

Ordinance No. 37

May 2, 2018

**RICH COUNTY ORDINANCE PROVIDING FOR THE PROTECTION OF
PUBLIC DRINKING WATER SOURCES**

WHEREAS, the County is authorized to enact zoning ordinances to promote the health, safety, and welfare of its residents;

WHEREAS, many residents of Rich County receive drinking water from public water systems in the County;

WHEREAS, the Utah Safe Drinking Water Act is intended to ensure that all citizens in the State have access to safe drinking water;

WHEREAS, the Utah Division of Drinking Water's regulations require public water systems to develop plans to protect the water sources used by the public;

WHEREAS, Rich County's interest in promoting the health, safety, and welfare of its residents coincides with the State's interest in encouraging public water systems to protect sources of groundwater used for drinking water from contamination; and

WHEREAS, it is in the best interests of the residents of Rich County that this ordinance be enacted to protect the sources of water used for public drinking.

THEREFORE, the County Legislative Body of Rich County, Utah ordains as follows:

Section 1. Purpose.

The purpose of this ordinance is to insure the provision of a safe and sanitary drinking water supply for the County by the establishment of drinking water source protection zones surrounding all wellheads and springs within the County's boundary, and by the designation and regulation of property uses and conditions which may be maintained within such zones.

Section 2. Definitions.

When used in this ordinance the following words and phrases shall have the following definitions:

“Controlled” means that a physical, regulatory, negligible quantity, or best management/practice control, as defined in Utah Administrative Code R309-600, exists to prevent the discharge of contaminated or hazardous substances from a pollution source or potential contamination source. If no such control exists, the pollution source or potential contamination source is deemed uncontrolled.

“Design standard” means a control that is implemented by a potential contamination source to prevent discharges to the ground water. Spill protection is an example of a design standard.

"Existing ground-water source of drinking water" means a public supply ground-water source for which plans and specifications were submitted to the Division of Drinking Water on or before July 26, 1993.

“Land management strategies” means controls such as: zoning and subdivision ordinances, site plan reviews, design and operating standards, source prohibitions, optional purchase of property and development rights, public education programs, ground water monitoring, household hazardous waste collection programs, water conservation programs, memoranda of understanding, written contracts and agreements and so forth.

"New ground-water source of drinking water" means a public supply ground-water source for which plans and specifications were submitted to DDW after July 26, 1993.

“Pollution source” means point source discharges of contaminants to ground water or potential discharges of the liquid forms of "extremely hazardous substances" which are stored in containers in excess of "applicable threshold planning quantities" as specified in SARA Title III. Examples of possible pollution sources include, but are not limited to, the following: storage facilities that store the liquid forms of extremely hazardous substances, septic tanks, drain fields, class V underground injection wells, sanitary landfills, open dumps, land filling of sludge and septage, manure piles, salt piles, pit privies, drain lines, and animal feeding operations with more than ten (10) animal units.

The following definitions are meant to clarify the definition of “pollution source:”

- (1) “Animal feeding operation” means a lot or facility where the following conditions are met: animals have been or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, and crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more animal feeding operations under common ownership are considered to be a single feeding operation if they adjoin each other, if

they use a common area, or if they use a common system for the disposal of wastes.

- (2) "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers; the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.
- (3) "Extremely hazardous substances" means those substances which are identified in the Sec. 302(EHS) column of the "TITLE III LIST OF LISTS - Consolidated List of Chemicals Subject to Reporting under SARA Title III," (EPA 560/4-91-011).

"Potential contamination source" means any facility or site which employs an activity or procedure which may potentially contaminate ground water, whether it currently does or not. A pollution source is also a potential contamination source.

"Protected Aquifer" means a producing aquifer in which the following conditions are met:

- (1) A naturally protective layer of clay, at least 30 feet in thickness, is present above the aquifer;
- (2) The clay layer is demonstrated to be laterally continuous to the extent of zone two; and
- (3) The public-supply well is grouted with a grout seal that extends from the ground surface down to at least 100 feet below the surface, and for a thickness of at least 30 feet through the protective clay layer. An aquifer not meeting these criteria is considered "unprotected."

"Regulatory agency" means any governmental agency with jurisdiction over hazardous waste as defined herein.

"Sanitary landfill" means a disposal site where solid wastes, including putrescible wastes, or hazardous wastes, are disposed of on land by placing earth cover thereon.

"Septic tank/drain-field systems" means a system that is comprised of a septic tank and a drain-field that accepts domestic wastewater from buildings or facilities for subsurface treatment and disposal. By their design, septic tank/drain-field system discharges cannot be controlled with design standards.

“Wellhead” means the upper terminal of a well, including adapters, ports, seals, valves and other attachments.

Section 3. Establishment of drinking water source protection zones.

There are hereby established use districts to be known as drinking water source protection zones one, two, three, and four:

Zone one is the area within a 100-foot radius from the wellhead or spring.

