

Chapter 26 ENVIRONMENT*

***Cross reference(s)**--Animals, ch. 6; buildings and building regulations, ch. 10; dangerous buildings, § 10-61 et seq.; health and sanitation, ch. 34; historical preservation, ch. 38; parks and recreation, ch. 58; planning, ch. 66; solid waste, ch. 70; streets, sidewalks and other public property, ch. 74; subdivisions and other land divisions, ch. 78; utilities, ch. 94; vegetation, ch. 98; waterways, ch. 106.

ARTICLE I. IN GENERAL

Secs. 26-1--26-30. Reserved.

ARTICLE II. NOISE

DIVISION 1. GENERALLY

Sec. 26-31. Finding and declaration of fact; purpose of chapter.

It is hereby found and declared that:

- (1) The making and creation of loud, unnecessary or unusual noises within the city is a condition which has existed for some time and the extent and the volume of such noises are increasing;
- (2) Loud, unnecessary, unnatural or unusual noises which are prolonged affect and are a detriment to the public health, comfort convenience, safety, welfare and prosperity of the residents of the city;
- (3) The necessity, in the public interest, for the provisions and prohibitions contained in this chapter is declared a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions contained and enacted in this article are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare, prosperity, peace and quiet of the city and its inhabitants.

(Code 1975, § 14-1)

Sec. 26-32. Penalty for violation of article.

Any person who violates any provision of this article shall be responsible for a civil infraction.

(Code 1975, § 14-20)

Sec. 26-33. Loud, disturbing, etc., noise generally.

- (a) It shall be unlawful for any person to make, continue or cause to be made or continued any loud or unusual noise or any noise which either disturbs, injures or endangers the comfort, repose, health, peace or safety of others, within the limits of the city.
- (b) The acts enumerated in the following sections of this article are hereby declare to be loud and disturbing noises, but such enumeration shall not be deemed to be exclusive.

(Code 1975, § 14-2)

Sec. 26-34. Playing of radios, musical instruments, etc.--Generally.

- (a) Playing, using, operating or permitting to be played, used or operated, any radio receiving set, musical instrument, phonograph or other machine or device for producing or reproducing sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person who is in the room, vehicle or chamber in which such machine or device is operated and those who are voluntary listeners thereto is prohibited.
- (b) The operation of any such set, instrument, phonograph, machine or device between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of 50 feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.

(Code 1975, § 14-3)

Sec. 26-35. Same--Where sound cast outside building for advertising purposes.

Playing, using, operating or permitting to be played, used or operated, any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for producing or reproducing sound which is cast upon the public streets or any unenclosed area open to the public where persons are permitted to congregate, for the purpose of commercial advertising or attracting the attention of the public to any building or structure for commercial purposes is prohibited.

(Code 1975, § 14-4)

Sec. 26-36. Yelling, shouting, etc., generally.

Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 11:00 p.m. and 7:00 a.m., or at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any office, dwelling, hotel or other type of residence, or of any person in the vicinity, is prohibited.

(Code 1975, § 14-5)

Sec. 26-37. Shouting by peddlers and hawkers.

The shouting and crying of peddlers, hawkers and vendors, which disturbs the peace and quiet of the neighborhood, is prohibited.

(Code 1975, § 14-6)

Sec. 26-38. Playing of radios, musical instruments and other sound-producing or amplifying devices in city parks; presumption established; vehicles providing power to or containing sound devices; public nuisances and abatement by impoundment.

- (a) Playing, using, operating or permitting to be played, used or operated, any radio receiving set, musical instrument, phonograph, tape recording device or other machine or sound-amplifying device for producing, reproducing or amplifying sound in any city park in such a manner that the sound emanating from any such device is plainly audible at a distance of 50 feet from the physical location of any such device, is prohibited and a person upon conviction thereof shall be deemed responsible for civil infraction.
- (b) If the source of power for any device or the sound from any device operated in violation of subsection (a) of this section emanates from a motor vehicle, the registered owner of the vehicle at the time of such violation shall be presumed to have committed the violation.
- (c) Any device operated in violation of subsection (a) of this section is declared to be a public nuisance which any police officer by hearing such device or upon information and belief may abate by impounding such device and removing it from the park to the police station. The owner of such device may have it removed from impoundment at any time thereafter by paying to the police department an impoundment fee in the amount established by resolution to cover the cost of removal and storage.
- (d) Any motor vehicle which furnishes the source of power for any such offending device or contains such offending device is hereby declared to be illegally parked and a public nuisance. Any police officer may abate such nuisance by impounding the vehicle in the manner provided in Section 2.5(d) of the Uniform Traffic Code as adopted by the city.
- (e) Nothing contained in this section shall be construed to limit the rights of citizens to obtain a permit to use a sound-amplifying device as authorized pursuant to division 2 of this article and article III of chapter 58.

(Code 1975, § 14-7)

Sec. 26-39. Zone of quiet.

Whenever authorized signs are erected indicating a zone of quiet, no person operating a motor vehicle within any such zone shall sound the horn or other warning device of such vehicle, except in an emergency.

(Code 1975, § 14-9(b))

Sec. 26-40. Transportation of rails, pillars or columns.

The transportation of rails, pillars or columns of iron, steel or other material over and along streets and other public places upon carts, drays, cars or trucks, in any manner as to cause loud noises or which disturbs the peace and quiet of such streets or other public places, is prohibited.

(Code 1975, § 14-10)

Cross reference(s)--Traffic and vehicles, ch. 92.

Sec. 26-41. Noise from loading or unloading vehicles or opening or destroying bales, boxes, etc.

The creation of a loud and excessive noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates and containers is prohibited.

(Code 1975, § 14-11)

Cross reference(s)--Traffic and vehicles, ch. 92.

Sec. 26-42. Discharge of engine or motor exhaust.

The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor boat or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom, is prohibited.

(Code 1975, § 14-12)

Cross reference(s)--Traffic and vehicles, ch. 92.

Sec. 26-43. Blowing of steam whistles.

The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as a warning of fire or danger, or upon request of proper city authorities is prohibited.

(Code 1975, § 14-13)

Sec. 26-44. Operation of blowers or power fans.

The operation of any noise-creating blower or power fan is prohibited, unless the noise from such blower or fan is muffled.

(Code 1975, § 14-14)

Sec. 26-45. Sound amplification from aircraft.

- (a) No person shall operate, or cause to be operated, any aircraft for any purpose in or over the city with sound amplifying equipment in operation.
- (b) For the purpose of this section, the word "aircraft," shall mean any contrivance now known or hereafter invented, used or designed for navigation or for flight in the air, including helicopters and lighter-than-air dirigibles and balloons.

(Code 1975, § 14-15)

Sec. 26-46. Limitation on hours for construction or demolition work.

- (a) The erection (including excavating), demolition, alteration or repair of any building, other than between the hours of 7:00 a.m. and 6:00 p.m. on weekdays

is prohibited, except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the building inspector, which permit may be granted for a period not to exceed three days or less while the emergency continues and which permit may be renewed for periods of three days or less while the emergency continues.

- (b) If the building inspector shall determine that the public health and safety will not be impaired by the erection, demolition, alteration or repair of any building or the excavation of streets and highways within the hours of 6:00 p.m. and 7:00 a.m., and if he shall further determine that loss or inconvenience would result to any party in interest, he may grant permission for such work to be done between the hours of 6:00 p.m. and 7:00 a.m., upon application for a permit, requesting performance of such work during the hours aforementioned.

(Code 1975, § 14-16)

Cross reference(s)--Buildings and building regulations, ch. 10.

Sec. 26-47. Operation of pile drivers, steam shovels, etc.

The operation, between the hours of 10:00 p.m. and 7:00 a.m., of any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist or other appliance, the use of which is attended by loud or unusual noise, is prohibited except in the case of an emergency.

(Code 1975, § 14-17)

Sec. 26-48. Noise near schools, courts, churches, hospitals.

The creation of any excessive noise on any street adjacent to any school, institution of learning, church, court or hospital, which unreasonably interferes with the business of any such institution, or which disturbs or unduly annoys patients in a hospital, shall be unlawful, provided conspicuous signs are displayed in such streets indicating the type of institution situated thereon and that noise is prohibited or that quiet is required in such area.

(Code 1975, § 14-18)

Sec. 26-49. Noise to attract attention to performance, show or sale.

The use of any drum or other instrument or device for the purpose of attracting attention, by the creation of noise, to any performance, show or sale is prohibited.

(Code 1975, § 14-19)

Secs. 26-50--26-65. Reserved.

