

Ordinance No.1417  
Source Water Protection Ordinance

AN ORDINANCE OF THE CITY OF PAYETTE, PAYETTE COUNTY, IDAHO, AMENDING TITLE 13, WATER, SEWERS AND PUBLIC SERVICES, BY ADDING A NEW CHAPTER 13.03 ENTITLED "SOURCE WATER PROTECTION", DEFINING TERMS, AUTHORIZING ESTABLISHMENT OF SOURCE WATER OVERLAY DESIGNATIONS, DEFINING SUCH DESIGNATIONS, PROVIDING FOR THE ADOPTION OF A MAP DEPICTING SUCH DESIGNATED LOCATIONS, REQUIRING A PERMIT APPLICANT TO DEMONSTRATE COMPLIANCE, PROVIDING PENALTIES, PROVIDING ADMINISTRATIVE PROCEDURES RELATING TO PERMIT APPROVALS, REQUIRING A WRITTEN RECORD OF PERMIT ACTIVITY, AUTHORIZING APPEALS TO THE CITY COUNCIL, ESTABLISHING THE STATUS OF EXISTING NONCONFORMING USES; PROVIDING FOR A SEVERABILITY CLAUSE; ESTABLISHING A REPEALER CLAUSE; ESTABLISHING A PENALTY; ALLOWING FOR PUBLICATION IN SUMMARY FORM; PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

Whereas, avoidance of the costs and disruption caused by pollution of the community drinking water supply is the most cost-effective means by which to protect the public interest; and,

Whereas, the provision of clean, safe drinking water is one of the most vital assets available to any community; and,

Whereas, the presence of hazardous materials and the conduct of certain land-related practices can make the source of community drinking water supply (source water) vulnerable to irreparable harm; and,

Whereas, certain natural hydrogeologic conditions can increase the vulnerability of the community source water to contamination; and,

Whereas, it is universally recognized that the costs of remediation of source water pollution in both economic and social terms are the most expensive means by which to meet the community's needs for clean water; and,

Whereas, certain forms of source water pollution cannot be readily remediated irrespective of cost or need; and,

Whereas, treatment of the drinking water supply after it has been collected from the source to meet drinking water quality standards can be costly; and,

Whereas, suitable alternatives of drinking water may be costly or not available if the water supply becomes contaminated; and,

Whereas, Article XII, section 2 of the Constitution of the State of Idaho authorizes Idaho's counties and cities to "make and enforce, within its limits, all such local police, sanitary, and other regulations as are not in conflict with its charter or with the general laws,"; and,

Whereas, Idaho Code 67-65, "Local Land Use Planning," authorizes land-use regulations to implement comprehensive plan policies intended to protect natural resources and maintain the economic health of each community; and,

Whereas, the planning and zoning process should be complementary to health and safety requirements that protect the health of individuals and sustain economic well-being within each local jurisdiction; and,

Whereas, the City of Payette has adopted Title 17, Zoning, of the Payette Municipal Code.

Now, therefore, be it ordained by the Mayor and Council of the City of Payette as follows:

**Section 1.** Title 13 of the Payette Municipal Code is hereby amended by adding a new chapter 13.03 as follows:

**Chapter 13.03**  
**SOURCE WATER PROTECTION**

**13.03.010 PURPOSE**

- A. The purposes of this ordinance include
1. Protecting the health, safety, and general welfare of the public.
  2. Fostering economic well-being derived from the availability of clean water.
  3. Minimizing public costs related to remediation, treatment, or replacement of the community water supply.
  4. Avoiding private costs and economic dislocation as a result of pollution of the public water supply.

5. Providing effective and efficient means for processing administrative permits to implement this ordinance.

### **13.03.020 DEFINITIONS**

Certain defined words and phrases shall have the particular meaning set forth in this section when used within the text of this ordinance or as particularly defined in IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems" adopted by the Idaho Board of Environmental Quality and Idaho Legislature. All other words and phrases contained in this ordinance shall be construed in light of their typical meaning applied in the context of the purpose and intent set forth above and elsewhere herein.

