

## ORDINANCE # 4, SERIES 2011

### AN ORDINANCE CONCERNING THE TOWN WATERWORKS AND WATERSHED

WHEREAS, the Town of Jamestown by Ordinance #4, Series 1991, designated a Jamestown Watershed District and adopted Regulations for the District; and

WHEREAS, Ordinance #5, Series 2001, amended those regulations and repealed Ordinance #4, Series 1991; and

WHEREAS, the presence of, potential use of, or remediation of numerous mining claims in the watershed that have been identified due to improved Geographic Information Systems represent a critical hazard to the watershed; and

WHEREAS, the Board of Trustees, by this Ordinance desires to re-designate the watershed district and adopt new regulations for such district;

THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF JAMESTOWN, COLORADO:

#### Article I – Jamestown Watershed District

Section 1. Creation of District; Intent of District. There is hereby created a James Creek Watershed District as further described in this ordinance.

- a.) The purpose for which this District is established is the full exercise of the powers of the Town of Jamestown in maintaining and protecting the Town's waterworks from injury and water supply from pollution or from activities that will create a hazard to health and water quality or a danger of pollution to the water supply of the Town. This District is created under the authority granted in Section 31-15-707 (1)(b), Colorado Revised Statutes, as amended, and other applicable laws. Further, this District and the following regulations are created for the purpose of protecting the Town's water and waterworks only, and not for purpose of regulating land use activities. The Town's authority herein shall be for the purpose of reviewing and restricting any activity within the District, which creates a foreseeable risk of damage or injury to the Town's water supply and waterworks, or pollution of the Town's water supply. The Town's review authority within the District shall, therefore, be concurrent with the authority of Boulder County and the U.S. Forest Service to review and/or require permits for the same activity as the Town may regulate. Compliance with this ordinance shall be in addition to compliance with any Town land use regulations, 1041 regulations, or other regulations or ordinances regarding the activity subject hereto.

Section 2. Jurisdiction and Map. The jurisdiction of the Watershed District shall extend over the territory occupied by the Town of Jamestown waterworks and all reservoirs, streams, trenches, pipes, and drains used in and necessary for the construction, maintenance, and operation of the same, and all water sources, including ground water, tributary thereto for five miles above the points at the treatment plant at which water is diverted for use by the Town of Jamestown and extending laterally from the center of the stream 2640 feet on each side. The Watershed District Map, which accompanies this ordinance established the boundaries of the Watershed District, and with all notation, references, and other information shown thereon, is incorporated herein as part of this ordinance. The official Watershed District Map is located in the office of the Town Clerk.

- a.) The buffer extending 2640 feet on each side of the center of James Creek is included in the District because of the potential importance of such areas for restoring and maintaining the chemical, physical, and biological integrity of the water, for removing pollutants that may be delivered in stormwater, for reducing erosion and controlling sedimentation, for stabilizing stream banks, for providing infiltration of stormwater runoff, for maintaining base flow of the

stream, and for other water quality benefits essential to maintaining and protecting the Town's waterworks and water supply.

Section 3. Definitions. Whenever the following words or phrases are used in this ordinance, 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 Town standards, and designed to prevent or reduce potential or actual injury to the Town's waterworks or pollution of the Town's water supply.
- b.) "Excavating" means the artificial movement of earth leaving any cut bank over three (3) feet in vertical height or a movement of material in excess of two hundred and fifty (250) cubic yards.
- c.) "Filling" means the artificial movement of earth leaving a fill earth bank over two (2) feet in vertical height or filled earth over two (2) feet deep, or the artificial addition of earth above a line sloping up at a grade of one (1) vertical to five (5) horizontal from the ground.
- d.) "Foreseeable risk" means the reasonable anticipation that harm or injury may result from acts or omissions.
- e.) "Grading" means the artificial movement of over two hundred and fifty (250) 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 two hundred and fifty (250) feet in length; or the use of vehicles or keeping of any animals upon any land that would lead to a movement of one hundred (100) cubic yards of material within one (1) year of the commencement of such use or which use, if continued, would result in the movement of any earth or material affecting or creating a drainage channel.
- f.) "Livestock grazing" means the grazing of domestic animals such as cattle, horses and sheep;
- g.) "Person" means any individual, corporation, limited liability company, business trust, estate, trust, partnership, government, association or other legal entity.
- h.) "Pollution" means the man-made, man-induced, or artificial or natural alteration of the physical, chemical, biological, and/or radiological integrity of water.
- i.) "Removing vegetation" means the artificial cutting, chemical killing or any other manner of removing any tree greater than thirty (30) feet in height, any shrubs or trees covering an area of more than 100 square feet or any grasses covering an area of more than 1,000 square feet.
- j.) "Sewage disposal system" means a septic tank, an "individual sewage disposal system" as defined in Colorado Revised Statutes section 25-10-103(10), and documented and permitted by Boulder County
- k.) "Surfacing" means any action resulting in the hardening or covering of the pre-existing ground in any area greater than 1000 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.
- l.) "Town staff" shall mean the officer, employee, or agent of the Town designated by the Town Board to perform the function required by this ordinance.

