

CITY OF MADISON, WISCONSIN

AN ORDINANCE \_\_\_\_\_

PRESENTED  
REFERRED

\_\_\_\_\_  
Water Utility Board, Board of  
Public Works

Amending Sections 13.07 and 13.21 of the Madison General Ordinances to create a residential water service connection requirement and to update the well operation permit and well abandonment procedures and requirements.

DRAFT

Drafted by: Doran Viste

Date: October 25, 2011

SPONSOR:

DRAFTER'S ANALYSIS: This ordinance amends Sec. 13.07 of the Madison General Ordinances to create, pursuant to Wis. Stat. § 281.45, a requirement that all buildings used for human habitation and located on a lot near a water main must connect to the public water supply. This new requirement includes a procedure for a temporary exemption from this requirement for economic hardship or development related issues. The connection requirement will be applicable immediately to unpermitted private wells, within six months for annexed or attached lands, and, for permitted wells, will phase in beginning on Jan. 1, 2013 upon the permit's expiration. This ordinance also makes significant changes and updates to the well operation permit and well abandonment procedures and requirements in Sec. 13.21. These changes more clearly detail the responsibilities of property owners and the Water Utility relating to the Utility's permitting of private wells, and provides procedural due process protections that better address this ordinance than the default provisions of Sec. 9.49, which were previously applicable to this section. These changes also create a nuisance abatement procedure that much more clearly details how and under what circumstances the Water Utility may order abatement of a private well and abate the nuisance if not addressed by the well owner or operator. This new language replaces former language contained in the penalty clause which was suspect in its enforceability. Finally, this ordinance eliminates this section's separate penalty provision so that any penalty imposed thereunder is consistent with those imposed for the entire chapter, and increases the well operation permit fee to better account for the City's increased costs to administer this Section.

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The Common Council of the City of Madison do hereby ordain as follows:

1. Section 13.07 entitled "Service Connections" of the Madison General Ordinances is amended to read as follows:

**"13.07 SERVICE CONNECTIONS.**

- (1) Standards. Service connections and other attachments to any of the water mains shall be made in conformity to the rules and regulations of the Water Utility Board.
- (2) Residential Connections Required.
  - (a) Purpose. This subsection is enacted pursuant to Wis. Stat. § 281.45, the City finding that requiring residential water service connections where available is necessary to assure the preservation of public health, and the comfort and safety of City residents.
  - (b) Definitions. For the purposes of this subsection, the following definitions apply:

Approved as to form:

1. Building means any structure built for the support, shelter or enclosure of persons, animals, chattels or movable property of any kind, and which is permanently affixed to the land.
  2. General Manager shall mean the Water Utility General Manager, or his or her designee.
  3. Human habitation means the use of a building or other structure for human occupancy, including but not limited to cooking, eating, bathing and sleeping. This term does not include the use of a building or other structure for commercial, industrial or other similar uses, unless the building or structure is also used for actual occupancy by a human.
  4. Lot means an individual lot or tax parcel, as the case may be.
  5. Structure means anything constructed or erected, the use of which requires more or less permanent location on the ground, or attached to something having permanent location on the ground, and in the case of flood plain areas, in the stream bed or lake bed.
  6. Unsafe has the meaning given to it by Sec. 13.21(3), MGO.
- (c) Requirement. Except as provided in sub. (d), any building used for human habitation and located on a lot either through which a water main runs, that is adjacent at any point to a public right-of-way or easement through which a water main runs, or that is in a block through which a water main extends, shall be connected with the water main pursuant to the standards set forth in sub. (1). Connections shall be made within sixty (60) days of the expiration of a valid well operation permit issued under Sec. 13.21(5), MGO, unless the expiration occurs before December 31, 2012, in which case the connection shall be required by December 31, 2012. However, for properties annexed into or attached to the City of Madison, connection shall be made within one hundred eighty (180) days of the effective date of said annexation or attachment.
- (d) Temporary Exemption.
1. The owner of a building that would otherwise be subject to the connection requirement set forth in sub. (c) and who has a valid well operation permit issued under Sec. 13.21(5), MGO, will be temporarily exempt from sub. (c) if the following requirements are met:
    - a. The owner must demonstrate to the Madison Water Utility that either:
      - i. The requirements of this subsection would cause a financial hardship to the owner;
      - ii. The requirements of this subsection are impractical due to site conditions that may include a setback in excess of two hundred (200) feet; or,
      - iii. The building is located on a developable lot, as determined under Sec. 16.23, MGO, that has yet to be subdivided.
    - b. The Madison Water Utility must receive test results from a certified drinking water laboratory, within thirty (30) days of the notice being sent under sub. (e), and every twelve (12) months thereafter, that the well is not unsafe.
  2. The owner must petition the General Manager in writing for this temporary exemption within fifteen (15) days of the mailing of the notice under sub. (e) by the General Manager, otherwise this exemption does not apply.
  3. As a condition of this temporary exemption, the owner must agree that annually the Madison Water Utility, or its agent, may enter the property to conduct well and pump inspections or have water quality tests conducted to verify that the well is not unsafe. The owner further must agree that annual bacteriological and nitrate tests conducted under this subdivision shall be at the owner's expense and any amount not paid shall be a special charge against the property.
  4. This temporary exemption will expire at the earliest of the following:

- a. The conditions that resulted in the initial finding and granting of an exemption no longer exist;
  - b. The well is found to be unsafe;
  - c. Ownership of the building or lot is transferred to another;
  - d. The owner fails to abide by the conditions of this temporary exemption as set forth in this subdivision; or,
  - e. The owner fails to renew the well operation permit for the well prior to its expiration.
5. Upon either a denial of the temporary exemption upon a finding that the well is unsafe or the expiration of the temporary exemption under par. 4, the General Manager shall provide a new notice to the owner of the building of the need to connect with the water main pursuant to sub. (e).
6. This subdivision may only apply to any building once, and once the exemption is denied or expires, this subdivision is no longer applicable to the building.
- (e) Notice. The General Manager shall provide written notice to the owner of the building required to connect to the water main under this subsection of the need to connect with the water main by a specified date, no earlier than ten (10) days from the date of the notice. The notice shall be mailed via first class mail to the property owner's last known address, and a copy shall also be served upon the owner or occupant at the building location or may be posted by attaching the notice to the entrance of any building or other structure on the lot. The notice shall include documentation showing the location of the water main in relation to the lot. The failure to comply with the deadline set forth in the order, or as subsequently amended by the General Manager in writing, shall be deemed a failure to comply with this subsection and subjects the owner to the penalties set forth in Sec. 13.23.
- (f) Appeal. The owner of the building required to connect to the water main under this subsection may, within fifteen (15) days of the mailing of the notice by the General Manager, appeal the notice to connect. The only issues that may be appealed are the actual ownership of the building, whether a finding that the well is unsafe was erroneous, whether the building is used for human habitation, and whether the location of the water main requires connection under sub. (c). The Appeal shall be to the Water Utility Board. All requests for appeal shall be filed with the City Clerk, with a copy sent to the General Manager, and must inform the Board of the reasons for the appeal. Within forty-five (45) days of the Clerk receiving the appeal, the Board shall hold a hearing at which the parties may offer testimony and documents. Within twenty (20) days of the hearing, the Board shall affirm, modify, or reverse the General Manager's determination that the building must connect to the water main. Appeal from the action of the Board shall be to Circuit Court within thirty (30) days of the determination of the Board.
- (g) Failure to Connect.
1. If connection to the water main is not made prior to the deadline set by the General Manager pursuant to sub. (e) and an appeal is not proceeding under sub. (f), in addition to the penalties set forth in Sec. 13.23, the City may, no earlier than fifteen (15) days of the mailing of the notice by the General Manager, cause the service connection to be made, and the entire expense thereof, including restoration costs, shall be levied as a special charge against the property.
  2. The owner may, within thirty (30) days after the completion of the work under par. 1., file a written notice with the City Clerk stating that he or she cannot pay the amount of the special charge in one sum and asking that it be levied in not to exceed five (5) equal annual installments.
  3. Upon timely receipt of the notice under par. 2, the full amount of the special charge shall be collected by the City in five (5) equal payments, together with interest at the rate in effect at the time the special charge is levied. Interest shall be determined by the City Comptroller pursuant to Sec. 4.08(2), MGO, but in any event shall not exceed a rate of fifteen

percent (15%) per year from the completion of the work. The unpaid balance shall be a lien against the property.”

