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AKRON CITY COUNCIL

Requested by the Office of the Mayor

Offered By: FUSCO HOLLAND

ORDINANCE NO. _____-2023, amending Title 15 “Land Usage” in the Code of Ordinances of the City of Akron by enacting Chapter 155 “Riparian Setbacks” to protect the benefits of riparian areas by providing reasonable controls governing structures and uses in riparian setbacks; and declaring an emergency.

BE IT ENACTED by the Council of the City of Akron:

Section 1. Title 15 “Land Usage,” Chapter 155 “Riparian Setbacks,” Sections 155.01 through 155.99 of the Code of Ordinances of the City of Akron be, and is hereby amended to read as follows:

155.01 – Public Purpose

- A. It is hereby determined that the system of streams within the City contributes to the health, safety, and general welfare of the residents of the City. The purpose of this Chapter is to protect and preserve the water quality within streams of the City and to protect residents of the City from property loss and damage from flooding and other impacts of the stream. This regulation has been enacted to protect these benefits of riparian areas by providing reasonable controls governing structures and uses in riparian setbacks.**
- B. The method of implementing this Chapter is by controlling uses and developments within the Riparian Setback that would impair the ability of the riparian area to do the following:**
 - 1. Reduce flood impacts by absorbing peak flows, slowing the velocity of floodwaters, and regulating base flow;**
 - 2. Stabilize the banks of streams to reduce bank erosion and the downstream transport of sediments eroded from stream banks;**
 - 3. Reduce pollutants in streams during periods of high flows by filtering, settling, and transforming pollutants already present in streams;**
 - 4. Reduce pollutants in streams during periods of high flows by filtering, settling, and transforming pollutants in runoff before they enter streams;**
 - 5. Provide areas for natural meandering and lateral movement of stream channels;**
 - 6. Reduce the presence of aquatic nuisance species to maintain diverse and connected riparian vegetation;**
 - 7. Provide high quality stream habitats with shade and food to a wide array of wildlife by maintaining diverse and connected riparian vegetation;**

8. **Benefit the City economically by minimizing encroachment on stream channels and reducing the need for costly engineering solutions such as dams and riprap, to protect structures and reduce property damage and threats to the safety of watershed residents, and by contributing to the scenic beauty and to the environment of the city, the quality of life of the residents of the City and corresponding property values; and**
9. **Protect the health, safety, and welfare of the citizens of the City.**

155.02—Application

- A. **The provisions of this Chapter shall apply to all lands within incorporated areas that are within the jurisdiction of the City.**
- B. **No preliminary plan, building, or zoning approvals shall be issued by the City without full compliance with the terms of these regulations where applicable.**

155.03—Definitions

- A. **For the purpose of this Chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning:**
 1. **ALTERATION: Any human action that adversely affects the vegetation, hydrology, wildlife or wildlife habitat in a wetland, stream or buffer regulated by this Chapter, including grading, filling, dumping, dredging, draining, paving, construction, application of gravel, discharging pollutants (including herbicides and pesticides), and compacting or disturbing soil through vehicle or equipment use. Alteration also includes the mass removal or mass planting of vegetation by means of cutting, pruning, topping, clearing, relocating, or applying herbicides or any hazardous or toxic substance designed to kill plant life. Alteration does not include the following activities in a buffer:**
 - a. **Walking, passive recreation, fishing, or other similar low-impact activities;**
 - b. **The maintenance of pre-existing, nonconforming lawn area;**
 - c. **The removal of trees or vegetation that is dead, dying, diseased, noxious, or hazardous in a manner that does not cause the compacting or disturbing of soil through vehicle or equipment use;**
 - d. **The removal of noxious weeds by nonchemical methods, or by means of chemical treatment in accordance with application methods that prevent the introduction of toxic chemicals into wetlands and streams;**
 - e. **The removal of non-native plants and shrubs;**
 - f. **Selective management of vegetation, such as selective pruning of trees or shrubs in order to enhance their health, selective removal of tree saplings of less than two inches in diameter in order to enhance wildlife value of the buffer, selective removal of non-native trees, selective seeding or planting of native vegetation;**

- g. Installation of temporary fencing without footings; or
 - h. Projects within the buffer that are the subject of an approved mitigation plan.
2. **APPLICANT:** Any person who executes the necessary forms to procure official approval of a project or a permit to carry out a project.
 3. **BEST MANAGEMENT PRACTICES (BMPs):** Conservation practices or protection measures which reduce impacts from a particular land use. Best Management Practices for construction are outlined in “Rainwater and Land Development, Ohio’s Standard for Stormwater Management, Land Development, and Urban Stream Protection” prepared by the Ohio Department of Natural Resources.
 4. **BOARD:** The City of Akron Board of Zoning Appeals.
 5. **BUFFERS:** Land areas adjacent to wetlands, streams, and hazards in which development and land use are restricted as set forth in this Chapter and in which the growth of native and naturalized plants and trees are to be preserved and encouraged in accordance with this Chapter.
 6. **CATEGORY 3 WETLAND:** 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.
 7. **CHAPTER:** Title 15 “Land Usage”, Chapter 155 “Riparian Setbacks” of this Code of Ordinances.
 8. **CITY:** The City of Akron, Ohio.
 9. **COUNTY AUDITOR:** The Fiscal Officer or other official of Summit County who oversees, manages, or otherwise maintains the tax duplicates for parcels.
 10. **ENGINEER:** The City of Akron Engineer or person designated by the City Engineer.
 11. **FEMA:** The Federal Emergency Management Agency for the United States of America.
 12. **IMPERVIOUS:** Any surface that cannot effectively absorb or allow the infiltration of water. This may include roads, streets, parking lots, rooftops, sidewalks, and other areas not covered by vegetation.
 13. **IN-LINE POND:** A permanent pool of water, inclusive of water bodies known as ponds or lakes, created by impounding a watercourse subject to this Chapter.
 14. **LAWN AREA:** An area within a buffer with maintained landscape, including areas of mowed turf grass, gardens, play areas, work areas, patios, play structures, and nonpermanent structures. Lawn area does not include areas within a buffer consisting of native or naturalized vegetation or land area that is outside of a buffer.

