AN ORDINANCE BY THE CLAYTON TOWN COUNCIL

to Adopt Source Water Protection Regulations

by Enacting Several Changes to the Zoning Ordinance and Subdivision Ordinance

WHEREAS, Section 4.2(e)(15) of the Town Charter of Clayton, Delaware, authorizes the Town Council “to exercise all powers and authorities vested in the Town by virtue of Chapter 3, Title 22 of the Delaware Code regarding the zoning and subdivision of lands as the same may, from time to time hereafter be amended;” and,

WHEREAS, Section 6.7-6.1 of the Clayton Zoning Ordinance authorizes the Town Council to “amend, supplement, change, or modify ... the text of the regulations ...” of the Zoning Ordinance; and,

WHEREAS, Section 5-1-3.1 of the Clayton Subdivision Ordinance authorizes the Town Council to “amend, supplement, change, or modify the provisions ...” of the Subdivision Ordinance;” and,

WHEREAS, the Town Council desires to:

1. Adopt regulations to protect public drinking water supplies from contamination pursuant to Title 7, Chapter 60, Subchapter VI, Section 6082(b) which mandates that municipalities whose population is 2,000 persons or more, adopt regulations governing the use of land in source water protection areas and adopt, as part of comprehensive plan updates, a map delineating source water protection areas;

2. Implement a recommendation in the 2008 comprehensive plan to adopt such regulations; and,

WHEREAS, the 2010 Census reported that Clayton’s population is 2,918 persons; and,

WHEREAS pursuant to Sections 6.2-3.3 and 6.7-6.6 of the Clayton Zoning Ordinance, and Section 5.1-3.4 of the Clayton Subdivision Ordinance, the Planning & Zoning Committee reviewed, and made a recommendation to the Town Council on, the proposed amendment at its regular meeting of February 18, 2015 and forwarded it to the Town Council; and,

WHEREAS, the Town Council:

1. Held a public hearing on April 13, 2015 which is more than 15 days from the newspaper publication pursuant to Section 6.7-6.5C of the Clayton Zoning Ordinance and Section 5.1-3.6A of the Clayton Subdivision Ordinance;

2. Received the Planning & Zoning Committee’s recommendation pursuant to Section 6.7-6.5D1 of the Clayton Zoning Ordinance and Section 5.1-3.5B of the Clayton Subdivision Ordinance and made it a part of the hearing record;

3. Gave all interested citizens and parties an opportunity to be heard pursuant to Section 6.7-6.5D2 of the Clayton Zoning Ordinance and Section 5.1-3.5B of the Clayton Subdivision Ordinance; and,

WHEREAS, notice of the public hearing was given as follows:

1. Pursuant to Section 6.7-6.6A1 of the Clayton Zoning Ordinance and Section 5.1-3.6A of the Clayton Subdivision Ordinance, notice appeared in the Smyrna-Clayton SunTimes, a newspaper of general circulation in the Clayton area, on February 24, 2015;

2. Pursuant to Section 6.7-6.6A2 of the Clayton Zoning Ordinance and Section 5.1-3.6B of the Clayton Subdivision Ordinance, notice was posted at the Clayton Town Hall on March 25, 2015; and,

WHEREAS, this Ordinance was introduced and read for the first time at the Town Council’s regular meeting of May 11, 2015; and,

WHEREAS, this Ordinance was read for the second time at the Town Council’s regular meeting of June 8, 2015; and,

WHEREAS, the Town Council finds that the provisions of this Ordinance are consistent with the Clayton Comprehensive Plan, which includes on pages 70 and 71, a recommendation for the adoption of source water protection legislation; and,

NOW, THEREFORE THE TOWN OF CLAYTON HEREBY ORDAINS that the following changes shall be made to the Zoning Ordinance and to the Subdivision Ordinance.

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CHANGES TO THE CLAYTON ZONING ORDINANCE

Delete the striken language from and add the underlined language to Section 6.1-2.2 Definitions.

Commission - Committee. The Clayton Planning and Zoning Committee Commission.
County. Kent County or New Castle County, Delaware.
DNREC. The Delaware Department of Natural Resources and Environmental Control.

