

ORDINANCE NO. 21-412-O

AN ORDINANCE ADOPTING RIPARIAN PROTECTION REQUIREMENTS FOR THE CITY OF ROGUE RIVER, OREGON.

THE COMMON COUNCIL OF THE CITY OF ROGUE RIVER, OREGON, ORDAINS AS FOLLOWS:

SECTION 1. Purpose

The City of Rogue River finds great value in its natural resources and wishes to adopt and implement policies that protect these unique features: our natural beauty, the protection of our streams, wildlife habitat and water quality.

SECTION 2. Definitions

The following definitions shall apply:

“Dangerous tree” means a dead, diseased, or other tree that poses an obvious health, safety, or welfare threat to persons or property.

“Development” is any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation and drilling operations. Development does not include signs, markers, direction aids, etc. placed by a public agency to serve the public.

“Fish-Bearing Stream” is a stream 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 Act.

“Fish habitat” means those areas upon which fish depend in order to meet their requirements for spawning, rearing, food supply, and migration.

“Grading” is any stripping, cutting, filling, or stockpiling of earth or land, including the land in its cut or filled condition, to create new grades.

“Impervious Surface” is any material which reduces and prevents absorption of storm water into previously undeveloped land.

“Lawns” consist of grass or similar materials maintained as a ground cover of less than 6-inches in height, and generally managed to restrict the growth of shrubs and trees that inhibit the growth of grasses and shrubs (vegetation other than grasses). For purposes of this ordinance, lawn is not considered native vegetation regardless of the species used.

“Low Impact Development” involves minimizing or eliminating pollutants in storm water through natural processes and maintaining pre-development hydrologic characteristics, such as flow patterns, surface retention, and recharge rates.

“Mitigation” is a means of compensating for impacts to a riparian corridor including: restoration, creation, or enhancement. Some examples of riparian impact mitigation actions are replanting trees, removal of nuisance plants, and restoring stream-side vegetation where it is disturbed or where it has been degraded due to past practices.

“Natural Vegetation Line” is the point at which native vegetation grows on the river or creek banks.

“Restoration of Riparian Areas” is to limit development, re-establish native vegetation and ensure the limitation of negative impacts to fish and wildlife and their habitat in and around waterways and water bodies within the city limits of the City of Rogue River.

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

"Riparian corridor" is a Rogue River Comprehensive Plan Goal 5 resource that includes the water areas, fish habitat, adjacent riparian areas, and wetlands within the riparian area boundary.

"Riparian corridor boundary" is an imaginary line that is a certain distance upland from the natural vegetation line. If no natural vegetation line exists below the top of bank, then the boundary shall be measured upland from the top of each bank.

"Stream" is 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.

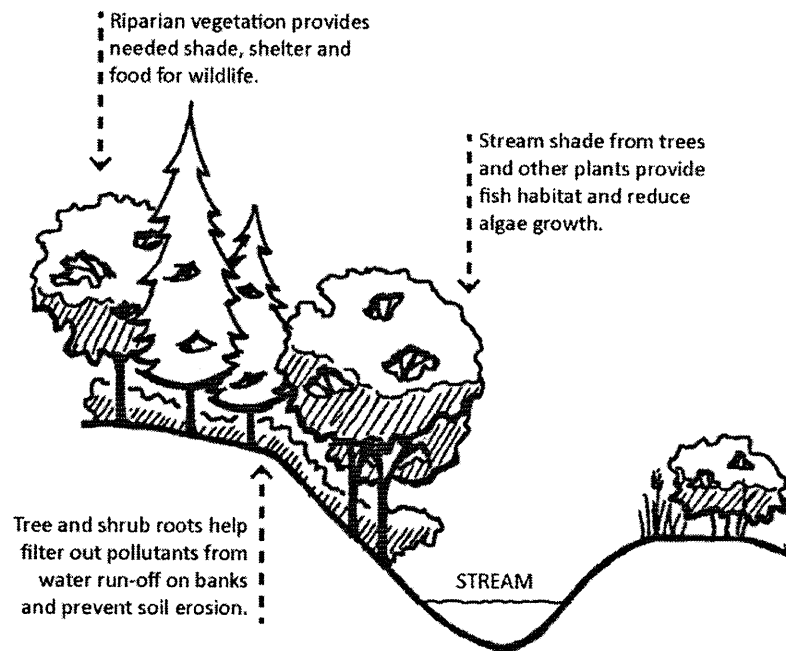
"Structure" is a building or other major improvement that is built, constructed, or installed, not including minor improvements, such as fences, utility poles, flagpoles, or irrigation system components that are not customarily regulated through zoning ordinances.

