

## **CHAPTER 13 Municipal Utilities**

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**Sec. 13-1-10. Creation of Water Department.**

There is hereby established the Water Department for the Town for the purpose of the management, maintenance, care and operation of the Town's waterworks and streetlights, for which a utility fee will be charged. The Water Department shall be managed by the Town Administrator, if such officer has been appointed by the Board of Trustees. In the absence of a Town Administrator, the Board of Trustees may designate one (1) of its members to oversee the day-to-day management of the Department, who shall serve in such capacity without compensation. The Board of Trustees shall serve as the Water Enterprise Board and administer the Town's waterworks and Water Enterprise Fund.

(Ord. 4, 1986 §1; Ord. 2, 1994; Ord. 11, 2002 §1; Ord. 7, 2006)

**Sec. 13-1-20. Superintendent; powers.**

There is hereby created the position of Water Superintendent of the Water Department who shall serve under the Town Administrator and be responsible for the day-to-day operations and maintenance of the waterworks. The Water Superintendent shall be appointed by the Town Administrator, subject to the advice and consent of the Board of Trustees, and shall perform all acts that may be necessary for the prudent, efficient and economical management and protection of said waterworks. The Board of Trustees shall have the power to prescribe water rates, rules and regulations as it may deem necessary.

(Ord. 4, 1986 §2; Ord. 11, 2002 §1)

**Sec. 13-1-30. Receipts and deposits.**

The Town Clerk shall keep a correct account of all receipts, make out all bills for water rents and materials furnished to consumers, collect the same and deposit the proceeds so collected with the Town Treasurer to the credit of the Town water fund and in accordance with the directions of the Board of Trustees.

(Ord. 4, 1986 §3)

**Sec. 13-1-40. Inspections.**

The Water Superintendent is authorized and empowered when he or she deems necessary on reasonable cause, to inspect the premises of a water user to determine if there is waste or other improper use of water. This power is deemed necessary to protect the health, safety and welfare of the citizens and users of the Town and its waterworks.

(Ord. 4, 1986 §4; Ord. 11, 2002 §1)

**Sec. 13-1-50. Application for water.**

Application for the use of water shall be made to the Water Superintendent through the Town Clerk. The application must be made by the owner or agent of the property to be benefited, upon forms furnished

by the Town Clerk. In the furnishing of water for any purpose other than domestic purposes, the Town shall not be responsible for the quantity or quality of the water furnished.

(Ord. 4, 1986 §5; Ord. 11, 2002 §1)

**Sec. 13-1-60. Connection to municipal water system; sanitation connections; meters; fees and charges.**

- (a) Connection required (new construction). Every new building, structure or facility of any nature to be constructed within the Town that uses water shall be connected to the Town's water system and the sanitary sewer system operated by the Fairplay Sanitation District.
- (b) Connection required (existing structures). All existing buildings, structures or other facilities of any nature that use water and that are not connected to the Town's water service system and/or the sanitary sewer system shall be required to connect to said systems when a water and/or sewer main is available within four hundred (400) feet of the property on which the building, structure or facility is situated, as measured along Town rights-of-way or water or sewer line easements. All extensions and connections shall be made in accordance with the procedures established by the Town and/or Fairplay Sanitation District, respectively. Private potable water lines, water wells and mains, and private septic or other wastewater sanitation systems and service connections existing and in use as of the effective date of this Section shall not be enlarged or the number of service connections increased without written permission of the Town. Should a water main or sewer main become available within four hundred (400) feet of a property which is currently served by a private well and/or sanitation system (as measured along existing Town rights-of-way or water/sewer line easements), the owner of the property shall be required to abandon his or her well and/or sanitation system, as applicable, and tap onto the water and/or sewer mains within ninety (90) days of the date on which said water and/or sewer service has become available. A property required to disconnect from a private water well as set forth in this Section may continue to utilize the well for outdoor irrigation so long as such use is authorized by a valid well permit and there is no cross-connection between the well system and any water-using building or structure or indoor potable water system, inclusive of the Town's water system.
- (c) Water meters required (new construction). All water service connected to any new building, structure or facility shall be metered. Meters and necessary pressure regulator valves shall be purchased and installed at the sole cost of the property owner and be of a type, size and design approved by the Town. The readout for all water meters must be accessible from outside the building or structure being served by water and be installed at a location approved by the Water Superintendent. All meters shall be subject to inspection and adjustment prior to the delivery of water service.
- (d) Water meters required (existing premises). All water service serving a business, commercial or governmental property, including a property used in a home occupation, shall be metered by no later than August 1, 1994. Additionally, whenever a property which is receiving unmetered water service is sold or otherwise conveyed to a new owner, a new water meter must be installed prior to the continuation of water service to such property. By June 1, 1996, all water service delivered to any property through the Town's water system shall be metered. Meters and necessary pressure regulator valves shall be purchased and installed at the sole cost of the property owner and be of a type, size and design approved by the Town. The readouts for all water meters must be accessible from outside the building or structure being served by water and be installed at a location approved by the Water Superintendent. All meters shall be subject to inspection and adjustment prior to the delivery of water service.
- (e) Tapping charges. Water services shall be furnished to the consumer when all tap fees and special fees as hereinafter provided have been paid to the Town Clerk or a deferred payment plan has been accepted by the Town. The consumer shall pay to the Town Clerk for each new water tap a fee which shall be the total sum of the charges for the actual cost to the Town of the corporation cock, expansion joint, curb box, curb stop, check valve, tapping saddle, water meter and any other incidental parts furnished by the Town to make such tap, plus the cost of labor to perform such work.

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- (f) Plant investment fees. Plant investment fees (P.I.F.) shall be set by the Board of Trustees by resolution and shall be based on the size of the tap. Such fees shall be paid by the consumer prior to any connection to the municipal water system. All water taps or connections shall be made within twelve (12) months following the date of payment. A consumer may request refund of the P.I.F. if within twelve (12) months following payment of the fee, the consumer fails or determines not to connect to the water system. All refunds shall be paid without interest. Should a consumer fail to have a water tap connected to the system within twelve (12) months of paying the P.I.F., the consumer may elect to have the fee applied toward a tap at such time as the consumer wishes to connect to the water system. However, nothing in this Section shall be construed as requiring the Town to make such tap available at such later date. Any increase in the P.I.F. following initial payment of the fee will apply to any consumer who does not connect to the water system within twelve (12) months. Prepaid water taps may not be transferred between properties.
- (g) Single-family equivalent. A single-family equivalent ("S.F.E.") shall mean the average characteristics of a single-family home in the water service area of the Town. The details of these characteristics may be changed from time to time as better data is obtained to define the S.F.E. Some of the more important characteristics of the S.F.E. are as follows:
- (1) Average occupancy = 3.5 persons.
  - (2) Average daily water consumption per person = 100 gal/day.\*
  - (3) Average daily water consumption per S.F.E. = 350 gal/day.\*
  - (4) Peak daily water flow = 350 gal/day.
  - (5) Peak instantaneous water flow = 20 gal/minute.

\* Average, as used here, applies only during the period in which the S.F.E. unit is occupied. This average cannot be used to determine the yearly average flow, for instance, because of the highly variable occupancy experienced in second homes in the Fairplay area.

For purposes of this Article, non-single-family uses shall be converted to the equivalent number of single-family units. This conversion shall be determined by the Town on the basis of the characteristics that are common to both single-family and non-single-family uses. Where more than one (1) characteristic is common to both uses, a weighing factor may be used to establish the relative importance of these characteristics on the water system.

