



CITY OF PONTIAC
OFFICE OF THE EMERGENCY MANAGER
LOUIS H. SCHIMMEL

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Dated: August 16, 2013

ORDER NO. S-326

RE: Adopt ordinance to amend the Code of Ordinances of the City of Pontiac by amending Chapter 58, Article VIII to regulate the use of groundwater in certain areas of the City.

**TO: Sherikia Hawkins, City Clerk
Charles Smith, Project Manager, Wade Trim**

The Local Financial Stability and Choice Act, 2012 PA 436, MCL 141.1541 to 141.1575 ("Act 436") in Section 10(1) states that "[a]n emergency manager shall issue orders to the appropriate local elected and appointed officials and employees, agents, and contractors of the local government the orders the emergency manager considers necessary to accomplish the purposes of [the] act, including, but not limited to, orders for the timely and satisfactory implementation of a financial and operating plan... or to take actions, or refrain from taking actions, to enable the orderly accomplishment of the financial and operating plan." Any such orders are binding on the local elected and appointed officials and employees, agents, and contractors of the local government to whom they are issued.

Section 12(1) of the Act provides that "[a]n emergency manager may take 1 or more of the following additional actions with respect to a local government that is in receivership, notwithstanding any charter provision to the contrary: (dd) [e]xercise solely, for and on behalf of the local government, all other authority and responsibilities of the chief administrative officer and governing body concerning the adoption, amendment, and enforcement of ordinances...."

WHEREAS, Emergency Manager Schimmel introduced the attached emergency ordinance at a public meeting on August 16, 2013; and,

WHEREAS, the Emergency Manager at a public meeting on August 16, 2013 announced that he is adopting the proposed emergency ordinance.

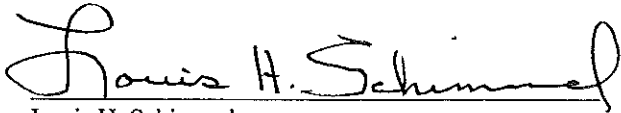
It is hereby ordered:

1. That the attached Ordinance No. 2311, an ordinance to amend the Code of Ordinances of the City of Pontiac by amending Chapter 58, Article VIII to regulate the use of groundwater in certain areas of the City, is adopted.
2. That the City Clerk shall take all actions required under the law to reflect the attached ordinance changes on the City books and records, including publication of the adopted ordinance.

The Order shall have immediate effect.

Copies of the documents referenced in this Order are to be maintained in the offices of the City Clerk and may be reviewed and/or copies may be obtained upon submission of a written request consistent with the requirements of FOIA and subject to applicable or available FOIA exemptions.

This order is effective as indicated and is necessary to carry out the duties and responsibilities required of the Emergency Manager under Act 436 and the contract between the Local Emergency Financial Assistance Loan Board and the Emergency Manager.

A handwritten signature in cursive script that reads "Louis H. Schimmel". The signature is written in black ink and is positioned above a horizontal line.

Louis H. Schimmel
City of Pontiac
Emergency Manager

cc: State of Michigan Department of Treasury
Mayor Leon B. Jukowski
Pontiac City Council

Ordinance No. 2311

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF PONTIAC BY AMENDING CHAPTER 58, ARTICLE VIII TO REGULATE THE USE OF GROUNDWATER IN CERTAIN AREAS OF THE CITY.

Whereas, a previously adopted ordinance was subsequently determined by the State of Michigan to be unenforceable.

THE CITY OF PONTIAC ORDAINS:

Section 1. Amendment.

The Code of Ordinances of the City of Pontiac, Michigan is hereby amended by adding Chapter 58, Article VIII entitled "Water Well Restriction" to read as follows:

ARTICLE VIII WATER WELL RESTRICTION.

SEC. 58-600. FINDINGS. The City 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 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. 58-601. 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 Pontiac.
- (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.*), or Part 213, *Leaking Underground*

Storage Tanks (MCL 324.21301a et seq.), of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.101 et seq., dependent upon whether the release is regulated pursuant to Part 201 or Part 213.

- (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 58-602 of this Ordinance for which the prohibition of Wells and the use of groundwater applies and includes parcels of land that are legally described in this Ordinance, and as amended from time to time as provided in this Ordinance.
- (12) "WRD" means the Water Resources Division 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. 58-602. 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 all applicable laws.

1. **Old Fiero Restricted Zone** – The Old Fiero Restricted Zone consists of three areas:

Area A:

Beginning at the intersection of East Kennett Road and Baldwin Avenue, traveling in an easterly direction to Saint Clair Street, then traveling south on Saint Clair Street to Owens Street. Traveling east on Owens Street to Portland Street, then continuing south on Portland Street to the northern boundary of tax identification number #14-20-255-001. Following the northern boundary of tax identification number #14-20-255-001 to the vacated railroad tracks, then continuing south along the tracks and across Montcalm Avenue for approximately 400 feet to the inlet of Harris Lake. Continuing west along the southern boundary of tax identification number #14-20-256-027 (Harris Lake Park) and the southern boundary of tax identification number #14-20-256-017 to Baldwin Avenue, then continuing north the point of beginning.

Inclusive of:

#14-20-202 Lots 1 through 59, #14-20-252 Lots 75 through 102, #14-20-253 Lots 127 through 158, #14-20-254 Lots 179 through 214, #14-20-255-001 Lots 242 through 244, #14-20-256-026 Lots 264 through 266, #14-20-256-003 Lot 267, #14-20-256-004, #14-20-256-005 Lot 268, #14-20-256-017, #14-20-256-027 (Harris Lake Park).