15. **MAYOR:** The Mayor of the City of Akron or person designated by the Mayor.
16. **MITIGATION PLAN:** Measures taken to minimize negative effects of stormwater runoff on the environment including, but not limited to, installation of rain gardens, infiltration basins, infiltration trenches, retention basins, filters, sediment traps, swales, reduction of impervious surfaces, planting of deep-rooted native plants, including but not limited to grasses, trees and shrubs, landscape, and pavement maintenance.
17. **NATIVE VEGETATION:** Native plants are the plant species that are naturally found in the Akron area of northeast Ohio. These plants are adapted to and thrive in the local soils, rainfall levels, weather, and climate conditions. Native plant lists are maintained by the Ohio Department of Natural Resources, Division of Natural Areas & Preserves and available on the Division's website.
18. **NATURAL OR NATURALIZED VEGETATION:** The plant community which grows freely on its own and is left undisturbed by humans for a long period of time is known as natural vegetation. The natural vegetation includes tall trees, shrubs, grasses, bushes, and flowering plants which live in association with one another in a given environment.
19. **NOXIOUS WEED:** A native or non-native plant species considered to be harmful to the environment or animals, typically subject to regulatory controls due to its aggressive or harmful nature. Typically, this includes non-native, introduced species which can become aggressive and quickly colonize a site due to the lack of natural biological controls. Noxious weeds can have adverse effects through contact or ingestion and detrimentally impact agriculture, forests, natural areas, parks, open spaces, and roadsides.
20. **100-YEAR FLOODPLAIN:** Any land defined by FEMA as being susceptible to being inundated by water from a base flood, which is the flood that has a one percent or greater chance of being equaled or exceeded in any given year.
21. **ORDINARY HIGH-WATER MARK:** The mark delineating the highest water level maintained for enough time on a bank or shore to leave evidence upon the landscape. The ordinary high-water mark is commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. The ordinary high-water mark defines the channel of a stream.
22. **RIPARIAN AREA:** The transitional area between a stream or Category 3 wetland and terrestrial ecosystems, which provides a continuous exchange of nutrients and woody debris between land and water. This area is at least periodically influenced by flooding. Riparian areas, if appropriately sized and managed, help to stabilize banks, limit erosion, reduce flood size flows and/ or filter and settle out runoff pollutants, or perform other functions consistent with the purposes of these regulations.
23. **RIPARIAN SETBACK:** The minimum horizontal distance set back from the wetland, stream, floodplain, or hazard to protect the riparian area and stream from impacts of development, and streamside residents from impacts of flooding and land loss through erosion. Riparian Setbacks are those lands within the City that fall within the area defined by the criteria set forth in these

regulations and include the total combined required buffer area and any hazard setback described in these regulations.

24. **SUMMIT SWCD:** An entity organized under Chapter 1515 of the Ohio Revised Code referring to either the Summit Soil and Water Conservation District Board or its designated employees.
25. **SOIL DISTURBING ACTIVITY:** The 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, erosion and sediment pollution.
26. **STREAM:** A surface watercourse with a well-defined bed and bank, either natural or artificial, which confines and conducts continuous or periodical flowing water (R.C. 6105.01) in such a way that terrestrial vegetation cannot establish roots within the channel.
27. **STREAM CORRIDOR:** The area that includes the stream and as well as any riparian buffer areas set forth in this Chapter.
28. **STORMWATER POLLUTION PREVENTION PLAN:** The plan which describes all the elements of the stormwater strategy implemented during and after construction. The plan addresses erosion control and stormwater quality. Also known as a SWPPP or SW3P.
29. **SUSTAINABLE DESIGN:** a development design that minimizes impacts on the landscape.
30. **VARIANCE:** A modification of the enforcement of the Chapter which will not be contrary to the public interest.
31. **WATERCOURSE:** A natural or artificial waterway, such as a stream or river, with a defined bed and channel and a definite direction of course that is contained within, flows through, or borders the community.
32. **WATERSHED:** An area of land that drains into a particular watercourse, usually divided by topography.
33. **WETLAND:** Those areas of land 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, including swamps, marshes, bogs, and similar areas.

155.04—Standards

- A. **Applications.** An applicant for a plan or permit that would result in alterations within the Riparian Setback must provide a delineation of the Riparian Setback and shall identify such setbacks on a site plan included with all subdivision plans, land development plans, and zoning permit applications submitted to the City for approval.
 1. The site plan shall be prepared by a professional engineer, surveyor, landscape architect, or other qualified professional as determined by the City and shall be based on a survey of the impacted land.

