

Chapter 12

ENVIRONMENT*

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ARTICLE I. IN GENERAL

Secs. 12-1—12-18. Reserved.

ARTICLE II. NUISANCES*

Sec. 12-19. Nuisance defined.

Whatever annoys, injures or endangers the safety, health, comfort or repose of the public; offends public decency; interferes with, obstructs or renders dangerous any street, highway or navigable stream; or in any way renders the public insecure in life or property is hereby declared to be a public nuisance. Public nuisances shall include, but not be limited to, whatever is declared to be a nuisance by state law or by this code or other ordinance of the city.
(Code 1972, § 35.001)

Sec. 12-20. Prohibited.

No owner or occupant, having control or management of any dwelling or any building, structure, excavation, business pursuit, matter or thing, shall create or maintain any nuisance or allow any nuisance to be created or to exist on the premises of which such person is the owner or over which he exercises control or management.
(Code 1972, § 35.002)

Sec. 12-21. Order to abate—County health officer.

Whenever any dwelling or any building, structure, excavation, business pursuit, matter or thing, or the lot upon which it is situated, or the plumbing, sewerage, light or ventilation thereof, is, in the opinion of the county health officer or other person designated by the city manager in condition or effect, dangerous or detrimental to life or health, or is likely to cause any unwholesome or noisome condition or offensive smell which, in the opinion of such officer, is dangerous or detrimental to public health, or is likely to cause sickness, the county health officer may declare the same to be a public nuisance and may order the same to be

*Charter reference—Power of city to declare and abate nuisances, § 2.1(a).

remedied, removed, abated, suspended, altered or otherwise improved or purified as the order may specify.
(Code 1972, § 35.003)

Sec. 12-22. Same—Building official.

If the building official or other person designated by the city manager shall find, on the inspection of any premises, building or structure, that the premises, building or structure is unsafe or unfit for human habitation or constitutes a danger to life or limb of any person lawfully in or on the premises, or to any other persons, or is in such an unsightly condition as to constitute a neighborhood nuisance, and does or is likely to depreciate the value of surrounding premises owned or occupied by other persons, he may declare the premises, building or structure or appendage thereto, to the extent he may testify, to be a public nuisance and may order the same to be remedied, removed, abated, altered, or otherwise improved, as the order may specify.
(Code 1972, § 35.004)

Sec. 12-23. Responsibility to abate.

The owner, the person in possession, and any other person having control of a premises shall be jointly and severally responsible to abate any nuisance existing thereon. It shall be a violation of this article for any such person to willfully refuse or neglect to comply with an order served on him as provided in this article. Where an order is ignored after 48 hours after such order has become final, it shall be presumed that such action is willful. The subsequent abatement of such nuisance by officers or agents of the city, as provided for in this article, shall not excuse such willful refusal or neglect or constitute a defense to a prosecution for such violation.
(Code 1972, § 35.005)

Sec. 12-24. Appeal from order to abate.

Should any person consider himself aggrieved by any order issued pursuant to section 12-21 or 12-22 he may, within 48 hours after such order has been served on him by the issuing officer, appeal in writing from such order to the city council. The city council shall thereupon make

such order concerning the premises as it shall deem right and reasonable, and its order shall be final.

(Code 1972, § 35.006)

Sec. 12-25. Abatement by city.

If any person shall fail or refuse to carry out any order served upon him pursuant to this article, after the expiration of the time allowed for an appeal from such order, or shall fail or refuse to carry out the order of the board of appeals, within the time fixed by the order, the city shall proceed to carry out the same through his agents, employees or contractors, and the cost of carrying out such order shall constitute a lien against the premises and shall be treated as a single lot assessment in accordance with section 32-18.

(Code 1972, § 35.007)

Secs. 12-26—12-53. Reserved.

ARTICLE III. NOXIOUS WEEDS AND UNMOWED GRASS*

Sec. 12-54. Duty of owners to cut weeds.

It shall be the duty of every person owning or occupying land within the city to cut down all Canada thistles, milk weed, wild carrots, oxeye daisies, or other unsightly or noxious weeds growing on the land once each month or as frequently as may be necessary to prevent the weeds from going to seed or becoming unsightly and failure to do so shall constitute a violation of this code.

