

**ORDINANCE NO: 804**

**AN ORDINANCE TO AMEND CHAPTER 22 OF THE ORDINANCES OF THE CITY OF ALMA BY THE ADDITION OF SECTIONS 22-1 THROUGH 22-8 TO REGULATE AND PROHIBIT CERTAIN WELLS WITHIN THE CITY**

THE CITY OF ALMA ORDAINS

**Section 1** Chapter 22 of the Ordinances of the City of Alma is amended by the addition of Sections 22-1 through 22-8 (“this Section”), to read as follows:

Sec. 22-1. FINDINGS

The City Commission finds that it is desirable to preserve and protect the quantity and quality of groundwater resources to assure a continued safe, adequate and usable supply, now and in the future, and that despite previous wellhead protection efforts, the use of certain groundwater wells and water supplies from such wells for human consumption or other purposes may constitute a public health risk and endanger the safety of the residents of the City. Hazardous substances have been released from historical operation of various manufacturing facilities within the City limits into the groundwater at concentrations which may present a threat to the public health, safety and welfare, and the groundwater resources. Exact location of each manufacturing facility and extent of hazardous substance releases are not possible due to the long history of operation, frequent change in ownership or activity and lack of proper recordkeeping, most before many substances were deemed to be hazardous. Therefore, the City Commission finds that it is in the best interest of the public health, safety and welfare to prohibit the use and installation of certain groundwater wells within existing City boundaries or as the boundaries may exist in the future.

Sec. 22-2. DEFINITIONS

The following definitions shall apply for the purposes of this Section.

1. *Abandoned* means a water well which has its use permanently discontinued.
2. *Contaminated Groundwater* means groundwater in which there is present concentrations of hazardous or regulated substances that exceed the residential drinking water criteria established by the MDEQ pursuant to Part 201, Environmental Remediation (MCL 324.20101 *et seq.*, as amended from time to time), or Part 213, Leaking Underground Storage Tanks (MCL 324.21301a *et seq.*) of the NREPA.
3. *Groundwater* means underground water within the zone of saturation.
4. MCL means Michigan Compiled Laws as currently recorded or enacted in the future.
5. MDEQ means the Michigan Department of Environmental Quality or its successor agency.
6. MMDHD means the Mid-Michigan District Health Department or its successor agency.
7. NREPA means the Natural Resources and Environmental Protection Act (MCL 324.101 *et seq.*), as amended from time to time.

8. *Person* means an individual, partnership, corporation, association, governmental entity or other legal entity.
9. *Well* means an opening in the surface of the earth for the purpose of removing groundwater for any purpose through non-mechanical or mechanical means.
10. *Well Code* means Michigan Water Well Construction and Pump Installation Code (specifically sections 325.1601 through 325.1676), as amended, and authorized by Part 127, Water Supply and Sewer Systems, of the Public Health Code, 1978 PA 368, (MCL 333.12701 *et seq.*).
11. *Plugging (of an abandoned well)* means the plugging and abandonment of a well in accordance with the requirements of the Well Code and any other applicable laws, rules, regulations, permit or license requirements, or orders or directives of the MDEQ or MMDHD, in the absence of an applicable law, rule, regulation, permit or license requirement, or order or directive of MDEQ or MMDHD, in conformance with the protocol developed consistent with the American Standards for Testing and Materials Standard #D5299-92 or any successor standard.

#### Sec. 22-3. PROHIBITION

Except as provided in Section 22-4, no person shall use, install, allow, permit, or contract or provide for the installation or utilization of, a well within the City of Alma.

#### Sec. 22-4. EXCEPTIONS

The prohibition set forth in Section 22-3 shall not apply to the following:

1. Construction Dewatering: Temporary wells used for construction dewatering if the following conditions are satisfied:
  - a. advance written notice of the installation and use is provided to the MMDHD and, when required by law, to the MDEQ;
  - b. the use of the dewatering well will not result in unacceptable exposure to Contaminated Groundwater, possible cross-contamination between saturated zones, or movement of Contaminated Groundwater toward an area that is not contaminated, and
  - c. water generated by the dewatering activity must be properly handled and disposed of in compliance with all applicable laws and regulations. Any exacerbation of existing contamination caused by the installation, use and abandonment of wells under this exception shall be the responsibility of those persons bound by the due care provisions of Part 201 and Part 213 of NREPA, being MCL 324.20107a and 324.21304c, and
  - d. dewatering well is properly removed or sealed and abandoned within a reasonable time period after construction completion or project is discontinued.

