

## CHAPTER 13

### Municipal Utilities

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## ARTICLE I

### General

#### **Sec. 13-1. Ordinance No. 78 not affected by Code.**

Nothing in this Code or the ordinance adopting this Code shall affect Ordinance No. 78, passed by the Town Council relating to water and sewers within the Town, and all of such ordinance as is not included in this Code or amended by a subsequent ordinance is hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code. (Prior code 25-1)

#### **Sec. 13-2. 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. (Ord. 2008-815 §1)

#### **Secs. 13-3—13-10. Reserved.**

## ARTICLE II

### Sewers

#### **Sec. 13-11. Definitions.**

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

(1) *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.

(2) *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.

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

(4) *Combined sewer* means a sewer intended to receive both waste water and storm or surface water.

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

(6) *Floatable oil* is oil, fat or grease in a physical state such that it will separate by gravity from waste water by treatment in an approved pretreatment facility. A waste water shall be

considered free of floatable fat if it is properly pretreated and the waste water does not interfere with the collection system.

(7) *Garbage* means the animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods.

(8) *Hearing Board* means that board appointed according to the provisions of Section 13-18.

(9) *Industrial wastes* means the waste water from industrial processes, trade or business as distinct from domestic or sanitary wastes.

(10) *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.

(11) *May* is permissive (see *shall*).

(12) *Person* means any individual, firm, company, association, society, corporation or group.

(13) *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. Neutral water, for example, has a pH value of seven (7) and hydrogen ion concentration of  $10^{-7}$ .

(14) *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 ( $\frac{1}{2}$ ) inch (1.27 centimeters) in any dimension.

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

(16) *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.

(17) *Sewage* is the spent water of a community. The preferred term is *waste water*.

(18) *Sewer* means a pipe or conduit that carries waste water or drainage water.

(19) *Shall* is mandatory (see *may*).

(20) *Slug* means any discharge of water or waste water 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 and shall adversely affect the collection system and/or performance of the waste water treatment works.

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

(22) *Superintendent* means the superintendent of waste water facilities, of waste water treatment works, and/or of water pollution control of the Town or his or her authorized deputy, agent or representative.

(23) *Suspended solids* means total suspended matter that either floats on the surface of or is in suspension in water, waste water or other liquids, and is removable by laboratory filtering as prescribed in *Standard Methods for the Examination of Water and Wastewater* and referred to as nonfilterable residue.

(24) *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 and would be benefited by discharge to the sanitary sewers and waste water treatment facilities provided.

(25) *Waste water* means the spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried waste from residences, commercial buildings, industrial plants and institutions, together with any ground water, surface water and stormwater that may be present.

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

(27) *Watercourse* means a natural or artificial channel for the passage of water either continuously or intermittently. (Prior code 25-17)

#### **Sec. 13-12. Use of public sewers required.**

(a) 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.

(b) 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.

(c) 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 waste water.

(d) The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes, situated 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 or combined sewer, are hereby required at the owners' expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this Article, within thirty (30) days after date of official notice to do so, provided that the public sewer is within three hundred (300) feet of the property line. (Prior code 25-18)

**Sec. 13-13. Private waste water disposal.**

(a) Where a public sanitary or combined sewer is not available under the provisions of Section 13-12(d), the building sewer shall be connected to a private waste water disposal system complying with the provisions of this Section.

(b) Before commencement of construction of a private waste water disposal system, the owner shall first obtain a written permit signed by the Superintendent. The application for such permit shall be made on a form furnished by the Town, which the applicant shall supplement by any plans, specifications and other information as deemed necessary by the Superintendent. A permit and inspection fee of one thousand dollars (\$1,000.00) shall be paid to the Town at the time the application is filed.

(c) A permit for a private waste water disposal system shall not become effective until the installation is completed to the satisfaction of the Superintendent. The Superintendent shall be allowed to inspect the work at any stage of construction, and, in any event, the applicant for the permit shall notify the Superintendent when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within forty-eight (48) hours of the receipt of notice by the Superintendent.

(d) The type, capacities, location and layout of a private waste water disposal system shall comply with all recommendations of the State Department of Public Health. No permit shall be issued for any private waste water disposal system employing subsurface soil absorption facilities where the area of the lot is less than forty-three thousand five hundred sixty (43,560) square feet. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

(e) At such time as a public sewer becomes available to a property served by a private waste water disposal system, as provided in Section 13-12(d), a direct connection shall be made to the public sewer within sixty (60) days in compliance with this Article, and any septic tanks, cesspools and similar private waste water disposal facilities shall be cleaned of sludge and filled with suitable material.

(f) The owners shall operate and maintain the private waste water disposal facilities in a sanitary manner at all times, at no expense to the Town.

(g) No statement contained in this Section shall be construed to interfere with any additional requirements that may be imposed by the Health Officer. (Prior code 25-19)

**Sec. 13-14. Sanitary sewers, building sewers and connections.**

(a) 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 Superintendent.

(b) There shall be two (2) classes of building sewer permits: (1) for residential and commercial service; and (2) for service to establishments producing industrial wastes. In either case, the owner or his or her agent shall make application on a special 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 Superintendent. A permit and inspection fee of one hundred dollars (\$100.00) for a residential or commercial building sewer permit and five hundred dollars (\$500.00) for an industrial building sewer permit shall be paid to the Town at the time the application is filed.

(c) 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.

(d) A separate and independent building sewer shall be provided for every building; except where one (1) 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 one (1) building sewer, but the Town does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection aforementioned.

(e) Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Superintendent, to meet all requirements of this Article.

(f) 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 A.S.T.M. and W.P.C.F. Manual of Practice No. 9 shall apply.

(g) 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.

(h) 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 unless such connection is approved by the Superintendent for purposes of disposal of polluted surface drainage.

(i) The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing codes or other applicable rules and regulations or the procedures set forth in appropriate specifications of the A.S.T.M. and the W.P.C.F. Manual of Practice No. 9. 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 Superintendent before installation.

(j) The applicant for the building sewer permit shall notify the Superintendent 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 Superintendent or his or her representative.

(k) 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 restored in a manner satisfactory to the Town.  
(Prior code 25-20)

**Sec. 13-15. Use of the public sewers.**

(a) No person shall discharge or cause to be discharged any unpolluted waters such as stormwater, surface water, ground water, roof runoff, subsurface drainage or cooling water to any sewer; however, stormwater runoff from limited areas, which stormwater may be polluted at times, may be discharged to the sanitary sewer by permission of the Superintendent.

(b) Stormwater other than that exempted under Subsection (a) above and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the Superintendent and other regulatory agencies. Unpolluted industrial cooling water or process waters may be discharged, on approval of the Superintendent, to a storm sewer, combined sewer or natural outlet.

(c) No person shall discharge or cause to be discharged any of the following described water or wastes to any public sewers:

(1) Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.

(2) Any water containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to contaminate the sludge of any municipal system, to injure or interfere with any sewage treatment process, constitutes a hazard to humans or animals, creates a public nuisance, creates any hazard in, or has an adverse effect on the water receiving any discharge from the treatment works.

(3) Any water or wastes having a pH lower than five and one-half (5½), or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the waste water works.

(4) 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 waste water facilities 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, milk containers, etc., either whole or ground by garbage grinders.

(d) The following described substances, materials, water or waste shall be limited in discharges to municipal systems to concentrations or quantities which will not harm either the sewers, waste water treatment process or equipment, will not have an adverse effect on the receiving stream, or will not otherwise endanger lives, limb, public property or constitute a nuisance. The Superintendent 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 Superintendent will give consideration to 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 waste water treatment plant, degree of treatability of the waste in the waste water treatment plant, and other permanent factors.

The limitations or restrictions on materials or characteristics of waste or waste waters discharged to the sanitary sewer which shall not be violated without approval of the Superintendent are as follows:

(1) Waste water having a temperature higher than one hundred fifty degrees (150°) Fahrenheit, sixty-five degrees (65°) Celsius.

