

**SUBSTITUE ORDINANCE NO. 5782**  
**SUBSTITUTE ORDINANCE TO PROTECT PUBLIC HEALTH AND THE**  
**ENVIRONMENT, PRESERVE THE MEMPHIS SAND AQUIFER, AND**  
**PROMOTE ENVIRONMENTAL JUSTICE**

WHEREAS, the City of Memphis relies on the groundwater of the Memphis Sand Aquifer for its drinking water supply; however, despite the importance of ensuring that Memphis' drinking water resources remain plentiful and uncontaminated, the existing system of federal, state, and local review for many development projects does not adequately consider risks to groundwater in many situations.

WHEREAS, the potential risks to groundwater resulting from improper siting and routing of underground toxic and hazardous materials infrastructure do not receive sufficient scrutiny at any level of government in Tennessee.

WHEREAS, recognizing the important and traditional role of city government in protecting the quality of the drinking water of its citizens, the Memphis City Council has determined a need to ensure increased oversight of structures that may impact the Memphis Sand Aquifer or Wellhead Protection Areas.

WHEREAS, acknowledging that patterns of racial, ethnic, and economic inequality in the United States have resulted in the inequitable geographic concentration of potential environmental hazards, the Memphis City Council has determined that this increased level of oversight must also ensure that new development in the City does not cause adverse impacts on the minority populations, low-income populations, and neighborhoods historically burdened by environmental pollution.

WHEREAS, experience has shown that companies handling hazardous materials are not always able to fully remediate environmental damage caused by accidents, leaving local governments responsible for expending resources to complete the remediation, such that it is in the fiscal stewardship interest of Memphis to regulate the storage and transport of hazardous materials.

WHEREAS, because the long-term success of the City of Memphis depends on thoughtful and deliberate planning, the City must carefully consider where underground infrastructure is sited to ensure that future growth and development is not unduly constrained.

WHEREAS, the Federal Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*, requires states to protect public water supplies, and pursuant to the Act the United States Environmental Protection Agency has authorized the Tennessee Department of Environment and Conservation to enforce the Act.

WHEREAS, the Tennessee Department of Environment and Conservation, pursuant to the Tennessee Safe Drinking Water Act of 1983, T.C.A. §§ 68-221-701 *et seq.*, promulgated regulations, including Tenn. Comp. R. & Regs. 0400-45-01-.34, and those state regulations identify the important role of local governments in protecting public drinking water, including through the enactment of ordinances to implement or support the wellhead protection plans developed by public water system operators.

WHEREAS, Memphis City Charter, Section 409, grants the City power to pass all laws to preserve the health of the City.

WHEREAS, Memphis City Charter, Section 405, grants the City power to regulate the keeping and storage of combustible articles.

WHEREAS, Memphis City Charter, Section 369, grants the City power over all affairs in the City in which the general welfare of the inhabitants is interested.

WHEREAS, Memphis City Charter, Section 834, grants the City power to provide rules and regulations for the use, handling, storage and sale of inflammable liquids and the products thereof.

NOW THEREFORE, the Memphis City Council hereby adopts the following requirements designed to protect the Memphis Sand Aquifer, Wellhead Protection Areas, and the health and well-being of the people of Memphis.

## **I. Definitions**

For the purposes of this section:

1. **Development:** Any man-made change defined as the construction of buildings or other structures, mining, dredging, paving, filling, grading or site clearing, and grubbing in amounts greater than ten cubic yards on any lot or excavation.
2. **Groundwater:** Any waters of the State as defined in T.C.A. § 69-3-103 (Tennessee Water Quality Control Act), occurring below the surface of the ground not contained by artificial barriers.
3. **Toxic or hazardous liquids:** Any toxic or hazardous material that is generally stored or transported in a liquid state, which includes crude oil, refined petroleum products, highly volatile liquids such as propane and butane, biofuels, supercritical carbon dioxide, and liquid forms of other inorganic chemical substances such as chlorine and anhydrous ammonia.
4. **Toxic or hazardous materials:** Any substance which poses an actual or potential hazard to water supplies or human health if such a substance were discharged to land or waters of Memphis. Such materials include nuclear or radioactive materials or wastes, crude oil and petroleum products, and any hazardous substance or hazardous waste as listed within:

- a. Superfund Amendments and Reauthorization Act (SARA) of 1986, Section 302, Appendices A and B (40 C.F.R. 302.4 App. A and B);
  - b. SARA of 1986, Section 313, Toxic Chemicals List (40 CFR 372.65); and
  - c. Resource Conservation and Recovery Act (RCRA) of 1976 and 1984 Amendments, Hazardous Wastes List (P and U Categories) (40 CFR 261.33 (e) and (f)).
5. **Wellhead Protection Area:** The surface and subsurface area surrounding a water well, well field or spring supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well, wellfield or spring. The Wellhead Protection Area contains both the Wellhead Protection Zone (Zone 1) and the Wellhead Management Zone (Zone 2), as described in Tenn. Comp. R. & Regs. 0400-45-01-.34.

## **II. Underground Infrastructure Review Board**

1. There is created an Underground Infrastructure Review Board (“Board”), whose purpose is to review particular development projects within the City of Memphis, as described in this Ordinance.
2. The Board shall consist of one representative from the Memphis Division of Engineering, one representative from the Memphis Division of Public Works, one representative from the Memphis and Shelby County Division of Planning and Development (as appointed by the Director of that Division), one representative from Memphis Light, Gas and Water, and one representative from the Memphis City Council.
3. The members of the Board shall be selected as follows: The Mayor of the City of Memphis will appoint the representative of the Memphis Division of Engineering and the representative of the Memphis Division of Public Works. The Director of the Memphis and Shelby County Division of Planning and Development will appoint the representative of that division. The President of MLGW will appoint the representative of that entity, and the chair person of the Memphis City Council will appoint the representative of that body.
4. The Board shall meet as needed in order to review applications for exemptions to prohibited development, as described in Sections III and IV below.

## **III. Prohibited Development**

1. Absent express approval by the Board, new developments with the following uses are prohibited throughout the City of Memphis:
  - a. underground toxic or hazardous materials storage tanks, unless contained within basements; and

- b. underground toxic or hazardous liquids transportation or transmission infrastructure, such as pipelines.
2. This prohibition will not apply to private or public wastewater, septage, or sewerage tanks or infrastructure.

#### **IV. Consideration of Exemptions to Prohibited Uses**

1. Any person(s) seeking Board approval to develop for a prohibited use within the City of Memphis shall first submit to the Board an application for approval with a Groundwater Impact Statement. The Groundwater Impact Statement shall include:
  - a. a description of the planned development, including a description of the type and volume of toxic or hazardous materials or liquids to be stored or transported;
  - b. documentation of all other required local, state, and federal permits necessary for the development;
  - c. a site plan that shows:
    - i. the area of the development that is in the City of Memphis;
    - ii. the location of the boundaries of the Wellhead Protection Area and all existing public water supply wells in relation to the project, within 1,000 feet of the project boundary; and
    - iii. the location of all known existing private water supply wells within 1,000 feet of the project boundary;
  - d. an analysis of the potential for the development to cause disproportionate adverse impacts on minority populations, low-income populations, and neighborhoods historically burdened by environmental pollution;
  - e. an analysis of any potential adverse environmental or groundwater impacts resulting from the development;
  - f. an analysis of the estimated short-term and long-term remediation costs associated with any such adverse impacts, and the long-term fiscal viability of the applicant(s) to pay such remediation costs, including the extent to which the applicant(s) has/have cash reserves or insurance available to pay for such remediation costs;
  - g. a copy of all certificates of insurance for all insurance policies that may provide coverage for remediation costs and/or liability claims arising from any leak, spill or discharge of hazardous materials or liquids;
  - h. a detailed description of the abandonment or closure plan for the storage tank or transportation infrastructure, including how any structures would be removed upon abandonment, what conditions would constitute such abandonment, how the City would be notified in case of abandonment, an analysis of the estimated costs of removal, and the long-term fiscal viability of the applicant(s) to pay such costs; and

