

**TOWN OF JOHNSTOWN, COLORADO
ORDINANCE NO. 2024-248**

AN ORDINANCE AMENDING ARTICLE III OF CHAPTER 13 OF THE JOHNSTOWN MUNICIPAL CODE TO ADD SECTION 13-86 ESTABLISHING A SPECIAL FEE CONCERNING REGIONAL WATER STORAGE TANK IMPROVEMENTS TO BE PAID BY BENEFITTED PROPERTIES IN THE SUBJECT AREA AND REMITTED TO THE WATER UTILITY ENTERPRISE

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

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

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

WHEREAS, the Town is experiencing significant growth and development in and around the area generally located on the west side of the Town, along, near and in relative close proximity to U.S. Interstate 25 and State Highway 60, as shown on Exhibit A attached hereto and incorporated herein by reference (“Region”); and

WHEREAS, the Region is the area of highest elevation in the Town and an area that is not served by a water storage tank; and

WHEREAS, because of the location and topography of the Region, water demands are currently met via a booster pump station located at the Town’s water treatment plant, a methodology that is inefficient, creates a significant demand on the pump station and has the potential, once development increases in the Region, to impact distribution system pressure and consistent water quality; and

WHEREAS, to better serve the Region, meet peak water demands and fire demands and protect the integrity of the Town’s water system, the Town intends to construct a water storage tank for the Region (“West Water Storage Tank”); and

WHEREAS, J-U-B Engineers, Inc., an Idaho corporation (“J-U-B”), conducted a study and evaluation of the Town’s water system and pressure zones (“Study”); and

WHEREAS, the Study included an analysis of the water pressure in the Region using projected residential densities and associated acreage to evaluate when the Town should construct the West Water Storage Tank, the cost of the construction of the West Water Storage Tank and related improvements and the properties that would benefit from construction and operation of the West Water Storage Tank; and

WHEREAS, J-U-B provided the Study to the Town on July 7, 2022, and thereafter revised the associated map on February 21, 2024, to reflect updated pressure zone boundaries; and

WHEREAS, J-U-B concluded that the projected cost of the West Water Storage Tank, the tank piping and a 16” water loop under U.S. Interstate 25 is \$12,900,000.00; and

WHEREAS, to foster growth and development, meet the Region's water demands and protect the integrity of the Town's water system, the Town Council desires that the Town, acting on behalf of the Enterprise, construct the West Water Storage Tank when directed to do so by licensed professional engineer and recover the capital improvement costs from the imposition of a special fee, to be known as the "West Water Storage Tank Fee," paid by property owners or developers in the Region who will benefit from the West Water Storage Tank by the ability to develop their properties and receive the requisite water demands associated with the development; and

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

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

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

WHEREAS, to fairly apportion the cost to be recovered from and among the benefitted properties in the Region, J-U-B recommended that the special fee be imposed on a per single-family equivalent ("SFE") basis; and

WHEREAS, the utilization of an SFE basis for the special fee allows the application to be scalable for non-residential development, including commercial and industrial uses, which would have SFE values assigned based upon the estimated volume of water generated by such uses as compared to the generation of water by an average single-family dwelling unit; and

WHEREAS, J-U-B projected that there are approximately 13,290 single-family equivalent ("SFE") units in the Region; and

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

WHEREAS, allocating the estimated cost of the West Water Storage Tank over the projected 13,290 SFEs yields a rate of \$970.00 per SFE in the Region; and

WHEREAS, based on the foregoing, for the purpose of meeting the water demands associated with the Region and to defray the cost of the West Water Storage Tank, the Town Council desires to impose the West Water Storage Tank Fee upon benefitted properties in the Region in the amount of \$970.00 per SFE, adjusted for inflation, and desires that the Town collect the West Water Storage Tank Fee at the time of issuance of each building permit; and

WHEREAS, the Town Council recognizes that certain property owners or developers in the Region entered into a contract with the Town to pay the equivalent of the West Water Storage Tank Fee

and that such property owners and developers should be exempt from payment of the West Water Storage Tank Fee contemplated herein and should, rather, pay the equivalent fee as provided in such contract; and

WHEREAS, the Town Council directs that revenues recognized from the West Water Storage Tank Fee be remitted to the Enterprise and deposited in the Water Utility Enterprise Fund and be used solely for the cost of the West Water Storage Tank and associated infrastructure and improvements and not for the operation or maintenance of the Town's water utility system or for any other purpose; and

WHEREAS, the Town Council hereby finds, determines and declares that the West Water Storage Tank Fee is reasonably related to the expenses incurred by the Enterprise in carrying out its legitimate goal of providing water services to the Region; and

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

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

Section 1. Section 13-86. Article III of Chapter 13 of the Johnstown Municipal Code shall be amended to add Section 13-86, which shall read in full as follows:

Sec. 13-86 – West Water Storage Tank Fee

(1) Purpose. To foster growth and development in and around the area generally located along, near and in relative close proximity to U.S. Interstate 25 and State Highway 60, meet peak water demands and fire demands and protect the integrity of the Town's water system, the Town, acting on behalf of the Water Utility Enterprise, intends to undertake the design, construction and installation of a water storage tank that will benefit property owners in the geographic area and desires to recover the cost of such improvements from benefitted property owners.

