

Chapter 8.44

WATER WELLS

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8.44.010 Definitions.

For the purposes of this chapter, the following words shall have the following meanings:

Decommission shall mean the act of filling, sealing, and plugging a water well in accordance with Title 178 NAC 12.

Ground water shall mean water at or below the water table.

Health Director shall mean the Director of the Lincoln-Lancaster County Health Department or such director's duly authorized representative.

Illegal water well shall mean any water well which has not been properly decommissioned and which meets any of the following conditions:

- (a) The water well is in such a condition that it cannot be placed in active or inactive status;
- (b) Any necessary operating equipment has been removed and the water well has not been placed in inactive status;
- (c) The water well is in such a state of disrepair that continued use for the purpose for which it was constructed is impractical;
- (d) The water well was constructed after October 1, 1986, but not constructed by a licensed water well contractor;
- (e) The water well poses a health or safety hazard; or
- (f) The water well is not in substantial conformance with Title 178 NAC 12.

Non-potable use shall mean use for irrigation, filling ponds, or discharging heat pumps, but shall not include use for human consumption, food preparation, cooking, or direct human contact.

On-site water supply system (OWSS) shall mean a private or shared water well used for potable or non-potable purposes and all appurtenances thereto for the delivery of ground water for use, including pump storage and piping.

Owner shall mean any person who holds equitable or legal title or a trustee under a deed of trust or similar instrument.

Potable use shall mean use of water for human consumption, including cooking, food preparation, and direct human contact such as bathing, showering, or swimming.

Premises shall mean an occupied residence or any building which requires a potable water supply.

Repair shall mean any change, replacement or other alteration of any water well, pump, or pumping equipment or any other activity which requires a breaking or opening of the well seal, except for purposes of disinfection or for replacing the seal or for replacing external electrical conduit by a licensed water well contractor or licensed pump installation contractor as defined in Title 178 NAC 10, or for other purposes by a state electrical inspector as defined in Neb. Rev Stat. § 46-1233 in the course of his employment.

TITLE 178 NAC 10 shall mean the Nebraska Administrative Code Title 178 Chapter 10 (Nebraska Department of Health and Human Services Title 178 Environmental Health Chapter 10 - Licensure Under the Water Well Standards and Contractors' Practice Act).

TITLE 178 NAC 12 shall mean the Nebraska Administrative Code Title 178 Chapter 12 (Nebraska Department of Health and Human Services Title 178 Environmental Health Chapter 12 - Water Well Construction, Pump Installation and Water Well Decommissioning Standards).

TITLE 179 NAC 3 shall mean the Nebraska Administrative Code Title 179 Chapter 3 (Nebraska Department of Health and Human Services Title 179 Public Water Systems Chapter 3 - Monitoring and Analytical Requirements).

Unsafe water sample shall mean a water sample which tests positive for coliform or *Escherchia coli* (*E. coli*) bacteria, or exceeds 10 mg/l Nitrate-Nitrogen, or which exceeds the Maximum Contaminant Level (MCL) for any other contaminant as established by the U.S. Environmental Protection Agency or Nebraska Department of Health and Human Services for a public water supply in Title 179 NAC 3.

Water well shall mean any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed, and its pumps and pumping equipment, when the intended use of such excavation is for the location, extraction, or artificial recharge of ground water, excluding dewatering wells, monitoring wells, closed loop ground water heat pump wells, and sump pumps within permanent structures.

Water well permit shall mean a written permit issued by the Health Director permitting the construction, use, or maintenance of a water well or an on-site water supply system. (Ord. 19586 §1; August 1, 2011: prior Ord. 15568 §1; May 14, 1990: P.C. §8.54.010: Ord. 13558 §2; March 14, 1983).

8.44.020 Purposes.

The City Council finds that properly planned, constructed, installed, operated, maintained and decommissioned water wells and on-site water supply systems:

- (a) Promote the health and welfare of the citizens of the City by preventing the pollution of ground water;
- (b) Prevent nuisances;
- (c) Eliminate hazards to the public health by minimizing pollution or degradation of water supplies; and
- (d) Minimize disease transmission potential.

It is therefore declared to be the public policy of the City to ensure a safe and adequate supply of drinking water for those homes served by a water well or an on-site water supply system and eliminate and prevent health and safety hazards by regulating the operation and maintenance of water wells and on-site water supply systems used for both potable and non-potable uses, and to provide penalties for violations. (Ord. 19586 §2; August 1, 2011: prior Ord. 15568 §2; May 14, 1990: P.C. §8.54.020: Ord. 13558 §3; March 14, 1983).

8.44.030 Use of Water Well; When Permitted.

It shall be unlawful to construct, maintain, or use within the limits of the city a water well without obtaining a water well permit; provided, that a water well existing immediately prior to the effective date of this chapter may be continued although such use does not conform to Section 8.44.110. It shall be unlawful to construct a water well for potable use within the limits of the city if a public water supply is available. Such water well shall comply with the other provisions of this chapter and with Title 178 NAC 12.