DIVISION 2. SOUND TRUCKS*

***Cross reference(s)**--Traffic and vehicles, ch. 92.

Sec. 26-66. Definitions.

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

Sound amplifying equipment means any machine or device for the amplification of the human voice, music or any other sound, but shall not be construed as including standard automobile radios, when used and heard only by occupants of the vehicle in which installed, or warning devices on authorized emergency vehicles or horns or other warning devices on other vehicles used only for traffic safety purposes.

Sound truck means any motor vehicle or animal-drawn vehicle, having mounted thereon, or attached thereto, any sound amplifying equipment.

(Code 1975, § 14-32)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 26-67. Registration.

(a) No person shall use, or cause to be used, a sound truck, with sound amplifying equipment in operation in the city, before filing a registration statement with the city clerk. This registration statement shall be filed in duplicate and shall state the following:

- (1) Name and home address of the applicant;
- (2) Address of place of business of the applicant;
- (3) License number and motor number of the sound truck to be used by the applicant;
- (4) Name and address of the person who owns the sound truck;
- (5) Name and address of the person having direct charge of the sound truck;
- (6) Names and addresses of all persons who will use or operate the sound truck;
- (7) The purpose for which the sound truck will be used;
- (8) A general statement as to the section of the city in which the sound truck will be used;
- (9) The proposed hours of operation of the sound truck;
- (10) The number of days of proposed operation of the sound truck;
- (11) A general description of the sound amplifying equipment which is to be used; and
- (12) The maximum sound producing power of the equipment to be used in or on the sound truck, including:
 - a. The wattage to be used;
 - b. The volume in decibels of the sound which will be produced; and

- c. The approximate maximum distance for which sound will be thrown from the sound truck.
- (b) All persons using or causing to be used sound trucks for noncommercial purposes, shall amend any registration statement filed pursuant to this section within 48 hours after any change in the information therein furnished.
- (c) The city clerk shall return to each registrant under this section, one copy of the registration statement, duly certified by the city clerk as a correct copy. Such certified copy shall be in the possession of any person operating the sound truck at all times while the sound amplifying equipment is in operation, and shall be promptly displayed and shown to any police officer of the city upon request.

(Code 1975, § 14-34)

Sec. 26-68. Permitted sounds.

The only sounds permitted from sound trucks are music and human speech.

(Code 1975, § 14-42)

Sec. 26-69. Hours of operation; operation on Sundays and holidays prohibited.

The operation of the sound amplifying equipment on sound trucks is permitted for four hours each day, except on Sundays and legal holidays, when such operation is prohibited. The permitted four hours of operation shall be between the hours of 11:30 a.m. and 1:30 p.m. and 4:30 p.m. and 6:30 p.m.

(Code 1975, § 14-43)

Sec. 26-70. Operation on certain streets prohibited.

No sound truck, with amplifying equipment in operation, shall be operated on the following streets: Western Avenue, between Spring Street and Fifth Street and Clay Avenue, from Spring Street to Fifth Street.

(Code 1975, § 14-44)

Sec. 26-71. Operation near hospital, school, church, court or voting place.

Sound shall not be emitted from a sound truck within 100 yards of any hospital, school, church or courthouse, or within 100 yards of any voting polling place on any primary or election day.

(Code 1975, § 14-45)

Sec. 26-72. Minimum speed; operation of sound equipment when truck stopped.

Sound amplifying equipment shall not be operated unless the sound truck upon which such equipment is mounted is operated at a speed of at least ten miles per hour, except when the truck is stopped or impeded by traffic. Whenever stopped by traffic, the sound amplifying equipment shall not be operated for longer than one minute at each stop.

(Code 1975, § 14-46)

Sec. 26-73. Control of sound volume generally.

The volume of sound from a sound truck shall be so controlled that it will not be audible for a distance in excess of 100 feet from the sound truck, nor in volume unreasonably loud, raucous, jarring, disturbing or a nuisance to persons within the area of audibility.

(Code 1975, § 14-47)

Sec. 26-74. Maximum amplification power.

No sound amplifying equipment on a sound truck shall be operated in excess of 15 watts of power in the last stage of amplification.

(Code 1975, § 14-48)

Secs. 26-75--26-100. Reserved.

ARTICLE III. EROSION AND SEDIMENTATION CONTROL*

*State law reference(s)--Soil and sedimentation control, MCL 324.9101 et seq.; local soil erosion and sedimentation control ordinances, MCL 324.9105 et seq.

DIVISION 1. GENERALLY

Sec. 26-101 through 26-110 concerning standards for soil erosion and sedimentation control has been repealed.

(Ord. No. 2130, 4-13-04)

Secs. 26-111--26-125. Reserved.

DIVISION 2. PERMIT

Sec. 26-126 through 26-135 concerning the permitting of construction projects requiring grading, stripping or excavating has been repealed.

(Ord. No. 2130, 4-13-04)

Secs. 26-136--26-155. Reserved.

ARTICLE IV. SOIL STRIPPING AND DUMPING

DIVISION 1. GENERALLY

Sec. 26-156. Soil defined.

The term "soil," as used in this article, shall mean topsoil, subsoil, sand, gravel, rock, stone and heavy aggregate, earth and any other material proposed to be removed from or dumped on land.

(Code 1975, § 17-2)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 26-157. Purpose.

The purpose of this article is to promote the public health, safety and general welfare of the residents of the city and preserve the natural resources and to prevent the creation of nuisances and hazards to the public welfare, health, safety, morals, well-being and general welfare.

(Code 1975, § 17-1)

Sec. 26-158. Waiver of article provisions.

In areas where, in the judgment of the city commission or administrative staff, adequate provisions are made to safeguard adjacent properties, or in the case of fills and excavations of minor importance situated in isolated areas, the city commission may waive any or all of the requirements of sections 26-159, 26-160 and 26-161.

(Code 1975, § 17-6)

Sec. 26-159. Requirements for stripping operations.

- (a) Every person to whom a permit authorizing stripping operations is issued under this article shall comply with the following:
 - (1) No soil or other material shall be removed below a point six inches above the mean elevation of the center line of the nearest existing or proposed street or road established or approved by the city, except as required for the installation of utilities and pavements.
 - (2) No soil or other materials shall be removed in such manner as to cause water to collect or to result in a place of danger or a menace to the public health. The premises shall at all times be graded so that surface water drainage is not interfered with.
 - (3) Sufficient topsoil shall be stockpiled on the site so that the entire site, when stripping operations are completed, may be recovered with a minimum of four inches of topsoil and the replacement of such topsoil shall be made immediately following the termination of the stripping operations. In the event, however, that such stripping operations continue over a period of time greater than 30 days, the operator shall replace the stored topsoil over the stripped areas as he progresses.
- (b) The city commission may impose such other and further requirements on stripping operations as it deems necessary in the interest of the public health, safety, morals, preservation of natural resources and general welfare of the citizens of the city.

(Code 1975, § 17-3)

Sec. 26-160. Grading required after dumping.

Within six months following any dumping authorized by a permit issued under this chapter, the parcel of land must be graded in such manner as to prevent the collection of water, to provide proper drainage and to leave the ground surface reasonably level or smooth, free of all rock, stone, cement, heavy aggregate or rubbish, and fit for the growth of turf and other land uses permitted in the district.

(Code 1975, § 17-4)

Sec. 26-161. Dumping on spillways or floodplains or between upper and lower banks of streams or watercourses.

No soil shall be dumped on the spillways or floodplains of any natural or artificial streams or watercourses, or in any area between the upper and lower banks of such streams or watercourses, except with the approval of the city commission, after public hearing and on a satisfactory showing that such dumping will not result in damage to other property within the limits of the city, and will not be detrimental to the public health, safety, preservation of natural resources or welfare. For the purposes of this section, the term "floodplain" is defined as the land abutting a watercourse which has stored the overflow of stormwater during periods of heavy storm.

(Code 1975, § 17-5)

Secs. 26-162--26-180. Reserved.

DIVISION 2. PERMIT

Sec. 26-181. Required; exceptions.

- (a) It shall be unlawful for any person to dump, remove or strip any soil, without a permit from the city commission.
- (b) No permit will be required under this section where the moving, grading or leveling of soil is carried on for the immediate use or development of land upon which the soil is found or where the removal or dumping is incidental to the construction or alteration of a building or the premises, pursuant to a building permit issued by the department of building inspection. However, where major reshaping of the land is contemplated, either by removal or dumping, such permit shall be required.

(Code 1975, § 17-18)

Sec. 26-182. Application; filing; contents.

