Title 18 MISCELLANEOUS LAND USE REGULATION

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Chapter 18.04 RIPARIAN PROTECTION

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18.04.010 Purpose.

The purpose of this ordinance is to protect significant riparian areas and significant wetlands, thereby protecting and restoring the hydrologic, ecologic and land conservation functions these areas provide. Specifically, this ordinance is intended to protect habitat for fish and other aquatic life, protect habitat for wildlife, protect water quality for human uses and for aquatic life, control erosion and limit sedimentation, and reduce the effects of flooding. The ordinance attempts to meet these goals by excluding new structures and uses from buffer areas around fish-bearing lakes, streams and associated wetlands, and by prohibiting vegetation removal or other alteration in those buffers for uses not permitted in the riparian corridor except under certain circumstances. Existing structures and uses at the time of passage of this ordinance that do not meet the riparian setback standards are considered to be non-conforming structures and uses.

(Ord. 1290 § 1 (part), 2001)

18.04.020 Definitions.

The following definitions are provided for use within this chapter. Definitions of general applicability for use are found within Title 17 of the Toledo Municipal Code.

"Conflicting use" means a land use or other activity reasonably and customarily subject to land use regulations, that could adversely affect a significant riparian resource. Agricultural practices in a Natural Resource Zone designation are not considered conflicting uses.

"Development" means any man-made change to improved or unimproved real estate, including, but not limited to constructing, erecting, and/or placing buildings or other structures, mining, dredging, filling,

grading, paving, excavating, and drilling operations. Development also includes any action or use on or applied to real property.

"Fish Use" means inhabited at any time of the year by anadromous or game fish species or fish that are listed as threatened or endangered species under the federal or state endangered species acts. Fish use is determined from the Oregon Department of Forestry Stream Classification maps or by maps issued by the Oregon Department of Fish and Wildlife.

"Lawn" is grass or similar materials maintained as a ground cover of less than six inches in height. For purposes of this ordinance, lawn is not considered native vegetation regardless of the species used.

"Mitigation" means taking one or more of the following actions listed in order of priority:

1. Avoiding the impact altogether by not taking a certain development action or parts of that action;
2. Minimizing impacts by limiting the degree or magnitude of the development action and its implementation;
3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the development action by monitoring and taking appropriate corrective measures;
5. Compensating for the impact by replacing or providing comparable substitute resources or environments.

"Non-conforming" means a structure or use that does not conform to the standards of this ordinance but has been in continuous existence from prior to the date of adoption of this ordinance up to the present. Non-conforming uses are not considered violations and are generally allowed to continue, though expansion, reconstruction, or substantial improvement may be regulated.

"Protect" when applied to an individual resource site, means to limit or prohibit uses that conflict with a significant resource site.

"Riparian area" means the area adjacent to a river, lake, or stream, consisting of the area of transition from an aquatic ecosystem to a terrestrial ecosystem.

"Stream" means a channel such as a river or creek that carries flowing surface water, including perennial streams and intermittent streams with defined channels, and excluding man-made irrigation and drainage channels.

"Structure" means a building or other major improvement that is built, constructed or installed, not including minor improvements, such as utility poles or irrigation system components, that are not customarily regulated through zoning ordinances.

"Top of Bank" means the state or elevation at which water overflows the natural banks of streams or other waters of the state and begins to inundate upland areas. In the absence of physical evidence, the two-year recurrence interval flood elevation may be used to approximate the bankfull stage or delineate the top of bank.

(Ord. 1290 § 1 (part), 2001)

18.04.030 Protection of significant marsh/riparian habitat.

A. The following areas are designated as significant marsh/riparian habitat:

1. Lincoln County Estuary Management Unit # 33 (Natural Classification) as identified in the 1982 Lincoln County Estuary Management Plan and denoted as "a tidal marsh and wildlife habitat of major significance";
2. The salt marsh and associated riparian area of Glen Lyons Park between Sturdevant Road, River Road, and Olalla Slough which is zoned as Natural Resource.

