

TITLE 10  
CHAPTER 32

**DRINKING WATER PROTECTION OVERLAY  
DISTRICT**

**SECTION:**

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**10-32-1: PURPOSE:**

- A. The Drinking Water Protection (DWP) Overlay District is established to protect from contamination the North Florence Sole Source Dunal Aquifer, used as the sole potable water supply source by the City. This Section establishes procedures and standards for the physical use of hazardous or other materials harmful to groundwater within TOTZ by new and existing land uses requiring development approval. The provisions of this Section are designed to:
  - 1. Protect the City's drinking water supply, which is obtained from groundwater resources, from impacts by facilities that store, handle, treat, use, produce, or otherwise have on premises substances that pose a hazard to groundwater quality; and
  - 2. Provide standards for hazardous or other materials that pose a risk to groundwater within the TOTZ.
- B. In order to accomplish this purpose, the DWP Overlay District includes methods and provisions to:
  - 1. Restrict or prohibit the use of hazardous or other materials which are potential groundwater contaminants;
  - 2. Set standards for the storage, use, handling, treatment, and production of hazardous or other materials that pose a risk to groundwater within TOTZ; and
  - 3. Review new or expanded uses of hazardous or other materials that pose a risk to groundwater

**10-32-2: APPLICABILITY:** This DWP Overlay District applies to industrial and commercial land uses within the Drinking Water Protection Area (DWPA) for the proposed wellfield. As of October 5, 2013, all areas in an industrial or commercial zoning district within the specified wellhead TOTZ are automatically rezoned to add the DWP Overlay District to the underlying zoning district. The areas to which the DWP Overlay District is applied are shown on the Drinking Water Protection Overlay Map, on file in the Community Development Department and incorporated in this Section by reference.

**10-32-3: WARNING AND WAIVER OF LIABILITY:** The degree of aquifer protection required by this Section in the areas designated in Section 10-32-2 is based on scientific and engineering considerations. The nature of these considerations is that the exact boundaries of Time of Travel Zones (TOTZ) have an associated uncertainty that renders conclusions based on them to be estimates. Under no conditions should this Section be construed to guarantee the purity of the ambient ground water or guarantee the prevention of ground water contamination. Therefore, this Section shall not create liability on the part of the City, or any City personnel, for any contamination that may result from reliance on this Section or any administrative decision made under this Section.

**10-32-4: TIME OF TRAVEL ZONES (TOTZ):**

- B. The DWP Overlay District includes 3 TOTZ for the proposed wellfield: 5-10 years; 10-20 years; and 20-30 years. The Overlay District does not include the 0-5 year TOTZ because there are no industrial or commercial properties or zones in that TOTZ. The locations of the TOTZ for the proposed wellfield are shown on the Drinking Water Protection Area Map for the Proposed Wellfield on file with the City's Planning Department; Public Works Department; the Siuslaw Valley Fire and Rescue Agency; and Heceta Water District (HWD).
- C. The areas within specified wellhead TOTZ are those drinking water protection areas for which the Oregon Health Authority issued a "provisional delineation," stating, "OHA approves the use of this delineation for protection of possible future drinking water resources," under the Oregon Administrative Rules that apply to Oregon's EPA-approved Drinking Water Protection Program, in Oregon Health Authority Delineation Certification #0016, March 16, 2012.
- D. In determining the location of a property within a TOTZ, the following criteria apply:
  - 1. The Lane County Department of Assessment and Taxation maps shall be used as a base map with the addition of TOTZ boundaries.
  - 2. That portion of a tax lot that lies within a TOTZ is governed by the restrictions applicable to that TOTZ.
  - 3. Tax lots having parts lying within more than one TOTZ are governed by the standards of the more restrictive TOTZ.
  - 4. EXCEPTION: The Public Works Director (Director) may waive the requirement that the more restrictive standards apply when all of the following apply:
    - a. Storage, use, handling, treatment, and/or production of hazardous or other materials that pose a risk to groundwater will not take place within the portion of the tax lot having the more restrictive TOTZ standards; and
    - b. Storage, use, handling, treatment, and/or production of hazardous or other materials that pose a risk to groundwater will not take place within 50 feet of the portion of the tax lot having more restrictive TOTZ standards; and
    - c. The tax lot is 20,000 square feet or larger.
  - 5. A property owner may request the TOTZ be modified by submitting a Zone Change application to the City. Any request for modification of the TOTZ shall be accompanied by certification of the TOTZ as proposed to be modified by the Oregon Health Authority, under the Administrative Rules that apply to Oregon's EPA-approved Drinking Water Protection Program.

