

## CHAPTER 154: WELLHEAD PROTECTION

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#### ***Cross-reference:***

*Drought Contingency Plan, see Chapter 52*

### **GENERAL PROVISIONS**

#### **§ 154.01 PURPOSE.**

(A) This subchapter sets forth uniform requirements for the uses and the construction of facilities in or on land within 150 feet of the wells in order to promote sanitary conditions in and around such wells, to secure all such land from pollution hazards, and to enable the city to comply with all applicable state and local regulations.

(B) The objective of this subchapter is to prevent certain uses and the construction of facilities in or on land surrounding the wells, which might create a danger of pollution to the water produced from such wells.

(Ord. 105-12, passed 5-22-12)

#### **§ 154.02 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**CITY.** The City of Sweeny, Texas.

**CITY COUNCIL.** The City Council of the City of Sweeny, Texas.

**ORDINANCE.** The ordinance establishing rules and regulations regarding sanitary and pollution control of the area in proximity to the city's public water supply wells.

**PERSON.** Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or its legal representatives, agents, successors, or assigns.

**WELLS.** The water wells owned and operated by the city, which are more specifically identified and described in Exhibit "A" attached to Ord. 105-12, passed 5-22-12, and made a part hereof.

(Ord. 105-12, passed 5-22-12)

#### **§ 154.03 PROHIBITED ACTIVITIES.**

The following activities are prohibited within the designated areas of land surrounding the wells:

(A) Construction and/or operation of any underground petroleum and/or chemical storage tank, liquid transmission pipeline, stock pen, feedlot, dump grounds, privy, cesspool, septic tank, sewage treatment plant, sewage wet well, sewage pumping station, drainage ditch which contains industrial waste discharge or the wastes from sewage treatment systems, solid waste disposal site, land on which sewage plant or septic tank sludge is applied, land irrigated by sewage plant effluent, septic tank perforated drain field, absorption bed, evapotranspiration bed, area irrigated by low dosage, low angle spray on-site sewage facility, military facility, industrial facility, wood treatment facility, liquid petroleum and petrochemical production, storage, and/or transmission facility, Class 1, 2, 3, and/or 4 injection well, pesticide storage and/or mixing facility, abandoned well, inoperative well, improperly constructed water well of any depth, and all other construction or operations that could create an unsanitary condition is prohibited within, upon, or across all areas within a 150 foot radius of the wells. For the purposes of this subchapter, improperly constructed water wells are those wells that do not meet the surface and subsurface standards for a public water supply well.

(B) Construction and/or operation of tile or concrete sanitary sewers, sewer appurtenances, septic tanks, storm sewers, and cemeteries is specifically prohibited within, upon, or across any area of land within a 50 foot radius of the wells.

(C) Construction of homes or buildings upon any area of land within a 150 foot radius of the wells is permitted, provided the restrictions described in division (A) and (B) above are met.

(D) Normal farming and ranching operations are not prohibited by this subchapter; provided, however, livestock shall not be allowed within a 50 foot radius of the wells.

(Ord. 105-12, passed 5-22-12)

#### **§ 154.04 RIGHT-OF-WAY.**

City employees, or authorized representatives of the city, bearing proper credentials and identification, shall be permitted to immediately enter upon any premises located within a 150 foot radius of any well to conduct any inspection or observation necessary to enforce this subchapter.

(Ord. 105-12, passed 5-22-12)

#### **§ 154.05 REQUIRED REMOVAL.**

Any person who shall violate any provision of this subchapter shall be required to remove the prohibited construction or contamination source within 30 days after notification that they are in violation of this subchapter.

(Ord. 105-12, passed 5-22-12)

#### **§ 154.06 SUPERCEDING REGULATION OR STATUTE.**

Whenever any applicable statute, regulation or permit of any state, federal, or other agency, having jurisdiction over the subject matter of this subchapter, is in conflict herewith, the stricter requirement shall apply, unless mandated otherwise.

