

**TOWN OF JOHNSTOWN, COLORADO
ORDINANCE NO. 2020-190**

AN ORDINANCE AMENDING ARTICLE II OF CHAPTER 13 OF THE JOHNSTOWN MUNICIPAL CODE TO ADD SECTION 13-55 ESTABLISHING A SPECIAL FEE CONCERNING REGIONAL SANITARY SEWER IMPROVEMENTS TO BE PAID BY BENEFITTED PROPERTIES IN THE SEWER SHED BASIN SERVED BY THE CENTRAL WASTEWATER TREATMENT PLANT AND REMITTED TO THE SANITARY SEWER UTILITY ENTERPRISE

WHEREAS, the Town of Johnstown, Colorado (“Town”) is a Colorado home rule municipality, duly organized and existing under the laws of the State of Colorado and the Town’s Home Rule Charter; and

WHEREAS, the Town Council is vested with authority to administer the affairs of the Town; and

WHEREAS, the Town Council established the Sanitary Sewer Utility Enterprise (“Enterprise”), and is the governing body of the Enterprise with the authority to act for and on behalf of the Enterprise; and

WHEREAS, the Town is aware that the potential for growth and development in and around the area generally located east of U.S. Interstate 25 (“I-25”) and in relative close proximity to State Highway 60, as shown on Exhibit A attached hereto and incorporated herein by reference (“Region”), is significant; and

WHEREAS, the Town is further aware that, while the opportunity exists, growth and development cannot occur due to constraints in the capacity of the Town’s sanitary sewer system and limitations in the existing sanitary sewer interceptor lines to carry wastewater flows to the Town’s Central Wastewater Treatment Plant (“Central WWTP”); and

WHEREAS, in 2019, IMEG Corporation, a Delaware corporation (“IMEG”), conducted a system-wide study and evaluation of the Region’s sanitary sewer system, which included an assessment of development and a calculation of the remaining available capacity in the existing lift stations and sanitary sewer interceptor lines, and concluded that, despite the potential for many thousands of new residential dwelling units, the Town could only issue approximately five hundred (500) to seven hundred (700) additional residential building permits in the Region until major upgrades to the sanitary sewer system are undertaken and that, without the upgrades, a moratorium would need to be considered upon the delivery of wastewater flows delivered to the Central WWTP (“Study”); and

WHEREAS, as a part of the Study, IMEG analyzed the best location to install the necessary infrastructure in the Region to expand the sanitary sewer system and deliver additional wastewater flows to the Central WWTP and concluded that, as subsequently amended, three new sanitary sewer interceptor lines should be installed and a new lift station should be constructed to serve the Region, including: (i) a sanitary sewer interceptor line from the Johnstown Farms development to the Central WWTP; (ii) a sanitary sewer interceptor line generally located at I-25 to the Central WWTP north of State Highway 60; (iii) a sanitary sewer interceptor line generally located from I-25 along State Highway 60 connecting to

the Johnstown Farms lift station; and (iv) a new lift station at Johnstown Farms with an additional force main to accommodate a larger design flow (collectively, the “Improvements”); and

WHEREAS, a depiction of the proposed location of the Improvements is set forth on Exhibit A; and

WHEREAS, based upon two estimates, one from IMEG and one from a contractor retained by IMEG, the Town anticipates that the total cost to design, construct and install the Improvements is approximately \$70,000,000; and

WHEREAS, while the Town has historically required developers to install infrastructure to accommodate development, the Town Council recognizes that the Improvements are extensive and require the expenditure of significant funds that may not reasonably be imposed upon any single developer; and

WHEREAS, to foster growth and development, the Town Council desires that the Town, acting on behalf of the Enterprise, install the Improvements using a variety of funding mechanisms, and recover the capital improvement costs from the imposition of a special fee, to be known as the “Regional Sewer Fee,” paid by property owners or developers in the Region who will economically benefit from the Improvements by the ability to connect to the sanitary sewer interceptor lines and/or discharge wastewater flows to the Central WWTP and thus develop their properties; and

WHEREAS, the Town is a home rule municipality that, under Article XX, Section 6 of the Colorado Constitution, has the authority to enact fees to recover the cost of providing infrastructure to properties within its jurisdiction; and

WHEREAS, the Town Council, as the governing body of the Enterprise, has authority to adopt a special fee for and on behalf of the Enterprise to fund the capital costs related to infrastructure improvements incurred to further the goals and purposes of the Enterprise; and