Add the following to Section 6.4-1.1 Establishment of Zoning Districts
Town Center District (TC) Source Water Protection Overlay District (Wellhead Protection and Excellent Groundwater Recharge Potential Areas)

Add new Subsection 6.4-2.10 to Section 6.4-2. Zoning Districts

6.4-2.11. Source Water Protection Area Overlay District
A. Intent. See also Section 6.6-4.1.
   1. Safeguard public drinking water supply from contamination.
   2. Comply with requirements of the Delaware Source Water Protection Law 2001 as codified in the Delaware Code, Title 7, Chapter 60, Subchapter VI Source Water Protection, Section 6082 (b) and (f).
B. Permitted Uses and Structures. Uses and structures shall be the same as allowed in the underlying zoning district set forth in Table 1, as further modified, restricted, or prohibited in Section 6.6-4.

Add the following section to Chapter 6.6 Regulations Applying to All Districts

Section 6.6-4. Source Water Protection Overlay Zoning District Regulations
6.6-4.1. Purposes.
A. Ensure that land use activities are conducted in such a way as to minimize the impact on and reduce the risk of contamination to, excellent groundwater recharge potential areas and wellhead protection areas which are the sources for public drinking water in the Town of Clayton.
B. Satisfy the requirements of the Delaware Source Water Protection Law 2001 as codified in the Delaware Code, Title 7, Chapter 60, Subchapter VI Source Water Protection, Section 6082 (b) and (f).
C. Establish land-use and development standards in environmentally sensitive areas that are in addition to other standards and regulations in this Zoning Ordinance, the Clayton Subdivision Ordinance and other applicable local, state, and federal standards and regulations.

6.6-4.2. Definitions
The following definitions pertain to the Source Water Protection Overlay Zoning District.

Aboveground Storage Tank (AST). A single containment vessel greater than 250 gallons as defined in the Delaware Regulations Governing Aboveground Storage Tanks. ASTs with a storage capacity greater than 12,499 gallons containing petroleum or hazardous substances, and ASTs with a storage capacity greater than 39,999 gallons containing diesels, heating fuel or kerosene are subject to the design, construction, operations, and maintenance requirements of the Delaware AST regulations.

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Best Management Practices. Structural, nonstructural and managerial techniques that are recognized to be the most effective and practical means to control nonpoint source pollutants yet are compatible with the productive use of the resource to which they are applied. These are used in both urban and agricultural areas.

Contamination. Any physical, chemical, biological, or radiological substance that enters the hydrologic cycle through human action and may cause a deleterious effect on ground water resources.


Green Technology Best Management Practices (BMP’s). Those practices that achieve stormwater management objectives by applying the principles of filtration, infiltration and storage most often associated with natural vegetation and undisturbed soils while minimizing a reliance on structural components. They may also be constructed using an imported soil medium and planted with vegetation designed to promote the natural hydrologic process. These practices include, but are not limited to, vegetative filtration, riparian buffer plantings, bio-retention areas, vegetative flow conveyance, as well as recharge and surface storage in undisturbed natural areas.

Ground Water. Water contained in interconnected pores located below the water table in an unconfined aquifer or located in a confined aquifer.

Hazardous Waste. A solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating irreversible, illness, or pose a substantial present or potential a hazard to human health or the environment when improperly treated, stored, transported, or disposed of, otherwise managed. Without limitation, included within this definition are those hazardous wastes described in Sections 261.31, 261.32, and 261.33 of the Delaware Regulations Governing Hazardous Waste.

Infiltration. The passage or movement of water through the soil profile.

Impervious Cover. The sum of parking lots, roads, buildings, sidewalks, or other created surfaces through which rainwater cannot pass or infiltrate the soil.

Land Disturbing Activity. A land change or construction activity for residential, commercial, industrial, and institutional land use.

Leadership in Energy and Environmental Design (LEED). A rating system developed and administered by the U.S. Green Building Council based in Washington D.C.. It is designed to promote design and construction practices that increase profitability while reducing the negative environmental impacts of buildings and improving occupant health and well-being. The LEED rating system offers four certification levels for new construction which includes Certified, Silver, Gold and Platinum, corresponds to the number of credits accrued in five green design categories: sustainable sites, water efficiency, energy and atmosphere, materials and resources and indoor environmental quality. LEED standards cover new commercial construction and major renovation projects, interiors projects and existing building operations.

