

**Town of New Castle**

450 W. Main Street
PO Box 90
New Castle, CO 81647

Administration Department

Phone: (970) 984-2311

Fax: (970) 984-2716

www.newcastlecolorado.org

Memorandum

To: Mayor & Council
From: David Reynolds
Re: Agenda Item: Consider reduction in Tap Fees
Date: 05/07/24

Purpose:

The purpose of this agenda item is to consider a Tap Fees Agreement for Drifters Coffee and the new brewery business at the old Texaco building. Business owner Joe Hemelt and his business partners are in the process of renovating the old Texaco building on Main Street and moving Drifters Coffee to the new location. The new shop will feature a Brewery / Brew Pub type business and is expected to change the look and feel of this historic downtown building.

The Town of New Castle has taken significant steps on behalf of this endeavor by helping to facilitate the sale of the property, making arrangements to relocate the existing U-Haul Business, changing the Municipal Code to allow Breweries as a permitted use in Downtown, consider a Conditional Use Permit to allow the operations of a Food Truck on the Texaco property, and consulting with the owners to help walk them through various processes.

Like any new business, the owners of this endeavor are investing significant funds into the renovation of the building, the move of their existing business, and the startup of a new business venture. As funding becomes tight for the project the owners are looking for avenues to cut expenses to keep the project moving forward. One significant expense that the owners would like to explore their options for is the Town's Tap Fee costs.

New Castle Municipal Code Sec 13.20.160 allows qualified downtown business owners to work with the town to explore and negotiate Tap Fee Agreements. Town staff has prepared calculations for the Tap Fee costs related to this business endeavor and will provide the Town Council with the *Approval Criteria* and options available related to Tap Fee Agreements.

Attached please see documentation that will be reviewed during this agenda item.

PERMIT FEE CALCULATOR - Residential Valuation: \$40,001.00 - \$100,000.00**Address:** 589 W Main St (Drifters Remodel)**Permit #:**

24-032

Valuation:

	<u>Area (sf)</u>	<u>Price/sf</u>
First Level:	NA	
Second Level:	NA	
Basement - Finished:	NA	
Decks/Patios:	NA	
Garage:	NA	
Basement - Unfinished:	NA	
Assumed Valuation:		\$100,000.00

Building Permit Fee:

\$487.00 for first \$40K of valuation, plus	\$487.00	
\$9.00 for each additional \$1,000 of valuation, or fraction thereof, to and including \$100K	\$540.00	
Building Permit Fee:		\$1,027.00

Plan Review Fee:

65% of Building Permit Fee:	\$667.55
-----------------------------	----------

Use Tax:

0.9% of total valuation (or 2% of building material costs):	\$900.00
---	----------

Tap Fees Brewery:

\$9,700 Water per EQR:	\$9,700 per 0.105 EQRs =	\$1,018.50
\$9,700 Sewer per EQR:	\$9,700 per 0.105 EQRs =	\$1,018.50
Dedication Fee \$6,000 per EQR	\$6,000 per 0.105 EQRs=	<u>\$630.00</u>
Brewery Total		\$2,667.00

Tap Fees Restaurant (60 seats):

\$9,700 Water per EQR:	\$9,700 per 0.864 EQRs =	\$8,380.80
\$9,700 Sewer per EQR:	\$9,700 per 0.864 EQRs =	\$8,380.80
Dedication Fee \$6,000 per EQR	\$6,000 per 0.864 EQRs=	<u>\$5,184.00</u>
Restaurant Total		\$21,945.60

Other Permits & Fees:

Mechanical Permit Fee:	\$225.00
Plumbing Permit Fee:	\$225.00
3/4" Water Meter Fee:	\$292.00
Total Tap Fees (Restaurant + Brewery):	\$24,612.60

SUBTOTAL:	\$29,986.15
DEPOSIT PAID:	\$-
TOTAL DUE:	<u>\$29,986.15</u>

Calculation Worksheet for Texaco Tap Fees

Restaurant Business:

Outdoor Seating = 32 Seats *Indoor Seating* = 28 Seats *Total Seating* = 60 Seats

Per Code Sec. 13.20.060

Seats 1-24 = 1.0 EQR

Seats 25-60 (36 seats) = .024 EQR's per seat or 36 seats x .024 = .864 EQR's

Conclusion: As drawn, the restaurant business has a total of 60 seats. The total calculated EQR requirement for a 60-seat restaurant is 1.864 EQR's.