- m.) "Waterworks" means any and all man-made or designed components of the Town's water system including, but not limited to, all transmission, storage and filtration facilities; and all reservoirs, streams, trenches, pipes and drains used in and necessary for the construction, maintenance and operation of the Town's water system.

Section 4. Activities Requiring Permit, Activities Requiring Written Notification, and Notice of Other Activities.

- a.) It shall be unlawful for any person to engage in any of the following activities within the Watershed District, which activities the Town Board finds pose a potential or actual threat of damage or injury to the Town's waterworks and of pollution to the Town's water supply, unless such person shall, prior to undertaking such activity, obtain a permit for such activity under the provisions of this ordinance:
- Excavating, grading, filling, or surfacing within 300 feet of stream center;
  - Removing vegetation within 300 feet of stream center;
  - Timber harvesting, excluding the removal of dead trees for firewood or domestic purposes within 300 feet of stream center;
  - Drilling operations (except wells for residential water)
  - Altering water drainage courses;
  - Surface and subsurface mining operations;
  - Spraying or using herbicides within 300 feet of stream center;
  - Using, handling, storing, or transmitting toxic or hazardous substances, including but not limited to, radioactive materials;
  - Using, handling, storing, or transmitting flammable or explosive materials except for domestic purposes or within vehicular fuel storage tanks-;
  - Increasing or decreasing the rate, quantity or duration of flow of water in James Creek or its tributaries; and
  - Livestock grazing within 300 feet of stream center;

The issuance of a permit or residential exclusion under this ordinance shall not constitute permission for any person to cause injury or damage to the Town waterworks, to pollute the Town's water supply, or otherwise violate this ordinance, other Town ordinances, or other applicable laws.

- b.) Activities within the Watershed District that require written notification to the Town 10 days prior to commencement of such activities are:
- Road maintenance and improvement by governmental entities-; and
  - Proposed management and use activities on National Forest lands that may have an adverse impact on the Town's waterworks or water supply. Notification shall include copies of the environmental assessments or project work plans prepared by or available to the Forest Service.
  - Sewage disposal systems permitted by Boulder County, if within 300 feet of stream center.

Written notification shall include the name and address of the person undertaking the activity, a description of the proposed activity and its site and such other information as the Town may require.

- c.) In the event that any act or omission not set forth in Subsection 1 of this section is being conducted in such a manner that Town staff finds that a foreseeable risk of pollution or other injury to the Town's waterworks or water supply exists from such act or omission, the person responsible for such act shall be notified by the Town staff of such finding and the Town staff may require that such act cease and desist until such person obtains a permit for such act

under the provisions of this ordinance, or the Town may require such person to act to prevent damage or injury to the Town waterworks or pollution of the water supply.

## **Article II - Permit and Hearing Procedure.**

Section 5. Application and Fees. An applicant for a Watershed District Permit shall submit the following to the Town no later than 120 days prior to the commencement of a proposed activity:

- a.) A completed application in the form prescribed by the Town. If the applicant is not the owner of the subject property, the owner shall also sign such 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 the Town has been submitted to the Town, and all fees and cost deposits have been paid to the Town.
- b.) A 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.
- c.) Two sets of plans and specifications which shall contain the following information:
  - 1) A vicinity sketch or other data indicating the site location and legal description of the subject property.
  - 2) Boundary lines of the property for which the permit is sought, if applicable.
  - 3) Location of any buildings, structures, or roads within fifty (50) feet of the proposed activity.
  - 4) Accurate contours establishing the topography of the existing ground.
  - 5) Elevations, dimensions, location, extent and the slopes of all proposed excavating, grading, filling, or surfacing shown by contours and/or other means.
  - 6) Details of all drainage devices in connection with the proposed activity.
  - 7) A statement of the amount and location of any matter proposed to be deposited in areas other than that shown on the plans.
  - 8) Nature and location of existing vegetation and a statement as to the effect of the proposed activity on such vegetation.
- d.) Identification of any activity that may present or create a foreseeable risk of injury or damage to the Town waterworks or pollution of the water supply of the Town along with a specific description of the measures, including best management practices, that will be employed by applicant to obviate such risks.
- e.) Any and all additional information that may be specifically requested by the Town, including but not limited to, the following:
  - A map showing the drainage pattern and estimated runoff of the area of the proposed activity.
  - Revegetation and reclamation plans and specifications.
  - A soils analysis, including the nature, distribution, and strength of existing soils, and recommendations for earth moving procedures and other design criteria.
  - A geologic analysis of the site and adjacent areas and its impact on the proposed activity.
  - An operational and maintenance analysis of the proposed activity.

