

# ARTICLE 24

## WATERSHED PROTECTION AREA

**SECTION 24.010, PURPOSE:** It is the finding of Wallowa County that continued residential development, selected agricultural practices, and certain industrial and commercial uses pose a threat to the City of Enterprise's municipal water source, and if left unregulated, such use and development poses an immediate and unacceptable threat to the public health, safety, and welfare of more than 2,000 residents dependent upon that water source. The purpose of this Watershed Protection Area is to provide additional restrictions upon uses permitted outright or conditionally in the underlying zones in order to protect the purity of the City of Enterprise's municipal water source. The zoning maps for Wallowa County shall designate areas to be encompassed by the Watershed Protection Area designation. The Watershed Protection Area designation on the zoning maps shall be in addition to the zone as described by this ordinance as applied to the area within described by this ordinance as applied to the area within the Watershed Protection Area.

**SECTION 24.015, ADDITIONAL RESTRICTIONS:** Within the Watershed Protection Area designated on the zoning maps, the additional restrictions, prohibitions, and requirements set forth in Sections 24.010 through 24.080 shall apply and where inconsistent with the provisions of the underlying zone or other provisions of this ordinance or other ordinance shall supersede same.

**SECTION 24.020, LIVESTOCK RESTRICTIONS:** Maintenance of domestic livestock within the Watershed Protection Area is subject to the following restrictions and limitations:

01. **DEFINITIONS:**

- A. As used herein; animal unit means: one cow and calf; one horse, donkey or mule; two pigs; or five sheep.
- B. Density means: the number of animal units carried per acre of pasture or other fenced enclosure shall be calculated based upon the number of animal units maintained in a fenced enclosure. Enclosure of livestock for limited times and durations, on portions of a parcel at night for customary or usual calving and normal and customary animal husbandry purposes (other than livestock feeding) shall not be subject to the density limitations of this section.

02. **LIMITATIONS ON DENSITY:** In the Watershed Protection Area the following

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limitations shall apply to the keeping of domestic livestock:

- A. Within 1,000 feet of a spring utilized as a municipal water source, the maximum density shall be two animals units per acre.
- B. In all other areas of the Watershed Protection Area, the maximum density shall be ten animal units per acre.
- C. At no time shall the maintenance of domestic livestock up to the density limits set forth above be such as to result in an accumulation of animal waste that could cause, materially contribute to, or create a material risk of any adverse effect upon the city of Enterprise's municipal water source.

03. **APPLICABILITY OF DENSITY RESTRICTIONS:** Restrictions contained in this section shall be applicable to all livestock operations within the Watershed Protection Area - including those established prior to the effective date hereof. Existing livestock uses not in conformance with the limitations contained herein shall be in compliance with the terms hereof within 120 days of the effective date of this ordinance.

**SECTION 24.025, STORAGE OF CROPS:** No storage of potatoes or other putrescent crops which are likely to ferment or rot is permitted within 1,000 feet of the diversion point for any of the City of Enterprise's springs as marked upon the ground by the City. Beyond 1,000 feet storage of potatoes or other putrescence crops likely to ferment or rot is permitted if stored in silos or other storage facility adequate to insure there will be no leaching into the groundwater.

**SECTION 24.030, CHEMICAL APPLICATIONS:** Application of fertilizer pesticide, and herbicide is prohibited within 500 feet of the City of Enterprise's springs unless authorization for such application is received from the Wallowa County Court. Aerial application of fertilizer, pesticide, and herbicide is prohibited within one-fourth mile of the City of Enterprise's springs as designated on the ground.

**SECTION 24.035, FUEL STORAGE:** Storage of gasoline, fuel oil, diesel or other petroleum distillates (hereafter "fuel storage") is subject to the following restrictions and limitations.

- 01. **PROHIBITED FUEL STORAGE:** No fuel storage is permitted within 1,000 feet of the City of Enterprise's springs.
- 02. **FUEL STORAGE PERMITTED OUTRIGHT:** At a distance in excess of 1,000 feet of the City of Enterprise's springs, fuel storage is permitted outright in above-ground tanks not to exceed 500 gallons in capacity provided that a

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buried tank may be installed for the purpose of storing fuel of a type which is required to be stored in buried tanks under provisions of Oregon Law. Up to four separate 500 gallon fuel storage tanks, which are not cross-connected for storage of a particular fuel type, may be permitted outright under this subparagraph.