(Code 1972, § 35.201; Ord. No. 19, § 1, eff. 3-15-1972; Ord. No. 160, eff. 5-12-1986)

Sec. 12-55. Duty of owners to mow grass.

It shall be the duty of every person or entity owning or occupying residential land or adjoining residential land within the city to mow the grass on their premises whenever the grass reaches a length of eight inches or more and failure to do so shall constitute a violation of this Code, unless

***Charter reference**—Power of city to provide for abatement for noxious weeds, § 2.1(a), (c)(4).

State law reference—Control and eradication of noxious weeds, MCL 247.61 et seq.

said person or entity shall have devised a plan for a "natural yard" and received written permission for same from the city manager or his designee.

(Code 1972, § 35.202; Ord. No. 160, § 2, eff. 5-12-1986)

Sec. 12-56. Notice to cut weeds or mow grass.

(a) It shall be the duty of the city manager or his designee to give notice once each calendar year to every owner or occupier of any lands in the city whereon uncut weeds are growing or unmowed grass is growing to cut the weeds or mow the grass. This notice shall be sent by regular mail to the owner, and to the occupant if the occupant is not the owner, and if the weeds are not cut or the grass is not mowed within seven days of the date of mailing, or if a written extension of this limit is not obtained from the code enforcement officer, then the city manager or his designee shall cause said weeds to be cut or said grass to be mowed.

(b) Subsequent to the first notice and subsequent cutting or mowing, if the noxious weeds grow up again, or the unmowed grass again reaches the length of eight inches, the city manager or his designee shall again, as many times as may be necessary, cause the weeds to be cut and/or the grass to be mowed without any further notice, and same shall be the case even if the property owner or occupant has previously in the same year taken care of a violation themselves.

(Code 1972, § 35.203; Ord. No. 160A, § 3, eff. 8-14-1995)

Sec. 12-57. City to mow grass or cut down weeds upon failure of owner to do so.

If the owner, occupier or person having charge of any land, shall refuse or neglect to comply with the notice to cut the weeds or mow the grass on or before the date stated in the notice, it shall be the duty of the city manager, or his designee, to cause all such grass and/or unsightly or noxious weeds to be cut down.

(Code 1972, § 35.204; Ord. No. 54, § 4, eff. 3-15-1972; Ord. No. 160, eff. 5-12-1986)

Sec. 12-58. Record of expenses incurred in mowing grass and in cutting down weeds.

The city manager or his designee shall keep an accurate account of the expenses incurred by him in carrying out the provision of section 12-57, and he shall make a sworn statement of such account to the city assessor.

(Code 1972, § 35.205; Ord. No. 54, § 5, eff. 3-15-1972; Ord. No. 160, eff. 5-12-1986)

Sec. 12-59. Special assessment; lien on property; collection.

When weeds or grass are mowed or cut by the city under the provisions of this article, the procedure to secure payment of the cost to the city of removal of said grass or weeds shall be as follows: A copy of the sworn statement of said account shall be sent by regular mail to the owner or occupier of the property, and if said amount is not paid within 60 days or written arrangements made with the city manager or his designee for an extension of time, then the following shall occur:

- (1) The city manager shall submit to the city council an itemized and verified statement showing expenditures of material, labor (including administrative expenses), equipment and any other related expense to the city used in the cutting or mowing of the grass or weeds; and the description of the lot, part of the lot or parcel of ground from which the weeds or grass have been mowed or cut.
- (2) The council shall examine the verified statement and, if found correct, shall direct that the expense of the mowing or cutting shall be assessed against the property as a single lot assessment in accordance with section 32-18.

(Code 1972, § 35.206; Ord. No. 54, § 6, eff. 3-15-1972; Ord. No. 160, eff. 5-12-1986; Ord. No. 160A, eff. 8-14-1995)

Secs. 12-60—12-76. Reserved.

ARTICLE IV. TREES*

Sec. 12-77. Purpose and intent.

(a) This program protects the environment and natural assets of the city and its citizens through a comprehensive tree management program, adopted to better control tree planting, tree removal, tree maintenance, and tree protection activities within the city and to better control problems of air pollution, landscape deterioration, and noise, while enhancing the beauty of our city and upholding property values.

(b) The purpose of this article is to permit management and protection of trees for the public health, safety, and the general welfare; to preserve and promote the city and its landscape resource values; and to define the power and duties of those who administer this article.

