

CHAPTER 476

GROUNDWATER AND WELLHEAD PROTECTION OVERLAY DISTRICT WITHIN THE AREA OF EXTRATERRITORIAL ZONING JURISDICTION OF THE CITY

[History: Ord 2012-12]

76.01 TITLE.

This Chapter shall be known, cited and referred to as the Richland Center Extraterritorial Zone Wellhead Protection Ordinance (hereinafter alternatively referred to as the "WHO Ordinance".)

476.02 PURPOSE, AUTHORITY AND APPLICATION.

(1) Finding of Fact and Statement of Purpose. Residents and businesses in the City of Richland Center depend exclusively on groundwater for a safe drinking water supply. Certain land use practices and activities can seriously threaten or degrade groundwater quality. The purpose of this Chapter is to institute land use regulations and restrictions to protect the City's municipal water supply and well fields, and to promote the health, safety and general welfare of the residents of the City of Richland Center.

(2) Statutory Authority. Statutory authority of the City to enact these regulations was established by the Wisconsin Legislature in sec. 62.23(7), Wis. Stats. Under these statutes, the City has the authority to enact this Chapter, effective in the area of extraterritorial zoning jurisdiction outside the incorporated areas of the City, to encourage the protection of groundwater resources.

(3) Application of This Chapter.

(a) In their interpretation and application, the provisions of this Chapter shall be held to be the minimum requirements for the promotion of the public health, safety, morals, and welfare.

(b) Where the conditions imposed by any provision of this Chapter are either more restrictive or less restrictive than comparable conditions imposed by any other law, ordinance, statute, resolution, or regulation of any kind, the regulations which are more restrictive, or which impose higher standards or requirements shall prevail.

(c) No structure shall be erected, converted, enlarged, reconstructed or altered, and no structure or land shall be used for any purpose nor in any manner which is not in conformity with the provisions of this Chapter.

(4) Geographic Application. The regulations specified in this Chapter shall apply within the area of extraterritorial zoning jurisdiction of the City of Richland Center which lies outside the corporate limits of said City.

476.03 DECLARATION OF PUBLIC NUISANCE.

Any violation of this Chapter is found to constitute a threat to the water supply of the City of Richland Center and is hereby declared to be a public nuisance. The City shall have the option of proceeding against any such public nuisance by action for abatement thereof in addition to or in lieu of other enforcement procedures or penalties.

476.04 DEFINITIONS. In this Chapter the following words and phrases shall have the meanings set forth below:

(1) Aquifer. "Aquifer" means a saturated, permeable, geologic formation that contains, and will yield, significant quantities of water.

(2) Existing facilities. "Existing facilities" means current facilities, practices and activities which may cause or threaten to cause environmental pollution within that portion of the City's wellhead protection area that lies outside the corporate limits of the City but within the area of extraterritorial zoning jurisdiction of the City of Richland Center. Existing facilities include but are not limited to the type listed in Appendix B to the City of Richland Center Wellhead Protection Plan, Wells #6, #7 and #8, September, 2009, which is hereby incorporated herein.

(3) Groundwater Protection Overlay District. "Groundwater Protection Overlay District" means the Wellhead Protection Areas for the municipal wells of the City of Richland Center which lie within the area of extraterritorial zoning jurisdiction of the City of Richland Center. Existing facilities include but are not limited to the type listed in Appendix B to the City of Richland Center Wellhead Protection Plan, Wells #6, #7 and #8, September, 2009, which is hereby incorporated herein, and in any future amendments of said Plan which may from time to time be approved by the Common Council. Maps excerpted from said Plan are attached hereto as Exhibits 1, 2 and 3.

(4) Recharge Area. "Recharge area" means the land area which contributes water to a well by infiltration of water into the subsurface and movement with groundwater toward the well. This area extends beyond the corporate limits of the City of Richland Center.

(5) Utilities Commission means the City of Richland Center Utilities Commission.

(6) Well. "Well" means a well operated by the City of Richland Center Water Utility used to provide water to the municipal water system of said City.

