

Part 72

72.000

WETLANDS ORDINANCE

Ord. No. 1

Adopted: June 12, 1991

Amended: April 13, 1994

CLYDE TOWNSHIP ORDAINS:

72.001

SHORT TITLE.

Sec. 1. This ordinance shall be known and may be cited as the Clyde Township Wetlands Ordinance.

72.002

PURPOSE.

Sec. 2. To provide for the protection, preservation, replacement, proper maintenance, and use of Wetlands in order to minimize disturbance to them and to prevent damage from erosion, siltation, flooding and other hazards.

72.003

DEFINITIONS.

Sec. 3. The following terms, phrases, words, and their derivatives shall have the meaning given in this section:

1. Activity: Any use, operation, or action including, but not limited to, filling, dredging, constructing, excavating, and or draining.
2. Contiguous Wetland: Wetlands touching or connected to an inland lake, pond, river or stream.
3. Fill Material: Soil, rocks, sand, waste or any kind, or any other material which displaces soil or water or reduces water retention potential.
4. Operation: Any activity which in any way modifies the conditions of wetlands subject to this Ordinance as they exist on the effective date of this Ordinance.
5. Minor Drainage: Ditching and tiling for the removal of excess soil moisture incidental to planting, cultivating, protecting, or harvesting of crops or improving the productivity of land in established use for agriculture, horticulture, silviculture, or lumbering.
6. Person: An individual, sole proprietorship, partnership, corporation, association, municipality, State of Michigan, an instrumentality or agency of the State of Michigan, the Federal Government, or any instrumentality or agency of the Federal Government, or other legal entity.
7. Structure: The term structure shall mean any assembly of materials above or below the surface of the land or water including, but not limited to, houses, buildings, streets, highways, or roads.
8. Upland: The land area, higher in elevation, adjoining the wetland perimeter, uses for which are essentially non-aquatic.
9. Wetland: Lands characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances do support, wetland vegetation or aquatic life and is commonly referred to as a bog, swamp or march and which is any of the following:
 - a. Contiguous to the Great Lakes, an inland lake or pond, or a river or a stream.
 - b. Not contiguous to the Great Lakes, and inland lake or pond, or a river or stream; and more than two acres in size.

72.004

LANDS TO WHICH CLYDE TOWNSHIP WETLANDS ORDINANCE APPLIES:

Section 4.

1. The provisions of this Ordinance shall apply to all of the following:
 - a. Wetlands contiguous to an inland lake, pond, river or stream and non-contiguous wetlands greater than two acres in size.
2. In the case of a conflict between the Official Wetlands Inventory Map and the definitions contained in this Ordinance, the definitions shall control.

72.005 OFFICIAL WETLANDS INVENTORY MAP

Section 5.

1. Clyde Township shall prepare an Official Wetlands Inventory Map prior to taking any enforcement action against a person under this Ordinance.
2. The Official Wetlands Inventory Map shall identify the location of wetlands, greater than two acres in size, which are situated in whole, or in part, within the territorial boundaries of the Township.
3. Until the population of Allegan County exceeds 100,000 persons, the Official Wetlands Inventory Map is not required to identify or list wetlands located on public lands.
4. The Official Wetlands Inventory Map does not create any legally enforceable presumptions regarding whether property that is or is not included on the Official Wetlands Inventory Map is or is not, in fact, a wetland.

72.006

OFFICIAL WETLANDS INVENTORY MAP:
PRELIMINARY DRAFT, NOTICE, PUBLIC HEARING

Section 6.

1. Before Clyde Township shall adopt the Official Wetlands Inventory Map it shall prepare a draft or preliminary Wetlands Map.
2. Upon completion of the draft or preliminary Wetlands Map, the draft or preliminary Wetlands Map shall be made available to the general public by placing a photocopy of the draft or preliminary Wetlands Map on record in the offices of the Township Hall.
3. Upon completion of the draft or preliminary Wetlands Map, the Township Board shall direct that a Notice be printed in a newspaper of general circulation within the Township. Said Notice shall state:
 - a. That a draft or preliminary Wetlands Map has been prepared; and
 - b. That the draft or preliminary Wetlands Map is available for public inspection at the Township Hall and the hours during which said inspection may occur; and
 - c. That interested persons may secure copies of the draft or preliminary Wetlands Map through the Township offices; and
 - d. That a public hearing shall be held on the issue of adopting the preliminary or draft Wetlands Map as the Official Wetlands Inventory Map of Clyde Township and the time, place and date of the public hearing; and
 - e. That interested persons may appear in person to present comments or objections in regards to the draft or preliminary Wetlands Map at the public hearing or may submit written comments in regards to the draft or preliminary Wetlands Map to the Township Board prior to the date of the public hearing.
4. The Township Board shall respond, in writing, to all written comments which the Township Board receives prior to the date of the public hearing, which comment upon the draft or preliminary Wetlands Map.