(2) Definitions.

For purposes of this Section, the following definitions apply:

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

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

Improvements means a water tank with a storage volume of at least two (2) million gallons of water, the connective piping and a water loop under U.S. Interstate 25 as well as related infrastructure and improvements.

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

Region means the area along, near and in relative close proximity to U.S. Interstate 25 and State Highway 60, south of State Highway 402 and north of Weld County Road 46, referred to as the “west pressure zone” with respect to the delivery of water from the Town’s Water Treatment Plant, that will utilize and benefit from the West Water Storage Tank. The Region is depicted on Appendix A to this Article, which may be amended from time to time by resolution of the Town Council.

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

SFE means “single family equivalent” and is a number related to the volume of 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 an average single-family dwelling unit is one (1). At the Town’s discretion, the SFE unit value assigned to any particular dwelling unit may be greater than, equal to or less than one (1). The SFE unit value assigned to non-residential uses shall be based on the Town’s estimated volume of water generated by such uses as compared to the generation of water by an average single-family dwelling unit.

(3) Establishment and payment of special fee.

- (a) There is hereby established a special fee known as the West Water Storage Tank Fee.
- (b) The West Water Storage Tank Fee shall be levied and assessed in the amount of \$970.00 per SFE.
- (c) The West Water Storage Tank Fee may be adjusted for inflation on an annual basis by resolution of the Town Council utilizing the most recent data from the Engineering News Record Construction Cost Index for the Denver metropolitan area and thereafter set forth in the Town Fee Schedule.
- (d) The West Water Storage Tank Fee shall be paid by property owners in the Region at the time of issuance a building permit.

(4) Exemption from payment of fee.

- (a) If a request is made upon application for a building permit, property owners shall not be required to pay the West Water Storage Tank Fee for the following building permits:
 - 1. Alterations or expansion of existing buildings where no additional dwelling units are created or square footage added;
 - 2. The construction of accessory buildings or structures that do not add dwelling units or square footage to the principal building or use of the land or increase water consumption on the property; and
 - 3. The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same square footage.
- (b) If the equivalent of the West Water Storage Tank Fee is paid pursuant to an executed contract with the Town, property owners shall not be required to pay the West Water Storage Tank Fee.

- (5) Use of funds; accounting. The revenues recognized from the West Water Storage Tank Fee shall be remitted to the Water Utility Enterprise and deposited in the Water Utility Enterprise Fund. The funds shall be used solely for the cost of the Improvements and shall not be used for the operation and maintenance of the water utility system or for any other purpose. The Town, acting on behalf of the Water Utility Enterprise, shall keep an accurate accounting of the cost of the Improvements and the revenues collected from the West Water Storage Tank Fee and any other source of revenue derived for such purpose.
- (6) Payment limitation. In the event the total amount of revenue received by the Town for the Improvements equals the cost of designing, constructing and installing the Improvements, property owners shall thereafter be relieved of any obligation to pay the West Water Storage Tank Fee.
- (7) Fee not an impact fee or development charge. The Town Council does not intend that the West Water Storage Tank Fee be construed as an impact fee or development charge within the meaning of Section 29-20-104.5, C.R.S., as amended, but that the West Water Storage Tank Fee be a special fee within the home rule authority of the Town. To the extent that the provisions of Section 29-20-104.5, C.R.S., as amended, conflict with the provisions of this section, this Section shall control.

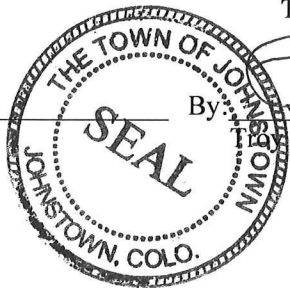
Section 2. Severability. If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance that can be given effect without the invalid provision, part or application, and, to this end, the provisions and parts of this Ordinance are declared to be severable.

Section 3. Publication; Effective Date. This Ordinance, after its passage on final reading, shall be numbered, recorded, published and posted as required by the Home Rule Charter of the Town of Johnstown, Colorado ("Charter") and the adoption, posting and publication shall be authenticated by the signature of the Mayor and the Town Clerk. This Ordinance shall become effective upon final passage as provided by the Charter. Copies of the entire Ordinance are available at the office of the Town Clerk.

INTRODUCED, AND APPROVED on first reading by the Town Council of the Town of Johnstown, Colorado, this 1st day of April, 2024.