2. Site plans must include the following information:

- a. The boundaries of the lot with dimensions;
- b. The location of all watercourses subject to this Chapter;
- c. The limits, with dimensions, of the riparian setbacks;
- d. The existing topography at intervals of two feet;
- e. The location and dimensions of any proposed structures or uses, including proposed soil disturbance, in relationship to watercourses subject to this Chapter;
- f. North arrow, scale, date, and stamp bearing the name and registration number of the qualified professional who prepared the site plan;
- g. If any work will occur below the ordinary high-water mark of the watercourse, proof of compliance with the applicable conditions of a United States Army Corps of Engineers Section 404 Permit (either a Nationwide Permit, including the Ohio State Certification Special Conditions and Limitations, or an Individual Permit, including an Ohio 401 Water Quality Certification);
- h. If wetlands protected under federal or state law are identified within the Riparian Setback, the approved wetland delineation by the United States Army Corps of Engineers or Ohio Environmental Protection Agency including the latest version of the Ohio Rapid Assessment Method for wetland evaluation approved at the time the delineation approval was sought; and
- i. Other such information as may be necessary for the City to determine compliance with this Chapter.

B. Stream Types. The Engineer shall assign each stream in the City to one of the following categories based on the appropriate criteria and shall make the determinations available on the City's website:

Stream	Stream Characteristics
Type I	Drainage area of up to 32 acres
Type II	Drainage area of greater than 32 acres up to 0.5 square miles
Type III	Drainage area greater than 0.5 square miles up to 20 square miles
Type IV	Drainage area greater than 20 square miles up to 300 square miles
Type V	Drainage area greater than 300 square miles

The Engineer's determination shall be given deference and shall not be set aside absent clear and convincing evidence that a stream has been designated as the incorrect stream type.

C. Buffer Types, Purposes and Characteristics. The following buffer types shall be used to regulate activities in the Riparian Setback. Any applicable buffer type boundaries shall be indicated on any plat or site plan filed by an applicant which includes an applicable Stream Corridor.

Buffer Type	Buffer Characteristics
Preserved Buffer	An area that protects the physical and ecological integrity of the stream or Category 3 wetland ecosystem. It is the most sensitive area of the Stream Corridor and includes the stream channel and the required setback from the ordinary high-water mark. In order to protect natural functions of the corridor, this area should contain undisturbed natural vegetation.
Managed Buffer	An area that protects key components of the stream or Category 3 wetland and provides distance and transitions between upland development and the Preserved Buffer. Activities in this area impact the function of the Preserved Buffer, as well as the Stream Corridor, and it begins immediately adjacent to the Preserved Buffer. In order to protect natural functions of the corridor, this area should contain trees and plant material of a type and quantity sufficient to protect the physical and ecological integrity of the waterway ecosystem and limited land disturbance.
Limited Development Buffer	An area that prevents encroachment into the stream corridor or wetland by more intense and conventional development. Activities in this area impact the function of the Stream Corridor, and it begins immediately adjacent to the Managed Buffer. Limited development activity is allowed in this area, provided it is accessory to a use in one of the other buffer areas or involves site design practices that eliminate, minimize or mitigate impacts of run-off into the stream corridor.

D. Buffer Area. The area for each buffer shall be as set forth in the following table subject to required and allowed modifications as set forth in this Chapter.

Stream Type	Preserved Buffer	Managed Buffer	Limited Development Buffer	Total Riparian Setback
Type I	30'	N/A	N/A	30', both sides
Type II	30'	50'	N/A	50', both sides
Type III	30'	50'	75'	75', both sides
Type IV	30'	75'	100'	100' both sides
Type V	30'	100'	300'	300' both sides
Category 3 Wetland	30'	50'	N/A	50'

Buffer distance requirements measured horizontally from the edge of the ordinary high-water mark or Category 3 wetland delineation extent. All Preserved Buffers shall also include the stream channel in addition to the specified setback from the ordinary high-water

E. Buffer Allowed Uses and Limitations. In addition to all standards and regulations of the zoning, stormwater, and building codes, the following additional limitations shall apply in the buffer areas:

Buffer Type	Allowed Uses and Limitations
Preserved Buffer	<p>The preserved buffer shall only allow uses that leave the soil and vegetation in an undisturbed state except for existing use activities provided in this Chapter.</p> <p><u>Prohibited Activities.</u> Mowing and clearing of vegetation, excavation, or any land disturbance is prohibited in this area unless it is conducted in association with restoration of natural stream conditions or occurs at an approved stream crossing.</p>
Managed Buffer	<p>Conservation uses such as wildlife sanctuaries, fishing and hunting areas, passive park lands or natural open space, unpaved recreation facilities, natural education and research activities, limited harvesting of trees and natural vegetation, sustainable agricultural practices involving only crops, camping and picnic areas.</p>
Limited Development Buffer	<p>Accessory buildings to other buffer uses, principal buildings to uses allowed by zoning provided green building practices, associated site elements provided low-impact or sustainable design are used to the greatest extent practicable.</p>

F. Additional Limitations

The following setback distances shall apply from the edge of the Riparian Setback to the hazard. No hazard described below shall be located within the combined horizontal distance of the Riparian Setback and the applicable setback for the hazard.

