

## **CHAPTER 13 Municipal Utilities**

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### **ARTICLE I General**

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#### **Sec. 13-1. Definitions.**

As used in this Chapter, unless the context otherwise requires,

*Customer* means a person who purchases or obtains utility services from the Town, and may include the owner of real property, a person with a leasehold interest in the real property or any other person entitled to possession of such real property.

*Dwelling, multifamily* means a structure or portion thereof designed to house two (2) or more families, with each dwelling unit having a separate entrance.

*Dwelling, single-family attached* means a residential structure designed to house a single-family unit from lowest level to roof, with private outside entrance but not necessarily occupying a private lot, and sharing a common wall between adjoining dwelling units.

*Dwelling, single-family detached* means a residential structure designed to house a single-family unit with private outside entrance but without common walls between the dwelling units.

*Dwelling unit* means a housekeeping unit designed and used for occupancy by a single individual or a family containing cooking, living, sleeping and sanitary facilities and having a separate entrance as required by the Building Code adopted by the Town.

*Multifamily* means a development of buildings or portions thereof which contain three (3) or more dwelling units.

*Owner* means any person having title to or right of ownership in property, excluding mineral owners, and shall include any part owner, joint owner, tenant in common or joint tenant.

*Person* means an individual, a partnership, an association, a corporation, a municipality or any other legal entity, public or private.

*Property* means the property, including but not necessarily limited to the building, lot, parcel, house or dwelling, to which the Town provides or is requested to provide utility services.

*Subdivision or subdividing* means any division of any parcel of land where additional water taps are requested or additional water is necessary to provide adequate water service to property.

*Town* means the Town of Johnstown.

*Town Manager* means the Town Manager of the Town of Johnstown, Colorado.

*Town water service or water service* means treated water service or raw water service furnished by the Town for any purpose, including but not limited to domestic, commercial and industrial uses.

*Utility Service* means water and sewer services.

*Water system* means the water system owned and operated by the Town. The system includes, without limitation, the Town's water, water rights, water treatment facilities, water storage facilities, pipe network, pumps and other facilities and equipment used to produce and supply water.

### **Sec. 13-2. Administration by Town Manager.**

The Town Manager is hereby delegated the authority to administer the provisions of this Article. Among other duties and obligations, the Town Manager may prescribe forms and rules and regulations in conformity with this Chapter and implement procedures for the ascertainment, computation and collection of the fees imposed hereunder. Subject to the limitations of the Code, the Town Manager may delegate the administration of this Article, or any part thereof, to duly qualified employees and agents of the Town.

### **Sec. 13-3. Property owner's consent; maintenance obligation; liability for utility service.**

- (1) Utility service provided to property pursuant to the terms of this Chapter shall be deemed to be provided at the request and with the consent of the owner of said property, unless and until the Town receives written notice of said owner's withdrawal of such consent.

- (2) The owner, regardless of whether the owner is the customer, shall be liable for all utility services charges provided to the owner's property. No change of ownership shall affect the application of this Chapter. The failure of any owner to learn that such owner purchased property against which a lien for utility services exists does not affect the owner's liability for such payment in full and is not a basis for any claim of any kind whatsoever against the Town.
- (3) The customer shall be responsible for maintenance of facilities required to provide utility services located on the customer's side of the point of delivery.
- (4) The customer shall hold the Town harmless and indemnify the Town against any and all claims and liability for injury to persons or damage to property when such injury or damage results from or is occasioned by the facilities located on the customer's side of the point of delivery unless caused by the negligence of the Town's employees or agents. The customer shall pay all costs that may be incurred by the Town in enforcing this indemnity.

**Sec. 13-4. Required information for utility service.**

- (1) Each customer or applicant for utility service shall provide the Town with all requested information to initiate, modify or terminate utility services, including but not limited to information regarding the customer, the owner and the property. The Town may require any person requesting the initiation, modification or termination of utility service to produce a government issued photo identification.
- (2) If, after utility service is activated, there is any change in the information provided to the Town, the customer shall notify the Town within thirty (30) days of such change.

**Sec. 13-5. Use of false information in connection with utility services.**

It shall be unlawful for any person to knowingly provide any untrue, deceptive or misleading information to the Town in connection with the provision of utility services. A violation of this Section shall be punishable as provided in Article IV of Chapter 1 of the Code and may constitute grounds for disconnection of utility services.

**Sec. 13-6. Confidentiality of utility account information.**

Unless otherwise required by law, the Town shall not disclose utility account information, except to:

- (1) A peace officer, employee or officer responsible for enforcement of the Code, upon the provision of satisfactory evidence that the inspection is reasonably related to the authority and duties of such peace officer, employee or responsible officer;
- (2) The owner of real property to which a utility account applies;
- (3) The public in an aggregated or statistical form so classified as to prevent identification, location or habits of individual customers; or
- (4) Persons within the Town's organization or to Town contractors, so long as the release of the information is conditioned upon reasonable precautions and requirements to prevent disclosure of said information to the public.

**Sec. 13-7. Billing procedure.**

Unless the Town Manager determines that a different process is warranted for a particular property, the following billing procedures shall apply:

- (1) Utility bills shall be sent to the customer once per month. The Town's failure to forward a utility bill shall not constitute a waiver of any fee or charge imposed by this Chapter.

- (2) All charges for Town utilities shall be due and payable within fifteen (15) days after the date of the utility bill.
- (3) Payment of any utility charge shall be considered delinquent if not received in the Town offices before the close of business on the last day specified for payment.
- (4) Late fees shall be assessed twenty (20) days after the date of the utility bill on all accounts with an outstanding balance.
- (5) Monthly service charges shall be billed to each meter in use regardless of whether any quantity charge is made. A meter is considered to be in use as long as it is in place.
- (6) Payments toward amounts owed for utility services shall be applied first to delinquent amounts, then to late fees, then to restoration fees and then to current service fees.
- (7) If payment of any utility charge imposed pursuant to this Chapter is made by a dishonored check, a non-sufficient funds fee shall be assessed.
- (8) If utility service is terminated due to a transfer of ownership on dates other than established billing dates, the Town shall only prorate the charge for water services, but not for sewer services.
- (9) All utility service charges, late charges, service fees, non-sufficient funds fees, reconnect fees and other associated fees shall be assessed in the amount set forth on the Town Fee Schedule.

**Sec. 13-8. Remedies for nonpayment.**

- (1) If utility services are not paid as provided in this Article, in addition to the imposition of late fees and other charges provided in this Article, the Town may avail itself of any or any combination of the following remedies:
  - (a) The Town may consider any utility service fee a lien upon the owner's property from the time when due and a perpetual charge against such property until paid. The lien shall be considered prior and superior to all other liens, claims, titles and encumbrances, whether prior in time or not, except liens for general taxes. The Town may foreclose any lien imposed by this Chapter in accordance with the law.
  - (b) The Town may maintain an action in any court of competent jurisdiction for the amount of the charge due and collect interest, costs and attorney's fees.
  - (c) The Town may certify the amount of the charge due to the county clerk and treasurer, together with an assessment fee, which shall thereafter become an assessment upon the property served and be collected and paid over to the Town in the same manner as taxes.
  - (d) The Town may discontinue utility services pursuant to the following procedure:
    - (i) The Town shall send written notice to the customer and, if the customer is not also the owner, to the owner, at the last known address available to the Town, providing that, absent timely full payment of all amounts due, services will be discontinued as of the date specified in the notice;
    - (ii) Within the time allotted in the notice, the customer or owner, as appropriate, may pay the outstanding amounts due or may file a written protest with the Town Manager;
    - (iii) If a written protest is filed, the Town Manager shall determine whether to discontinue the utility service and provide written notice to the customer and owner, if appropriate, of his or her decision, along with an additional opportunity to pay the outstanding amounts; and
    - (iv) If utility services are discontinued as provided herein, such services shall not be reinstated until all amounts due are paid to the Town, unless the Town Manager agrees to a payment plan. If the Town Manager agrees to a payment plan, utility

services may be discontinued if the customer does not comply with the payment plan without providing the notices set forth above.

**Sec. 13-9. Common meter for multiple dwelling units.**

- (1) If more than one dwelling unit, including but not limited to multi-family dwelling units, commercial buildings or other such properties, is served by a common meter, thus by means other than by metering the consumption of each individual unit, any act or omission by any person served by a common meter constitutes a joint act of all persons served through such common meter.
- (2) The Town shall issue only one utility bill for utility services to dwelling units with a common meter. While the customers may proportion the payment of the utility bill among themselves, as to the Town, each customer shall be liable for payment of the utility bill in full. If the utility bill is not paid in full when due, the Town may impose fees or undertake any remedies provided in this Article.
- (3) If the Town desires to discontinue utility services to dwelling units with a common meter, the Town shall send written notice to each customer and, if the customers are not also the owners, to the owners, at the last known address available to the Town, providing that, absent full payment of all amounts due, services will be discontinued as of the date specified in the notice. The Town shall comply with the disconnection procedures set forth in this Article.
- (4) For dwelling units with a common meter, the lien for the unpaid utility fees attaches upon each separate unit in an amount computed by dividing the total amount of the lien by the number of units served by the common meter.
- (5) No person who has complied with the rules and regulations relating to utility services who has paid a proportionate or other share of the charges outstanding or remaining unpaid may file a claim for damages against the Town because utility services have been discontinued as provided in this Article.

**Sec. 13-10. Right to entry**

- (1) In connection with the necessary discharge of their duties and the enforcement of the provisions of this Chapter, authorized Town personnel shall, at all reasonable times, have safe access to property within or without the Town served by water or sewer utilities for any purpose incidental to supplying or disconnecting such utility service.
- (2) Customers shall provide access to meters and utility service equipment located on the customer's property for proper administration and billing of utility services. Such access includes non-intrusive, automatic drop out access to the customer's service for remote reading of meters by the utilities when such service is available. If any meter cannot be read or access to utility service equipment is not provided for three (3) consecutive months, the Town shall provide written notice to the customer and, if the owner is not the customer, to the owner providing that the condition must be corrected by a date certain or the Town may discontinue service until access is accomplished.
- (3) Whenever the Town has reasonable cause to believe that there exists in or upon any property, a condition or violation which makes such property unsafe, dangerous or hazardous or presents a significant, immediate danger to human health or the environment, authorized Town personnel may enter such property to inspect it and, if required, perform any authorized act to bring the property to a safe condition.

- (4) If property is occupied at the time entry is required, authorized Town personnel shall first present proper credentials and request entry. If such property is unoccupied, except in the case of an emergency as described above, authorized Town personnel shall first make a reasonable effort to locate the owner, customer or other person having charge or control of the property. If such entry is refused, the Town shall have recourse to pursue remedies provided by law to secure entry.
- (5) When the Town has obtained an inspection warrant or other remedy provided by law to secure entry, no owner, customer, occupant or other person having charge or control of the property shall fail or neglect, after proper request, to promptly permit entry therein by authorized Town personnel for the purpose of inspection and examination pursuant to this Chapter.
- (6) Owners or such other persons having charge or control of property shall permit the Town or other utility providers, as appropriate, to trim the limbs and branches of trees, bushes and shrubs to the extent that such trimming is reasonably necessary to avoid interference with utility lines, streetlights, or other equipment or to allow access to meters or other equipment on said property or in the public right-of-way.

**Sec. 13-11. Annexation required for water and sewer service.**

Any person requesting either water or sewer service for a property that is outside the Town boundaries must first annex such property to the Town to be included within the Town boundaries prior to the Town extending either water or sewer service.

**Sec. 13-12. Exceptions; waiver.**

For good cause, consistent with the purposes of the provisions contained herein, Town Council may substitute, modify or waive any condition or requirement contained in this Chapter.

**Sec. 13-13. – 13.39. Reserved.**

**ARTICLE II Sanitary Sewers**

Sec. 13-40. Sanitary Sewer Utility Enterprise.

Sec. 13-41. Definitions.

Sec. 13-42. Adoption of rules and regulations governing sanitary sewers.

Sec. 13-43. Use of public sewers required.

Sec. 13-44. Private waste water disposal.

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Secs. 13-55.—13-69. Reserved.

#### **Sec. 13-40. Sanitary Sewer Utility Enterprise.**

- (1) The Town Council hereby recognizes the establishment of the Town's Sanitary Sewer Utility Enterprise and confirms the operation of the Sanitary Sewer Utility Enterprise, inclusive of the Town's municipal sanitary sewer system, as an "Enterprise" within the meaning of Section 20 of Article X of the State Constitution.
- (2) The Town Council recognizes that the creation and establishment of the Town's Sanitary Sewer Utility Enterprise serves the purpose of managing, maintaining and operating the Town's wastewater system and the sewer facilities for the conveyance, treatment and disposal of waste water from within the Town.
- (3) The Town Council designates itself as the governing body of the Sanitary Sewer Utility Enterprise and shall exercise the Town's legal authority relating to the Sanitary Sewer Utility Enterprise, but shall not levy a tax.
- (4) The Town Council directs that funds of the Sanitary Sewer Utility Enterprise and funds of the Town may be commingled for purposes of investment so long as accurate records are kept of the amount of such funds allocable to the Enterprise and to the Town.
- (5) The Town Council ratifies, approves and confirms all action not inconsistent with the provisions of this Section heretofore taken by Town Council or by the officers and employees of the Town directed toward the operation of the Wastewater Utility Enterprise as an "Enterprise" under Section 20 of Article X of the State Constitution.

#### **Sec. 13-41. Definitions.**

Unless the context specifically indicates otherwise, the meaning of terms used in this Article shall be as follows:

*Act* means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. section 1251 et seq.

*Article* means this Article II of Chapter 13 of the Town of Johnstown Municipal Code.

*Biochemical oxygen demand (BOD)* means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty degrees (20°) Celsius, expressed in milligrams per liter.

*Building drain* means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet (1.5 meters) outside the inner face of the building wall.

*Building sewer* means the extension from the building drain to the public sewer or other place of disposal, also called house connection.

