

ORDINANCE NO. 2017- 24

Elkhart County Private Water Well Ordinance

AN ORDINANCE REGULATING PRIVATE WATER WELLS IN ELKHART COUNTY, INDIANA, PROVIDING THAT ALL NEW PRIVATE WATER WELLS CONSTRUCTED IN ELKHART COUNTY MEET MINIMALLY ACCEPTABLE STANDARDS FOR SITING, CONSTRUCTION, AND POTABILITY AND ASSURING THAT ABANDONED PRIVATE WATER WELLS DO NOT ADVERSELY AFFECT AQUIFERS FROM WHICH WATER IS DRAWN

WHEREAS Indiana Code §§ 36-1-3 et seq. permit any county in the State of Indiana to exercise any power or to perform any function necessary to the public interest, which is not prohibited by the Constitution of the United States or the State of Indiana, denied or preempted by any other law, or granted expressly by any other law to another governmental entity;

WHEREAS the Board of Commissioners of the County of Elkhart, Indiana, is the County legislative body and is by law authorized to adopt ordinances for the regulation of conduct in the County of Elkhart, Indiana;

WHEREAS the Elkhart County Board of Health has conducted a public hearing concerning this Ordinance regulating private water wells in Elkhart County, Indiana, and has recommended the adoption of this Ordinance to the Board of Commissioners of the County of Elkhart, Indiana; and

WHEREAS the Board of Commissioners of the County of Elkhart, Indiana, deems it to be reasonable, appropriate, and in the best interests for the public health, safety, and general welfare of the citizens of the County of Elkhart, Indiana, to adopt an ordinance concerning private water wells in Elkhart County, Indiana; regulating the construction and location of all such wells; requiring the permitting of private water well construction; regulating the abandonment of such wells; providing for the enforcement of this Ordinance; and fixing penalties for the violation thereof;

NOW, THEREFORE, BE IT ORDAINED, ORDERED AND ESTABLISHED by the Board of Commissioners of the County of Elkhart, Indiana, as follows:

SECTION 1 Title

This Ordinance may be referred to as the "Elkhart County Private Water Well Ordinance."

SECTION 2 Adoption of Statutes and Regulations by Reference

The following statutes and regulations are hereby adopted and incorporated herein by reference:

Ind. Code Article 14-25, as amended, concerning water rights and resources;

Ind. Code Article 25-39, as amended, concerning water well drillers and water well pump installers;

Article 12 of Title 312, as amended, of the Indiana Administrative Code concerning water well drilling and ground water;

Article 13 of Title 312, as amended, of the Indiana Administrative Code concerning water well drillers and water well pump installers.

Any words defined by these statutes and regulations, as amended, shall have the same meaning when used in this Ordinance, except as defined in Section 3 which shall control for purposes of this Ordinance. Copies of the current versions of these statutes and regulations shall be kept on file at the environmental health office of the Elkhart County Health Department.

SECTION 3 Definitions

For purposes of this Ordinance, the terms below shall be defined as follows:

- A. "Absorption field" shall mean the part of a residential or commercial onsite sewage system that provides for the infiltration of sewage through pipes or chambers laid in a system of subsurface trenches or pipes laid in elevated beds into which the effluent from the septic tank is discharged into the soil for treatment and dispersal.
- B. "Available" shall mean located within the corporate limits of the town or city providing the utility and within three hundred (300) feet of the property line of the affected property, as measured along accessible easements or right-of-ways, or connectable at a construction cost estimated by the Health Officer not to exceed one hundred fifty percent (150%) of the cost estimated by the Health Officer for installing a private water well system to serve the affected property.
- C. "Commercial onsite sewage system" means all equipment and devices necessary for proper conduction, collection, storage, treatment, and on-site disposal of wastewater from other than one- or two-family dwellings, except where such dwellings are connected to a cluster system. Included within, but not limited to, the scope of this definition are building sewers, grease traps, septic tanks, dosing tanks, absorption fields, perimeter drains, vault privies, and temporary wastewater holding tanks serving such facilities as apartment buildings, campgrounds, churches, commercial establishments, condominiums, medical facilities, mobile home parks, motels, office buildings, restaurants, and schools. However, an onsite sewage system serving two (2) single-family dwellings on the same property, with a combined DDF of less than or equal to seven hundred fifty (750) gallons per day, is a residential onsite sewage system, not a commercial onsite sewage system.
- D. "County" shall mean the County of Elkhart, State of Indiana.
- E. "Cross-connection" shall mean any permanent or temporary physical connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other of which contains either water of unknown or questionable safety or steam, gas or chemical, whereby there exists the possibility for flow from one

system to the other, with the direction of flow depending on the pressure differential between the two systems.

