

Chapter 18.365
STREAM CORRIDOR REQUIREMENTS

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18.365.010 Purpose and Findings.

- A. This ordinance is created to establish acceptable minimum requirements to preserve and protect stream corridors and other valuable aquatic riparian resources within the City.
- B. The Governing Body finds that stream corridors provide multiple benefits to the citizens of Overland Park, benefits which include (a) preservation of habitat for plants and animals; (b) protection of water quality and base flow potential through infiltration, filtration, runoff velocity control and sediment retention; (c) stabilization of stream banks thus minimizing bank erosion, stream migration and property damage due to stream bank instability; (d) temporary storage and velocity reduction of flood waters; (e) recreational and educational opportunities; (f) beautification and aesthetic enhancement of the City; (g) effective visual and auditory screening between adjoining land uses; and (h) enhance property value.
- C. Further, the Governing Body finds that proper management of stream corridors will continue to enhance the quality of life for the citizens of Overland Park and that conservation and preservation of stream corridors is necessary to protect the public health, safety and welfare.
- D. Further, the Governing Body finds that regulation of stream corridors by establishing acceptable minimum standards is an important component of the City's overall storm water management strategy and that such regulation is consistent with the provisions and goals of the Clean Water Act, the National Pollutant Discharge Elimination System, and other federal, state, and local requirements for water quality and environmental preservation.
- E. Further, the Governing Body finds that natural channels migrate in response to a variety of factors, including changes in upstream and downstream land uses, and property owners must consider the potential for migration when locating facilities.

(History: Ord. ZRR-2382 §1, 2002)

18.365.020 Definitions.

For the purposes of this Chapter, these words and phrases shall have the following meaning:

“Active Stream Zone” is the area of the stream that lies between the ordinary high water mark established on each side.

“Best Management Practices” (Also known as “BMPs”) is the utilization of methods, techniques or products that have been demonstrated to be the most effective and reliable in minimizing adverse impacts on water bodies and the adjacent Stream Corridors.

“Director” is the Director of Planning and Development Services.

“Ordinary High Water Mark” is the line on the shore established by the fluctuation of water indicated by a physical characteristic such as a clear natural line impressed on the bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation, presence of litter or debris, or other appropriate means.

“Recreational field” is a facility such as picnic area, playground, soccer, baseball, softball and football fields, excluding parking lots and paved facilities such as tennis and basketball courts.

“Storm sewer system” refers to structures such as pipes, culverts, reinforced concrete boxes, lined ditches or other man made alterations, other than in situ materials, designed to convey storm water runoff which were built in accordance with Chapter 15.08 or which the Director determines are substantially equivalent to those built in accordance with Chapter 15.08.

“Stream” is a body of running water moving over the earth’s surface in a channel or bed, such as a creek, rivulet or river that flows at least part of the year. Streams are dynamic in nature and their structure is maintained through build up and loss of sediment. Streams are typically formed by natural forces but also includes drainageways, outside of street right-of-way, which were formed by man in the past. Storm sewer systems and roadside ditches in street right-of-way are not considered streams.

“Stream Corridor” is a stream and the adjacent land that is set aside in conformance to this ordinance and which is substantially preserved in a natural state.

(History: Ord. ZRR-2382 §1, 2002)

18.365.030 Scope.

No land shall be disturbed nor structure built, located, converted or altered without full compliance with this Chapter unless development occurs as allowed by the following exceptions:

- A. A preliminary plan or plat was approved prior to October 7, 2002, and the preliminary plan or plat shows elimination of all streams and all natural drainageways through the construction of a concrete piped storm sewer system or concrete ditch liner.
- B. Revisions to an approved preliminary plan or plat specified in Section 18.365.030.A above which retain the storm sewer system specified in Section 18.365.030.A throughout the entire project.

- C. A preliminary plan or plat was approved prior to October 7, 2002 and the City Council granted a variance from constructing an enclosed storm sewer system or concrete ditch liner prior to October 7, 2003. Revisions to the plan that was the basis of the variance will continue to qualify for an exemption from this Chapter only when both the following conditions are met:
 - 1. the revisions do not constitute a “substantial or significant change” as defined by Section 18.140.200; and
 - 2. paved surfaces and structures are no closer to streamways than shown on the approved plan or plat.

