

ORDINANCE NO. 756

**AN EMERGENCY ORDINANCE TO DEAL WITH SAFETY AND
NUISANCE ISSUES OF PUBLIC WATER SYSTEMS OPERATING
WITHIN THE TOWN OF MILLS AND DECLARING AN EMERGENCY**

WHEREAS, The Town of Mills Governing Body has been informed or become aware that there are public water systems being operated within the boundaries of the Town that are administered by entities other than the Town of Mills; and

WHEREAS, The Town of Mills Governing Body has been informed or become aware that a portion of some of these systems have structures, pipes, and other appurtenances located under the surface of Town owned streets and lands; and

WHEREAS, The Town of Mills Governing Body has been informed or otherwise become aware that a portion of some of these systems have structures, pipes, and other appurtenances located under permanent structures that are primarily used as residential homes; and

WHEREAS, The Town of Mills Governing Body has been informed that a portion of some of these systems have structures, pipes, and other appurtenances located in areas where no legal easement to locate such has been obtained or where none appear of record, the latter of which creates confusion and doubt as to the existence of such easements and the ability to access said property; and

WHEREAS, The Town of Mills Governing Body has the power granted to it by Wyo. Stat. Sec. 15-1-103 (a) (v) “Perform all acts in relation to the property and concerns of the city or town necessary to the exercise of its corporate powers”; and

WHEREAS, The Town of Mills Governing Body has the power granted to it by Wyo. Stat. Sec. 15-1-103 (a) (ix) “Levy and collect special assessments against persons or property to the extent allowed by the constitution and the law”; and

WHEREAS, The Town of Mills Governing Body has the power granted to it by Wyo. State Sec. 15-1-103 (a) (xi) “Take all necessary action to plan, construct or otherwise improve, modify, repair, maintain and regulate the use of streets, including the regulation of any structures thereunder, alleys, any bridges, parks, public grounds, cemeteries and sidewalks”; and

WHEREAS, The Town of Mills Governing Body has the power granted to it by Wyo. Stat. Sec. 15-1-103 (a) (xiii) “License, tax and regulate any business whatsoever conducted or trafficked in within the limits of the city or town for the purpose of raising revenue, and any license taxes imposed shall be uniform in respect to the class of business upon which imposed”; and

WHEREAS, The Town of Mills Governing Body has the power granted to it by Wyo. Stat. Sec. 15-1-103 (a) (xviii) “Regulate, prevent or suppress riots, disturbances, disorderly assemblies or parades, or any other conduct which disturbs or jeopardizes the public health, safety, peace or morality, in any public or private place”; and

WHEREAS, The Town of Mills Governing Body has the power granted to it by Wyo. Stat. Sec. 15-1-103 (a) (xix) “Declare and abate nuisances and impose fines upon parties who create, continue or permit nuisances to exist”; and

WHEREAS, The Town of Mills Governing Body has the power granted to it by Wyo. Stat. Sec. 15-1-103 (a) (xli) “Adopt ordinances, resolutions and regulations, including regulations not in conflict with this act and necessary for the health, safety and welfare of the city or town, necessary to give effect to the powers conferred by this act and, except as provided by paragraph (xlvi) of this subsection, enforce all ordinances by imposing fines not exceeding seven hundred fifty dollars (\$750.00), or imprisonment not exceeding six (6) months, or both. The governing body of a city or town may by ordinance impose a term of probation for battery which may exceed

the maximum term of imprisonment established for the offense provided the term of probation, together with any extension thereof, shall in no case exceed one (1) year”; and

WHEREAS, The Town of Mills Governing Body has the power granted to it by Art 13, Sec. 1(c) and (d) of the Constitution of the State of Wyoming or “Home Rule”; which states:

Article 13, Section 1 Incorporation; alteration of boundaries; merger; consolidation; dissolution; determination of local affairs; classification; referendum; liberal construction.

