

**AN ORDINANCE OF THE TOWN OF PROSPER, TEXAS, REPEALING ORDINANCE NO. 02-22 IN IT'S ENTIRETY AND ESTABLISHING REGULATIONS FOR THE CONSTRUCTION AND/OR DRILLING OF WATER WELLS IN PROSPER; PROVIDING FOR DEFINITIONS; PROVIDING FOR PERMIT AND LICENSE REQUIREMENTS AND FEES; PROVIDING FOR INSPECTIONS; PROVIDING FOR CONSTRUCTION REQUIREMENTS; PROVIDING FOR MISCELLANEOUS REGULATORY PROVISIONS; PROVIDING FOR SEVERABILITY, SAVINGS AND PENALTY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.**

WHEREAS, the Town Council for the Town of Prosper, Texas ("Town Council") has investigated and determined that Ordinance No. 02-22 (Regulation of Water Wells) should be repealed in it's entirety and that this Ordinance should be established; and

WHEREAS, the Town Council has investigated and determined that it would be in the best interest of the Town of Prosper, Texas ("Prosper") and its inhabitants to establish regulations for the construction, location and/or drilling of water wells within Prosper and its Extraterritorial Jurisdiction ("ETJ"); and

WHEREAS, the Town Council finds that establishing regulations relating to the construction, location and/or drilling of water wells and water systems in Prosper and its ETJ, if same is connected or could be connected to either Prosper's water or sewage system, will help protect the health, safety and welfare of the citizens of Prosper.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS:**

SECTION 1: Findings Incorporated/Application of Ordinance. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein. This Ordinance shall regulate the construction and operation of water wells within Prosper and its ETJ.

SECTION 2: Definitions. The following definitions shall apply in the interpretation and enforcement of this Ordinance and shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Approved water supply source – means Prosper's water system.

Air gap – means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water to a tank, fixture, receptor, sink, or other assembly and the flood level rim of the receptacle. The vertical, physical separation must be at least twice the diameter of the water supply outlet, but never less than 1.0 in.

Auxiliary Water Supply – means any water supply other than Prosper’s approved water supply source, including water from another public water supply or from a natural source including, but not limited to, wells, cisterns, springs, rivers, streams, used waters, or industrial fluids.

Backflow - means the reversal of flow of water or mixtures of water and other liquids, gases or other substances into the distribution pipes of a potable water supply from any sources other than an approved water supply source.

Backflow Prevention Assembly - means an assembly which, when properly installed between the Prosper’s approved water supply system and at or near the point where the approved water supply source enters the premise. For the purposes of this Ordinance the only approved assembly shall be a Reduced Pressure Backflow Assembly (“RPBA”).

Backflow Prevention Assembly Tester - means an individual licensed in accordance with Texas Commission on Environmental Quality (“TCEQ”) rules, as amended, for the purpose of testing Backflow Prevention Assemblies.

Building Official - means the officer or other designated authority charged with the administration and enforcement of this Ordinance or a duly authorized representative of Prosper.

Contamination - means an impairment of the quality of the public potable water supply or a private potable water supply by the introduction or admission of any foreign substance that degrades the quality and which creates an actual or potential hazard to the public health through poisoning or through the spread of disease by sewage, industrial fluids, or waste.

Cross-Connection – means a point in the plumbing system where the public water supply is connected directly, or has the potential of being connected, to a source of non-potable substance that is not part of the potable water supply. Any actual or potential physical connection between a potable water line and any pipe, vessel or machine containing a non-potable fluid, such that it is possible for the non potable fluid to enter into the potable water system by backflow. This connection may be temporary or permanent, potential or actual, indirect or direct.

Director of Public Works - means the Director of Public Works for Prosper or his or her designee.

Existing Work - means a water well or water system which had been installed prior to the effective date of this Ordinance.

Health Hazard – means a cross-connection, potential contamination hazard, or other situation involving any substance that can cause death, illness, and spread of disease or has a probability of causing such effects if introduced into the potable drinking water supply.

Non-Potable water - means a water supply, which has not been approved, for human consumption by Prosper.

Person - means any individual, firm, partnership, association, corporation, company or organization of any kind.