- Water use analysis, including legal basis, source, quality, amount of consumptive use, impact on ground water, and discharge characteristics.
- f.) The applicant shall submit a Watershed District Permit application fee of \$100 to the Town at the time of filing such application. If, after initial review a determination of "no impact" is made, the application fee shall be returned, less actual expenses incurred by the Town. Otherwise, the Town may determine that outside professional services and other costs will be necessary in association with the Town's review of the application, then the applicant shall be so advised and shall enter into a cost agreement and funds deposit agreement with the Town prior to any further processing of the application. Such agreements shall be in the forms prescribed by the Town and shall require a deposit of funds in the estimated amount of the costs of such professional services and other costs, which may include but shall not be limited to engineering, consulting, legal, publication, and copying costs but shall not exceed ten times the application fee. The agreements shall require that the applicant reimburse the Town for all costs incurred in the Town's review of the application, and any deposit shall be considered an estimate only. An application shall not be considered complete until the executed agreements and deposit, if required, have been delivered to the Town. No watershed district permit shall be issued until all fees and costs have been paid.

#### Section 6. Review, Analysis, and Risks

- a.) Within sixty (60) days following receipt of a completed application, Town staff shall review the same, perform a site inspection, if permitted by weather conditions and if determined necessary to an understanding of the matters set forth in the application, and prepare an analysis of the proposed activity, including a discussion of any factor that may present or create a foreseeable risk of injury or damage to the waterworks or pollution of the water supply of the Town of Jamestown 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 Town Board.
- b.) In undertaking the analysis of any proposed activity, the following factors, among any other that may be deemed relevant, shall be considered by Town staff:
- Nature and extent of the proposed activity;
  - Proximity to existing water courses;
  - Drainage patterns and control measures;
  - Soil criteria;
  - Slope steepness and stability;
  - Effects of denudation;
  - Geologic hazards, including but not limited to, avalanche paths, flood plains, high water tables, fault zones, and similar factors;
  - Point source effluent and emissions into air or water;
  - Ambient and non-point source effluent and emissions into air or water;
  - Vehicular and motorized activity; and
  - Fire hazards.

Section 7. "No Impact" Permit. Town staff may classify a proposed activity as "no impact". If such a classification is made, the provisions of Sections 8, 9,10,11, and 12 of this Ordinance shall not apply.

- a.) The 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 Town staff needs to determine whether a "no impact" finding is warranted.
- b.) Upon review of such application, Town staff shall determine whether the proposed activity is of a type, magnitude, or location that no damage, injury or negative impact is foreseeable to the Town of Jamestown waterworks or to the reservoirs, streams, trenches, pipes, and drains used in and necessary for the construction, maintenance, and operation of the same, or to the water sources tributary thereto for five miles above the points from which water is diverted

for use by the Town. If such a “no impact” finding is made, Town staff shall issue a “no impact” Watershed District Permit for the proposed activity and return the applicants fee, less any actual costs incurred by the Town.

- c.) Issuance of a “no impact” permit: Town staff shall report same to the Town Board 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. Further, Town Staff may decide a “no impact” finding cannot be made for one or more requested permits based upon the cumulative impacts of the proposed activities.
- d.) If Town staff decides that a “no impact” finding cannot be made, that decision may be appealed to the Town Board at its next regularly scheduled meeting or at that meeting at which the application is otherwise reviewed. At said meeting the Board may, based upon the standards set forth in this paragraph, grant a “no impact” permit for the proposed activity or may review the application as otherwise provided by this ordinance.

Section 8. Hearing. Upon receipt of the analysis from the Town staff, the Town Board 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 90 days after receipt of staff’s analysis, except that if the activity requires approval of permits from any agency of the County, State, or Federal government and those permit procedure timelines exceed the time requirements of this ordinance, then, and in that event, the Town shall have an additional sixty (60) 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 Town Board 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.

Section 9. Standards for Issuance of Permit. A Watershed District Permit shall be issued if the Town Board 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 damage or injury to or pollution of the Town of Jamestown waterworks and all reservoirs, streams, trenches, pipes, and drains used in and necessary for the construction, maintenance, and operation of the same, and all water sources tributary thereto for five miles above the points from which water is diverted for use by the Town of Jamestown. A Watershed District Permit shall be denied if the Town Board finds that the applicant has not sustained such burden of proof.

