

PENINSULA TOWNSHIP
Ordinance No. 37 of 2009

AN ORDINANCE PURSUANT TO ACT 246 OF THE PUBLIC ACTS OF 1945,
AS AMENDED, TO PROVIDE PROCEDURES INTENDED TO COMPLY WITH
FEDERAL AND STATE DUE PROCESS REQUIREMENTS BEFORE
INCLUDING PRIVATE PROPERTY ALONG THE GRAND TRAVERSE BAY
LAKE MICHIGAN SHORELINE IN A PHRAGMITES ERADICATION ZONE

THE TOWNSHIP OF PENINSULA ORDAINS:

Section 1. Title.

This Ordinance shall be known as the Peninsula Township Phragmites Ordinance.

Section 2. Legislative Findings and Purpose of Ordinance.

Phragmites is an invasive species whose spread is not halted by traditional legal boundaries between parcels. Although Phragmites seeds can cause a small amount of spread, most reproduction is accomplished through runners growing along the ground. A single stand of Phragmites can spread 30-50 feet per year through these runners. If left unchecked, dense Phragmites stands can block views of Lake Michigan and make beaches inaccessible, which can lead to a decline in tourism and property values. In addition, the spread of Phragmites can drive out native plant species thereby destroying beneficial wildlife habitat. As a result, the purpose of this Ordinance is to provide procedures intended to comply with federal and state due process requirements so that all property along the Grand Traverse Bay Lake Michigan shoreline with a Phragmites infestation can be included in a Phragmites eradication zone and can receive effective Phragmites treatment. By including all property along the Grand Traverse Bay Lake Michigan shoreline with a Phragmites infestation in the Phragmites eradication zone, this Ordinance will help maximize the effectiveness of the Phragmites treatment, thereby eliminating or reducing the adverse impacts of a Phragmites infestation.

Section 3. Definitions. As used in this Ordinance,

“Bottomland” means lands in Grand Traverse Bay, Lake Michigan, including the bays and harbors thereof, lying below and lakeward of the ordinary high water mark.

“Ordinary high water mark” means the elevation above sea level, International Great Lakes datum of 1955 established for Lake Michigan, 579.8 feet, by Section 32502 of Part 325 of the Natural Resources and Environmental Protection Act of 1984, as amended, being MCL 324.32502, as amended.

“Person” means an individual, firm, corporation, association, partnership, limited liability company, or other legal entity.

“Phragmites” or “Phragmites plant” means the invasive plant species with the scientific name *Phragmites australis*, also known as the common reed, which is a large perennial grass native to wetland sites throughout temperate regions of the world.

“Phragmites administrator” means the person(s) appointed by the Township Board to administer this Ordinance.

“Phragmites eradication zone” means the bottomland within the Township with a Phragmites infestation that the Township Board has determined is subject to Phragmites treatment.

“Phragmites infestation” means the presence of one or more seed heads in a Phragmites plant.

“Phragmites treatment” means the application of necessary herbicide chemicals by a person authorized to do so under a permit issued by the Michigan Department of Environmental Quality (DEQ).

“Township Board” means the Peninsula Township Board.

Section 4. Phragmites Inspection; Written Report; Right to Access Property; Consent; Administrative Search Warrant.

As directed by the Township Board, the Phragmites administrator may annually conduct an inspection of all Grand Traverse Bay Lake Michigan shoreline property within the Township for the purpose of identifying all parcels on which a Phragmites infestation is present. The Phragmites administrator shall submit a written report of his or her findings to the Township Board no later than a date requested by the Township Board. The Phragmites administrator shall have the right to walk along the Grand Traverse Bay Lake Michigan shoreline below the ordinary high water mark, as authorized by the Michigan Supreme Court’s decision in *Glass v Goeckel*, 473 Mich 667 (2005), for the purpose of conducting the Phragmites inspections, which are within the Public Trust Doctrine since the inspections are designed to protect the waters of Lake Michigan and its submerged lands from Phragmites infestation. However, before entering onto private property above the ordinary high water mark to conduct any inspections, the Phragmites administrator shall obtain written consent from the property owner. If the property owner fails to provide written consent to the Phragmites administrator for such inspections, then the Phragmites administrator shall not enter onto the private property above the ordinary high water mark unless authorized to do so by an administrative search warrant issued by a court of competent jurisdiction. **(Amended by Ordinance No. 37, Amendment 1 of 2010, effective August 22, 2010)**

Section 5. Public Hearing to Show Cause Why Property Should not be Included in Phragmites Eradication Zone; Notice of Public Hearing.