Natural Condition. Open space that is essentially unimproved and set aside, dedicated, designed, or reserved for public or private use.

On-site Wastewater Treatment and Disposal System. Conventional or alternative, wastewater treatment and disposal systems installed or proposed to be installed on land of the owner or on other land to which the owner has the legal right to install the system.

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Public Water Supply Well. Any well from which the water is used to serve a community water system by section 22.146 (Public Water Systems) in the Delaware State Regulations Governing Public Drinking Water Systems.

Public Drinking Water System. A community, non-community, or non-transient non-community water system, which provides piped water to the public for human consumption. The system must have at least 15 service connections or regularly serve at least 25 individuals daily for at least 60 days.

Runoff. That portion of precipitation or snow melt that has not evaporated or infiltrated into the soil, but flows on land or impervious surfaces.

Sanitary Landfill. A land site at which solid waste is deposited on or into the land as fill for the purpose of permanent disposal, except that it will not include any facility that has been approved for the disposal of hazardous waste under the Delaware Regulations Governing Hazardous Waste.

Source Water Protection Areas. Wellhead Protection Areas and Excellent Ground Water Recharge Potential Areas.

Stormwater. The runoff of water from the surface of the land resulting from precipitation or snow or ice melt.

Stormwater Management:

A. For water quantity control, a system of vegetative, structural, and other measures that may control the volume and rate of stormwater runoff, which may be caused by land disturbing activities or activities upon the land; and

B. For water quality control, a system of vegetative, structural, and other measures that control adverse effects on water quality that may be caused by land disturbing activities upon the land.

Underground Storage Tank (UST). One or a combination of Tanks including underground Pipes, the volume of which is 10% or more below ground, as defined in the Delaware Regulations Governing Underground Storage Tank Systems, dated March 12, 1995.

Note: The following USTs are not subject to the design, construction, operation, and maintenance requirements of the Delaware UST Regulations: (1) Residential Heating Fuel, Agricultural, and Residential Motor Fuel USTs less than 1,100 gallons; and, (2) any UST less than 110 gallons.

Water Quality. Those characteristics of stormwater runoff from an impervious surface or a land disturbing activity that relate to the chemical, physical, biological, or radiological integrity of water.

Water Quantity.

A. Those characteristics of stormwater runoff that relate to the volume of stormwater runoff to downstream-gradient areas resulting from land disturbing activities.

B. Those characteristics of stormwater that relate to the volume of stormwater that infiltrates the land surface and enters the underlying aquifer.

Wellhead Protection Area. Surface and subsurface area surrounding a water well or well field supplying a public water system through which contaminants are likely to reach such well, or well field.

6.6-4.3. Source Water Protection Area Boundaries.

A. Official Boundaries. The official boundaries for Source Water Protection Areas are as follows.


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B. Map Updates.
   1. DNREC periodically shall provide the Town of Clayton with updated excellent groundwater recharge potential and wellhead protection area maps which, upon approval by Town Council, are referenced by this Zoning Ordinance and shall be made available to the public upon request prior to any public hearing.
      a) DNREC Source Water Assessment and Protection Program (SWAPP) may, when based on sound science and information, revise and update the maps depicting the boundaries of wellhead protection areas.
      b) The Delaware Geological Survey (DGS) may, when based on sound science and information, revise and update the maps depicting the boundaries of good or excellent ground-water recharge potential areas.

