

ORDINANCE NO. 4620

AN ORDINANCE OF THE CITY OF HASTINGS, NEBRASKA, TO CREATE SECTION 34-220 “WPO – WELLHEAD PROTECTION OVERLAY DISTRICT;” TO REPEAL ANY ORDINANCE IN CONFLICT HEREWITH; AND TO PROVIDE WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF HASTINGS, NEBRASKA:

SECTION 1. That Hastings City Code Section 34-220 of the Official City Code be created to read as follows:

Section 34-220 WPO Wellhead Protection Overlay District

(1) Intent: The intent of this district is to overlay any of the primary zoning districts herein established in order to assist the City of Hastings, which maintains and operates public water wells in the city and county. In addition, the district assists water production districts in maintaining and operating public or semi-public water wells in the county that serve rural areas and municipalities within Adams County, as well as neighboring counties. In order to provide protection for such wells, the regulation of land uses having the potential for contamination of the groundwater source(s) is necessary near and adjacent to said wells. The intent of this district is also to protect existing and future agricultural uses which are in balance with the natural environment, which are compatible with existing agricultural uses and which will not present unacceptable potential for contamination of the public water supply system wells.

(2) Prerequisite Requirements for Application of this overlay district: Prior to the application of this overlay district to any lands in the City of Hastings and that portion of its extraterritorial jurisdiction where zoning powers and duties are exercised, the City of Hastings shall identify such lands, and City Council shall approve such lands, either through an Ordinance amending Section 32-616.01 of the Official City Code or by adopting a map delineating the wellhead protection area. Prior to making such application and approval of any application of this district to any lands within the county by the City Council, a municipality, other than the City of Hastings or any rural water district making such application shall have first complied with all other requirements of the Wellhead Protection Act (Neb. Rev. Stat. 46-1501 through 46-1509). These requirements include, but are not limited to the following:

(a) Delineation of the wellhead protection area based upon a 20-year time of travel recharge zone, as defined by the Nebraska Department of Environment and

Energy,

(b) Approval of such wellhead protection area by the Nebraska Department of Environment and Energy,

(c) Completion and mapping of an inventory of potential contamination sources within the wellhead protection area(s), including identification of abandoned wells,

(d) Formulation of emergency/contingency/long-range plans in the event of disruption of supply of water from the wells in the wellhead protection area(s),

(e) Formulation, adoption and enforcement of land use control regulations for those portions of the wellhead area within the corporate limits and zoning jurisdiction area of the municipality which are appropriated to minimize the potential for contamination to the water supply of the municipality,

(f) Formulation of and ability to implement an on-going public involvement / education program to permit public comment in the establishment of the Wellhead Protection Program and to provide information to the public regarding the program and voluntary cooperation with said program,

(g) Development of a program to install and maintain Wellhead Protection Area signs on roadways around the wellhead protection area(s),

(h) The municipality, other than the City of Hastings, or any other public water supply system shall execute an inter-local agreement with the City of Hastings for the administration and enforcement of the regulations of the lands within this wellhead protection overlay district. In such agreement, the governmental entity agrees to pay any administrative fees to the City which the parties involved agree, agree to provide legal counsel to address any legal question or legal challenge to the wellhead protection overlay district regulations, and agree to hold the city harmless from any liability related to the requirements of this district, except for proper administration and enforcement of the requirements of this district by the city, together with other terms and conditions which are acceptable to the parties involved in such agreement.

(3) Limitation on Application of This overlay district: This district may be applied only to wellhead protection areas officially approved by the Nebraska Department of Environment and Energy. In the event the boundaries of any such officially approved Wellhead Protection Areas do not follow easily identifiable boundaries such as roads, rivers, creeks, section, quarter section or quarter-quarter section lines, the boundaries of such area shall be expanded to the nearest such lines to avoid confusion and added administrative costs associated with in-the-field determination of such boundaries. In the event that the City of Hastings extends that portion of its extraterritorial jurisdiction where zoning powers and duties are exercised to any tracts which were previously under the jurisdiction of Adams County, and which are designated in Section 32-616.01, or by

a map delineating the wellhead protection area, this provision shall apply to such tracts beginning on the effective date of the jurisdictional expansion without further action by either the city or the county.