B. Alteration of habitat in significant marsh/riparian habitat precluded except for:

1. Improvements to Glen Lyons Park to improve the hydrological connection with Olalla Slough;
2. Breaching of dikes to allow an improved hydrological connection with an adjacent river area;
3. Enhancement of riparian vegetation by the removal of invasive, non-native species and the replacement with native vegetation;
4. Uses permitted in Management Unit # 33 as established by the 1982 Lincoln County Estuary Management Plan.

(Ord. 1290 § 1 (part), 2001)

18.04.040 Protection of wetlands.

A. All applications to the city of Toledo for permits that may impact Oregon Division of State Lands or U.S. Army Corps of Engineers jurisdictional wetlands shall require notification by the city manager to the Oregon Division of State Lands and the U.S. Army Corps of Engineers of the proposed permit application prior to approval of the permit. A copy of the notification shall also be given to the applicant and to the property owner if different than the applicant.

B. Permits that may impact jurisdictional wetlands shall be approved on the condition that appropriate state and/or federal permits be obtained and copies of permits be submitted to the city manager.

(Ord. 1290 § 1 (part), 2001)

18.04.050 Establishment of riparian corridors.

The inventory of fish-bearing waterways within the Urban Growth Boundary of Toledo includes the Yaquina River, Depot Slough, Depot Creek, Olalla Slough, West and East Fork Olalla Slough/Creek, and Little Beaver Creek. In addition to those wetlands identified within the approved Toledo Wetland Conservation Plan Inventory, there may be wetlands which meet the criteria of the U.S. Army Corps of Engineers and/or the Oregon Division of State Lands criteria for jurisdictional wetlands which have not been mapped. However, if a property owner desires, to have a separate wetlands survey approved by the Oregon Division of State Lands and the U.S. Army Corps of Engineers as a verified wetland boundary, then the setback shall be measured from the most restrictive of the Oregon Division of State Lands and the U.S. Army Corps of Engineers defined wetlands outer boundaries. Based on the classification contained in these inventories and those determined by the U.S. Army Corps of Engineers and Oregon Division of State Lands, the following riparian corridors shall be established:

A. Along all streams with average annual stream flow greater than one thousand (1,000) cubic feet per second (cfs), the riparian corridor boundary shall be seventy-five (75) feet upland from the top of each bank. This includes the Yaquina River.

B. Along all fish-bearing lakes and fish-bearing streams with average annual stream flow less than one thousand (1,000) cfs, the riparian corridor boundary shall be fifty (50) feet from the top of bank. This includes Depot Slough, Depot Creek, Olalla Slough, West and East Fork Olalla Slough/Creek, and Little Beaver Creek.

C. Where the riparian corridor includes all or portions of a wetland identified in the Toledo Wetland Conservation Plan Inventory, the standard distance to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland.

(Ord. 1290 § 1 (part), 2001)

18.04.060 Management of riparian corridors.

A. Existing uses and structures at the date of passage of this ordinance are allowed to continue within riparian corridors to the extent allowed by the Comprehensive Plan map zone classification or as non-conforming structures or uses including:

1. Streets, roads, and paths;
2. Drainage facilities, utilities, and irrigation pumps;
3. Development within lands zoned for water-dependent uses;
4. Development within lands zoned for Industrial and Light-Industrial uses wherein past development patterns at the date of passage of this ordinance have resulted in a minimal amount of riparian vegetation and existing dense development in the general vicinity has significantly degraded riparian habitat values;
5. Existing lawn within the riparian area may be maintained but not expanded within the riparian area;
6. Existing agricultural uses at the date of passage of this ordinance;
7. Park facilities that are used to allow public access to and along the waterway;
8. Development conducted pursuant to an approved U. S. Army Corps of Engineers, Oregon Division of State Lands permit or an approved National Marine Fisheries Service Habitat Conservation Plan issued prior to the date of passage of this ordinance.