The application for a permit required by this article shall be filed with the city clerk in quadruplicate, the original of which shall be sworn to before some person lawfully authorized to administer oaths, and shall set forth the following information and shall be accompanied by the following data:

- (1) A full identification of the applicant and all persons to be directly or indirectly interested in the permit, if granted.
- (2) The residence and business address of the applicant.
- (3) A complete description and location of the property on which the work is proposed to be done, prepared by a registered civil engineer or land surveyor.
- (4) The exact nature of the proposed excavation and soil to be removed or dumped and an estimate of the approximate number of cubic yards to be removed or dumped. This computation shall be made by a registered civil engineer or land surveyor, if deemed necessary.
- (5) A statement of the manner in which it is proposed to dump or excavate and remove the soil, including the slope of the sides and the level of the floor, and the finished grade and condition of the property following the completion of the project, and the kind of equipment proposed to be employed in making such excavation and removing the soil.
- (6) The proposed route which the applicant proposes to use over the public streets and over private property in transporting the soil.
- (7) The past experience of the applicant in the matter to which the permit appertains and the name, address and past experience in such matter of the person to be in charge of the proposed operations.
- (8) Whether or not any permit of the applicant has been revoked, and if so, the circumstances of such revocation.
- (9) The time within which such excavation or dumping is to be commenced after the granting of the permit and the time when it is to be completed.
- (10) Such further information as the city manager, city engineer or city commission may require.

(Code 1975, § 17-19)

Sec. 26-183. Map to be filed by applicant.

At the time of the filing of the application provided for in section 26-182, the applicant shall file with the city clerk a topographic map of the property on which the proposed work is to be done covering an area having a radius of 300 feet, so far as may be possible, from the exterior boundary of the proposed site.

(Code 1975, § 17-20)

Sec. 26-184. Filing fee.

At the time of filing the application and map pursuant to sections 26-182 and 26-183, the applicant shall pay a filing fee as set forth by resolution of the city commission. Such fee shall be used to defray costs of engineering services, investigation, publication charges and other miscellaneous administrative expenses occasioned by processing such application.

(Code 1975, § 17-21)

Sec. 26-185. Applicant's bond and insurance.

The city commission shall require, as a condition to the granting of any permit under this article, that the applicant deposit a surety bond, in an amount to be fixed by the city commission, insuring to the benefit of the city and the general public, guaranteeing that the applicant will faithfully perform all of the conditions and requirements under which the permit is issued. The city commission shall also require, as a condition to the granting of any such permit, that the applicant deposit a certificate of a responsible indemnity company, in an amount reasonably relevant to the proposed work to be done, insuring the city and the public against any loss or damage to persons or property arising, directly or indirectly, from the operations of the applicant, or any person acting on his behalf, in carrying on any work connected, directly or indirectly, with the issuance of the permit.

(Code 1975, § 17-22)

Sec. 26-186. Investigation of application.

Immediately upon the filing of an application for a permit under this article, one copy of such application shall be delivered to the city manager and one copy to the city engineer. The city engineer shall make an investigation of the facts set forth in the application and shall make a written report of his investigation, together with his recommendations, to the city manager.

(Code 1975, § 17-23)

Sec. 26-187. Hearing on application.

Within 30 days after the city engineer makes his report and recommendations to the city manager pursuant to section 26-186, the city commission shall hold a public hearing on the application for a permit under this article. Notice of such hearing shall be given by the city clerk, by mailing a copy thereof addressed to the applicant and to the owners of the property, as appear on the last assessment rolls of the city, within a 300-foot radius of the exterior boundaries of the proposed site. Such notice shall be mailed at least five days prior to the date set for the hearing. Such notice shall contain a statement of the time and place of the hearing, the name of the applicant, a general description of the premises where the applicant proposes to do the work, and a general statement of the size and nature of the proposed excavation or dumping area.

(Code 1975, § 17-24)

Sec. 26-188. Grant or denial.

The city commission, in granting or denying any application for a permit under this article, shall take into consideration the zoning of the proposed site, the character of the applicant as respects morality, honesty and integrity, his financial responsibility and all pertinent things concerning the health, safety, preservation of natural resources and the preventing of nuisances and hazards, and shall exercise a reasonable and sound discretion in the premises. No permit shall be granted if it appears from the investigation thereof that the project would remove the lateral and subjacent support of the adjacent land and result in a dangerous topographic condition, or result in seepage or slides or create an attractive nuisance dangerous to public safety, or that it otherwise would in

any manner endanger the public health or morals and prevent the preservation of natural resources, or be detrimental to the general public welfare.

(Code 1975, § 17-25)

Sec. 26-189. Fee; inspection of work under permit.

At the time of issuance of a permit under this article the applicant shall pay a permit fee as set by resolution of the city commission to cover the expense of inspection and examination of the combined operation of the site. The site shall be inspected as often as deemed necessary by the city but at least every six months. A fee as set by resolution of the commission shall be paid for each subsequent inspection. The fees required by this section shall be in addition to any fees or deposits required by other provisions of this article.

(Code 1975, § 17-26)

Sec. 26-190. Expiration.

In the event that any work for which a permit has been granted under this article is not commenced within six months from the date hereof, or in the event work is started on excavations pursuant thereto and such work is abandoned for a period of six months, the permit shall automatically expire by limitation and cease to be valid for any purpose. Such expired permit may be reviewed by the city commission for continuance, without payment of a filing fee, provided that the commencement date change or abandonment is caused by access problems or weather conditions.

(Code 1975, § 17-27)

Sec. 26-191. Revocation or suspension.

Any permit granted pursuant to this article may be revoked or suspended for failure to comply with any of the provisions of this article. Revocation of such permit shall be accomplished only pursuant to a public hearing held before the city commission, after five days notice to such permit holder stating the grounds of complaint against him and the time and place where the hearing will be held. If, in the opinion of the city manager, the public health, safety or welfare requires it, the city manager may suspend any permit granted under this article pending the hearing for the revocation of such permit by the city commission.

(Code 1975, § 17-28)

Secs. 26-192--26-195. Reserved.

DIVISION 3. EXCAVATIONS

Sec. 26-196. Application of division; compliance.

The provisions of this division shall apply to excavations and excavating operations authorized by a permit issued under this article and every person to whom such a permit is issued shall comply with this division.

(Code 1975, § 17-40)

Sec. 26-197. Location with respect to streets and property lines.

No cut or excavation shall be made closer than 50 feet from the nearest street or highway right-of-way nor nearer than 40 feet to the nearest property line; provided, however, that the city commission may prescribe more strict requirements in order to give sublateral support to surrounding property where soil or geographic conditions warrant it.

(Code 1975, § 17-41)

Sec. 26-198. Standards.

- (a) *Maximum size and period of operation of gravel or sand pit.* No person shall open more than 15 acres of land for purposes of excavation for, or operation of, a gravel or sand mining pit at one time, and such excavation shall not be allowed to remain open for any period in excess of one year except by special permission of the commission.
- (b) *Floor level.* The floor of any excavation shall not be made lower than the level thereof as set forth in the permit application filed under division 2 of this article.
- (c) *Bank slope.* The slopes of the banks of an excavation shall in no event exceed a minimum of five feet horizontal to one foot vertical. Where ponded water results from the operation, such slope must be maintained and extended into the water to a depth of three feet.
- (d) *Fencing.*
 - (1) If, in the opinion of the city engineer, any excavation will present a dangerous condition if left open, such excavation shall be enclosed by a chainlink or wire mesh fence completely surrounding the portion of the site where the excavation extends. Such fence shall be not less than five feet in height and shall be complete with gates, which gates shall be kept locked when operations are not being carried on. Barbed wire shall not be used.
 - (2) In all cases where a lake, pool or pond is construed in connection with the operation of a pit, and the same is within 1,000 feet of any residence, chainlink fences shall be placed around such body of water adequate to prevent children from entering.
- (e) *Warning signs.* Where excavation operations result in a body of water, the owner or operator shall place appropriate "Keep Out--Danger" signs around the premises, not more than 100 feet apart.
- (f) *Stagnant water; spraying of pools or ponds.* During the period in which excavation is being made or a pit is being operated, no person shall allow pools or puddles of water to form and become stagnant, and any person operating a pit shall, at least once each month, spray any pools or ponds which may exist in conjunction with such operations to keep them from becoming breeding places for mosquitoes or otherwise creating an unhealthy condition.
- (g) *Certain access roads to be dustfree.* Any roads used for the purpose of ingress

and egress to an excavation site, and which are located within 300 feet of an occupied residence, shall be kept dustfree by hard topping with concrete, bituminous substance, chemical treatment or other approval means.

