

**ORDINANCE NO. 2017-07**

**AN ORDINANCE TO CREATE A GROUNDWATER PROTECTION OVERLAY DISTRICT FOR THE PROTECTION OF WELLS FROM THREATS OF CONTAMINATION IN THE VILLAGE OF MCFARLAND**

Sponsor: Public Works Director, Allan Coville

Recommended Referral: Plan Commission; Required

Public Hearing: Class 2 Notice Required

The Village of Board of the Village of McFarland do hereby ordain as follows:

Article V of Chapter 62 of the McFarland Municipal Code is hereby created to read as follows:

**“ARTICLE V. GROUNDWATER PROTECTION OVERLAY DISTRICT.**

**Sec. 62-711. Findings of fact and purpose.**

The residents of the Village of McFarland depend exclusively on groundwater for a safe drinking water supply. Certain land use practices and activities can seriously threaten or degrade groundwater quality. The purpose of this Article is to establish a groundwater protection overlay district to institute land use regulations and restrictions within a defined area which contributes water directly to the municipal water supply providing protection for the aquifer and municipal water supply of the Village of McFarland and promoting the public health, safety and general welfare of Village residents.

**Sec. 62-712. Wellhead Protection Plan.**

The Village of McFarland adopted a Wellhead Protection Plan on January 23, 2017. This Plan developed detailed studies of all of McFarland’s existing wells together with future McFarland Well #5. The Wellhead Protection Plan is adopted by this reference into this ordinance, and shall be publicly available on the Village’s website and at the Village Clerk’s office.

**Sec. 62-713. Definitions.**

- (a) Aquifer. A saturated, permeable, geologic formation that contains, and will yield, significant quantities of water.
- (b) Cone of Depression. The area around a well in which the natural water level has been lowered at least by one-tenth of a foot by pumping of a well.

- (c) Department. The Wisconsin Department of Natural Resources.
- (d) Existing facilities. Current facilities, practices and activities which may cause or threaten to cause environmental pollution within that portion of the Village's wellhead protection area that lies within the corporate limits of the Village. Existing facilities include but are not limited to the type listed in the Department's form 3300-215, *Public Water Supply Potential Contaminant Use Inventory Form* which is incorporated herein as if fully set forth.
- (e) Recharge Area. The land area which contributes water to a well by infiltration of water into the subsurface and movement with groundwater toward the well. This area may extend beyond the corporate limits of the Village.
- (f) Five Year Time of Travel. The recharge area upgradient of the cone of depression, the outer boundary of which is defined by the estimated distance at all points from any pumping well that groundwater will take five years to travel to any pumping well.
- (g) Hazardous Chemicals. Chemicals and chemical mixtures that are required to have an MSDS and meets the definition of hazardous chemical under the OSHA regulations found at 29 CFR §1910.1200(c). Substances packaged for consumption for humans or animals are not considered Hazardous Chemicals. Hazardous Chemicals include:
- (1) Chemicals for which there is scientific evidence that acute or chronic health effects may result from exposure including carcinogens, toxic and highly toxic agents, irritants, corrosives, sensitizers, hepatotoxins, agents that act on the hematopoietic system, reproductive toxins, and agents which damage the lungs, skin, eyes, or mucous membranes as defined in 29 CFR §1910.1200, Appendix A, "*Health Hazard Definitions (Mandatory)*."
  - (2) Mixtures of chemicals which have been tested as a whole and have been determined to be a health hazard.
  - (3) Mixtures of chemicals which have not been tested as a whole but which contain any chemical which has been determined to be a health hazard and comprises one (1.0) percent or greater of the composition on a weight-per-unit weight basis.
  - (4) Mixtures of chemicals which include a carcinogen if the concentration of the carcinogen in the mixture is one-tenth of one (0.1) percent or greater of the composition on a weight-per-unit weight basis.
  - (5) Ingredients of mixtures prepared within the Groundwater Protection Overlay District in cases where such ingredients are health hazards but comprise more than one-tenth of one (0.1) percent of the mixture on a weight-per-unit weight basis if carcinogenic, or more than one (1.0) percent of the mixture on a weight-per-unit weight basis if no carcinogenic.

- (6) Petroleum and non-solid petroleum derivatives (except non-polychlorinated biphenyl (“PCB”) dielectric fluids used in equipment or for transmission of electric power to homes and businesses).
- (g) Well Field. A piece of land used primarily for the purpose of supplying a location for construction of wells to supply a municipal water system.
- (h) Wellhead Protection Area. That area of land which contributes water to a municipal well based on accepted hydrogeological research, outlined and described as a “Wellhead Protection Area” by the Village’s most recent and up to date wellhead protection plan, approved by the Department.

