



**CITY OF YPSILANTI
NOTICE OF ADOPTED ORDINANCE
Ordinance No. 1308**

An ordinance to amend Chapter 106, Article III, Division 3 "Groundwater Wells" of the Ypsilanti City Code to regulate the use of groundwater in certain areas of the City.

1. THE CITY OF YPSILANTI HEREBY ORDAINS that Chapter 106, Article III, Division 3 "Groundwater Wells" of its Code of Ordinances be amended to read as follows:

DIVISION 3. - GROUNDWATER WELLS

Sec. 106-121. Findings

The City Council finds that 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 residents of the City. The identified public health risks affect premises that are located on or in the vicinity of sites that are the source or location of contaminated groundwater, or where there is a known and identified threat of contaminated groundwater. The City Council has determined that a well water restriction ordinance is necessary and appropriate to prohibit and/or otherwise restrict the use of wells to supply water in and from the affected areas in order to protect City residents by minimizing public health, safety and welfare risks and minimizing the potential for migration of contaminated groundwater into presently unaffected groundwater.

Sec. 106-122~~1~~. - Definitions.

For the purposes of this division, the words and phrases listed below shall have the following meanings:

Affected Parcel means a parcel of land, any part of which is located within a Restricted Zone.

Applicant means a person who applies or applied for the establishment of a Restricted Zone pursuant to this Division.

City means the City of Ypsilanti.

City Property means any interest in real property owned or held by the City and shall include but not be limited to the following:

- i. Real property owned by the City;*
- ii. Real property leased by the City as Lessee; and*
- iii. City streets, alleys, or other City rights-of-way or easements.*

Contaminated Groundwater means groundwater in which there is or may be present concentrations of materials that exceed drinking water criteria under the Safe Drinking Water Act, 1976 PA 399, as amended, or the residential drinking criteria established by the MDEQ in operational memoranda or rules promulgated pursuant to Part 201, Environmental Remediation (MCL 324.20101, et seq.) or Part 213, Leaking Underground Storage Tanks (MCL 324.21301a, et seq).

Domestic Use means the use of water for lawn, garden, or landscaping irrigation on a residential parcel of land. The term does not include water used for commercial, agricultural, or farm irrigation, except as specifically directed by the MDEQ.

Influential Well means a well outside the restricted zone that impacts the contaminated groundwater plume, whether by drawing contaminated water into the well or by merely changing the direction of groundwater flow.

MDEQ means the Michigan Department of Environmental Quality, or its successor agency.

Owner means the holder of record title for a parcel of land and also the occupant of a parcel of land in possession under a land contract or lease.

Person means any individual, partnership, corporation, association, club, joint venture, estate, trust, and any other group or combination acting as a unity, and the individuals consisting of that group or unit.

RAP means a remedial action plan under Part 201 of the Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended ("NREPA").

Restricted Zone means an area or areas legally described and incorporated within Section 106-123 of this division.

Well means an opening in the surface of the earth for the purpose of removing fresh water through non-mechanical or mechanical means for any purpose other than a public emergency or conducting response actions that are consistent with NREPA, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, or other applicable statute.

Sec. 106-1232. - ~~Water well~~ Restricted Zones.

~~(a) — The following described areas in the City shall be is the rRestricted Zones as defined under this division. A scaled map illustrating the restricted zone is shown as Exhibit A below. See Exhibit B below for legal description. They may be referred to by the names provided in the caption preceding their descriptions. Additional Restricted Zones, along with a map illustrating the Restricted Zone, may be added by amending this division in accordance with Section 106-131 and all other applicable laws. Within 30 days after the establishment of an additional Restricted Zone, the City shall record a Notice of Water Well Restriction with the Register of Deeds to be recorded against all parcels in the Restricted Zone. The Notice shall include a copy of the ordinance, as amended, and a map illustrating the Restricted Zone.~~

1. Downtown Restricted Zone. Described below and depicted in the map attached as Schedule 2.

~~(b) — Except as provided in section 106-125 of this division, and after the effective date hereof, no person or legal entity shall install or allow or permit or provide for the installation or utilization of a well on any property on which they have an ownership interest, or lessee or tenant interest, or control within the restricted zone. Property within the restricted zone shall be serviced only by public water supply.~~

Exhibit A Legal Description

~~Lots 1 and 2, and the East 40.0 feet of Lot 3, in Howard's Addition to the City of Ypsilanti, Washtenaw County, Michigan, according to the Plat thereof as recorded in Liber 60 of deeds, page 711, Washtenaw County Records.~~

