

**ORDINANCE NO. 22, SERIES OF 2004**

**AN ORDINANCE CREATING A STORMWATER UTILITY ENTERPRISE; ESTABLISHING A STORMWATER UTILITY FUND; DETERMINING AND PROVIDING FOR THE PURPOSES AND FUNCTIONS OF SUCH STORMWATER UTILITY ENTERPRISE AND STORMWATER UTILITY FUND; PROVIDING FOR ADMINISTRATION OF THE STORMWATER UTILITY; AND ESTABLISHING PROCEDURES FOR ADMINISTRATIVE AND JUDICIAL REVIEW.**

**WHEREAS**, the City of Cañon City is responsible for stormwater management in the City; and

**WHEREAS**, the Council of Cañon City is authorized by the Constitution of Colorado and the City's home rule Charter to establish a Stormwater Utility Enterprise and to adopt a system of charges to fund the implementation of stormwater facilities and systems; and

**WHEREAS**, the City wishes to establish a Stormwater Utility Enterprise and to enact a stormwater management fee system based on the amount of impervious surface on lots and parcels of real property situated within the City, as an alternative to an *ad valorem* tax; and

**WHEREAS**, all real property in the City, including property owned by public and tax-exempt entities, contributes to runoff and either uses or benefits from the stormwater system; and

**WHEREAS**, stormwater runoff contributes to nonpoint source pollution to the streams of the City's watersheds and a stormwater management program can reduce this type of pollution; and

**WHEREAS**, a stormwater management fee system offers additional financial management options that could assist the City to improve stormwater and drainage services and to comply with federal and state mandates and other requirements concerning the control and management of stormwater and runoff; and

**WHEREAS**, it is in the interests of the public to fund stormwater management with a user fee system that allocates the costs of stormwater management to all property owners in the City and that further seeks to base the amount of the stormwater management fee on the extent to which each lot or parcel of real property in the City contributes to the need for stormwater management.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE COUNCIL OF THE CITY OF CAÑON CITY, COLORADO**, as follows:

**SECTION 1.** Title 13 of the Cañon City Municipal Code is hereby amended by the enactment and addition of the following new Chapter 13.10.

## CHAPTER 13.10

### STORMWATER UTILITY

#### **Sec. 13.10.010: Title.**

This chapter shall be known and cited as the Stormwater Utility Ordinance of Cañon City.

#### **Sec 13.10.020: Findings, Legislative intent and purpose, and Authority.**

A. The City Council finds and determines that:

(1) Due to its general terrain and geographical location, property within the City is particularly subject to damage from floods and stormwater which, from time to time, overflow existing watercourses and stormwater facilities; and that the City's existing stormwater facilities are inadequate to control such overflow and other runoff or to prevent flooding in many parts of the City during and following certain storm events.

(2) The City maintains a system of storm and surface water management facilities including, but not limited to, inlets, conduits, manholes, channels, ditches, drainage easements, retention and detention basins, and other components.

(3) The stormwater system in the City needs regular maintenance and improvements.

(4) Water quality is degrading due to erosion and the discharge of nutrients, metals, oil, grease, toxic materials, and other substances into and through the stormwater system.

(5) The City is currently permitted, through the Colorado Water Quality Control Act, Colorado Stormwater Discharge Permit System, to discharge stormwater to state waters, provided that six minimum measures are implemented within the next few years. The six minimum measures include: a) Public Education; b) Public Involvement; c) Elimination of Illicit Discharges; d) Construction site erosion control; e) Post Construction monitoring; and f) Municipal Operations. There is a cost involved with this unfunded mandate to implement these measures.

(6) The public health, safety, and welfare is adversely affected by poor ambient water quality and flooding that results from inadequate management of both the quality and quantity of stormwater.

(7) All real property in the City either uses or benefits from the maintenance of the stormwater system.

(8) The extent of use of the stormwater system by each property is dependant on factors that influence runoff, including land use and the amount of impervious surface on the property.

(9) The costs of improving, maintaining, operating, and monitoring the stormwater system should be allocated, to the extent practicable, to all property owners based on the impact of runoff from the impervious areas of their property on the stormwater management system.

(10) Management of the stormwater system to protect the public health, safety, and welfare requires adequate revenues and it is in the interest of the public to finance stormwater management adequately with a user charge system that is reasonable and equitable so that each user of the system pays to the extent to which such user contributes to the need for it.