(2) Waste water containing more than twenty-five (25) milligrams per liter of petroleum oil, non-biodegradable cutting oils or product of mineral oil origin.

(3) Waste water from industrial plants containing floatable oils, fat or grease.

(4) Any garbage that has not been properly shredded (see Section 13-11 for definition of *properly shredded garbage*). Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments or similar places where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers.

(5) Any waters or wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances to such degree that any such material received in the composite waste water at the waste water treatment works exceeds the limits established by the Superintendent for such materials.

(6) Any waters or wastes containing odor-producing substances exceeding limits which may be established by the Superintendent.

(7) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Superintendent in compliance with applicable state or federal regulations.

(8) Quantities of flow, concentrations or both which constitute a *slug* as defined herein.

(9) Waters or wastes containing substances which are not amenable to treatment or reduction by the waste water treatment processes employed or are amenable to treatment only to such degree that the waste water treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

(10) Any water or wastes which, by interaction with other water or wastes in the public sewer system, release obnoxious gases, form suspended solids which interfere with the collection system or create a condition deleterious to structures and treatment processes.

(e) 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 (d) of this Section, and which in the judgment of the Superintendent, may have a delirious effect upon the waste water facilities, processes, equipment or receiving waters or which otherwise create hazard to life or constitute a public nuisance, the Superintendent may:

(1) Reject the wastes;

(2) Require pretreatment to an acceptable condition for discharge to the public sewers;

(3) Require control over the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of Subsection (j) of this Section.

(f) When considering the above alternatives, the Superintendent shall give consideration to the economic impact of each alternative on the discharger. If the Superintendent 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 Superintendent.

(g) Grease, oil and sand interceptors shall be provided when, in the opinion of the Superintendent, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts as specified in Subsection (d)(3), 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 Superintendent, 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 of the captured material and shall maintain records of the dates and means of disposal which are subject to review by the Superintendent. Any removal and hauling of the collected materials not performed by the owner's personnel must be performed by currently licensed waste disposal firms.

(h) 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 at his or her expense.

(i) When required by the Superintendent, 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 Superintendent. 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.

(j) The Superintendent may require the user of sewer services to provide information needed to determine compliance with this Article. This requirement may include:

- (1) Waste water discharge peak rate and volume over a specified time period.
- (2) Chemical analyses of waste waters.
- (3) Information on raw materials, processes and products affecting waste water volume and quality.
- (4) Quantity and disposition of specific liquid, sludge, oil, solvent or other materials important to sewer use control.
- (5) A plot plan of sewers of the user's property showing sewer and pretreatment facility location.

(6) Details of waste water pretreatment facilities.

(7) Details of systems to prevent and control the losses of materials through spills to the municipal sewer.

(k) 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. Sampling methods, location, times, durations and frequencies are to be determined on an individual basis subject to approval by the Superintendent.

(l) No statement contained in this Section shall be construed as preventing any special agreement or arrangement between the Town and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the Town for treatment. (Prior code 25-21)

**Sec. 13-16. Destroying facilities.**

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 waste water facilities. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct. (Prior code 25-22)

**Sec. 13-17. Powers and authority of inspectors.**

(a) The Superintendent and other duly authorized employees of the Town 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 community system in accordance with the provisions of this Article.

(b) The Superintendent or other duly authorized employees are authorized to obtain information concerning industrial processes which have a direct bearing on the kind and source of discharge to the waste water collection system. The industry may withhold information considered confidential. The industry must establish that the revelation to the public of the information in question might result in an advantage to competitors.

(c) While performing the necessary work on private properties referred to in Subsection (a) above, the Superintendent or duly authorized employees shall observe all safety rules applicable to the premises established by the company, the company shall be held harmless for injury or death to the Town employees, and the Town shall indemnify the company against loss or damage to its property by Town employees and against liability claims and demands for personal injury or property damage asserted against the company growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in Section 13-15(i).

(d) The Superintendent and other duly authorized employees of the Town bearing proper credentials and identification shall be permitted to enter all private properties through which the Town holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the waste water

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. (Prior code 25-22.1)

**Sec. 13-18. Hearing Board.**

(a) A Hearing Board shall be appointed as needed for arbitration of differences between the Superintendent and sewer users on matters concerning interpretation and execution of the provisions of this Article by the Superintendent. The cost of the arbitration will be divided equally between the Town and the sewer user.

(b) One (1) member of the Hearing Board shall be a registered professional engineer; one (1) member shall be a practicing sanitary engineer; one (1) member shall be a representative of industry or manufacturing enterprise; one (1) member shall be a lawyer; and one (1) member shall be selected at large for his or her interest in accomplishing the objectives of this Article. (Prior code 25-22.2)

**Sec. 13-19. Abandonment of connection.**

No person shall abandon any building connection without first obtaining a written permit therefor. Such building connection shall be effectively sealed with a vitrified clay stopper inserted in the bell of the sewer extending to the property line, which stopper shall be jointed as directed by the Town Council. (Prior code 25-23)

**Sec. 13-20. Interference with Town employees prohibited; digging up streets for purposes of sewer connections.**

No person shall in any way interfere with the employees in any discharge of their duties either in the tapping of any sewer pipe, main or lateral. 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 in its original condition. (Prior code 25-24)

**Sec. 13-21. Sewer service charges.**

(a) Monthly service charges for residential customers are increased from sixteen dollars (\$16.00) per month to eighteen dollars (\$18.00) per month.

(b) Nonresidential service charges shall be at a monthly minimum fee that covers a base amount of water plus an additional charge if the water use exceeds the monthly allowance based on the water meter size. The monthly base volume is equal to six thousand (6,000) gallons per month (two hundred [200] gallons/day/SFE). If the commercial customers use more water than the monthly minimum, they shall be charged two dollars and fifty-nine cents (\$2.59) per one thousand (1,000) gallons. The excess of water used above the monthly base volume will be based only on the average of the three-month (December, January and February) winter use period. The charges noted herein do not apply to grandfathered unmetered downtown commercial users, unless meters are eventually installed.

**Sewer Service Charges**

<i>Customer Class</i>	<i>Customer (\$/Mo.)</i>	<i>Min. Vol. (\$/1000 g)</i>	<i>In Town Rates</i>		<i>Outside Town Rates</i>	
			<i>Minimum Chg. (\$/Mo.)</i>	<i>Volume Chg. (\$/1000 g)</i>	<i>Customer (\$/Mo.)</i>	<i>Volume Chg. (\$/1000 g)</i>
Residential	\$2.49		\$18.00		\$22.51	
Nonresidential	2.49	6,000	18.00	\$2.59	22.51	\$3.23

(c) In addition to the above charges, customers that discharge wastes with BOD and suspended solids concentrations above normal domestic wastes shall be assessed a surcharge of \$0.0698 per pound of excess BOD and \$0.107 per pound of excess suspended solids.