~~Property Identification: 11 11 40 481 014~~

Exhibit B Legal Description

~~That area of the City of Ypsilanti, Michigan described as follows:~~

~~Commencing at the Southwest corner of the intersection of West Michigan Avenue and North Hamilton Street, thence northerly along the westerly right of way of North Hamilton Street to the northwest corner of North Hamilton Street and Pearl Street, thence east along the northerly right of way of Pearl Street to the northeast corner of Pearl Street and Washington Avenue, thence south along the easterly right of way of Washington Avenue to the southeast corner of Washington Avenue and West Michigan Avenue, thence west along the southerly right of way of West Michigan Avenue to the point of beginning.~~

2. Bell Kramer Neighborhood Restricted Zone. Legally described on the attached Schedule 1 and depicted in the map attached as Schedule 2.

3. Former City Landfill Restricted Zone. Legally described on the attached Schedule 1 and described in the map attached as Schedule 2.

Sec. 106-1243. - Wells affecting contaminated groundwater Prohibition.

Except as provided in Section 106-125, no person shall install or utilize, or allow, permit, or provide for the installation or utilization of a Well on any Affected Parcel. Any existing Well at the time of the enactment of a Restricted Zone on any Affected Parcel within that Restricted Zone shall be plugged/abandoned by a well driller licensed in the State of Michigan at the expense of the Applicant within 30-days passage of the ordinance or ordinance amendment for that particular Restricted Zone and as provided for in Section 106-126 and in accordance with applicable laws, regulations and ordinances, unless such existing Well falls within one of the exceptions listed in 106-125. Except as provided in Section 106-125, no person shall use any groundwater from an Affected Parcel.

No well may be used or installed at any place in the city if the use of the well will have the effect of causing the migration of contaminated groundwater or a contaminated groundwater plume to previously un-impacted groundwater, or adversely impacting any groundwater treatment system, unless the well is part of an MDEQ or United States Environmental Protection Agency approved groundwater monitoring or remediation system.

Sec. 106-1254. - Nonconforming wells Exceptions.

A person may install or utilize, or allow, permit, or provide for the installation or utilization of a Well in any Restricted Zone if any of the following exceptions applies and the requirements of the exception are complied with. The party proposing an exception to the Well prohibition shall conduct all appropriate inquiry and prepare a due care analysis pursuant to Part 201 of NREPA.

- (a) *Proof of No Influence.* If the MDEQ makes a recommendation based on information provided to it by the person seeking this exception that the use of a Well in a Restricted Zone will not exacerbate any existing groundwater contamination related to the former landfill adjacent to the affected area, facilitate the migration of groundwater into uncontaminated areas, and that water from the proposed Well will not be affected by Contaminated Groundwater, and proof of the recommendation is delivered to the City, the Well may be so used.
- (b) *Groundwater Monitoring/Remediation.* A Well may be used for groundwater monitoring and/or remediation as part of a response activity approved by the MDEQ or the United States Environmental Protection Agency.
- (c) *Construction Dewatering.* A Well may be used for construction dewatering if the following conditions are satisfied: (i) the use of the dewatering Well will not

result in unacceptable exposure to Contaminated Groundwater, possible cross-contamination between saturated zones, or exacerbation of Contaminated Groundwater, as defined in Part 201 of NREPA; and (ii) the water generated by that activity is properly handled and disposed of in compliance with all applicable laws, rules, regulations, permit and license requirements, orders and directives of any governmental entity or agency of competent jurisdiction. Any exacerbation caused by the use of the Well under this exception shall be the responsibility of the person operating the de-watering Well, as provided in Part 201 or Part 213 of NREPA.

- (d) *Processing Activities.* If the MDEQ recommends that the use of a Well for non-contact heating, cooling, production, or processing involved in industrial or commercial activities will not cause migration or exacerbation of Contaminated Groundwater, and proof of that recommendation is delivered to the City, such use of the Well under terms and conditions specified by the MDEQ will be allowed. All information necessary for the MDEQ recommendation described in this subsection shall be provided by the person seeking this exception.
- (e) *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 a reasonable time thereafter.

~~Any existing well, the use of which is prohibited by this division shall be plugged or abandoned in conformance with all applicable laws, rules, regulations, permit and license requirements, orders and directives of any governmental entity or agency of competent jurisdiction, or, in the absence of an applicable law, rule, regulation, requirement, order, directive, in conformance with the protocol developed consistent with the American Standards for Testing and Materials Standard #D5299-92.~~

Sec. 106-1265. – ExceptionsSources of water supplied for Domestic Use and Irrigation Use.