**Sec. 62-714. Areas to be regulated.**

This Article regulates the area within the Wellhead Protection Area. Any parcel that is fully or partially within a Wellhead Protection Area is considered fully part of the Groundwater Protection Overlay District set forth in this ordinance. The boundaries of the Groundwater Protection Overlay Districts shall be shown on the Village of McFarland zoning map.

**Sec. 62-715. Permitted Uses.**

The following uses are permitted in the Groundwater Protection Overlay District subject to the separation distances in Sec. 62-718:

- (a) Parks, provided there is no on-site waste disposal or fuel storage tank facilities associated with this use.
- (b) Playgrounds.
- (c) Wildlife areas.
- (d) Non-motorized trails, such as bike, skiing, nature and fitness trails.
- (e) Residential, commercial and industrial establishments that are municipally sewered and whose use, aggregate of hazardous chemicals in use, storage, handling and/or production may not exceed 20 gallons or 160 pounds at any time (except for those listed in Sections 62-713(f)(2) and (3) of this Article.
- (f) Routine tillage, planting, and field management operations in support of agricultural crop production, where nutrients from legume, manure, and commercial sources are accounted for and credited toward crop nutrient need. The combination of all nutrient sources applied or available on individual fields may not exceed University of Wisconsin soil test recommendations for that field.

**Sec. 62-716. Conditional Uses.**

Conditional Uses. The following uses may be conditionally permitted in the Groundwater Protection Overlay District subject to the separation distances in Sec. 62-718:

- (a) Motor vehicle services, including filling and service stations, repair, renovation and body work.
- (b) Residential, commercial and industrial establishments that are municipally sewered and whose use, Aggregate of Hazardous Chemicals in use, storage, handling and/or production exceeds 20 gallons or 160 pounds at any time.
- (c) Geothermal wells, also known as ground source heat pump along with any associated piping and/or ground loop component installations.

**Sec. 62-717. Prohibited Uses.**

The following uses are prohibited in the Groundwater Protection Overlay District:

- (a) Hydrocarbon, petroleum or hazardous chemical storage tanks, as specified under 29 CFR §1910.1200(c) and under 40 CFR Part 370.
- (b) Cemeteries.
- (c) Chemical manufacturers (Standard Industrial Classification Major Group 28).
- (d) Coal storage.
- (e) Dry cleaners.
- (f) Electroplating facilities.
- (g) Foundries and forge plants.
- (h) Industrial liquid waste storage lagoons and pits.
- (i) Landfills and any other solid waste facility, except post-consumer recycling.
- (j) Manure and animal waste storage.
- (k) Mining of any kind, including metallic, sand and aggregate pits.
- (l) Pesticide and fertilizer dealer, manufacturing, transfer or storage facilities.

- (m) Private on-site wastewater treatment systems or holding tanks receiving 12,000 gallons per day or more
- (n) Railroad yards and maintenance stations.
- (o) Rendering plants and slaughterhouses.
- (p) Salt or deicing material bulk storage.
- (q) Salvage or junk yards.
- (r) Septage or sludge spreading, storage or treatment.
- (s) Septage, wastewater, or sewage lagoons.
- (t) Stockyards and feedlots.
- (u) Storm water infiltration basins without pre-treatment, including vegetative filtration and/or temporary detention.
- (v) Wood preserving operations.
- (w) Any other use determined by the Village Board to be similar in nature to the above listed uses.

**Sec. 62-718. Separation Distances.**

The following minimum separation distances as specified in Wis. Admin. Code § NR 811.12(5), shall be maintained in the Groundwater Protection Overlay District:

- (a) Ten feet between a well and a parcel containing an emergency or standby power system that is operated by the same facility which operates the well and that has a double wall above ground storage tank with continuous electronic interstitial leakage monitoring. These facilities shall meet the installation requirements of Wis. Admin. Code § ATCP 93.260 and receive written approval from the department of safety and professional services or its designated Local Program Operator under Wis. Admin. Code § ATCP 93.110.
- (b) Fifty feet between a well and a parcel containing either a storm sewer main or a sanitary sewer main where the sanitary sewer main is constructed of water main class materials and joints. Gravity sanitary sewers shall be successfully air pressure tested in place. The air pressure test shall meet or exceed the requirements of the 4 psi low pressure air test for plastic gravity sewer lines found in the latest edition of Standard Specifications for Sewer & Water Construction in Wisconsin. Force mains shall be successfully pressure tested with water to meet the American Waterworks Association

("AWWA") C600 pressure and leakage testing requirements for one hour at 125% of the pump shut-off head.

