

ORDINANCE

**AN ORDINANCE AMENDING CHAPTER 6.18 OF THE CODE OF ORDINANCES ESTABLISHING A WATERSHED DISTRICT FOR THE PROTECTION OF MANITOU SPRINGS' HISTORIC MINERAL SPRINGS.**

---

**WHEREAS,** the City of Manitou Springs commissioned John shoemaker & Associates, Inc. to prepare and deliver *Studies Relating to the Mineral Springs, Manitou Springs, Colorado*, April 2011; and

**WHEREAS,** the study recommends that procedures be put into place to protect the Mineral Springs from damage due to seismic activities and excavation; and

**WHEREAS,** City Council deems it to be in the public interest to protect its historic mineral springs from injury and pollution as well as from activities that may create a hazard to the health and water quality or interfere with this resource's continuous recharge.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MANITOU SPRINGS, COLORADO, THAT:**

**Section 1:** Section 6.18.030 of the Manitou Springs Municipal Code is amended to read as follows:

**6.18.030 - Definitions.**

Whenever the following words or phrases are used in this chapter they shall have the following meanings:

- A. "Best management practice" means the most effective means of preventing or reducing harmful effects of certain activities to a level compatible with Manitou Springs' standards.
- B. "City of Colorado Springs": The City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation, to include its enterprises and their service territory and to also include any organization, association, or entity in which the City of Colorado Springs or any of its enterprises has any interest.
- C. "City of Manitou Springs": The City of Manitou Springs, Colorado, a home rule city and Colorado municipal corporation, to include its enterprises.
- D. "Discharge area" means that portion, generally described as the Southeasterly part of the Watershed District, including everything south of the line between Township 14 South and Township 15 South.
- E. "Excavating" means the artificial movement of earth leaving any cut bank over three feet in vertical height or a movement of material in excess of ten cubic yards.
- F. "Filling" means the artificial movement of earth leaving a fill earth bank over two feet in vertical height or filled earth over two feet deep, or, artificial addition of earth above a line sloping up at a grade of one vertical to five horizontal from the ground.
- G. "Foreseeable risk" means the reasonable anticipation that harm or injury may result from acts or omissions.

H. "Grading" means the artificial movement of over five cubic yards of material; or movement of any earth or material affecting or creating a drainage channel; or pioneering of roads, meaning the artificial movement of trees and shrubbery creating a roadway or driveway in excess of twenty-five feet in length.

I. "Person" means any individual, corporation, business trust, estate, trust, partnership, association or any other legal entity.

J. "Pollution" means the man-made, man-induced, or natural alteration of the physical, chemical, biological and radiological integrity of water.

K. "Recharge area" means that portion, generally described as the Northwesterly part of the Watershed District, and includes all of the Watershed District which is not in the "Discharge Area" described above.

L. "Removing vegetation" means the artificial cutting, chemical killing or any other manner of removing any tree greater than fifteen feet in height, any shrubs or trees covering an area of more than one hundred square feet or any grasses covering an area of more than one thousand square feet.

M. "Seismic damage" refers to the effect of blasting for construction or other purposes causing the opening of fractures and the onset of water flowing from the historic springs aquifer.

N. "Sewage disposal system" means a septic tank or other facility designed and constructed for the purpose of receiving and disposing of sewage.

O. "Subdivided areas" means any land area for which a subdivision plat has been approved, and includes areas for which grading plans have been approved, by the appropriate department or agency of the County of El Paso, the City of Manitou Springs, or the City of Colorado Springs.

P. "Surfacing" means any action resulting in the hardening or covering of the pre-existing ground in an area greater than one hundred square feet such that rain striking the area will accumulate or run off the surface to a greater extent than prior to the hardening or covering of said pre-existing ground. Surfacing includes, but is not limited to, such things as compacting the surface of the earth, placing gravel, concrete or like substances on the surface of the earth, or the placement of structures upon the ground.

