

DOWAGIAC CITY COUNCIL MEETING

Monday, January 25, 2016

A regular meeting of the Dowagiac City Council was called to order by Mayor Lyons at 7:00 p.m.

Mayor Lyons led the Pledge of Allegiance to the flag.

PRESENT: Mayor Donald D. Lyons, Mayor Pro-Tem Leon D. Laylin; Councilmembers Charles K. Burling, James B. Dodd, Lori A. Hunt, Danielle E. Lucas, Bob B. Schuur and City Clerk Jane P. Wilson.

ABSENT: None

STAFF: City Manager Kevin P. Anderson, Deputy Clerk Rozanne H. Scherr, Public Safety Director Steve Grinnewald

Councilmember Laylin moved and Councilmember Dodd seconded that the minutes of the January 11, 2016 meeting be approved.

APPROVED unanimously.

COMMENTS FROM THE AUDIENCE (NON-AGENDA)

Mr. Robert Mortimore, Resident, spoke to council about his water bill being excessively high.

RESOLUTIONS

1. Councilmember Schuur offered and moved the adoption of the following resolution; seconded by Councilmember Dodd.

WHEREAS, at the December 11, 2015 City Council meeting by way of an adopted resolution introducing same, the Dowagiac City Council approved of a final-form resolution authorizing the conveyance of City-owned, real property in accordance with the provisions of Section 14.9 of the City Charter, and the specifications outlined in the City Council Policy enacted on June 21, 1993, and;

WHEREAS, having now remained on file for public inspection with the Office of the City Clerk for in-excess-of the minimum twenty-one (21) day period required by the City Charter, the City of Dowagiac wishes to formally convey and sell the parcel of surplus real property legally described in Exhibit "A", commonly known as 202 McCleary Street in the City of Dowagiac, according to the recorded plat thereof, and more commonly referred to as Parcel Code No. 14-160-300-750-00, to Mr. Richard Accoe, for the total sale price of six hundred dollars (\$600.00).

NOW, THEREFORE, BE IT RESOLVED that the Dowagiac City Council, by the affirmative roll call vote of five or more of its City Council Members, does hereby adopt and approve the sale and conveyance of City-owned real property legally described in Exhibit "A", commonly known as 202 McCleary Street in the City of Dowagiac,

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according to the recorded plat thereof, and more commonly referred to as Parcel Code No. 14-160-300-750-00, to Mr. Richard Accoe, for the total sale price of six hundred dollars (\$600.00).

BE IT FURTHER RESOLVED that the said conveyance shall be accomplished by means of the transfer of a Quit-claim Deed, as prepared by the City Attorney, signed by the Mayor and Clerk respectively of the City of Dowagiac, and executed within thirty (30) days following adoption of this resolution.

ADOPTED unanimously.

2. Resolution to authorize the City Manager to submit an application for a 2016 Michigan Blight Elimination Grant Program with the Michigan Land Bank.

Councilmember Schuur offered and moved the adoption of the following resolution; seconded by Councilmember Burling.

WHEREAS, the City of Dowagiac desires to improve its employment, tax base and the overall quality of lives of its residents; and,

WHEREAS, the City of Dowagiac recognizes that blighted, abandoned buildings negatively impacts the tax base and quality of life for its residents; and,

WHEREAS, competitive grant funding is available through the 2016 Michigan Blight Elimination Program; and,

WHEREAS, the City of Dowagiac is committed to eliminating blight and needs additional resources to deal with five (5) blighted and vacant properties; and,

WHEREAS, the City of Dowagiac has determined that the removal of the structures located at 101 New York Avenue, 214 Commercial Street, 204 Commercial Street, 307 Commercial Street and 203 Chestnut Street are necessary and have committed financial resources to cover costs associated with the demolitions that are ineligible for the grant or are in excess of the grant; and,

NOW, THEREFORE, BE IT RESOLVED that the City of Dowagiac, by the affirmative vote of its City Council, does hereby designate Kevin P. Anderson, City Manager, to make a grant application on behalf of the City of Dowagiac to the 2016 Michigan Blight Elimination Program up to \$100,000.