- (c) Two hundred feet between a well field and a parcel containing any sanitary sewer main not constructed of water main class materials, sanitary sewer manhole, lift station, one or two family residential heating fuel oil underground storage tank or above ground storage tank or private onsite wastewater treatment system ("POWTS") treatment tank or holding tank component and associated piping.
- (d) Three hundred feet between a well field and a parcel containing any farm underground storage tank system or other underground storage tank system with double wall and with electronic interstitial monitoring for the system, which means the tank and any piping connected to it. These installations shall meet the most restrictive installation requirements of Wis. Admin. Code § ATCP 93.260 and receive written approval from the Department of Safety and Professional Services or its designated Local Program Operator under Wis. Admin. Code § ATCP 93.110. These requirements apply to tanks containing gasoline, diesel, bio-diesel, ethanol, other alternative fuel, fuel oil, petroleum product, motor fuel, burner fuel, lubricant, waste oil, or hazardous substances.
- (e) Three hundred feet between a well field and a parcel containing any farm above ground storage tank with double wall, or single wall tank with other secondary containment and under a canopy; other above ground storage tank system with double wall, or single wall tank with secondary containment and under a canopy and with electronic interstitial monitoring for a double wall tank or electronic leakage monitoring for a single wall tank secondary containment structure. These installations shall meet the most restrictive installation requirements of Wis. Admin. Code § ATCP 93.260, and receive written approval from the Department of Commerce or its designated Local Program Operator under Wis. Admin. Code § ATCP 93.110. These requirements apply to tanks containing gasoline, diesel, bio-diesel, ethanol, other alternative fuel, fuel oil, petroleum product, motor fuel, burner fuel, lubricant, waste oil, or hazardous substances.
- (f) Four hundred feet between a well field and a parcel containing a POWTS dispersal component with a design capacity of less than 12,000 gallons per day, a cemetery or a storm water retention or detention pond.
- (g) Six hundred feet between a well field and a parcel containing any farm underground storage tank system or other underground storage tank system with double wall and with electronic interstitial monitoring for the system, which means the tank and any piping connected to it; any farm above ground storage tank with double wall, or single wall tank with other secondary containment and under a canopy or other above ground storage tank system with double wall, or single wall tank with secondary containment and under a canopy; and with electronic interstitial monitoring for a double wall tank or electronic leakage monitoring for a single wall tank secondary

containment structure. These installations shall meet the standard double wall tank or single wall tank secondary containment installation requirements of Wis. Admin. Code § ATCP 93.260 and receive written approval from the Department of Safety and Professional Services or its designated Local Program Operator under Wis. Admin. Code § ATCP 93.110. These requirements apply to tanks containing gasoline, diesel, bio-diesel, ethanol, other alternative fuel, fuel oil, petroleum product, motor fuel, burner fuel, lubricant, waste oil, or hazardous substances.

- (h) One thousand feet between a well field and a parcel containing any land application of municipal, commercial, or industrial waste; the boundaries of a land spreading facility for spreading of petroleum-contaminated soil regulated under state administrative regulations while that facility is in operation; agricultural, industrial, commercial or municipal waste water treatment plant treatment units, lagoons, or storage structures; manure stacks or storage structures; or POWTS dispersal component with a design capacity of 12,000 gallons per day or more.
- (i) One thousand eight hundred feet between a well field and any parcel containing any solid waste storage, transportation, transfer, incineration, air curtain destructor, processing, wood burning, one time disposal or small demolition facility; sanitary landfill; any property with residual groundwater contamination that exceeds Wis. Admin. Code § NR 140 enforcement standards; coal storage area; salt or deicing material storage area; any single wall farm underground storage tank or single wall farm above ground storage tank or other single wall underground storage tank or above ground storage tank that has or has not received written approval from the Department of Safety and Professional Services or its designated Local Program Operator under Wis. Admin. Code § ATCP 93.110, for a single wall tank installation. These requirements apply to tanks containing gasoline, diesel, bio-diesel, ethanol, other alternative fuel, fuel oil, petroleum product, motor fuel, burner fuel, lubricant, waste oil, or hazardous substances; and bulk pesticide or fertilizer handling or storage facilities.

