

ST. JAMES TOWNSHIP
Ordinance No. ____ of 2020
St. James Township Terrestrial Invasive Species Ordinance

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 IN AN TERRESTRIAL INVASIVE SPECIES ERADICATION ZONE.

AN ORDINANCE TO AMEND ST. JAMES TOWNSHIP ORDINANCE OF 2008 KNOWN AS THE PHRAGMITES ORDINANCE.

THE TOWNSHIP OF ST. JAMES ORDAINS:

Section 1. Title.

This Ordinance shall amend St. James Township Ordinance of 2008, known as the Phragmites Ordinance. Henceforth, this ordinance will be known as the St. James Township Terrestrial Invasive Species Ordinance.

Section 2. Legislative Findings; Definition and Purpose of Ordinance.

Terrestrial Invasive Species are those species that are non-native to the ecosystem and whose introduction causes or is likely to cause economic or environmental harm to human health. They can be very aggressive and spread rapidly once established. They are capable of displacing native species and altering ecosystem processes. Their presence may cause property values to decline and may adversely affect the local economy. The spread of invasive species is not halted by traditional legal boundaries between parcels. 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 within St. James Township with a Terrestrial Invasive Species infestation or likely infestation be included in a Terrestrial Invasive Species Eradication Zone and can receive effective treatment. By including all infested or likely to be infested property in a Terrestrial Invasive Species Eradication Zone, this Ordinance will help maximize the effectiveness of any treatment, thereby eliminating or reducing the adverse impacts of a terrestrial invasive species infestation.

Section 3. Definitions. As used in this Ordinance,

Bottomland means land in Lake Michigan, including the bays and harbors thereof, lying below and lakeward of the ordinary highwater mark.

Ordinary Highwater Mark means the line between upland and bottomland that 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 marked distinctly from the upland is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation.

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

Terrestrial Invasive Species (TIS) means any species not native and whose introduction causes or is likely to cause economic or environmental harm or harm to human health. Such species include, but are not limited to: Phragmites, Emerald Ash Borer, Autumn Olive, Garlic Mustard, Knapweed, Hemlock Woolly Adelgid, Japanese Knotweed, Baby's Breath, Chinese Yam, Himalayan balsam, Japanese Stiltgrass and any others as identified by the State of Michigan as species of concern.

Terrestrial Invasive Species (TIS) Administrator means the person (s) appointed by the Township Board by resolution to administer this Ordinance. This person (s) reports to the Township Supervisor.

Terrestrial Invasive Species (TIS) Eradication Zone means all the lands within the Township that have been found to be infested or to be likely and at high-risk to be infested by a terrestrial invasive species.

Terrestrial Invasive Species (TIS) Survey means the physical survey of properties within the Township where infestation has or is likely to occur.

Terrestrial Invasive species treatment requires various methods to prevent, control or eradicate any given species, which may or may not require the application of necessary herbicide chemicals by a person authorized to do so under a permit issued by the Michigan Department of Environment, Great Lakes and Energy.

Township Board means the St. James Township Board.

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

As directed by the Township Board, the terrestrial invasive species administrator may annually conduct or authorize an inspection of all Lake Michigan shoreline, and all other property within the Township for the purpose of identifying all parcels on which a terrestrial invasive species infestation is present or may be present. The terrestrial invasive species administrator shall have the right to access all Lake Michigan shoreline property, up to the ordinary highwater mark. All other property within the Township, for the purpose of conducting the terrestrial invasive species inspection, the terrestrial invasive species administrator shall obtain written consent from the property owner for any such inspection. If the property owner fails to provide written consent to the terrestrial invasive species administrator for the physical inspection of the parcel, then the terrestrial invasive species administrator shall not enter onto the parcel, unless authorized to do so by an administrative search warrant sought by the Township Board and issued by a court of competent jurisdiction. The terrestrial invasive species administrator shall submit a written report of their findings to the Township Board for their review and approval, no later than a date requested by the Township Board.

Section 5. Terrestrial Invasive Species Eradication Zone

Based upon the determination of the terrestrial invasive species administrator, under Section 4 of this Ordinance, working with the Michigan Department of Environment, Great Lakes and Energy (EGLE) and/or other authorized groups, in the interest of protecting property values and to facilitate control and eradication of terrestrial invasive species along the entire Lake Michigan Shoreline and inland areas of the Township, hereby creates a Terrestrial Invasive Species Eradication Zone consisting of the those lands within St. James Township which are currently infested or at risk of infestation.

