

CHAPTER 13

Municipal Utilities

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ARTICLE 1

General Provisions Regarding Water

Sec. 13-1-10. Definitions.

As used in this Chapter, the following definitions shall apply:

Accessory areas means areas such as lobbies, mechanical rooms, convention centers, ballrooms, auxiliary dining rooms and guest recreational facilities in a hotel, lodge, motel, lock-off or accommodation unit.

ADD means average daily demand.

Backflow means the flow of nonpotable water or other nonpotable liquids, mixtures, gases or substances into the distributing pipes of a potable water supply, from any source other than its intended source.

Backflow preventer means an assembly or method designed to prevent backflow, consisting of one (1) of the following:

- a. Air-gap method. The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture or other device and the flood-level rim of said vessels.
- b. Atmospheric vacuum-breaker assembly.
- c. Pressure vacuum-breaker assembly.
- d. Double-check valve assembly.
- e. Reduced pressure principle assembly.

Backflow prevention means the prevention of the flow of any foreign liquids, mixtures, gases or substances into the distributing pipe lines of the public water system.

Backflow prevention device is a device or assembly accepted and approved by the Town as meeting an applicable specification stated or cited in this Chapter, or as suitable for the proposed use and as approved and accepted by the Colorado Department of Public Health and Environment (CDPHE).

Cross-connection means any unprotected actual or potential connection or structural arrangement between the water system or a customer's potable water system and any other source or system, through which it is possible to introduce into any part of the water system any used water, industrial fluid, gas or substance not meeting drinking water requirements in the Colorado Primary Drinking Water Regulations. By-pass arrangements, jumper connections, removable sections, swivel or changeover devices and other temporary or permanent devices through which, or because of which, backflow can or may occur, are considered to be cross-connections.

Curb stop means a shut-off valve located in the private service line.

Customer is any person or entity authorized to connect to and use the Town's water system. The customer effectively encompasses: owner, renter, contractor, subcontractor, developer, etc. A *customer* is also any person who applies to the Town for a service connection, service disconnection, main line extension or other such service agreement, or who attempts to have real property included within the Town.

Efficiency room means a single room with a bathroom and a kitchen.

Kitchen includes, but is not limited to, hot and cold water, stove and/or microwave, sink and refrigerator.

Private service line means the service line from the curb stop to the customer's water-using unit. The private service line includes, without limitation, the curb stop and water meter. With the exception of the water meter, the private service line is owned and maintained by the customer.

Residential unit means any living unit with a kitchen. Examples are: single-family houses, residential condominiums, townhomes, apartments, duplexes, triplexes, lock-off apartments, etc.

Room means a single room without a kitchen, with or without a bathroom, with private access to a central corridor or the outside.

SFE (Single Family Equivalent) means the basic unit for determination of water charges.

Square-foot floor area, as used in determining fees, is calculated on gross residential floor area, plus unfurnished areas, but excluding garage area and multi-unit common space.

Tap or connection means the process of connecting a service line to the water main.

Water main means the principal artery of the water system to which service lines may be connected. The water main is owned, operated and maintained by the Town.

Water meter means all components between the amended or flanged ends of the meter body. Gaskets and fittings are not considered part of a water meter. Each meter shall have a separate and independent service from the water main.

Water system means the public water system owned and/or operated by the Town.

Water-using property includes any real property within the Town or outside the legal boundaries of the Town, and being serviced by the Town, on which a water-using unit is located or desired to be located.

Water-using unit includes any space, structure or building, movable, fixed or otherwise, or any part or parcel of the same for which a separate water rate is applicable, or, in the alternative, any space, structure or building, movable, fixed or otherwise, or any part or parcel thereof having or being equipped with a device, fixture or method for using water. (Ord. 15-2008 §1)

Sec. 13-1-20. Exclusive authority of Town; exceptions.

(a) No person shall operate, own, manage, control or possess a water distribution system separate from the water distribution system owned and operated by the Town, without first obtaining a franchise therefor from the Town.