- A. **Agricultural Runoff Waste Water.** Water diverted for irrigation, but not applied to crops, or runoff of irrigation water from cropland as a result of irrigation.
- B. **Aquifer Remediation-Related Wells.** Wells used to prevent, control, or remediate aquifer pollution, including, but not limited to, wells at Superfund sites.
- C. **Community Public Water System.** A public water system (PWS) that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.
- D. **Facility.** Any land use, business, or undertaking that is established, constructed, or modified to serve a particular purpose for which potential issues may affect possible degradation of source water.
- E. **Hazardous Waste Disposal Facility.** A hazardous waste treatment, storage, or disposal facility that receives hazardous material as described in the Code of Federal Regulations 40 CFR 260.1.
- F. **Hazardous Waste or Material.** Any waste or material that because of its quantity, concentration, physical, chemical, or infectious characteristics may
  1. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or,
  2. Pose a substantial present or potential hazard to human health or to the environment when improperly treated,

stored, transported, disposed of, or otherwise managed;  
or,

3. Any material or substance designated as a hazardous or toxic substance defined by 40 CFR 261.3, or any material or substance designated as a hazardous or toxic substance by the State of Idaho, acting through the Idaho Department of Environmental Quality (DEQ) or any successor agency.
- G. **Idaho Department of Environmental Quality Public Water System Records.** Geographic information system data concerning the location and environmental characteristics of water sources for PWSs maintained on computer systems by DEQ or by those subject to DEQ oversight.
- H. **Injection Well.** Any excavation or artificial opening into the ground used for or intended to be used for injection of waters into the ground inclusive of all facilities so defined within the rules of the Idaho Department of Water Resources.
- I. **Nontransient Noncommunity Public Water System.** A PWS that does not meet the definition of a community PWS and that serves at least 25 of the same persons over 6 months per year. Examples of nontransient noncommunity systems include schools, offices, and businesses.
- J. **Public Water System.** An integrated source and distribution system defined in Idaho code or regulation serving piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals at least 60 days out of the year, or as such definition may subsequently be modified by state law or regulation. A PWS can be either a *community PWS*, a *nontransient noncommunity PWS*, or a *transient noncommunity PWS*.
- K. **Sanitary Landfill.** A solid waste disposal operation as defined by Idaho code or regulation.
- L. **Source Water.** Any aquifer, surface water body, or watercourse from which water is taken either periodically or continuously by a PWS for drinking or food-processing purposes.
- M. **Special Drainage Wells.** Injection wells used for disposing of water from sources other than direct precipitation. Examples of this well type include landslide control drainage wells, potable water tank overflow drainage wells,

swimming pool drainage wells, and lake level control drainage wells.

- N. **Storm Water Runoff.** Water discharged into the environment as a result of rain, melting snow, or other precipitation.
- O. **Time of Travel Areas.** Time of travel (TOT) is land area plotted based on the time required for a particle of water to move from a specific point in the aquifer to a well or spring that serves as a source for a PWS. TOT areas are those calculated or approved by DEQ professionals and maintained in DEQ's public records.
- P. **Transient Noncommunity Public Water Systems.** A PWS that does not regularly serve at least 25 of the same persons over 6 months per year (e.g., tavern, restaurant with less than 25 regular employees, motel, church, campground, state or federal park, a recreational vehicle park, or highway rest area).
- Q. **Wellhead.** The upper terminus of a well, including adapters, ports, seals, valves, and other attachments.

### **13.03.030 SOURCE WATER PROTECTION OVERLAY DESIGNATIONS.**

A. To protect source water from exposure to hazardous materials or practices that expose a well or spring that supplies water to a PWS, the Source Water Protection Overlay (SWPO) designation established pursuant to this ordinance shall implement certain measures of protection for water sources appropriate to the risk posed by particular conductor activities. A SWPO designation shall be identified and configured to protect a well, spring, or surface water source from vulnerability to pollutants within a calculated 10-year Time of Travel (TOT) area determined by studies and mapping provided by DEQ. Original data concerning such studies can be obtained from DEQ.