- (h) *Landscaping of site.* The site shall be so landscaped upon completion of each excavated or filled part of the site that all soil erosion by wind and water will be eliminated.
- (i) *Use of prescribed route to move soil from site.* Vehicles transporting soil from an excavation over the public streets of the city shall be driven directly over such route as may be prescribed by the city engineer to be least dangerous to public safety, cause the least interference with general traffic and cause the least damage to the public streets.
- (j) *Removal of spillage from streets.* Any soil that may be deposited on any public street or place from any vehicle transporting the same from an excavation shall be immediately removed, in a manner satisfactory to the city engineer, at the expense of the person to whom the permit to excavate was issued.
- (k) *Additional standards.* The city commission may require performance standards with regard to excavations, in addition to those prescribed in this division, where, because of peculiar conditions, they are deemed necessary for the protection of health, safety, morals, preservation of natural resources and well-being of the citizens of the city.

(Code 1975, §§ 17-42--17-52)

Secs. 26-199--26-210. Reserved.

ARTICLE V. POINT-SOURCE GROUNDWATER DISCHARGES*

***Cross reference(s)**--Water system, § 94-61 et seq.

State law reference(s)--Groundwater and freshwater protection, MCL 324.8701 et seq.

DIVISION 1. GENERALLY

Sec. 26-211. 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:

Acceptable water quality means chemical or biological content and the resulting quality of water and effluent which meets or exceeds the final effluent limitations for the discharge of treated groundwater and surface water discharge as allowed by the state department of natural resources, the United States Environmental Protection Agency, and other governmental agencies with authority. The city may enact by amendment to this article additional and more stringent standards whenever the need reasonably arises.

Purge well means a well used to pump or otherwise remove groundwater from below the land surface in an effort to control the movement of, or to clean, contaminated or polluted groundwater.

Responsible person means a person who owns, controls, occupies or regulates the premises, wherever located (including whether or not located within the city limits of the city), upon which or from which a discharge regulated by this article originates.

Storm drainage system means all pipes, conduits, culverts, chambers or channels within the city used or installed for the purpose of controlling surface stormwater runoff in the city from and including the city's rights-of-way, easements or public lands, or from other sources, whether or not within the city's boundaries.

Storm or surface water runoff means water discharged to the storm drainage system as a result of rain, snow, or other precipitation.

(Code 1975, § 24-202)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 26-212. Policy and purposes.

The purpose of this article is to control and regulate access to and use of the city stormwater and surface water management system where it is sought to be used for discharges from groundwater purges and similar point-source discharges to the system. The city commission intends to establish with this article a uniform city policy addressing groundwater discharges which use the system and ensure that the quality of water being discharged into the system and the waterways contiguous to the city is maintained at acceptable levels; protect the stormwater and surface water drainage system; provide for adequate drainage of the streets, rights-of-way and public areas of the city as a result of stormwater and surface water runoff; and to provide a source of revenue to meet the costs of maintenance and upgrading of the stormwater and surface water drainage of the system as it is affected by point-source discharges covered by this article. The city commission intends that the city's first duty is to protect the existing stormwater and surface water drainage system from being inundated by flows not directly caused by stormwater runoff as defined in this article. The system must be reasonably able to accommodate the normal runoffs as well as excessive runoff caused by unusual conditions of weather and natural accumulations of surface water and stormwater runoff.

(Code 1975, § 24-201)

Sec. 26-213. Civil infraction.

A person who violates any provisions of this article or who violates any permit issued pursuant to this article is responsible for a civil infraction.

(Code 1975, § 24-211)

Secs. 26-214--26-230. Reserved.

DIVISION 2. PERMIT FOR DISCHARGE FROM PURGE WELL

Sec. 26-231. Prohibition.

No person shall cause or permit a discharge of groundwater from a purge well to enter the city's storm drainage system unless the person has been issued a current permit which continues in force as required by this article and pays all fees determined by resolution of the city commission and incurred by the person. This prohibition shall further extend to discharges from other sources identified by the city and added to this article and defined by amendment.

(Code 1975, § 24-203)

Sec. 26-232. Application for permit.

A responsible person shall apply for a permit under this article. Such application shall be filed with the city clerk and directed to the city's engineering department. The application shall include at least the following:

- (1) A capacity analysis of the portion of the city's storm drainage system which will be used, over its entire length, including a statement of the available capacity for all purposes of the portion of the system to be affected by the proposed discharge. The analysis must be completed and certified by a registered professional engineer.
- (2) A narrative description of the following:
 - a. The reasons for and the operation of the proposed groundwater purge
 - b. The types and levels of pollutants which are and will be included in the groundwater to be extracted.
 - c. The method of treatment of the groundwater extracted, including a description of the entire treatment system.
 - d. The proposed acceptable water quality of the water to be discharged into the city's storm drainage system after treatment, including the proposed maximum chemical and biological content of the effluent.
 - e. The proposed maximum flow rate of the treated groundwater to be discharged to the city's system.
 - f. The commitment that the flow and maximum content of pollutants identified will not be exceeded at any time.
 - g. A copy of all data and studies used or referred to by the applicant and the professional engineer, if requested by the city.
- (3) The method, including the facilities to be used and constructed by the applicant, and the location of the proposed discharge into the city's storm drainage system; a description of and commitment to the establishment of a sampling point to test water quality prior to entering the city's storm drainage system, a description of all facilities and devices to be installed for sampling.
- (4) A plan and commitment to terminate the discharge when surface water or

stormwater runoff is too high, in the sole judgment of the city, to accommodate the applicant's discharge, or at such times as the city determines that maintenance activities at any place which require shutdown of the applicable portion of the storm drainage system is required. Further, the applicant shall state procedures and provisions for routine testing of the shutdown system for terminating the discharge. Plans for such discharge termination and for testing thereof shall include a commitment and covenant by the applicant that city personnel may enter for the purpose of shutting down as well as inspecting the system at reasonable times determined by the city.

- (5) A provision for and commitment to supplying to the city all reports for monitoring of the discharged water, together with all other reports submitted to the state department of natural resources, the United States Environmental Protection Agency or any other governmental entity with authority.
- (6) A copy of the applicant's NPDES permit applicable to the discharge and any other permits required from any governmental agency.
- (7) Certificates of insurance evidencing policies issued by insurers acceptable to the city and licensed to write policies in the state for comprehensive public liability coverage in connection with the discharge, naming the city as additional insured, with a 30-day cancellation notification requirement to the city. The minimum coverages for such insurance shall be determined by the city. Pollution coverage naming the city as an additional insured may be required at the city's discretion.
- (8) A performance bond adequate to cover city costs for shutdown or repairs to city facilities caused by violation of this article or a permit, naming the city as the obligee of the bonds.

(Code 1975, § 24-204)

Sec. 26-233. Review.

The city shall review the permit application, determine whether or not the application is complete, and once complete shall review such permit application for the purpose of determining whether a permit shall be issued.

(Code 1975, § 24-205)

Sec. 26-234. Permits.

In the event the city determines that the application meets the standards and requirements of this article, the city may issue a permit to the applicant. The permit shall include all provisions of the application which are deemed acceptable by the city and shall, in addition, provide at least the following:

- (1) A detailed plan of the facilities to be located at the discharge point, the route of the proposed discharge in the city storm drainage system, the facilities and the location at the designated monitoring location, together with any and all equipment specifications required by the city. This plan shall be submitted with, or as part of, the application, and must be

approved by the city.

- (2) A provision for discharge system shutdown and termination which shall allow the city to modify settings on any automatic shutoff devices, enter the premises for inspections and shutoff, and for the provision of modifications to the equipment and facilities as conditions warrant from time to time in the judgment of the city.
- (3) Requirements for periodic submission of monitoring reports, not less than quarterly.
- (4) Determination of the allowable discharge flows as to quantity and the acceptable water quality to be maintained. A provision allowing the city to install a meter or equipment to monitor discharge at any time. If evidence or circumstances reasonably indicate that past discharges have been in excess of reported flows, the applicable fees may be charged.
- (5) The name and address of the contact person of the permit applicant, which person shall have all authority necessary to deal with the city under the permit. In the event the representative is found not to have such authority, the city may immediately revoke the permit and terminate the discharge.
- (6) Statement of the fees in itemized form as determined by the city, applying the most recent city commission resolution regarding fees. The statement shall provide that fees for discharge shall be based on the maximum allowable discharge set forth in the permit.
- (7) The permit shall provide that the permittee shall indemnify and hold the city harmless for any and all claims or demands resulting from permittee's activities in constructing its facilities, monitoring the flow and acceptable water quality, the use of and discharge to the city's storm drainage system and the discharge of the permittee's flow to any surface water or groundwater. The obligations shall include reimbursement to or payment of all claims, expenses, attorney fees, laboratory and consultant fees, and any other costs in connection with any such claim or demand.
- (8) The permit shall contain provisions for cancellation in the event of the violation of any of its provisions or any provisions of this article, or any other relevant law, ordinance, rule or regulation applicable to permittee's activities.
- (9) The permit shall contain an expiration date reflecting the terms of permits set forth in this article.
- (10) The permit shall include statements of the penalties set forth in this article for noncompliance and shall consent to any and all injunctive relief by the city, necessary in the sole discretion of the city, to enforce this article.
- (11) The certificates of insurance and bonds shall be attached and kept in force. Cancellation or failure of the insurance coverage or a bond shall result in immediate cancellation of the permit and termination of the discharge.