03. **FUEL STORAGE PERMITTED CONDITIONALLY:** Fuel storage tanks in excess of 500 gallons are permitted only as a conditional use within the Watershed Protection Area upon the Planning Commission's findings that:
- A. There is a need for said fuel tank within the Watershed Protection Area that cannot be reasonably satisfied by the applicant in an alternate location outside the Watershed Protection Area
  - B. The applicant has a need for storage of fuels in tanks of the capacity requested that cannot reasonably be met by fuel tanks permitted outright or of a size smaller than requested.
  - C. In the event of a major spill or leak involving the proposed tank and after consideration of any impoundment or other mitigating measures proposed or required by this ordinance or the Planning Commission; said spill will not cause, materially contribute to, create a material risk of, or have an adverse effect upon the City of Enterprise's water source. All such permits shall require (as condition thereof) compliance with the standards contained in 24.035(4).
04. **REQUIRED PROTECTIVE MEASURES:** In the event a permit is granted for a fuel storage tank under this 24.035 (3), the Planning Commission shall require all above ground tanks of 1,000 gallons or more to have a berm and an impervious surface installed to provide a catch basin to contain any fuel spills. In the event a buried fuel storage tank of 1,000 gallons capacity or more is approved; installation of monitoring wells adequate in number, location, and design to detect any leakage from said fuel tank shall be required.
05. **PRE-EXISTING BURIED TANKS:** Within one year from the effective date of this ordinance, all existing buried fuel tanks of 1,000 gallons capacity, or more, shall be abated unless a permit is obtained for said tank and monitoring wells installed within the said one year period or within such other time as may be imposed by the Planning Commission. It is the intent of this subsection to require all existing buried fuel storage tanks over 1,000 gallons to be removed unless they meet the criteria specified in 24.035(3)(4) - including installation of monitoring wells.
06. **PRE-EXISTING ABOVE GROUND TANKS:** All existing above ground tanks

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in excess of 5,000 gallons capacity shall be abated within one year of the effective date of this ordinance unless a permit is received under 24.035(3) above. It is the intent of this subsection to require removal of all such tanks that are not in compliance with the criteria specified in 24.035(3) (4) - including installation of a berm and impervious surfaces.

07. **PUBLIC NUISANCE:** All leaking fuel storage tanks within the Watershed Protection Area are hereby declared a public nuisance; therefore, Wallowa County, the City of Enterprise, or any affected person may maintain an action in circuit court for the State of Oregon to obtain an order requiring the abatement of any such leaking fuel tank.
08. **MONITORING WELLS:** Whenever monitoring wells are required to be installed under the provisions of 24.035(4); a monitoring well or wells adequate in depth, design, and proximity to the fuel tank to have reasonable assurance of detection of leaking fuel into the ground water shall be required and, depending upon topography, more than one monitoring well may be required. The monitoring well facilities required may be varied in accordance with the risk to the City of Enterprise's water source created by the proposed fuel tank and a greater number of wells and more stringent specifications may be required for fuel tanks which, due to size or proximity to the water source, create serious risks to the purity of such water source.
09. **PERMISSION TO DRAW SAMPLES:** Under the provisions of 24.035 (4), it shall be a condition of any permit for a fuel storage tank which requires monitoring wells that the owner of the property on which said monitoring wells are installed shall grant permission to responsible officials of either the City of Enterprise, the County of Wallowa, the State of Oregon, or the United States Government to enter said premises at reasonable times and reasonable hours for the purpose of drawing water samples from said monitoring wells. In the event that a property owner refuses to allow access to his property for said purpose, the permit to install the fuel storage tank shall immediately terminate, and the fuel storage tank shall be immediately abated.

