

1 **AN ORDINANCE TO AMEND ARTICLE IX OF CHAPTER 197, ZONING,**
2 **OF THE MUNICIPAL CODE OF THE CITY OF LEWES, DELAWARE,**
3 **SECTION 197-74 RELATING TO WETLANDS AND THE CREATION OF**
4 **A WETLAND BUFFER.**

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6 **WHEREAS**, the Mayor and City Council of the City of Lewes have deemed it desirable
7 to amend zoning provisions relating to the Environmental Protection Regulations regarding
8 wetlands;

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10 **WHEREAS**, at a public meeting on July 15, 2020, the Lewes Planning Commission
11 reviewed and took public comment on the proposed amendments to the City of Lewes Zoning
12 Ordinance and forwarded Recommendations to the Mayor and City Council for consideration;

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14 **WHEREAS**, Title 22, Chapter 3, Section 301 of the Delaware Code provides that “[f]or
15 the purpose of promoting health, safety, morals or the general welfare of the community, the
16 legislative body of cities and incorporated towns may regulate and restrict the height, number of
17 stories and size of buildings and other structures, percentage of lot that may be occupied, the size
18 of yards, courts and other open spaces, the density of population, and the location and use of
19 buildings, structures and land for trade, industry, residence or other purposes”;

20
21 **WHEREAS**, Section 38 of the City's Charter provides that “[f]or the purpose of protection
22 against fire, promoting health, safety, morals or the general welfare of the community, the City
23 Council is hereby empowered to adopt ordinances to regulate and restrict the height, number of
24 stores [sic], size of buildings and other structures, the density of population and the location and
25 use of buildings, structures and lands for trade, industry, residence or other purposes”;

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27 **WHEREAS**, the Mayor and City Council deem it appropriate to consider the question of
28 whether it is in the public interest to amend Chapter 197, Zoning, of the Municipal Code of the
29 City of Lewes, Delaware, as amended, by amending provisions related to wetlands;

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31 **WHEREAS**, Article XV, Chapter 197, Section 104 , Text and map amendments, of the
32 Municipal Code of the City of Lewes provides that any amendment to the Zoning Ordinance
33 shall be made after a public hearing following fifteen (15) days’ notice by publication in an
34 official paper or a paper of general circulation in the City;

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36 **WHEREAS**, a public hearing was conducted on October 8, 2020;

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38 **WHEREAS**, at least fifteen (15) days’ notice of such hearing was provided by publishing
39 notice of the time and place of such hearing in an official paper or newspaper of general circulation
40 in the City; and

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42 **WHEREAS**, the proposed amendment will promote the health, safety, and general welfare
43 of the Lewes community.

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45 **BE IT ORDAINED** by the Mayor and City Council, in session met, a quorum pertaining
46 at all times thereto, in the manner following to-wit:

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48 **Section 1.** Chapter 197, Section 197-74, of the Municipal Code of the City of Lewes,
49 Delaware, be and the same is hereby further amended by making insertions as shown by underline
50 and deletions as shown by strikethrough to subsection 197-74 as follows:
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52 B. Definition: [**Amended 8-12-2019**]
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54 (5) WETLAND BUFFER - An area located upland and landward of the
55 delineated wetlands line, at the time of accepted delineation, that is
56 established or will be established with vegetation to protect the wetlands
57 and terrestrial environment from human disturbance, even if the area was
58 previously disturbed by human activity.
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60 D. Identification on development plans and in the field.
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62 (1) Development plans shall include a report delineating the locations
63 of ~~all both state and federal~~ wetlands by legal description with
64 bearings and distances and with each flag point numbered, signed,
65 and dated. [**Amended 8-12-2019**]
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67 (c) The wetlands shall be flagged and the flags shall remain on site for major
68 subdivisions during construction of the development.
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70 G. Wetland buffers
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72 (1) Purpose: provide standards for the establishment of a buffer around all wetlands in
73 major subdivisions as the wetlands boundaries are expected to change over time; to
74 provide standards for protecting wetlands in major subdivisions; to encourage natural
75 drainage; and to encourage best management practices and design standards.
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77 (a) This ordinance shall be reviewed for consistency with this Purpose after two years
78 from its adoption date, October 12, 2020.
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80 (2) Wetland buffer zones
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82 (a) A 50-ft. wetlands buffer shall be established landward from the boundaries of all
83 wetlands. This buffer shall consists of two zones as defined below.
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85 (i) Wetland buffer zone

- 86 • Zone A. – 20 ft. wide on the upland side of the wetland buffer
- 87 • Zone B. – 30 ft. wide beyond zone A except as provided in G(4).