(Code 1975, § 24-206)

Sec. 26-235. Term of permit.

No permit shall be issued under this article for a period longer than five years. A shorter permit period may be determined by the city, and in such event, written reasons for the shorter term shall be set forth in the permit or attached thereto.

(Code 1975, § 24-207)

Sec. 26-236. Existing purge wells.

Existing purge wells discharging into the city's storm drainage system as of December 31, 1992, may continue to so discharge without a permit until December 31, 1995; provided, that the responsible persons apply for a permit no later than January 1, 1995. In the event the discharge rate of the existing discharge is increased, the point of discharge is altered, or a complete application is not timely received, then the right to continue discharging into the city's storm drainage system shall immediately cease and no further discharge shall occur until a permit is issued under this article.

(Code 1975, § 24-208)

Sec. 26-237. Capacity of system; proposed changes.

If capacity for applicant's proposed discharge is unavailable, the applicant may propose to increase the capacity of the city's storm drainage system facilities needed to accommodate the proposed discharge. Such proposal shall seek an agreement with the city to be approved and executed by the mayor and clerk after city commission approval and shall further provide that the installations and facilities shall be constructed at the sole expense of the applicant. The planning and construction of the modifications shall be approved before commencing and completed to the city's satisfaction before any permit may issue, and any improvements or altered facilities constructed or installed by the applicant shall immediately be the property of the city. The applicant shall fully protect and indemnify the city against any claims or demands resulting from the construction or installation of such facilities and shall protect the city against any liens which may be sought to attach to the facilities. The city may require that the improvement or repair be designed, contracted, bid and constructed by it at applicant's cost. In any event, all contracts for construction shall include a one-year warranty and shall include insurance bonds and nondiscrimination commitments by the contractor complying with city standards.

(Code 1975, § 24-209)

Sec. 26-238. Other laws.

The applicant shall, in addition to complying with this article, comply with and fully obey all other laws, statutes, ordinances, rules and regulations of any governmental entity with authority.

(Code 1975, § 24-210)

Secs. 26-239--26-260. Reserved.

ARTICLE VI. CONTROLLED SUBSTANCES AND PROSTITUTION NUISANCES*

***Cross reference(s)**--Offenses and miscellaneous provisions, ch. 54; prostitution and related offenses, § 54-141 et seq.

State law reference(s)--Drug and prostitution nuisances, MCL 600.3801 et seq.

Sec. 26-261. 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:

Owner means any person who possesses or has any legal or equitable interest in a property. The term "owner" also means any persons who have or exercise control, custody or dominion over any property. The term "owner" also means any persons having an ownership interest in a property as disclosed by the records referred to in this article. As used in this article, the terms "the owner," "an owner" or "owner" shall mean any and all persons that the city is aware of who have or who may have an ownership interest. Whenever this article provides for notice to the owner, it shall be construed to mean that notice shall be given to all persons having a known ownership interest, and all tenants or occupants reasonably known to the city.

Property means any land, structure, house, building, premises or any part thereof.

(Code 1975, § 12-141)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 26-262. Penalty.

Whoever violates any prohibition in this article shall be subject to the following minimum criminal penalties which shall be assessed in addition to any other lawful sentence that the sentencing court may impose:

- (1) For a first violation, a fine of not less than \$175.00 nor more than \$500.00.
- (2) For a second violation, a fine of not less than \$300.00 nor more than \$500.00, and imprisonment for not more than 90 days.
- (3) For a third or subsequent violation, a fine of not less than \$400.00 nor more than \$500.00, and imprisonment for not more than 90 days.

(Code 1975, § 12-150)

Sec. 26-263. Findings with respect to drug use and prostitution.

The city determines that whenever that repeated use, sale, furnishing, giving or possession of controlled substances or drug paraphernalia occurs on any property or whenever property is repeatedly used for violation of the controlled substances or drug paraphernalia laws or for purposes of prostitution a public nuisance results. Such a public nuisance results from the increased criminal activity that occurs in the

neighborhood surrounding the property, increased pedestrian and/or vehicular traffic in the neighborhood surrounding the property, and the disturbance of the peace and quiet of residents living in the neighborhood surrounding the property.

(Code 1975, § 12-142)

Sec. 26-264. Declaration of public nuisance.

- (a) Whenever the illegal use, sale, furnishing, giving or possession of controlled substances or drug paraphernalia repeatedly occurs on any property or when any violation of the controlled substances act or the drug paraphernalia laws or any act of prostitution occurs on any property, the city commission may declare, by resolution, that the property is a public nuisance and order that the nuisance be abated as provided in this article. Such a declaration may occur only after there has been notice given to the owner of the property and the owner has had an opportunity to be heard at a public hearing.
- (b) Notice of the public hearing shall be given to the owner and shall consist of personal service or the mailing of a certified letter to that owner as indicated by the city assessor's records, the records of the register of deeds of the county and the records of the inspection department of the city. The notice shall state the nature of the alleged nuisance and the time, date and location of the hearing. If the notice is served by certified mail, it shall be delivered with a return receipt requested according to the practices of the post office. Receipt of the return receipt card by the city indicating the owner or a representative of the owner has received such notice shall be deemed notice to the owner. It shall not be necessary that the card be returned if the certified mail has been refused or there is other evidence that the owner has received notice. Such notice to an owner shall occur by the mailing with postmark or personal delivery at least 14 calendar days prior to the date of the public hearing.
- (c) At the public hearing, the city commission, sitting as an administrative body and acting in a quasijudicial capacity, shall make a determination as to whether a public nuisance exists under the standards established by this article. The city commission shall make this determination based solely upon the evidence presented at the public evidentiary hearing. In conducting the public evidentiary hearing, the city commission shall afford the owner, city personnel, other witnesses, and interested parties an opportunity to present relevant and material evidence and to make arguments as to factual or legal issues. Cross examination of opposing witnesses shall be permitted. The owner may appear in person and be represented by an attorney. Lay representation is not permitted. In conducting its public evidentiary hearing, the city commission shall not be bound by the rules of evidence and may admit and give weight to probative evidence of a nature that is commonly relied upon by reasonably prudent individuals in the conduct of their affairs. Irrelevant, incompetent and immaterial evidence and unduly repetitious evidence shall be excluded.

(Code 1975, § 12-143)

Sec. 26-265. Abatement of nuisance and costs; posting; recording and listing of public nuisances.

If the city commission determines by a preponderance of the evidence that a property is a public nuisance, it may, by resolution, in addition to any other remedies available to the city at law or in equity, order abatement of the nuisance. The resolution shall state the factual findings and the basis for the decision of the city commission in writing.

- (1) The abatement process shall be conducted as follows:
 - a. If it is determined that all or a portion of the property is to be ordered vacated, the city commission shall order the property vacated and declare that occupancy of all or a portion of the property is prohibited and authorize the police department to prohibit the occupancy of the property by either padlocking all or a portion of the property or boarding or otherwise securing all or a portion of the property, as is appropriate, for a period of up to one year as the city commission shall determine based upon the evidence; and/or
 - b. Determine that the owner shall be liable for the full cost of any materials and personnel (including police and any other city employees or contractors) involved in the padlocking, boarding or securing of the property in the first instance and the full cost of any personnel and materials involved in any subsequent or remedial padlocking, boarding or securing of the property; and/or
 - c. Determine that the costs set out in this article shall be a personal debt of the owner and/or assess those costs against the property as a lien as provided for in this article and by law, or both; and
 - d. Determine that such costs shall be placed as a lien against the premises with collection to occur as in the case of real property taxes.
- (2) Where only a discrete area or unit of a property under the control of a person or the owner is involved in the illegal activity, the city commission shall not order that any part of the property other than the part used for the illegal activity be vacated. It is the intent of this section to protect those truly and completely innocent of any participation in the act and those not having any notice of, or direct or imputed knowledge of, the illegal acts from being deprived of the use of their property. By way of example and not limitation, if only a single apartment in a multiple dwelling is determined to constitute the location of the public nuisance as provided for in this article, the city commission may vacate and secure only the apartment used for the illegal purposes and shall not vacate or secure the entire building.
- (3) The posting, recording and listing of public nuisances shall be as follows:
 - a. Whenever the city commission shall have ordered a property to be vacated and ordered that occupancy is prohibited, the police department shall post a notice so stating at each entrance to any building on the property and at the entrance to each dwelling unit or other portion of the property ordered and shall replace any notices that are missing or unreadable.

