

CITY OF KALAMAZOO

ORDINANCE NO. 1825

AN ORDINANCE TO CREATE APPENDIX A: CHAPTER 3, SECTION 3.5,
WELLHEAD PROTECTION OVERLAY

THE CITY OF KALAMAZOO ORDAINS:

Section 1. Chapter 3, section 3.5 of Appendix A of the Kalamazoo Code of Ordinances is hereby created to read as follows:

A. Intent / Purpose

The intent of the City of Kalamazoo Wellhead Protection Overlay Ordinance is to safeguard the health, safety, and welfare of persons served by the City of Kalamazoo Public Water Supply System by protecting groundwater that serves as drinking water, thus providing a safe potable water supply now and for future generations.

B. Definitions

The following definitions apply to this ordinance:

Best Management Practices (BMP) means the best available methods, activities, maintenance procedures, technologies, operating methods or management practices for preventing or reducing the quantity of Regulated Substances entering groundwater and surface water from a particular land use activity.

Capture Zone means that area through which water travels below the surface and reaches a City well or wellfield within a specified period of time (under specified conditions set by the MDEQ). This ordinance addresses both a one-year and ten-year time-of-travel capture zone.-

City means the City of Kalamazoo.

Groundwater means the water below the land surface in a zone of saturation, excluding those waters in underground piping for water, wastewater, or stormwater distribution/collection systems.

Michigan Department of Environmental Quality (MDEQ): shall include its predecessors and successors.

Performance Standards means those BMPs and engineering controls contained within the document “City of Kalamazoo Performance Standards for Groundwater Protection within Wellhead Protection Capture Zones and Stormwater Quality Management.”

RCRA means the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580; 42 U.S.C. 6901 et seq.), as amended.

Regulated Substances shall include:

1. Substances for which there is a material safety data sheet (MSDS), as established by the United States Occupational Safety and Health Administration, and the MSDS cites possible health hazards for said substance;
2. Hazardous Waste, as defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended;
3. Hazardous Substance, as defined by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) when the hazardous substance is the focus of remedial or removal action being conducted under CERCLA in accordance with the U.S. EPA regulations;
4. Radiological materials; and
5. Biohazards.

Regulated Substances shall not, however, include:

1. Substances in an amount equal or less than 2200 pounds that are in an area capable of fully containing a total release of said substance or an area that would drain the substance to a wastewater treatment system, excluding septic tanks systems, capable of treating the released substance(s);
2. Substances in a parked or stopped vehicle in transit, provided the vehicle is stopped or parked for less than 72 hours;
3. Substances, such as gasoline or oil, in operable motor vehicles or boats so long as used solely for the operation of the vehicle, but not the tanker portion of a tank truck;

4. Pressurized gases such as chlorine, propane, hydrogen, and nitrogen when in a chemical storage tank;
5. Refrigerants contained within equipment and used for on-site air cooling or in household appliances;
6. Substances contained within electrical utility transformers/switches;
or
7. Substances used in construction for which all necessary permits have been obtained, and in accordance with the "Performance Standards."

Release means the spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of one or more regulated substances upon or into any land or water within a capture zone. Release includes, without limitation, leakage of such materials from failed or discarded containers or storage systems and disposal of such materials into any on-site sewage disposal system, dry-well, catch basin, or landfill. The term "release" when used and applied herein does not include:

1. Disposal in accordance with all applicable legal requirements, including those in RCRA and CERCLA, of hazardous wastes in a Facility that has received and maintained all necessary legal approvals for that purpose;
2. Disposal of any substance in compliance with applicable legal requirements, including without limitation, the terms and provisions of a valid municipal, state, or federal permit;
3. Disposal, in accordance with all legal requirements, of any substance to a sanitary sewer system that has received and maintained all necessary legal approvals for that purpose;
4. Disposal, in accordance with all legal requirements, of "sanitary sewage" to subsurface sewage disposal systems as defined and permitted by the State of Michigan or Kalamazoo County Environmental Health;
5. A release for which there is no obligation to report under Federal, State, or other local regulations that occurs on an impervious ground surface (e.g. building floor or concrete driveway) that is effectively cleaned up before reaching permeable ground (e.g. unpaved), a dry well, a storm sewer, or surface water body; or

6. The application of agricultural chemicals, fertilizers, mineral acids, organic sulfur compounds, etc. as used in routine agricultural operations and applied under the “Generally Accepted Agricultural Management Practices,” and consistent with label directions approved by the United States Environmental Protection Agency or the Michigan Department of Agriculture.