**10-32-5: REVIEW:**

- A. A DWP Overlay District Development Application is required when all of the following criteria are met:
  - 1. Industrial and commercial land uses that are affected by one or more of the following: a land use permit application or building permit application;
  - 2. The action in Subsection A.1., above will:
    - a. Affect the storage, use, and/or production of hazardous or other materials that pose a risk to groundwater; or
    - b. Increase the quantity of hazardous or other materials that pose a risk to groundwater that are stored, used and/or produced.

- B. Prior to the submittal of a DWP Overlay District Development Application, an exemption request may be submitted to the Director as specified in Section 10-32-6-B-1.
- C. DWP Overlay District applications shall be reviewed under Type II Review procedures in 10-1-1-6-2.
- D. Prior to undertaking an activity covered by Section 10-32-5-A, the owner or tenant shall submit a DWP Overlay District Application to the City for review and approval. Applications shall include the following information:
  - 1. A Hazardous Material Inventory Statement and a Material Safety Data Sheet for any or all materials entered in the Statement unless exempted under Section 10-32-6. Hazardous material weights shall be converted to volume measurement for purposes of determining amounts; 10 pounds shall be considered equal to one gallon as specified in Florence Fire Code.
  - 2. A list of the chemicals to be monitored through the analysis of groundwater samples and a monitoring schedule if ground water monitoring is anticipated to be required.
  - 3. A detailed description of the activities conducted at the facility that involve the storage, handling, treatment, use or production of hazardous materials in quantities greater than the maximum allowable amounts as stated in Section 10-32-7-A;
  - 4. A description of the primary and any secondary containment devices proposed, and, if applicable, clearly identified as to whether the devices will drain to the storm or sanitary sewer;
  - 5. A proposed Hazardous Material Management Plan for the facility that indicates procedures to be followed to prevent, control, collect and dispose of any unauthorized release of hazardous material;
  - 6. A description of the procedures for inspection and maintenance of containment devices and emergency equipment;
  - 7. A description of the plan for disposition of unused hazardous materials or hazardous material waste products over the maximum allowable amounts including the type of transportation, and proposed routes.
- E. The Director shall review the application and make a decision based on the standards contained in Section 10-32-7, after consulting with the Building Official, Fire Marshall, Planning Director, and the manager of Heceta Water District, as appropriate.

**10-32-6: EXEMPTIONS:** This section does not exempt any material or use from Fire Code regulations as adopted by the City.

- A. Exemptions are as specified in this Section unless the Director, in consultation with the Fire Marshall, determines that a hazardous material, activity, and/or facility that are exempt pursuant to this Section has a significant or substantial potential to degrade groundwater quality. Then the Director may require compliance with the requirements of this Section related to that hazardous material, activity or facility. This determination will be based upon site and/or chemical-specific data and are eligible for appeal to the Planning Commission, as specified in Section 10-32-9.

B. Unless otherwise provided herein, the following materials are exempt from regulation hereunder:

1. Use, storage and handling of specific hazardous materials that do not present a risk to the aquifer, as determined and listed by the Director, are exempt from all regulation under this Section with the exception of the potential requirement to list these hazardous materials on the Hazardous Material Inventory Statement as found in the most recent Fire code regulations adopted by the City. A Hazardous Materials Exemption Request may be submitted to the Director for Hazardous Materials that can be demonstrated to pose no threat to the aquifer. These materials may be exempted from regulation and added to the list. The demonstration of no threat is the responsibility of the applicant seeking the exemption and will be subject to review by technical experts.
2. Hazardous materials offered for sale in their original sealed containers of 5 gallons or less are exempt from the 500-gallon storage limit specified in Section 10-32-7-A-1.
3. Hazardous materials in fuel tanks and fluid reservoirs attached to a private or commercial motor vehicle and used directly in the motoring operation of that vehicle, or machinery, including, but not limited to: fuel, engine oil and coolant.
4. Fuel oil used in existing heating systems.
5. Emergency use, storage, and handling of hazardous materials by governmental organizations in the public interest.
6. Hazardous materials used and stored specifically for water treatment processes of public water systems and private systems for the same purposes when approved by the Director.
7. Hazardous materials contained in properly operating sealed units (including, but not limited to: transformers, refrigeration units) that are not opened as part of routine use.
8. Local natural gas distribution lines, when available.
9. Fuel for emergency generators located at facilities that provide essential community services (including, but not limited to: hospitals, fire/life safety, police, public shelters, and telephone systems)
10. Any commonly used office supply – including, but not limited to: correcting fluid for typewriters, toner for computer printers or cleaners for windows and bathrooms – where the supplies are purchased off-site for use on-site.
11. Aggregate quantities equal to or less than 20 gallons of hazardous materials that do not contain DNAPLs.<sup>1</sup>

**10-32-7: STANDARDS FOR HAZARDOUS MATERIALS WITHIN TOTZ:** Applications shall comply with the following standards. Where the following standards are more restrictive than the standards of the Florence Fire Code, the following standards shall apply:

A. Five to Ten Year TOTZ Standards.

1. The storage, handling, treatment, use, application, or production or otherwise keeping on premises of more than 20 gallons of hazardous materials that pose a risk to groundwater in aggregate quantities not containing DNAPLs are allowed only upon compliance with containment and safety standards specified by the most recent applicable Fire Code.

