

Chapter 60 - WETLANDS PRESERVATION ORDINANCE^[1]

Footnotes:

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Editor's note—Ord. No. 49-94, § 1, adopted Dec. 5, 1994, repealed Ch. 60 in its entirety, which pertained to wetlands and watercourses preservation ordinance. Section 2 of said ordinance enacted provisions designated as a new Ch. 60 to read as herein set out. See the Code Comparative Table.

5:200. - Purpose.

Preservation and enhancement of wetlands is essential to maintaining and improving the city's aesthetic character, its ecological stability, its economic well-being, its educational opportunities, and its quality of life.

Wetlands are protected to help reduce damage to aquatic resources from erosion, turbidity, siltation, and contamination. They are protected to minimize the loss of native plants and animals, to help preserve biological diversity and to minimize the loss of wildlife habitat within the city, and to sustain many benefits wetlands can help provide - including flood control, stormwater storage and release, ground water recharge, and water quality improvement.

(Ord. No. 49-94, § 2, 12-5-94)

5:201. - Definitions.

Words and phrases used in this chapter shall have their usual and customary meaning, provided, however, that all words defined in the Part 303 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, and used in this chapter, shall have the meaning specified in that Act and the administrative regulations passed pursuant to that Act, except that the following words and phrases are defined as follows:

(1) Invasive/Nuisance Species: Botanical species included on the city's invasive species list.

(2) Mitigation: May consist of any of the following:

a. Establishment -- Creation of new wetlands where none previously existed

b. Preservation--The preservation of existing wetlands may be considered as mitigation if the following conditions are met:

i. The wetland meets the High Level of Concern Protection Priority as defined within this Chapter.

ii. An applicant shall protect the mitigation area by a permanent conservation easement or similar instrument that provides for the permanent protection of the natural resource functions and values of the mitigation site.

iii. Development of a wetland management plan and 5 years of wetland management by the applicant.

c. Restoration - the re-establishment/rehabilitation of wetland characteristics and functions at a site where they have been impaired or ceased to exist through the replacement of wetland hydrology, vegetation, or soils.

~~(3) (1)~~ Noncontiguous wetland. A wetland which is not "contiguous" as defined by law for wetland regulation.

~~(4) Storm water retention/detention basin. An artificial impoundment constructed in upland which serves to restrain or filter storm water runoff.~~

~~(2)(5)~~ Use permit. The city approval required for activities regulated by this chapter, issued by the Community Services Area Administrator.

~~(6) Use permit fee. An amount paid to the city to obtain a use permit.~~

~~(7) (4)~~ Wetland. Any land characterized by the presence of water at a frequency and duration sufficient to support and that under normal circumstances does support wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh.
Wetland Protection Priorities:

a. High-Level Concern: Include large undisturbed wetland complexes, forested wetlands, vernal ponds and wetlands along watercourses with established native wetland plant communities, native aquatic animals and hydric soils.

b. Mid-Level Concern: Include wetlands that may have been previously disturbed but have underlying hydric soils and hydrology. Mid-level concern wetlands have some established native wetland plants, native aquatic animals and may contain invasive species.

c. Low-Level Concern: Include wetlands that have been heavily disturbed or were created due to development activities. These wetlands contain few native wetland plant species or native aquatic animals and are dominated by invasive species. Hydric soils and hydrology may not be present.

(Ord. No. 49-94, § 2, 12-5-94; Ord. No. 33-96, § 1, 8-5-96; Ord. No. 43-04, § 25, 1-3-05)

5:202. - Relationship to other permit requirements.

Approvals under this chapter shall not relieve a person of the need to obtain other required permits nor shall issuance of another permit relieve a person of the need to obtain approval under this chapter, if applicable.

(Ord. No. 49-94, § 2, 12-5-94)

5:203. - Wetland determination.

(1) The physical boundary and extent of wetlands shall be identified by a professional having technical ability and experience sufficient to accurately identify wetland boundaries.

(2) Wetland determination shall be made using the same criteria as provided for Part 303 of the Natural Resources and Environmental Protection Act, 1994 PA 451, and administrative rules as amended.

(3) To facilitate verification, the boundary of the wetland shall be flagged in the field by the applicant prior to the application for a use permit.

(4) Wetland determinations may be rejected by the City if the boundaries were identified outside of the growing season, and/or if the wetland determination was completed more than 2 -years ago.

