the City using delineation protocols accepted by the U.S. Army Corps of Engineers and the Ohio EPA at the time an application is made under this regulation. If a conflict exists between the delineation protocols of these two agencies, the delineation protocol that results in the most inclusive area of wetland shall apply. Any costs associated with reviewing these delineations may be assessed by the City to the applicant.

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(e) The applicant or his or her designated representative shall be responsible for delineating riparian and wetland setbacks, including any expansions or modifications as required by these regulations, and identifying these setbacks on all property subdivision/property/parcel splits, commercial development or other land development plans, and/or building permit applications submitted to the City. This delineation may be done by a metes and bounds, or higher level survey and shall be subject to review and approval by the City. As a result of this review, the City may consult with a representative of the local county SWCD or other technical experts as necessary.

(f) Prior to any land clearing or soil disturbing activity, riparian and wetland setbacks shall be clearly delineated on site by the applicant or his or her designated representative, and the delineation shall be maintained throughout soil disturbing activities.

(g) No approvals or subdivision plan approval, site plan approval, nor land development plan approval shall be issued by the City prior to on-site delineation of riparian and wetland setbacks in conformance with these regulations. No building permits that include land clearing or soil disturbing activities shall be issued by the City prior to delineation of riparian and wetland setbacks in conformance with these regulations.

(h) Upon completion of an approved property subdivision/property/parcel split, land development, or other improvement, riparian and wetland setbacks shall be permanently recorded on the plat records of the City.

Section 351.06 Establishment of Wetland Setbacks

Wetland setbacks are established as follows:

(a) A minimum of 120 feet surrounding and including all Ohio EPA Category 3 Wetlands, or current equivalent Ohio EPA classification.

(b) A minimum of 75 feet surrounding and including all Ohio EPA Category 2 Wetlands, or current equivalent Ohio EPA classification.

Section 351.07 Procedure for Wetland Setbacks

(a) No change to parcel boundaries or land use change:

(1) Upon filing a request for a building permit that does not involve changing of any parcel boundaries or changes in land use, the applicant will check for indicators of wetlands on the National Wetlands Inventory maps, and Ohio Wetlands Inventory map, and the Cuyahoga County Wetlands Inventory (if applicable). A photocopy of the applicable section of each map will be attached to the permit application.

(2) If a potential wetland is shown on any of the maps or if there is reason for the City to believe that an unmapped wetland exists on or within 120 feet of the project site, the applicant will retain a qualified wetland professional to evaluate the proposed project site for wetlands or wetland buffer areas under this chapter. If no wetland or wetland buffer areas are found, the applicant shall submit a letter from the qualified wetland professional with the preliminary plat or permit application verifying his or her negative findings.

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(b) New residential or commercial or other type development and projects involving a change to parcel boundaries or a land use change:

Upon filing a request for approval of a preliminary plat or building permit for new residential, commercial or other type of development that involves changes in any parcel boundaries or changes in land use, the applicant or his or her designated representative shall retain a qualified wetland professional to survey the proposed development site for wetlands. If no wetlands are found, the applicant or his or her designated representative shall submit a letter with the preliminary plat or permit application verifying that a qualified wetland professional has surveyed the site and found no wetlands. If wetlands are found, the following procedures shall be followed:

(1) A qualified wetland professional, acceptable to the Director of Building and Housing, shall determine the presence of Ohio EPA Category 2 or 3 wetlands (or current equivalent Ohio EPA classification) on the proposed development site using the latest version of the Ohio Rapid Assessment Method for wetland evaluation approved at the time of application of this regulation. Acceptance of this determination shall be subject to approval by the Director of Building and Housing.

(2) If Ohio EPA Category 2 or 3 wetlands (or current equivalent Ohio EPA classification) are located on the proposed development site, the applicant or his or her designated representative shall delineate these wetlands and the wetland setback in conformance with these regulations. The applicant or his or her designated representative shall identify all delineated wetlands and their associated setbacks on all property subdivision/property/parcel split plans, land development plans, and/or permit applications submitted to the City.

