ORDINANCE NO. 20121011-005

AN ORDINANCE AMENDING THE CITY CODE TO ADD A NEW CHAPTER 15-12 RELATED TO WATER WELLS, ESTABLISHING REGISTRATION REQUIREMENTS, AND ESTABLISHING PENALTIES FOR VIOLATIONS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. The City Code is amended to add a new Chapter 15-12, to read as follows:

CHAPTER 15-12 WATER WELLS.

ARTICLE 1. GENERAL PROVISIONS.

§ 15-12-1 APPLICABILITY.

(A) This chapter applies to a person or public water system receiving service from Austin Water Utility and to any person providing well-drilling or related services on a property receiving service from Austin Water Utility.

(B) This chapter applies to or upon any property receiving service from Austin Water Utility.

(C) This chapter does not apply to environmental soil boring, geothermal, injection, de-watering, monitoring, and test wells and other wells or excavations not included in the definition of water well in Chapter 1901 (Water Well Drillers) of Title 12 of the Texas Occupations Code.

§ 15-12-2 DEFINITIONS.

Except as otherwise defined in this Code, words and phrases in this chapter have the same meaning as defined terms in Chapter 1901 (Water Well Drillers) and Chapter 1902 (Water Well Pump Installers) of Title 12 of the Texas Occupations Code.

§ 15-12-3 AUTHORITY.

(A) The director shall have the following powers for any well for which this chapter applies:

(1) to require the property owner to provide advance notice on a form provided by the director of the property owner's intent to have a water well drilled and furnish all information requested about the well and pump including, the name of the owner of the well, proposed location, proposed date of construction, and purpose for which the well will be constructed;

(2) to require the property owner to provide advance notice on a form provided by the director of the property owner's intent to have an existing water well re-drilled, plugged, or capped and furnish all information requested about the well and pump;

(3) to require any water well driller to register with the city as a requirement of drilling, constructing, repairing, plugging or capping any new or existing water well;

(4) to require any water well pump installer to register with the city as a requirement of installing or repairing any water well pump on any new or existing water well;

(5) to require the owner of any new or existing water well to register their well on a registration form developed by the director and furnish all information requested about the well and pump including, but not limited to, the name of the owner of the well, exact location including GPS coordinates, date of construction, complete logs of the well showing depth to and through all geologic formations encountered, depth of casing, diameter, purpose for which the well was constructed, screened interval(s), date of plugging if applicable, and any pump information requested for the state well report;

(6) to go upon the land and property of the owner of a water well for any purpose allowed in this chapter;

(7) to make or have made examinations of all water wells, privately owned or otherwise;

(8) to supervise the construction, repair, capping, and plugging of water wells and the operation of such wells, and, for new, re-drilled, repaired or reconstructed wells, require the well driller to show proof of proper collection, treatment, and disposal of well drilling materials and byproducts and general construction sediment;

(9) to make or have made at any time the necessary analyses or tests of water from water wells to protect public health and safety; and

(10) to require the owner to furnish well information on site controls implemented to prevent sediment runoff and the method of disposal for all drilling materials and byproducts to prevent polluting or potentially polluting discharges in violation of Chapter 6-5 (*Water Quality*).

(B) The director shall keep a register of all water wells on any property receiving service from Austin Water Utility.

§ 15-12-4 RULEMAKING.

(A) The director may promulgate regulations and procedures to implement and interpret this chapter that are not in conflict with this Code, and applicable state and federal law.

(B) The director shall adopt the rules according to the procedure of Chapter 1-2 (*Adoption of Rules*) of the Code.

ARTICLE 2. REQUIREMENTS FOR WATER WELL DRILLERS AND WATER WELL PUMP INSTALLERS.

§ 15-12-11 WATER WELL DRILLER AND WATER WELL PUMP INSTALLER REGISTRATION.

For all wells to which this chapter applies:

(A) It shall be unlawful for anyone to provide services for the drilling, or construction of any new water well, or any other artificial excavation to explore for or produce groundwater, without first registering in the manner required by the director.