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BE IT FURTHER RESOLVED that City of Dowagiac does hereby commit to reserving capital improvement funds to pay costs associated with the demolition that are ineligible for the grant or are in excess of the grant.

ADOPTED unanimously.

3. Resolution to adopt a 2017 Dial-A-Ride Transit budget.

Councilmember Dodd offered and moved the adoption of the following resolution; seconded by Councilmember Hunt.

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Michigan Department
Of Transportation
3078 (10/15)

FY 2017 RESOLUTION OF INTENT

*The approved resolution of intent to apply for state formula operating assistance for
fiscal year 2017 under Act 51 of the Public Acts of 1951, as amended.*

INSTRUCTIONS: Complete and save the form in PTMS, and attach a signed copy in PTMS

WHEREAS, pursuant to Act 51 of the Public Acts of 1951, as amended (Act 51), it is necessary for the
Dowagiac, City of _____, (hereby known as THE APPLICANT) established under
Name of Applicant (legal organization name)

Act 51 _____ to provide a local transportation program for the state fiscal year of 2017 and, therefore, apply
for state financial assistance under provisions of Act 51; and

WHEREAS, it is necessary for the governing body, to name an official representative for all public
transportation matters, who is authorized to provide such information as deemed necessary by the State
Transportation Commission or department for its administration of Act 51; and

WHEREAS, it is necessary to certify that no changes in eligibility documentation have occurred during the
past state fiscal year; and

WHEREAS, the performance indicators have been reviewed and approved by the governing body.

WHEREAS, THE APPLICATION, has reviewed and approved the proposed balance (surplus) budget,
and funding sources of estimated federal funds \$ 38,663, estimated state funds \$ 75,952,
estimated local funds \$ 14,524, estimated fare box \$ 30,000, estimated other funds
\$ 49,850 with total estimated expenses of \$ 208,989

NOW THEREFORE, be it resolved that THE APPLICANT hereby makes its intentions known to provide
public transportation services and to apply for state financial assistance with this annual plan, in accordance with
Act 51; and

HEREBY, appoints Rozanne H. Scherr, as the Transportation Coordinator,
for all public transportation matters, who is authorized to provide such information as deemed necessary by the
State Transportation Commission or department for its administration of Act 51 for 2017.

I, Jane P. Wilson, City Clerk
(Name) *(Secretary/Clerk)*

THE APPLICANT, having custody of the records and proceedings of THE APPLICANT, does hereby certify that I
have compared this resolution adopted by THE APPLICANT at the meeting of January 25, 2016, with
the original minutes now on file and of record in the office and that this resolution is true and correct.

IN TESTIMONY WHEREOF, I have hereunto set my
hand and affixed seal of said _____, this _____
day of _____ A.D. 20____

SIGNATURE

ADOPTED unanimously.

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4. Resolution calling for the repeal of Michigan Law, Section 57, subsection (3) of PA 269 of 2016 that prohibits local governments from sharing information with the public 60 days prior to an election.

Councilmember Burling offered and moved the adoption of the following resolution; seconded by Councilmember Laylin.

WHEREAS, Governor Snyder signed into law, with immediate, effect Public Act 269 (Senate Bill 571) despite wide spread calls for a veto of this bill, including from members of his own party; and

WHEREAS, both the Michigan Senate and the Michigan House of Representatives passed Senate Bill 571 late into the night of December 16, 2015, just prior to recessing for the year; and

WHEREAS, one of the last minute amendments made to Senate Bill 571, without the knowledge of the Michigan Municipal League or other local government organization, and approved without any public testimony or awareness, was the new language inserted into Section 57, subsection (3); and

WHEREAS, this new law prohibits a public body, or a person acting for a public body, from using public funds or resources for the purpose of communicating any information to the electorate regarding a local ballot question that is to appear on the ballot, within 60 days of an election, and

WHEREAS, this law places an immediate gag order on entities with ballot questions on the March 8 ballot and every election thereafter; and