“Top of bank” shall mean the stage or elevation at which water overflows the natural banks of streams or other waters of the state and begins to inundate the upland. Where this cannot be determined, “top of bank” shall have the same meaning as "bankfull stage" defined in OAR 141-085-0510(5), which is the two-year recurrence interval flood elevation.

“Water area” is the area between the banks of a lake, pond, river, perennial or fish-bearing intermittent stream, excluding man-made farm ponds.

“Water-dependent use” means a use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water.

“Water-related” means uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered. Except as necessary for water-dependent or water-related uses or facilities, residences, parking lots, spoil and dump sites, roads and highways, restaurants, businesses, factories, and trailer parks are not generally considered dependent on or related to water location needs.



SECTION 3. Riparian Corridors

The following riparian corridors are established:

A. Because the Rogue River has an average annual stream flow greater than 1,000 cubic feet per second (cfs) the riparian corridor boundary shall be 75-feet upland from the top of each bank.

B. Where the riparian corridor includes all or portions of a significant wetland as identified in the Rogue River Comprehensive Plan, the standard distance to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland. The City of Rogue River does not have a local wetlands inventory, but relies on the National Wetlands Inventory.

C. Along all fish-bearing streams, including Evans Creek and Wards Creek, with an average annual stream flow less than 1,000 cfs, the riparian corridor boundary shall be 50-feet from the top of bank.

SECTION 4. Activities within the Riparian Corridor

This section of the Ordinance describes limits on the placement of structures, removal of vegetation and other alterations to the riparian conservation corridor. It lists

allowed and prohibited activities and activities that may be allowed if impacts are offset by appropriate restoration or mitigation.

A. Pre-existing Activities in the Riparian Corridor:

1. Any use, sign, or structure, and the maintenance thereof, lawfully existing on the date of adoption of the provisions herein, is permitted within a riparian corridor. Such use, sign, or structure may continue at a similar level and manner as existed on the date of adoption of the provisions herein. Pre-existing uses existing fully or partially within the riparian corridor may be expanded, provided the expansion does not occur within the riparian corridor.

2. The maintenance, alteration, and replacement of pre-existing landscaping is permitted within a riparian corridor as long as no additional riparian vegetation is disturbed. Any herbicide, pesticide, or fertilizer applications must strictly comply with the manufacturer's label and avoid saturation, drift, or runoff to water bodies. Maintenance trimming of existing trees is allowed but under no circumstances can the trimming maintenance be so severe as to compromise the tree's health, longevity, and resource functions.

3. The provisions of this section shall not be affected by any change in ownership of properties containing a riparian corridor.

B. Allowed Activities in the Riparian Corridor:

The City may approve the following activities, and maintenance thereof, within a riparian corridor, subject to obtaining applicable permits, if any, from the Oregon Department of State Lands and the United States Army Corps of Engineers. All plans for development and/or improvements within a riparian corridor shall be submitted to the Oregon Department of Fish and Wildlife for a habitat mitigation recommendation pursuant to the Fish and Wildlife Habitat Mitigation Policy.

1. Streets, roads, and private paths.

2. Drainage facilities, utilities, and irrigation pumps.

3. Water-related and water-dependent uses.

4. Replacement of existing structures with structures in the same.

5. Expansion of existing structures in the riparian corridor that do not disturb additional riparian surface areas, including second story additions, cantilevered additions supported from the existing structure, and basement additions subject to compliance with the Flood Ordinance.