(b) No water distribution system or consumer of water within the limits of the Town shall obtain water for distribution or consumption except from the Town and through the water distribution system of the Town, unless a variance is approved in writing.

(c) Exceptions. An owner of a single dwelling on a lot, which lot also contains an existing water well or other water rights within the property, may consume water from that well for consumption on said lot. An approved backflow preventer shall be installed on each such well. (Ord. 15-2008 §1)

Sec. 13-1-30. Double-service connections prohibited; exception.

No tap and service connection shall be connected to or service more than one (1) water-using unit, except where such water-using unit is contiguous with another water-using unit and is

reasonably operated with such other water-using unit as an integrated unit and operation, and the water-using units have a common owner. (Ord. 15-2008 §1)

Sec. 13-1-40. Uncontrolled cross-connections prohibited.

No water pipes shall be permitted to connect between one (1) water-using unit and another water-using unit, except pursuant to and in accordance with this Chapter. Cross-connection between the public water supply system and any nonpotable supply is not permitted, unless an approved cross-connection control device is properly installed and maintained in compliance with Section 13-2-110 of this Chapter. The device shall continuously provide cross-connection protection commensurate with the degree of hazard. (Ord. 15-2008 §1)

Sec. 13-1-50. Easements required for certain installations.

No private service lines, water pipes or water installations of any type whatsoever shall be laid, conducted or permitted to cross property not owned by the customer on whose property the tap and service connections from the water system originate, except in a designated easement. (Ord. 15-2008 §1)

Sec. 13-1-60. Supply to another unit prohibited.

Unless written permission is obtained from the Public Works Director, no customer obtaining water from the water system for any water-using unit shall supply water to any other water-using unit, except in strict accordance with the terms and provisions of this Chapter. (Ord. 15-2008 §1)

Sec. 13-1-70. Right of entry for inspections.

A duly authorized employee of the Town bearing proper credentials and identification

shall be permitted, upon due notice to the customer, to enter upon any and all water-using properties for the purpose of repair, maintenance, inspection, observation, excavations, measurement, sampling and testing of the water meter, private service line, curb stop or any other appurtenances associated with the private service line. This right-of-entry shall be a condition of water service in order to protect the health, safety and welfare of the customers served by the Town's water system. Failure to permit such entry may result in a finding that permission is being denied to avoid discovery of a violation. Such finding may result in disconnection of service to the water-using property or other remedies, as allowed under these regulations or otherwise as allowed under law. (Ord. 15-2008 §1)

Sec. 13-1-80. Fire hydrant use restricted.

It is unlawful for any person, except members of the Public Works Department, to open, draw or attempt to draw water from any of the fire hydrants without prior written authorization from the Public Works Director. (Ord. 15-2008 §1)

Sec. 13-1-90. Pollution and interference with supply prohibited.

It is unlawful for any person to pollute or interfere in any manner with:

- (1) The stream or source from which water is taken by the Town for five (5) miles above the point from which water is taken.
- (2) Reservoirs, intakes, headgates, wells, trenches, pipes or drains necessary for or used in the construction, maintenance or operation of the Town water system. (Ord. 15-2008 §1)

Sec. 13-1-100. Compliance with provisions required.

It is unlawful for any person to obtain water from the water system and/or water services of the Town, except in accordance with this Chapter and upon payment of the proper and applicable charges levied, set forth and/or imposed herein. (Ord. 15-2008 §1)

Sec. 13-1-110. Violation and penalty.

(a) Any person who willfully violates any provisions of this Chapter shall be fined not to exceed one thousand dollars (\$1,000.00) for each offense or punished by imprisonment not exceeding one (1) year, or by both such fine and imprisonment, for each offense. Each day any person is in violation of any provision of this Chapter shall constitute a separate offense.

(b) Any activity or use which is continued, operated or maintained contrary to any provision of this Chapter is unlawful. The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove such violation, in which event the Town shall be entitled to recover court costs and its reasonable attorney's fees.