(5) Wetland permit approval must be obtained within 2 years of the applicant's wetland determination or the determination shall expire and the wetland boundaries must be re-evaluated and re-flagged.

(Ord. No. 49-94, § 2, 12-5-94; Ord. No. 33-96, § 2, 8-5-96)

5:204. - Activities which require a use permit.

Except as otherwise provided by this chapter or by a use permit obtained from the city, a person shall not:

- (1) Deposit or permit the placing of fill material in a wetland.
- (2) Dredge, remove, or permit the removal of soil or minerals from a wetland.
- (3) Construct, operate, or maintain any use or development in a wetland including draining or directing water from an upland activity into a wetland.
- (4) Drain surface water from a wetland.

(Ord. No. 49-94, § 2, 12-5-94)

5:205. - Non-regulated activities.

The following activities and uses are not regulated by this chapter:

- (1) The activities which are allowed in a wetland without a permit by Part 303 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.
- (2) Stormwater retention/detention basins not intended nor acting as mitigation of any wetland disturbed by development.
- (3) Construction of or addition to a single- or 2-family dwelling on an approved subdivision or condominium lot that is less than $\frac{3}{4}$ acre in size and zoned solely for residential purposes where the wetland is wholly contained on the lot.

(Ord. No. 49-94, § 2, 12-5-94; Ord. No. 33-96, § 3, 8-5-96)

5:206. - Application for use permit.

Applications for a use permit shall be filed with the community services area as prescribed below:

- (1) The application material for a use permit shall consist of the following:
 - (a) ~~Ten copies~~ One hard copy and an electronic copy of the state-approved "Application for Permit" and "Application for Local Wetland Permit," with each section thoroughly completed.
 - (b) ~~Ten copies of~~ One hard copy and an electronic copy drawings which contain, at a minimum, the information provided for on the "Application for Permit."
 - (c) A signed letter from the applicant which explains why the project meets the use permit standards and criteria contained in section 5:212 of this chapter.
- (2) Ten copies One hard copy and an electronic copy of the mitigation plan shall be submitted, if mitigation is proposed. In order to adequately review a proposed mitigation plan, the following information should be provided to the city:
 - (a) A brief overview of the plan including the short-range and long-range objectives for vegetation, hydrology, grading, and monitoring.
 - (b) A schedule of all mitigation activities, including coordination with other local and state agencies, if applicable.

- (c) A planting plan and plant list for the area(s) to be established. The use of native plants characteristic of local conditions is encouraged. Species should be selected based on the need for wildlife, restoration, landscaping, and recovery. The public services area shall, in consultation with knowledgeable persons, maintain and update a list of botanical species which are considered invasive. Mitigation activities shall be performed without the use of invasive species.
 - (d) A grading and soil erosion control plan including existing and proposed conditions.
 - (e) A description of all soils and materials to be used including their approximate volumes and origin.
 - (f) Hydro-geological information sufficient to determine the site's suitability for the mitigation.
 - (g) Construction detail drawings for planting, soil erosion control, stabilization, water conveyance, and all other items necessary to facilitate the review.
- (3) Ten copies One hard copy and an electronic copy of a monitoring plan (text or drawings or both) which includes monitoring performance standards shall be submitted, if mitigation is proposed. In order to adequately review a monitoring plan, the following information should be provided to the city:
- (a) Schedule and list of activities to be contracted and conducted related to the site's hydrology, including sub-surface and surface water for a period of at least 5 years. A report and recommendation on the hydrologic conditions of the site should be submitted to the Public Services Area Administrator annually.
 - (b) Schedule and list of activities to be contracted and conducted related to the site's plant establishment and control of invasive exotic species for a period of at least 5 years. A report and recommendation on the plant establishment of the site should be submitted to the Public Services Area Administrator annually.
 - (c) To assure that the objectives established in the mitigation plan are successful, the monitoring plan should indicate the mechanisms necessary to execute the recommendations from the annual reports and provide for additional monitoring after the 5-year period.

(Ord. No. 49-94, § 2, 12-5-94; Ord. No. 33-96, § 4, 8-5-96; Ord. No. 43-04, § 25, 1-3-05; Ord. No. 27-06, § 1, 6-19-06)

5:207. - General review requirements.