Area B:

Beginning at the intersection of Saginaw Street and Montcalm Avenue, traveling in an easterly direction to Edison Street, then traveling south on Edison Street. Traveling west on Edison Street to the southern boundary of tax identification number #14-20-426-003 (Assessor's Plat No. 11, Lot 2). Continuing west along the southern boundary of tax identification number #14-20-426-003 (Assessor's Plat No. 11, Lot 2) to Saginaw Street, and then north to the point of beginning.

Inclusive of:

Assessor's Plat No. 11 Lot 2 and 3
Montcalm Avenue

Columbia Avenue Area:

The area along Columbia Avenue consisting of the road area and easement from the railroad line east of Baldwin Avenue extending to approximately 350 feet east of the centerline of E. Highwood Street.

2. **Franklin and Rapid Street Restricted Zone**. The Franklin and Rapid Street Restricted Zone consists of the following described area:

Beginning at the Westerly Right of Way line of Woodward Avenue and the Northerly row line of South Blvd.; Thence traveling west along said right of way line to the Easterly right of way line of Franklin Road; Thence traveling North along said easterly right of way line to a point on the South line of Rapid Street and the Northwest corner of parcel 14-33-302-001; Thence Northeasterly along the South line of Rapid Street to the Northern most point of parcel 14-33-302-001 and the Southerly right of way line of The Railroad; Thence Southeasterly along the Southerly right of way line of The Railroad to the intersection of the Southerly right of way line of Woodward Avenue; Thence Southeasterly along said Southerly right of way line of Woodward Avenue and the Westerly line of Parcel identification number 14-33-351-012 to the point of beginning of Area B.

Inclusive of:

- 14-33-351-001 Lots 1 through 8 (Sachse Addition) and Lot 1 (Assessor's Plat No. 91)
- 14-33-351-012 Lots 2 through 16 (Assessor's Plat No. 91), Lots 1 through 32 (Donaldson Addition), Lots 33-42 (Donaldson Addition No. 16),
- 14-33-302-001 Part of lots 7, 8, and 9, Lots 1 through 6, Lots 10-42 (Rapid Motor Addition)
- 14-33-302-002 Lots 1 through 12 (Assessor's Plat No. 90),
- 14-33-302-003 Lots 11 and 12 (Assessor's Plat No. 90),
- Wilson Avenue.

3. **North Mill Streets Restricted Zone.** The North Mill Street Restricted Zone consists of the following area:

The area encompasses a portion of Mill Street (City of Pontiac property), and is located in the SE ¼ of Section 29, T3N, R10E. The area is bounded by Mill Street and Parcel Number 14-29-283-020 to the north, Parcel Number 14-29-428-002 to the east, University Drive to the south, and Parcel Numbers 14-29-283-020, 14-29-427-004, 14-29-427-012, 14-29-427-007, and 14-29-427-009 to the west.

SEC. 58-603. PROHIBITION. Except as provided in Section 58-604, 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 58-605 and in accordance with applicable laws, regulations and ordinances, unless such existing Well falls within one of the exceptions listed in Section 58-604. Except as provided in Section 58-604, no person shall use any groundwater from an Affected Parcel.

SEC. 58-604. 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 or Part 213 of the 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 or corrective action 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 or Part 213 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.
- (1) *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. 58-605. SOURCES OF WATER SUPPLIED FOR DOMESTIC 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. 58-606 ENFORCEMENT. The Mayor, 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 (if any), giving written notice of the need to cease using such Wells and of the need for establishment of a Domestic Use water source (to the extent required) as prescribed under Section 58-605, or to obtain approval or acknowledgment of an exception under Section 58-604. 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 58-607.

SEC. 58-607. PENALTY. Any person who violates any provision of this Ordinance shall be liable for a municipal civil infraction under the provisions of the Code of Ordinances. 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. 58-608. 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. 58-609. 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. 58-610. AMENDMENT; REPEAL. The MDEQ, an Applicant, an Owner, an entity involved in performing remedial actions in order to seek approval of a No Further Action Report under Section 20114d of Part 201 or in performing corrective actions in order to seek approval of a Closure Report under Section 21312a of Part 213 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 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. 58-611. 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. 58-612. 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.

Section 2. Severability.

If any section, clause, or provision of this Ordinance shall be declared to be unconstitutional, void, illegal, or ineffective by any Court of competent jurisdiction, such section, clause, or provision declared to be unconstitutional, void, or illegal shall thereby cease to be a part of this Ordinance, but the remainder of this Ordinance shall stand and be in full force and effect.

Section 3. Saving Clause.

A prosecution which is pending on the effective date of this ordinance and which arose from a violation of an ordinance repealed by this ordinance, or a prosecution which is started within one (1) year after the effective date of this ordinance arising from a violation of an ordinance repealed by this ordinance and which was committed prior to the effective date of this ordinance, shall be tried and determined exactly as if the ordinance had not been repealed.

Section 4. Repealer

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Section 5. Publication and Recording

- (1) The Clerk shall publish this Ordinance in a newspaper of general circulation.
- (2) If the release for which this ordinance or amendment to this ordinance is sought is regulated pursuant to Part 201, then this ordinance or amendment to the ordinance shall be published and maintained in the same manner as zoning ordinances.
- (3) If the release for which this ordinance or amendment to this ordinance is sought is regulated pursuant to Part 213, then the ordinance or amended ordinance shall be filed by the Applicant with the register of deeds as an ordinance affecting multiple properties.

Section 6. Emergency Declaration

This Ordinance is hereby determined to be immediately necessary for the preservation of the public health, safety, and welfare and shall be in full force and effect upon publication as required by law.