(B) It shall be unlawful for any person to provide services for the reconstruction, capping, plugging, correction or repair of a water well without first registering in the manner required by the director.

(C) It shall be unlawful for anyone to install a water well pump without first registering in the manner required by the director.

(D) It shall be unlawful for any person to provide services for the repair of a water well pump without first registering in the manner required by the director.

§ 15-12-12 INFORMATION REQUIRED FOR WATER WELL DRILLER AND WATER WELL PUMP INSTALLER REGISTRATION.

Every application for registration of a person who provides services for the drilling, construction, repair, reconstruction, capping or plugging, or correction of a water well or of a person who provides services for the installation of a water well pump shall be considered incomplete unless all information requested by the director's registration form has been provided. The director shall maintain and update registration application forms to request all information necessary to carry out the intent of this chapter.

§ 15-12-13 WATER WELL DRILLER AND WATER WELL PUMP INSTALLER REGISTRATION APPROVAL AND RENEWAL.

(A) A person shall register with the director before the person provides services for the drilling of any water well or installation of any water well pump.

(B) An applicant may apply to the director for registration as a licensed water well driller or water well pump installer for properties receiving service from Austin Water Utility with approval being granted by the Director if the Texas Department of Licensing and Regulation (TDLR) has issued a license to the applicant water well driller or water well pump installer.

(C) A registration remains in effect unless:

(1) the water well driller or water well pump installer fails to maintain eligibility for registration; or

(2) as a result of an appeal to the city manager, established by rule, the director by order revokes the registration for failure to comply with this code or other applicable state law.

(D) A person must have a current license issued by the TDLR to drill a water well or install a pump on a water well regulated under this chapter. If TDLR revokes or suspends a person's license, the person's registration is automatically revoked.

(E) A person must submit proof of a current TDLR license with his or her registration application.

§ 15-12-14 PLAN REVIEW AND WORK PERMIT REQUIREMENTS.

Each water well drilled, constructed, repaired, capped or plugged, each water well pump installed or repaired, and any facilities connected to or associated with a water well or pump constructed or altered shall be done so in conformance with all relevant city code provisions, including but not limited to, Chapter 15-1 (*Cross Connection Regulations*); local building, plumbing and electrical codes within Chapter 25-12 (*Technical Codes*); and Chapter 6-5 (*Water Quality*). Any plan review, approval, permit and inspection requirements under these relevant code provisions are applicable to each water well or water well pump related project.

ARTICLE 3. RESPONSIBILTIES OF WATER WELL OWNERS.

§ 15-12-20 REQUIREMENT TO PROVIDE ADVANCE NOTICE REGARDING WATER WELL ACTIVITY.

Before a new water well is drilled or an existing water well is re-drilled, plugged, or capped, the property owner shall provide the director advance notice of the intent to have a water well drilled or an existing water well re-drilled, plugged, or capped by providing the information requested in the notice form described in Sections 15-12-3(A)(1) and 15-12-3(A)(2) (*Authority*). Advance notice shall be provided 5 business days prior to any work on a water well described under this section, unless the director determines that for

plugging or capping a well public health and safety concerns warrant allowing for a shorter advance notice period.

§ 15-12-21 REQUIREMENT TO REGISTER WATER WELLS.

(A) The owner of any new water well shall register such well within 70 days after the drilling of such well has been completed by providing the information requested in the registration form described in Section 15-12-3(A)(5) (*Authority*).

(B) The owner of any existing water well shall register such well within 180 days from the effective date of this ordinance by providing the information requested in the registration form described in Section 15-12-3(A)(5) (*Authority*).

(C) Every application for registration of a new or existing water well shall be considered incomplete unless all information requested by the director's registration form has been provided. The director shall maintain and update registration application forms to request all information necessary to carry out the intent of this chapter.

(D) The director may allow a person a longer period within which to register an existing water well for good cause as determined by the director.