~~Upon receipt of an application, the services area which received the application shall forward the application and supporting documentation and plans to the Michigan Department of Environmental Quality. If a Michigan Department of Environmental Quality/ US Army Corp of Engineers Joint Wetland Use Permit application is required, the Petitioner shall provide the city with a copy of the application submitted to the State.~~ The city shall review the application pursuant to this chapter and shall modify, approve (with or without conditions), or deny the application within 90 days after receipt. An application for a permit shall not be deemed as received or filed until the community services area has received all information requested on the application form, the application fee, and other information required by this chapter and necessary to reach a decision. The period for modifying, approving, or denying an application begins as soon as all such information and the application fee are received by the city. The failure to supply complete information with a permit application may be reason for denial of a permit. The denial of a permit shall be accompanied with a written reason for denial. If the city does not modify, approve, or deny the permit application within 90 days, the permit application shall be considered approved.

(Ord. No. 49-94, § 2, 12-5-94; Ord. No. 33-96, § 5, 8-5-96; Ord. No. 43-04, § 25, 1-3-05)

5:208. - Departmental review of use permit application.

- (1) After application is made to the community services area, application documents shall be distributed to the following services areas for review and comment:
 - (a) Community services area
 - (b) Public services--area
- (2) The Public Services Area Administrator shall review the use permit application to verify that all required information has been provided. At the request of the petitioner or the city, an administrative meeting may be held to review the proposed activity in light of the purposes of this chapter.
- (3) Upon receipt of a complete application, the Public Services Area Administrator may conduct or authorize the completion of a field investigation to review and verify the accuracy of information received. The receipt of a use permit application shall comprise permission from the owner to complete an on-site investigation.
- (4) If a state permit is required, the Public Services Area Administrator ~~may shall~~ coordinate field investigations with state agency personnel to the maximum feasible extent.
- (5) Plans for wetland mitigation shall be reviewed only after the requirements of section 5:213 of this chapter have been met.
- (6) It shall be the responsibility of the Public Services Area Administrator to select a qualified wetlands consultant or retain qualified staff to conduct wetland field investigations and complete assessments on behalf of the city, if the Public Services Area Administrator determines its necessity.
- (7) When a use permit application is not related to a development or activity necessitating review and approval of a site plan or plat by the Planning Commission or City Council, the Community Services Area Administrator and Public Services Area Administrator shall be responsible for granting or denying the application.
- (8) Prior to the decision of the Community Services Area Administrator and Public Services Area Administrator, notice of the use permit application shall be sent by first-class mail to property owners within 300 feet of the boundary of the property upon which the activity is proposed at least 10 days before the Community Services Area Administrator and Public Services Area Administrator makes his or her decision, which notice shall indicate where and when the use permit application may be examined and that said owner(s) may file comments with the Community Services Area Administrator and Public Services Area Administrator.

(Ord. No. 49-94, § 2, 12-5-94; Ord. No. 43-04, § 25, 1-3-05)

5:209. - Planning Commission review of use permit application.

After city services areas have completed their review of a use permit application, the application shall be referred to the Planning Commission if it relates to a proposed development or activity which requires review by the Commission pursuant to the terms of another chapter. A public hearing with regard to the use permit application shall be held by the Planning Commission at the same meeting at which it considers the related site plan or preliminary plat. Public hearing requirements shall be the same for the wetland application as for the related site plan or preliminary plat. The public hearing on the wetland permit application shall be held concurrently with the public hearing required by another chapter. After conducting a public hearing the Planning Commission shall:

- (1) In the case of a site plan, an amendment to an approved site plan, or a preliminary plat, make a recommendation to the City Council with regard to whether the use permit application shall be issued and in connection with a favorable recommendation may suggest conditions; or
- (2) In the case of a site plan for minor modification, modify, approve (with or without conditions), or deny the use permit application.

(Ord. No. 49-94, § 2, 12-5-94; Ord. No. 43-04, § 25, 1-3-05)

5:210. - City Council review of use permit application.

Upon receipt of the Planning Commission recommendation with regard to a use permit application and the related site plan or preliminary plat which relates to a proposed development or activity which requires City Council approval, the City Council shall hold a public hearing with regard to the use permit application at the same meeting at which it considers the related site plan or preliminary plat. The public hearing on the wetland permit application shall be held concurrently with the public hearing required by another chapter for a site plan or plat. The City Council, after conducting the public hearing, shall modify, approve (with or without conditions), or deny the use permit application.

(Ord. No. 49-94, § 2, 12-5-94)

5:211. - Use permit conditions.