- (a) For Affected Parcels that are not already connected to the City water system on the day of enactment of a Restricted Zone, the Applicant of the Restricted Zone shall be responsible for the costs to connect those Affected Parcels within that Restricted Zone to the City water system. Furthermore, for Affected Parcels that have a Well on the day of enactment of a Restricted Zone which is used primarily for Irrigation Uses, the Applicant of the Restricted Zone shall be responsible for the costs to connect the irrigation system on the Affected Parcel within that Restricted Zone to the City water system.
- (b) This Section shall not be deemed as affecting the rights and remedies of an Owner, or any other person or entity and/or of any federal, state or local

government that may exist under any law, regulation, rule, ordinance, order, agreement and/or remedial action plan addressing groundwater within the City.

- ~~(c) In no event shall the City be required to incur any expense or cost under this division, except as may otherwise be approved by the City Council for a public works project or by a separate agreement with the Applicant, Owner, other person or entity, or a governmental body or agency.~~
- ~~(a) Water service unavailable. If city water service is unavailable to a premises in the restricted zone, any well on that premises shall annually be tested by the city by a laboratory that is acceptable to and for chemical parameters specified by the Michigan Department of Environmental Quality Water Division (MDEQ). The results of that test shall be submitted to the MDEQ, or the Washtenaw County Health Department for review. If the MDEQ or the county health department determines that the well is safe and suitable for use, and proof of that determination is delivered annually to the city, that well may be used. No split or conveyance of property shall be effective to render city water services unavailable.~~
- ~~(b) Construction of de-watering wells. Wells in the restricted zone used for construction de-watering are not prohibited by this division, provided that the water generated by that activity is properly handled and disposed in compliance with all applicable laws and regulations. Any exacerbation caused by the use of wells under this exception shall be the responsibility of the person operating the de-watering well, as provided in Part 201 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.~~
- ~~(c) Groundwater monitoring and remediation wells. Wells used for groundwater monitoring and/or remediation as part of a response activity approved by the Michigan Department of Environmental Quality are not prohibited by this division.~~

Sec. 106-127. - Enforcement.

The City Manager, or his or her designee, shall be the official having the authority to enforce this division. After the enactment of a Restricted Zone, the enforcement official shall contact all Owners of Affected Parcels, which from the information available to the City, appear to have Wells prohibited under this division, giving written notice of the need to cease using such Wells and of the need for establishment of a Domestic Use water source as prescribed under Section 106-126, or to obtain approval or acknowledgment of an exception under 106-125. The Owner shall immediately take steps so as to comply with the provisions of this division with regard to provision of Domestic Use water within sixty (60) days from the date of such notice. Any existing Well in violation of this division shall then be plugged or abandoned in conformance with applicable legal requirements. Where, upon information available to the enforcement official, it is suspected that a Well is being used on an Affected Parcel in violation of this division, the enforcement official may inspect such Affected Parcel and

serve an appropriate notice and order of such violation requiring that action be taken promptly by the Owner to bring the Affected Parcel into compliance. If the Owner fails to act in accordance with such order, the enforcement official may seek remedies and penalties as provided in Section 106-128.

Sec. 106-1286. - Penalty.

Any person or legal entity who shall violate any provision of this division shall be deemed guilty of a misdemeanor offense punishable by imprisonment for not more than 90 days or by fine of not more than \$500.00 or both such fine and imprisonment in the discretion of the court.

In addition, the city may seek an order from a court of appropriate jurisdiction to restrain any person from violating this division, including the collection of costs and attorney fees associated with such enforcement action. Any well in violation of this division shall also be declared and deemed a nuisance, subject to abatement, and shall be immediately taken out of service and lawfully abandoned consistent with all applicable state and local regulations. Any person found to be in violation is subject to being ordered by a court of appropriate jurisdiction to properly and lawfully remove or abandon the well.

Sec. 106-129. - Building and zoning permits.

No permit for the construction or alteration of a building or structure nor any permit for any zoning approval shall be issued by the City Building and Zoning Administrator for any improvement on an Affected Parcel which has, or proposes, a water supply from a Well in violation of this division.

Sec. 106-130 - Administrative liability.

No officer, agent or employee of the City or member of the City Council shall render himself or herself personally liable for any damage which may occur to any person or entity as the result of any act or decision performed in the discharge of his or her duties and responsibilities pursuant to the division.

Sec. 106-13127. - Notification of intent to aAmendment or repeal.

The MDEQ, an Applicant, an Owner, an entity involved in performing remedial actions in order to seek approval of a Response Activity Plan or No Further Action Report under Part 201 or in performing corrective actions in order to seek approval of a Financial Assessment Report or Closure Report under Part 213, or other interested party may request of the City in writing to add parcels to or delete parcels from a Restricted Zone or to establish an additional Restricted Zone or to otherwise amend or repeal this division. The City on its own motion may also take action to amend or repeal this division as it

deems appropriate. The amendment or repeal of this division shall be by ordinance and any such action shall be in the sole legislative discretion of the City Council.

