

ARTICLE __ *DRAFT GROUNDWATER PROTECTION DISTRICT*

I. AUTHORITY

The City of Franklin hereby adopts this ordinance pursuant to the authority granted under RSA 674:16 as an Innovative Land Use Control pursuant to RSA 674:21.

II. PURPOSE

The purpose of this ordinance is, in the interest of public health, safety, and general welfare, to preserve, maintain, and protect from contamination existing and potential groundwater supply areas that may be available for use as a current or future source of supply for Franklin's municipal water system, and to protect other wells and surface waters that are fed by groundwater.

This article also serves as a public education tool to increase residents and small businesses awareness on typically unrecognized hazards.

III. DEFINITIONS

- A. Aquifer: a geologic formation composed of rock, sand, or gravel that contains significant amounts of potentially recoverable water.
- B. Bulk Fuel Sale and Storage: see "Word Usage and Definitions" section of the Zoning Ordinance.
- C. Franklin Municipal Water System: The public treatment and distribution system, which consists of water treatment plants, water main pipes, storage tanks, booster stations, and service connections that convey potable water for domestic, fire protection, and other community uses.
- D. Groundwater: subsurface water that occurs beneath the water table in soils and geologic formations.
- E. Fueling station: means that portion of a property where petroleum products are received by tank vessel, pipeline, tank car, or tank vehicle and distributed for the purposes of retail sale of gasoline. This is also referred to as a "fuel distribution center" within the definition "Motor Vehicle Oriented Business" within the "Word Usage and Definitions" section of the Zoning Ordinance.
- F. Impervious: not readily permitting the infiltration of water.
- G. Impervious surface: a surface through which regulated substances cannot pass when spilled. Impervious surfaces include concrete unless unsealed cracks or holes are present. Earthen; wooden, or gravel surfaces; or other surfaces which could react with or dissolve when in contact with the substances stored on them are not considered impervious surfaces.
- H. Junkyard: a property, or an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automotive recycling yard, and as defined in NHRSA 236:112.
- I. Outdoor storage: storage of materials where they are not protected from the elements by a roof, walls, and a floor with an impervious surface.
- J. Public water system: a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.

- K. Regulated substance: Any of the following, with the exclusion of all substances used for the treatment of drinking water or wastewater at facilities approved by the Department of Environmental Services [1] [Section Env-Wq 401.03(h), New Hampshire Code of Administrative Rules]:

[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

A. Petroleum products and their by-products of any kind, and in any form, including but not limited to petroleum, fuel, sludge, crude oil refuse or oil mixed with wastes and all other liquid hydrocarbons regardless of specific gravity and which are used as motor fuel, lubricating oil, or any oil used for heating or processing. Shall not include natural gas, liquefied petroleum gas or synthetic natural gas regardless of derivation or source. (RSA 146-A:2, III, Oil Discharge or Spillage in Surface Water or Groundwater); or

B. Any substance that contains a regulated contaminant for which an ambient groundwater quality standard has been established pursuant to RSA 485-C:6; or

C. Any hazardous substance listed in 40 CFR Part 302, Table 302.4. Reportable quantities of hazardous substances as listed in 40 CFR Part 302, Table 302.4, under column heading final RQ pounds (Kg). Sanitary protective radius: The area around a public water supply well which must be maintained in its natural state as required by Env- Dw 301 or 302 (for small and large community water systems); Env-Dw 405.14 (small public water systems) and 406.12 (for other public water systems.)

- L. Sanitary protective radius: The area around a public water supply well which must be maintained in its natural state as required by Env- Dw 301 or 302 (for community water systems); Env-Dw 405.14 and 406.12 (for other public water systems).
- M. Seasonal high water table: The depth from the mineral soil surface to the upper most soil horizon that contains 2 percent or more distinct or prominent redoximorphic features that increase in percentage with increasing depth as determined by a licensed Hydrogeologist, Soils Scientist, Wetlands Scientist, Civil or Environmental Engineer or other qualified professional approved by the Planning Board, or the shallowest depth measured from ground surface to free water that stands in an unlined or screened borehole for at least seven consecutive days.
- N. Secondary containment: a structure or feature with an impervious surface which is adequate to hold at least 110 percent of the volume of the largest regulated-substances container that will be stored there.
- O. Snow dump: For the purposes of this ordinance, a location where snow, which is cleared from roadways and/or motor vehicle parking areas, is placed for disposal.
- P. Stratified-drift aquifer: A geologic formation of predominantly well-sorted sediment deposited nearby or in bodies of glacial meltwater, including gravel, sand, silt, or clay, which contains sufficient saturated permeable material to yield significant quantities of water to wells.
- Q. Surface water: streams, lakes, ponds and tidal waters, including marshes, water-courses and other bodies of water, natural or artificial.