Hazard	Setback
Drain-fields from onsite sewage disposal and treatment systems	100 feet
Above ground or underground petroleum storage facilities or use of petroleum-based products	150 feet
Storage or use of hazardous substances	150 feet
Raised septic systems	250 feet
Mining of natural resources	250 feet
Agricultural activities involving animal feed operations, grazing, or storage	250 feet
Solid waste landfills, recycling facilities, or junkyards	300 feet

155.05—Modifications and Exceptions

A. The following are exempt from the terms, limitations, and protections of this Chapter:

1. **Grassy swales, roadside ditches, drainage ditches created at the time of a subdivision to convey stormwater to another system, in-line ponds, tile drainage systems, and stream culverts;**
 2. **Public roadways and the maintenance and expansion of those roadways;**
 3. **Emergency public safety activities;**
 4. **Property which is located within a buffer, but is separated from the stream or wetland by an existing public roadway;**
 5. **Buildings and structures not in conformity with the regulations prescribed by this Chapter as of its effective date shall be regarded as nonconforming and may continue; and**
 6. **Lawn areas not in conformity with the regulations prescribed by this Chapter as of its effective date shall be regarded as nonconforming and may continue. A nonconforming lawn area will lose its legal nonconforming status if it is converted to native or naturalized vegetation and may not thereafter be treated as a lawn area.**
- B. The Ohio & Erie Canalway within the City is exempt from the Preserved and Managed Buffer terms and limitations of this Chapter. The allowed uses and limitations applicable to the Limited Development Buffer shall apply to the full extent of the Riparian Setback for the Ohio & Erie Canalway, which is from the high-water mark to 50’.**
- C. Alternative Buffers and Mitigation Plans.**
1. **Alternatives to the standards in this Chapter may be introduced by the City or landowner proposing development in a stream corridor if based on scientific studies of the specific site and surrounding impacted areas, considering the following factors:**
 - a. **Slope**
 - b. **Groundwater and surface water flow**
 - c. **Rainfall**
 - d. **Soil infiltration rate and conditions**
 - e. **Floodplain width**
 - f. **Catchment size**
 - g. **Existing and proposed land uses**
 - h. **Impervious surfaces**
 - i. **Wetlands**
 - j. **Surrounding vegetation characteristics.**

2. **No request for relaxation of the standards set forth in this Chapter shall be considered unless an applicant submits a proposed mitigation plan for uses prohibited by this Chapter within a setback or buffer regulated by this Chapter. In reviewing the plan, the City may consider the extent to which the mitigation plan proposes one more of the following actions:**
 - a. **reducing or avoiding the impact by limiting the degree or amount of the alteration, such as by using appropriate technology or best management practices;**
 - b. **rectifying the impact of the alteration by replanting, rehabilitating, or restoring the buffer, setback, and/or wetland;**
 - c. **reducing or eliminating the impact of the alteration over time by prevention and maintenance operations during the life of the actions;**
 - d. **compensating for the impact of the alteration by replacing, enhancing, and or providing substitute buffer land at a two-to-one ratio;**
 - e. **monitoring the impact and taking appropriate corrective measures; and**
 - f. **where the City recommends restoration or replacement of a buffer, the owner or contractor shall replant the buffer with native vegetation. A restoration plan must be approved by the City before planting.**
3. **The City may require additional mitigation plan measures based on the goals of this Chapter.**
4. **The City may require a buffer, setback, or wetland mitigation surety, such as a cash deposit or letter of credit, of 150% of the estimated cost for mitigation. The surety may be required based on the size of the project as deemed necessary by the Board. Funds will be held by the City until successful completion of restoration as determined by the City after a final inspection. A wetland or buffer mitigation surety does not include other sureties required pursuant to any other provision of City ordinance or City directive.**

D. The following shall apply to the Riparian Setback:

1. **Where the 100-year floodplain is wider than the Riparian Setback on either or both sides of the stream, the Limited Development Buffer of the Riparian Setback shall be extended to the outer edge of the 100-year floodplain.**
2. **Where wetlands protected under federal or state law are identified within the Riparian Setback, the Limited Development Buffer of the Riparian Setback shall be extended to the outer edge of the wetland delineation.**
3. **The applicant shall be responsible for delineating the Riparian Setback, including any expansions or modifications as required by Section 155.04, and identifying this setback on all subdivisions, land development plans, and/or building permit applications. This delineation shall be done at the time of application of the preliminary plans, or all plans that**

are required, or at the time of submission of any permit applications. This delineation shall be subject to review and approval by the city. As the result of this review, the City may require further studies from the applicant.

4. Prior to any soil disturbing activity, the Riparian Setback shall be clearly delineated with construction fencing or other suitable material by the applicant on site, and such delineation shall be maintained throughout soil-disturbing activities. The delineated area shall be maintained in an undisturbed state unless otherwise permitted by these regulations. All fencing shall be removed when a development project is completed.
5. No approvals or permits shall be issued by the City or its agent prior to delineation of the Riparian Setback in conformance with these regulations.
6. Upon completion of an approved subdivision, the Riparian Setback shall be permanently recorded on the plat records for the County of Summit.

155.06 – Undue Hardship

To avoid undue hardship, nothing in this Chapter shall prevent the restoration of a structure wholly or partly destroyed by fire, explosion, act of God, or act of the public enemy subsequent to the effective date of this Chapter or an amendment thereof, or prevent the continuance of the use of such building or part thereof as such use existed at the time of such destruction, or prevent a change or expansion of such existing use as provided in this Chapter.

155.07—Variances.