Possible Options: It is reasonable to conclude that the outdoor seating area may not be used year-round. If the outdoor area was expected to only operate for 6 months, it may be reasonable to reduce the outdoor seating count from 32 seats to 16 seats. Reducing the time that the outdoor seating is available for practical use would reduce the total seating count to 44 seats.

Seats 1-24 = 1 EQR

Seats 25-44 (20 seats) = .024 EQR's per seat or 20 seats x .024 = .48 EQR's

This seasonal option would yield a total EQR requirement of 1.48 EQR's for the Restaurant side of the business.

Brewery Business:

The Town Code formulates that 500 barrels of beer produced annually shall be equal to 1 EQR. This formula assumes that it takes on average 8 gallons of water to produce 1 gallon of beer and that each barrel contains 31 gallons of beer.

Therefore 500 barrels of beer = 124,000 gallons of water.

31 gal. beer x 8 gal. water x 500 barrels produced = 124,000 gallons of water annually.

Note: Because the proposed Texaco brewery is only doing a portion of the actual brewing process in New Castle, the applicant estimates that they will use only 13,400 gallons of water per year and will produce beer at a ratio of approximately .8 gallons of water to 1 gallon of beer.

Given the assumptions above the calculated EQR estimates for the Brewery = .105 EQR's

Possible Options: Because the brewery is new and water usage is only an estimate, accurate EQR's for the brewery are not yet known. Staff recommends that the applicant install a second water meter in the building to monitor the brewery specific water usage over time. After a period (staff suggests 2 years),

the issue of accurately assessing water usage for the brewery can be revisited using actual data from both the brewery and the restaurant sections of the business. If the two businesses combined do not exceed an average use of 127,750 (calculated use for a typical EQR), staff recommends that no additional EQR's be charged. If the water usage exceeds the estimates then staff recommends that appropriate Tap Fees be charged at that time.

Other Factors:

Both the Municipal Code and the Downtown Plan give guidance regarding Tap Fee charges in the Downtown area. Section 13.20.160 of the Municipal Code sets specific approval criteria by which the Town Council may consider entering into a Tap Fee Agreement with Downtown business owners. The Town's 2018 Downtown Plan also encourages the Town to work with business owners to stimulate a more vibrant business environment in Downtown.

As calculated by adhering strictly to the Municipal Code, the restaurant would be required to purchase an additional .864 EQRs plus Water Dedication fees. These fees would total \$21,945.60.

As calculated by adhering strictly to the Municipal Code, the brewery would be required to purchase .105 EQRs plus Water Dedication Fees. These fees would total \$2,667.00.

Total estimated Tap Fees for restaurant and brewery = \$24,612.60.

Possible Business Relief Options available to Town Council:

- Lower the restaurant EQR requirement to 1.48 EQRs (allowing for seasonal seating). Note, the building already owns 1 EQR, leaving .48 EQRs to be purchased.
- Remove all Water Dedication Fees with the understanding that the Downtown corridor has historically had water allotments that would have allowed for various water consuming business over the past decades.
- Allow the actual water usage of the brewery to be monitored over time to establish actual use along with reasonable and appropriate Tap fees.
- Work with the business owner to establish a suitable Tap Fee Agreement by which the Tap fees owed might be financed over time or otherwise paid.

The above recommendations would make the business responsible for .48 EQRs for the restaurant with additional fees possible for the brewery as future usage dictates.

Using the above recommendations, the estimated Tap Fee charges would be reduced to \$9,312 for the additional .48 EQRs. (original charge \$24,612.60)

C. It is unlawful for any person not authorized by this chapter to make any connection with any main of the water or sewer utility or for any unauthorized person to connect to the water and sewer utility or for any person to make a water consuming addition or change in service contrary to the provisions of this chapter.