Plumbing Inspector - means any person hired by Prosper for the purpose of inspecting work and installation in connection with health and safety laws as provided in, or referred to in, this Ordinance. The plumbing inspector shall be licensed by the Texas State Board of Plumbing Examiners (TSBPE) in accordance with the Texas Plumbing License Law (Texas Occupation Code § 1301.001 et seq., as it exists or may be amended.)

Potable water - means any public water supply, which has been investigated and approved by Prosper as satisfactory for drinking, culinary and domestic purposes.

Premises or Property - means any property real, improved or personal that is connected to Prosper's approved water supply source.

Premises Isolation – means the practice of protecting the potable water supply by installing a backflow prevention assembly at or near the point where water enters the premise. This protection does not provide backflow protection for personnel inside the premises.

Public Sewer - means a common sewer directly controlled by public authority.

Reduced Pressure Backflow Assembly (RPBA) - means an assembly containing two independently acting approved check valves together with a hydraulically operating, mechanically independent pressure differential relief valve located between the check valves and at the same time below the first check valve. The unit includes properly located resilient-seated test cocks and two tightly-closing resilient-seated shutoff valves at each end of the assembly.

Sanitary Sewer - means a pipe which carries wastewater and excludes storm, surface water and groundwater.

Septic Tank - means a watertight receptacle which receives the discharge of a drainage system or part thereof, which is designed and constructed so as to separate solids from the liquid, digest organic matter through a period of detention, and allow the liquids to discharge into the soil outside of the tank through a drain field, disposal or perforated piping.

Service Connection - means the terminal end of a service connection from the public potable water system (i.e., where the water purveyor loses jurisdiction and sanitary control over the water at its point of delivery to the customer's water system). If a meter is installed at the end of the service connection, then the service connection shall mean the downstream end of the meter.

Testing or Reporting Deficiencies - means incomplete, or inaccurate backflow prevention assembly test results or reports filed with Prosper pursuant to this Ordinance, use of inaccurate gauges; or the use of improper operational certification methods.

Thermal Expansion - means heated water that does not have any space to expand.

Town or Prosper - means the Town of Prosper and its duly authorized representatives.

Town Engineer – means the person designated as the Town Engineer and registered as a Professional Engineer in the State of Texas or a Consulting Engineer providing authorized services to Prosper.

Water main - means a water-distribution pipe for public or community use.

Water Purveyor - means the operator of a potable water system supplying at least 15 service connections or servicing at least 25 individuals at least 60 days out of the year.

Water Wells - means bored wells, dug wells and driven wells developed into the underground soils, which are to produce water for private use. Water wells are prohibited unless approved under the provisions of this Ordinance.

SECTION 3: Permits and Licenses. It shall be unlawful for any person to construct, operate and/or drill a water well or water system in Prosper or its ETJ, as set out in this Ordinance, without having first obtained the necessary contractor registration and permit as provided for in this Ordinance. All workmanship and materials shall meet the requirements of this Ordinance in regard to the drilling, construction, location and operation of such wells and systems. The forms, plans and other information and documentation required to be provided under this Ordinance may be approved by the Town Engineer and Building Official or their designees only if all provisions of this Ordinance are complied with.

SECTION 4: Licensing Requirements. Construction of water wells shall be performed only by those holding a valid water well drillers license issued by the State of Texas. The license number shall be displayed during construction at the site of the work. The number shall be clearly readable from the nearest traveled public roadway. Water well drillers must hold a current contractor registration with the Town and be in good standing. In addition, the approved permit issued by the Town shall be displayed during construction at the site of the work and remain on site until a final inspection is obtained.

SECTION 5: Permits, Fees and Inspection.

- A. **When Permit Required.** It shall be unlawful to construct a water well or to overhaul of a water well without first securing a water well permit. “Overhaul” means work that is not considered routine maintenance.
- B. **When Permit Not Required.** Permits are not required for routine maintenance of pre-existing wells, as determined by the Town Engineer or Director of Public Works or his or her designee. It is the well driller’s responsibility to notify the Town Engineer or Director of Public Works or his or her designee of routine maintenance so a determination may be made on whether or not a permit is required.
- C. **Permits Not Transferable.** Each permit issued under this Ordinance shall be personal to the permittee. No such permit shall be assigned or transferred to another person, and no person

shall permit another person to obtain a permit in his/her name or permit any new well construction or overhaul work to be performed under his/her permit other than a person authorized to do the same.