(Code 1972, § 35.501; Ord. No. 149, § 1.01, eff. 11-12-1983; Ord. eff. 2-22-1999)

Sec. 12-78. Applicability.

The provisions of this article, except as otherwise specifically stated, shall apply only to public streets, parkways, parks and other publicly owned land.

(Code 1972, § 35.502; Ord. No. 149, § 2.01, eff. 11-12-1983; Ord. eff. 2-22-1999)

Sec. 12-79. Creation and establishment of a city tree management commission.

There is hereby created and established the Portland Tree Management Commission for the city, which shall consist of seven members, who shall be appointed by the city council. Included in the seven members shall be one member of the parks and recreation board and at least one

***Charter references**—Power of City to regulate location of trees and shrubbery near street corners and intersections, § 2.1(c)(10); power to control trees and shrubs in public places and on private property when overhanging public places, § 2.1(c)(14).

State law reference—Municipal forests, MCL 324.52701 et seq.

council member. The Portland Tree Management Commission hereinafter will be referred to as the commission.

(Code 1972, § 35.503; Ord. No. 149, § 3.01, eff. 11-12-1983; Ord. eff. 2-22-1999)

Sec. 12-80. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Curb tree lawn means the property between the portion of the right-of-way used for vehicular traffic and the sidewalk or, when there is no sidewalk, it will be the legal measurement from the center of the street to the property line.

Department means the department of parks and recreation and the city "superintendent" shall mean superintendent of the department or authorized representative.

Developer means and includes all persons or organizations of any kind who shall engage in new construction or other improvements in any area of the city.

Park means and includes all city-owned areas to which the public has free access as a park.

Prohibited species means and includes any tree of popular (populus sp.), willow (salix sp.), box elder (acer negundo), silver maple (acer saccharinum), thorny locust (robina sp.), tree of heaven (ailanthus altissima), catalpa (catalpa ap.), mulberry (morus sp.), siberian elm (ulmus pumila), birch (betula sp.), and any other species so determined by the commission.

Public utility means and includes any person or company, owning or operating any pole, line, pipe, or conduit located in any public street, or over or along any public easement or right-of-way.

Street means and includes all the land lying between property lines on either side of all streets and highways and public rights-of-way in the city.

Tree means and includes trees, shrubs, bushes, and all other woody vegetation, whether potted or not.

(Code 1972, § 35.504; Ord. No. 149, § 4.01, eff. 11-12-1983; Ord. eff. 2-22-1999)

**Sec. 12-81. Tree management commission—
Terms of office, annual meeting.**

(a) Term of office of the seven appointed members shall be two members for three-year terms, two members for two-year terms, and one member for a one-year term. The term of the council member shall coincide with the councilmember's term of office, and the term of the member from the parks and recreation board shall coincide with the member's term on the board. All future appointments shall be for a three-year term.

(b) An annual meeting shall be held on the second Thursday in January with additional meetings held as often as the commission feels necessary.

(Code 1972, § 35.505; Ord. No. 149, § 5.01, eff. 11-12-1983; Ord. eff. 2-22-1999)

Sec. 12-82. Same—Powers.

(a) The tree management commission powers are all subject to city council approval.

(b) The commission shall have power and authority over all trees and shrubs planted or hereafter planted in the commission's jurisdiction.

(c) Furthermore, the maintenance of such trees and shrubs shall be subject to such rules and regulations as the commission may adopt, and the commission shall have the right to add new rules and regulations from time to time as may be required for the proper care of such trees and shrubs.

(Code 1972, § 35.506; Ord. No. 149, § 6.01, eff. 11-12-1983; Ord. eff. 2-22-1999)

Sec. 12-83. Same—Duties and responsibilities.

(a) It shall be the responsibility of the commission to develop, update annually, and administer a plan for the care, preservation, pruning, planting, replanting, removal, or disposition of trees and shrubs in public areas. The plan will be

presented to the city council along with the department's (electric, DPW, and parks and recreation) proposed budgets, and upon its acceptance and approval shall constitute the official city tree plan for the city.

(b) The commission shall consult a registered state forester whenever necessary to assist the commission in the technical matters of tree management.

(c) The commission, when requested by the city council, shall consider, investigate, make findings, report and recommend upon any special matter or question coming within the scope of its work.