- (h) Maintenance and testing. Meters shall be the property of the Town. All meters and remote readouts shall be maintained by the Town and tested and repaired as necessary. All meter pits, vaults, covers and meter risers located on private property shall be maintained by the water consumer and be subject to inspection by the Town. It shall be the responsibility of the consumer to prevent damage to meters from freezing, and any repair or replacement necessitated by freezing shall be paid for by the consumer. If a consumer questions the accuracy of a meter, the Town shall remove and test the meter. If such testing reveals that the meter is accurate, the consumer shall pay for the actual cost of removal, testing and reinstallation of the meter. If such testing shows the meter to be inaccurate, it shall be repaired and reinstalled at Town expense. If the Town tests a meter at the initiative of the Water Department, the Town shall bear the cost of removal, testing and reinstallation of the meter. Any appeal concerning the charges provided by this Section shall be determined by the Board of Trustees.
- (i) Failure to install. Water service shall not be provided or continued unless a meter is installed, tested and inspected as required by this Section. In the event that a consumer fails to install a meter as required, water service may be turned off, at the discretion of the Water Superintendent, after fourteen (14) business days' notice to the consumer, which notice shall be deemed complete upon the date of mailing. Whenever unmetered water service has been discontinued at the request of the owner, service shall not be resumed until a water meter has been installed pursuant to this Section.
- (j) Restrictions. Taps on service lines between the main and the meter are prohibited unless specifically approved by the Water Superintendent, which approval shall only be granted where the Water Superintendent determines that a connection to a service line will not result in the unauthorized or

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unmetered use of water. It shall be unlawful for any person to tamper or interfere with any meter, readout or meter seal or to modify water services or plumbing so that water will not actuate the meter or water use will not be accurately metered. Violation of this Section may result in the discontinuance of service.

- (k) Costs of shut-off and penalty. All costs for labor and material required to shut off service will be borne by the consumer or owner of the property. Should any owner, or occupant or other consumer restore water service absent authorization from the Town, or cause it to be turned on after it has been turned off at the curb cock, service will be turned off at the main and an additional charge in an amount to be set and determined by the Board of Trustees by resolution, plus the cost of labor and material, as determined by the Town, shall be collected prior to the resumption of service. Change of ownership or occupancy shall not affect the application of this Section.

(Ord. 4, 1986 §6; Ord. 4, 1990 §1; Ord. 6, 1990 §1; Ord. 7, 1991 §1; Ord. 2, 1994; Ord. 4, 1994; Ord. 13, 1994; Ord. 2, 1995 §§1, 2; Ord. 4, 1995; Ord. 11, 2002 §1; Ord. 4, 2005; Ord. 2, 2006; Ord. 2008-04 §1; Ord. No. 2014-4, § 9, 5-5-2014)

### **Sec. 13-1-70. Replacement of existing tap.**

When an enlarged tap replaces an existing tap, and the existing tap is completely disconnected from the water main or pipeline, credit will be allowed for the existing tap against the tap fee charges for the new tap at the current rate.

(Ord. 4, 1986 §7; Ord. 2, 1994 §7)

### **Sec. 13-1-80. Water availability fees; tap charge for fire protection only.**

- (a) When a tap is made for the purposes of water availability and connection to an approved fire protection system, the connection charge shall be twenty-five percent (25%) of the P.I.F. and one hundred percent (100%) of the tapping charges, plus all of the other fees and costs.
- (b) Lots which have installed taps for domestic household use but on which no structure has been completed will only be charged one-half (½) of the applicable base rate for up to six (6) months, or until a meter has been installed, or until a certificate of occupancy has been issued for the water-using structure on the property, whichever occurs first, after which the property will be charged the full normal base rate.

(Ord. 4, 1986 §8; Ord. 2, 1994 §8; Ord. 2, 1995 §3; Ord. 11, 2002 §1)

### **Sec. 13-1-90. Special fees.**

All necessary pipe, fittings, valves, shut-off, trenching, booster pumps, back-filling and installation of the tap and water meter must be made at the expense of the consumer and under the supervision of the Water Superintendent. No water service shall be turned on to serve any tap until all fees provided hereunder shall have been paid and the Water Superintendent shall have given final approval of the tap as installed. Tapping must be performed by the Town, and the necessary appurtenances must be furnished by the Town. Upon approval by the Town of the connection of the curb valve to the service line, the curb valve will become the property of the Town and will be maintained by the Town.

(Ord. 4, 1986 §9; Ord. 2, 1994 §9; Ord. 11, 2002 §1)

**Sec. 13-1-100. Size of service tap.**

No service tap shall be more than three-fourths ( $\frac{3}{4}$ ) inch in diameter unless special permission is given for a larger tap, and all plumbing through which water is used shall be installed by a licensed plumber or other person approved by the Water Superintendent. Installation of such service line shall be in conformance with the "CABO One and Two Family Dwelling Code," 1983 edition, and the "Uniform Plumbing Code," 1988 edition and the Colorado Primary Drinking Water Regulations issued by the Colorado Department of Health.

(Ord. 4, 1986 §10; Ord. 2, 1994)

**Sec. 13-1-110. Extension policies.**

- (a) All extension of water mains shall be built to the specifications of the Town. Water mains shall be installed by the builder-developer according to plans and specifications submitted to and approved by the Board of Trustees. In all cases, the work must be performed by qualified individuals and must receive the final approval of the Water Superintendent before water service will be provided.
- (b) The builder-developer must pay for the entire project cost, including labor, material, engineering, construction and job inspection by the Town.
- (c) The line size shall be the same as the presently existing mains, except that where additional sized mains are desired or may be required because of possible future extension of the same, the Town will pay for the extra cost of the oversize. Lines up to eight (8) inches will not be considered oversized. In determining the size of main, reference shall be made to the Town Master Water Plan.
- (d) The Town shall assume full ownership of and responsibility for the water main after final inspection and acceptance by the Town and dedication to the Town of appropriate rights-of-way in fee for the maintenance of the water mains thereunder.
- (e) When a property is connected to the system, the property owner will pay to the Town the applicable tap fee and P.I.F.
- (f) After the property served by an extension main line, paid for by a builder-developer, is occupied by a paying consumer, such consumer may be required to reimburse the builder-developer pursuant to an approved reimbursement agreement executed between the Town and the builder-developer according to the following formula:

Cost of line extension divided by the number of potential users equals each user's share of construction cost.

The number of potential users is defined as the number of lots which will be served from the line extension and which lot did not at the time of construction have access to any alternative water line.

- (g) The Town shall collect the above share of construction costs from each such connecting user to the line extension at the time of the user's payment of tap fees and P.I.F., and the Town shall forthwith pay such share to the builder-developer.
- (h) The above rights of reimbursement (referred to in Subsections (f) and (g) above) shall terminate on the fifth anniversary of any of the following: (1) the date of conveyance of the subject line to the Town; (2) the date the subject line first carries water to any user, including the builder-developer; or (3) the date that the construction of the subject line is substantially completed as determined by the Water Superintendent, whichever occurs first.

(Ord. 4, 1986 §11; Ord. 2, 1994; Ord. 11, 2002 §1)

**Sec. 13-1-120. Fixtures installed by plumber.**

All plumbing and plumbing fixtures wherever used shall be of standard make and construction and, in the event a property owner does not do his or her own work, shall be installed in the first instance by a licensed plumber. Any plumber or owner altering, changing or adding to any plumbing shall immediately report the same to the Water Superintendent, and any failure to do so shall constitute a violation of this Article.

(Ord. 4, 1986 §12)

**Sec. 13-1-130. Discontinuance of service.**

- (a) Any person who wishes to discontinue the use of water service shall file a written or verbal notice with the Water Superintendent and pay all current and back charges for water services. The fee for turning off water service at the request of the consumer shall be as set and determined by the Board of Trustees by resolution.
- (b) The fee for discontinuing and resuming water service for valid maintenance purposes shall be as set and determined by the Board of Trustees by resolution.
- (c) Any maintenance shut-down under this provision will not exceed seventy-two (72) hours unless the Water Superintendent states that the maintenance requires more time. The basic charge in Section 13-1-260 will still be assessed during maintenance shut-downs.
- (d) Notwithstanding any discontinuance of service, the basic charge provided in Section 13-1-260 hereof shall continue to be charged to the consumer during said discontinuance.

(Ord. 4, 1986 §14; Ord. 2, 1994; Ord. 2, 1995 §4; Ord. 7, 1996; Ord. 11, 2002 §1; Ord. No. 2014-4, § 10, 5-5-2014)

**Sec. 13-1-140. Separate connection required.**

Two (2) or more premises cannot be supplied from one (1) connection unless provided with separate shut-off cocks located at the public street right-of-way line or at such place as designated by the Water Superintendent. However, multiple dwelling premises, including but not limited to apartment buildings, condominiums, trailer parks and the like, may, by order of the Water Superintendent, be provided with a single service line for all or a portion of such multiple dwelling and shall pay a basic charge for the water consumed equal to the number of S.F.E.s determined by the Water Superintendent times the basic charge.