WHEREAS, municipal elected and appointed officials have a civic and legal duty to the residents of their communities to fully inform them regarding the issues placed before them, upon which they may exercise their constitutional right to vote; and

WHEREAS, existing laws, including the former language in Section 57, and decades of guidance from the Michigan Secretary of State, already prohibit the use of public funds to advocate for or against ballot issues; and

WHEREAS, existing laws already provided for an allowance for elected and appointed officials to express their views without fear of violating the act; and

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WHEREAS, because the new law bans only communication on local ballot issues, it creates inconsistent treatment of statewide ballot questions versus local initiatives; and

WHEREAS, there are substantial questions regarding the constitutionality and legality of the new law, including a possible ban on freedom of speech;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Dowagiac calls for an immediate repeal of the new language in Section 57, subsection (3) of PA 269 of 2016; and

NOW, THEREFORE, BE IT FINALLY RESOLVED, that a copy of this Resolution be forwarded to the city's state representatives in the Michigan House of Representatives and the Michigan Senate.

Yeas: Six (6) Laylin, Burling, Dodd, Hunt, Lucas, Schuur

Nays: None (0)

Absent: None (0)

ADOPTED unanimously.

5. Resolution authorizing a lease and construction of 2,409 square feet of space in the James E. Snow Professional Building to the Van Buren/Cass District Health Department.

Councilmember Laylin offered and moved the adoption of the following resolution; seconded by Councilmember Burling.

WHEREAS, the City of Dowagiac owns the professional office building known as the Jame E. Snow Professional Building located at the corner of Front and Main Street in Downtown Dowagiac, and;

WHEREAS, the Van Buren/Cass District Health Department needs office space to expand their services to the greater Dowagiac area, and:

WHEREAS, terms have been negotiated for 2,409 square feet of space in the first floor of the James E. Snow Professional Building,

NOW, THEREFORE, BE IT RESOLVED that the City of Dowagiac, by the affirmative vote of its City Council, does hereby approve the terms of a building lease with Van Buren/Cass District Health Department subject to final review and approval by the City Manager, and;

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BE IT FURTHER RESOLVED, that the City Manager is hereby authorized and directed to complete lease negotiations and act as signatory for the execution of a lease once the document review is complete.

BE IT RESOLVED that the City of Dowagiac, hereby approves and authorizes a budget of \$144,000 for construction of the office suite for Van Buren/Cass District Health Department, and;

BE IT FUTHER RESOLVED that the City Manager be authorized and directed to act as signator for Purchase Orders with necessary subcontractors so that the office suite described in the executed lease with Van Buren/Cass District Health Department can be constructed and occupied as quickly as possible.

ADOPTED unanimously.

6. Resolution confirming construction budget and authorization for buildout of Suite C of the James E. Snow Professional Building.

Councilmember Burling offered and moved the adoption of the following resolution; seconded by Councilmember Dodd.

WHEREAS, the City of Dowagiac approved a lease agreement with the law firm May, Oberfell, Lorber for office space on the first floor of the James E. Snow Professional Building; and

WHEREAS, the estimated cost to construct the office suite for law firm May, Oberfell, Lorber is \$72,000.

NOW, THEREFORE, BE IT RESOLVED that the City of Dowagiac, hereby approves the estimate for construction of an office suite for law firm May, Oberfell, Lorber.

BE IT FUTHER RESOLVED that the City Manager be authorized and directed to act as signator for Purchase Orders with necessary subcontractors so that the office suite described in the executed lease with May, Oberfell, Lorber can be constructed and occupied as quickly as possible.

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7. Resolution to authorize and direct the City Treasurer to pay the following bills and payroll due:

Councilmember Schuur offered and moved the adoption of the following resolution; seconded by Councilmember Burling.

WHEREAS, the following information has been reviewed by the City Manager and City Treasurer and is being presented to City Council with a recommendation to approve invoices and payroll #9 for the period ending 01/21/16:

Invoices	\$586,686.48
Payroll #9	<u>\$194,308.69</u>
Total	\$780,995.17

BE IT RESOLVED that the City Manager and City Treasurer are hereby authorized and directed to pay the following bills and payroll due:

<u>BILLS</u>	<u>PAYROLL</u>	<u>TOTAL</u>
\$586,686.48	\$194,308.69	\$780,995.17

ADOPTED on a roll call vote.