(Code 1972, § 35.507; Ord. No. 149, § 7.01, eff. 11-12-1983; Ord. eff. 2-22-1999)

Sec. 12-84. Same—Operations.

(a) The commission shall choose its own officers; make its own rules, regulations, and policies; and keep a journal of its proceedings.

(b) A majority of the members shall be a quorum for the transaction of business.

(Code 1972, § 35.508; Ord. No. 149, § 8.01, eff. 11-12-1983; Ord. eff. 2-22-1999)

Sec. 12-85. Donations, gifts and bequests.

(a) The commission shall, on behalf of and with the consent of the city council, have authority to receive gifts or bequests from any person or organization for the planting and/or maintenance of trees and shrubs on any street or public property.

(b) Said gifts or bequests shall be received by the city and maintained in a special fund for the above purpose.

(Code 1972, § 35.509; Ord. No. 149, § 9.01, eff. 11-12-1983; Ord. eff. 2-22-1999)

Sec. 12-86. Reforestation.

The maintenance of trees will be done by the city and may be accomplished by order of the superintendent or the city council upon recommendation of the commission, by resolution of the

council, or by petition of parties owning a majority of the lineal footage of the fronting property along a street.

(Code 1972, § 35.510; Ord. No. 149, § 10.01, eff. 11-12-1983; Ord. eff. 2-22-1999)

Sec. 12-87. Permits.

(a) *Tree planting or removal.*

(1) No person shall hereafter plant, transplant, or remove any tree from any curb tree lawn, street, park or public place in the city, nor cause such act to be done by others without first obtaining a written permit from the office of the superintendent.

(2) Persons receiving such permits shall abide by the ordinances and policies adopted by the city.

(b) *Application for permits.* Application for permits must be made at the office of the superintendent not less than 72 hours in advance of the time the work is to be done, unless special permission is granted by the superintendent.

(c) *Permit expiration.*

(1) Each permit granted shall contain an expiration date, and the work shall be completed in the time allowed in the permit and in the manner therein described.

(2) Any permit issued shall be void if its terms are violated or if the work described is not substantially completed by its expiration date.

(3) Permit extensions will be considered if conditions warrant.

(d) *Permit contents.*

(1) Every permit issued by the superintendent shall describe work to be done or state the number of trees to be removed or planted and the location, size, species, or variety of each tree; the method of planting; and other information that the superintendent may require to insure that the work will be done properly.

(2) Whenever any tree shall be planted in conflict with the provisions of the permit,

it shall be lawful for the superintendent with the approval of the commission to cause the removal of the tree. The cost for removal and replanting shall be assessed to the permittee as provided by law in the case of special assessments.

(e) *Permit and supervision.*

- (1) In issuing any and all permits, the superintendent shall act promptly and shall keep duplicate records of all permits issued and of compliance therewith.
- (2) Permits for all tree management activities will be approved only after the superintendent of the commission makes an investigation as to the advisability of the proposed work.

(Code 1972, § 35.511; Ord. No. 149, § 11.01, eff. 11-12-1983)

Sec. 12-88. Distance from street corner, fire hydrants and tree spacings.

No tree shall be planted closer than 25 feet from of any street corner, measured from the point nearest intersecting curbs and curblines. No tree shall be planted closer than ten feet from any fire hydrant and all trees in curb lawn shall be planted from 35 feet to 40 feet between trees.

(Code 1972, § 35.512; Ord. No. 149, § 12.01, eff. 11-12-1983; Ord. eff. 2-22-1999)

Sec. 12-89. Compensation for trees destroyed or damaged.

Any city trees destroyed or damaged shall be paid for by the persons or company who is responsible for the damage. The commission shall determine the replacement value or the repair costs and determine if repair or replacement is required.

(Code 1972, § 35.513; Ord. No. 149, § 13.01, eff. 11-12-1983; Ord. eff. 2-22-1999)

Sec. 12-90. Authority of superintendent of trees on private property.

(a) The superintendent or his designated agent shall have the authorization, upon reasonable belief that a potential problem exists as defined in

section 12-77, to enter upon private property to inspect for diseases, pests, etc., and to take necessary action for their control.

(b) If the landowner has an objection to the treatment of the tree, the landowner shall have a right to a public hearing prior to any possible treatment. The hearing board shall consist of the tree management commission members.