2. Section 13.21 entitled “Well Abandonment” of the Madison General Ordinances is amended to read as follows:

**“13.21 WELL OPERATION PERMITS AND WELL ABANDONMENT.**

- (1) Purpose. The purpose of this ordinance is ~~to prevent the~~ contamination of groundwater and to protect ~~the~~ public health, safety and welfare by assuring that unused, unsafe or noncomplying wells, wells which may serve as conduits for contamination, or wells which may be illegally cross-connected to the ~~Madison Water Utility~~ public water supply are properly abandoned, ~~and that existing private wells meet State requirements for construction and water quality.~~ Improperly abandoned wells represent potential direct pathways for groundwater contamination to enter the municipal drinking water supply.
- (2) Applicability. This ordinance applies to all wells located in the City of Madison or on premises served by the Madison Water Utility.
- (3) Definitions.
  - General Manager shall mean the General Manager of the Madison Water Utility, or his or her designee.
  - Noncomplying means a well or pump installation which does not comply with the provisions of Wis. Admin. Code ch. NR 812, in effect at the time the well was constructed, a contamination source was installed, the pump was installed or work was done on either the well or pump installation.
  - Pump installation means the pump and related equipment used for withdrawing water from a well including the discharge piping, the underground connections, pitless adapters, pressure tanks, pits, sampling faucets and well seals or caps.
  - Unsafe means a well or pump installation which produces water which is bacteriologically contaminated or contaminated with substances in excess of the standards of Wis. Admin. Code chs. NR 809 or 140, or for which a Health Advisory has been issued by the Department of Natural Resources.
  - Unused means a well or pump installation which is not in use or does not have a functional pumping system.
  - Well means an excavation or opening into the ground made by digging, boring, drilling, driving, or other methods for the purpose of obtaining groundwater for consumption or other use. Wells for the express purpose of monitoring the quality of ground water and/or gases and/or soil characteristics are exempt from this Ordinance.
  - Well abandonment means the filling and sealing of a well according to the provisions of Wis. Admin. Code ch. NR 812.
- (4) Abandonment Required. All wells located in the City of Madison or on premises served by the Madison Water Utility shall be abandoned ~~by the owner of the property if there is no valid well operation permit has been obtained from~~ issued by the Madison Water Utility under sub. (5) for the well, or if so required under Wis. Admin. Code § NR 812.26(2). Abandonment under this subsection shall proceed according to the requirements of sub. (8). Upon receiving an abandonment notice from the Madison Water Utility, the owner has ninety (90) days to either make An application for a well operation permit under sub. (5) shall be made within ninety (90) days of the date of any abandonment notice from the Madison Water Utility or abandon the well under sub. (8), otherwise the Madison Water Utility may proceed with abatement under sub. (10).
- (5) Well Operation Permit.
  - (a) Permit Required. No person may operate or maintain a well without ~~having obtained a valid~~ having a valid well operation permit ~~issued under this subsection.~~
  - (b) Permit Issuance. If the requirements of this subsection are met, ~~the~~ Madison Water Utility may grant a well operation permit to a private well owner to operate or maintain a well for a period not to exceed five (5) years ~~providing the conditions of this section are met.~~ If the requirements of this subsection are not met, the Madison Water Utility may reject the application or renewal, providing the applicant with the reasons for the denial of the well operation permit in writing.

