

## DOWAGIAC CITY COUNCIL MEETING

Monday, November 9, 2015

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.

### SWEARING IN OF ELECTED OFFICIALS

Notary Public James E. Snow swore in the following public officials elected on November 3, 2015:

Jane P. Wilson, City Clerk  
Danielle Lucas, Councilmember – Ward 1  
James Dodd, Councilmember – Ward 2  
Charles Burling, Councilmember – Ward 3

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

Councilmember Dodd moved and Councilmember Burling seconded that the minutes of the October 26, 2015 meeting be approved.

APPROVED unanimously.

### COMMENTS FROM THE AUDIENCE (NON-AGENDA)

Ron Leitz, Amtrak Host, updated council on Amtrak schedules and ridership numbers.

### COMMUNICATIONS

Christmas Open House Weekend – November 13, 14, 15

Candle Light Parade – December 4

Motion by Councilmember Laylin and second by Councilmember Schuur that both events be approved.

### APPOINTMENTS

Recommended by Mayor that Councilmember Laylin be reappointed as Mayor Pro-Tem. Motion by Burling and second by Dodd.

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RESOLUTIONS

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

WHEREAS,

1. The City of Dowagiac has need for \$2,100,000 of improvements to the Wastewater Treatment Plant (WWTP) that will allow operation costs to decrease and continue to meet permit requirements, and;
2. Sister Lakes Area Utilities Authority (SLAUA) and Silver Creek Township (TOWNSHIP) are served by the WWTP and contractually will share in the capital cost increases and the operational cost savings per previous agreements, and;
3. SLAUA and TOWNSHIP authorities have developed sufficient reserves in anticipation of long-term capital needs and determined that a lump sum payment of the capital costs would serve their customers best interest, and;
4. It has been determined that a fair allocation of the capital costs will be the ten (10) year average of the flow usage from SLAUA and TOWNSHIP.

NOW, THEREFORE, BE IT RESOLVED that the City of Dowagiac, by the affirmative vote of its City Council, does hereby adopt and approve:

1. That the City Manager is authorized to execute and implement the Memorandum of Understanding with SLAUA and Silver Creek Township specifying the lump sum payment from SLAUA in the amount of \$174,297 and from Silver Creek Township in the amount of \$81,229 for capital costs associated with WWTP improvements.

ADOPTED unanimously.

2. 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 #3 for the period ending 10/25/15:

Invoices	\$350,968.16
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Payroll #3	<u>\$232,544.88</u>
Total	\$583,513.04

**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>
\$350,968.16	\$232,544.88	\$583,513.04

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. First 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 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.

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*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.

### 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

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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 USEP A 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 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

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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.

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.

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### 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 USEPA 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 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

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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 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

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Zone, along with a written statement from an USEP A and MDEQ representative with approval authority stating that the proposed Restricted Zone and use regulations have received USEP A and MDEQ approval as part of the response actions for the groundwater contamination. The USEP A 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 USEP A, MDEQ and the applicant for more information;
5. A description of the groundwater plume and a brief description of the nature of the contamination; and
6. 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. 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

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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.

## 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 \_\_\_\_\_, 2015.

ATTEST:

\_\_\_\_\_

## EXHIBIT A



## 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

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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 1<sup>st</sup> reading 09 NOV 2015  
Seconded by: Lucas

ADJOURNMENT

Upon motion by Councilmember Laylin and seconded by Councilmember Schuur, the Dowagiac City Council adjourned at 7:21 PM.

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Donald D. Lyons, Mayor

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Rozanne H. Scherr, Deputy City Clerk