B. It is the intent and purpose of the City Council in enacting this chapter:

(1) To promote the public health, safety and welfare by permitting the movement of emergency vehicles during storm or flooding periods and by minimizing storm and flood losses and the inconvenience and damage resulting from uncontrolled stormwater runoff in the City;

(2) To provide for the establishment and implementation of a master drainage plan for effective stormwater and flood management;

(3) To establish a stormwater utility enterprise to coordinate, design, construct, manage, operate and maintain the stormwater and flood management systems and stormwater projects and facilities;

(4) To establish reasonable stormwater utility service charges based on the use and availability of stormwater facilities; and

(5) To encourage and facilitate urban water resources management techniques including without limitation, detention of floods and stormwater runoff, minimizing the need to construct stormwater facilities, reduction of pollution, and enhancement of the environment.

C. The City's authority for the establishment of a Stormwater Utility Enterprise and a Stormwater Utility Fund and for the adoption of a system of charges to fund the City's Stormwater Utility Enterprise is derived from Section 6 of Article XX of the Colorado Constitution, Sections 3, 4 and 5 of Article I and subsection 5(F) of Article VII of the Charter of Cañon City and Part 4 of Article 35 of Title 31, C.R.S.

**Sec. 13.10.030: Definitions.**

For purposes of this chapter, the following words shall have the following meaning, unless the context clearly indicates otherwise:

(a) [Reserved for definition of “Base Rate”]

(b) [Reserved for definition of “Base Unit”]

(c) “Developed Property” means real property, which has been altered from its natural state by the addition of any improvements such as buildings, structures, or other impervious area.

(d) "Director" means the City Administrator or the City Administrator’s Designee.

(e) "Grant" means a cash payment of public funds or contribution of money made directly to the stormwater utility enterprise by a state or local governmental entity, or district, which is not required to be repaid. "Grant" does not include public funds paid or advanced to the stormwater utility enterprise in consideration for the provision of any goods, services, facilities, rights or interest by the stormwater utility enterprise to a state or local governmental entity, or district, nor does "grant" include refunds made in the current or next fiscal year, gifts, any payments directly or indirectly from federal funds or earnings on federal funds whether or not the state or local governmental entity, or district acts as a conduit for such payments, collections for another governmental entity, and any other payments or revenue excluded from the definition of "grant" under the Colorado constitution or law.

(f) "Impervious Surface Area" means the number of square feet of horizontal surface covered by buildings and other impervious surfaces. All building measurements shall be made between exterior faces of walls, foundations, columns or other means of support or enclosure.

(g) “Impervious Surface” means a surface area which is compacted or covered with material that is resistant to infiltration by water, including, but not limited to, most conventionally surfaced streets, roofs, sidewalks, patios, driveways, parking lots, and any other oiled, compacted, or other surface which impedes the natural infiltration of surface water.

(h) "Improvement" means any works of man or manmade change to real property including but not limited to building or other structures streets, parking lots, driveways, patio areas, roofs, sidewalks, storage areas, paving and compacted surfaces.

(i) "Project Costs" means those costs of administration, operation, management, planning, financing, engineering, testing, installation, construction, maintenance, reconstruction, replacement, land acquisition, contingencies, fiscal and

legal costs, of stormwater facilities including those costs incurred to comply with federal, state or local laws regulating stormwater facilities or runoff.

(j) "Property Owner" means the property owner of record as listed in the records of the Cañon City Water Department, or if not so listed, in the records of the Park Center Water District, if available, or if neither listed nor available in such department or district records, the records of the Fremont County Treasurer. A property owner includes any individual, corporation, firm, partnership, or group of individuals acting as a unit, and any trustee, receiver, or personal representative.

(k) "Revenue Bonds" means bonds, notes or other obligations lawfully, issued or otherwise contracted for, payable from the revenues derived or to be derived from the functions, services, benefits, or facilities of the stormwater utility enterprise or from other available funds of the stormwater utility enterprise.

(l) "Runoff" means that part of snowfall, rainfall or other stormwater which is not absorbed, transpired, evaporated, or left in surface depressions and which then flows controlled or uncontrolled into a watercourse or body of water.

(m) "Stormwater Facilities" means any one or more of the various devices used in the collection, disposition, or treatment of storm, flood or surface drainage waters, including manmade structures and natural watercourses for the conveyance of runoff, such as: conduits and appurtenant features, canals, ditches, streams, gulches, gullies, flumes, culverts, streets, curbs, gutters, detention areas, pumping stations, pipes and related equipment and appurtenances; all extensions, improvements, remodeling, additions and alterations thereof and any and all rights or interest in such stormwater facilities.

(n) "Stormwater System" means the system or network of stormwater facilities located in whole or in part within the City, including but not limited to inlets, conduits, manholes, channels, ditches, drainage easements, retention and detention basins, infiltration facilities and other components, as well as all natural waterways.