(c) In addition to, or as an alternate to, Municipal Court prosecution or filing a civil action under state or federal law, the Town may, upon five (5) days' prior written notice to the customer, abate any violation of this Chapter or cause it to be abated. The Town may charge the cost of such abatement to the customer, to be recovered in the same manner as unpaid water or sewer utility charges, as provided under state law or this Code.

(d) The remedies herein provided shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law. (Ord. 15-2008 §1)

Sec. 13-1-120. Liability and ownership.

(a) The Town shall not be liable or responsible for inadequate treatment or interruption of service brought about by circumstances beyond its control.

(b) No claim for damage shall be allowed against the Town by reason of the following conditions: blockage in the system causing the backup of sewage; damage caused by smoking of main lines to determine connections to the Town's main lines; breakage of main lines; interruption of water or sewer service and the conditions resulting therefrom; damage from the breaking of any service or collection line, pipe, cock or meter; failure of the water supply; shutting off or turning on water; installation of connections or extensions; damage caused by water running or escaping from open or defective faucets; burst service lines or breakage of other facilities not owned by the Town; damage to water heaters, boilers or other appliances resulting from shutting water off, or from turning it on, or from inadequate, excessive, or sporadic pressures; or from doing anything to the systems of the Town deemed necessary by the Town Administrator or Public Works Director.

(c) The Town has no responsibility to notify customers of any occurrence of the foregoing conditions. (Ord. 15-2008 §1)

ARTICLE 2

**Water Service Applications
and Connections**

Sec. 13-2-10. Application procedure generally.

(a) An application and written approval of the application by the Public Works Director shall be required for any material change in

water service for the customer or potential customer, including, without limitation for any new service connection, any expansion of or addition to the water-using unit, any change in use of the water-using unit or property served (e.g., from residential to commercial, conditional-use permit, home-occupation permit or conversion of a garage into a residential unit), the addition of additional water fixtures in commercial establishments, any remodel or other work for which a building permit is required, any demolition of a water-using unit, and/or rezoning or subdivision of property. The water service application shall be in writing on a form approved by the Town, shall be submitted to the Town Clerk and shall set forth: the name and post office address of the owner of the water-using property, the legal description of the water-using property for which water is desired, the purpose or purposes for which the water will be used and such other facts reasonably required by the Town, to determine the purpose, extent, nature and location of water use, the water-using property and the water-using unit.

(b) Applications shall be made only in the names of and for water-using property owners.

(c) The Town reserves the exclusive right to deny application for service when, in the opinion of the Town, the service applied for would create an excessive seasonal or other demand on the facilities. Denial may also be based upon an unresolved obligation between the Town and the applicant, inadequate documentation of easements for main lines serving the property or any other reason as determined by the Town. The Town reserves the right to revoke any prior approval before service has been provided, and the right to revoke service after it has commenced for any violation of this Chapter. (Ord. 15-2008 §1)

Sec. 13-2-20. Application and tap fee payment; water dedication or payment of cash in lieu of water rights.

(a) Application and tap fee:

(1) Each application for connection to the water system shall be accompanied by a tap fee, the purpose of which is to cover the cost of connection as well as compensate the Town for its previous investment in the water system. Any other application required under this Chapter shall be accompanied by such application fee as the Town Council may establish by resolution. Payment shall be made to the Town Clerk.

(2) As required in Section 13-2-10 above, the customer shall apply to the Town for approval prior to any expansion of or addition to the water service, or any change in the use of the water-using unit or property served by the Town. Any such expansion, addition or change in use which, in the opinion of the Town, will increase the burden placed on the Town's system by the customer shall require:

- a. Redetermination of the tap fee and monthly service charge;
- b. Payment by the customer of any additional tap fee and monthly service charge resulting from the redetermination; and
- c. Dedication of water rights or a payment in lieu of water rights for the increase in water use under Subsection 13-2-20(b) below.