(Ord. 105-12, passed 5-22-12)

#### **§ 154.07 PENALTY.**

Any person who shall violate any provision of this subchapter shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$500.00. Each day of violation shall constitute a separate offense.

(Ord. 105-12, passed 5-22-12)

### **WELL REGULATIONS; PERMITS**

#### **§ 154.25 POWERS AND DUTIES OF CITY COUNCIL.**

(A) The City Council or its designated agent or representative shall have the following powers:

- (1) To make or have made examinations of all wells within the city and all wells outside the city limits which by law is under the jurisdiction of the city, privately owned or otherwise;
- (2) To make or have made at any time the necessary analyses for tests of water therefrom;
- (3) To go upon the land and property of the owner of a well for that purpose;
- (4) To require the owner to furnish all information requested concerning a well, including, in the case of new wells, complete logs of the well showing depth to the aquifer through all geologic formations encountered; and
- (5) To supervise the construction, repair, abandonment and plugging of wells with and the operation of the wells.

(B) The Council or its agent shall keep a register of all wells within the area defined in division (A)(1) above, which shall show the name of the owner, the location and the date of construction of each well, its depth and diameter, the purpose for which the well was constructed, and if abandoned, the date of abandonment. All acts authorized to be done by the City Council may be performed by such persons as may be authorized by the Council to act for it.

(Ord. 103-91, passed 12-18-90)

#### **§ 154.26 COMPLIANCE REQUIRED.**

It shall be deemed a violation of this chapter for any person to fail or refuse to comply with any order of the City Council made in conformity with and under the authority of this chapter.

(Ord. 103-91, passed 12-18-90)

#### **§ 154.27 SCOPE.**

The provisions of this chapter shall apply to all wells or other openings greater than ten feet in depth. Furthermore, the owner of any proposed well shall be required to apply and receive from the city a permit to construct a well or opening, the application for which shall supply all the information required under § 154.29 and for the permit the city shall charge and receive the fee hereinafter provided for.

(Ord. 103-91, passed 12-18-90)

#### **§ 154.28 PERMIT; WORK ON WELLS.**

It shall be unlawful for any person to drill or otherwise construct, repair, correct, abandon or plug a well, or to engage upon the work, within the limits of the area defined in § 154.25, or to employ anyone else to engage in the work, without first applying for and securing a permit from the Council or a duly authorized agent thereof. The permit may be granted with the approval of the Council's authorized agent to any person who files with the city the application hereinafter provided for and pays the fee hereinafter required, and complies with all other provisions of this chapter applicable to him or her.

(Ord. 103-91, passed 12-18-90) Penalty, see § 10.99

#### **§ 154.29 APPLICATION.**

Every application for a permit for the drilling, construction, repair and correction, abandonment or plugging of a well, shall state the name and address of the owner thereof, the purpose for which the permit is desired, which shall be done or more of the acts above-mentioned; the definite location of the well or proposed well; its approximate depth; and if for a permit for the drilling or construction or repair and correction of a water well, the estimated amount of water to be, or which is pumped daily, monthly or annually, and the use or uses for which the water will be or is required; if for a permit for the drilling or construction or for the repair and correction of a well, the proposed method of drilling or construction, or the proposed method of repair and correction, and the kind of equipment to be used, and in all cases, the name of the contractor(s), and the license number issued by the State Water Well Drillers Board, if done through a contractor, whom the owner desires to drill or construct, repair and correct or do the work pursuant to an abandonment of a well in compliance with this chapter.

(Ord. 103-91, passed 12-18-90)

#### **§ 154.30 INSPECTION BEFORE ISSUANCE.**

It shall be the duty of the City Council or its designated agent or representative to inspect the property where any well is to be drilled, sunk, dug or bored and to refuse the issuance of a permit to drill, sink, dig or bore a well in a place which does not meet with its approval as to drainage and other sanitary conditions.