- (1) A use permit shall allow development of land consistent with the permit plans, regulations, laws, and ordinances in effect at the time the use permit is approved.
- (2) Any permit issued under this chapter does not obviate the necessity of receiving, when applicable, approval from other federal, state, and local government agencies.
- (3) A use permit shall become invalid if the authorized work is not commenced within 6 months of the date issued, or is suspended or abandoned for a period of 6 months after termination of substantial operations as determined by the Community Services Area Administrator.
- (4) Whenever the city approves the issuance of a use permit, it may:
 - (a) Issue permits on a city-wide basis for a category of activities if the city determines that the activities are similar in nature, will cause only minimal environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment.
 - (b) Impose conditions on a permit for a use or development if the conditions are designed to remove an impairment to benefits gained from wetlands, or if they are designed to mitigate the impact of a discharge of fill material, or if they will otherwise improve water quality.
 - (c) Establish a reasonable time when the construction, development, or use is to be completed or terminated.

(Ord. No. 49-94, § 2, 12-5-94; Ord. No. 43-04, § 25, 1-3-05)

5:212. - Use permit standards and criteria.

In making a determination whether to approve a use permit application, the Planning Commission, the Council, ~~or~~ the Public Services Area Administrator or Community Services Area Administrator shall consider the following standards and criteria:

- (1) Except as provided in subsection (4) of this section, a permit for an activity listed in section 5:204 shall not be approved unless the city determines that the issuance of a use permit is in the public interest, that the permit is necessary to realize the benefits derived from the activity, and that the activity is otherwise lawful.
- (2) In determining whether the activity is in the public interest, the benefit which reasonably may be expected to accrue from the proposal shall be balanced against the reasonably foreseeable detriments of the activity. The decision shall reflect local, state, and national concern for protection of natural resources from pollution, impairment, and destruction. The following general criteria shall be considered:

- (a) The relative extent of the public and private need for the proposed activity.
 - (b) The availability of feasible and prudent alternative locations and methods ~~and alternative locations and methods~~ to accomplish the expected benefits from the activity.
 - (c) The extent and permanence of the beneficial or detrimental effects ~~which the that the~~ proposed activity may have on the public and private uses to which the area is suited, including the benefits the ~~protected~~ wetland provides.
 - (d) The probable effects impact of each proposal in relation to the cumulative effects created by other existing and anticipated activities in the watershed.
 - (e) The probable effects on recognized historic, cultural, scenic, ecological, or recreational values and on the public health or fish or wildlife.
 - (f) The size of the wetland being considered.
 - (g) The amount of remaining wetland in the general area.
 - (h) Proximity to any waterway.
 - (i) Economic value, both public and private, of the proposed land change to the general area.
- (3) A permit shall not be issued unless it is shown that an unacceptable disruption will not result to the aquatic resources. In determining whether a disruption to the aquatic resources is unacceptable, the criteria set forth in Section 30302 of Part 303 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, and subsection 2 of this section shall be considered. A permit shall not be issued unless the applicant also shows either of the following:
- (a) The proposed activity is primarily dependent upon being located in the wetland.
 - (b) A feasible and prudent alternative does not exist.
- (4) Upon application for a wetland use permit in a noncontiguous wetland that is less than 2 acres in size, the city shall approve the permit unless the city determines that the wetland is essential to the preservation of the natural resources of the city. The city shall provide these findings in writing to the permit applicant, stating the reasons for its determination. In making this determination, the city must find that 1 or more of the following exist at the particular site:
- (a) The site supports state or federal endangered or threatened plants, fish or wildlife appearing on a list specified in Part 365 of the Natural Resources and Environmental Protection Act, 1994 PA 451.
 - (b) The site represents what is identified as a locally rare or unique ecosystem.
 - (c) The site supports plants or animals of an identified local importance.
 - (d) The site provides groundwater recharge documented by a public agency.
 - (e) The site provides flood and storm control by the hydrologic absorption and storage capacity of the wetland.
 - (f) The site provides wildlife habitat by providing breeding, nesting, or feeding grounds or cover for forms of wildlife, waterfowl, including migratory waterfowl, and rare, threatened, or endangered wildlife species.
 - (g) The site provides protection of subsurface water resources and provision of valuable watersheds and recharging groundwater supplies.
 - (h) The site provides pollution treatment by serving as a biological and chemical oxidation basin.
 - (i) The site provides erosion control by serving as a sedimentation area and filtering basin, absorbing silt and organic matter.