- F. "Dug well" shall mean a water well made by excavating with hand tools or power machinery instead of by drilling or driving to below the water table.
- G. "Emergency well installation" occurs when a water well driller/contractor or home owner is not able to obtain a water well permit from the Health Officer due to office closure, and extreme hardship would likely result if the water well construction were to be delayed until normal business hours arrive and the office is open for business.
- H. "Groundwater" means all water occurring beneath the surface of the ground regardless of location or form.
- I. "Health Department" shall mean the Elkhart County Health Department.
- J. "Health Officer" shall mean the Elkhart County Health Officer and his or her duly authorized representatives.
- K. "Identification credentials" shall mean the official identification credentials issued by the County of Elkhart to employees working for the Elkhart County Health Department.
- L. "Location area" shall mean the proposed area or part of a property that meets the isolation distances as outlined in this Ordinance where the water well has the potential to be located as reflected in the site plan and application.
- M. "Monitoring well" shall have the same meaning set forth in 312 IAC 13-1.
- N. "Owner" shall mean the owner, in whole or in part, of a dwelling, of a facility, of a property or the agent of any such owner.
- O. "Potable water" means water that at the point of use is acceptable for human consumption under prevailing governmental standards.
- P. "Private water well" shall mean any water well that does not meet the definition of a "Public Water Supply Well" as defined in 312 IAC 13-1-20 or "Significant Groundwater Withdrawal Facility" as defined in IC 14-25-4-6.
- Q. "Residential onsite sewage system" means all equipment and devices necessary for proper conduction, collection, storage, treatment, and onsite disposal of wastewater from:
 - (1) a one (1) or two (2) family dwelling;
 - (2) a residential outbuilding; or
 - (3) two (2) single-family dwellings on the same property with a combined DDF of less than or equal to seven hundred fifty (750) gallons per day.This definition includes, but is not limited to, residential sewers, dosing tanks, septic tanks, soil absorption systems, perimeter drains, temporary sewage holding tanks, and sanitary vault privies.

- R. "To-scale" shall mean an engineering scale where 'one (1) inch = x number of feet' and where x = 20, 30, 40, or 50 feet.
- S. "Vulnerable location" shall mean a location in which the water well would be subject to damage, breakage or other undesired intrusion.
- T. "Water line" shall mean any buried pipe or conduit used to transport water from the water supply source to its final destination including, but not limited to, water well lines, building plumbing, and geothermal heat pump piping.
- U. "Water well permit" shall mean a permit issued to a property owner or licensed water well contractor to construct a private water well in accord with the specifications of the approved plan, the requirements of this Ordinance, and both federal and state statutes and regulations.
- V. "Water well" shall mean any excavation, whether drilled, bored, driven, jetted, or dug for the purposes of intersecting ground water, or obtaining water from the ground, or returning water to the ground, or for the purpose of testing the quantity or quality of such water, but shall also include a Closed Loop Geothermal Well System.
- W. "Well sealing permit" shall mean a permit issued to a licensed water well contractor, pump installer or property owner to seal/abandon a water well to the specifications of the approved plan and the requirements of this Ordinance and State codes and rules.

All other words and phrases shall have their usual and customary meaning.

SECTION 4 Registration

- A. Any person that constructs, installs, replaces or abandons a potable or non-potable private water well in the County must be licensed as required by Indiana Code Article 25-39.
- B. A licensed water well driller or licensed water well pump installer must perform all private water well construction, installation, replacement and abandonment activities in the County, except where licensure for such activity is not required by State law.
- C. No person may construct, install, replace or abandon any private water well in the County unless he or she has registered with the Health Officer.
- D. The Health Officer shall prescribe a form by which a person may apply to register as a private water well driller or private water well pump installer. The application must include a copy of the applicant's state license.
- E. The registration shall expire on January 31 of each year, but may be renewed annually by filing a renewal registration on or after January 1 of each year.
- F. All water well drillers and water well pump installers operating in the County shall comply with the terms and provisions of this Ordinance and the incorporated state laws and regulations. In the event of any conflict between the provisions of the incorporated state laws and regulations and this Ordinance, the provisions which are more restrictive shall govern.

- G. A person's registration with the Health Officer does not constitute an endorsement by the Health Officer of the person's competence or professionalism, and the County shall not be responsible or liable for the person's work on account of the person's registration with the Health Officer.
- H. The Health Officer may suspend or revoke the registration of a water well driller or water well pump installer if the water well driller or water well pump installer fails to comply with any provision of this Ordinance or any federal or state statute or regulation concerning the installation and maintenance of private water wells and pumps or the abandonment of any such well.
- I. In the event that the Health Officer suspends or revokes a water well driller or water well pump installer's registration, the water well driller or water well pump installer may appeal the suspension or revocation to the Elkhart County Board of Health by filing a notice of intent to appeal the suspension or revocation of the registration within ten (10) business days from the date when the Health Officer issues notice of such suspension or revocation.
- J. Upon request, the Health Department shall provide a complete list of currently registered water well drillers and water well pump installers.