IV. GROUNDWATER PROTECTION DISTRICT BOUNDARIES

The Groundwater Conservation District is an overlay district which is superimposed over the existing underlying zoning and includes within its boundaries:

The Stratified Drift Aquifer(s) shown on the map entitled, Water Resources and Groundwater Conservation District, dated **TBD**, or as updated by USGS and made available through NH GRANIT.

V. APPLICABILITY

This Ordinance applies to all uses in the Groundwater Protection District, except for those uses under this article.

VI. PERFORMANCE STANDARDS

The following Performance Standards apply to all uses in the Groundwater Protection District unless exempt under this article:

- A. For any new or expanded uses that will render impervious more than 20 percent or more than 5,000 square feet of any lot, whichever is greater, a stormwater management plan shall be prepared which the planning board determines is consistent with New Hampshire Stormwater Manual Volumes 1-3, December 2008, NH Department of Environmental Services and City of Franklin Stormwater Management Regulations/Rules/etc.. If relief from this provision is desired see Article X, Conditional Uses
- B. Redevelopment proposals that will render new impervious areas below the threshold in Standard "A", and/or result in a more intense use of the property, shall require proposed stormwater management improvements appropriate for the proposed scale and use.
- C. Stormwater management shall not allow for the infiltration of stormwater through areas containing contaminated soils.
- D. Stormwater infiltration practices must maintain a minimum of four feet vertical separation between the bottom of a stormwater practice that infiltrates or filters stormwater and the average seasonal high-water table as determined by a New Hampshire licensed hydrogeologist, soil scientist, engineer or other qualified professional as determined by the Planning Board
- E. Animal manures, fertilizers, and compost must be stored in accordance with Manual of Best Management Practices for Agriculture in New Hampshire, NH Department of Agriculture, Markets, and Food, (June 2011) and any subsequent revisions;
- F. All regulated substances within regulated containers or hazardous substances listed under 40 CFR 302.4 with a capacity equal to or greater than the reportable quantity must be used and stored in accordance with Part Env-Wq 401, Required Best Management Practices for Groundwater Protection, New Hampshire Code of Administrative Rules. Additionally:
 - 1. Outdoor storage areas for regulated substances, associated material or waste must be protected from exposure to precipitation and must be located at least 50 feet from surface water or storm drains, at least 75 feet from private wells, and outside the sanitary protective radius of wells used by public water systems;
 - 2. Secondary containment must be provided for outdoor storage of regulated substances in regulated containers and the containment structure must include a cover to minimize accumulation of water in the containment area and contact between precipitation and storage container(s);
 - 3. Containers in which regulated substances are stored must be clearly and visibly labeled and must be kept closed and sealed when material is not being transferred from one container to another;
- G. Prior to any land disturbing activities, all inactive wells on the property, not in use or properly maintained at the time the plan is submitted, shall be considered abandoned and must be sealed in accordance with We 604 of the New Hampshire Water Well Board Rules;

- H. All activities related to rock blasting must adhere to NHDES WD-10-12, Best Management Practices for Blasting, Rock Blasting and Water Quality Measures That Can Be Taken To Protect Water Quality and Mitigate Impacts, prepared 2010, and any subsequent revisions;
- I. All transfers of petroleum from delivery trucks and storage containers over five gallons in capacity shall be conducted over an impervious surface having a positive limiting barrier at its perimeter. A positive limiting barrier (PLB) is a depression (e.g., groove) in the surface of an otherwise level impervious area designed to impede the flow and contain spilled substances within the perimeter of the impervious area. PLBs are typically constructed and maintained to contain small spills or releases (five to fifteen gallons).

VII. SPILL PREVENTION, CONTROL AND COUNTER MEASURE (SPCC) PLAN

Permitted and Conditional uses, as described under this article, using regulated substances shall submit a spill control and countermeasure (SPCC) plan to the Planning Board, or their representative, who shall determine whether the plan will prevent, contain, and minimize releases from ordinary or catastrophic events such as spills, floods or fires that may cause large releases of regulated substances. It shall include:

1. A description of the physical layout and a facility diagram, including all surrounding surface waters and wellhead protection areas;
2. Contact list and phone numbers for the current facility response coordinator(s), cleanup contractors, and all appropriate federal, state, and local agencies who must be contacted in case of a release to the environment;
3. A list of all regulated substances in use and locations of use and storage;
4. A prediction of the direction, rate of flow, and total quantity of regulated substance that could be released where experience indicates a potential for equipment failure;
5. A description of containment and/or diversionary structures or equipment to prevent regulated substances from infiltrating into the ground;
6. List of positions within the facility that require training to respond to spills of regulated substances;
7. Prevention protocols that are to be followed after an event to limit future large releases of any regulated substance.

VIII. PERMITTED USES

All uses permitted by right or allowed by special exception in the underlying district are permitted in the Groundwater Protection District unless they are Prohibited Uses or Conditional Uses. All uses must comply with the Performance Standards unless specifically exempt under this article.

