

Ordinance No. 3961

An Ordinance Establishing Watershed and Water Supply Standards; Establishing Requirements for Watershed Permits in Connection with Various Activities within said Watersheds; Prohibiting any Person from Polluting said Watersheds; and Encouraging the City Council to Adopt Implementing Ordinances or Resolutions

BE IT ORDAINED BY THE VOTERS OF THE CITY OF GRAND JUNCTION that the following watershed and water supply protection ordinance is hereby passed and adopted.

1. CITATION. This ordinance shall be known as the "Watershed Protection Ordinance" of the City.
2. IMPLEMENTING ORDINANCE. The City Council is encouraged to adopt an additional ordinance or resolutions to further implement the provisions of this ordinance in light of the provisions and purpose hereof.
3. PURPOSE. The primary purpose for which the Watershed Protection Ordinance is established is the fullest exercise of the powers, authorities, privileges and immunities of the City of Grand Junction in maintaining and protecting the City's water supply and waterworks from injury and water supply from pollution or from activities that may create a hazard to health or water quality or a danger of pollution to the water supply of the City. The City's authority herein shall be for the purpose of restricting any activity, or requiring changes in the way the activity or use is performed, within a watershed which creates a substantial risk of pollution or injury to the City's water supply or waterworks and/or the lands from under, or across or through which the water flows or is gathered. This purpose and authority statement shall not, however, be construed as an attempt to interfere with federal jurisdiction over federal lands within the City's watershed: This Ordinance should be construed to supplement and integrate with federal law and jurisdiction.
4. DESIGNATED WATERSHEDS.
 - (A) The City's primary watersheds (*i.e.*, Kannah Creek, North Fork of Kannah Creek, and Whitewater Creek) are hereby declared to extend over all the territory occupied by the City of Grand Junction's waterworks in the drainages of the City's primary watersheds and shall include but not be limited to all reservoirs, streams, trenches, pipes and drains used in and necessary for the construction, maintenance and operation of the same and over all creeks, streams, lakes, reservoirs and the City's waterworks and all water sources tributary thereto for five (5) miles up gradient (*i.e.*, obtained or used upstream) of each point from which any water is diverted for use by the City of Grand Junction or placed into any City domestic waterworks. Any ordinance or resolution implementing this Ordinance shall address the City's water rights and waterworks that are supplied by water from either the Gunnison and/or the Colorado Rivers.

5. STANDARDS. No land use activity shall be permitted in any primary watershed which creates a substantial risk of pollution or injury to the City's water supply or waterworks except in compliance with the provisions of this ordinance.

In addition:

(A) It shall be unlawful for any person to cause injury or damage to the City's waterworks, including all springs, seeps, streams, surface intakes, ditches, drains, pipelines and reservoirs used in and necessary for the construction, maintenance and operation of the same.

(B) All point and non-point sources of pollutants caused by or associated with a proposed land use activity shall not result in any measurable increase in pollution over the existing water quality of any waters of any primary watershed of the City potentially affected by the proposed land use or activity.

(C) The burden of proving the lack of substantial risk of pollution or injury, in terms of quantity and quality, to the City's water supply and/or waterworks shall be on the person proposing the land use or activity.

(D) Terms not defined herein shall be defined by the implementing ordinance and/or regulations. For the purposes of this ordinance, the following words shall have the following meanings.

(I) "Domestic Use" means: Construction of a single family residence of less than 10,000 square feet in total interior square feet; construction and maintenance of driveways, landscaping and accessory barns and sheds in connection with a single family residence; the maintenance, cutting and clearing of necessary trees and vegetation to accomplish the same; and treatment of noxious weeds and fire fuels management on the single family residential property.

(II) "Drilling" or "Drilling Operations" means: Drilling for water, oil, gas or other natural resources, and includes grading, construction, and traffic activities associated with the drilling.

(III) "Excavating" means: The intentional movement of earth leaving any cut bank over three feet (3') in height or a movement of material in excess of ten (10) cubic yards.

(IV) "Filling" means: The intentional movement of earth that results in any earth bank over two feet (2') in height or filled earth over two feet (2') deep, or artificial addition of earth above a line sloping up at a grade of one (1) vertical unit to five (5) horizontal units from the ground before the filling.

(V) "Grading" means: The intentional movement of over five (5) cubic yards of material; movement of any earth or material that changes the natural flow of surface water, or affects or creates a drainage channel; pioneering of a road, cutting or clearing of trees and shrubbery that results in

creating a roadway or driveway in excess of twenty-five feet (25') in length; or the use of vehicles or keeping of any animals upon any land that could reasonably lead to a movement of five (5) cubic yards of material within any five (5) year period.

(VI) "Removing Vegetation" means: The intentional cutting, burning, grubbing, dragging, chemical killing or any other manner of removing any flora or tree; any shrubs and/or trees, or combination, covering an area of more than one hundred (100) square feet; or any grasses covering an area of more than one thousand (1,000) square feet. Notwithstanding the preceding sentence, "removing vegetation" does not include: removal of clearly diseased or dead trees for domestic uses; clearing of trees in order to construct a single family residence; cutting of Christmas trees for non-commercial purposes; yard or garden work incidental to domestic uses; treatment of noxious weeds; fire fuel reduction on a single family residential property; or, removing vegetation incidental to a lawful use existing as of the date of approval hereof.