Ayes: (6) Laylin, Burling, Dodd, Lucas, Hunt, Schuur

Nays: None (0)

Absent: None (0)

Abstain: None (0)

ORDINANCES

1. Second reading of an Ordinance to add Section 2.28 GROUNDWATER USE RESTRICTIONS to the Dowagiac Municipal Code.

SECTION 2.28 GROUNDWATER USE RESTRICTIONS.

The City of Dowagiac City Council finds that the use of certain groundwater wells and water supplies from such wells for human consumption or other purposes may constitute a public health risk and endanger the safety of the residents of the City of Dowagiac and therefore the City has determined that it is

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in the best interests of the public health, safety and welfare to prohibit uses of groundwater from wells at properties located in the vicinity of contaminated sites.

A. DEFINITIONS. For the purposes of this Ordinance, the following definitions shall have the following meanings:

Affected premises means a parcel of property any part of which is located within a Restricted Zone as defined below.

Applicant means a person who applies for the establishment of a Restricted Zone pursuant to this Ordinance.

Contaminated groundwater means groundwater in which there are present concentrations of materials that exceed the residential drinking water criteria established by the Michigan Department of Environmental Quality in operational memoranda or rules promulgated pursuant to Part 201, Environmental Remediation (MCL 324.20101 et seq.), or part 213, Leaking Underground Storage Tanks (MCL 324.21301a et seq.), of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.101 et seq., dependent upon whether the release is regulated pursuant to Part 201 or part 213.

Exacerbation means "Exacerbation" as defined in Part 201, Environmental Remediation (MCL 324.20101, et seq.).

Groundwater means underground water within the zone of saturation.

MDEQ means the Michigan Department of Environmental Quality, or its successor agency.

Person means any individual, co-partnership, corporation, association, club, joint venture, estate, trust, and any other group or combination acting as a unit, and the individuals constituting such group or unit.

Release means a "release" as defined in Part 201, Environmental Remediation (MCL 324.20101 et seq.), or Part 213, Leaking Underground Storage Tanks (MCL 324.21301a et seq.), of the Natural Resources and Environmental Protection Act, 1994 P A 451, as amended, MCL 324.101 et seq., dependent upon whether an underground storage tank is involved.

Restricted Zone means an area or areas described within Section B of this Ordinance within which the prohibition of groundwater wells and the use of groundwater applies.

Well means an opening in the surface of the earth for the purpose of removing fresh water through non mechanical or mechanical means for any purpose other than a public emergency or conducting response actions that are consistent with the Michigan Natural Resources and Environmental Protection Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, or other applicable statute.

USEPA means the U.S. Environmental Protection Agency.

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B. RESTRICTED ZONE.

1. Except as provided in Section E of this ordinance, and after the effective date hereof, no person or legal entity shall install or allow, permit or provide for the installation or utilization of a well on any affected premises on which they have an ownership interest, or lessee or tenant interest or control, within the Restricted Zone. Property within the Restricted Zone shall be serviced only by public water supply.
2. Exhibit A attached hereto is a scaled map illustrating the groundwater well restricted zone ("Restricted Zone").
3. Exhibit B attached hereto contains the narrative description of the Restricted Zone.
4. Exhibit C attached hereto contains a listing of all affected premises within the Restricted Zone by parcel identification number and address.
5. A notice shall be sent to the Van Buren/Cass County Public Health Department advising the health department of the Restricted Zone established hereunder and the health department's written acknowledgement that it will not issue permits for prohibited wells within the Restricted Zone, shall be filed with MDEQ prior to the effective date of this Ordinance.

C. WELLS AFFECTING CONTAMINATED GROUNDWATER WAIVER.

No well may be used or installed at any place in the City if the use of the well will have the effect of causing the migration of contaminated groundwater or a contaminated groundwater plume to previously unimpacted groundwater, or adversely impacting any groundwater treatment system, unless the well is part of an MDEQ or USEPA approved groundwater monitoring or remediation system.