(d) Industrial users who desire treatment of domestic wastewater only, wastewater treatment charges will be based on the number of employees, determined in a manner prescribed by Town staff. By way of example, 50 employees at 200 gal/employee/day = 1,000 gal/day, which equals 1,000/250 = 4.0 single family residential equivalents (SFE). This results in a monthly charge of 4.0 x \$18.00 = \$72.00, or an amount reflecting the monthly SFE charge then in effect. (Ord. 2004-732 §6)

**Sec. 13-22. Billing; payment.**

The sewer charges levied pursuant to this Article shall be payable monthly and shall be added to and made a part of the monthly water bill of the various properties in the Town. Properties outside the Town shall pay monthly and in advance, or as provided by agreement; and if the same are not paid within thirty (30) days, the Town Clerk shall notify in writing the owner and/or tenant of the deficiencies. Then if the deficiencies are not corrected within ten (10) days following a written notice by the Town Clerk, a penalty of five percent (5%) of such charge shall be added to such bill. (Prior code 25-29)

**Sec. 13-23. Lien upon premises of unpaid charges; liability of owner.**

All sewer charges shall be a charge and lien upon the premises to which sewer service is furnished from the date the same becomes due and until paid, and the owners of every building, premises, lot or house shall be liable for all sewer service taken from his or her premises, which lien and liability may be enforced by the Town by action at law or suit to enforce such lien. In case the tenant in possession of such premises or building shall pay the sewer charge, it shall relieve his or her landlord from such obligation and lien, but the Town shall not be required to look to any person whatsoever other than the owner for the payment of sewer service herein provided. Further, if the sewer charges are not paid by the owner or by the tenant, then and in that event the Town Clerk shall notify in writing the County Treasurer and give him or her the legal description of the property and the amount of the sewer charges due, and shall be certified to the County Treasurer and added to the real estate taxes of the property owner. (Prior code 25-30)

**Sec. 13-24. Discontinuance of sewer service for delinquent bills and discharging nonacceptable wastes.**

In addition to the remedies provided in this Section, the Town may, without notice, discontinue sanitary sewer service to any premises as to which the sanitary sewer service system charges are delinquent for a period of ten (10) days. The Town may, without notice, discontinue the sanitary sewer service to any premises discharging nonacceptable wastes into the sanitary sewer system. (Prior code 25-31)

**Sec. 13-25. Disposition and use of funds.**

The funds received from the collection of charges and rentals authorized by this Article shall be deposited, paid out and applied only in the manner and form provided for the issuance of sanitary sewer refunding and improvement revenue bonds for the Town, for the purpose of refunding and paying outstanding sanitary sewer revenue bonds, and for extending and improving the Town's sanitary sewer system and treatment plant, such funds to be known and established as the *Sanitary Sewer Refunding and Improvement Bond Fund*, but nothing contained in this Chapter shall be construed in any way to prevent the Town Council from applying and crediting to such fund available money derived from any other sources. (Prior code 25-32)

**Sec. 13-26. Adoption of rules and regulations governing sewers.**

The Town Council shall make and enforce such rules and regulations as it may deem necessary for the safe, efficient and economical management of the Town sewer system. Such rules and regulations, when not repugnant to this Code or any other ordinances of the Town and laws of the State, shall have the same force and effect as ordinances of the Town. (Prior code 25-33)

**Sec. 13-27. Sewer tap fees.**

The sewer tap fee schedule is determined in accordance with the meter capacity as recommended for the water meters. Water use and wastewater flows from the larger meters can vary widely from one (1) customer to another, depending on the type of customer. Consequently, the fees for the larger meters (four [4] inches through eight [8] inches) shall be determined on a case-by-case basis to reflect the individual needs of those users. Fees are summarized in the following table:

**Sewer Tap Fees**

<i>Water Meter Size</i>	<i>AWWA Ratio to ¾"</i>	<i>In Town</i>	<i>Outside Town</i>
¾"	1.0	\$ 3,800.00	\$ 5,600.00
1"	1.7	6,000.00	9,333.00
1½"	3.3	12,000.00	18,687.00
2"	5.3	19,200.00	29,867.00
3"	11.7	42,000.00	85,333.00
4"	21.0	Negotiable	Negotiable
6"	46.7	Negotiable	Negotiable

8"	80.0	Negotiable	Negotiable
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(Ord. 2004-732 §5)

**Sec. 13-28. Penalties for violation of Sections 13-12 through 13-15 and Section 13-17.**

(a) Any person found to be violating any provision of Sections 13-12 through 13-17 of this Article, except Section 13-16, shall be served by the Town with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

(b) Any person who shall continue any violation beyond the time limit provided for in Subsection (a) shall be guilty of a misdemeanor, and on conviction thereof shall be penalized pursuant to the provisions of Section 1-62 of this Code.

(c) Any person violating any of the provisions of this Article shall become liable to the Town for any expense, loss or damage occasioned the Town by reason of such violation. (Prior code 25-22.3)

**Secs. 13-29—13-40. Reserved.**

**ARTICLE III**

**Water**

**Sec. 13-41. Requirements for receiving Town tap; subdivision and annexation requirements concerning water and water transfers.**

(a) All owners of a subdivision, areas of land and/or business, commercial, industrial or residential sites outside the Town limits that request and petition the Town for domestic water must, as a part of the consideration for securing and receiving Town domestic water service, agree to transfer when a request for Town water is made, at no cost to the Town, certain water rights, including Northern Colorado Water Conservancy District allotments, irrigation water and carriage rights of the water, to the Town before receiving permits to tap the Town water lines.

(b) All petitioners requesting annexation of their land to the Town shall, as a prerequisite to receiving approval of the annexation, agree on behalf of themselves, and all successors in interest to the land to be annexed, to transfer at no cost to the Town water rights, including Northern Colorado Water Conservancy District allotments, irrigation water and carriage rights upon subdividing and/or requesting domestic water service to the Town before receiving the approval of the annexation petition.

(c) The owners or lessees of land, subdividers or owners of a subdivision within or without the Town limits shall furnish to the Town three (3) acre foot units of project water or shares of Home Supply Ditch Co. water which the Town can use in its system per each acre of land as a prerequisite and as a part of the consideration to receive Town water service and Town water taps for the land, subdivision or parcel. But if the land is dry, the Town shall still require the owner, lessee, subdivider or developer to furnish water as above required at the time of the final approval of the annexation.

This standard shall apply to a subdivision, subdevelopment or parcel of land within or without the Town limits, but shall be applied one (1) time and one (1) time only to the subdivision or parcel of land, except if further subdivided and additional water taps are requested.

(d) *Subdivision* or *subdividing* shall be defined as any division of any parcel of land where additional water taps are requested.

(e) Persons requesting one (1) water tap only for a single parcel of land over twenty thousand (20,000) square feet and where the tap does not exceed three-fourths ( $\frac{3}{4}$ ) inch shall furnish to the Town one-third ( $\frac{1}{3}$ ) of the acre requirements as defined herein.

(f) The water as required under this Section shall be a prerequisite to receiving any Town water service tap, and the water must be transferred in full to the Town before any approval is given for a service tap. (Prior code 25-53)

**Sec. 13-42. Rates and charges, meters generally.**

(a) The Town Council shall cause to be installed water meters both within and outside the Town and shall establish uniform meter rates for all users of the water and water system.

(b) The Town shall initially install water meters for every primary tap service in use on December 5, 1966, within the Town at its own expense.

(c) In all cases where there is a second tap and a meter is desired (existing second tap on December 5, 1966, only) by a water user, there shall be an extra twenty-five dollar (\$25.00) installation charge.

(d) Potable water tap fee. The water tap fee shall be five thousand two hundred dollars (\$5,200.00) for a three-quarter-inch meter. In addition, the tap fee schedule shall be revised for the larger meters to be based on the meter capacity of the larger meters in relation to the three-quarter-inch meters, as determined by the American Water Works ratings. In addition, since the water use and peak rates of use from the larger meters can vary widely from one (1) customer to another depending on the type of customer, the fees for the larger meters (four [4] inches through eight [8] inches) shall be determined on a case-by-case basis to reflect the individual needs of those users. The fees are summarized in the following table:

**Water Tap Fees**

<i>Meter Size</i>	<i>Ratio to <math>\frac{3}{4}</math>"</i>	<i>In Town</i>	<i>Outside Town</i>
$\frac{3}{4}$ "	1.0	\$ 5,200.00	\$ 7,200.00
1"	1.7	8,687.00	12,000.00
1½"	3.3	17,333.00	24,000.00
2"	5.3	27,733.00	38,400.00
3"	11.7	60,667.00	84,000.00
4"	21.0	Negotiable	Negotiable

6"	46.7	Negotiable	Negotiable
8"	80.0	Negotiable	Negotiable

(Prior code 25-59; Ord. 519, 1996; Ord. 2004-732 §1)

**Sec. 13-43. Tap fees; costs of installation and maintenance.**

(a) All users of the Town's domestic water system, at the time of securing a building permit, shall pay to the Town the cost of the water meter and installation, which will then be installed by the Town. All other costs for providing facilities to a property for domestic water service shall be the responsibility of the property owner.