Zone two is the area within a 250-day ground-water time of travel to the wellhead or spring, the boundary of the aquifer(s) which supplies water to the ground-water source, or the ground-water divide, whichever is closer. UAC R309-600 allows the establishment of a “Management Area” in lieu of a delineation based on aquifer data; in that case the “Management Area” is considered to be Zone two for that drinking water source.

Zone three is the area within a 3-year ground-water time of travel to the wellhead or margin of the collection area, the boundary of the aquifer(s) which supplies water to the ground-water source, or the ground-water divide, whichever is closer.

Zone four is the area within a 15-year ground-water time of travel to the wellhead, the boundary of the aquifer(s) which supplies water to the ground-water source, or the ground-water divide, whichever is closer.)

Section 4. Permitted uses.

The following uses shall be permitted within drinking water source protection zones:

- (a) Each use established before the effective date of this ordinance, and uses incidental and accessory to such use, may be continued in the same manner thereafter, unless such use is subsequently determined by a court to be a nuisance.
- (b) Any use permitted within existing agricultural, single family residential, multi-family residential, and commercial districts so long as uses conform to the rules and regulations of the regulatory agencies and not prohibited under Section 5.
- (c) Any other open land use where any building located on the property is incidental and accessory to the primary open land use.

Section 5. Prohibited uses.

The following uses or conditions shall be and are hereby prohibited within drinking water source protection zones for all groundwater sources, whether or not such use or condition may otherwise be ordinarily included as a part of a use permitted under Section 4.

- (a) Zone one (for all aquifer types). The location of uncontrolled potential contamination sources or pollution sources as defined herein.
- (b) Zone two (in unprotected aquifers). The location of pollution sources as defined herein, unless their contaminated discharges are controlled with design standards.
- (c) Zones three and four. The location of potential contamination sources unless they are adequately controlled through either design standards or land management strategies.

Section 6. Administration.

The policies and procedures for administration of any source protection zone established under this ordinance, including without limitation those applicable to nonconforming uses, exception, enforcement and penalties, shall be the same as provided in the existing zoning ordinance for the County, as the same is presently enacted or may from time to time be amended.

Section 7. Applicability.

The applicability of this ordinance extends to both incorporated and unincorporated sections of the County, unless an incorporated municipality within the County enacts an ordinance in accordance with Utah Code Ann. § 19-4-113 and/or Utah Code Ann. § 10-8-15.

Section 8. Enforcement.

Pursuant to UCA Section 19-4-113(3)(c), if a water district notifies the County of a violation of the ordinance, and the County within ten days of receiving the notice advises the water district that it will not seek enforcement of the ordinance, the water district or supplier may proceed to enforce the ordinance in the district court.

If the County does not respond within ten days of receiving the notice, it will be deemed that the County will not seek enforcement of the ordinance, and the water district may proceed to enforce the ordinance in the district court. If the County notifies the supplier within ten days of receiving the notice that it will seek enforcement of the ordinance, the

water district may not take enforcement action. Where a violation of the ordinance may cause irreparable harm to the groundwater source, a water district or supplier may seek enforcement in the district court, if the County does not seek enforcement within two days of receiving a notice of the violation from the water district or supplier.

Section 9. Notice and maps showing source protection zones.

Each water source protection area covered by this chapter shall be shown on a map, which shall include the boundaries of all zones. The water district/supplier shall prepare a map, which shall be filed with the Rich County Planning and Zoning office and filed with the County Clerk.

Section 10. Alleged Overly Protective Zones.

If a party disagrees with the boundaries of a drinking water source protection zone, such boundaries may be disputed according to the following procedure:

- (a) Applicant submits written comments to the public drinking water system stating the reasons that the protection zone boundaries are being disputed.
- (b) If the public drinking water system concurs, it may authorize a new hydrogeologic investigation at the expense of the one disputing the delineations or elect to conduct a new hydrogeologic investigation at its own expense if it appears that the boundary was established without considering geologic/hydrogeologic data.
- (c) If the public drinking water system declines to authorize a new hydrogeologic investigation, the applicant may appeal this determination to the County. In the event that the County authorizes a new investigation, it shall be conducted at the expense of the applicant.
- (d) Upon completion, the new hydrogeologic investigation shall be submitted to the Utah Division of Drinking Water for review.
- (e) If the Division of Drinking Water finds that the new hydrogeologic investigation meets the requirements of UAC R309-600, the County may enforce this ordinance according to the new hydrogeologic investigation.

Section 11. Effective Date.

This ordinance shall become effective immediately upon posting as provided by law.

APPROVED and ADOPTED this 2 day of MAY, 2018.

BOARD OF RICH COUNTY COMMISSIONERS

William E. Cox
Chairman

ATTEST:

Rebecca Peort
Rich County Clerk

Commissioner Bill Cox voted YES.
Commissioner Norman Weston voted YES.
Commissioner Thomas Weston voted YES.