If the MDEQ determines that the use of a well is not influenced or potentially influenced by contaminated groundwater and further determines the use of that well will remain permanently unaffected by the future migration of contaminated groundwater, and proof of those determinations is delivered to the City, the City Manager may execute a waiver allowing the use of the well. For example, a well may be installed within a restricted zone in a deep aquifer below a geologic aquitard, provided that the person proposing to install such a well:

- a. Uses well construction techniques (e.g. double casing) that will maintain the integrity of the lower aquifer and prevent the migration of contaminants from the upper aquifer into the lower aquifer; and
- b. Submits to the City Manager, the USEPA and MDEQ the proposed well construction techniques for review and approval, prior to the installation of the well.

D. NON-CONFORMING WELLS.

Any existing well, the use of which is prohibited by this Ordinance, shall, within 180 days of the effective date hereof, be plugged or abandoned in conformance with all applicable laws, rules, regulations, permit and license requirements, orders and directives of any governmental entity or agency of competent jurisdiction, or, in the absence of an applicable law, rule, regulation, requirement, order, directive, in conformance with the protocol developed consistent with the American Standards for Testing and

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Materials standard #D5299-92 and the person requesting the ordinance shall provide for the abandonment and plugging of all existing wells prohibited by this Ordinance on the affected premises and connect such premises to The City of Dowagiac Public Water Supply, without cost to the owners or occupants of the premises.

E. EXCEPTIONS.

1. Construction of De-Watering Wells. Wells in the Restricted Zone used for construction de-watering are not prohibited by this Ordinance, provided that the water generated by that activity is properly handled and disposed in compliance with all applicable laws and regulations and the use of a de-watering well does not result in the unacceptable exposures to contaminated groundwater, possible cross-contamination between saturated zones, or exacerbation of contaminated groundwater. Any exacerbation caused by the use of wells under this exception shall be the responsibility of the person operating the de-watering well, as provided in Part 201 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

2. Groundwater Monitoring and Remediation Wells. Wells used for groundwater monitoring and/or remediation as part of response activity approved by the USEPA and/or MDEQ are not prohibited by this ordinance.

3. Exception Wells. Two (2) groundwater exception wells approved by USEPA for purposes other than drinking water ("Exception Wells") are located in the Restricted Zone at the locations identified on Exhibit C, attached hereto, 504 Louise (aquaculture) and 601 Louise (toilet flushing), and may continue to be utilized for the limited purposes identified thereon.

4. A well may be used in the event of a public emergency. Notice of such use shall be provided to the MDEQ within a reasonable time thereafter.

F. ENFORCEMENT.

1. Any well in violation of any provision of this Ordinance is hereby declared to be a nuisance per se, subject to abatement and immediately taken out of service and lawfully abandoned or plugged consistent with all applicable rules and regulations. Any person, firm, or corporation who violates, disobeys, omits, neglects, or refuses to comply with any of the provisions of this Ordinance shall be guilty of a civil infraction punishable by the sanctions as set forth below.

2. The City Manager or his or her designee, together with law enforcement officers, are authorized officials to issue municipal civil infraction citations and municipal civil infraction violation notices for violation of this Ordinance.

3. Each day that a violation continues may be deemed a separate infraction.

4. The sanction for any violation of this Ordinance which is a municipal civil infraction shall be a civil fine as provided herein, plus any costs, damages, expenses, and other sanctions authorized under Act 12 through 26, Public Acts of Michigan of 1994 and the Code of Ordinances of the City of Dowagiac.

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5. Increased civil fines will be imposed for repeated violations that occur within a six (6) month period. Civil fines for first offenses, repeat first offenses and repeat second offenses will be established from time to time by resolution of the City Council.