(7) Well Field. "Well field" means a piece of land used primarily for the purpose of supplying a location for construction of a well to supply a municipal water system.

476.05 REGULATIONS APPLICABLE IN A GROUNDWATER PROTECTION OVERLAY DISTRICT.

(1) Minimum Separation from Contamination Sources. Certain uses, whether permitted or conditional uses, which are potential sources of contamination shall be adequately separated from any

City well by the following Minimum Separation Distances unless a hydrogeologic investigation indicates lesser separation distances would provide adequate protection of a well from contamination or department of Natural Resources approved treatment is installed to address the potential contamination concerns. The establishment of a minimum separation distance for a given use by this paragraph shall not be deemed to permit a prohibited use. The Minimum Separation Distances shall be:

(a) Ten feet (10') between a well and an emergency or standby power system that is operated by the same facility which operates the well and that has a double wall above ground storage tank with continuous electronic interstitial leakage monitoring. These facilities shall meet the installation requirements of s. SPS 310.260 and receive written approval from the department of safety and professional services or its designated Local Program Operator under s. SPS 310.110.

(b) Fifty feet (50') between a well and a storm sewer main or a sanitary sewer main where the sanitary sewer main is constructed of water main class materials and joints. Gravity sanitary sewers shall be successfully air pressure tested in place. The air pressure test shall meet or exceed the requirements of the 4 psi low pressure air test for plastic gravity sewer lines found in the latest edition of Standard Specifications for Sewer & Water Construction in Wisconsin. Force mains shall be successfully pressure tested with water to meet the AWWA C600 pressure and leakage testing requirements for one hour at 125% of the pump shut-off head.

(c) Two hundred feet (200') between a well and:

1. Any sanitary sewer main not constructed of water main class materials, sanitary sewer manhole or lift station.
2. Any one or 2 family residential heating fuel oil underground storage tank or above ground storage tank or POETS treatment tank or holding tank component and associated piping.

(d) Three hundred feet (300') between a well and any farm underground storage tank system or other underground storage tank system with double wall and with electronic interstitial monitoring for the system, which means the tank and any piping connected to it. These installations shall meet the most restrictive installation requirements of s. SPS 310.260 and receive written approval from the department of safety and professional services or its designated Local Program Operator under s. SPS 310.110. These requirements apply to tanks containing gasoline, diesel, bio-diesel, ethanol, other alternative fuel, fuel oil, petroleum product, motor fuel, burner fuel, lubricant, waste oil, or hazardous substances.

(e) Three hundred feet (300') between a well and:

1. Any farm above ground storage tank with double wall, or single wall tank with other secondary containment and under a canopy;
2. Any other above ground storage tank system with double wall, or single wall tank with secondary containment and under a canopy and with electronic interstitial monitoring for a double wall tank or electronic leakage monitoring for a single wall tank secondary containment structure.

These installations shall meet the most restrictive installation requirements of s. SPS 310.260 and receive written approval from the department of safety and professional services or its designated Local Program Operator under s. SPS 310.110. These requirements apply to tanks containing gasoline, diesel, bio-diesel,

ethanol, other alternative fuel, fuel oil, petroleum product, motor fuel, burner fuel, lubricant, waste oil, or hazardous substances.

(f) Four hundred feet (400') between a well and:

1. A POETS dispersal component with a design capacity of less than 12,000 gallons per day
2. A cemetery
3. A storm water retention or detention pond.

(g) Six hundred feet (600') between a well and:

1. Any farm underground storage tank system or other underground storage tank system with double wall and with electronic interstitial monitoring for the system, which means the tank and any piping connected to it;
2. Any farm above ground storage tank with double wall, or single wall tank with other secondary containment and under a canopy or other above ground storage tank system with double wall, or single wall tank with secondary containment and under a canopy and with electronic interstitial monitoring for a double wall tank or electronic leakage monitoring for a single wall tank secondary containment structure.