(o) "Undeveloped Property" means any property which has no impervious surface area.

**Sec. 13.10.040: Stormwater utility enterprise.**

A. There is hereby created a stormwater utility in the City.

B. The stormwater utility shall constitute an enterprise empowered to coordinate, design, conduct, manage, operate and maintain the stormwater and flood management systems and stormwater facilities of the City, and to implement the provisions of this chapter. The stormwater utility enterprise is authorized to issue its own revenue bonds. The enterprise shall be wholly owned by the City and operated in

accordance with the Charter, ordinances and resolutions of the City and other applicable law.

C. The City Council shall act ex officio as the governing body of the stormwater utility enterprise.

D. The stormwater utility enterprise shall at all times and in all ways conduct its affairs so as to continue to qualify as a "water activity enterprise" within the meaning of Section 37-45.1-102, C.R.S., and as an "enterprise" within the meaning of Section 20 of Article X of the Colorado Constitution. Specifically, but not by way of limitation, the stormwater utility enterprise is not authorized and shall not receive ten percent or more of its annual revenue in grants. So long as the stormwater utility enterprise continues to qualify as a "water activity enterprise" and as an "enterprise," the stormwater utility enterprise and all spending and revenue thereof shall not be subject to Section 20 of Article X of the Colorado constitution.

**Sec. 13.10.050: [This Section is Reserved]**

**Sec. 13.10.060: [This Section is Reserved]**

**Sec. 13.10.070: Stormwater utility fund.**

A. There is hereby created pursuant to Section 5(F) of Article VII of the Charter a special fund designated as the "Stormwater Utility Fund" which shall be separate and segregated from all other City funds. All Stormwater Management Fees paid and collected pursuant to this chapter shall be credited and deposited into the Stormwater Utility Fund. Monies in the Stormwater Utility Fund shall not be transferred therefrom to any other account of the City or used for any purpose other than as set forth in subsection B of this section.

B. Funds on deposit in the Stormwater Utility Fund and income earned thereon shall be used only for the following purposes:

(1) The acquisition by gift, purchase or condemnation of real and personal property, and interests therein, necessary to construct, operate, and maintain stormwater facilities.

(2) All costs of administration and implementation of the City's stormwater management program, including the establishment of reasonable operating and capital reserves to meet unanticipated or emergency stormwater management requirements.

(3) Engineering and design, debt service and related financing expenses, construction costs for new facilities, and enlargement or improvement or existing facilities.

- (4) Operation and maintenance of the stormwater system.
- (5) Monitoring, surveillance, and inspection of stormwater control devices.
- (6) Water quality monitoring and water quality programs.
- (7) Retrofitting developed areas for pollution control.
- (8) Inspection and enforcement activities.
- (9) Billing and administrative costs.
- (10) Implementation of the six minimum measures required under the Colorado Stormwater Discharge Permit.
- (11) Other activities which are either mandated or reasonably required to manage stormwater runoff within the City or to comply with applicable federal and state laws, rules and regulations which regulate the flow, treatment and discharge of runoff into the waters of the United States or the waters of the State of Colorado.

**Sec. 13.10.080: Stormwater utility enterprise debt issuance.**

A. The stormwater utility enterprise is authorized to issue revenue bonds for the payment or other financing of eligible project costs or for the purpose of refunding any revenue bonds issued for such purpose. Such bonds shall be authorized by ordinance adopted by the City Council in the same manner as other ordinances of the City and, when required by the Charter or ordinances of the City, by an approving vote of the registered electors of the City at a general or special election called and conducted in accordance with the requirements of applicable law.

B. The terms, conditions, and details of revenue bonds, the procedures related thereto, and the refunding thereof shall be set forth in the ordinance authorizing the revenue bonds. Each bond issued under this section shall recite in substance that said bond, including the interest thereon, is payable from the revenues and other available funds of the stormwater utility enterprise pledged for the payment thereof. Notwithstanding any other provision of law to the contrary, such revenue bonds may be issued to mature at such times not beyond thirty years from their respective issue dates, shall bear interest at such rates and shall be sold at private or public sale at, above, or below the principal amount thereof, all as shall be determined by the City Council. The powers provided in this section shall be in addition to and shall not modify, limit, or affect the powers conferred by any other law, either directly or indirectly.

C. The City may pledge all or any portion of the Stormwater Utility Fund, including revenues anticipated to be collected, to the payment of principal, interest,

premiums, if any, and reserves for revenue bonds, issued for the payment or other financing of any of the activities of this chapter, including but not limited to eligible project costs, or for the purpose of refunding any revenue bonds issued for such purposes.