- b. The city clerk shall maintain a list of those properties that have been declared to be public nuisances and of the remedy ordered by the city commission. Immediately upon a declaration of public nuisance as provided for in this article, the city clerk shall add the property to the list. A list of such properties shall be available for public inspection at the city clerk's office.
- c. No person other than an authorized city employee shall tamper with, damage, alter, destroy or remove any notice posted by the city.
- d. The city may, at its discretion, record an affidavit setting forth its findings under this article and the remedies determined to apply to the property at the county register of deeds.

(Code 1975, § 12-144)

Sec. 26-266. Presumption of public nuisance--Drugs or drug paraphernalia.

The city commission may find that a public nuisance exists if the following conditions are established by the evidence presented at the public evidentiary hearing:

- (1) The property has been:
 - a. Lawfully searched by the police and illegal controlled substances or drug paraphernalia have been found by the police; or
 - b. The location of a violation of the state or federal controlled substances law or of a drug paraphernalia ordinance or law, as evidenced by conviction of an individual for violation of either at that location;
- (2) A letter informing the owner that an illegal controlled substance and/or illegal drug paraphernalia has been found by the police at the property or that a drug-related or drug paraphernalia-related crime has been committed on the property, and of the potential consequences if either of the above events occurs again at the property, has been:
 - a. Personally served on an owner; or
 - b. Sent by certified mail to an owner, as provided for in this article, and a return receipt card has been received by the city or other evidence of delivery is available in the event the certified mail is refused; and
- (3) The same property is lawfully searched by the police again within six months from the date of the first search or the acts resulting in the conviction, and an illegal controlled substance or illegal drug paraphernalia is found by the police or, if within six months of the acts resulting in the first conviction above, an act occurs resulting in a conviction for violation of the state or Federal Controlled Substance Act or the drug paraphernalia ordinance or law.

(Code 1975, § 12-145)

Sec. 26-267. Same--Prostitution.

The city commission may find that a public nuisance exists if the following conditions are established by the evidence presented at the public evidentiary hearing:

- (1) The property has been the location of an act of prostitution as proven by the conviction of an individual for engaging in an act of prostitution or solicitation of prostitution at that location; and
- (2) A letter, informing an owner that an act of prostitution or solicitation has occurred on the property and of the potential consequences if a similar activity occurs at the property, has been:
 - a. Personally served on an owner; or
 - b. Sent by certified mail to an owner, as provided for in this article, and a return receipt card has been received by the city or other evidence of delivery is available in the event the certified mail is refused; and
- (3) The same property is again proven to be the location of an act, occurring within six months of the acts resulting in the first conviction above, of prostitution or solicitation from which a conviction occurs.

(Code 1975, § 12-146)

Sec. 26-268. Appeal.

- (a) An owner aggrieved by any final determination by the city commission under this article may appeal the determination to the circuit court within 21 days of the date of the decision.
- (b) The circuit court shall review the city commission's decision to determine whether it is in violation of the law, has been procured by fraud, if an abuse of discretion exists, and whether the decision is supported by competent, substantial and material evidence on the record as a whole. The circuit court's review shall be made upon the record made before the city commission. It is the responsibility of the appealing party to demonstrate error, and to present and settle the record. The court may return the matter for further hearing, reverse or modify the decision of the city commission, or affirm the decision. If the court affirms the action of the city, or modifies it, the court may provide any order or relief it deems appropriate to enforce and aid in the enforcement of this article and the action of the city.

(Code 1975, § 12-147)

Sec. 26-269. Notification to the property owner.

The notification letters to the owner and the notice of a public evidentiary hearing shall contain a report of the nature of the violation and materials found, the nature of the drugs or drug paraphernalia seized, the individuals involved and, with reasonable specificity, the location where any contraband was found or illegal act committed.

(Code 1975, § 12-148)

Sec. 26-270. Entry into or use of property ordered vacated; occupancy prohibited.

No person shall enter upon any property that has been declared by the city commission to be a nuisance and which the city commission has ordered to be vacated and secured against occupancy or use under this article except to secure the property or perform necessary maintenance with written permission of the city, including designation of time and specific actions to be accomplished. The city is not responsible for maintaining the property.

(Code 1975, § 12-149)

Secs. 26-271—26-299. Reserved.

ARTICLE VII. GENERAL

Sec. 26-300. Statutory authority and title.

The City of Muskegon shall administer, implement, and enforce the provisions of the ordinance. Any powers granted, or duties imposed, upon the City of Muskegon may be delegated in writing by the City Manager of the City of Muskegon to persons or entities acting in the beneficial interest of, or in the employ of the City of Muskegon.

(Ord. No. 2135, 6-8-2004)

Sec. 26-301. Findings.

The City of Muskegon finds that:

- (1) Illicit discharges contain pollutants that will significantly degrade the waterbodies and water resources of the City of Muskegon, thus threatening the health, safety, and welfare of the citizenry.
- (2) Illicit discharges enter the storm water drainage system through either direct connections (e.g., wastewater piping either mistakenly or deliberately connected to the storm drains) or indirect connections (e.g., infiltration into the storm drain system or spills connected by drain inlets).
- (3) Establishing the measures for controlling illicit discharges and connections contained in this Ordinance and implementing the same will address many of the deleterious effects of illicit discharges.
- (4) 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.

(Ord. No. 2135, 6-8-2004)

Sec. 26-302. Purpose.

It is the purpose of this Ordinance to establish minimum storm water management requirements and controls to accomplish, among others, the following objectives:

- (1) To regulate the contribution of pollutants to the storm water drainage system and waterbodies by storm water discharges by any user.
- (2) To prohibit illicit discharges and connections to the storm water drainage system and waterbodies.
- (3) To establish legal authority to carry out all inspections, surveillance, and monitoring procedures necessary to ensure compliance with this Ordinance.
- (4) To provide appropriate remedies for failure to comply with this Ordinance.
(Ord. No. 2135, 6-8-2004)

Sec. 26-303. Applicability and general provisions.

This Ordinance shall apply to all discharges entering the storm water drainage system and waterbodies generated on any developed and undeveloped lands.
(Ord. No. 2135, 6-8-2004)

Sec. 26-304. Definitions.

For the purpose of this Ordinance, the following words and phrases shall have the meanings respectively ascribed to them by this section, unless the context in which they are used specifically indicates otherwise:

Authorized Enforcement Agency: The City of Muskegon and/or any persons or agencies designated to act as the Authorized Enforcement Agency by the City of Muskegon.

Best Management Practices (BMPs): Structural devices or nonstructural practices that are designed to prevent pollutants from entering storm water flows, to direct the flow of storm water, or to treat polluted storm water flows. BMPs may include, but shall not be limited to, those described in the Michigan Department of Environmental Quality Guidebook of BMPs for Michigan watersheds. Equivalent practices and design criteria that accomplish the purpose of this Ordinance (including, but not limited to, minimizing storm water runoff and preventing the discharge of pollutants into storm water) shall be as determined by the City of Muskegon Engineer.

Clean Water Act: The Federal Water Pollution Control Act, 33 USC Section 1251 et seq., as amended, and the applicable regulations promulgated thereunder.

Discharge: Means the introduction (intentionally or unintentionally, and directly or indirectly) of any liquid, substance, pollutant, or other material into a storm water drainage system or water body.

Discharger: Any person who directly or indirectly discharges storm water from any premises. Discharger also includes any employee, officer, director, partner, contractor, or other person who participates in, or is legally or factually responsible for, any act or omission that is, or results in, a violation of this Ordinance.

Drain: Any and all conduits, facilities, measures, areas, and structures that serve to convey, catch, hold, filter, store, and/or receive storm water or groundwater, either on a temporary or permanent basis.

Drainage: The collection, conveyance, or discharge of groundwater and/or surface water.

Drainageway: A drain, water body, or floodplain.

EPA: The U.S. Environmental Protection Agency (EPA).

