

## CHAPTER 7

### WATER SUPPLY PROTECTION ACT

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#### **SEC. 8-7-1 SHORT TITLE.**

The name of this Ordinance shall be the "Town of Waukesha Water Supply Protection Act."

#### **SEC. 8-7-2 AUTHORITY.**

This Ordinance is adopted and enacted pursuant to the authority granted to the Town of Waukesha by all relevant State and Federal laws and administrative regulations, including, but not limited to the authority granted the Town pursuant to Wis. Stat. §§ 60, 62 and 66, which authorize the Town to enact ordinances dealing with the protection and preservation of the health and safety of the Town residents, and to prevent and abate public and private nuisances.

#### **SEC. 8-7-3 FINDINGS.**

The Town Board of the Town of Waukesha makes the following findings in support of the passage of this Ordinance. The Town Board finds:

That private wells serving residential and small business uses may be threatened by new uses which propose large scale withdrawals of water from Town water resources;

That water supplies within the Town are limited and should be protected to afford the greatest beneficial use to Town citizens and existing businesses, which depend on current water supplies for their livelihood, health, welfare, and economic production;

That taking steps to ensure clean, wholesome, and adequate water supplies to the residents of the Town is a high priority in protecting the health, safety, and welfare of Town residents;

That, therefore, proponents of any new construction or new use which is likely to result in large-scale water withdrawals should be required to show that those withdrawals will not adversely affect water supplies currently being used by Town residents and existing businesses in the Town; and

That if a proposed new construction or new use will adversely affect water supplies in the Town, such proposed new construction or new use shall be disallowed or discontinued.

**SEC. 8-7-4 DEFINITIONS.**

“Adversely affect” or “adversely impact” - Diminution in the quantity or quality of a water supply.

“Large-scale water withdrawal” - Any withdrawal of water from a water source within the Town of Waukesha that consumes more than 5,000 gallons of water per any 24 hour period, or any proposed withdrawal of water from a water source within the Town of Waukesha that is anticipated to consume more than 5,000 gallons of water per any 24 hour period.

“New construction or new use” - Any new land development that results in increased water withdrawal or consumption.

“Ordinance” -- Town of Waukesha Water Supply Protection Act.

“Town” – Town of Waukesha, including the Town Board.

“Water Impact Study” -- A comprehensive study performed by two certified hydrologists holding a Ph.D. in the field, which evaluates the impact of proposed new construction or new use on private and public well water supplies within a three mile radius of the proposed new construction or new use. A listing of acceptable hydrologists and firms employing certified hydrologists will be maintained by the Town and will be made available to prospective building permit applicants. The two hydrologists employed by the prospective building permit applicants shall be employed by different firms or independent practices.

“Water Impact Study Report” - A report of professional quality written in plain, understandable English, that describes a Water Impact Study and the findings and/or results of the Study.

“Water Supply”-Any source of water that is serving one or more water wells, whether public or private, and any public water or municipal water system

**SEC. 8-7-5 PROHIBITION AGAINST LARGE-SCALE WATER WITHDRAWALS HAVING AN ADVERSE AFFECT ON A WATER SUPPLY.**

No person or entity proposing new construction or new use on real property located within the Town, which will result in large-scale water withdrawals, shall adversely affect private or public well water supplies within a three mile radius of the proposed new construction or new use.

Any large-scale water withdrawal having an adverse affect on a private or public well water supply, and any violation of this Ordinance, is hereby declared to be a public nuisance.

**SEC. 8-7-6 EFFECT ON BUILDING PERMIT APPLICATIONS.**

Prior to submitting a building permit application to the Town, any person or entity proposing new construction or new use on real property located within the Town shall first determine the amount of water consumption that such new construction or new use would result in on an average daily basis. In the case of an industrial facility, the water consumption determination shall be based on the facility's maximum operating potential during a 24 hour period.

If a prospective building permit applicant determines that the proposed new construction or new use will result in, or is likely to result in, large-scale water withdrawal, the prospective applicant shall ensure that a Water Impact Study is conducted prior to submitting the building permit application. Following completion of a Water Impact Study, a building permit applicant for new construction or new use shall submit a Water Impact Study Report along with the building permit application at the time the application is submitted.

If the Town Board, or the building inspector, independently determines that proposed new construction or new use will result in, or is likely to result in, large-scale water withdrawal, the building permit application process shall be suspended until a Water Impact Study is conducted and the applicant submits a Water Impact Study Report to the Town. Any determination that a Water Impact Study is required shall be promptly communicated to a building permit applicant.

Water Impact Study requirements contained herein shall supersede and toll any mandatory issuance deadlines imposed by other Town ordinances.

