

ORDINANCE GOVERNING THE EXTRACTION OF SPRING WATER, GROUND
WATER, AND/OR WATER FROM AQUIFERS WITHIN THE
MUNICIPALITY OF PALMYRA, MAINE

Article 1. Purpose

The purpose of this ordinance is to protect the quality and quantity of groundwater, spring water and aquifers and aquifer recharge areas located wholly or partially within the Town of Palmyra, to insure any water extraction is subject to prior review and approval so as to establish the ongoing sustainability and quality of said water supplies and the avoidance of any interruption or degradation of water quality and quantity to members of the general public within the town and generally to protect the health, safety and welfare of persons dependant upon such water supplies.

Article 2. Authority

This ordinance is adopted and enacted pursuant to the Maine Constitution, Article VII, Part Second, 30 A MRSA 2101 et seq ("Municipal Home Rule), and 30A MRSA 3001 – 3006 ("Ordinance Power").

Article 3. Definitions

Words and phrases, unless their context requires otherwise, shall be defined as follows: first as set forth below, second in accordance with their generally accepted technical meaning within involved scientific disciplines, third as defined by Maine Statutes, and fourth their common dictionary definition.

"Aquifer" means a saturated permeable geologic unit that can transmit significant quantities of water under ordinary hydraulic gradients.

"Extraction" (or "water extraction" or "extraction of water") means withdrawal, removal, diversion, taking, or collection by any means of water from ground water sources, aquifers, springs, wells, pumps, or similar.

"Extraction point" or "Extraction facility" means the physical location where water is extracted, whether by well, pump, pipeline, catchments or other similar method.

"Large scale water extraction" means extraction of water from ground water sources, aquifers, springs, wells or similar in a total daily amount on any given day of 5000 gallons or more, as extracted by an individual or entity or consortium or association of individuals or entities, regardless of the number of extraction facilities utilized.

"Reviewing authority", "reviewing agency" and "Planning Board" are used interchangeable and have the same meaning.

"Water bodies" or "surface water(s)" means lakes, ponds, rivers, streams, wetlands, and similar.

"Zone of Contribution" means that area of an aquifer that contributes water to a well or other extraction point under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at approved yield with no recharge from precipitation). It is bounded by the groundwater divides that result from pumping the well and by the contact of the aquifer with less permeable materials such as till or bedrock. In some cases, streams or lakes may act as recharge boundaries. In all cases the zone of contribution shall extend up gradient to its point of intersection with prevailing hydro geologic boundaries (a groundwater flow divide, a contact with till or bedrock, or a recharge boundary).

Article 4. Large Scale Water Extraction

A. Permit Required

It shall be unlawful for any entity, person, consortium, association of entities or persons acting in concert to extract more than 5000 gallons daily of groundwater, spring water and/or water from aquifers or their recharge areas, regardless of the number of extraction facilities utilized, without first obtaining a written permit issued by the Planning Board, following a public hearing.

B. Activities not requiring a Permit

The requirement of review and approval shall not apply to existing extraction of water used within the Town of Palmyra for standard agricultural purposes; drinking water and domestic water supply to private residences within the Town of Palmyra; water supply for public facilities such as schools within the Town of Palmyra; fires suppression; or for on site residential, commercial and industrial purposes within the Town of Palmyra.

C. Application Requirements

1. The application shall be in writing and be accompanied by site plans prepared by a licensed surveyor, licensed engineer, or similar appropriately licensed professional.
2. The Selectmen of the Town of Palmyra shall establish an application fee. A non-refundable application fee shall be submitted with the application. All checks shall be made payable to the Town of Palmyra.
 - a. The Planning Board may assess reasonable impact fees at any time during the permitting process or during the term of the permit to recover costs associated with contracting professional assistance to evaluate compliance. The Planning Board will obtain a proposal from at least one qualified peer reviewer of its choice and notify the applicant or permitted of the expected charge prior to incurring the charge or charges. (Note: this is intended to cover costs associated with contracting any outside resources the Town may require, i.e. site evaluator during construction, hydro geologists to interpret data, etc.)
3. The application shall include:
 - a. Evidence of applicant's right, title and interest in and to the property (ies) from which the water is to be extracted. If such evidence is other than ownership evidenced by a deed duly recorded in the Somerset Registry of Deeds, the entire document/documentation (other than reference(s) to purchase price and financing terms, which may be redacted) whether lease, option, contract, or other shall be submitted with the application.
 - b. A statement of the maximum daily quantity of water to be extracted, from all extraction points operated by the same individual, entity, consortium, association of individuals or entities.
 - c. The location(s) of the points of extraction.
 - d. The method(s) of extraction.
 - e. A copy of all application, exhibits and reports for such extraction files or to be filed with any other municipal authority or any agency or department of the State of Maine, including as required by 22 MRSA 2660 et seq. (transport of water for commercial purposes) or under applicable Department of Health and Human Services rules and regulations.
 - f. A copy of any permit, approval or denial for such extraction as may have been issued by any agency referred to in (e) above.
 - g. A written report, certified to the Palmyra Planning Board procured and paid for by the applicant, of a hydro geologic investigation and study, conducted and prepared by a licensed professional hydro geologist, geologist, hydrologist, registered professional engineer or other appropriately licensed professional possessing in the

