

ORDINANCE NO.
AN ORDINANCE PROTECTING TOWN WATER SUPPLY

CLIENT'S COPY

WHEREAS, it is in the public interest and welfare to establish an ordinance protecting the water supply of Town residents; and

WHEREAS, the Town finds it necessary to exercise its police powers as the same are authorized by sections 60.22 and 61.34 of the Wisconsin Statutes; and

WHEREAS, the Town wishes to exercise its general powers relating to the preservation of water supply, groundwater protection and to otherwise encourage the protection of groundwater resources for the health, welfare and safety of the Town's residents;

NOW, THEREFORE, the Town Board of the Town of Byron, Fond du Lac County does ordain as follows:

SEC. 1-APPLICABILITY:

This ordinance shall regulate test wells or permanent wells within the Town intended to be used as part of a community water system, a municipal water system, a public water system, or a high capacity water system as the same are defined herein. The purpose of this ordinance is to (a) provide advance notice of the installation or construction of a test well or permanent well for the previously described systems and (b) to provide security to protect Town residents against injury caused by the installation or operation of a test well or permanent well as defined herein.

SEC. 2-DEFINITIONS:

For the purpose of this ordinance, the following terms are defined:

ADEQUATE WATER SUPPLY. A water supply which has a yield, where obtainable, and the pump capacity to provide the quantity of water which is reasonably necessary to maintain use for drinking, culinary, personal hygiene, and other purposes for which the water is reasonably intended to be used. This ordinance is intended to protect the existing water supply of Town residents.

COMMUNITY WATER SYSTEM. As defined by NR 111.03(2) of the Wisconsin Administrative Code which is incorporated herein as if fully set forth.

CONTAMINANT. Any matter which may render water bacteriologically or chemically impure or turbid so as to make it unfit for human consumption.

DISTRIBUTION SYSTEM. All pipes or conduits by which water is delivered to consumers or municipalities located outside the Town boundaries, except piping inside buildings served and service pipes from a building to a distribution main or pipe.

DRAWDOWN. The extent of lowering the water level when water is pumped or flows from a private well.

GROUNDWATER. Subsurface water which is within the zone of saturation, including but not limited to, perched water tables, shallow regional groundwater tables and aquifers or zones that are seasonally, periodically or permanently saturated.

GROUNDWATER SOURCE. All groundwater obtained from horizontal collectors, infiltration lines, springs and dug, drilled or other types of test wells or permanent wells.

HIGH CAPACITY WATER SUPPLY OR SYSTEM. As defined by NR 112.03(30m) of the Wisconsin Administrative Code which is incorporated herein as if fully set forth.

LIVING UNIT. A domicile located within the Town's boundaries.

MUNICIPALITY. Any City, Town, Village, County, County Utility District, Town Sanitary District, Town Utility District, School District or Metropolitan Sewage District or any other public entity created under Wisconsin law and having authority to collect, obtain, store, treat or convey water for domestic, commercial or industrial use.

MUNICIPAL WATER SYSTEM. As defined by NR 111.03(9) of the Wisconsin Administrative Code which is incorporated herein as if fully set forth.

PERSON. An individual, corporation, company, association, cooperative, trust, institution, partnership, state, municipality, or federal agency.

PRIVATE WATER SUPPLY. One or more sources of groundwater, including facilities for storage and conveyance of groundwater, such as wells, springs, pumps, pressure tanks and reservoirs, on one property, other than those serving a public water system.

PUBLIC WATER SYSTEM. As defined by NR 111.03(12) of the Wisconsin Administrative Code which is incorporated herein as if fully set forth.

SPECIFIC CAPACITY. The continuance yield of a well at a given well water or pressure drawdown expressed in gallons per minute, per foot of drawdown.

SUPPLIER OF WATER. Any person who owns or operates a public water system.

UTILITY. A public utility as defined in Chapter 196 of the Wisconsin Statutes and as the same may be modified or amended.

WATERWORKS OR WATER SYSTEM. Any facility installed or constructed to obtain, store, treat or convey water for drinking or domestic, commercial or industrial use for a public water system.

WELL. An excavation or opening into the ground made by digging, boring, drilling, driving or other methods for the purpose of obtaining groundwater or for monitoring groundwater movement. This definition applies to all wells, whether for test purposes or for permanent use.

WELL DRILLER. Any person, firm or corporation, whether private or public, employed in obtaining groundwater from a well by digging, boring, drilling, driving or other methods for the purpose of obtaining groundwater.

YIELD. The quantity of water which may flow or be pumped from the well per unit of time.