(Ord. 4, 1986 §15; Ord. 11, 2002 §1)

**Sec. 13-1-150. Service pipe regulations.**

No consumer shall be permitted to conduct water pipes across lots or buildings to adjoining premises. Water service to a portion of developed property shall not be permitted. Service must include all improvements on the property with no cross-connection with other water supply except as provided in Section 13-1-140. Service pipes must be laid at least eight (8) feet below the surface of the ground. The consumer shall be responsible for the installation, maintenance or repair of service pipes, valves and fixtures from the water main to the use facility. Any installation or modification of service lines shall be subject to inspection by the Water Department before service will be provided or restored. All owners, at their own expense, must keep service pipes from the water main and all their apparatus in good working order and properly protected from frost and other disturbances. No claim shall be made against the Town on account of the breaking of service pipes or apparatus or for failure in the supply of water. No reduction in the rates will be made for any time that service pipes or fixtures may be frozen.

(Ord. 4, 1986 §16; Ord. 4, 1990 §1; Ord. 2, 1994 §16)

**Sec. 13-1-160. Waste of water prohibited.**

- (a) Consumers shall prevent unnecessary waste of water and keep all water outlets closed when not in actual use. In addition to the penalty provided herein for violations of this Article, the water supply may be turned off when any such waste occurs and, in such case, a penalty as set by the Town Board by resolution plus all labor and material costs must be paid before the water is turned on again.
- (b) In the event of a break in any service line, the property owner or person occupying the premises shall forthwith notify the Water Superintendent. Upon examination of the service line, the Water Superintendent may, in his or her discretion, turn off the water supply to the premises supplied by said line without notice to said property owner. It is unlawful for any property owner or any person in control of any premises served by a service line to knowingly fail to report a break in the service line supplying said premises.

(Ord. 4, 1986 §17; Ord. 2, 1994; Ord. 2, 1995 §5; Ord. 11, 2002 §1; Ord. No. 2014-4, § 11, 5-5-2014)

**Sec. 13-1-170. Supplying water to others.**

The Town furnishes water for a certain specified sum. If, therefore, a consumer furnishes water to other users, or permits it to be taken without the consent or knowledge of the Town, such conduct shall be deemed a violation of this Article and the consumer shall be required to pay double the price of the water so used. The Town may also shut off the supply for abuse of water privileges. When the water has been turned off for violation of this Section, the water will not be turned on again until all water charges and penalties have been paid, including an additional sum in an amount to be set and determined by the Board of Trustees by resolution.

(Ord. 4, 1986 §18; Ord. 2, 1994; Ord. 2, 1995 §6; Ord. 11, 2002 §1; Ord. No. 2014-4, § 12, 5-5-2014)

**Sec. 13-1-180. No use during fire alarm.**

During all alarms of fire, the use of hose and all outlets where a constant flow of water is maintained is positively forbidden.

(Ord. 4, 1986 §19)

**Sec. 13-1-190. Sprinkling restrictions.**

In case of water shortage or scarcity, the Water Board may place any restrictions which are deemed necessary upon the use of water for irrigation or sprinkling purposes.

(Ord. 4, 1986 §20; Ord. 11, 2002 §1)

**Sec. 13-1-200. Repair and extension of mains.**

The Town reserves the right, upon reasonable notice, to shut off its mains for the purpose of making repairs or extensions or for any other purpose. No claim shall be made against the Town by reason of the



breakage of any service pipe or service cock or from any other damage that may result from shutting off water for repairing and relaying mains, hydrants or other connections.

(Ord. 4, 1986 §21)

**Sec. 13-1-210. Payment of water bills; penalties and interest; service termination.**

- (a) The Town Clerk/Treasurer shall prepare and mail monthly billing statements for the water consumed during the previous month based on the schedule of water rates and charges established by the Board of Trustees. All charges for water shall be due and payable on the last day of the month in which the billing statement has been mailed (the "due date"). The failure of a customer or water user to pay a billing statement in full on or before the due date shall cause such statement to become delinquent. A delinquency penalty of five dollars (\$5.00) shall be assessed and collected on any billing statement that has not been fully paid by the statement due date. Additionally, all unpaid bills shall be assessed and incur interest at a rate of one percent (1%) per month until fully paid; except that said interest shall not be assessed upon any delinquency penalty, but only on the principal amount due.
- (b) If any customer, user or property owner who has failed to timely and fully pay all charges or fees for water service, or fails to timely and fully comply with an ordinance, rule or regulation governing the delivery of water, then service may be discontinued by the Town until all charges and fees have been fully paid, inclusive of delinquency, disconnection and reconnection fees, and/or until compliance has been obtained with the rules and regulations governing water service. There will also be a charge in an amount to be set and determined by the Board of Trustees by resolution for all checks returned by a customer's bank for insufficient funds.
- (c) A customer, user or property owner who has failed to timely and fully pay a charge or fee for water service, or who has failed or refused to comply with an ordinance, rule or regulation governing water service, shall be provided a written notice or correction order that shall state the nature, date and location, or approximate location, of the failure or violation and the compliance required. The notice or order shall further provide that if the failure or violation is not corrected by a specified date, water service shall be terminated. The notice or order shall be issued not less than fourteen (14) business days prior to the termination of service and shall include an advisement that the termination of service may be appealed by submitting a written request to the Town Clerk within seven (7) business days, excluding holidays, from the date of the notice or order.
- (d) In the event a notice or order for termination of service is appealed, the Board of Trustees shall review the same and afford the appellant an opportunity to be heard thereon. Such review and hearing shall be held within twenty-one (21) days from receipt of the written appeal by the Town Clerk, or at such later time as the Board of Trustees deems prudent. Notice of the hearing shall be sent to the appellant not less than five (5) business days, excluding holidays, prior thereto. No water service shall be discontinued pending resolution of the appeal. The decision of the Board of Trustees on the appeal shall be promptly entered and shall be final. A failure by an appellant to appear at a hearing shall constitute grounds to dismiss an appeal and affirm the notice, order or action appealed from.
- (e) Notices and orders regarding appeals or the termination of service shall be sent by: (1) certified mail to the customer or water user at the address last shown in the Town's service records; or (2) by hand-delivery; or (3) if the customer or user cannot be found after due diligence, the notice or order may be posted conspicuously upon the premises being served for a period of not less than ten (10) days.
- (f) Notwithstanding the provisions for notice and the termination of service as set forth above, the Town may summarily discontinue service to a building, property or premises without advance notice where such action is necessary to alleviate an emergency, such as a broken main or service line, or to protect the municipal water system or supply from contamination.
- (g) Neither the issuance of a notice or order for termination of service, nor a customer's compliance therewith, shall bar or be a prerequisite to the commencement of a prosecution in Municipal Court for a violation of the ordinances, rules or regulations governing water service, or the initiation of any other proceeding to abate or remedy a violation thereof.

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- (h) If more than one (1) building, lot, parcel, dwelling unit, condominium unit or other premises is served by or through a common service line or meter, each customer, user or property owner receiving service from the single service line or meter shall be liable for the full amount of all charges or fees for services delivered through such line or meter. If a charge or fee is not timely and fully paid, or if any customer, user or property owner fails or refuses to comply with the ordinances, rules or regulations governing water service, then the Town may discontinue service to all customers, users or property owners served by the common service line or meter until all fees and charges are paid, and/or until all violations of the Town's ordinances, rules and/or regulations are corrected.
- (i) In the event water service is terminated for failure to pay service fees or charges, or for violating the regulations governing the delivery of water services, a service charge in an amount set and determined by the Board of Trustees by resolution shall be paid by the water service user or customer prior to restoration of such service, Should any customer or user cause water service to be restored without the authorization or consent of the Town, said customer or user shall be assessed and pay an additional charge in an amount set and determined by the Board of Trustees by resolution to compensate the Town for having to disconnect or terminate said unauthorized restoration of service.