Whenever the use of a water well becomes a nonconforming use through a change in the corporate limits of the city, such use may be continued if such water well is in substantial conformance with Title 178 NAC 12 and poses a minimal likelihood of degradation of ground water or risk to public health, and a permit is obtained from the Health Director.

Discharge, recharge, or reinjection wells are prohibited except for the disposal of water where only the temperature of the water has been altered; provided, that the maximum water temperature shall not exceed ninety degrees Fahrenheit. It shall be deemed a violation of this ordinance for any person to reinject or inject any chemically altered water or hazardous substance of any kind into a water well or into or above the ground water aquifer, except for purposes of disinfection by a licensed water well contractor or pump installation contractor as defined in Title 178 NAC 10.

(Ord. 19586 §3; August 1, 2011: prior Ord. 15568 §3; May 14, 1990: P.C. §8.54.030: Ord. 13558 §4; March 14, 1983).

8.44.040 Temporary Permit for Domestic Use of New Water Well; When Required.

(Repealed by Ord. 19586 §4; August 1, 2011: prior Ord. 15568 §4; May 14, 1990: P.C. §8.54.035: Ord. 13558 §5; March 14, 1983).

8.44.050 Construction or Repair of Water Well; Permit Required.

No person except a licensed contractor or supervisor or a person working directly under the supervision of a licensed contractor or supervisor per Title 178 NAC 10 shall construct, repair, or decommission a water well, except that a state electrical inspector may open a well seal in the course of his or her employment. All water wells shall be constructed, repaired or decommissioned in accord with Title 178 NAC 12. No person shall construct a water well within the city or its three-mile jurisdictional limit without obtaining a water well permit from the Health Director. No person shall repair a water well within the city or its three-mile jurisdictional limit without obtaining a water well repair permit from the Health Director.

A water well construction permit shall be valid for a period of 12 months. Within sixty days following the construction of the water well, the owner shall be required to have the water well inspected by the Health Director. In the event the water well is not in substantial conformance with Title 178 NAC 12, the water well shall be repaired within 30 days or the use of the water well shall be immediately discontinued until the same is brought into compliance.

Within sixty days following the repair of the water well, the owner shall be required to have the water well inspected by the Health Director. If the repaired water well is not in substantial conformance with Title 178 NAC 12, the water well shall be brought into conformance within ten (10) days or the use of the water well shall be immediately discontinued until the same is brought into compliance. In the case of emergency repairs, such repairs may be made without first obtaining the repair permit; provided, however, said permit shall be obtained within ten days subsequent to such emergency repair. (Ord. 19586 §5; August 1, 2011; prior Ord. 15568 §5; May 14, 1990: P.C. §8.54.040; Ord. 13558 §6; March 14, 1983).

8.44.060 Maintaining or Using Water Well; Permit Required.

All persons maintaining or using water wells within the limits of the city shall be required to have such wells inspected by the Health Director and to obtain a water well permit from the Health Director to continue the maintenance or use of such water well. Water well permits for such water wells shall be valid for one year, commencing January first of each year. (Ord. 19586 §6; August 1, 2011; prior Ord. 17714 §3; August 14, 2000: Ord. 15568 §6; May 14, 1990: P.C. §8.54.050; Ord. 13558 §7; March 14, 1983).

8.44.070 Permit for Water Well; Application; Fees.

Any person applying for a water well permit shall obtain forms from the Health Director, which completed forms together with the permit fee, shall be filed with the Health Director. The Health Director may approve the renewal of a water well permit without making a reinspection. All water wells that have not been previously permitted under this chapter must be inspected before a water well permit will be issued. In the event that such applicant's water well is not in substantial conformance with Title 178 NAC 12 or with Title 179 NAC 3, such applicant shall obtain a water well repair permit, if necessary, and cause such well to be brought into compliance.

(a) The following permit fees are hereby adopted:

- (1) Water well construction permit \$190.00
- (2) Annual water well permits
 - Permits issued for the period of January 1, 2012
 - to December 31, 2012 \$ 85.00
 - Permits issued for any period beginning on or
 - after January 1, 2013 \$110.00
- (3) Water well repair permit \$100.00
- (4) Variance application \$100.00

(b) All fees shall be credited to the Health Fund. No fees or portion of fees shall be refunded. (Ord. 19614 §1; September 12, 2011; prior Ord. 19586 §7; August 1, 2011: Ord. 19447 §10; September 13, 2010: Ord. 19302 §15; September 14, 2009: Ord. 19141 §14; September 15, 2008: Ord. 18983 §14; August 27, 2007: Ord. 18800 §12; September 18, 2006: Ord. 18598 §9; August 22, 2005: Ord. 17714 §4; August 14, 2000: Ord. 15568 §7; May 14, 1990: P.C. §8.54.060: Ord. 15242 §1; August 7, 1989: Ord. 13558 §8; March 14, 1983).

