

ORDINANCE NO. 8-500

AN ORDINANCE TO PROVIDE FOR AND REGULATE THE PROTECTION OF GROUNDWATER RESOURCES IN THE CITY OF ISHPEMING

THE CITY OF ISHPEMING ORDAINS:

Section 8-501. PURPOSE

The City of Ishpeming has determined that:

1. Certain groundwater underlying the City is a 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.
3. Spills and discharges of petroleum products, sewage and hazardous substances threaten the quality of the groundwater supplies and other water related resources, posing potential public health and safety hazards and threatening economic losses.

Therefore, the City of Ishpeming has enacted this 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.
5. Assure that state regulations which help protect groundwater are implemented consistently when new or expanded development proposals are reviewed.

Section 8-502. DEFINITIONS

1. **AQUIFER:** Means a geologic formation, group of formations or part of a formation capable of storing and yielding a significant amount of groundwater to wells or springs.
2. **BEST MANAGEMENT PRACTICES:** Means measures, either managerial or structural, to prevent or reduce pollution inputs to soil, surface water or groundwater.
3. **DEVELOPMENT:** Means the construction, reconstruction, or alteration of surface or structure or change of land use or intensity of use.
4. **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.
5. **FACILITY:** Means any building, structure, installation or property from which there may be a discharge of a hazardous substance.
6. **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, each of the following:

- a. Hazardous Substances as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96.510, 94 State. 2767.
 - b. Hazardous Waste as defined in Part 111 of the State of Michigan Natural Resources and Environmental Protection Act, 1994 Public Act 451, as amended.
 - c. Regulated Substance as defined in Part 213 of the State of Michigan Natural Resources and Environmental Protection Act, 1994 Public Act 451, as amended.
 - d. Hazardous Substance as defined in Part 201 of the State of Michigan Natural Resources and Environmental Protection Act, 1994 Public Act 451, as amended.
 - e. Used oil.
 - f. The waste or discharge produced by animal or mineral food processing plants and feedlots.
7. PRIMARY CONTAINMENT FACILITY: Means a tank, pit, container, pipe, or vessel of first containment of a hazardous substance.
 8. 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 environmental contamination of land, groundwater or surface water.
 9. 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 defined in Part 213 of the State of Michigan Natural Resources and Environmental Protection Act, 1994 Public Act 451, as amended.
 10. USED OIL: Means any oil which has been (a) refined from crude oil, (b) used, and (c) as a result of such use is contaminated by physical or chemical impurities.
 11. 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, Act 368 of the Public Acts of 1978, as amended, and rules.
 12. WELLHEAD PROTECTION AREA (WHPA): Means the area around and up gradient from the public water supply wells delineated by the ten-year travel time contour capture boundary.
 13. WELLHEAD PROTECTION OVERLAY ZONE: Means the Wellhead Protection Area as outlined on the overlay zoning map.

Section 8-503. PRINCIPAL LAND USES PERMITTED, PROHIBITED

Proposed land use is specified by applicant and confirmed by the City Planning

Commission. Permitted land uses in the Wellhead Protection Overlay Zone include all permitted uses as allowed in the City Zoning Ordinance, except for the following, which are prohibited:

- a. Petroleum product manufacturing (including coal).
- b. Commercial salvage yards and/or scrap processing.
- c. Oil and gas drilling.
- d. Vehicle maintenance services, including public and private garages.
- e. Chemical and paint manufacturing operations.
- f. Laundry and dry cleaner operations.
- g. Electronic equipment manufacturing operations.
- h. Electro-plating and chemical coating operations.

Section 8-504. 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 includes 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 ordinance or the Zoning Ordinance of the City of Ishpeming. The General Provisions apply to entire property parcels, providing a parcel is at least partially included in the Wellhead Protection Overlay Zone.

1. Groundwater Protection Standards.

- a. Every building and structure and all related improvements shall be designed to protect the natural environment, including lakes, ponds, streams, wetlands, flood plains and groundwater, and to ensure the absence of an impairment, pollution, and/or destruction of water, natural resources, and the public trust therein.
- b. Storm water 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 storm water shall maintain a Storm Water 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 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. Above-ground 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 or groundwater discharge permit has been obtained pursuant to applicable county, state and federal 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, 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 overflow 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.

- a. Well drilling, construction and installation shall only be performed by State of Michigan Registered Well Drillers.
- b. Well construction shall be completed in accordance with Part 127 of Act 368 of the Public Acts of 1978, as amended, and the rules and regulations issued thereunder.
- c. Well construction shall include fully grouting the entire length of the well casing in accordance with Part 127 of Act 368 of the Public Acts of 1978, as amended, and the rules and regulations issued thereunder.

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 the 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 generating, handling, disposal or removal of any hazardous substance. 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 a hazardous substance 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 him/herself 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 by the owner of the property if the contractor fails or refuses to do so, 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.
 - 2. The total excluded substances containing hazardous substances may

not exceed fifty (50) gallons or four hundred (400) pounds at any time.