6. The rights and remedies provided herein are cumulative and in addition to any other remedies provided by law.

7. In addition, the City may seek an order from a court of appropriate jurisdiction to obtain equitable relief to restrain any person from violating this Ordinance and to properly and lawfully remove or abandon the well and such other relief as may be available to the City pursuant to Chapter 83 and 87 of the Michigan Remedial Judicate Act, as amended at the present time or in the future, including the collection of costs and actual attorney fees associated with such enforcement action.

G. NOTIFICATION OF INTENT TO AMEND OR REPEAL.

At least thirty (30) days prior to adopting a revision or amendment to this Ordinance or prior to its repeal, the City of Dowagiac shall notify the USEP A and MDEQ, or their successor agencies, of its intent to so act.

H. PUBLISHING AND RECORDING.

This Ordinance or an amendment to this Ordinance shall be published as follows:

(a) If the release is regulated pursuant to Part 201, then this Ordinance or an amendment to this Ordinance shall be published and maintained in the same manner as zoning Ordinances.

(b) If the release is regulated pursuant to Part 213, then this Ordinance or an amendment to this Ordinance shall be filed with the Cass County Register of Deeds as an Ordinance affecting multiple properties.

I. ADDING NEW RESTRICTED ZONES.

The City of Dowagiac City Council may amend this Ordinance to address new Restrictive Zones in accordance with the following procedure:

(1) An applicant shall first file a request with the City of Dowagiac City Manager advising the City of the applicant's interest in establishing a Restricted Zone pursuant to this article. The notice shall describe the proposed boundaries of the proposed Restricted Zone, the reason for the proposed Restricted Zone, a preliminary map of the proposed Restricted Zone, the proposed time schedule for implementing the proposed Restricted Zone and the proposed groundwater use restrictions to be applicable within the Restricted Zone. The City Manager will, after notifying the City Council of the notice of intent, respond to the applicant with a preliminary and non-binding indication of the City's willingness to consider the proposed Restricted Zone. The City Manager, or his or her designee, may also be an applicant for the purposes of initiating this procedure.

(2) The Applicant shall seek and obtain the USEPA and MDEQ's approval of the proposed Restricted Zone

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and proposed groundwater use restrictions to be applicable therein prior to filing an application with the City. In order to be considered by the City, the Restricted Zone must minimize or eliminate the need for restrictive covenants on property that is not owned or operated by and is not subject to remediation by a party responsible for the contaminated groundwater. The creation of a Restricted Zone should have the effect of eliminating the need for non-responsible parties to impose environmental restrictive covenants on their property and be beneficial to the owners or occupants of property that was not the site of a release.

(3) If any premises, which will be subject to the proposed new Restricted Zone, are not already served by City water service, the applicant shall assure such service is, if it is feasible from an engineering perspective to do so, served with City water service at no cost to the property owners or occupant. The applicant shall have to assure such service is provided. The applicant shall also provide for the abandonment and plugging of nonconforming wells on any affected premises without cost to the owners or occupants of the premises and in compliance with Section D above. Proof of the provision of such service and plugging/abandonment of such wells shall be required or an escrow account shall be established therefor in an amount and form acceptable to the City Council.

(4) After USEPA and MDEQ approve the proposed Restricted Zone as an alternative to restrictive covenants on property on which no release has occurred, an applicant shall file with the City Manager a formal request to the City including, at a minimum, the following information, together with an escrow deposit as required under this section. The information can be in the form of a proposed remedial action plan (RAP), corrective action plan (CAP), or other similar document if appropriate cross-references are made for ease of reference.

a. The name, address, and phone number of the applicant, as well as each person having an interest as owner, tenant, easement holder or mortgagee in the real property which is the source or site of the contaminated groundwater, if known.

b. The street address and legal description of the real property which is a source or site of the contaminated groundwater, if known, and the nature of the applicant's relationship to that property and involvement concerning the contaminated groundwater.

c. The nature and extent of the contaminated groundwater and the contamination causing it, both in summary form in plain English, and in detail in technical terms, stating the types and concentrations of contaminants; a map or survey showing their current location; a statement of their likely or anticipated impact on groundwater and the nature of the risks presented by the use of the groundwater, as well as the likely or anticipated path of migration if not remediated or corrected and a detailed statement of any plan to remediate, correct, and/or contain the contamination.

