

AMENDMENT TO PART II – CHAPTER 2 – APPENDIX A  
OF THE ORDINANCES OF THE CITY OF STURGIS

An ordinance to amend Part II - Chapter 2 - Appendix A - Zoning, of the Ordinances of the City of Sturgis by adding Article XV – Groundwater Protection, pertaining to the regulation and protection of groundwater resources within the City, and to provide for an effective date of this Ordinance.

WHEREAS, the City of Sturgis has determined that it is in the best interest of the residents of the City to amend the Ordinances to add Article XV to the Zoning Ordinance to regulate and protect the groundwater resources within the City.

NOW, THEREFORE, the City of Sturgis, St. Joseph County, Michigan, ordains:

Part II – Chapter 2 - Appendix A - Zoning is hereby amended by adding Article XV – Groundwater Protection as follows, effective as of January 1, 2014:

**ARTICLE XV. GROUNDWATER PROTECTION**

**1.1501. PURPOSE**

The City of Sturgis has determined that:

1. Certain groundwater underlying areas, including the City of Sturgis, currently is, or may be in the future, the sole source of the City's drinking water supply.
2. 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.
3. 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.

Therefore, the City of Sturgis has enacted a groundwater protection ordinance to:

1. Protect existing and potential groundwater supplies, aquifers, and groundwater recharge areas of the City.
2. Preserve the natural resources of the City and the surrounding area.

**1.1502. DEFINITIONS**

**AQUIFER:** 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.

**CHEMICAL ABSTRACT SERVICE (CAS) NUMBER:** This is 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:** 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 ordinance

- 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. Hazardous Waste as defined in Part 111 of the State of Michigan Natural Resources and Environmental Protection Act, 1994 Public Act 451, as amended;
- c. Regulated Substance as defined in Part 213 of the State of Michigan Natural Resources and Environmental Protection Act, 1994 Public Act 451, as amended;
- d. Hazardous Substance as defined in Part 201 of the State of Michigan Natural Resources and Environmental Protection Act, 1994 Public Act 451, as amended;
- e. Used oil;
- f. Radiological materials.

**PROPERLY PLUGGED ABANDONED WELL:** A well that has been closed in accordance with regulations and procedures of the Michigan Department of Environmental Quality and the local Health Department. A properly plugged abandoned well requires a permit to be brought back into service.

**SECONDARY CONTAINMENT:** 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.

**UNDERGROUND STORAGE TANK:** 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:** A well which has not been used for one year or more.

**WASTE OIL:** Any oil that has been refined from crude oil, or used, or as a result of such use contaminated by physical or chemical impurities.

**WELL:** 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; or 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.

**WELLHEAD PROTECTION AREA:** The area which has been approved by the MDEQ 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.

### **1.1503. APPLICABILITY**

1. **USES SUBJECT TO SITE PLAN REVIEW:** Except as provided in Section 1.1507, “EXEMPTIONS AND WAIVERS”, this Groundwater Protection ordinance applies to all building permit requests made under ARTICLE XII. SITE PLAN REVIEW.

### **1.1504. PROHIBITIONS WITHIN TEN (10) YEAR TIME-OF-TRAVEL (TOT) WELLHEAD PROTECTION AREA**

1. For any parcel of land that has a portion within a ten-year Wellhead Protection Area, the following are prohibited at any location on the parcel:
  - a. Operations of a scrap and recycling yard.
  - b. Operations of a State of Michigan Type II or Type III solid waste landfill.
  - c. Use of oil, waste oil, or similar liquid petroleum-type products for dust suppression.
  - d. Installation of a private water well for the purpose of drinking water or irrigation if, in the determination of the City of Sturgis City Manager, or a person or body designated by the City Manager, public water service is reasonably available.
  - e. Use of a non-municipal well that meets the State of Michigan’s definition of a High Capacity Well as defined in Part 327 The Great Lakes Preservation Act unless it can be shown that the proposed well will not have an adverse impact on current municipal wells.
  - f. Excavation, extraction, or mining of sand, gravel, bedrock, or any other type of earth if a permit or site plan review is required.
  - g. Unplugged abandoned wells.
  - h. Drilling for natural gas or petroleum, whether for exploration or production.
  - i. Drilling, direct-push and other earth penetration beyond 20 feet depth shall be sealed to within 2 feet of surface grade with grout, or with soil material exhibiting lower hydraulic permeability than the native soil.

