

AN ORDINANCE TO PROTECT THE WETLANDS AND WATERCOURSES WITHIN THE CITY OF LUNA PIER; TO PRESERVE THE ECONOMIC, HEALTH, AESTHETIC, AND RECREATIONAL VALUES ASSOCIATED WITH WETLANDS AND WATERCOURSES; TO ESTABLISH STANDARDS AND PROCEDURES FOR THE REVIEW OF PROPOSED ACTIVITIES IN WETLANDS AND WATERCOURSES; TO PROVIDE FOR THE ISSUANCE OF USE PERMITS FOR APPROVED ACTIVITIES; AND TO ESTABLISH PENALTIES FOR THE VIOLATION OF THIS ARTICLE.

THE CITY OF LUNA PIER ORDAINS:

Section 1.01. Short Title.

This Ordinance shall be known and may be cited as the City of Luna Pier's Wetlands and Watercourses Ordinance.

Section 2.01. Purpose.

The wetlands and watercourses of the City are indispensable but sensitive natural resources subject to flooding, erosion, soil bearing capacity limitations, and other hazards. In their natural state, wetlands and watercourses serve multiple functions for flood control, stormwater storage and release, pollution control, erosion control, wildlife habitat, aesthetics, open space, and recreation. The continued destruction and loss of wetlands and watercourses constitutes a distinct and immediate danger to the public health, safety, and general welfare.

Pursuant to Mich. Const. 1963, Art. IV, 52, the conservation and development of natural resources of the State is a matter of paramount public concern in the interest of the health, safety, and general welfare of the people. It is, therefore, the policy of the City of Luna Pier:

- 1) To protect wetlands and watercourses while taking into account varying economic, ecological, hydrologic, recreational, and aesthetic values.
- 2) To provide for the protection, preservation, replacement, proper maintenance, and use of wetlands and watercourses located in the City of Luna Pier in order to minimize disturbance to them and to prevent damage from erosion, siltation, and flooding.
- 3) To provide for the issuance of use permits and approved activities.
- 4) To establish standards and procedures for the review of proposed activities in wetlands and watercourses.
- 5) To establish penalties for the violation of this Ordinance.

Section 3.01. Definitions.

The following terms, phrases, words, and their derivatives shall have the meaning, given herein, unless the context otherwise requires:

- 1) Activity: Means any use, operation, or action including but not limited to filling, dredging, constructing, or excavating material and/or structures.
- 2) Aquatic vegetation: Means plants and plant life forms which naturally occur in, at, near, or predominantly near water.
- 3) Bottomland: All land area of a lake, stream, or watercourse which lies below the ordinary high water mark and which may or may not be covered by water.

4) Channel: The geographical area within the natural or artificial banks of a watercourse required to convey continuously or intermittently flowing water under normal or average flow conditions.

5) Contiguous: Means any of the following: A permanent surface water connection or other direct physical contact with an inland lake or pond; a seasonal or intermittent direct surface water connection; a wetland partially or entirely located within 500 feet of the ordinary high water mark.

6) Drainageway: Any drain, pipe, stream, creek, or swale which serves to transport water runoff to the primary water course system.

7) Fill material: Any soil, sand, gravel, clay, peat, debris, and refuse, waste of any kind, or any other material which displaces soil or water or reduces water retention potential.

8) Hydric Soil: Is a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

9) Minor Activities: Means activities that are similar in nature, that will cause only minimal adverse environmental effects when performed separately, and that will have only minimal cumulative adverse effects on the environment.

10) Minor Drainage: Includes ditching or tiling for the removal of excess soil moisture incidental to the planting, cultivating, protecting or harvesting of crops or improving the productivity of land in established use for agriculture, horticulture, silviculture or lumbering.

11) Office map: The official Wetlands Map of the City of Luna Pier, as amended or updated from time to time, a copy of which shall be on file with the City Clerk.

12) Ordinary high water: The line between upland and bottomland which persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is markedly distinct from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation. On an inland lake which has a level established by law, the ordinary high water mark means the high establishing level. When water returns to its natural level as a result of the permanent removal and abandonment of a dam, it means the natural ordinary high water mark.