(c) Wetlands shall be delineated by a site survey, approved by the City, using delineation protocols accepted by the US Army Corps of Engineers and the Ohio EPA at the time of application of this regulation. If conflict exists between the delineation protocols of these two agencies, the delineation protocol that results in the most inclusive area of wetland shall apply.

(d) Wetland setbacks shall be delineated through a metes and bounds, or higher level, survey subject to approval by the City.

(e) Prior to any soil or vegetation disturbing activity, the applicant or his or her designated representative shall delineate wetland setbacks on the development site in such a way that they can be clearly viewed, and such delineation shall be maintained throughout construction.

(f) No approvals or permits shall be issued by the City prior to delineation of wetland setbacks in conformance with this regulation.

(g) Upon completion of an approved property subdivision/property/parcel split, commercial development or other land development or improvement, riparian and wetland setbacks shall be permanently recorded on the plat records for the City and shall be maintained as open space thereafter through a permanent conservation easement. A third party, not the landowner or permittee or the City, which is allowed by state law, shall be given the conservation easement. If no third party will accept the conservation easement, the City shall accept it and protect it in perpetuity.

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Section 351.08 Uses Permitted in Riparian and Wetland Setbacks

(a) *By-Right Uses Without A Permit.* No use permitted under these regulations shall be construed as allowing public trespass on privately held lands. Open space uses that are passive in character shall be permitted in riparian and wetland setbacks, including the following:

(1) *Recreational Activity.* Passive recreational use activity, as otherwise legally permitted by federal, state, and local laws, such as hiking, swimming, fishing, hunting, picnicking, and similar uses.

(2) Removal of damaged or diseased trees and control of noxious weeds if the control does not involve drainage or fill.

(3) *Revegetation and/or Reforestation.* Riparian and wetland setbacks may be revegetated, enhanced or restored. Any revegetation must be performed with non-invasive plant species. Refer to the *Ohio Invasive Plant Species* list created by the Ohio Department of Natural Resources to determine invasive plant species undesirable for revegetation, reforestation, or restoration of riparian areas.

(4) Conservation of soil, vegetation, water, fish, and wildlife consistent with the purposes of this chapter that does not involve hydrologic modification or fill.

(5) *Maintenance of lawns, gardens and landscaping:* Lawns, gardens and landscaping that existed at the time this chapter was enacted, may be maintained as long as they are not increased in size to further encroach onto the riparian area, wetland or watercourse. In that case, trees, shrubbery and other non-lawn wood vegetation in the riparian or wetland setback must be maintained to the extent practicable to reduce the impact to the riparian area, wetland or watercourse.

(b) *By-Right Uses With A Permit:*

(1) *Streambank Stabilization and Erosion Control Measures.* Any activity not prohibited by the regulations that also involves streambank stabilization and erosion control measures may be performed in regulated areas as long as it is conducted under the standards and specifications in the current edition of Ohio's Rainwater and Land Development manual or other standards acceptable to Ohio EPA.

(2) *Crossings.* Crossings of designated watercourses and through riparian setbacks or wetland setbacks by publicly and privately owned roads, drives, sewer and/or water lines and public and private utility transmission lines shall only be allowed upon approval of a Crossing Plan by the Manager of Engineering and Construction. Such crossings shall minimize disturbance in riparian setbacks, wetland setbacks, and watercourse substrate and shall mitigate any necessary disturbances. Soil erosive materials will not be used in making stream crossings.

(3) *Construction of Fencing.* Construction of fencing shall be allowed with the condition that reasonable efforts be taken to minimize the destruction of existing vegetation, provided that the fence does not impede stream or flood flow, and the disturbed area is replanted to the natural or preexisting conditions

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before the addition of the fence, as approved by the Director of Building and Housing.