IX. PROHIBITED USES

The following uses are prohibited in the Groundwater Protection District.

- A. The development or operation of a solid waste landfill;

- B. The outdoor storage of uncovered road salt or other deicing chemicals in bulk;
- C. The development or operation of a junkyard;
- D. The development or operation of a non-municipal snow dump;
- E. The development or operation of a non-municipal wastewater or septage lagoon;
- F. The development or operation of Bulk Fuel Sale and/or Storage.
- G. The development or operation of fueling stations.
- H. Use of powdered ammonium nitrate fuel oil and explosives that contain perchlorate during blasting activities.

X. CONDITIONAL USES

The Planning Board may grant a Conditional Use Permit for a use which is otherwise permitted in the underlying district, if the permitted use is involved in one or more of the following:

- A. Storage, handling, and use of regulated substances in quantities exceeding 55 gallons or 660 pounds dry weight at any one time, provided that an adequate spill prevention, control and countermeasure (SPCC) plan, in accordance with this article, is approved by the Planning Board or their designee;
- B. Any use that will render impervious more than 20 percent or 5,000 square feet of any lot, whichever is greater;
- C. Any activities that involve the blasting of bedrock.

In granting such approval, the Planning Board must first determine that the proposed use is not a prohibited use (as listed in Article IX of this Ordinance) and will be in compliance with the Performance Standards in Article VI as well as all applicable local, state and federal requirements. The Planning Board may, at its discretion, require a performance guarantee or bond, in an amount and with surety conditions satisfactory to the Board, to be posted to ensure completion of construction of any facilities required for compliance with the Performance Standards.

XI. EXISTING NON-CONFORMING USES

Existing non-conforming uses may continue without expanding or changing to another non-conforming use, and thus are exempt from this article per RSA 674:19.

XII. EXEMPTIONS

The following uses are exempt from the specified provisions of this ordinance as long as they are in compliance with all applicable local, state, and federal requirements:

- A. Any private residence is exempt from all Performance Standards, however, home occupations are not exempt;
- B. Any business or facility where regulated substances are stored in containers with a capacity of less than five gallons or where hazardous substances are stored in containers with a capacity of less than the reportable quantity is exempt from Article VI, Performance Standards, sections E through H;
- C. Storage of heating fuels for on-site use or fuels for emergency electric generation, provided that storage tanks are indoors on a concrete floor or have corrosion control, leak detection, and secondary containment in place, is exempt from Performance Standard E;
- D. Storage of motor fuel in tanks attached to vehicles and fitted with permanent fuel lines to enable the fuel to be

used by that vehicle is exempt from Performance Standards, E through H;

- E. Storage and use of office supplies is exempt from Performance Standards, E through H;
- F. Temporary storage of construction materials on a site where they are to be used is exempt from Performance Standards, sections E through H, if incorporated within the site development project within six months of their deposit on the site;
- G. The sale, transportation, and use of pesticides as defined in RSA 430:29 XXVI are exempt from all provisions of this ordinance;
- H. Non-reoccurring household hazardous waste collection projects regulated under NH Code of Administrative Rules Env-Hw 401.03(b)(1) and 501.01(b) are exempt from Performance Standards, E through H;
- I. Underground storage tank systems and aboveground storage tank systems that are in compliance with applicable state rules are exempt from inspections under Article XIV of this ordinance.

XIII. RELATIONSHIP BETWEEN STATE AND LOCAL REQUIREMENTS

Where both the State and the City of Franklin have existing requirements, the more stringent shall govern.

XIV. MAINTENANCE AND INSPECTION

- A. For uses requiring Planning Board approval for any reason, a narrative description of maintenance requirements for structures required to comply with Performance Standards shall be recorded so as to run with the land on which such structures are located, at the Registry of Deeds for Merrimack County. The description so prepared shall comply with the requirements of RSA 478:4-a.
- B. Inspections may be required to verify compliance with Performance Standards. Such inspections shall be performed by appropriate City Staff and/or a consultant at reasonable times with prior notice to the landowner.
- C. All properties in the Groundwater Protection District known to the City of Franklin as using or storing regulated substances in containers with a capacity of five gallons or more, except for facilities where all regulated substances storage is exempt from this Ordinance under this article, shall be subject to inspections under this Article.
- D. The City of Franklin may require a fee for compliance inspections. The fee shall be paid by the property owner. A fee schedule shall be established by the Franklin City Council as provided for in RSA 41-9:a.

XV. ENFORCEMENT PROCEDURES AND PENALTIES

Any violation of the requirements of this ordinance shall be subject to the enforcement procedures and penalties detailed in RSA 676 or RSA 485-C.

XVI. SAVING CLAUSE

If any provision of this ordinance is found to be unenforceable, such provision shall be considered separable and shall not be construed to invalidate the remainder of the ordinance.

XVII. EFFECTIVE DATE

This ordinance shall be effective upon adoption by the Franklin City Council.