Section 6. Public Hearing to Show Cause Why Property Should not be Included in Terrestrial Invasive Species Eradication Zone; Notice of Public Hearing.

The Township Board shall schedule a public hearing giving the owners of the properties within the Township an opportunity to show cause why their property should not be included among those properties to be treated within the terrestrial invasive species eradication zone. A written notice of the public hearing, specifying the time, date, and place of the hearing and stating that all parcels have been tentatively identified for inclusion in the terrestrial invasive species eradication zone, and the basis for exclusion of the parcel from the eradication zone under Section 7 A., B, and C. 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-one (21) days before the hearing. Notice of the public hearing shall also be published once in a newspaper of general circulation in the Township with the first publication being no less than twenty-one (21) days before the hearing. The notice shall explain to property owners that only those properties actually containing a terrestrial invasive species may be treated, and that properties containing a terrestrial invasive species may also be excluded from the Township's treatment program in accordance with the provisions under Section 7 A., B., and C.

Section 7. Parcels to be excluded from treatment within the Terrestrial Invasive Species Eradication Zone.

Following the public hearing required under Section 6 of this Ordinance, the Township Board shall determine which parcels included in the terrestrial invasive species eradication zone, although containing invasive species, are to be excluded from the Township's treatment program as set forth below.

The Township Board may exclude a parcel identified by the terrestrial invasive species 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 terrestrial invasive species infestation on the parcel, or other factors, the exclusion of the parcel from terrestrial invasive species treatment will not have a significantly detrimental impact on the effectiveness of terrestrial invasive species 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 Environment, Great Lakes and Energy (EGLE) 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 EGLE for treatment, or from any other appropriate state or county agency, or has confirmation from the EGLE or other appropriate agency that a permit is not required. In addition, the property owner(s) will have a treatment plan written by an approved resource professional.

C. The owner of the parcel (or multiple owners of parcels) has determined that no eradication processes shall be used on their property and voluntarily signs off on any treatment of terrestrial invasive species on their property. The Township Board shall determine possible impacts of this determination to the rest of the terrestrial Invasive species eradication zone and may seek jurisdictional court action as required or accept decision of the owner of the parcel and exclude the parcel from the terrestrial Invasive species eradication zone.

Section 8. Application to EGLE for Invasive Species Treatment Permit; Permit Fee.

After the Township Board has determined which parcels shall be included in the terrestrial invasive species treatment for that year, the terrestrial invasive species administrator shall insure that application has been made on behalf of the Township to the Michigan Department of Environmental, Great Lakes and Energy (EGLE) or other appropriate state or county agency for a permit authorizing terrestrial invasive species treatment on the parcels within the terrestrial invasive species eradication zone. Any fee charged by EGLE for such invasive species treatment permit shall be paid for as determined by the Township Board.

Section 9. Terrestrial Invasive Species Treatment; Cost.

Following the receipt of a permit from the Michigan Department of Environment, Great Lakes and Energy (EGLE) or other appropriate state or county agency authorizing invasive species treatment on the parcels within the terrestrial invasive species eradication zone, the Township shall insure that the services of a certified and insured professional authorized to engage in terrestrial invasive species treatment has been arranged. The cost of the terrestrial invasive species treatment shall be paid for as determined by the Township Board.

Section 10. 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 affect any remaining portions or application of this Ordinance, which can be given effect without the invalid portion or application.

Section 11. Effective Date.

This Ordinance shall become effective the day following its publication in a newspaper of general circulation within the Township, as provided by law.

Ordinance No. ___ of 2020 was adopted on the ___ day of _____, 2020, by the St. James Township Board as follows:

Motion by:

Seconded by:

Yeas:

Nays:

Absent:

Julie Gillespie, Clerk

Kathleen McNamara, Supervisor

I certify that this is a true copy of Ordinance No. ___ of 2019 that was adopted at a regular meeting of the St. James Township Board on _____, 2019 and published in the _____, 2019.

Dated: _____ Signed: _____
Julie Gillespie, Township Clerk, or Patricia Cull, Deputy Clerk