*Combined sewer* means a sewer intended to receive both wastewater and storm water or surface water.

*Easement* means an acquired legal right for the specific use of land owned by others.

*Floatable oil* is oil, fat or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. Wastewater shall be considered free of floatable fat if it is properly pretreated and the wastewater does not interfere with the POTW.

*Garbage* means the solid wastes from domestic and commercial preparation, cooking, and dispensing of food, and from handling, storage and sale of produce.

*Indirect Discharge or Discharge* means the introduction of any pollutant into the Publicly Owned Treatment Works (POTW) from any non-domestic source under Section 307(b), (c) or (d) of the Act.

*Industrial Wastes* mean the liquid wastes from industrial manufacturing processes, trade or business as distinct from sanitary sewerage.

*Industrial Users or IU* means a source of indirect discharge.

*Interference* means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

- (1) Inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and,
- (2) Therefore, is a cause of a violation of the Town's NPDES permit(s) (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory and regulatory provisions or permits issued thereunder, or any more stringent State or local regulations: Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act; any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

*Industrial waste* means the wastewater from industrial processes, trade or business as distinct from domestic or sanitary wastes.

*Medical Waste* means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

*National Pollutant Discharge Elimination System Permit or "NPDES Permit"* means the permit(s) issued by the State of Colorado authorizing the Town to discharge to waters of the United States under the Act, and includes, as may be amended from time to time, CO-0021156 and CO-0047058.

*Natural outlet* means any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake or other body of surface or ground water.

*May* is permissive (see shall).

*Pass through* means a discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the Town's NPDES permit, including an increase in the magnitude or duration of a violation.

*pH* means the logarithm of the reciprocal of the hydrogen ion concentration. The concentration is the weight of hydrogen ions, in grams, per liter of solution.

*Pollutant* means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, flow, TSS, turbidity, color, BOD, COD, toxicity, or odor).

*Pretreatment* means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutants in wastewater prior to, or in lieu of, a discharge of such pollutants into the POTW. This reduction or alteration may be obtained by physical, chemical, or biological processes, by process changes or by other means, except by diluting the concentration of the pollutants, unless otherwise allowed by law or by the Town.

*Publicly Owned Treatment Works or POTW* means the treatment works, as defined by Section 212 of the Act (33 U.S.C. section 1292), that are owned by the Town. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances that convey wastewater to the POTW Treatment Plant.

*POTW Treatment Plant* means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste and includes, as may be amended from time to time, the Johnstown Central Wastewater Treatment Facility and the Low Point Wastewater Treatment Plant.

*Public sewer* means a common sewer controlled by a governmental agency or public utility.

*Sanitary sewer* means a sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with minor quantities of ground, storm and surface waters that are not admitted intentionally.

*Sewage* is the spent water of a community, and typically refers to water containing human excrement and gray water (as from showers, baths, dishwashing operations, sinks, washing machines). The preferred term is wastewater.

*Sewage Works* means all facilities for collecting, pumping, treating and disposing of sewerage.

*Sewer* means a pipe or conduit that carries wastewater.

*Shall* is mandatory (see may).

*Slug discharge* means any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four-hour concentration or flows during normal operation that adversely affect the collection system and/or performance of the wastewater treatment works. Slug discharge includes any discharge of a non-routine, episodic nature, such as an accidental spill or a non-

customary batch discharge, which has a reasonable potential to cause interference or pass through, or in any other way violate the Town's NPDES Permit, the POTW's regulations, local limits or pretreatment requirements.

*Storm drain* (sometimes termed storm sewer) means a drain or sewer for conveying water, ground water, subsurface water or unpolluted water in any source.

*Total Suspended Solids* (TSS) or Suspended Solids (SS) means suspended matter that either floats on the surface of or is in suspension in water, wastewater or other liquids, and is removable by laboratory filtering as prescribed in Standard Methods for the Examination of Water and Wastewater.

*Unpolluted water* is water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards

*Wastewater* means the liquid and water-carried pollutants from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW. It may be a combination of the liquid and water-carried waste together with any ground water, surface water and storm water that may be present.

*Wastewater treatment works* means an arrangement of devices and structures for treating wastewater, industrial wastes and sludge. Sometimes used as synonymous with waste treatment plant or wastewater treatment plant or water pollution control plant or POTW.

*Watercourse* means a natural or artificial channel for the passage of water either continuously or intermittently.

#### **Sec. 13-42. Adoption of rules and regulations governing sanitary sewers.**

The Town Manager may adopt forms and make and enforce rules and regulations in conformity with this Article that are necessary for the safe, efficient and economical management of the Town's sanitary sewer system. Subject to the limitations of this Code, the Town Manager may delegate the administration of this Article, or any part thereof, to duly qualified employees and agents of the Town.

#### **Sec. 13-43. Use of public sewers required.**

- (1) It shall be unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the Town, or in any area under the jurisdiction of the Town, any human or animal excrement, garbage or other objectionable waste.
- (2) It shall be unlawful to discharge to any natural outlet within the Town, or in any area under the jurisdiction of the Town, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Article.
- (3) Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of wastewater.
- (4) The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes situated (incorporated) within the Town and abutting on any street, alley or right-of-way in which there is now located or may in the future be located a public sanitary, are hereby required, at the owners' expense, to install suitable toilet facilities therein, and to promptly connect such facilities directly with the proper public sewer in accordance with the provisions of this Article, within one hundred-twenty (120) days provided that the public sewer is within four hundred (400) feet of the property line.

#### **Sec. 13-44. Private wastewater disposal.**

- (1) Where a public sanitary or combined sewer is not available as provided in this Article, the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this Section.
- (2) Before commencement of construction of a private wastewater disposal system, the owner shall first obtain a written permit signed by the Town. The application for such permit shall be made on a form furnished by the Town, which shall be supplemented by any plans, specifications and other information deemed necessary by the Town. The applicant shall also pay a permit and inspection fee to the Town at the time the application is filed in the amount set forth in the Town Fee Schedule.
- (3) A permit for a private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the Town. The Town shall be allowed to inspect the work at any stage of construction, and, in any event, the applicant for the permit shall notify the Town when the work is ready for final inspection and before any underground portions are covered. The Town shall promptly inspect the work upon receipt of notice.
- (4) The type, capacities, location and layout of a private wastewater disposal system shall comply with all recommendations and requirements of the Colorado Department of Public Health and Environment and of the Larimer or Weld County Department of Public Health and Environment, as appropriate. No permit shall be issued for any private wastewater disposal system employing subsurface soil absorption facilities where the area of the lot is less than the lot size required by the Larimer or Weld County Department of Public Health and Environment, as appropriate. No septic tank or cesspool shall be permitted to discharge to any natural outlet.
- (5) At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in this Article, a direct connection shall be made to the public sewer within one hundred twenty (120) days in compliance with this Article, and any septic tanks, cesspools and similar private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material.
- (6) The owners shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, at no expense to the Town.
- (7) No statement contained in this Section shall be construed to interfere with any additional requirements that may be imposed by the Town, the Colorado Department of Public Health and Environment, and Larimer or Weld County Department of Public Health and Environment, as appropriate.

**Sec. 13-45. Sanitary sewers, building sewers and connections.**

- (1) No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Town.
- (2) There shall be two (2) classes of building sewer permits: (i) building sewer permits for residential and commercial uses and (ii) building permits for service to establishments producing industrial wastes. In either case, the owner or his or her agent shall make application on a form furnished by the Town. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the Town and, for industrial users, shall include the information and shall meet the obligations required by this Article and any additional information required by the Town. The applicant shall also pay a permit, inspection tapping, and/or impact fee to the Town at the time the application is filed in the amount set forth in the Town Fee Schedule.

- (3) All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the Town from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.
- (4) A separate and independent building sewer shall be provided for every building; except, where a building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as a single building sewer. The Town does not and will not assume any obligation or responsibility for damage caused by or resulting from any single connection.
- (5) Old building sewers may be used in connection with new buildings only when they are found, on examination, video, and/or test submitted by the property owner or contractor to the Town, to meet all requirements of this Article.
- (6) The size, slope, alignment and materials of construction of all sanitary sewers including building sewers, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and plumbing codes or other applicable rules and regulations of the Town. In the absence of suitable code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the American Society for Testing and Materials ("ASTM") International Standards and Water Pollution Control Facility ("WPCF") Manual of Practice No. 9 shall apply.
- (7) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.
- (8) No person shall make connection of roof downspouts, foundation drains, areaway drains or other sources of surface runoff or ground water to a building drain which in turn is connected directly or indirectly to a public sanitary sewer.
- (9) The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing codes, other applicable rules and regulations adopted by the Town or the procedures set forth in appropriate specifications of the ASTM International Standards and the WPCF Manual of Practice No. 9, as determined by the Town. All such connections shall be made gas-tight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the Town before installation.
- (10) The applicant for the building sewer permit shall notify the Town when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be made under the supervision of the Town or a representative of the Town.
- (11) All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be promptly restored in a manner satisfactory to the Town and to the Town's specifications.
- (12) The Town maintains the sewer main only and the property owner is responsible for the service line in total to the main including the tap.

**Sec. 13-46. Use of the public sewers.**

- (1) No person shall discharge or cause to be discharged any unpolluted waters such as storm water, surface water, ground water, roof runoff, subsurface drainage, uncontaminated cooling water or unpolluted industrial process waters to any sanitary sewer.

- (2) Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers or to a natural outlet approved by the Town and other regulatory agencies. Unpolluted industrial cooling water or unpolluted process waters may be discharged, on approval of the Town, to a storm sewer, combined sewer or natural outlet.
- (3) No person shall discharge or cause to be discharged any of the following described water or wastes to any public sewers:
- (a) Petroleum oil, benzene, naphtha, fuel oil, nonbiodegradable cutting oil, products of mineral oil origin, or other flammable or explosive liquid, solid or gas;
  - (b) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed-cup flashpoint of less than 140 degrees F (60 degrees C) using the test methods specified in 40 CFR 261.21;
  - (c) Wastewater having a pH less than five and one-half (5.5) or having any other corrosive property capable of causing damage or hazard to structures, to the POTW, its collection system, equipment or personnel of the sewerage works;
  - (d) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;
  - (e) Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW Treatment Plant exceeds 40 °C (104 °F) unless the Town approves alternate temperature limits;
  - (f) Pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems;
  - (g) Trucked or hauled pollutants except in manner consistent with Subsection (14) below;
  - (h) Any waters or wastes containing toxic or poisonous soils, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create public nuisance or create any hazard in the receiving waters of the sewage treatment plant, including but not limited to cyanides in excess of two (2) mg/l as CN in the wastes as discharged to the public sewer; and
  - (i) Solids or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the POTW such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair, fleshings, entrails, paper dishes, cups, disposable wipes, milk containers, etc., either whole or ground by garbage grinders.
- (4) The following described substances, materials, water or waste shall be limited in discharges to concentrations or quantities which will not harm the POTW, the sewers, the wastewater treatment process or equipment, will not have an adverse effect on the receiving stream and will not otherwise endanger lives, limb, public property or constitute a nuisance. The Town may set limitations lower than the limitations established in the regulations below if, in his or her opinion, such more severe limitations are necessary to meet the above objectives. In forming his or her opinion as to the acceptability, the Town may consider such factors as the quantity of subject waste in relation to flows and velocities in the sewers, materials of construction of the sewers, the wastewater treatment process employed, capacity of the wastewater treatment plant, degree of treatability of the waste in the wastewater treatment plant and other permanent factors. The

limitations or restrictions on materials or characteristics of waste or wastewaters discharged to the POTW which shall not be violated without approval of the Town are as follows:

- (a) Fats, wax, oils or greases of animal or vegetable origin, whether emulsified or not, in excess of one hundred (100) mg/l or containing substances which may solidify or become viscous at temperatures between thirty-two degrees (32° F) and one hundred fifty (150° F);
- (b) Any garbage that has not been properly shredded. For purposes of this Subsection, properly shredded garbage means the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (½) inch (1.27 centimeters) in any dimension. Garbage grinders equipped with a motor of three-fourths (¾) shall be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments or similar places and subject to inspection, reviews and approval of the Town where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers. However, garbage grinders shall only be used to grind small amounts of garbage incidental to cleaning of plates, cookware, etc. and not to dispose of large quantities of waste. Waste must be scraped into a garbage can prior to cleaning;
- (c) Any waters or wastes containing strong acid iron pickling wastes, concentrated plating solutions whether neutralized or not, chromium, copper, zinc and similar objectionable or toxic substances to such degree that any such material received in the composite wastewater at the POTW Treatment Plant exceeds the limits established by the Town for such materials;
- (d) Any waters or wastes containing phenols odor-producing substances exceeding limits which may be established by the Town as necessary, after treatment of the composite sewage, to meet the requirements of the State, Federal, or other public agencies of jurisdiction for such discharge to the receiving streams;
- (e) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Town in compliance with applicable state or federal regulations;
- (f) Quantities of flow, concentrations of which constitute a slug discharge;
- (g) Waters or wastes containing substances which are not amenable to transport, treatment or reduction by the wastewater treatment processes employed or are amenable to treatment only to such degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters;
- (h) Any water or wastes which, by interaction with other water or wastes in the public sewer system or POTW, release obnoxious gases, form suspended solids which cause interference with the collection system or create a condition deleterious to structures and treatment processes;
- (i) Wastewater which imparts color that cannot be removed by the POTW Treatment Plant, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently impart color to the POTW Treatment Plant's effluent, thereby causing a violation of the Town's NPDES Permit;
- (j) Sludges, screenings or other residue from the pretreatment of industrial wastes, unless specifically approved by the Town and otherwise in compliance with the Town's NPDES Permit;

- (k) Wastewater causing, alone or in conjunction with other sources, the POTW Treatment Plant's effluent to fail toxicity tests;
- (l) Detergents, surface-active agents (surfactants) or other pollutants that might cause excessive foaming in the POTW or receiving waters; and
- (m) Wastewater causing a reading on an explosion hazard meter at the point of discharge into the POTW or at any point in the POTW.
- (n) Any waters or wastes having a pH in excess of 9.5
- (o) Materials which exert or cause:
  - (i) Unusual concentrations of inert suspended solids (such as, but not limited to, fuller's earth, lime slurries and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate).
  - (ii) Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).
  - (iii) Unusual BOD, chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works.
  - (iv) Unusual volume of flow or concentration of wastes constituting slugs as defined herein.
- (5) The pollutants, substances or wastewater prohibited by this Subsection 13-46(4) shall not be processed or stored in such a manner that they could or will be discharged to the POTW.
- (6) If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Subsection (4) of this Section, and which, in the judgment of the Town, may have a delirious effect upon the POTW, processes, equipment or receiving waters or which otherwise create hazard to life or constitute a public nuisance, the Town may:
  - (a) Reject the wastes;
  - (b) Require pretreatment to an acceptable condition for discharge to the public sewers;
  - (c) Require control over the quantities and rates of discharge; and/or
  - (d) Require payment of the added cost of handling and treating the wastes not otherwise covered by existing taxes or sewer charges under the provisions of this Article.
- (7) When considering the above alternatives, the Town shall give consideration to the economic impact of each alternative on the discharger, but, in any event, shall not allow a discharge that has the potential to cause a violation of the Town's NPDES Permit or the law. If the Town permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the Town.
- (8) No user shall increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment, including pretreatment, to achieve compliance with a discharge limitation unless expressly authorized by law or by the Town. The Town may impose mass limitations on users who are using dilution to meet applicable requirements.
- (9) Grease, oil and sand interceptors shall be provided when, in the opinion of the Town, they are necessary for the proper handling of liquid wastes containing floatable fats, oils or greases in excessive amounts as specified in Subsection (4)(a), or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Town, and shall be located as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors, the owner shall be responsible for the proper removal and disposal by appropriate means at least annually or determined appropriate and necessary by the Town of the

captivated material and shall maintain records of the dates and means of disposal which are subject to review by the Town. Any removal and hauling of the collected materials not performed by the owner's personnel must be performed by currently licensed waste disposal firms.