- D. For land immediately adjacent to a stream or natural drainageway which has a drainage area in excess of 1500 acres and is within a preliminary plan or plat approved prior to October 7, 2002, the following conditions apply:
 - 1. if revisions that do not constitute a “substantial or significant change” as defined by Section 18.140.200 are proposed, then such development is exempt from this Chapter only if paved surfaces and structures are no closer to streamways than shown on the preliminary plan or plat approved prior to October 7, 2002; and
 - 2. if revisions are proposed to a plan or plat approved prior to October 7, 2002, and the revisions constitute a “substantial or significant change” as outlined by Section 18.140.200, the revised plan or plat no longer qualifies for an exemption from this Chapter.

(History: Ord. ZRR-2675 §7, 2008; ZRR-2382 §1, 2002)

18.365.040 Designation of Stream Corridor.

The stream corridor shall consist of the stream and all lands adjacent to the stream on both sides for the minimum distance from the ordinary high water mark specified below:

<u>Stream tributary area:</u>	<u>*Minimum distance from “ordinary high water mark” to the limit of stream corridor on each side:</u>
Less than 25 acres	See 18.365.040 B
Including 25 acres up to 40 acres	30 feet (See 18.365.040 C)
Including 40 acres up to 160 acres	60 feet
Including 160 acres up to 5000 acres	100 feet
5000 acres and greater	120 feet

*Distances in excess of the minimum may be required as indicated in 18.365.060(A).

- A. A stream corridor shall be designated along streams with a tributary drainage area of 40 acres or more with the following exceptions:

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1. Streams of less than 300 feet in length measured along the center of the active stream zone and which are between portions of an existing storm sewer system may be enclosed within a pipe or box structure.
 2. Streams adjoining an existing storm sewer system may be enclosed within a pipe or box structure, if the application of this Chapter would otherwise leave a stream remnant less than 300 feet in length measured along the center of the active stream zone.
- B. Streams with tributary areas less than 25 acres may construct a storm sewer system in accordance with Chapter 15.10. If a storm sewer system is not constructed, a stream corridor may be delineated which may be variable in width but is generally not less than 15 feet from “ordinary high water mark” to the limit of stream corridor on each side. The actual corridor width shall be adequate to provide for: stream geomorphology, stream bank stability, preservation of tree canopy, flood control and maintenance access.
- C. Streams with tributary areas including 25 acres up to 40 acres may construct a storm sewer system in accordance with Chapter 15.10. If a storm sewer system is not constructed, a stream corridor shall be delineated of not less than 30 feet from “ordinary high water mark” to the limit of the stream corridor on each side.
- D. Stream corridors shall be terminated when a stream discharges into a pond, lake or other body of water and shall resume at the outlet from the water body. Property reserved for the pond, lake or other body of water shall include at a minimum all areas that would have been reserved for a stream corridor had there been no pond, lake or body of water.
- E. Stream corridor delineation is not required for man-made ditches within street right-of-way.
- F. Stream corridor designation is not required for construction projects which are undertaken to explicitly protect existing buildings or property from flooding and/or erosion caused by actions such as channel migration or bank instability.
- G. Regardless of the stream or stream corridor size, buildings must maintain a minimum distance of 40 feet from the ordinary high water mark of a stream.
- H. Delineation of stream corridors under this Ordinance is based on the existing location of the stream. Relocation of existing streams to new locations is not authorized by this Ordinance.

All developments, which do not dedicate a stream corridor in accordance with this Chapter, shall construct storm sewer systems to meet the requirements of Chapter 15.10 of the Overland Park Municipal Code. In the event an approved development plan showing the construction of a

storm sewer system cannot obtain a permit from the appropriate state or federal agencies then the owner of such property is required to comply with this Ordinance and reapply for a preliminary plan, preliminary plat, special use permit or rezoning, as appropriate.