d. A detailed map and narrative description of the proposed Restricted Zone.

e. The street addresses and general description of all affected premises.

f. The names, addresses (mailing and street), and phone numbers (if readily available) of all persons with an interest as owner, tenant, easement holder or mortgagee of all affected premises.

g. The location, current status, and usage characteristics of all existing groundwater wells within the

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proposed restricted zone.

h. A detailed statement or description of the proposed regulation or prohibition of the use of existing and future wells within the Restricted Zone needed to adequately protect the public from the potential health hazards associated with the contaminated groundwater, including a description of permissible uses of such wells, together with the written consent of the USEPA and MDEQ to such uses of groundwater.

i. A description and time schedule for any actions the Applicant will take to implement any remediation plan, mitigate the adverse impact of the Restricted Zone (e.g., providing substitute water service), and to properly close and abandon any existing wells subject to the use prohibition within the proposed Restricted Zone.

j. A copy of the information submitted to the USEPA and MDEQ concerning the proposed Restricted Zone, along with a written statement from an USEPA and MDEQ representative with approval authority stating that the proposed Restricted Zone and use regulations have received USEPA and MDEQ approval as part of the response actions for the groundwater contamination. The USEPA and MDEQ approval may be contingent upon the City's establishment of the proposed Restricted Zone pursuant to this Article.

k. Copies of the notice provided to the Van Buren/Cass County Public Health Department concerning the New Restricted Zones established hereunder, as well as Restricted Zones that may be created in the future. This documentation, accompanying regulations, and the health department's written acknowledgement that it will not issue permits for prohibited wells within the New Restricted Zone(s) must be provided.

l. Copies of the notices provided to the owners of affected property together with a sworn statement that such notices were provided to all such owners with the details of the manner in which such notices were provided. At minimum, the notice must:

1. Identify the sender of the notice including the sender's name, address, contact person and telephone number;

2. Identify the owner of the property which is the source of the contamination or who is seeking the Restricted Zone including the owner's name and the property address;

3. State what the effects of the Restricted Zone will be, i.e. how use of the groundwater will be restricted;

4. Who can be contacted at the City, the USEPA, MDEQ and the applicant for more information;

1. A description of the groundwater plume and a brief description of the nature of the contamination; and

2. Any other information reasonably requested by the City Manager.

m. A statement that the applicant agrees to pay all costs incurred by the City in the establishment of the proposed Restricted Zone, including without limitation, reimbursement for staff time, the fees of environmental consultants and legal counsel, the cost of publication, any per diem or other amounts paid to public officials for attending any special meetings, etc. This statement shall also consent to the placement of a lien on the applicant's premises of the amounts due under this section if same, are not timely paid (i.e.

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paid within 30 days of the issuance by the City of an invoice therefor). That statement shall be in the form acceptable to the City's legal counsel and shall be in a form so as to be recordable in the records of the county register of deeds.

(5) Along with the application, the applicant shall pay a deposit for escrow of the amount estimated by the City Manager to be the costs incurred by the City for the establishment of the proposed Restricted Zone as described in 4 above. The deposit shall not bear interest and the City may use funds from it to pay the costs as they are incurred, requiring the applicant to maintain a minimum balance of \$5000.00 in the escrow account. Any failure by the applicant to maintain the escrow as required by this provision may result in the City's discontinuance of its processing of the request to establish a Restricted Zone and can result in the filing of a lien against the premises of the applicant.

(6) Once the City Manager or his or her designee is satisfied that the application is complete, the City Manager shall place the matter on the City Council's agenda to set a time, date, and place for a public hearing on the application.

