

**COUNCIL ACTION FORM**

**SUBJECT: ZONING TEXT AMENDMENTS RELATING TO ENVIRONMENTALLY SENSITIVE AREA OVERLAY (O-E)**

**BACKGROUND:**

On November 11, 2015 the City Council initiated potential map and text amendments for adding a discretionary review process to activities within the FEMA designated Floodway. On March 22<sup>nd</sup> staff provided an update of its work on crafting language for further regulation of the Floodway beyond current requirements. City Council then directed staff to prepare zoning amendments to implement a broad discretionary review process for development activities in the Floodway.

The Ames Zoning Ordinance includes a zoning overlay district known as the Environmentally-Sensitive Area Overlay (O-E). Zoning overlays are districts that are added to base zoning districts to augment requirements in relation to a specific area or use. The O-E is described as follows:

The Environmentally Sensitive Overlay (O-E) Zone is intended to supplement the City's flood plain regulations and to protect designated natural resource areas by using the natural resources inventory to identify and preserve natural resources and by establishing parks and open space areas. Greenways are included in this district for stream corridors, linear parks, and open spaces adjacent to environmentally sensitive areas to create a continuous system throughout the City.

The Zoning Ordinance specifies that such overlays are to be mapped based on a scientific study that concludes the area is “especially sensitive to adverse public impact from development due to unique environmental concerns.” The ordinance notes that flood plains, designated natural resource areas, parks and open spaces, greenways, and areas adjacent to aquifers are eligible based on existing scientific evidence (FEMA Flood Insurance Study, Norris Study of 1994, etc.). Other areas may be so designated by the City Council based on other scientific studies done by the City or by other parties.

The O-E does not contain specific regulatory requirements, such as use limitations. It requires the applicant to prepare an Environmental Assessment Report on how the development will “address, obviate, or mitigate” the environmental issues which led to the designation. **The major regulatory tool within the O-E is the requirement for City Council approval of a Major Site Development Plan or Preliminary Plat for development within the Overlay.**

O-E standards require a developer or property owner to identify measures to reduce the expected impacts of development in the Floodway, such as increase in runoff from impervious surfaces or significant alteration of natural features. **This approach would not entirely prohibit development in the Floodway, but instead would require the project to demonstrate how its impacts will be mitigated.** The City Council could

impose conditions on a project to mitigate possible negative effects of the development on area within the O-E. The City Council could also seek changes to the development to better mitigate negative impacts or, if mitigation was not possible, to deny the proposed development. The City Council would review a project through the criteria of a Major Site Development Plan (Attachment C) or Preliminary Plat (Attachment D). The most relevant criteria for a Major Site Development Plan would be # i, iv, v, and xi.

#### Storm water Management Ordinance (Chapter 5B)

The post-construction storm water ordinance (known as Chapter 5B of the Ames Municipal Code) was approved in April, 2014 and is a storm water quality and quantity control ordinance. The ordinance includes storm water design standards that limit post-development surface runoff to a rate and volume not to exceed pre-development runoff and also requires the capture and cleansing of the first 1.25" of rainwater prior to release (the "first flush"). Chapter 5B includes a comprehensive approach to storm water management of first completing a site assessment of soils and vegetation, and then incorporating best management practices (BMP) into a project to meet the quantity and quality standards. The ordinance also includes design requirements, inspections, management plans with maintenance obligations, and initial bonding for security of the improvements for the first three years after the improvements are established.

**Standards of Chapter 5B specifically identify areas adjacent to waterways for limitations on encroachment.** In particular, it requires buffers of varying sizes depending upon the "order" or significance of the waterway. Smaller streams in Ames may be a 1<sup>st</sup> or 2<sup>nd</sup> order stream, such as College Creek, Worle Creek, or Clear Creek. These streams require a buffer of 100 feet on each side of the stream. Larger or higher order streams, such as Skunk River, Squaw Creek, and Onion Creek require specific studies to determine the adequate buffer width. The buffer is measured from the mean level of the waterway, which is a level that is within the top of the bank of a stream.

Buffers create areas that must be managed in accordance with an approved management plan and an easement granted to the City. Natural vegetation must be maintained or restored. It is possible to be granted a waiver from the buffer requirements, but the applicant must show how site conditions make it difficult to implement the best management practices for storm water. The municipal engineer may require alternative detention or treatment methods if a partial waiver is granted.

The requirements of Chapter 5B clearly complement the requirements of the Environmentally Sensitive Overlay with its site assessment requirements and direction to promote native vegetation and protection of riparian areas. However, there are differences in its effect on a site and how the objectives are principally about controlling storm water runoff. Chapter 5B addresses the impacts of development, but does not control how development is located or shaped on a site, with the potential exception of the buffers.