(History: Ord. ZRR-2675 §8, 2008; ZRR-2382 §1, 2002)

18.365.050 Delineation of the Stream Corridor.

The stream corridor shall be delineated on preliminary plats, preliminary plans, final plans and final plats. The boundary of the stream corridor shall be documented by a legal boundary description in such instrument as the Director may require, which could include but is not limited to a separate tract of land, a conservation easement, or dedication on the final plat. The Director may adopt written regulations to implement the provisions of this Section. The instrument used to document the boundary must also identify the area as a "Natural Stream Preservation Corridor" and shall stipulate that these areas are subject to the restrictions and protections provided for in Chapter 18.365 of the Overland Park Municipal Code. The instrument shall further stipulate that restrictions and protections are subject to change by action of the Governing Body.

(History: Ord. ZRR-2675 §9, 2008; ZRR-2382 §1, 2002)

18.365.060 Stream Bank Stability.

- A. To minimize the need for future bank stability measures, the Director may require geotechnical or geomorphological studies of streams prior to approval of development plans or building permits for any structure to be located adjacent to a stream. Such studies may be used to increase the stream corridor width requirement and could include the delineation of the maximum expected natural channel migration, analyses of slope stability, and foundation analysis of adjacent structures. At a minimum, for slope stability and foundation analysis purposes, it will be assumed streams migrate at least one half the distance of the minimum stream corridor indicated in 18.365.040; provided, however, the same studies may also be required to be performed assuming the maximum channel migration has occurred. The City Engineer is authorized but not required to issue technical guidance to assist applicants in making this estimate of channel migration potential.
- B. The use of rip-rap, retaining walls, gabions, revetments or other bank armoring techniques shall not be used to reduce the stream corridor boundaries established in 18.365.040. Such activities are allowed only when the Director or the City Engineer determine them to be necessary to protect structures, primarily when stream migration has exceeded the original estimate of natural channel migration. The Director may allow bank stabilization measures that are designed to incorporate natural channel features and vegetation in situations where projects will enhance the value of the stream corridor and minimize the likelihood of more extreme measures being needed at a later time.

(History: Ord. ZRR-2382 §1, 2002)

18.365.070 Flood Plain.

Additional restrictions to activities within the stream corridor shall be applied in accordance to the Floodplain Management Ordinance in Chapter 18.360.

18.365.080 Allowable Uses.

A. “Active stream zone” allowable uses should utilize best management practices to minimize disturbance to and impacts on the stream corridor and include:

1. Sanitary sewer line crossings.
2. Other utilities crossings as approved by the Director.
3. Roadway crossings, limited to minimum required to provide access for orderly development.
4. Crossings for foot, bicycle, golf cart, and similar uses.
5. Flood control structures.
6. Stream restoration projects and bioengineered bank stabilization.
7. Storm sewer pipe discharge.
8. Stream gauging and water quality monitoring.
9. Pump stations and structures required to transport water from the stream.

Crossing the active stream zone shall be minimized, crossing at skewed angles shall be avoided, and the length and area disturbed shall be restricted, to the maximum extent feasible.

B. “Stream corridor” allowable uses shall utilize best management practices to minimize disturbance or impacts to the stream corridor and include:

1. All activities allowed in the “active stream zone.”
2. Paved or unpaved paths for foot, bike, golf carts, and other similar uses. Paths must be constructed near natural grade to minimize clearing, filling and grading.
3. Utility installations are allowed provided it is demonstrated installing the utility outside the stream corridor isn’t feasible. Storm sewer pipes may discharge into the active stream zone or stream corridor if appropriate measures to prevent erosion and scouring are taken. Utility easements will be dedicated on the subdivision plat, or by separate document after platting if Director approval is obtained for the utility location. The Director may establish minimum standards for utility construction in the stream corridor.
4. Other uses approved by the Director that meet the intent of this Chapter. Allowable uses in the stream corridor are limited to low-impact passive uses that require little or no disturbance, grading, clearing, or filling of the existing native vegetation, and are related to recreation, public enjoyment, and protection of the stream and stream corridor. These uses may include small non-habitable structures ancillary to the approved use. Examples of allowable structures include play equipment, gazebos and picnic shelters. Allowable uses do not include parking facilities.
5. Recreational fields, public parklands and golf course fairways may encroach into the stream corridor, reducing the stream corridor width up to one-half the width indicated in Section 18.365.040, provided the following guidelines are followed:

- a) Recreational fields, public parklands and golf course fairways, which reduce the stream corridor, will be required to compensate for that reduction by providing additional stream corridor width within the project sufficient to provide the same net stream corridor area that would result from enforcement of the stream corridor widths in Section 18.365.040.
 - b) Golf course fairway crossings will be given the following additional latitude.
 - 1) Fairway crossings within the stream corridor are allowed if the crossing does not exceed 120 feet (measured perpendicular to the fairway direction) and the number of crossings is limited to 2 per 1000 feet of stream.
 - 2) Fairway crossings within the stream corridor shall be maintained as either unmowed native grasses and trees or as “low rough,” which permits grasses mowed to about 1 ½ to 2 inches. Additional stabilization may be required immediately adjacent to the stream banks where “low rough” is established.
 - 3) Designers are encouraged to limit the size and number of stream crossings, to minimize stream crossing impacts on wooded areas, and to orient stream crossings perpendicular to the stream.
 - 6. Existing agricultural uses.
 - 7. Low impact enhancements to the stream corridor for purposes of stormwater treatment as allowed under Chapter 16.210 of this Code.
- C. Private lakes and other impoundments for recreational, aesthetic, or irrigation purposes are allowed within the active stream zone and stream corridor with the following criteria:
- 1. Lakes and other impoundments shall be constructed in accordance to Chapter 15.10 and all State and Federal regulations.
 - 2. Pre-existing private lakes within a development are allowed when the developer provides certification from a licensed engineer either that the preexisting or reconstructed outlet works, dam structure, and other hydraulic functions of the lake meet current Federal, State and City requirements.
 - 3. Where an existing or new private lake or pond is created, the stream corridor terminates at the normal pool level where storm water discharges into the body of water and resumes 10 feet below the toe of the dam embankment. Where private lakes are removed or filled as part of development, the stream shall be restored through that area and the stream corridor shall be created through the existing private lake area. See Section 18.365.040.D for additional requirements.

(History: Ord. ZRR-2675 §10, 2008; ZRR-2382 §1, 2002)

18.365.090 Maintenance of the stream corridor.

- A. Allowed maintenance (as approved and specified in the Maintenance Agreement):
 - 1. Removal of dead trees/brush and trash.

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2. Removal of debris that could cause flooding.
3. Selective tree trimming or tree removal to mitigate safety hazards or that could cause flooding.
4. Selective (spot) chemical spraying for noxious weeds.
5. Cutting or mowing of non-woody vegetation or other management practices shown to enhance natural conditions when completed as part of an approved Stream Corridor Maintenance Agreement, or when approved by the Director.
6. Maintenance of all City-approved improvements.
7. Maintenance of City-approved bank stabilization measures.

B. Prohibited Maintenance

1. Cutting or mowing of non-woody vegetation outside of approved recreational use areas, unless such mowing is part of an approved Stream Corridor Maintenance Agreement, or is approved by the Director.
2. Non-selective chemical spraying.

C. Required Maintenance:

Maintenance of stream corridors shall comply with all other applicable City property maintenance codes, except Section 18.365.090 B shall take precedence over other City codes.

D. Stream Corridor Maintenance Agreement

When a stream corridor is to be dedicated, a Stream Corridor Maintenance Agreement shall be submitted with all final plan and final plat applications; be approved by the City prior to the City approving final plans or final plats; and then recorded with the Johnson County Records and Tax Administration concurrent or prior to recording the final plat.

At a minimum, the Maintenance Agreement should:

1. Identify the responsible party for maintaining the stream corridor, or segment thereof, the boundaries of which are identified as an attachment to the Maintenance Agreement.
2. Establish the minimum frequency and levels of maintenance to be done.
3. Establish the frequency of inspection.
4. Identify resources available to provide maintenance.
5. Identify prohibited practices and Homes Association's enforcement process for restoration.
6. Identify City's rights in the event that the responsible party fails or is unable to perform any of the obligations in the Maintenance Agreement.
7. Clarify how modifications or additions can be made to the Maintenance Agreement.