C. Challenges to Mapped Boundaries.
   1. When there appears to be a conflict between official boundary maps and actual site conditions, the applicant may engage the services of a Professional Geologist to prepare a report intended to determine more accurately the precise boundary of the Source Water Protection Area. This Report shall include all of the following:
      a) A detailed topographic layout of the subdivision and/or area to be developed prepared by a Delaware-registered professional land surveyor, professional engineer, or professional geologist.
      b) Evidence derived from a site-specific investigation that may include aquifer testing, test borings, test pits, observation wells, groundwater elevations, and topography surveys as appropriate for the types of source water protections area that clearly demonstrate that the area in question does not meet the definition of a Source Water Protection Area as defined in this Section.
      c) Any challenges to the delineation of the excellent groundwater recharge potential areas shall follow the methods used in the Delaware Geological Survey Publication: Report of Investigations No. 66, Ground-Water Recharge Potential Mapping in Kent and Sussex Counties, Delaware. Challenges must be approved by DGS.
   2. Identification on Development Plans Required. Development plans depicting development or land disturbance shall delineate the locations of Source Water Protection Areas. If a tract proposed for development contains no Source Water Protection Areas, the plan shall include a statement affirming this.

6.6-4.4. Applicability.
A. All major subdivisions, conditional use site plans, site plans, and revised subdivision or site plans received for approval or reapproval by the Clayton Planning & Zoning Committee and/or Town Council shall meet the requirements set forth in this Section prior to approval, except as provided in Section 6.6-4.5 Exemptions.
B. All public drinking water well systems constructed after the effective date of this ordinance are required to comply with this Zoning Ordinance as well as the provisions of the Clayton Subdivision Ordinance and other applicable local, state, and federal standards and regulations.
C. For developments that are located partially in Zone I, Zone 2, or Zone 3 of the Source Water Protection Overlay Zone area:
   1. Only those portions in the Source Water Protection Overlay Zone area are required to comply with applicable source water protection standards; and
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2. Existing, developed land, located in the Source Water Protection Overlay Zoning District, shall be treated as nonconforming uses with respect to the applicable provisions of this Zoning Ordinance.

D. The uses and bulk standards which govern the underlying zoning designations attached to the properties within the Source Water Protection Overlay Zone shall apply in all instances except where uses are specifically prohibited by this Section and except pertaining to impervious cover. Where issues of impervious cover are concerned, the provisions of the Source Water Protection Overlay Zone are the governing provisions and override the existing zoning for the property.

6.6-4.5. Exemptions. The following are exempt from the requirements of this ordinance:

A. Recorded subdivisions.
B. Revisions to recorded subdivision plans that do not result in the creation of additional lots.
C. Conditional use applications not requiring development-plan review.
D. Improvements to existing residential lots, including additions to existing one-family dwellings, and the placement of sheds and fences.


A. Definition. A report that documents that post-development recharge will be no less than predevelopment recharge for both water quality and quantity when computed on an annual basis.
B. When Required. Whenever land proposed for development contains Source Water Protection Areas.
C. Elements. The Environmental Assessment Report shall include at least the following elements:
   1. Site description of proposed development within the water resource protection area.
   2. Climatic water balance comparing pre-development and post-development recharge potential for both water quantity and quality.
   3. Subsurface exploration including borings, test pits, and infiltration tests.
   4. Design of ground-water recharge facilities that assure water quality as well as water quantity.
   5. Construction and maintenance considerations.
   6. Recommended ground-water monitoring plan.
   7. Water management agreement between the applicant and the county providing for monitoring and maintenance of the recharge system. The applicant will abide by the Ground Water Management Agreement as written in the DNREC Supplement to the Source Water Protection Guidance Manual for the Local Governments of Delaware: Ground-Water Recharge Design Methodology dated May 2005 or as later revised.

6.6-4.7. Source Water Protection (SWP) Area Standards.

A. SWP Zone 1. Surface area extending 150-foot radius around a wellhead.
   1. Development Standards.
      a) Impervious Cover. Impervious cover shall be prohibited on lands located in a Zone 1 area with the exception of buildings, pumps, water storage tanks, generators and related appurtenances, and access associated with the well and related treatment and distribution facilities.
      b) Stormwater. Stormwater runoff shall be diverted away from wellheads.
   2. Prohibited Uses. The following uses are prohibited in SWP Zone 1 areas.
      a) On-site community and private wastewater treatment and disposal systems.
      b) Underground and aboveground storage tank systems subject to the registration requirements of DNREC.
      c) Junk/scrap/salvage yard.
      d) Mines/gravel pit.

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f) Sanitary and Industrial Landfills, as defined in 7 DE Admin. Code 1201, Delaware Regulations Governing Solid Waste.

