

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2024-35

ORDINANCE No. 5932

**AS AMENDED**

AN ORDINANCE AMENDING CHAPTER 137, OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS THE "ZONING ORDINANCE" OF THE CITY OF MISHAWAKA, INDIANA.

WELLHEAD PROTECTION LAND USE RESTRICTIONS

WHEREAS, in 1966 the City of Mishawaka adopted the Zoning Ordinance to regulate uses and development within the City, and

WHEREAS, the City has recently completed multiple water infrastructure improvement projects expending over 50 million dollars, and

WHEREAS, these improvements include the rehabilitation and expansion of a storage tank on Ireland Road, the construction of a new water tower at the Gumwood Wellfield, the replacement of a 100 year old storage tank and system improvements at Virgil Street adjacent to the Eberhart-Petro Golf Course, the construction of a new wellfield along Juday Creek that will replace the Gumwood Wellfield, new Water Treatment Facility at Juday Creek, and

WHEREAS, the City has identified that the issues surrounding wellhead protection and providing for safe drinking water needed to be further addressed, and

WHEREAS, a need was identified for additional public education and increased availability of wellhead protection maps online, and

WHEREAS, both the Administration and Council members have identified a need and desire for ordinance modifications to both increase and formally codify restrictions regarding development within wellhead protection areas, and

WHEREAS, St. Joseph County has adopted Chapter 52-Water Regulations of the St. Joseph County Code that outlines provisions to help insure safe drinking water, and

WHEREAS, included in the Water Regulations of the St. Joseph County Code is are two sub-categories- Well Drilling and Water Supply System, and Wellhead Protection, and

WHEREAS, the St. Joseph County Health Department is the administrative entity that is responsible for issuing local permits for wells, and

WHEREAS, the Wellhead Protection provisions of the County are oriented to a permit process that is designed to regulate the minimum setback distances for new wells and was not drafted to regulate uses or developmental standards which is predominantly a function of zoning, and

WHEREAS, St. Joseph County within its Wellhead protection requirements defines threats to groundwater as follows: (1) The presence of a hazardous substance or regulated substance in the vadose zone in sufficient quantity or concentration to present a reasonable likelihood that it will damage groundwater; and/or (2) The presence at a facility of any of the following activities or conditions involving hazardous or regulated substances in a manner either not in compliance with applicable federal, state or local requirements, or in a manner which represents an unreasonable risk of release to groundwater, or to soil in a quantity sufficient to present a reasonable likelihood that it will damage groundwater: Water Regulations 49 (a) An underground storage tank; (b) An above-ground storage tank; (c) A drum storage area; (d) A waste pile, including one consisting of contaminated soil awaiting removal; (e) A surface impoundment; (f) A rail or truck-loading or transfer area; and/or (g) An outdoor storage or disposal area exposed to precipitation, and

WHEREAS, the City desires to expand on this definition for the purposes of regulating the storage and distribution of chemicals, materials, uses, and storage methods that are potential threats to groundwater, and

WHEREAS, the City's water system is a public water system that is further reviewed and regulated by the Indiana Department of Environmental Management (IDEM), and

WHEREAS, the City's water system, as a public water system, is subject to continued environmental rule changes by the federal government that continues to increase the standards for public water quality where private wells are not regulated in the same way, and

WHEREAS, the ongoing environmental rule changes by the federal government include but are not limited to lead, copper, and Per- and polyfluoroalkyl substances (PFAS), arsenic, manganese, and

WHEREAS, with the increasing standards for public water, the vulnerability of groundwater infiltration, the higher cost of treatment and filtration, and the potential that exists to force the closure of wells and wellfields from contamination, the City desires to further regulate development within both the one-year and five year time of travel surrounding municipal wellfields.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, that:

Section 1. Chapter 137, of the Municipal Code of the City of Mishawaka, commonly known as the "Zoning Ordinance", be, and the same is hereby amended as follows:

Add the following:

## **DIVISION 8. – Wellhead Protection Land Use Restrictions**

### **Sec. 137-870. – Prohibited Uses**

The commercial storage and distribution of chemicals, materials, uses, and storage methods identified in Sec. 137-872 shall be prohibited within the one-year time of travel for public wellfields. Maps of the one-year and five-year time of travel shall be as adopted by the City in accordance with the Safe Drinking Water Act and the Indiana Wellhead Protection Rule (327 IAC 8-4.1) which mandates the delineation of maps that identifies the time of travel and a wellhead protection program for each well or wellfield providing groundwater to a Community Public Water System.

#### **Sec. 137-871- Conditional uses.**

The commercial storage and distribution of chemicals, materials, uses, and storage methods identified in Sec. 137-872 may be conditionally approved by the board of zoning appeals and the Common Council outside of the one-year time of travel but within the five-year time of travel for public wellfields. Maps of the one-year and five-year time of travel shall be as adopted by the City in accordance with the Safe Drinking Water Act and the Indiana Wellhead Protection Rule (327 IAC 8-4.1) which mandates the delineation of maps that identifies the time of travel and a wellhead protection program for each well or wellfield providing groundwater to a Community Public Water System.