judgment of the Planning Board comparable credentials and qualifications. This report must address at least the following:

- (1) The rates of draw down and recharge of any aquifer or other ground water source as may have been established by a pumping or "stress test" or other similar testing regimen accordance with accepted standards within the geology and engineering professions.
 - (2) The characteristics of the aquifer or other ground source, including rates of draw down and recharge, sustainable extraction rates, aquifer boundaries, recharge areas, impacts on the water table, and impacts on any and all existing water bodies including but not limited to lakes, ponds, rivers, streams, and wetland areas and private wells or other existing extraction locations within the zone of contribution.
 - (3) Possible effects on the aquifer or other ground water resources which might result in the disturbance of existing minerals such as, but not limited to, iron, manganese, arsenic, and uranium, and any health hazards raised by such disturbance(s) or other impacts including issues such as drinking water turbidity, clarity, and aroma.
- h. The application shall be accompanied by written notification of the application and an explanation of the intent, scope, and location of the proposed water extraction in terms readily understandable to a layman to be addressed and mailed to, via certified mail, return receipt requested, the following:
- (1) The owners of record of all parcels of land lying above the aquifer or other water source cited in the application,
 - (2) The owners of record of all parcels of land lying within 500 feet of the outside perimeter of the aquifer or other water source cited in the application,
 - (3) The owners of record of all parcels of land having frontage on any body of water whether lake, pond, river, stream, or wetland within 500 feet of the outside perimeter of the aquifer or other water source cited in the application, even though such individual parcels may themselves lie more than 500 feet from the outside perimeter of said aquifer or other water source.
 - (4) For purposes of these notification requirements an applicant is entitled to rely on the information on file at the Palmyra Town Office as represented by its most recent assessors' maps and the mailing addresses maintained by the Town as to the owners of the affected parcels shown thereon. Actual posting of the certified mail notices is not required until the application is declared or deemed to be complete. See D (6) below.
 - (5) For good cause shown the above notice requirements may be modified by the Planning Board where, for example, it can be established that a body of water, a portion of which lies within 500 feet of the outside perimeter of the aquifer or other water source, extends so far from the proposed extraction point(s) that actual notice to the owners of all land having frontage on that body of water is not necessary.
- i. A small scale site plan depicting at least the following:
- (1) The limits (outside perimeter) of the aquifer or other water source cited in the application, and the bounds of the land of the applicant.
 - (2) The location of all water bodies located within 500 feet of the outside perimeter of the aquifer or other water source.
 - (3) The location(s) of the proposed extraction points.
 - (4) The existing network of public or private roads leading to or by the extraction point(s).
 - (5) Any proposed new roads or driveways to be constructed for access to and egress from the extraction point(s), and the point(s) of intersection of such proposed roads or driveways with existing roads.

- (6) Any existing or proposed utility lines to be utilized in the extraction operation(s).
 - (7) The location and type of monitoring and test wells.
 - (8) Any existing or proposed pipes, pipelines, aqueducts, or similar that are intended to facilitate transport of extracted water from the extraction point(s) towards the intended end user, if any part of the extracted water is ultimately to be transported outside the geographic limits of the Town of Palmyra.
 - (9) Any other relevant and material detail(s) bearing on the proposed extraction process the omission of which would tend to hinder the ability of the reviewing authority, affected land owners or the public from developing a full understanding of the scope and impact of the proposal.
- j. A large scale site plan depicting at least the following:
- (1) A detailed plan of the extraction point(s) including without limitation well heads, pumping facilities, monitoring or test wells, buildings, sheds, paving, vehicular drives, parking and turn around, utility lines, fencing, access roads or driveways, elevation, and contour lines.
 - (2) Any other relevant and material detail(s) bearing on the proposed extraction process the omission of which would tend to hinder the ability of the reviewing authority, affected landowners or the public from developing a full understanding of the scope and impact of the proposal.

D. Application Process

The entire application, including studies, reports, site plans, and all other items referred to in Article 4 (C) above shall be submitted to the Planning Board in triplicate.