(10) Where pretreatment or flow-equalizing facilities are provided or required for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner or the operator at his or her expense.

(11) When required by the Town, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable structure together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such structures, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the Town. The structure shall be installed by the owner at his or her expense, and shall be maintained by him or her so as to be safe and accessible at all times.

(12) The Town may require the user of sewer services to provide information needed to determine compliance with this Article. The requirements may include, but are not limited to:

- (a) Wastewater discharge peak rate and volume over a specified time period;
- (b) Chemical analyses of wastewaters;
- (c) Information on raw materials, processes and products affecting wastewater volume and quality;
- (d) Quantity and disposition of specific liquid, sludge, oil, solvent or other materials important to sewer use control;
- (e) A plot plan of sewers of the user's property showing sewer and pretreatment facility location;
- (f) Details of systems to prevent and control the losses of materials through spills to the municipal sewer; and/or
- (g) A wastewater discharge permit application, questionnaire or other reports and notifications in a format and timeframe specified by the Town.

(13) Industrial users.

(a) Mandatory pretreatment requirements. In addition to all other requirements contained in this Article, industrial users shall provide wastewater treatment, as necessary, to comply with the pretreatment standards required by the Town's NPDES Permit and otherwise required by law. The industrial user shall achieve compliance prior to discharge. Any facilities necessary for compliance shall be provided, operated and maintained at the industrial user's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the Town for review, and shall be acceptable to the Town before such facilities are constructed. Acceptance by the Town of any such facilities shall not be construed as a guarantee or agreement by the Town that such facilities will achieve compliance with this Article. The review of such plans and operating procedures shall in no way relieve the industrial user from the responsibility of modifying such facilities, as necessary, to produce a discharge acceptable to the Town under the provisions of this Article.

(b) Additional pretreatment and monitoring requirements. The Town may, in his or her discretion:

- (i) Require an industrial user to restrict its discharge, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate domestic waste streams from non-domestic waste streams or impose such other conditions as may be necessary to protect the

POTW and ensure the industrial user's compliance with the requirements of this Article;

- (ii) Require an industrial user discharging into the POTW to install and maintain, on the user's property and at the owner's or operator's expense, a suitable storage and flow-control facility to ensure equalization of flow;
  - (iii) Require an industrial user discharging into the POTW to install, at the owner's or operator's expense, suitable monitoring facilities or equipment that isolates appropriate wastewater discharges into the wastewater system and facilitates accurate observation, sampling and measurement of discharges. The equipment shall be maintained in proper working order and kept safe and accessible without restriction to POTW personnel at all times. Where practical, the monitoring equipment shall be located and maintained on the industrial user's premises outside of the building; and/or
  - (iv) Require an industrial user with the potential to discharge flammable substances to install and maintain an approved combustible gas detection meter.
- (c) Slug discharge control. Facilities to prevent slug discharges shall be provided and maintained at the industrial user's expense. The Town may require industrial users to implement prevention plans to control slug discharges.
- (d) Notification. After initial approval, industrial users shall provide the following notifications:
- (i) In the case of any discharge, including, but not limited to, spills, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, a slug discharge or a discharge that may cause potential problems for the POTW, the industrial user shall immediately telephone and notify the POTW of the incident. The notification shall include:
    - (1) Name of the facility;
    - (2) Location of the facility;
    - (3) Name of the caller;
    - (4) Date and time of the discharge;
    - (5) Date and time discharge was halted;
    - (6) Location of the discharge;
    - (7) Type of waste;
    - (8) Estimated volume of the discharge;
    - (9) Estimated concentration of pollutants in the discharge;
    - (10) Corrective actions taken to halt the discharge; and
    - (11) Method of disposal, if applicable.
  - (ii) Within five (5) working days following such discharge under Part (d)(i) of this Subsection, the industrial user shall, unless waived by the Town in writing, submit a detailed written summary describing the cause(s) of the discharge and measures to be taken by the industrial user to prevent similar future occurrences. Such notification shall not relieve the industrial user of any expense, loss, damage or other liability which might be incurred as a result of damage to the POTW, natural resources, or any other damage to persons or property; nor shall such notification relieve the industrial user of any fines, penalties or other liability which may be imposed pursuant to this Article and applicable regulations.

- (iii) The industrial user shall notify the Town in advance of any substantial change in the volume or character of pollutants in their discharge and/or of any changes to their facilities affecting the potential for slug discharges and/or accidental release of prohibited discharges.
  - (iv) The industrial user shall notify the Town, the Colorado Department of Public Health and Environment and Region 8 of the Environmental Protection Agency in writing of any discharge into the POTW of any substance which, if otherwise disposed of, would be considered a hazardous waste under 40 CFR Section 261. Each industrial user shall notify the POTW in advance of any substantial change to such discharge. The specific information required to be reported and the time frames in which it is to be reported are found at 40 CFR Section 403.12(p).
- (e) Recordkeeping. Industrial users shall retain all records related to discharges for a minimum period of three (3) years. The records shall be made immediately available upon request of the Town at any time during the three (3) year period or so long as actually retained.
- (f) Time for Compliance. All existing industrial users shall come into compliance with the terms of this Article upon the effective date.
- (14) Trucked or hauled waste. The Town may regulate trucked and hauled waste to ensure that persons are complying with the terms of this Article and that the Town is acting in compliance with its NPDES Permit.
- (15) RV disposal stations. The Town may allow recreational vehicle ("RV") disposal sites in the service area if the quality or quantity of the RV waste does not adversely impact the POTW. The Town may require RV disposal sites in the service area to ensure adequate controlled access to its disposal site including locked access, sign-in records for persons discharging from the RV, record keeping by the RV disposal site and other information deemed appropriate.
- (16) All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this Article shall be determined in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, and/or per EPA approved methods, as referenced in 40 CFR Part 136. Sampling methods, location, times, durations and frequencies are to be determined on an individual basis subject to approval by the Town.
- (17) No statement contained in this Section shall be construed as preventing any special agreement or arrangement between the Town and any person relating to an industrial concern whereby an industrial waste of unusual strength or character may be accepted by the Town for treatment, except that no such agreement shall be permitted which violates Subsection (3) of this Section or causes or may cause the Town to violate its NPDES Permit or the law.

**Sec. 13-47. Powers and authority of inspectors.**

- (1) The Town, by and through duly authorized personnel bearing proper credentials and identification, shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing pertinent to discharge to the POTW system in accordance with the provisions of this Article.
- (2) Duly authorized Town personnel shall be permitted to obtain information concerning industrial processes which have a direct bearing on the kind and source of discharge to the POTW. All records, reports, data or other information supplied by any person as a result of any disclosure required by this Article or information and data from inspections shall be available for public inspection except as otherwise provided in this Section, 40 CFR Section 403.14 or Colorado law.

These provisions shall not be applicable to any information designated as a trade secret by the person supplying such information. Materials designated as a trade secret may include, but shall not be limited to: processes, operations, style of work or apparatus or confidential commercial or statistical data. Any information and data submitted which is desired to be considered a trade secret shall have the words, "Confidential Business Information," stamped on each page containing such information. The person must demonstrate to the satisfaction of the Town and the Town Manager that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets.

- (3) Information designated as a trade secret shall remain confidential and shall not be subject to public inspection, except as otherwise required by law. Such information shall be available only to officers, employees or authorized representatives of the Town charged with implementing and enforcing the provisions of this Article and properly identified representatives of the Environmental Protection Agency and or the Colorado Department of Public Health and Environment. Effluent data obtained by self-monitoring, monitoring by the POTW or monitoring by any state or federal agency shall not be considered a trade secret or otherwise confidential. All such effluent data shall be available for public inspection.
- (4) While performing the necessary work on private properties referred to in Subsection (1) above, duly authorized Town personnel shall observe all safety rules applicable to the premises established by the company and otherwise required by law.
- (5) The Town, by and through duly authorized personnel bearing proper credentials and identification, shall be permitted to enter all private properties through which the Town holds an easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the wastewater facilities lying within the easement. All entry and subsequent work, if any, on the easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

#### **Sec. 13-48. Abandonment of connection.**

No person shall abandon any building connection without first obtaining a written permit therefor. Such building connection shall be abandoned and effectively sealed as appropriate to the material of the building lead, subject to approval and the rules and regulations required by the Town.

#### **Sec. 13-49. Interference with Town employees prohibited; digging up streets for purposes of sewer connections; destroying facilities.**

- (1) No person shall in any way interfere with Town employees in any discharge of their duties with respect to the POTW.
- (2) No person shall dig up or cause to be dug up any street or alley in the Town for the purpose of connecting with the sewer system, without first obtaining a permit, and no person having a permit shall dig up any portion of any street or alley for the purpose of connecting with the sewer system of the Town and fail or neglect to replace the street or alley to its original condition.
- (3) No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the POTW.
- (4) Any person violating these provisions may be subject to immediate arrest and to any other recourse permitted under this Article, the Johnstown Municipal Code or the law.

#### **Sec. 13-50. Administrative enforcement.**

- (1) Notice of violation. When the Town finds that a person has violated, or continues to violate, any provision of this Article, the Town's NPDES Permit or any other order under this Article, the

Town may serve upon such person a written notice of violation. Within five (5) business days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to Town.

Submission of such a plan in no way relieves the person of liability for any violations occurring before or after receipt of the notice of violation. If the plan for correction submitted by the person is not satisfactory to the Town, the Town may take further action. Nothing herein shall limit the authority of the Town to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

(2) Suspension of service.

(a) Suspension of service with notice. The Town may suspend wastewater treatment service by disconnecting water service, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons or the environment, which causes or may imminently cause pass through, interference or the violation of the Town's NPDES Permit or which results or may imminently result in a violation of any other provision of this Article. Any person notified of a suspension of wastewater treatment service shall immediately stop or eliminate the discharge. In the event of a failure of the person to comply voluntarily with the suspension order, the Town may take such steps as deemed necessary including immediate physical severance of the sewer connection, to prevent or minimize damage to the POTW or endangerment to individuals or the environment

(b) Emergency suspension. The Town may, without prior notice of hearing, order wastewater treatment services suspended or physically sever a sewer connection if an actual or proposed discharge immediately and substantially endangers public health, safety or welfare, or the environment, or may likely cause the Town to violate any condition of its NPDES Permit or the law. Any such emergency suspension order shall become effective immediately, and any person notified of such suspension shall immediately stop or eliminate all discharge of industrial waste. In such emergency situations, the Town is authorized to prevent or minimize danger or property damage.

(3) Administrative orders and penalties.

(a) Administrative orders. When the Town finds that a person has violated, or continues to violate, any provision of this Article, the Town's NPDES Permit or any other order under this Article, the Town may issue an order to the person responsible for the discharge directing that such person immediately, or within a time specified by the Town, come into compliance. If the person does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders may also contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance otherwise required by the provisions of this Article or required to ensure that the Town remains in compliance with the NPDES Permit, nor does a compliance order relieve the person of liability for any violation, including any continuing violation during the time it takes the person to come into compliance. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the person.

(b) Administrative penalties. When the Town finds that a person has violated, or continues to violate, any provision of this Article, the Town's NPDES Permit or any other order under this Article, the Town may fine such person in an amount not to exceed the amount set

forth in Article IV of Chapter 1 of the Code. Such fines shall be assessed on a per-violation, per day basis. The Town may, in addition to fines, collect charges to pay for damage to the POTW, fines issued to the POTW as a result of such person's noncompliance and any other costs incurred by the Town or the POTW as a result of such person's noncompliance. A lien against the person's property may be sought for unpaid charges, fines, and penalties. The issuance of an administrative fine shall not be a bar against, or prerequisite for, taking any other action against the person.