Staff created a simple exhibit to illustrate how a 100-foot buffer relates to the floodway areas that are proposed to be subject to the O-E. The buffering in some instances includes the entire Floodway, but in others does not. Attachment E is a map showing the relationship between a Chapter 5B buffer and the Floodway.

Chapter 5B does allow for storm water control features such as detention ponds to be located within a Floodway, but likely outside of the buffer. This may seem counter intuitive, but in many ways it fits the layout of the site and meets the storm design events of 1 year, 5 year, 10 year, and 100 year storms. Not all projects will locate facilities in the Floodway, but it is an option that is available. Additionally, if improvements such as parking are allowed in the Floodway, the treatment of parking areas would need to be located at or below the elevation of the improvements. While the performance standards of Chapter 5B are comprehensive, adding the O-E overlay would add a broader application of criteria to development within the Floodway beyond management of storm water.

Adding the O-E will not change the Chapter 5B requirements for storm water management, but will change the approval process as the stormwater management plan relationship to the site plan will be subject to the discretionary review process. Additionally, due to the requirement for City Council approval of development activities that will include most types of grading, pre-development grading permits would no longer be possible within the O-E.

#### Proposed Amendments

The proposed amendments to the O-E district address the applicability of the overlay to activities within the Floodway. The amendments address the process for seeking approvals for a project within the overlay.

There are in excess of 400 properties in the City in which at least a portion of the property lies within the Floodway. Most also include a portion of the property within the Floodway Fringe. The intent of the O-E is to ensure that the review occurs only if development uses occur in the Floodway. If development activities are limited to only the Floodway Fringe, the procedural requirements of Section 29.1103(4) would not apply. If, however, development is proposed in the Floodway, those procedures (the preparation of an Environmental Assessment Review and Major Site Development Plan) would apply to the entire development. The intent for subdivisions is that a review of the environmental constraints would occur with the Preliminary and Final Plats and that the resulting individual home lots would not be subject to a Major Site Development Plan. Non-single-family development in the Floodway still would be subject to review even if a preliminary plat had been approved. Non-development uses would not be subject to a Major Site Development Plan process, but would require administrative approval of a flood plain development permit by staff.

The proposed language can be found in Attachment B.

**Planning and Zoning Commission Recommendation:** At a public hearing on February 17, 2016, the Planning and Zoning Commission voted 5-0 with 2 abstentions to recommend that the City Council deny any proposed changes to the O-E district text. Scott Renaud, FOX Engineering, spoke against the proposal, stating that the provisions of other City ordinances, such as the Flood Plain regulations and the City's storm water ordinances, already accomplish the desires of the City. He also believed that including storm water facilities in the requirement for a major site development plan would result in uncertainty of approval for what should be a routine staff approval. Members of the

Commission believed the amendments were unnecessary and excessive and created a layer of review that was not needed for environmental protection.

**ALTERNATIVES:**

1. The City Council can on first reading adopt the proposed changes to the language of the O-E district.
2. The City Council can decline to adopt the proposed changes to the language of the O-E district.
3. The City Council can direct staff to provide additional information.

**CITY MANAGER'S RECOMMENDATION:**

Staff believes that these amendments, in conjunction with the proposed amendments to Chapter 9 Flood Plain Zoning Regulations and the mapping of the O-E (companion items on the agenda), will reduce the impacts of development in the Floodway by requiring owners and developers to identify and account for a broad range of potential impacts and to devise measures to mitigate them. Approvals of those developments would require a review and recommendation by the Planning and Zoning Commission and action by the City Council following a public hearing. This process will replace the Zoning Board of Adjustment conditional use permit process and add more types of activities subject to discretionary review. However, development that occurs entirely in the Floodway Fringe would not be subject to any changes in process or standards.

The proposed amendments also address grading and utility installation that may need to occur during the platting process. Developers would be required to prepare the environmental assessment and address impacts as part of the preliminary plat process rather than through the Major Site Development Plan. Again, if no grading or other activity was proposed in the Floodway, the provisions of the O-E overlay would not apply.

**Therefore, it is the recommendation of the City Manager that the City Council accept Alternative No. 1, thereby approving the proposed changes to the language of the Environmentally Sensitive Area Overlay (O-E) district.**

## ATTACHMENT A: EXISTING LANGUAGE

### Sec. 29.1103. "O-E" ENVIRONMENTALLY SENSITIVE AREA OVERLAY.

(1) **Purpose.** The Environmentally Sensitive Overlay (O-E) Zone is intended to supplement the City's flood plain regulations and to protect designated natural resource areas by using the natural resources inventory to identify and preserve natural resources and by establishing parks and open space areas. Greenways are included in this district for stream corridors, linear parks and open spaces adjacent to environmentally sensitive areas to create a continuous system throughout the City.