8. Be filed as a covenant to the recorded deeds of all lots to enforce the imposition of any special tax assessment that may be necessary to maintain the stream corridor if the responsible party fails or is unable to perform any of the obligations in the Maintenance Agreement.

E. Plat Notice

All subdivision final plats with a Stream Corridor shall include a notice on the face of the plat regarding the Stream Corridor Maintenance Agreement. The notice shall be substantially as set forth below:

Notice: This subdivision's home owners (business) association is responsible for perpetual maintenance of a protected Stream Corridor, as defined and regulated in Chapter 18.365 of the Overland Park Municipal Code. This property is also subject to the obligations and requirements of a Stream Corridor Maintenance Agreement approved by the City and recorded with the Johnson County Records and Tax Administration. Restrictions on the use or alteration of the Stream Corridor apply.

F. Home Owners or Business Association

The owner or developer shall form a home owners or business association prior to the sale of any lots or recording the final plat. At a minimum the covenants and restrictions shall:

1. Establish covenants that include the provisions of the approved Stream Corridor Maintenance Agreement.
2. Place responsibility for permanent maintenance of the Stream Corridor with the association.
3. Grant authority to the home owners or business association to enter the stream corridor to fully perform all obligations pursuant to the Stream Corridor Maintenance Agreement.
4. Grant the City's rights in the event that the responsible party fails or is unable to perform any of the obligations in the maintenance agreement.
5. Record the required deed restrictions with the Johnson County Records and Tax Administration concurrent or prior to recording the final plat.

(History: Ord. ZRR-2892 §1, 2011; ZRR-2838 §2, 2009; ZRR-2675 §11, 2008; ZRR-2382 §1, 2002)

18.365.100 Deviations.

- A. The Planning Commission or Governing Body may, in the process of approving preliminary plats, final plats, preliminary development plans or final development plans, approve deviations from the specific terms of this ordinance which would not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship for the applicant, and

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provided that the spirit of this ordinance shall be observed, the public safety and welfare secured and substantial justice done for the applicants.

- B. An application for a deviation may only be granted upon a finding that all of the following conditions have been met:
1. That the granting of the deviation will not adversely affect the rights of adjacent landowners.
 2. That the strict application of the provisions of this ordinance would constitute unnecessary hardship upon the landowner represented in the application.
 3. That the deviation desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.
 4. That granting the deviation will comply with the general spirit and intent of this ordinance.
 5. That it has been determined the granting of a deviation will not result in extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local, federal, or state laws.

Upon consideration of the factors listed above and the purposes of this ordinance, the City may attach such conditions to the granting of deviations as it deems necessary to further the purpose of this Chapter.

- C. In considering deviation applications, the City has the discretion of using any or all of the following project evaluations when, in the judgment of the Planning Commission or Governing Body, these evaluations are relevant and appropriate. No individual or combination of evaluations are necessarily required for an application to be approved, and the Planning Commission or Governing Body may weigh these evaluations in light of all relevant considerations in determining whether or not to approve an application.
1. Any increase in danger to life and property due to flooding or erosion damage.
 2. The susceptibility of the proposed facility to damage from factors such as flooding, stream bank erosion and channel migration and the effect of such damage on the individual owner.
 3. The availability of alternative locations for the proposed development.
 4. The compatibility of the proposed development with the comprehensive plan.
 5. The deviation is the minimum necessary to afford relief.
 6. Any decrease in the average width of the stream corridor set aside.
Any increase to bank instability or bank erosion and the resulting effects on other properties.
 7. The extent to which the proposed development retains the natural terrain within the stream corridor while avoiding such activities such as filling, grading and constructing retaining walls.
 8. The extent to which the proposed development provides protection from negative impacts to: water quality, base flow potential through infiltration, runoff velocity, temporary storage area for flood waters and sediment retention capability which is compatible with the intent of this Chapter.

9. The extent to which the proposed development provides aesthetic enhancement, preservation of habitat for plants and animals, recreational opportunities, educational value and effective screening from adjoining land uses which are compatible with the intent of this Chapter.

(History: Ord. ZRR-2382 §1, 2002)

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