- (4) Appeal of administrative orders or penalties.
  - (a) A person who disputes an administrative order, or administrative penalty made by or on behalf of the Town pursuant to and by the authority of this Article may petition for a hearing in accordance with this Article.
  - (b) Limitation. Notwithstanding the right to appeal, the Town may take any action deemed necessary during the pendency of the appeal to allow the Town to remain in compliance with the Town's NPDES Permit, to prevent or mitigate damage to the POTW and to protect the health, safety, or welfare of the public, including, but not limited to, discontinuing wastewater treatment services or physically severing of the sewer connection.

#### **Sec. 13-51. Administrative review; appeals process.**

- (1) Petition. A person who disputes an administrative order or an administrative penalty may petition for a hearing. The petition shall be in writing, filed with the Town Clerk and contain facts in support of the position alleged therein. The petition shall be submitted under oath in writing or orally at the duly scheduled hearing. A person may only file one petition in connection with a particular dispute, except upon a showing of changed circumstances sufficient to justify the filing of an additional petition.
- (2) Hearing. The Town Manager shall hold a hearing on the petition or designate another person as a hearing officer with authority to hold such hearing. The hearing shall be held within a reasonable time after the filing of a petition at the Town Hall or other place as designated by the hearing officer, and notice thereof and the proceedings shall otherwise be in accordance with the rules and regulations issued by the Town. The petitioner shall have the burden of proof.
- (3) Final order. Within fourteen (14) days of a hearing, the hearing officer shall make written findings of fact and conclusions based upon all relevant information contained in the petition and presented at the hearing. The hearing officer's determination shall be considered a final order, which may, within ten (10) days of its issuance, be appealed to the Town Council.
- (4) Appeal of the final order. An appeal to the Town Council shall be in writing and filed with the Town Clerk, setting forth the specific errors and omissions of the hearing officer in such hearing officer's final order. At the time of filing, appellant must pay the docket fee in the amount set forth in the Town Fee Schedule. Written notice of the hearing shall be given to all parties concerned at least (5) days prior to the hearing. The appellant shall have burden of proof on an appeal. The Town Council shall make its final determination and affirm, modify or reverse the final order.
- (5) Service. Service by certified mail, return receipt requested, shall be conclusive evidence of service for the purpose of this Article. Service may also be accomplished by electronic mail on the condition that the recipient acknowledges receipt of the electronic mail.
- (6) Limitation. Notwithstanding the right to appeal, the Town may take any action deemed necessary during the pendency of the appeal to allow the Town to remain in compliance with the Town's NPDES Permit, to prevent or mitigate damage to the POTW and to protect the health, safety, or

welfare of the public, including, but not limited to, discontinuing wastewater treatment services or physically severing of the sewer connection.

**Sec. 13-52. Judicial enforcement.**

- (1) Injunctive relief. When the Town finds that a person has violated, or continues to violate, any provision of this Article, the Town's NPDES Permit or any other order under this Article, the Town Manager may petition the court for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of an administrative order issued hereunder or any other requirement imposed by this Article, by the Town's NPDES Permit or by law. The Town Manager may also seek such other action as is appropriate, including pursuing legal recourse to require the person in violation to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against such person.
- (2) Action at law. When the Town finds that a person has violated, or continues to violate, any provision of this Article, the Town's NPDES Permit or any other order under this Article, the Town Manager may commence an action at law in a court of competent jurisdiction. An action at law shall not be a bar against, or a prerequisite for, taking any other action against such person.
- (3) Municipal court. Without limitation to other potential remedies, when the Town finds that a person has violated, or continues to violate, any provision of this Article, the Town's NPDES Permit or any other order under this Article, the Town Manager may direct that the person be served a summons and issued a citation into the Johnstown Municipal Court and be subject to the penalties set forth in Article IV of Chapter 1 of the Code.

**Sec. 13-53. Sewer service charges.**

- (1) Monthly sewer service charges for residential and nonresidential customers are hereby levied and assessed at the rates set forth in the Town Fee Schedule.
- (2) In addition to monthly sewer service charges, customers that discharge wastes with BOD and suspended solids concentrations above normal domestic wastes shall be assessed a surcharge in the amount set forth in the Town Fee Schedule.
- (3) Sewer service charges for industrial users who desire treatment of domestic wastewater only are hereby levied and shall be assessed by the Town in an amount that is based upon the number of persons employed by the industrial user. The Town Manager shall implement a uniform methodology to calculate such charges, which methodology shall be available to the user.

**Sec. 13-54. Sewer tap fees.**

- (1) Applicants for sewer service shall pay a sewer tap fee at the time that a building permit is issued.
- (2) Except as provided below, sewer tap fees shall be determined in accordance with the meter capacity recommended for the related water meter and shall be set forth in the Town Fee Schedule.
- (3) Because water use and wastewater flows for larger meters varies widely depending on the type of customer, sewer tap fees for meters ranging from four (4) inches to eight (8) inches shall be determined by the Town on a case-by-case basis.

**Secs. 13-55—13-69. - Reserved.**

### **ARTICLE III - Water**

Sec. 13-70. Water Utility Enterprise.

Sec. 13-71. Requirements for receiving water tap.

Sec. 13-72. Water meters.

Sec. 13-73. Water tap and raw water development fee.

Sec. 13-74. Maintenance.

Sec. 13-75. Meter obstruction.

Sec. 13-76. Disconnection of service unrelated to delinquency.

Sec. 13-77. Water service charges.

Sec. 13-78. Bulk potable water for construction.

Sec. 13-79. Damage to property and equipment of water system.

Sec. 13-80. Trespass, interference with water system prohibited.

Sec. 13-81. Authority to turn on water.

Sec. 13-82. Pollution of the water system prohibited.

Sec. 13-83. Control, repair, and tests of fire hydrants.

Sec. 13-84. Operation of fire hydrants.

Sec. 13-85. Interruption of service by utility.

Sec. 13-86. - 13-110. Reserved.

#### **Sec. 13-70. Water Utility Enterprise.**

- (1) The Town Council recognizes the establishment of the Town's Water Utility Enterprise and confirms the operation of the Water Utility Enterprise as an "Enterprise" within the meaning of Section 20 of Article X of the State Constitution.
- (2) The Town Council recognizes that the creation and establishment of the Town's Water Utility serves the purpose of managing, maintaining and operating the Town's water system.
- (3) The Town Council designates itself as the governing body of the Water Utility and shall exercise the Town's legal authority relating to the Water Utility Enterprise, but shall not levy a tax.
- (4) The Town Council directs that funds of the Water Utility Enterprise and funds of the Town may be commingled for purposes of investment so long as accurate records are kept of the amount of such funds allocable to the Enterprise and to the Town.
- (5) The Town Council ratifies, approves and confirms all action not inconsistent with the provisions of this Section heretofore taken by Town Council or by the officers and employees of the Town directed toward the operation of the Water Utility Enterprise as an "Enterprise" under Section 20 of Article X of the State Constitution.

**Sec. 13-71. Requirements for receiving water tap.**

- (1) Any person who seeks an extension of water service, annexation of land to the Town or a change in land use, if such change in use will increase the demand for water service, shall dedicate a sufficient amount of acceptable water to the Town as provided in Article IV of this Chapter.
- (2) Any person desiring to make a connection to the water system or use water therefrom shall make written application to the Town. No person shall connect to the water system or use water therefrom until such application has been approved and such person has otherwise complied with all relevant provisions of the Code.
- (3) Any person desiring to make a connection to the water system or use water therefrom shall pay all applicable fees.

**Sec. 13-72. Water meters.**

- (1) All water services supplied by the Town shall be metered. Use of any water without proper metering shall be prohibited.
- (2) Property owners shall install a curb stop with a cast iron box and lid within the Town right-of-way at a location near the property line. Materials shall be of a standard type approved by the Town and in accordance with Town requirements. Property owners shall maintain curb boxes and lids therefor in good and unbroken condition and in readiness for emergency connect and/or disconnect, and shall keep curb box lids unobstructed and visible at all times.
- (3) Water meters shall be of a size, type and design approved by the Town, shall be installed in the Town right-of-way, and shall be in a readily accessible location for the meter reader. Indoor water meters must be approved by the Town. Water meters shall be installed either in a frost-proof meter pit or inside the structure with a remote reading device connected to allow reading from the outside of the structure. Water meters shall be installed with a stopcock on each side of the meter.
- (4) At the time of construction of new commercial or industrial buildings, the Town may, in its discretion, permit the installation of dual water meters where usage of water partially for irrigation purposes would otherwise create inequitable billing. In such instances, one of the meters shall record water used exclusively for irrigation purposes, and the use of such water shall be reflected in water billings, but not the sewer billing.
- (5) Each water meter shall be inspected by the Town and shall be properly adjusted before installation.
- (6) A record shall be made and preserved of each meter installed, containing the location, serial number and size of the meter.
- (7) All water meters shall be provided by the Town at the expense of the property owner. Payment for the water meter shall be in the amount set forth on the Town Fee Schedule and made at the time a building permit is issued. All other expenses for providing water facilities to a property shall be the responsibility of the property owner.
- (8) Water meters sized  $\frac{3}{4}$ " or 1" shall be installed by the Town or an authorized representative of the Town at the expense of the property owner.
- (9) Water meters shall be maintained by the Town and shall be tested and repaired as necessary.
- (10) Property owners shall be responsible for the cost of the cut and backfill from the water tap to the shut-off valve, the cost and installation of the meter pit and all materials from shut-off to the improvement on the property and all necessary repairs and maintenance from the shut-off valve to the improvement on the property.

- (11) The Town may remove any meter for routine tests, repairs and replacement. Meter tests shall be subject to the following:
- (a) Each water meter shall be tested either by the Town or the manufacturer and shall be found to be in good working condition and properly adjusted before installation. If the test is made by the manufacturer, a report of such test result shall be furnished to the Town prior to the installation.
  - (b) Whenever, upon test by the Town, a water meter is found to have an accuracy within the acceptable American Water Works Association ("AWWA") standards, such meter shall be considered to be accurate and correct and no adjustment shall be made in any charge or bill for service prior to the date of such test. If, upon test by the Town, a water meter is found to have an average error in excess of the AWWA standards, such meter shall be corrected or replaced, at the option of the Town, and an appropriate correction or charge in keeping with the percentage error found upon testing shall be made to the charges for water service measured through said meter during a period of not more than one hundred eighty (180) days prior to the date of such test.
  - (c) The customer shall have the right to request a special water meter test at any time. If the special test discloses that the water meter is registering correctly within the AWWA standards, the customer shall pay the water meter testing fee set forth in the Town Fee Schedule.
- (12) It shall be unlawful for any person to tamper or interfere with any water meter or meter seal or to arrange a water service or piping wherein the use of water will not actuate the meter. The Town may discontinue water service immediately to any user who violates the provisions of this Section until satisfactory payment has been made for all water used and all repairs to the water meter and piping have been made.

#### **Sec. 13-73. Water tap and raw water development fee**

- (1) Water tap fee. Any person desiring to use water from the Town's water system shall obtain and pay for a water tap fee in the amount set forth on the Town Fee Schedule. The water tap fee shall be based on the water meter size. Because water use for larger meters varies widely depending on the type of customer, water tap fees for meters ranging from four (4) inches to eight (8) inches shall be determined by the Town on a case-by-case basis.
- (2) Raw water development fee. A raw water development fee shall be assessed for all new water taps. The raw water development fee shall be used for the purpose of funding raw water development projects in the Town. The raw water development fee shall be in the amount set forth on the Town Fee Schedule. The raw water development fee shall be based on the water meter size.
- (3) Payment due. Water tap fees and raw water development fees shall be paid at the time of building permit issuance. Said fees shall be in addition to all other charges and to the required dedication of raw water as set forth in this Code.

#### **Sec. 13-74. Maintenance.**

- (1) Every person taking water through the water system of the Town shall permit the Town, at all reasonable hours of the day, to enter his or her property for the purpose of inspection, observation, measurement, sampling, testing, maintenance and upgrading of the Town's water system. Unreasonable delays in allowing the Town access to the property shall be considered a violation of this Article. The Town may terminate water service to any property for the failure to allow access.

- (2) Unless maintenance and repair are necessary due to the acts of the customer, maintenance of the meter shall be the responsibility of the Town. If the maintenance or repair is due to the acts of the customer, the Town shall bill the cost of the maintenance or repair to the customer.
- (3) The Town shall be responsible for maintenance of the water line services as follows:
  - a. If a curb stop exists, the Town shall be responsible from the curb stop back to the water main and for the water meter only.
  - b. If no curb stop exists and the meter is in the right-of-way, the Town shall be responsible from the property side of the water meter to the water main.
  - c. If no curb stop exists and the meter is inside the house, the Town shall be responsible for the water service in the right-of-way back to the water main.

#### **Sec. 13-75. Meter obstruction.**

Persons owning or possessing property on which a water meter is located shall provide at least three feet of unobstructed access to the meter pit and at least five feet of vertical clearance above the meter pit. Failure to provide adequate access to the water meter shall result in an obstructed meter charge in the amount set forth in the Town Fee Schedule until the obstruction is cleared. Water meters shall be deemed to be obstructed for, among other reasons, locked gates preventing entry or animals threatening or intimidating authorized personnel from accessing the meter.

#### **Sec. 13-76. Disconnection of service unrelated to delinquency.**

- (1) Voluntary disconnection
  - (a) Persons may periodically desire to temporarily turn off water service.
  - (b) Voluntary disconnects and reconnects of existing water service shall be made only under the following specific conditions:
    - (i) Water service charges are paid in full and not delinquent;
    - (ii) The monthly service charge shall be paid during the period of disconnection; and
    - (iii) Disconnection and reconnection shall be made only by those persons approved and authorized for such work by the Town.
- (2) Involuntary disconnection
  - (a) Where water service is temporarily discontinued for pipeline repairs or related matters, the Town shall not impose a disconnect or reconnect fee.
- (3) Abandonment of water service.
  - (a) A water connection to the Town water system shall be considered to be abandoned, upon ten (10) days' written notice to the owner and the failure to cure, under either of the following conditions:
    - (i) Water service has been discontinued for nonpayment of water service charges and said delinquency has not been rectified within three (3) months of the discontinuance of water service; or
    - (ii) Water service was voluntarily disconnected as set forth above and the minimum monthly service charge has not been paid for a continuous twelve (12) month period.
  - (b) If service is determined to be abandoned, abandonment shall be made at the water main with a repair clamp and the water meter removed at the cost of the property owner.
  - (c) Prior to reconnection of abandoned water, the person seeking water service shall pay, among other potential charges, all delinquent fees and costs to reactivate the water service or a new water tap fee.