72.007

OFFICIAL WETLANDS INVENTORY MAP
PUBLIC HEARING, NOTICE TO PROPERTY OWNERS

Section 7.

1. Not less than 14 days, nor more than 35 days, after the publication of the Notice required by Section 6 of this Ordinance, the Clyde Township Board shall conduct a public hearing concerning the Official Wetlands Inventory Map.
2. At the public hearing, interested persons may comment upon and make objections to the draft or preliminary Wetlands Map.
3. At the conclusion of the public hearing the Township Board shall adopt the draft or preliminary Wetlands Map, with the additions, changes and corrections which the Township Board determines are appropriate, as the Clyde Township Official Wetlands Inventory Map.
4. After the adoption of the Official Wetlands Inventory Map, the Township Board shall direct the Township Assessor to send each record owner of property who is identified on the property tax roll of the Township, a Notice which states:
 - a. That the Official Wetlands Inventory Map exists.
 - b. Where the Official Wetlands Inventory Map may be viewed.
 - c. That Clyde Township has adopted an Ordinance regulating Wetlands.
 - d. That the Official Wetlands Inventory Map does not necessarily include all Wetlands which are subject to the Clyde Township Wetlands Ordinance.
5. The Notice required by Subsection 4 of this Section of the Ordinance may be given to property owners by including said Notice with the annual Notice of the property owner's property tax assessment.

72.008

OFFICIAL WETLANDS INVENTORY MAP:
AMENDMENT

Section 8. The Township may, in its discretion, amend the Official Wetlands Inventory Map. An amendment to the Official Wetlands Inventory Map shall conform to the procedures and requirements established in this Ordinance for the adoption of the original Official Wetlands Inventory map.

72.009

COMPLIANCE MANDATORY

Section 9. No operation, structure, or land use shall be located, extended, converted, or structurally altered without full compliance with the terms of this Ordinance and other applicable regulations which apply to uses within Clyde Township.

72.010

PERMITTED ACTIVITIES

Section 10. The following activities are permitted within a Wetland area, without a permit, unless otherwise prohibited by statute or ordinance:

1. Activities that require a permit under the **Inland Lakes and Streams Act, No. 346 of the Public Acts of 1972.**
2. Fishing, trapping or hunting.
3. Swimming or boating.
4. Hiking.
5. Grazing of animals.
6. Farming, horticulture, silviculture, lumbering and ranching activities; including plowing, irrigation, irrigation ditching, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices. Wetlands altered under this subdivision shall not be used for a purpose, other than a purpose described in this Section, without a permit from the Township.