- (c) Renewal. An owner may request renewal of a valid well operation permit by submitting information verifying that the conditions requirements of this subsection are met, and that there is a continued need for the well. A request to renew a valid well operation permit must be made to the Madison Water Utility within the six (6) months prior to the expiration of the permit. Failure to timely request a renewal of a valid well operation permit will result in expiration of the permit, and the issuance of an abandonment notice by the Madison Water Utility.
  - (d) Testing Requirement. As a condition of the issuance or renewal of a well operation permit, the Madison Water Utility, or its agent, may conduct inspections or have water quality tests conducted at the applicant's expense to obtain or verify information necessary for consideration of a permit application or renewal.
  - (e) Application and Permit Fee. Permit applications and renewals shall be made on forms provided by the Madison Water Utility. A permit fee of ~~one~~ two hundred dollars (\$200) shall accompany the application. This fee shall include the cost of conducting up to two (2) bacterial examinations of water samples obtained from the well, with the cost of any additional tests required to meet the permit criteria at the applicant's expense.  
~~The Madison Water Utility may require abandonment of a well for failure to renew a permit or to pay renewal fee within ninety (90) days of the date of any abandonment notice from the Madison Water Utility; otherwise, abandonment shall be required.~~
  - (f) Conditions. The following conditions must be met for issuance or renewal of a well operation permit:
    - ~~(a)~~1. The well and pump installation have been certified by a licensed well driller or pump installer to meet, or are upgraded to meet, the requirements of Wis. Admin. Code ch. NR 812.
    - ~~(b)~~2. The well construction and pump installation have a history of producing bacteriologically safe water as evidenced by at least two (2) samplings taken a minimum of two (2) weeks apart. No exception to this condition may be made for unsafe wells, unless the Department of Natural Resources approves, in writing, the continued use of the well.
    - ~~(c)~~3. There are no cross-connections between the well and pump installation and the Madison Water Utility.
  - (g) Appeal. If a person's application for a well operation permit, or renewal of a well operation permit, is denied by the Madison Water Utility, the person may appeal within fifteen (15) days of the mailing of the permit denial notice. Appeal shall be to the Water Utility Board. All requests for appeal shall be filed with the City Clerk and the General Manager, and must inform the Water Utility Board of the reasons for the appeal. Within forty-five (45) days, the Water Utility Board shall hold a hearing at which the parties may offer testimony and documents. Either at or within twenty (20) days of the hearing, the Water Utility Board shall affirm, modify, or reverse the determination that the well operation permit should be denied. Appeal from the action of the Water Utility Board shall be to Circuit Court within thirty (30) days of the determination of the Board.
  - (h) Revocation of Permit. If, at any time after the issuance of a well operation permit, the General Manager determines that a well is a serious hazard to the health or safety of the public, the General Manager may immediately revoke the well operation permit and proceed under sub. (10). The General Manager shall include the reasons for the revocation of the well operation permit in the abatement order issued under that subsection.
- (6) Required Inspection. Whenever real property with a well on the premises is conveyed pursuant to Wis. Stat. ch. 706, the seller shall contact the Madison Water Utility at least fourteen (14) days prior to the transfer of property. Upon proper notice, the Madison Water Utility may conduct an inspection to determine whether the well should be permitted or abandoned under this section. The failure to contact the Madison Water Utility prior to the transfer of the property as required under this subsection shall result in the termination of the well operation permit.

