

**CITY OF OTSEGO
ALLEGAN COUNTY, MICHIGAN
ORDINANCE NO. 166**

Commissioner McNees moved to adopt Ordinance No. 166 – Ground Water Ordinance, seconded by Commissioner Krueger.

**AN ORDINANCE TO AMEND THE OTSEGO CITY CODE OF ORDINANCES TO
PROVIDE FOR GROUNDWATER PROTECTION AND TO REPEAL ALL
ORDINANCES OR PARTS THEREOF IN CONFLICT HEREWITH**

THE CITY OF OTSEGO ORDAINS:

CHAPTER 59 : GROUNDWATER PROTECTION

ARTICLE I. – GENERAL PROVISIONS

Chapter 59, “Groundwater Protection”, Section 59-1 through 59-61, is hereby adopted and shall now read:

Sec. 59-1. Intent and Purpose.

The purpose of this chapter is to:

- A. Protect existing and potential groundwater supplies, aquifers, and groundwater recharge areas of the city that are or may be used as a source of public drinking water supply.
- B. Protect the public health, safety and welfare of city residents and to protect property values, quality of life, and natural systems relating to groundwater quality management. The city finds it a matter of public concern and benefit to protect groundwater and properties within the city and to reduce the future need for public expenditures relating to water quality, and public water well maintenance. Both the quality and quantity of groundwater are a matter of public concern.
- C. Establish minimum groundwater management requirements and controls to accomplish, among others, the following objectives:
 1. To reduce the contribution of pollutants to groundwater by any person (as defined in this chapter);
 2. To establish legal authority of the city to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this chapter; and,
- D. Provide appropriate legal and equitable remedies for failure to comply with this chapter.

Sec. 59-2. Findings.

The city finds that groundwater regulation and management is a matter of public health, safety and welfare because:

- A. Certain groundwater underlying areas including the City of Otsego currently are, or may be in the future, the sole source of the city's drinking water supply.
- B. Groundwater aquifers are integrally connected with the surface water, lakes and streams that constitute significant public health, recreational and economic resources of the city and surrounding area.

- C. Spills and discharges of hazardous substances threaten the quality of the groundwater supplies and other water related resources, posing potential public health and safety hazards and threatening economic losses.

Sec. 59-3. Applicability and general provisions.

This chapter applies to all building permit requests made under the City's Zoning Ordinance.

Sec. 59-4. Definitions.

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section unless the context in which they are used specifically indicates otherwise. *Abandoned operations* means any property that is unoccupied for at least thirty (30) days and to which one or more of the following applies:

- A. Is open to casual entry;
- B. Has one or more windows boarded;
- C. Has utilities disconnected;
- D. Is unsafe for occupancy or the general public, or is a visual blight adversely affecting the general welfare of the area;
- E. Is the subject of indebtedness to the city for more than one year.

Abandoned operations do not include a property that is actively listed by a licensed real estate broker.

Aquifer means a geological formation, group of formations, or part of a formation capable of storing and yielding a significant amount of groundwater to wells and springs.

Authorized enforcement agency means the stormwater protection administrator, or any person or agencies designated to act as the authorized enforcement agency by the city commission of the City of Otsego to enforce the provisions of this chapter.

Chemical abstract service (CAS) number means a unique number for every chemical established by a Columbus, Ohio organization which indexes information published in "Chemical Abstracts" by the American Chemical Society.

Hazardous substance means a chemical or other material that is or may become injurious to the public health, safety, or welfare, or to the environment. The term "hazardous substance" includes, but is not limited to, any of the following which are stored or generated in quantities greater than 100 kilograms (approximately 220 pounds or 25 gallons) per month, and which require site plan review under provisions of this chapter

- A. Hazardous Substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, Public Law 96.510, 94 State. 2767;
- B. Toxic Chemical as defined in the Emergency Planning and Community Right-to-Know Act (EPCRA) Title III of the Superfund Amendments and Reauthorization Act of 1986, Public Law 99.499
- C. Hazardous Waste as defined in Part 111 of the State of Michigan Natural Resources and Environmental Protection Act, 1994 Public Act 451, as amended;
- D. Regulated Substance as defined in Part 213 of the State of Michigan Natural Resources and Environmental Protection Act, 1994 Public Act 451, as amended;

- E. Hazardous Substance as defined in Part 201 of the State of Michigan Natural Resources and Environmental Protection Act, 1994 Public Act 451, as amended;
- F. Used oil;
- G. Radiological materials.

Person means any person, individual, partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or other legal entity, or their legal representatives, agents or assigns. The masculine gender shall include the feminine and the singular shall include the plural where indicated by context.