(E) For existing wells, exceptions for certain reporting requirements may be granted for good cause as determined by the director.

§ 15-12-22 CROSS CONNECTIONS PROHIBITED.

A person or property receiving service from the Austin Water Utility may not make or maintain any plumbing connections to a water well system that creates a cross-connection with the utility's potable water system. All plumbing associated with any water well must be compliant with all relevant City codes including but not limited to Chapter 15-1 (*Cross Connection Regulations*); local building, plumbing and electrical codes within Chapter 25-12 (*Technical Codes*); and Chapter 6-5 (*Water Quality*).

§ 15-12-23 CROSSING LOT LINES PROHIBITED.

A water well may only serve the property on which the water well is located. No part of any plumbing system connected to the water well shall be located in any lot other than the lot that is the site of the water well. The crossing of any lot line or property boundary by any plumbing system connected to a water well is prohibited.

§ 15-12-24 DEFECTIVE OR CONTAMINATING WATER WELLS.

(A) Any defective or contaminating well, as described in Section 15-12-24 (B) below, is hereby found to be a threat to the surface water, groundwater, public or private water supply, a potential source of disease, and injurious to the public health, and pursuant to Tex. Loc. Govt. Code Ann. Sections 217.042 and 551.002 is declared a nuisance.

(B) For the purpose of this chapter, a contaminating water well is considered to be any water well or other opening which penetrates the underground water supply and which in any way pollutes, or contaminates, or threatens to pollute or contaminate, surface water, groundwater, any other well, or a public or private water supply.

(C) The director may require the abatement of such nuisance. The director may, on his own initiative, or upon information or complaint from any source, make an examination of any well suspected of causing contamination or being defective. If such examination indicates, in the opinion of the director, that the water well is a contaminating or defective well, or that the water from such well is unsafe for human consumption, unless the director finds that the manner of use of well water unsafe for human consumption presents no risk to human health and safety, then the director shall issue an order or written instructions to the owner or his agent in charge of such well or the property upon which it is situated to plug this well in such a manner as prescribed by the director and in compliance with TDLR and Texas Commission on Environmental Quality (TCEQ) regulations.

§ 15-12-25 ABANDONED WATER WELLS.

(A) For the purpose of this chapter, a water well is considered to be an abandoned well if it has not been used for a period of six consecutive months or longer, unless it is:

(1) A non-deteriorated, non-defective or non-contaminating well, which contains the casing, pump and pump column in good condition, and which is connected to an active electrical or other power source; or

(2) A non-deteriorated, non-defective or non-contaminating well, which has been properly capped, and for which a variance for such well has been granted by the director.

(B) An abandoned water well, as defined in Subsection (A) above, has the potential to pollute the water supply, violate Chapter 6-5 (*Water Quality*), or be otherwise injurious to the public health, and, pursuant to Tex. Loc. Govt. Code Ann. §§ 217.042 and 551.002 is a nuisance, for which the City may require the abatement of such nuisance.

(C) The owner, operator, or agent in charge of an abandoned water well shall notify the director that the well is abandoned. Every abandoned water well shall be filled and plugged in accordance with all applicable TDLR and TCEQ regulations and with

such materials and in such manner as will prevent the pollution and contamination of any other water well within the limits of the City of Austin and the Austin Water Utility's service area.

(D) If the director receives notice from any source of an abandoned water well which has not been plugged and filled, the director shall notify the owner, operator, or agent in charge of such well or of the property upon which it is situated that such well is abandoned and shall order such person to fill and plug the well as set forth in (C) above. The director may require any owner of a capped water well to take any action necessary or to provide any information or materials necessary to establish that such a capped well is not defective, contaminating, or deteriorated.

§ 15-12-26 FAILURE TO ABATE NUISANCE, REMEDIES.