#### **Sec. 137-872- Identified chemicals, materials, uses, and storage methods**

- a) Petroleum or petroleum-based products, including fuels, fuel additives, lubricating oils, motor oils, hydraulic fluids, and other similar petroleum based products
- b) Antifreeze, transmission fluids, brake fluids, and coolants
- c) Solvents (raw or spent), including cleaning solvents, degreasing solvents, stripping compounds, dry cleaning solvents, painting solvents, and/or hydrocarbon or halogenated hydrocarbon solvents
- d) Inks, printing and photocopying chemicals, and waste rags used for solvent-based cleaning
- e) Organic pigments
- f) Liquid storage batteries
- g) Non-aerosol, non-latex based paints, primers, thinners, dyes, stains, wood preservatives, varnishing and cleaning compounds, paint sludges, and paint filters
- h) Corrosion and rust prevention solutions
- i) Industrial and commercial cleaning supplies, including drain cleaners
- j) Sanitizers, disinfectants, bactericides, and algacides
- k) Pesticides, herbicides, and fertilizers
- l) Acids and bases with a pH less than or equal to 2 or greater than or equal to 12.5

- m) Aqueous metals
- n) Road salt
- o) Any other regulated substance in a quantity sufficient to present a reasonable likelihood that it has or is likely to damage groundwater or surface water, and stored, transferred or used in a manner either not in compliance with applicable federal, state or local requirements; or in a manner which represents an unreasonable risk of release to the soil, groundwater or surface water
- p) A drum storage area
- q) Waste pile, including one consisting of contaminated soil awaiting removal
- r) Waste or material surface impoundment that contains waste containing free liquids or other material susceptible to ground infiltration
- s) Rail or truck-loading or transfer area;
- t) Auto salvage facility;
- u) An outdoor storage or disposal area with material susceptible to ground infiltration when exposed to precipitation

#### **Sec. 137-873- Underground Storage Tanks.**

**Underground storage tanks (UST) shall be prohibited within the one-year time of travel for public wellfields.** Underground Storage tanks shall include any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of petroleum, or any other product containing concentrations of drinking water contaminants as tracked and regulated by the Indiana Department of Environmental Management, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground. For the purposes of this section this shall not include:

- a) Farm or residential tanks of 185 gallons or less capacity used for storing fuel for noncommercial purposes;
- b) Tank used for storing heating oil for consumptive use on the premises where stored;
- c) Septic tank; as regulated, approved, and permitted by the St. Joseph County, Indiana, Board of Health
- d) Pipeline facility (including gathering lines) regulated under: 1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671 et seq.); 2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001 et seq.); or 3. Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in divisions (1)(d)1. or (1)(d)2. of this definition.
- e) Surface impoundment, pit, pond or lagoon;

- f) Storm water or wastewater collection system as may be approved by the City of Mishawaka Engineering Department as part of a final site plan.
- g) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, Water Regulations 50 shaft or tunnel) if the storage tank is situated upon or above the surface of the floor.
- h) Property that has established C-10 zoning on the effective date of the **DIVISION 8. – Wellhead Protection Land Use Restrictions.** This shall specifically not include C-10 Uses identified by reference within a Planned Unit Development Zoning Classification. C-10 zoned property established after the effective date shall comply with all DIVISION 8. -Wellhead Protection Land Use Restrictions.

#### **Sec. 137-874- Conflicting Ordinances**

The Wellhead Protection Land Use Restrictions identified herein shall be deemed as additional requirements to minimum legal requirements identified by zoning districts or other local codes and ordinances, also including other governmental entities. In case of conflicting requirements, the most restrictive shall apply.

Section 2. This Ordinance shall be in full force and effect from and after its passage, due attestation and legal publication.

PASSED by the Common Council of the City of Mishawaka, Indiana, this  
\_\_\_\_ 5 \_\_\_\_ day of \_\_\_\_ May \_\_\_\_, 2025, at \_\_\_\_ 6:25 \_\_\_\_ o'clock \_\_\_\_  
P\_\_\_\_.M.

Gregg Hixenbaugh\_\_\_\_\_/s/  
Gregg Hixenbaugh - President

ATTEST:

Deborah S. Block\_\_\_\_\_/s/  
Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this \_\_\_\_ 6 \_\_\_\_ day of \_\_\_\_ May \_\_\_\_,  
2025, at \_\_\_\_ 8:32 \_\_\_\_ o'clock \_\_\_\_ A \_\_\_\_ .M.

Deborah S. Block\_\_\_\_\_/s/  
Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this \_\_\_\_ 5 \_\_\_\_ day of \_\_\_\_ May \_\_\_\_, 2025, at  
\_\_\_\_ 9:39 \_\_\_\_ o'clock \_\_\_\_ A \_\_\_\_ .M.

David A. Wood\_\_\_\_\_/s/  
David A. Wood, Mayor