Any additional tap fee due as a result of such expansion, addition or change in use shall take into account the tap fee paid for the

existing use. Tap fees based on the current fee charged for the specific use allowed under the Town's original approval shall be credited against the redetermined tap fee, so that only the additional portion of any redetermined tap fee shall be due. For example, if a structure changes from two (2) units to three (3) units without expanding the square-footage of the structure, the additional tap fees shall be calculated giving full credit to the two (2) units and the square-footage for which tap fees were previously paid or payable at the current fee charged by the Town. However, if the redetermination results in a conclusion that the tap fee, if assessed currently, would be in an amount less than the tap fee originally paid, the redetermined fee shall not result in a refund to the customer.

(b) In addition to the fees described in Subsection 13-2-20(a) above, the Town conditions new water service upon either a dedication of water rights or a payment of cash in lieu of water rights. This condition applies to:

(1) All new development or redevelopment within the Town not covered by existing taps and all redevelopment within the Town that will require an increase in water use in excess of the use covered by existing taps; and

(2) All properties not currently within the Town, as provided in Section 13-2-80 of this Article. The applicant for water service for new development or redevelopment in the Town must agree, in writing, to:

a. Dedicate water rights to the Town in an amount and of a quality adequate, in the judgment of the Town, to serve the needs of the new water use or the increase in water use not covered by existing taps; or,

b. At the Town's discretion, pay cash in lieu of such water rights at the then-current rate set by the Town. Such cash-in-lieu payments shall be paid to the Town to be used, at the discretion of the Town, to develop and/or acquire water rights or storage for the Town or to construct or improve municipal water facilities.

The increase in water use caused by redevelopment may be as a result of increased density, increased landscaping or any other change in use of the property that increases the water demand from the pre-redevelopment demand. The applicant must provide evidence, acceptable to the Town, regarding the amount of water required by the proposed use. The applicant shall be required to pay the Town for all legal, engineering and other costs incurred or which may be incurred by the Town to evaluate the application and implement this Section or to adjudicate any Water Court application necessary to provide water service to the new development or redevelopment within the Town. Such agreement shall be made a covenant running with the land.

(c) Should any information disclosed on the application prove at any time to be false, or should the applicant omit any material information, the Town shall have the right to:

- (1) Reassess the tap fee originally charged to the rate current at the time of discovery by the Town of the false or omitted information;
- (2) Disconnect the service in question;
- (3) Back-charge the customer for the water-using unit in question for tap fees and/or service fees that may be due and owned; and/or

(4) Charge any other additional fee or penalty specified in this Chapter. Any reassessment, penalties or other additional fees, charged with interest at the maximum legal rate on the entire balance upon and from the date of the original application, shall be due and payable immediately.

(d) Unless otherwise agreed by the Town in writing, the customer shall pay a monthly water service fee commencing upon the earlier of:

- (1) Two (2) years from the Town's issuance of the tap for the water-using unit or property;
- (2) Expiration of the building permit issued for the water-using unit; or
- (3) Issuance of the certificate of occupancy for the water-using unit.

Monthly service fees commencing under Subparagraph (d)(1) or (d)(2) above shall be at the base rate, unless the Town Council has established another rate by resolution. Monthly service fees commencing under Paragraph 13-2-20(d)(3) above shall be at the metered water rate. (Ord. 15-2008 §1)

Sec. 13-2-30. Town Clerk's duties.

Upon receipt of an application, together with the required accompanying data, material and fees, the Town Clerk shall, upon finding the same in order and in accord with this Chapter, submit such application and accompanying data to the Public Works Director. (Ord. 15-2008 §1)

Sec. 13-2-40. Connection specifications.

All taps and connections must comply with all the regulations of this Chapter and the Town's standard specifications. (Ord. 15-2008 §1)

Sec. 13-2-50. Firefighting systems.

Approval for a firefighting water supply or suppression system shall be granted or denied by the Eagle River Fire Protection District upon submission of such request in writing from the property owner and acceptance by the Public Works Director. The entire cost of installation and maintenance of said firefighting water supply or suppression system shall be paid by the customer. (Ord. 15-2008 §1)

Sec. 13-2-60. Connections; maintenance and operations; terms generally.