Spill Contingency Plan: A written site-specific plan conforming to the specifications contained in the “Performance Standards,” including the documentation of general site operations; Regulated Substance storage areas; potential for releases of Regulated Substances and an analysis of the potential destination of such releases; and procedures to be followed in the event of a release.

Wellhead: is any individual well used for supplying water.

C. Responsibility for Administration

The City’s Department of Public Services (“Department”) shall administer, implement, and enforce the provisions of this Section. Any powers granted or duties imposed upon the Department may be delegated in writing by the Department Director to third parties as said Director deems appropriate.

D. Prohibitions within Ten (10) Year Time-of-Travel (TOT) Capture Zone.

Within a ten-year time-of-travel capture zone, no person shall, nor cause or allow another over whom he or she has control to:

1. Release or allow the release of a Regulated Substance, alone or in combination with other materials (such as fill) in such a manner that the substance gains access to the ground, to a storm sewer or surface water or in any other way such that the substance might enter the groundwater if doing so creates a reasonable likelihood of an adverse impact upon the groundwater;
2. Possess a Regulated Substance, including fuels (e.g. gasoline, diesel, kerosene, etc.) exceeding fifty-five (55) gallons aggregate for liquid materials, or four-hundred forty (440) pounds aggregate for dry weights, unless prepackaged and intended for retail sale or for commercial or household use (such as salt used in water softeners, fertilizers, pesticides, herbicides, etc.), or unless engineering controls are designed and implemented consistent with the City’s “Performance Standards,” BMPs, the City’s Fire Code, and applicable State of Michigan laws and regulations. The following, however, shall not be considered prohibited activities:

- a. The use of underground oil and water separators and stormwater treatment structures which meet the conditions of the "Performance Standards;
 - b. The use of current hazardous waste storage areas at RCRA permitted facilities;
 - c. Laboratory activities, consistent with all Federal, state, and local regulations.
3. Operate a scrap and recycling yard;
4. Operate a sanitary / solid waste landfill;
5. Use oil, waste oil or similar liquid petroleum-type products for dust suppression;
6. Install a private water well for the purpose of drinking water or irrigation if, in the determination of the Department, public water service is reasonably available;
7. Install or use a private water well not installed for the purpose of drinking water or irrigation unless it is determined by the Department that the well owner (or representative) has scientifically demonstrated that the well will not cause an adverse impact to the public water supply;
8. Use any private well if said use is likely to cause an adverse impact to the public water supply;
9. Excavate, extract, or mine sand, gravel, bedrock or any other type of earth if a permit or site plan review is required unless the property owner has established, to the Department's satisfaction, that the activity will not cause an adverse impact to the public water supply;
10. Allow the presence of an abandoned well, which is defined as any well which has either been discontinued for more than one year, is in such disrepair that its continued use for obtaining groundwater is impractical, has been left uncompleted, is a threat to groundwater resources, or is a health or safety hazard. A well shall not be considered abandoned if it has been properly plugged pursuant to The Groundwater Quality Control Act, Part 127, 1978 PA 368; or

11. Drill for natural gas or petroleum, whether for exploration, production or otherwise.

E. Prohibitions Within One (1) Year Time-of-Travel (TOT) Capture Zone.

Within a one-year time-of-travel capture zone, no person shall, nor cause or allow another, over whom he or she has control, to:

1. Engage in any activity prohibited in the 10-Year TOT Capture Zone;
2. Possess Regulated Substances, including fuels (e.g. gasoline, diesel, kerosene, etc.), exceeding fifty-five (55) gallons aggregate for liquid materials or four-hundred forty (440) pounds aggregate for dry weights, such as sometimes occurs with activities such as fueling service establishments, motor vehicle repair, body repair; trucking or bus terminals; primary metal product industries; metal plating, polishing, etching, engraving, anodizing or similar processes; lawn, garden, pesticide and agricultural services with on-site bulk mixing or blending of fertilizers, pesticides and other industry-related chemicals for commercial application; and dry cleaning facilities with on-site cleaning service; or
3. Construct or replace any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of domestic or non-domestic wastewater.