These installations shall meet the standard double wall tank or single wall tank secondary containment installation requirements of s. SPS 310.260 and receive written approval from the department of safety and professional services or its designated Local Program Operator under s. SPS 310.110. These requirements apply to tanks containing gasoline, diesel, bio-diesel, ethanol, other alternative fuel, fuel oil, petroleum product, motor fuel, burner fuel, lubricant, waste oil, or hazardous substances.

(h) One thousand feet (1,000') between a well and:

1. Land application of municipal, commercial, or industrial waste;
2. The boundaries of a land spreading facility for spreading of petroleum-contaminated soil regulated under ch. NR 718 while that facility is in operation;
3. Agricultural, industrial, commercial or municipal waste water treatment plant treatment units, lagoons, or storage structures;
4. Manure stacks or storage structures; or POETS dispersal component with a design capacity of 12,000 gallons per day or more.

(I) Twelve hundred feet (1,200) between a well and:

1. Any solid waste storage, transportation, transfer, incineration, air curtain destructor, processing, wood burning, one time disposal or small demolition facility;
2. Any sanitary landfill;

3. Any property with residual groundwater contamination that exceeds ch. NR 140 enforcement standards;

4. Any coal storage area;

5. Any salt or deicing material storage area;

6. Any single wall farm underground storage tank or single wall farm above ground storage tank or other single wall underground storage tank or above ground storage tank that has or has not received written approval from the department of safety and professional services or its designated Local Program Operator under s. SPS 310.110 for a single wall tank installation. These requirements apply to tanks containing gasoline, diesel, bio-diesel, ethanol, other alternative fuel, fuel oil, petroleum product, motor fuel, burner fuel, lubricant, waste oil, or hazardous substances; and bulk pesticide or fertilizer handling or storage facilities.

(2) Permitted uses in the Groundwater Protection Overlay District. The following uses are permitted uses within the Wellhead Protection Area. Uses not listed shall be considered prohibited uses:

(a) Parks, provided there is no on-site waste disposal or fuel storage tank facilities associated with this use.

(b) Playgrounds.

(c) Wildlife areas.

(d) Non-motorized trails, such as bike, skiing, nature and fitness trails.

(e) Residential facilities which are municipally sewered and which have no flammable or combustible liquid storage tanks and no underground storage tanks (USTs) on the premises.

(3) Prohibited uses in the Groundwater Protection Overlay District. Certain uses are prohibited based upon high risk that activities associated with the fact that these uses routinely involve the storage, use and/or handling of potential pollutants which would cause groundwater pollution. Accordingly, the following uses are prohibited in a **Groundwater Protection Overlay District**:

(a) Any use for which a minimum separation is established by sec. 476.05(1) which is carried on within the minimum separation distance set forth in sec. 476.05(1).

(b) Animal confinement facility, except a veterinary clinic/hospital

(c) Asphalt product manufacturing

(d) Bus or truck terminals

(e) Cemetery

(f) Cheese factory, dairy or dairy product processing plant

(g) Concrete products manufacturing

(h) Dry cleaning businesses

(I) Electronic circuit manufacturing

- (j) Electroplating facility
- (k) Exterminating businesses
- (l) Fertilizer manufacturing or storage facility
- (m) Foundry
- (n) Storage of hazardous and/or toxic materials denominated as such by the US Environmental Protection Agency or the State of Wisconsin
- (o) Any facility dealing with, handling or having on its premises hazardous and/or toxic waste
- (p) Junk yards or auto salvage yards
- (q) Landfill or waste disposal facility
- (r) Metal reduction or refinement
- (s) Mining or quarrying, including sand or gravel extraction, except such activity when carried on as part of construction for a permitted or approved conditional use
- (t) Pesticide manufacturing or storage facility
- (u) Paint and/or coating manufacturing or storage, except that storage of 100 gallons or less within a building and in approved containers is allowed
- (v) Plastic or plastic product manufacturing
- (w) Printing or duplicating businesses
- (x) Pulp or paper processing or manufacturing
- (y) Any facility dealing with, handling or having on its premises radioactive materials or waste
- (z) Recycling facility
- (aa) Highway salt storage unless enclosed in a roofed structure
- (bb) Underground storage tanks of any size except those described in sec. 476.05, subject to the conditions set forth therein
- (cc) Vehicle repair establishment, including body repair and/or vehicle painting
- (dd) Vehicle fueling facility or gas station
- (ee) Vehicle washing facility
- (ff) Wastewater spray facility
- (gg) Wastewater treatment facility