SECTION 5 Private Water Well Systems: General Requirements

- A. If a person intends to construct, install, replace or abandon a private water well within the boundaries of a municipality and if the municipality has an ordinance regulating private water wells, the person shall obtain permission for the private water well activity from the municipality before applying for a permit under this Ordinance.
- B. No permits will be issued for the construction, installation, or replacement of potable private water wells within a subdivision, planned unit development, or other area served by a municipal water service.
- C. After the effective date of this Ordinance, and subject to the approval of the municipality having jurisdiction, if a subdivision is approved where a municipal water system is available, the subdivision developer must make connection to that municipal water system and shall extend the municipal water system to all lots in the subdivision at the developer's expense.
- D. No permit will be issued for the construction or installation of a new potable private water well that is intended to serve more than one single family dwelling or more than one unit of a multi-family dwelling if each individual unit in the building is separately owned. A private water well in these circumstances must be registered with and meet the requirements of the State for a public well. However, a dawdi haus, a grandparent's cottage, or a guest house may be connected to the private water well serving the main residence on a parcel or lot when both residences are owned by the same individuals or entity.
- E. A permit may be issued for a non-potable private water well within a subdivision, planned unit development, or other area served by a municipal water service unless a municipal ordinance, the ordinance establishing the subdivision or the planned unit development, or other local,

state, or federal law or regulation prohibits the installation of a non-potable private water well where proposed.

- F. Any private water well in the plume of known groundwater contamination shall be abandoned as soon as practicable, but not later than one year from the time when municipal water service is made available to the property served by the private water well. Until that time, the owner of any property served by such a private water well shall install, operate, maintain, and use drinking water filtration systems to reduce the contamination in the water drawn from the private water well to meet EPA drinking water standards.
- G. New private water well construction and installation shall generally be prohibited in areas of known groundwater contamination, such as those designated by the United States Environmental Protection Agency or an agency of the State of Indiana, including but not limited to Super Fund Sites, Environmental Restrictive Covenant Sites, and other ground water use restriction sites. The Health Officer will follow the guidance of the designating agency regarding the drilling of private water wells in the delineated area and will, if a new private water well is necessary in such an area, issue a permit if the location and installation of such a private water well is consistent with the advice of the designating agency, and all precautions as outlined in 312 IAC 13-3-2 are strictly adhered to in order to prevent the mixing of aquifers or the inadvertent contamination of a suitable water supply. Any special well construction methods, techniques and materials that are proposed to be used shall be enumerated on the permit in any situation where a private water well must be drilled in a known groundwater contamination area.
- H. There shall be no connections between a private water well or water supply and a public or municipal water supply.
- I. Dug wells may not be installed in the County, except for dewatering wells.

SECTION 6 Permits

- A. Except as provided in subsection H of this Section 6, no person shall construct, install, replace or abandon a private water well unless the Health Officer has issued a permit pursuant to this Ordinance to the owner of the real estate where a private water well is to be constructed or installed or where any replacement or abandonment of an existing private water well is planned. The owner shall apply for a permit on a form provided by the Health Officer. The owner shall supplement the application form with plans, specifications, and other information deemed necessary by the Health Officer and as required by applicable federal and state statutes and regulations. The applicant shall pay a permit fee to the Health Department as prescribed by the Health Department Fee Schedule Ordinance at the time the application is filed. The issuance of a permit shall not be construed as authority to violate, cancel, or set aside any of the provisions of this Ordinance. Failure to obtain a permit prior to private water well construction, installation, replacement, or abandonment will result in the assessment of a late fee three times the regular permit fee as per the Health Department Fee Schedule Ordinance.

- B. The owner shall post the permit in a conspicuous place at or near the dwelling or facility where the private water well system work is occurring. The notice shall be plainly visible from the public thoroughfare nearest this structure.
- C. When a permit has expired or has been revoked, the work specified on the private water well system permit shall not commence or resume unless a new application and fee have been submitted and a new permit has been obtained.
- D. Permit fees are not refundable. In the event that a purported payment of a permit fee by check or other means is not honored by the drawee, credit card issuer or other third-party payer, the person who issued the check or used such other means will be required to pay any penalties and late fees and be required to make any future permit fees in cash.
- E. Transfer of ownership of the real estate for which a private water well system permit has been issued shall automatically void the permit for that property unless the transfer has been disclosed in the permit application and approved with the permit. An example may be an expected transfer from a builder or developer to an owner following the construction of a house.
- F. Permits issued under the provisions of this Ordinance shall be valid for a period of 12 months from the date of issuance. In the event the work authorized by the permit is not completed within 12 months from the date of issuance, the permit shall automatically expire and become void.
- G. A separate permit shall not be required for well abandonment if the abandonment and the drilling of a new private water well are undertaken as parts of the same project.
- H. The following exceptions exist with respect to the permit requirement:
 - 1. In emergency well installation situations where it becomes necessary to restore water to a house, facility or other building and the emergency does not allow time for the submission of a site plan and permit application, a licensed and registered water well driller may proceed in such an emergency to install a new private water well, but a permit application must be submitted therefor on the first business day after the work has been commenced. A water well driller who commences an emergency private water well installation proceeds at his own risk, including the risk of having to undertake remedial work to bring the new private water well into compliance and the risk that the Health Officer may issue a stop order. Should the work not meet acceptable standards, the work must be brought into compliance with all applicable codes, rules or ordinances within a specified time period, not to exceed 14 days.
 - 2. Monitoring wells used solely for the purpose of testing for contamination of the groundwater must be permitted, but will be permitted by the parcel rather than by the individual well.
 - 3. Temporary dewatering wells are not required to obtain a permit under this Ordinance.