<sup>1</sup> DNPLs are organic substances that are relatively insoluble in water and more dense than water. DNAPLs tend to sink vertically through sand and gravel aquifers to the underlying layer. The most common are chlorinated solvents. Significant amounts of DNAPLs are present at chlorinated solvent-contaminated sites, such as manufacturing and degreasing facilities, dry cleaners, wood treators, and former manufacturing gas plants.

2. Unless exempted, all hazardous or other materials that pose a risk to groundwater shall be stored in areas with approved secondary containment in place (Fire Code).
3. All new use of DNAPLs are prohibited.
4. Any change in the type of use or an increase in maximum daily inventory quantity of any DNAPL is considered a new use and is prohibited.
5. The following certain types of facilities or changes in chemical use and/or storage of hazardous or other materials that pose a risk to groundwater are prohibited:
  - a. Hazardous material product pipelines used to transport the hazardous material off of the tax lot where it is produced or used;
  - b. Injection wells, except for dry wells for roof drainage;
  - c. Solid waste landfills and transfer stations;
  - d. Fill materials containing hazardous materials;
  - e. Land uses and new facilities that will use, store, treat, handle, and/or produce DNAPLs.
6. Requirements found in the Fire Code for a monitoring program and monitoring methods to detect hazardous or other materials in the secondary containment system shall be met for all amounts of hazardous materials that pose a risk to groundwater unless exempted.
7. The following requirements for inspection and record keeping procedures for monthly in-house inspection and maintenance of containment and emergency equipment for all amounts of hazardous or other materials that pose a risk to groundwater shall be met unless exempted: Schedules and procedures for inspecting safety and monitoring and emergency equipment. The applicant shall develop and follow a written inspection procedure acceptable to the Director for inspecting the facility for events or practices which could lead to unauthorized discharges or hazardous materials. An inspection check sheet shall be developed to be used in conjunction with routine inspections. The check sheet shall provide for the date, time, and location of inspection; note problems and dates and times of corrective actions taken; and include the name of the inspector and the countersignature of the designated safety manager for the facility.

**B. Ten to Twenty Year TOTZ Standards.**

1. The storage, handling, treatment, use, production or otherwise keeping on premises of more than 20 gallons of hazardous materials that pose a risk to groundwater in aggregate quantities not containing DNAPLs is allowed upon compliance with containment and safety standards specified by the most recent Fire Code adopted by the City.
2. All hazardous or other materials that pose a risk to groundwater shall be stored in areas with approved secondary containment in place (Fire Code).
3. All new use of DNAPLs are prohibited.
4. Any change in the type of use or an increase in maximum daily inventory quantity of any DNAPL is considered a new use and is prohibited.

5. The following requirements for inspection and record keeping procedures for monthly in- house inspection and maintenance of containment and emergency equipment for all amounts of hazardous or other materials that pose a risk to groundwater shall be met unless exempted: Schedules and procedures for inspecting safety and monitoring emergency equipment. The applicant shall develop and follow a written inspection procedure acceptable to the Director for inspecting the facility for events or practices which could lead to unauthorized discharges or hazardous materials. An inspection check sheet shall be developed to be used in conjunction with routine inspections. The check sheet shall provide for the date, time, and location of inspection; note problems and dates and times of corrective actions taken; and include the name of the inspector and the countersignature of the designated safety manager for the facility.
- C. Twenty to Thirty Year TOTZ Standards. The storage, handling, treatment, use, production or keeping on premises of more than 20 gallons of hazardous materials that pose a risk to groundwater in aggregate quantities is allowed only upon compliance with containment and safety standards specified by the most recent Fire Code adopted by the City.

**10-32-8: CONDITIONS:** The Director may attach conditions of approval that will minimize negative impacts of regulated substances on groundwater and ensure that the facility or the proposed development can fully meet the standards specified in Section 10-32-7. These conditions may include, but are not limited to: on-site monitoring wells, Wellhead Protection Area signs, special storm water facilities or other conditions to address specific risks associated with the proposed development.

**10-32-9: APPEALS:** The only portions of this Section that are subject to appeal are: Section 10-32-5-E, the Director's decision on a DWP application, Section 10-32-6, Exemptions, and Section 10-32-7-A-1, Waiver. The decision to the Director may be appealed as specified in Section 10-1-1-7.

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