7. Maintenance or operation of serviceable structures in existence on the effective the effective date of this ordinance.
8. Construction or maintenance of farm or stock ponds.
9. Maintenance operation or improvement which includes straightening, widening or deepening of the following, which is necessary for the production or harvesting of agricultural products:
 - a. An existing private agricultural drain.
 - b. That portion of a drain legally established pursuant to the Drain Code of 1956, Act No. 40 of the Public Acts of 1956, as amended, which has been constructed or improved for drainage purposes.
 - c. A drain constructed pursuant to the provisions of the **Goemaere-Anderson Wetland Protection Act, Act No. 203 of the Public Acts of 1979**, as amended.
10. Construction or maintenance of farm roads, forest roads, or temporary roads for moving, mining, or forestry equipment, if the roads are constructed and maintained in a manner to assure that any adverse effect on the Wetland will be otherwise minimized.
11. Drainage necessary for the production and harvesting of agricultural products if the Wetland is owned by a person who is engaged in commercial farming and the land is to be used for the production and harvesting of agricultural products. Except as otherwise provided in this Ordinance, Wetlands improved under this subdivision after the effective date of this Ordinance shall not be used for non-farming purposes without a permit from the Township. This subdivision shall not apply to a Wetland, which is contiguous to a lake or stream, or to a tributary of a lake or stream, or to a Wetland which the Township has determined by clear and convincing evidence to be a Wetland which is necessary to be preserved for the public interest, in which case a permit shall be required.
12. Maintenance or improvement of public streets, highways, or roads within the right-of-way and in such a manner as to assure that any adverse effect on the Wetland will be otherwise minimized. Maintenance or improvement does not include adding extra lanes; increasing the right-of-way; or deviating from the existing location of the street, highway or road.
13. Maintenance, repair, or operation of gas or oil pipelines and construction of gas or oil pipelines having a diameter of 6 inches or less, if the pipelines are constructed, maintained, or repaired in a manner to assure that any adverse effect on the Wetland will be otherwise minimized.
14. Maintenance, repair, or operation of electric transmission and distribution powerlines and construction of distribution powerlines if the distribution powerlines are constructed, maintained or repaired in a manner to assure that any adverse effect on the Wetland will be otherwise minimized.
15. Operation or maintenance, including reconstruction of recently damage parts, of serviceable dikes and levees in existence on the effective date of this Ordinance or constructed pursuant to this Ordinance.
16. Construction of iron and copper mining tailings, basins, and water storage areas.

72.011

WETLAND PERMIT REQUIRED

Section 11.

1. Except for those activities expressly permitted by Section 10 of this Ordinance, it shall be unlawful for any person to conduct any activity within a Wetland area without first obtaining a Wetland Permit from the Township. Activities requiring a permit include, but are not limited to, the following:
 - a. Depositing, or permitting the placement of, fill material in a Wetland.
 - b. Dredging, removing, or permitting the removal of soil, or minerals from a Wetland.
 - c. Constructing, operating or maintaining any use, structure or development in a Wetland.

- d. Draining surface water from a Wetland.
2. Wetland activities approved under this Ordinance shall not be commenced until all applicable Township, local, state and/or federal approvals and permits have been acquired.

72.012 WETLAND PERMIT APPLICATION:
CONTENTS, FEES

Section 12.

1. The Township shall distribute official Wetland Permit Applications (prepared or approved by the **Michigan Department of Natural Resources**) to any person who wishes to apply for a Wetland permit.
2. Any person applying for a Wetland Permit shall submit a completed Wetland Permit Application to the Township Clerk.
3. All Wetland Permit Applications must include a check or money order, made payable to the **Michigan Department of Natural Resources**, in the amount established by the **Michigan Department of Natural Resources** for Wetland Permit Applications.
4. All Wetland Permit Applications must include an application fee, payable to the Township, which is established by the Township Board through resolution, which will be used to defray the costs of processing the Wetland Permit Application.

72.013 WETLAND PERMIT APPLICATION:
PROCEDURE, NOTICE OF PUBLIC HEARING

Section 13.

1. Immediately upon receipt of a completed Wetland Permit Application and the required fees, the Township Clerk shall send a photocopy of the application and the \$25.00 check or money order, payable to the **Michigan Department of Natural Resources**, to the **Michigan Department of Natural Resources**.
2. Immediately upon receipt of a completed Wetland Permit Application and the required fees, the Township Clerk shall send photocopies of the application to each member of the Clyde Township Planning Commission.
3. The Secretary of the Clyde Township Planning Commission shall publish a Notice in a newspaper of general circulation within the Township that states:
 - a. That the Township has received a Wetland Permit Application;
 - b. A general description of the proposed project;
 - c. The location of the proposed project;
 - d. That the Planning Commission will hold a public hearing on the Wetland Permit Application and the date, time and location of the public hearing;
 - e. That interested persons may review the Wetland Permit Application at the Township Hall and the times during which such review is permitted;
 - f. That interested persons may submit written comments or objections regarding the Wetland Permit Application to the Planning Commission prior to the date of the public hearing and that interested persons will be given the opportunity to comment upon the Wetland Permit Application during the public hearing.
4. The Notice required in Subsection 3 of this Section shall be published not less than 14 days, no more than 28 days, prior to the date of the public hearing.

72.014 REVIEW OF WETLAND PERMIT APPLICATIONS

Section 14.

1. The Clyde Township Planning Commission shall review the submitted Wetland Permit Application to insure that all required information has been provided.