Section 10. Permit Conditions. The Town Board in issuing any Watershed District Permit may prescribe any conditions it may deem necessary to effect the intent of this ordinance. The Town Board may require any applicant to post a surety bond, letter of credit, or cash in an amount sufficient to ensure compliance with the Permit, including but not limited to, the cost of maintenance, operation, revegetation, reclamation, or other requirements related to the proposed activity or permit. The Town Board may release to the applicant portions of any such bond, letter of credit, or cash from time to time when it determines that such portions are no longer necessary to ensure compliance with the Watershed District Permit.

Section 11. Duration of Permit. If any proposed activity for which a Watershed District Permit is issued is not commenced within nine (9) months from the date of issuance of such permit, the permit shall expire and become void.

Section 12. Notice of Hearing. Notice of any public hearing hereunder shall be given at least ten (10) days in advance of the public hearing by posting at the designated Town Posting Place or by publication in a newspaper of general circulation within the Town of Jamestown, and by notice to the applicant by mail.

Section 13. Joint Review Processes. Any permit required hereunder may 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.

## **Article III – Violation, Enforcement, Severability and Repeal**

### **Section 14. Enforcement.**

- a.) Right of Entry: Whenever necessary to make an inspection to enforce any provision of this ordinance or any permit issued hereunder, Town staff may go upon any land at any reasonable time to inspect the same or to perform any duty imposed hereunder after making a reasonable effort to locate the applicant or other persons having control of such land to notify them of such entry.
- b.) Stop Work Order; Whenever any work, activity, or other act or omission is being done contrary to the provisions of this ordinance, or in violation of the terms of any Watershed District Permit issued hereunder, Town staff may order the work activity or act be stopped by notice in writing served on the applicant or any person engaged in or causing such activity to be done, and any such person shall cease such activity until authorized by the Town to proceed. Town Staff may order the applicant or any person to take such action as necessary to comply with this ordinance or any permit issued hereunder. Any permit issued pursuant to this ordinance may be revoked or suspended if work is not done in accordance with the terms and conditions of the permit.

**Section 15. Regulations.** The Town Board may issue regulations providing guidelines and criteria to carry out the purposes of this ordinance.

**Section 16. Activity in Progress.** The lawful use of any buildings, structure, or land existing at the time of the enactment of this ordinance may be continued even though it does not conform to the requirements of this ordinance. Ordinary repairs and maintenance of any existing building, structure, or land shall be allowed. Any change, expansion, alteration, or enlargement of such existing lawful use shall be subject to all requirements of this ordinance.

### **Section 17. Offenses.**

- a.) No person shall in any way damage or injure any property, equipment, or appliance constituting or being a part of the Town waterworks.
- b.) No person shall cast, place, dump, or deposit in any part of the Town watershed any substance or material which would in any manner Injure or obstruct the same, or would tend to contaminate or pollute the water or obstruct the flow of water, or would in any other manner harm the Town of Jamestown waterworks and all reservoirs, streams, trenches, pipes, and drains used in and necessary for the construction, maintenance, and operation of the same, and all water sources tributary thereto for five miles above the points from which water is diverted for use by the Town.

**Section 18. Violation and Penalty and Remedies.** It is a violation of this ordinance for any person to do any act which is forbidden or declared to be unlawful or declared to be a nuisance or to fail to do or perform any act required in this ordinance. Such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any provision of this ordinance is committed, continued, or permitted. Upon conviction thereof, such person shall be punishable by a fine of not more than one thousand dollars (\$1,000.00), by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment for each such offense.

- a.) Any activity or use which is continued, operated, or maintained contrary to any provision of this ordinance is unlawful. The Town of Jamestown may institute injunction, abatement, or any other appropriate action to prevent, enjoin, abate, or remove such violation in which event the Town shall be entitled to recover court costs and attorney's fees.
- b.) Remedies: The remedies herein provided shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law or equity.

Section 19. Appeal. Any person desiring to appeal any decision or determination by the Town Board hereunder shall file such appeal within thirty (30) days following such decision or determination with the District Court of Boulder County.

Section 20. Severability. If any provision of this ordinance or the application thereof is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

Section 21. Repeal: All ordinances or parts of ordinances, of the Town of Jamestown, Colorado in conflict herewith and specifically: Ordinance No. 5, Series 2001 is hereby repealed.

**INTRODUCED, READ, ADOPTED, APPROVED, AND ORDERED PUBLISHED IN FULL THIS 6TH DAY OF JUNE, 2011.**

**TOWN OF JAMESTOWN, COLORADO**

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Tara Schoedinger, Mayor

Attest:

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Mary Ellen Burch, Town Clerk