(4) Conditional Uses in the in the Groundwater Protection Overlay District. Any use in the Groundwater Protection Overlay District which is not a permitted use and which is not a prohibited use shall be a conditional use and shall require a conditional use permit. In the case of every application for a conditional use permit, the determination whether to grant a conditional use permit shall be made after consideration of the nature of the proposed use and its potential for threatening or degrading groundwater quality.

(5) District Boundaries; Mapping. The location and boundaries Groundwater Protection Overlay District established by this Chapter are as set forth in the City of Richland Center Wellhead Protection Plan, Wells #6, #7 and #8, September, 2009, which is incorporated herein by reference, as the same may be from time to time amended.

476.06 REQUIREMENTS FOR EXISTING FACILITIES AND LAND USES.

- (1) Existing facilities shall provide copies of all Federal, State and local facility operation approvals or certificates and ongoing environmental monitoring results to the City of Richland Center.
- (2) Existing facilities shall provide additional environmental or safety monitoring as deemed necessary by the City of Richland Center Utilities Commission, specifically including the production of any and all environmental statements detailing the extent of chemical use and storage on the property.
- (3) Existing facilities shall replace equipment or expand in a manner that improves the existing environmental and safety technologies already in existence.
- (4) Existing facilities shall have the responsibility of devising and filing with the Richland Center Utilities Commission a contingency plan satisfactory to the Utilities Commission for the immediate notification of the appropriate City of Richland Center officers in the event of an emergency.
- (5) All uses which involve animal waste including land spreading or animal waste shall be carried on in conformity with all regulations set forth in ACP 50, NARCS 590 and NR 151 of the Wisconsin Administrative code, as the same may from time to time be amended.

476.07 PERMIT REQUIREMENT & PROCEDURES.

(1) All uses in the Groundwater Protection Overlay District shall require a zoning or land use permit from the City of Richland Center. A favorable recommendation on an application for a land use permit application by the Richland Center Utilities Commission shall not take the place of any required zoning or land use permit under Chapter 475, the Extraterritorial Zoning Ordinance, nor shall it constitute a determination that the proposed use is in conformity with the provisions of Chapter 475. The applicant must secure any permit required under Chapter 475 as well as a permit under this Chapter if the property is in the Groundwater Protection Overlay District. The City may combine the Chapter 475 permit and the Chapter 476 permit for administrative purposes.

(2) Review and Recommendation on Permit Applications by the Utilities Commission.

(a) All applications for building, zoning or land use permits including conditional use permits within the shall, prior to issuance of a land use permit by the Extraterritorial Zoning Administrator, be referred to the City of Richland Center Utilities Commission. The Utilities Commission shall review all requests for approval of permits for land uses in the Groundwater Protection Overlay District for the purpose of assessing the proposed use in light of the requirements and regulations of this Chapter and shall make a determination and recommendation as to the permissibility of the requested permit under this Chapter. The Utilities Commission shall then make and forward a recommendation to the Extraterritorial Zoning Administrator as to the application,

(b) All determinations and recommendations as to permit applications by the City of Richland Center Utilities Commission within sixty (60) days of any request for permit approval, provided however, that this sixty (60) day period of limitation may be extended by the Utilities Commission for

"good cause", as determined in the sole and absolute discretion of the City of Richland Center Utilities Commission.

