

GROUNDWATER USE RESTRICTIONS

The City of Au Gres, County of Arenac, State of Michigan

ORDAINS:

ORDINANCE NO. 45

AN ORDINANCE to protect and promote the public health, safety and welfare by regulating the extraction and use of groundwater in areas of th City with known, or having the potential of having been contaminated by, releases as per Parts 201 and 213 of Public Act 451 of 1994, being the Natural Resources and Environmental Protection Act of 1994, as amended.

§ 1. Short Title:

This Ordinance shall be known as the Groundwater Use Restriction Ordinance.

§ 2. Definitions:

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- A. "Abandoned well" shall have the meaning provided in Part 127 of Act 368 of the Public Acts of 1978, as amended.
- B. "Act" shall mean Part 127 of Act 368 of the Public Acts of 1978, as amended.
- C. "City" shall mean the City of Au Gres.
- D. "City Manager" means the chief administrative officer of the city appointed by the City Council, regardless of title, or his or her authorized representative.
- E. "City Water Service" shall mean the water supplied by the City of Au Gres.
- F. "Health Department" shall mean the Central Michigan District Health Department- Arenac Branch Office or any successor entity or agency having jurisdiction from time to time in and to the impact area lands. As of the effective date of the Ordinance, Central Michigan District Health Department- Arenac Branch Office is the appropriate agency, located at 3727 Deep River Road, Standish, Michigan.

- G. "Impact Area" shall mean those lands situated in the City of Au Gres, County of Arenac, State of Michigan, and described within Exhibit A and Exhibit B attached hereto and incorporated by reference herein. The Impact Area is that area within the City with know, or having the potential of having been contaminated by, releases as per Parts 201 and 213 of Public Act 451 of 1994, as amended begin the Natural Resources and Environmental Protection Act of 1994.
- H. "Irrigation Well" shall mean a well that is used to provide water for plants, livestock or other agricultural processes to and including watering of lawns and gardens.
- I. "Nonpotable Water" is water that is not safe for human consumption or is of questionable potability.
- J. "Potable Water" means water which is free of contaminants in concentrations that may cause disease or harmful physiological effects and which is safe for human consumption.
- K. "Well" shall mean any opening in the surface of the earth for the purpose of removing fresh water in any quantity and for any purpose through non-mechanical or mechanical means.

§ 3. Private Potable Water Wells Prohibited:

No wells whatsoever are to be installed without first notifying the City and if necessary, paying a fee or fees to obtain all required permits and approvals from the City and/or Health Department prior to any such installation, construction, development, expansion, modification, use or maintenance. Wells only provided in section 4 may be installed, constructed and maintained in conformity with said Act and any restrictions or additional requirements imposed by the City and/or Health Department as part of the approval process. Further provided, that no potable water well shall be installed, constructed, developed, expanded, modified, used or maintained if the property upon which such well is located or proposed lies within three hundred (300) feet of any City Water Service distribution line.

§ 4. Exceptions

A person may install or utilize, or allow, permit, or provided for the installation or utilization of, a well within the Impact Area if any of the following exceptions applies and the requirements of the exception are complied with.

- A. Groundwater Monitoring. A well may be used for groundwater monitoring and/or remediation as part of response activity approved by MDEQ.
- B. 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 the unacceptable exposure to contaminated groundwater, possible cross contamination

between saturated zones, or hydro geological effects on contaminated groundwater plumes and (II) the water generated by that activity is properly handled and disposed of in compliance with all rules, regulations, permit and license requirements, order 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.

- C. **Irrigation Wells.** A well may be used for irrigation, if the following conditions are satisfied. (I) The well must be approved by the local Health Department and the MDEQ. (II) The use of the irrigation well will not result in the unacceptable exposure to contaminated groundwater, possible cross contamination between saturated zones, or hydro geological effects on contaminated groundwater plumes. (III) All information needed to justify the use of an irrigation well within the Ordinance Area will be the burden of the entity that is applying for the well. The requirements needed to justify an irrigation well are available from the Central Michigan District Health Department Arenac Branch in Standish, Michigan. Any exacerbation caused by the use of the well under this exception shall be the responsibility of the person operating the irrigation well, as provided in Part 201 of the Natural Resources and Environmental Protection Act, being MCL 324.20101 to 324.20142.

§ 5. Abandoned Wells:

Within thirty (30) days of the effective date of this Ordinance, all existing wells, should be abandoned and plugged by the well owner or a licenced well drilling contractor, unless they meet the requirement for an exception pursuant to Section 4 of this Ordinance. The manner in which such well is plugged shall be in compliance with this Ordinance.

§ 6. Non-Conforming Wells:

All water wells lawfully in existence as of the effective date of this Ordinance and which do not comply with any provision of this Ordinance shall be deemed legal non-conforming uses for a period of 30 days from and after said effective date. Upon the expiration of said 30 day period, all such non-conforming wells shall either be considered abandoned in accordance with applicable Health Department and Michigan Department of Environmental Quality rules and regulations, or specifically permitted and approved by said Health Department subject to and in accordance with Section 3 above. Such non-conforming wells shall be plugged or abandoned in conformance with all applicable laws, rules, regulations, permit and license requirements, orders and directives of any governmental entity or agency of competent jurisdiction, or in the absence of an applicable law, rule, regulation, requirement, order, directive, in conformance with the protocol developed consistent with the American Society of Testing and Materials standard #D5299-92.

§ 7. Modifications- Department of Environmental Quality Notifications:

The City shall give no less than thirty (30) days notice prior to the effective date of any modification, amendment or repeal of this Ordinance.

§ 8. Enforcement:

That the City Manager or other authorized City representative, as well as any Health Department official, may enter the lands upon which any well being subject to this Ordinance is situated or proposed, and for the purposes of inspecting such lands and wells and maintaining compliance with the provisions of this Ordinance.

A violation of this Ordinance or any provision hereof shall be deemed a misdemeanor, and subject to a penalty of not more than \$500 and/or imprisonment not to exceed 90 days for each offense; any such violation shall as well constitute a nuisance *per se*, and the City shall have all remedies available under law or equity for purposes of obtain the abatement of such violation and compliance herewith. In the event a civil action is commenced by the City to enforce this Ordinance or any provision thereof and a violation is found to exist, the violating party shall be further liable unto the City for its actual costs and attorney fees incurred in bringing such proceedings.

§ 9. Repealer:

All City Ordinance or provisions thereof that conflict with the provisions of this Ordinance are hereby repealed to the extent necessary to give full force and effect to this Ordinance.

§ 10. Severability:

Should any term, phrase, clause, provision, section or sub-section of this Ordinance be declared by a court of competent jurisdiction as null, void or invalid, the balance of this Ordinance not affected by such declaration shall be deemed separate and distinct and shall remain in full force and effect.

Dated: April 25, 2007

La Vern Dittenber
La Vern Dittenber, Mayor

Dated: April 25, 2007

Mary Fresorger
Mary Fresorger, City Clerk/Treasurer

Adopted: April 24, 2007

Effective: May 2, 2007