Section 351.09 Uses Prohibited in Riparian and Wetland Setbacks

Any use not authorized under this chapter shall be prohibited in riparian and wetland setbacks. By way of example, the following uses are specifically prohibited; however, prohibited uses are not limited to those examples listed here:

- (a) *Construction.* There shall be no structures of any kind.
- (b) *Dredging or Dumping.* There shall be no drilling, filling, dredging, or dumping of soil, spoils, liquid, or solid materials, except for non-commercial composting of uncontaminated natural materials, and except as permitted under this chapter.
- (c) *Roads or Driveways.* There shall be no roads or driveways permitted in riparian and/or wetland setback area, except as permitted under this chapter.
- (d) *Motorized Vehicles.* There shall be no use of motorized vehicles, except as permitted under this chapter.
- (e) *Disturbance of Natural Vegetation.* There shall be no disturbance, including mowing, of the natural vegetation, except for conservation maintenance necessary to control noxious weeds; for plantings that are consistent with this regulation; for disturbances that are approved under this chapter; and for the passive enjoyment, access, and maintenance of landscaping or lawns existing at the time of passage of this regulation as provided in the chapter.
- (f) *Parking Lots.* There shall be no parking lots or other human-made impervious cover, except as permitted under this chapter.
- (g) *New Surface and/or Subsurface Sewage Disposal or Treatment Areas.* Riparian and wetland setbacks shall not be used for the disposal or treatment of sewage except under local county Board of Health regulations in effect at the time of application of this regulation.
- (h) *Crossings.* Crossings of designated riparian and wetland setbacks by publicly and privately owned sewer and/or water lines and small public and small private utility transmission lines in accordance with a permit or regulatory exemption issued by, or under the regulations of, the US Army Corps of Engineers and the Ohio EPA.
- (i) *Other permits and approvals.* Nothing in this chapter shall be construed as exempting any person from obtaining other permits by other agencies that may be required, including permits from the US Army Corps of Engineers and/or the Ohio EPA under the federal and state Clean Water Acts.

Section 351.10 Non-Conforming Structures or Uses in Riparian and Wetland Setbacks

- (a) A non-conforming use within a riparian and wetland setback that is in existence at the time of passage of this regulation and that is not otherwise permitted

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under these regulations, may be continued. However, the use shall not be changed or enlarged unless it is changed to a use permitted under these regulations.

(b) A non-conforming structure within a riparian or wetland setback that is in existence at the time of passage of this regulation and that is not otherwise permitted under these regulations, may be continued, but shall not have the existing building footprint or roofline expanded or enlarged.

(c) A non-conforming structure or use or deteriorated structure within a riparian and wetland setback that is in existence at the time of passage of this regulation and that is discontinued, terminated, or abandoned for a period of six (6) months or more, may not be revived, restored, or re-established. This section shall not apply to a structure that is vacant and that is not subject to condemnation orders by the Director of Building and Housing unless the vacant structure has been destroyed or damaged for more than 50% of its value by flooding, wind, fire, or other natural or man-made force. This section shall also not prohibit ordinary repairs to a residence or residential accessory building that are not in conflict with other provisions of this chapter.

(d) In the case of a non-conforming structure within a riparian or wetland setback, the City will allow a ten (10) foot maintenance access zone measured perpendicular to the structure, to temporarily extend further into the setback as long as disturbance to existing vegetation is minimized and vegetation is restored to the pre-existing state, as near as practical, upon completion. If any soil disturbance in a wetland will occur as part of any such maintenance activity, a permit from the U. S. Army Corps of Engineers or the Ohio EPA, as appropriate, must be submitted prior to the onset of the soil disturbing activity.

(e) In the case of a non-conforming residential structure, the Director of Building and Housing may allow minor upgrades to the structure that extend further into the riparian setback, such as awnings and pervious decks/patios, provided the modifications do not extend more than ten (10) feet further toward the watercourse than the original foundation of the structure existing at the time of passage of this regulation, and further provided that the modification will not impair the function of the riparian zone or wetland nor destabilize any slope nor stream bank, as determined by the Director of Building and Housing.

Section 351.11 Variances within Riparian and Wetland Setbacks

(a) The Board of Zoning Appeals may grant a variance from this regulation as provided in these codified ordinances. In determining whether there is unnecessary hardship or practical difficulty to justify the granting of a variance, the Board of Zoning Appeals shall consider the potential harm to, or reduction in the functions of, the riparian area or wetland area that may be caused by a proposed structure or use.