- I. The Health Officer shall not issue a permit unless the application therefor and the site plans submitted therewith are complete and accurate. The Health Officer may revoke a permit or issue a stop work order if the Health Officer finds, after the issuance of a permit, that the application therefor or the site plans submitted therewith are inaccurate or incomplete.
- J. If the Health Officer does not approve an application for a permit, the Health Officer shall advise the applicant of the Health Officer's rationale for not approving the application and inform the applicant of any technical or administrative options known to the Health Officer.

SECTION 7 Applications

- A. An application for a permit to construct, install, replace, or abandon a private water well shall be made in writing on forms provided by the Health officer.
- B. A person applying for a permit to install a new private water well system shall submit with the application two copies of a site plan that conforms with the requirements of Section 8 of this Ordinance. The application must be complete and accurate. The required permit fee must be submitted with the application. The application must identify the site by the Auditor's Property Identification Number (PIN), the Treasurer's tax identification number, the site's legal description, or the site's property address. Also, the latest aerial photo of the site must be attached.
- C. If the site plan includes a proposed new onsite sewage system, the application for a permit to install a new private water well shall include a copy of the plan for the new onsite sewage system that has been approved and signed by the Health Officer.

SECTION 8 Site Plans

- A. For new building construction, the site plan must be drawn on a recent plat of survey or have the survey attached. For replacement private water wells of existing structures, the site plan should be superimposed upon the survey map or a copy of the survey map should be submitted with the application if a survey of the site has been made.
- B. The site plan must show the following required features:
 - 1. the location of existing onsite buildings, driveways, parking areas and other improvements even if they will be removed;
 - 2. the location of any proposed new buildings, driveways, parking areas and other improvements;
 - 3. the location of utility and access easements;
 - 4. the location of existing water wells;
 - 5. the location of existing and proposed onsite sewage systems, including the locations of the septic tank or tanks, sewer line or lines, absorption trenches, subsurface drains and distribution boxes;
 - 6. all onsite potential sources of groundwater contamination;
 - 7. the boundaries of the site and the dimension of each boundary; and

8. If the applicant has a title search for the subject property, a copy of the title search must be submitted.
- C. The site plan submitted with an application for a new private water well shall be large enough to show legibly the proposed location of the new private water well, and the location of required features. The site plan shall be drawn to scale and shall show accurate measurements of the distances from the proposed location of the new private water well to each of the other required features of the site plan, including the boundaries of the site.
- D. If the site is within a flood plain, the site plan must show topographical elevations and indicate that the top of the finished well casing or pitless adapter for the proposed private water well shall be at least 2 feet above the elevation of the regulatory flood elevation.
- E. The site plan shall include as an inset or as an attachment a sketch of the geographical location of the site showing at least the closest intersection of public roads.
- F. The site plan must state name, address, email address and telephone number of the person who prepared the site plan.
- G. To the extent practicable, a site plan shall also show the location of water wells, onsite sewage systems and potential sources of groundwater contamination on any contiguous site when the water well will potentially be located less than 100 feet from the contiguous site. The location of such features may be a matter of record in the Health Department.
- H. A person applying for a permit to abandon a private water well shall submit with the application a site plan large enough to show legibly the location of the well in relationship to the boundaries of the site and existing features such as onsite buildings, onsite sanitary sewer lines, and onsite sewage systems, and, if any existing building is to be demolished, to two nearby property pins or permanent landmarks such as numbered electric poles.

SECTION 9 Site Evaluation

Before a permit for the installation of a private water well is issued, the Health Officer must evaluate the site to determine the suitability of the proposed location for the installation of the water well. The Health Officer shall review the site plan submitted with the application for the permit and may visit the site in order to evaluate the proposed location for installation of the private water well and to ascertain any special conditions that may need additional consideration. The Health Officer's site evaluation will also include a record search for known groundwater contamination.

SECTION 10 Location and Installation

- A. A private water well shall be located:
1. At the highest point on the site consistent with the general layout and surroundings, but in any case in a place protected against surface drainage and flooding, and
 2. As far removed from any known or probable source of contamination as the general layout of the premises and surroundings allow.

