

City Council

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ORDINANCE NO. 2018-10

**ORDINANCE AMENDING CHAPTER 42, ARTICLE II, DIVISION 6 OF THE
CADILLAC CITY CODE REGARDING INSTITUTIONAL CONTROLS FOR KYSOR
INDUSTRIAL CORPORATION/NORTHERNAIRE PLATING COMPANY**

THE CITY OF CADILLAC ORDAINS:

Section 1. Amendment of Chapter 42, Article II, Division 6

Chapter 42, Article II, Division 6 of the City Code entitled "Institutional Controls for Kysor Industrial Corporation/Northernair Plating Company" is hereby amended to incorporate additional institutional controls on the Kysor Site restricting groundwater use to prevent exposures and identify the site as Unrestricted Use/Unrestricted Exposure. The section, as amended, shall read in its entirety as follows:

Sec. 42-164. - Purpose.

- (a) The purpose of this division is for protecting the public health, welfare and the environment, and for implementing the remedial action plan at the site commonly known as the Kysor Industrial Corporation/Northernair Plating Company Superfund Site.

Sec. 42-165. – Definitions.

- (a) *Contaminated Groundwater* means groundwater in which there is present concentrations of materials that exceed drinking water criteria under the Safe Drinking Water Act, 1976 PA 399, as amended, or the residential drinking water criteria established by the MDEQ in the operational memoranda or rules promulgated pursuant to Part 201, Environmental Remediation (MCL 324.20101 *et seq.*).
- (b) *Domestic Use* means the use of water by humans for drinking, cooking, food preparation and other food-related services, cleaning, washing, bathing and similar household-type water uses in any dwelling, or in any building in which commercial/business, governmental/public or industrial activities are conducted. The term does not include

water used solely for closed-loop heat pumps, non-contact cooling, production and/or processing purposes of commercial or industrial enterprises.

- (c) *Irrigation 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.
- (d) *MDEQ* means the Michigan Department of Environmental Quality or its successor agency.
- (e) *Person* means any individual, partnership, corporation, association, club, joint venture, estate, trust, and any other group or combination acting as a unit, and the individuals constituting such group or unit.
- (f) *Restricted Zone* means an area or areas described within Section 42-166 of this Ordinance for which the prohibition of Wells and the use of groundwater applies and includes parcels of lands that are legally described in the map attached as **Exhibit A**.
- (g) *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 the Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (“NREPA”), the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC § 9601 *et seq.*, the Resource Conservation and Recovery Act, 42 USC § 6901 *et seq.*, and other applicable laws.

Sec. 42-166. – Restricted Zone.

The following described area(s) in the City shall be Restricted Zone(s) under this Division. Additional Restricted Zones may be added by amending this Ordinance.

- (a) All land located in Township 22 North, Range 9 West, City of Cadillac, Wexford County, Michigan, described as follows:
 - (1) The East Quarter (E¹/₄) of the Northwest Quarter (NW¹/₄) of Section 32.
 - (2) The Northeast Quarter (NE¹/₄) of Section 32.
 - (3) The North Half (N¹/₂) of the Southeast Quarter (SE¹/₄) of Section 32.
 - (4) The Southwest Quarter (SW¹/₄) of Section 33 lying North and West of the Tuscola-Saginaw Bay Railroad.
 - (5) The Northwest Quarter (NW¹/₄) of Section 33, except the following: South of Gunn Street and Seventh Street which is East of the Ann Arbor Railroad; the property lying

East of the Pennsylvania Central Railroad; and also commencing as the Point of Beginning at the Southwest corner of Block 179 of the Improvement Board Addition; thence North to the Northwest corner of Block 188; thence East along the North line of Block 188 to the Northwest corner of Block 189; thence East along the North block line, 220 feet; thence South 71 feet; thence East 107.43 feet; thence North 71 feet; thence East 212.83 feet; thence South 16°2'30" East, 331.74 feet; thence South 3°28'30" East, 246.56 feet to the West right-of-way line of the Ann Arbor Railroad; thence Southwesterly along the West right-of-way line of the Ann Arbor Railroad to the Southeast corner of Block 177; thence West along the South line of Block 177 to the centerline of Third Avenue; thence North on the centerline of Third Avenue to the South line of Block 179 and Block 178, if extended; thence West to the Point of Beginning of the Improvement Board Addition, City of Cadillac, Wexford County, Michigan.

Hereafter referred to as the Kysor Industrial Corporation/Northern Plating Company Site (the "Site").

Sec. 42-167. – Prohibition.

Except as provided in Section 42-168, no person shall install or utilize, or allow, permit or provide for the installation or utilization of a Well in any Restricted Zone. Any existing Well at the time of the enactment of a Restricted Zone within the Restricted Zone shall be plugged/abandoned at the expense of an applicant for that particular Restricted Zone and as provided for in this Ordinance in accordance with applicable laws, regulations and ordinances, unless such existing Well falls within one of the exceptions provided in Section 42-168. Except as provided in Section 42-168, no person shall use any groundwater from a Restricted Zone.

