



4800 Ashford Dunwoody Road
Dunwoody, Georgia 30338
dunwoodyga.gov | 678.382.6700

MEMORANDUM

To: Mayor and City Council
From: Allegra DeNooyer, Planner II
Date: October 16, 2023
Subject: Text Amendment for Fences in Stream Buffers

ITEM DESCRIPTION

This item is a proposed text amendment to exempt fences from stream buffer regulations. In accordance with state law, City of Dunwoody staff proposes exempting fences from stream buffer regulations, with the condition that fences cannot be in the floodplain.

DISCUSSION

The City of Dunwoody enforces a 75-foot stream buffer along all streams in the city. The City exempts certain activities that have a minimal impact on the stream buffer, such as maintenance work and other minor land-disturbing activities that can be done with hand tools. The City also maintains regulations for floodways and floodplains as established by FEMA. Construction is typically prohibited within the floodway and only limited development is allowed in the future-conditions floodplain.

Since 2020, eight variance cases involving fences in stream buffers have come before the City of Dunwoody’s Zoning Board of Appeals and all eight have been approved. Additionally, the State of Georgia exempts fences from stream buffer regulations. Amongst peer cities Sandy Springs, Brookhaven, and Peachtree Corners exempt fences from stream buffer requirements, while Woodstock, Alpharetta, and Roswell do not exempt fences from stream buffer regulations.

Staff has reviewed the proposed fence text amendment with the City Engineer, who found that the regulations would have no negative impacts on water quality and that any land disturbance or soil erosion would be very minor.

UPDATES AFTER SEPTEMBER 11 CITY COUNCIL MEETING

Staff has reviewed the applicability of the regulations for fences in floodplains and recommends not exempting fences in the floodplain from the stream buffer regulations. Fences in the floodplain would require a variance, which is staff’s current policy and will continue to allow for project-specific review during the variance process.

Lynn Deutsch Mayor
Eric Linton ICMA-CM City Manager
Sharon Lowery CMC City Clerk

Catherine Lautenbacher City Council Post 1
Rob Price City Council Post 2
Tom Lambert City Council Post 3

Stacey Harris City Council Post 4
Joe Seconder City Council Post 5
John Heneghan City Council Post 6



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STAFF RECOMMENDATION

Staff recommends **APPROVAL**.

PLANNING COMMISSION RECOMMENDATION

In its August 8 meeting, the Planning Commission recommended approval of the text amendment by 5-0 vote.

ATTACHMENTS

- Ordinance, Fences in Stream Buffers
- Proposed Chapter 16 Regulations, Redlined
- Proposed Chapter 16 Regulations, Clean

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AN ORDINANCE TO AMEND CHAPTER 16 (LAND DEVELOPMENT REGULATION) OF THE CITY OF DUNWOODY CODE OF ORDINANCES; TO UPDATE THE LIST OF EXEMPT ACTIVITIES IN THE STREAM BUFFERS, IN ACCORDANCE WITH STATE LAW;

WHEREAS, the City of Dunwoody is charged with preserving the health, safety and welfare of the citizens of the City; and

WHEREAS, the City of Dunwoody enforces stream buffer regulations to preserve vegetation along streams; and

WHEREAS, certain activities are exempt from stream buffer requirements because of their minimal impact so as to not overly burden residents; and

WHEREAS, the State of Georgia and several municipalities exempt fences from stream buffer regulations; and

WHEREAS, the Zoning Board of Appeals has approved all variance cases involving fences in stream buffers from the past three years; and

WHEREAS, this amendment is necessary to ensure the health, safety, and welfare of Dunwoody residents.

NOW, THEREFORE, the Mayor and City Council of the City of Dunwoody HEREBY ORDAIN that Chapter 16, Section 79 is amended 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 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 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 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.
 - (14) Fences, provided that they are not located in a floodplain.
- (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:

STATE OF GEORGIA
CITY OF DUNWOODY

ORDINANCE 2023-XX-XX

- (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)

SO ORDAINED, this ____ day of _____, 2023.

Approved:

Lynn P. Deutsch, Mayor

STATE OF GEORGIA
CITY OF DUNWOODY

ORDINANCE 2023-XX-XX

ATTEST:

Approved as to Form and Content:

Sharon Lowery, City Clerk (Seal)

City Attorney

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

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 - (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;
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 - (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;

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- (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 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 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 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.

(14) Fences, provided that they are not located in a floodplain.

- (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)

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 - (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;
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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;

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City of Dunwoody Georgia

Text Amendment – Stream Buffer Regulations

October 16, 2023

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Updates since September 11 City Council

- Staff recommends not exempting fences in the floodplain from stream buffer regulations
 - Fences in the floodplain would require a variance, as is our current policy
- Previous text amendment language for exemption:
 - Fences, provided that they are not located in a floodway and that all fences in floodplains are constructed of wood.
- Current proposed text amendment language for exemption:
 - Fences, provided that they are not located in a floodplain.

Current Stream Buffer Regulations

- 25-foot stream buffer: regulated by the State of Georgia; fences are exempt
- 75-foot stream buffer: includes state 25-foot buffer; enforced by the City of Dunwoody along all streams in the City; fences in the 75-foot stream buffer need a variance
- City also maintains regulations for floodways and floodplains (as established by FEMA)
 - No construction within floodway
 - Only limited development within floodplain
 - Fences are not specifically addressed for floodways and floodplains
- Certain activities that have a minimal impact on the stream buffer are exempt from the 75-foot stream buffer
 - Maintenance work, minor land-disturbing activities done with hand tools

Why Change the Stream Buffer Regulations?

- Since 2020, the ZBA has approved all 8 of the variance cases involving fences in stream buffers
 - Variance process adds approximately 3 months onto the timeline and costs a minimum of \$675
 - Since most fences do not require permits, this leads to uneven enforcement issues
- Fences are typically installed with hand tools and have very minimal land disturbance
- There is a need to codify existing policy for floodways and floodplains
- The State of Georgia, Sandy Springs, Brookhaven, and Peachtree Corners exempt fences from stream buffer regulations
 - Woodstock, Alpharetta, and Roswell do not

Proposed Regulations for Fences in Stream Buffers

- Exempt fences from stream buffer regulations, except that fences cannot be in the floodplain
- City Engineer found no negative impacts on water quality and that any land disturbance or soil erosion would be very minor