F. Well Isolation Distance Restrictions

Within either capture zone, no person shall cause or allow uses or activities that would violate the terms and conditions set forth in the document "Minimum Well Isolation Distances (From Contamination Sources and Buildings), Part 127, Act 368, P.A. 1978 and Act 399, PA 1976" as prepared by the MDEQ, Water Division, as it may be amended, which, for the purpose of this section, shall be deemed to apply to all persons, unless approved in writing by the Department Director or his or her designee.

G. Determination of Capture Zone Boundaries

In determining whether a property is within a capture zone, the following shall apply:

1. Where a capture zone line that delineates the boundary of one or more zones passes through a property, the entire parcel shall be subject to the restrictions that apply to the more restrictive zone.

2. The Environmental Services Superintendent, or his or her designee, shall have the authority to interpret the capture zone and determine where the boundaries of the different zones fall, if in dispute. Said interpretation may be appealed to the Director.

H. Continuation of Existing Non-Conforming Facilities and Land Uses

1. Existing nonconformities for land uses/activities will be allowed within a capture zone only if in accordance with Chapter 9 “Nonconformities” of Appendix A (Zoning Ordinance) of the City of Kalamazoo Code of Ordinances.
2. In addition, the facility must meet the requirements of the “Performance Standards” and/or shall prepare a Spill Contingency Plan within two years from the adoption date of this ordinance or one year from the date of contact from the City regarding recognition of Non-Conforming status, whichever is sooner. The City reserves the right to approve / determine which option(s) is to be implemented for the specific circumstance.

I. Requirements Regarding Release of Regulated Substance

1. Upon discovery of a release within a capture zone, the owner and person in control of the property on which a release occurred, as well as the person responsible for the release, shall take appropriate reasonable actions to mitigate the potential impact of the release on groundwater and remediate the release. Remediation must be conducted in a timely manner and in accordance with applicable law. Wastes generated during remediation of a Regulated Substance release must be handled in accordance with all applicable legal requirements. Storage of these materials for a period of greater than ninety (90) days must be reported to, and approval obtained from, the Environmental Services Superintendent or designee by said persons.
2. All releases shall be documented in writing and mailed to the Department within ten (10) business days of said incident. Initial release notification shall include, at a minimum, the following:
 - a. Location of the release (name, address, and phone);
 - b. Reporting party’s name, address, and phone (if different from above);
 - c. Emergency contact and phone;

- d. Description of the nature of the incident, including date, time, location, and cause of the incident; type, concentration, and volume of substance(s) released;
 - e. Map showing exact release location, and relevant site features (i.e. paved area, storm sewer catch basins/inlets, water features, etc.), scale, and north arrow;
 - f. All measures taken to clean up the release; and
 - g. All measures proposed to be taken to reduce and prevent any future release.
3. The Environmental Services Superintendent or his/her designee shall use the Regulated Substance Release Report to determine if and where any additional investigative work needs to be completed to assess the potential impact of the release. The owner or operator shall retain a copy of the written notice for at least three years.

J. Inactive Operations

This section applies to any business or other operation (“operation”) that is inactive, is within a capture zone, and at which there are regulated substances. For purposes of this section, “inactive” is defined to include those businesses / operations that are unoccupied and have no activity for at least thirty (30) days. Those who own or control such an inactive operation shall do the following:

1. Within 7 days of the operation becoming inactive, take such steps as necessary to secure the site such that vandals and all other persons cannot gain access to the regulated substances;
2. Within 30 days of the operation becoming inactive, provide to the superintendent a document that identifies the site, the date of inactivity, the regulated substances that exist on site, and the name, address and telephone number of both the owner and the person in control of the site; and
3. Within 6 months of the operation becoming inactive, remove all regulated substances from the site; this does not include those substances used for heating, cooling, or electrical lighting.

K. Enforcement

1. Whenever the Department determines that a person has violated a provision of this Ordinance, the Department may order compliance by issuing a written Notice of Violation to the responsible person/facility.
2. If the Department requires abatement of a violation and/or restoration of affected property, the notice shall set forth a deadline by which such action must be completed. Said notice may further

advise that, should the violator fail to remediate or restore within the established deadline, the work will be performed by the Department, with the resulting expense thereof charged to the violator.