(c) In reviewing all requests for approval, the City of Richland Center Utilities Commission shall consider all of the following factors:

1. The City's responsibility, as a public water supplier, to protect and preserve the health, safety and welfare of its citizens.
2. The degree to which the proposed land use practice, activity or facility may seriously threaten or degrade groundwater quality in the City of Richland Center or the City's recharge area.
3. The economic hardship which may be faced by the landowner if the application is denied.
4. The availability of alternative options to the applicant, and the cost, effect and extent of availability of such alternative options.
5. The proximity of the applicant's property to other potential sources of contamination.
6. The then-existing condition of the City's groundwater public water wells and well fields, and the vulnerability to further contamination.
7. The direction of flow of groundwater and other factors in the area of the applicant's property which may affect the speed of the groundwater flow, including topography, depth of soil, extent of aquifer, depth to water table and location of private wells.
8. Any other hydro geological data or information which is available from any public or private agency or organization.
9. The potential benefit, both economic and social, from the approval of the applicant's request for a permit.

(d) Any determination and recommendation by the Utility Commission which exempts the property from the requirements of this Chapter granted may be made subject to conditions and may include environmental and/or safety monitoring which indicates whether the facility may be emitting any releases or harmful contaminants to the surrounding environment. The facility will be held financially responsible for all environmental cleanup costs. The City of Richland Center Utilities Commission may recommend to the City Council that a bond be posted for future monitoring and cleanup costs if deemed necessary at the time of granting an exemption.

(e) The applicant shall be solely and exclusively responsible for any and all costs associated with the application, including all of the following:

1. The cost of an environmental impact study if so required by the City of Richland Center or its designee.
2. The cost of groundwater monitoring or groundwater wells if required by the City of Richland Center or its designee.

3. The costs of an appraisal for the property or other property evaluation expense if required by the City of Richland Center or its designee.

4. The costs of City's employee's time associated in any way with the application based on the hourly rate paid to the employee multiplied by a factor, determined by the City, representing the City's costs for expenses, benefits, insurance, sick leave, holidays, overtime, vacation and other similar benefits.

5. The cost of any City equipment used in relation to the application.

6. The cost of any mileage reimbursed to City employees in relation to the application.

(f) Upon receipt and consideration of the recommendation of the Utilities Commission, the Zoning Administrator shall take the following alternative actions:

1. If the Utilities Commission and the Zoning Administrator recommend approval of the application, the Zoning Administrator shall refer the matter to the City Council, together with the recommendation of the Utilities Commission and his/her own recommendation. The City Council shall then decide whether to direct issuance of the requested building or zoning permit(s).

2. If the Utilities Commission and the Zoning Administrator do not recommend approval of the application, the Zoning Administrator shall refer the matter to the Joint Extraterritorial Zoning Committee, who shall review the application and make a recommendation to the City Council. Thereupon, the Zoning Administrator shall refer the matter to the City Council, together with the recommendation of the Utilities Commission, the recommendation of the Zoning Administrator and the recommendation of the Joint Extraterritorial Zoning Committee. The City Council shall then decide whether to direct issuance of the requested building or zoning permit(s).

476.08 APPEALS FROM ACTIONS OF THE ZONING ADMINISTRATOR OR CITY COUNCIL. The Board of Zoning Appeals of the City of Richland Center created and existing under section 475.05(3) of the Code of Ordinances shall have jurisdiction over appeals from any action of the Zoning Administrator or the City Council under this Chapter. The procedure of Board of Zoning Appeals on matters under this Chapter shall be the same as is set forth in sec. 475.05 of the Code of Ordinances.

476.09 ENFORCEMENT, PENALTIES AND OTHER REMEDIES.

(1) Violations. It shall be unlawful to construct or use any structure, land or water in violation of this Chapter or in violation of a permit issued under this Chapter. This ordinance shall be enforced by the City Utilities Commission acting through its designated employees.

(2) Penalties and Other Remedies.

(a) Forfeiture. Any person, partnership, corporation, limited liability company, voluntary association or other legal entity who shall violate or fail or refuse to comply with any section of this Chapter may be prosecuted for such violation and shall, upon conviction, forfeit to the City of Richland Center not less than \$100.00 nor more than \$1000.00, plus all applicable costs, fees and surcharges

imposed under Ch. 814 Wis. Stats., and in the event such forfeiture, costs, fees and surcharges are not paid, such person, any partner of such partnership, or any officer, director or managing member of any corporation or limited liability company or any officer of such voluntary association may, upon order of the Circuit Court, be imprisoned in the Richland County jail until such forfeiture, costs and assessment are paid, but not to exceed 90 days, or may be subject to any other sanctions imposed by the Court for such failure to pay. Each day that a violation is maintained or permitted to exist shall constitute a separate violation.