D. All utility connection permits as required by this chapter shall be issued by the town clerk and shall set forth all those requirements specified in Section 13.20.040(A). The town clerk shall keep a duplicate or record of all utility connection permits issued.

E. Any permit issued pursuant to this section shall expire upon failure to make the authorized utility connection, at the time of expiration of the building permit for the structure or structures proposed to be serviced, or upon expiration of the sixty (60) day period provided for in Section 13.20.040(D). In the event of expiration of a utility connection permit, the applicant, on request, shall be refunded any tap fees not expended by the town for the benefit of the applicant.

F. All permits issued pursuant to this section and all taps permitted under this chapter are appurtenant to the real property for which they are issued. Permits and taps may not be sold or otherwise transferred separate from the real property they are intended to serve. (Ord. 2004-3 § 10 (part); prior code § 11-06-050) (Ord. No. 2009-9, § 2(A), 8-3-2009)

13.20.060 Tap fees.

A. No water or sewer service shall be furnished to any new connection or to any water consuming addition to an existing service until all tap fees and utility hookup charges have been paid as provided by this chapter.

B. All water and sewer connections to the main service lines shall be done by the town's public works department or a contractor approved by the town council.

C. The following tap fees shall be assessed, except as otherwise set by the town council:

1. Residential Water Service.

a. Fee for each EQR unit, where both the tap and all points of consumption are within the corporate limits of the town: nine thousand seven hundred dollars (\$9,700.00).

b. Fee for each EQR unit, where the tap or any point of consumption is outside the corporate limits of the town: sixteen thousand two hundred dollars (\$16,200.00).

2. Commercial Water Service.

a. Fee for each EQR unit, where both the tap and all points of water consumption are within the corporate limits of the town: nine thousand seven hundred dollars (\$9,700.00).

b. Fee for each EQR unit, where the tap or any point of water consumption is outside the corporate limits of the town: sixteen thousand two hundred dollars (\$16,200.00).

TABLE OF EQUIVALENT UNITS

Classification	EQR
1. Single-family residential unit, not exceeding 3,000 square feet in habitable space, housing a statistical average of 3.5 persons each using 100 gallons per day and having not more than two thousand five hundred (2,500) square feet of irrigated lawn or garden	1.0

Classification	EQR
2. Multifamily residential units, four units or more, apartments, condominiums, townhomes, when in one building and billed collectively:	
A. Efficiency apartment (a space not exceeding 600 square feet and not having more than 1 bathroom and one kitchen facility)	0.6
B. One or two bedroom apartment	0.8
C. Three bedroom or more apartment	1.0
D. Coin-operated washing machine	0.5
E. Mobile home (trailer) in court with not more than two thousand five hundred (2,500) square feet of irrigated lawn or garden	1.0
3. Transient rental units, hotels, motels, bed and breakfast:	
A. First unit or manager's apartment	1.0
B. Each additional rental unit without cooking facilities	0.4
C. Each additional rental unit with cooking facilities	0.5
D. Each coin-operated washing machine	0.5
4. Accessory dwelling units:	
A. One bedroom	0.5
B. Capable of having 2 bedrooms	0.8
5. Bars, restaurants—The applicant shall submit a seating plan to the building official. The actual number of seats shall be confirmed from time to time by the building official:	
A. For a business with less than 25 seating capacity	1.0
B. For each seat in excess of 24 seats	0.024
6. Service stations:	
A. Full service, no bays	1.0
B. Self-service, no bays	1.0
C. With one work/lubrication bay	1.2
D. Each additional work/lubrication bay	0.2
E. With one car wash bay	2.0
F. Each additional car wash bay	2.0
7. Commercial or public buildings such as stores, offices, industrial warehouses, and similar, having industrial wastes, process water or waste loads (i.e., which are used for nonsolid waste disposal):	
A. One bathroom (1 to 3 water using fixtures)	1.0
B. For each additional sink	0.2
C. For each additional toilet	0.2
D. For each additional urinal	0.2
E. For each additional bath tub	0.2
F. For each additional water fixture not listed above	0.2

tracts, parcels, sites, separate interests in common, condominium interests or other divisions for the purpose, whether immediate or future, of transfer of ownership, or for building or other development, or for street use by reference to such subdivision or a recorded plat thereof.