**Sec. 13-77. Water service charges.**

- (1) Water service charges are hereby levied and assessed for water service at the rates as set forth in the Town Fee Schedule. Water service charges for properties located outside the corporate limits of the Town shall be one and one-half times the rates charged for properties within the Town.
- (2) Except as provided below, the fees for water service shall include a charge based on the size of the water meter and a charge based on the amount of water taken through the water meter.
- (3) For structures with a common meter serving multiple dwelling units, the fees for water service shall include on a charge based on the number of dwelling units served by the common meter and a charge based on the amount of water taken through the water meter.
- (4) Water users outside the corporate limits of the Town shall be on individual meters.
- (5) Water meters shall be read once per month and water users shall be billed monthly. If any meter shall fail to register in any billing period, the water user shall be charged according to the average quantity of water used during a similar period.
- (6) Water service rates for non-potable only service to green belt areas, parks, and dual systems shall be charged in the amount set forth in the Town Fee Schedule.

**Sec. 13-78. Bulk potable water for construction.**

- (1) For purposes of this section, *construction hydrant meter* means a Town-authorized temporary metering device placed upon a fire hydrant or other Town water supply source by which a construction contractor may obtain water to be used during construction.
- (2) A cash deposit based on the cost of repairing or replacing a construction hydrant meter, in the amount determined by the Town, shall be required for each meter to assure its return in good working order.
- (3) Bulk potable water for construction purposes within the Town may be obtained from a construction hydrant meter authorized by the Town. Bulk water service shall be metered.
- (4) The water delivered through the construction hydrant meter shall be billed to the contractor on a monthly basis in the amount set forth in the Town Fee Schedule.

**Sec. 13-79. Damage to property and equipment of water system.**

No person shall in any way damage any property, equipment, or appliance, constituting part of the water system.

**Sec. 13-80. Trespass, interference with water system prohibited.**

No person shall trespass upon the property of the water utility, tap any water mains, make any connections therewith, in any manner interfere with the water system or the property, equipment, mains, valves, or any other appliances of the water system, change or alter the position of any valve or appliances of the water system, or change or alter the position of any valve or appliance regulating the flow of water in any water utility main, unless authorized to do so in writing by the Town Manager.

**Sec. 13-81. Authority to turn on water.**

No person other than a duly authorized employee of the Town shall open or turn on any Town water valve or curb stop regulating the flow of water from the Town mains to any premises, lot, building or house for any reason.

**Sec. 13-82. Pollution of the water system prohibited.**

No person shall deposit in any part of the water system any substance or material that will in any manner injure or obstruct the water system or any material or substance that would tend to contaminate or pollute the water or obstruct the flow of water.

**Sec 13-83. Control, repair, and tests of fire hydrants.**

All fire hydrants connected to a Town owned water main are part of and shall be maintained by the Town. The installation, maintenance, testing and repairs of all fire hydrants, stand pipes, and fire sprinklers on private waterlines or watermains are the responsibility of the property owner.

**Sec. 13-84. Operation of fire hydrants.**

No person, other than authorized Town or fire department personnel, shall open or operate any fire hydrant, standpipe or fire sprinkler system on public property without written authorization from the Town.

**Sec. 13-85. Interruption of service by utility.**

Town water may at any time be shut off from the street main due to emergencies or for the purpose of making any connections or extensions of the water mains or to perform any other work necessary to repair and maintain the water system. Notice will be given whenever reasonably possible. The Town is not liable for any damages that may occur directly or indirectly on account of the Town water being cut off for any purpose.

**Secs. 13-86 —13-110. - Reserved.**

**ARTICLE IV - Water Rights Dedication**

Sec. 13-111. Title.

Sec. 13-112. Intent and purpose.

Sec. 13-113. Definitions.

Sec. 13-114. Water rights dedication requirement.

Sec. 13-115. Cash in lieu of water dedication.

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Sec. 13-118. Dedication of water rights for park, open space or recreation uses.

Sec. 13-119. Little Thompson Water District.

Sec. 13-120. Annexations.

Sec. 13-121. Procedure.

Sec. 13-122. Water court transfer fee.

Sec. 13-123. Yield by water type and decree

Sec. 13-124. Lease back.

Sec. 13-125. Return flows and augmentation, exchange, or reuse plans.

Sec. 13-126. – 13-129. Reserved.

**Sec. 13-111. Title.**

The ordinance codified in this Article shall be known and may be cited as the Town Water Rights Dedication Ordinance.

**Sec. 13-112. Intent and purpose.**

It is the intent and purpose of this Article to require the dedication of water rights to the Town sufficient to satisfy any new or additional demand for Town water service resulting from the extension of water service, annexation of land to the Town or any change in land use, within or outside the limits of the Town, which will require new or additional water supply from the Town, and thereby to assure an adequate and stable supply of water to all Town water users, to ensure the financial stability of the Town water utility and to promote the general welfare of the public.

**Sec. 13-113. Definitions.**

As used in this Article, unless the context otherwise requires,

*Annexation* means the act of attaching, adding, joining or uniting a parcel of land to the legal entity known as the Town of Johnstown.

*Applicant* means any individual, partnership, association, organization or corporation requesting water service from the municipal water system of the Town.

*Appurtenant* means belonging to, accessory or incident to, adjunct, appended, annexed to or used in conjunction with.

*Change in land use* shall include expansion of an existing use.

*Consumptive use* means the amount of water consumed and which does not return to the stream system after use.

*Conveyance of water rights* means the process by which legal title to water rights is transferred by appropriate deed, stock assignment, allotment contract or other record transfer.

*Dedicate or dedication* means to appropriate an interest in land or water rights to some public use, made by the owner, and accepted for such use by or on behalf of the public.

*Extension of water service* means any extension of the Town water service for which a tapping charge is assessed or any increase in Town water service resulting from a change in use of property, an increased use of property or an increase in irrigated area.

*Historical use affidavit* means a notarized written statement on a form approved by the Town, which sets forth, among any other information that may be requested by the Town, the following information concerning each water right proposed for dedication to the Town:

- (1) The name and address of the owner;
- (2) The amount of each water right or the number of shares of stock;

- (3) If the water right is used for irrigation, the number of acres presently being irrigated and a legal description and/or map of the acreage irrigated;
- (4) A copy of the stock certificate in any ditch or reservoir company which furnishes water and, unless this requirement is waived by the Town, all decrees or judgments determining or adjudicating each water right proposed for dedication to the Town and any other water rights appurtenant to the property;
- (5) A copy of the document by which the present owner of each water right received title to the water right proposed for dedication to the Town and any other water rights appurtenant to the property;
- (6) A copy of all diversion records for each water right proposed for dedication or transfer to the Town, unless this requirement is waived by the Town; and
- (7) A description of the historical use of the water right, including the amount and time of diversions and, if the use was irrigation, the type of irrigation, the number of acres irrigated, the crops grown and a description of any other water rights used on the land irrigated.

*Lease* means any grant for permissive use which results in the creation of a landlord-tenant relationship.

*Owner* means the property owner, annexor or developer, as the case may be and the context indicates, and shall include any part owner, joint owner, tenant in common or joint tenant.

*Raw water credit* means the number of SFE's for which dedication credit is provided by the Town for the dedication of a particular acceptable water right to the Town.

*Single family equivalent unit (SFE)* means a number related to the volume of water necessary to meet the demand and consumptive use requirements of an average dwelling unit housing not more than three and one-half (3.5) persons and having not more than three thousand (3,000) square feet of irrigated area. The SFE unit value assigned to such average dwelling unit is one (1.0). The SFE unit value assigned to any particular dwelling unit may be greater than, equal to or less than one (1.0). The SFE unit value assigned to other uses shall be based on the Town's estimated volume of water demanded and consumed by such uses as compared to the volume of water demanded and consumed by such average dwelling unit.

*Sufficient priority* means that a water right has a date as of which it is entitled to use water in relation to other water rights deriving their supply from the same source which is sufficiently senior that it may reasonably be expected to provide a dependable water supply for the requirements of this Article. Factors to be considered in making this determination shall include, but not by way of limitation, the appropriation date and adjudication date of the water right, the decreed use, the historical use of the water right, the physical flow available and the administrative practices of the office of the State Engineer.

*Town water service or water service* means treated water service or raw water service furnished by the Town for any purpose, including but not limited to domestic, commercial, and industrial uses.

*Transfer, dedicate, or dedication of water rights* means the conveyance of legal title to water rights to the Town.

*Water court transfer fee* means the estimated cost per SFE of court filing fees, publication fees, professional fees and other reasonable and customary costs associated with required proceedings in the water court for the Town to make full and lawful use of water rights dedicated to or acquired by the Town for use in its municipal water system, the amount of which is set forth in the Town Fee Schedule.

*Water credit* means the number of acre-feet, or the number of SFEs, for which dedication credit is provided by the Town for the dedication of a particular acceptable water right to the Town.

*Water right* means a decreed right to use in accordance with its priority a certain portion of the waters of the State by reason of the appropriation of the same. It shall include both direct-flow and storage rights.

**Sec. 13-114. Water rights dedication requirement.**

(1) Any person who seeks approval of any of the following:

- (1) an extension of water service;
- (2) annexation of land to the Town; or
- (3) any change in land use, within or outside the limits of the Town, if such change in land use will increase the demand for Town water service,

shall dedicate surface water rights to the Town of an amount and priority to produce, after dedication of such water rights to the Town and completion of any necessary water court transfer proceedings, a sufficiently reliable source of water acceptable to the Town to supply at least the amount of water needed to supply the additional deliverable and fully consumable water per year for each SFE, which water will be available for diversion at such point or points of diversion as the Town may designate for use and consumption by the Town for municipal purposes.

- (2) If wastewater from in-house or in-building uses will not be treated by the Town's municipal wastewater treatment facilities or other wastewater treatment facilities of equal efficiency and which provide similar return flow patterns, the Town shall increase the dedication requirement so that, after dedication of such water rights to the Town, the water rights to be dedicated will produce an amount of deliverable and fully consumable water per year for each SFE that is sufficient to ensure an adequate supply of water to satisfy the proposed use or uses.
- (3) Any person required to dedicate water rights to the Town shall designate, on forms to be prescribed by the Town, all water rights proposed to be dedicated to the Town with proof of ownership or otherwise show the legal ability to dedicate the water rights, and shall provide a legal description of the land for which the extension of water service is requested or for which approval of annexation or a change in land use is sought; and, in addition, shall specify the proposed use or uses for which Town water service is requested and the number of SFE units required for such use or uses. The form shall be accompanied by a historical use affidavit, except that, if the total number of SFE units is greater than thirty (30) SFE units, the Town may, in its discretion, require, in addition to the historical use affidavit, an engineering report prepared at said person's expense by an engineer experienced in water rights matters to analyze the historical use of the water rights proposed for dedication to the Town.
- (4) Upon receipt of the foregoing, the Town, in its sole discretion, shall determine whether the water rights are acceptable to the Town and whether the water rights are sufficient to satisfy the requirements of Article. In making such determination, the Town shall consult with persons knowledgeable in water rights matters.
- (5) The water dedication requirement shall be satisfied by the person seeking approval of the extension of water service, annexation or a change in land use, regardless of whether that person will be the ultimate user of the Town water service.
- (6) All costs and expenses to dedicate water rights to the Town to satisfy the water dedication requirements contained in this Article shall be paid by the person required to dedicate such water rights. Costs and expenses necessary to change dedicated water rights so they can be diverted and used by the Town for municipal use shall be paid by the person required to dedicate water

rights to the Town in the form of payment of a water court transfer fee or as otherwise required by the Town. Payment of the water court transfer shall not create an ownership interest in the dedicated water.

- (7) Prior to commencing a project that requires water or sewer service, the owner shall be required to enter into a water and sewer service agreement with the Town.

#### **Sec. 13-115. Cash in lieu of water dedication.**

Town Council may, in its discretion, accept cash-in-lieu of the required water dedication. If cash-in-lieu is approved, the rate shall be based on a per SFE standard and shall at a minimum be equal to the fair market value of water rights required to satisfy the water dedication requirement provided in this Article, determined as of the date of actual cash-in-lieu payment.

#### **Sec. 13-116. Water dedication rate.**

- (1) Unless otherwise approved or required by the Town, in its discretion, the required water dedication for the uses set forth below, which are based on the anticipated annual water usage and account for treatment system losses, distribution system losses, contractual assessments and drought protection, shall be as follows:
  - (a) A single-family detached dwelling unit shall require the dedication of 0.33 acre-feet of water for indoor use.
  - (b) A single-family attached, townhome, or multifamily dwelling unit shall require the dedication of 0.29 acre-feet of water for indoor use.
  - (c) The dedication requirements for zoning districts and land use types other than those listed above shall be determined by the Town on a case-by-case basis based on proposed uses.
  - (d) Irrigation of dwelling unit lots consisting of less than or equal to 3,000 square feet that do not contain a non-potable system shall require the dedication of 0.17 acre-feet of water for outdoor use.
  - (e) Spray irrigation for seed and sod shall require the dedication of 2.5 acre-feet of water per irrigated acre.
  - (f) Drip irrigation shall require the dedication of 1.5 acre-feet of water per irrigated acre.
  - (g) Xeriscape irrigation shall require 1.0 acre-feet of water dedication per irrigated acre
- (2) For clarity, a single-family equivalent without a separate non-potable irrigation system shall require the dedication of 0.50 acre-feet of water per residence for a landscaped lot consisting of less than or equal to 3,000 square feet, unless otherwise approved by the Town. The 0.50 acre-feet per residence consists of 0.33 acre-feet of water for in-home consumptive use and 0.17 acre-feet of water for irrigation. This shall be the basis for a single-family equivalent (SFE).