- i. any other additional information as may be requested by the Board regarding the proposed development, its potential impacts on groundwater or the public interest, hydrogeologic information, monitoring and mitigation measures.
2. After receiving any such application, the Board shall ensure that the application is complete, and request further information from the applicant(s) is required. The Board shall also seek comments on the application and Groundwater Impact Statement from the following:
  - a. Memphis Light, Gas & Water;
  - b. Memphis and Shelby County Land Use and Development Services; and
  - c. The Shelby County Groundwater Quality Control Board.
3. The Board shall solicit and collect public comments regarding the application. The Board shall:
  - a. give public notice of the application, which must include access to the applicant's Groundwater Impact Statement and a means for the public to submit comments to the Board; and
  - b. accept public comments for at least 30 days from the public notice of the application.
4. The Board shall hold a public hearing on the application, allowing a presentation by the applicant(s) and comments from members of the public. At least 30 days prior to holding the public hearing, the Board must give notice to the applicant(s) and members of the public regarding the time and date of the hearing, as well as providing access to the application and Groundwater Impact Statement.
5. Within 45 days of conducting the public hearing, the Board shall decide whether or not to approve the application. The Board shall only approve the application if it determines, after full consideration of the Groundwater Impact Statement all comments received, and any additional information that the Board may, in its discretion, request from the applicant(s), that approving the application would be in the public interest, which shall include a determination that:
  - a. the development will not go through any Wellhead Protection Area, as delineated in the most recent Wellhead Protection Plan finalized by Memphis Light, Gas & Water;
  - b. Memphis Light, Gas & Water has no objections to the development;
  - c. the project poses no significant risk of adverse environmental or groundwater impacts resulting from the proposed development, or any future land uses associated with the development;
  - d. the application presents no significant risk that the City will be responsible for expending resources on environmental remediation

should an unanticipated accident or event cause such adverse impacts, or should the storage tank or infrastructure be abandoned; and

- e. there will be no disproportionate impacts on minority populations, low-income populations, or neighborhoods historically burdened by environmental pollution.
6. Within 14 days of approving or rejecting the application, the Board shall send notice of the decision to the applicant(s), and provide notice of the decision to the public.
  7. The applicant(s), or any person who submitted comments to the Board or attended the public hearing, may petition the Memphis City Council for review of the Board's decision within 30 days of the Board providing public notice of the decision. The Council shall review the application to determine whether the project is in the public interest, according to the criteria described in this section.

#### **V. Existing Development**

1. Development of underground hazardous materials storage tanks or transportation infrastructure that would be prohibited without a special exemption, which has completed construction and is in operation at the time this ordinance is adopted, may continue operation without applying for an exemption.
2. The owner or operator of such existing underground hazardous materials storage tanks or transportation infrastructure must apply for and receive an exemption under the provisions of Section IV of this ordinance prior to initiating any addition, expansion, or construction activities, and before any significant change in operations.

#### **VI. Compliance with Other Authority**

All activities and development being considered by the Board under this ordinance shall comply with these and all other relevant local ordinances and regulations, as well as all relevant state and federal laws and regulations. Any approval of an application for exemption by the Board shall not be taken as a finding of public purpose or use in the context of any eminent domain proceedings, and conveys no additional rights or privileges to applicant. To the extent that the development regulated by this ordinance is also regulated by any other local, state, or federal regulation, the more restrictive of the regulations will apply.

#### **VII. Savings Clause**

Should any section or provision of this ordinance be declared invalid, such decision shall not affect the validity of the ordinance as a whole or any other part thereof.