8.44.075 Water Well Permit; Renewal Late Fee.

(a) A permit holder who fails to renew the water well permit before it expires, but within 30 days of the date of expiration shall pay a late fee of 33% of the annual fee in addition to the annual fee.

(b) A permit holder who fails to renew the water well permit before it expires and fails to renew the permit within 30 days from the date of expiration shall pay a late fee of 67% of the annual fee in addition to the annual fee.

(c) A permit holder who fails to renew the water well permit before it expires is operating without a valid permit and shall be subject to appropriate enforcement action by the Health Director. (Ord. 19586 §8; August 1, 2011: prior Ord. 19141 §15; September 15, 2008).

8.44.080 Appeal; Procedure.

(a) Any person whose application for a water well permit under this chapter has been denied shall be notified in writing as to the reasons for denial and such person may within ten working days after official notification of such action file a written request for a hearing before the Health Director. Such hearing shall be held within ten working days after the receipt of the request by the Health Director and upon reasonable notice to the applicant. The Health Director shall affirm, modify, or revoke the denial, or issue the permit on the basis of the evidence presented at the hearing.

(b) Any person aggrieved by any final decision of the Health Director in the administration and enforcement of this chapter may appeal such decision to the district court as provided by state law. (Ord. 19586 §9; August 1, 2011: prior Ord. 15568 §8; May 14, 1990: P.C. §8.54.065; Ord. 14227 §1; September 30, 1985).

8.44.090 Location Near City's Water Supply.

It shall be unlawful for any person to dig, construct, use, or maintain a water well within a distance of 3,000 feet of any existing production well belonging to the City of Lincoln in connection with the city's water supply; provided, that any such water well existing immediately prior to March 29, 1983, may be continued to be used, maintained, and repaired when necessary, although such use does not conform to the provisions hereof. (Ord. 15568 §9; May 14, 1990: P.C. §8.54.070; Ord. 13558 §9; March 14, 1983).

8.44.100 Decommissioning a Water Well.

The Health Director shall be notified prior to the decommissioning of any water well. All unused or illegal water wells shall be properly decommissioned in accordance with Title 178 NAC 12.

Whenever a water well has been improperly decommissioned or discontinued for use and does not have formal inactive status, the owner of such property upon which such water well is located shall be notified to decommission such water well within 90 days. Upon failure of the owner of the property upon which said water well is located to comply with such order, the Health Director shall decommission such well at the cost of the owner of such property. (Ord. 19586 §10; August 1, 2011: prior Ord. 15568 §10; May 14, 1990: P.C. §8.54.080; Ord. 13558 §10; March 14, 1983).

8.44.110 Water Well, Use of; When Permitted.

The use of water wells within the limits of the city for potable purposes shall be permitted only when a public water system is not available to the premises on which water is required. A public water system shall, for the purposes of this chapter, be considered available when a water distribution main which can be tapped is located within 300 feet of any part of said premises on which water is required. (Ord. 19586 §11; August 1, 2011: prior Ord. 15568 §11; May 14, 1990: P.C. §8.52.010; Ord. 3489 §11-1301; July 6, 1936).

8.44.120 Notice and Order to Discontinue Use or Decommission.

Whenever a water well is determined by the Health Director to have an unsafe water sample, pose a significant health or safety hazard, or pose a risk of groundwater contamination, the Health Director may issue a stop use order, order the water well repaired, require the water to be treated to reduce health or safety risks, or order the water well to be decommissioned. Such notice shall be served by certified or registered mail, or in person, to the last known owner of the property. If the Health Director orders the water well to be decommissioned, such decommissioning must be completed within 90 days.

Upon failure of the owner to comply with such order, the Health Director may cause such water well to be repaired, treated, or decommissioned at the cost and expense of the owner of the property upon which such water well is located. (Ord. 19586 §12; August 1, 2011; prior Ord. 15568 §12; May 14, 1990; P.C. §8.52.020; Ord. 3489 §11-1301; July 6, 1936).

8.44.130 Enforcement; Penalty.

(a) The Health Director shall investigate suspected violations of this chapter. Whenever the Health Director finds violations of this chapter, the Health Director may issue a notice of violation specifying the corrective action to be taken and the time period within which such action must be completed.

(b) Failure to correct the violations within the time period specified shall be cause for an enforcement action by the City.

(c) Any person who violates this chapter shall be subject to a penalty of no more than \$500.00 per day of violation, imprisonment in the county jail for a period not to exceed six months, or both such penalty and imprisonment. In the case of a continuing violation, each day shall constitute a separate and distinct offense. In addition to any penalty sought or obtained under this chapter or other applicable law, the City may seek injunctive relief or take other appropriate action necessary to obtain compliance or to abate any nuisance resulting from the violation. (Ord. 19586 §13; August 1, 2011).