“Sufficient legal priority” means that the water rights proposed for dedication may reasonably be expected to provide a dependable water supply throughout the season of use in the amount for which they are decreed, including in drought years, available at the point of diversion determined exclusively by the town. In making this determination, factors to be considered shall include, but not by way of limitation, the adjudication date and appropriation date of the water rights, the decreed use(s), the historic use of the water under the decree, the physical flow available, and the administration practices of the office of the state engineer.

“Town” means the town of New Castle, Colorado.

“Transfer of water rights” means the conveyance of legal title to water rights to the town in addition to referring to all actions required under the laws of the state of Colorado to be brought in the Water Court, Water Division No. 5, to ensure that the dedication requirement is fulfilled. Such action may include, but not by way of limitation, a change in the type, place, or time of use, a change in the point of diversion, a change from a fixed point of diversion to alternate or supplemental points of diversion, a change from alternate or supplemental points of diversion to a fixed point of diversion, a change in the means of diversion, a change in the place of storage, a change from direct application to storage and subsequent application, a change from storage and subsequent application to direct applica-

tion, a change from a fixed place of storage to alternate places of storage, a change from alternate places of storage, or any combination of such changes. “Transfer of water rights” includes transfer of conditional as well as absolute water rights.

“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 or a contract to use water rights owned by a governmental water supplier. (Ord. 2008-3 § 3 (part))

13.24.040 Basic dedication requirement.

A. 1. A dedication or transfer of direct flow and/or storage water rights to the town shall be required for any extension of service which shall include: (a) the approval of the annexation of any land to the town; (b) all extensions of municipally treated water service outside the town limits as such boundaries exist on the effective date of the ordinance codified in this chapter; (c) the subdivision or replatting of any land now located within the town if such subdivision or replatting requires a change of zone district or increases the demand for municipal water service; and (d) an expansion of use on an existing platted property that increases the demand for municipal water service beyond the definition of an EQR or previous water right dedications made to the town.

2. For any extension of service or new or enlarged use of water for residential or non-residential purposes, the applicant shall submit to the town an estimate of water demands based on the dedication requirements provided in the table of equivalent units as set forth in Section 13.20.060, as such table may be amended, on forms provided by the town.

3. Applicant shall provide the town with adequate information to facilitate a review of the water rights in order to determine that the water rights have sufficient legal priority. Such information shall include a historical use affidavit and a detailed list of all water rights and water resources owned or controlled by the applicant. For those persons whose compliance with this section results in a total demand of greater than thirty (30) EQR, no historical use affidavit shall be required, but an engineering analysis, acceptable to the town, of the historic use of the water rights proposed for dedication shall be required.

4. The basic requirement shall be 0.54 acre foot/year of historic consumptive use of a water right of sufficient legal priority for each EQR. It is assumed that 0.54 acre foot of historic consumptive use water is necessary to satisfy an average demand of 0.14 acre foot of consumptive use which allowance is made for the location of the town's municipal water diversion and wastewater treatment plant together with reasonable transit and transfer losses.

5. For raw water uses, the dedication requirement shall be in conformance with the town's Raw Water Irrigation Ordinance (Code Section 13.38.010 et seq.). Other uses not calculated under the table of EQRs, the basic requirement shall be the quantity of water to be required ultimately in the satisfaction of those use(s) as contemplated by the applicant. The amount of such use shall be quantified by a registered professional engineer.

6. The basic requirement shall be satisfied by the person seeking approval of annexation, subdivision, replacing, or the extension or expansion of municipally treated water service, whether or not that person will be the ultimate user(s).

7. Sufficient water rights shall be dedicated so as to enable the town to divert a quantity of water at any point of diversion it may determine, which will allow for the total consumption by the town of the quantities set forth in subsection (A)(4) of this section.

B. The town may, in its sole discretion, require dedication before the issuance of a building permit or upon discovery of an expanded use of additional EQRs, including partial EQRs, for uses which do not conform to the definition of EQR.