- (j) The site provides sources of nutrients in water food cycles and nursery grounds, and sanctuaries for fish.

(Ord. No. 49-94, § 2, 12-5-94; Ord. No. 33-96, § 6, 8-5-96; Ord. No. 43-04, § 25, 1-3-05)

5:213. - Mitigation.

- (1) As authorized by section 5:211(4)(b) of this chapter, the city may impose conditions on a use permit ~~for a use or development if the conditions are designed to remove an impairment to the wetland benefits, to mitigate the impacts of wetland disturbance, of a discharge of fill material, or otherwise improve the water quality.~~
- (2) The city shall consider a mitigation plan if submitted by the applicant and may incorporate the mitigation actions as permit conditions for the ~~improvement~~ restoration and/or preservation of the existing wetland resources or the creation of a new wetland resource to offset wetland resource losses resulting from the proposed project.
- ~~(3)~~ Financial assurances in the form of a cash bond, for at least 50% of the cost of the mitigation (establishment, restoration and/or monitoring) may be will be required to ensure that mitigation is accomplished as specified by the permit conditions. ~~The city shall, when requested by the applicant, meet with the applicant to review the applicant's mitigation plan. The bond will be released after the performance standards, detailed in this section have been achieved and the full monitoring period has been completed.~~
- ~~(4)~~ In developing conditions to mitigate impacts, the city shall consider mitigation to apply only to unavoidable impacts that are otherwise permissible utilizing the criteria under Part 303 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. Mitigation shall not be considered when it is feasible and prudent to avoid impacts or when the impacts would be otherwise prohibited under this chapter.
- ~~(5)~~ When considering mitigation proposals, the city shall make all of the following determinations:
- (a) That all feasible and prudent efforts have been made to avoid the loss of wetland resource values.
 - (b) That all practical means have been considered to minimize impacts.
 - (c) That it is practical to replace the wetland resource values which will be unavoidably impacted.
 - (d) That proposed mitigation activities do not disturb other regulated natural features.
- ~~(6)~~ If the city determines that it is practical to replace the wetland resource values which will be unavoidably impacted, the city shall consider all of the following criteria when reviewing an applicant's mitigation proposal:
- (a) Mitigation shall be provided on-site where practical and beneficial to the wetland resources.
 - (b) When subdivision (a) of this subsection does not apply, mitigation shall be provided in the immediate vicinity of the permitted activity where practical to the wetland resources provided that mitigation shall be within the same sub-watershed of the Huron River ~~within which where~~ the proposed wetland use is located (i.e., the Allen Creek, Fleming Creek, Honey Creek, Malletts Creek, Miller Creek, Swift Run Drain or Traver Creek sub-watersheds). If the proposed wetland use is not within 1 of the foregoing sub-watersheds, then mitigation may be within the Huron River direct discharge area, provided that mitigation in the Huron River direct discharge area shall be within the city limits or within 1 mile upstream of the city limits. Mitigation upstream of the proposed wetland use is preferred.
 - (c) Only when it has been determined by the Public Services Area Administrator that subdivisions (a) and (b) of this subsection are inappropriate and impractical shall mitigation be considered elsewhere.

(d) Any proposal shall assure that, upon completion, there will be no net loss to the overall ecological functions of the wetland resources. Mitigation shall be provided as follows:

i. Disturbance to high quality wetland resources (highest concern) is not permitted.

ii. Mitigation for disturbance of mid-quality wetland resources (mid-level concern) shall be provided at a ratio of no less than 10:1.

iii. Mitigation for disturbance of low-quality wetland resources (low-level concern) shall be provided at a ratio of no less than 5:1.

~~i. Any mitigation plan approved under this chapter shall provide replacement of wetlands disturbed at a ratio of no less than 1.5:1 and no more than 2:1, in accordance with the federal rules and state operating procedures. Should such rules and procedures change, the most current ratio shall be used.~~

(e) The proposal shall give consideration to replacement of the predominant functional values lost within the impacted wetland.