(a) No person shall make a tap or connect onto the water system of the Town, either within or without the Town, without first submitting an application and obtaining written approval of the application by the Public Works Director. Tap and service connections are approved for specific uses, as stated on the application. The Public Works Director may conduct an inspection in accordance with Section 13-1-70 of this Chapter, to identify any unauthorized use for which the customer is subject to a fine in accordance with Sections 13-1-110 and 13-2-120 of this Chapter.

(b) All water-using units shall connect to the Town's water system when a Town water main is capable of furnishing service to the water-using unit. An application and accompanying fee for such connection shall be submitted to the Town in compliance with this Chapter, for review by the Public Works Director. Any such connection shall be in compliance with all the regulations of this Chapter and the Town's standard specifications.

(c) All customers, at their own expense, shall install a shut-off or maintenance valve, located inside the water-using unit, to enable the water supply to be turned off to the water-using unit. This valve is to enable maintenance of the

plumbing and fixtures within the water-using unit, to protect from freezing and to make any repairs which may be necessary to prevent leaks or damage.

(d) Control of hazardous cross-connections shall occur in compliance with Section 13-2-110 of this Article.

(e) Private service lines:

(1) Installation of all private service lines and other facilities extending from the curb stop to the water-using unit, including all excavations and backfilling, and the continued maintenance and repair thereof, shall be done, made and performed by the customer in accordance with the Town's standard specifications, at the customer's expense. Private service lines shall not be placed in the same trench with other utilities except under such special conditions as may be approved in writing by the Public Works Director. The Town may, in its discretion, install a new curb stop at the customer's property line and bill the customer for all costs associated with the installation.

(2) On or before October 1, 2012, or earlier, upon the sale or issuance of a building permit for a customer's water-using unit, every customer shall have installed a curb stop in the customer's private service line, at the customer's own expense. The curb stop shall be located at the customer's property line and/or the edge of the public right-of-way, as specified in writing by the Public Works Director, at the time the excavation permit is approved. If the customer fails to comply with such installation (including, as applicable, relocation of the curb stop to the customer's property line and/or edge of the public right-of-way), or if the Town determines that environmental or property damage

is being caused, the Town may shut off the water service to the water-using unit until the curb stop has been installed. In addition, the Town shall have the right to effect the installation of the curb stop or relocation of the curb stop to the customer's property line and/or edge of the public right-of-way, the costs therefor shall constitute a lien on the water-using property, and such lien shall be enforced by law. The principle that the customer is the owner of, and is responsible for maintenance of, the private service line including curb stop, shall not be changed by the fact that the Town may inspect, repair, maintain or otherwise affect the curb stop.

(3) Leaks, breaks, repair and maintenance of the private service line, and any damages resulting therefrom, shall be the responsibility of the customer. Except as provided in Subsection 13-2-60(f) below regarding the water meter, the Town's responsibility for maintenance of the water system ends at the curb stop or the edge of the customer's property line, whichever is closer to the public main. Upon written notice (by first-class mail) by the Town to the customer that the private service line is defective or in need of repair, the customer shall repair or replace the service line immediately. Written notice is not required in the event of an emergency necessitating the immediate replacement or repair of the service line. If the customer fails to comply in a timely manner, or if the Town determines that environmental or property damage is being caused, the Town may shut off the water service to the water-using unit until the service line has been repaired or replaced. In addition, the Town shall have the right to effect the repair or replacement, the costs therefor shall constitute a lien on the water-using property, and such lien shall be enforced by law. The principle that the customer is the owner of and is responsible for

maintenance of the private service line shall not be changed by the fact that the Town may inspect, repair, maintain or otherwise affect the private service line or water meter.

(4) Prior to any excavation of a private service line, the customer shall contact the Public Works Director to schedule an inspection of the private service line and curb stop. The customer shall not cover the private service line or curb stop with earth until after the Public Works Director has inspected and approved the installation. The Town further reserves the right to monitor all private service line construction, including without limitation the excavation in any sidewalk, street, highway, public right-of-way or easement.