After its review, and the completion of the public hearing on the Wetland Permit Application, the Planning Commission will make a determination to grant, deny or modify the Wetland Permit Application based upon the standards set forth in Section 15 of this ordinance.

2. Failure to submit complete information with the Wetland Permit Application may constitute good cause to deny a Wetland Permit Application.
3. If the Planning Commission denies a Wetland Permit Application, the Planning Commission must set forth its reasons for the denial in writing, and send a copy of its written determination to the applicant.
4. If the Planning Commission denies a Wetland Permit Application, the land owner may appear at the Township's annual property assessment Board of Review to request a revaluation of the affected property for assessment purposes to determine its fair market value under the use restrictions.
5. If the Township Planning Commission grants a Wetland Permit Application under the provisions of this Ordinance, the Planning Commission may require the applicant to file a cash bond, or irrevocable letter of credit, in such form and amount as deemed necessary by the Planning Commission, to insure compliance with this Ordinance.
6. If a Wetland Permit Applicant is aggrieved by a determination, action, or inaction by the Planning Commission regarding the issuance of a permit, that person may seek judicial review in the same manner as provided in the Administrative Procedures Act of 1969, Act No. 306 of Public Acts of 1969. This provision shall not limit the right of a Wetland owner to institute proceedings in a Court of competent jurisdiction when necessary to protect the Wetland owner's rights.
7. The Township Planning Commission shall take final action, either granting, denying or modifying, a Wetland Permit Application within 90 days of the date that the Township Clerk first received the Wetland Permit Application.

72.015

WETLAND PERMIT APPLICATION: REVIEW STANDARDS

Section 15.

1. A Wetland Permit shall not be approved unless the Planning Commission determines that the issuance of a permit is in the public interest, that the permit is necessary to realize the benefits derived from the activity, and that the activity is otherwise lawful.
2. In determining whether the activity is in the public interest, the benefit which reasonably may be expected to accrue from the proposal shall be balanced against the reasonably foreseeable detriments of the activity. The decision shall reflect the local, state and national concern for the protection of natural resources from pollution, impairment and destruction. The following general criteria shall be considered when making the determination:
 - a. The relative extent of the public and private need for the proposed activity.
 - b. The availability of feasible and prudent alternative locations and methods to accomplish the expected benefits from the activity.
 - c. The extent and permanence of the beneficial or detrimental effects which the proposed activity may have on the public and private uses to which the area is suited, including the benefits the Wetland provides.
 - d. The probable impact of each proposal in relation to the cumulative effect created by other existing and anticipated activities in the watershed.
 - e. The probable impact on recognized historic, cultural, scenic, ecological or recreational values on the public health, or fish, or wildlife.
 - f. The size of the Wetland being considered.
 - g. The amount of remaining Wetland in the general area.

- h. Proximity to any waterway.
 - i. Economic value, both public and private, of the proposed land change to the general area.
3. In considering a Permit Application, the Planning Commission shall also give consideration to the following criteria:
- a. Whether the proposed activity will threaten public health, safety or welfare by causing flooding, erosion, saltation and/or pollution.
 - b. Whether the proposed activity will interfere with the natural functions of Wetlands, including the flow of waters and nutrients between Wetlands and adjacent water courses.
 - c. Whether the proposed activity will unnecessarily alter the natural grade of soils of any Wetland or alter the flow of surface or subsurface water to or from the Wetland at any season of the year.
 - d. Whether the proposed activity will result in the destruction of critical wildlife and waterfowl habitat including habitat important for migratory waterfowl.
 - e. Whether the proposed activity will interfere with public rights to the enjoyment and use of public waters.
 - f. Whether the proposed activity will interfere with scenic, aesthetic, recreational and educational benefits of Wetlands.
 - g. Whether the proposed activity will channelize a Wetland for the purpose of providing access to a development on a contiguous upland area.
 - h. The proposed activity will be in compliance with all other applicable statutes and ordinances.
4. In considering a Permit Application, the Planning Commission shall give serious consideration to findings of necessity for the proposed activity which have been made by local, state or federal agencies.
5. A permit shall not be issued unless it is shown that an unacceptable disruption will not result to the aquatic resource. In determining whether a disruption to the aquatic resource is unacceptable, the criteria set forth in Subsections 2, 3 and 4 of this Ordinance shall be considered. A permit shall not be issued unless the applicant also shows either of the following:
- a. The proposed activity is primarily dependent upon being located in the Wetland; or
 - b. A feasible and prudent alternative does not exist.

