

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AMENDING CHAPTER 15.08 OF THE MONTEREY COUNTY CODE RELATING TO REGULATION OF WATER WELLS

County Counsel Summary

This ordinance amends Chapter 15.08 of the Monterey County Code to require the Monterey County Health Officer to issue well permits if an applicant meets certain standards delineated in the Chapter. The ordinance also gives the Health Officer discretion to apply conditions to a permit in response to potential environmental impacts, and to issue a variance from the standards if an applicant meets certain criteria. The ordinance lengthens the time an applicant may appeal a permit that has been denied, or granted conditionally, or has been suspended or revoked from 10 days to 30 days. The ordinance also adds language that requires property owners and applicants to indemnify, defend, and hold harmless Monterey County from any claims associated with the issuance of a well permit under this Chapter. Lastly, the ordinance updates citations to state law and the Monterey County Code, and adds clarifying language on technical standards.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Findings and declarations.

A. Pursuant to Article XI, section 7 of the California Constitution, the County of Monterey may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.

B. On August 27, 2020, the California Supreme Court issued its decision in the case *Protecting Our Water and Environmental Resources et al., v. County of Stanislaus, et al.*, (10 Cal.5th 479 (2020); “*Protecting Our Water*”). The decision may require environmental review, pursuant to the California Environmental Quality Act (“CEQA”), when the County considers applications to construct, repair, or destroy water wells if the decision to issue the permit involves the exercise of discretion by the decision-making authority.

C. Chapter 15.08 of the Monterey County Code sets forth the application and decision-making process for the County in considering applications for construction, repair, and destruction of water wells, and such process includes the potential for certain discretionary determinations by the County Health Officer in considering permit applications.

D. The purpose of this ordinance is to distinguish between ministerial well permits that will be issued by the Health Officer if an applicant meets certain standards, as opposed to well permits that do not meet certain standards that are discretionary and will be subject to CEQA.

E. The adoption of this ordinance is to clarify the well permit regulatory program to address concerns held by the *Protecting Our Water* case. The ordinance is an administrative activity to clarify existing regulations in light of the recent Supreme Court decision, but will not result in direct or indirect physical changes in the environment per CEQA Guidelines section 15378(b)(5). It is therefore not a “project” under CEQA.

SECTION 2. Section 15.08.030 of the Monterey County Code is amended to read as follows:

A. No person shall construct, repair, reconstruct or destroy any well, abandoned well, cathodic protection well, observation well, monitoring well, or test well in the unincorporated area of Monterey County unless a written permit has first been obtained from the Health Officer of the County or his or her authorized representative as provided in this Chapter.

B. Any person who shall commence any work for which a permit is required by this Chapter without having obtained a permit therefor, shall, if subsequently granted a permit, pay double the permit fee for such work; provided, however, that this provision shall not apply to emergency work that is necessary to replace, repair, or destroy an existing well that has experienced a catastrophic collapse or other condition that renders the well physically incapable of operating, or such collapse or condition is imminent, as determined by the Health Officer when it shall be proved to the satisfaction of the Health Officer that such work was urgently necessary and that it was not practical to obtain a permit before commencement of the work. In all cases in which emergency work is necessary, a permit shall be obtained within three working days after commencement of the work. The applicant for a permit for any such emergency work shall, in any case, demonstrate that all work performed is in compliance with the technical standards ~~of Section 15.08.110~~ of this Chapter. Emergency work includes but is not limited to wells necessary for the operation of a water system or agricultural operation.

C. Obtaining the permit, pursuant to this Chapter, does not relieve an applicant from obtaining other required permits or following the regulations required by any other ~~f~~sState law or regulation, or local ~~codes~~regulation. A discretionary use permit may be required pursuant to the Monterey County General Plan or certified Local Coastal Program, in addition to the permit issued pursuant to this Chapter.