- D. **False Statement or Bad Faith.** Any person who shall willfully make any false statement in order to obtain a permit shall be guilty of a misdemeanor and subject to the penalty provided herein. Bad faith or unreasonable delay in the performance of work under this Ordinance shall be deemed a sufficient reason for suspension of the permit of the well driller so offending and no further permit shall be issued until such act of bad faith or unreasonable delay has been corrected. Water well drillers in violation of any ordinance governing contractor registration requirements may be suspended or have their registration revoked.
- E. **Issuance of Permit.** The Building Official, or his or her designated representative, shall issue all permits in accordance with the provisions and requirements of this Ordinance. Incomplete applications shall be rejected or denied. All applications for permits shall be on the approved and current form and provide the following information:
1. Company name, address and telephone number of the well driller;
  2. Well drillers license number and Town assigned contractor registration number;
  3. Name, address, legal description and telephone number of property owner;
  4. Company name and Town assigned contractor registration number of electrical contractor;
  5. Company name and Town assigned contractor registration number of plumbing contractor;
  6. Company name and Town assigned contractor registration number of irrigation contractor (if applicable);
  7. Company name and Town assigned contractor registration number of backflow prevention assembly tester;
  8. A plan of the property that shows the location of the proposed water well, all buildings, septic tanks, drain fields and other significant structures. The plan shall also show the location of structures and adjacent property if within ten (10) feet of the property line. All setbacks and dimensions shall be shown to be in conformance with Section 11 of this Ordinance.
  9. Any other information deemed necessary by Prosper.
- F. **Duration of Permits.** Every permit issued under the provisions of this Ordinance shall expire ninety (90) days after the date issued. In every case where a permit is expired, a new permit shall be obtained before any work is resumed.
- G. **Permit and Inspection Fees.** The permit and inspection fees provided in this Ordinance shall be paid to the Town before the issuance of a permit and before any work is started. Fees shall not be collected prior to permit approval. The fees shall be as follows:
1. Water Well Drilling Permit shall be Sixty Dollars (\$60).
  2. Electrical inspection fees, includes electrical underground and electrical final inspections, shall be Sixty Dollars (\$60).

3. Plumbing inspection fees, includes plumbing rough (disconnect) and plumbing final (RPBA) inspections, shall be Sixty Dollars (\$60).
4. Reinspection fees shall be in accordance with the Prosper approved fee schedule, as amended.
5. Whenever any work for which a permit is required by this Ordinance has been commenced or completed without first obtaining a permit, a special investigation shall be made before a permit may be issued for such work. An investigative fee, in addition to the permit fee, shall be collected whether or not a permit is then subsequently issued. The investigation fee shall be double the amount of the permit fee required by this Ordinance. The payment of such investigative fee shall not exempt any person from compliance with all provisions of this Ordinance nor from any penalty prescribed by law.

**H. Inspections and Tests.** The Town Engineer or Building Official or their designees shall have the right, at any time, to enter the property for the purpose of inspections to ensure compliance with this Ordinance. In addition, the Town Engineer or Building Official or their designees shall have the right to enter the property at any time in the future for the purpose of inspections to ensure that there are no cross-connections.

The original permit packet shall be located at the water meter at all times during construction. A 120v Ground Fault Circuit Interrupting (“GFCI”) receptacle shall be installed immediately adjacent to the well equipment to allow for maintenance work on the equipment or the use of a freeze protection device. Adequate provisions must be made to protect piping from freezing by insulation or heat or both on all water wells and RPBA’s. A RPBA is the only approved backflow prevention assembly allowed on properties with water wells, located within Prosper, its ETJ or any other premises connected to the approved water supply source.

The RPBA is to be installed at or near the point where the approved water supply source enters the premise on the owner’s side of the property line. For the purpose of this Ordinance the service connection shall mean where the approved water supply enters the premise.