(b) In making a variance determination, the Board of Zoning Appeals shall consider the following:

(1) Varying the front, rear and side yard setback before the riparian and wetland setbacks are varied.

(2) Variances should not be granted for asphalt or concrete paving in the riparian and wetland setbacks in any situation where gravel or porous pavement (i.e., porous pavers, and similar products) will do the job.

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(c) In making a variance determination, the Board of Zoning Appeals may consider the following:

(1) A parcel existing at the time of enactment of this chapter is made unbuildable.

(2) The soil type and natural vegetation of the parcel, as well as the percentage of the parcel that is in the 100-year floodplain. The standards and criteria for granting variances in the City's Flood Plain Management Ordinances at Chapter 3167 may be used as guidance.

(3) The extent to which the requested variance impairs the flood control, soil erosion control, sediment control, water quality protection, ecological functions, or other functions of the riparian area or wetland area. This determination shall be based on sufficient technical and scientific data.

(4) The degree of hardship with respect to the use of the property or the degree of practical difficulty with respect to maintaining the setback as established in this chapter placed on the landowner, and the availability of alternatives to the proposed structure or use.

(5) Soil disturbing activities permitted in a riparian setback areas or wetland setback areas through variances should be controlled in order to minimize clearing to the maximum extent possible, and must include Best Management Practices necessary to minimize soil erosion and maximize sediment control.

(6) The presence of significant impervious cover, or smooth vegetation such as maintained lawns, in or near the riparian setback areas or wetland setback areas that compromises the benefits of the riparian setback areas or wetland setbacks areas received by the City.

(7) Whether the benefit of reduction of storm water infiltration into the soil in wetland areas will be lost.

(8) If the request is for an above-ground fence, whether it increases the existing area of mowed grass or lawn.

(9) Whether parking needs can be modified before varying the riparian setback.

(10) Whether the building shape, size or design can be modified to avoid or minimize intrusion into the riparian setback.

(11) In the case of a lot made unbuildable by this regulation, the minimum variance needed to make it buildable for an appropriately-sized and compatibly-designed structure, while following the guidance provided in this section.

(12) Whether the variance will increase the likelihood of flood or erosion damage to either the applicant's property or to other properties.

(13) Culverting of watercourses should be avoided.

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(14) Whether the variance will result in the need for artificial slope or bank stabilization measures that could interfere with the function of the riparian or wetland zone.

Section 351.12 Mitigation

All riparian or wetland restoration, creation and/or enhancement projects required under this chapter either as a permit condition or as a result of an enforcement action shall follow a mitigation plan prepared by a qualified professional and approved by the Director of Building and Housing. The applicant or violator shall receive written approval of the mitigation plan by the Director of Building and Housing prior to commencement of any wetland area restoration, creation or enhancement activity. To realize preservation goals, the City will use the following methods of riparian or wetland impact mitigation in order of preference:

(a) The applicant shall avoid all impacts that degrade the functions and value of the wetland. Unless otherwise provided in this chapter if alteration to the area is unavoidable, all adverse impacts to the area and associated buffer resulting from a development proposal shall be mitigated under an approved wetland report and an approved mitigation plan.

(b) Mitigation shall be in-kind and onsite, when possible, and sufficient to maintain the functions and values of the riparian/wetland area.

(c) Mitigation shall not be implemented until after the Director of Building and Housing or his designated authority has approved the appropriate wetland report and mitigation plan.

(d) *Mitigation measures.* Mitigation shall achieve equivalent or greater biological and habitat functions as existed in wetland prior to mitigation. Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to these areas. When an alteration is proposed, such alteration shall be avoided, minimized, or compensated for in the following order of preference:

(1) Avoid impact altogether by not taking a certain action or parts of an action;

(2) Minimize impact by limiting the degree or magnitude of the action by project redesign, relocation, timing changes, or technological applications;

(3) Rectifying the impacts to wetlands, frequently flooded areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to conditions equal to or higher quality than at the time of initiation of the project;

(4) Restoring, replacing, or enhancing the wetland on site of the project;

(5) Restoring, replacing, or enhancing degraded riparian corridors/wetlands in the same sub-basin;

(6) Preserving high quality wetlands that are under eminent threat;

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(7) Reduce or eliminate the impact over time by prevention and maintenance operations during the life of the actions;

(8) Compensate for the impact by replacing, enhancing or providing substitute resources or environments;

(9) All mitigation efforts will be monitored and remedial action taken if necessary

(10) Mitigation actions shall be conducted within the same sub-drainage basin and on the impacted site.