After receiving the written report from the Phragmites administrator identifying all parcels in the Township on which a Phragmites infestation is present, the Township Board shall schedule a public hearing giving the owners of the property identified by the Phragmites administrator in his or her written report, submitted to the Township Board under Section 4 of this Ordinance, an opportunity to

show cause why their property should not be included in the Phragmites eradication zone for the succeeding year. A written notice of the public hearing, specifying the time, date, and place of the hearing and stating that the parcel has been tentatively identified for inclusion in the Phragmites eradication zone and the basis for exclusion of the parcel from the eradication zone under Section 6 A. and B., shall be sent by first-class mail to all owners of record or other parties in interest whose names and mailing addresses are on the Township assessment records no less than twenty (20) days before the hearing. Notice of the public hearing shall also be published twice in a newspaper of general circulation in the Township with the first publication being no less than twenty (20) days before the hearing.

In the event the Phragmites administrator, working with the Michigan Department of Environmental Quality, determines that Phragmites is growing consistently, even on an intermittent basis, along the entire Grand Traverse Bay Lake Michigan shoreline (or “Shoreline”) of the Township, the administrator may declare that the entire Shoreline constitutes the Phragmites eradication zone and all Shoreline parcels may be provided notice of the hearing in Section 5. If all of the Shoreline parcels are included in the eradication zone, however, the notice shall explain to property owners that only those properties actually containing Phragmites will be treated, and that properties containing Phragmites may also be excluded in accordance with the provisions under Section 6 A. and B.

Section 6. Parcels to be Included in Phragmites Eradication Zone.

Following the public hearing required under Section 5 of this Ordinance, the Township Board shall determine which parcels identified by the Phragmites administrator in his or her written report submitted to the Township Board under Section 4 of this Ordinance shall be included in the Phragmites eradication zone.

The Township Board may exclude a parcel identified by the Phragmites administrator in his or her written report based upon the following:

- A. Due to the isolation of the parcel in relation to other parcels, the minor nature of the Phragmites infestation on the parcel, or other factors, the exclusion of the parcel from the Phragmites eradication zone will not have a significantly detrimental impact on the effectiveness of Phragmites treatment in the Township.
- B. The owner of the parcel (or multiple owners of parcels) has applied for a permit from the Michigan Department of Environmental Quality (MDEQ) or other appropriate state or county agency. Before a property is excluded from the Township program on this basis, however, the property owner(s) shall provide confirmation that the property owner(s) has obtained the necessary permit from the MDEQ for treatment, or from any other appropriate state or county agency, or has confirmation from the MDEQ or other appropriate agency that a permit is not required.

Section 7. Application to DEQ for Phragmites Treatment Permit; Permit Fee.

After the Township Board has determined which parcels shall be included in the Phragmites eradication zone for that year, the Phragmites administrator shall apply to the Michigan Department of Environmental Quality (DEQ) or other appropriate state or county agency for a permit authorizing Phragmites treatment on the parcels within the Phragmites eradication zone. Any fee charged by the DEQ for such Phragmites treatment permit shall be paid for as determined by the Township Board.

Section 8. Phragmites Treatment; Cost.

Following the receipt of a permit from the Michigan Department of Environmental Quality (DEQ) or other appropriate state or county agency authorizing Phragmites treatment on the parcels within the Phragmites eradication zone, the Township shall engage the services of a professional authorized to engage in Phragmites treatment. The cost of the Phragmites treatment shall be paid for as determined by the Township Board.

Section 9. Validity.

If any section, provision or clause of this Ordinance or the application thereof to any parcel, person or circumstances is held invalid, such invalidity shall not effect any remaining portions or application of this Ordinance, which can be given effect without the invalid portion or application.

Section 10. Effective Date.

This Ordinance shall become effective the day following its publication in a newspaper of general circulation within the Township.

PENINSULA TOWNSHIP

By: _____
Rob Manigold, Supervisor

By: _____
Monica Hoffman, Clerk

Ordinance No. 37 of 2009 was adopted on the 9th day of June, 2009, by the Peninsula Township Board as follows:

Motion by: _____

Seconded by: _____

Yeas: _____

Nays: _____

Absent: _____

Monica Hoffman, Clerk

Rob Manigold, Supervisor

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