The following inspections shall be required on all water wells drilled within Prosper or its ETJ:

1. Plumbing Rough to verify the disconnection of the existing irrigation system from the approved water supply source (if applicable).
2. Plumbing Final to determine the proper installation of the RPBA. The original Backflow Assembly Test Report, on a town approved form, must be in the permit packet at time of inspection (if applicable).
3. A Thermal Expansion Tank must be installed at the water heater by Plumbing Final. This can only be done by the state licensed plumber listed on the water well application.
4. Electrical Underground (EUG) to verify trench depth and proper wire is used (size & type).
5. Electrical Final to verify disconnects are installed and appropriate panel box in place (weather tight).

6. Upon completion of the well, the well driller shall furnish the Town Engineer with a copy of the driller's report and a copy of the water analysis. Any well that is not completed shall be sealed and considered a plugged or an abandoned well in accordance with rules, regulations and statutes of the State of Texas.
7. A Backflow Assembly Test Report, on a town approved form, shall be submitted annually, within twelve months, from the last test. Only a state licensed, town registered, Backflow Prevention Assembly Tester (BPAT), shall perform the test.

SECTION 6: Construction Requirements.

- A. **Casing.** A casing of steel or other approved material shall be provided to prevent caving of the formations penetrated and also to ensure protection of water supply from contamination by water from shallow strata. The wall shall be cased from the bottom of the drilled hole to twenty four (24) inches above the finish grade or more if required to keep surface water from entering casing. The well casing shall be cemented in place and sealed to protect the underground water formation from potential contamination resulting from surface water or individual waste disposal systems (*i.e.* septic tanks).
- B. **Well seal.** The annular space between the drilled hole and the well casing shall be sealed with concrete or grout for a depth of at least ten (10) feet above the water producing formation. The casing shall be covered at the ground with a concrete slab no less than twenty-four (24) inches by twenty-four (24) inches by twelve (12) inches. The top of the slab shall protrude six (6) inches above finished grade and shall be sloped away from the casing. The top of the casing shall be provided with a suitable well seal to prevent contamination of the well. If a vent is provided on the casing, it shall be equipped with an elbow turned downward and screened with a 16-mesh screen.
- C. **Disinfection of Wells and Equipment.** Upon completion of the well, but before it is placed into service, the well and equipment shall be disinfected by the use of chlorine (powdered, tablet or solution).
- D. **Water Samples.** After the chlorine has been flushed, a sample of water shall be analyzed for purity. The well shall not be placed into service until the water has been tested and found to be suitable for human consumption.
- E. **Abandonment of Wells.** Permanently abandoned wells shall be filled with cement grout or concrete. Abandoned wells shall not be used for the disposal of wastewater, septic tank effluent or other wastes.
- F. **Screening.** The water bearing formation shall be screened to control, among other similar conditions, the flow or production of sands and formation materials.
- G. **Compliance with Texas Department of Licensing and Regulation (TDLR) rules and regulations.** Permittee shall comply with any and all TDLR rules and regulations and other governing state statutes.

SECTION 7: Applicability of State Regulations. The regulations of the TDLR and the Texas Water Well Drillers Act, as existing or as may be amended and as they pertain to the

construction of water wells, shall be and are hereby incorporated into this Ordinance and must be strictly complied with.

SECTION 8: Domestic Use. No more than one (1) household may be served by a single water well if the water is for use inside the house.

SECTION 9: Commercial Use. It shall be unlawful for a commercial water well to be used for domestic (household) use or for consumption by the public.

SECTION 10: Irrigation Use. Any irrigation water well must be constructed in accordance with the provisions of this Ordinance. No irrigation water well shall be used for domestic (potable water) use. No irrigation water well shall be shared without complying with the following requirements:

- A. The owner of the water well, or proposed water well, shall furnish a notarized letter to Prosper that includes their name, address and legal description of the property. The letter shall include the names, addresses and legal descriptions of all properties wishing to tie on to the well. The letter shall state that the owner and all affected properties acknowledge and understand the well is for irrigation use only and not domestic (potable water) use.
- B. All properties wishing to tie on to the well shall:
  - 1. Hire a state licensed, Town registered plumbing or irrigation contractor to obtain a plumbing permit for the installation of the RPBA. A state licensed, Town registered Backflow Prevention Assembly Tester will have to be declared on the permit at time of application.
  - 2. Plumbing permit and inspection fees shall be Sixty Dollars (\$60). All requirements related to plumbing in Section 5 of this Ordinance shall apply.
  - 3. Plumbing permits shall expire ninety (90) days after the date issued. In every case where a permit is expired, a new permit shall be obtained before any work is resumed.