* *

(c) Each city or town may elect that the whole or any part of any statute, other than statutes uniformly applicable to all cities and towns and statutes prescribing limits of indebtedness, may not apply to such city or town. This exemption shall be by charter ordinance passed by a two-thirds (2/3) vote of all members elected to the governing body of the city or town. Each such charter ordinance shall be titled and may provide that the whole or any part of any statute, which would otherwise apply to such city or town as specifically designated in the ordinance shall not apply to such city or town. Such ordinance may provide other provisions on the same subject. Every charter ordinance shall be published once each week for two consecutive weeks in the official city or town newspaper, if any, otherwise in a newspaper of general circulation in the city or town. No charter ordinance shall take effect until the sixtieth (60th) day after its final publication. If prior thereto, a petition, signed by a number of qualified electors of the city or town, equaling at least ten per cent (10%) of the number of votes cast at the last general municipal election, shall be filed in the office of the clerk of such city or town, demanding that such ordinance be submitted to referendum, then the ordinance shall not take effect unless approved by a majority of the electors voting thereon. Such referendum election shall be called within thirty (30) days and held within ninety (90) days after the petition is filed. An ordinance establishing procedures, and fixing the date of such election shall be passed by the governing body and published once each week for three (3) consecutive weeks in the official city or town newspaper, if any, otherwise in a newspaper of general circulation in the city or town. The question on the ballot shall be: "Shall Charter Ordinance No. Entitled (stating the title of the ordinance) take effect". The governing body may submit, without a petition, any charter ordinance to referendum election under the procedures as previously set out. The charter ordinance shall take effect if approved by a majority of the electors voting thereon. An approved charter ordinance, after becoming effective, shall be recorded by the clerk in a book maintained for that purpose with a certificate of the procedures of adoption. A certified copy of the ordinance shall be filed with the secretary of state, who shall keep an index of such ordinances. Each charter ordinance enacted shall prevail over any prior act of the governing body of the city or town, and may be repealed or amended only by subsequent charter ordinance, or by enactments of the legislature applicable to all cities and towns.

(d) The powers and authority granted to cities and towns, pursuant to this section, shall be liberally construed for the purpose of giving the largest measure of self-government to cities and towns.

WHEREAS, Art 13, Sect 5 of the Wyoming Constitution further provides:

Article 13, Section 5 Acquisition of water rights.

Municipal corporations shall have the same right as individuals to acquire rights by prior appropriation and otherwise to the use of water for domestic and municipal purposes, and the legislature shall provide by law for the exercise upon the part of incorporated cities, towns and villages of the right of eminent domain for the purpose of acquiring from prior appropriators upon the payment of just

compensation, such water as may be necessary for the well being thereof and for domestic uses.

WHEREAS, Wyo. Stat 41-10-113(a)(xxvi) contemplates Water and Sewer Districts entering into contracts with municipalities and authorizes them to do so, stating:

(xxvi) If a boundary of a district is contiguous with the corporate boundary of a city or town, a district may contract with a city or town to supply water or to provide sanitary sewer or other services for which the district was organized to property within the city or town, if it is economically feasible in the opinion of the board. Any water service shall be accomplished in strict adherence with the water rights held by the district, or as such rights may be amended or enlarged under procedures of law provided in title 41 of the Wyoming statutes through the state engineer. The board may finance the extension and maintenance of the water or sewer system through revenue bonds or other means granted by law for financing the service. A one-time connection fee or system investment fee reasonably calculated to permit recovery of a proportionate share of the system infrastructure cost necessary to treat, deliver or transport the water or sewer may also be charged. A one-time fee may also be charged to recover reasonable expenses incurred by the district in determining the actual costs necessary to treat, deliver or transport the water or sewer to the point of connection. The district board may establish one (1) or more service areas outside the district in each of which an average rate may be used for all customers. Charges for special services such as line installation and maintenance shall be in addition to the water or sewer rate. The rate established for use of water or sewer pursuant to this section is as follows:

(A) A district which at any time after April 1, 1999, enters into a contract to serve property within a contiguous city or town outside of its district boundaries shall establish rates, tolls and charges that are no less than the rates, tolls and charges charged for the same or similar service within the district and that do not exceed the actual costs of treating, delivering or transporting the water or sewer to the point of connection. As used in this paragraph, "actual costs" of treating, delivering or transporting water or sewerage shall include a proportionate share of the following costs related to the water or sewer system:

(I) Fees, interest charges and principal payments on all bonds issued and other indebtedness incurred to construct, purchase or improve the system;

(II) Salaries and wages of employees;

(III) The cost of materials, supplies, utilities and outside services;

(IV) Other costs directly related to the water delivery or sewer system;

(V) The cost for providing and maintaining a depreciation fund, a fund for emergencies and a fund for acquisition and development of new water rights and water sources;

(VI) Administrative and overhead expenses; and

(VII) The cost of acquiring, treating, delivering or transporting water or sewer.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN OF MILLS, WYOMING:

Section 1: Purpose and application.

Effective immediately, the following provisions shall come into effect which are designed and enacted to assure the safe conveyance of water within the Town of Mills, Wyoming for the public and with its safety in mind. Further, the town declares that the ongoing operation and presence of water delivery systems within the Town of Mills that are outside of its regulation and

jurisdiction constitutes a public health and safety emergency. Therefore, the following provisions are set into ordinance effectively immediately upon the passage of this ordinance.

