

Article XV Overlay Districts

1500 Intent

Overlay districts are created to reflect the imposition of special needs, considerations, restrictions and regulations upon land areas to reflect or create special protections or uses in the public interest. These areas are delineated on the City of Allegan Official Zoning Map maintained at city hall. Land areas included in an overlay zone must meet the regulations and requirements of the primary zoning and the special regulations of the overlay district. The City of Allegan has three (3) overlay districts listed as follows.

1500.01 HISTORIC PRESERVATION DISTRICT

This district was created by City Ordinance No. 210, adopted by the City Council on the fourteenth day of January, 1985. This district regulates the use and exterior character of certain parcels of land and buildings thereon for the purposes of preserving and maintaining the historic character and image of the City of Allegan.

1500.02 FLOODWAY/FLOOD PLAIN AREAS DISTRICT

This district reflects the areas mandated and delineated by the Federal Emergency Management Agency as being a flood hazard area prone to seasonal and temporary flooding from the Kalamazoo River and tributaries. It is the objective of the City of Allegan to protect the safety and welfare of the community; to minimize the loss of property, structure and life due to flooding; and to maintain flood systems and their absorption capabilities. Specific regulations for uses and construction in these areas are contained elsewhere in this ordinance.

1500.03 WELLHEAD PROTECTION OVERLAY ZONE

A. Findings and purpose.

1. The City Council, in considering this ordinance, determined the following:
 - a. Certain groundwater is the sole source of potable water for the City.
 - b. Groundwater is integrally connected with surface waters.
 - c. Releases of toxic or hazardous substances into surface waters or upon lands can adversely affect the quality of groundwater resulting in risk to public health and safety.
 - d. There is a significant public investment in the City's wells and water supply system, so adverse impacts on the groundwater also threaten that investment.
 - e. The economic vitality of the City depends upon the availability of potable water, so adverse impacts on the groundwater also threaten the City's economic vitality.

2. Accordingly, the purpose of this section is to:
 - a. Preserve, protect, and maintain the groundwater upon which the City depends.
 - b. Prevent and minimize the impact of existing and future uses of land on the groundwater.
 - c. Maintain and preserve natural resources, including surface and groundwater.
 - d. Assure the proper implementation of federal, state, and local drinking water, groundwater, and surface water requirements.
- B. Establishment of Wellhead Protection Overlay Zone. There is hereby created the Wellhead Protection Overlay Zone which is an overlay district extending across the City's other zoning districts and consists of the property depicted in the drawing attached as Attachment A which is incorporated into this subsection by reference. Within this overlay zone, the provisions of this section shall apply in addition to those provisions governing the zoning district in which the property is also located. Where the provisions of this section conflict with the provisions of another section, the more restrictive provisions shall apply.
- C. General provisions. The following shall apply to all uses and developments in the Wellhead Protection Overlay Zone to the extent such uses include the storage or generation of hazardous substances in quantities greater than 100 kilograms or 25 gallons during any month or which uses require site plan review under this chapter.
 1. Groundwater protection standards.
 - a. The use and the development and related improvements shall be designed to protect the natural environment, including all surface and groundwater, and to prevent, minimize, and contain releases.
 - b. Stormwater management and drainage facilities (i) shall be designed to retain the natural retention and storage capacity of any wetland, water body, or watercourse; (ii) shall not increase flooding, or the potential for environmental contamination, on-site or off-site; and (iii) shall not result in loss of the use of property by any third party.
 - c. Industrial facilities with a point source discharge of storm water shall maintain a stormwater pollution prevention plan in accordance with applicable federal and state laws, rules, and 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 or groundwater discharge permit. If connected to the public sewer system, the volumes and concentrations of waste discharged to the floor drain shall comply with the City's ordinance provisions governing use of the City's sanitary sewer system including, without limitation, any industrial pretreatment requirements.
 - e. Spill prevention programs shall be drafted and implemented.

- f. Federal and state permits, licenses, certifications, and other approvals shall be obtained and maintained, and all laws, rules, regulations, orders, and directives of governmental agencies of competent jurisdiction shall be met, including all of those applicable to the storage, handling, transportation, and disposal of hazardous substances and those applicable to spill prevention, emergency response, right-to-know, and recordkeeping.
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. Secondary containment shall also be required.
 - d. Out buildings, storage rooms, sheds, and pole barns which are utilized as secondary containment shall not have floor drains which outlet to the soil, a public sanitary or storm sewer system, groundwater, or nearby drains or natural water bodies unless a surface or groundwater discharge permit has been obtained pursuant to applicable federal and state laws, rules, and regulations.
 - 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, surface waters, groundwater, or soils.
3. Underground storage tank systems.
 - a. Existing and new underground storage tanks shall be registered with the applicable governmental agencies as required under applicable laws, rules, and regulations.
 - b. Installation, operation, maintenance, closure, and removal of underground storage tanks shall be in accordance with applicable laws, rules, and regulations including, without limitation, those concerning leak detection, secondary containment, corrosion protection, spill prevention, and overflow protection.
4. Out-of-service wells shall be sealed and abandoned in accordance with applicable laws, rules, and regulations.
5. Well Construction.
 - a. Well drilling, construction, and installation shall only be performed by well drillers registered by the State of Michigan.