(Ord. 4, 1986 §22; Ord. 2, 1994; Ord. 2, 1995 §7; Ord. 6, 2000 §1; Ord. 11, 2002 §1; Ord. 2010-5; Ord. No. 2014-4, § 13, 5-5-2014; Ord. No. 2015-1, § 1, 1-12-2015)

### **Sec. 13-1-220. Protest by water users.**

A water user shall have the right to contest and protest the amount of a water service billing charge incurred in a particular month subject to the following terms:

- (1) All protests must be in writing and must be filed with the Town Clerk within thirty (30) days following the date of the monthly billing statement which is the subject of the protest. The Town Clerk shall place the protest on the agenda for the second regular meeting of the Board of Trustees following the date on which the Town Clerk receives the protest, or as soon thereafter as can be accommodated. The Town Clerk shall notify the person filing the protest of the date, place and time of such meeting by certified mail at the address disclosed in the protest or, if none, at the last known address of the protester. At such meeting the protester shall show cause why the contested billing charge is in error.
- (2) If a billing protest is upheld, the Board of Trustees shall make a determination of the appropriate charges which should have been billed, and the Town Clerk thereafter shall make the appropriate adjustment in the protester's billing account. All decisions by the Board of Trustees shall be final.
- (3) A protest filed pursuant to this Section shall be void, and the Town Clerk shall not be required to place such protest on the agenda of the Board of Trustees if the billing charges for which the protest has been filed have not first been paid in full at or prior to the date on which the protest is submitted to the Town Clerk. Any amounts subsequently determined to have been billed and paid in error shall be credited to the protester's account, or refunded as deemed appropriate by the Board of Trustees.

(Ord. 4, 1986 §23; Ord. 6, 2000 §3; Ord. 11, 2002 §1)

### **Sec. 13-1-230. Water account in name of owner.**

All accounts for water shall be kept in the name of the owner of the property, who shall be held responsible for water charges, and not in the name of an agent; provided that persons holding property under a lease may be listed on an account. In such case, the Town may require a deposit of one hundred fifty-six dollars (\$156.00), which deposit may be forfeited to the Town at any time when water charges become delinquent and a new deposit required before further service is rendered.

(Ord. 4, 1986 §24; Ord. 11, 2002 §1)

**Sec. 13-1-240. Liability for service fees and charges; lien.**

- (a) Until paid in full, all fees, charges, rates or tolls for water service shall constitute a first and perpetual lien on and against the lot, land, building and/or property served by the municipal water system, and in the event said fees, charges, rates or tolls are not paid when due, the Town may certify the same to the County Treasurer to be collected and paid over in the same manner as taxes, together with the costs of collection.
- (b) The imposition or certification of a lien as provided for in this Section shall not relieve a customer, user or property owner from liability for the payment of a fee or charge for water service, and the Town may seek and obtain the collection of the same through an action at law or other appropriate legal proceeding.

(Ord. 4, 1986 §25; Ord. 2, 1994, Ord. 2, 1995 §8; Ord. 6, 2000 §2)

**Sec. 13-1-250. Regulations part of contract.**

All regulations contained in this Article shall be considered a part of the contract of every person taking water from the Town's water system, and every person taking water shall be considered as having expressly consented to be bound thereby.

(Ord. 4, 1986 §26)

**Sec. 13-1-260. Rates for water services.**

The rates for water service shall be as set and determined by the Board of Trustees by resolution.

(Ord. 4, 1986 §27; Ord. 4, 1990 §1; Ord. 6, 1990 §1; Ord. 7, 1991 §2; Ord. 2, 1994; Ord. 2, 1995 §9; Ord. 6, 2000 §4; Ord. 11, 2002 §1; Ord. 2007-07 §§1, 2; Ord. No. 2014-4, § 14, 5-5-2014)

**Sec. 13-1-270. Outside users.**

- (a) The Town does not assume any responsibility for furnishing water service to any area outside the Town, even though such service has been furnished in the past; however, it shall be the policy of the Town, within its sole discretion, to furnish such service whenever practical, subject to the terms and conditions of this Article.
- (b) Not responsible for water mains. The Town does not assume any responsibility for the maintenance of water mains not owned by the Town located outside the Town limits, even though the Town has maintained such mains in the past.
- (c) Water mains maintained when. It shall be the policy of the Town to maintain existing water mains outside the Town limits only upon compliance with the following terms and conditions:
  - (1) The title to water mains, together with proper easements, are placed in the name of and accepted by the Town; or
  - (2) The posting of proper financial guarantees for the payment to the Town for labor and equipment to maintain mains outside the Town limits.
- (d) The following will be required before any application is approved to extend a water main beyond the Town limits:

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- (1) The applicant must submit an engineered plan to the Board of Trustees which must be approved by the Planning Commission and the Water Superintendent.
  - (2) The applicant must pay all of the costs of constructing water mains from the present location of the mains within or without the Town to the place where service is desired.
  - (3) All construction must be supervised by the Water Superintendent, and the applicant must pay all costs of such supervision and construction.
  - (4) The title to the water mains, together with proper easements, must be placed in and accepted by the Town before service begins.
  - (5) All nonresident users will pay twice the normal connection and monthly service charges provided for in this Article.
  - (6) The applicant and all nonresident users must comply with all existing and future ordinances of the Town regarding the construction and operation of such a main and the delivery of water service.
- (e) Nonresidents who construct expansions to existing water lines may avail themselves of the construction cost reimbursement procedures as provided in this Article.
- (f) Notwithstanding the provisions contained in Section 13-1-260 above, the base rate and additional charges for water supplied to outside users as set forth in Subsections (a) and (b) above shall be equal to two (2) times the base rate for water supplied to users located within the Town's boundaries as they exist from time to time.
- (g) The terms outside user and nonresident as used in this Section shall be synonymous and shall be defined as those persons and entities owning or using a water tap issued by the Town and from which those persons and entities utilize water from the Town's municipal system but which services a parcel of real property and improvements located outside the Town's boundaries as they exist from time to time (Ord. 4, 1986 §28; Ord. 10, 1997 §1; Ord. 11, 2002 §1)

### **Sec. 13-1-280. Maintenance and repairs; after hours, weekends and legal holidays.**

To the extent any user or consumer of water provided by the Town from its municipal water system requires any maintenance, repair or other service with respect to such user's or consumer's water lines, valves or any other equipment connecting the user or consumer to the Town's municipal water system, and the maintenance, repair or other service is required or necessitated other than during normal business hours of the Town's administrative offices or on weekends or legal holidays, the user or consumer shall pay the Town an amount equal to three (3) times the regular base fee or charge for such maintenance, repair or services, as established by resolution of the Board of Trustees from time to time.

(Ord. 10, 1997 §2; Ord. 11, 2002 §1)

### **Sec. 13-1-290. Access to meters.**

Each owner of lands serviced by a water tap issued by the Town shall assure to the Town reasonable access to the water meters on such lands by Town personnel for the purposes of reading and repairing the water meters. To the extent the Town does not have reasonable access to such water meters, the Town shall have the right to assess a fine or penalty to such owner in an amount to be set and determined by the Town Board of Trustees by resolution for each such failure to provide reasonable access. In addition the Town shall have the right to estimate and assess water charges to such owner in the event such owner has failed to provide reasonable access to such meter by the Town personnel, and such owner or actual user shall pay the Town an amount based on such estimates. In the event the Town has not had reasonable access to a water meter for a period of three (3) consecutive months, the Town may issue a shutoff notice to the owner of the lands serviced by such water meter in the manner provided in Section 13-1-210 above. In the event such owner does not provide reasonable access to such water meter within the ten (10) day

notice period, the Town shall have the rights described in Section 13-1-210 above as if the owner had not paid water charges in a timely manner, including but not limited to the ability to terminate water service.

(Ord. 10, 1997 §2; Ord. No. 2014-4, § 15, 5-5-2014)

**Sec. 13-1-300. Unlawful acts; penalties.**

- (a) It shall be unlawful for a person to violate any of the provisions of this Article or to do any of the following acts, to wit:
  - (1) Open or operate any fire hydrant without permission.
  - (2) Trespass on waterworks grounds, or damage or destroy any property of the waterworks.
  - (3) Pollute or allow others or animals to pollute the Town water supply.
  - (4) Tap water mains without permission.
  - (5) Make connections with existing service for new or additional use.
- (b) Every person convicted of a violation of any provision of this Article shall be punished as set forth in the general penalty provisions of this Code.