This ordinance shall apply to any public water or sewer system located within the Town of Mills' municipal boundaries and shall include both water or sewer systems that deliver their services to properties within the Town of Mills and those which maintain means of conveying their services to properties that run through or under the Town of Mills.

Section 2: Definitions.

A. The definition of public water or sewer system for the purposes of this ordinance shall be: any person, entity, company, municipality, district, service district, improvement district, group, association, governmental entity, joint powers board, or any other organization which has its sole or partial purpose to distribute and or sell water or sewer through a permanent means of conveyance and infrastructure.

This definition shall not include any water or sewer systems that are subject to Joint Powers Agreements which the Town of Mills is a party to. Nor shall it include water wells with conveyance systems that are properly permitted with the State of Wyoming, provide water for irrigation purposes, and which are located upon the property which they serve.

B. The definition of business for the purpose of this ordinance shall be: any person, company, municipality, service district, improvement district, group, association, governmental entity, joint powers board, or any other possible organization that is involved in the exchange of money and goods and services as part of its daily operating practices.

C. The definition of occurrence for the purpose of this ordinance shall be one day.

Section 3: All Water Systems Subject to Contract/Franchise.

A. No water or sewer system shall be operated or maintained in the Town of Mills without first acquiring a contract or franchise agreement with the Town of Mills which shall allow it to operate and which consents to the jurisdiction of the Town of Mills. This shall include any water or sewer system which delivers services to properties within the town or which runs its conveyances through the town.

B. In such instances in which an area is annexed into the Town of Mills in which such a system is operating, said system shall obtain a contract or franchise agreement with the Town of Mills within thirty (30) days of the effective date of annexation.

C. Any such system which exists within the Town of Mills at the time of the adoption of this ordinance shall obtain a contract or franchise with the Town of Mills within thirty (30) day so of the effective date of this ordinance taking effect.

D. All such contracts or franchise agreements shall include:

- i. The water or sewer systems' owner's consent to the jurisdiction of the Town of Mills over the delivery and conveyance of services by the system's owners and agrees to annual obtain or renew a license from the Town's public works department to operate the system.
- ii. A legal description of the system's means of conveyance.
- iii. A description of the systems charges for services, with the same to include rates that are such as set forth in Wyo. Stat 41-10-113(a)(xxvi), and which shall match as nearly as feasible the rates charged by the Town of Mills for such services, where applicable, and which are not to depart from the same

without a substantial and bonafide reason for the same. Further, said rates shall not exceed the actual costs of treating, delivering or transporting the water or sewer to the point of connection. As used in this paragraph, "actual costs" of treating, delivering or transporting water or sewerage shall include a proportionate share of the following costs related to the water or sewer system:

- (a) Fees, including tap fees, interest charges and principal payments on all bonds issued and other indebtedness incurred to construct, purchase or improve the system;
 - (b) (II) Salaries and wages of employees;
 - (c) (III) The cost of materials, supplies, utilities and outside services;
 - (d) (IV) Other costs directly related to the water delivery or sewer system;
 - (e) (V) The cost for providing and maintaining a depreciation fund, a fund for emergencies and a fund for acquisition and development of new water rights and water sources;
 - (f) (VI) Administrative and overhead expenses; and
 - (g) (VII) The cost of acquiring, treating, delivering or transporting water or sewer.
 - (h) Rate consideration will include cost to operate the system, mill levies imposed if any, cash reserves, and any other item the governing body deems reasonably applicable. The Town may be the billing agent for any system collecting revenue if it so desires on a case by case basis for each system after its officials consider wherein doing so will benefit the users of the system. No employee of any public system will have any contact with any member of the public in which they represent themselves as having any authority over the system unless expressly authorized to do so in writing by an executive town official.
 - (i) The governing body at its discretion may choose to not set the rates for certain systems if it deems there is no benefit in doing such. In such case the annual charges in this ordinance will apply. If the governing body sets the rates the annual charges do not apply.
- iv. For all such systems which are proposed to operate within the Town of Mills on an extended basis, a summation of a plan for acquisition of the system by the Town of Mills or, should there be no proposal for the Town to acquire the system, an explanation of why the system will remain outside of that owned and operated by the Town.
 - v. An acknowledgement that the system is to be permitted and inspected by the Town Building Official and the Town Engineer of the Town of Mills and that all final permitting and inspections are to be done by the Town of Mills and not the district.
 - vi. The initial fee for said agreements shall be \$150,000.00 per year. The Town Council may set the fees following the fiscal year of the adoption of this ordinance at a different rate if it wishes to.

Section 4: Infrastructure and Operation.