### **1.1505. SITE PLAN REVIEW**

1. **SITE PLAN REVIEW PROCEDURES:** Applicable projects under this Article that also require site plan review under ARTICLE XII shall include:
  - a. Existing and proposed land use deed restrictions, if any.
  - b. Location and outline of all existing septic tanks and drain fields.
  - c. The 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 code official and Fire Department (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 Sturgis Environmental Permits Checklist.

#### **1.1506. CRITERIA FOR REVIEW**

- 1. ARTICLE XII 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. 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.
  - c. 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. 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).
  - d. Unplugged abandoned wells and cisterns shall be plugged in accordance with regulations and procedures of the Michigan Department of Environmental Quality and the County Health Department.
  - e. Completion of the City of Sturgis Environmental Permits Checklist.

#### **1.1507. EXEMPTIONS AND WAIVERS**

- 1. A limited exclusion from this ordinance is hereby authorized as follows:
  - a. The site plan review criteria of Section 1.1506 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. The total excluded substances containing hazardous substances may not exceed the lesser of two hundred (200) gallons or one thousand (1000) pounds at any time.
  - b. The site plan review requirements of Section 1.1506 do not apply to products held in containers with a volume of less than 40 gallons and packaged for retail use.

#### **1.1508. INACTIVE OPERATIONS**

- 1. This section applies to any inactive business or other operation (“operation”) at which there are hazardous substances. For purposes of this section, “inactive” is defined to include those business/operations that are unoccupied and have no activity for at least thirty (30) days. Those who own or control such an inactive operation shall do the following:
  - a. Within seven (7) days of becoming inactive, 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 Fire 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.

#### **1.1509. ENFORCEMENT**

1. Whenever the City determines that a person has violated a provision of this ordinance, the City may order compliance by issuing a written Notice of Violation to the responsible person/facility/property owner.
2. If abatement of a violation and/or restoration of affected property are required, the notice shall set forth a deadline by which such remediation or restoration must be completed. Said notice shall further advise that, should the responsible party fail to remediate or restore within the established deadline, the work may be done by the City, with the expense thereof charged to the property owner and possibly assessed as a lien against the property.

#### **1.1510. ABATEMENT/REMEDIAL ACTIVITIES BY THE CITY**

1. The City is authorized to take or contract with others to take reasonable and necessary abatement or remedial activities whenever the City determines a violation of this ordinance has occurred and that the responsible party cannot or will not correct the violation in a timely manner, or when no known responsible party exists. The responsible party shall reimburse the City for all reasonable expenses thus incurred by the City. A lien may be placed on the property for the reimbursement of all reasonable expenses.
2. If the City desires the responsible party to reimburse it for reasonable abatement activity expenses, the City shall, within ninety (90) days of the completion of said activities, mail to that person a Notice of claim outlining the expenses incurred, including reasonable administrative costs, and the amounts thereof. The person billed shall pay said sum in full within 30 days of receipt of the claim. If the person billed desires to object to all or some of the amount sought by the City, said person may file, within the same thirty (30) day period, a written objection so stating. The City shall, within thirty (30) days of its receipt of the objection, provide an opportunity for the objecting party to present facts or arguments supporting said objection. If the City determines that some or the entire amount originally billed is appropriate, the person shall pay said sum within thirty (30) days of receipt of that determination. If the amount due is not paid, the city may cause the charges to become a special assessment against the property and shall constitute a lien on the property.

#### **1.1511. INJUNCTIVE RELIEF**

1. If a person has violated or continues to violate the provisions of this ordinance, the City may petition the appropriate court for injunctive relief restraining the person from activities that would create further violations, or compelling the person to perform necessary abatement or remediation.

#### **1.1512. VIOLATIONS DEEMED A PUBLIC NUISANCE**

1. In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at

the responsible party's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the City.

### **1.1513. PENALTIES AND COSTS**

1. Any violation of this ordinance shall be considered a misdemeanor, punishable by a fine of not more than \$500.00 or imprisonment of not more than ninety (90) days. Each day a violation exists shall be deemed a separate violation. A citation charging such a misdemeanor may be issued by the code official, or his or her designee.