- (7) A representative of the Madison Water Utility shall have the power and authority at all reasonable times, for any proper purpose, to enter upon any property in the City of Madison and make inspection thereof. If entry is refused, such representative may obtain a special inspection warrant under Wis. Stat. § 66.0119. Upon request by a representative of the Madison Water Utility, the owner, lessee or occupant of any property so served shall furnish to the inspection agency any pertinent information regarding the well on such property if such information is known to such owner, lessee or occupant.
- (8) Abandonment Procedures.
- (a) All wells abandoned under the jurisdiction of this ordinance or rule shall be abandoned by a licensed well driller or pump installer according to the procedures and methods of Wis. Admin. Code § NR 812. All debris, pump, piping, unsealed liners and any other obstructions which may interfere with sealing operations shall be removed prior to abandonment.
  - (b) The owner of the well, or the owner's agent, shall notify the Madison Water Utility at least forty-eight (48) hours prior to commencement of any well abandonment activities. The abandonment of the well may be observed by the Madison Water Utility.
  - (c) An abandonment report form, supplied by the Department of Natural Resources, shall be submitted by the well owner to the Madison Water Utility and the Department of Natural Resources within ten (10) days of the completion of the well abandonment.
  - (d) The Madison Water Utility may require any person who has abandoned a well not in compliance with sub. (a) to return and take corrective action so that the well is abandoned by him or her in a complying manner.
- (9) Well Abandonment Rebate. Upon the proper abandonment of a well pursuant to this section, the City Engineer, in consultation with the Water Utility General Manager and the Public Health Director, is authorized to issue a rebate to the owner of a property located in the City of Madison or that is served by the Madison Water Utility of up to fifty percent (50%) of the cost to the owner of the abandonment of the well, up to a maximum rebate of one thousand dollars (\$1000.00). In determining the amount of the rebate, any contributions made by Dane County under Dane County Ordinance 46.42 or the Wisconsin Department of Natural Resources under the Well Compensation Program (Chapter NR 123) shall not be considered, provided that the rebate issued by the City under this subsection, when combined with any contribution made by Dane County and WDNR, shall not exceed the total cost to the owner of abandoning the well. No rebate shall be issued to the owner of a property against whom the City has either issued a citation or made a written referral to the City Attorney for non-compliance with the requirements of this section. Rebates issued under this subsection shall be funded out of the landfill remediation fee as set forth in Sec. 32.025, MGO.
- (10) Abatement. If the General Manager of the Water Utility determines that an existing well is a serious hazard to the health or safety of the public, then the General Manager may order the owner or operator to abandon or repair the well at the owner or operator's expense, pursuant to this subsection. A well without a valid well operation permit issued under this section shall be deemed a public nuisance under this section.
- (a) Summary Abatement.
    - 1. Order of Abatement. If the General Manager determines that a well constitutes a public nuisance and that there is imminent danger to the public health, safety, peace, comfort or welfare, he or she may, without notice or hearing, issue an order to the owner and/or well operator reciting the existence of a public nuisance constituting imminent danger to the public and requiring immediate action be taken as he or she deems necessary to abate the nuisance, including abandonment of the well. Notwithstanding any other provisions of this subsection, the order shall be effective immediately. Any person to whom such order is directed shall comply with the order immediately.
    - 2. Abatement by the Utility. Whenever the owner or operator shall refuse or neglect to remove or abate the condition described in the order, the General Manager may, in his or her discretion, enter upon the property

and cause the nuisance to be removed or abated, including abandonment of the well, and the Water Utility shall recover the expenses incurred thereby from the owner or operator of the property. The expenses so incurred shall be levied as a special charge against the property.

(b) Nonsummary Abatement.

1. Order of Abatement. If the General Manager determines that a well constitutes a public nuisance but that the nature of such nuisance is not such as to threaten imminent danger to the public health, safety, peace, comfort or welfare, he or she shall issue an order reciting the existence of a public nuisance and requiring the owner and/or operator of the property to remove or abate the condition described in the order within the time period specified therein, including abandonment of the well. The order shall be served personally on the owner of the property, as well as the operator if different from the owner and applicable to the described nuisance, or, at the option of the General Manager, the notice may be mailed to the last known address of the person to be served by registered mail with return receipt requested. If the owner or the operator cannot be served, the order may be served by posting it on the main entrance of the premises and by publishing as a class 1 notice under Wis. Stat. ch. 985. The time limit specified in the order runs from the date of service or publication.

2. Abatement by the Utility. If the owner or operator fails or refuses to comply within the time period prescribed, the General Manager may enter upon the property and cause the nuisance to be removed or abated, including abandonment of the well, and the Water Utility shall recover the expenses incurred thereby from the owner or operator of the property. The expenses so incurred shall be levied as a special charge against the property.

(c) Remedy from Order. The order of the General Manager shall not be appealable to the Water Utility Board. Any person affected by orders issued under this subsection shall timely apply to the circuit court for an order restraining the Water Utility and the Director of the Water Utility from entering on the premises and abating or removing the nuisance, or be forever barred.

(d) Abatement in Accordance with State Law. Nothing in this article shall be construed as prohibiting the abatement of public nuisances by the Water Utility or its officials in accordance with the laws of the state. The Water Utility or its officials may choose to proceed with an action under state law, upon authorization by the Water Utility Board.

~~(4011) This law does not supersede the State Plumbing Code, Wis. Admin. Code § NR 811 or Chapter 18 of the Madison General Ordinances entitled "Plumbing Code" but is supplementary to them.~~

~~(11) Penalties. The penalty for violation of this section may be not less than twenty-five dollars (\$25) nor more than one thousand dollars (\$1,000) and the cost of prosecution. Each day of violation is a separate offense. If any person fails to comply with this ordinance for more than ten (10) days after receiving written notice of the violation, the City may impose a penalty and cause the well abandonment to be performed and the expense may be levied as a special charge against the property."~~