1. Within thirty- (30) days from the date of submission the Planning Board shall conduct a preliminary review of the application solely for the purpose of determining whether the application is complete as required by this ordinance.
2. For good cause shown, and upon receipt of confirmatory independent technical advice, the Planning Board may waive one or more of the application details upon a determination that such details are unnecessary, unobtainable as a practical matter or duplicative and that such waiver would not tend to hinder the ability of the Board, affected landowners or the public from developing a full understanding of the scope and impact of the proposal.
3. If the Planning Board deems the application incomplete in any material or relevant respect it shall so inform the applicant by the best practical means, either by writing or verbally at a regularly scheduled meeting of the Board at which the applicant shall have sixty (60) days to complete its application in accordance with this ordinance, upon failure of which the application shall be deemed withdrawn.
4. Upon finding the application complete, the Planning Board shall schedule a public hearing on the application.
5. Any review of the application by the Planning Board or its agents for completeness is preliminary only and is not to be deemed a substantive review, and confers no vested rights upon the applicant or under the application.
6. Applicant's obligations of written notification via certified mail of property owners as set forth in Article 4 (C) (3) (h) above shall not accrue until the application is declared or deemed complete under this ordinance.

E. Review Process; Hearing Process

1. The completed application shall be reviewed by the Planning Board at a public hearing convened for that purpose, no less than 7 days following published notice in a newspaper of general circulation within the Town of Palmyra and posting to notice at three conspicuous public places within the Town. Upon confirmation on the hearing date that certified mail notice has been sent to all affected landowners as previously set forth in this ordinance no less than 10 days prior to the public hearing date.

2. The Planning Board shall be entitled to adopt whatever procedural rules for the hearing, including the imposition of reasonable time limits for the presentations of the applicants, opponents if any, and the general public, it deems appropriate, fair, and reasonable calculated to afford a full consideration of the issues pertaining to the application.

F. Decision: Performance Standards

1. Upon the adjournment of the public hearing the Planning Board shall schedule a public session of the Board, to occur not later than thirty (30) days from the final adjournment of the public hearing, to deliberate and render a decision.
2. The Planning Board may:
 - a. Approve the application;
 - b. Deny the application; or
 - c. Approve the application conditionally, with conditions or stipulations upon the satisfactory completion of which the application will be finally approved. Provided however, any approval (conditional or unconditional) shall require the Board's determination that the applicant has satisfied all of the performance standards as set forth below.
 - d. Any approval shall specify the maximum daily quantity of water authorized for extraction, and any increase in such daily totals shall require further application and review in accordance with this ordinance.
3. The Board shall issue a written decision with findings of fact and rulings and conclusions not later than thirty (30) days from the date on which it votes at a public session to approve, deny, or approve with conditions, and a copy of such written decision shall thereupon promptly be provided to applicant, and otherwise be available publicly.

Article 5. Performance Standards

No approval shall be granted any application until and unless the reviewing authority shall have affirmatively found that each of the following performance standards has been or will be met. The burden of proof is on the applicant. Applicant must also demonstrate to the reviewing authority that it possesses the expertise and financial resources to provide continuing adherence to these standards.

A. Geologic and Hydrologic Standards

1. The quantity of water to be extracted will not have an adverse effect upon ground water flow patterns relating to the aquifer, its recharge areas, or other ground water sources within the Town.
2. The quantity of water to be extracted will not adversely impact, diminish or alter any surface waters within the Town, including during any periods of drought.
3. The quantity of water to be extracted will not cause any ground subsidence beyond the property lines of applicant's property.
4. The quantity of water to be extracted will not adversely affect the long-term sustainability of the aquifer, or its recharge areas, or other groundwater source, including during periods of drought.
5. The proposed extraction will not create a health risk or adversely affect drinking water turbidity, clarity or aroma. Ongoing follow up monthly testing for this purpose, are to be undertaken by the developer with results of such tests provided in writing to the Palmyra Health Officer and CEO on a monthly basis.
6. The establishment of an ongoing follow up monitoring system and development of a system of recording and documenting extraction and recharge data, within the zone of contribution, to be reported in writing to the Palmyra Code Enforcement Officer on at least a monthly basis. At least 25% of monitoring locations shall be at private wells

located within the zone of contribution, provided applicant obtains landowner permission for such testing.

