

# TOWN OF SHELBY

## Ordinance 3.11

### Municipal Wellhead Protection Overlay District.

#### ORDINANCE TO CREATE SECTION 3.11 OF THE TOWN OF SHELBY CODE OF ORDINANCES RELATING TO MUNICIPAL WELLHEAD PROTECTION OVERLAY DISTRICT

THE BOARD OF TRUSTEES OF THE TOWN OF SHELBY, LA CROSSE COUNTY, WISCONSIN DOES ORDAIN AS FOLLOWS:

Section 3.11 of the Town of Shelby Code of Ordinances is created to read as follows:

**SECTION 1. Title** The title of this ordinance is the Municipal Wellhead Protection Ordinance of the Town of Shelby, La Crosse County, Wisconsin.

#### **SECTION 2. Purpose, Authority and Application**

- A. Purpose: The residents of the Town of Shelby who are served by Shelby Sanitary District 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 Ordinance is to establish a *Municipal Wellhead Protection Overlay District* to institute land use regulations and restrictions within a defined area which contributes water directly to the municipal water supply for the Shelby Sanitary District, providing protection for the aquifer and municipal water supply and promoting the public health, safety and general welfare of town residents.
- B. Authority: Statutory authority of the Sanitary District to enact these regulations was established by the Wisconsin Legislature in 1983, Wisconsin Act 410 (effective May 11, 1984), which specifically added groundwater protection, in §59.97(1) {which has since been renumbered as §59.69(1)} and §62.23(7)(c), Wis. Stats., to the statutory authorization for county and municipal planning and zoning to protect the public health, safety and welfare. In addition, §60.61 and 60.62, Wis. Stats., the town has the authority to enact this ordinance, to encourage the protection of groundwater resources.
- C. *Application*: The regulations specified in this Municipal Wellhead Protection Overlay District shall apply within the area surrounding each municipal water supply well that has been designated as a "wellhead protection area" by the sanitary district in the most recent and up to date wellhead protection plan, available at the sanitary district office, and are in addition to the requirements in the underlying zoning district, if any. If there is a conflict between this chapter and the zoning ordinance, the more restrictive provision shall apply.

**SECTION 3. Permitted Uses** The following uses are permitted in the Municipal Wellhead Protection Overlay District subject to the separations distances in *Section 6*:

- 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. Recreational trails, such as ATV, snowmobile, bike, skiing, and nature trails.
- E. Residential, public authority, commercial and industrial establishments that are municipally sewered and whose, *Aggregate of Hazardous Chemicals* in use, storage, handling and/or production may not exceed 20 gallons or 160 pounds at any time, with the exception for those uses listed as "conditional" or "prohibited" in Sections 4 or 5.

- 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.

**SECTION 4. Conditional Uses** The following uses may be conditionally permitted in the Municipal Wellhead Protection Overlay District subject to the separations distances in *Section 6*, and governed by the conditional use provisions in Section 7.

- A. Hydrocarbon, petroleum or hazardous chemical storage tanks. (Hazardous chemicals are identified by OSHA under 40 CFR Part 302.)
- B. Motor vehicle services, including filling and service stations, repair, renovation and body work.
- C. 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.
- D. Stormwater infiltration basins
- E. Geothermal wells, also known as ground source heat pumps along with any associated piping and/or ground loop component installations.

**SECTION 5. Prohibited Uses** The following uses are prohibited in the Municipal Wellhead Protection Overlay District.

- A. Cemeteries.
- B. Chemical manufacturers (Standard Industrial Classification Major Group 28).
- C. Coal storage.
- D. Dry cleaners.
- E. Electroplating facilities
- F. Foundries and forge plants
- G. Industrial liquid waste storage lagoons and pits.
- H. Landfills and any other solid waste facility, except post-consumer recycling.
- I. Manure and animal waste storage.
- J. Mining of any kind, including metallic, sand and aggregate pits.
- K. Pesticide and fertilizer dealer, manufacturing, transfer or storage facilities.
- L. Private on-site wastewater treatment systems or holding tanks receiving 12,000 gallons per day or more
- M. Railroad yards and maintenance stations.
- N. Rendering plants and slaughterhouses.
- O. Salt or deicing material bulk storage.
- P. Salvage or junk yards.
- Q. Septage or sludge spreading, storage or treatment.
- R. Septage, wastewater, or sewage lagoons.
- S. Stockyards and feedlots.
- T. Wood preserving operations.
- U. Any other use determined by the Sanitary District Commission or Sanitary District Board to be similar in nature to the above listed uses.

**SECTION 6. Separation Distances** The following separation distances as specified in s. NR 811.12(5), Wis. Adm. Code, shall be maintained within the Municipal Wellhead Protection Overlay District.

- A. Ten feet between a well and 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 s.

ATCP 93.260 and receive written approval from the department of safety and professional services or its designated Local Program Operator under s. ATCP 93.110.

- B. Fifty feet between a well and 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 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 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 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 s. ATCP 93.260 and receive written approval from the department of safety and professional services or its designated Local Program Operator under s. ATCP 93.110, Wis. Admin. Code. 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 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 s. ATCP 93.260, Wis. Admin. Code, and receive written approval from the department of commerce or its designated Local Program Operator under s. ATCP 93.110, Wis. Admin. Code. 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 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 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 s. ATCP 93.260 and receive written approval from the department of safety and professional services or its designated Local Program Operator under s. 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 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. Twelve hundred feet between a well field and 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 ch. 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 s. ATCP 93.110, Wis. Admin. Code, 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.