SEC. 3-NOTICE REQUIREMENTS:

1. No test well or permanent well shall be constructed in the Town if such well is intended as part of a community water system, a municipal water system, a public water system, or a high capacity water system, unless written notice of such well and its intended use is given to the Town (a) within ten (10) days of the submission of preliminary plans and specifications to the Wisconsin Department of Natural Resources under NR 108.04; or (b) thirty (30) days prior to the commencement of any test or permanent well construction; whichever is earlier. Said notice shall be provided to the Town Clerk and shall contain the following information:

- A. The name of the supplier of water and/or owner of the well;
- B. The type of water system for which the well will be used;
- C. The location of the well and the name of the owner of the site location;

- D. The description and location of the distribution system for the water system, identifying affected roads, rights-of-way, and easements to be utilized in transporting the water to its ultimate user;
- E. The name and address of the well driller;
- F. Identification of all existing wells located in the Town, whether public, private, municipal, community and/or high capacity, within a two mile radius of the well site;
- G. The estimated specific capacity of the well, whether a test or permanent well;
- H. The estimated yield of the test and/or permanent well(s), utilizing calculations based on per minute yields, per day yields, and annual yields;
- I. The groundwater source to be utilized by the well;
- J. The estimated time for completion of the permanent water supply and distribution systems;
- K. The estimated useful life of the well and water system;
- L. The contact person having authority to respond to inquiries regarding the application.

2. Any information identified above which is not available at the time of the required submission of the Notice shall be supplied immediately as the same becomes available or determinable. The Notice required by this section shall be in addition to any and all reports, applications and/or Notices required elsewhere in any Town ordinance applicable to wells or the location of wells. The applicant shall be responsible for supplementing or updating the submitted application as new information is obtained or as circumstances change.

SEC. 4-FILING OF REPORTS:

If the water system proposed or under construction is a reviewable project under Chapter NR 108(2) of the Wisconsin Administrative Code, copies of any and all reports required to be filed with the Wisconsin Department of Natural Resources shall be filed simultaneously with the Town Clerk.

SEC. 5-COSTS INCIDENT TO WELL CONSTRUCTION:

1. The provisions of this and any other Town ordinance notwithstanding, each well owner and supplier of water subject to this ordinance shall be solely responsible for all costs of repairs to roads, public rights-of-ways, topography or other surfaces or locations damaged or disturbed in any manner due to the construction of any well and/or water distribution system servicing a community water system, municipal water system, public water system and/or high capacity water system. The plans and specifications for all water distribution systems located within the Town shall be filed with the Town Clerk 60 days prior to commencement of construction of any such distribution system or portion thereof. The information to be submitted shall include specification of the size, type and exact location of the distribution system and its appurtenances and shall indicate whether such is to be located within private or public lands and shall indicate the owners of all lands upon which the system shall be located. The well owner and water supplier shall be solely responsible for obtaining the necessary easements, public or private, for location of the well and distribution system and for conformance to all Town, State and Federal requirements governing the same. The Town Board may limit and/or regulate the location of wells and distribution systems in conformance with applicable zoning ordinances and uses allowed in accordance therewith.

2. The plans and specifications for all water distribution systems described in paragraph 1 above shall be accompanied by (a)an application and inspection fee of \$200.00 and (b)a performance bond in an amount which the Town Board determines to be reasonably necessary to secure the proper performance and completion of the construction of the relevant water distribution systems located within the Town. Said bond shall be determined in light of the nature of the improvements and the contents of the plans and specifications filed with the Town Clerk as set forth in Section 1 above. Performance bonds used in conjunction with the applicant's well construction project are sufficient to meet the requirements of this section provided the bonds designate the Town as an additional insured or beneficiary.

3. In addition to all other requirements set forth herein, the permit applicant shall perform, at its cost, static and pumping operating levels for all wells of whatever depth within a two mile radius. Thereafter, the well permittee shall perform follow-up well surveys within the same areas at 2 year intervals. The follow-up surveys shall be performed during the same month or season as the initial well surveys in order to maintain comparability in the data. The Town shall assist the permit applicant or permittee by providing a letter addressed to the relevant Town residents requesting cooperation in the well surveys.

SEC. 6-GROUNDWATER PROTECTION FUND:

1. The existence of wells servicing community water systems, municipal water systems, public water systems and/or high capacity water systems in the Town may have future adverse effects on the groundwater and groundwater sources utilized by Town residents. Protection of groundwater and groundwater sources is necessary for the maintenance of the health, welfare and economic well-being of the Town and its residents. There presently exists the scientific knowledge and expertise necessary to reasonably determine the effect of such wells on prior, existing, normal capacity private wells and the groundwater sources for such private wells. To protect Town property owners from adverse effects of the existence and location of community, public, municipal and/or high capacity wells in the Town, and to provide for reasonable compensation for any losses which may be incurred thereby, there is hereby established a Groundwater Protection Fund, to be administered as set forth herein.