Q. "Exercise of water rights" includes without limitation the diversion, exchange or storage of water for beneficial use pursuant to vested or conditionally decreed water rights, any changes of the points of diversion or exchange or changes of the places of storage for vested or conditionally decreed water rights as approved by the Water Court, all operation, maintenance and construction activities relating to the diversion, exchange or storage of water for beneficial use pursuant to vested or conditionally decreed water rights or any changes of such water rights approved by the Water Court, and all operation, maintenance and construction activities relating to the construction, repair, relocation or reconstruction of existing or future facilities required for the diversion, exchange or storage of water for beneficial use pursuant to vested or conditionally decreed water rights or any changes thereof approved by the Water Court.

R. "Exercise of rights to withdraw groundwater" includes without limitation the construction, repair, reconstruction or relocation of existing or future wells or other facilities consistent with vested or conditionally decreed rights or changes to vested or conditionally approved rights to groundwater approved by the Water Court and pursuant to permits as may be required from the State Engineer and all activities related thereto: the pumping, withdrawal or storage of groundwater for beneficial use through such wells or facilities; and all operation, maintenance and construction activities relating to such wells or facilities and relating to the pumping,

withdrawal or storage of groundwater pursuant to vested or conditionally decreed rights to groundwater or changes to vested or conditionally approved rights to groundwater approved by the Water Court and pursuant to permits as may be required from the State Engineer.

S. El Paso County: El Paso County, Colorado, a political subdivision of the State of Colorado, whose jurisdiction includes the unincorporated area of the County. This reference shall include its enterprises and their service territory and any organization, association, or entity in which El Paso County or any of its enterprises has any interest.

**Section 2:** Section 6.18.040 of the Manitou Springs Municipal Code is amended to read as follows:

**6.18.040 - Prohibited activity, permitted activity and notice of other activity.**

A. It shall be unlawful for any person to engage in any of the following activities within the Recharge Area of the Watershed District, which activities the City Council finds pose a potential or threat of seismic damage, pollution or diminution of volume to the City's historic mineral springs, unless such person shall, prior to undertaking such activity, obtain a permit for such activity under the provisions of this Article:

1. Constructing a sewage disposal system, except one which is connected to a municipal sewer system.
2. Excavating, grading, filling or surfacing, except within subdivided areas.
3. Removing vegetation on more than one acre.
4. Timber harvesting excluding the removal of dead trees for firewood or domestic purposes.
5. Altering water drainage courses.
6. Surface and subsurface mining operations.
7. Spraying or using herbicides or pesticides, except in normal households or gardens of less than one acre.
8. Using, handling, storing, or transmitting toxic or hazardous substances, including, but not limited to, radioactive materials, except for domestic purposes or within vehicular fuel storage tanks and except the transportation of such materials in accordance with requirements of the Colorado and United States Departments of Transportation, or by licensed PUC or Interstate Commerce carriers along State or Federal highways or along main public thoroughfares.
9. Using, handling, storing, or transmitting flammable or explosive materials except for domestic purposes or within vehicular fuel storage tanks, and except the transportation of such materials in accordance with requirements of the Colorado and United States Departments of Transportation or, by licensed PUC or Interstate Commerce carriers along State or Federal highways or along main public thoroughfares.

B. It shall be unlawful for any person to engage in any of the following activities with the Discharge Area of the Watershed District, which activities the City Council finds pose a potential threat of pollution or diminution of value to the City's historic mineral springs, unless such person shall, prior to undertaking such activity, obtain a permit for such activity under the provisions of this Article:

1. Drilling operations, or any method of constructing or modifying any well or spring.
2. Subsurface mining operations.

3. The use of explosives or blasting for construction excavation or other purposes.

C. In the event that any activity not set forth in subdivisions (1) or (2) of this section, above, is being conducted in such a manner that the Manitou Springs City Council finds that a foreseeable risk of seismic damage, pollution or diminution of flow to Manitou Springs' water supply and/or historic springs exists from such activity, the person responsible for such activity shall be notified by Manitou Springs of such finding and Manitou Springs may require that such activity cease and desist until such person obtains a permit for such activity under the provisions of this section.