Floodplain: The area, usually low lands, adjoining the channel of a river, stream, or watercourse or lake, or other body of standing water, that has been or may be covered by floodwater.

Hazardous Materials: Any solid, liquid, semisolid, or gaseous substance or material that because of its quantity, quality, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible illness or serious incapacitating but reversible illness, or may pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of, or otherwise managed.

Illicit Connection: Any method, means, or conduit for conveying an illicit discharge into a water body or a storm water drainage system.

Illicit Discharge: Any discharge to a water body or a storm water drainage system that does not consist entirely of storm water, that is not authorized by the terms of an NPDES permit, or that is not an authorized discharge as defined by this Ordinance.

MDEQ: Michigan Department of Environmental Quality.

National Pollutant Discharge Elimination System (NPDES) Permit: A permit issued by the EPA or a state under authority delegated pursuant to the Clean Water Act that authorized the discharge of pollutants to waters of the United States.

Non-Storm Water Discharge: Any discharge to the storm water drainage system or a water body that is not composed entirely of storm water.

Person: An individual, firm, partnership, association, public or private corporation, public agency, instrumentality, or any other legal entity.

Pollutant: The term pollutant includes, but is not limited to, the following: any dredged spoil, solid waste, vehicle fluids, yard wastes, animal wastes, agricultural waste products, sediment, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological wastes, radioactive materials, hazardous materials, wrecked or discharged equipment, rock, sand, cellar dirt, and industrial, municipal, commercial, and agricultural waste, or any other contaminant or other substance defined as a pollutant under the Clean Water Act. Pollutant also includes properties or characteristics of water, including, but not limited to, pH, heat, TSS, turbidity, color, BOD, COD, toxicity, and odor.

Premises: Any building, structure, lot, parcel of land, or portion of land, or property, whether improved or unimproved, including adjacent sidewalks and parking strips.

Property Owner: Any person having legal or equitable title to premises or any person having or exercising care, custody, or control over any premises.

State of Michigan Water Quality Standards: All applicable state rules, regulations, and laws pertaining to water quality, including the provisions of Section 3106 of Part 31 of 1994 PA 451, as amended.

Storm Water Drainage System: Storm sewers, conduits, curbs, gutters, catch basins, drains, ditches, pumping devices, parking lots, roads, or other man-made channels that are designed or used, singly or together in combination with one another, for collecting or conveying storm water.

Storm Water Pollution Prevention Plan: A document, that describes the BMPs and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to storm water, a storm water drainage system, and/or a water body to the maximum extent practicable.

Storm Water Runoff (or Storm Water): The runoff and drainage of precipitation resulting from rainfall, snowmelt, or other natural event or process.

Toxic Material: Any pollutant or combination of pollutants that is or can potentially be harmful to the public health or the environment, including, without limitation, those listed in 40 CFR 401.15 as toxic under the provisions of the Clean Water Act, or listed in the Critical Materials Register promulgated by the Michigan Department of Environmental Quality, or as otherwise provided by local, state, or federal laws, rules, or regulations.

Wastewater: Any water or other liquid, other than uncontaminated storm water, discharged from a premises. The term includes any water that has in any way been used and degraded or physically or chemically altered.

Water Body: A river, lake, stream, creek, or other watercourse or wetlands.
(Ord. No. 2135, 6-8-2004)

Sec. 26-305 Prohibited discharges.

- (1) It is unlawful for any person to discharge, or cause to be discharged, to a storm water drainage system or water body any substance or material, including, but not limited to, pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water or an authorized discharge. This prohibition includes the commencement, conducting, or continuance of any illicit discharge by any person to a storm water drainage system or water body.
- (2) Any person discharging storm water shall effectively prevent pollutants from being discharged with the storm water, except in accordance with BMPs.

- (3) The Authorized Enforcement Agency is authorized to require dischargers to implement pollution prevention measures, using Storm Water Pollution Prevention Plans and BMPs, as determined necessary by the Authorized Enforcement Agency to prevent or reduce the discharge of pollutants to a storm water drainage system or water body.
- (4) The discharge prohibitions of this section shall not apply to any non-storm water discharge authorized under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the EPA, provided the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm water drainage system.

(Ord. No. 2135, 6-8-2004)

Sec. 26-306. Prohibited illicit connections.

- (1) It is unlawful for any person to construct, use, maintain (or to allow the construction, use, maintenance or continued existence of) an illicit connection.
- (2) This prohibition expressly includes, without limitation, illicit connections made prior to the effective date of this Ordinance, and regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(Ord. No. 2135, 6-8-2004)

Sec. 26-307. Authorized discharges.

The following non-storm water discharges are permissible, but only if they do not result in a violation of State of Michigan water quality standards and provided that they are undertaken in compliance with any applicable or required BMPs:

- (1) Water supply line flushing.
- (2) Landscape irrigation runoff.
- (3) Diverted stream flows.
- (4) Rising groundwater.
- (5) Uncontaminated groundwater infiltration to storm drains.
- (6) Uncontaminated pumped groundwater.
- (7) Discharges from portable water sources.
- (8) Foundation drains.
- (9) Air conditioning condensate.

- (10) Irrigation water.
 - (11) Springs.
 - (12) Water from crawl space pumps.
 - (13) Footing drains and basement sump pumps.
 - (14) Lawn watering runoff.
 - (15) Waters from non-commercial car washing.
 - (16) Flows from riparian habitats and wetlands.
 - (17) Residential swimming pool water and other dechlorinated swimming pool water, provided that any filter backwash water that is present is treated.
 - (18) Residual street wash water.
 - (19) Discharges or flows from emergency fire fighting activities.
 - (20) Discharges specifically authorized in writing by the Authorized Enforcement Agency as being necessary to protect public health, welfare, and safety or the environment.
- (Ord. No. 2135, 6-8-2004)

Sec. 26-308. Storage of hazardous or toxic materials in drainageway.

Except as permitted by law, it shall be unlawful for any person to store or stockpile, within a drainageway, any hazardous or toxic materials, unless adequate protection and/or containment has been provided so as to prevent any such materials from entering a storm water drainage system or water body.

(Ord. No. 2135, 6-8-2004)

Sec. 26-309. Inspection and sampling.

The Authorized Enforcement Agency may inspect and/or obtain samples from any discharger's premises as necessary to determine compliance with the requirements of the Ordinance. Upon request, the discharger shall allow properly identified representatives of the Authorized Enforcement Agency to enter the premises of the discharger at all hours necessary for the purposes of such inspection or investigation, including, but not limited to, smoke/dye testing, televising pipes, sampling, and excavation. The Authorized Enforcement Agency shall provide the discharger reasonable advance notice of the need for such access, if possible and consistent with protection of public health and safety and the environment. The properly identified representatives may place on the discharger's premises the equipment or devices used for such sampling or inspection.

(Ord. No. 2135, 6-8-2004)

Sec. 26-310. Storm water monitoring facilities.

If directed in writing to do so by the Authorized Enforcement Agency, a discharger of storm water runoff from any premises used for commercial or industrial purposes shall provide and operate equipment or devices for the monitoring of storm water runoff to provide for inspection, sampling, and flow measurement of each discharge to a water body or a storm water drainage system, as specified by the Authorized Enforcement Agency. The Authorized Enforcement Agency may require a discharger to provide and operate such equipment and devices if it is necessary or appropriate for the inspection, sampling, and flow measurement of discharges in order to determine whether adverse effects from, or as a result of, such discharges may occur. All such equipment and devices for the inspection, sampling, and flow measurement of discharges shall be installed and maintained at the discharger's expense in accordance with applicable laws, ordinances, and regulations.
(Ord. No. 2135, 6-8-2004)

Sec. 26-311. Accidental discharges.

Any discharger who accidentally discharges into a storm water drainage system or a water body any substance other than storm water or an authorized discharge shall immediately notify the Authorized Enforcement Agency of the discharge. If the notification is given orally, a written report concerning the discharge shall be filed with the Authorized Enforcement Agency within 5 days. The written report shall specify all of the following:

- (1) The composition of the discharge and the cause thereof.
- (2) The exact date, time, and estimated volume of the discharge.
- (3) All measures taken to clean up the discharge, all measures taken or proposed to be taken to mitigate any known or potential adverse impacts of the discharge, and all measures proposed to be taken to reduce and prevent any recurrences.
- (4) The name(s) and telephone number(s) of the individual(s) making the report, and (if different) the individual(s) who may be contacted for additional information regarding the discharge.

(Ord. No. 2135, 6-8-2004)

Sec. 26-312. Record keeping requirement.