Pollution incident prevention plan (PIPP) means a written plan that includes a polluting material inventory, a site diagram depicting the locations of the polluting materials, emergency response procedures, and secondary-containment details. Sites are subject to Michigan's Part 5 Rules if they store oils and other polluting materials above established threshold management quantities (TMQs), which are:

- A. Salt in solid form at quantities of five (5) tons (10,000 pounds) or more.
- B. Salt in liquid form at 1,000 gallons or more.
- C. Petroleum products in an AST or container with a capacity of 660 gallons or greater or an aggregate aboveground storage capacity of 1,320 gallons.
- D. All other polluting materials specified in Part 5 that are used, stored, or otherwise managed in a discrete outdoor location, with a total storage quantity of 200 kilograms (kg) (440 pounds) or more.
- E. All other polluting materials specified in Part 5 that are used, stored, or otherwise maintained at a discrete indoor location, with a total storage quantity of 1,000 kg (2,200 pounds) or more.

Properly plugged abandoned well means a well that has been closed in accordance with regulations and procedures of the State of Michigan's Environmental Departments and the local Health Department. A properly plugged abandoned well requires a permit to be brought back into service.

Receiving body of water means any watercourse, wetland or waters of the state into which surface waters are directed, either naturally or artificially.

Secondary containment means a second tank, catchment pit, pipe, or vessel that limits and contains liquid or chemical leaking or leaching from a primary containment area; monitoring and recovery are required.

Spill prevention control and countermeasure (SPCC) plan means a written plan as detailed in 40 CFR Part 112, sites are subject to the SPCC rules if (1) they store either more than 1,320 gallons of petroleum products aboveground and (2) they present a reasonable risk to a navigable water of the United States property (including via storm water and groundwater). An SPCC Plan details site oil storage, spill potential, and emergency response and notification procedures. The SPCC Plan is required to be certified by a registered Professional Engineer.

Stormwater pollution prevention plan (SWPPP) means a written plan as detailed in 40 CFR Part 122, sites that are required to have a storm water permit are also required to have SWPPPs that detail hazardous substance exposed to storm water and controls to prevent releases.

Underground storage tank means a tank or combination of tanks, including underground pipes connected to the tank or tanks, which is, was, or may have been used to contain an accumulation of hazardous substances, as defined in Part 211 of the State of Michigan Natural Resources and Environmental Protection Act, 1994 Public Act 451, as amended.

Unplugged abandoned well means a well which has not been used for one year or more.

Watercourse means any waterway or receiving body of water having reasonably well defined banks, including rivers, streams, creeks and brooks, whether continually or intermittently flowing; and lakes and ponds, as shown on the official maps of the Michigan Department of Natural Resources and Allegan County Drain Commissioner.

Well means a permanent or temporary opening in the surface of the earth for the purpose of removing water, or testing water quality, or measuring water characteristics, or measuring liquid recharge, or measuring liquid levels, or oil and gas exploration or production, or waste disposal, or dewatering purposes; or geothermal heat exchange purposes, or a cistern of a depth of 4 feet or more and with a top width of 12 inches or more, or as defined in the Michigan Water Well Construction and Pump Installation Code, Part 127, Act 368 of the Public Acts of 1978, as amended, and rules.

Wellhead protection area means an area which has been approved by the State of Michigan's Environmental Departments in accordance with the State of Michigan Wellhead Protection Program, which represents the surface and subsurface area surrounding a water well or well field, which supplies a public water system, and through which contaminants are reasonably likely to move toward and reach the water well or well field within a ten-year time of travel.

Sec. 59-5 – 59-9. – Reserved.

ARTICLE II. - PROHIBITIONS

Sec. 59-10. Prohibitions within Wellhead Protection Area.

For any parcel of land that has a portion within a Wellhead Protection Area, the following are prohibited at any location on the parcel:

- A. Use of oil, waste oil, or similar liquid petroleum-type products for dust suppression.
- B. Extraction, or mining of sand, gravel, bedrock, or any other type of earth if a permit or site plan review is required.
- C. Unplugged abandoned wells.
- D. Drilling for natural gas or petroleum, whether for exploration or production.
- E. Drilling, direct-push and other earth penetration beyond 15 feet depth unless sealed to within 2 feet of surface grade with grout, or with soil material exhibiting lower hydraulic permeability than the native soil.

Sec. 59-11 – 59-19. – Reserved.

ARTICLE III. – PERFORMANCE AND DESIGN STANDARDS

Sec. 59-20. Site Plan Review.