**Section 3:** Section 6.18.050 of the Manitou Springs Municipal Code is amended to read as follows:

**6.18.050 - Permit and hearing procedure.**

A. Application and Fees. An applicant for a Watershed District Permit shall submit the following to Manitou Springs:

1. A completed application form as prescribed by Manitou Springs. If the applicant is not the owner of the subject property, the owner shall also sign the application and the applicant shall set forth its interest in the proposed activity. An application will not be deemed to be complete until all information required by Manitou Springs has been submitted to Manitou Springs.

2. A full and complete description of the proposed activity for which a permit is sought, including, if applicable, a discussion of any future activity anticipated by the applicant with respect to the subject property for which a permit may be required hereunder.

3. Two sets of plans and specifications which shall contain the following information:

a. A vicinity sketch or other data indicating the site location and legal description of the subject property.

b. Boundary lines of the property for which the permit is sought, if applicable.

c. Location of any buildings or structures within fifty feet of the proposed activity.

d. Accurate contours establishing the topography of the existing ground.

e. Elevations, dimensions, location, extent and the slopes of all proposed excavating, grading, filling or surfacing shown by contours and/or other means.

f. A statement of the amount and location of any matter proposed to be deposited in areas other than that shown on the plans.

g. Nature and location of the existing vegetation and a statement as to the effect of the proposed activity on such vegetation.

4. Identification of any activity that may present or create a foreseeable risk of seismic damage or pollution to the water supply of the City of Manitou Springs or to the historic springs along with a specific description of the measures, including best management practices, that will be employed by applicant to obviate such risks.

5. Any and all additional information that may be specifically requested by Manitou Springs, including, but not limited to, the following:

a. A map showing the drainage pattern and estimated runoff of the area of the proposed activity.

b. Revegetation and reclamation plans and specifications.

c. A soils analysis, including the nature, distribution and strength of existing soils, and recommendations for earth moving procedures and other design criteria.

d. A geologic analysis of the site and adjacent areas and its impact on the proposed activity.

e. An operational and maintenance analysis of the proposed activity.

6. Any applicant shall submit a Watershed District Permit application fee to Manitou Springs at the time of filing such application. The application shall be assessed a fee sufficient to cover the costs of publication, hearing, processing, administration, inspection and enforcement of such requested permit. The minimum fee hereunder shall be twenty-five dollars. In the event the fee charged by Manitou Springs at the time of application is determined to be insufficient to cover Manitou Springs' costs, Manitou Springs shall have the right to charge the additional fee prior to the issuance or denial of any permit. No Watershed District Permit shall be issued until all such assessed fees have been paid.

B. Review, Analysis and Risks.

1. Within thirty days following receipt of a completed application and site inspection, if necessary as determined by Manitou Springs, as weather conditions permit, the City Administrator or his/her designee shall review the same and prepare an analysis of the proposed activity, including a discussion of any factor that may present or create a foreseeable risk of seismic damage or pollution to the historic mineral springs along with an analysis of the measures, including best management practices, if any, that are proposed by the applicant to obviate such risks and submit such analysis to the City Council.

2. In undertaking the analysis of any proposed activity, the following factors, among any others that may be deemed relevant, shall be considered:

a. Nature and extent of the proposed activity.

b. Proximity to existing water courses, and effect on the recharge or discharge of aquifers.

c. Drainage patterns and control measures.

d. Soil criteria.

e. Slope steepness and stability.

f. Effects of denudation.

g. Geologic hazards, including, but not limited to, avalanche paths, flood plains, high water tables, fault zones and similar factors.

h. Point source effluent and emissions into air or water.

i. Ambient and non-point source emissions into air or water.

j. Vehicular and motorized activity.

k. Fire hazard.

3. The City Administrator or his/her designee may classify in writing an application as minor impact based upon the analysis set forth above if the proposed activity clearly does not present or create a foreseeable risk of seismic damage or pollution to the water supply of the City of Manitou Springs or to the historic springs. Within thirty days after any such minor impact classification, the City Council shall conduct the hearing required hereunder and render a decision

regarding the issuance or denial of a Watershed District Permit to such applicant. The failure of the City Council to render such decision within the time limits herein set forth shall be deemed and considered affirmative action on the issuance of the requested permit for any application as minor impact.