(Ord. 4, 1986 §§29, 30; Ord. 11, 2002 §1)

**Sec. 13-1-310. Water conservation measures in event of water emergency.**

- (a) In the event of a water emergency, as declared by the Town's Contract Water Superintendent (the "Superintendent"), the Superintendent shall have the authority to promulgate rules and regulations governing water usage by all customers of the Town water system.
- (b) Rules and regulations promulgated by the Superintendent pursuant to the authority of this Section shall include, but not be limited to:
  - (1) Limiting lawn watering to certain times of the day, days of the week or times of the month;
  - (2) Prohibiting the waste of water;
  - (3) Prohibiting or limiting the times of day or days per week for washing of cars and other vehicles at residential properties;
  - (4) Prohibiting the use of water for the washing of sidewalks, driveways, patios or similar impervious surfaces;
  - (5) Prohibiting power-washing of housing, fences, windows, decks or other similar impervious surfaces;
  - (6) Prohibiting new lawns from being planted or installed;
  - (7) Rationing the amount of water that can be used by each customer, household and/or business;
  - (8) Prohibiting or limiting any outside irrigation use of water;
  - (9) Prohibiting serving water at restaurants prior to a request for the service of water;
  - (10) Prohibiting the transportation of water from the Town water system beyond the boundaries of the Town without Town permission;
  - (11) Implementing a major public education program on the need to conserve water; and
  - (12) Other similar restrictions designed to conserve water and reduce excess water usage within the boundaries of the Town.

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- (c) Upon the promulgation of such rules and regulations pursuant to this Section, the Superintendent shall publish, post or otherwise make available copies of the rules and regulations in the manner determined by the Superintendent as best calculated to reach the largest number of water consumers.
- (d) Any person violating any provision of this Section or of the rules and regulations promulgated by the Superintendent pursuant to this Section shall, upon conviction, be punished in as set forth in Chapter 1, Article IV of the Fairplay Municipal Code. The assessment of fines for violations of this Section or the rules and regulations promulgated hereunder will be through the Town's utility bill for the responsible party's billing account. The responsible party shall be defined as the owner, manager, supervisor or person who receives the water utility bill or person in charge of the property, facility or operation during the period of time the violation is observed. All fines must be paid within the normal payment period allowed by the Town utility billing system. The superintendent may, as part of the rules and regulations promulgated pursuant to this Section, establish a progressive schedule of warnings and/or fines subject to approval of such schedule by the Board of Trustees by resolution or motion.

(Ord. 2007-4 §§1—4; Ord. No. 2014-4, § 16, 5-5-2014)

### **ARTICLE II Cross-Connection Devices**

[Sec. 13-2-10. Definition.](#)

[Sec. 13-2-20. Potable water connections.](#)

[Sec. 13-2-30. Installation.](#)

[Sec. 13-2-40. Facilities requiring devices.](#)

[Sec. 13-2-50. Violation, penalty.](#)

#### **Sec. 13-2-10. Definition.**

A cross-connection is any physical linkage permanently or temporarily connecting a water source or system not owned or operated by the Town to the Town-owned water distribution system.

(Ord. 2, 1993 §1; Ord. 11, 2002 §1)

#### **Sec. 13-2-20. Potable water connections.**

There shall be no cross-connections to the Town-owned water distribution system absent the Town's written consent.

(Ord. 2, 1993 §2; Ord. 11, 2002 §1)

#### **Sec. 13-2-30. Installation.**

- (a) Except when no significant hazard is posed to the public health, it is required that each supplier of water for public consumption will install an acceptable air gap, reduced pressure zone device, double check valve assembly or equivalent protection device to be authorized by the Water Department, and a ten-foot horizontal separation between water and sewer services entering the property to the site, in accordance with the State design criteria.
- (b) Users of such connections shall submit plans for the installation of protection devices to the water Superintendent for approval.

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- (c) All protective devices shall be inspected and tested annually either by the supplier or the user of that product, with the test results submitted to and reviewed by the Water Superintendent. If it is found that any such device is defective or fails to operate, such failure or defect shall be corrected within twenty (20) days of an order in writing by the Town, in accordance with Colorado Primary Drinking Water Regulations.

(Ord. 2, 1993 §3; Ord. 11, 2002 §1)

### **Sec. 13-2-40. Facilities requiring devices.**

Facilities or premises required to have cross-connection control containment are as follows:

- (1) Hospitals, clinics, medical and dental laboratories.
- (2) Mortuaries.
- (3) Manufacturing and industrial facilities.
- (4) All buildings greater than forty (40) feet high.
- (5) All new construction.
- (6) All facilities which have a service line larger than four (4) inches in diameter.
- (7) All premises having irrigation systems separate from the domestic systems at cemeteries, churches, golf courses, parks, playgrounds, ranches, etc.
- (8) All facilities, areas and locations that have pipe arrangements whereby piping containing potable water is physically piped to a piping system which contains any substance other than potable water.
- (9) All facilities, areas and locations that have pipe arrangements whereby piping containing potable water may be contaminated by any substance which may be forced, back-siphoned or otherwise diverted into the potable water system.

(Ord. 2, 1993 §4)

### **Sec. 13-2-50. Violation, penalty.**

Failure to comply with the provisions of this Article shall result in an enforcement order, and shall also be subject to the provisions and penalties prescribed by Sections 25-1-114 and 25-1-114.1 C.R.S., and to such other actions as provided by law. Further, such failure and/or violation may result in a water disconnect order and action until such failure and/or violation is corrected.

(Ord. 2, 1993 §5)

## **ARTICLE III Water Supply Protection District**

[Sec. 13-3-10. Water Supply Protection District established.](#)

[Sec. 13-3-20. Jurisdiction and intent of regulations.](#)

[Sec. 13-3-30. Adoption of boundaries and map.](#)

[Sec. 13-3-40. Definitions.](#)

[Sec. 13-3-50. Prohibited activity.](#)

[Sec. 13-3-60. Permit required.](#)

[Sec. 13-3-70. Permit application and review procedures; fee.](#)

[Sec. 13-3-80. Permit issuance standards.](#)

[Sec. 13-3-90. Certificates of compliance.](#)

[Sec. 13-3-100. Wastewater and sewage disposal facilities; inspections.](#)

[Sec. 13-3-110. Water quality monitoring plans.](#)

[Sec. 13-3-120. Delegation of authority.](#)

[Sec. 13-3-130. Certain de minimis activities exempted.](#)

[Sec. 13-3-140. Enforcement.](#)

[Sec. 13-3-150. Violations and penalties.](#)

**Sec. 13-3-10. Water Supply Protection District established.**

There is hereby established the Town of Fairplay Water Supply Protection District for the purpose of protecting the sources, supply, quantity, quality, delivery, storage, treatment and distribution of water serving the Town, its citizens and water-using customers.

(Ord. 9, 1982 §I; Ord. 5, 2002 §1)

**Sec. 13-3-20. Jurisdiction and intent of regulations.**

The establishment of the Water Supply Protection District and the regulations applicable thereto have been adopted in accordance with Section 31-15-707, C.R.S., and are designed and intended to extend and enforce the Town's legal jurisdiction and authority to the maximum extent allowed by law for the purpose of protecting the Town's drinking water resources and delivery system from interference, pollution and other degradation over an area comprised of all territory within five (5) miles above or around any point or points from which the Town diverts or otherwise draws water for domestic use. The Town's authority and jurisdiction shall extend, by way of example and not limitation, to all reservoirs, streams, trenches, ditches, pipes, drains and other waterworks, and all regulations shall be liberally construed and enforced in order to satisfy and further the purposes and intent as set forth above.

(Ord. 9, 1982 §I; Ord. 5, 2002 §1)

**Sec. 13-3-30. Adoption of boundaries and map.**

The Town hereby approves and adopts the official Town of Fairplay Water Supply Protection District Map dated May 2001, prepared by McLaughlin Water Engineers, Ltd., defining and illustrating the geographical boundaries of the Protection District. At least one (1) copy of the map shall at all times be maintained in the office of the Town Clerk for public inspection during regular business hours. Copies of the map may be ordered for purchase at such cost as deemed necessary and reasonable by the Town Clerk.

(Ord. 9, 1982 §I; Ord. 5, 2002 §1)



**Sec. 13-3-40. Definitions.**

As used in this Article, the following words and phrases shall have the following meanings unless the context plainly requires otherwise:

Absorption system means a wastewater disposal system or leaching field utilizing and/or inclusive of adjacent soils for the treatment of sewage by means of absorption into the ground.

Absorption trench means a trench in which sewage effluent is transported or directed for percolation into the soil.

Aquifer means a water-bearing formation that contains sufficient groundwater to be important as a source of supply.

Best management practice means the most effective means of preventing, reducing or mitigating the harmful impacts of development activities consistent with the standards set forth in this Article.