- A. In addition to the standard procedures for variances provided in Section 153.404, the Board may, upon application by a property owner or lessor, issue an order doing any of the following:
 1. Reducing the buffer widths set forth in Section 155.04 at certain points of a parcel so long as the average width of the buffer meets the minimum requirements set forth in Section 155.04(C). No such reduction shall be permitted except where the requestor demonstrates by clear and convincing evidence that such reduction will not compromise the function of the buffer.
 2. Approving an alternative buffer or mitigation plan so long as the requestor demonstrates that the modification satisfies the considerations in Section 155.05(C) of this Chapter.
- B. The Board may not grant a variance in connection with any order to comply issued pursuant to Section 155.97 if the requestor, property owner, or other responsible party has challenged the validity of the order through the appeal as provided by Section 155.98.
- C. Applications. In addition to the requirements in Section 153.420, an application for a variance that alters the requirements of this Chapter must also comply with all the requirements set forth in Section 153.04(A) and be accompanied by a fee in the same amount as the fee set forth in Section 153.420(F)(2) and remitted in the same manner.

D. The Board may impose any additional requirements as a condition of granting a variance it deems necessary to ensure the applicant's compliance with the requirements of the variance or other requirements of this Chapter.

155.08—Permitted Uses

A. The following uses are permitted within the Riparian Setbacks with prior approval of the design:

- 1. Stream bank stabilization/erosion control measures. Best Management Practices (BMP's) for stream bank stabilization or erosion control may be allowed if such practices are within permitted uses by the local, state, and federal government regulations and are ecologically compatible and emphasize the use of natural materials and native plant species where practical and available. Such stream bank stabilization/ erosion control practices shall only be undertaken upon approval of a Stormwater Pollution Prevention Plan by the Summit SWCD.**
- 2. Crossings. All roadway crossings shall be approximately perpendicular to the stream flow, shall minimize disturbance to the Riparian Setback, and shall mitigate any necessary disturbances. In reviewing plans for stream crossings, the City may confer with the Summit SWCD, the Ohio Department of Natural Resources, Division of Natural Areas; the Ohio Environmental Protection Agency, Division of Surface Water; the County of Summit Engineer; the Summit County Health Department; or other technical experts as necessary.**
- 3. Limited crossings of approved streams through the Riparian Setback by vehicles, storm sewers, sewer and / or water lines, and public utility lines will be per the approval of City and state governing agencies and as a part of the regular subdivision review process.**
- 4. Construction or installation of recreation features or public park elements, including construction of a publicly accessible trail or pedestrian walkway.**
- 5. Utility installation when such activities and installations cannot reasonably be located outside the Riparian Setback or other nearby areas of development. Placement of stormwater retention or detention facilities may be considered within the Riparian Setback if the stormwater quality treatment that is consistent with current state standards is incorporated into the basin.**
- 6. Structures and uses within the Riparian Setback, existing at the time of passage of these regulations, that are not permitted under these regulations may be continued but shall not be expanded except as set forth in this Chapter.**

[Sections 155.09-.96—Reserved]

Section 155.97 – Notice of Violation

A. Whenever it is determined that there has been a violation of any of the provisions of this Chapter, notice of the violation shall be given to the person or persons responsible therefor and order compliance as herein provided. The notice and order shall do the following:

1. **Include a list of violations with reference to the sections and subsections violated;**
 2. **Impose an administrative penalty as set forth in Section 155.98(A) and set forth a reasonable time in which to satisfy the payment; and**
 3. **To the extent the violation is ongoing, order such remedial action that will effect compliance with the provisions of this Chapter and specify a reasonable time for the responsible person to comply.**
- B. Any notice or order issued pursuant to subsection (A) of this section may be served personally upon the owner and/or lessor of the property where the violation occurred or by certified mail and regular mail to property, in the case of a lessor, or the tax mailing address on file with the Fiscal Officer of Summit County, in the case of the owner. If the certified and regular mail are both return unclaimed and/or undelivered, the notice may be posted at the property.**
- C. Notwithstanding subsection (A) of this section, the imposition of an administrative penalty may be waived or reduced by the Mayor if, in the discretion of the Mayor, there is good cause to believe that imposing the administrative penalty would not further the purposes of this Chapter.**
- D. A notice of violation and/or an order to comply is valid upon any person on whom it is served. It is not a defense to a notice of violation and/or order to comply issued pursuant to this section that another person who is an owner or lessor was not also served and lack of service upon another person does not invalidate the notice of violation and/or order to comply upon any person who has been served.**
- E. The purpose of the requirements of this section is to place the person served with a notice of violation and/or order to comply on notice of the violations and their obligation to remediate them. Any non-substantive deviation from the requirements of this section shall not be grounds to set aside a notice of violation and/or order to comply where the notice reasonably apprises the individual receiving it of the violations and their obligations.**

Section 111.98 – Appeals

- A. Any person who receives a notice of violation and/or order to comply issued pursuant to section 155.97 of this Chapter may appeal the notice and/or order to the Board.**
- B. Any person who wishes to appeal a notice of violation and/or order to comply must submit a written notice of appeal to the Department of Planning and Urban Development, Zoning Division, within ten days after the day the notice is served and shall be accompanied by a deposit of seventy-five dollars, which deposit shall be non-refundable. The notice shall set forth the name, address, and phone number of the appellant and a brief statement of the grounds for the hearing and appeal.**
- C. A hearing before the Board will be held within a reasonable time after the notice of appeal has been filed in compliance with subsection (B) of this section.**
- D. At the appeal hearing, the appellant shall be given an opportunity to be heard and show cause why the notice and/or order should be modified or dismissed. The failure of the appellant or**

representative to appear and present the appellant's position at the hearing shall be grounds for affirming the notice and/or order.

