

DIVISION 3. PROHIBITION OF USE OF GROUNDWATER**Sec. 30-61. Prohibition on use of groundwater.**

(a) *Purpose.* The city commission finds that the use of wells for water for human consumption and the use of wells that may influence the movement of contaminated groundwater constitute a potential public health risk. This section is intended to protect the public health, safety, and welfare. This section is intended to address, in part, the presence of contaminated groundwater within the city.

(b) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) "Contaminated groundwater" means groundwater in which there is present concentrations of materials that exceed the residential drinking water criteria established by the MDEQ by rule or operational memoranda pursuant to Part 201 of Michigan's Natural Resources and Environmental Protection Act, 1994 P.A. 451, as amended.

(2) "DWRPD" means the Drinking Water and Radiologic Protection Division of the MDEQ, or its successor agency.

(3) "Groundwater" means underground water within the zone of saturation.

(4) "MDEQ" means the Michigan Department of Environmental Quality, or its successor agency.

(5) "Well" means an opening in the surface of the earth for the purpose of removing water through non-mechanical or mechanical means for any purpose.

(6) A reference to any city official shall be deemed a reference to the individual duly appointed to such position and that individual's designee.

(c) *Prohibition.* Except as provided in subsection (d), no person shall install or utilize, or allow, permit, or provide for the installation or utilization of, a well in the city.

(d) *Exceptions.* A person may install or utilize, or allow, permit, or provide for the installation or utilization of, a well within the city if any of the following exceptions applies and the requirements of the exception are complied with:

(1) *Water service unavailable.* If city water service is unavailable to a premises in the city, any well on that premises shall be tested annually by a laboratory that is acceptable to and for chemical parameters specified by the DWRPD. The results of that test shall be promptly submitted to the DWRPD or the Berrien County Health Department for review. If the DWRPD or the Berrien 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 maybe used. No split or conveyance of property shall be effective to render city water service unavailable.

(2) *Proof of no influence.* If the MDEQ determines that the use of a well is not influenced or potentially influenced by contaminated groundwater and further determines the use of that well will remain permanently unaffected by the future migration of contaminated groundwater, and proof of those determinations is delivered to the city, the city manager may execute a waiver allowing the use of the well.

(3) *Groundwater monitoring.* A well may be used for groundwater monitoring and/or remediation as part of response activity approved by the MDEQ.

(4) *Construction de-watering.* A well may be used for construction de-watering, if the following conditions are satisfied:

a. The use of the de-watering well will not result in unacceptable exposure to contaminated groundwater, possible cross-contamination between saturated zones, or hydro geological effects

on contaminated groundwater plumes, and

b. 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 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 the Natural Resources and Environmental Protection Act, being MCL 324.20101 to 324.20142.

(5) *Processing activities.* If the MDEQ determines that the use of a well for non-contact heating, cooling or processing activities will not cause the future migration of contaminated groundwater, and proof of that determination is delivered to the city, the city manager may execute a waiver allowing the use of the well for the permitted purposes upon such terms and conditions that the MDEQ identifies.

(6) *Public emergencies.* A well may be used in the event of a public emergency.

(e) *Sources of water supplied for human consumption.* Except as provided in subsection (d), water supply for human consumption in the city shall be delivered only from the city water system or by the use of bottled water delivered or purchased in containers under conditions approved by the DWRPD or other appropriate agency. For the purposes of this subsection, the term "human consumption" means use in food or drink intended for human ingestion, use in food preparation or food service, use in the interior of a dwelling or dwelling unit for household purposes, and use in any building for personal washing or ingestion by irrigation.

(f) *Wells affecting contaminated groundwater.* 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 unimpacted 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.

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

(h) *Enforcement.* The city manager or the city engineer, or the designee of either, shall be responsible for the enforcement of this section.

(i) *Penalty, permit denial, remedies.*

(1) *Misdemeanor.* Any violation of this section shall be a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00) and costs of prosecution or by imprisonment in the county jail for not to exceed ninety (90) days, or by both such fine and imprisonment in the discretion of the court. Each act of violation and each day upon which such violation shall occur or shall continue shall constitute a separate offense.

(2) *Building or improvement permit.* No permit for building, alteration, or other required permit for a premises or improvement thereon shall be issued by the city for any premises found in violation of this section, or where it is proposed to install or use a well in violation of this section.

(3) *Injunctive relief.* The city may further enforce this section by action seeking injunctive relief. Any well in violation of this section shall be deemed a nuisance subject to abatement.

(j) *Miscellaneous.*

(1) *Modification 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 of its intent to so act.

(2) *Severability.* If any subsection, sentence, clause, phrase, or portion of this section 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 the remaining

portions of this section. The city shall promptly notify the MDEQ upon the occurrence of any event described in this paragraph.

(Ord. of 2-24-03)

Secs. 30-62--30-65. Reserved.