L. Variance / Appeal Rights

1. If an owner of property within a capture zone believes the requirements of this ordinance impose an unreasonable burden on the use of the owner's property, the owner may seek a variance from the Department Director (or his or her designee). Such a request must be in writing with enough detail to allow the Director to understand the situation and proposed variance. If the Director determines that additional information is needed, the request for additional information shall be made within 30 days of the owner's request. Within 30 days of the receipt of such additional information, or, if no such request is made, within 30 days of the owner's request, the Director shall issue a written response to the owner. The response shall grant, deny, or partially grant the request. A grant, partial or complete, may relieve the property owner from strict compliance of this ordinance. Reasonable conditions may be imposed as part of such a grant. The Director shall be guided by the primary goal of protecting the city's wellfields without creating undue hardship upon the property owners affected.
2. Any person receiving a Notice of Violation may appeal the determination set forth within the Notice to the Department Director by submitting a written notice of appeal to the Department. The notice of appeal must be received by the Director within 30 days from the date of the Notice of Violation, with enough detail to allow the Director to understand the situation. Within 30 days of the receipt of such an appeal shall issue a written response to the appeal unless additional information is requested by the Director, in which case the response shall issue within 30 days of receipt of the information. The Director's response shall affirm, reverse, or modify the Notice of Violation being appealed.
3. If the person who has made a variance request or an appeal of a Notice of Violation does not agree with the Director's decision, said person may appeal the matter by filing an action in the Kalamazoo Circuit Court, which may affirm, reverse or modify the decision being appealed. Such an appeal must be filed within 30 days of the Director's final decision.

M. Abatement / Remedial Activities by the Department

1. The Department is authorized to take or contract with others to take reasonable and necessary abatement or remedial activities whenever the Department determines a violation of this Ordinance has occurred and that the responsible party cannot or will not timely correct the violation, or when no known responsible party exists. The responsible party shall reimburse the City for all reasonable expenses thus incurred by the City.
2. If the City desires the responsible party to reimburse it for reasonable abatement activity expenses, the City shall, within 90 days of the completion of said activities, mail to that person a Notice of Claim outlining the expenses incurred, including reasonable administrative costs, and the amounts thereof. The person billed shall pay said sum in full within 30 days of receipt of the claim. If the person billed desires to object to all or some of the amount sought by the Department, said person may file, within the same 30-day period, a written objection so stating. The Department shall, within 30 days of its receipt of the objection, provide an opportunity for the objecting party to present facts or arguments supporting said objection. If the Department determines that some or the entire amount originally billed is appropriate, the person shall pay said sum within 30 days of receipt of that determination. If the amount due is not timely paid, the City may cause the charges to become a special assessment against the property and shall constitute a lien on the property. In the alternative, the City may attempt collection of the sum due by filing a civil lawsuit.

N. Injunctive Relief

If a person has violated or continues to violate the provisions of this Ordinance, the Department may petition the appropriate court for injunctive relief restraining the person from activities that would create further violations, or compelling the person to perform necessary abatement or remediation.

O. Violations Deemed a Public Nuisance

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the City.

P. Criminal Prosecution

Any violation of this Ordinance shall be considered a misdemeanor, punishable by a fine of not more than \$500.00 or imprisonment of not more than 90 days. Each day a violation exists shall be deemed a separate violation. A citation charging such a misdemeanor may be issued by the Director, his or her designee, or a member of Public Safety.

Q. Remedies Not Exclusive

The remedies listed in this Ordinance are not exclusive of any other remedies available under any applicable federal, state, or local law and it is within the discretion of the Department to seek cumulative remedies.”

Section 2. Subsections 20, 21, and 22 within Section 28-38 of the Kalamazoo City Code are hereby repealed.

REPEALER

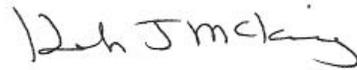
All former ordinances or parts of ordinances conflicting or inconsistent with the provisions of this ordinance are hereby repealed.

SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

CERTIFICATE

The foregoing is a true and complete copy of the ordinance adopted by the City Commission of the City of Kalamazoo at a regular meeting held on May 21, 2007. Public notice was given and the meeting was conducted in full compliance with the Open Meetings Act, (PA 267, 1976). Minutes of the meeting will be made available as required by the Act, and the ordinance was duly recorded, posted and authenticated by the Mayor and City Clerk as required by the Charter of said City.



Hannah J. McKinney, Mayor



Scott Borling, City Clerk