(c) The landowner may appeal the decision of the public hearing board to the city council. (Code 1972, § 35.514; Ord. No. 149, § 14.01, eff. 11-12-1983; Ord. eff. 2-22-1999)

Sec. 12-91. Stump removal and replanting.

It shall be the responsibility of the city to remove all stumps in the curb lawn area and plant a new tree unless the location is prohibited by section 12-88.

(Code 1972, § 35.519; Ord. No. 149, § 19.01.1, eff. 11-12-1983; Ord. eff. 2-22-1999)

Secs. 12-92—12-110. Reserved.

ARTICLE V. WELLHEAD PROTECTION OVERLAY ZONE*

Sec. 12-111. Purpose.

(a) The city has determined that:

- (1) Certain groundwater underlying the city is the sole source of the city's drinking water;
- (2) Groundwater aquifers are integrally connected with the surface water, lakes, and streams which constitute significant public health, recreational and economic resources of the city and surrounding area; and
- (3) Spills and discharges of petroleum products, sewage and hazardous substances threaten the quality of the groundwater supplies and other water related re-

*State law reference—Water pollution and environmental protection act, MCL 324.8801 et seq.

sources, posing potential public health and safety hazards and threatening economic losses.

(b) The city has enacted an overlay ordinance to initiate the following actions:

- (1) Preserve and maintain existing and potential groundwater supplies, aquifers, and groundwater recharge areas of the city, and to protect them from adverse land use development or land use practices;
- (2) Preserve and protect sources of drinking water supply for public health and safety;
- (3) Conserve the natural resources of the city and the surrounding area;
- (4) Provide a level of protection of the financial investment that the city has in its drinking water supply; and
- (5) Assure that state regulations which help protect groundwater are implemented consistently when new or expanded development proposals are reviewed.

(Code 1972, § 35.601; Ord. No. 191, § 00.200, eff. 6-11-2000)

Sec. 12-112. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Aquifer means a geologic formation, group of formations or part of formation capable of storing and yielding a significant amount of groundwater to wells or springs.

Best management practices means measures, either managerial or structural, to prevent or reduce pollution inputs to soil, surface water or groundwater.

Development means the construction, reconstruction, alteration of surface or structure or change of land use or intensity of use.

Environmental contamination means the presence or release of a hazardous substance or other substance, in a quantity, which is or may become injurious to the environment, or to the public health, safety, or welfare.

Facility means any building, structure, installation or property from which there may be a discharge of hazardous substances.

Hazardous substance means a chemical or other material which is or may become injurious to the public health, safety, or welfare, or to the environment. The term "hazardous substance" includes, but is not limited to, any of the following:

- (1) Hazardous substances as defined in the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96.510, 94 State. 2767;
- (2) Hazardous waste as defined in part 111 of the State of Michigan Natural Resources and Environmental Protection Act, Public Act No. 451 of 1994 (MCL 324.11101 et seq.);
- (3) Regulated substance as defined in part 213 of the State of Michigan Natural Resources and Environmental Protection Act, Public Act No. 451 of 1994 (MCL 324.21301 et seq.);
- (4) Hazardous substance as defined in part 201 of the State of Michigan Natural Resources and Environmental Protection Act, Public Act No. 451 of 1994 (MCL 324.20101 et seq.);
- (5) Used oil; and
- (6) Animal waste or byproducts, or carcasses.

Primary containment facility means a tank, pit, container, pipe, or vessel of first containment of a hazardous substance.

Secondary containment facility means a second tank, catchment pit, or vessel that limits and contains liquid or hazardous substance leaking or leaching from a primary containment area. Containment systems shall be constructed of materials of sufficient thickness, density and composition to prevent future environmental contamination of land, groundwater or surface water.

Underground storage tank system means a tank or combination of tanks, including underground pipes connected to the tank or tanks, which is, was, or may have been used to contain an accumulation of hazardous substances, as de-

fined in part 213 of the State of Michigan Natural Resources and Environmental Protection Act, Public Act No. 451 of 1994 (MCL 324.21301 et seq.).

Used oil means any oil that had been:

- (1) Refined from crude oil;
- (2) Used; and
- (3) As a result of such use contaminated by physical or chemical impurities.

