

## ORDINANCE 2021-35

### AN ORDINANCE ESTABLISHING TITLE 9 CHAPTER 7 DRINKING WATER SOURCE PROTECTION ORDINANCE, AND ESTABLISHING REQUIREMENTS TO PROTECT DRINKING WATER SOURCES IN NORTH OGDEN CITY

**WHEREAS:** siting of land uses that have the potential to release hazardous waste, petroleum products, or other contaminants significantly increases the risk of contamination; and

**WHEREAS:** poor management practices, accidental discharges, and improper maintenance of these facilities may lead the release of pollutants; and

**WHEREAS:** discharges of hazardous wastes, leachate, pathogens, and other pollutants have repeatedly threatened surface and ground water quality throughout Utah; and

**WHEREAS:** surface and ground water resources in the North Ogden City contribute to the city's drinking water supplies;

**WHEREAS:** therefore, North Ogden City adopts the following regulation, under its authority as specified in Utah Code Section 19-4-113 and/or 10-8-15, as a preventative measure for the purposes of:

**WHEREAS:** preserving and protecting North Ogden City's drinking water resources from discharges of pollutants; and

**WHEREAS:** minimizing the risk to public health and the environment to the City due to such discharges.

**NOW THEREFORE, BE IT ORDAINED** by the Mayor and Council of North Ogden City by authority of Utah Code Section 19-4-113 Water source protection ordinance required, that the following ordinance known as the Drinking Water Source Protection Ordinance is adopted and made a part of the Code of Ordinance of the North Ogden City as Title 9 Chapter 7:

**SECTION 1:** The North Ogden Code Title 9 Chapter 7 be enacted.

#### 9-7: DRINKING WATER SOURCE PROTECTION

##### 9-7-1: SHORT TITLE AND PURPOSE

- A. This ordinance shall be known as the "Drinking Water Source Protection Ordinance."

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

#### 9-7-2: DEFINITIONS

When used in this ordinance the following words and phrases shall have the meanings given in this Section:

- A. Controlled – means that a physical, regulatory, negligible quantity, or best management practice control, as defined in Utah UAC 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 ipso facto uncontrolled.
- B. 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.
- C. 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, and animal feeding operations with more than ten animal units
- D. 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.
- E. Protected Aquifer – means "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.

- F. An aquifer not meeting these criteria is considered “unprotected”
- G. Regulatory agency - means any governmental agency with jurisdiction over hazardous waste as defined herein.
- H. 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.
- I. 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.
- J. Wellhead - means the upper terminal of a well, including adapters, ports, seals, valves and other attachments.

#### 9-7-3: ESTABLISHMENT OF DRINKING WATER SOURCE PROTECTION ZONES

There are hereby established use districts to be known as zones one and two (*three and four*) of the drinking water source protection area identified and described as follows:

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

#### 9-7-4: PERMITTED USES

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

- A. 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.
- B. Any other open land use where any building located on the property is incidental and accessory to the primary open land use.

#### 9-7-5: PROHIBITED USES

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

- 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.

#### 9-7-6: 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 North Ogden City, as the same is presently enacted or may from time to time be amended.

#### 9-7-7: ENFORCEMENT

Pursuant to UCA Section 19-4-113(3)(c), if a retail water supplier or wholesale water supplier notifies the city of a violation of the ordinance, and the city within ten days of receiving the notice advises the supplier that it will not seek enforcement of the ordinance, the supplier may proceed to enforce the ordinance in the district court. If the city does not respond within ten days of receiving the notice, it will be deemed that the city will not seek enforcement of the ordinance, and the supplier may proceed to enforce the ordinance in the district court. If the city notifies the supplier within ten days of receiving the notice that it will seek enforcement of the ordinance, the supplier may not take enforcement action. Where a violation of the ordinance may cause irreparable harm to the groundwater source, a retail water supplier or wholesale water supplier may seek enforcement in the district court, if the city does not seek enforcement within two days of receiving a notice of the violation from the supplier.

#### 9-7-8: 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 City. In the event that the City 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 is sufficiently protective, the City may enforce this ordinance according to the new hydrogeologic investigation.

**SECTION 2:** This ordinance shall take immediate effect.

**PASSED and ADOPTED this 12<sup>th</sup> day of October 2021.**

**North Ogden City:**

*S. Neal Berube*  
**S. Neal Berube**  
 North Ogden City Mayor

**CITY COUNCIL VOTE AS RECORDED:**

	<b>Aye</b>	<b>Nay</b>
<b>Council Member Barker:</b>	<u>X</u>	___
<b>Council Member Covering:</b>	<u>X</u>	___
<b>Council Member Ekstrom:</b>	<u>X</u>	___
<b>Council Member Stoker:</b>	<u>X</u>	___
<b>Council Member Swanson:</b>	<u>X</u>	___

(In event of a tie vote of the Council):

**Mayor Berube**                                 \_\_\_                                 \_\_\_

**ATTEST:**

*Susan L. Nance*  
**Susan L. Nance, CMC**  
 City Recorder