(Ord. 103-91, passed 12-18-90)

#### **§ 154.31 EXECUTION.**

All permits shall be executed in triplicate, one copy to be delivered to the applicant and two copies to be retained in the office of the city.

(Ord. 103-91, passed 12-18-90)

#### **§ 154.32 ADDITIONAL PERMITS.**

It shall be unlawful for any applicant who obtains a permit to construct a well of a certain depth, to extend the well to a depth exceeding the depth provided for in the permit without first obtaining an additional permit therefor.

(Ord. 103-91, passed 12-18-90) Penalty, see § 10.99

**§ 154.33 FEES; DISPOSITION.**

(A) The fees to be paid to the city for the permits required by this chapter shall be as set by the city's fee schedule.

(B) All fees and other money collected by the city by virtue of this chapter shall be expended by the city to cover the expense of making examinations of wells within the city, to make or have made the necessary analyses and test of water therefrom, to supervise the construction, repair, abandonment and plugging of wells and their operation and other expenses as may be necessary to enforcement of this chapter.

(Ord. 103-91, passed 12-18-90; Am. Ord. 101-21, passed 3-16-21)

**Cross-reference:**

*Fee schedule, see § 38.01*

**§ 154.34 CASING OF WELLS REQUIRED.**

(A) (1) Every well constructed, whether drilled, dug or excavated, which encounters salt water or water containing mineral or other substance injurious to health or vegetation, shall be securely plugged and sealed or cased in a manner that the waters be confined to the stratum or strata in which found, and all wells shall be so constructed and cased in a manner that the waters be confined to the stratum or strata in which found, and all wells shall be so constructed and cased so that no water from one stratum can be reason of the construction of the well come in contact with waters from another stratum.

(2) The casing shall be set in the top of the stratum from which water is to be taken and shall be cemented in place by suitable method to be approved by the City Council or its authorized agent to the end that cement be forced up around the outside of the casing from the bottom of the casing to the surface of the ground so that all water found in the strata, except that from which water is to be used, shall be scientifically developed to accomplish the purpose mentioned, a better method may be prescribed by the city in lieu of cementing. the casing used shall be of weight per foot, not less than the following.

<b>Size of Casing Minimum</b>	<b>Weight Per Foot</b>
Four-inch	Ten pounds
Five-inch	14 pounds
Six-inch	18 pounds
Eight-inch	28 pounds
Ten-inch	40 pounds
12-inch	49 pounds
15-inch	60 pounds
18-inch	80 pounds
20-inch	89 pounds

(B) The casing shall be mechanically continuous from the point of setting the bottom of the well to a point not less than 12 inches above ground level and shall be so installed as to make impossible any leakage as against any pressures which may be encountered.

(C) If casing is of two or more diameter sizes, the different sizes shall be connected with threaded nipples or be sealed with rubber, cement or lead or by some other manner satisfactory to the city.

(Ord. 103-91, passed 12-18-90)

**§ 154.35 WELLS CONTAMINATING OTHER WATER SOURCES.**

Any well or other opening located inside the area defined in §154.02 which penetrates the underground water supply and which pollutes or contaminates any other wells or the city's water supply, is declared a nuisance, and on notice to the owner of the well, or to the operator therefor, or to his or her agent in charge of the well or of the property on which it is situated, issued by the City Council or its agent the nuisance shall be abated by the owner within ten days from the date of the notice by filling and plugging the well or opening in the manner provided for in this chapter for abandoned wells; and if he or she shall fail to abate the nuisance within the time, or if owner or his or her agent, the Council or its agent shall have the right to go on the land or property upon which the well is situated and abate the nuisance in the manner provided and the owner thereof shall be liable to the city for the cost of the work and shall pay the cost upon demand.

