

MEMORANDUM

To: Mayor and City Council
From: Richard McLeod, Community Development Director
Date: January 28, 2019
Subject: Amendment to City of Dunwoody Ordinances
Chapter 16—Stream Buffer Exemptions

ITEM DESCRIPTION

Request to consider text amendment to the land development code (Chapter 16). The proposal would clarify that all improvements related to city council-approved plans would be permitted to encroach the first 50-feet of the City's 75-foot stream buffer.

DISCUSSION

As code currently reads, "multi-use trails and related improvements that are part of a city council approved plan" are permitted to encroach the first 50-feet of the City's 75-foot stream buffer without a variance. This amendment would extend this exemption to cover any and all improvements that are part of a city council-approved plan. This change would aid in facilitating several City approved development plans, namely the Brook Run Park Improvements as a component of the Dunwoody Parks and Recreation Master Plan.

While the City is not required to conform to the code as-is, this amendment is offered in the interests of transparency and clarity.

NOTE: This amendment does not apply to the State's 25-foot stream buffer. Any work within the State's 25-foot stream buffer would require acquisition of a variance from Georgia's Environmental Protection Division. This amendment applies only to the area 25-75 feet from applicable bodies of water.

RECOMMENDATION

Staff recommends Mayor and City Council approve the attached draft changes to Chapter 16, as prepared.

Attachments:

Chapter 16, with edits

STATE OF GEORGIA

CITY OF DUNWOODY

ORDINANCE NO. 2019-

AN ORDINANCE TO AMEND CHAPTER 16 (LAND DEVELOPMENT REGULATIONS); TO CREATE AN EXEMPTION FROM STREAM BUFFER REQUIREMENTS FOR CITY COUNCIL APPROVED PROJECTS; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES

WHEREAS, the Mayor and City Council of the City of Dunwoody are empowered to regulate Land development Regulations within the City of Dunwoody; and

WHEREAS, the Mayor and Council have created certain exemptions for stream buffer requirements related to the design and construction of multi-use trails; and

WHEREAS, the Mayor and Council wish to expand the scope of such exemption to include City of Dunwoody projects that have been approved by the City Council.

THEREFORE, THE MAYOR AND COUNCIL OF THE CITY OF DUNWOODY, GEORGIA HEREBY ORDAIN:

SECTION I: Subsection 16-79 of Chapter 16 is hereby amended to read as follows:

Sec. 16-79. - Exemptions and special administrative permits.

- (a) *Exemptions.* The stream buffer regulations of this division do not apply to any of the following activities, provided that any activity within a state-mandated stream buffer must meet state requirements. Exemption of these activities does not constitute an exemption from any other activity proposed on a property or a requirement to obtain a building/land development permit.
- (1) Work consisting of the usual and customary repair or maintenance of any lawful use of land that is zoned and approved for such use on or before the effective date of this section. Such usual and customary repair and maintenance activities cannot create any land disturbance, and must occur within the preexisting disturbed area;
 - (2) Maintenance, including the full replacement, of existing decks, porches or similar improvements attached to a dwelling that encroach into a city stream buffer so long as the work does not increase the degree of encroachment or any nonconformity. The complete replacement of these improvements is provided for, including the replacement of stairs and all supporting beams, posts and footings subject to compliance with applicable city codes. The necessary construction of new or improved footings as required to comply with current building codes is allowable up to a maximum of 100 square feet of land disturbance;