- B. The isolation distances for private water wells required by 312 IAC 13-3-2 must be observed. In addition, the following isolation distances for private water wells must be observed:
1. A minimum of fifty (50) feet from all portions of a residential onsite sewage system and the designated reserve onsite sewage system area as approved by the Health Department.
 2. A minimum of one hundred (100) feet from all portions of a commercial onsite sewage system and the designated reserve onsite sewage system area as approved by the Health Department.
 3. A minimum of five (5) feet from side, rear or front lot lines .
 4. A minimum of five (5) feet from any public right-of-way.
 5. A minimum depth of twenty five (25) feet as measured from the ground surface to the top of the well screen.
 6. A minimum of five (5) feet from a dwelling or other access inhibiting structures, including any building overhangs.
- C. Every private water well shall be located so that it will be reasonably accessible by proper equipment for cleaning, treatment, testing, inspection, and for such other attention as may be necessary. No private water well shall be located so that the top of the well will be within the basement of any building or under a building having no basement. Nothing shall be constructed in proximity to a private water well, including landscaping, that will interfere with the inspection, maintenance or abandonment of the well.
- D. The finished well casing shall extend at least 1 foot above the ground level. However, if the site is within a flood plain, the finished well casing shall extend at least 2 feet above the elevation of the regulatory flood elevation.
- E. Well heads and well casing openings shall not be located in any pit, room, area or space that is below the elevation of the surrounding ground surface unless the conditions and construction requirements prescribed by the Department of Natural Resources for the location of well heads and well casing openings in such spaces are observed.
- F. In the instance when water cannot be obtained from a new private water well due to excessive depth or other geographical limitations within the permitted location area and the licensed water well driller must go outside the approved location area on the subject property, the following conditions shall be met:
1. All isolation conditions as previously outlined for all private water wells must be followed.
 2. If a variance from the Indiana Department of Environmental Management or the Indiana Department of Natural Resources is needed, it must be obtained and submitted to the Health Department as soon as possible but no later than ten (10) business days after receipt of the variance.
 3. A water well driller who goes outside the approved location area for private water well installation proceeds at his own risk, including the risk of having to undertake remedial work to bring the new private water well into compliance and the risk that the Health

Officer may issue a stop order. Should the work not meet acceptable standards, the work must be brought into compliance with all applicable codes, rules or ordinances within a specified time period, not to exceed 14 days.

- G. In the instance when water cannot be obtained from a new private water well due to excessive depth or other geographical limitations within the permitted location area and the licensed water well driller must go outside the subject property's property lines, a new application shall be submitted to the Health Department for approval and the following conditions shall be met:
 - 1. Easements or other access rights in perpetuity for all properties that come in contact with any portion of the private water well or any of its components must be obtained.
 - 2. If a variance from the Indiana Department of Environmental Management or the Indiana Department of Natural Resources is needed, it must be obtained and submitted to the Health Department as soon as possible but no later than ten (10) business days after receipt of the variance.
- H. The Health Officer recognizes that a number of properties in the County cannot meet current requirements for replacement private water wells due to lot site limitations and that a proposal for repair or replacement must make the best use of the available space and must employ acceptable standards of construction and siting to maximize the best interests of public health. The judgment of the Health Officer will be employed where it is necessary to replace an existing private water well on a case-by case basis and will hold isolation distances as the highest priority to promote and maintain public health and water well system functioning.
- I. The Health Officer may impose conditions on the location and construction of private water wells regulated under this Ordinance on a case-by-case basis to protect the public health or safety of the groundwater. Any such conditions shall be explicitly stated in the permit and may include, but are not limited to, additional testing requirements, special casing and grouting procedures, modified well screening depth requirements, and increased minimum separation distances for any proposed well location.
- J. After the work of drilling a private water well is complete, the water well driller shall place a permanent identification on the well cap at least twelve (12) inches above the ground that clearly states the name and state license number of the well driller or company that drilled the well.

SECTION 11 Well Abandonment

- A. Private water wells taken out of service must be properly abandoned in accordance with 312 IAC 13.
- B. When an existing structure is scheduled for demolition, any private water well connected thereto must be abandoned unless the well serves another structure which is not scheduled for demolition or unless the Health Officer explicitly authorizes the reuse of the well for service to a structure that will begin construction within twelve (12) months of the issuance date of the building department demolition permit.
- C. Any person who proposes to demolish an existing structure that is connected to a private water well must, before undertaking the demolition, apply to the Health Officer for a permit to

abandon the well or to preserve the well. A well abandonment permit issued in connection with a proposed demolition may authorize well abandonment either prior to initiation of the demolition or after the demolition is complete but no later than twelve (12) months from the issuance date of the building department demolition permit.

