

**ORDINANCE NO: 202-09**

CITY OF LUDINGTON

MASON COUNTY, MICHIGAN

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF LUDINGTON BY ADDING ARTICLE \_\_\_\_\_ OF CHAPTER \_\_\_\_\_ TO REGULATE THE USE OF GROUNDWATER IN CERTAIN AREAS OF THE CITY.

THE CITY OF LUDINGTON ORDAINS:

Section 1: Amendment. The Code of Ordinances of the City of Ludington, Michigan is hereby amended by adding Article \_\_\_\_\_ of Chapter \_\_\_\_\_, entitled “Water Well Restriction Ordinance” to read as follows:

**ARTICLE \_\_\_\_\_. WATER WELL RESTRICTION ORDINANCE.**

SEC. 1. FINDINGS. The City Council has been informed and hereby finds that an aquifer in certain areas of the City has been contaminated or otherwise adversely impacted by hazardous substances and that identified public health, safety and welfare risks may affect drinking water drawn from certain areas of such impacted aquifers. The City Council has determined that it 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 the health, safety and welfare risks and minimizing the potential for migration of contaminated groundwater into presently unaffected groundwater.

SEC. 2. DEFINITIONS. The following definitions shall apply to terms used in this Article:

- (1) “Affected Parcel” means a parcel of land, any part of which is located within a Restricted Zone.
- (2) “Applicant” means a person who applies or applied for the establishment of a Restricted Zone pursuant to this Article.
- (3) “City” means the City of Ludington.
- (4) “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.
- (5) “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 operational memoranda or rules promulgated pursuant to Part 201, Environmental Remediation (MCL 324.20101 *et seq.*).

- (6) “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, or production and/or processing purposes of commercial or industrial enterprises.
- (7) “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.
- (8) “MDEQ” means the Michigan Department of Environmental Quality, or its successor agency.
- (9) “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.
- (10) “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.
- (11) “Restricted Zone” means an area or areas described within Section 3 of this Ordinance for which the prohibition of Wells and the use of groundwater applies and includes parcels of land that are legally described on the attached Schedule 1 and that are depicted in the map(s) attached as Schedule 2, as amended from time to time as provided in this Ordinance.
- (12) “WB” means the Water Bureau of the MDEQ, or its successor agency.
- (13) “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, the Resource Conservation and Recovery Act, or other applicable statute.

SEC. 3. RESTRICTED ZONE. The following described areas in the City shall be Restricted Zones under this Article. They may be referred to by reference to 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 the Ordinance in accordance with Sections 11 and 12 and all other applicable laws.

- (1) Whittier/Delia Restricted Zone – legally described on the attached Schedule 1 and depicted in the map attached as Schedule 2.

SEC. 4. PROHIBITION. Except as provided in Section 5, 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 at the expense of the Applicant for that particular Restricted Zone and as provided for in Section 6 and in accordance with applicable laws, regulations and ordinances, unless such existing Well falls within one of the exceptions listed in Section 5. Except as provided in Section 5, no person shall use any groundwater from an Affected Parcel.

SEC. 5. 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.

- (1) *Proof of No Influence.* If the MDEQ determines 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 existing groundwater contamination, and that water from the proposed Well will not be affected by Contaminated Groundwater, and proof of those determinations is delivered to the City, the Well may be so used.
- (2) *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.
- (3) *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 of NREPA.

- (4) *Processing Activities.* If the MDEQ determines 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 determination 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 determination described in this subsection shall be provided by the person seeking this exception.
- (5) *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. 6. SOURCES OF WATER SUPPLIED FOR DOMESTIC USE AND IRRIGATION USE.

- (1) 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.
- (2) 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.
- (3) In no event shall the City be required to incur any expense or cost under this Ordinance, 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.

SEC. 7. 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 Affected Parcels, which from the information available to the City, appear to have Wells prohibited under this Ordinance, 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 6, or to obtain approval or acknowledgment of an exception under Section 5. The Owner shall immediately take steps so as to comply with the provisions of this Ordinance 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 Ordinance 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 Ordinance, 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 8.

SEC. 8. PENALTY. Any person who violates any provision of this Ordinance shall be liable for a municipal civil infraction under the provisions of Ordinance Number \_\_\_\_\_. In addition, the City may seek an order from a court of appropriate jurisdiction requiring compliance with this Ordinance and may also seek collection of 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. 9. 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 Ordinance.

SEC. 10. 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 Ordinance.

SEC. 11. AMENDMENT; REPEAL. The MDEQ, an Applicant, an Owner, an entity involved in a RAP or other interested party may request 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 Ordinance, and shall provide advance notice to the MDEQ and any Applicant for such Restricted Zone of any proposed change hereunder, including the reasons supporting such request. The City on its own motion and upon advance notice to the MDEQ and any Applicant for such Restricted Zone, may also take action to amend or repeal this Ordinance as it deems appropriate. The amendment or repeal of this Ordinance shall be by an appropriate ordinance adopted in the same manner as this Ordinance, and any such action shall be in the sole legislative discretion of the City Council.

SEC. 12. NOTIFICATION OF LAPSE, OR INTENT TO AMEND OR REPEAL. At least thirty (30) days prior to any action regarding a proposed amendment or repeal in whole or in part of this Ordinance, the City shall notify the MDEQ and

any Applicant of its intent to so act. The City shall also notify the MDEQ and any Applicant that this Ordinance may lapse at least thirty (30) days prior to the Ordinance being allowed to lapse.

SEC. 13. SEVERABILITY AND CAPTIONS. If any article, section, subsection, sentence, clause, phrase, or portion of this Ordinance is 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 remaining portions of the Ordinance, it being the intent of the City that this Ordinance shall be fully severable. The City shall promptly notify the MDEQ and any Applicant upon the occurrence of any event described in this section. The captions included at the beginning of each section are for convenience only and shall not be considered a part of this Ordinance.

SEC. 14. REPEAL. All resolutions, ordinances, orders or parts thereof in conflict in whole or in part with any of the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

SEC. 15. 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 16. EFFECTIVE DATE. This Ordinance shall take effect upon \_\_\_\_\_

This Ordinance is enacted by the City of Ludington, County of Mason, State of Michigan, at a meeting of the City Council held at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.