#### **Sec. 13-117. Water and sewer demand analysis.**

- (1) The applicant shall include with any annexation petition, subdivision, development plan submittal, or the request for extension of water service, a written analysis sufficient to allow the Town to fully evaluate the probable water demand and consumption and the sewer service requirements for the property to be developed, based on the specific development plan proposed. The analysis shall include the entire property and shall specify the use of all land in the property. Water demands and consumption shall be estimated separately for each use category (e.g. single-family residential, multifamily residential, commercial, office, industrial, parks or others), and irrigation demands and consumptive use shall be set forth separately for each use category which is applicable to the property.

- (2) Subject to Town approval, the applicant may use historical water service(s) from similar projects based on their use and size for both consumptive and irrigation use in preparing the water and sewer demand analysis.
- (3) In lieu of the analysis described above, the Town may elect to provide its own water and sewer demand analysis if the Town has sufficient information and experience with other similar developments to adequately evaluate the probable water demands and consumption and the sewer service requirements for the property.

**Sec. 13-118. Dedication of water rights for park, open space or recreation uses.**

- (1) If land is dedicated to the Town for park, open space or recreation uses, the owner shall also dedicate water rights sufficient to irrigate said land, as provided in this Article.
- (2) Where the Town enters into an agreement to accept cash-in-lieu of in-kind land dedication for parks, open space or recreation uses, and the Town is unable to specifically determine the irrigation demand for the public project for which the cash is contributed, the amount of water rights dedication, or cash-in-lieu of water rights dedication, in the Town Council's discretion, required to meet the water dedication requirements shall be equal to the amount required to irrigate eighty percent (80%) of the land area which otherwise would have been required for in-kind land dedication by the Code or the Town.

**Sec. 13-119. Little Thompson Water District.**

If a property is served by the Little Thompson Water District or the Town determines that all or part of a property would be better served by the Little Thompson Water District, either temporarily or permanently, and the Little Thompson Water District is willing to provide water service, Town Council may permit such property to receive water service from the Little Thompson Water District upon such terms and conditions set forth in an agreement between the Town and the owner.

**Sec. 13-120. Annexations.**

- (1) At the time of annexation, the annexor shall identify all water rights appurtenant to the property to be annexed and shall not, after the filing of the petition for annexation, transfer, assign or sell any such appurtenant water rights without the written consent of the Town.
- (2) Unless otherwise agreed by the Town, at the time of annexation, the annexor shall dedicate to the Town all water rights appurtenant to the property to be annexed. The Town may, in its discretion, permit the annexor to defer dedication of the water rights until a subsequent date, consistent with the provisions of this Article. The Town may also, in its discretion, permit the annexor to dedicate water rights that are not appurtenant to the property, in addition to or in lieu of, water rights that are appurtenant to the property.

**Sec. 13-121. Procedure.**

- (1) Unless otherwise agreed by the Town, no extension of water or sewer service, including any new or additional service, shall be furnished by the Town until adequate water in a sufficient amount to provide the services is dedicated to the Town and there has been full compliance with the provisions of this Article.
- (2) The Town shall evaluate any water rights offered to the Town for dedication. The Town shall determine whether said water rights are to be accepted based upon the following criteria: priority date, historical point of diversion, location of historical use, historical yield, historical

consumptive use, the contribution to historical consumptive use of other water rights or sources of water supply, future use of the land historically irrigated, including future irrigation, considerations with respect to title, anticipated difficulties with transferring the water rights to appropriate points of diversion, places of storage and municipal uses, the Town's contractual obligations and arrangements, expected needs of the Town and of the Town's municipal water supply system, composition of the Town's water rights portfolio at the time of the proposed annexation, and any other appropriate factors.

- (3) The Town reserves the right, in its discretion, to accept, reject or accept in part any water rights proposed for dedication to the Town. If the Town determines that the water rights proposed for dedication to the Town are unacceptable to the Town, or insufficient to comply with the dedication requirements, the Town may, in its discretion, determine whether the Town will accept cash-in-lieu of dedication to satisfy all or part of the dedication requirement.
- (4) Unless otherwise permitted by the Town based on extraordinary circumstances, no final plat or development plan for residential uses shall be approved by the Town unless sufficient water rights dedications and/or cash-in-lieu payments have been accepted by the Town to provide sufficient water supply for the demands projected for all proposed uses within the platted area. Non-residential subdivisions may be approved prior to full water rights dedication, however no building permits shall be issued prior to completing all necessary analysis, acceptance, and dedication of water rights as set forth in this Article to meet the water demands of said use.
- (5) A change in land use or expansion of an existing use may, in the Town's determination, require updated water demand information and the dedication of additional water, in accordance with this Article.
- (6) The Town reserves the right to review actual water usage at a point in time after water usage has been established to confirm the adequacy of the water demand projections and executed water and sewer service agreement, and to require additional water rights dedication and/or cash-in-lieu payments based on actual water usage. If additional water rights are not dedicated in a timely manner, as required by the Town, the Town may, in its discretion, disconnect water service to the subject property. (Prior contractual water and sewer service agreement references to "Section 13-68(h) of the Ordinance" shall be deemed to mean and include this subsection.)
- (7) All costs and expenses related to the dedication of water rights to the Town shall be borne by the person required to dedicate the water rights to the Town pursuant to this Article.
- (8) Any decision or recommendation made by the Town Manager or other Town agent or designee under any delegation of authority or responsibility contained in this Article or otherwise relating to water rights dedication shall be submitted to the Town Council for determination or ratification, as the case may be. No such decision or recommendation shall be of any force or effect until finally determined or ratified by the Town Council.
- (9) In the event the water rights offered to the Town for dedication provide raw water credits in excess of those required by this Article, the Town may, in its discretion, purchase the surplus water upon terms that are agreeable to the owner.
- (10) The Town shall not require that groundwater wells or their appurtenant water rights be offered to the Town for dedication or purchase, nor shall the Town provide any raw water credits for such structures or water rights.
- (11) All determinations provided for herein shall be made by the Town in the exercise of its reasonable judgment.
- (12) All dedications of water rights to the Town hereunder shall be effected by delivering to the Town sufficient warranty deeds, stock certificates with appropriate stock assignments, written approval of the transfer of allotment contracts or by other acceptable means, as is appropriate to the

particular transaction. All title documents shall be subject to approval by the Town. No water rights dedication shall be considered completed until the Town has accepted sufficient documents transferring title to the Town.

**Sec. 13-122. Water court transfer fee.**

Water court transfer fees, calculated on a per SFE basis and based upon whether water has been decreed for municipal use, are hereby assessed. Water court transfer fees shall be paid in the amount set forth on the Town Fee Schedule and, unless otherwise agreed by the Town, at the earlier of the time of approval of a final plat, execution of a water and sewer service agreement or the extension of water service.

**Sec. 13-123. Yield by water type and decree**

- (1) Based on the provisions of this Article, the Town shall evaluate any water rights offered to the Town for dedication. If the following water rights are accepted by the Town and are decreed for municipal use in the Town, the following raw water credits shall be provided:

<b>Water Rights</b>	<b>Raw Water Credits (Acre Feet Yield)</b>
Consolidated Home Supply Ditch & Reservoir Company	16 SFEs per share (8 Acre Feet Yield)
Colorado Big Thompson Project Units (CBT)	0.7 SFE per unit (0.35 Acre Feet Yield)

If the following water rights are accepted by the Town and are not decreed for municipal use in the Town, the following raw water credits shall be provided:

<b>Water Rights</b>	<b>Raw Water Credits (Acre Feet Yield)</b>
Consolidated Home Supply Ditch & Reservoir Company	12.8 SFEs per share (6.4 Acre Feet Yield)
Colorado Big Thompson Project Units (CBT)	0.7 SFE per unit (0.35 Acre Feet Yield)

- (2) For water rights acceptable to the Town for dedication that are not set forth in the table above, the Town, in its discretion, shall determine the raw water credit.

**Sec. 13-124. Lease back.**

If the owner of property to be annexed, subdivided or otherwise subsequently developed desires to retain land, or any portion thereof, in agricultural production or as open space prior to development, the owner may, pursuant to written agreement with the Town, lease back, on an annual basis and for irrigation, aesthetic and recreational purposes only, all or part of the water rights dedicated to the Town pursuant to this Article. Unless otherwise agreed by the Town, the terms of any such leases shall be at fair market value, as determined by the Town, and on such other terms and conditions as required by the Town. The owner shall pay, at a minimum, all assessments due and owing on the water. Said leases shall provide that, in the event any portion of the land for which the water is leased is platted during the term of the lease, the Town may cancel the lease, in whole or in part, to the extent a portion of the leased water is determined by the Town to be necessary for water service to the property so platted.

**Sec. 13-125. Return flows and augmentation, exchange, or reuse plans.**

The Town shall have dominion and control of all water supplied through its water system, subject to reasonable use thereof by its water users in compliance with applicable agreements, leases, licenses and the Code. Such dominion and control shall continue without interruption as to all wastewater, return flows, runoff, sewage, or tail water attributable to or originating in water supplied through Town-owned or controlled water rights or facilities. Except as otherwise agreed by the Town in writing, the Town shall have the exclusive right to recapture such return flows or claim credit therefrom for reuse, successive use, exchange, replacement, augmentation, substitute supply or any other lawful purposes, and the Town's dominion and control over water shall continue to attach to all such return flows, regardless of form, even after they return to the groundwater aquifers or the surface stream systems. All return flows from water supplied through Town-owned or controlled water rights or facilities remain the property of the Town.

**Secs. 13-126—13-129. - Reserved.**

## **ARTICLE V - Infrastructure Reimbursement**

Sec. 13-130. Water and sewer line reimbursements and regional storm water infrastructure; purpose.

Sec. 13-131. Conditions invoking eligibility for reimbursement.

Sec. 13-132. Time period for reimbursement.

Sec. 13-133. Computation of recoverable reimbursement; reimbursement agreement; interest.

Sec. 13-134. Payment by benefited properties.

Sec. 13-135. Upsizing or capacity upgrades by the Town.

Secs. 13-136.—13-150. - Reserved.

### **Sec. 13-130. Water and sewer line reimbursements and regional storm water infrastructure; purpose.**

It is the intention of the Town Council in providing a reimbursement procedure under this Article to provide an appropriate incentive for developers of private property to pay for the construction of water and sewer mains and regional stormwater facility infrastructure to connect their property with existing utilities by providing a process whereby a developer may recoup a portion of the initial construction cost of such infrastructure from benefitted offsite properties. The Town Council also recognizes that it is necessary for a developer to timely apply to the Town for reimbursement and further that there shall be a limitation on the period of time, expressed in years, whereby a developer may recoup the cost.

### **Sec. 13-131. Conditions invoking eligibility for reimbursement.**

Developers who construct off-premises water or sewer mains or regional storm water improvements that benefit other properties may, in the Town's discretion, be entitled to reimbursement from persons desiring to connect to the off-premises mains or are in the drainage area of the storm water improvements if all of the following circumstances exist:

- (1) The developer constructs the off-premises water or sewer main or regional storm water improvements in accordance with Town specifications and requirements with prior approval by the Town;

- (2) The developer provides the Town with the final certified costs of the improvements and satisfactory evidence that all such costs, including engineering, construction and other costs in connection with the project, were paid in full;
- (3) The developer provides the Town with completed bid forms containing the description, estimated quantity and unit price for each item included in the project from at least three (3) qualified contractors, unless the Town otherwise agrees, with an indication of which contractor was awarded the project;
- (4) The developer provides the Town with a map of the improvements for which the developer is seeking reimbursement, including the following:
  - (a) The location of the improvements;
  - (b) The name of the owner of each property specially benefitted by the improvement; and
  - (c) The legal description of each property benefitted by the improvement;
- (5) The Town is notified of the completion of the construction within three months of the completion and is provided documentation evidencing the date of such completion.
- (6) Prior to completion of the construction, the developer provided notice of the opportunity to participate in the cost of the construction to all owners of benefitted properties, or their predecessors in interest, against whom reimbursement may be assessed and provides proof of such notice to the Town;
- (7) The off-site benefitted property to be served by the improvements was owned at the time of construction by a person who did not participate in the cost of construction; and
- (8) The person against whom the reimbursement is to be assessed requests approval for water or sewer line extensions or services which connect to the off-premises water or sewer main either directly or indirectly or are in the drainage area of the regional storm water improvements during the time period in which the developer is eligible for reimbursement.

**Sec. 13-132. Time period for reimbursement.**

If the developer is eligible for reimbursement, the developer must obtain approval for such reimbursement from the Town Council. If approved, the developer shall be entitled to reimbursement for a ten-year period following completion of the construction. The ten-year period may be renewed, in Town Council's discretion, for a maximum of two additional five-year periods by action of the Town Council upon written request of the person who paid for such initial construction, or their successor in interest, if the request is made prior to the lapse of the initial ten-year or first five-year renewal period.

**Sec. 13-133. Computation of recoverable reimbursement; reimbursement agreement; interest.**

- (1) If all conditions are met, the Town shall proportionally allocate the eligible costs of the construction to the land area on a frontage, flow capacity, drainage area, acreage or other equitable basis. The developer seeking reimbursement shall submit a proposed formula for allocation of the costs to the Town. The allocation shall be calculated on a gross acreage if allocated on a drainage area basis, and shall include all rights-of-way, stormwater facilities, parks and other private land which may be dedicated to public purposes within each tract. For sewer, the allocations and reimbursement shall be limited to a total depth over diameter capacity of the sewer main at fifty 50%. In each case, the reimbursement will be computed by prorating the construction cost, without any additional charges other than interest, against the property served by the off-premises main.
- (2) The Town may, in its discretion, at the expense of the developer, retain a third party to confirm the reasonableness of the developer's costs of construction.