(b) The regular tap fee to be paid by the property owner shall be set by the Town Council by resolution.

(c) Future maintenance of the meter, unless maintenance and repair are necessary due to negligence of the property owner, shall be the responsibility of the Town.

(d) The Town shall be responsible for maintenance of the water line from the tap to the shut-off valve.

(e) The property owner shall be responsible for the cost of the cut and backfill from the 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.

(f) Raw water development fee. A raw water fee of one thousand dollars (\$1,000.00) for a three-quarter-inch meter shall be assessed for all new water taps (potable or raw) for the purpose of funding raw water development projects. The fees for larger meters shall be adjusted in accordance with the ratios for the larger meters. The raw water fee schedule is shown in the following table:

**Raw Water Tap Fees**

<i>Meter Size</i>	<i>Ratio to ¾"</i>	<i>Water Development Fee</i>
¾"	1.0	\$ 1,000.00
1"	1.7	1,667.00
1½"	3.3	3,333.00
2"	5.3	5,333.00
3"	11.7	11,667.00
4"	21.0	Negotiable
6"	46.7	Negotiable
8"	80.0	Negotiable

(Prior code 25-59.1; Ord. 2004-714 §§1,2; Ord. 2004-732 §3; Ord. 2006-775 §1)

**Sec. 13-44. Billing procedure and delinquent payments.**

(a) All water meters shall be read at least once each month by such person as the Town Council may employ, and the amount due shall be payable on or before the tenth day of the following month.

(b) If any water bill for any property is delinquent for more than thirty (30) days, the owner and/or tenant of the property shall be so notified by the Town Clerk in writing. The cost of such notification shall be surcharged to the owner's and/or tenant's water bill in the amount of five dollars (\$5.00). If any water bill is delinquent for more than thirty (30) days, the water service shall be shut off and the water shall not be turned on until and unless the total arrearage, together with the current month's charges, has been paid in full with cash or with certified funds. The cost of resumption of such water service shall be the sum charged by the Town to turn on water and borne by the water user and/or the property owner. Moreover, in the event the delinquent water bill exceeds one hundred fifty dollars (\$150.00), there shall be a surcharge assessed in the sum of fifty dollars (\$50.00) each thirty-day delinquency.

(c) Any tampering with the shutoff pertaining to the water service shall be in violation of this Article.

(d) The property owner or owners whereat water meters are installed shall be primarily responsible to pay for the water used as indicated by the water meter and as billed therefor.

(e) All water rates shall be a charge and lien upon the premises to which water is delivered from the date the same becomes due and until paid, and the owner of every building, premises, lot or house shall be liable for all water delivered to or taken and used upon his or her premises, which lien and liability may be enforced by the Town by action at law or suit to enforce such lien. In case the tenant in possession of such premises or building shall pay the water rent or rate, it shall relieve his or her landlord from such obligations and lien, but the Town shall not be required to look to any person whatsoever other than the owner for the payment of water rents and rates herein provided. Further, if the water rent is not paid by the owner or by the tenant, then and in that event the Town Clerk shall notify in writing the County Treasurer and give him or her the legal description of the property and the amount of the water rent due which shall be certified to the County Treasurer and added to the real estate taxes of the property owner. (Prior code 25-60, Ord. 452, 1989; Ord. 504, 1995)

**Sec. 13-45. Potable water service charges.**

The service charge schedule for all customers is shown in the following table:

<b>Potable Water Service Charges</b>		
<i>Rate Schedule</i>	<i>Charges</i>	
	<i>In Town</i>	<i>Outside Town</i>
Residential customers		
Monthly minimum volume (gallons)	5,000	5,000
Monthly minimum charge	\$10.40	\$13.40
Volume charges (per 1,000 gallons)		

5,001 – 10,000 gallons	\$ 2.00	\$ 2.60
10,001 – 15,000 gallons	2.24	2.91
15,001 – 20,000 gallons	2.49	3.24
20,001 – 27,000 gallons	2.74	3.56
Over 27,000 gallons	2.99	3.89
Nonresidential/Commercial/Industrial customers Volume charges (per 1,000 gallons)	2.49	3.24

(Ord. 2004-732 §2)

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**Secs. 13-46—13-49. Reserved.**

**Sec. 13-50. Article not to affect contracting industrial users.**

The rates prescribed in this Article, the size of the orifice into the main and any provision regarding a discount of payment shall not apply to industrial users with contracts in effect. Such users shall be governed by such agreements, regulations and resolutions as the Town Council may, from time to time, establish. (Prior code 25-65)

**Sec. 13-51. Amendment of fees.**

The fees provided in this Chapter may be amended by the Town Council by resolution. (Ord. 520, § 5, 1996)

**Sec. 13-52. Raw water service.**

(a) Service charge for raw water use. Rates for raw-water-only service to green belt areas and parks shall be set at eighty percent (80%) of the treated water charges as provided in Section 13-45 of this Article.

(b) Residential raw water use. The tap fees and rates for residential use of raw water service (dual-water systems) shall be negotiated on a case-by-case basis. (Ord. 2004-732 §4)

**Secs. 13-53—13-60. Reserved.**

**ARTICLE IV**

**Water Rights Dedication**

**Sec. 13-61. Title.**

The ordinance codified in this Article shall be known and may be cited as the *Town Water Rights Dedication Ordinance*. (Ord. 577 §1, 1998; Ord. 99-590 §1)

**Sec. 13-62. 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. (Ord. 577 §1, 1998; Ord. 99-590 §1)

**Sec. 13-63. Definitions.**

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

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

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

(3) *Board of Trustees* means the Board of Trustees of the Town.

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

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

(6) *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.

(7) *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.

(8) *Dwelling unit* means any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, as required by the Uniform Building Code.

(9) *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.

(10) *Historical use affidavit* means a notarized written statement which sets forth the following information concerning each water right proposed for dedication to the Town:

- a. The name(s) and address(es) of the owner(s);
- b. The amount of each water right or the number of shares of stock;

c. 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;

d. 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;

e. A copy of the document(s) by which the present owner(s) 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;

f. 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

g. 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.

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

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

(13) *Raw water credit* means the number of S.F.E.'s for which dedication credit is provided by the Town for the dedication of a particular acceptable water right to the Town.

(14) *Single family equivalent unit (SFE or S.F.E.)* 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 S.F.E. unit value assigned to such average dwelling unit is one (1.0). The S.F.E. unit value assigned to any particular dwelling unit may be greater than, equal to or less than one (1.0). The S.F.E. 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.

(15) *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(s), the historical use of the water right, the physical flow available and the administrative practices of the office of the State Engineer.

(16) *Town* means the Town of Johnstown.

(17) *Town Administrator* means the Town Administrator of the Town of Johnstown, Colorado.

(18) *Town water service* means treated water service or raw water service furnished by the Town.

(19) *Transfer water rights* means the conveyance of legal title to water rights to the Town.

(20) *Water court transfer fee* means the estimated cost per S.F.E. 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.

(21) *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. (Ord. 577 §1, 1998; Ord. 99-580 §1; Ord. 99-590 §1)

**Sec. 13-64. Water rights dedication requirement.**

(a) From and after the effective date of the initial ordinance codified herein, any person who seeks approval of any of the following:

(1) An extension of water service;

(2) Annexation of land to the Town;

(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 water rights to the Town of sufficient priority to produce, after dedication of such water rights to the Town and completion of any necessary water court transfer proceedings, at least one-half (0.5) acre-foot of deliverable supply per year, of which at least two-tenths (0.2) of an acre-foot per year must be fully consumable, for each S.F.E. unit, determined in accordance with this Section and Section 13-68(d), and which 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; provided that wastewater from in-house or in-building uses will either 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. 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 S.F.E. which is sufficient to ensure an adequate supply of water to satisfy the proposed use or uses. In the case of a request for annexation of land to the Town, the person who seeks approval of the annexation shall comply with this Article.