4. The City Administrator or his/her designee may classify a proposed activity as "no impact" in the following fashion. A potential applicant for a Watershed District Permit may apply for a "no impact" finding relative to the proposed activity. Such application shall be accompanied by such information, in writing, as the City Administrator needs to determine whether a "no impact" finding is warranted. Such information may be less than is required under subsection A.5.1., above, and required permit fees may be waived. Upon such application, the City Administrator or his/her designee shall determine whether the proposed activity is of a type or location that no negative impact on the historic springs is reasonably foreseeable. If such a "no impact" finding is made, the City Administrator or his/her designee shall immediately issue a Watershed District Permit for the proposed activity. After issuance of said permit, the City Administrator shall report same to the City Council at its next regular or special meeting, and shall also keep a record of such "no impact" permits for the purpose of assessing the cumulative impact of "no impact" activities. If the City Administrator or his/her designee does not make a "no impact" determination, that decision may be appealed to the City Council at its next regularly scheduled meeting. At said meeting the City Council may, based upon the same standards as set forth above, grant a "no impact" permit for the proposed activity.

C. Hearing. Upon receipt of the analysis from the City Administrator, the City Council shall conduct a public hearing to review the application and analysis and shall render a decision regarding the issuance or denial of a Watershed District Permit to such applicant within three months unless the activity requires approval of permit from any agency of the County, State or Federal government and which approval or permit procedure exceeds the time requirements of this Article, then, and in that event, Manitou Springs shall have an additional sixty days following the final decision of such County, State or Federal government approval or permit procedure to conduct the public hearing required hereunder and render a decision regarding the issuance or denial of a Watershed District Permit to such applicant. The City Council may require additional information from any applicant, in which event the public hearing and decision may be delayed or continued until receipt of such additional information.

D. Standards for Issuance of Permit. A Watershed District Permit shall be issued when the City Council finds that the applicant has sustained the burden of proof that the proposed activity including best management practices, if any, does not present or create a foreseeable risk of seismic damage or pollution to the historic mineral springs or any water sources tributary thereto in the area described on Exhibits A. A Watershed District Permit shall be denied when the City Council finds that the applicant has not sustained such burden of proof.

E. Permit Conditions. The City Council in issuing any Watershed District Permit may prescribe any conditions it may deem necessary to effect the intent of this Watershed District. The City Council may require any applicant to post a surety bond or cash in an amount sufficient to ensure compliance with the Watershed District Permit, including, but not limited to, the cost of maintenance, operation, revegetation, reclamation, any other requirements of proposed activities. The City Council may release to the applicant portions of any such bond or cash from time to time when no longer necessary to ensure compliance with the Watershed District Permit.

F. Duration of Permit. If any proposed activity for which a Watershed District Permit is issued is not commenced within nine months from the date of issuance of such permit, the permit shall expire and become void.

G. Notice of Hearing. Notice of any public hearing hereunder shall be given at least ten days

in advance of the public hearing by publication in the official newspaper of the City of Manitou Springs.

H. Joint Review Processes. Any permit required hereunder can be reviewed and issued pursuant to a joint review process with any other government entity or agency charged with the review and approval of the same activity or activities.

**Section 4:** If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

**Section 5:** The repeal or modification of any provision of Manitou Springs Municipal Code by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

**Section 6:** This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

**Section 7:** This ordinance shall take effect five (5) days after final approval and adoption on second reading.

Passed on First Reading and Ordered Published this 6<sup>th</sup> day of September, 2011.

/s/ Donna Kast  
City Clerk

A Public Hearing on this ordinance will be held at the September 20, 2011 City Council meeting. The Council Meeting will be held at 7:00 P.M. at City Hall, 606 Manitou Avenue, Manitou Springs, Colorado.

Ordinance Published: September 8, 2011 (in full).  
*Pikes Peak Bulletin*

Passed on Second Reading and Ordered Published this 20th day of September 2011.

Approved: /s/ Marc A. Snyder  
Mayor and City Council

Attest: /s/ Donna Kast  
City Clerk

Approved for Council Action: /s/ Jack Benson  
City Administrator

Approved as to form: /s/ Jeff Parker  
City Attorney

Published: September 22, 2011 (by title)  
*Pikes Peak Bulletin*