

## CHAPTER 92

### IMPACTS TO RIVERS, STREAMS, AND PUBLIC WATERS

#### SECTION:

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**10-92-1: PURPOSE:** The purpose of this ordinance is to control or minimize impacts to rivers, streams and Public Waters. In addition, storm water pollution along with soil erosion and sedimentation shall be controlled to preserve water bodies within the City. It establishes standards and specifications for conservation practices and planning services, which minimize impacts to rivers, streams or Public Waters.

**10-92-2: SCOPE:** Except where a variance is granted, any person, firm, sole proprietorship, partnership, corporation, state agency, or political subdivision proposing a land disturbance activity within the City that is adjacent to a river, stream or Public Water shall submit to the City, for approval, a River, Stream or Public Water Buffer Plan, as required by this Ordinance. No land shall be disturbed until the plan is approved by the City and conforms to the standards set forth herein.

**10-92-3: GENERAL RIVER, STREAM OR PUBLIC WATER REQUIREMENTS:** Every applicant for a building permit with twenty thousand (20,000) square feet or more of land disturbance, subdivision approval, or a permit to allow for excavation, filling, grading, or other such activity, when on a parcel riparian to an identified public water shall submit a River, Stream or Public Water Buffer Plan to the City Engineer for review and approval. No building permit, subdivision approval, or permit to allow land disturbing activities shall be issued until the City approves this plan.

- A. Runoff shall not be discharged directly into rivers, streams or Public Waters without quality and quantity runoff control in compliance with the terms of this Ordinance.
- B. Undisturbed buffer zones of native vegetation are required at all times for permitted activity adjacent to rivers, streams or Public Waters.
- C. The Rum River is classified as a “Scenic or Recreational River Segment” by the Minnesota Pollution Control Agency. This classification causes the river to fall under the “Special Water” designation and requires additional consideration for stormwater pollution prevention. Reference requirements of the Minnesota Pollution Control Agency’s NPDES/SDS General Stormwater Permit for Construction Activity for work in the vicinity of a Special Water.

**10-92-4: RIVER, STREAM OR PUBLIC WATER BUFFER PLAN:** Every applicant for a building permit with twenty thousand (20,000) square feet or more of land disturbance, subdivision approval, or a permit to allow for excavation, filling, grading, or other such activity, when conducted on a parcel riparian to a river, stream or public water, must submit a River, Stream or Public Water Buffer Plan to the City Engineer. No building permit, subdivision approval, or permit to allow land disturbing activities shall be issued until the City approves this plan. At a minimum these pollution abatement control practices must conform to those in the current version of the Minnesota Pollution Control Agency’s publication, “Protecting Water Quality in Urban Areas”.

- A. **The River, Stream or Public Water Buffer Plan and the Grading Plan.** The River, Stream or Public Water Buffer plan measures and limits the area of disturbed surface and identifies the location of buffers. All land disturbance activities and buffers shall be marked on the approved grading plan, and identified with flags, stakes, signs, fences, etc. on the development site before work begins.
- B. **Inspections of the River, Stream or Public Water Buffer Plan’s Measures.** At a minimum such inspections shall be done monthly to assure protection of the river, stream or Public Water and surrounding buffer.
- C. **Minimum Requirements of the River, Stream or Public Water Buffer Plan.**
  - 1. This plan is a supplement to the required Stormwater Pollution Prevention Plan. The requirements of the SWPPP are identified in this Ordinance.
  - 2. Phasing of construction: time frames and schedules for the construction in the vicinity of the river, stream or Public Water.
  - 3. A map of the existing river, stream or public water and existing native buffers.