- E. On hearing, the Board may affirm, disaffirm, modify, or dismiss the notice and/or order by a majority vote of the members of the Board who are present. The appellant and the City shall be notified in writing of the findings, which may be delivered via electronic mail.
- F. The proceedings at the hearings, including the findings and decision of the Board and reasons therefor, shall be summarized in writing and entered as a matter of public record in the office of the Director of Planning and Urban Development. The record shall also include a copy of every notice and order issued in connection with the matter. Any person, including the City, aggrieved by the decision of the Board may seek relief therefrom in any court of competent jurisdiction as provided by the laws of the state.

Section 155.99 – Penalties

- A. **Administrative Penalties.** In addition to any criminal penalties that may be imposed pursuant to subsection (D) of this section, any person, occupant, operator, or owner who violates or fails to comply with any of the provisions of this chapter shall be subject to following administrative penalties in accordance with the criteria stated in Section 155.97 of this Chapter:
 - 1. For a first offense, an administrative fine of up to one hundred dollars.
 - 2. For a second offense, an administrative fine of up to five hundred dollars.
 - 3. For a third and subsequent offense, an administrative fine of up to one thousand dollars.
- B. If a person, occupant, operator, owner, or purchaser fails, neglects, or refuses to pay an administrative penalty within the time ordered pursuant to Section 155.97 of this Chapter, then the Mayor shall so notify the Director of Finance. The Director of Finance shall certify the administrative penalty to the County Auditor. In addition to the administrative penalty, an interest rate equal to the current rate of interest charged by the City on special assessments shall be imposed by the City for the life of the administrative penalty, added to the administrative penalty, and collected as provided in this section. The Director of Finance shall then certify the amount of the administrative penalty, including interest, to the County Auditor. The County Auditor shall enter the amount on the tax duplicate of the county as a special assessment against the person's real estate at issue.
- C. Money collected under this section shall be used exclusively for the Department of Planning and Urban Development.
- D. **Criminal Penalties.** In addition to any administrative penalties that may be imposed pursuant to division A of this section, any person, occupant, operator, or owner who violates or fails to comply with any of the provisions of this Chapter shall be guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars, imprisoned not more than sixty days, or both, and shall, in addition to any other penalties within these maximum amounts, be subject to the imposition of the following minimum mandatory penalties, which shall not be

suspended or held in abeyance:

1. A person, occupant, operator, or owner who has not previously been convicted of any violation of this Chapter shall be fined not less than fifty dollars.
2. A person, occupant, operator, or owner who has previously been convicted of one violation of a section of this Chapter shall be fined not less than two hundred dollars.
3. A person, occupant, operator, or owner who has previously been convicted of two or more violations of a section of this Chapter shall be fined not less than three hundred and fifty dollars.

E. **Continuing Violations.** A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

F. **Strict Liability.** The provisions of this Chapter are specifically intended to impose strict liability.

Section 2. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety for the reason that it would provide for the protection of riparian areas in Akron at the soonest possible time, provided this ordinance receives the affirmative vote of two-thirds of the members elected or appointed 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 at the earliest time allowed by law.

Passed _____, 2023

Clerk of Council

President of Council

Approved _____, 2023

M A Y O R

Akron City Council - Uniform Council Report (UCR)

PART I – General Information

Subject of Requested Legislation:
Riparian Setbacks

Department/Division: Mayor's Office

Requestor: Emily Collins Phone/Ext: 2325

If applicable, previous legislation on this subject (reference by ordinance/resolution number):
None

Purpose/Objective of Legislation:

The objective is to protect and preserve water quality of streams while preventing property loss and damage from flooding and erosion. The proposed ordinance is attached.

PART II – Financial Information

Does this Legislation directly involve the expenditure of funds? YES NO
 Was this expenditure budgeted for in the current operating budget? YES NO

If "YES," describe how the budgeted amount for the project compares to the actual or estimated costs:

City Expenditures

Budgeted Costs	
Amount:	
Fund:	
Org:	
Acct:	

Estimate of Costs	
Amount:	
Fund:	
Org:	
Acct:	

Amount:	
Fund:	
Org:	
Acct:	

Amount:	
Fund:	
Org:	
Acct:	

City Receipts

City Receipt of Funds	
Amount:	
Fund:	
Org:	
Acct:	

Other Consideration

Total expenditure (if applicable): \$ _____

Total receipts (if applicable): \$ _____

PART III – DETAILED INFORMATION:

Attach detailed information/documentation, as described in UCR Instruction Sheet.

City of Akron: Title 15 Land Usage, Chapter 155 Riparian Setbacks

Response to Public Comments

Summary: The City of Akron is proposing the City's first ordinance imposing riparian setbacks. The purposes of the ordinance are described in the legislation. The City issued a draft of the ordinance for public feedback on August 3, 2023. The comment period closed on September 8, 2023.