(4) Prohibited Uses and Structures: All other uses and structures which are not permitted in the underlying district either as a permitted use, accessory use or conditional use is prohibited. These shall include both new and expanding uses. Furthermore, the following uses and/or structures shall be specifically prohibited:

- (a) confined or intensive animal feeding operations,
- (b) all waste handling facilities,
- (c) landfills and refuse recycling centers,
- (d) all commercial or industrial uses that utilize or generate any materials determined by the United States Department of Environmental Protection, as hazardous materials, which store petroleum products or anhydrous ammonia or other fertilizers in excess of 50 gallons, shall be prohibited,
- (e) domestic, irrigation and any other water wells closer than 1,000 feet to the water wells being protected in this Wellhead Protection Overlay District,
- (f) sanitary landfills,
- (g) storage of hazardous waste.

(5) Wellhead Area Protection Requirements: The following restrictions shall apply to all uses within any land areas on which this wellhead protection overlay district is applied:

(a) Storage of gasoline, diesel fuel, fuel oil or other similar fuels, whether on a farm or ranch or in association with any other use, shall comply with the rules and regulations of Title 126 (Rules and Regulations Pertaining to Management of Waste), Title 159 (Underground Fuel Storage Tanks), and the National Fire Protection Association Code 30, administered by the Nebraska Department of Environment and Energy or other responsible agency or department. In addition, storage of gasoline, diesel fuel, fuel oil or other similar fuels in excess of one hundred forty (140) gallons within two hundred (200) feet of any well, whether on a farm or ranch or in association with another land use and whether or not such fuels are stored on, above or below ground, shall include an impervious liner or shall include double wall construction.

(b) Fuel storage associated with any irrigation engine, including any portable fuel storage tanks shall be equipped with an impervious containment area, or double wall construction, in accordance with Chapter 57 of the International Fire Code, 2018 edition, the National Fire Protection Association Code 30, and with Title 126 (Rules and

Regulations Pertaining to the Management of Waste), administered by the Nebraska Department of Environment and Energy, in the event of a release.

(c) No new fuel storage in excess of one hundred forty (140) gallons shall be permitted within one thousand (1,000) feet of any municipal well.

(d) Bulk storage of fertilizers, herbicides, pesticides and other materials other than fuels, determined by the United States Environmental Protection Agency to be hazardous materials, shall be prohibited, except when a conditional use for such use is authorized and such authorization includes a condition that all such uses shall comply with the applicable rules and regulations of Title 118 (Groundwater Quality Standards and Use Classifications), Title 119 (National Pollutant Discharge Elimination System Permits), Title 126 (Rules and Regulations Pertaining to the Management of Waste), Title 128 (Nebraska Hazardous Waste Regulations), Title 159 (Rules and Regulations Pertaining to Underground Fuel Storage Tanks) and Title 198 (Rules and Regulations Pertaining to Agricultural Chemical Containment), administered by the Nebraska Department of Environment and Energy and other agencies.

(e) Any industrial or commercial process that includes more than 1,000 lbs. of materials, determined by the United States Environmental Protection Agency to be hazardous materials, shall be prohibited, except when a conditional use for such use is authorized and such authorization includes a condition that all such uses shall comply with the applicable rules and regulations of Title 118 (Groundwater Quality Standards and Use Classifications), Title 119 (National Pollutant Discharge Elimination System Permits), Title 126 (Rules and Regulations Pertaining to the Management of Waste), Title 128 (Nebraska Hazardous Waste Regulations), Title 159 (Underground Fuel Storage Tanks) and Title 198 (Rules and Regulations Pertaining to Agricultural Chemical Containment), administered by the Nebraska Department of Environment and Energy and other agencies.

(f) Prior to the development of any permitted land use, any abandoned well which has not been closed and sealed in accordance with the requirements of Title 178 Chapter 12 (Water Well Standards) and the requirements of the applicable Natural Resource District(s) guidelines shall be so closed and sealed.

(g) No septic tank, tile field or other on-site wastewater treatment system, associated with any type of land use, shall be located within one thousand (1,000) feet of any municipal well protected under this district.

(h) One septic tank and tile field or other on-site wastewater treatment system may be established on an undeveloped lot of record, as may be defined in this Code, located more than one thousand (1,000) feet from any municipal well protected under this district and existing as of the effective date of application of this district and the entirety of said lot of record lies within the land area on which this district is applied and when a public sewer is not available within 300 feet or as otherwise defined in this Code and provided such tank, tile field or other system complies with the requirements

of Title 124 (Rules and Regulations Pertaining to On-Site Wastewater Treatment) of the Nebraska Department of Environment and Energy.