A. Any system operating within the Town of Mills shall meet the same standards and specifications as applies to the systems owned and operated or operated by the Town of Mills. The Town of Mills may inspect any system to ensure compliance with this provision. All work done by the system operator shall be inspected by the Town of Mills before being put into operation. Inspections by the system operator shall not substitute for inspections by the Town of Mills. All work or infrastructure which requires inspections or permitting shall have the done same through

the Town of Mills pursuant to its Codes and regulations. Determinations made by the Town of Mills in regard to inspections and permitting shall be determinative of the same.

B. Any system that is annexed into the Town of Mills shall submit to inspection within thirty (30) days of annexation. Any deficiencies shall be addressed within ninety (90) days of a notice of noncompliance being issued by the Town of Mills. The Town may extend this period upon a finding of a good faith attempt to comply or upon a finding that compliance will exceed ninety (90) days, providing that a plan of compliance is submitted and approved by the Town Engineer and such other individuals as the Town of Mills may designate for the same.

C. Any system owner must provide a survey or plat of its infrastructure lying within the Town of Mills within thirty (30) days of annexation. Said information must also provide recordation data on any easements that serve the system. Should the system lack recorded easements where the same would be generally required, the system's owners must provide a plan to obtain the same at the point at which such information is submitted.

D. Any system that exists within the Town of Mills at the time at which this ordinance goes into effect must comply with the same requirements set forth in subsections 4(A),(B) and (C) within thirty days of this ordinance going into effect.

E. The operator of any system subject to this ordinance must obtain an annual license from the Town of Mills to operate the same. The Town may inspect any operator prior to issuance of the license. The fee for the annual license shall be \$150,000.00 and may be re set by the Town Council as it sees fit.

F. Upon declaration of an Emergency by the Mayor of the Town of Mills, the system operator furnishing water shall do so at the rate of \$2.00/1000 gallon, or at costs, whichever are lower, for the duration of the emergency. During any such emergency, the Town may require said water to be sent to the Mills municipal water system.

Section 5: Penalties.

A. It shall be a misdemeanor to knowingly violate any provision of this ordinance. The penalty for violation of this ordinance shall be, for any person, company, municipality, service district, improvement district, group, association, governmental entity, joint powers board, or any other possible organization found guilty of violating this ordinance seven hundred fifty dollars (\$750.00) per occurrence.

B. Irrespective of whether a party is charged with a criminal violation of this section, the Town of Mills may levy a civil penalty for violating this ordinance of up to \$10,000.00 per day, or to the limits of any amount which a Wyoming municipality may charge at law.

C. Upon a determination that a system is operating in a manner which constitutes a risk to the health or safety of any person, or which constitutes a danger to public or private property, the Town, through a code enforcement officer or other individual designated by the Town to do so, may order the system owner to cease operations or to create a plan to be approved by the Town's official to come into compliance, within sixty (60) days of the providing notice of the same. For purposes of this section, such conditions constituting a violation of this section would include:

- i. Operating a system which is contaminated with biological or chemical constituents that creates a public health hazard.
- ii. Operating a system which falls below the system standards which are applicable to the Town of Mills.

- iii. Operating a system which contains means of conveyances which run under real residential or commercial structures which his not designed to serve those structures.
- iv. Operating a system under a street or alley dedicated to the Town of Mills without an agreement to do so.

Section 6 Effective Date.

This Emergency Ordinance shall become effective immediately.

Section 3:

Pursuant to Wyo Stat Sec 15-1-115, or an Emergency Ordinance, the requirements relating to public readings and then (10) day elapse between introduction and passage may be suspended by the affirmative vote of three-fourths of the qualified members of the governing body; and pursuant to WS 15-1-115(d) the passage of an Emergency Ordinance requires the affirmative vote of three-fourths of the qualified members of the governing body.

Section 4:

Pursuant to WS 15-1-105(a)(iii), and Emergency Ordinance means an Ordinance operating for the immediate preservation of the public peace, safety or welfare, in which the emergency is defined.

Section 5:

For the reasons set forth above the Council finds and declares that an emergency exists; that this Ordinance is for the immediate preservation of the public peace, health, safety and welfare and that it shall be in full force and effect immediately upon its approval.

Section 6:

Should any portion of this Ordinance be determined to be unenforceable, the remainder of the Ordinance will remain intact and enforceable.

PASSED ON FIRST READING the _____ day of _____, 2021.

Seth Coleman, Mayor

Sara McCarthy, Council

Darla R. Ives, Council

James Hollander, Council

Ronald Wales, Council

ATTESTED:

Christine Trumbull, Town Clerk