(b) Remediation Expenses. In addition to any forfeiture or other remedy, in the event any person, corporation or other legal entity causes the release of any contaminants which endanger the Groundwater Protection Overlay District, such person, corporation or other legal entity causing said release shall immediately cease and desist, and shall provide clean-up and remediation of the release satisfactory to the City of Richland Center as provided herein.

1. The person, corporation or other legal entity which causes the release of any contaminants which endanger the Groundwater Protection Overlay District shall be responsible for all costs of cleanup and remediation, including but not limited to the cost of City employees for time expended thereon, the cost of per hour of City equipment used thereon and the cost to the City of any consultants or outside contractors incurred in relation to the release and remediation thereof at the amount invoiced to the City therefor plus administrative costs for oversight, review and documentation, specifically including all of the following:

a. The cost of City employees' time associated in any way with the clean-up, based on the time expended in relation to the matter at the hourly rate paid to the employee multiplied by a factor determined by the City representing the actual cost per hour to the City for the pay of any full or part time employee or official plus all benefits, insurance, sick leave, holidays, overtime, vacation, and similar benefits.

b. The cost per hour of City equipment employed in the clean-up, based upon the City's schedule of rates for equipment usage.

c. The cost of any mileage reimbursed to City employees attributed to the clean-up.

d. The cost to the City of any outside consultants or outside contractors incurred in relation to the release and/or remediation thereof at the amount invoiced therefor to the City plus administrative costs

e. Following any such discharge, the City may require additional test monitoring or other requirements as outlined in Sections 476.06 and 476.07 herein, the costs of which shall also be borne by the person or entity causing the release.

(c) Other Remedies. In addition to or as an alternative to the imposition of a forfeiture or other procedures under this Chapter, the City may, in circumstances deemed appropriate by the City, proceed by court action against any violation or violator of this Chapter for injunction, abatement of a public nuisance or other remedy available to the City.

(d) Remedies Not Exclusive. A proceeding seeking other remedies shall not be deemed waived by the City by the imposition of a forfeiture for the same violation, nor shall imposition of a forfeiture be

deemed a waiver of or a bar to proceeding for other remedies. To the extent permitted by law, actions seeking multiple or alternative remedies may combined in one action.

(e) Actions for Private Nuisance. Nothing in this Chapter shall be deemed to prevent or prohibit any person who is specifically damaged by a violation from instituting appropriate private action or proceeding to enjoin a violation of this Chapter.

(3) Special Inspection Warrant. The City of Richland Center or Richland Center Utilities Commission or their respective employees may apply for a special inspection warrant under sec. 66.0119 Wis. Stats. under appropriate circumstances where a necessity exists to determine if a premises complies with this Chapter.

476.10 SEVERABILITY CLAUSE.

If any section, subsection, sentence, clause paragraph or phrase of this Chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, or other applicable administrative or governing body, such decision shall not effect the validity of any other section, subsection, sentence, clause, paragraph or phrase or portion thereof. The Common Council of the City of Richland Center hereby declares that they would have passed this Chapter and each section, subsection, sentence, clause, paragraph or phrase thereof irrespective of the fact that any one or more other sections, subsections, sentences, clauses, paragraphs, or phrases may be declared invalid or unconstitutional.

476.11 CONFLICTS WITH OTHER ORDINANCES.

Where any provision of this Chapter is in conflict with the provisions of any other ordinance of the City of Richland Center, the provision which is more restrictive shall be deemed controlling.

SECTION II: EFFECTIVE DATE

This Ordinance shall take effect upon its passage and publication as provided by law.

Enacted the 5th day of June, 2012