(7) Wetland mitigation activities must conform to the following minimum performance standards:

a) Documentation that hydrology is functioning and is sufficient to support the native wetland vegetation in the approved mitigation plan.

b) Less than 5% cover by invasive or nuisance species during monitoring period.

c) Planted native and non- nuisance wetland plant species shall be planted at a density to meet the following coverage requirements or remedial planting will be required. If after each year the performance standards are not achieved, a contingency plan must be submitted detailing how the site will be brought up to the minimum performance standards.

i. Year Two: 60% live native and non- nuisance plant cover

ii. Year Three: 70% live native and non- nuisance plant cover

iii. Year Four: 80% live native and non- nuisance plant cover

iv. Year Five: 90% live native and non- nuisance plant cover

Financial assurances will not be released until performance standards have been met and monitoring activities have been completed.

~~(86) Any mitigation activity shall be completed before issuance of Certificate of Occupancy. initiation of other permitted activities, unless a phased concurrent schedule is agreed upon between the city and the applicant.~~

~~(97) Implementation of the approved wetland mitigation monitoring plan and adherence to the performance standards outlined in this chapter, will be required as a permit condition. Monitoring to establish documentation of the functional performance of the mitigation may be required as a permit condition, as well as necessary corrective actions required, to deliver the wetland resource values identified.~~

(Ord. No. 49-94, § 2, 12-5-94; Ord. No. 33-96, § 7, 8-5-96; Ord. No. 27-06, § 2, 6-19-06)

5:214. - Approval for legitimate public need.

City Council may determine that there may be a legitimate public need for a proposed public project that is greater than the need to protect a wetland, and that the project may be exempted from certain requirements of this chapter.

- (1) For a project to be considered for exemption from any requirement of this chapter, City Council must find, after full review and public hearing, all of the following exist:
 - (a) The project is either being performed by or required by a public agency;
 - (b) There is a legitimate public need, as per the requirements of this section, for the project that is greater than the need to protect a wetland;
 - (c) The proposed use cannot reasonably be accomplished utilizing alternative designs on-site;
 - (d) A reduction in the size, scope, configuration, or density of the design which would avoid, or result in less, adverse impact on a regulated wetland cannot be reasonably accomplished; and
 - (e) Mitigation shall be provided to the maximum extent possible within the scope of the project.
- (2) In determining whether the legitimate public need for the project exceeds the need to protect a wetland, the City Council must find that the benefit which reasonably may be expected to accrue from the project shall be greater than the reasonably foreseeable detriments of the activity. The following general criteria shall be considered:
 - (a) The relative extent of the public need for the proposed activity.
 - (b) The availability of feasible and prudent alternative locations and methods to accomplish the expected benefits from the activity.
 - (c) The extent and permanence of the beneficial or detrimental effects which the proposed activity may have on the public uses to which the area is suited, including the benefits the wetland provides.
 - (d) The probable impact of the project in relation to the cumulative effect created by other existing and anticipated activities in the watershed.
 - (e) The probable impact on recognized historic, cultural, scenic, ecological, or recreational values and on the public health or fish or wildlife.
 - (f) The size of the wetland being considered.
 - (g) The amount of remaining wetland in the general area.
 - (h) Proximity to any waterway.
 - (i) Economic public value of the proposed land change to the general area.

(Ord. No. 49-94, § 2, 12-5-94)

5:215. - Protection of wetlands during and after construction.

An applicant who has received a use permit under this chapter shall comply with the requirements of this section in connection with any construction or other activity on the property for which the use permit has been issued. Conditions may be established by the city to ensure that the intent of this chapter is carried out. The activity or use shall be conducted in such manner as to cause the least amount of disruption of the protected wetland, including, but not limited to, the following requirements:

- (1) Prior to any development, clearing, filling, or other activity for which a use permit is required, protective construction fencing intended to restrict access shall be erected between the protected area and the area subject to development. Such protection shall remain until it is authorized to be removed by the city, or until issuance of a final certificate of occupancy. Nails, wires, or other objects may not be attached to any tree, nor otherwise cause damage to any tree.
- (2) All protected wetland and watercourse areas within or adjacent to the use permit activity area shall be protected with barrier fencing at least 4 feet in height staked in place at 10-foot

(minimum) intervals. No filling, excavating, or storage of materials, debris, or equipment shall take place within the barrier fencing.