- b. A limited exclusion from the General Provisions is hereby authorized for non-routine 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 fifty (50) gallons or four hundred (400) pounds at any time
 2. The total use of substances containing hazardous substances may not exceed one hundred (100) gallons or eight hundred (800) pounds at any time.

Section 8-505. SITE PLAN REVIEW REQUIREMENTS

1. Every site plan for a parcel of land located in or abutting the Wellhead Protection Overlay Zone shall specify location and size of interior and exterior area(s) and structure(s) to be used for onsite storage, use, load/unloading, recycling, or disposal of hazardous substances.
2. Specify location of all underground and above ground storage tanks for such uses as fuel storage, waste oil holding tanks, hazardous substance storage, collection of contaminated storm water 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 storm water 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. Submit "City of Ishpeming State and County Environmental Permits Checklist".
7. Refer to Site Plan Review of the Zoning Ordinance of the City of Ishpeming for additional requirements.

Section 8-506. DETERMINATION OF APPLICABILITY

It shall be the responsibility of every 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 ordinance as it pertains to the property and/or business under his or her ownership or operation, and his or her failure to do so shall not excuse any violations of this ordinance.

Section 8-507. CONDITIONS FOR APPROVAL OR DENIAL OF SITE PLAN

The Zoning Administrator, upon reviewing a site plan for a parcel of land located within or abutting the Wellhead Protection Overlay Zone, shall take one of the following actions:

1. Approval - If the site plan meets all the Zoning Ordinance and related development requirements and standards and the requirements of this ordinance, the Zoning Administrator shall record such approval and shall sign three copies of the site plan, filing one in the official site plan file, forwarding one to the Building Inspector, and returning one to the applicant.

2. Disapproval - If the site plan does not meet Zoning Ordinance and related development requirements and standards or the requirements of this Ordinance, the Zoning Administrator 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 Ordinance or this ordinance, or both. All conditions must be:
 - a. designed to protect natural resources and the health, safety, and welfare of residents, neighbors, and the community as a whole;
 - b. related to the valid exercise of the police power;
 - c. necessary to meet the purposes of the Zoning Ordinance and this ordinance and related to the standards established in the Zoning Ordinance and this ordinance 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 Zoning Administrator may table the site plan until a public hearing can be scheduled to determine specific improvement requirements the Zoning Administrator feels are necessary but the applicant is not in agreement with.

Section 8-508. EXEMPTIONS AND WAIVERS

The transportation of any hazardous substance shall be exempt from the provisions of this ordinance 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.

Section 8-509. APPEALS

1. A property owner aggrieved by any action, order, or decision of the Zoning Administrator may appeal such decision or order to the City of Ishpeming Board of Zoning appeals, under the procedure set forth in Section 30 of the City of Ishpeming Zoning Ordinance. In hearing such appeal, the Board of Zoning Appeals shall follow the administrative standards set forth at Section 26 of the City of Ishpeming Zoning Ordinance, but shall be guided by the intent and requirements of both the Zoning Ordinance and this ordinance. The provisions of this section shall also apply to a public hearing held under Section 8-507(4).
2. No action may be taken or decision may be made by the Board of Zoning Appeals unless it finds, at a minimum, that the construction, use or activity contemplated by a site plan:
 - a. will not, during construction or thereafter, have an actual or potential adverse impact on any aquifer or recharge area in the district; and
 - b. will not actually or potentially adversely affect an existing or potential domestic or municipal water supply; and
 - c. is consistent with existing and probable future development of surrounding areas.

Section 8-510. PENALTIES AND COSTS

1. Falsifying Information.

Any person 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 ordinance, or who falsifies, tampers with, or knowingly renders inaccurate any method required under this ordinance, shall be guilty of a misdemeanor, punishable by a fine not to exceed five hundred (\$500.00) dollars or by imprisonment in the Marquette County Jail for a period not to exceed ninety (90) days, or by both such fine and imprisonment, per each occurrence.

2. Violations.

Any person who is found to have violated any provision of this ordinance or any order, rule or regulation or any permit issued hereunder shall be guilty of a misdemeanor, punishable by a fine not to exceed five hundred (\$500.00) dollars or by imprisonment in the Marquette County Jail for a period not to exceed ninety (90) days, or by both such fine and imprisonment, per each occurrence.

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 ordinance or any order, rule, regulation, or permit issued hereunder.

Any person or persons violating any of the provisions of this ordinance shall be liable to the City for all expense, loss, or damage caused by such violation. The City shall bill the person or persons for the costs incurred by the City caused by the violation.

Section 8-511. SEVERABILITY

If any provision, paragraph, word, section or article of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, and chapters shall not be affected and shall continue in full force and effect.

This ordinance shall become effective upon publication.

Adopted: March 6, 2002
Amended: May 1, 2002