4. A site construction plan that includes the proposed land disturbing activities, stockpile locations, erosion and sediment control plan, construction schedule, and the plan for the maintenance and inspections of the River, Stream or Public Water Buffer Plan's measures.
5. Designate the site's areas that have the potential for serious erosion problems that may impact the river, stream or public water on or adjacent to the site.
6. Permanent stabilization: how the buffer areas will be stabilized after construction is completed, including buffer width and type of vegetation, specifications, time frames or schedules, and maintenance procedures.
7. At the minimum, a one hundred (100) foot wide protective buffer strip of, if possible, predevelopment vegetation shall be along each bank of the Rum River. Buffer width shall be increased at least two (2) feet per one (1) percent of slope of the surrounding land.
  - a. Detailed buffer design shall be site specific.
  - b. For newly constructed buffers site specific design criteria should follow common principles and the example of nearby natural areas. The site should be examined for existing buffer zones and mimic the slope structure and vegetation as much as possible. Buffer design and protection during construction should do any or all of the following: slow water runoff, trap sediment, enhance water infiltration, trap fertilizers, pesticides, pathogens, heavy metals, trap blowing snow and soil, and act as corridors for wildlife. How much stress is put on these functions will determine the buffer zone's final configuration. The Minnesota Department of Natural Resources requires permits when vegetation is introduced downgrade of a water's "ordinary high water mark". The Minnesota Department of Natural Resources area hydrologist defines the ordinary high water mark. Planting permits are obtained from the Minnesota Department of Natural Resources regional fisheries office.
  - c. The applicant and/or property owner shall maintain the buffer strip.
  - d. Drain tiles on the development site should be identified and rendered inoperable.
  - e. Buffer strips can be made into perpetual conservation easements.
  - f. Buffer strips shall be marked as such with permanent signs.

8. At the minimum, a twenty-five (25) foot wide protective buffer strip of, if possible, predevelopment vegetation shall be along each bank of other rivers or streams or a public water. Buffer width shall be increased at least two (2) feet per one (1) percent of slope of the surrounding land.
  - a. Detailed buffer design shall be site specific.
  - b. For newly constructed buffers site specific design criteria should follow common principles and the example of nearby natural areas. The site should be examined for existing buffer zones and mimic the slope structure and vegetation as much as possible. Buffer design and protection during construction should do any or all of the following: slow water runoff, trap sediment, enhance water infiltration, trap fertilizers, pesticides, pathogens, heavy metals, trap blowing snow and soil, and act as corridors for wildlife. How much stress is put on these functions will determine the buffer zone's final configuration. The Minnesota Department of Natural Resources requires permits when vegetation is introduced downgrade of a water's "ordinary high water mark". The Minnesota Department of Natural Resources area hydrologist defines the ordinary high water mark. Planting permits are obtained from the Minnesota Department of Natural Resources regional fisheries office.
  - c. Drain tiles will short-circuit the benefits of vegetated buffer strips. Therefore drain tiles on the development site should be identified and rendered inoperable.
  - d. Buffer strips can be made into perpetual conservation easements.
  - e. Buffer strips shall be marked as such with permanent signs.
9. The applicant and/or property owner shall maintain the buffer strip.
10. Water courses used solely for drainage, such as road side ditches, are exempt from this provision.

D. **General River, Stream or Public Water Buffer Plan Criteria.** The plan shall address the following:

1. This plan is a supplement to the required Stormwater Pollution Prevention Plan. The requirements of the SWPPP are identified in this Ordinance.
2. Establishing permanent vegetation and the related time frame or schedule.

3. Preventing sediment damage to adjacent natural features and other designated areas such as streams, wetlands, lakes and unique vegetation (e.g., oak groves, rare and endangered species habitat.)
4. The location of permanent and temporary sedimentation basins.
5. Precautions to be taken to contain sediment when working in or crossing water bodies.
6. The maintenance of temporary and permanent erosion and sediment control practices.

E. **Minimum River, Stream, or Public Water Buffer Plan Measures and Inspection.** These minimum control measures are required where land disturbance activities are adjacent to a river, stream or Public Water. Due to the diversity of individual construction sites, each site will be individually evaluated. Where additional control measures are needed, they will be specified at the discretion of the City Engineer. The City will determine what action is necessary to prevent impacts to river, streams or other Public Waters from occurring on the site. The plan shall address the following:

1. This plan is a supplement to the required Stormwater Pollution Prevention Plan. The requirements of the SWPPP are identified in this Ordinance.
2. All grading plans and building site surveys must be reviewed by the City for effectiveness of erosion control measures protecting the adjacent water body in the context of the site topography and drainage.
3. Sediment control measures must be properly installed by the applicant/contractor before construction activity begins. Such structures may be adjusted during dry weather to accommodate short term activities, such as those that require very large vehicles. As soon as this activity is finished or before rainfall, the erosion and sediment control structures must be returned to the configuration specified by the City. An inspection to confirm compliance shall be scheduled, and passed before a footing inspection will be done.
4. Minimize amount of exposed soil.
5. Minimize disturbance of vegetation adjacent to rivers, streams or other Public Waters to provide wider buffers through the majority of the construction.
6. Locate stockpiles in areas a safe distance from existing rivers, streams or Public Waters and other native buffer areas.