- (3) Where vehicle and driveway access is permitted, any existing hydrological connection shall not be disrupted.
- (4) When the use of fill is permitted, it shall be clean and free of garbage, refuse, toxic or contaminated material, or any material that through the action of leaching may cause degradation of surface or ground water quality.
- (5) Soil erosion control structures and measures shall be maintained, including, but not limited to, silt fences, straw bale berms, and sediment traps. The landowner shall provide for periodic inspections and maintenance of such installations throughout the duration of the project.
- (6) A copy of the city use permit and state permits, if applicable, shall be prominently displayed or available at the site. They shall be displayed continuously when authorized activities are conducted and for 10 days following completion. The owner shall allow city representatives to enter and inspect the premises at any reasonable time, and failure to allow inspections shall constitute a violation of this section.

(Ord. No. 49-94, § 2, 12-5-94)

5:216. - Nonconforming activities.

A use or activity regulated by this chapter that was lawfully begun before the passage of this chapter, but which is not in conformity with the provisions of this chapter, may be continued subject to the following:

- (1) No such use or activity shall be expanded or enlarged in any way unless it is permanently changed to a conforming use.
- (2) If a nonconforming use or activity is discontinued for 12 consecutive months, any resumption of the activity shall conform to this chapter.
- (3) If nonconforming use or activity is destroyed, it shall not be resumed except in conformity with the provisions of this chapter.

(Ord. No. 49-94, § 2, 12-5-94)

5:217. - Fees.

Applications to the city for a use permit shall be accompanied by a non-refundable use permit fee set by resolution of City Council. The use permit fee will be for review of application and plans, and field inspections. A property owner may request of the Public Services Area Administrator a preliminary assessment of the site to determine whether or not the site will be affected by the ordinance. No fee shall be charged for this determination.

(Ord. No. 49-94, § 2, 12-5-94; Ord. No. 43-04, § 25, 1-3-05)

5:218. - Penalties and enforcement.

- (1) The Community Services Area Administrator may issue a stop work order on the remaining portion of construction or shall refuse a certificate of occupancy or other construction permits related to the project whenever there is a failure to comply with the provisions of this chapter.
- (2) If, on the basis of information available to the city, the city finds that a person is in violation of this chapter or of a condition set forth in a permit, the city shall issue an order requiring the person to

comply with the prohibitions or conditions or the city shall take such enforcement action as it deems appropriate.

- (3) An order issued under subsection (2) shall state with reasonable specificity the nature of the violation and shall specify a time for compliance, not to exceed 30 days, which the city determines is reasonable, taking into account the seriousness of the violation and good faith efforts to comply with acceptable requirements.
- (4) A person who violates any provision of this chapter shall be responsible for a civil infraction for which the court may impose a civil fine of not more than \$10,000.00 per day of violation plus all costs, direct or indirect, which the city has incurred in connection with the violation.
- (5) In addition to the penalties provided in subsection (4), the court may order a person who violates this chapter to restore as nearly as possible the wetland affected by the violation to its original condition immediately before the violation, and may issue any other orders permitted by law. The restoration may include the removal of fill material deposited in a wetland or the replacement of soil, sand, minerals, or plants.

(Ord. No. 49-94, § 2, 12-5-94; Ord. No. 43-04, § 25, 1-3-05)

5:219. - Assessment revaluation.

- (1) If a wetland permit is denied by the city for a proposed use, the landowner may request a revaluation of the affected property for assessment purposes to determine its fair market value under the use restrictions.
- (2) A landowner who is aggrieved by a determination, action, or inaction under this section may protest and appeal that determination, action, or inaction pursuant to the General Property Tax Act (Act 206, Public Acts of 1893), being Sections 211.1—211.157 of the Michigan Compiled Laws.

(Ord. No. 49-94, § 2, 12-5-94)

5:220. - Appeal or variance.

- (1) A decision by an administrative official of the city regarding a use permit may be appealed to the Zoning Board of Appeals, in accordance with procedures established in Chapter 55. Except as provided for in section (2), the zoning board of appeals will have the same powers and limitations as provided in Chapter 55.
- (2) A variance may be granted from the provisions of this chapter when evidence supports at least 1 of the following affirmative findings:
 - (a) That the public benefit intended to be served by this chapter will be retained, despite more disruption of the wetland than permitted.
 - (b) That the topographical features or special characteristics of the site create conditions such that strict application of the provisions of this chapter will result in less protection of the wetland.
 - (c) That the application of this chapter would deny all reasonable use of the property.
 - (d) That practical difficulties or unnecessary hardship exist or will occur as specified in Chapter 55, section 5:99 of the City Code.

(Ord. No. 49-94, § 2, 12-5-94)