The City received comments from the following:

- The Nature Conservancy
- Chagrin River Watershed Partners, Inc.
- LEAD for Pollinators, Inc.
- Gina Burk
- Jodie M. Grasgreen
- M.H. Deal
- Zach Freidhof
- Summit Soil & Water Conservation District
- Biohabitats
- The City of Cuyahoga Falls
- Patrick Fogarty
- Wyatt Childers
- Cara Snyder
- Bancroft Development Group, LLC
- City of Akron Engagement Portal Users: songwriter, barbgreene, kb235111, janyse, and anakronism

All public comments are available [here](#).

Topic 1: Process Concerns

Commenters expressed concerns about the use of the City's Civic Engagement Portal to receive public comments and the accessibility of the site.

The City's goal is to provide many diverse avenues to engage with City government. In addition to the Engagement Portal, the City invited public comments via a dedicated email address – riparian@akronohio.gov – and City staff attended Ward meetings as requested by City Council members. In addition, while the Civic Engagement Portal is WCAG 2.1 AA compliant, the City's use of the Portal is new and the selection of background images and ensuring readability is something that City staff are adjusting as we better understand best practices and use of the Portal to accomplish our engagement goals.

Topic 2: Concerns about Timing

Commenters expressed concern about a lack of knowledge of the comment period and that the comment period was held during a break for City Council. Commenters requested more time to comment.

The City announced the opening of a public comment period on August 3, 2023 by [press release](#), publication on the City’s Civic Engagement Portal, the City’s weekly newsletter, and through many social media alerts. The news media published several articles about the draft ordinance being open for public comment, including the [Akron Beacon Journal](#) and [Ideastream Public Media](#). The City utilized a public comment period to obtain public feedback on the draft ordinance *prior* to introducing the legislation to City Council. The City received very helpful feedback from a variety of stakeholders and interest groups that has improved the ordinance that Mayor Horrigan is now proposing for City Council’s consideration. City Council’s processes include committee consideration of the ordinance, discussions with individual council members and their constituents, and a weekly public comment period.

Topic 3: Concerns about Duplicative Regulation of Waterways and Wetlands

A commenter expressed concern that local government riparian setback legislation is duplicative of Ohio EPA and US EPA regulations of waterways and wetlands.

Akron is joining many Ohio municipalities with riparian setbacks in their codes. While the Clean Water Act addresses the quality of waterways and wetlands, riparian setbacks are common land use measures adopted by local governments.

Topic 4: Concerns about Costs of Compliance and Impacts on Housing Markets

A commenter expressed concern that the City is requiring landowners to invest more in compliance with the law than before the Riparian Setback ordinance was in place. The commenter also expressed concern that the additional costs of compliance will create pressure on the housing market.

The City acknowledges that compliance with the requirements of the law takes time, investment in the process and the compilation of necessary documentation of the site-specific proposals. However, building improvements on any property in the City of Akron go through the City of Akron Engineering Bureau’s Plans and Permits process. The Riparian Setback ordinance will be a consideration in addition to other parts of the Code, including Building Standards and Zoning. The additional consideration in riparian areas serves the public interest as described in the proposed ordinance. The City does not expect the Riparian Setback ordinance to negatively impact property values.

Topic 5: Definitions of “noxious weeds,” “native vegetation,” “flowing water,” “stream,” and “wetland” and wetland protection

A commenter suggested additions and adjustments to various definitions for clarity. Several commenters expressed concern that the draft ordinance did not provide adequate protection to wetlands within the proposed Riparian Setbacks.

The City has included definitions of “noxious weed” and “wetland” and altered language related to “flowing water” and “stream” in the proposed ordinance. In addition, the City’s proposal now includes

the extension of Limited Development Buffer protection for federal- and state-regulated wetlands within, but stretching beyond the Riparian Setback. Category 3 Wetlands within or outside of the Riparian Setback are assigned preserved and managed buffer protections in the proposed ordinance.

Topic 6: Site Plan requirements

A commenter asked for additions of site plan requirements to include a soil map and a professional wetland delineation.

The proposed ordinance requires the location of all watercourses and wetlands subject to proposed Chapter 155. In addition, a delineation of the entire Riparian Setback is a requirement of the ordinance in section 155.04(A). The proposed ordinance now includes submission of the “approved wetland delineation by the United States Army Corps of Engineers or Ohio Environmental Protection Agency” where “wetlands protected under federal or state law are identified within the Riparian Setback.” The ordinance deliberately lists the professionals that may be used for the purpose of developing the site plan, delineation, and other required documentation in section 155.04(A)(1). The site plan requirements listed are minimum, non-exclusive requirements. The proposed ordinance includes “Other such information as may be necessary for the City to determine compliance with this Chapter,” which can include soil maps, tree removal plans, design specifications for temporary fencing, or any other information deemed necessary based on the site-specific proposal.

Topic 7: Riparian Setback Map

A commenter expressed concern that the GIS map created by the City should be described as non-binding in the ordinance.

The GIS map is not listed in the ordinance as a requirement of the site plan or as a consideration of the City Engineer. The map is not a substitute for site plan requirements, but is provided for the purpose of consideration of the draft ordinance.

Topic 8: Concerns about Enforcement

Commenters expressed concern that enforcement of the ordinance will occur upon complaint.

The proposed ordinance will be enforced through the plans and permitting process. If an alteration occurs in the riparian setback without authorization, the City will exercise its enforcement discretion based on all the evidence provided, including complaints, inspections, and any other information available.

Topic 9: Use of Incentives to Achieve Objectives of the Ordinance

Commenters expressed concern that the ordinance does not provide incentives for compliance.