Applicable projects under this chapter that also require site plan review under Chapter 14 shall include the following site plan review requirements:

- A. Existing and proposed land use deed restrictions, if any.
- B. Location and outline of all existing septic tanks and drain fields.
- C. Location of any floor drains in proposed structures on the site. The point of discharge for all drains and pipes shall be specified on the site plan.

- D. Location of existing and proposed public and private drinking water wells, monitoring wells, irrigation wells, test wells, wells used for industrial processes or wells that have no identified use.
- E. Inventory of hazardous substances to be stored, used or generated on-site, presented in a format acceptable to the city Planning Commission and Department of Public Works (include CAS numbers).
- F. Description and drawings showing size and location for any existing or proposed aboveground and underground storage tanks, piping lines and dispensers.
- G. Descriptions of type of operations proposed for the project and drawings showing size, location, and description of any proposed interior or exterior areas of structures for storing, using, loading or unloading of hazardous substances.
- H. Reported delineation of areas on the site which are known or suspected to be contaminated, together with a report on the status of cleanup or closure.
- I. Completion of the City of Otsego Environmental Permits Checklist.

Sec. 59-21. Criteria for Review.

Criteria for Review will include:

- A. The project and related improvements shall be designed to protect land and water resources from pollution, including pollution of soils, groundwater, rivers, streams, lakes, ponds, and wetlands.
- B. If required by state or federal law, properties using hazardous substances are required to have a Spill Prevention Control and Countermeasure (SPCC) Plan, a Pollution Incident Prevention Plan (PIPP), and/or a Storm Water Pollution Prevention Plan (SWPPP).
- C. Sites that at any time use, store or generate hazardous substances shall be designed to prevent spills and unpermitted discharges to air, surface of the ground, groundwater, lakes, streams, rivers or wetlands.
- D. Hazardous substances stored on the site before, during, or after site construction, shall be stored in a location and manner designed to prevent spills and unpermitted discharges to air, surface of the ground, groundwater, lakes, streams, rivers, or wetlands.
- E. Secondary containment facilities shall be provided for aboveground storage of hazardous substances in accordance with state and federal requirements. Aboveground secondary containment facilities shall be designed and constructed so that the potentially polluting material cannot escape from the unit by gravity through sewers, drains, or other means, directly or indirectly into a sewer system, or to the waters of the State (including groundwater).
- F. Unplugged abandoned wells and cisterns shall be plugged in accordance with regulations and procedures of the State of Michigan's Environmental Departments and the County Health Department.
- G. Completion of the City of Otsego Environmental Permits Checklist.

Sec. 59-22. Exemptions and Waivers.

A limited exclusion from this chapter is hereby authorized as follows:

- A. Residential family dwellings (R-A, R-B, MHP) districts proposed for development are exempt from the site plan review requirements of Sec. 59-20.
- B. PUD districts proposed for development outside of the city's Wellhead Protection Areas are exempt from the site plan review requirements of Sec. 59-20.

- C. The site plan review criteria of Section 59-20 and 59-21 do not apply to hazardous substances packaged for personal or household use or present in the same form and concentration as a product packaged for use by the general public.
- D. The site plan review requirements of Section 59-20 and 59-21 do not apply to products held in containers with a volume of less than 40 gallons and packaged for retail use.
- E. The total excluded substances containing hazardous substances may not exceed the lesser of two hundred (200) gallons or one thousand (1,000) pounds at any time.

Sec. 59-23 – 59-30. – Reserved.

ARTICLE IV. ABANDONED OPERATIONS

Sec. 59-30. Abandoned Operations.

Those who own or control abandoned residences, businesses or other operations shall do the following:

- A. Within seven (7) days of becoming an abandoned operation, take such steps as necessary to secure the site such that natural elements such as water, wind and ice or vandals and all other persons cannot gain access to the hazardous substances.
- B. Within thirty (30) days of becoming inactive, provide to the code official and the Police Department a document that identifies the site, the date of inactivity, the hazardous substances that exist on site, and the name, address, and telephone number of both the owner and the person in control of the site.
- C. Within sixty (60) days of becoming inactive, remove all hazardous substances from the site. This does not include those substances used for heating, cooling, and/or electrical lighting.

Sec. 59-31 – 59-39. – Reserved.

ARTICLE V. ENFORCEMENT

Sec. 59-40. Enforcement and violation.

- A. It is a violation of this chapter by any person that intentionally makes a false statement, representation or certification in an application for or form pertaining to a permit, or in a notice, report or record required by this chapter or in any other correspondence or communication, written or oral, with the authorized enforcement agency regarding matters regulated by this chapter
- B. Any person convicted of a violation of any provision of this chapter, is subject to the fines and penalties as set forth in chapter 1, sections 1-14 and 1-15 of the Otsego city Code.