B. Alteration of existing structures or uses are allowed provided that:

1. Replacement of existing structures is with structures in the same location that do not disturb additional riparian surface area or such disturbance is mitigated;
2. Structures or other nonconforming alterations existing fully or partially within the riparian area may be expanded provided the expansion does not occur within the riparian area or the expansion is conducted pursuant to an approved Oregon Division of State Lands permit, U.S. Army Corps of Engineers permit, National Marine Fisheries Service Habitat Conservation Plan or Take Permit, or an approved Oregon Department of Fish and Wildlife Habitat Mitigation Plan;
3. Existing shoreline stabilization and flood control structures may be maintained. Any expansion of existing structures or development of new structures shall be evaluated by the Oregon Division of State Lands and/or the U.S. Army Corps of Engineers as provided by state and/or federal law.

(Ord. 1290 § 1 (part), 2001)

18.04.070 Modification of riparian vegetation.

A. Riparian vegetation modification in riparian corridors is prohibited if the modification of riparian vegetation either individually or cumulatively would result in a significant degradation of the riparian corridor. Modification of riparian vegetation is allowed in conjunction with a permit submitted on appropriate forms to the city of Toledo if the:

1. Modification is conducted pursuant to an approved U.S. Army Corps of Engineers permit and/or an Oregon Division of State Lands permit which shall be considered sufficient evidence that the modification of riparian vegetation in the riparian corridor will not result in significant degradation of the riparian corridor; or
2. Modification is conducted pursuant to an approved National Marine Fisheries Service Habitat Conservation Plan or other permit which shall be sufficient evidence that the modification of riparian vegetation in the riparian corridor will not result in significant degradation of the riparian corridor; or

3. Modification is conducted pursuant to an approved National Marine Fisheries Service limit or other permit which shall be sufficient evidence that the modification of riparian vegetation in the riparian corridor will not result in significant degradation of the riparian corridor; or
4. Modification is conducted for either the removal of non-native vegetation and replacement with native plant species or the improvement of the existing riparian area by the planting of suitable riparian plant species. The replacement vegetation shall cover, at a minimum, the area from which vegetation was removed, and shall maintain or exceed the density of the removed vegetation; or
5. Modification is conducted for the removal of trees in danger of falling and posing a hazard to life or property, following consultation and approval from the Oregon Division of State Lands. If no hazard will be created, the Oregon Division of State Lands may require these trees, once felled, to be left in place in the riparian area; or
6. Modification is conducted for restoration or mitigation authorized pursuant to an approved U. S. Army Corps of Engineers or Oregon Division of State Lands permit; or
7. Modification is conducted pursuant to an approved Oregon Department of Fish & Wildlife Habitat Mitigation Plan under Oregon Administrative Rules 635-415-0000 through 635-415-0025 and shall be sufficient evidence that the modification of riparian vegetation in the riparian corridor will not result in significant degradation of the riparian corridor.

B. Exceptions: The following activities or areas are not required to meet the standards of this section:

1. Commercial forest practices regulated by the Oregon Forest Practices Act;
2. Normal and accepted farming practices other than new buildings or structures, occurring on land zoned for agricultural or natural resource purposes and existing in the riparian area since prior to the date of adoption of this ordinance; and
3. Development along the industrialized waterfront of Depot Slough from the confluence with the Yaquina River to the Georgia Pacific bridge at the end of NW 1st Street.

(Ord. 1290 § 1, 2001)

18.04.080 Violation.

Violation of this ordinance shall be a Class A infraction.

(Ord. 1290 § 1 (part), 2001)

Chapter 18.08 BALLOT MEASURE 37

Sections:

18.08.010 Purpose.

18.08.020 Definitions.

18.08.030 Claim filing procedures.

18.08.040 City manager investigation and recommendation.

18.08.050 City council public hearing.

18.08.060 City council action on claim.

18.08.070 Processing fee.

18.08.010 Purpose.

This real property compensation ordinance is intended to implement the provisions added to Chapter 197 of Oregon Revised Statutes by Ballot Measure 37 (November 2, 2004). These provisions establish a prompt, open, thorough and consistent process that enables property owners an adequate and fair opportunity to present their claims to the city; preserves and protects limited public funds; and establishes a record of the city's decision capable of circuit court review.