(f) Water meters:

(1) Every tap or service connection to the Town's water system shall include a water meter. The type, size and location of the meter shall be subject to the Town's approval and shall be accessible for maintenance. All water meters shall have devices for remote reading and, if required by the Town, a Meter Transceiver Unit (MXU) for automated radio-meter reading. For any new service connections, the Town will inspect the meter and installation for compliance before water service is turned on to the water-using unit. The customer shall install the initial meter at the customer's expense and the Town shall have the right to test, remove, repair or replace any and all water meters. Any meter not installed in accordance with the Town's specifications shall be immediately replaced upon notification by the Town. At the Town's discretion, the cost of the initial meter may be included in the tap fee.

(2) Each water meter shall become and is the property of the Town. Ownership shall remain valid whether the meter is installed,

financed, paid for, repaired or maintained by another person, or whether the meter is located on a private service line. The customer shall maintain free and clear access to the meter at all times.

(3) The customer shall be subject to a fine for illegal tampering of the meter or for bypassing of the meter. The customer shall be responsible for promptly notifying the Town if the meter is operating defectively. If any meter is suspected to be defective, the Town shall diligently pursue repair or replacement at the Town's expense, unless the defect is a result of negligence or tampering by the customer. In the case of such negligence or tampering, the cost for repair or replacement shall be charged to the customer.

(4) During the interim period prior to repair, the following procedure shall be followed: The Town shall give the customer a written notice, by first-class mail, that the Town suspects the meter is defective. The customer shall have thirty (30) days in which to respond, which response shall include scheduling an appointment with the Town's Public Works Department for a meter inspection and replacement. If the customer fails to respond, the customer will be placed on the unmetered rate, effective with the next billing cycle. The customer shall be given a second written notice by first-class mail. The customer shall have thirty (30) days in which to respond, which response shall include scheduling an appointment with the Town's Public Works Department for a meter inspection and replacement. If the customer fails to respond to the second notice, the Town may disconnect the water service and charge the customer the base water rate while the service is disconnected. Service will be restored only upon payment of all fees and repair of the water meter.

(5) If any water meter shall fail to register in any billing period through no fault of the customer, the customer shall be charged the base rate for the billing period. If any water meter shall fail to register in any billing period through negligence, tampering or other fault of the customer, the customer shall be charged the unmetered rate for the billing period.

(g) On or before October 1, 2012, or earlier, upon the sale or issuance of a building permit for a customer's water-using unit, the customer shall install a pressure-reducing valve (PRV) in every private service line upstream of the water meter, ensuring that the water meter and the building plumbing system, including any fire sprinkler system, are protected from fluctuating water main pressures. The pressure setting of the PRV shall not exceed 100 psi on a residential system or 200 psi on a fire-suppression system without written permission from the Public Works Director. No properties are exempt from the requirement to install a PRV. All water-using units shall have a PRV, regardless of the age of the property or the service connection. (Ord. 15-2008 §1)

Sec. 13-2-70. Treated water storage.

(a) This Section applies to:

(1) All new development or redevelopment within the Town not covered by existing taps and all redevelopment within the Town that will require an increase in water use in excess of the use covered by existing taps; and

(2) All properties not currently within the Town, as provided in Section 13-2-80 below.

(b) For proposed development under Subsection 13-2-70(a) above that the Town deter

mines cannot be served by an existing treated water storage facility, the property owner shall provide a water storage tank or tanks and the land therefor. Tanks shall be sized as follows:

Equalization Storage	=	ADD/SFE x 0.25 = 87 gallons/SFE
Emergency Storage	=	ADD/SFE = 350 gallons/SFE
Fire-flow Storage	=	Minimum 180,000 gallons (=1500 gpm x 2 hours' fire- flow), sized to provide at least the volume needed to deliver the greatest fire-flow requirement within the zone, as recommended by the local fire department (e.g., a fire- flow)

(Ord. 15-2008 §1)

Sec. 13-2-80. Connections outside Town.