13) Owner: Any person who has dominion over, control of, title to and/or any proprietary interest in wetland and watercourse areas, or title to an obstruction, natural or otherwise, to wetland and watercourse properties.

14) Person: Any individual, firm, partnership, association, corporation, company, organization, or legal entity of any kind, including governmental agencies conducting operations within the City of Luna Pier.

15) Runoff: Surface discharge of precipitation to a watercourse or low area.

16) Seasonal: Any intermittent or temporary activity which occurs annually and is subject to interruption from changes in weather, water level, or time of year, and may involve annual removal and replacement of a device or structure.

17) 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, bulkheads, piers, docks, landings, dams, waterway obstructions, towers, and utility transmission devices.

18) Temporary: A time period as specified in the use permit, or if unspecified, means an uninterrupted time period less than one (1) year in duration.

19) Watercourse: Any waterway, drainageway, drain, river, stream, lake, pond, or retention basin, or any body of surface water having well-defined banks, whether continually or intermittently flowing. Watercourses subject to regulation are designed on the official Wetlands Map.

20) Wetlands: 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 are commonly referred to as bogs, swamps, marshes, and wet meadows.

Section 4.01. Lands to Which Ordinance Applies.

Those wetlands subject to the regulatory terms of this article include:

1) All wetlands contiguous to designated watercourses including but not limited to other streams and drains illustrated on the official Wetlands and Watercourses Map.

2) All wetlands of more than two (2) acres in size.

3) All other wetlands determined by the City of Luna Pier to be essential for preventing pollution, impairments or destruction of natural resources systems and the environment, and which are so designated on the official Wetlands Map.

4) All retention and detention facilities constructed for the purpose of collecting and/or directing runoff water onto any wetland or watercourse identified but not limited to the official Wetlands and Watercourses Map.

Section 5.01. Official Wetlands Map.

1) The designated Wetlands shall be established by the City of Luna Pier Planning Commission and shown on an official Wetlands Map and which map with all notations, references, and the information shown thereon, shall be as much a part of this Ordinance as if fully described herein. The official Wetlands Map is not definitive of all possible wetlands within the City. Individuals may request an on-site wetland determination from the Department of Natural Resources. The official Michigan DNR Wetlands Map, compiled from the following sources: USGS Datum Survey, 1965 and photo revised in 1983, and the U.S. Department of the Interior, fish and Wildlife Service National Wetlands Inventory Map may be incorporated by the Planning Commission into City map. Only limited accuracy may be obtained from the use of the official Wetlands Map due to scale and detail. A site specific evaluation and field investigation by the City Building Inspector or like official will also be made during the site plan approval process to verify parcels in question.

2) The City Council may revise the official Wetlands Map at any time that new and substantial data for wetlands and watercourses are available. Where the official Wetlands Map is amended to and an individual property or several properties are affected, notice of the proposed amendment and hearing shall be given to all owners of such property or properties at least fifteen (15) days before the hearing.

Section 6.01. Notice to Department of Natural Resources.

The City of Luna Pier shall notify the Department of Natural Resources of the State of Michigan of the adoption of this Ordinance.

Section 7.01. Property Inspection.

The City of Luna Pier, its officials, agents, and employees may make reasonable entry upon any lands or water with the City for the purpose

of enforcement of this Ordinance or the conduct of any investigation, survey, or study contemplated by this Ordinance.

Section 8.01. Use Permits Required.

The draining of any wetlands is an activity expressly prohibited under Act 203; any activity occurring within the wetlands will be done in accordance with Public Act 203. Except for those activities expressly permitted by Section 9.01, it shall be unlawful for any person to conduct any activity within a wetlands area without first having obtained a Use Permit upon proper application, including but not limited to the following:

- 1) Depositing or permitting the depositing of any material including but not limited to hazardous chemicals, non-biodegradable aquatic pesticides and herbicides, and harmful fertilizers into, within, or upon any watercourse or wetland area.
- 2) Dredging, removing, or permitting the dredging or removal of material or minerals from a watercourse or wetland area.
- 3) Erecting or building any structure including but not limited to buildings, roadways, bridges of any type, tennis courts, paving, utility, or private poles, or towers within or upon any watercourse or wetland area.
- 4) Constructing, operating or maintaining any land use or development in a wetland or watercourse area.
- 5) Enlarging, diminishing, or altering any lake, stream, or other naturally occurring watercourse.
- 6) Creating, enlarging, or diminishing any natural or artificially constructed canal, channel, ditch, lagoon, pond, lake, or other waterway for navigation or any other purpose, whether or not connected to an existing lake, stream, or watercourse.