7. Monthly inspections of all river and stream buffers will be required when construction activities are occurring to assist in preserving the buffer area and assuring proper establishment/preservation of the vegetation.
8. Follow-up inspections must be performed by the City on a regular basis to ensure that erosion and sediment control measures are properly installed and maintained. In all cases the inspectors will attempt to work with the applicant and/or builder to maintain proper erosion and sediment control at all sites. In cases where cooperation is withheld, a stop work order may be issued by the City Engineer or Building Official, until erosion and sediment control measures meet specifications. A second erosion and sediment control/grading inspection must then be scheduled and passed before the final inspection will be done.
9. The entire buffer area shall be contained entirely within an outlot when dedicated to the City or drainage and utility easement in favor of the City.

F. **Models / Methodologies Computations.** Hydrologic models and design methodologies used for determining runoff characteristics and analyzing storm water management structures must be approved by the City Engineer. Plans, specifications and computations for storm water management facilities submitted for review must be sealed and signed by a registered professional engineer licensed in the State of Minnesota. All computations must appear in the plans submitted for review, unless otherwise approved by the City Engineer.

**10-92-5: REVIEW:** The City Engineer shall review the River, Stream, or Public Water Buffer Plan.

- A. **Permit Required.** If the City determines that the River, Stream, or Public Water Buffer Plan meets the requirements of this ordinance, the City shall issue a permit valid for specified period of time that authorizes the land disturbance activity contingent on the implementation and completion of this plan.
- B. **Denial.** If the City determines that the River, Stream or Public Water Buffer Plan does not meet the requirements of this ordinance, the City shall not issue a permit for the land disturbance activity. All land use and building permits must be suspended until the applicant has an approved plan.

**10-92-6: MODIFICATION OF PLAN:** An approved River, Stream or Public Water Buffer plan may be modified on submission of a written application for modification to the City, and after written approval by the City Engineer. In reviewing such an application, the City Engineer may require additional reports and data.

- A. **Records Retention.** The City shall retain the written records of such modifications for at least five (5) years.

**10-92-7: FINANCIAL SECURITIES:** The applicant shall provide security for the performance of the work described and delineated on the approved grading plan involving the River, Stream, or Public Water Buffer Plan and any Storm Water Pollution Prevention Plan related remedial work in an amount of \$2,000 per gross acre or \$750 for each single or twin family home, whichever is greater. This security must be available prior to commencing the project. The form of the securities must be:

- A. **Currency.** The first \$10,000 (in U.S. currency) or fifteen (15) percent, whichever is greater, of this financial security must be by cash deposit to the City,
- B. **Deposit.** Deposit, either with the City, a responsible escrow agent, or trust company, at the option of the City, money, negotiable bonds of the kind approved for securing deposits of public money or other instruments of credit from one or more financial institutions, subject to regulation by the state and federal government wherein said financial institution pledges that the funds are on deposit and guaranteed for payment. The type of security must be of a type acceptable by the City,
- C. **Financial Security.** The City may request a greater financial security, if the City considers that the development site is especially prone to erosion or the resource to be protected is especially valuable.
- D. **Maintaining the Financial Security.** If at anytime during the course of the work the security falls below fifty (50) percent of the required deposit, the applicant shall make another deposit in the amount necessary to restore the cash deposit to the required amount.
1. If the applicant does not bring the financial security back up to the required amount within seven (7) days after notification by the City that the amount has fallen below fifty (50) percent of the required amount the City may:
- a. Withhold the scheduling of inspections and/or the issuance of a Certificate of Occupancy.
- b. Revoke any permit issued by the City to the applicant for the site in question or any other of the applicant's sites within the City's jurisdiction.
- E. **Proportional Reduction of the Financial Security.** When more than half of the development's exposed soil area achieves final stabilization, the City can reduce the total required amount of the financial security by half, if recommended by the City Engineer.