**SECTION 24.040, CHEMICAL STORAGE:** Storage of chemicals - including pesticides, herbicides, and fertilizers - is prohibited in the Watershed Protection Area (except as permitted by this Section or in conjunction with a use permitted by Section 24.050). Storage of chemicals in conjunction with farm and domestic use is permitted, but only in amounts customarily required for continuing the farm operation or for domestic use if stored above ground on a site protected from weather and stored in the manufacturer's containers or other approved storage means. Disposal of used or empty containers shall only be in the manner required by Oregon Law and at sites approved under Oregon Law. Storage of chemicals in conjunction with a commercial application business is prohibited in the Watershed Protection Area

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(except as permitted at the Joseph Airport). Storage and handling of chemicals in exclusive conjunction with an aerial application business is prohibited at the Joseph Airport unless the airport has a pesticide management site plan in full compliance with Federal and Oregon Law and as approved by the Oregon Department of Environmental Quality. Pending development and implementation of a pesticide management site plan, aerial application activity may occur from the airport provided the Planning Director issues a zoning permit, and the applicant provides evidence that an interim management plan has been accepted by the Department of Environment Quality for the operation. The Planning Director's permit shall be good for a period of 12 months. Utilization of the airport for application of fire retardant shall comply with the provisions required for other chemicals associated with aerial application.

**SECTION 24.045, SOLID WASTE DISPOSAL:** On-site disposal of putrescent waste, garbage, or other solid waste is prohibited within the Watershed Protection Area. Solid waste transfer sites, as cited and approved by the Department of Environmental Quality, may be permitted within the Watershed Protection Area provided the site is found to present no threat to the City of Enterprise's springs.

**SECTION 24.050, COMMERCIAL AND INDUSTRIAL USES:** Commercial and industrial uses are permitted when allowed in the underlying zone subject to the procedures and restrictions in the underlying zone and subject to the following additional limitations and restrictions:

01. New commercial and industrial uses or change in uses or the enlargement and alteration of commercial and industrial uses existing as of the effective date of this ordinance and permitted outright in the underlying zone are permitted outright in the Watershed Protection Area when no chemicals or other products are used, produced by, or commonly associated with the activity which (in the event of introduction of a large quantity thereof into the ground water) might cause or materially contribute to or create a material risk of or cause any adverse effect upon the City of Enterprise's municipal water source.
  
02. A new commercial or industrial use or change in use not permitted outright under 24.050(1) may be permitted by the Planning Commission after issuance of a special use permit following public hearing and upon a finding that the proposed use (considering the quantity and character of the chemical or other product, the methods of use, and the distance from the City of Enterprise's municipal water source) would not have an adverse effect upon the City of Enterprise's municipal water source in the event of a major spill, improper storage and handling, or improper disposal of said chemical or other product. If said use is permitted outright in the underlying zone, review by the Planning Commission shall be limited to the determination of whether the standard contained in this subparagraph is met. Conditions may be imposed upon the

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permit by the Planning Commission to insure protection of the City of Enterprise's municipal water source.

03. Enlargement or alteration of a commercial or industrial use existing as of the effective date of this ordinance or the addition of a process or ancillary facility in conjunction with a use existing as of the effective date of this ordinance, but not permitted outright under 24.050(1) may be permitted in the Watershed Protection Area. This may take place after issuance of a special use permit and upon finding the proposed enlargement or expansion of the use (considering the quantities and character of the chemical or other product, the method of use, and the distance from the City of Enterprise's water source) would not have an adverse effect, materially contribute to an adverse effect, or create a material risk of an adverse effect upon the City of Enterprise's municipal water source but only after consideration of any impoundment or other mitigating measures imposed by State and Federal Law, this ordinance, the Planning Director, or the Planning Commission.