Development or development activity means any construction or activity which alters or changes the natural or preexisting character and/or use of the land on which the construction or activity occurs, excepting residential gardening or landscaping.

Dispersal system means a system for the disposal of effluent after final treatment in an ISDS by a method which does not depend upon or utilize the treatment capability of the soil.

Effluent means the liquid waste discharge from an individual ISDS.

Excavating means any act by which ten (10) cubic yards or more of soil or rock is cut into, quarried, uncovered, removed, displaced or relocated, and includes the conditions resulting therefrom.

Filling means the deposition of ten (10) cubic yards or more of material brought from another location by other than natural means for purposes of altering the natural or existing grade of the ground surface.

Foreseeable risk means the reasonable anticipation that harm or injury may result from an act or omission.

Grading means the alteration of the natural surface of any land by leveling, stripping, filling or excavating and involving ten (10) or more cubic yards of soil or other surface material; the alteration of any natural or preexisting drainage pattern or channel through the alteration, movement or addition of surface materials; or the installation of any road or other surface utilized for the movement of vehicles.

Hydric soil means soil that, in its undrained condition, is saturated, flooded or ponded long enough during a growing season to develop an anaerobic condition that supports the growth or regeneration of hydroponic vegetation.

Individual sewage disposal system (ISDS) means an on-site sewage system of any size or flow designed to collect and treat, neutralize, stabilize and dispose of sewage that is not part of or connected to a permitted municipal sewage treatment works. Examples include, without limitation, conventional septic tanks and leach fields, absorption trenches and pits, dosing siphon septic tanks, pumped systems, constructed wetland treatment systems, evapotranspiration systems and mound systems.

Maximum extent feasible means that no feasible and prudent alternative exists and all possible efforts to comply with a regulation, or minimize potential harm or adverse impacts, have been undertaken.

Person means any individual, partnership, corporation, trust, association, company or other public, governmental or corporate entity, or instrumentality thereof.

Pollute or pollution means the contamination or befouling of the natural biological, chemical, physical or radiological composition or integrity of water or soil through human or human-induced conduct or activities.

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Sewage means a combination of liquid wastes that may include chemicals, house wastes, human or animal excreta or animal or vegetable matter in suspension or solution, and/or other solids in suspension or solution, and that are discharged from, without limitation, a building, vehicle, tank or other structure or facility.

Sewage disposal system or facility means a septic tank, leach field or other facility, regardless of size or flow, designed and constructed for the purpose of receiving, treating or disposing of sewage.

Sewage treatment works means any system or facility for treating, neutralizing, stabilizing or disposing of sewage and which has a designed or operational capacity to receive more than two thousand (2,000) gallons of sewage per day.

Significant degradation means to lessen in grade, quality or desirability so as to create or cause unsafe or harmful impacts.

Stream (primary) means a visible waterway expected to run flowing water for more than one (1) month per year.

Stream (secondary intermittent) means a visible waterway, normally dry and not expected to run flowing water for more than one (1) month per year.

Substantial means material and/or considerable in importance, value, degree, amount or extent.

Surfacing means the compaction, hardening or covering of the natural land surface with asphalt, concrete, gravel or similar materials in an area greater than one thousand (1,000) square feet.

Wastewater means the same as sewage.

Water Supply Protection District permit ("WSPD permit") or permit means the written approval issued by the Town under this Article for a land use activity or development within the Fairplay Water Supply Protection District.

Watershed means the area encompassed by the Fairplay Water Supply Protection District.

Waterworks means any and all man-made or designed component of the Town's drinking water collection and treatment system, including, but not limited to, transmission, storage and filtration facilities, and all wells, springs, aquifers, reservoirs, streams, trenches, pipes and drains used in and necessary for the operation and maintenance of the Town's water supply system.

Wetland means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of hydroponic vegetation typically adapted for life in saturated soil conditions.

(Ord. 9, 1982 §I; Ord. 5, 2002 §1)

### **Sec. 13-3-50. Prohibited activity.**

It shall be prohibited and unlawful for any person to engage in or cause any of the following activities or conduct within the Fairplay Water Supply Protection District unless such person has first obtained a permit:

- (1) The construction, installation, expansion or removal of any ISDS or sewage disposal system, excepting a system connected to a municipal sewage treatment works.
- (2) Excavating, grading, filling, blasting or surfacing, including road building.
- (3) Timber harvesting, excluding the removal of dead or diseased trees for firewood or for noncommercial domestic purposes.
- (4) Drilling operations of any kind.
- (5) Altering or obstructing natural or historic water drainage courses.

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- (6) Surface and subsurface mining operations.
- (7) The out-of-doors spraying or using of fertilizers, herbicides or pesticides, excepting noncommercial applications for domestic household or gardening purposes.
- (8) Using, handling, storing or transporting toxic or hazardous substances, including, but not limited to, radioactive materials, except for noncommercial domestic household purposes as permitted by law.
- (9) Using, handling, storing or transporting flammable or explosive materials, except for noncommercial domestic household purposes as permitted by law, or within vehicular fuel storage tanks.
- (10) Moving, tampering, adjusting, impairing, obstructing or trespassing upon any Town waterworks.
- (11) Increasing or decreasing any rate of stream flow or natural or existing drainage pattern or course, except as permitted pursuant to an adjudicated water right; increasing sediment deposition in any stream; causing or increasing erosion on any slope or stream bank; or disturbing any wetland within the watershed.
- (12) Any activity reasonably giving rise to a foreseeable risk of injury or pollution to the Town's sources of water supply or water supply system or waterworks.

(Ord. 9, 1982 §I; Ord. 5, 2002 §1)

### **Sec. 13-3-60. Permit required.**

No person shall engage in or cause any development, development activity or prohibited activity or conduct identified in this Article without first applying for and obtaining a duly authorized WSPD permit from the Town. Permits may be limited and/or subjected to expiration and renewal requirements.

(Ord. 9, 1982 §I; Ord. 5, 2002 §1)

### **Sec. 13-3-70. Permit application and review procedures; fee.**

- (a) All applications for a permit shall be initiated in writing and shall include, at a minimum, the information set forth in this Section. No application shall be accepted, processed or approved unless and until it is complete and all fees associated therewith have been paid. The application shall be accompanied by not less than three (3) copies. The Public Works Director may waive certain application information requirements if he or she deems the same to be unnecessary or overly burdensome with respect to a specific proposed activity. All costs incurred by the Town in processing an application, inclusive of the costs for outside professional services or consultants necessary to evaluate an application, shall be paid by the applicant, inclusive of testing, engineering, inspection and legal fees. The applicant, at the discretion of the Public Works Director, may be required to post a deposit to be utilized in the timely payment of all application review costs. Any funds remaining on deposit after the issuance of a permit, or the discontinuance of an application, shall be promptly refunded to the applicant.
  - (1) The name, mailing address and telephone number of the applicant.
  - (2) The name, mailing address and telephone number of the owner of the land upon which the development or activity subject to the permit is to occur if different from the applicant, and written authorization from the landowner for the submission of the application.
  - (3) A legal description of the lot, tract, parcel or other land upon which the development is to occur.
  - (4) A written narrative describing the development activity for which the permit is being sought, including a general identification of the environmental characteristics of the subject land and surrounding area.