(b) Any person required to dedicate water rights to the Town by Subsection (a) of this Section shall designate, on forms to be prescribed by the Town, all water rights proposed to be dedicated to

the Town and shall provide a legal description of the land for which an 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 S.F.E. units required for such use or uses. The form shall be accompanied by an historical use affidavit, except that if the total number of S.F.E. units is greater than thirty (30) S.F.E. 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, which report is determined by the Town to sufficiently analyze the historical use of the water rights proposed for dedication to the Town.

(c) Thereafter, the Town shall make a determination as to whether or not the water rights are sufficient to satisfy the requirements of Subsection (a) of this Section. In making such determination, the Town shall consult with persons knowledgeable in water rights matters.

(d) The dedication requirement shall be satisfied by the person seeking approval of the extension of water service, annexation or a change in land use, whether or not that person will be the ultimate user of the Town water service.

(e) All costs and expenses to dedicate water rights to the Town to satisfy the requirements of Subsection (a) of this Section, or to dedicate water rights which the Town has otherwise accepted in accordance with Section 13-68, shall be paid by the person required to dedicate water rights to the Town pursuant to this Article. All costs and expenses necessary to change such 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 pursuant to this Article, or his or her successor in interest, by payment of all required water court transfer fees. (Ord. 577 §1, 1998; Ord. 99-590 §1)

#### **Sec. 13-65. Water and sewer demand analysis.**

(a) The annexor, developer or owner, as the case may be, shall include with the annexation petition, or subdivision submittal if the property has already been annexed, 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 by such annexor, developer or owner. 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.

(b) The Town may elect to provide its own analysis if, in its judgment, 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. If the Town and the annexor, developer or owner agree on applicable criteria for the property, the Town may advise such person that he or she is not required to submit the written analysis provided for in Subsection (a). (Ord. 577 §1, 1998; Ord. 99-590 §1)

**Sec. 13-66. Dedication of water rights for park, open space or recreation uses.**

(a) If the owner of any property to which the provisions of this Article is applicable dedicates land to the Town pursuant to this Code, such land to be used for park, open space or recreation uses, such owner shall also comply with the provisions of this Article, including the dedication of water rights sufficient to irrigate said land, as determined by the Board of Trustees.

(b) Where the Board of Trustees 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, from a specific Town construction plan, master plan or otherwise, the amount of water rights dedication, or cash-in-lieu of water rights dedication, at the Board of Trustee's discretion, which shall be required to meet the requirements of Subsection (a) 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 this Code. (Ord. 577 §1, 1998; Ord. 99-590 §1)

**Sec. 13-67. Exceptions.**

(a) The Board of Trustees may substitute or waive any conditions or requirements deemed necessary to meet the purposes of this Article.

(b) This Article does not apply to an extension of water service for which the dedication requirements have been previously satisfied.

(c) The Board of Trustees may from time-to-time determine that certain provisions of this Article, as amended, may be inapplicable to certain developments or portions of developments, or the application of said Article should be deferred in time or on certain conditions, if there is existing water service from Little Thompson Water District or the Town believes all or part of the development would be better served by said District, either temporarily or permanently. Any such determinations shall be set out expressly in the annexation, development and other similar agreements relating to water service.

(d) The Board of Trustees may make exceptions to the provisions of Section 13-68 in the event that all water rights appurtenant to the property being annexed cannot be dedicated upon annexation as a result of a mortgage or other encumbrance or a situation where the annexor or developer is not, at annexation, the owner of the water rights, if the Town determines that the owner or developer has made a good faith effort to secure the release of the mortgage or encumbrance, which effort has been unsuccessful, and the Town further determines that special circumstances exist which make granting an exception in the best interests of the Town. (Ord. 577 §1, 1998; Ord. 99-590 §1)

**Sec. 13-68. Procedure.**

(a) The Town shall include in any annexation, subdivision, development or similar agreements, provisions addressing whether or not there is any commitment on behalf of the Town to provide water or sewer service. Any provision affirmatively providing a commitment for water or sewer service shall limit the level of service to the amount of water dedicated by the developer and/or acquired by the Town for the developer's benefit with cash-in-lieu payments.

(b) At the time of annexation, the annexor shall elect to do one (1) or more of the following: (1) offer for dedication to the Town all water rights appurtenant to the property to be annexed; and/or (2) offer for dedication to the Town water rights which are not appurtenant to the property to be annexed; or (3) not to offer for dedication to the Town all water rights appurtenant to the property to be annexed. The Town may, in its discretion, and using the criteria set forth in this Article, consider and accept for dedication water rights offered by the annexor which are not appurtenant to the property to be annexed. The Town shall determine whether any such water rights in (1) and/or (2) offered to the Town for dedication will be accepted, rejected or accepted in part by the Town for dedication.

(c) In the event the annexor elects not to offer for dedication to the Town all water rights appurtenant to the property to be annexed, the Town shall provide in the annexation, subdivision, development and other similar agreements that: (1) there is no commitment by the Town at the time of approval of the annexation to provide water or sewer service to the property; (2) if the developer later elects to offer all such appurtenant water rights and the Town accepts them for dedication, the timing and extent of any commitment to serve water or sewer shall be limited by the completion of any necessary water court proceedings by the Town; (3) no platting of the property may occur until water right dedications have been completed for each plat; (4) only Colorado Big Thompson Project (CBT) units will be accepted for dedication at the time of platting; and (5) the annexor, developer or owner shall not be entitled to provide cash-in-lieu payments to the Town until after such time as all appurtenant water rights have been offered to the Town for dedication.

(d) 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.

TABLE I

If the following water rights are accepted by the Town, the following water court transfer fees shall be applicable:

<u>Water Rights</u>	<u>Raw Water Credits</u>
Consolidated Home Supply Ditch & Reservoir Company	\$100.00 per S.F.E.
Colorado Big Thompson Project Units (CBT)	\$0.00
Other acceptable water rights	\$100.00 per S.F.E.

Water court transfer fees shall be paid not later than the time of approval of the plat(s) to which the water rights dedication is applicable.

TABLE II

If the following water rights are accepted by the Town, the following raw water credits shall be applicable:

<u>Water Rights</u>	<u>Raw Water Credits</u>
Consolidated Home Supply Ditch & Reservoir Company	16 S.F.E.s per share
Colorado Big Thompson Project Units (CBT)	1.0 S.F.E. per unit

For water rights acceptable to the Town for dedication which are not set forth in the table above, raw water credits shall be determined by the Town in the same manner as the raw water credits listed above were determined, which determination shall include use of the criteria set forth in Section 13-64 and this Subsection (d).

(e) The Town reserves the right, in its sole 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 sole discretion, determine whether the Town will accept cash-in-lieu of dedication to satisfy all or part of the dedication requirement. If the Town elects to accept cash-in-lieu of dedication, the amount of cash shall be equal to the current fair market value of water rights required to satisfy the dedication requirement, determined as of the date of actual payment by the annexor, developer or owner, which value shall include any transaction costs incurred or to be incurred by the Town in acquiring additional water rights for the Town's system. All determinations required by this Section shall be made by the Town in its sole judgment.

(f) No plat 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.

(g) No extension of water service, including any new or additional water service, shall be furnished until there has been full compliance with the provisions of this Article, unless the Board of Trustees determines by resolution or written agreement that one (1) or more of the exceptions set forth in Section 13-67 apply.

(h) The Town reserves the right to review actual water usage within a project at a point in time after water usage has been established to confirm the adequacy of the water demand projections made by the annexor, developer or owner, and to require additional water rights dedication and/or cash-in-lieu payments based on actual water usage.