- D. The application for the permit to abandon the private water well must specify the location of the well by use of global positioning equipment that locates the well within a circular perimeter having a diameter no greater than three (3) meters and must specify the date by which the abandonment will be completed.
- E. The application for the request to preserve the private water well must specify the location of the well by use of global positioning equipment that locates the well within a circular perimeter having a diameter no greater than three (3) meters and must specify the date by which the structure the water well is to service will be completed.
- F. The well driller or pump installer must keep detailed and accurate records of the entire abandonment procedure for future reference. Such records must be sufficient to demonstrate to the Health Officer that the well was properly abandoned and shall be furnished upon request.

SECTION 12 Work Reports

- A. Within 30 days after a new private water well has been installed, the water well driller shall submit a complete and accurate copy of the approved Indiana Department of Natural Resources Well Log and Record of Water Well State Form to the Health Officer. The well log shall also contain the County private water well permit number.
- B. The water well driller shall submit to the Health Officer an as-built site plan indicating the exact location the private water well was actually placed. The use of global positioning equipment that locates the well within a circular perimeter having a diameter no greater than three (3) meters is required. Any changes in location from the approved site plan must be clearly indicated. The well driller shall also furnish, upon request, any additional well construction information deemed necessary by the Health Officer to protect public health and safety or the groundwater.
- C. Each well driller shall also submit to the Division of Water of the Indiana Department of Natural Resources an accurate record of each private water well drilled in accordance with the provisions of Ind. Code Article 25-39. The well driller shall provide to the State Department of Natural Resources the County private water well permit number for each well drilled.
- D. For each private water well abandoned by a water well driller or pump installer, a copy of the Record of Water Well with the abandonment section completed that is filed with the Indiana Department of Natural Resources shall be filed with the Health Officer within 30 days after the work has been done. The well abandonment log shall include a drawing made to scale showing the location of the abandoned well or accurate GPS coordinates. If a recent survey of the site has been made, the location of the abandoned well may be superimposed upon the survey map.

- E. In accordance with the provisions of 312 IAC 13-10-2, each owner shall submit written notification to the Division of Water of the Indiana Department of Natural Resources of each well abandoned within thirty (30) days after plugging is completed.

SECTION 13 Onsite Visits and Right of Entry

- A. The Health Officer shall enforce this Ordinance. The Health Officer shall be permitted to enter upon any property at any reasonable and proper time for the purposes of onsite visits, observation, measurement, sampling and testing necessary to carry out and assure compliance with the provisions of this Ordinance. The Health Officer shall ensure that all proposed, constructed, installed, replaced and abandoned private water wells comply with the applicable provisions of this Ordinance.
- B. By making an application for a new private water well or for the abandonment of a private water well, an owner authorizes the Health Officer, at reasonable times, to enter upon the lot or parcel of land where the well will be installed or abandoned in order to perform activities required for the enforcement of this Ordinance.
- C. Every permit issued under this Ordinance shall include as a condition the right of the Health Officer, at reasonable times, to enter upon the lot or parcel of land identified in the permit in order to perform activities required for the enforcement of this Ordinance.
- D. The Health Officer may obtain access to privately owned land in order to perform activities required for the enforcement of this Ordinance as authorized by Ind. Code § 16-20-1-23.

SECTION 14 Report of Onsite Visit

Whenever an onsite visit is made of a private water well construction, the findings shall be recorded on the report form approved by the Health Officer. The report form shall summarize the requirements of this Ordinance and shall set forth a cumulative total of all violations. Onsite visit remarks shall be written to reference the corrections to be made and a reasonable period of time for the correction of the violations found. A copy of the completed report form shall be presented at the time of the onsite visit. The complete report form constitutes an official notice of onsite visit findings and an order of the Health Officer to correct all violations found. Corrections of all violations shall be accomplished within the time period specified.

SECTION 15 Water System Disinfection

- A. Each private water well and associated plumbing must be thoroughly and properly disinfected in accordance with 312 IAC 13-9-1 prior to any sampling and prior to placing the system into use or reuse.
- B. Any time a private water well seal is broken, any portion of a private water well is exposed to potential contamination such as flood conditions, or any private water well samples show evidence of bacterial contamination, the well and all associated plumbing shall be disinfected in accordance with 312 IAC 13-9-1.