C. The council shall have sole and exclusive discretion in determining whether the basic dedication requirement should be increased or decreased, on a case by case basis, after consideration of the place, method, and efficiency of water use and wastewater treatment. (Ord. 2008-3 § 3 (part))

13.24.050 Exceptions.

A. Council may substitute or waive any conditions or requirements deemed necessary to meet the purposes of this section.

B. This chapter does not apply to the extension of new municipally treated water service or raw water service for which the basic dedication requirement has been previously complied with by any person and where no increase in demand will occur.

C. This chapter does not apply to the extension of new municipally treated water service where the terms for extension of such service are addressed in an annexation and/or development agreement approved by council, as such agreement(s) may be amended. (Ord. 2008-3 § 3 (part))

13.24.060 Dedication of water rights for open space.

The owner of any property proposed to be annexed or subdivided who dedicates property

repaired within forty-eight (48) hours from the time of such notice being served upon the water user or agent, the town may shut off the water from the premises and immediately notify the customer. It is unlawful for any person to fail or refuse to comply with the order provided in this section. (Prior code § 11-06-130)

13.20.140 Disconnections.

A. In case any owner of premises on which water is used shall cease to use water, and desires to disconnect his or her premises, he or she shall not be permitted to remove the corporation stop, curb stop, curb box and appurtenances, except by order of the town council. Corporation stops, curb stops, and curb boxes are the property of the town and shall be removed only by order of the town council.

B. The owner of property serviced shall be responsible for the repair and maintenance of the service line, curb stop, curb box, and meter, and is further responsible for insuring that none of the above become inaccessible by reason of landscaping, foliage, or construction of improvements on the premises.

C. In the event a meter is damaged, or concealed or otherwise made inaccessible for reading, the town council shall direct that the water user be billed the flat rate for his or her water service until such time as the meter is again made operable or accessible by the owner. (Prior code § 11-06-140)

13.20.150 Penalties.

It is unlawful for any person to violate any of the provisions stated or adopted in this chapter. Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any

of the provisions of this chapter is committed, continued or permitted, and upon conviction of any such violation, such person shall be punished by a fine of not more than three hundred dollars (\$300.00) or by imprisonment for not more than ninety (90) days or by both such fine and imprisonment. (Prior code § 11-06-150)

13.20.160 Tap fee agreements.

A. Town council or the town's enterprises may, at their sole discretion, enter into a tap fee agreement with a person concerning the payment of tap fees. In order to enter into such an agreement, the approving body must make the following findings:

1. That the proposed utility service will serve a commercial use;

2. That the user is proposing to operate the commercial use within the town's downtown core as it is defined in the comprehensive plan;

3. That the tap fee agreement is necessary for the town's economic development;

4. That absent the tap fee agreement the proposed commercial use may not locate within the town;

5. That the agreement would not violate or conflict with the terms of any grant, loan, bond issuance, or other agreement that addresses the collection and allocation of tap fee revenues for the town;

6. That sufficient monies have been budgeted and appropriated from funds other than the enterprise fund at the time of such agreement to cover the full amount of tap fees that would otherwise be due to the enterprise; and

7. That the user has made an adequate demonstration of how it proposes to repay the tap fee over the amortization period.

B. The form of the agreement is subject to review and approval by the town, on such terms and conditions as it deems necessary to ensure full repayment of all appli-

cable tap fees. Approved agreements will be recorded against the property to be served by the tap. Such terms may include, but are not necessarily limited to:

1. Interest on the outstanding tap fee balance;
2. Amortization of the tap fee over a period not in excess of five years;
3. A repayment schedule;
4. Acceleration and/or default provisions including but not limited to a right of the town to collect default interest, costs and attorney fees as part of any collection efforts;
5. A provision concerning disconnection of service in the case of non-payment or default.
6. A notice that the user understands that the tap is appurtenant to the real property it serves and may not be sold or transferred separate from that property;
7. A due on sale clause.

(Ord. No. 2009-9, § 2(C), 8-3-2009)