72.016

VIOLATIONS:
CRIMINAL PENALTIES

Section 16.

- 1. A person who violates a provision of this Ordinance, or who violates a conditions or requirement of a Wetland Permit issued under this Ordinance, is guilty of a misdemeanor, and upon conviction, shall be imprisoned for not more than 90 days, or fined not more than \$500, or both. Each day that a violation exists or continues shall be a new and separate offense.
- 2. A person who willfully or recklessly violates a condition or limitation in a Wetland Permit issued under this Ordinance, or a corporate officer who has knowledge of or is responsible for a violation, is guilty of a misdemeanor, punishable by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or both.

72.017

VIOLATIONS:
ORDER FOR COMPLIANCE, CIVIL ACTIONS

Section 17.

- 1. If, on the basis of information available to the Township Board, the

Township Board finds that a person is in violation of this Ordinance or a condition set forth in a permit issued under Section 14, the Township Board shall issue an Order requiring the person to comply with the provision of this Ordinance, or the conditions included on the person's Wetland Permit. In the alternative, the Township Board can direct the Township Attorney to bring a civil action under Section 18 of this Ordinance.

2. An order issued under Subsection 1 shall state with reasonable specificity the nature of the violation and shall specify a time for compliance, not to exceed 30 days, which the Township Board determines is reasonable, taking into account the seriousness of the violation and good faith efforts to comply with applicable requirements.

72.018 CIVIL ACTIONS BY TOWNSHIP ATTORNEY;
FINES AND PENALTIES

Section 18.

1. Upon request of the Township Board, the Township Attorney may commence a civil action for appropriate relief including injunctive relief, under Section 19 (1). An action under this Subsection may be brought in the Circuit Court for the County of Allegan or for a County in which the defendant is located, resides or is doing business. The Circuit Court shall have jurisdiction to restrain the violation and to require compliance with this Act. In addition to any other relief granted under this Section, the Court may impose a civil fine of not more than \$10,000 per day of violation.
2. In addition to the penalties provided under Subsection 1, the Court may Order a person who violates this Act to restore as nearly as possible the Wetland which was effected by the violation, to its original conditions immediately before the violation. The restoration may include the removal of fill material deposited in the Wetland or the replacement of soil, sand or minerals.

72.019 FEES AND CIVIL FINES;
DEPOSIT IN TOWNSHIP GENERAL FUND

Section 19. Funds collected by the Township under this Ordinance, other than criminal fines, shall be deposited in the general fund of the Township.

72.020 TAKING WITHOUT COMPENSATION

Section 20.

1. This Ordinance shall not be construed to abrogate any rights or authority otherwise provided by law.
2. For the purpose of determining if there has been a taking of property without just compensation under state law, an owner of property who has sought and been denied a permit from the Township; or, who has been made subject to modifications or conditions in the permit under this Ordinance; or, who has been injured by the action or inaction of the Township in processing a Wetlands Permit Application, may file an action in a Court of competent jurisdiction.
3. If the Court determines that an action of the Township, pursuant to this Ordinance, constitutes a taking of the property of a person then the Court shall Order the Township, at the Township's option, as applicable, to do one or more of the following:
 - a. Compensate the property owner for the full amount of the lost value.
 - b. Purchase the property, in the public interest, at a price determined before its value was affected by this Ordinance, or through the action or inaction of the Township pursuant to this Ordinance.
 - c. Modify its action or inaction, with respect to the property, so as to minimize the detrimental affect to the property's value.

4. For the purposes of this Section, the value of the property may not exceed that share which the area in dispute occupies in the total parcel of land, of the state equalized valuation of the total parcel, multiplied by two, as determined by an inspection of the most recent assessment roll of the Township.

72.021 SEVERABILITY

Section 21. If any Section, Subsection, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

72.022 EFFECTIVE DATE AND REPEAL OF CONFLICTING ORDINANCES

Section 22. This Ordinance amendment shall take effect 30 days following publication of the same. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

CLYDE TOWNSHIP,
ALLEGAN COUNTY, MICHIGAN

Joan Nagel, Clerk
Clyde Township
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Fennville, MI 49408-9502