SECTION 16 Well Water Samples

- A. The water from a private water well that is constructed or installed after the effective date of this Ordinance shall not be used for human consumption until such time as the Health Officer has approved the well and found the water analysis to be acceptable.
- B. The Health Officer shall grant final approval of a potable private water well only if the Owner submits to the Health Officer a satisfactory report of an analysis (or satisfactory reports of analyses) of a water sample (or water samples) taken from the well made by a water laboratory (or water laboratories) certified by the Indiana Department of Health.
- C. The water laboratory (or water laboratories) shall test for, and report on, the presence or absence of (1) total coliform bacteria; (2) E. coli; (3) nitrate concentrations measured as nitrogen; (4) arsenic and (5) chlorine residual. If the private water well is located in the vicinity of known areas of concern or contamination, the Health Officer may require testing for, and a report concerning, additional testing parameters.
- D. If the laboratory report or reports indicate the presence of:
 - 1. chlorine, total coliform bacteria, or E. coli, at any level, or
 - 2. a nitrate level of 10 milligrams per liter (parts per million (ppm)) or greater, or
 - 3. an arsenic level of 10 micrograms per liter (parts per billion (ppb)) or greater,the Health Officer shall not approve the use of the potable private water well until a satisfactory report or reports is obtained and submitted to the Health Officer.
- E. It shall be the responsibility of the property owner to provide for the collection and testing of all the water well samples. The owner of the private water well or the owner's designee may collect the sample or samples to be analyzed. The sample or samples shall be collected from a permanent fixture inside the building or dwelling or a sampling tap installed near the pressure tank, but only after it appears that all chlorine residual has dissipated from the water supply.
- F. All water analysis sample results shall be provided to the Health Officer within ten days of the completion of the analysis.

SECTION 17 Well Maintenance

- A. An owner shall maintain a private water well on the owner's property in accordance with the provisions of this Ordinance. Any defect that exists or occurs in any private water well or abandoned private water well that could contaminate the well water or cause damage to the aquifer shall be corrected immediately by the owner and, in any case, not later than the time specified in an order of the Health Officer.
- B. A private water well shall be accessible for cleaning, treatment, repair, testing, inspection and such other attention as may be necessary. A private water well owner shall maintain access to the well for a well drilling machine or pump setting equipment.

- C. All private water wells shall be protected against breakage by accident and secured from vandalism. The owner of a private water well shall be responsible for corrective action caused by contamination that enters a water system or the groundwater through the owner's well.
- D. The owner of any private water well in a vulnerable location shall employ means to protect the well against breakage by accident. Such means include but are not limited to the installation of guard posts, locking caps and fences, and relocation of the private water well. The Health Officer may issue an order directing an owner to take specific protective measures with respect to any private water well the Health Officer deems to be in a vulnerable location.
- E. Except when authorized by an abandonment permit, it shall be unlawful for any person to damage, deface or tamper with any structure, equipment or appurtenance which is a part of, or used in connection with, a private water well.

SECTION 18 Notices

- A. The Health Officer shall issue to any person found to be violating any provision of this Ordinance a written order stating the nature of the violation and providing a time limit for its satisfactory correction. If a person receives a written order from the Health Officer directing compliance with any provisions of this Ordinance, that person shall comply with the provisions of the order and perform all acts required by the order within the time limit set forth in the order. The Health Officer may affect service of the order by any of the means for service of process authorized by the Indiana Rules of Trial Procedure. An order shall also be deemed served when an onsite visit tag or report indicating the violation is to the property owner or person in charge of the job site at the time of the onsite visit or by mailing a copy in ordinary mail to the last known address of the water well driller or water well pump installer listed on the permit application.
- B. If a violation continues following the specified period of time in an order, the matter may be referred to the attorney for the Health Department or the County Prosecuting Attorney for appropriate legal action. In any case, the Health Officer may revoke any permit previously issued by the Health Officer and promptly give written notice of the action to the permittee. Any permit granted by the Health Officer may be revoked by the Health Officer for any of the following causes:
 - 1. Violation of any condition of the permit;
 - 2. Failure to disclose all of the relevant facts in the application for the permit;
 - 3. Any misrepresentation made in the application for the permit;
 - 4. Any use of the permit which in the opinion of the Health Officer is not consistent with the purpose of this Ordinance; or
 - 5. Failure to allow a properly credentialed Health Officer right of entry on the property for the purpose of assuring compliance with the provisions of this Ordinance.
- C. No new private water well permits shall be issued to a water well driller or a water well pump installer where the water well driller or water well pump installer performing the work has one or more outstanding violations of this Ordinance which are more than 90 days past the ordered correction dates.