(a) Prior to connection to the Town's water facilities, each owner of property which is not within the corporate limits of the Town shall:

(1) Begin and pursue to completion the annexation of the property to the Town, if the property is eligible for immediate annexation. If the property is not eligible for immediate annexation, the owner must agree in writing to annex all of the property served by the Town's water facilities when the property becomes eligible for annexation, to sign any petition and to do all things which the property owner may do, or must do, under the requirements of the State Constitution, to effect the annexation. The agreement shall be made a covenant running with the land.

(2) Furnish the Town, at no cost, the necessary easements and rights-of-way to provide water service to the property.

(3) Agree in writing to:

a. Transfer all water rights to the Town that are appurtenant to the property to be served,

b. Dedicate water rights to the Town in an amount and of a quality adequate, in the judgment of the Town, to serve the needs of the property and proposed uses to be served by the Town or, at the Town's discretion, to pay cash in lieu of such water rights at the then-current rate set by the Town, and

c. Pay the Town for all legal, engineering and other costs incurred, or which may be incurred, by the Town with respect to the application for water service, including, without limitation, to evaluate the proposed water requirements, draft any agreements relating to the extension of water service and/or adjudicate any Water Court application necessary to provide water service to the property. Such cash-in-lieu payments shall be paid to the Town to be used, at the discretion of the Town, to develop and/or acquire water rights or storage for the Town or to construct or improve municipal water facilities. The water rights described in Subparagraph 13-2-80(a)(3)a. herein may be used, in whole or in part, to satisfy the dedication requirements of Subparagraph 13-2-80(a)(3)b. herein, and, in determining the amount of any water rights dedication or cash payment in lieu, consideration shall be given to any past dedication of water rights by the applicant and whether excess water rights exist from such past dedication. The party requesting water service from the Town must provide evidence, acceptable to the Town, regarding the amount of water required by

the proposed use. Said agreement shall be made a covenant running with the land.

(4) Agree in writing to provide treated water storage as provided in Section 13-2-70 above.

(b) Prior to receiving water service, the owner of a single residential property located outside the Town limits and not presently eligible for annexation must comply with the following:

(1) Agree in writing to include the property in any special improvement district formed to provide water service, facilities, lines or related services in which the property is eligible to be included, at such time as the eligibility occurs. The agreement shall be made a covenant running with the land.

(2) Agree in writing to include the property in any special improvement district formed to provide curb, gutter, paved streets, sidewalks, storm sewers, sanitary sewer service, facilities, lines or related services in which the property is eligible to be included, at such time as the eligibility occurs. The agreement shall be made a covenant running with the land.

(3) Agree in writing to:

a. Transfer all water rights to the Town that are appurtenant to the property to be served;

b. Dedicate water rights to the Town, in an amount and of a quality adequate, in the judgment of the Town, to serve the needs of the property and proposed uses to be served by the Town or, at the Town's discretion, to pay cash in lieu of such water rights at the then-current rate set by the Town; and

c. Pay the Town for all legal, engineering and other costs incurred, or which may be incurred, by the Town with respect to the application for water service, including, without limitation, to evaluate the proposed water requirements, draft any agreements relating to the extension of water service and/or adjudicate any Water Court application necessary to provide water service to the property. Such cash-in-lieu payments shall be paid to the Town to be used, at the discretion of the Town, to develop and/or acquire water rights or storage for the Town, or to construct or improve municipal water facilities. The water rights described in Subparagraph 13-2-80(b)(3)a. herein may be used, in whole or in part, to satisfy the dedication requirements of 13-2-80(b)(3)b. herein, and in determining the amount of any water rights dedication or cash payment in lieu, consideration shall be given to any past dedication of water rights by the applicant and whether excess water rights exist from such past dedication. The party requesting water service from the Town must provide evidence acceptable to the Town regarding the amount of water required by the proposed use. Said agreement shall be made a covenant running with the land.