**Sec. 13.10.090: [This Section is Reserved]**

**Sec. 13.10.100: Administration and review.**

A. The administration of the provisions of this chapter is vested in and shall be exercised by the Director who may prescribe forms and rules and regulations in conformity with this chapter for the proper administration and enforcement of this chapter. The Director may delegate the administration of this chapter, or any part thereof, to duly qualified persons in the Department of Public Works, the City Engineer's office and/or the Finance Department.

B. Every decision or determination of the Director shall be in writing and notice thereof shall be served upon or mailed by first class mail, postage prepaid to the affected person at his or her address shown on the records of the City. Service by first class mail as provided herein shall be conclusive evidence of service of such decision or determination. The decision or determination of the Director shall be final and conclusive upon the affected person unless he or she timely files a petition for hearing.

C. Any person aggrieved by any decision or determination of the Director may petition the Director for a hearing on revision or modification of such decision or determination no later than thirty (30) days after notice thereof is served on the aggrieved person.

D. Such petition shall be verified in writing upon forms approved by the Director and specify in detail the aggrieved person's reasons and grounds for revision or modification. The petition shall be accompanied by all documents or other evidence supporting the petition.

E. The Director shall schedule a hearing on the petition not less than sixty (60) days from the date the Director receives the petition. The Director may designate a representative of the City as the hearing officer.

F. The hearing shall take place at the time, date and location specified by the Director in the notice of hearing. Notice of the hearing shall be given to the petitioner by first class mail addressed to the petitioner at his or her address shown in the petition. The hearing shall be conducted in accordance with the rules and regulations issued by the Director. The petitioner shall have the burden of proof. Failure to timely file a petition or the failure of the petitioner or his or her representative to appear at the hearing shall constitute and be deemed to be a waiver of the right to a hearing by the aggrieved person.

G. Within thirty (30) days after the hearing, the Director or hearing officer shall make findings of fact based upon relevant and competent information and evidence

submitted at the hearing. The Director shall make a decision or determination based upon such findings and, if appropriate, modify his/her prior decision or determination accordingly. The decision or determination by the Director after hearing shall be final and conclusive upon the petitioner, subject only to review by City Council pursuant to the process and procedures specified in Chapter 2.52 of the Cañon City Municipal Code.

H. A petition may be filed only once in connection with any decision or determination of the Director.

**Sec. 13.10.110: Nonliability of City.**

Runoff may occur which exceeds the capacity of City's stormwater facilities. This chapter does not imply that real property liable for the charges and fees established herein will be free from runoff or flood damage. Nor shall this chapter create any liability on the part of, or cause of action against, the City or any officer or employee thereof for runoff or flood damage. This chapter does not purport to reduce the need or necessity for obtaining flood insurance.

**Sec. 13.10.120: [This Section is Reserved]**

**Sec: 13.10.130: Cooperation with the County.**

A. The City shall cooperate with Fremont County in providing stormwater facilities in stormwater basins, or parts thereof, extending from unincorporated areas of the County into the City and from the City into unincorporated areas of the County, and in general to carryout the drainage plans, if any, developed therefor.

B. The City expresses its willingness to enter into an intergovernmental agreement with Fremont County to establish a joint stormwater technical committee to review and recommend joint stormwater facilities, priorities and cost-sharing thereof to City Council and Board of County Commissioners of Fremont County, Colorado and to explore the viability of jointly creating a Stormwater Utility Authority.

SECTION 2. If any section, provision, paragraph, clause or phrase of this Ordinance is held, or decided to be unconstitutional, invalid or enforceable for any reason, such decision shall not affect the constitutionality, validity or enforceability of the remaining portions of this Ordinance.

SECTION 3. All other ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

SECTION 4. The City Council finds that this Ordinance is necessary for the immediate preservation of the public peace, health and safety of the residents of the City.

SECTION 5. This Ordinance provides for the creation of a Stormwater Utility Enterprise within the City and establishes a Stormwater Utility Fund. Stormwater utility charges and/or

Stormwater Management Fees to properties and property owners within the City are not imposed through this ordinance. It is contemplated that the Council of Cañon City will establish rates and methods of calculating, charging and collecting stormwater utility charges and/or fees through a separate ordinance which the Council expects to introduce and adopt during the first half of calendar year 2005.

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William F. Jackson, Mayor

#### ATTESTATION & CERTIFICATION

10/04/04 – Introduced, Read by title & Passed on first reading

10/08/04 – Published

10/18/04 – Passed & Adopted on second reading

10/23/04 – Effective

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Becky Walker, CMC  
City of Cañon City, Colorado