ATTEST:

By: Hannah Hill
Hannah Hill, Town Clerk



TOWN OF JOHNSTOWN, COLORADO

By: D. Mellon
D. Mellon, Mayor

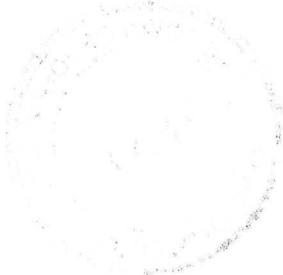
PASSED UPON FINAL APPROVAL AND ADOPTED on second reading by the Town Council of the Town of Johnstown, Colorado, this ____ day of _____, 2024.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Hannah Hill, Town Clerk

By: _____
Troy D. Mellon, Mayor



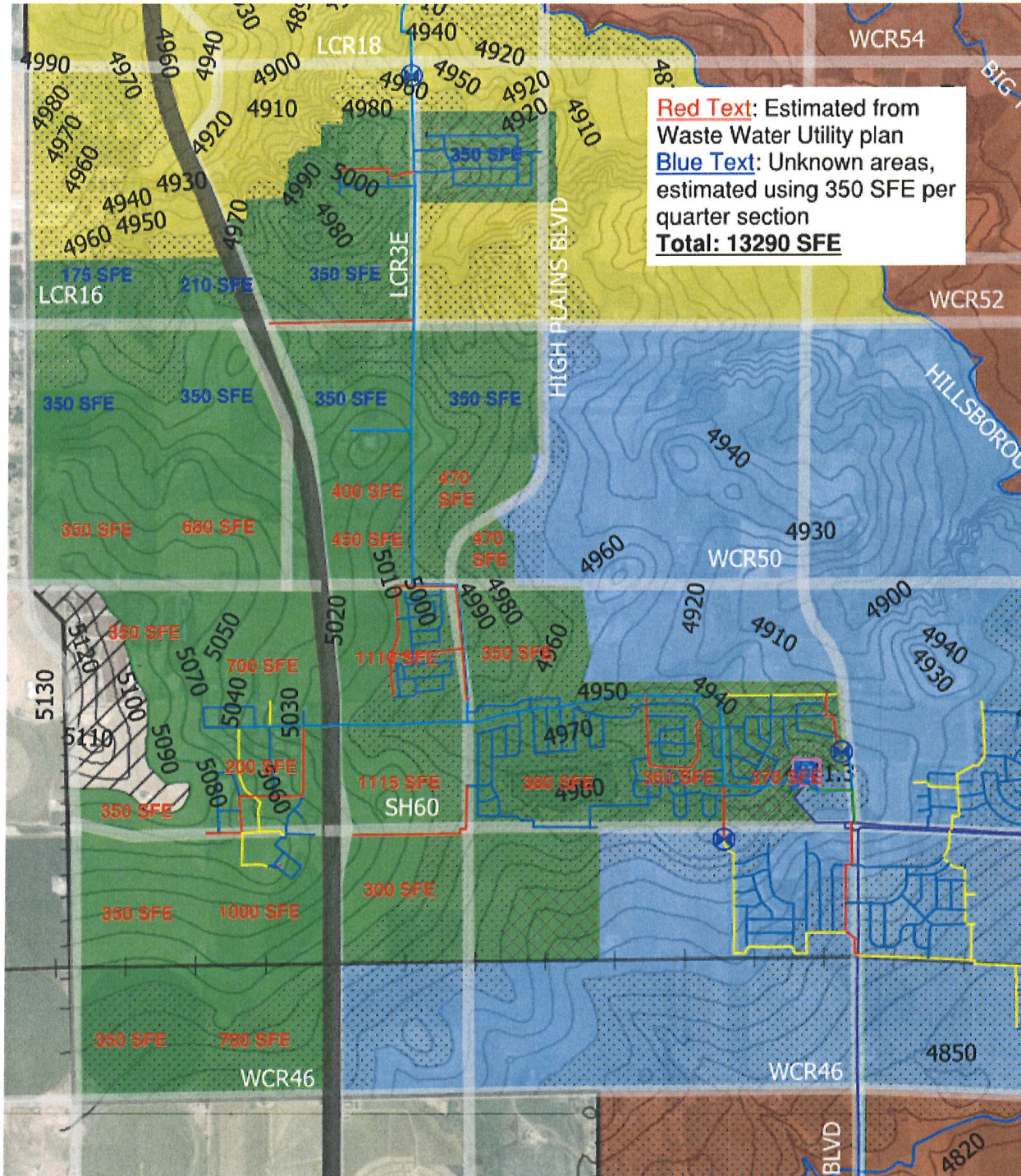


Figure 1 – West Zone Buildout Density

*Figure 1 revised 2/21/2024 to reflect updated pressure zone boundaries. Projected SFE count was not changed.