WHEREAS, the Colorado Supreme Court has affirmed this or similar authority in several separate decisions, including *Loup-Miller Const. Co. v. City and County of Denver*, 676 P.2d 1170 (Colo. 1984), *Bloom v. City of Fort Collins*, 784 P.2d 304 (Colo. 1989), and *E-470 Public Highway Authority v. The 455 Company*, 3 P.3d 18 (Colo. 2000); and

WHEREAS, to fairly apportion the cost to be recovered from and among the benefitted properties in the Region, IMEG determined that the special fee should be based on the industry standard measurement for the generation of wastewater, providing that each single family equivalent (“SFE”) generates approximately two-hundred twenty (220) gallons per day of wastewater, and recommended that the special fee be imposed on a per SFE basis; and

WHEREAS, the utilization of an SFE basis for the special fee allows the application to be scalable for non-residential development, including commercial and industrial uses, which would have SFE values assigned based upon a sewer projection analysis; and

WHEREAS, based on the geographic layout of the Region and market conditions and projections, the Town reasonably anticipates the construction of approximately two hundred and fifty (250) residential dwelling units or other types of construction totaling approximately two hundred fifty

single family equivalents (250 SFEs) annually in the Region, and a total of approximately fifteen thousand five hundred (15,500) SFEs in the Region; and

WHEREAS, a depiction of the anticipated SFEs in the Region is set forth on Exhibit A; and

WHEREAS, after an analysis of the funding options available to the Enterprise, including, among other potential options, an interfund loan from the General Fund and to the Sanitary Sewer Enterprise Fund in the approximate amount of \$9,500,000 and the issuance of a revenue bond in the approximate amount of \$55,000,000, payable over a thirty (30) year term, the revenue available to Enterprise and the cost of debt to fund the Improvements, the Town Manager and the Town's Finance Director concluded that, to fund the Improvements, the special fee should equate to \$9,500 per SFE;

WHEREAS, based on the foregoing, for the purpose of providing sanitary sewer services to the Region and defray the cost of the Improvements, the Town Council desires to impose a Regional Sewer Fee upon benefitted properties in the Region in the amount of \$9,500 per SFE and desires that the Town collect the Regional Sewer Fee at the time of issuance of each building permit; and

WHEREAS, alternatively, rather than collect the Regional Sewer Fee one at a time upon issuance of each building permit, the Town Council recognizes that having an influx of funds may ultimately reduce the cost to fund the Improvements and thus desires to provide discretion to permit a reduction in the amount of the Regional Sewer Fee when a property owner or developer of a large subdivision in the Region prepays all, or a significant portion, of the Regional Sewer Fees due and owing for each dwelling unit or other type of development in the subdivision; and

WHEREAS, the Town Council directs that revenues recognized from the Regional Sewer Fee be remitted to the Enterprise and deposited in the Sanitary Sewer Enterprise Fund and be used solely for the cost of the Improvements and not for the operation and maintenance of the Town's sanitary sewer system or for any other purpose; and

WHEREAS, the Town Council hereby finds, determines and declares that the Regional Sewer Fee is reasonably related to the expenses incurred by the Enterprise in carrying out its legitimate goal of providing wastewater treatment services to the Region; and

WHEREAS, the Town Council hereby further finds, determines and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the preservation of the public health, welfare, peace, safety and property, that this Ordinance is necessary for the protection of public convenience and welfare and that this Ordinance is in the best interests of the citizens of the Town.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, AS FOLLOWS:

Section 1. Section 13-55. Article II of Chapter 13 of the Johnstown Municipal Code shall be amended to add Section 13-55, which shall read in full as follows:

Sec. 13-55 – Regional Sewer Fee

(1) Purpose. To foster growth and development in and around the area generally located along, near and in relative close proximity to State Highway 60 and expand the ability to deliver wastewater flows to the Central Wastewater Treatment Plant, the Town, acting on behalf of the Sanitary Sewer Utility Enterprise, desires to undertake the design, construction and installation of significant regional sanitary sewer infrastructure improvements that will benefit property owners in the geographic area and recover the cost of such improvements from benefitted property owners.

(2) Definitions.

For purposes of this Section, the following definitions apply:

Benefitted Property means a parcel of land, of whatever size and whatever designation, that is subject to a building permit in the Region.

Building permit means a building permit issued in accordance with the Code before building or construction activity may be initiated on a Benefitted Property.

Central Wastewater Treatment Plant or *Central WWTP* means the wastewater treatment plant located east of the Town along State Highway 60, as may be subsequently replaced, expanded, upgraded or renamed.