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B. SWP Zone 2. Remaining surface area of the wellhead protection area outside of SWP Zone 1 and excellent groundwater recharge potential areas.

   a) New development in SWP Zone 2 Source Water Protection Overlay SWP Zone areas may not exceed 20% gross impervious cover.
   b) New development may exceed the 20% gross impervious cover threshold up to 50% gross impervious cover provided that the applicant demonstrates, through an environmental assessment report prepared by a registered professional geologist or registered professional engineer familiar with the hydro-geologic characteristics of Kent County using climatic water budget, that the post-development recharge quantity will meet or exceed the pre-development recharge quantity.
   c) Roof Drains. For all new construction, all structures shall be required to discharge roof drains into recharge facilities designed per the Delaware Sediment and Stormwater Regulations dated January 1, 2014 or as later revised. For all new construction, including residential, all structures shall be required to discharge roof drains onto permeable surfaces.
   d) Stormwater. Stormwater from new development shall be treated using water quality best management practices in accordance with current requirements of the Delaware Sediment and Stormwater Regulations dated January 1, 2014 or as later revised.

2. Prohibited Uses. The following uses are prohibited in SWP Zone 2.
   a) On-site community wastewater treatment and disposal systems.
   b) Underground storage tank systems subject to the registration requirements of DNREC.
   c) Chemical processing/storage facility.
   d) Junk/scrap/salvage yard.
   e) Mines/gravel pit.
   g) Sanitary and Industrial Landfills, as defined in 7 DE Admin. Code 1201, Delaware Regulations Governing Solid Waste.

C. SWP Zone 3. Where a SWP Zone 2 wellhead protection area overlays an excellent groundwater recharge potential area.

1. Wellhead Protection Areas in SWP Zone 3 shall be preserved in a natural condition.

2. Impervious cover shall not be permitted.
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Add the underlined language to Section 6.7-5 Site Plan Permits

6.7-5.4. Application Requirements

B. A site plan, prepared by a competent professional, drawn to scale that includes at least the following information:
1. Location, dimensions, and first floor elevations of all buildings and structures.
2. Existing and proposed parking areas.
3. Existing and proposed access roads.
4. Drives and walkways.
5. Topography and major vegetative features.
6. Existing and proposed grading
7. Location of landscape screens.
8. Recreation and open space areas.
9. Location of flood hazard areas.
10. Location of source water protection areas.

Add the following language to Table 1 Permitted Uses and Structures.

Note: Permitted uses shall be modified in accordance with any applicable standards set forth in Section 6.6-4 Source Water Protection Overlay Zoning District Regulations.

CHANGES TO THE CLAYTON SUBDIVISION ORDINANCE

Add the underlined language to Section 5.4-4. Drainage and Storm Sewers

5.4-4.1. Design

A. Every subdivision plan shall provide for storm or flood runoff channels or basins. The stormwater drainage system shall be separate from and independent of any sanitary sewer system. The system shall be designed according to the standards contained in the Kent County Drainage Code.

B. Drainage systems in source water protection areas shall be designed in accordance with applicable State and Town standards. See Section 6.6-4.2.

Add the following language to Table 5. Required Documents and renumber table elements as needed.

30. Location of source water protection areas (wellhead protection and excellent groundwater recharge potential areas)

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AND, FURTHER, THE TOWN OF CLAYTON HEREBY ORDAINS that, where warranted, the numbering system of the Zoning Ordinance and Subdivision Ordinance be amended so that they are in sequence after incorporating the provisions of this Ordinance.

AND, FURTHER, THE TOWN OF CLAYTON HEREBY ORDAINS that the boundaries of source water protection areas shall be depicted on a map adopted with the next comprehensive plan update.

AND, FURTHER, THE TOWN OF CLAYTON HEREBY ORDAINS that, pursuant to Title 10 Section 8126 of the Delaware Code, notice of the adoption of this Ordinance shall be published in a newspaper of general circulation.

AND, FURTHER, THE TOWN OF CLAYTON HEREBY ORDAINS that this Ordinance shall take effect upon adoption.

ADOPTED June 8, 2015.

By

Dave Letterman
Mayor and Council President
Town of Clayton, Kent County, Delaware