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- (5) A vicinity map showing the land on which the proposed development is to occur and all lots, tracts, parcels or other lands adjacent thereto, and illustrating any wetlands, lakes, ponds, springs, watercourses or other bodies of water, water wells, location of proposed development, roads, structures and any existing well fields utilized by the Town. The map is to be based on the USGS 7.5-minute quadrangle or a comparable base map. The map should be no larger than eleven (11) inches by seventeen (17) inches.
  - (6) A boundary and improvements map or drawing of the land subject to the application containing sufficient detail and drawn at a scale to accurately illustrate, review and assess the location of all proposed development activity, inclusive of proposed new dwellings, water wells, septic systems and access roads and driveways, and existing structures, including dwelling units, wells, septic systems and lot/property lines; and illustrating the existing directions of slope (contours) and directions of surface runoff. A professionally prepared boundary and improvements survey may be required if the Public Works Director deems the same necessary in order to adequately assess an application.
  - (7) A listing and copy of all federal, state or local permits or approvals required or obtained for implementation of the development activity.
  - (8) A detailed description of the impacts or potential impacts the development activity may have on any surface or subsurface water sources or courses, inclusive of wetlands.
  - (9) A detailed description of the impacts or potential impacts the development activity may have on existing vegetation, trees and groundcover.
  - (10) A detailed description of the impacts or potential impacts the development activity may have on soils, inclusive of a description of the nature and condition of existing soils and any planned grading, excavation, filling or surfacing.
  - (11) A detailed description of the impacts or potential impacts the development activity may have on existing drainage patterns and land contours, inclusive of comparative run-off and absorption calculations for the subject land and any impacted adjacent land, both pre- and post-development.
  - (12) A detailed description of any proposed wastewater or sewage disposal system to be installed and a copy of the design/engineered plans, including soils and percolation test results for the same.
  - (13) A detailed description of any proposed water supply/delivery system to be installed, inclusive of water source and/or aquifer and anticipated consumptive use, and a copy of the design/engineered plans for the same.
  - (14) A detailed description and copy of any and all mitigation plans or measures addressing impacts resulting from the development activity to surface and subsurface water sources, wetlands, vegetation and trees, soils, drainage and slopes.
  - (15) The identification of any activity to be undertaken by the applicant as part of the development that presents, or may present, a foreseeable risk of pollution or injury to the Town's water sources, supply or waterworks, along with a specific description of the best management practices designed to eliminate or minimize such risk to the maximum extent feasible.
  - (16) Such additional information as the applicant or Town may deem necessary to fully evaluate the proposed development and/or demonstrate or explain why a watershed permit should issue.
- (b) All applications for a permit shall be filed with the Town Clerk, who shall promptly forward copies of the same to the Public Works Director. The application and all supporting material shall be reviewed and evaluated by the Public Works Director to determine whether the application is complete and satisfies the requirements of this Article. Where appropriate, and weather permitting, the Public Works Director may schedule a site visit to inspect the land on which the proposed development activity is to occur. Advance notice of the time and date of such site visit shall be provided to the applicant.
- (c) Within thirty (30) days following receipt of a complete application, and weather permitting for any necessary site visits or inspections, the Public Works Director shall determine whether the permit application should be granted or denied. The issuance of a permit may be conditioned upon the

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applicant's compliance with such mitigation measures, financial security, performance standards or time deadlines, or such other terms and conditions as the Public Works Director may deem necessary to ensure protection of the Town's water supply sources, watershed and/or waterworks from pollution, disruption or damage. A failure by an applicant to accept or timely adhere to such terms and conditions shall constitute cause to deny or revoke a permit.

- (d) Any applicant dissatisfied with a decision or order made by the Public Works Director under this Article may pursue an appeal of same to the Board of Trustees by filing a written notice of appeal and appropriate fee with the Town Clerk within ten (10) days from the date of the decision or order appealed from. Upon receipt of a timely notice, the Town Clerk shall agendize the appeal for a hearing before the Board of Trustees to be conducted within thirty (30) days from the date the notice of appeal was received, or as soon thereafter as can be accommodated. The hearing shall be conducted de novo and written notice of the date, time and place for the hearing shall be sent by regular mail or personally delivered to the applicant not less than ten (10) days in advance thereof. A failure by the applicant to appear at the hearing without good cause shall constitute a waiver of the applicant's appeal rights and the decision or order subject to the appeal may be automatically affirmed. The applicant shall carry the burden of persuasion with regard to all issues on appeal. Decisions of the Board of Trustees on appeal shall be entered not more than thirty (30) days from the conclusion of the hearing thereon and shall be reduced to writing, a copy of which shall be mailed to the applicant. The Board of Trustees may on appeal prescribe such conditions on the issuance of a permit as it may deem necessary to protect or implement the intent and purposes of this Article.

(Ord. 9, 1982 §I; Ord. 5, 2002 §1)

### **Sec. 13-3-80. Permit issuance standards.**

The following standards shall be applied in determining whether a WSPD permit should be issued:

- (1) The compliance of the application with all application requirements.
- (2) The proximity of the proposed development activity to the Town's water supply sources and/or waterworks. No ISDS component shall be located within a one-hundred-year floodplain. No ISDS treatment or disposal component shall be located within one hundred (100) feet from any water supply source or primary stream or wetland. No ISDS absorption component shall be located within two hundred (200) feet of any water supply source or primary stream or one hundred (100) feet from a secondary intermittent stream, and no building shall be located within one hundred (100) feet from a water supply source, waterworks or primary stream, except if connected to a municipal sewage treatment system.
- (3) The environmental suitability of the proposed development activity and proposed site therefor, taking into consideration surface and subsurface watercourses, soils, slopes, drainage patterns, geologic formations, existing vegetation and tree stands, wetlands, erosion, and the intensity and impact of the proposed development activity.
- (4) The likelihood or threat of pollution or injury to the Town's water supply sources, watershed or waterworks presented by the proposed development activity.
- (5) The effectiveness of all protective or mitigation measures proposed by the applicant to eliminate or minimize pollution or injury to the Town's water supply sources, watershed and waterworks, and the availability of alternative protective and/or mitigation measures.
- (6) The overall anticipated impact of the proposed development activity on the Town's water supply sources, watershed and waterworks.

(Ord. 9, 1982 §I; Ord. 5, 2002 §1)

**Sec. 13-3-90. Certificates of compliance.**

- (a) At or immediately prior to the completion of any development or activity performed under a permit, and in all events prior to the burying or covering up of any work or facility authorized under a permit, the permittee shall make written application to the Public Works Director for inspection and the issuance of a certificate of compliance in order to establish and confirm the permittee's adherence with the provisions of this Article and with all terms and conditions as may have been imposed as part of the permit. As soon as reasonably practicable, and not more than fifteen (15) working days after receipt of the request, weather permitting, the Public Works Director shall inspect the subject development or activity to ascertain if there is conformance with the permit application and the plan and specifications submitted to the Town, and any conditions imposed as part of the permit. Alternatively, the Public Works Director may elect to allow a qualified permittee or third-party professional to submit a written inspection report certifying that the permittee has fully complied with all permit requirements, inclusive of all plans, specifications and conditions.
- (b) All costs incurred by the Town in conducting inspections shall be paid by the permittee, inclusive of any costs for outside consultants. If the inspection determines that the development conforms to all applicable regulations and to all applications, plans, specifications and conditions of the permit, a certificate of compliance shall be issued. However, if the inspection determines that the development or activity fails in any manner to comply as set forth above, a certificate of compliance shall not be issued. In such case, the permittee shall be informed in writing of the reason why the certificate of compliance cannot be issued and the requirements to be met before issuance of the certificate may be obtained. All follow-up inspections shall be conducted in accordance with this Section.
- (c) It shall be a violation of this Section for any person who is required to obtain a permit to use any land within the Fairplay Water Supply Protection District without first having obtained a certificate of compliance.

(Ord. 9, 1982 §I; Ord. 5, 2002 §1)

**Sec. 13-3-100. Wastewater and sewage disposal facilities; inspections.**

- (a) Notwithstanding any other provision or requirement contained within this Article, all wastewater and/or sewage disposal facilities or systems within the Water Supply Protection District shall be designed by a licensed engineer and constructed, operated and maintained so as to eliminate and/or minimize to the maximum extent feasible any pollution or injury, or threat of pollution or injury, to the Town's water supply sources, watershed and waterworks. A WSPD permit shall be required for the installation of any new wastewater or sewage disposal facility. Additionally, no existing wastewater or sewage disposal facility shall be expanded, repaired, replaced or abandoned without a permit having first been obtained.
- (b) The Public Works Director may investigate and inspect any wastewater and sewage disposal facility located within the Water Supply Protection District to determine whether such facility is being properly constructed, operated or maintained. All owners and/or operators of a wastewater or sewage disposal facility shall maintain written service records on the site of said facility illustrating the age of the facility and the dates and service provider for all inspections, installations, repairs, cleanings or other maintenance performed on the facility. Additionally, all ISDS's shall be inspected every five (5) years from the date of initial installation. In order to ensure that a sewage disposal facility is constructed, performing or being maintained properly, the Public Works Director may order the owner or operator of such facility to install a monitoring well or other monitoring device as a condition for issuance of a WSPD permit, or as deemed reasonably necessary to determine the operational integrity of an existing facility. In the event any owner or operator refuses access to the Public Works Director to any wastewater or sewage disposal facility, or refuses to make available service records as required under this Section, the Town shall take such steps as necessary to secure the appropriate warrants or court orders to undertake such inspections or obtain the records, and seek to recover the costs therefor, including attorney fees, against the nonconsenting owner and/or operator.