7) Constructing, placing, enlarging, extending, or removing any temporary, seasonal, or permanent operation or structure upon bottomland or wetlands, except seasonal docks, rafts, diving platforms, and other water recreational devices customarily owned and used by individual households.

8) Constructing, extending, enlarging, or connecting any conduit, pipe, culvert, or open or closed drainage facility carrying storm water runoff from any site, within a wetlands area, or any other land use permitting discharge of silt, sediment, organic or inorganic material, chemicals, fertilizers, flammable liquids, or other polluting substances except in accordance with requirements of County, State, Federal agencies, and the City of Luna Pier.

9) Constructing, enlarging, extending, or connecting any private or public sewage or waste treatment plant discharge to any lake, pond, stream, watercourse, or wetland, except in accordance with requirements of County, State, Federal agencies, and the City of Luna Pier.

10) Developments that increase the use of human density upon a wetland or watercourse that would threaten the natural character of the resources or produce a recreational impact beyond the capacity of the lake and/or stream to provide for the health and safety of existing users.

Section 9.01. Permitted Activities.

Notwithstanding the prohibition of Section 8.01, the following activities are permitted within wetland areas without a Use Permit, unless otherwise prohibited by statute or ordinance:

- 1) Fishing, trapping, and hunting.
- 2) Conservation of soil, vegetation, water, fish, wildlife, and

other natural resources.

3) Swimming and boating.

4) The operation and maintenance of existing dams and other water control devices, if in compliance with all applicable State statues and ordinances.

5) Installation on lakes, for noncommercial use, of any type of dock, boat hoist, ramp, raft, or other recreational structure which is placed in a lake and removed at the end of the boating season.

6) Activities by a governmental entity relating to the construction, maintenance or repair of a public highway, street, roadway, sewer system, drainage system, or watermain facility.

7) Where a final subdivision plat or a final site development plan containing work as defined in this article has been reviewed and approved by the City Council on conformance with the requirements of this article, such approval, together with any additional terms and conditions attached hereto, shall be considered to have completed the requirements for a permit under this article, which shall then be issued by the City of Luna Pier.

City of Luna Pier.

Section 10.01. Nonconforming Activities.

An activity that was lawful before effective date of this Ordinance, but which is not in conformity with the provisions of this article may be continued subject to the following:

1) No such activity shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity with this article.

2) On a building or structure devoted in whole or in part to a nonconforming use or activity; work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing to an extent not exceeding sixty (60) percent of the assessed value of the building or structure.

3) If a nonconforming activity is discontinued for six (6) consecutive months, any resumption of the activity shall conform to this article.

4) If any nonconforming use or activity is destroyed, it shall not be resumed except in conformity with the provisions of this article.

5) Activities that are or become nuisances shall not be entitled to continue as nonconforming activities.

Section 11.01. Use Permit Application.

A use permit applicant shall submit the following materials to the City Clerk:

1) A completed Use Permit Application which includes the following information:

- a. The name, address and telephone number of the applicant and of the applicant's agent;
- b. The name, address and telephone number of the owner of the property;
- c. The project location, including as applicable, the street, road or highway, section number, name of subdivision, and name of any wetlands or watercourses which will or may be impacted;
- d. A detailed description and statement of the purpose of the proposed activity;
- e. The location and number of trees to be removed of three (3) inch caliper or greater (The caliper of a tree is its diameter at

four and one-half (4 1/2) feet above the ground);

2) A Use Permit Application Fee in an amount equal to the then prevailing land use permit fee.

3) Where the applicant is not the owner of the property, a written authorization from the owner permitting the proposed activity.

