

Chapter 14 ENVIRONMENT

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ARTICLE II. WETLANDS NOTIFICATION ORDINANCE

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Sec. 14-19. 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:

Generalized Wetlands Map means the current U.S. fish and Wildlife Service National Wetlands Inventory Maps for the city.

Jurisdictional wetland means an area that meets the definitional requirements for wetlands as determined by the U.S. Army Corps of Engineers.

Jurisdictional wetland determination means a delineation of jurisdictional wetland boundaries by the

U.S. Army Corps of Engineers, as required by section 404 of the Clean Water Act, 33 USC 1344, as amended.

Regulated activity means any activity which will, or which may reasonably be expected to, result in the discharge of dredged or fill material into waters of the United States excepting those activities exempted in section 404 of the Federal Clean Water Act.

Wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

The term "wetlands," generally, includes swamps, marshes, bogs, and similar areas. The ecological parameters for designating wetlands include hydric soils, hydrophytic vegetation, and hydrological conditions that involve a temporary or permanent source of water to cause soil saturation.

(Ord. No. 67, § 1-2)

Sec. 14-20. Purpose.

- (a) The wetlands in the city are indispensable and fragile natural resources with significant development constraints due to flooding, erosion, and soils limitations. In their natural state, wetlands serve man and nature. They provide habitat areas for fish, wildlife and vegetation; water quality maintenance and pollution control; flood control; erosion control; natural resource education; scientific study; and open space and recreational opportunities. In addition, the wise management of forested wetlands is essential to the economic well being of many communities within the state.
- (b) Nationally, a considerable number of these important natural resources have been lost or impaired by draining, dredging, filling, excavating, building, pollution and other acts. Piecemeal or cumulative losses will, over time, destroy additional wetlands. Damaging or destroying wetlands threatens public safety and the general welfare.
- (c) The purpose of this article is to promote wetlands protection, while taking into account varying ecological, economic development, recreational and aesthetic values. Activities that may damage wetlands should be located on upland sites to the greatest degree practicable as determined through a permitting process. This article is based on the findings of the 2015 Greater Berrien Comprehensive Plan and the official Department of Natural Resources Rules for Environmental Planning Criteria (chapter 391-3-16, as amended).

(Ord. No. 67, § 1-1)

Sec. 14-21. Establishment of the wetlands protection district.

- (a) The wetlands protection district is hereby established which shall correspond to all lands within the jurisdiction of the city that are mapped as wetland areas by the U.S. Fish and Wildlife Service National Wetlands Inventory Maps. This map shall be referred to as the Generalized Wetlands Map and is hereby adopted by reference and declared to be a part of this article, together with all explanatory matter thereon and attached thereto.
- (b) The Generalized Wetlands Map does not represent the boundaries of jurisdictional wetlands within the city and cannot serve as a substitute for a delineation of wetland boundaries by the U.S. Army Corps of Engineers, as required by section 404 of the Clean Water Act, as amended. Any local government action under this article does not relieve the landowner from federal or state permitting requirements.

(Ord. No. 67, § 1-3)

Sec. 14-22. Protection criteria.

Requirement for local permit: No regulated activity will be permitted within the wetlands protection district without a permit from the city. If the area proposed for development is located within 50 feet of a wetlands protection district boundary, as determined by the building official or authorized local government representative using the Generalized Wetlands Map, a U.S. Army Corps of Engineers determination shall be required. If the U.S. Army Corps of Engineers determines that wetlands are present on the proposed development site, the local permit will not be granted until a section 404 permit or letter of permission is issued by the U.S. Army Corps of Engineers.

(Ord. No. 67, § 1-4)

Sec. 14-23. Permitted uses.

The following uses shall be allowed as of right within the wetlands protection district to the extent that they are not prohibited by any other ordinance or law, including laws of trespass, and provided they do not require structures, grading, fill, draining, or dredging except as provided herein. (The activities listed in this section are exempted from section 404 regulations provided they do not have impacts on a navigable waterway that would necessitate acquisition of an individual 404 permit. However, under [section 10](#) of the Rivers and Harbors Act, a permit may be required in some circumstances.)

- (1) Conservation or preservation of soil, water, vegetation, fish and other wildlife, provided it does not affect waters of the state or of the United States in such a way that would require an individual 404 permit.
- (2) Outdoor passive recreational activities, including fishing, bird watching, hiking, boating, horseback riding, and canoeing.
- (3) Forestry practices applied in accordance with best management practices approved by the state forestry commission and as specified in section 404 of the Clean Water Act.
- (4) The cultivation of agricultural crops. Agricultural activities shall be subject to best management practices approved by the state department of agriculture.
- (5) The pasturing of livestock, provided that riparian wetlands are protected, that soil profiles are not disturbed and that approved agricultural best management practices are followed.
- (6) Education, scientific research, and nature trails.