Section 351.13 Monitoring Program

The mitigation plan shall include a program for monitoring construction, and for assessing a completed project by a riparian corridor/wetland specialist. A protocol for the schedule of monitoring and reporting shall be implemented that verify the performance standards are being met. The period of monitoring shall be adequate to verify that the performance goals and objectives are being met and will vary at the discretion of the Director of Building and Housing, or his designated authority. Monitoring would never be less than three years.

Section 351.14 Financial Guarantees

The mitigation plan shall include financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented. The requirement of financial guarantees is at the discretion of the Director of Building and Housing based on the size, complexity, and cost of the mitigation project. If financial guarantees are required they shall be of sufficient funding to ensure mitigation, maintenance, and monitoring.

Section 351.15 Boundary Interpretation and Appeals Procedure

Any applicant seeking a variance to the regulations or criteria under this chapter or any appeal of an administrative order made under this chapter may request the variance or make an appeal to the Board of Zoning Appeals. The following procedures shall apply:

(a) Before filing the request or appeal, when an applicant or his or her designated representative disputes the boundary of a riparian or wetland setback or the ordinary high water mark of a watercourse, the applicant or his or her designated representative shall submit documentation to the Director of Building and Housing which describes the boundary, the applicant's proposed boundary, and justification for the proposed boundary change.

(b) The Department of Building and Housing shall evaluate this documentation and shall make a determination within sixty (60) days. If during this evaluation the Department of Building and Housing requires further information, it may be required of the applicant. In the event that the Department of Building and Housing requests such additional information, the sixty (60) day period for determination shall be postponed until the applicant provides the information.

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(c) If the applicant does not receive the determination regarding the boundary dispute within 60 days, the applicant's submission shall be considered denied and the denial may be appealed to the Board of Zoning Appeals within 30 days. In the event the applicant receives an adverse determination, that determination may be appealed to the Board of Zoning Appeals within 30 days.

Section 351.16 Inspection of Riparian and Wetland Setback

The delineation of riparian setbacks or wetland setbacks may be inspected by the City, as follows:

(a) Prior to any soil disturbing activities authorized by the City for a property subdivision/property/parcel split, land development plan, and/or building permit. The applicant or his or her designated representative shall provide the Department of Building and Housing with at least five (5) working days' notice under this chapter prior to starting soil disturbing or land clearing activities.

(b) Prior to starting any of the activities authorized by this chapter, the applicant or his or her designated representative shall provide the Department of Building and Housing with at least five (5) working days' notice prior to starting the activities.

(c) Any time evidence is brought to the attention of the City that uses or structures are occurring that may reasonably be expected to violate the provisions of these regulations.

Section 351.17 Disclaimer of Liability

Neither submission of a plan under the provisions of this chapter, nor compliance with the provisions of these regulations, shall relieve any person or entity from responsibility for damage to any person or property that is otherwise imposed by law.

Section 351.18 Conflicts, Severability, Nuisances & Responsibility

(a) Where this chapter imposes a greater restriction upon land than is imposed or required by other City provisions of law, ordinance, contract or deed, the provisions of this chapter shall prevail.

(b) If a court of competent jurisdiction declares any clause, section, or provision of these regulations invalid or unconstitutional, the validity of the remainder shall not be affected.

(c) These regulations shall not be construed as authorizing any person to maintain a private or public nuisance on his or her property. Compliance with the provisions of this regulation shall not be a defense in any action to abate the nuisance.