Sec. 59-41. - Failure to comply; completion.

- A. The authorized enforcement agency may, after giving notice and opportunity for compliance as provided in section 59-40(b), to enter the premises or site, and correct any violation of this chapter or damage or impairment to the property, and to assess the person or property for all costs to repair, replace or remediate the damage or impairment to groundwater, watercourse or receiving waters. The costs reimbursable under this section shall be in addition to any fees, inspection fees, and/or any other amounts or other costs and expenses required to be paid to the authorized enforcement agency under other sections of this chapter.

- B. If the property owner fails or refuses to comply with the requirements of this chapter, the city shall give written notice to the property owner. The notice shall be delivered to the property owner, or mailed to the last known post office address of the property owner. A notice of violation shall contain a statement:
1. Setting forth the nature of the violation or requirements of this chapter;
 2. That the property owner has five days from the date of the notice to correct the violation;
 3. That, if the property owner fails to correct the violation, the city will enter the premises or site, and correct the violations of this chapter, and assess the person or property for all costs and fees, associated with the repairs, replacement or remediation of the damage to groundwater, watercourse or receiving waters.
 4. That if the property owner fails [to] reimburse the city for the costs and fees a lien shall be filed against the property to secure all costs and fees associated with the repairs, replacement or remediation of the damage or impairment to groundwater, watercourse or receiving waters, then city may place a lien on the premises or take other legal action seeking reimbursement of costs.
 5. That refusal or failure to correct violations of this chapter, is a municipal civil infraction which shall, upon a determination of responsibility, is subject to the fines and penalties as set forth in chapter 1, sections 1-14 and 1-15 of the Otsego City Code.

Sec. 59-42. – Emergency measures; cost recovery.

If an emergency condition exists, as determined by the authorized enforcement agency, such that emergency remedial measures are necessary in order to respond to a nuisance to protect public safety, health and welfare, or to prevent loss of life, injury or damage to property, the authorized enforcement agency may carry out or arrange for all such emergency remedial measures to abate the nuisance. Property owners shall be responsible for all costs of the authorized enforcement agency in responding to the emergency and implementation of remedial measures as a result of a violation of this chapter, and shall promptly reimburse the city for all of such costs.

Sec. 59-43. – Collection of costs; single-premises assessments.

Costs incurred by the city pursuant to sections 59-41 and 59-42 will be invoiced to the property owner. Any cost not collected within six months thereafter shall become a special assessment on the property or premises, which shall be enforceable in accordance with chapter 62 of the city charter. The failure by any person to pay amounts required to be reimbursed to the city as provided by this chapter shall constitute an additional violation of this chapter.

Sec. 59-44. – Appeals.

Any person who has been cited for a violation of this chapter or has been ordered to take action to comply with the provisions of this chapter may appeal in writing to the city manager of the City of Otsego not later than 30 days after the action or decision being appealed. Such appeal shall identify the matter being appealed and the basis for the appeal. The city manager shall consider the appeal and decide whereby the action being appealed is affirmed, rejected or modified. In considering any such appeal, the city manager may consider the recommendations of the authorized enforcement agency and the comments of other persons having knowledge or expertise regarding the matter. In considering any such appeal, the city manager may grant a temporary variance from the terms of this chapter so as to provide relief, in whole or in part, from the action being appealed, but only upon finding that the following requirements are satisfied:

- A. The application of the ordinance provisions being appealed will present or cause unnecessary hardship for the property or premises owner appealing; provided, however, that unnecessary hardship shall not include the need for a property or

premises owner to incur additional reasonable expenses in order to comply with the part; and,

- B. The granting of the relief requested will not prevent accomplishment of the goals and purposes of this chapter, nor result in less effective management of groundwater.

In order that the provisions of this article may be reasonably applied and substantial justice done in instances where unnecessary hardship would result from carrying out the strict letter of these sections, the city zoning board of appeals shall consider appeals from the decision of the city manager and to determine, in particular cases, whether any deviation from strict enforcement will violate the intent of this article or jeopardize the public health or safety or environment.

Appeals from orders of the city manager may be made at the zoning board of appeals of the City of Otsego, within 30 days from the date of any citation, order, charge, fee, surcharge, from the date of any citation, order, charge, fee, surcharge, penalty or other action. The appellant shall file a notice of appeal with the zoning board of appeals, specifying the grounds therefor. Prior to a hearing, the city manager shall transmit to the zoning board of appeals a summary report of all previous action taken. The zoning board of appeals may, at its discretion, call upon the city manager to explain the action. The final disposition of the appeal shall be in the form of a resolution, either reversing, modifying, or affirming, in whole or in part, the appealed decision or determination.