(Ord. 103-91, passed 12-18-90) Penalty, see § 10.99

### **§ 154.36 DEFECTIVE WELLS.**

Every well whether dug or drilled, which for any reason does not completely prevent the mixing of water or other liquid from above and below the source of the city's water supply, or which for any reason would tend to pollute or contaminate any other well or the water in the source of the city's water supply, shall be considered a defective well and the City Council or its agent on its own initiative or upon information or complaint from any source may make an examination of any well suspected of being defective and if an examination of any well suspected of being defective and if the examination indicates in the opinion of the Council or its agent that the well is a probable source of contamination of the city water supply or any other well, or that the water from the well is unsafe for human consumption, shall issue written instructions to the owner or his or her agent in charge of the well or the property with the provisions of this chapter, and prescribe a time which in its judgment, under all the circumstances, is reasonable within which the instructions shall be complied with. It shall be unlawful for the owner or operator of the defective well to fail to comply with such instructions within the time prescribed by the City Council or its authorized agent.

(Ord. 103-91, passed 12-18-90)

### **§ 154.37 ABANDONED WELLS.**

(A) (1) An abandoned well is:

(a) A defective well which, in the judgment of the City Council or its agent, cannot be corrected to comply with the requirements of this chapter; or

(b) Any well which has been continuously out of use for a period of six months or longer.

(2) Whenever any wells have not been in active use for more than two years, the owner or operator of the well shall report the fact to the city. Every abandoned well shall be filled and plugged with the materials and in a manner approved by the State Water Well Drillers Board that will, in their and the city's judgment, prevent the pollution and contamination of the city's water supply or the contamination of any other well within the limits of the city, and the filling and plugging shall be done under the supervision of the city and at the expense of the owner of the well.

(B) Whenever the city shall receive notice from any source of the existence of an abandoned well which has not been plugged and filled in accordance with the provisions of this chapter and/or the State Water Well Drillers Board, it shall notify the owner or agent in charge of the well or of the property upon which it is situated that the well is abandoned and shall instruct him or her to fill and plug the well in accordance with this chapter; and the owner or operator of the well shall comply with the order within 60 days after its date. Should he or she fail to so comply within the period or if, after using reasonable diligence, should the city fail to locate the owner or the agent in charge of the well or of the property upon which the well is situated, the Council or its agent may go on the land or property upon which the well is situated and fill and plug the well in the manner required by this chapter.

(C) Whenever it becomes necessary for the city to fill and plug any abandoned well the owner thereof shall be liable to the city for the cost of doing the work and shall pay the cost upon demand.

(Ord. 103-91, passed 12-18-90)

### **§ 154.38 WELLS OUTSIDE CITY; ABATING NUISANCE; DRILLING.**

The owner or lessee of property on which any well heretofore drilled or that may be hereafter drilled outside the city which is found to be contaminating or polluting influence to the underground water-bearing strata from which the municipal water supply of the city is taken or drawn or may hereafter be taken or drawn, as well as the owner or lessee of all wells drilled inside the area defined in § 154.02 shall be subject to all the provisions hereof and all other provisions of this chapter relating to the protection of the water supply of the city, and any contaminating well may be abated, as provided therein. Any person desiring to drill a well outside of the city at any location within the radius of mile outside the city, prior to drilling the well shall fully comply with all provisions of this chapter relating to the protection of the water supply of the city, and upon failure to do so shall be punished as provided herein.

(Ord. 103-91, passed 12-18-90) Penalty, see § 10.99

### **§ 154.39 WELLS IMPOSING IMMEDIATE THREAT; ABATING NUISANCE.**

(A) (1) Any well or other opening located inside the area defined in §154.02 which, in the sole opinion of the City Council or its agents, presents an immediate threat and menace to the health, morals, safety or general welfare of the public is declared to be a nuisance.

(2) The City Council or its agents shall have the right to go on property upon which the wells is situated and abate the nuisance in a temporary mariner.

(B) The well shall thereafter be filled and plugged by the owner after the giving of required notice and in a manner set out in § 154.37.