Incentives to perform an action required by law can be instigated by budget and/or policy rather than by law.

Topic 10: Use of the Variance Process

Commenters expressed concern that variances from the riparian setback standards and limitations are included in the ordinance.

A process for the City to consider alterations within the riparian setback is appropriate to avoid undue hardship for landowners.

Topic 11: Different Treatment of Canal

Commenters expressed both concern and support for the different treatment of the Ohio & Erie Canalway.

While a constructed waterway through the most urban parts of the City, the Canalway is a National Heritage Area and provides similar functions as other waterways in Akron. The City provided the protection of a limited development buffer for the extent of 50 feet from the high water mark on either side of the Canalway in the proposed ordinance instead of exempting it from protection as in the instance of drainage ditches.

Topic 12: Concern that the Ordinance Allows Drilling and Mining in the Riparian Setback

A commenter expressed concern that the ordinance “allows drilling and mining” in the Riparian Setback.

The proposed ordinance provides for “additional limitations” for hazards listed Section 155.04(F). One of the hazards listed in this section is “mining of natural resources.” The proposed ordinance does not include “mining of natural resources” as an allowed use in Section 155.04(E). Instead, the inclusion of “mining of natural resources” as a “hazard” subjects the hazard to the extended setback from the riparian area: “No hazard described below shall be located within the combined horizontal distance of the Riparian Setback and the applicable setback of for the hazard.”

Topic 13: Inclusion of City-owned Property Outside the City’s Jurisdiction

A commenter expressed concern that the proposed ordinance does not mandate the same standards and limitations for City-owned properties outside the City of Akron’s jurisdiction.

By way of ordinance, the City may enact laws applicable to the incorporated areas within its own jurisdiction. City-owned properties outside of the City of Akron are subject to the laws of the jurisdiction in which each property sits, including riparian setback laws enacted within those jurisdictions.

Topic 14: Inclusion of Required Signage to Prevent Mowing in Riparian Buffer

A commenter suggested a signage requirement along the edge of the Riparian Setback to prevent mowing within the setback.

The proposed ordinance does include setback delineation with “construction fencing or other suitable material” during soil-disturbing activities.

Topic 15: Potential for Conflict with Akron’s FEMA Ordinance (Section 197) regarding Substantial Improvements to Substantially Damaged Structures

A commenter expressed concern that the Section 155.06 - Undue Hardship language in the proposed ordinance should not conflict with standards in Chapter 197 of the City of Akron’s Building Code related to substantial improvements to substantially damaged structures located in special flood hazard areas.

The purpose of the Undue Hardship section in the proposed ordinance is drafted to ensure that the standards and limitations of the Riparian Setback provisions of Chapter 155 are not construed to prevent restoration of a structure wholly or partly destroyed by fire, explosion, act of God, or act of the public enemy. Other Chapters of the Code may present restrictions on restoration or continued use or expansion of the use, including the provisions in Chapter 197 of the Building Code.

Topic 16: Concerns about Encouraging Degradation of Streambank Properties

A commenter expressed concern that permitting requirements for changes in the riparian setback could lead to degradation of streambank properties.

Building improvements on any property in the City of Akron go through the City of Akron Engineering Bureau’s Plans and Permits process. The Riparian Setback ordinance will be a consideration in addition to other parts of the Code, including Building Standards and Zoning. In addition, the undue hardship provision of the proposed ordinance; the allowed uses; the exemption for nonconforming buildings, structures and lawn areas in existence at the effective date of the proposed ordinance; and the variance process all provide methods to improve land within the Riparian Setback.

Topic 17: Concerns about Creating Mosquito Breeding Habitat in Long Grasses

A commenter expressed concern that creating Riparian Setbacks may increase the instance of high grasses in Akron that could serve as mosquito breeding habitat.

While a correlation between high grasses and mosquito breeding habitat may exist, the Riparian Setback ordinance is expected to encourage gradual changes over time in riparian areas rather than immediate instances of high grass and vegetation. For example, nonconforming buildings, structures, and lawn areas are allowed to continue as long as maintained.

Topic 18: Concerns about Negative Impacts to Property Values and Non-Buildable Lots

Commenters expressed concern that properties in the Riparian Setback may not be buildable and property values could be impacted.

The proposed ordinance includes a variance process to ensure that landowners may utilize their properties in ways that achieve the goals of the ordinance as long as impacts to the riparian setback are mitigated. The institution of Riparian Setbacks in Akron is not anticipated to cause changes in property values for properties within or adjacent to the riparian areas.

Topic 19: Concerns about Non-adjacent Wetlands and Lakes: Marian Lake and Little Beaver Pond

Commenters expressed concerns that the Riparian Setbacks would not apply to non-adjacent wetlands and lakes, such as Marian Lake and Little Beaver Pond.

The proposed ordinance is intended to address directional waters as described in the definition of “watercourse” and “stream.” Ponds and lakes are not included in the proposed ordinance. The proposed ordinance focuses on water bodies heavily impacted by the volume and velocity of water flow to prevent flooding, erosion, and resulting property damage. Category 3 wetlands are assigned their own Riparian Setback distances. Category 3 wetlands are not required to be part of the Riparian Setback of a watercourse or stream to receive protection of the ordinance, which is unlike the extent of the 100-year floodplains or other wetlands protected under federal or state law identified within the Riparian Setback.