B. Source Water Protection Overlay (SWPO) designations shall be depicted on a map of the City of Payette that is designated as the official SWPO designation map. Each spring, well, or surface water intake that serves as a source for a PWS shall be located on the SWPO map. The official SWPO map of like date with the initial effective date of this ordinance is hereby adopted as a component of this ordinance and as a complement to the zoning ordinance of the City of Payette. Each subsequently identified PWS well, spring, or surface water intake shall hereby be automatically added to the SWPO map with the well, spring, or surface water intake location identified by its Global Positioning System coordinates, or by the same means that other wells, springs, or

shall lie with the permit applicant. Whenever any permit request calls for proof of compliance, the administrator of this ordinance shall maintain written records of the compliance process from the point of initial application to its conclusion. All licenses which are issued shall be granted by the city clerk or designee. The city clerk or designee shall grant or deny the permit within thirty (30) days of the time it is filed with the city clerk. Whenever the city clerk or designee denies a permit, they shall specify in writing:

1. The statutes, ordinances and standards used in evaluating the application;
2. The reason for the denial; and
3. The actions, if any, that the applicant could take to obtain the license, transfer or renewal thereof.

B. Whenever an administrative authorization is required to demonstrate compliance with standards established by this ordinance or whenever an administrative authorization decision is appealed to the City Council of the City of Payette, written notice of the hearing shall be given to the entity(ies) operating the public water supply(ies) within the regulatory distance called for pursuant to this ordinance. Any administrative determination shall comply with any procedural requirements established by the City of Payette zoning ordinance and this ordinance. Said determination shall be in writing and shall state the basis in fact and law for the approval or denial of a permit. An applicant is authorized to request reconsideration of any permit decision by the administrator, provided that an affected PWS shall be notified of any such request and shall be allowed to participate in any such proceedings. The permit applicant and affected PWS shall be promptly notified of the final decision.

C. Any permit decision made by the administrator may be appealed by the permit applicant or the PWS to the City Council of the City of Payette. Any such appeal must be filed within 28 days of the mailing date of the final decision by the administrator and shall state the legal basis therefor. The appellant, any opposing party, and the administrator shall be entitled to be heard by the City Council. Any decision on appeal made by City Council of the City of Payette shall be in writing and shall state the facts and legal standards relied upon.

### **13.03.070 PENALTY FOR VIOLATION**

Failure to demonstrate compliance with applicable provisions of this ordinance, failure to demonstrate compliance with the City of Payette zoning ordinance, or express noncompliance with this ordinance shall constitute a violation of this ordinance subject

to a misdemeanor criminal fine of up to \$1,000 per day of violation, 6 months of incarceration per day of violation, or both such fine and incarceration for each day that a violation continues.

**13.03.080 STATUS OF LAWFUL EXISTING FACILITIES**

Any lawful use existing at the time of the adoption of this ordinance and characterized as a prohibited or restricted use herein, shall be recognized as a lawful nonconforming facility. Any such nonconforming facility may not be expanded or modified except as otherwise provided in the zoning ordinance and in accordance with provisions of this ordinance. Mitigation or preventive measures may be required as a precondition for allowing modification or expansion of nonconforming facilities located within any designated tier.

**SECTION 2. SEVERABILITY**

The ordinance is hereby declared to be severable. Should any portion of this ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect and shall be read to carry out the purpose(s) of the ordinance before the declaration of partial invalidity.

**SECTION 3. REPEAL OF CONFLICTING PROVISIONS**

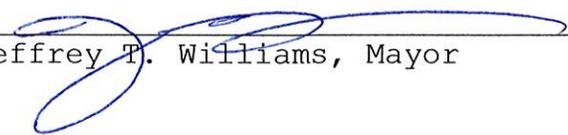
All provisions of the current City of Payette code or ordinances of the City of Payette that conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

**Section 4.** This Ordinance may be published in summary form allowed by Idaho Code.

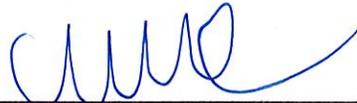
**SECTION 5.** This ordinance shall be effective upon its passage and publication as provided by law.

PASSED and APPROVED by the Mayor and City Council of the City of Payette, Idaho this 29<sup>th</sup> day of November, 2016.

CITY OF PAYETTE, IDAHO

BY   
Jeffrey T. Williams, Mayor

ATTEST:

  
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City Clerk