2. Groundwater Monitoring and Remediation Wells: Temporary or permanent wells used for groundwater monitoring and/or remediation as part of response activity approved by the MDEQ or U.S. Environmental Protection Agency, or corrective action conducted in accordance with applicable law (including Part 213 of NREPA) and following advance notice to MDEQ.
3. Municipal Wells: Permanent wells, or their collocated replacement wells, used or intended for the production of potable water currently in operation at the ratification of this Section within City of Alma limits (namely Gratiot Area Water Authority Wells 1, 7, and 8) and Gratiot Area Water Authority Well 9 (in the event of future city limit expansion), in conjunction with the operation of a municipal potable water treatment and distribution system.
4. Public Emergencies: A well may be used in the event of a public emergency. Notice of such use shall be provided to the MDEQ within 72 hours.
5. Geothermal Wells: Professionally installed permanent closed loop wells used for heating/cooling residences and small businesses, with minimal excess water, which will not result in unacceptable exposure to possible cross-contamination between saturated zones.
6. Wells Located on Property Not Served By Municipal Water Supply:
  - a. A permanent well in existence on the effective date of this Section located upon and serving property within the City of Alma and such property is not connected to a potable water treatment and distribution system provided by the City of Alma, City of St. Louis, or the Gratiot Area Water Authority.
  - b. A permanent well installed after the effective date of this Section located upon and serving property within the City of Alma and such property is not served by a municipal potable water treatment and distribution system provided by the City of Alma, City of St. Louis, or the Gratiot Area Water Authority; provided, however, that at such time as such property becomes served by a municipal potable water treatment and distribution system, the use of such well shall be discontinued, the well plugged and abandoned, and the property connected to such system.
  - c. A property is deemed to be “served by” a municipal potable water treatment and distribution system if a water supply line which is a part of such system is located within 300 feet of any boundary of the property.
  - d. Notwithstanding the foregoing, under no circumstances shall a temporary or permanent private well be used, installed, permitted or allowed in the Kensington Heights area of the City; generally described as the properties abutting and contained within the area bounded by Massachusetts Boulevard on the north and east, Hickory Street on the south, Pennsylvania Avenue on the west, and Michigan Avenue on the north.

#### Sec. 22-5. ABANDONMENT OF PROHIBITED AND NONFUNCTIONAL WELLS

1. Except as set forth below, any well existing as of the effective date of this Section the use of which is prohibited by this Section shall be plugged and abandoned. Any exacerbation of existing contamination (including Contaminated Groundwater) caused by the plugging and abandonment of an existing well shall be the responsibility of the owner of the property, on which abandoned well is located.
2. Any well the use of which is permitted pursuant to Section 22-4 but which is or becomes nonfunctional shall be plugged and abandoned unless the property upon which such well is located is not served by a municipal potable water treatment and distribution system, in which case the well may be replaced or repaired, provided that such repair or replacement complies with all applicable laws and MDEQ and/or MMDHD requirements.

#### Sec. 22-6. VIOLATION.

1. Any person who shall violate any provision of this Section shall be deemed responsible for a municipal civil infraction; and shall be subject to a civil fine as set forth in Chapter 30 of the Ordinances of the City of Alma. Each day of violation shall constitute a separate civil infraction.
2. In addition, the City may seek an order from a court of appropriate jurisdiction to restrain any person from violating this Section, including the collection of costs and attorney fees associated with such enforcement action. Any well in violation of this Section shall also be declared and deemed a public nuisance, subject to abatement as set forth in Chapter 22 of the Ordinances of the City of Alma and shall be immediately taken out of service and plugged and abandoned.

#### Sec. 22-7. NOTIFICATION OF LAPSE OR INTENT TO AMEND OR REPEAL

At least thirty (30) days prior to any amendment or repeal in whole or in part of this Section, the City shall notify the MDEQ or its successor agency of its intent to so act.

#### Sec.22-8. BUILDING AND ZONING PERMITS

No permit for the construction or alteration of a building or structure shall be issued or rezoning petition granted for any property on which a well in violation of this Section has been installed or is proposed to be installed.

#### **Section 2** Severability

If any section, subsection, paragraph, sentence, clause, phrase or portion of this Section 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 3** Ordinances Repealed

All ordinances and/or parts of ordinances inconsistent with this Section are hereby repealed.

#### **Section 4** Effective Date

This Section shall take effect and be in force fifteen days from and after its enactment as provided by the City Charter.

Passed and approved by the City Commission of the City of Alma, Michigan, in regular session, held November 13, 2018.

We, the undersigned, Mayor and Clerk of the City of Alma, Michigan, do hereby certify that the above and foregoing Ordinance, known as Ordinance No. 804 of the City of Alma, Michigan, was introduced at a regular meeting of the City Commission, held on October 9, 2018, and was thereafter passed at a regular meeting on November 13, 2018, at least two weeks elapsing between the introduction and the enactment.

Dated at Alma, Michigan, this 13<sup>th</sup> day of November, 2018.

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Gregory S. Mapes, Mayor

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Sheila Letourneau, Clerk

I, the undersigned, City Clerk, DO HEREBY CERTIFY that the foregoing and above Ordinance No. 804 of the City of Alma, Michigan, is a true and compared copy of the original ordinance, now on file in my office, and of the whole thereof; that the same was published within 10 days from its adoption in the Morning Sun, a newspaper printed, published and circulated in the City of Alma, Michigan, and that the Affidavit of Publication thereof is now on file in my office and is a part of the original records pertaining to the adoption of the aforesaid ordinance.

I FURTHER CERTIFY that in accordance with the provisions of Section 5.3 and 5.5 of Chapter V of the Charter of Alma, Michigan, the foregoing ordinance shall take effect 15 days after its enactment as aforesaid.

Dated November 28, 2018 at Alma, Michigan

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Sheila Letourneau, City Clerk