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- (c) Without limiting the circumstances under which a failure of an ISDS shall be found to have occurred, the occurrence or presence of the following factors shall be deemed sufficient to establish a failure in an ISDS:
  - (1) Ponding in a leach field or dispersal trench.
  - (2) Obstructed leaching pipes.
  - (3) The presence of unacceptable levels of nutrients, dissolved organics or fecal coliform in soil or groundwater.
- (d) All wastewater and sewage disposal systems shall, at a minimum, be designed, constructed and maintained in conformity with all applicable federal, state and local laws, standards and permits in addition to complying with the terms and conditions of this Article. Additionally, absorption fields with sand filters and dosing chambers shall be required, at a minimum, for all wastewater and sewage disposal systems within the Fairplay Water Supply Protection District. In the event of a conflict between competing laws, standards or regulations, the most restrictive and/or protective of the Town's water supply and waterworks shall prevail.
- (e) Minimum separation distances between ISDS components and protected structures or physical features as required by this Article shall be maintained at all times unless soil, geological or other conditions warrant greater distance separation. ISDS components that are not watertight should not extend into areas occupied by the root systems of nearby trees. Where repair or upgrading of an existing ISDS is involved, and the size of the lot or parcel precludes adherence to the distance separation standards prescribed in this Article, the repairs or repaired system components shall not be closer to protected structures or features than first existing.
- (f) All owners or operators of substandard wastewater and sewage disposal systems existing within the Water Supply Protection District on or before the effective date of this Article shall be provided notice and a reasonable period of time in which to correct any deficiency or noncompliance with respect to their systems and the requirements of this Article.

(Ord. 9, 1982 §I; Ord. 5, 2002 §1)

### **Sec. 13-3-110. Water quality monitoring plans.**

Notwithstanding any other provision or requirement contained within this Article, the Public Works Director may require the preparation and implementation by an applicant of a water quality monitoring plan and program as a condition for the issuance of a WSPD permit. Such plan may include the installation of monitoring devices, the regular collection of soil and water samples and the establishment of reporting and/or inspection requirements. The costs for the design, implementation and inspection of any water quality monitoring plan shall be borne by the applicant.

(Ord. 5, 2002 §1)

### **Sec. 13-3-120. Delegation of authority.**

The Public Works Director may from time to time devise, adopt and enforce supplemental administrative, procedural or technical/engineering rules and regulations as he or she may deem necessary and advantageous to the successful implementation and enforcement of the provisions of this Article, inclusive of the preparation of standardized forms and fees associated with the evaluation and issuance of permits. All rules and regulations must be consistent with the terms of this Article, and the Board of Trustees may review, amend or vacate such rules and regulations upon written complaint or appeal.

(Ord. 5, 2002 §1)

**Sec. 13-3-130. Certain de minimis activities exempted.**

- (a) The Public Works Director may determine upon written request that an activity or proposed schedule of activities to be undertaken within the Water Supply Protection District presents a de minimis risk of pollution to or disruption of the Town's water supply, watershed and/or waterworks and may, thus, exempt or except such activity or activities from some or all of the application and/or permit requirements as contained in this Article. The burden will be upon the applicant seeking an exemption to supply sufficient information to demonstrate that the activity in question will present no more than a de minimis threat or risk to the Town's water supply and/or water supply system. In no event shall the installation or repair of an ISDS be deemed an exempt activity, and in all events an applicant must provide the Public Works Director written notice of when and where any exempted activity is to occur.
- (b) All exceptions or exemptions must be reduced to writing, specifically identify the activity excepted hereunder and any conditions with regard thereto, and specify in detail the basis for such exception or exemption. In the event an excepted or exempted activity is not fully implemented or concluded in the manner as represented and authorized under this Section, the Public Works Director shall order the cessation or correction of such activity in accordance with the enforcement provisions contained in this Article.

(Ord. 5, 2002 §1)

**Sec. 13-3-140. Enforcement.**

- (a) Right of entry. When it is necessary to make an inspection to enforce the provisions of this Article or the terms and conditions of any permit, or where reasonable grounds exist to believe that a condition, activity or facility on any premises presents a threat of pollution or injury to any of the Town's water sources, supplies or waterworks, the Public Works Director may enter onto such premises at reasonable times to inspect and/or perform such investigation and duties as called for under this Article; provided that if the premises are occupied, proper identification shall be shown to the person on the premises and a request for access be made. If the premises are unoccupied, reasonable efforts shall be made to locate and/or provide notice to the owner or operator of the land or facility in question of the desired access. If access is refused, a warrant to enter onto the premises may be obtained ex parte from Municipal Court.
- (b) Stop work and cease and desist orders. Whenever any development or activity is being performed or continued in violation of the provisions of this Article or the terms and conditions of a permit, or where it is determined that a permit was issued in error or as the result of incorrect, inaccurate or misleading information, the Public Works Director may execute and issue a written stop work and/or cease and desist order commanding that the subject development or activity immediately cease and/or be corrected. A stop work and/or cease and desist order shall set forth in plain language the nature of any violation and shall be served on the permittee or person engaged in the prohibited development or activity by personal service or by regular mail and certified, return receipt. A copy of the order shall also be posted at a conspicuous place on the subject premises. Appeals or challenges to a stop work or cease and desist order shall be heard by the Board of Trustees upon written request filed with the Town Clerk not less than five (5) working days after service of the order on the permittee or person contesting the same. The failure of a person to timely file an appeal or challenge, or to appear at the hearing thereon, shall constitute a waiver of his or her right to contest the order. Hearings shall be conducted by the Board of Trustees within thirty (30) days from the date on which the written notice of appeal or challenge was filed with the Town Clerk. Written notice of the hearing shall be sent by regular mail or personally served on the appellant not less than ten (10) days in advance thereof. The continuation of any development or activity subject to a stop work or cease and desist order shall constitute a violation of this Article.
- (c) Permit revocation.
  - (1) All WSPD permits shall be subject to revocation by the Public Works Director for violations of this Article or the rules and regulations adopted pursuant thereto, inclusive of stop work and cease



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and desist orders. Written notice of a proposed revocation shall be mailed to the permittee not less than fifteen (15) days prior to the effective date of the revocation and shall set forth in plain language the grounds justifying the revocation. A hearing on the revocation shall be conducted by the Board of Trustees upon the written request of the permittee filed with the Town Clerk prior to the effective date of the revocation. All hearings shall be promptly scheduled before the Board of Trustees by the Town Clerk and written notice thereof mailed to the permittee by certified mail, return receipt, at least five (5) business days in advance thereof. The effectiveness of any order of revocation shall be stayed pending the decision of the Board of Trustees on appeal, except where the Public Works Director certifies in writing that a delay in revoking the permit will present a clear and immediate danger to public health, safety, welfare or property. All decisions on appeal shall be reduced to writing and a copy thereof provided to the permittee.

- (2) Upon the revocation of a permit, the Town may require the permittee to restore any land, facility or site to such condition as deemed necessary to prevent pollution or injury to the watershed or any water source, supply or waterworks. Upon the failure of the permittee to timely perform such restoration, the Town may, at its option, perform or have performed the restoration and assess the costs thereof against the permittee, inclusive of the imposition of a lien against the permittee's property on which such restoration work took place.

(Ord. 9, 1982 §I; Ord. 5, 2002 §1)

### **Sec. 13-3-150. Violations and penalties.**

- (a) It shall be unlawful for any person to engage in or cause a violation of any provision of this Article or of any term or condition of any WSPD permit, and such person or persons shall be fined upon conviction thereof as set forth in the general penalty provisions of this Code.
- (b) Any development, activity, facility or structure which is continued, operated or maintained in violation of this Article, or the terms and conditions of any permit, shall be subject to injunction, abatement and/or other appropriate legal remedy as may be sought and obtained by the Town, in which event the Town shall be entitled to recover its reasonable costs and attorney fees from the offending party.
- (c) All penalties and remedies for violations of this Article shall be nonexclusive and cumulative, and the Town's pursuit and/or exercise of one (1) remedy or penalty shall not foreclose or prohibit the pursuit and exercise of alternative or other remedies.

(Ord. 9, 1982 §I; Ord. 5, 2002 §1)