6. Removal of non-native vegetation and replacement with native plant species as referred to in the Jackson Soil & Conservation District's Natural Resource Stewardship Handbook.

7. Removal of vegetation necessary for the development of water-related or water-dependent uses.

8. Permanent alteration of the riparian area by placement of structures or impervious surfaces within the riparian corridor boundary established under subsection (3)(B) upon a demonstration that equal or better protection for identified resources will be ensured through restoration of riparian areas, enhanced buffer treatment, or similar measures including, stormwater controls that infiltrate stormwater and are characteristic of Low Impact Development or green infrastructure such as bioswales, rain gardens, and vegetated filter strips as referred to in the Jackson Soil & Conservation District's Natural Resource Stewardship Handbook. In no case shall alterations occupy more than 50-percent of the width

of the riparian area measured from the upland edge of the corridor. This adjustment affects only the Rogue River riparian area; it is not permitted along tributaries.

9. Perimeter mowing and other cutting necessary for fire hazard prevention.

10. Except in emergency circumstances, the City shall review requests for removal of hazardous dangerous trees. The determination shall be made by the City Administrator or his/her designee of which may require a determination by a professional arborist at the property owners' expense. Hazardous trees are those that pose an obvious threat to safety and or welfare to persons or personal property. Any and all trees to be removed will be replaced on a ratio of 1 to 3 pre-existing seedlings may be counted to meet this requirement at the City Administrator or his/her designee's discretion. Replacements are required to be native species or alternate approved native species as described in the Jackson Soil & Water Conservation District's Natural Resource Stewardship Handbook. The City shall conduct inspections or use other means to verify the trees are surviving. Those that do not survive must be replaced.

11. Stream bank stabilization and flood control structures that legally existed on the effective date of this ordinance may be maintained. Any expansion of existing structures or development of new structures shall be evaluated by the City Administrator or his/her designee and appropriate state and federal natural resource agency staff. Such alteration of the riparian corridor shall be approved only if less-invasive or non-structural methods will not adequately meet the stabilization or flood control needs.

12. Stream restoration and enhancement activities that are approved by the Oregon Department of State Lands.

13. Maintenance and protection of the function of City utilities and transportation facilities located within riparian corridors.

C. Prohibited Activities in the Riparian Corridor:

The following practices are prohibited within stream setback area, unless otherwise approved by the City and all applicable state and federal regulatory agencies:

1. Expansion of pre-existing non-native landscaping such as lawns.
2. Permanent alteration by placement of structures or impervious surfaces, except as allowed in Section (B).

3. Storage or dumping of herbicides, pesticides, fertilizers, solvents, fuels, or other hazardous or toxic materials or wastes.

4. Dumping, piling, or disposal of refuse (trash or garbage).

5. Channelizing, culverting, straightening, or otherwise modifying natural drainageways.

6. Dumping, piling, disposing, or composting of yard debris, fill, or other potentially harmful material, except for single-family residential composting which must be kept a minimum of ten feet from the top of bank.

7. All filling, grading, or excavating.

8. Application of herbicides, pesticides, or fertilizers, except as permitted under Section (3)(A), or as otherwise approved by the city and all applicable state and federal agencies for the protection of public safety and the enhancement or maintenance of the stormwater conveyance or flood control capacity.

9. Removing vegetation for the creation of fuelbreaks.
10. Dumping or disposal of yard debris, refuse or chemicals in the rivers or streams or in storm drains.
11. Placement of temporary structures, such as storage units and recreational structures including tree houses.

SECTION 5. Development review procedures

Application Requirements

A Riparian Development Permit shall be obtained prior to initiating development activities in any areas designated as a riparian corridor. An application for a Riparian Development Permit along with the required fee as set by resolution shall be submitted to the City Administrator or his/her designee on forms furnished by the City. If structures (including hardscape) are involved, items A & B below are required prior to starting any development activity. Item C is required within 90-days of structure completion. If no structures are involved, then items A, B & C are required before starting any development activity. Some or all activities may be restricted to times of year with limited stream flows and or rain fall.