(i) All costs and expenses related to the dedication of water rights to the Town shall be borne by the person required to dedicate water rights to the Town pursuant to this Article.

(j) Any decision or recommendation made by the Town Administrator 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 Board of Trustees 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 Board of Trustees by ordinance, resolution or approval of a written agreement.

(k) In the event the water rights offered to the Town for dedication provide raw water credits in excess of those required by this policy, the annexor, developer or owner shall offer any excess water rights for sale to the Town at current fair market value. The Town may enter into a written agreement to purchase all or part of any such excess water rights and, in the event the Town does not then purchase all of such excess water rights, the Town may require the annexor, developer or owner to grant to the Town a right of first refusal to purchase such excess water rights in the future, pursuant to the provisions of Section 13-70.

(l) 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.

(m) All determinations provided for herein shall be made by the Town in the exercise of its reasonable judgment and shall be consistent with this Article.

(n) 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 or by written approval by the Northern Colorado Water Conservancy District of the transfer of any allotment contracts, as is appropriate to the particular transaction. All title documents shall be subject to approval by the Town's attorneys. No water rights dedication shall be considered completed until the Town has accepted sufficient documents transferring title to the Town. (Ord. 577 §1, 1998; Ord. 99-590 §1)

#### **Sec. 13-69. Agricultural and open space property.**

If the owner of the property proposed to be annexed, subdivided or on which the land use is proposed to be changed resulting in an increased demand for Town water service desires to retain the land, or any portion thereof, in agricultural production or as open space prior to development, he or she may, pursuant to written agreement with the Town, be permitted to 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. 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 are determined by the Town. 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 any portion of the leased water is determined by the Town to be necessary for water service to the property so platted. (Ord. 577 §1,1998; Ord. 99-590 §1)

#### **Sec. 13-70. Option or right of first refusal to purchase.**

(a) Time. Prior to any extension of water service, any person required to comply with the provisions of this Article shall also grant to the Town the option for one (1) year to purchase any and all water rights which are appurtenant to the land to be annexed, or on which the land use is proposed to be changed, but which are in excess of the dedication requirements of this Article. The option may be exercised by the Town at any time for a period of one (1) year following the date of the grant to the Town with regard to any or all of the water rights subject to the grant.

(b) Price.

(1) The option price shall be that price agreed upon by the parties. If the parties cannot agree upon an option price within thirty (30) days after notice of the Town's intent to exercise its option is received by the owner, appraisal at the Town's expense will establish the price that reflects the fair market value of the water rights.

(2) The appraisal shall be conducted by one (1) appraiser appointed by the Town, one (1) appraiser appointed by the owner of the water rights, and a third appraiser who shall be appointed by both parties. The average of the three (3) appraisals shall be the option price. All three (3) appraisers must have at least ten (10) years' experience in appraising water rights in Colorado.

(c) Right of first refusal.

(1) Grant of right. In addition to the grant to the Town of the option to purchase water rights as provided in Subsection (a), any person required to comply with the dedication requirements shall also grant to the Town a right of first refusal regarding any water rights subject to said option to purchase. If the Town for any reason should choose not to exercise its option to purchase water rights as provided in Subsection (a), the Town shall have the right of first refusal in the event the water rights are to be sold separately from the land, for a period of ten (10) years following the date of the grant to the Town.

(2) Notice period. If the owner of the water rights subject to the right of first refusal wishes to sell the water rights to a third party, he or she shall give the Town at least ninety (90) days' prior written notice of his or her intention to effect a sale of the water rights by delivering to the Town an acceptable bona fide written offer to purchase made by a third party.

(3) Exercise of right. During the ninety-day notice period provided for in Subsection (c)(2), the Town shall enjoy its right of first refusal entitling it to purchase the water rights offered for sale on the same terms and conditions as contained in the acceptable bona fide written offer. If within ninety (90) days following notice by the owner of his or her intention to sell his or her water rights, the Town chooses to exercise its right to purchase, then the Town shall so notify the owner in writing and shall proceed to closing on the terms and conditions contained in the acceptable bona fide written offer by the third party. In the event that the Town determines not to exercise its right to purchase the water rights offered for sale, the owner shall be free to sell the water rights to the third party; provided, however, that any such sale to the third party shall be for a price which is at least equal to that price which was tendered to and refused by the Town, and on terms and conditions which are no more favorable to the third party than those refused by the Town. (Ord. 577 §1, 1998; Ord. 99-590 §1)

**Sec. 13-71. 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 customers in compliance with applicable water service agreements, leases or licenses or the Town's ordinances. 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. 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. (Ord. 577 §1, 1998; Ord. 99-590 §1)

**Sec. 13-72. Regulations may be modified.**

This Article may, in the future, be modified from time to time by ordinance to reflect changes in the Town's needs, current market conditions and other appropriate factors. (Ord. 577 §1, 1998; Ord. 99-590 §1)

**Secs. 13-73--13-90. Reserved.**

**ARTICLE V**

**Infrastructure Reimbursement**

**Sec. 13-91. Water and sewer line reimbursements; purpose.**

It is the intention of the Board of Trustees in providing a reimbursement procedure under this Article to provide an appropriate incentive for developers of private property to pay for the initial construction of water and sewer mains to connect their property with existing public water and sewer mains by providing a process whereby a developer can recoup a portion of the initial construction cost of such water or sewer mains. The Board of Trustees 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 his or her cost. (Ord. 98-585 §1)

**Sec. 13-92. Conditions invoking eligibility for reimbursement for connections to public water and sewer.**

Property benefiting from sanitary sewer service or water service can be either contiguous or noncontiguous to the system. Noncontiguous development requires the construction of off-premises mains. *Off-premises mains* are defined as mains constructed to serve a property which is not contiguous to existing water and sewer mains and which crosses other private property or properties. Excluded from this definition are water or sewer mains in the interior or on the perimeter of the property initially served. The measurement of the off-premises main shall be from the point it departs the initially served property along such main to the point of connection to the existing public system. All persons desiring water or sewer service for property abutting or in the drainage area of an off-premises main shall be required to pay reimbursement if all of the following circumstances exist:

- (1) The off-premises main was constructed in accordance with Town specifications and requirements with prior approval by the Town, at the expense of one (1) or more private persons who have obtained approval for reimbursement from the Board of Trustees pursuant to Section 13-93;

(2) The person against whom the reimbursement is to be assessed requests approval for additional line extensions or services which connect to the off-premises main either directly or indirectly within ten (10) years of the completion of the construction. The initial ten-year period may be renewed for an additional five-year period or periods by action of the Board of Trustees upon petition by the person who paid for such initial construction. If such renewal petition is not filed prior to the lapse of an initial or renewal period, such renewal shall not be allowed; the granting or denial of a renewal period shall be completely at the discretion of the Board of Trustees;

(3) The property to be served with water or sewer service was owned at the time of construction by a person who did not participate in the cost of construction;

(4) The property owners against whom the reimbursement may be assessed were notified (or their predecessors in interest were notified) by the initial developer of their opportunity to participate in the cost of construction prior to the completion of construction. With respect to all owners of property directly abutting the off-premises main, such notification shall be by both certified and first class postage prepaid mail. With respect to all owners of property not directly abutting the off-premises main but in the drainage area of such off-premises main, such notification shall be in the form of signs (in the shape and form as those used for zoning request changes) announcing such opportunity erected at the intersection of the off-premises main with all public streets and roads, and left standing at all times during construction of the off-premises main. (Ord. 98-585 §1)