#### **Sec. 62-719. Conditional Use Permits.**

Applicants may request the Village in writing, to permit additional land uses in the Groundwater Protection Overlay District.

##### **(a) Required Application Materials.**

- (1) All requests shall be in writing, whether on or in substantial compliance with forms to be provided by the Village and may require an environmental assessment report prepared by a licensed environmental engineer. Said report shall be forwarded to the Village and/or designee(s) for recommendation and final decision by the Village Board.

- (2) Applicants shall reimburse the Village for all consultant fees associated with this review at the invoiced amount.
- (3) Any exemptions granted shall be conditional and may include required environmental and safety monitoring consistent with local, state and federal requirements, and/or bonds and/or securities satisfactory to the Village.
- (b) Referral to Plan Commission. A properly filed application shall be referred to the Plan Commission for its review and recommendation. The Plan Commission shall forward its recommendations to the Village Board. Upon receipt of the recommendations, the Village Board shall hold a public hearing.
- (c) Standards for Conditional Use. The Village Board shall apply the following factors:
- (1) The Village's responsibility, as a public water supplier, to protect and preserve the health, safety and welfare of its citizens.
  - (2) The degree to which the proposed land use practice, activity or facility may threaten or degrade groundwater quality in the Village or the Village's recharge area.
  - (3) The economic hardship which may be faced by the landowner if the application is denied.
  - (4) The availability of alternative options to the applicant, and the cost, effect and extent of availability of such alternative options.
  - (5) The proximity of the applicant's property to other potential sources of contamination.
  - (6) The then existing condition of the Village's groundwater public water well(s) and well fields, and the vulnerability to further contamination.
  - (7) The direction of flow of groundwater and other factors in the area of the applicant's property which may affect the speed of the groundwater flow, including topography, depth of soil, extent of aquifer, depth to water table and location of private wells.
  - (8) Any other hydrogeological data or information which is available from any public or private agency or organization.
  - (9) The potential benefit, both economic and social, from the approval of the applicant's request for a permit.
- (d) Types of Conditions which the Village Board May Require. The Village Board may stipulate conditions and restrictions including but not limited to the following:

- (1) A requirement for periodic environmental and safety sampling, testing, and reporting to establish the continued protection of the public water supply. The Village may require an applicant to install one or more groundwater monitoring well(s), at the expense of the applicant;
  - (2) The establishment of safety structures to prevent groundwater contamination;
  - (3) The establishment of an operational safety plan to define processes and procedures for material containment, operations monitoring, best management practices, and storm water runoff management to prevent groundwater contamination;
  - (4) Written policies and procedures for reporting and cleaning up any spill of a hazardous material;
  - (5) The provision of copies of all federal, state and local facility operation approval or certificates, and on-going environmental monitoring results to the Village.
  - (6) A written agreement pursuant to which the applicant agrees to be held financially responsible for all environmental cleanup costs in the event of groundwater contamination;
  - (7) Bonds and/or securities satisfactory to the Village for future monitoring and cleanup costs if groundwater contamination occurs in the future.
  - (8) The foregoing conditions are listed for illustration purposes and are not exclusive.
- (e) Transfers of Interest In Property. The permit holder may not transfer a conditional use permit issued under this section to successor owners of the property without the express written consent of the Village Board. The Village Board may set conditions and restrictions on the transfer including but not limited to a stipulation that the permit shall not be transferred unless the new owner expressly and in writing assumes the same terms, if any, for personal liability as were required of the former owner in the conditional use permit to be transferred. Written permission shall be obtained prior to the voluntary transfer of the subject property. When an involuntary transfer occurs, the new owner, trustee, or other successor to an interest in the real property shall apply to the Village within 60 days for permission to continue the use granted by the conditional use permit.
- (f) Payment of Costs. The applicant shall be solely and exclusively responsible for any and all costs associated with the application. The conditional use will become effective only after any costs incurred by the Village during the conditional use application review process and billed to the applicant are paid by the applicant. Those costs may include:

- (1) The Village's expenses, including consultant's and attorney's fees, if any, associated with the review at the invoiced amount plus administrative costs.
- (2) The cost of an environmental impact study if so required by the Village or its designee.
- (3) The cost of groundwater monitoring or groundwater wells if required by the Village or its designee.
- (4) The costs of an appraisal for the property or other property evaluation expense if required by the Village or its designee.