A. Site Plan

1. Top of Bank and natural vegetation line.
2. Boundaries of the Riparian Corridor in the site.
3. Existing improvements such as structures, buildings, utility lines, fences, etc.
4. Areas where riparian area has been previously disturbed.
5. Areas where new disturbance in the riparian area is proposed.
6. Outline of trees, shrubs and ground covers.
7. Include time of the year.

B. Construction Management Plan

Identify measures that will be taken during construction or mitigation work to protect the remaining resources at and near the construction site and a description of how the undisturbed areas will be protected. For example, describe how trees will be protected, erosion controlled, stormwater managed, and construction equipment located and controlled and the timing of construction in relation to season.

C. Landscape Plan

In addition to the construction management plan, a landscape plan will be required for newly disturbed areas in the riparian corridor prior to issuance of permits. The plan shall include the extent of vegetation removal proposed, characteristics of the existing vegetation types, density, proposed riparian enhancement or restoration measures, proposed alterations of topography or drainage patterns, and existing uses on the property.

D. Completion

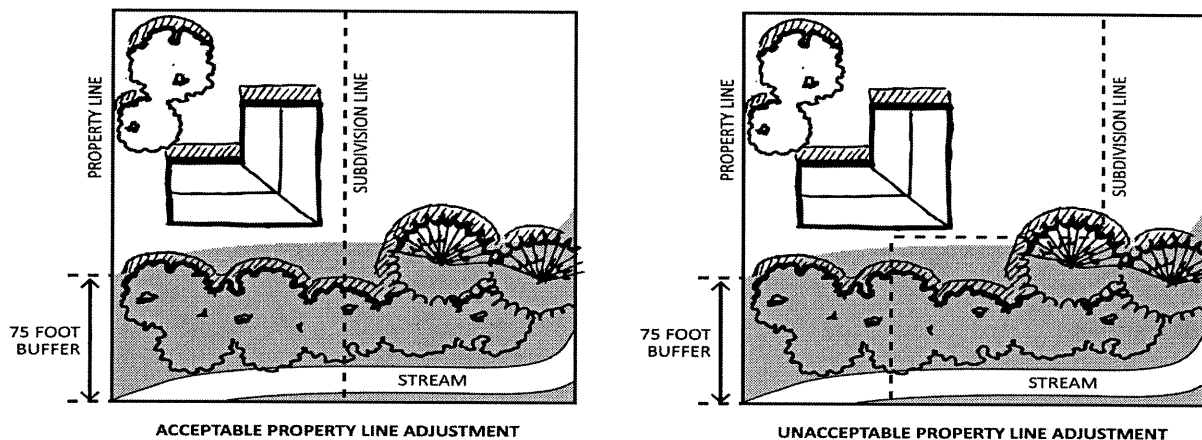
The property owner will advise the City Administrator or his/her designee when the permitted work has been accomplished. The City Administrator or his/her designee will conduct a Type I review to determine if the work is consistent with the approved plans.

E. Expiration of Riparian Permit

A Riparian Permit shall become invalid unless the work authorized by the permit is commenced within 180-days after its issuance, or if the work is suspended or abandoned for a period of 180-days after the work commences. Extensions for periods of not more than 180-days each shall be requested in writing to the City Administrator or his/her designee and may be subject to review and additional permit fees.

SECTION 6. Property line adjustments and subdivisions

Subdivisions, partitions, and property line adjustments must be designed so that the resulting lots or parcels can be developed in conformance with the provisions of this ordinance including hardship variances, encroachment into the 75-foot corridor, and fuel breaks.



SECTION 7. Hardship variances and restoration provisions

For any existing lot or parcel demonstrated to have been rendered not buildable by application of this ordinance, the property owner may apply for a Class C Variance under the following provisions:

Granting of a Variance requires findings that:

A. The proposed development requires deviation from the riparian standards as set forth in this section; and,

B. Strict adherence to the riparian setback and other applicable standards would effectively preclude a use of the parcel that could be reasonably expected to occur in the zone, and that the property owner would be precluded a substantial property right enjoyed by the majority of landowners in the vicinity.