4) A site Plan, including topographical survey, sealed by a registered engineer or registered surveyor, which includes the following information:

- a. The shape and dimensions of the lot or parcel, together with the existing and proposed locations of structure and improvements, if any;
- b. Specification of the extent of all areas to be disturbed, the depths at which removal or deposition activities are proposed, and the angle or repose of all slopes of deposition material, and/or sides of channels or excavation resulting from removal operations;
- c. Existing general soil conditions throughout the parcel;
- d. Location and dimensions of all setbacks, easements, and existing and proposed public and private utilities; and
- e. Statements as to grade changes proposed and proposed drainage pattern changes for the lot or parcel and how such changes for the lot or parcel and how such changes will affect these regulations. Existing contour data for the entire property with a vertical contour interval of no more than two (2) feet, and vertical contour data at an interval of no more than one (1) foot for all areas to be disturbed by proposed operations, extending for a distance of at least fifty (50) feet beyond the limits of such areas. Indicated elevations shall be based on United States Geological Survey datum.

Section 12.01. Review of Use Permit Applications.

1) The Luna Pier Planning Commission shall review the submitted Use Permit Application to insure that all required information has been provided. At the request of the applicant or the City, a public hearing may be held to review the proposed activity in light of the purposes and review standards of this Ordinance. The Luna Pier Planning Commission shall, after review of the proposed activity, submit a report and recommendations as to the propriety of the proposed use under the review standards of Section 13.01.

2) The granting or denying of all use permits shall be the responsibility of the City of Luna Pier Planning Commission. The granting or denying of all permits shall be governed by the standards contained in Section 13.01.

3) Prior to a determination by the Planning Commission on a Use Permit Application, notice of the application and the date, time and location for public comment shall be mailed by regular First Class Mail to those persons to whom real property adjacent within 300 feet to the proposed activity is assessed. Notice shall include a date prior to which written comments regarding the application may be submitted to the City for consideration by the Planning Commission.

4) Whenever a User Permit Application is denied, the reasons for denial shall be transmitted, in writing to the applicant.

5) Whenever a Use Permit Application is granted, the Planning Commission shall:

- a. Impose such conditions on the manner and extent of the proposed activity or use as are necessary to ensure that the intent of this Ordinance is carried out and that the activity or use will be conducted in such manner as will cause the least possible damage, encroachment or interference with natural resources and natural processes within the watercourse and/or wetland area;

- b. The expiration date of which any wetland operation must be completed shall be within one (1) year from the date of issuance.
- c. Require the filing with the City of a cash bond or irrevocable letter of credit, in such form and amount as determined necessary by the City to ensure compliance with the approved Use Permit; and
- d. Send written notice of the granting of the permit to all persons who have submitted written comments on the application to the Planning Commission.

6) A permit approved by the Planning Commission shall not be issued until ten (10) calendar days following the date of the approval. Any interested person who is aggrieved by the granting or denying of a Use Permit may request an appeal of the decision to the City Council. A request for appeal must be filed within ten (10) day period, the issuance of any permit shall be suspended pending the outcome of the appeal. The City Council, upon review, may reverse, affirm or modify the determination and/or permit issued by the Planning Commission.

Section 13.01. Review Standards.

The following standards shall govern the grant or denial of Use Permit Applications:

- 1) The proposed activity shall not threaten public health or safety by increasing flooding, erosion, siltation, pollution, or stormwater runoff volumes.
- 2) The proposed activity shall not interfere with the natural functions of wetlands and watercourses, including the flow of waters and nutrients between wetlands and adjacent watercourses.
- 3) The proposed activity shall not unnecessarily alter the natural grade or soils of any wetland or watercourse, or alter the flow of surface or subsurface water to or from the wetland at any season of the year.
- 4) The proposed activity shall not result in the destruction of critical wildlife and waterfowl habitat, including habitat important for migratory waterfowl.
- 5) The proposed activity shall not interfere with public rights to the enjoyment and use of public waters.
- 6) The proposed activity shall not interfere with the scenic, aesthetic, recreational, and educational benefits of wetlands and watercourses.
- 7) There shall be no less harmful, feasible, and prudent alternatives to the proposed activities.
- 8) The proposed activity must be consistent with the promotion of the public health, safety, and welfare in light of the paramount concern for the protection of its natural resources from pollution, impairment, or destruction.
- 9) The proposed activity shall be in compliance with all other applicable statutes and ordinances.
- 10) Proposed recreational activities shall not increase user density beyond the ability of the resource to provide for a safe and healthy environment.

