

CITY COUNCIL OVERSIGHT COMMITTEE MEETING

**CONFERENCE ROOM – MUNICIPAL BUILDING
201 WEST GRAY**

WEDNESDAY, MARCH 6, 2013

5:30 P.M.

- 1. DISCUSSION REGARDING DOMESTIC WATER WELLS FOR NON-POTABLE USE AND RELATED PERMIT REQUIREMENTS.**
- 2. MISCELLANEOUS DISCUSSION.**



DATE: February 27, 2013
TO: Members of the Council Oversight Committee
THROUGH: Jeff H. Bryant, City Attorney *JHB*
FROM: Kathryn L. Walker, Assistant City Attorney *KLW*
RE: Domestic Water Wells in Norman

Background

Because of the prolonged drought, several property owners associations (POA) have inquired recently about the potential for drilling a well from which non-potable water could be drawn and used for irrigation of the neighborhood's common areas. As discussed in the February 13, 2013 Oversight Committee meeting, Staff has been examining the City's existing ordinances regulating wells and determined that the applicable Code provision needs to be updated both to reflect the current constraints of state law on water well regulation by cities as well as to ensure contamination and quantity issues with domestic water wells are addressed to protect the public water supply. The first portion of this memorandum will examine the applicable laws related to domestic water wells, and the second portion will outline the proposed changes to Section 21-404 of Norman's Code.

Applicable State Law

The Oklahoma Water Resources Board (OWRB) has exclusive authority by law to regulate groundwater use and to issue permits allowing its withdrawal.¹ Any landowner has a right to take groundwater from land owned by him for domestic use without a permit from the OWRB.² Although a municipality cannot deny a landowner the right to withdraw groundwater for a domestic use, it can regulate or permit the drilling of domestic and industrial water wells within its corporate limits.³ Pursuant to this authority, the City can require landowners in Norman to obtain a permit from the City to drill water well for domestic or industrial use. Water wells drilled for other beneficial uses – e.g., irrigation use⁴ – require a permit

¹ *Ricks Exploration Co. v. Oklahoma Water Res. Bd.*, 1984 OK 73, 695 P.2d 498, 501.

² 82 O.S. § 1020.3.

³ 82 O.S. § 1020.21. This provision also allows a municipality to use the water allocated to the platted land within its corporate limits provided the municipality can make water available to the platted land, a permit is obtained from OWRB, and the wells are located not less than six hundred (600) feet within its limits, and such wells are drilled on the platted land.

⁴ "Irrigation use" is defined by the OWRB as the use of water for the production of food, fiber, crops, timber, fruits, nuts; and water applied to pastures, fields, landscaping, horticulture services, and golf courses. OAC 785:30-1-2.

office memorandum

from the OWRB.⁵ The OWRB estimates that approximately 100,000 groundwater wells existed in 2012, with an estimated 70,000 of those being domestic wells.⁶ Because domestic wells are exempt from permitting requirements through the OWRB, it is unknown how much water is being withdrawn from the 70,000 domestic wells.⁷

The City's ordinances do not define the term "domestic use." Oklahoma groundwater law defines "domestic use" as "the use of water by a natural individual or by a family or household for household purposes, for farm and domestic animals up to the normal grazing capacity of the land and for the irrigation of land not exceeding a total of three (3) acres in area for the growing of gardens, orchards and lawns, and for such other purposes, specified by Board rules, for which *de minimis* amounts are used[.]"⁸ The Oklahoma Water Resources Board has specified that "domestic use" also includes "the use of water by non-household entities for drinking water purposes, restroom use, and the watering of lawns, provided that the amount of groundwater used for any such purposes does not exceed five acre-feet per year."⁹

Reading the two definitions together, the domestic use exemption appears to have four components: (1) household use for natural individuals, families, households; (2) farm and animal use to the normal grazing capacity of the land; (3) irrigation use for gardens, orchards, and lawns not exceeding three acres; and (4) other purposes specified by the OWRB in *de minimis* amounts, i.e. up to 5 acre feet of water per year for use by non-household entities for drinking water, restrooms, and watering of lawns.¹⁰

The use of groundwater by a property owner's association for irrigation of the common areas appears to qualify as a "domestic use" under the OWRB rule as a use by a non-household entity for the watering of lawns. As such, the use of the water would be limited to 5 acre feet or 1,629,257 gallons of water per year. Such a domestic use would not require a permit from the OWRB, but would require a permit from the City.

Water Well Permits, Norman Code, Section 21-404

Section 21-404 was adopted by the City Council of Norman in the early 1970's and has not been updated since that time. It requires all persons desiring to drill a water well to obtain a permit from the City of Norman and forbids non-domestic users from drilling or deepening a privately owned well into the Garber Wellington sandstone formation without approval by City Council. It also empowers Council to issue cease and desist orders during a period of drought, low water supply, or when deemed necessary to safeguard the citizen welfare. Finally, it requires the owners of private water wells to plug and abandon those wells when the City furnishes water service to them.

⁵ See 82 O.S. § 1020.7; OAC 785:30-1-4.