(2) **Designation of Environmentally Sensitive Areas.** Any area may be designated an O-E Zone by ordinance of City Council, after the advice and recommendation of the Planning and Zoning Commission, if the results of a scientific study of the area support the conclusion that the area so designated is especially sensitive to adverse public impact from development due to unique environmental circumstances. Examples of such areas that may be designated as an O-E zone are:

- (a) Flood Plain Areas. Those areas defined in Chapter 9 of the Municipal Code;
- (b) Designated Natural Resource Areas. Those areas defined in "A Natural Areas Inventory of Ames" (July 18, 1994);
- (c) Park and Open Space Areas. Those areas defined in the City's Parks and Recreation Master Plan of the Municipal Code;
- (d) Green-ways. Those areas as may be defined as Green-ways by the City Council; and
- (e) Aquifer Protection Areas. Those areas as may be defined as Aquifer Protection Areas as defined by the City Council.

(3) **Studies.** The Department of Planning and Housing and the Planning and Zoning Commission are authorized to conduct studies in order to evaluate areas for environmental sensitivity as part of the continuing process of maintaining a current comprehensive land use plan for the City. Additionally, studies done by or for other governmental or private parties may be adopted for the purposes of this section.

(4) **Procedures.** No Building/Zoning Permit shall be issued and no grading, excavation, construction or change in use shall occur in an area designated as an O-E Zone except in accordance with the procedures set forth in Section 29.1503(4), "Major Site Development Plan Review". In addition, the applicant shall prepare and submit an Environmental Assessment Report which shall detail how the problems identified in the study on which the O-E Zone designation was based will be addressed, obviated or mitigated. City Council shall not approve the Major Site Development Plan unless it has reviewed and approved the Environmental Assessment Report.

(5) **Enforcement.** Development or other activities in conflict with the Major Site Development Plan, or a failure to implement the Plan, including the measures set out in the Environmental Assessment Report shall constitute the violation of this section for which any and all enforcement means and remedies established by law or zoning regulations may be invoked and instituted.

**ATTACHMENT B: PROPOSED LANGUAGE**  
**[Bold and underlined text]** reflect proposed language.]

**Sec. 29.1103. "O-E" ENVIRONMENTALLY SENSITIVE AREA OVERLAY.**

(1) **Purpose.** The Environmentally Sensitive Overlay (O-E) Zone is intended to supplement the City's flood plain regulations and to protect designated natural resource areas by using the natural resources inventory to identify and preserve natural resources and by establishing parks and open space areas. Greenways are included in this district for stream corridors, linear parks and open spaces adjacent to environmentally sensitive areas to create a continuous system throughout the City.

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(4) **Procedures.** No Building/Zoning Permit shall be issued and no grading, excavation, construction or change in use shall occur in an area designated as an O-E Zone except in accordance with the procedures set forth in Section 29.1502(4), "Major Site Development Plan Review" **or with the procedures set forth for a Preliminary Plat in Chapter 23, Subdivisions.**

In addition, the applicant shall prepare and submit an Environmental Assessment Report, which shall detail how the problems identified in the study on which the O-E Zone designation was based will be addressed, obviated or mitigated. City Council shall not approve the Major Site Development Plan **or Preliminary Plat** unless it has reviewed and approved the Environmental Assessment Report.

**(a)Development within the Floodway**

**(i) If no activity defined as a Development Use in Section 9.4 (2) occurs within the O-E Zone, th`e requirements of this subsection shall not apply.**

**(ii) If any activity defined as a Development Use in Section 9.4 (2) occurs within the O-E Zone, the requirements of this subsection shall apply to the entire site.**

(5) **Enforcement.** Development or other activities in conflict with the Major Site Development Plan, or a failure to implement the Plan, including the measures set out in the Environmental Assessment Report shall constitute the violation of this section for which any and all enforcement means and remedies established by law or zoning regulations may be invoked and instituted.

**ATTACHMENT C: MAJOR SITE DEVELOPMENT PLAN CRITERIA EXCERPT:**

(vii) City Council Decision. After the transmittal of the recommendation from the Planning and Zoning Commission, the City Council shall consider the application at a public hearing conducted as part of a regularly scheduled meeting. Notification of the public hearing shall be made by mail and posting, in accordance with Sections 29.1500(2)(d)(i) and (iii) above. The City Council must approve, deny or modify the Major Site Development Plan approval application within 60 days of the public hearing.

