

BY AUTHORITY

ORDINANCE NO. **4264**

COUNCILLOR'S BILL NO. **30**

SERIES OF 2024

INTRODUCED BY COUNCILLORS

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A BILL  
FOR AN ORDINANCE FOR THE REGULATION OF GROUND WATER USE UPON CERTAIN  
PROPERTY WITHIN THE CITY OF WESTMINSTER

WHEREAS, the City of Westminster (the “City”) has jurisdiction over an area where residual ground water contamination exists (“Ground Water Contamination Area”) from the former Shaw Heights Dry Cleaners Site located at 3681 W 88<sup>th</sup> Avenue, Westminster, Colorado, EPA ID No. COD983793431 (the “Site”), and the City Council adopts this Ordinance to control and regulate ground water use in the area, pursuant to authority granted in Section 29-20-104, C.R.S. and Section 30-11-101, C.R.S., *et seq.*; and

WHEREAS, the current property owner of the Site has conducted corrective action to address contamination pursuant to the Colorado Hazardous Waste Act, Section 25-15-101, C.R.S., *et seq.* (“CHWA”), and the Colorado Hazardous Waste Regulations, 6 C.C.R. 1007-3, with oversight by the Colorado Department of Public Health and Environment (“CDPHE”); and

WHEREAS, the Ground Water Contamination Area within and outside of the Site is depicted in **Attachment A** and described in **Attachment B**, both of which Attachments are attached hereto and incorporated herein by this reference; and

WHEREAS, although the CHWA corrective action was conducted to protect human health and the environment, residual ground water contamination will remain in the Ground Water Contamination Area within and outside of the Site; and

WHEREAS, contact with residual ground water contamination could result in unacceptable human exposure to contaminants; and

WHEREAS, the Colorado Environmental Covenants Law, Section 25-15-320(2), C.R.S. requires environmental covenants or notice of environmental use restrictions for environmental remediation projects related to remedial decisions made after July 1, 2001, that result in residual contamination levels determined safe for one or more specific uses, but not all uses, or where engineered features or structures are incorporated requiring monitoring, maintenance or operation or that will not function as intended if disturbed; and

WHEREAS, environmental covenants or notices of environmental use restrictions are required for remedial decisions made pursuant to CHWA; and

WHEREAS, Site corrective action was selected pursuant to CHWA and after July 1, 2001, thus triggering the requirement for an environmental covenant or notice of environmental use restrictions at the Site and the Ground Water Contamination Area; and

WHEREAS, CDPHE imposed a notice of environmental use restrictions at the Site, recorded in the records of the Clerk and Recorder of Adams County on January 31, 2023, at reception number 2023000005613; and

WHEREAS, Section 25-15-320(3)(b), C.R.S. authorizes CDPHE to waive the requirement for an environmental covenant or notice of environmental use restriction for parcels of land where the owner does not grant an environmental covenant or notice of environmental use restriction under Section 25-15-320, C.R.S. and where the County, City, or municipality having jurisdiction over the affected land has enacted

an ordinance or resolution imposing the relevant environmental use restrictions and has entered into an intergovernmental agreement with CDPHE; and

WHEREAS, the City Council has authority to regulate land use, development and activities in hazardous areas pursuant to Section 29-20-104, C.R.S. and to adopt and enforce ordinances and resolutions regarding health, safety and welfare pursuant to Section 30-11-101, C.R.S., *et seq.*; and

WHEREAS, the City and CDPHE have agreed to enter into an intergovernmental agreement pursuant to Section 29-1-203, C.R.S. and Section 25-15-320, C.R.S. for the purpose of protecting human health and the environment within the Ground Water Contamination Area; and

WHEREAS, the City hereby finds and determines that this Ordinance is necessary to protect human health and the environment within the Ground Water Contamination Area.

#### THE CITY OF WESTMINSTER ORDAINS:

Section 1. Purpose: The City Council finds and declares that residual contamination within the Ground Water Contamination Area may pose a threat to the health, safety, and welfare, of the residents of Westminster, Colorado.

Section 2. Scope:

(A) This Ordinance shall apply to the Ground Water Contamination Area depicted in **Attachment A** and described in **Attachment B**. The Ground Water Contamination Area is hereby defined as portions of real property beneath which ground water contamination from the former Shaw Heights Dry Cleaners is located, either partially or wholly.

(B) This Ordinance is intended to prohibit ground water use in the Ground Water Contamination Area, in addition to any ground water use restrictions in the Westminster Municipal Code. Nothing herein shall be construed as limiting the scope or the authority of the Westminster Municipal Code.