If a person to whom an order is directed fails to abate the nuisance as required by the director's order, then the director shall have the right to go on the property on which the well is situated and abate such nuisance, and the owner of the property thereof shall be liable to the City of Austin for the cost of such work and shall pay such cost upon demand to the City of Austin. The director shall have the right to file a lien on the property to secure payment of the costs of such work.

ARTICLE 4. ENFORCEMENT.

§ 15-12-30 VIOLATION.

It shall be a violation of this chapter for any person to refuse or otherwise fail to comply with any requirement of this chapter, or with any order of the director made in conformity with and under the authority of this chapter.

§ 15-12-31 INSPECTIONS.

For the purpose of protecting public health and safety from risks or potential risks associated with water wells and pumps, the director may inspect or require an inspection of property, buildings, real property, or facilities, including water wells and all related components, on property provided water service by Austin Water Utility with an existing or proposed water well. An inspection may include a survey of the property, buildings, real property, or facilities, including water wells and all related components for provision of water and waste water service for violations of this chapter, other related city regulations and state law requirements.

§ 15-12-32 RIGHT OF ENTRY.

(A) The director may enter a customer's property or facility, including an easement or private property served by Austin Water Utility to gain access to a water well, cross connection, backflow prevention assembly, or piping. The director's right of

entry is a condition of a customer's water service or connection to the City's public water system.

(B) The director may inspect a customer's water well, water system, piping, or the records required under this chapter or the rules of a public water system with which the City has an agreement for wholesale water service.

(C) A customer shall provide access to the director to the customer's property or facilities.

(D) In connection with action by the director under this chapter, a customer with water service provided by the utility commits an offense if the person:

(1) denies the director right of entry;

(2) fails to remove a barrier or obstacle to access by the director; or

(3) unreasonably delays access by the director.

§ 15-12-33 SEARCH WARRANT.

(A) The director may apply to the municipal court or other court of competent jurisdiction for a search warrant if:

(1) a customer denies the director access to a building, structure, property, water well, or a public or private water system or

(2) the director has probable cause to believe there is:

(a) a violation of this chapter or other enforcement order; or

(b) a threat to public health or safety.

(B) The director may make an inspection without a warrant to remedy an imminent danger to the public health and safety.

§ 15-12-34 OFFENSES.

A person commits an offense if the person:

(1) commits or assists in the commission of a violation of this chapter;

(2) is the customer, owner, occupant, lessee, or manager of property or facilities that are the source of a violation of this chapter; or

(3) obstructs or delays the director's access to a customer's property or facilities.

§ 15-12-35 NOTICE OF VIOLATION.

(A) The director may serve a written notice of violation on a person who has violated a requirement of this chapter.

(B) The director may take any enforcement action without first issuing a notice of violation.

§ 15-12-36 CRIMINAL PENALTY.

(A) A person violating this chapter commits an offense. An offense under this chapter is a class C misdemeanor, punishable in accordance with Section 1-1-99 (*Offenses; General Penalty*). Each occurrence of a violation of this chapter is a separate offense.

(B) Proof of a culpable mental state is not required for a conviction of an offense under this chapter.

§ 15-12-37 CIVIL REMEDIES.

(A) The city attorney may enforce this chapter by injunction, declaratory relief, or other action at law or in equity.

(B) The city attorney may initiate a suit against the owner, occupant, tenant, manager, or water customer of property or facility that is the source of a violation of this chapter, to recover a civil penalty not to exceed $5,000 for each violation. Each day that a violation continues constitutes a separate violation.

§ 15-12-38 LIABILITY.

(A) A person or public water system may be held liable for a violation of this chapter if the person:

(1) commits or assists in the commission of a violation;

(2) is an authorized representative under this chapter; or

(3) is the owner, occupant, tenant, manager, or water customer of premises, property or a facility that is the source of a violation of this chapter.

(B) A person who violates this chapter is liable to the City for expenses, loss, or damage incurred by the City.

§ 15-12-39 TERMINATION OF SERVICE.

(A) The director may terminate water or wastewater service in accordance with this section.