**SECTION 7. Conditional Use Permits** Individuals and/or facilities may request the Town in writing, to permit additional land uses in the Groundwater Protection Overlay District. Conditional use permit applications within the district are subject to review and recommendation by the Town Plan Commission and Sanitary District.

A. Required Application Materials

1. All requests shall be in writing, and may require an environmental assessment report prepared by a licensed environmental engineer. Said report shall be forwarded to the Town Plan Commission and Sanitary District and/or designee(s) for recommendation and final decision by the Town Board.
2. All The individual/facility shall reimburse the Town and Sanitary District for all consultant fees associated with this review at the invoiced amount plus administrative costs.
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 Town.

B. Referral To Plan Commission & Sanitary District

1. A properly filed application shall be referred to the Plan Commission and the Utility Commission for review and recommendation. The Plan Commission and the Utility Commission shall review the application and forward their recommendations to the Town Board. Upon receipt of the recommendations, the Town Board shall hold a public hearing.

C. Standards For Conditional Use. The Town Board shall apply the following factors:

1. The Town'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 Town or the Sanitary District'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 Sanitary District's municipal 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 Town Board May Require. The Town 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 Town may require an application 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 stormwater 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 Town.
  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 Town 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.
1. Conditional use permits issued under this section are non-transferable to successor owners of the property subject to the permit without the express written consent of the Town Board. The Town 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 Town within 60 days for permission to continue the use granted by the conditional use permit.
- F. Payment Of Costs.
1. 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 Town or Sanitary District during the conditional use application review process and billed to the applicant are paid by the applicant. Those costs may include:
  2. The Town or Sanitary District's expenses, including consultant's and attorney's fees, if any, associated with the review at the invoiced amount plus administrative costs.
  3. The cost of an environmental impact study if so required by the Town or its designee.
  4. The cost of groundwater monitoring or groundwater wells if required by the Town or its designee.
  5. The costs of an appraisal for the property or other property evaluation expense if required by the Town or its designee.

**SECTION 8. Existing Non-Conforming Uses** Non-conforming uses lawfully in existence within the Municipal Wellhead Protection Overlay District at the adoption of the ordinance creating this district may continue to exist in the form and scope in which they existed at that time subject to the following provisions.

- A. Existing facilities shall provide copies of all federal, state and local facility operation approvals or certificate and on-going environmental monitoring results to the Sanitary District upon request.
- B. Existing facilities shall 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 Sanitary District's public water supply, the Sanitary District may take any action permitted by law to abate the hazard.
- D. Existing facilities shall have the responsibility of devising and/or filing with the Sanitary District, a contingency plan satisfactory to the Plan Commission for the immediate notification of the appropriate Sanitary District officers in the event of an emergency.

**SECTION 9. Enforcement And Penalties**

- A. In the event an individual and/or facility causes the release of any contaminants which endanger the Municipal Wellhead Protection Overlay District, the individual/facility causing said release shall immediately cease and desist, and provide clean-up satisfactory to the Town and Sanitary District.
- B. The individual/facility shall be responsible for all costs of cleanup and the Town or Sanitary District's consultant fees at the invoice amount plus administrative costs for oversight, review and documentation, which includes all of the cost of Town or Sanitary District employees' time associated in any way with the clean-up, the cost of Town or Sanitary District equipment employed and the cost of mileage reimbursed to the Town or Sanitary District employees attributed to the clean-up.
- C. Following any such discharge, the Town may require additional test monitoring or other requirements as outlined in Section 7 herein.
- D. 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.
- E. Penalties: Any person, firm or corporation who 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 the costs of the prosecution for each violation, and in default of payment of such forfeiture and costs, shall be imprisoned in the county jail until payment thereof, but not exceeding thirty (30) days, or in the alternative, shall have such costs added to their real estate property tax bill as a lien against the property. Each day a violation exists or continues shall constitute a separate offense.

**SECTION 10. Definitions**

- A. "Aquifer" means a saturated, permeable, geologic formation that contains, and will yield, significant quantities of water.
- B. "Existing facilities" means current facilities, practices and activities which may cause or threaten to cause environmental pollution within that portion of the Sanitary District's wellhead protection area. Existing facilities include but are not limited to the type listed in the Department of Natural Resources' form 3300-215, Public Water Supply Potential Contaminant Use Inventory Form which is incorporated herein as if fully set forth.
- C. "Hazardous Chemicals" means Chemicals and chemical mixtures that is required to have an MSDS and meets the definition of hazardous chemical under the OSHA regulations found in CFR 40 Part 302. Substances packaged for consumption for humans or animals are not considered Hazardous Chemicals. Hazardous Chemicals include:

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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 CFR 40 Part 302.
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 Municipal Wellhead 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-PCB dielectric fluids used in equipment or for transmission of electric power to homes and businesses).
- D. "Municipal Wellhead Protection Overlay District" means that area surrounding each municipal water supply well that has been designated as a "wellhead protection area" by the sanitary district in the most recent and up to date wellhead protection plan
- E. "Recharge area" means the land area which contributes water to a well by infiltration of water into the subsurface and movement with groundwater toward the well.
- F. "Sanitary District" means the Goodman Sanitary District which operated the municipal water supply wells for Goodman.
- G. "Well field" means a piece of land used primarily for the purpose of supplying a location for construction of wells to supply a municipal water system.

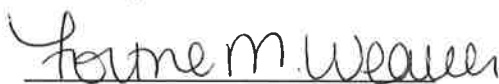
**SECTION 11. Conflict And Severability**

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.

**SECTION 12. Effective Date** This ordinance shall take effect upon passage and publication. The provisions of this

  
Tim Candahl, Town Chairperson

ATTEST:

  
Fortune Weaver, Town Clerk

Date Passed: 7/20 /2021