SECTION 19 Hearings

- A. Any person affected by an order or notice in connection with the enforcement of any provision of this Ordinance may request and shall be granted a hearing on the matter before the Elkhart County Board of Health, provided that the person files a written Request for Hearing with the Health Officer within thirty (30) days after receipt of the order or notice. Written requests for hearing shall clearly state the following:
- (1) The name and address of person affected;
 - (2) The provisions of this Ordinance in question;
 - (3) The reasons for requesting a hearing;
 - (4) The requested relief; and
 - (5) The basis for the requested relief.
- B. A hearing requested pursuant to this section shall be conducted within thirty (30) working days of the Health Officer's receipt of the request. The hearing shall be conducted by the Elkhart County Board of Health at a time and place designated by the Health Officer. Written notice of the time and place of hearing shall be delivered by regular U.S. mail to the person requesting the hearing at least ten (10) days prior to the hearing. If the person requesting the hearing so requests, the Health Officer may grant a continuance of the hearing date for a period of not more than thirty (30) days.
- C. A tape recording shall be made of the hearing, and the cost borne by the Health Department; however, a transcript of the hearing will be made only if a person requests it and shall be transcribed at the cost of such person. The Elkhart County Board of Health shall make a ruling based upon the complete hearing record and shall sustain, modify, or rescind any order, suspension, revocation, or ruling challenged in the hearing. A written report of the hearing decision including the reason(s) for such decision shall be furnished to the affected person by the Health Officer within ten (10) days of the hearing.
- D. At the request of the Health Officer, staff testimony may be presented at the hearing.
- E. The Elkhart County Board of Health may in its discretion establish a Hearing Board to conduct water well system violation hearings in the County. Any such Hearing Board would have three (3) members. The members of the Hearing Board would include the Health Officer, one representative of the Builders Association of Elkhart County appointed by the Elkhart County Board of Health to serve at its pleasure, and one Indiana State licensed well driller appointed by the Elkhart County Board of Health to serve at its pleasure. In the event that a Hearing Board is established, the procedures indicated above in subsections (a), (b), (c) shall apply with respect to hearings before the Hearing Board. In the event that either the Health Department or the affected person is not satisfied with the decision of the Hearing Board, either party may appeal to the Elkhart County Board of Health for a further hearing on the matter in accordance with and to be conducted under the provisions of subsections (a), (b), and (c) above. In such event, the Elkhart County Board of Health may affirm, reverse, or modify the decision of the Hearing Board.
- F. In the event the Health Officer elects to instigate prosecution and enforcement action for violation of the provisions of this Ordinance with the assistance of the County Prosecutor or the County Attorney or both, the hearing provisions contained within this Section shall not apply and shall not be available to the affected person.

SECTION 20 Fines and Penalties

Any person who violates any provision of this Ordinance shall be deemed to have committed an ordinance violation and, upon conviction, shall be fined not more than Five Hundred Dollars (\$500.00) for the first offense and not more than One Thousand Dollars (\$1,000.00) for the second and each subsequent offense. Each violation of the Ordinance shall constitute a separate ordinance violation. Each day that an ordinance violation continues, after the expiration of the time period set forth in any order for corrections, if applicable, shall constitute a separate ordinance violation. In addition to the specific enforcement mechanisms contained within this Ordinance, the Health Officer may furnish written evidence of any violation of this Ordinance to the County Prosecutor or the County Attorney or both for appropriate action against the offending person, including prosecution and enforcement actions to include the abandonment of improperly installed, unlawful, or unpermitted private water wells in violation of the provisions of this Ordinance.

SECTION 21 Construction

- A. In the event that any provision of this Ordinance is ultimately determined by a court of competent jurisdiction to conflict with any provision of the state laws and regulations adopted by and incorporated in this Ordinance, then and in any such event the more strict provision shall govern.
- B. In the event that any provision of this Ordinance is ultimately determined by a court of competent jurisdiction to be pre-empted by any state or federal law or regulation, this Ordinance shall automatically be deemed amended by eliminating the pre-empted provision and incorporating in its place the applicable provision of the pre-empting state or federal law or regulation.
- C. Each provision of this Ordinance shall be construed as separate, to the end that if any part of it shall be held invalid for any reason, the remainder shall continue in full force and effect.
- D. Compliance with the requirements of this Ordinance does not obviate or eliminate the necessity of complying with any other applicable federal, state, or local laws and regulations affecting private water well systems.

SECTION 22 Authority of Health Officer

It is hereby acknowledged, understood, and declared by the Board of Commissioners of the County of Elkhart, Indiana, that under this Ordinance the Health Officer is required to exercise and is vested with the authority to exercise his or her discretion and judgment in order to protect and preserve the public health, safety, and general welfare of the citizens of the County of Elkhart, Indiana, in regulating private water well systems. The authority of the Health Officer to issue, deny, suspend, or revoke or fail or refuse to issue, deny, suspend, or revoke any permit, license, approval, order, or similar authorization under this Ordinance is hereby declared to be discretionary.

SECTION 23 Effective Date and Repeal

This Ordinance shall take effect on the 1st day of January, 2018 following publication in accordance with the requirements of law. All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed.

Approved by the Board of Commissioners of the County of Elkhart, Indiana this 20th day of ~~October~~ November, 2017.

BOARD OF COMMISSIONERS OF THE COUNTY OF ELKHART, INDIANA

BY 
Mike Yoder

By: 
Frank Lucchese

By: 
Suzanne Weirick

Attest:


Pauline E. Graff
Elkhart County Auditor

APPROVAL

The above and forgoing Elkhart County Private Water Well Ordinance is approved by the Elkhart County Board of Health and recommended to the Board of Commissioners of the County of Elkhart, Indiana for approval this 28th day of September, 2017.

ELKHART COUNTY BOARD OF HEALTH

By 
Dr. Tom Mellin