B. Impacts on the General Vicinity.

1. The reviewing authority shall require the furnishing of a bond or other performance guaranty it deems of equivalent security to secure the applicant's obligations under this section.
2. Vehicular access to extraction facility (ies) and for circulation, loading, unloading upon the lot shall occur in such a manner as to safeguard against hazards to traffic and pedestrians on adjacent streets or roads; avoid traffic congestion and traffic safety hazards, or other safety risks.
3. D.O.T. must approve any driveways or access roads to the extraction facility (ies) and a permit must be issued.
4. Additional vehicular demand on existing town roads or public easements occasioned by the operation of the extraction facility (ies) will not exceed the capacity of those roads, or cause premature failure, aging, or diminished utility of those roads.
5. If extraction facility (ies) will be served by pipes, pipelines, aqueducts or similar devices such installations will be sited and constructed in a manner which will not interrupt the public's use of any existing roadway, interrupt the public's access to any public facility, great pond, interrupt private access to private property; or pose the risk of damage to any property along or through which installation traverses as a result of any failure or malfunction which might cause ponding, erosion, run off, or similar.
6. The proposed extraction and activities incident to such extraction such as increased traffic (volume and type), parking, hours of operation, noise, glare from lights, or similar potential for nuisances shall not adversely effect adjacent properties.

C. Farm or Farm operation not a nuisance.

A farm or farm operation may not be considered a public or private nuisance if the farm or farm operation alleged to be a nuisance meets one of the following conditions:

1. The farm or farm operation conforms to best management practices, as determined by the Commissioner of Agriculture, Food and Rural Resources in accordance with the Maine Administrative Procedure Act, title 5, chapter 375:
2. For complaints regarding the storage or use of farm nutrients as defined in Title 7, section 4201, subsection 4, the farm or farm operation has implemented a nutrient management plan developed in accordance with Title 7, section 4204 and operation of the farm is consistent with the nutrient management plan: or
3. The farm or farm operation existed before a change in the land use or occupancy of land within one mile of the boundaries of the farm as long as, before the change in land use or occupancy, the farm or farm operation would not have been considered a nuisance. This paragraph does not apply to a farm or farm operation that materially changes the conditions or nature of the farm operation after a change in the land use or occupancy of land within one mile of the boundaries of the farm. Nothing in this paragraph affects the applicability of any of the other provisions of this section.

D. Extraction for Commercial Purposes and/or Bulk Water Transport Out of Palmyra

In addition to the foregoing performance standards, any application for an extraction permit, which includes or contemplates the transport of water in excess of 10 gallons per day out of the Town of Palmyra, must also meet the following standards and requirements:

1. The Town must have received a copy of any application filed with any state agency, under the provisions of 22 MRSA 2260-A, or the Bulk Water Transport Rules of the Department of Human Services, contemporaneous with its filing with the State and a copy of any decision pertaining thereto,

2. The water withdrawal will not adversely affect existing uses of groundwater or surface resources, including private wells.

Article 6. Independent Expert Assistance

If the Planning Board reasonably determines it requires independent expert assistance to assist it in its preliminary review of the application, or in evaluating the substance of the application or in developing appropriate conditions of approval, it may engage the services of an expert to assist the Board. The applicant shall pay to the Town, in advance of the scheduling of any public hearing, a sum equal to said projected or estimated cost, the failure of which payment shall excuse the reviewing authority from scheduling any public hearing until such payment is made in full.

Article 7. Concurrent Jurisdiction

As applicable, jurisdiction of the Planning Board under this ordinance is concurrent with such jurisdiction as may be presently vested in Palmyra's Board of Appeals (under Palmyra Zoning Ordinance) and the Palmyra Code Enforcement Officer/Local Plumbing Inspector (under Palmyra Zoning Ordinance/State Plumbing Code) and is not intended to divest them of existing jurisdiction as applicable, but rather establishes and imposes additional requirements and procedures as set forth herein.

Article 8. Enforcement and Severability

This ordinance may be enforced by the Code Enforcement Officer of the Town of Palmyra under 30 MRSA 4452, the fines and penalties set forth therein to apply hereto. Should any section or provisions of this ordinance be declared by a court of competent jurisdiction to be invalid such decision shall not invalidate or affect the enforcement of any other section or provision of this ordinance.

As additional means of enforcement, the Planning Board may suspend or revoke any permit issued hereunder if it determines, after notice and hearing, that it was issued in error or upon false information, or that the applicant has failed to comply with any conditions of approval, and upon such suspension or revocation all water extraction addressed by said permit shall cease until a new approval or permit is obtained under this ordinance by the applicant.

Any appeal of any suspension or revocation of a permit shall be to the Board of Appeals, as an administrative appeal under Article 5 Section 3 of the Palmyra Zoning Ordinance.

Article 9: Effective Date

This ordinance shall become effective immediately upon its adoption and enactment by vote of the legislative body of the town at a town meeting.

I certify the foregoing ordinance was adopted at Town Meeting on March 11, 2006

Joan R. Bradley, Town Clerk