(Ord. 1305 § 1, 2004)

18.08.020 Definitions.

As used in this chapter, the following words and phrases mean:

"City manager" means the city manager of the city of Toledo, or his or her designee.

"Claim" means a claim filed under Ballot Measure 37.

"Exempt land use regulation" means a land use regulation that:

1. Restricts or prohibits activities commonly and historically recognized as public nuisances under common law;
2. Restricts or prohibits activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;
3. Is required in order to comply with federal law;
4. Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or
5. Was enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.

"Family member" means and includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

"Land use regulation" means and includes:

1. Any statute regulating the use of land or any interest therein;
2. Administrative rules and goals of the land conservation and development commission;
3. Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;
4. Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and
5. Statutes and administrative rules regulating farming and forest practices.

"Owner" means the present owner of the property, or any interest therein.

"Valid claim" means a claim submitted by the owner of real property that is subject to a land use regulation adopted or enforced by the city that restricts the use of the private real property in a manner that reduces the fair market value of the real property.

(Ord. 1305 § 2, 2004)

18.08.030 Claim filing procedures.

A. A person seeking to file a claim under this chapter must be the present owner of the property that is the subject of the claim at the time the claim is submitted. The claim shall be filed with the city manager's office, or another city office if so designated by the city manager.

B. A claim shall include:

1. The name(s), address(es) and telephone number(s) of all owners, and anyone with any interest in the property, including lien holders, trustees, renters, lessees, and a description of the ownership interest of each;
2. The address, tax lot, and legal description of the real property that is the subject of the claim, together with a title report issued no more than thirty (30) days prior to the submission of the claim that reflects the ownership interest in the property, or other documentation reflecting sole ownership of the property by the claimant, and the date the property was acquired;
3. The current land use regulation(s) that allegedly restricts the use of the real property and allegedly causes a reduction in the fair market value of the subject property;
4. The amount of the claim, based on the alleged reduction in value of the real property supported by an appraisal by an appraiser licensed by the appraiser certification and licensure board of the state of Oregon; and
5. Copies of any leases or covenants, conditions and restrictions (CCR's) applicable to the real property, if any, that impose restrictions on the use of the property.

C. Notwithstanding a claimant's failure to provide all of the information required by subsection B of this section, the city may review and act on a claim.

(Ord. 1305 § 3, 2004)

18.08.040 City manager investigation and recommendation.

A. Following an investigation of a claim, the city manager shall forward a recommendation to the city council that the claim be:

1. Denied;
2. Investigated further;
3. Declared valid, and waive or modify the land use regulation, or compensate the claimant upon completion of an appraisal; or
4. Evaluated with the expectation of the city acquiring the property by condemnation.

(Ord. 1305 § 4, 2004)

18.08.050 City council public hearing.

The city council shall conduct a public hearing before taking final action on a recommendation from the city manager. Notice of the public hearing shall be provided to the claimant, to owners and occupants of property within three hundred (300) feet of the perimeter of the subject property.

(Ord. 1305 § 5, 2004)

18.08.060 City council action on claim.

A. Upon conclusion of the public hearing, and prior to the expiration of one hundred eighty (180) days from the date the claim was filed, the city council shall:

1. Determine that the claim does not meet the requirements of Measure 37 and this chapter, and deny the claim; or
2. Adopt a resolution with findings therein that supports a determination that the claim is valid and either direct that the claimant be compensated in an amount set forth in the resolution for the reduction in value of the property, or remove, modify or direct that the challenged land use regulation not be applied to the property.

B. The city council's decision to waive or modify a land use regulation or to compensate the owner shall be based on whether the public interest would be better served by compensating the owner or by removing or modifying the challenged land use regulation with respect to the subject property.

(Ord. 1305 § 6, 2004)

18.08.070 Processing fee.

The city manager shall maintain a record of the city's costs in processing a claim, including the costs of obtaining information required by Section 18.08.030 which a property owner does not provide to the city. Following final action by the city on the claim at the local level, the city manager shall send to the property owner a bill for the actual costs, including staff and legal costs, that the city incurred in reviewing and acting on the claim.

(Ord. 1305 § 7, 2004)