Sec. 42-168. – 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 apply and the requirements of the exceptions 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 determines based on information provided to it by the person seeking an exception (1) that the use of a Well in the Restricted Zone will not exacerbate existing groundwater contamination, and (2) that the water from the proposed Well will not be affected by Contaminated Groundwater, the Well may be so used. The party proposing the exception shall deliver proof/notice of those determinations to the City prior to Well operation..
- (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 (EPA). The party proposing the exception shall deliver proof of the MDEQ or EPA approval to the City prior to Well operation.

(c) *Construction Dewatering.* A Well may be used for construction dewatering upon approval by the MDEQ if the following conditions are satisfied:

- (1) 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
- (2) The water generated by that activity is properly handled and disposed of in compliance with all applicable laws, rules, regulations, permit and license requirements, and orders and directives of any governmental entity or agency of competent jurisdiction.

Any exposure, cross-contamination, or exacerbation caused by the use of the Well under this exception shall be the responsibility of the person operating the dewatering Well as provided in Part 201 of NREPA.

The party proposing the exception shall deliver proof/notice of MDEQ approval to the City prior to Well operation.

(d) *Processing Activities.* If the MDEQ determines that the use of a Well for non-contact heating, cooling, production, or processing involved in industrial, commercial or residential activities will not cause migration or exacerbation of Contaminated Groundwater, such use of the Well under terms and conditions specified by the MDEQ will be allowed. All information necessary for the MDEQ determination described in this subsection shall be provided by the person seeking this exception. Upon MDEQ approval, the party proposing the exception shall deliver proof/notice of those MDEQ determinations to the City prior to Well operation.

(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.

Sec. 42-169. – Enforcement.

The City Manager, or his/her designee, shall be the official having the authority to enforce this Ordinance. After the Effective Date of this Ordinance, the enforcement official shall contact all owners of Restricted Zone parcels, which appear to have Wells prohibited under this Ordinance, giving written notice of the need to cease using such Wells and of the need for (1) establishment of a Domestic Use and/or Irrigation Use water source by connecting to the City water system or (2) obtaining approval or acknowledgment of an exception under Section 42-168. The owner of a Restricted Zone parcel shall comply with the provisions of this Ordinance with regard to the provision of Domestic or Irrigation Use water within sixty (60) days from the date of such

notice. Any existing Well in violation of this Ordinance shall 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 within the Restricted Zone in violation of this Ordinance, the enforcement official may inspect the Restricted Zone and serve appropriate notice and order of such violation requiring that action be taken promptly by the owner to bring the Restricted Zone in compliance. If the owner fails to act in accordance with such order, the enforcement official may seek remedies and penalties as provided in this Ordinance including, but not limited to, suspension or revocation of a previously granted exception.

Sec. 42-170. – Penalties.

Any person who violates any provision of this Ordinance shall be liable for a municipal civil infraction under Section 38-135 of the City’s Code. In addition, the City may also seek an order from a court of appropriate jurisdiction requiring compliance with this Ordinance and may seek costs and attorney fees associated with such enforcement action. Any violation of this Ordinance is a public nuisance, subject to abatement, and any Well in violation of this Ordinance shall be immediately taken out of service and lawfully abandoned in compliance with applicable legal requirements. A court of competent jurisdiction may order any person violating any provision of this Ordinance to properly and lawfully remove or abandon a Well. **Sec. 42-171. – 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 as a result of any act or decision performed in the discharge of his or her duties pursuant to this Ordinance.

Sec. 42-172. – Notice of Amendments/Repeal.

The MDEQ, an applicant, an owner, or any other interested party may request to add parcels or delete parcels from a Restricted Zone or to establish an additional Restricted Zone or to otherwise amend or repeal this Ordinance and shall provide thirty (30) days’ advance notice to the MDEQ, including the reasons supporting such request. The City, upon thirty (30) days’ advance notice to the MDEQ, EPA and any applicant, may also take action to amend or repeal this Ordinance as it deems appropriate. The City shall also notify the MDEQ, EPA and any applicant that this Ordinance may lapse at least thirty (30) days prior to the Ordinance being allowed to lapse.

Section 2. Validity and Severability.

Any section or subsection not expressly amended by this Ordinance shall remain in full force and effect. Should any portion of this Ordinance be found invalid for any reason, such holding shall not be construed as affecting the validity of the remaining portions of this Ordinance.

Section 3. Repealer.

All other ordinances inconsistent with the provisions of this Ordinance are hereby repealed but only to the extent necessary to give this Ordinance full force and effect.

Section 4. Effective Date

This Ordinance shall take effect twenty (20) days after its adoption.

Approved this 4th day of September, 2018.

Sandra Wasson, Clerk

Carla Filkins, Mayor

I, Sandra Wasson, City Clerk of the City of Cadillac, Michigan, do hereby certify that a summary of Ordinance No. 2018-10 was published in the Cadillac News on the ____ day of _____, 2018.

Sandra Wasson, City Clerk