- (1) Any person that violates any requirement of this Ordinance or that is subject to monitoring under this Ordinance shall retain and preserve for no less than three years any and all books, drawings, plans, prints, documents, memoranda, reports, correspondence, and records, including records on magnetic or electronic media, and any and all summaries of such records relating to monitoring, sampling, and chemical analysis of any discharge or storm water runoff from any premises connected with the violation or subject to monitoring.
- (2) Any person who (1) at the time of a violation knew or should have known that a pollutant or substance was discharged contrary to any provision of this Ordinance, or contrary to any notice, order, permit, decision or determination promulgated, issued or made by the Authorized Enforcement Agency under this

Ordinance, or (2) intentionally makes a false statement, representation, or certification in an application for, or form pertaining to a permit, or in a notice, report, or record required by this Ordinance, or in any other correspondence or communication, written or oral, with the Authorized Enforcement Agency regarding matters regulated by this Ordinance; or (3) intentionally falsifies, tampers with, or renders inaccurate any sampling or monitoring device or record required to be maintained by this Ordinance; or (4) commits any other act that is punishable under state law by imprisonment for more than 90 days; shall upon conviction, be guilty of a misdemeanor punishable by a fine of \$500 per violation, per day, or imprisonment for up to 90 days, or both in the discretion of the court.
(Ord. No. 2135, 6-8-2004)

Sec. 26-313. Sanctions for violation.

- (1) A person who violates any provision of this Ordinance upon conviction shall be guilty of a misdemeanor punishable by a fine of \$500 per violation or imprisonment for up to 90 days, or both.
- (2) Authorized Local Official. Notwithstanding any other provision of the City of Muskegon's laws, ordinances, and regulations to the contrary, the Director of the Department of Public Works is designated as the authorized local officials to issue citations for violations of this Ordinance.
- (3) Any person who aids or abets another person in a violation of this Ordinance shall be subject to the sanctions provided in this section.

(Ord. No. 2135, 6-8-2004)

Sec. 26-314. Failure to comply; completion.

The Authorized Enforcement Agency is authorized, after giving reasonable notice and opportunity for compliance, to correct any violation of this Ordinance or damage or impairment to the storm water drainage system caused by a discharge and to bill the person causing the violation or discharge for the costs of the work to be reimbursed. The costs reimbursable under this section shall be in addition to fees, amounts or other costs and expenses required to be paid to the Authorized Enforcement Agency under other sections of this Ordinance.

(Ord. No. 2135, 6-8-2004)

Sec. 26-315. Emergency measures.

If emergency measures are necessary to respond to a nuisance; to protect public safety, health, and welfare; and/or to prevent loss of life, injury, or damage to property, the Authorized Enforcement Agency is authorized to carry out or arrange for all such emergency measures. Property owners shall be responsible for the cost of such measures made necessary as a result of a violation of this Ordinance, and shall promptly reimburse the City of Muskegon for all of such costs.

(Ord. No. 2135, 6-8-2004)

Sec. 26-316. Cost recovery for damage to storm water drainage system.

Any person who discharges to a storm water drainage system or a water body, including, but not limited to, any person who causes or creates a discharge that violates any provision of this Ordinance, produces a deposit or obstruction or otherwise damages or impairs a storm water drainage system, or causes or contributes to a violation of any federal, state, or local law governing the City of Muskegon, shall be liable to and shall fully reimburse the City of Muskegon for all expenses, costs, losses or damages (direct or indirect) payable or incurred by the City of Muskegon as a result of any such discharge, deposit, obstruction, damage, impairment, violation, exceedence or noncompliance. The cost that must be reimbursed to the City of Muskegon shall include, but shall not be limited to, all of the following.

- (1) All costs incurred by the City of Muskegon in responding to the violation or discharge, including, expenses for any cleaning, repair or replacement work, and the costs of sampling, monitoring, and treatment, as a result of the discharge, violation, exceedence or noncompliance.
- (2) All costs to the City of Muskegon of monitoring, surveillance, and enforcement in connection with investigating, verifying, and prosecuting any discharge, violatoin, exceedence, or noncompliance.
- (3) The full amount of any fines, assessments, penalties, and claims, including natural resource damages, levied against the City of Muskegon, or any City of Muskegon representative, by any governmental agency or third party as a result of a violation of applicable laws or regulations that is caused by or contributed to by any discharge, violation, exceedence, or noncompliance.
- (4) The full value of any City of Muskegon staff time (including any required overtime), consultant and engineering fees, and actual attorney fees and defense costs (including the City of Muskegon legal counsel and any special legal counsel), associated with responding to, investigating, verifying, and prosecuting any discharge, violation, exceedence or noncompliance, or otherwise enforcing the requirements of this Ordinance.

(Ord. No. 2135, 6-8-2004)

Sec. 26-317. Collection of costs; lien.

- (1) Costs incurred by the City of Muskegon pursuant to this chapter shall constitute a lien on the premises. Any such charges that are delinquent for 6 months or more may be certified annually to the City of Muskegon Treasurer, who shall enter the lien on the next tax roll against the premises, the costs shall be collected, and the lien shall be enforced in the same manner as provided for in the collection of taxes assessed upon the roll and the enforcement of a lien for taxes.

(Ord. No. 2135, 6-8-2004)

Sec. 26-318. Suspension of access to the storm water drainage system.

- (1) The Authorized Enforcement Agency may, without prior notice, suspend access to the storm water drainage system to any person or premises when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm water drainage system or a water

body. If the person fails to comply with a suspension order issued in an emergency, the Authorized Enforcement Agency may take such steps as deemed necessary to prevent or minimize damage to the storm water drainage system or the environment, or to minimize danger to persons, and bill the person for the costs to the City of Muskegon in taking such steps.

- (2) Suspension due to the detection of illicit discharge. Any person discharging to the storm water drainage system in violation of this Ordinance may have their access to the system terminated, if the Authorized Enforcement Agency determines that such termination would abate or reduce an illicit discharge. The Authorized Enforcement Agency will notify a violator of the proposed termination of its access. It shall be unlawful for any person to reinstate access of the storm water drainage system to a premises terminated pursuant to this section without the prior written approval of the Authorized Enforcement Agency.

(Ord. No. 2135, 6-8-2004)

Sec. 26-319. Judicial relief.

The Authorized Enforcement Agency may institute legal proceedings in a court of competent jurisdiction to seek all appropriate relief for violations of this Ordinance or of any permit, order, notice or agreement issued or entered into under this Ordinance. The action may seek temporary or permanent injunctive relief, damages, penalties, costs, and any other relief, at law or equity, that a court may order. The Authorized Enforcement Agency may also seek collection of fines, penalties and any other amounts due to the City of Muskegon that a person has not paid.

(Ord. No. 2135, 6-8-2004)

Sec. 26-320 Cumulative remedies.

The imposition of a single penalty, fine, order, damage, or surcharge upon any person for a violation of this Ordinance, or of any permit, order, notice or agreement issued, or entered into under this Ordinance, shall not preclude the imposition by the City of Muskegon, the Authorized Enforcement Agency, or a court of competent jurisdiction of a combination of any or all of those sanctions and remedies or additional sanctions and remedies with respect to the same violation, consistent with applicable limitations on penalty amounts under state or federal laws or regulations. A criminal citation and prosecution of a criminal action against a person shall not be dependent upon and need not be held in abeyance during any civil, judicial, or administrative proceeding, conference, or hearing regarding the person.

(Ord. No. 2135, 6-8-2004)

Sec. 26-321. Responsibility to implement BMPs.

The owner or operator of a premises used for commercial or industrial purposes shall provide, at the owner or operator's own expense, reasonable protection from an accidental discharge of prohibited materials or other wastes into the storm water drainage system or water body through the use of structural and nonstructural BMPs. Further, any person responsible for a premises that is, or may be, the source of an illicit discharge may be required to implement, at the person's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the storm water drainage system or water body. Compliance with all terms and conditions of a valid

NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

(Ord. No. 2135, 6-8-2004)

Sec. 26-322. Interpretation.

Words and phrases in this Ordinance shall be construed according to their common and accepted meanings, except those words and phrases defined in Section 1.05 shall be construed according to the respective definitions given in that section. Technical words and technical phrases not defined in this Ordinance, but which have acquired particular meanings in law or in technical usage, shall be construed according to such meanings.

(Ord. No. 2135, 6-8-2004)

Sec. 26-323. Catch-line headings.

The catch-line headings of the articles and sections of this Ordinance are intended for convenience only, and shall not be construed as affecting the meaning or interpretation of the text of the articles or sections to which they may refer.

(Ord. No. 2135, 6-8-2004)