Upon receipt of an application to enlarge or alter an existing commercial or industrial use or to add a process or ancillary facility in conjunction with a pre-existing use, said permit not reviewable under the provisions of 24.050(1), the Planning Director shall notify the City of Enterprise. Prior to scheduling a public hearing before the Planning Commission, shall arrange a conference to be attended by the applicant, the City's representative, and the Planning Director. The purpose of the conference shall be to review the application, the nature of the processes, chemicals, and the impoundment and other mitigating measures to be employed by the applicant to comply with the standards of 24.050(3). If, following the conference, the City of Enterprise and the applicant are in agreement and the application meets the burden of proof set forth in 24.050(3), the Planning Director shall proceed to review and issue the special use permit under the procedures set forth in Section 24.080(1). If, following the conference, the City of Enterprise and the applicant cannot reach agreement as to the compliance of the application to the standards set forth in 24.050(3), the Planning Director shall schedule a public hearing before the Planning Commission as required by Section 24.080(1). Failure to conduct the conference within 45 days of the date of the application's submission shall require the Planning Director to schedule the hearing before the Planning Commission. If the proposed use or development is permitted outright in the underlying zone, review by the Planning Director or Planning Commission shall be limited to determination of the application's compliance with the standards set forth in 24.050(3). In the event the proposed use complies with Federal and State Laws and Regulations, the City of Enterprise, or other opponent, shall have the burden of coming forth with evidence sufficient to provide a reasonable basis for concluding that said State and Federal Laws and Regulations are inadequate to assure compliance with the standards set forth

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in 24.050(3). Upon presentation of such evidence, the burden shall shift to the Planning Director or Planning Commission which insure the protection of the City of Enterprise's municipal water source.

**SECTION 24.055, RESIDENTIAL USES:** Within the Watershed Protection Area the minimum lot size allowed for single-family dwellings shall be five acres.

**SECTION 24.060, SEPTIC TANKS:** No septic tank or other on-site subsurface sewage disposal system shall be installed within 300 feet of the City of Enterprise's springs. Privies shall not be permitted within the Watershed Protection Area - except for portable privies used on a temporary basis in conjunction with construction activity.

**SECTION 24.065, OTHER USES:** In the event that any use otherwise permitted, either outright or conditionally, in the underlying zone will cause, materially contribute to, or create a material risk of any adverse effect upon the City of Enterprise's municipal water source; said use is prohibited unless permitted by the Planning Commission subject to conditions adequate to assure the protection of the City of Enterprise's water source. The burden of proving the adverse effect shall be upon the City of Enterprise or other opponent of the use.

**SECTION 24.070, USE REVIEW REQUIRED:** In addition to the uses and developments requiring permit application and review under the provisions of the underlying zones, the following uses and developments shall require review and authorization by the Planning Director or Planning Commission.

01. Storage of crops pursuant to Section 24.080(1).
02. Fuel storage as provided for in Section 24.050.
03. Chemical storage at the Joseph Airport pursuant to Section 24.080(2), the Planning Commission to be the review authority.

**SECTION 24.075, VARIANCE:** Following public hearing, a Variance to a regulation or restriction enacted through the Watershed Protection Area which affects a use or development permitted by or unregulated within the underlying zone may be permitted by the Planning Commission provided the requested variance:

01. Relates solely to a regulation or restriction of the Watershed Protection Area and is not a variance which can be heard pursuant to the provisions of Article 8, Amendments.
02. The variance is the minimum variance necessary to alleviate a hardship on the property owner related to the use and enjoyment of the property caused by the regulation or restriction as enacted within the Watershed Protection Area.

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03. The Planning Commission finds the variance will not cause, materially contribute to, or create a material risk of any adverse effect upon the City of Enterprise's municipal water source - under reasonably possible hydrological or geological conditions.

**SECTION 24.080, BURDEN OF PROOF:** The burden of proof shall be upon the applicant except where specifically provided to the contrary.

**SECTION 24.085, PROCEDURES:** In addition to the review procedures specified in this ordinance, the following review procedures shall apply to all land within the Watershed Protection Area.