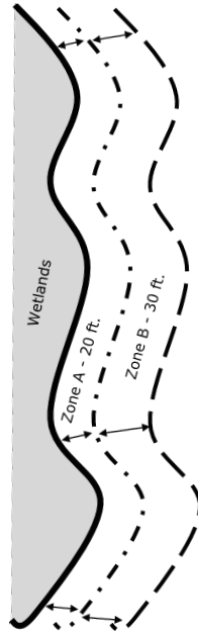


Figure 1- Wetlands Buffer Zones Ex. NTS

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(ii) Permitted Activities

<u>Activity</u>	<u>Zone A</u>	<u>Zone B</u>
<u>State and federal permitted disturbances such as road crossing and fill with permits</u>	<u>Permitted</u>	<u>Permitted</u>
<u>Other road crossings, such as bridges with permits</u>	<u>Permitted</u>	<u>Permitted</u>
<u>Stormwater management outfalls permitted by Sussex Conservation District (SCD)</u>	<u>Permitted</u>	<u>Permitted</u>
<u>Invasive species control</u>	<u>Required</u>	<u>Required</u>
<u>Planting of native vegetation</u>	<u>Permitted</u>	<u>Permitted</u>
<u>Floodplain creation without impacting associated wetlands with permits</u>	<u>Permitted</u>	<u>Permitted</u>
<u>Tax ditch maintenance</u>	<u>Permitted</u>	<u>Permitted</u>
<u>Stormwater management BMP's</u>	<u>Not permitted</u>	<u>Permitted</u>
<u>Recreational trails constructed of permeable materials</u>	<u>Not permitted</u>	<u>Permitted</u>
<u>Selective cutting for maintenance</u>	<u>Not permitted</u>	<u>Permitted</u>
<u>Erosion or stabilization measures</u>	<u>Not permitted</u>	<u>Permitted</u>
<u>Boat ramps with permits</u>	<u>Permitted</u>	<u>Permitted</u>
<u>Boardwalks</u>	<u>Not permitted</u>	<u>Permitted</u>
<u>Docks with permits</u>	<u>Permitted</u>	<u>Permitted</u>

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(iii) Additional regulations

No buffers are required for wetlands to be filled with a valid USACE

95 and/or DNREC permit.

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97 (iv) The wetland buffer shall not traverse any lot intended to be developed
98 with one or more dwelling units.

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100 (3) Authorized Impacts

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102 (a) Development activities shall not be authorized in Waters of the US, Waters of the
103 State, delineated wetlands, or wetland buffers without approval from the United
104 States Army Corp of Engineers and/or DNREC. Subject to City approval, such
105 allowable activities permitted may include bridge crossings, utility crossings, boat
106 ramps, docks, or stormwater outfalls, only with proper approval and permitting.

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108 (b) Major subdivision activities such as permanent or temporary structures shall not be
109 authorized by the City of Lewes in wetlands or wetland buffers except when the
110 following criteria are met:

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112 (i) The applicant has taken every reasonable step to avoid adverse impact to
113 the wetland and buffer; and

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115 (ii) The applicant has provided appropriate mitigation for adverse impacts to
116 the wetland and buffer.

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118 (4) Wetlands Buffer-Width Averaging:

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120 (a) Wetlands buffer width averaging can be utilized to allow flexibility in site design
121 and buffer width due to non-conformities in shorelines/wetlands lines.

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123 (b) Wetlands buffer width averaging will require the overall total area to be provided,
124 and no area reduction will be allowed implementing averaging.

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126 (c) Buffer width averaging may be utilized to adjust the width of the buffer along the
127 length, allowing a reduction of the width for short runs while meeting the overall
128 area of buffer to be provided as to not reduce the wetlands function or values

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130 (d) The overall square footage of Zone B Wetland Buffer must be achieved within
131 the boundaries of the property to be developed

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133 (e) Wetland buffer width averaging is not available for Zone A.

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135 (f) Wetland buffer width averaging may be used on all of the Zone B wetland buffers

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137 (g) Zone B Wetland buffer averaging shall not be expanded more than double the
138 width of Zone B wetland Buffer as referenced in attached table.

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140 (5) Buffer Maintenance and Management:

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(a). Maintenance Standards

(i) All buffers that are composed of native species should be preserved to the maximum extent practicable with no disturbance of native species allowed in Zone A and only selective cutting of native species allowed in Zone B.

(ii) All buffers that are composed of native species shall be maintained with no mowing allowed in Zone A. Planting of native woody species is encouraged in these buffers. Grass in Zone B shall be mowed a maximum of four times per year.

(iii) All buffers that are composed of nonnative species should be maintained to minimize nonnative species and to encourage colonization from native noninvasive species. Planting of native woody species is encouraged in these buffers. Planting of nonnative and invasive species is prohibited.

(b) Buffer Management Plan. All major subdivisions that contain buffers shall be required to submit a buffer management plan and inventory of trees and plants, prepared by a qualified professional that describes measures for maintaining and if applicable, improving buffer on the site. The community's homeowners' association shall be responsible for maintaining the buffer.

(i) The Buffer Management Plan shall include that all maintenance of the buffer shall comply with City of Lewes codes and/or policies regarding invasive species.

Section 2. If any provision of this Ordinance shall be deemed or held to be invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect any other provision of this Ordinance which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to be severable.

Section 3. This Ordinance shall take effect immediately upon its adoption by the Mayor and City Council of the City of Lewes.

187 Adopted by the Mayor and City Council
188 of the City of Lewes
189 October 12, 2020

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192 I, Robert Morgan, Secretary of the City Council of the City of Lewes, do hereby certify that the
193 foregoing is a true and correct copy of the ordinance passed by the Mayor and City Council at its
194 regular meeting on October 12, 2020, at which a quorum was present and voting throughout and
195 the same is still in full force and effect.

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198 _____
199 Secretary

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201 **SYNOPSIS:** This Ordinance makes a variety of amendments to the residential zoning
202 regulations relating to the official zoning map, zoning district purpose statements, permitted
203 uses, dimensional regulations, lot standards, and lot averaging.

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