**SEC. 8-7-7 WATER IMPACT STUDY AND WATER IMPACT STUDY REPORT.**

The Water Impact Study required by this Ordinance shall be conducted by two certified hydrologists holding a Ph.D. in the field, and approved by the Town Board. The costs associated with conducting the Water Impact Study, as well as the costs of preparing and submitting the Water Impact Study Report to accompany a building permit application, shall be borne in their entirety, by the prospective applicant for a building permit.

**SEC. 8-7-8 EFFECT OF WATER IMPACT STUDY.**

If a Water Impact Study Report demonstrates to the Town Board's satisfaction that the proposed new construction or new use will not have an adverse affect on the water supply of wells within a three mile radius of the proposed new construction or new use, then the Town shall process the building permit application in the normal fashion.

If a Water Impact Study Report demonstrates to the Town Board's satisfaction that the proposed new construction or new use will have an adverse affect on the water supply of wells within a three mile radius of the proposed new construction or new use, then the Town shall deny the building permit application.

**SEC. 8-7-9 EFFECT OF EXCESSIVE LARGE-SCALE WATER WITHDRAWAL.**

If the Town Board determines, during the course of operation of new construction or new use, that a previously productive well fails to yield water as a result of; or is otherwise adversely affected by, large-scale water withdrawal of the new construction or new use, the Town may require the building permittee, the owner/operator of the new construction or new use, and/or the landowner of the property where the new construction or new use is situated, to compensate the adversely affected well owner for the expense of drilling a new well, or otherwise obtaining an adequate replacement supply of potable water. An adequate replacement supply shall be determined by the number of gallons per day which was previously used by the adversely affected well owner.

Nothing in this Section is intended, nor shall be construed, as abridging, limiting, or otherwise affecting any private cause of action that an adversely affected well owner may have. Further, any activity or condition declared to be a public nuisance by this Ordinance shall be abatable in the manner provided by law, or equity for the abatement of public nuisances.

**SEC. 8-7-10 INJUNCTION AGAINST WATER WITHDRAWAL.**

If the Town Board determines, during the course of operation of new construction or new use, that two or more productive wells fail to yield water as a result of, or are otherwise adversely affected by, large-scale water withdrawal related to the new construction or new use, the Town Board shall have the authority to enjoin water withdrawal by the new construction or new use.

**SEC. 8-7-11 PUBLIC HEARING ON BUILDING PERMIT APPLICATION.**

Within 14 days after the submission of a building permit application supported by a Water Impact Study Report, the Town shall conduct a public hearing and receive comments from the public on the proposed new construction or new use. At this public hearing, Town residents shall have an opportunity to submit information in support of, or in opposition to, the Water Impact Study Report submitted by the building permit applicant.

The Town shall make copies of the Water Impact Study Report available to the public at least five business days prior to the public hearing.

**SEC. 8-7-12 FINAL ACTION ON BUILDING PERMIT APPLICATION SUPPORTED BY WATER IMPACT STUDY REPORT**

Within 14 days after the public hearing required by Section 11 of this Ordinance, the Town Board shall make a final decision to approve or deny a building permit application supported by a Water Impact Study Report.

**SEC. 8-7-13 REVOCABILITY OF BUILDING PERMIT.**

If the Town Board determines that information contained within the Water Impact Study Report was misleading, factually inaccurate, or that a building permit applicant purposefully omitted essential information which would have altered the final decision made by the Town Board to issue a building permit, the Town Board shall revoke the building permit and initiate legal action to enjoin the building permittee from continuing with construction or operation of the new construction or new use.

**SEC. 8-7-14 SEVERABILITY.**

The provisions of this Ordinance are severable, and if any section, clause, sentence, part, or provision thereof shall be held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of this Ordinance. It is hereby declared to be the intent of the Town Board that this Ordinance would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence, part, or provision had not been included herein.

**SEC. 8-7-15 ENFORCEMENT AND PENALTY.**

Any person who violates the provisions of this Chapter shall be subject to a forfeiture of not less than \$250.00, nor more than \$1,000.00 per day, and each day that a violation continues shall constitute a separate violation of this Ordinance. In addition to all other penalties imposed by this Chapter, the Town may seek injunctive relief to abate any public or private nuisance caused by violation of this Ordinance. The cost of abating the nuisance shall be collected as a debt from the owner, occupant, or person owning the property, or causing or permitting or maintaining the nuisance, as the case may be, and such cost shall be assessed against the real estate as a special charge, and shall be placed on the real estate tax bill and collected with all other real estate taxes and assessments due and owing.