The decision of the zoning board of appeals shall be final, except that the board or the members thereof may be required, under proper mandamus proceedings, to show cause why certain actions were taken or decisions rendered.

All charges for service, penalties, fees, or surcharges outstanding during any appeal process shall be due and payable to the city. Upon resolution of any appeal, the city shall adjust such amounts accordingly.

If an appeal is not demanded within the periods specified in this section, the administrative action shall be deemed final. In the event of an appeal, action shall be suspended until a final determination has been made, except for immediate cease and desist orders or any emergency or judicial action.

Appeals from determinations of zoning board of appeals may be made to the circuit court for the county as provided by law. The appeals shall be governed procedurally by the Administrative Procedures Act of 1969 (MCL 24.201 et seq.). All findings of fact, if supported by the evidence, made by the board shall be conclusive upon the court.

Sec. 59-45. – Judicial relief.

The city may institute legal proceedings in a court of competent jurisdiction to seek all appropriate relief for violations of this chapter or of any permit, order, notice or agreement issued or entered into under this chapter. The action may seek temporary or permanent injunctive relief, damages, penalties, costs and any other relief at law or equity that a court may order. The city may also seek collection of fines, penalties and any other amounts assessed and due to the city that remain unpaid.

Sec. 59-46. – Civil infraction.

Any violation of this chapter shall be considered a civil infraction, subject to a fine of not more than \$500.00 together with costs as provided for by ordinance. Each day a violation exists shall

be deemed a separate violation. A citation charging such a violation may be issued by the city ordinance enforcement officer, or his or her designee.

Sec. 59-47. – Remedies not exclusive.

The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state, or local law and it is within the discretion of the city to seek cumulative remedies.

Sec. 59-48. – Cumulative remedies.

The imposition of a single penalty, fine, order, damage or surcharge upon any person for a violation of this chapter or of any permit, order, notice or agreement issued or entered into under this chapter shall not preclude the imposition by the city, the authorized enforcement agency, or a court of competent jurisdiction of a combination of any or all of those sanctions and remedies or additional sanctions with respect to the same violation, consistent with applicable limitations on penalty amounts under state or federal laws or regulations. A criminal citation and prosecution of a criminal action against a person shall not be dependent upon and need not be held in abeyance during any civil, judicial or administrative proceeding, conference or hearing regarding the person.

Sec. 59-49 – 59-59. – Reserved.

ARTICLE VI. - INTERPRETATION

Sec. 59-60. – Interpretation of words and phrases

Words and phrases in this chapter shall be construed according to their common and accepted meanings, except those words and phrases that are defined in section 60-5 shall be construed according to the respective definitions given in that section. Technical words and technical phrases not defined in this chapter, but which have acquired particular meanings in law or in technical usage, shall be construed according to such meanings.

Sec. 59-61. –Catchline headings

The catchline headings of the chapters and sections of this chapter are intended for convenience only and shall not be construed as affecting the meaning or interpretation of the text of the chapters or sections to which they may refer.

ARTICLE VII.

Sections 59-70 – 59-99 are hereby reserved.

ARTICLE VIII.

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

ARTICLE IX.

This ordinance shall take effect January 10, 2021.

Passed and approved on the 21st day of December, 2020 with the following vote:

YEAS: Commissioners: Cyndi Trobeck, Brent Milhiem, Dustin McNees, Stacey Withee,
Lauri Krueger.

NAYS: Commissioners: None.

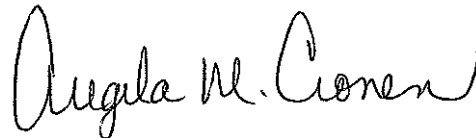
ABSTAIN: Commissioners: None.

ABSENT: Commissioners: None.

ORDINANCE ADOPTED.

CERTIFICATE

I, Angela M. Cronen, the duly appointed clerk of the City of Otsego do hereby certify the foregoing is a true and complete copy of an Ordinance adopted by the Otsego City Commission at a regular meeting held Monday, December 21, 2020, in compliance with the Open Meetings Act, Act No. 267 of the Public Acts of Michigan, 1976, as amended, the minutes of the meeting were kept and will be or have been made available as required by said Act.



Attest: _____

Angela M. Cronen, City Clerk

Introduced: November 16, 2020

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Effective: January 10, 2021