(C) The determination as to whether a specific property is subject to this Ordinance shall be made by CDPHE and the City. Any property owner or prospective purchaser may at any time request CDPHE and the City make a formal determination whether a property is in whole or in part within the Ground Water Contamination Area and thus subject to this Ordinance. Requests shall be made in writing and provide at minimum a survey plat as well as corresponding survey staking of the subject property. CDPHE and the City shall make such a determination within a reasonable period of time. The determination regarding inclusion or exclusion of a specific property is subject to change for reasons including but not limited to changes on the ground, current or proposed remediation measures, or the discovery or evaluation of additional information. To assist in the determination process, CDPHE and the City may request that a Phase 1 and/or Phase 2 environmental site assessment be conducted on the subject property. If CDPHE and the City determine that the subject property is not within the Ground Water Contamination Area, then this Ordinance will not apply to the property. Any determination of non-applicability shall be provided in writing to the applicant.

Section 3. Regulation of Ground Water Use in the Ground Water Contamination Area: No ground water may be withdrawn or used from the Ground Water Contamination Area for any purpose, except as authorized in a remedial decision document. Corrective action operations, inspection and maintenance activities undertaken at the Ground Water Contamination Area pursuant to CHWA are exempt from this Ordinance.

Section 4. Violations and Penalties:

(A) Violation of this Ordinance shall constitute a violation of Westminster Municipal Code (W.M.C.) Title XI and shall subject the violating party or parties to the provisions of Sections 11-1-5, W.M.C., and 1-8-1, W.M.C.

(B) When imposing a fine under this Ordinance, the Municipal Court shall separately state, as a part of the total fine, the surcharge specified in Section 24-4.2-104(1), C.R.S. in addition to court costs and fees.

(C) Pursuant to Section 25-15-322, C.R.S., this Ordinance, and the Intergovernmental Agreement referenced herein, whenever CDPHE and/or the City finds that any person is or has been in violation of any requirement of this Ordinance, CDPHE and/or the City may bring suit in the District Court for the County of Adams for injunctive relief, enforcement of this Ordinance, and recovery of attorneys' fees and costs for any such enforcement action pursuant to Section 25-15-322, C.R.S. CDPHE may also issue an administrative order identifying the factual and legal elements of such violation and requiring the person to comply with any such requirements remedying the violation.

Section 5. Severability: If a Court of competent jurisdiction shall hold any part of this Ordinance void or unconstitutional, such part shall be deemed severable, and the invalidity thereof shall not affect the remaining provisions of the Ordinance.

Section 6. Disposition of Fines, Fees, and Forfeitures: All fines and forfeitures obtained through enforcement actions initiated under section 4 for violations of the provisions of this Ordinance shall be paid into the City's general fund.

Section 7. Effective Date: This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9th day of September, 2024.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of September, 2024.

ATTEST:

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City Clerk

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Mayor

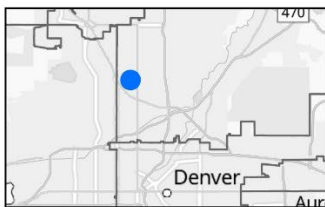
APPROVED AS TO LEGAL FORM:

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City Attorney's Office

**ATTACHMENT A**  
**Ground Water Contamination Area**  
**Depiction**



**Groundwater Use Restriction IGA: 88th and Lowell**



 Restriction Area

0 0.03 0.05 0.1 Miles



**COLORADO**  
Department of Public  
Health & Environment

**ATTACHMENT B**  
**Ground Water Contamination Area**  
**Description**

Commencing at the Southeast corner of Section 19, Township 2 South, Range 68 West, thence North 58 degrees 43 minutes 24 seconds West, a distance of 1213.96 feet to the Point of Beginning; thence South 88 degrees 54 minutes 33 seconds East, a distance of 1075.92 feet; thence South 0 degrees 24 minutes 16 seconds East, a distance of 581.85 feet; thence North 89 degrees 36 minutes 32 seconds East, a distance of 401.13 feet; thence South 0 degrees 31 minutes 44 seconds East, a distance of 444.95 feet; thence North 89 degrees 50 minutes 16 seconds West, a distance of 483.27 feet; thence North 0 degrees 10 minutes 25 seconds East, a distance of 451.78 feet; thence North 89 degrees 04 minutes 06 seconds West, a distance of 1010.47 feet; thence North 0 degrees 42 minutes 54 seconds East, a distance of 574.98 feet to the Point of Beginning.