



OFFICE OF THE
MAYOR
CITY OF SAN LUIS

Ordinance

ORDINANCE NO. 319

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF
SAN LUIS, ARIZONA AMENDING THE CITY CODE OF THE CITY OF
SAN LUIS BY AMENDING ARTICLE 9-2 WELL REGULATION,
PROVIDING FOR PENALTIES, REPEALING CONFLICTING
PROVISIONS, PROVIDING FOR SEVERABILITY, AND DECLARING
AN EMERGENCY**

Whereas, the City of San Luis, Arizona (City) lies in the extreme southwest corner of the State on the U.S. border with Mexico;

Whereas, the City has seen rapid growth in the past 15 years, primarily on the Yuma Mesa but also in the Yuma Valley;

Whereas, Article XIII Sec. 5 of the Constitution of Arizona provides that every municipal corporation of the State shall have the right to engage in any business or enterprise which may be engaged in by virtue of a franchise from said municipal corporation;

Whereas, a water utility business is a business or enterprise authorized by Article XIII Sec. 5 of the Constitution of Arizona;

Whereas, the City operates an exclusive water utility pursuant to its franchise business or enterprise rights and A.R.S. §§9-511 and 9-514, and supplies water to its citizens through a city public works distribution system;

Whereas, Yuma County, in response to legislation at the state level, adopted the provision requiring all developments within the County to demonstrate that there is an adequate water supply for 100 years;

Whereas after that provision was adopted all developments in San Luis separately applied for designation of an adequate water supply;

Whereas the City of San Luis applied for and obtained a designation of an adequate water supply from the Arizona Department of Water Resources to alleviate the need for each future development to apply individually;

Whereas the City intends to deliver water to each new development;

Whereas the City operates and maintains its water utility system with revenue collected through water rates, with certain system improvements funded from impact fees;

Whereas the City currently acquires all of its water supply from groundwater pumped from wells located within City limits and on the Yuma Mesa;

Whereas the water is treated and delivered to its customers, both on the Yuma Mesa and in the Yuma Valley, through a City distribution system;

Whereas the City foresees continued growth and intends to continue to furnish water to its residents;

Whereas, the pumping of groundwater in Southern Yuma County is impacted by the Mexican Water Treaty of 1944 (specifically Minute 242) on water supplies and uses in the San Luis area;

Whereas, Minute 242 established a pumping limit for groundwater wells of 160,000 af/yr in the United States and 160,000 af/yr in Mexico within five miles of the Arizona-Sonora Boundary in each country (called the Five-Mile Zone);

Whereas there are currently approximately 133 known wells in Mexico and the United States in the Five-Mile Zone drawing on the aquifer which supplies water to the water system of the City of San Luis;

Whereas, the City received a hydrological study dated November 30, 2010 for its Adequate Water Supply designation prepared by N. W. Bill Plummer, Earl Burnett, Donald J. Young, and James Davey and Associates;

Whereas, the City of San Luis is the principal local government jurisdiction in the United States supplying potable water to residents within the Five-Mile Zone; and its ability to pump and supply water to meet the needs of the community, the needs of future growth, and maintain an Adequate Water Supply in compliance with the designation as granted by the Arizona Department of Water Resources on February 16, 2011 is impacted adversely by new wells located within said zone;

Whereas, Council desires to manage the number of wells drawing on the aquifer within the Five-Mile Zone so as to preserve the ability to deliver potable water to meet the needs of the community and the needs of future growth in compliance with the requirements of Arizona State law;

Whereas, the City Council of the City of San Luis, Arizona, on July 25, 2012 adopted Ordinance No. 316 of the City of San Luis, Arizona as an emergency measure;

Whereas, at the time of adoption of said Ordinance No. 316, Gadsden Elementary School District had begun drilling a well on the grounds of Desert View Elementary School located at 1508 N. 10th Ave., San Luis, Arizona; and

Whereas the City Council of the City of San Luis desires to make an exception for said well from Ordinance No. 316;

NOW THEREFORE BE IT ORDAINED by the Mayor and Council of the City of San Luis as follows:

Section 1: The City Code of the City of San Luis, Arizona is hereby amended to amend Article 9-2 Well Regulation to read as follows:

Article 9-2 Well Regulation

Section 9-2-1 Purpose

It is the purpose of this Article to regulate the establishment of new wells drawing upon the aquifer within five miles of the Arizona-Sonora Boundary as described in Minute 242 of the Mexican Water Treaty of 1944, the "Five Mile Zone", in order to promote the health, safety, and general welfare of the citizens of the city by managing the water supply to ensure the availability of a safe and secure source of potable water within its water utility service area to distribute to its residents, and secure the future needs and growth of the city. In making this policy, the City is committed to protecting its exclusive right to engage in a water utility business or enterprise within its service area, and to provide potable water and fire protection service to all residents and customers in sufficient quantities to meet public need and demand. In providing water service for the purposes of public health, safety, and welfare, the City further commits to providing safe water in effective quantities in accordance with its Assured Water Supply designation as granted by the Arizona Department of Water Resources on February 16, 2011 (DWR No. 40-700671.0000). In making this policy the City Council hereby refers to and adopts the findings and conclusions of the Hydrological Study on the Availability of Water for Assured Water Supply Designation, City of San Luis, Arizona dated November 30, 2010.

Section 9-2-2

It is unlawful to drill, establish, construct, maintain or operate a well in the municipal limits of the City within five miles of the Arizona-Sonora

Boundary as described in Minute 242 of the Mexican Water Treaty of 1944, the "Five Mile Zone", except as follows:

- 1) Wells drilled, established, and operational prior to July 25, 2012;
- 2) An exempt well established pursuant to the provisions of A.R.S. §45-454;
- 3) A well for irrigation purposes for Desert View Elementary School located at 1508 N. 10th Ave., San Luis, Arizona.
- 4) A well serving property located more than 5000 feet from an existing water main.
- 5) A well of the City of San Luis.

Section 9-2-3

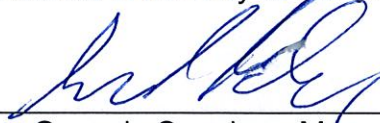
It shall be unlawful for any person, firm, or corporation to violate, or cause the violation of, any provision of this Article. Any person, firm, or corporation violating any of the provisions of the requirements of this Article shall be guilty of a class 1 misdemeanor, punishable pursuant to Article 1-8 of the City Code. With respect to violations of this Article that are continuous with respect to time, each day the violation continues is a separate offense.

Section 2: In the event of a conflict between the provisions of this Ordinance and any other ordinance, resolution, regulation, or policy of the City of San Luis, the conflicting provisions are hereby repealed, superseded, and replaced, and the provisions of this Ordinance shall govern.

Section 3: If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

Section 4: Whereas, it is necessary for the preservation of the peace, health, safety and welfare of the City of San Luis, Arizona, and for further reason that pending purchases, financial considerations, and the best interest of the City require the amendments to go into immediate effect, an emergency is declared to exist, and this Ordinance shall become immediately operative and in force from and after the date of posting hereof.

PASSED AND ADOPTED by the Mayor and Council of the City of San Luis, Arizona,
this 26th day of September, 2012.



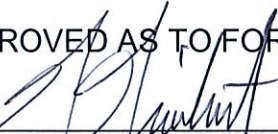
Gerardo Sanchez, Mayor

ATTEST:



Sonia Cuello, City Clerk

APPROVED AS TO FORM



Glenn J. Gimbut, City Attorney