(Ord. No. 67, § 1-5)

Sec. 14-24. Prohibited uses.

The following uses are not permitted within the wetlands protection district:

- (1) Receiving areas for toxic or hazardous waste or other contaminants;
- (2) Hazardous or sanitary waste landfills.

(Ord. No. 67, § 1-6)

Sec. 14-25. Site plans required for permit; permit void if not begun in six months.

- (a) Any applications for building permits shall be accompanied by two site plans drawn to scale showing the actual dimensions of the lot to be built upon, the size and location of the proposed buildings, and any proposed land disturbing activities as may be essential for determining whether the provisions of

this article are being observed. The required information of this subsection is required on the site plan before the site plan is considered by the building official or the authorized local government representative and any local permits are approved.

- (b) Any building permit shall become void if the work involved has not begun within six months after the date of issuance of the permit or if the work or development authorized by such permit is suspended or abandoned for a period of six months after the work of development is commenced; provided that extensions of time and periods not exceeding six months each may be allowed in writing by the building official or the authorized local government representative.

(Ord. No. 67, § 1-7)

Sec. 14-26. Activities to comply with site plan.

All development activities or site work conducted after approval of the site plan shall conform to the specifications of said site plan. The site plan may be amended only with the approval of the building official or the authorized local government representative.

(Ord. No. 67, § 1-8)

Sec. 14-27. Enforcement authority.

The building official or the authorized local government representative is hereby established as the administrator of this article.

(Ord. No. 67, § 1-9)

Sec. 14-28. Appeals.

Appeals on decisions on permit applications made by the building official or the authorized local government representative may be made to the city council, but only after review and recommendation of the Greater Berrien Planning Commission. The appeal must be made within ten days of the decision rendered by the building official or the authorized local government representative. A public hearing shall be held for such administrative appeals. Public announcement of the hearing shall be printed in the city official legal organ at least 15 but not more than 45 days prior to the hearing. Any person may offer testimony at the hearing. The decision of the city council may be appealed to a court of competent jurisdiction, as provided in state law.

(Ord. No. 67, § 1-10)

Sec. 14-29. Duration of permit validity.

- (a) If construction described in the development permit has not commenced within six months from the date of issuance, the permit shall expire.
- (b) If construction described in the development permit is suspended or abandoned after work has commenced, the permit shall expire six months after the date that work ceased.

(Ord. No. 67, § 1-11)

Sec. 14-30. Monitoring and enforcement.

The building official or the authorized local government representative shall have authority to enter

upon privately owned land for the purpose of performing their duties under this article.

- (1) The building official or the authorized local government representative shall have authority to enforce this article; issue permits thereunder; and address violations or threatened violations thereof by issuance of violation notices, administrative orders, and civil and criminal actions. All costs, fees, and expenses in connection with such actions may be recovered as damages against the violator.
- (2) Law enforcement officials or other officials having police powers shall have authority to assist the building official or the authorized local government representative in enforcement.
- (3) The building official or the authorized local government representative shall have authority to issue cease and desist orders in the event of any violation of this article. Cease and desist orders may be appealed to a court of competent jurisdiction, as provided in state law.

(Ord. No. 67, § 1-12)

Sec. 14-31. Penalties.

- (a) Any person who commits, takes part in, or assists in any violation of any provision of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided by law.
- (b) When a building or other structure has been constructed in violation of this article, the violator may be required to remove the structure at the discretion of the building official or the authorized local government representative.
- (c) When removal of vegetative cover, excavation or fill has taken place in violation of this article, the violator may be required to restore the affected land to its original contours and to restore vegetation, as far as practicable, at the discretion of the building official or the authorized local government representative. Such actions shall be closely coordinated with U.S. Army Corps of Engineers' supervision.
- (d) If the building official or the authorized local government representative discovers a violation of this article that also constitutes a violation of provisions of the Clean Water Act as amended, the building official or the authorized local government representative may issue written notification of the violation to the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers and the landowner.
- (e) Suspension, revocation. The building official or the authorized local government representative may suspend or revoke a permit if it finds that the applicant has not complied with the conditions or limitations set forth in the permit or has exceeded the scope of the work set forth in the permit.

(Ord. No. 67, § 1-13)

Sec. 14-32. Judicial review.

All decisions of the city council concerning denial, approval, or conditional approval of a permit shall be reviewable in the proper courts as provided by state law.

(Ord. No. 67, § 1-14)

Sec. 14-33. Amendments.

This article and the water resources districts map may from time to time be amended in accordance with procedures and requirements in the general statutes and as new information concerning the protected environmentally sensitive areas become available.

(Ord. No. 67, § 1-15)