

**ORDINANCE NO. 0-2008-131**

**AN ORDINANCE AMENDING CHAPTER 19, "UTILITIES", ARTICLE III, "WATER & SEWER SERVICE", DIVISION "A", "WATER SERVICE", OF THE CODE OF ORDINANCES, CITY OF TYLER, TEXAS, BY ADOPTING PROVISIONS FOR SANITARY CONTROL FOR PROTECTION OF PUBLIC WATER WELLS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, it is the intent of the City Council to protect the public health, safety and welfare; and

**WHEREAS**, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and welfare of citizens; and

**WHEREAS**, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

**WHEREAS**, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for the good government, peace, or order of the municipality; and

**WHEREAS**, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

**WHEREAS**, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of local self-government; and

**WHEREAS**, Texas Local Government Code Section 51.072(b) states that the grant of powers to a home-rule municipality under the Texas Local Government Code does not prevent, by implication or otherwise, the municipality from exercising the authority incident to self-government; and

**WHEREAS**, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City; and

**WHEREAS**, Texas Administrative Code Title 30, Part 1, Chapter 290, Subchapter D., Section 290.41 establishes rules and regulations for public water; and

**WHEREAS**, under T.A.C. Section 290.41(c)(1)(F)(iv)(III), a political subdivision may establish necessary sanitary control protection by adoption of an ordinance or land use restriction which provides an equivalent or higher level of sanitary protection to a well as would a sanitary control easement; and

**WHEREAS**, the Texas Commission on Environmental Quality has established specific requirements for establishing sanitary controls surrounding all wells used for supplying potable water to the customers of Tyler Water Utilities; and

**WHEREAS**, the Texas Commission on Environmental Quality has determined that additional requirements are needed in the Tyler Water Utilities program to address sanitary control requirements and to be in compliance with current state requirements; and

**WHEREAS**, it is important to adopt specific regulations related to establishing sanitary control requirements for Tyler Water Utilities wells that existed prior to 1999;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:**

**PART 1:** That Tyler City Code Chapter 19, "Utilities", Article III, "Water & Sewer Service", Division "A", "Water Service", is hereby amended by adding a new Section 19-49 to read as follows:

**Sec. 19-49. Sanitary Control for Protection of Public Water Wells**

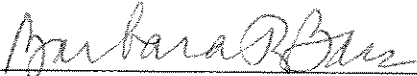
Groundwater sources shall be protected from the danger of pollution caused by flooding or unsanitary surroundings, such as privies, sewage, sewage treatment plants, livestock and animal pens, solid waste disposal sites or underground petroleum and chemical storage tanks and liquid transmission pipelines, or abandoned and improperly sealed wells, as follows:

- a. The following items are not allowed within a 50-foot radius of a well site: tile or concrete sanitary sewer, sewerage appurtenance, septic tank, storm sewer, cemetery, or livestock in pastures.
- b. The following items are not allowed within a 150-foot radius of a well site: septic tank perforated drainfield, areas irrigated by low dosage, low angle spray on-site sewage facilities, absorption bed, evapotranspiration bed, improperly constructed water well, or underground petroleum and chemical storage tank or liquid transmission pipeline.
- c. Sanitary or storm sewers constructed of ductile iron or polyvinyl chloride (PVC) pipe meeting American Water Works Association (AWWA) standards, having a minimum working pressure of 150 pounds per square inch (psi) or greater, and equipped with pressure type joints may be located at distances of less than 50 feet from a well site, but in no case shall the distance be less than 10 feet. (0-2008-131; 9/24/08)

**PART 2:** That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity or the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

**PART 3:** That any person, firm or corporation violating any provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall become effective upon its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be September 26, 2008.

PASSED AND APPROVED this 24<sup>th</sup> day of September, A.D. 2008.

  
BARBARA BASS, MAYOR OF  
THE CITY OF TYLER, TEXAS

ATTEST:

  
CASSANDRA BRAGER, CITY CLERK

APPROVED:

  
GARY C. LANDER, CITY ATTORNEY