SECTION 8. Site maintenance

The limitations imposed by this Section do not preclude the routine maintenance of structures and landscaped areas.

A. Maintenance of existing lawns, non-native riparian planted vegetation, or landscaping is allowed but shall not expand lawn areas or remove or damage any non hazardous tree.

B. The application of herbicides or other pesticides, and the application of fertilizers are subject to applicable state and federal regulations; and developed properties shall be subject to the restrictions set forth in the Rogue River Municipal Code.

C. Where replanting is done, vegetation shall be replanted with native species or approved alternatives, with the exception of continued Agricultural Uses.

D. Maintenance pruning of existing trees shall be kept to a minimum and shall be in accordance with the American National Standards Institute (ANSI) A300 standards for Tree Care Operations. Under no circumstances shall the maintenance pruning be so severe that it compromises the tree's health, longevity, and resource functions.

E. Vegetation within utility easements shall be kept in a natural state and replanted when necessary with native plant species as referred to in the Jackson Soil & Conservation District's Natural Resource Stewardship Handbook.

F. Disposal of yard waste or other organic materials, with the exception of downed trees, leaf litter from Riparian vegetation, and mulch for allowed riparian plantings, is prohibited within riparian corridors.

SECTION 9. Compliance with all State and Federal Laws

Activities wholly or partially within the riparian corridor are subject to all applicable federal and state regulations. The following regulations commonly apply within the resource areas. Note: other regulations not listed may also apply; it is the property owner's responsibility to adhere to all applicable State and Federal regulations:

A. Oregon Department of State Lands permit requirements under the Removal-Fill Law.

A. U.S. Army Corps of Engineers permit for fill activities as required under Section 404 of the Clean Water Act.

C. Department of Environmental Quality permit requirements for stormwater under the Clean Water Act and state water quality regulations.

D. Oregon Department of Fish and Wildlife regulations may apply to development activities that could impact one of the sensitive, threatened, critical, or endangered species indigenous to the region.

E. The federal Endangered Species Act (ESA) prohibits any action that causes a "taking" of any species of endangered fish or wildlife listed as endangered without authorization from the listing agency.

F. National Flood Insurance Program regulations as they are enforced through the Flood Insurance Reform Act (FIRA). Refer to Rogue River's Flood Ordinance for additional floodplain regulations.

SECTION 10. Enforcement

This chapter shall be enforced in accordance with Chapter V. Powers and Duties of Officers, RRMCM 17.130.

SECTION 11. Appeals

The appeals process shall be the same as stated in Section 17.120 of the Rogue River Municipal Code.

SECTION 12. Penalties

The penalties for violation of this chapter shall be the same as stated in Section 17.130.020 of the Rogue River Municipal Code.

SECTION 13. Severability Clause

If any portion of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of the Ordinance.

ORDINANCE NO. 21-412-O

First Reading: June 24, 2021

The enactment of the above Ordinance was moved to adopt by **VanArsdale**, seconded by **Hilty**, roll call being had thereon, resulted as follows:

Bird, aye; Kempa; aye, VanArsdale; aye Hilty; aye, Daugherty, aye; Gregory; aye.

Second Reading: July 22, 2021

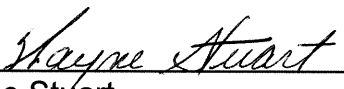
The enactment of the above Ordinance was moved by, **Hilty**, seconded by **Kempa**, roll call being had thereon, resulted as follows:

Bird, aye; Kempa; aye, VanArsdale; aye Hilty; aye, Daugherty; aye, Gregory; aye.

Whereupon the Mayor declared the motions to be carried and the Ordinance adopted.


PASSED this 22nd day of **July 2021**, by the Common Council of the City of Rogue River, Oregon.

SIGNED this 24th day of **July 2021**, by the Mayor of the City of Rogue River, Oregon.



Wayne Stuart
Mayor

ATTEST:



Carol J. Weir, MMC
City Recorder