Section 14.01. Display Permits.

The permit grantee shall prominently display on the site the permit issued. Such display shall be continuous while work authorized under

the permit is being done, and for at least ten (10) days after the completion thereof. Failure to allow entry for inspection by City representatives pursuant to the conditions attached to the permit shall constitute a violation of this Ordinance.

Section 15.01. Taking Without Compensation.

1) This Ordinance shall not be construed to abrogate rights or authority otherwise protected by law.

2) For the purposes of determining if there has been a taking of property without just compensation under Michigan Law, an owner of property who has sought and has been denied a permit or has been made subject to modifications or conditions in the permit under this Ordinance may file an action in a court of competent jurisdiction.

3) If the court determines that an action of the City pursuant to this Ordinance constitutes a taking of the property of a person, then the court shall order the City, at the City's option, 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 as determined before its value was affected by this Ordinance;
- c. Modify its action with respect to the property so that the action will not constitute a taking of the property.

Section 16.01. Interpretation and Application.

In the interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements adopted for the promotion of the public health, morals, safety, comfort, convenience, or general welfare. It is not intended by this Ordinance to repeal, abrogate, annul, or in any way impair or interfere with any existing provisions of law or ordinance, with any rules, regulations, or permits previously adopted or issued or which shall be adopted or issued pursuant to the law relating to activities within Wetland Areas; provided, however, that where this Ordinance imposes a greater restriction than is required by existing ordinance or by rules, regulations, or permits, the provisions of this Ordinance shall control.

Section 17.01 Penalties - Enforcement.

1) Any person violating any of the provisions of this Ordinance shall be guilty of a misdemeanor, and upon conviction therefore shall be fined a maximum of Five Hundred Dollars (\$500.00) for each such conviction, or shall be punished by imprisonment for a period not to exceed ninety (90) days for each offense, or by both such fine and imprisonment in the discretion of the court, together with costs of such prosecution. Each day upon which such violation shall occur shall constitute a separate offense.

2) Any use or activity in violation of the terms of this Ordinance is hereby declared to be a nuisance per se, and may be abated by order of any court of competent jurisdiction. The City Council, in addition to other remedies, including those provided prevent, abate, or restrain the violation. All costs, fees, and expenses in connection with such action shall be assessed as damages against the violation.

3) In the event of a violation, the City of Luna Pier shall have the power to order complete restoration of the wetland area involved by the person or agent responsible for the violation. If such responsible person or agent does not complete such restoration within the time specified in the order (not to exceed eighteen (18) months), the City shall have the authority to restore the affected wetland to the prior condition wherever possible and the person or agent responsible for the original violation shall be held liable to the City for the cost of restoration.

4) Any person violating the provisions of this Ordinance shall become liable to the City for any expense or loss or damage occasioned by the City by reason of such violation.

Section 18.01. Severability.

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.

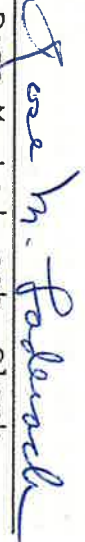
Section 19.01. Section Headings.

The sections headings used in this Ordinance are for convenience only and are not part of the Ordinance.

EFFECTIVE DATE:

This Ordinance shall become effective ten (10) days after a summary has been published as provided by law.

I, Rose M. Laderach, Clerk, City of Luna Pier, do hereby certify that the foregoing ordinance was duly adopted at a regular meeting of the Luna Pier City Council held on 11th day of September, 1997.


Rose M. Laderach, Clerk
City of Luna Pier

DATED: 9/12/97

ADOPTED: 9/11/97

PUBLISHED: 9/19/97

EFFECTIVE: 9/29/97