### **Sec. 13-93. Computation of reimbursement for connection to public mains.**

To be eligible for reimbursement, a developer must seek prior approval from the Board of Trustees, to be for an initial ten-year period. The area subject to the reimbursement procedure described in Section 13-92 shall consist of land tracts which the Board of Trustees determines benefit from the off-premises main. Costs shall be proportionally allocated by the Board to the land area on a frontage, flow capacity, drainage area or other equitable basis if all conditions are met. The developers seeking reimbursement approval shall submit to the Town Council a proposed formula for approval. The allocations 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. 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. The reimbursement shall be paid prior to the approval of plans for construction of additional extensions or when service taps are requested, whichever come first. An interest component may be added, but shall apply to the first ten-year period only, and not to subsequent periods, and it shall be equal to that of ten-year U.S. treasury bills at the completion of construction as evidenced by the date of final approval by the Town Council. Eligibility for reimbursement and reimbursement formulas must have approval of the Town Council, such approval to be had by a majority of those members present and voting. (Ord. 98-585 §1)

### **Sec. 13-94. Reimbursement procedure for private payment.**

Private persons who pay for the construction of sections of public water or sewer mains and who desire partial reimbursement for such payment shall deliver a written document to the Town Manager setting forth the total construction cost, and setting forth the name and address of an individual, bank

or other organization authorized to receive payments from the Town pursuant to this Section. Only water and sewer mains constructed by prior approval of the administrative authority and in strict compliance with Town standard specifications will be considered for reimbursement. As reimbursement charges are paid to the Town pursuant to Sections 13-92 and 13-93, the Town shall transmit such payments to such authorized individuals, bank or other organization. The Town shall have no responsibility to see that such individual, bank or other organization properly deals with such funds. The Town shall not recognize any recipients or claimants other than the named individual, bank or other organization. (Ord. 98-585 §1)

**Secs. 13-95—13-110. Reserved.**

## **ARTICLE VI**

### **Water Conservation**

**Sec. 13-111. Levels of drought condition.**

(a) There shall be three (3) separate levels of drought conditions. Level 1 shall be a normal year, requiring no restrictions, and shall be in effect without further action by the Town Council; 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; and Level 3 shall be severe drought conditions prohibiting lawn irrigation and shall become effective as provided by resolution adopted by the Town Council. The Town Council's decision to determine a restriction level shall be based upon the following criteria:

- (1) Water delivery limitations placed on the Town by its raw water providers;
- (2) Snow pack and reservoir level;
- (3) Available water supplies in general; and
- (4) Any other relevant factor that affects the Town's available water supply.

(b) Under Level 2 conditions, no person or property owner shall utilize water from the water utility 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:

(1) 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.

(2) Spray irrigation and hand-watering shall occur only on the designated property watering days to be indicated as either a circle, diamond or square. The last digit of the address of the property owner will determine the designated watering day. If the last digit is from zero (0) to three (3), it shall be designated by a circle; if by four (4) to six (6), designated by a diamond; and if from seven (7) to nine (9), designated by a square. The Town Manager shall cause to be submitted to each property owner receiving water service from the Town a calendar stamped with

the appropriate designations of circle, diamond or square so that each property owner receiving water service is informed as to the dates on which it is appropriate to water.

(c) No person or property owner shall utilize water from the water utility for the purpose of washing sidewalks, driveways, patios or similar hardscapes.

(d) Vehicles may be washed only on a property owner's District-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 15th through the date of April 15th. Trees and shrubs may be watered on either a Saturday or Sunday in accordance with the District 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 determined by resolution of the Town Council.

(g) Irrigation with well water may occur only subject to the premises being clearly posted with a notice visible from the street indicating irrigation is with well water.

(h) Only nonpotable water may be used for construction purposes. (Ord. 2003-704 §1; Ord. 2004-719 §1)

**Sec. 13-112. Water waste.**

(a) No person or property owner shall cause, allow or permit any water waste.

(b) *Water waste* is the intentional or nonintentional use of water which results in water being utilized in a wasteful or inefficient manner. Water waste includes, without limitation, the following:

(1) 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;

(2) Failure to repair or shut off within one (1) hour any irrigation system that is malfunctioning; or

(3) Excessive use of water for any exempt activities set forth in this regulation including, without limitation, vehicle washing and use of child-type swimming pools.

(c) *Excessive* means more than the minimum reasonably necessary to accomplish the task. (Ord. 2003-704 §1)

**Sec. 13-113. 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, for 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 one (1) irrigation season. These charges shall supersede the charges expressed for usage rates under Section 13-45 of this Chapter. (Ord. 2003-704 §1)

**Sec. 13-114. Penalty for violation.**

It shall be unlawful to violate of the terms and conditions of this Article, and the penalties for violation of this Article shall be as follows:

<i>Offense</i>	<i>Penalty</i>
1st offense	\$ 25.00
2nd offense	50.00
3rd offense	100.00
4th offense	200.00
5th or any subsequent offense	1,000.00

There shall be no suspension of fines. (Ord. 2003-704 §1)

**Secs. 13-115—13-130. Reserved.**

**ARTICLE VII**

**Storm Water Utility**

**Sec. 13-131. Declaration of purpose.**

(a) The Town Council hereby finds, determines and declares that 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 is necessary to protect the health, safety and welfare of the Town and its inhabitants.

(b) The Town Council further finds, determines and declares that the owners of all real property within the Town are the ultimate beneficiaries and users of the Town's storm water system and should pay a portion of the costs of providing the facilities, maintenance and administration necessary for the reasonable control of storm water.

(c) The Town Council further finds, determines and declares that dedicated funding for storm water management is needed.

(d) The Town Council further finds that the appropriate way to establish and administer the program is by establishing a storm water utility as an enterprise fund operation of the Town. (Ord. 2004-718 §1)

**Sec. 13-132. 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 Management 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* 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.

*Town* means the Town of Johnstown, including staff and elected and appointed officials. (Ord. 2004-718 §1)

**Sec. 13-133. Creation of Storm Water Utility.**

There is hereby created a Storm Water Utility of the Town empowered to implement the provisions of this Article. (Ord. 2004-718 §1)

**Sec. 13-134. Administration by Town Manager.**

The administration of the provisions of this Article is hereby vested in and shall be exercised by the Town Manager, who may prescribe forms and rules and regulations in conformity with this Article or for the ascertainment, computation and collection of the fees imposed hereunder and for the proper administration and enforcement hereof. The Town Manager may delegate the administration of this Article or any part thereof, subject to the limitations of this Code, to duly qualified employees and agents of the Town. (Ord. 2004-718 §1)

**Sec. 13-135. Comprehensive Storm Water Management Plan.**

The Storm Water Management Utility shall develop a Comprehensive 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 Comprehensive Storm Water Management Plan by resolution. All substantial modifications or amendments shall also be made by resolution of the Town Council. Such plan shall guide the Storm Water Management 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 Weld County 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 Storm Water Management Plan developed therein. Maps showing all drainage basins and proposed facilities shall be furnished to the Weld County Commissioners for their use in this matter as such maps are requested and become available and updated. (Ord. 2004-718 §1)

**Sec. 13-136. Storm water fees.**

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 fees or system development charges.

(1) System development charges. As each parcel of land is developed or redeveloped and approved as to final plat, each acre of such filing shall be assessed a system development charge of one thousand one hundred dollars (\$1,100.00). This fee may be amended by the Town Council by

resolution. These charges fund the expansion of public facilities needed to accommodate new growth.

(2) Storm water management utility fee. There is hereby imposed on each and every property within the Town and upon the owners thereof a storm water management fee equal to five dollars (\$5.00) per ERU. Each single-family residential lot shall be equivalent to one (1) ERU. A schedule of ERUs applicable to other than single-family residential properties shall be adopted by resolution of the Town Council as recommended by the Town Manager with the assistance of the Town Engineer. The storm water management utility fee may be amended by the Town Council by resolution. 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. All of 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.