Well means a permanent or temporary opening in the surface of the earth for the purpose of removing fresh water, testing water quality, measuring water characteristics, liquid recharge, waste disposal, or dewatering purposes during construction, as defined in the Michigan Water Well Construction and Pump Installation Code, part 127, Public Act No. 368 of 1978 (MCL 333.12701 et seq.), and rules.

Wellhead protection area (WHPA) means the area around and upgradient from the public water supply wells delineated by the ten-year travel time contour capture boundary.

Wellhead protection overlay zone means the wellhead protection area as outlined on the overlay zoning map. (Code 1972, § 35.602; Ord. No. 191, § 00.202, eff. 6-11-2000)

Sec. 12-113. Principal land uses permitted; prohibited.

Proposed land use is specified by the applicant and confirmed by the city planning commission. Permitted land uses in the wellhead protection overlay zone include all those permitted uses as allowed in the underlying zoning district, except for the following:

- (1) Petroleum product manufacturing (including coal);
- (2) Commercial salvage yards and/or scrap processing;
- (3) Oil and gas drilling;
- (4) Chemical and paint manufacturing operations;
- (5) Laundry and dry cleaner operations;

- (6) Electronic equipment manufacturing operations;
- (7) Electroplating and chemical coating operations;
- (8) Sanitary landfills;
- (9) Hazardous waste treatment, storage, and disposal facilities;
- (10) Hazardous materials recycling facilities; and
- (11) High density animal feedlots.

(Code 1972, § 35.603; Ord. No. 191, § 00.201, eff. 6-11-2000)

Sec. 12-114. General provisions.

These provisions shall apply to all properties within the wellhead protection overlay zone, including private, commercial, industrial, residential and public properties, which use include the storage or generation of hazardous substances in quantities greater than 100 kilograms (approximately 220 pounds or 25 gallons) per month, and which require site plan review under provisions of this article and chapter 42, zoning. The general provisions apply to entire property parcels, providing parcel is at least partially included in the wellhead protection overlay zone.

- (1) *Groundwater protection standards.*
 - a. The project and related improvements shall be designed to protect the natural environment, including lakes, ponds, streams, wetlands, floodplains and groundwater, and to ensure the absence of an impairment, pollution, and/or destruction of water, natural resources, and the public trust therein.
 - b. Stormwater management and drainage facilities shall be designed to retain the natural retention and storage capacity of any wetland, water body, or watercourse and shall not increase flooding, or the potential for environmental contamination, on-site or off-site and shall not result in loss of the use of property by any third party.

- c. Industrial facilities with a point source discharge of stormwater shall maintain a stormwater pollution prevention plan in accordance with applicable state and federal regulations.
 - d. General purpose floor drains shall be connected to a public sewer system, an on-site holding tank, or a system authorized through a state surface water or groundwater discharge permit. If connected to the public sewer system then the volumes and concentrations of waste discharged to the floor drain may require compliance with the city's industrial pretreatment ordinance.
 - e. Sites that at any time use, store or generate substances in quantities greater than 100 kilograms that include hazardous substances shall be designed to prevent spills and unpermitted discharges to air, surface of the ground, groundwater, lakes, streams, rivers or wetlands.
 - f. State and federal agency requirements for storage, spill prevention, record-keeping, emergency response, transport and disposal of hazardous substances and polluting materials shall be met. No discharges to groundwater, including direct and indirect discharges, shall be allowed without applicable permits and approvals.
 - g. Bulk storage of pesticides shall be in accordance with applicable county, state and federal regulations.
- (2) *Aboveground storage and use areas for hazardous substances.*
- a. Primary containment of hazardous substances shall be product tight.
 - b. Secondary containment shall be sufficient to store the substance for the maximum anticipated period of time necessary for the recovery of any released substance. Products held in containers with a volume of less than 40 gallons and packaged for retail use shall be exempt from this item.
- c. Outdoor storage of hazardous substances shall be prohibited except in product-tight containers which are protected from weather, leakage, accidental damage and vandalism, including an allowance of the expected accumulation of precipitation.
 - d. Out buildings, storage rooms, sheds and pole barns which are utilized as secondary containment shall not have floor drains which outlet to soil, public sewer system, groundwater, or nearby drains or natural water bodies unless a surface water or groundwater discharge permit has been obtained pursuant to applicable county, state and federal regulation.
 - e. Areas and facilities for loading and unloading of hazardous substances as well as areas where such materials are handled and stored, shall be designed and constructed to prevent unpermitted discharges to floor drains, rivers, lakes, wetlands, groundwater, or soils.
- (3) *Underground storage tank systems.*
- a. Existing and new underground storage tanks shall be registered with the authorized state agency in accordance with applicable requirements of the U.S. Environmental Protection Agency and the Michigan Department of Environmental Quality.
 - b. Installation, operation, maintenance, closure, and removal of underground storage tanks shall be in accordance with applicable requirements of the Michigan Department of Environmental Quality. Leak detection, secondary containment, corrosion protection, spill prevention and overfill protection requirements shall be met.