Improvements means the infrastructure designed, constructed and installed in the Region to expand the sanitary sewer system and deliver additional wastewater to the Central WWTP and includes, without limitation: (i) a sanitary sewer interceptor line from the Johnstown Farms development to the Central WWTP; (ii) a sanitary sewer interceptor line generally located at I-25 to the Central WWTP north of State Highway 60; and (iii) a sanitary sewer interceptor line generally located from I-25 along State Highway 60 to a newly constructed lift station at Johnstown Farms.

Property owner(s) means the current and future owner or developer of Benefitted Property in the Region.

Region means the sewer shed basin wherein wastewater is treated at the Central WWTP and includes property generally located in the southern portion of the Town along, near and in relative close proximity to State Highway 60. The Region is depicted on Appendix A to this Article, which may be amended from time to time by resolution of the Town Council.

Regional Sewer Fee means the special fee imposed upon property owners in the Region to reimburse the Town for cost of designing, constructing and installing the Improvements.

SFE means “single family equivalent” and is a number related to the volume of wastewater generated by an average dwelling unit housing not more than three and one-half persons. The SFE unit value assigned to an average single-family detached dwelling unit is generally one. In the Town’s discretion, the SFE unit value assigned to any particular dwelling unit may be greater than, equal to or less than one. The SFE unit value assigned to non-residential uses shall be based

on the Town's estimated volume of wastewater generated by such uses as compared to the generation of wastewater by an average single-family detached dwelling unit.

- (3) Establishment and payment of special fee.
 - (a) There is hereby established a special fee known as the Regional Sewer Fee.
 - (b) The Regional Sewer Fee shall be levied and assessed in the amount of \$9,500 per SFE and shall be due and payable as provided by resolution of the Town Council in the Town Fee Schedule.
 - (c) The Regional Sewer Fee shall be paid by property owners in the Region at the time of issuance a building permit.
- (4) Prepayment of fee. To incentive prepayment and reduce the cost of financing the Improvements, in lieu of the payment of the Regional Sewer Fee at the time of issuance of a building permit, upon request of the property owner or developer, the Town Council may reduce the Regional Sewer Fee when the owner or developer of a large subdivision prepays all or a significant portion of the Regional Sewer Fees due and owing for each dwelling unit or other type of development in the subdivision.
- (5) Exemption from payment of fee. If a request is made upon application for a building permit, property owners shall not be required to pay the Regional Sewer Fee for the following building permits:
 - (a) Alterations or expansion of existing buildings where no additional dwelling units are created or square footage added;
 - (b) The construction of accessory buildings or structures that do not add dwelling units or square footage to the principal building or use of the land;
 - (c) The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same square footage; or
 - (d) Additional residential dwelling units in existing established subdivisions or on property subject to approved final plats wherein the Town committed to provide water and sewer service pursuant to a water and sewer service agreement executed prior to January 1, 2021.
- (6) Use of funds; accounting. The revenues recognized from the Regional Sewer Fee shall be remitted to the Sanitary Sewer Utility Enterprise and deposited in the Sanitary Sewer Enterprise Fund. The funds shall be used solely for the cost of the Improvements and shall not be used for the operation and maintenance of the sanitary sewer system or for any other purpose. The Town, acting on behalf of the Enterprise, shall keep an accurate accounting of the cost of the Improvements and the revenues collected from the Regional Sewer Fee.
- (7) Fee not an impact fee or development charge. The Town Council does not intend that the Regional Sewer Fee be construed as an impact fee or development charge within the meaning of Section 29-20-104.5, C.R.S., as amended, but that the Regional Sewer Fee be a special fee within

the home rule authority of the Town. To the extent that the provisions of Section 29-20-104.5, C.R.S., as amended, conflict with the provisions of this section, the section shall control.

Section 2. Code revisions. Minor changes such as the format and other changes to unify the revised Code may be necessary. The Town Clerk is hereby authorized to make such changes, provided that neither the intent nor substantive content will be altered by such changes.

Section 3. Publication; Effective Date. This Ordinance, after its passage on final reading, shall be numbered, recorded, published and posted as required by the Town's Home Rule Charter and the adoption, posting and publication shall be authenticated by the signature of the Mayor and the Town Clerk and by the Certificate of Publication. This Ordinance shall become effective on January 1, 2021. Copies of the entire Ordinance shall be available at the office of the Town Clerk.

INTRODUCED, AND APPROVED on first reading by the Town Council of the Town of Johnstown, Colorado, this ____ day of _____, 2020.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____ By: _____
Diana Seele, Town Clerk Gary Lebsack, Mayor

PASSED UPON FINAL APPROVAL AND ADOPTED on second reading by the Town Council of the Town of Johnstown, Colorado, this ____ day of _____, 2020.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____ By: _____
Diana Seele, Town Clerk Gary Lebsack, Mayor