(3) There is hereby established a detention credit which shall act to reduce the fee assessed against certain lots or parcels of land subject to the within storm water drainage fee. Any lot or parcel of land located within the Town which contains self-maintained on-site storm water detention facilities shall be entitled to a twenty-five-percent reduction on the fee assessed pursuant to the formula set forth above. It shall be the obligation of the owners of lots or parcels of land entitled to this detention credit to present satisfactory evidence thereof to the Town Engineer prior to obtaining the benefit of this credit. (Ord. 2004-718 §1)

**Sec. 13-137. Storm water management fund.**

All storm water management program fees collected by the Town and such other monies as might be available to the Town for the purposes of this Article shall be deposited into a special fund which is hereby created, known as the "Storm Water Management Program Fund." Such fund shall be used for the purpose of paying the costs of storm water facilities to be constructed, operations, administration, repairs and maintenance of the storm water facilities of the Town. All amounts available in such fund from time to time shall be invested by the Town Treasurer in investments proper for Town funds. All funds collected pursuant to the provisions of this Article for operation, administration, maintenance and construction of storm water facilities shall be separately designated as such and shall be used solely for those purposes. (Ord. 2004-718 §1)

**Sec. 13-138. Development infrastructure fund.**

The water drainage fees currently collected pursuant to this Article shall be deposited in a special fund to be administered by the Storm Water Management Utility and expended in accordance with this Article. (Ord. 2004-718 §1)

**Sec. 13-139. Billing for fee.**

The storm water management utility fee may be billed and collected with the Town water and sewer bill or other method as determined by the Town Council for those lots or parcels of land utilizing Town water and sewer services and billed and collected separately as storm water

management utility fees for those lots or parcels of land and owners thereof not utilizing other Town utilities. All such bills for the Storm Water Management Utility shall be paid to the Town Treasurer and shall become due and payable in accordance with the rules and regulations of this Code pertaining to the collection of such charges. The Town Clerk shall place all such charges so collected into the Storm Water Management Utility Fund to be deposited and separately kept as a fund to be used only for the purposes stated herein. (Ord. 2004-718 §1)

**Sec. 13-140. Certain properties exempt from fees.**

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

- (1) All public park land;
- (2) All public or private ponds, lakes, reservoirs, rivers, creeks, natural water courses, wetlands or irrigation ditch/canal rights-of-way;
- (3) All public streets, highways, rights-of-way and alleys;
- (4) All railroad rights-of-way except railroad property not utilized for railroad purposes;
- (5) All cemeteries; and
- (6) All lands actively used for agriculture and larger than two (2) acres in size. (Ord. 2004-718 §1)

**Sec. 13-141. Enforcement.**

Any fee which shall not be paid when due may be recovered in an action at law by the Town. In addition to any other remedies or penalties provided by this Article or any ordinance of the Town, the Town Manager is hereby empowered and directed to enforce this provision as to any and all delinquent users. The employees of the Town shall, at all reasonable times, have access to any premises served by the Town for inspection, repair or the enforcement of the provisions of this Article. (Ord. 2004-718 §1)

**Sec. 13-142. Unpaid fees to be a lien.**

All storm water management utility fee charges made pursuant to this Article shall become a permanent lien upon the property to which such charge is associated from the date said fee becomes due until such fee is paid. The owner of every building, premises, lot or house shall be obligated to pay the charge for all service provided for his or her premises, which obligation may be enforced by the Town by action at law or suit to enforce the lien. In the case that a tenant in possession of any premises or buildings shall not pay said fee, it shall not relieve the landowner from such obligation and lien, and the Town shall not be required to look to any person whatsoever other than the owner for the payment of such fees. No changes of ownership, occupation or use shall affect the application of this Section, and the failure of any owner to learn that he or she purchased property against which a lien for storm water management utility fees exists shall in no way affect his or her responsibility for such payment. Notwithstanding any provision to the contrary, any delinquent amount may be

enforced by assessment and lien upon the property and premises so served and certification thereof to the County Treasurer for collection, with ten-percent administrative fee. (Ord. 2004-718 §1)

**Sec. 13-143. Administrative review; appeals.**

(a) Any owner who disputes the amount of the storm water management utility fee made against such owner's property or who disputes any determination made by or on behalf of the Town pursuant to and by the authority of this Article may petition for a hearing on a revision or modification of such fee or determination. The Town Manager may hold such hearing or may designate another person as a Hearing Officer with authority to hold such hearing. Such petition may be filed only once in connection with any such fee or determination, except upon a showing of changed circumstances sufficient to justify the filing of such additional petition.

(b) Such petition shall be in writing, filed with the Town Clerk, and the facts and figures submitted shall be submitted under oath either in writing or orally at a duly scheduled hearing. The hearing, if any, shall take place 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.

(c) Within thirty (30) days of filing, the Hearing Officer shall make findings of fact based upon all relevant information, shall make a determination based upon such findings and, if appropriate, modify such fee or determination accordingly. Such determination shall be considered a final order of the Hearing Officer, which order may, within thirty (30) days of its issuance, be appealed to the Town Council for hearing on such a revision or modification of such fee. Any such appeal to the Town Council shall be in writing, filed with the Town Clerk, setting forth the specific errors and omissions of the Hearing Officer in the Officer's determination. Such hearing shall take place in the Town, and notice thereof and the proceedings shall otherwise be in accordance with the bylaws, rules and regulations of the Town Council. The appellant shall have the burden of proof.

(d) Persons desiring to appeal a decision of the Hearing Officer to the Town Council shall, at that time of making such appeal, pay to the Town Treasurer a docket fee in the amount of fifty dollars (\$50.00). Written notice of hearing shall be given to all parties concerned at least seven (7) days prior to the hearing or by mailing the same to such party's last known address by first-class mail, postage prepaid. The Town Council may, from time to time, adopt such additional rules and regulations as it deems necessary and advisable for the conduct of its hearings and for carrying out the provisions hereof. Within thirty (30) days of filing of an appeal, the Town Council shall make its final determination and, if appropriate, modify such charge or determination of the Hearing Officer in accordance with the facts submitted to the extent that the Town Council finds such facts to be true.

(e) Every decision or determination of the Hearing Officer shall be in writing and notice thereof shall be from the date of such action. Service by certified mail, return receipt requested, shall be conclusive evidence of service for the purpose of this Article. (Ord. 2004-718 §1)

**Sec. 13-144. 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 Storm Water Management Plan adopted by the Town Council. The Town Manager shall review such plans and specifications and, after the Town Manager's 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. (Ord. 2004-718 §1)

**Sec. 13-145. Title granted to Town.**

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. (Ord. 2004-718 §1)

**Sec. 13-146. Responsibility for accepted facilities.**

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 may refuse to accept facilities inadequately constructed or constructed in variance with Town requirements. (Ord. 2004-718 §1)

**Sec. 13-147. 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. (Ord. 2004-718 §1)

**Sec. 13-148. Disclaimer.**

Floods or drainage problems associated with storm water runoff may occasionally occur which exceed the capacity of storm sewer facilities constructed and maintained by funds made available under 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 Section 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. (Ord. 2004-718 §1)

**Sec. 13-149. Storm Water Utility Enterprise.**

(a) The Town Council hereby recognizes and confirms the operation of the municipal sewer system (the "system") as an enterprise within the meaning of Section 20 of Article X of the State Constitution.

(b) The Town Council hereby formally establishes the Storm Water Utility Enterprise (the "Enterprise"), pursuant to the Act, for the purpose of continuing the operation of the system as a Water Activity Enterprise under the Act and as an enterprise within the meaning of Section 20 of Article X of the State Constitution.

(c) The Town Council hereby designates itself as the ex officio governing body of the Enterprise, pursuant to the Act.

(d) To the extent it deems necessary, the governing body of the Enterprise shall exercise the Town's legal authority relating to the system, but shall not levy a tax.

(e) All action not inconsistent with the provisions of this Section heretofore taken by the Town Council or by the officers and employees of the Town directed toward the operation of the system as an enterprise under Section 20 of Article X of the State Constitution is hereby ratified, approved and confirmed. (Ord. 2004-718 §1)

**Secs. 13-150—13-160. Reserved.**