November 14, 2016

Buffalo’s Proposed Unified Development Ordinance (Green Code)

Buffalo Niagara Riverkeeper is pleased to submit the following comments to the City of Buffalo Common Council as it works to adopt the Buffalo Consolidated Development Framework (BCDF), known as the Green Code. The opportunity for the City of Buffalo to completely revamp its outmoded Euclidean zoning code with a modern, form-based code that serves to create a revitalized community and restored environment is an unprecedented, once-in-a-generation action for achieving the community’s vision and goals.

The proposed Green Code being considered for adoption by the Common Council represents the combined efforts of not only the City of Buffalo, but the thousands of hours and intellectual resources contributed in-kind by stakeholders, individuals, and community organizations such as Riverkeeper.

Buffalo Niagara Riverkeeper is an advocate for our region’s water systems, and is committed to working with the City of Buffalo to ensure that appropriate and achievable provisions are included in the zoning code to protect, restore, and enhance the freshwater systems that enable the City to be healthy, vibrant, and resilient. The proposed Green Code goes a long way towards guiding development in the City at realistic, sustainable scales, while protecting water resources, however there are several provisions that should be improved.

Several elements are a great improvement to protect water in the Green Code and Riverkeeper recommends the Common Council accept the following.

1. **Shoreline protections for waterfront development are established in the C-W zone.**
   - Section 5.3.3.A of the Unified Development Ordinance (UDO) subjects developments within the C-W zone to maintain a waterfront yard setback of 25 or 100 feet, based on the zone in which the development takes place.
   - Shoreline buffers of native or naturalized vegetation are required for a minimum of 50 feet. Buffers help to filter pollutants from runoff that may otherwise be directed directly into waterbodies and drinking water sources (Lake Erie and the Niagara River). The also provide habitat for wildlife, and valuable ecosystem services far beyond what engineered shorelines offer.

2. **The creation of an Outer Harbor Review Area protects this regional asset from unfettered development.**
   - Section 5.3.3.C of the UDO clearly delineates the Outer Harbor, and requires that any proposed uses within the boundary are subject to public access and environmental conservation considerations.

3. **The scale of developments on the Outer Harbor, and other open spaces is limited.**
   - D-OG zoned parcels on the Outer Harbor, and other civic and green spaces such as Delaware Park, are limited to building coverage of 10% of the lot, and impervious coverage of 15% of the lot.
D-ON zoned parcels on the Outer Harbor and Buffalo River, where open spaces are meant to be relatively undeveloped, are limited to building coverage of 2% of the lot, and impervious coverage of 5% of the lot.

4. **A clear and limited definition of a water-dependent use.**
   - Section 5.3.3.A.2 defines a water-dependent use as a use “which can only be conducted in, on, over, or adjacent to a water body because such use requires direct access to that water body, and which involves, as an integral part of such activity, the use of the water.” This definition limits waterfront development to activities which cannot occur without water access, rather than activities which benefit from being situated on or near waterways, ensuring that unnecessary stresses are not placed upon the shorelines and waterways that make our region unique.

While the above elements benefit water quality, public access, and ecological restoration, some provisions in the Green Code require revision to adequately protect aquatic resources. Riverkeeper recommends the Common Council adopt the changes below to ensure that development in, on, and around the water in the City of Buffalo is appropriate and reasonable.

1. **The Outer Harbor parcels zoned N-3E (Mixed Use Edge) should be rezoned to D-OG (Green Space) to support the City’s and community’s vision for an Outer Harbor for all.**
   - The designation of a portion of parcels on the Outer Harbor as mixed use supports the development of exclusionary residential properties on publicly-owned lands, in clear contradiction with the community’s vision, and the LWRP adopted by the Common Council.

   Riverkeeper recommends expanding public access requirements for all waterfront parcels and limiting mixed use development on the Outer Harbor to the Terminals A&B complex as it is currently zoned and revising the N-3E parcels to D-OG parcels. The smaller lot sizes in this area plus the special uses allowed under D-OG will encourage water-dependent uses and some unique uses complementary to a waterfront location without becoming exclusionary to the public.

2. **Strengthen the C-W-100 waterfront yard standards to include language that was taken out in the last revision of the UDO.**
   - Section 5.3.3.A.5 of the UDO was revised in the most recent iteration of the Green Code to have a significantly weakened definition for C-W-100 waterfront yards. The bolded text was removed from the definition in the September 2016 draft of the UDO:

     “The C-W-100 waterfront yard type is intended for less urbanized waterfronts, where [the shore is characterized by, or where plans exist to reestablish] a shoreline buffer of native vegetation protects and restores wildlife habitat and ecosystem services.”

   The restoration and reclamion of City shorelines for ecological benefits and public access is a highly successful, multi-decade process involving countless stakeholders, community organizations, and state and federal agencies. For the City to undermine the...
significant progress made thus far by excluding areas identified as priority restoration targets is an unfortunate development. Riverkeeper recommends re-introducing the original language bolded above into this section.

3. **Make shoreline public walkways and access to public trust resources as mandatory rather than “encouraged” for waterfront development.**
   - Citizens within the City of Buffalo have long been cut off from the water on which their City sits. As the public begins to utilize the shoreline recreationally for the first time in over a century, and the waterfront is beginning to be developed, it has never been more important to ensure the public’s right to access the water through the development of contiguous waterfront trails for public use.

   Riverkeeper recommends mandating shore public walkways on shoreline developments rather than merely encouraging them as the language in UDO section 5.3.3.B suggests. Additionally, shore public walkways should be developed in accordance with the Niagara River Greenway Plan.

4. **Reduce the scale of building size and impervious surfaces in N-1S zoned parcels on the Outer Harbor.**
   - The current draft of the UDO increased the allowable maximum building coverage in N-1S (Secondary Employment Center) from 80% to 90% of a parcel, and the maximum pervious coverage from 90% to 100% of a parcel with an “Attached” building form. Large parcels of N-1S zoned land directly abuts Lake Erie, and it is inappropriate to allow large parcels of critical riparian land to be 100% covered in impervious surfaces. Riverkeeper recommends greatly reducing the amount of allowed impervious surfaces on shoreline land, and mandating that surfaces on shoreline developments be permeable, and utilize green infrastructure techniques.