01. **ADMINISTRATIVE ACTION:** The following procedures shall apply to review and authorization of uses and developments permitted outright in the underlying zone or requiring review and authorization under Section 3.010 and 3.015 and which do not require notice be given or public hearing be conducted.
  - A. The Wallowa County Planning Department shall provide the City of Enterprise written notice of review for all applications requiring administrative action. The notice of review shall provide the City no less than 30 days to review the application and provide a written response.
  - B. The Planning Director shall take final action on an application brought forth under this 24.085 no sooner than 31 days following the date of the notice of review or upon receipt of the City of Enterprise's written response whichever occurs first. The Planning Director shall inform the city of all final actions taken on applications reviewed administratively. The notice of final action given to the City of Enterprise shall include the findings of act used to establish conformance with the requirements and restrictions of the Watershed Protection Area and any conditions of approval related to the requirements and restrictions contained herein on the grounds for denial of the application.
  - C. Applications for single-family dwellings permitted in the underlying zone shall be exempt from the notice of review procedures of the above provided the residence is to be sited on a lot or parcel no less than five acres in size, and the residence is to be sited no closer than one-fourth mile from the City of Enterprise's springs.
02. **REVIEWS REQUIRING NOTICE OF HEARING:** The following procedures shall apply to all permit reviews which require notice and/or hearing. These include home-based occupation permits, conditional uses, non-conforming

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uses, variances, reviews, zone ordinance text and/or map amendment, land use plan text and/or map amendments and uses or developments requiring such review.

- A. The City of Enterprise shall be given written notice of all applications to the Planning Department which fall within the above categories and which relate to lands within the Watershed Protection Area.
  - B. The City of Enterprise shall be given no less than 30 days to review the application and prepare a written response to the Planning Director or for submission into the record of the hearing before the Planning Commission whichever is the review authority.
  - C. The City of Enterprise shall be notified, in a timely manner, of all final actions taken on applications subject to these review procedures. The decision of the Planning Director shall be rendered no sooner than 31 days from the date of notice to the City of Enterprise or upon receipt and review of the City of Enterprise's written response whichever occurs first. The notice of decision by the Planning Director or Planning Commission shall include the findings of fact used to establish conformance with the regulations and restrictions of the Watershed Protection Area. The conditions of approval related to the Watershed Protection Area regulations and restrictions are the grounds for denial of the application.
  - D. Hearings before the Planning Commission initiated solely by provisions of the Watershed Protection Area and not otherwise required shall be restricted to the single issue of the application's compliance with the relevant regulations and restrictions of the Watershed Protection Area.
03. **APPEAL:** The City of Enterprise shall have standing to appeal any actions taken by the Planning Director or Planning Commission on permits and other reviews within the Watershed Protection Area and for which the City of Enterprise is entitled to notice.

**SECTION 24.090, SPECIAL PROCEDURES:** In addition to the review procedures specified in this ordinance, the following review procedures shall apply to all land located within the Watershed Protection Area as designated in The Wallowa County Ordinance - Section 24.010 through 24.080.

- 01. **EXCLUDED DEVELOPMENTS:** There shall be excluded from the procedures and requirements of 24.090 all residential minor partition applications if the site thereof is more than 1,320 feet from the exterior boundary of the City of Enterprise's municipal water source provided the residential use is permitted

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outright in the underlying zone and none of the parcels are less than five acres in size. All other partitions and subdivisions shall be subject to review under the procedures of this section.

**02. REVIEWS REQUIRING NOTICE:**

- A. The City of Enterprise shall be given written notice of all applications submitted to the Planning Department for minor partitions, major partitions, subdivisions, and amendments to the text of this ordinance which relate to any lands and zones within the Watershed Protection Area.
- B. Notice of review to the City of Enterprise shall give the City no less than 30 days to review the requests and prepare a written response to the Wallowa County Planning Director or Planning Commission whichever is responsible for the review and decision.
- C. The Planning Director shall inform the City of Enterprise of all final actions taken on applications for minor partitions, major partitions, subdivisions, or amendments to the text of this ordinance relating to lands within the Watershed Protection Area. Said notice of action given to the City of Enterprise shall include the factual evidence used to establish conformance with the requirements and restrictions of the Watershed Protection Area contained in the Wallowa County zoning ordinance or grounds for denial of the application.
- D. The City of Enterprise has standing to appeal any action taken by the Planning Director or Planning Commission on land division applications issued within the Watershed Protection Area and for which the City of Enterprise is to receive notice.

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