- b. Well construction shall be completed in accordance with the Michigan Water Well Construction and Pump Installation Code, Part 127, 1978 P.A. 168, as amended, and the rules promulgated pursuant thereto, and shall include fully grouting the entire length of the well casing.
6. Sites with contaminated soils and/or groundwater.
 - a. Site plans shall clearly delineate and 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 and shall be performed only in accordance with appropriate “due care” plans for the site.
7. Construction standards.
 - a. The property owner and the developer shall assure that each contractor or subcontractor handles any hazardous substances in a manner appropriate for the site. For instance, handling hazardous substances in proximity to any surface waters, any well, any drain or storm sewer, or any sanitary sewer may be improper.
 - b. Hazardous substances stored on the construction site during construction shall be stored in a location and manner designed to prevent spills and unpermitted discharges to air, soils, groundwater, and surface waters. Any storage container volume of over 40 gallons that contains hazardous substances shall have secondary containment.
 - c. Any storing or handling of hazardous substances that require a material safety data sheet (MSDS) shall comply with all requirements therefor and related thereto.
 - 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 site and shall be disposed of, recycled, or reused in accordance with applicable laws, rules, and 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 and shall be performed only in accordance with appropriate “due care” plans for the site.
8. In areas where hazardous substances are handled, structural integrity of the building must be maintained to avoid inadvertent releases to soils, surface waters,

or groundwater. Cracks and holes in floors, foundations, and walls must be repaired in areas where hazardous substances are handled or stored.

9. The general provisions of this subsection C. shall not apply to:
 - a. A use or site where the hazardous substances consist only of those packaged for personal or household use or those present in the same form and concentration as a product packaged for use by the general public and to the extent the total quantity of such excluded hazardous substances does not exceed the lesser of fifty (50) gallons or four hundred (400) pounds at any time.
 - b. The hazardous substances are for non-routine maintenance or repair of property, and the uses of the hazardous substances are limited as follows:
 - (i) The aggregate of hazardous substances may not exceed the lesser of fifty (50) gallons or four hundred (400) pounds at any time.
 - (ii) The total use of substances containing hazardous substances may not exceed one-hundred (100) gallons or eight hundred (800) pounds at any time.

D. Site plan approval required. In addition to the other circumstances in which site plan approval is required under this chapter, site plan approval by the Planning Commission in accordance with this section shall be required for any development or change of use on property within the Wellhead Protection Overlay Zone. In addition to the information required by Section 1800, the site plan application shall contain the following information. In addition to its options available under Section 1800, the Planning Commission may impose conditions upon its approval of any site plan submitted pursuant to this subsection, which conditions are related to protecting surface and groundwaters from contamination.

1. Specify the location, size, and materials comprising interior and exterior area(s) and structure(s) to be used for on-site storage, use, load/unloading, recycling, or disposal of hazardous substances.
2. Specify location, size, and materials comprising all underground and above-ground 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 the location and use of existing and proposed wells.
4. Specify the 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.

6. Specify the hazardous materials to be used, stored, handled or disposed of on the site, including the quantity and purpose of any use. Detail the locations of such use and the plans for spill prevention and containment.
7. If the site is a “facility” as defined in Part 201 of Michigan’s Natural Resources and Environmental Protection Act, 1994 P.A. 451, as amended, include a copy of the “due care plan, “ if any, for the site.

E. Applicability.

1. It is the burden of the property owner and developer of property within the Wellhead Protection Overlay Zone to demonstrate the inapplicability of this section or show an exemption from the requirements of this section.
2. This section shall not be applicable to the transportation of hazardous substances by motor vehicle or rail in continuous transport across property in the Wellhead Protection Overlay Zone.
3. This section shall not apply to dewatering wells temporarily used during construction.

F. No Variances or Appeals. No use variance can be granted from the provisions in this section. There shall be no appeal from any decision made by the City Council under this section, except those judicial remedies as may be available in the Allegan County Circuit Court under applicable Michigan law.

G. Violations and penalties. A violation of this section shall be a municipal civil infraction, and any person found responsible for such a violation shall be punished by a fine of not less than \$100 and not more than \$2,500 and shall pay the costs of prosecution. Each act of violation and each day a violation occurs or continues shall constitute a separate offense. The penalty provided herein shall be in addition to the abatement of the violating condition, any injunctive relief, the revocation of any permit, license, or certificate (including, without limitation, a certificate of occupancy or any building permit). A violation of this section shall constitute a nuisance *per se*. To the extent not otherwise prohibited by law, persons violating this section shall be liable for any damages to the groundwater, the City drinking water, the City water supply system, and any surface waters which result from such violation including, without limitation, the costs incurred by the City to investigate such violation and to prevent or minimize damages resulting from it.