- (3) After analysis of the foregoing, the Town may set forth the reimbursement recoverable from each benefitted property in the reimbursement agreement.
- (4) An interest component may be added to the amount that is subject to reimbursement, but shall apply to the first ten-year period only, and not to renewal periods. The interest shall be equal to that of ten-year U.S. treasury bills on the date of the completion of construction.

**Sec. 13-134. Payment by benefitted properties.**

- (1) The reimbursement contemplated herein shall be paid by the owner or developer of benefitted properties prior to the approval of plans for construction of additional extensions or when service taps are requested, whichever comes first.
- (2) The Town shall not be obligated or liable financially or otherwise for any portion of the reimbursement or for the failure of an owner or developer to pay the reimbursement.
- (3) If the Town collects the reimbursement on behalf of the developer, the Town shall retain an administrative service charge of three percent (3%) of the funds collected.

**Sec. 13-135. Upsizing or capacity upgrades by the Town.**

The Town may require a developer to construct utility infrastructure as part of the developer's planned improvements for which a reimbursement agreement may apply pursuant to this Article. The Town, in its discretion, may elect to participate in utility upsizing or capacity upgrades. If the Town participates, the Town shall be responsible for the difference in material costs only to upsize the applicable utility and the reimbursements available to the developer shall be limited to the original construction planned, not to the upsizing or capacity upgrade paid for by the Town.

**Secs. 13-136.—13-149. - Reserved.**

**ARTICLE VI - Water Conservation**

Sec. 13-150. General.

Sec. 13-151. Levels of drought condition.

Sec. 13-152. Water waste.

Sec. 13-153. Drought surcharge.

Sec. 13-154. Penalty for violation.

Sec. 13-155 – 13-169. Reserved.

**Sec. 13-150. General.**

The Town is considered a semi-arid climate receiving just over 13" of rain annually. It is with this focus that the Town encourages water wise applications to conserve our valuable water resources.

**Sec. 13-151. Levels of drought condition.**

- (1) There shall be three (3) separate levels of drought conditions as detailed below. The Town Council's decision to determine a restriction level shall be based upon the following criteria:

- (a) Water delivery limitations placed on the Town by its raw water providers;
  - (b) Snow pack and reservoir level;
  - (c) Available water supplies in general;
  - (d) Peak water demand usage which may impact the ability of the Town to provide adequate and water supply and fire flows to the water distribution system; and
  - (e) Any other relevant factor that affects the Town's available water supply.
- (2) Level 1 shall be a normal year, with standard conservation practices in effect, and shall be in effect without further action by the Town Council. Under Level 1 conditions, the following provisions shall apply:
- (a) It shall be unlawful for any consumer or other person, or for the owner of any property to cause, permit, suffer, or allow any person to irrigate, sprinkle, or otherwise apply water from the Town's water system to any outdoor vegetation, including, but not limited to, lawns and gardens, between the hours of 10:00 a.m., and 6:00 p.m. Therefore, watering may occur from midnight to 10:00 a.m. and then from 6:00 p.m. to midnight.
  - (b) The foregoing restriction shall not apply to:
    - (i) Irrigation of land used for commercial agriculture;
    - (ii) Watering by hand of any outdoor vegetation using a manually operated hose equipped with an automatic shut-off valve;
    - (iii) Watering by hand of any community gardens using a manually operated hose equipped with an automatic shut-off valve;
    - (iv) Irrigation of, short grass on city-owned or operated golf courses and city owned athletic fields; or
    - (v) Irrigation of land using non-potable water sources which do not directly apply water from the treated municipal water utility system.
- (3) Level 2 shall be a moderate drought year limiting outdoor irrigation as hereinafter provided and shall become effective as provided by resolution adopted by the Town Council. Under Level 2 conditions, no person or property owner shall utilize water from Town's water system for the purpose of spray irrigation or hand-watering of lawns, gardens or other landscapes unless such usage complies with all of the following restrictions:
- (a) Spray irrigation and hand-watering shall occur only on the homeowner's appropriate watering day and only between the hours of 6:00 p.m. and 10:00 a.m. Therefore, on the homeowner's appropriate watering day, watering may occur from midnight to 10:00 a.m. and then from 6:00 p.m. to midnight;
  - (b) Spray irrigation and hand-watering shall occur only on the designated property watering days to be indicated as either an even- or odd-numbered address. The last digit of the address of the property owner will determine the designated watering day. Even addresses may water on Sunday and Thursday. Odd addresses may water on Saturday and Wednesday;
  - (c) No person or property owner shall utilize water from the Town's water system for the purpose of washing sidewalks, driveways, patios or similar hardscapes;
  - (d) Vehicles may be washed only on a property owner's assigned watering days, but shall be washed with a bucket or a hose running with an automatic shut-off nozzle. If possible, persons are encouraged to park vehicles on their lawns while washing occurs, but such vehicles may be on the lawn only while they are being washed and shall be immediately removed from the lawn upon completion. Commercial vehicle washing facilities are exempt from this regulation;

- (e) There shall be no lawn watering from the date of October 15 through the date of April 15. Trees and shrubs may be watered on either a Saturday or Sunday in accordance with the Level 2 irrigation schedule;
  - (f) Watering of newly planted grass shall only occur subject to a permit issued by the Water Department. The cost of the permit shall be the amount set forth in the Town Fee Schedule; and
  - (g) Irrigation with well water may occur only subject to the premises being clearly posted with a notice visible from the street indicating that irrigation is with well water;
  - (h) Only non-potable water may be used for construction purposes;
  - (i) The Town may, by resolution, at such times where warranted, provide appropriate measures for watering large areas, such as open space and parks by schools and homeowners associations; and
  - (j) In addition to the restrictions set forth herein, Town Council may by resolution impose time restrictions on the use of municipal water for irrigation purposes.
- (4) Level 3 shall be severe drought conditions prohibiting lawn irrigation and shall become effective as provided by resolution adopted by the Town Council.

**Sec. 13-152. Water waste.**

- (1) No person or property owner shall cause, allow or permit any water waste.
- (2) Water waste is the intentional or negligent use of water which results in water being utilized in a wasteful or inefficient manner. Water waste includes, without limitation, the following:
  - (a) Water applied in any manner, rate or quantity such that runoff results from the landscaped area being watered and water runs onto public or private streets or into drainage or storm drainage facilities;
  - (b) Failure to repair or shut off within one (1) hour any irrigation system that is malfunctioning;
  - (c) Excessive use of water for any exempt activities set forth in this Article including, without limitation, vehicle washing and use of child-type swimming pools; or
  - (d) Excessive means more than the minimum reasonably necessary to accomplish the task.

**Sec. 13-153. Drought surcharge.**

The Town Council may establish by resolution a temporary drought surcharge for excessive water usage. Funds received from the surcharge shall be used solely for leasing or acquisition of water rights, the cost of enforcement of water restrictions and water department operation and maintenance. This shall be a temporary surcharge and may last no longer than a single irrigation season. These charges shall be in addition to the charges expressed for usage rates specified by this Chapter.

**Sec. 13-154. Penalty for violation.**

Prior to the issuance of a summons and complaint, any person alleged to have violated any provision of this Article shall first have received one written warning from the Town. Thereafter, any person alleged to have violated any of the provisions of this Article may be served a summons and complaint and be subject to the penalties set forth in Article IV of Chapter 1 of the Code.

**Secs. 13-155 to 13-169 Reserved.**

**ARTICLE VII - Storm Water Utility**

Sec. 13-170. Storm Water Utility Enterprise.

Sec. 13-171. Definitions.

Sec. 13-172. Storm water management plan.

Sec. 13-173. Storm water fees.

Sec. 13-174. Certain properties exempt from fees.

Sec. 13-175. - Administrative review; appeals process.

Sec. 13-176. Storm water facilities required for subdivisions.

Sec. 13-177. Title granted to Town and responsibility for accepted facilities.

Sec. 13-178. Town to maintain storm water facilities; exception.

Sec. 13-179. Disclaimer.

Secs. 13-180. - 13-199. - Reserved.

#### **Sec. 13-170. Storm Water Utility Enterprise.**

- (1) The Town Council recognizes the establishment of the Town's Storm Water Utility Enterprise and confirms the operation of the Storm Water Utility Enterprise as an "Enterprise" within the meaning of Section 20 of Article X of the State Constitution.
- (2) The Town Council recognizes that the creation and establishment of the Town's Storm Water Utility serves the purpose of providing storm water facilities for drainage and control of flood and surface waters within the Town, including areas to be subdivided and developed, is necessary in order that storm and surface waters may be properly drained, treated and controlled and to protect the health, safety and welfare of the Town and its inhabitants.
- (3) The Town Council designates itself as the governing body of the Storm Water Utility and shall exercise the Town's legal authority relating to the Storm Water Utility Enterprise, but shall not levy a tax.
- (4) The Town Council directs that funds of the Storm Water Utility Enterprise and funds of the Town may be commingled for purposes of investment so long as accurate records are kept of the amount of such funds allocable to the Enterprise and to the Town.
- (5) The Town Council ratifies, approves and confirms all action not inconsistent with the provisions of this Section heretofore taken by Town Council or by the officers and employees of the Town directed toward the operation of the Storm Water Utility Enterprise as an "Enterprise" under Section 20 of Article X of the State Constitution.

#### **Sec. 13-171. Definitions.**

*Best Management Practices (BMPs)* means methods that have been determined to be the most effective, practical means of preventing or reducing pollution from storm water runoff. These include schedules of activities, prohibitions of practices, maintenance procedures and other management practices. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or water disposal or drainage from raw material storage.

*Detention* means the collection and temporary storage of storm water in such a manner as to provide treatment through physical, chemical or biological processes, with subsequent gradual release of the storm water.

*Developed land* means land on which any part of its surface has been modified by the works of humans in such a way that the land's natural ability to absorb and hold precipitation has been reduced.

*Drainage basin* means the watershed area contributing storm water to the storm water system.

*Equivalent residential unit (ERU)* means the average impervious area of a residential lot.

*Impervious surface* means a surface that has been compacted or covered so that it is highly resistant to infiltration by water.

*Retention* means the prevention of, or to prevent the discharge of, a given volume of storm water runoff into surface waters by permanent storage.

*Storm water* means the flow of surface water that results from and occurs following a precipitation event or irrigation return flow.

*Storm water management* means all activities related to the administration, planning, master planning, financing, construction, operation and maintenance of the storm water system.

*Storm Water Management Plan* means a plan for receiving, handling and transporting storm water within the Town storm water system.

*Storm Water Utility* shall be operated as an enterprise following the accepted principles and procedures established by the Governmental Accounting Standards Board as a publicly held "Enterprise Fund."

*Storm water system* means all natural and manmade elements, facilities, structures, equipment and land that are used for or incidental to the conveyance, control, treatment or disposition of storm water.

*Storm water system development charges or storm water development charges* means charges that are a one-time payment that fund the expansion of public facilities needed to accommodate new development. The intent is for new development to pay for its proportional share of the capital costs for additional infrastructure capacity.

*Surface waters* means water naturally open to the atmosphere (rivers, lakes, reservoirs, ponds, streams, impoundments, seas, etc.) and all springs, wells or other collectors directly influenced by surface water.

### **Sec. 13-172. Storm water management plan.**

The Town Manager, or his or her designees, shall develop a Storm Water Management Plan for the Town based on sound engineering studies that indicate the location of all facilities in the Town, including those facilities that currently exist and those determined to be needed and that are intended to be constructed in the future. The Town Council may adopt the Plan by resolution. All substantial modifications or amendments shall also be made by resolution of the Town Council. The Plan shall guide the Storm Water Utility in the construction, operation and maintenance of the storm water system. The Town shall, in all ways and within the limits of its powers, solicit adjacent municipalities and counties to cooperate in providing storm water facilities in drainage basins, or parts thereof, extending outside the Town limits and in general to carry out the Plan. Maps showing all drainage basins and proposed

facilities may be furnished to the Larimer and Weld County Commissioners for their use in this matter as such maps are requested and become available and updated.

**Sec. 13-173. Storm water fees.**

- (1) Revenues. The Storm Water Utility must receive sufficient revenue to ensure proper operation and maintenance, development and perpetuation of the system and maintenance of the utility's financial integrity. Operation and maintenance expenses include the annual cost of salaries and wages, employee fringe benefits, power, other purchased utilities, repair materials and supplies, smaller items of equipment that do not extend the useful life of major facilities and general overhead. These costs represent the normal everyday costs of operation that should be covered by monthly service charges. Major capital improvements are typically funded through either debt financing cash reserves from storm water management utility fees or system development charges.
- (2) System development charges. As each parcel of land is developed or redeveloped and approved as to final plat, each gross acre of such filing shall be assessed a system development charge in the amount set forth in the Town Fee Schedule. These charges fund the expansion of public facilities needed to accommodate new growth.
- (3) Storm water management utility fee. There is hereby imposed on every property within the Town and upon the owners thereof a storm water management fee in the amount set forth in the Town Fee Schedule. Each single-family residential lot shall be equivalent to one (1) ERU. A schedule of ERUs applicable properties other than single-family residential properties shall be set by resolution in the Town Fee Schedule. This fee is deemed reasonable and is necessary to pay for the operation, maintenance and minor capital expenses associated with replacement and improvement of the Town storm water facilities and of such future storm water facilities as may be required and to pay for the design, right-of-way acquisition and construction or reconstruction of storm water facilities to the extent that such costs have been determined to be the responsibility of developed properties. The proceeds of this fee are deemed to be in payment for use of the Town's storm water system by the real property on which the fee is imposed and by the owners thereof.

**Sec. 13-174. Certain properties exempt from fees.**

The following land uses are exempt from storm water management utility fees:

- (1) Public park land;
- (2) Public or private ponds, lakes, reservoirs, rivers, creeks, natural water courses, wetlands or irrigation ditch/canal rights-of-way;
- (3) Public streets, highways, rights-of-way and alleys;
- (4) Railroad rights-of-way except railroad property not utilized for railroad purposes;
- (5) Cemeteries; and
- (6) Lands actively used for agriculture and larger than two (2) acres in size.