(7) After the City Council sets the public hearing, the applicant shall cause a written notice of the hearing to be sent by first class mail to all persons having an interest as owner, tenant, easement holder, or mortgagee in any of the affected premises. The notice shall include a brief statement regarding the application fairly designed to inform the recipients of its main features and potential impact on the recipients in general. The notice shall be mailed at least ten days prior to the hearing. The notice of hearing shall also be published in a newspaper of general circulation in the City at least seven days before the hearing. The notice shall also be mailed to the USEP A and MDEQ representative who gave the approval of the proposed Restricted Zone and use regulations and the USEP A and MDEQ district supervisor for the USEP A and MDEQ regulatory program with jurisdiction over the contaminated site. A copy of the notice, an affidavit of publication and an affidavit of mailing shall be filed with the City Manager before the hearing.

(8) Upon the establishment of a new Restricted Zone, the City Clerk shall publish notice of the amendment to this article in the manner required by law for ordinance amendments. The applicant shall give notice to the owners and occupants of all property on which wells are located of the need to close and abandon wells under this chapter as amended.

J. SAVINGS PROVISION.

If any article, section, subsection, sentence, clause, phrase or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of remaining portions of the Ordinance, it being the intent of the City of Dowagiac that this Ordinance shall be fully severable. The City of Dowagiac shall promptly notify the USEP A and MDEQ upon the occurrence of any event described in this section.

K. CONFLICT WITH OTHER ORDINANCES.

All ordinances or parts of ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

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L. EFFECTIVE DATE.

This Ordinance shall be in full force and effect ten (10) days after its publication as provided by law.

Adopted and signed this _____ day of _____, 2016.

ATTEST:

EXHIBIT A



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EXHIBIT B

**NARRATIVE DESCRIPTION OF A GROUNDWATER RESTRICTED ZONE IN THE
CITY OF DOWAGIAC, CASS COUNTY, MICHIGAN**

OCTOBER 16, 2015
(PROJECT NO. 154220)

THAT PART OF THE NORTH HALF OF SECTION 31, TOWNSHIP 5 SOUTH, RANGE 15 WEST, CITY OF DOWAGIAC, CASS COUNTY, MICHIGAN, DESCRIBED AS: BEGINNING AT THE INTERSECTION OF THE NORTH RIGHT OF WAY LINE OF PRAIRIE RONDE STREET AND THE WEST RIGHT OF WAY LINE OF KING STREET; THENCE NORTHERLY ON SAID WEST RIGHT OF WAY LINE AND ON SAID WEST RIGHT OF WAY LINE EXTENDED TO THE SOUTHEASTERLY BANK OF AN UNNAMED CREEK ALSO KNOWN AS THE KING STREET STORM WATER OUTLET; THENCE NORTHERLY ON SAID SOUTHEASTERLY BANK AND ON THE EASTERLY BANK OF SAID UN-NAMED CREEK TO THE NORTH LINE SAID SECTION 31 AND THE NORTH LINE OF THE DOWAGIAC CITY LIMITS; THENCE EASTERLY ON SAID NORTH LINE TO THE SOUTHWESTERLY TOP OF BANK OF PINE LAKE DRAIN; THENCE SOUTHEASTERLY ON SAID SOUTHWESTERLY TOP OF BANK TO THE NORTHWESTERLY TOP OF BANK OF THE RUDY ROAD DRAIN; THENCE SOUTHWESTERLY ON SAID NORTHWESTERLY TOP OF BANK TO THE NORTH RIGHT OF WAY LINE OF SAID PRAIRIE RONDE STREET; THENCE WESTERLY ON SAID NORTH RIGHT OF WAY LINE TO THE POINT OF BEGINNING.

EXHIBIT C

**[List of Restricted Zone Parcels by Parcel Identification
Number and Address]**

See Original on file with City Clerk.

Moved by: Schuur 1st reading 09 NOV 2015
Seconded by: Lucas

2nd reading 25 JAN 2016

ADOPTED on a roll call vote.

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Ayes: (6) Laylin, Burling, Dodd, Lucas, Hunt, Schuur

Nays: None (0)

Absent: None (0)

Abstain: None (0)

ADJOURNMENT

Upon motion by Councilmember Laylin and seconded by Councilmember Schuur, the Dowagiac City Council adjourned at 7:20 PM.

Donald D. Lyons, Mayor

Jane P. Wilson, City Clerk