(d) Failure of the City to observe or recognize hazardous or unsightly conditions or to recommend corrective measures shall not relieve the owner from the responsibility for the condition or damage resulting there from, and shall not result in the City, its officers, employees, or agents being responsible for any condition or damage resulting there from.

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Section 351.19 Authority to Stop Work

Upon notice from the Director of Building and Housing, or designated representative, that work is being performed contrary to this regulation, such work shall immediately stop. The notice shall be in writing and shall be given to the owner or person responsible for the development area, or person performing the work, and shall state the conditions under which the work may be resumed; provided, however, in instances where immediate action is deemed necessary for public safety or the public interest, the Director of Building and Housing may require that work be stopped upon verbal order pending issuance of the written order.

Section 2. That Section 327.99 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by Ordinance No. 899-06, passed August 16, 2006, is amended to read as follows:

Section 327.99 Penalty

(a) Except as provided in divisions (c) and (d) below, any person, firm or corporation who violates any of the provisions of this Zoning Code or who fails to comply shall, for each and every violation or failure, be fined not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00) or imprisoned for not less than ten (10) days, nor more than ninety (90) days, or both. A separate offense shall be deemed committed each day during or on which such violation or failure to comply is permitted to exist under notification thereof.

(b) The imposition of any penalty under this division shall not be construed as excusing or permitting the continuance of any violation, and when the violation constitutes a nuisance, any owner of the premises, whether the owner at the time the violation was committed or his or her assignee, shall be deemed guilty of a violation of this Zoning Code each day he or she permits such nuisance to continue unabated after due notice from the Director of Building and Housing of the existence of such nuisance.

(c) Any person, firm, or corporation who violates any provision of Section 337.16 of this Zoning Code or who fails to comply shall, for each and every violation or failure, be fined not less than two hundred fifty dollars (\$250.00), nor more than five hundred dollars (\$500.00) which fine shall not be reduced, waived or suspended. In addition, imprisonment for not less than ten (10) days nor more than ninety (90) days may be imposed. A separate offense shall be deemed committed each day during or on which such violation or failure to comply is permitted to exist after notification thereof.

(d) Whoever violates Sections 337.23, 347.02, 347.10, 349.02, 349.04, 349.13, 350.19, 357.13, or, 357.14 or Section 347.08 as a first offense of that section shall be fined not more than one hundred fifty dollars (\$150.00). In addition to any other method of enforcement provided for in this chapter, the above listed minor misdemeanors may be enforced by the issuance of a citation in compliance with Rule 4.1 of the Ohio Rules of Criminal Procedure.

(e) Whoever violates Section 347.08 as a second offense of that section shall be fined not more than two hundred fifty dollars (\$250.00) or imprisoned for not more than thirty (30) days, or both. Whoever violates Section 347.08 as a third or

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subsequent offense of that section shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned for not more than six (6) months, or both.

(f) Whoever violates or fails to comply with any provision of Chapter 351 is guilty of a misdemeanor of the first degree. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

Section 3. That existing Section 327.99 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by Ordinance No. 899-06, passed August 16, 2006, is repealed.

Section 4. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

ST:nl
11-18-13

FOR: Director Brown

Ord. No. 1555-13

**REPORT
after second Reading**

Council Members Cleveland, Mitchell and Kelley (by departmental request)

AN EMERGENCY ORDINANCE

To supplement the Codified Ordinances of Cleveland, Ohio, 1976 by enacting new Sections 351.01 to 351.19 relating to riparian setbacks and wetlands setbacks; and to amend Section 327.99, as amended by Ordinance No. 899-06, passed August 16, 2006, relating to penalties under the Zoning Code.

READ FIRST TIME

REPORTS

and referred to **DIRECTORS** of City Planning Commission, Finance, Law;
COMMITTEES on City Planning, Legislation, Finance
by the council **NOVEMBER 13, 2013**

CITY CLERK

READ SECOND TIME

by the council _____

CITY CLERK

READ THIRD TIME

by the council _____

PRESIDENT

CITY CLERK

APPROVED

MAYOR

Recorded Vol. _____ Page _____

Published in the City Record _____