⁶ Drew L. Kershen, *Domestic Well Exemption in Oklahoma Groundwater Law – Impact and Implications*, 64 Okla. L. Rev. 563, 565 (2012) (discussing potential impact of well exemption), citing a telephone interview with Dean Couch, General Counsel of the OWRB.

⁷ *Id.*

⁸ 82 O.S. § 1020.1(2) (*emphasis added*).

⁹ OAC 785:30-1-2.

¹⁰ Kershen, *supra* note 6, at 566.

The ordinance, while well intentioned, is out of date and is inconsistent with existing State law. Staff has been working on draft amendments to this section that would be consistent with State law while providing reasonable protection of the public water supply. The proposed changes would limit the City's authority to regulate to only domestic and industrial wells and also limit the use of such water to domestic and industrial use as defined by State law.

The protections for the City are contained in the proposed amendments to Section 21-404(c). Permits for industrial and domestic water wells would be conditioned on the following:

- Wells must be constructed by an OWRB certified well driller;
- The OWRB Groundwater Well Completion Report must be submitted to the City upon completion;
- An operable totalizing meter must be installed and maintained by the permit applicant;
- At least 30 feet of well surface casing must be installed to reduce the risk of groundwater contamination;
- There must be no cross-connection of the well to the public water supply;
- Water must not be withdrawn in excess of the limits set by law;
- Water withdrawn from the well will be used only for the stated purpose for which the well is installed;
- Water withdrawn from the well must not be applied or discharged to property owned by others; and
- Well user must submit records annually that document the volume of water being withdrawn.

These items will help protect the public water supply by reducing the risk of contamination and monitoring the amount of water being withdrawn from each domestic or industrial water well.

Staff will be available at the next Oversight Committee meeting to answer any questions you may have.

cc: Steve Lewis, City Manager
Ken Komiske, Director of Utilities

Sec. 21-404. - Installation and use of water wells.

(a) No person shall drill or enlarge any domestic or industrial water well, or subsequently use the water from such well, except upon:

- (1) Application for a permit for such activity or usage from the Public Works-Utilities Department,
- (2) Payment of a \$50.00 permit fee, and
- (3) Compliance with this Code and the rules and regulations of the Oklahoma Water Resources Board and the Department of Environmental Quality~~Department of Health~~.

(b) Water from such wells shall be used only for domestic or industrial purposes as defined by Oklahoma state law and applicable Oklahoma Water Resources Board rules on the premises where the well is located, and there shall be no inter-connection of any kind between such well and the water supply of the City. ~~Any non-domestic or non-industrial usage existing before February 8, 1955, may be continued to the same extent and for the same purposes, but such uses shall not be extended or increased.~~

~~(c) Except as otherwise provided, no person shall drill, deepen, or otherwise complete any privately owned well into the Garber-Wellington sandstone formation, the water from such formation being part of the City water supply.~~

~~(d) Persons excepted from the provisions of the above subsection (c) are~~

- ~~(1) Domestic users residing in areas not serviced by the City water supply, and~~
- ~~(2) Those commercial or industrial users specifically granted permission by the City Council.~~

(c) Permits for industrial and domestic wells shall be conditioned on the following:

- (1) Well construction by a well driller certified by the Oklahoma Water Resources Board and submission of the Oklahoma Water Resources Board Groundwater Well Completion Report to the Utilities Department of the City upon completion;
- (2) Installation and maintenance of an operable totalizing water meter;
- (3) Installation of at least 30 feet of properly installed well surface casing to reduce the risk of groundwater contamination;
- (4) There is no cross connection of the well to the City of Norman public water supply.
- (5) Agreement by the user of the well that the water from the well shall not exceed the volume limits (in acre feet) set by State law and applicable Oklahoma Water Resources Board rules on an annual basis

and shall only be used for the stated purpose for which the well is installed;

- (6) Agreement that the water withdrawn from the well shall not be wasted or allowed to run off the property on which the well is installed;
- (7) Agreement that the water withdrawn from the well shall not be applied or discharged to property owned by others; and
- (8) Agreement by the user of well to keep records of monthly meter readings of the well to document the volume of water being withdrawn from the well and to report the volume of water withdrawn in the previous calendar year to the Utilities Department no later than February 1 of the following year. Such report shall include the meter reading, the date of the meter reading, well location and the name, address, and phone number of the permit holder.

Failure to comply with these provisions may result in the denial or withdrawal of the well permit and/or imposition of a penalty as described in Section 21-501.

- ~~(e) All domestic and industrial wells drilled, deepened, or completed to the Garber-Wellington sandstone formation pursuant to this Section, and the operation of such wells, are subject to the inspection and regulation of the City, so as to prevent pollution and/or damage to those water producing sands.~~
- ~~(f) The City Council may issue cease and desist orders to all users of water from the Garber-Wellington sandstone formation during any period of drought, low water supply, or at those times the Council deems necessary to safeguard the welfare of its citizens.~~
- ~~(g) Should the City subsequently furnish water service to users of private water wells drawing water from the Garber-Wellington formation, those persons owning such wells shall immediately plug and abandon those wells.~~