2. A special permit shall be required prior to the installation and operation of all permanent wells servicing community, municipal, public and/or high capacity water systems located within the Town. An applicant for a special permit shall submit his or her request on forms to be supplied by the Town Clerk. The Town shall act on the permit application within 45 days of receipt.

3. There shall be imposed upon all new permanent wells servicing community, municipal, public and/or high capacity water systems an initial special permit fee payable to the Town prior to the installation of said permanent well in an amount of \$25,000.00. Furthermore, there shall be imposed upon all new permanent wells servicing community, municipal, public and/or high capacity water systems an annual operation fee payable to the Town no later than February 1 of the year following each year, or fraction thereof, such a well is operating in the Town in an amount of \$1,000.00. The special permit fee and the annual operation fee shall be escrowed pursuant to the terms of subsection 4 below.

4. The initial special permit fees and the annual operation fees shall be deposited into a separate interest-bearing insured account(s) demoninated "Groundwater Protection Fund Well No.____." The account(s) may be in the name of and controlled by the permittee, provided no withdrawals occur except as authorized by mutual agreement between the Town Board and the permittee or by direction of the Arbitration Panel as provided herein. The annual operation fee of \$1,000 per well shall continue to be paid until the account balance, including accumulated interest thereon, reaches a balance of \$50,000.00. The permittee shall be entitled to the interest earned on the account after the \$50,000.00 balance has been met. In the event the account balance falls below \$50,000.00, the annual operation fee shall resume and earned interest shall be retained until such time as the \$50,000.00 balance has been restored. The Groundwater Protection Funds shall be administered as follows:

A. Disbursements to be made from the Groundwater Protection Fund to private well owners who incur damages or expenses as a result of any adverse effect(s) created by wells subject to the jurisdiction of this ordinance. Such damages or expenses shall include, but are not limited to, the following:

- (1) Contamination of private water supply;
- (2) Depletion of groundwater sources resulting in the drawdown of private wells;
- (3) Depletion of groundwater sources resulting in a significant lowering of well water level in private wells;
- (4) Such other and similar expenses or damages reasonably shown to have been caused by wells regulated under this ordinance.

B. Any damages or expenses found to be compensable under "A" above which occur within a two mile radius of any wells subject to this ordinance shall be presumed to have been caused by the operation of the community, public, municipal and/or high capacity well. Damages or expenses incurred by private well owners outside the one mile radius area may be compensable under this section if sufficient evidence is presented to reasonably establish a causal connection between the damage or expense and the community, municipal, public and/or high capacity well. The presumptions set forth above may be rebutted by clear and satisfactory evidence presented by hearing before the Arbitration Panel described below.

C. Distributions from the Groundwater Protection Fund shall be made upon submission by the private well owner of evidence of damages or expenses incurred, or to be incurred. The private well owner's submission shall include two bids identifying the work required and the cost thereof. Compensable expenses shall be limited to the following:

- (1) Obtaining an alternate water supply for a maximum period of one year after the date of the written request for a distribution from the Groundwater Protection Fund, or until a replacement water supply has been obtained.
- (2) A replacement water supply.

(3) Equipment used for treating the contaminated private water supply only if it is not feasible to remedy the contamination with a replacement water supply.

(4) Other costs as deemed necessary by the Town Board to accomplish the purposes of this ordinance.

D. Distributions from the Groundwater Protection Fund shall not be made for the following ineligible costs:

(1) The replacement of a sand point well with a drilled well unless (a) the Town Board determines that replacement with another sand point well is not feasible; (b) the Town Board determines that the claimant had no knowledge or reason to believe the sand point well would become contaminated at the time it was constructed; and (c) the well serves a principal residence.

(2) Any costs incurred prior to the date of this ordinance.

(3) A replacement well greater than seven (7) inches in diameter.

(4) A replacement well screen greater than ten (10) feet in length.

(5) Any consulting or cost estimate fees.

(6) Any state, county or local permit fees.

(7) Relocation, replacement or abandonment of sewer piping, buried gasoline or fuel oil tanks, or similar items.

(8) Mileage, phone, postage, and other miscellaneous costs incurred by the claimant.

(9) Any other well construction costs which exceed the dollar limits set forth in Chapter NR 123(21)(3) of the Wisconsin Administrative Code.

E. Within 10 days of receipt of a private well owner's claim, but in no event prior to approval or disapproval of said claim, the Town shall notify the relevant permittee by certified mail of the filing of a compensation claim. The notice to the permittee shall include all supporting documentation filed by the private well compensation claimant. The permittee shall have 14 days to object to the compensation claim filed with the Town. All objections shall be in writing setting forth the grounds thereto with specificity. Upon receipt of a timely objection, the Town, the permittee and the claimant shall attempt to resolve the dispute on a voluntary basis. If the parties are unable to resolve the dispute within 30 days, the matter shall be submitted to a third person Arbitration Panel for resolution as follows:

(1) The Town and the permittee shall each designate a representative to serve on the Panel. The two designated representatives shall name a third Panel member. If the two designated representatives are unable to agree on a third Panel member, they shall contact the Department of Natural Resources for a list of 5 qualified individuals. Names shall be stricken from the list on an alternate basis in order to arrive at the third Panel member.