(C) The owner thereof shall be liable to the city for the cost of doing the temporary work under this section and shall pay the cost upon demand.

(Ord. 103-91, passed 12-18-90)

## **ADMINISTRATION AND ENFORCEMENT**

### **§ 154.50 WELLHEAD PROTECTION AREA ADMINISTRATOR; DESIGNATION; DUTIES.**

(A) The is hereby appointed the Wellhead Protection Area Administrator to administer and implement the provisions of this chapter and other appropriate sections of Tex. Water Code § 26.177.

(B) Duties and responsibilities of the Wellhead Protection Area Administrator shall include, but are not limited to the following:

- (1) Maintain and hold open for public inspection all records pertaining to the provisions of this chapter;
- (2) Review water well permit applications and other permit applications where applicable to determine whether the proposed activity in the WHPA will pose a threat to the integrity of the public water supply;
- (3) Review, approve or deny (or recommend denial where authority for denial is not granted) all applications for permits required by the adoption of this chapter;
- (4) Review permits for proposed development within the WHPA(s) to assure that all necessary permits have been obtained from those federal, state, or local government agencies from which prior approval is required;
- (5) Where interpretation is needed as to the exact location of the boundaries of the WHPA(s) (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation;
- (6) When WHPA delineation has not been provided by the state (for example, upon completion of a new PWS well), delineate a one-quarter mile radius around the well and administer it in accordance with this chapter until the time as site specific determination can be made;
- (7) Coordinate the city's emergency response activities in the event a potential contamination event occurs; and
- (8) Maintain an active list of potential sources of contamination which shows the physical location, street address, contact and telephone number. This list shall be kept open for public inspection.

(Ord. 103-91, passed 12-18-90)

### **§ 154.51 NONCOMPLIANCE; VIOLATIONS.**

Persons and/or entities found to be in violation of this chapter shall be notified by the City Council or its agent in writing.

(Ord. 103-91, passed 12-18-90)

### **§ 154.52 VARIANCE PROCEDURES.**

(A) The Appeal Board as established by the community shall hear and render judgment on requests for variances from the requirements of this chapter.

(B) The Appeal Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision or determination made by the Wellhead Protection Area Administrator in the enforcement or administration of this chapter.

(C) Any person or persons aggrieved by the decision of the Appeal Board may appeal the decision in the courts of competent jurisdiction.

(D) No variance may be requested nor granted as a means to circumvent the intentions of this chapter or as a remedy for a violation of this chapter (such as a variance cannot be issued after the fact).

(E) The Wellhead Protection Area Administrator shall maintain a record of all actions involving an appeal.

(F) Upon consideration of the intent of this chapter, the Appeal Board may attach the conditions to the granting of variances as it deems necessary to further the purpose and objectives of this chapter.

(G) Prerequisites for granting variances:

(1) Variances shall only be issued upon a determination that the variance is the minimum necessary considering the potential threat of contamination of the PWS well and aquifer, to afford relief.

(2) Variances shall only be issued upon:

- (a) Showing a good and sufficient cause;
- (b) A determination that failure to grant a variance would result in exceptional hardship to the applicant; and
- (c) A determination that the granting of a variance will not result in additional threats to the public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

(3) Any application to whom a variance is granted shall be given written notice that the activity receiving this variance will decrease the travel time for potential contaminants to reach the PWS well and that any and all liability of a contamination

event as a result of this activity receiving the variance is on the variance holder.

(4) Furthermore, the city, its officers and services, as well as its employees are released from any responsibility and liability for any damages and/or contamination events due to activity receiving the variance.

(H) Variances may be issued by a community for new development necessary for the conduct of the functionally dependent use, provided that:

(1) The criteria outlined in this section are met; and

(2) The development is protected by methods that minimize the risk of a contamination event and creates no additional threats to public safety.

(Ord. 103-91, passed 12-18-90)