- (4) *Well abandonment.* Out of service wells shall be sealed and abandoned in accordance with applicable state requirements.
- (5) *Well construction.* Section 40-47 prohibits the installation of wells within the city.
- (6) *Sites with contaminated soils and/or groundwater.*
 - a. Site plans shall take into consideration the location and extent of any contaminated soils and/or groundwater on the site, and the need to protect public health and environment.
 - b. Information must be provided regarding the type, concentration and extent of identified contamination, land use deed restrictions and any remedial action plans.
 - c. Excavation, drilling, direct-push and other earth penetration shall be sealed with grout, or with soil material exhibiting lower hydraulic permeability than the native soil.
- (7) *Construction standards.*
 - a. The general contractor, or if none, the property owner, shall be responsible for assuring that each contractor or subcontractor evaluates each site before construction is initiated to determine if any site conditions may pose particular problems for handling any hazardous substances. For instance, handling hazardous substances in proximity to water bodies or wetlands may be improper.
 - b. Hazardous substances stored on the construction site during the construction process, shall be stored in a location and manner designed to prevent spills and unpermitted discharges to air, surface of the ground, groundwater, lakes, streams, rivers, or wetlands. Any storage container volume of over 40 gallons that contains hazardous substances shall have secondary containment.
 - c. If the contractor will be storing or handling hazardous substances that require a material safety data sheet (MSDS), the contractor shall familiarize himself with the sheet, and shall be familiar with procedures required to contain and clean up any releases of the hazardous substance.
 - d. Upon completion of construction, all hazardous substances and containment systems no longer used, or not needed in the operation of the facility shall be removed from the construction site by the responsible contractor, and shall be disposed of, recycled, or reused in a proper manner as prescribed by applicable state and federal regulations.
 - e. Excavation, drilling, direct-push and other earth penetration shall be sealed with grout, or with soil material exhibiting lower hydraulic permeability than the native soil.
- (8) *Maintenance.* In areas where hazardous substances are handled, structural integrity of the building must be maintained to avoid inadvertent discharge of chemicals to soil and groundwater. Cracks and holes in floors, foundations and walls must be repaired in areas where hazardous substances are handled or stored.
- (9) *Exclusions.*
 - a. A limited exclusion from the general provisions is hereby authorized for hazardous substances as follows:
 - 1. The hazardous substance is packaged for personal or household use or is present in the same form and concentration as a product packaged for use by the general public; and
 - 2. The total excluded substances containing hazardous substances may not exceed 50 gallons or 400 pounds at any time.
 - b. A limited exclusion from the general provisions is hereby authorized for

nonroutine maintenance or repair of property in the wellhead protection overlay zone provided the uses are limited as follows:

1. The aggregate of hazardous substances may not exceed 50 gallons or 400 pounds at any time; and
2. The total use of substances containing hazardous substances may not exceed 100 gallons or 800 pounds at any time.

(Code 1972, § 35.604; Ord. No. 191, § 00.202, eff. 6-11-2000)

Sec. 12-115. Site plan review requirements.

The site plan review requirements shall be as follows:

- (1) Specify location and size of interior and exterior area and structure to be used for onsite storage, use, load/unloading, recycling, or disposal of hazardous substances;
- (2) Specify location of all underground and aboveground storage tanks for such uses as fuel storage, waste oil holding tanks, hazardous substance storage, collection of contaminated stormwater or wash water, and all similar uses;
- (3) Specify location of existing and proposed wells;
- (4) Specify location of exterior drains, dry wells, catch basins, retention/detention areas, sumps, and other facilities designed to collect, store or transport stormwater or wastewater. The point of discharge for all drains and pipes shall be specified on the site plan;
- (5) Specify areas on the site that the applicant has reason to believe are contaminated, together with a report on the status of any site remedial action plan and land use deed restrictions, if applicable; and
- (6) Submit a "City of Portland State and County Environmental Permits Checklist."