SECTION 3. Subsection B of Section 15.08.040 of the Monterey County Code is amended to read as follows:

B. No person shall undertake to dig, bore, ~~or drill, a "well," including a water well, cathodic protection well, observation well, test well, or monitoring well, or to deepen, or re-perforate, any water well, cathodic protection well, observation well, test well, or monitoring well, or to abandon,~~ or destroy any water well, cathodic protection well, or monitoring well, unless the person responsible for that construction, alteration, destruction, or abandonment possesses a contractor's license in accordance with ~~the Contractors License Law (Chapter 9, Division 3, of the California Business and Professions Code, Chapter 9, and possesses a~~ possesses a C-57 Water Well Contractor's License in accordance with California ~~provided, however, that a property owner may construct or destruct a well on his or her own property,~~

~~which well serves or will serve the property that is neither being offered for sale nor intended to be so offered. (Water Code Section 13750.5.)~~

SECTION 4. Section 15.08.050 of the Monterey County Code is amended to read as follows:

A. Application for a permit pursuant to this Chapter shall be made to the Health Officer, in such form as he or she may prescribe, setting forth such information as ~~he or she~~ may be reasonably required to secure the purposes of this Chapter, and shall contain:

1. ~~The Property owners name, home mailing address, and telephone number of all property owners. If the application is made by an agent on behalf of property owners, the application shall include the name, mailing address, email, and telephone number of the agent and a written authorization, signed by at least one owner of the property, authorizing the agent to act on behalf of the property owners.~~

2. A description of the property where the work is to be done, sufficient for identification, such as street address, name of subdivisions or tract, lot number, and ~~county~~ Assessor's Parcel Number.

3. ~~A map Sketched outline~~ of the property with a given scale for, giving dimensions and the direction of north. ~~The information on the map shall include to include:~~

a. Location and nature of any existing sewage disposal installation on the property or within one hundred fifty (150) feet of the property.

b. Location of any existing well, whether domestic or irrigation, and whether in use or abandoned, either on the property or within one hundred (100) feet of the property.

c. Location of ocean, lakes, sloughs, streams, springs, water channels and water supplies on or adjacent to the property

d. Location of all recorded easements on the property.

e. Location of all recorded well lots on the property or within two hundred (200) feet of the property.

4. The type of work to be done and a description of the type of construction.

5. Such additional data ~~as may be necessary, in the judgment of the Health Officer~~ may require to process the application, to insure public health, safety, and welfare.

B. The filing of an application under this Chapter shall be accompanied by payment

of such fees as the Board of Supervisors may establish to recover the cost of administration of this Chapter. Such fees shall not be refundable. Fees specified by this Chapter shall be as established by the Board of Supervisors and as set forth in the Monterey County Fee Resolution, pursuant to Chapter 1.40 of the Monterey County Code, as amended from time to time. The application shall be accompanied by a fee as prescribed in Title 10.08, Section 10.08.050BB, no part of which shall be refundable.

SECTION 5. Section 15.08.060 of the Monterey County Code is amended to read as follows:

A. The Health Officer shall approve issuance of a permit ministerially if the applicant can meet the standards set forth in Sections 15.08.110, 15.08.120, and 15.08.130 of this Chapter. The Health Officer shall include requirements in the permit relating to proper construction, destruction, reconstruction, sealing methods, and quantity and quality testing methods to implement the standards of this Chapter.

B. The Health Officer shall deny issuance of a permit if the applicant cannot meet the standards set forth in Sections 15.08.110, 15.08.120, and 15.08.130 of this Chapter, or cannot meet the requirements for a variance under Section 15.08.090 of this Chapter.

C. The Health Officer may, in the exercise of discretion and subject to the California Environmental Quality Act, require conditions of approval to address potential environmental impacts of a well or issue a variance under Section 15.08.090 of this Chapter.

~~When the Health Officer issues a permit pursuant to this Chapter, he or she may condition the permit in any manner he or she deems necessary to carry out the purposes of this Chapter. Conditions may include, but are not limited to, proper construction, destruction, reconstruction, sealing methods, quantity and quality testing methods as the Health Officer finds necessary to carry out the purposes of this Chapter. The Health Officer shall deny an application for a permit if, in his or her judgment, its issuance would tend to defeat the purpose of this Chapter.~~

SECTION 6. Section 15.08.090 of the Monterey County Code is amended to read as follows:

A. The Health Officer shall have the power, in specific cases, to may exercise discretion and grant a variance from any provision of the standards incorporated into this Chapter. A variance may be granted by reference whenever he or she finds that if special circumstances exist in a particular case, and that practical difficulties or unnecessary hardship would result from the strict interpretation and enforcement of any such standard any provision of this Chapter, and that if the granting of such a variance would not tend to defeat the purposes of this Chapter. There is no appeal from denial of a variance. The standards incorporated into this Chapter are based upon public health standards for the protection of groundwater supplies. Variances are based upon the technical expertise of the Health Officer ~~or his or her authorized representative, the Director of Environmental Health, and his or her exercise of discretion in using that expertise.~~

B. The Health Officer may grant a variance if all of the following are met:

1. Special circumstances exist;

2. Practical difficulties or unnecessary hardship would result from the strict interpretation and enforcement of any provision of this Chapter; and

3. Approval of the variance would not defeat the purposes of this Chapter.

C. The Health Officer may consider a variance based on factors that include but are not limited to: site limitations; hydrogeological constraints; well design constraints; and well setback constraints.

D. The application for a variance shall submitted to the Health Officer with supporting documentation demonstrating the criteria in Subsection B of this Section are met. The Health Officer may require the applicant to submit a report prepared by a professional geologist or a certified specialty geologist registered in the State of California as part of the supporting documentation. The application shall be accompanied by a fee as prescribed in the Monterey County Fee Resolution, no part of which shall be refundable.

SECTION 7. Section 15.08.100 of the Monterey County Code is amended to read as follows:

A. Upon receipt of an application, an inspection of the location of the well, ~~test well, or cathodic protection well shall may~~ be made by the Health Officer prior to issuance of a well permit. ~~Inspection of monitoring well or observation well locations prior to permit issuance may be made at the discretion of the Health Officer.~~

B. The person responsible for construction, reconstruction, or destruction of any well shall notify the Health Officer ~~at least when twenty-four (24) hours before the~~ work commences. All work shall be subject to inspection by the Health Officer to insure compliance with all the requirements of this Chapter.

SECTION 8. Section 15.08.110 of the Monterey County Code is amended to read as follows:

A. ~~State S~~standards. ~~The following s~~standards for the construction, repair, reconstruction, ~~of~~ or destruction of "wells," including abandoned wells, monitoring wells, test wells, observation wells, and cathodic protection wells ~~shall be met shall be~~ as set forth in ~~Chapter II and Appendices A, B, C D~~ of the Department of Water Resources "California Well Standards", Bulletin No. 74-90 (June 1991) supplement to Bulletin No. 74-81, "Water Well Standards" (December, 1981), and ~~the Department of Water Resources~~ Bulletin No. 74-1, "Cathodic Protection Well Standards" (March, 1973), or as subsequently revised, ~~or~~ supplemented, ~~or replaced~~. ~~These standards shall be~~ incorporated by reference in this Chapter. Copies of these standards are available in the offices of the ~~Division of~~ Environmental Health Bureau or on file with the Health Officer.

B. County standards. In addition to the required state standards described in Subsection A of this Section, wells shall meet all the ~~These following standards shall be~~ ~~are incorporated by reference in this Chapter, with the following modifications: met for wells:~~

1. The minimum distance between wells and subsurface sewage leaching fields or septic tanks shall be one hundred (100) feet, and the minimum distance between wells and seepage pits shall be one hundred fifty (150) feet. ~~If the type of absorption field is unknown, the distance shall be one hundred fifty (150) feet.~~

2. The well must be located outside the Federal Emergency Management Agency's one hundred (100) year floodplain.

3. The annular space shall be at least three (3) inches wide for public water system wells when measured at any point around the casing, and ~~two (2) inches wide for all other types of wells.~~

4. The annular space surrounding the conductor casing of all wells shall be sealed with neat cement, sand cement grout, neat cement/pozzolan/polymer mixture, bentonite clay (in continuously saturated zones where there are or will be no chlorine salts, acids or other contaminants that could adversely affect the sealing properties of the clay), ~~or any other equal or similar compound approved by the Health Officer~~ from the ground level to a minimum depth of fifty (50) feet ~~or as required by the Health Officer for groundwater protection. The annular space surrounding wells installed in areas defined as seawater intruded shall be sealed with neat cement. The annular space shall be as least two (2) inches when measures at any point around the casing.~~

5. The seal shall do all of the following:

- a. Restore, as far as feasible, the controlling hydrogeological ~~hydrological~~ conditions that existed before the well was drilled and constructed, including the elimination of physical hazards.
- b. Prevent pollution of groundwater.
- c. Conserve the yield and hydrostatic head of aquifers.
- d. Prevent intermingling of desirable and undesirable waters.