- (3) Construction of new decks, porches or other similar additions no more than 200 square feet in area, to existing structures without a deck, porch or similar structure, provided that such construction does not require more than 100 square feet of land disturbance and does not further encroach more than ten feet into the city stream buffer;
- (4) Existing development and on-going land-disturbance activities including existing agriculture, silviculture, landscaping, gardening and lawn maintenance, except that new development or land-disturbance activities on such properties is subject to all applicable buffer requirements;
- (5) Public sewer line installation in easements running parallel with the stream where necessary, except that all easements (permanent and construction) and land disturbance within a state waters' buffer must meet state requirements. This includes such impervious cover as is necessary for the operation and maintenance of the utility, including but not limited to manholes, vents and valve structures. This exemption may not be construed as allowing the construction of roads, bike paths or other transportation routes in such easements, regardless of paving material, except for access for the uses expressly identified in this paragraph;
- (6) Removal of unwanted ground cover (e.g., poison ivy) using hand tools as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed;
- (7) Land development activities within a dedicated transportation right-of-way existing at the time this section takes effect or approved under the terms of this section;
- (8) Within an easement of any utility existing at the time this section takes effect or approved under the terms of this section, land-disturbance activities and such impervious cover as is necessary for the operation and maintenance of the utility, including but not limited to manholes, vents and valve structures;
- (9) Emergency work necessary to preserve life or property. However, when emergency work is performed, the person performing it must report such work to the community development department on the next business day after commencement of the work. Within ten business days thereafter, the person must apply for a permit and perform such work within such time period as may be determined by the community development department to be reasonably necessary to correct any impairment such emergency work may have caused to the water conveyance capacity, stability or water quality of the protection area;
- (10) Forestry and silviculture activities on land that is zoned for forestry, silvicultural or agricultural uses and are not incidental to other land development activity. If such activity results in land-disturbance in the buffer that would otherwise be prohibited, then no other land-disturbing activity other than normal forest management practices will be allowed on the entire property for three years after the end of the activities that intruded on the buffer;
- (11) Activities to restore or enhance stream bank stability, riparian vegetation, water quality or aquatic habitat, so long as native vegetation and bioengineering techniques are used;

- (12) The removal of dead, diseased, insect-infested, or hazardous trees (without any associated land disturbance), provided the property owner provides a tree removal permit; and
- (13) Multi-use trails and ~~related other City~~ improvements that are part of a city council-approved plan. Unless otherwise approved by the state, such encroachments must be located at least 25 feet from the banks of state waters when, after study of ~~project alternatives alternative—trail—alignments~~, the community development director determines that the alignment is the most desirable alternative and that they are designed to minimize impervious surfaces and incorporate BMPs and other mitigation practices that minimize the impact of encroachments on water quality. ~~Trail Project~~ improvements that are part of a city council-approved plan are not counted as part of a site's impervious surface area for purposes of site development-related calculations and regulations.
- (b) *Special administrative permits.* The following activities may be approved within the stream buffers required by section 16-78 by special administrative permit, pursuant to the process outlined in chapter 27, article V, division 7:
- (1) Stream crossings by utility lines, roads, driveways or similar transportation routes, including trails for nonmotorized transportation;
 - (2) Public water supply intake or public wastewater outfall structures;
 - (3) Land development necessary to provide access to a property;
 - (4) Public access facilities that must be on the water including boat ramps, docks, foot trails leading directly to the stream, fishing platforms and overlooks;
 - (5) Stormwater outfalls to the stream, by pipe or channel, necessary to protect the buffer from erosion caused by high-flow velocities due to steep slopes;
 - (6) Exclusive of the exemptions in [subsections] (a)(2) and (a)(3) above, minor land-disturbing activities totaling no more than 200 square feet in area and located more than 25 feet from the stream, for the construction of decks, porches, or other additions to existing structures, and accessory structures where riparian vegetation is restored or replaced in any disturbed areas; and
 - (7) Construction and land disturbance that results in the reduction or removal of impervious surfaces.

(Ord. No. 2013-10-14, 1(Exh. A § 16-6.40), 10-14-2013; Ord. No. 2015-01-04, § 1, 1-26-2015; Ord. No. 2016-04-04, § 1, 4-11-2016; Ord. No. 2018-07-13, § III, 7-23-2018)

SECTION II:

a. It is hereby declared to be the intention of the Mayor and Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are or were, upon their enactment, believed by the Mayor and Council to be fully valid, enforceable and constitutional.

b. It is hereby declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

c. In the event that any section, paragraph, sentence, clause or phrase of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgement or decree of any court or competent jurisdiction, it is the express intent of the Mayor and Council that such invalidity, unconstitutionally or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining sections, paragraphs, sentences, clauses or phrases of this Ordinance and that, to the greatest extent allowed by law, all remaining sections, paragraphs, sentences, clauses or phrases of this Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

SECTION III: All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION IV: This Ordinance shall be codified in accordance with State law and the Code of the City of Dunwoody, Georgia. This Ordinance shall become effective upon adoption.

SO ORDAINED, this _____ day of _____, 2019.

Approved by:

Approved as to form:

Denis L. Shortal, Mayor

Cecil G. McLendon, City Attorney

Attest:

Sharon Lowery, City Clerk

SEAL