(B) The director may terminate water or wastewater service if the customer, owner, tenant, or lessee does not correct a violation within five days after the person becomes aware of the violation.

(C) The director may refuse or terminate water or wastewater service if all required corrections have not been made.

(D) The director may terminate water or wastewater service if a customer fails to terminate a connection between a potable water system and an auxiliary water supply, including a water well.

§ 15-12-40 EMERGENCY SUSPENSION.

(A) On receipt of informal written or verbal notice, the director may order the suspension of water service and disconnect a private or public water system from the City's public water system without a hearing if the director determines that contamination or pollution due to a violation of this chapter:

(1) presents an imminent threat to the City's public water system;

(2) presents an imminent danger to public heath or safety;

(3) presents a threat to the environment; or

(4) threatens to interfere with the operation of the City's public water system.

(B) A person notified of the suspension of the person's service shall immediately stop use of the City's public water system water and the director shall disconnect the City's public water system from the person's private or public water system.

(C) If a person fails to immediately comply with an emergency suspension order, the director may take action the director determines is necessary to prevent contamination or pollution, or to minimize damage to the City's public water system, the public, property, or the environment.

(D) The director may take action under this section even if termination proceedings have been initiated under Section 15-12-38 (*Termination of Service*).

(E) A suspension under this section is not affected by evidence that the danger caused by the contamination or pollution due to a cross connection of the City's public water system has ceased.

§ 15-12-41 CUMULATIVE REMEDIES.

The remedies authorized under this chapter are cumulative unless specifically prohibited by state or federal regulation.

§ 15-12-42 VOLUNTARY COMPLIANCE.

(A) The director may accept from a person responsible for a violation under this chapter a written agreement for voluntary compliance, or issue a consent order that establishes an agreement for voluntary compliance.

(B) An agreement under this section must:

(1) describe the violation;

(2) describe the specific action the person must take to correct the violation;

(3) specify the time period for the person to complete the corrective action;

(4) be signed and dated by the person responsible for compliance; and

(5) be judicially enforceable.

(C) The director may take action to enforce compliance with an agreement under this section.

§ 15-12-43 SHOW CAUSE HEARING.

(A) The director may order a person responsible for a violation of this chapter or an enforcement order to appear before the director and show cause why a proposed enforcement action should not be taken.

(B) The director shall serve notice to a person under this section including:

(1) the time and place for a hearing;

(2) the nature of the violation;

(3) the proposed enforcement action;

(4) the reasons for the enforcement action; and

(5) a request that the person show cause why the proposed enforcement action should not be taken.

(C) The director shall serve notice under this section in person or by certified mail, return receipt requested, no later than the third day before the hearing. Notice may be served on an employee, agent or other authorized representative of a person responsible for a violation.

(D) The director may take immediate enforcement action following a noticed show cause hearing.

§ 15-12-44 COMPLIANCE ORDER.

(A) If the director determines that a person has violated this chapter or an enforcement order, the director may issue an order to the person directing the person to correct the violation within a specified time period.

(B) If a person does not comply within the time period provided, the director may disconnect water or wastewater service to the non-compliant premises until the person installs an operational facility, device, or equipment to correct the violation.

§ 15-12-45 CEASE AND DESIST ORDER.

If the director determines that a person is violating this chapter or an enforcement order, or that a past violation committed by the person is likely to recur, the director may issue an order directing the person to:

(1) immediately cease and desist the violation;

(2) immediately comply with this chapter or an enforcement order; and

(3) take necessary remedial or preventive action to address a present, continuing, or threatened violation, including halting operation.

PART 2. The director may establish, by rule, procedures to appeal any order under this chapter to the city manager.

PART 3. Fees may be established by separate ordinance for registration required by this chapter.

PART 4. This ordinance takes effect on October 22, 2012.

PASSED AND APPROVED

October 11, 2012 § Lee Leffingwell
Mayor

APPROVED: Karen M. Kennard
City Attorney

ATTEST: Shirley A. Gentry
City Clerk