(d) Design Standards. When acting upon an application for a major site plan approval, the City Council shall rely upon generally accepted site planning criteria and design standards. These criteria and standards are necessary to fulfill the intent of the Zoning Ordinance, the Land Use Policy Plan, and are the minimum necessary to safeguard the public health, safety, aesthetics, and general welfare. These criteria and standards include:

(i) The design of the proposed development shall make adequate provisions for surface and subsurface drainage to limit the rate of increased runoff of surface water to adjacent and down stream property;

(ii) The design of the proposed development shall make adequate provision for connection to water, sanitary sewer, electrical and other utility lines within the capacity limits of those utility lines;

(iii) The design of the proposed development shall make adequate provision for fire protection through building placement, acceptable location of flammable materials, and other measures to ensure fire safety;

(iv) The design of the proposed development shall not increase the danger of erosion, flooding, landslide, or other endangerment to adjoining and surrounding property;

(v) Natural topographic and landscape features of the site shall be incorporated into the development design;

(vi) The design of interior vehicle and pedestrian circulation shall provide for convenient flow of vehicles and movement of pedestrians and shall prevent hazards to adjacent streets or property;

(vii) The design of outdoor parking areas, storage yards, trash and dumpster areas, and other exterior features shall be adequately landscaped or screened to minimize potential nuisance and impairment to the use of adjoining property;

(viii) The proposed development shall limit entrances and exits upon adjacent streets in order to prevent congestion on adjacent and surrounding streets and in order to provide for safe and orderly vehicle movement;

(ix) Exterior lighting shall relate to the scale and location of the development in order to maintain adequate security, while preventing a nuisance or hardship to adjacent property or streets;

(x) The proposed development shall ensure that dust and other forms of air pollution, noise disturbances, odor, glare, and other nuisances will be limited to acceptable levels as prescribed in other applicable State and City regulations; and

(xi) Site coverage, building scale, setbacks, and open spaces shall be in proportion with the development property and with existing and planned development and structures, in adjacent and surrounding property.

**ATTACHMENT D: PRELIMINARY PLAT CRITERIA EXCERPT**

23.302 (6) City Council Action on Preliminary Plat:

(a) Based upon such examination, the City Council shall determine whether the Preliminary Plat conforms to relevant and applicable design and improvement standards in these Regulations, to other City ordinances and standards, to the City's Land Use Policy Plan and to the City's other duly adopted plans. In particular, the City Council shall determine whether the subdivision conforms to minimum levels of service standards set forth in the Land Use Policy Plan for public infrastructure and shall give due consideration to the possible burden of the proposed subdivision on public improvements in determining whether to require the installation of additional public improvements as a condition for approval.



**ORDINANCE NO.**

**AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF AMES, IOWA, BY REPEALING SECTION 29.1103 AND ENACTING A NEW SECTION 29.1103 THEREOF, FOR THE PURPOSE OF REVISING THE APPLICABILITY OF THE O-E DISTRICT TO ACTIVITIES WITHIN THE FLOODWAY; REPEALING ANY AND ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; AND ESTABLISHING AN EFFECTIVE DATE.**

**BE IT ENACTED**, by the City Council for the City of Ames, Iowa, that:

Section One. The Municipal Code of the City of Ames, Iowa shall be and the same is hereby amended by repealing Section 29.1103 and enacting a new Section 29.1103 as follows:

**“Sec. 29.1103. "O-E" ENVIRONMENTALLY SENSITIVE AREA OVERLAY.**

(1) **Purpose.** The Environmentally Sensitive Overlay (O-E) Zone is intended to supplement the City's flood plain regulations and to protect designated natural resource areas by using the natural resources inventory to identify and preserve natural resources and by establishing parks and open space areas. Greenways are included in this district for stream corridors, linear parks and open spaces adjacent to environmentally sensitive areas to create a continuous system throughout the City.

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(3) **Studies.** The Department of Planning and Housing and the Planning and Zoning Commission are authorized to conduct studies in order to evaluate areas for environmental sensitivity as part of the continuing process of maintaining a current comprehensive land use plan for the City. Additionally, studies done by or for other governmental or private parties may be adopted for the purposes of this section.

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In addition, the applicant shall prepare and submit an Environmental Assessment Report, which shall detail how the problems identified in the study on which the O-E Zone designation was based will be addressed, obviated or mitigated. City Council shall not approve the Major Site Development Plan or Preliminary Plat unless it has reviewed and approved the Environmental Assessment Report.

(a)Development within the Floodway

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(ii) If any activity defined as a Development Use in Section 9.4 (2) occurs within the O-E Zone, the requirements of this subsection shall apply to the entire site.

(5) **Enforcement.** Development or other activities in conflict with the Major Site Development Plan, or a failure to implement the Plan, including the measures set out in the Environmental Assessment Report shall constitute the violation of this section for which any and all enforcement means and remedies established by law or zoning regulations may be invoked and instituted.”

Section Two. All ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent of such conflict, if any.

Section Three. This ordinance shall be in full force and effect from and after its passage and publication as required by law.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Diane R. Voss, City Clerk

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Ann H. Campbell, Mayor