**Sec. 13-175. - Administrative review; appeals process.**

- (1) Petition. A person who disputes the amount of a storm water management utility fee may petition for a hearing. The petition shall be in writing, filed with the Town Clerk and contain facts in support of the position alleged therein. The petition shall be submitted under oath in writing or orally at the duly scheduled hearing. A person may only file one petition in connection with a

particular dispute, except upon a showing of changed circumstances sufficient to justify the filing of an additional petition.

- (2) Hearing. The Town Manager may hold a hearing on the petition or may designate another person as a hearing officer with authority to hold such hearing. The hearing shall be held within a reasonable time after the filing of a petition at the Town Hall or other place as designated by the hearing officer, and notice thereof and the proceedings shall otherwise be in accordance with the rules and regulations issued by the Town. The petitioner shall have the burden of proof.
- (3) Final order. Within fourteen (14) days of a hearing, the hearing officer shall make written findings of fact and conclusions based upon all relevant information contained in the petition and presented at the hearing. The hearing officer's determination shall be considered a final order, which may, within ten (10) days of its issuance, be appealed to the Town Council.
- (4) Appeal of the final order. An appeal to the Town Council shall be in writing and filed with the Town Clerk, setting forth the specific errors and omissions of the hearing officer in such hearing officer's final order. At the time of filing, appellant must pay the docket fee in the amount set forth in the Town Fee Schedule. Written notice of the hearing shall be given to all parties concerned at least (5) days prior to the hearing. The appellant shall have burden of proof on an appeal. The Town Council shall make its final determination and affirm, modify or reverse the final order.
- (5) Service. Service by certified mail, return receipt requested, shall be conclusive evidence of service for the purpose of this Article. Service may also be accomplished by electronic mail on the condition that the recipient acknowledges receipt of the electronic mail.

#### **Sec. 13-176. Storm water facilities required for subdivisions.**

Prior to the final approval of the plat of any subdivision or planned unit development ("PUD") plan, the owners of the property being subdivided shall, at such owners' cost, prepare detailed plans and specifications for the construction and installation of all storm water facilities and BMPs required for such subdivision, including the facilities required to convey storm water to existing drains, detention ponds or other existing discharge points, all in conformity with the Plan adopted by the Town. The Town shall review such plans and specifications and, after the Town acceptance of the same, the plat of the subdivision or PUD plan may be approved, subject to the Town being furnished with acceptable assurance that such facilities will be constructed and installed as indicated and approved.

#### **Sec. 13-177. Title granted to Town and responsibility for accepted facilities.**

Title granted to the Town for storm water structures and facilities, including but not limited to detention ponds, inlet and outlet structures and ditches, shall be by warranty deed and unencumbered fee simple title. All storm water facilities constructed, installed or provided hereunder shall, upon acceptance of the same by the Town, become the property of the Town, and the Town thereafter shall be responsible for the operation and maintenance of the same. The Town shall have exclusive authority in determining what facilities to accept, own, operate, and maintain.

#### **Sec. 13-178. Town to maintain storm water facilities; exception.**

The Town shall maintain all public storm water facilities accepted by the Town located within the Town-owned land, Town rights-of-way and public easements, and may maintain additional dedicated public storm water facilities located within or adjacent to the Town. Such public facilities include, but are not limited to, open drainage ways and piped storm waters constructed expressly for use by the general public and as a part of the Town storm water facilities, bridges, roadside storm water ditches and gutters, flood control facilities, including detention and retention basins, dikes, overflow channels, pump stations

and other improvements that have been designed and constructed expressly for use by the general public. Such public storm water facilities do not include facilities not accepted by the Town for maintenance.

**Sec. 13-179. Disclaimer.**

Floods or drainage problems associated with storm water runoff may occasionally occur which exceed the capacity of storm sewer facilities constructed and maintained pursuant to this Article. This Article does not imply, and the Town expressly disclaims, that property liable for the charges established herein will always be free from storm water flooding or flood drainage. This Article does not purport to reduce the need or the necessity for the owner obtaining flood insurance. The establishment of a Storm Water Management Utility, its functions, maintenance of storm water drainage structures and facilities and the activities of the Storm Water Management Utility and/or its agents does not create liability of any nature or kind on the part of the Town for damages caused by storm water except as provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S.

**Secs. 13-180.—13-199. - Reserved.**

**ARTICLE VIII - Cross-Connection Control Program**

Sec. 13-200. Purpose.

Sec. 13-201. Authority.

Sec. 13-202. Responsibility.

Sec. 13-203. Administration.

Sec. 13-204. General requirements.

Sec. 13-205. Standards for backflow prevention assemblies.

Sec. 13-206. Installations

Sec. 13-207. Testing and maintenance.

Sec. 13-208. Right of entry.

Sec. 13-209. Violations.

Sec. 13-210 – 220. Reserved.

**Sec. 13-200. Purpose.**

The purpose of this Article is to:

- (1) Protect the Town's public potable water supply from the possibility of contamination or pollution by isolating within the Town's customers' internal distribution system such contaminants or pollutants which could backflow or back-siphon into the public water system;

- (2) Promote the elimination or control of existing cross-connections, actual or potential, between the Town's customers' on-site potable water systems and non-potable systems
- (3) Provide for the maintenance of a continuing program of cross-connection control that will effectively prevent the contamination or pollution of potable water systems by cross-connection; and
- (4) Provide that backflow prevention devices within structures, building and appurtenant plumbing will be regulated by the Town's plumbing code, as adopted and in effect from time to time, and in accordance with this Article.

#### **Sec. 13-201. Authority.**

The Town, as the water purveyor, has the primary responsibility and authority for preventing water from unapproved sources, or any other substances, from entering the public potable water system, pursuant to the Town's Home Rule Charter and applicable federal and state laws and rules and regulations.

#### **Sec. 13-202. Responsibility.**

The Town, or such person's designee, shall be responsible for the protection of the public potable water distribution system from contamination or pollution due to the backflow or back-siphonage of contaminants or pollutants through the water service connection. If the Town determines that an approved backflow device is required at the Town's water service connection to any customer's premises, the Town shall give written notice to said customer to install an approved backflow prevention device at each service connection to such customer's premises. The customer shall install the approved device or devices at the customer's own expense within ninety (90) days of the receipt of the notice or the customer's water service may, in the Town's discretion, be discontinued until the proper device or devices are installed.

#### **Sec. 13-203. Administration.**

- (1) The Town, by and through its public works department, shall operate a "cross-connection control program," which includes, among other procedures, the provisions required by this Article and the required recordkeeping related to initial inspection, hazard level, initial device testing, yearly device testing and device replacement and similar measures.
- (2) Each property owner located in the Town or served by the Town's water system, or that has Town water facilities on such property, shall allow his or her property to be inspected for possible cross-connections, and such owner shall follow the provisions of the Town's cross-connection program if a cross-connection is permitted.

#### **Sec. 13-204. General requirements.**

The following requirements shall be met for all containment backflow prevention assemblies, required on identified hazardous cross connections:

- (1) Commercial, industrial, multi-family and institutional buildings shall have an approved reduced pressure zone assembly to isolate all building fixtures and taps from the Town's water distribution system.
- (2) Backflow prevention assemblies shall be installed in an accessible location to facilitate maintenance, testing and repair. Drawings must show various installations.

- (3) All backflow prevention assemblies shall be installed on the customer side, following the water meter, at a Town approved location.
- (4) It shall not be permissible to have connections or tees between the meter and service line backflow prevention assembly, unless approved in writing by the Town.
- (5) The valves associated with the backflow prevention device shall not be used as the inlet or outlet valve of the water meter. Test cocks shall not be used as supply connections.
- (6) In order to ensure that backflow prevention assemblies continue to operate satisfactorily, they shall be tested at the time of installation and on an annual schedule thereafter. Such test shall be conducted in accordance with American Society of Sanitary Engineering (A.S.S.E.) and/or University of Southern California, Foundation of Cross-Connection Control and Hydraulic Research (U.S.C. F.C.C.C. and H.R.) performance standards and field test procedures as directed by the Colorado Department of Public Health and Environment, as adopted and in effect from time to time.
- (7) All costs for design, installation, maintenance, repair and testing shall be borne by the customer.
- (8) All fire sprinkler systems shall conform to the applicable sections in the most-current edition of the National Fire Protection Association pamphlets and to the policies and procedures of, as appropriate, the Front Range Fire Rescue Fire Protection District or the Loveland Fire Rescue Authority.
- (9) All identified hazardous cross-connections to the Town's water system shall conform to, or be brought into conformance with, the requirements of this Article within one year of adoption of this Article.

#### **Sec. 13-205. Standards for backflow prevention assemblies.**

Any backflow prevention assembly required herein shall be a model and size approved by the department of public works. Only approved backflow prevention assemblies shall be used. The term "approved backflow prevention assembly" shall mean an assembly that has been manufactured in full conformance with the standards established by the latest version of the Colorado Department of Public Health and Environment Cross-Connection Control Manual. Final approval shall be evidenced by a "certificate of approval" issued by an approved testing laboratory certifying full compliance with Colorado Department of Public Health and Environment standards and A.S.S.E. and/or U.S.C. F.C.C.C. and H.R. specifications. The following testing laboratories are qualified to test and certify backflow prevention assemblies, and an assembly being listed on their periodic approved list shall constitute meeting all of the above requirements:

- (1) A.S.S.E., American Society of Sanitary Engineering, 28901 Clemens Road, Suite 100, Westlake, Ohio 44145.
- (2) U.S.C. Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California, OHE 430-D University Park-MC, 1453, Los Angeles, California 90089-14534.2.

In addition, the Town may provide written approval of testing laboratories other than the laboratories listed above.

#### **Sec. 13-206. Installations.**

The following requirements shall apply with respect to installation of any backflow prevention assembly:

- (1) Backflow prevention assemblies shall be installed in accordance with the specifications of the Town plumbing code, as adopted and in effect from time to time.
- (2) Backflow prevention assembly installations shall be inspected and approved for use by the Town.
- (3) All backflow assemblies shall be installed in the horizontal position unless a variance is obtained for other installation pursuant to the variance procedures applicable to the Town's plumbing code. Any variance granted may include specifications for vertical installation and may contain such other terms and conditions as are determined necessary by the Town or the chief building official.
- (4) A single check valve is not considered to be a backflow prevention assembly.
- (5) Reduced pressure backflow prevention devices shall be installed above ground. The unit shall be placed at least twelve (12) inches above finish grade to allow clearance for the repair work. A concrete slab at finish grade is recommended. Proper drainage shall be provided for the relief valve and drainage may be piped away from the location, provided that the valve and drain line are readily visible from above grade and provided that the relief valve is separated from the drain line by a minimum of double the diameter of the supply line. A modified vault installation may be used if constructed with ample side clearances. Precautions shall be taken to protect above ground installations from freezing and damage, and the Town may impose installation specifications upon an installation to protect the same from freezing or damage, and to protect the public water system and water supply.

#### **Sec. 13-207. Testing and maintenance.**

The following requirements shall apply with respect to testing and maintenance of cross-connection assemblies:

- (1) Identified hazardous cross connections (containment protection): The property owner and the customer at any premises where backflow prevention assemblies are installed shall obtain a certified test of the assemblies at least once per year. Such duty shall be a joint and several obligation of the property owner and the customer. If the Town deems the hazard to be great enough, the Town may, require certified inspections and testing at more frequent intervals. The certified tests shall be at the expense of the property owner and the customer and shall be performed by a certified technician approved by the Colorado Department of Public Health and Environment and the department of public works. In addition, an inspection of the assembly may be performed at any time pursuant to the right-of-entry procedures contained in this Article.
- (2) As necessary, the backflow prevention assembly shall be repaired or replaced at the expense of the property owner and the customer whenever the assembly is found to be defective. Records of all such tests, repairs or replacements shall be kept for three years by the property owner and the customer and the department of public works.
- (3) Existing backflow prevention assemblies shall be tagged by the technician performing the test at the completion of the test, showing the names of the technician and date of test.
- (4) All testing equipment used in the testing of backflow prevention assemblies shall be checked for accuracy yearly, or more often, and the proof of compliance shall be submitted to the department of public works upon request.
- (5) The department of public works retains the right to test or otherwise check the installation and operation of any containment assembly at any time to assure proper operation.

#### **Sec. 13-208. Right of entry.**

By previously arranged appointment and upon presentation of proper credentials, a department of public works representative shall have the right of entry to inspect any and all buildings or premises for the presence of cross-connections, for possible hazards relative thereto and for determining compliance with this Article. This right of entry shall be a condition of water service in order to protect the health, safety and welfare of the customers throughout the Town's water distribution system. The property owner and the customer shall work cooperatively with the department of public works to schedule an inspection or be subject to the remedies set forth in [this Article](#). Questions regarding proper credentials should be directed to the Town.

**Sec. 13-209. Violations.**

- (1) Failure of a property owner or customer to cooperate in the installation, maintenance, testing or inspection of backflow prevention assemblies as required by this Article shall be grounds for the discontinuance of water service to the premises or the requirement of installation of an air-gap separation from the public potable water system.
- (2) The Town may discontinue water service to any premises within the Town if unprotected cross-connections exist on the premises. When a defect is found in an installed backflow prevention assembly, or if a backflow prevention assembly has been removed or bypassed, the Town may discontinue water service until such conditions or defects are corrected.
- (3) In the Town's judgment and discretion, the discontinuance of service may be summary, immediate and without written notice when such action is necessary to protect the purity of the public potable water supply, the safety of the water system or the health, safety and welfare of members of the public.
- (4) It shall be unlawful for any person to violate any provision of this Article. In addition to the discontinuance of water service or other action taken by the Town, a person who violates the provisions of this Article shall be subject to the penalties set forth in Article IV of Chapter 1 of the Code. The Municipal Court is further authorized to enter orders for injunctive relief to require compliance with this Article.

**Sec. 13-210 – 13-220. Reserved.**