6. A geologic log and electric log shall be performed and submitted to the Health Officer before the well is sealed. The geologic and electric log shall support a seal depth that meets the criteria in Subsection 5 of this Section.

47. Drilling fluids and other drilling materials used in connection with well construction, repair, or destruction shall not be allowed to discharge onto streets or into waterways; and shall not be allowed to discharge off the parcel on which the well is constructed onto adjacent properties; provided, that adjacent property may be used temporarily for the discharge of such fluids and materials pursuant to a written agreement with the owner(s) of the adjacent property and provided that such fluids and materials are removed and cleaned up within thirty (30) days of completion of the well drilling.

85. Water generated during test pumping of wells shall be dispersed or disposed of in a manner which will not cause significant erosion.

~~6.— Modifications 1 and 2 may not apply to monitoring wells at the discretion of the Health Officer or his or her authorized representative.~~

CB. Casing. All wells shall be cased and constructed so as to prevent pollution. The casing shall meet the minimum applicable standards set by the American Petroleum Institute, the American Society for Testing and Materials, the American Water Works Association, and the Plastic Pipe Institute, as they relate to the specifications for water well casing.

1. All wells with a casing diameter of greater than twelve (12) inches proposing a pumping rate of 1,000 gallons per minute or less must perform a pump test to demonstrate that the well has been designed to pump less than one thousand (1,000) gallons per minute.

2. All wells constructed with thermoplastic (PVC) casing shall have joints or couplings that are either threaded, spline-locking, or cold/solvent welded with reinforcing screws. If a cold/solvent weld with reinforcing screws is used, the tips of the screws shall not penetrate the inner wall of the casing.

3. All wells located in areas defined as seawater intruded shall be constructed using stainless steel casing. This shall not apply to cathodic protection wells or monitoring wells.

DC. Capping of a Well. If a pump is not installed at the time of drilling a well, a tight cap shall be placed over the casing so as to prevent pollution of the well or injury to animals or humans. During this time, as well as after a pump is installed, all openings shall be sealed off to prevent any pollution of the well.

ED. Domestic Water Well Sanitization. All domestic water wells shall be provided with a pipe or other effective means of directly introducing chlorine or other disinfecting agents into the well.

FE. Exclusion of Contamination. All ~~water~~ wells shall be designed and constructed to exclude contamination as follows:

1. All sanitization pipes, for an above surface pump discharge installation, shall extend to a height equal to the pump pedestal that is at least eight (8) inches above the finished grade. The pipe shall be kept sealed by a threaded or equivalently secure cap.

2. All sanitization pipes for a subsurface pump discharge installation shall be kept sealed by a threaded or equivalently secure cap.

3. All air relief vents at the well head shall terminate downward and be screened and protected against the possibility of contaminating material entering the vent.

4. All entry pipes into gravel packed sections of a well shall be kept sealed by a threaded or equivalently secure cap.

GF. Sounding Tube. A sounding tube or similar access for the introduction of water level measuring devices shall be available on all wells. Access may be provided using a removable plug in the well cap, or via a sounding tube affixed to the casing.~~A "sounding tube" or similar access for the introduction of water level measuring devices shall be applied to the casing of all water wells. For wells fitted with a "well cap" the cap shall have a removable plug for this purpose. For wells with turbine pumps special sounding tube designed may be required by the Health Officer or his or her authorized representative.~~

H. New well impact standards. All new wells must meet the below standards to avoid significant adverse impacts to existing domestic wells or water system wells, and instream flows of surface water bodies designated as critical habitat by the National Marine Fisheries Service.

1. All of the following must be demonstrated for new wells:

a. Pumping shall not result in drawdown in existing domestic or water system wells exceeding five (5) percent of an existing well's saturated thickness, or drawdown equal to five (5) feet or more in an existing well after one (1) year of pumping at the proposed pumping rate for the assumed pumping cycle in Subsections 2 or 3 of this Subsection.-

b. Pumping shall not decrease the instream flows of surface water bodies designated as critical habitat by more than two (2) cubic feet per second at the proposed pumping rate for the assumed pumping cycle in Subsections 2 or 3 of this Subsection.