(2) The Arbitration Panel shall meet within 30 days for the purpose of resolving the compensation claim dispute. The meetings shall be informal and shall not be subject to the procedural requirements set forth in Chapter 68 of the Wisconsin Statutes. Notwithstanding the informal nature of the hearings, all parties shall be given the opportunity to present evidence in support of their positions.

(3) The Arbitration Panel shall rule on the compensation claim within 30 days of the close of the meeting described in subsection (2) above. In making its determination, the Arbitration Panel shall consider the evidence and argument of the parties consistent with the remedial purposes of this Ordinance.

(4) The award of the Arbitration Panel shall be final and binding. The successful party may petition Fond du Lac County Circuit Court for Judgment affirming the award pursuant to the provisions of Chapter 788 of the Wisconsin Statutes.

(5) The permittee shall be responsible for the costs of the arbitration proceedings unless it is the prevailing party, in which event, it shall be reimbursed by the relevant Groundwater Protection Fund for the fees and disbursements of the third Arbitrator.

F. Distributions from the Groundwater Protection Fund shall be in addition to, and not in lieu of, other compensations which may be available to a private well owner, but in no case shall distributions be made other than for actual damages and/or expenses for which compensation or reimbursement has not been received from another source.

G. Nothing in this ordinance or the Groundwater Protection Fund created hereunder shall be deemed to be a property right of a property well owner. Distributions from the Groundwater Protection Fund are qualified by and limited to available monies. Nothing contained herein shall obligate the Town to maintain a fund in amounts sufficient to compensate private well owners.

SEC. 7-EMERGENCY WATER PROVISIONS:

The Town Board shall have authority under this ordinance to require a permittee to provide emergency water supplies to Town residents, including farms for livestock use, in all cases where it is reasonably determined by the Town Board that the operation of the community, municipal, public and/or high capacity water system has depleted, contaminated, or has otherwise caused the loss of an adequate water supply. The exercise of the emergency powers herein are in addition to all other powers granted to the Town Board under this ordinance or as authorized by law.

SEC. 8-PRIVATE WELL PERMITS:

A permit accompanied by a \$25.00 permit fee shall be required from the Town prior to anyone drilling, redrilling, renovating, rehabilitating or replacing a private well in the Town. No permit is required for the replacement of a private well pump. The Town shall maintain a permanent record of all permits issued under the provisions of this section. This record shall be available for public inspection.

SEC. 9-NONEXCLUSIVITY:

1. Adoption of this ordinance does not preclude the Town Board from adopting any other ordinance or providing for the enforcement of any other law or ordinance relating to the same or other matters. The jurisdiction and duties defined herein shall not preclude the Town Board or any other Town officer from proceeding under any ordinance or law or by any other enforcement method to enforce any ordinance, regulation or order.

2. This ordinance is to operate in conjunction with the previously adopted Town Zoning Ordinance applicable to exclusive agricultural district zoning.

SEC. 10-ENFORCEMENT:

The Town Board shall have the authority to institute the appropriate action or proceedings to prevent, restrain, correct or abate a violation of this ordinance. Enforcement remedies created by this ordinance are cumulative and shall be in addition to all other remedies available under law. Any person who violates any provision of this ordinance or any order, rule, or regulations promulgated shall, upon conviction, be fined not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), for each offense, together with the costs of prosecution. Each day that a violation continues shall be considered a separate offense.

SEC. 11-INTERPRETATION:

The provisions of this ordinance shall be considered minimum requirements. Where the provisions of this ordinance impose greater restrictions than any statute, other regulation, ordinance, or covenant, the provisions of this ordinance shall prevail. Where the provisions of any statute, other regulation, ordinance or covenant impose greater restrictions than the provisions of this ordinance, the provisions of such statute, other regulation, ordinance or covenant shall prevail.

SEC. 12-SEVERABILITY:

If any provision of this ordinance is invalid or unconstitutional, or if the application of this ordinance to any person or circumstance is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the provisions or applications of this ordinance which can be given effect without the invalid or unconstitutional provision or application.

SEC. 13-EFFECTIVE DATE:

This ordinance shall take effect upon adoption and publication as a Class I notice in the Town's official newspaper.

The foregoing ordinance was adopted at a regular meeting of the Town Board of the Town of Byron on the 10th day of April, 1989.

TOWN OF BYRON

Francis Ferguson
Francis Ferguson,
Town Chairman

Attest:

Betty M. Kaufman
Betty M. Kaufman,
Town Clerk

Published this 11th day of May, 1989.