At least 30 days advance notice to prior to any amendment or repeal in whole or in part of this division, the City of Ypsilanti shall notify the MDEQ Michigan Department of Environmental Quality, or its successor agency, of its intent to so act is required before City Council consideration of an amendment or repeal of this division. In addition, the local health department which has jurisdiction over the installation of wells in the area of the Restricted Zone shall be notified in writing not less than five days in advance of the meeting of City Council for the consideration of the proposed Restricted Zone. The local health department must also be notified in writing of the passage of any amendment or repeal not less than five days before the effective date of the subject ordinance. The party requesting such a repeal or amendment under this section, or the City if on its own motion, must provide such advance notice and provide the reasons supporting such a request.

Sec. 106-132. - Reimbursement of additional City construction costs.

The Applicant of a Restricted Zone shall reimburse the City for the reasonable additional costs the City incurs for dewatering Contaminated Groundwater or disposing of soils impacted by Contaminated Groundwater in connection with construction activity undertaken by the City on City property in that Restricted Zone, provided that the City supplies the Applicant with documentation confirming the amount and necessity of such additional costs, including the extent to which they exceeded the cost of dewatering or disposing of materials not impacted by Contaminated Groundwater.

Sec. 106-133. Influential wells.

No Influential Well nor a well within the restricted zone may be used or installed if it will have the effect of exacerbating a contaminated groundwater plume, unless it is part of monitoring and/or remediation in conjunction with a response activity or corrective action approved by the MDEQ or the United States Environmental Protection Agency.

Sec. 106-134. Prohibition on using existing Restricted Zones for future closures.

Once a Restricted Zone has been established by this Division, future Applicants may not utilize existing Restricted Zones to achieve closure under Part 201 or Part 213 of NREPA. An Applicant must petition the City to add an additional Restricted Zone by amending the Ordinance as outlined in Section 106-131 in order to assure that the closures and their associated institutional controls remain separate and distinct in the event of the repeal of a portion of this Division.

Secs. 106-135~~28~~—106-139. - Reserved.

2. Severability. If any clause, sentence, section, paragraph, or part of this ordinance, or the application thereof to any person, firm, corporation, legal entity, or

circumstances, shall be for any reason adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not effect, impair, or invalidate the remainder of this Ordinance and the application of such provision to other persons, firms, corporations, legal entities, or circumstances by such judgment shall be confined in its operation to the clause, sentence, section, paragraph, or part of this Ordinance thereof directly involved in the case or controversy in which such judgment shall have been rendered and to the person, firm, corporation, legal entity, or circumstances then and there involved. It is hereby declared to be the legislative intent of this body that the Ordinance would have been adopted had such invalid or unconstitutional provisions not have been included in this Ordinance. Notice will be provided to the DEQ if a court action is found to alter the ordinance or its interpretation.

3. Repeal. All other Ordinances inconsistent with the provisions of this Ordinance are, to the extent of such inconsistencies, hereby repealed.

4. Savings Clause. The balance of the Code of Ordinances, City of Ypsilanti, Michigan, except as herein or previously amended, shall remain in full force and effect. The repeal provided herein shall not abrogate or affect any offense or act committed or done, or any penalty or forfeiture incurred, or any pending fee, assessments, litigation, or prosecution of any right established, occurring prior to the effective date hereof.

5. Copies to be available. Copies of the Ordinance are available at the office of the city clerk for inspection by, and distribution to, the public during normal office hours.

6. Publication and Effective Date. The City Clerk shall cause this Ordinance, or a summary of this Ordinance, to be published according to Section 11.13 of the City Charter. This Ordinance shall become effective after publication at the expiration of 30 days after adoption.

MADE, PASSED AND ADOPTED BY THE YPSILANTI CITY COUNCIL THIS 1st DAY OF May, 2018.

Frances McMullan, City Clerk

Attest

I do hereby confirm that the above Ordinance No. 1308 was published according to Section 11.13 of the City Charter on the 1st day of May, 2018.

Frances McMullan, City Clerk

CERTIFICATE OF ADOPTING

I hereby certify that the foregoing is a true copy of the Ordinance passed at the regular meeting of the City Council held on the 29th day of March, 2018.

Frances McMullan, City Clerk

Notice Published: March 29, 2018

First Reading: April 17, 2018

Second Reading: May 1st, 2018

Published: May 7, 2018

Effective Date: May 31, 2018