2. The assumed pumping cycle for a domestic or water system well shall be twelve (12) hours per day, seven (7) days per week, for twelve (12) months of the year.

3. The assumed pumping cycle for an agricultural well shall be eight (8) hours per day, six (6) days per week, for twelve (12) months of the year.

I. Well destruction. The destruction of all wells must meet the below standards.

1. All bridged and poorly compacted materials shall be removed to the original well depth, by cleaning well or redrilling.

2. All oil from lubricated pumps or other contaminants shall be removed from the well and placed in an approved container for proper disposal, in accordance with all applicable hazardous waste disposal regulations.

3. All sealing materials shall be poured under pressure, without bridging, and in one continuous operation unless the well is to be destroyed with the use of explosives as described in Subsection 4 of this Section.

a. Cable tool wells shall be filled with neat cement, sand-cement grout, or concrete placed with a tremie pipe in one continuous operation, proceeding upward from true bottom of the well to five (5) feet below ground surface.

b. Gravel pack wells shall be filled with neat cement placed with a tremie pipe in one continuous operation, proceeding upward from true bottom of the well to five (5) feet below ground surface.

4. All wells to be destroyed with the use of explosives shall be approved and completed by a blaster licensed by the State of California Division of Occupational Safety and Health. The approved blasting plan must be submitted to the Health Officer.

J. Abandoned wells. All abandoned wells found on the same parcel as the proposed well shall be properly destroyed in accordance with the applicable standards set forth in this Chapter.

SECTION 9. Subsection B of Section 15.08.140 of the Monterey County Code is amended to read as follows:

B. In Zone 6 of the former Monterey County Flood Control and Water Conservation District, well construction shall be subject to the requirements found in the *Specifications for Wells in Zone 6 of the Monterey County Flood Control and Water Conservation District*, which are on

file with the Health Officer and the Monterey County ~~Flood Control and Water Conservation District~~ Water Resources Agency.

SECTION 10. Section 15.08.160 of the Monterey County Code is amended to read as follows:

A. Any person whose application for a permit has been denied, or granted conditionally, or whose permit has been suspended or revoked, may appeal to the Board of Supervisors, in writing, within thirty (30) ~~ten (10)~~ calendar days after any such denial, conditional granting, suspension, or revocation. Such appeal shall specify the grounds upon which it is taken, and shall be accompanied by a filing fee as set forth herein. The Clerk of the Board shall set such appeal for hearing at the earliest practicable time, and shall notify the appellant and the Health Officer, in writing, of the time so set at least five (5) days prior to the hearing.

B. After such hearing, the Board of Supervisors may reverse, wholly or partly, or may modify the order or determination appealed from.

C. The filing of an appeal under this Chapter shall be accompanied by payment of such fees as the Board of Supervisors may establish to recover the cost of administration of this Chapter. Such fees shall not be refundable. Fees specified by this Chapter shall be as established by the Board of Supervisors and as set forth in the Monterey County Fee Resolution, pursuant to Chapter 1.40 of the Monterey County Code, as amended from time to time~~The filing fee may be set from time to time by the Board of Supervisors by ordinance (Fee Ordinance: Monterey County Code Section 10.08.050BB).~~

SECTION 11. Section 15.08.200 is added to the Monterey County Code to read as follows:

15.08.200 – Indemnification.

Each permit issued pursuant to this Chapter shall include as a condition of approval of the permit, a requirement that the property owner and applicant indemnify, defend, and hold harmless the County and its officers, agents, and employees from actions or claims of any description brought on account of issuance of permit, or any injury or damages sustained by any person or property resulting from the issuance of permit and the conduct of the activities authorized under said permit.

SECTION 12. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 13. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED this ____ day of _____, 2021, by the following vote:

AYES:
NOES:
ABSENT:

Chair, Monterey County Board of Supervisors

A T T E S T :

VALERIE RALPH
Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM:

KELLY L. DONLON
Deputy County Counsel