(i) If a new lot is created after the effective date of application of this district and the entirety of said lot lies within the land area on which this district is applied and a public sewer is not available within 300 feet or as may otherwise be defined in this Code to serve such lot of record, one septic tank and tile field or other on-site wastewater treatment system may be established, provided such tank, tile field or other system complies with the requirements of Title 124 (Rules and Regulations Pertaining to On-Site Wastewater Treatment) of the Nebraska Department of Environment and Energy and is located more than one thousand (1,000) feet from any municipal well protected under this district. However, in no event shall more than four (4) septic tanks, tile fields or other on-site wastewater treatment systems be established or located in any quarter/quarter (40 acre) parcel of land within this overlay district.

(j) Domestic, irrigation, and any other water wells, other than municipal water wells shall be prohibited within a wellhead protection area on which this district has been applied, provided that:

- (1) Any existing irrigation well may be replaced with the same capacity well if said existing well no longer functions, or
- (2) A new irrigation well may be established on a non-irrigated parcel of land eighty (80) acres in area or larger provided such well shall not be located closer than one thousand (1,000) feet to any well protected under this district, or
- (3) If an undeveloped lot of record, as defined in f this Code, exists as of the effective date of application of this district and the entirety of said lot of record lies within the land area on which this district is applied, one (1) four (4) inch casing diameter domestic well may be established, provided such well shall be constructed in accordance with the rules and requirements of Title 178 (Water Well Standards) and said well or wells are not located closer than one thousand (1,000) feet to any well protected under this district, or
- (4) If a new lot is created after the effective date of application of this district and the entirety of said lot lies within the land area on which this district is applied one (1) four (4) inch casing diameter domestic well may be established, provided such well shall not be located closer than one thousand (1,000) feet to any well protected under this district and shall be constructed in accordance with the rules and requirements of Title 178 (Water Well Standards). However, in no event shall more than four (4) four (4) inch casing diameter domestic wells be established or located in any quarter/quarter (40 acre) parcel of land within this overlay district.

(k) Any application of agricultural crop fertilizers, livestock manure, pesticides, or herbicides to the land or crops through an irrigation system (chemigation)

shall comply with the rules and requirements of Title 195 (Rules and Regulations Pertaining to Chemigation). Further, when such fertilizers and/or livestock manure is applied, the amount of such fertilizers and/or livestock manure shall be at agronomic rates. Written verification of amounts of such fertilizers and/or livestock manure shall be provided upon request to the city by the owner of any land within this district.

(l) If any land area contained within a Wellhead Protection Overlay District is also part of a special protection area or ground water management area established under the Groundwater Management Protection Act, all uses within such areas, including agricultural uses, shall comply with the action plan and best management practices established for such areas by the applicable Natural Resource District(s).

(m) Any land use or any particular potential pollution hazard for which a separation distance is provided in Title 179 (Rules and Regulation Pertaining to Siting, Design and Construction of Public Water Systems) of the Nebraska Department of Health and Human Services shall be located a sufficient distance from any municipal water well so that the distance from the municipal water well to the potential source of contamination described in Title 179 shall exceed the separation distances provided for in Title 179.

(6) Minimum Lot Area Requirements: The minimum lot area for any lot in this overlay district shall be as set forth in the primary zoning district(s) on which this district is overlain.

(7) Minimum Lot Width and Frontage Requirements: The minimum lot width and frontage for any lot in this overlay district shall be as set forth in the primary zoning district(s) on which this district is overlain.

(8) Minimum Building Setback Requirements: The minimum setback for all regulated structures and buildings in this overlay district shall be as set forth in the primary district(s) on which this district is overlain, provided that the minimum setback requirements from protected wells shall also be complied with.

(9) Maximum Height: The maximum height of any building or structure in this overlay district shall be as set forth in the primary zoning district(s) on which this district is overlain.

SECTION 2. That any ordinance passed and approved prior to the passage of this ordinance, and in conflict with its provision, is hereby repealed.

SECTION 3. This ordinance shall take effect and be in full force from and after its passage, approval and publication in pamphlet form.

PASSED AND APPROVED by the Mayor and City Council of the City of Hastings, Nebraska, this 10th day of February, 2020.

Mayor

ATTEST:

City Clerk

(S E A L)

APPROVED AS TO FORM

City Attorney