Refer to Chapter 42, article VI, Site Plan Review for additional requirements.

(Code 1972, § 35.605; Ord. No. 191, § 00.203, eff. 6-11-2000)

Sec. 12-116. Determination of applicability.

It shall be the responsibility of any person owning real property and/or owning and operating a business within the city corporate limits to make a determination of the applicability of this article as it pertains to the property and/or business under his ownership or operation and his failure to do so shall not excuse any violations of this article.

(Code 1972, § 35.606; Ord. No. 191, § 00.204, eff. 6-11-2000)

Sec. 12-117. Conditions for approval or denial.

The planning commission, upon reviewing a site plan, shall take one of the following actions:

- (1) *Approval.* If the site plan meets all the zoning chapter and related development requirements and standards, the planning commission shall record such approval and the chairman shall sign three copies of the site plan filing one in the official site plan file, forwarding one to the building official, and returning one to the applicant.
- (2) *Disapproval.* If the site plan does not meet zoning chapter and related development requirements and standards, the planning commission shall record the reasons for denial. The applicant may subsequently refile a corrected site plan under the same procedures followed for the initial submission.
- (3) *Conditional approval.* Conditions on approval of the site plan may be imposed meeting the requirements specified in the city zoning enabling act. Conditions must be:
 - a. Designed to protect natural resources, and the health, safety, and welfare

and the social and economic wellbeing of residents, neighbors, and the community as a whole;

- b. Related to the valid exercise of the police power; and
- c. Necessary to meet the purposes of the zoning chapter and related to the standards established in the zoning chapter for the land use or activity under consideration.

- (4) *Table.* If the site plan is found to be in violation of requirements, incomplete with respect to necessary information or presenting a unique situation, the planning commission may table the site plan until a public hearing can be scheduled to determine specific improvement requirements the planning commission feels are necessary but the applicant is not in agreement with.

(Code 1972, § 35.607; Ord. No. 191, § 00.205, eff. 6-11-2000)

Sec. 12-118. Exemptions and waivers.

The transportation of any hazardous substance shall be exempt from the provisions of this article; provided, the transporting motor vehicle or rail is in continuous transit, or that it is transporting substances to or from a state-licensed hazardous waste treatment, storage or disposal facility.

(Code 1972, § 35.608; Ord. No. 191, § 00.206, eff. 6-11-2000)

Sec. 12-119. Appeals.

The city council may grant a special permit if it finds by written decision that the proposed use:

- (1) Meets the intent of this article as well as its specific criteria;
- (2) Will not, during construction or thereafter, have an actual or potential adverse impact on any aquifer or recharge area in the district; and
- (3) Will not actually or potentially adversely affect an existing or potential domestic or

municipal water supply; and is consistent with existing and probable future development of surrounding areas.

(Code 1972, § 35.609; Ord. No. 191, § 00.207, eff. 6-11-2000)

Sec. 12-120. Penalties and costs.

(a) Any persons who knowingly makes any false statements, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this article, or who falsifies, tampers with, or knowingly renders inaccurate any method required under this article, shall be responsible for a municipal civil infraction and fined upon conviction not more than \$2,000.00 per occurrence.

(b) Any person who is found to have violated an order of the city or who willfully or negligently fails to comply with any provision of this article and the orders, rules and regulations and permits issued thereunder, shall be responsible for a municipal civil infraction and fined upon conviction not more than \$2,000.00 per occurrence.

(c) Each day on which a violation shall occur, or continue to occur, shall be deemed a separate and distinct offense. In addition to the penalties provided herein, the city may recover reasonable attorney's fees, court costs, court reporters' fees and other expenses of litigation by appropriate suit at law against the person found to have violated this article or the orders, rules, regulations, and permits issued thereunder.

(d) Any person violating any of the provisions of this article, shall be liable to the city for any expense, loss, or damage caused by such violation. The city shall bill the person for the costs incurred by the city (caused by the violation).

(Code 1972, § 35.610; Ord. No. 191, § 00.208, eff. 6-11-2000)