**Sec. 62-720. Existing Non-Conforming Uses.**

Non-conforming uses lawfully in existence within the Groundwater Protection Overlay District at the date of adoption of this Article may continue to exist in the form and scope in which they existed at that time subject to the following provisions:

- (a) Owners of existing facilities have an affirmative duty to provide copies of all federal, state and local facility operation approvals or certificate and on-going environmental monitoring results to the Village.
- (b) Existing facilities shall timely replace equipment or expand in a manner that improves the existing environmental and safety technologies already in existence.
- (c) In the event a lawful non-conforming use poses a direct hazard to the Village's public water supply, the Village may take any action permitted by law to abate the hazard.
- (d) Existing facilities shall have the responsibility of devising and filing with the Village, a contingency plan satisfactory to the Plan Commission for the immediate notification of the appropriate Village officers in the event of an emergency.

**Sec. 62-721. No Acceptance of Liability by Village.**

Nothing in this section shall be construed to imply that the Village has accepted any of an owner or operator's liability if a facility or use, whether permitted as of right or pursuant to a conditional use permit, contaminates groundwater in any aquifer.

**Sec. 62-722. Zoning Administrator.**

The Zoning Administrator shall have the following duties and powers:

- (a) Advise applications as to the provisions of this Article and assist them in preparing permit applications and appeal forms.

- (b) Issue permits and certificates of compliance and inspect properties for compliance with this Article.
- (c) Keep records of all permits issued, inspections made, work approved and other official actions.
- (d) Have access to any structure or premises between the hours of 8:00 a.m. and 6:00 p.m. for the purpose of performing these duties.
- (e) Submit copies of decisions on variances, conditional use permits, appeals for a map or text interpretation and map or text amendments within ten days after they are granted or denied to the appropriate district office of the Department.
- (g) Investigate and report violations of this Article to the appropriate Village planning agency and the District Attorney, Corporation Counsel or Village Attorney.
- (h) Provide written notice to the appropriate district office of the Department at least ten days prior to any hearing on appeals, conditional use permits, or other issues involving shore land-wetland zoning.

**Sec. 62-723. Enforcement.**

- (a) In the event an individual and/or facility causes the release of any contaminants which endangers water quality in the Groundwater Protection Overlay District, the owner, operator or other responsible party causing said release shall immediately cease and desist all activities and operations posing any risk to groundwater quality, and shall provide notice to the Village and provide clean-up satisfactory to the Village, and provide clean-up satisfactory to the Village.
- (b) The owner, operator or other responsible party shall be responsible for all costs of cleanup including but not limited to the following:
  - (1) the actual cost of Village consultant fees at the invoice amount;
  - (2) the cost of Village equipment employed in the clean-up; and
  - (3) the cost of mileage reimbursed to Village employees attributed to the clean-up.
- (c) Following any such discharge, the Village may require additional test monitoring or other requirements as outlined in Sections 62-719(a), (d) and (f) herein.

**Sec. 62-724. Violations.**

It shall be unlawful to construct or use any structure, land or water in violation of this ordinance. Any person who is specifically damaged by such violations may institute appropriate action or proceeding to enjoin a violation of this ordinance. In addition, violation of this Article shall constitute a public nuisance.

**Sec. 62-725 Penalties.**

Any person, firm, corporation, limited liability company or other entity that fails to comply with the provisions of this ordinance shall, upon conviction thereof, forfeit not less than One Hundred Dollars (\$100.00) or more than Five Thousand Dollars (\$5,000.00), plus statutory costs, fees and assessments. Each day a violation exists or continues shall constitute a separate offense.

**Sec. 62-726. Conflict and Severability.**


If any section, subsection, sentence, clause, paragraph or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, or other applicable administrative or governing body, such decision shall not affect the validity of any other section, subsection, sentence, clause, paragraph or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, paragraphs, or phrases may be declared invalid or unconstitutional.”

The above and foregoing Ordinance was duly adopted at a regular meeting of the McFarland Village Board on the 22 day of May, 2017.

APPROVED:

  
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Brad Czebotar, Village President

ATTEST:

  
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Cassandra Suettinger, Clerk

4827-3490-6172, v. 2

ORDINANCE 2017 -07			
MOTION	SECOND		
Czebotar	Kolk		
ACTION	DATE		
Adopted	05/22/2017		
Referred			
Tabled			
Withdrawn			
Defeated			
Published			
INDIVIDUAL VOTING RECORD			
Adrian	Aye	Kolk	Aye
Brassington	Aye	Lytle	Aye
Clow	Aye	O'Hearn	Aye
Czebotar	Aye		
VOTING RESULTS			
Motion Carried: 7-0			
Motion Defeated:			