6. HIGH RISK ACTIVITIES. Because certain activities in the City's primary watersheds pose a substantial risk of pollution or injury to the City's waterworks and/or the quality of the City's domestic water quality, it shall be unlawful for any person to engage in any of the following activities within the City's primary watersheds unless the proposed use falls under the category of a domestic use, or unless and until such person has first obtained a Watershed Permit issued by the City:

(A) Excavating, grading, filling or surfacing 100 cubic yards or more;

(B) Removing 1000 square feet or more of vegetation;

(C) Using, handling, storing or transmitting flammable, explosive, hazardous or radioactive materials or substances; except for domestic uses and except that above-ground fuel tanks containing 350 or fewer gallons, and storage tanks that are an integral part of a vehicle, are allowed for each farm or ranch within a primary watershed.

(D) Because timbering, mining, and confined animal feeding operations, have a potential to cause significant degradation of water quality in a primary watershed, each such activity is prohibited unless and until the proponent of such land use or activity has obtained a City permit, based on the applicant/proponent having established that:

(I) Any alteration to water drainage courses shall not increase or decrease rates of stream flow, increase sediment load and/or deposition, cause erosion to stream banks, result in an increase or decrease in stream temperature, or otherwise cause injury to the aquatic environment. The City shall issue its permit if the applicant establishes that there is not a significant risk of pollution or injury to the City's water or waterworks;

(II) Any timber harvesting, other than the removal of deadfall or diseased trees, or the removal of trees for incidental purposes which may be associated with an activity that is not regulated by this ordinance, shall not cause degradation of water quality in a primary watershed;

(III) Surface or subsurface mining operations, including the extraction of gas and/or oil, and the preparation of sites in anticipation of drilling, mining or quarrying shall not cause degradation of water quality in a primary watershed. Reclamation activities pursuant to a state-approved reclamation plan are not regulated by this provision;

(IV) Confined animal feeding operations involving more than two hundred animals confined to less than 100 acres shall not cause degradation of water quality in a primary watershed.

(E) At a minimum, the applicant for a land use or activity involving timbering, mining or confined animal feeding operations shall provide: (I) Detailed plans and specifications of the proposed land use activity; (II) Itemization of all hazardous, toxic or explosive substances or materials to be used, transported, stored or handled as a part of the proposed land use activity; (III) A detailed description of any reasonable alternative to the proposed land use activity which may result in less of an impact to the City's water works and primary watersheds; (IV) Proposed detailed mitigation measures necessary assuming that best management practices are employed to reduce all adverse impacts to the primary watersheds, and the City's water and waterworks; (V) The existing water quality in all waters reasonably affected by the proposed activity for each parameter established by the Colorado Water Quality Control Commission; and (VI) A detailed description of the potential impacts the proposed land use activity will have on the quality and quantity of the City's water, waterworks and/or primary watersheds.

(F) Upon request of a rancher, farmer, resident of a single family dwelling or other person subject to the requirements of this ordinance, the City Manager may waive one or more of the above requirements if the City Manager determines that such information is not required in the particular circumstances to adequately evaluate risks of pollution or potential of injury to the primary watersheds, City waters or waterworks.

(G) Ongoing industrial operations (such as timbering, oil and gas drilling or confirmed animal feeding) in any primary watershed may require the hiring of a third-party monitor selected by the City the costs of which are paid by the

permittee for the duration of time the operations could cause damage to a primary watershed, City waters and/or waterworks.

7. **STANDARDS FOR ISSUANCE OF PERMIT.** A Watershed Permit shall only be issued when the City finds that the applicant has sustained its burden of proof that the proposed activity, including alternatives, mitigation and best management practices, if any, as proposed or required, does not present or create a foreseeable and substantial risk of pollution or injury to the primary watersheds, City waters or waterworks.
8. **PERFORMANCE GUARANTEE INSPECTION COSTS.**
 - (A) Before a permit authorizing a land use or activity in a primary watershed is issued, each permittee shall provide the City, at the permittee's expense, a performance guarantee in the form of cash or a letter of credit in the amount of one hundred percent (100%) of the City Manager's estimate, based on the best available information, of the cost to ensure compliance with this ordinance and/or any implementing ordinances or regulations, including, but not limited to, the cost of maintenance, operation, re-vegetation, reclamation and other requirements of or arising out of or under the proposed activities. Such performance guarantee shall be in effect for at least one year beyond the anticipated completion and reclamation of the activity identified in the permit.
 - (B) Any public utility regulated by the Colorado Public Utilities Commission, any governmental agency, any mutual water company, any conservancy district or any equivalent public or quasi-public water delivery entity may provide the City with an annual letter signed by an appropriate officer of the same guaranteeing: complete performance of the conditions prescribed in the permit; and, the correction of any defect in the work which the City discovers and for which the City gives written notice to the permittee within one year after the date when the City initially approves the completed work.
 - (C) Each permittee shall pay for the costs of City selected inspectors and/or testers deemed necessary by the City to evaluate each permit application and ensure that compliance is had with the requirements of this ordinance and any implementing ordinances and/or regulations.
9. **SEVERABILITY.** If any section, subsection, paragraph, clause, phrase or provision of this Ordinance shall be adjudged invalid, unenforceable or held to be unconstitutional by a court of competent jurisdiction, the validity of the rest of this Ordinance shall not be affected in whole or in part, other than the provision adjudged to be invalid or unconstitutional.

Introduced on first reading this 16th day of August, 2006.

Adopted on second reading this 6th day of September, 2006.

/s/: James J. Doody
President of the Council

ATTEST:

/s/: Stephanie Tuin
City Clerk