- F. **Action Against the Financial Security.** The City may act against the financial security if any of the conditions listed below exist. The City shall use funds from this security to finance remedial work undertaken by the City of a private contractor under contract to the City and to reimburse the City for all direct costs incurred in the process of remedial work including, but not limited to, staff time, consultant time, and attorney's fees.
1. The applicant ceases land disturbing activities and/or filling and abandons the work site prior to completion of the grading plan.
  2. The applicant fails to conform to the grading plan and/or the River, Stream, or Public Water Buffer Plan as approved by the City.
  3. The techniques utilized under the River, Stream, or Public Water Buffer Plan fail within one year of installation.
  4. The applicant fails to reimburse the City for corrective action taken under Section 10-92-8 of this Ordinance.
- G. **Returning the Financial Security.** Any unspent amount of the financial security deposited with the City for faithful performance of the River, Stream, or Public Water Buffer Plan and any storm water pollution prevention plan related remedial work must be released one full year after the completion of the installation of all storm water pollution prevention measures as shown on the grading and/or storm water pollution prevention plan and establishment of final stabilization.

**10-92-8: RIGHT OF ENTRY AND INSPECTION:**

- A. **Powers.** The permittee shall allow the City and their authorized representatives, upon presentation of credentials to:
1. Enter upon the permitted site for the purpose of obtaining information, examination of records, conducting investigations or surveys.
  2. Bring such equipment upon the permitted development as is necessary to conduct such surveys and investigations.
  3. Examine and copy any books, papers, records, or memoranda pertaining to activities or records to be kept under the terms and conditions of this permitted site.
  4. Inspect the storm water pollution control measures required as part of the River, Stream, or Public Water Management Plan.

5. Sample and monitor any items or activities pertaining to permits issued by the City.

**10-92-9: NOTIFICATION OF FAILURE OF THE RIVER, STREAM, OR PUBLIC WATER BUFFER PLAN:** The City shall notify the permittee when the City is going to act on the financial securities part of this ordinance.

- A. **Notification by the City.** The initial contact will be to a party or parties listed on the application and/or the River, Stream, or Public Water Buffer Plan. Forty-eight (48) hours after notification by the City or seventy-two (72) hours after the failure of erosion control measures, whichever is less, the City, at its discretion, may begin corrective work.
- B. **Erosion into Wetlands or Water Bodies.** If eroded soils (including tracked soils from construction activities) enter or appear likely to enter wetlands or other water bodies, prevention strategies, cleanup and repair must be immediate. The applicant shall provide all traffic control and flagging required to protect the traveling public during the cleanup operations.
- C. **Failure to Do Corrective Work.** When an applicant fails to conform to any provision of this policy within the time stipulated, the City may take the following actions:
  1. Withhold the scheduling of inspections and/or the issuance of a Certificate of Occupancy.
  2. Revoke any permit issued by the City to the applicant for the site in question or any other of the applicant's sites within the City's jurisdiction.
  3. Direct the correction of the deficiency by the City or by a separate contract. The issuance of a permit constitutes a right-of entry for the City or its contractor to enter upon the construction site for the purpose of correcting deficiencies in erosion control.
  4. All costs incurred by the City in correcting deficiencies must be reimbursed by the applicant. If payment is not made within thirty (30) days after costs are incurred by the City, payment will be made from the applicant's financial securities as described in Section 10-92-7 of this Ordinance.
  5. If there is an insufficient financial amount, in the applicant's financial securities as described in Section 10-92-7 of this Ordinance to cover the costs incurred by the City, then the City may assess the remaining amount against the property. As a condition of the permit, the owner shall waive notice of any assessment hearing to be conducted by the City, concur that the benefit to the property exceeds the amount of the proposed

assessment, and waive all rights by virtue of Minnesota Statute 429.081 to challenge the amount or validity of assessment.

**10-92-10: VARIANCE:** In any case where, upon application of the responsible person or persons, the City finds that by reason of exceptional circumstances strict conformity with this ordinance would be unreasonable, impractical, or not feasible under the circumstances; the City in its discretion may grant a variance there from upon such conditions as it may prescribe for prevention, control, or abatement of pollution in harmony with the general purposes of this ordinance. The variance shall be processed in compliance with Chapter 8 of this Ordinance.

**10-92-11: ENFORCEMENT:** The City shall be responsible for enforcing this ordinance and shall act in accordance with Section 10-3-9 of this Ordinance.

**10-92-12: ABROGATION AND GREATER RESTRICTIONS:** It is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail. All other ordinances inconsistent with this Ordinance are hereby repealed to the extent of the inconsistency only.

**10-92-13: SEVERABILITY:** The provisions of this Ordinance are severable, and if any provisions of this ordinance, or application of any provision of this ordinance to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this ordinance must not be affected thereby.