### **1.1514. GROUNDWATER PROTECTION BOARD OF APPEALS**

1. 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 commission shall appoint a groundwater protection board of appeals. The duty of the groundwater protection board of appeals shall be to 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.
2. The groundwater protection board of appeals shall meet at times as the board may determine. There shall be a fixed place of meeting and all meetings shall be open to the public in accordance with applicable laws. The groundwater protection board of appeals shall adopt its own rules of procedure and keep a record of its proceedings, showing findings of fact, the action of the board, and the vote of each member upon each question considered. The presence of five members of the groundwater protection board of appeals shall be necessary to constitute a quorum.
3. The groundwater protection board of appeals may prescribe the sending of notice to persons as it deems to be interested in any hearing by the board.
4. The groundwater protection board of appeals will be appointed by City Commission, may be revised from time to time, and shall include:
  - a. Mayor
  - b. Chair of the Planning Commission
  - c. At large Planning Commission member
  - d. City Engineer
  - e. Director of Public Services
  - f. At large Citizen of the City of Sturgis
  - g. At large representative of industry in the City of Sturgis

### **1.1515. APPEALS**

1. Right of appeal. Any person has the right to appeal the basis for any charges, permits, orders, or other action developed in accordance with this article. Appeals shall be directed to the City Manager along with any supporting documentation for amendment of the charges in question. Any additional information that may be required to resolve the appeal, as directed by the City Manager, shall be obtained by the user at his expense. Resolution of appeals shall be made within 30 days in accordance with the best available data and the formulations presented in this article. In no event shall appeals be accepted which would require a variance in the methods of charge calculations established and in force by this article.

2. Informal hearing.
  - a. An informal hearing before the City Manager may be requested in writing by any person deeming itself aggrieved by any citation, order, charge, fee, surcharge, penalty, or action within ten days after the date thereof, stating the reasons therefor with supporting documents and data.
  - b. The informal hearing shall be scheduled at the earliest practicable date, but not later than five days after receipt of the request, unless extended by mutual written agreement.
  - c. The hearing shall be conducted on an informal basis at the city hall or such place as designated by the City Manager.
3. Formal hearing.
  - a. Appeals from orders of the City Manager may be made at the groundwater protection board of appeals, 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 appeal may be taken by any person aggrieved. The appellant shall file a notice of appeal with the City Manager and with the groundwater protection board of appeals, specifying the grounds therefor. Prior to a hearing, the City Manager shall transmit to the groundwater protection board of appeals a summary report of all previous action taken. The 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. In order to find for the appellant, a majority of the groundwater protection board of appeals must concur.
  - b. The groundwater protection board of appeals shall fix a reasonable time for the hearing of the appeal, give due notice thereof the interested parties, and decide the appeal within a reasonable time. Within the limits of its jurisdiction, the groundwater protection board of appeals may reverse or affirm, in whole or in part, or may make such order, requirements, decisions, or determination as, in its opinion, ought to be made in the case under consideration, and to that end shall have all the powers of the official from whom the appeal is taken.
  - c. The decision of the groundwater protection 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.
4. Charges outstanding during appeal process. 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.
5. Administrative action. If an informal or formal hearing is not demanded within the periods specified in this section, the administrative action shall be deemed final. In the event either or both hearings are demanded, the action shall be suspended until a final determination has been made, except for immediate cease and desist orders or any emergency or judicial action.
6. Appeals from determinations of groundwater protection board of appeals. Appeals from the determinations of the groundwater protection 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.

#### **1.1516. REMEDIES NOT EXCLUSIVE**

1. The remedies listed in this ordinance 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.

#### **1.1517. CONFLICTING REGULATIONS**

1. Whenever any provision of this ordinance imposes more stringent requirements, regulations, restrictions or limitations than are imposed or required by the provisions of any other law or ordinance, then the provisions of this ordinance shall govern. Whenever the provisions of any other law or ordinance impose more stringent requirements than are imposed or required by this title, then the provision of such ordinance shall govern.

#### **1.1518. SEVERABILITY**

1. If any provision, paragraph, work, section or article of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, and chapters shall not be affected and shall continue in full force and effect.