SECTION 11: Location. Water wells shall be constructed no closer to property lines or significant structures than the following distances:

- A. Front property line: twenty-five (25) feet;
- B. Side property lines: five (5) feet;
- C. Rear property lines: ten (10) feet;
- D. Buildings: ten (10) feet;
- E. Power lines: thirty (30) feet;
- F. Septic tanks and drain fields: one hundred fifty (150) feet;
- G. Septic tanks and drain fields: fifty (50) feet; if well is cement encased.
- H. Septic spray heads/soil absorption area: eighty (80) feet;
- I. Barns and animal pens: one hundred, fifty (150) feet; and

J. Permanent derricks and towers: no closer than forty (40) feet to side property lines.

SECTION 12: Sewer Charges. Prosper is required to charge for water discharges into the public sewer on the basis of actual quantity of water discharge into the sanitary sewer. The method of determining this quantity is based on estimates made from the water meter readings; therefore, when a water well is being used the following shall apply:

- A. Water well used only for yard or irrigation watering and other uses not connected with the sanitary sewer: No change in sewer charges is required.
- B. Residential water wells used in such a manner that all or a portion of the well water enters the public sewer: Sewer charge shall be based on a minimum of ten thousand (10,000) gallons a month discharged entering the sanitary sewer.
- C. Water wells used for purposes other than residential use where all or a portion of the well water enters the public sewer: The person being charged for sewer has the following options:
  - 1. Water being discharged into the sanitary sewer will be estimated by Prosper based on each individual case; or
  - 2. A wastewater meter shall be installed and maintained by Prosper, but all costs incurred by Prosper will be charged to the person using the public sewer.

SECTION 13: Cross Connections. In addition to the required RPBA, there shall also be a physical separation of at least twelve (12) inches (air gap) between systems.

SECTION 14: Debris, etc. on Public Rights-of-Way. There shall be no debris, dirty water, mud or any other refuse dumped and/or discharged onto public rights-of-way. The drilling operation of any well shall control and dispose of, among other things, all drilling, cuttings, mud and water so as not to create a mud pit or disposal operation at the well site.

SECTION 15: Penalty. Any person, firm, corporation or entity violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined a sum not exceeding Two Thousand Dollars (\$2,000.00) per day. Each continuing day's violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Prosper from filing suit to enjoin the violation. Prosper retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 16: Savings/Repealing Clause. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 17: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full

force and effect. Prosper hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that anyone or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

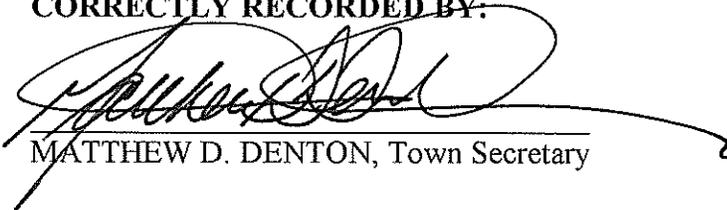
SECTION 18: Repeal Of Ordinance No. 02-22. Prosper Ordinance No. 02-22 is repealed in its entirety and replaced by this Ordinance. The effective date of the repeal discussed in this Section shall not occur until the effective date of this Ordinance at which time Ordinance No. 02-22 shall be repealed. Such repeal shall not abate any pending prosecution and/or lawsuit or prevent any prosecution and/or lawsuit from being commenced for any violation of Ordinance No. 02-22 occurring before the effective date of this Ordinance.

SECTION 19: Publication of Caption. The caption of this Ordinance shall be published in accordance with the laws of the State of Texas and shall be effective immediately upon its passage and publication.

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS** on this 10<sup>th</sup> day of October 2006.

  
CHARLES NISWANGER, Mayor

**ATTESTED TO AND  
CORRECTLY RECORDED BY:**

  
MATTHEW D. DENTON, Town Secretary



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