(c) Prior to receiving water service, the owner, subdivider or developer of a subdivision of two (2) or more lots located within the corporate limits of the Town, or of property which is eligible for immediate annexation, must comply with the following:

(1) Install, at no cost to the Town, all curbs, gutters, paved streets, sidewalks, storm sewers, water lines and taps, sewer lines and taps and all other public improvements according to Town specifications and in accordance with Chapter 16 pertaining to subdivisions.

(2) Install all water lines and taps per Town specifications, at no cost to the Town, with no repayment provisions.

(3) Comply with Subparagraph 13-2-80(a)(3) above.

(4) Agree in writing to provide treated water storage, as provided in Section 13-2-70 above.

(d) If it is not physically possible or practicable, as determined in the sole discretion of the Town Administrator, to make the installations required at the time of first receiving water service, the customer shall agree in writing to install them as soon as the installation becomes possible. The agreement shall be made a covenant running with the land.

(e) Prior to receiving water service, the owners of property located outside the corporate limits of the Town and not eligible for immediate annexation, in existing platted subdivisions which are wholly or partially developed and where more than one (1) owner is involved, shall be furnished water service only on a special district or homeowners' association basis and must comply with the following:

(1) Satisfy all County subdivision regulations;

(2) Install all of the water lines and taps per Town specifications, at the district's or association's expense, with no repayment provision;

(3) Comply with any then-existing requirements of the Town for inspections of the work, including paying a qualified Town inspector if this condition is required by the Town Administrator; and

(4) Agree in writing to include the property in any special improvement district which is formed to provide curb, gutter,

paved streets, sidewalks, storm sewer, water service, sewer and other public improvements and not to oppose the formation of the districts; and that the installation of the improvements will be provided at no cost to the Town, according to Town specifications, when the property has been annexed to the Town. The agreement shall be made a covenant running with the land.

(5) Agree in writing to:

a. Transfer all water rights to the Town that are appurtenant to the property to be served;

b. Dedicate water rights to the Town, in an amount and of a quality adequate, in the judgment of the Town, to serve the needs of the property and proposed uses to be served by the Town, or, at the Town's discretion, to pay cash in lieu of such water rights at the then-current rate set by the Town; and

c. Pay the Town for all legal, engineering and other costs incurred, or which may be incurred, by the Town with respect to the application for water service, including, without limitation, to evaluate the proposed water requirements, draft any agreements relating to the extension of water service and/or adjudicate any Water Court application necessary to provide water service to the property. Such cash-in-lieu payments shall be paid to the Town to be used, at the discretion of the Town, to develop and/or acquire water rights or storage for the Town or to construct or improve municipal water facilities. The water rights described in Subparagraph 13-2-80(e)(5)a. herein may be used in whole or in part to satisfy the dedication requirements of Subparagraph 13-2-80(e)(5)b. herein, and in determining the amount of any water rights dedication

or cash payment in lieu, consideration shall be given to any past dedication of water rights by the applicant and whether excess water rights exist from such past dedication. The party requesting water service from the Town must provide evidence acceptable to the Town, regarding the amount of water required by the proposed use. Said agreement shall be made a covenant running with the land.

(6) Agree in writing to provide treated water storage as provided in Section 13-2-70 above.

(f) Prior to receiving water service, the owner of property located in a newly developed and platted subdivision wholly owned by one (1) individual, partnership, joint venture, corporation or limited liability company which is not eligible for immediate annexation shall comply with the requirements of Subparagraphs 13-2-80(e)(1) through (e)(6) above, but will not be required to include the property in a special improvement district formed to provide water service, facilities, lines and other related services.

(g) In addition to any other requirements of this Section or Section 13-2-10 of this Article, an application for water service outside of the Town shall be reviewed by the Town Administrator and include, at a minimum, the following:

- (1) Description of area to be served;
- (2) Description of proposed development;
- (3) Timing of development;
- (4) Probable flow requirements; and

(5) Any other documentation or information required by the Town Administrator. (Ord. 15-2008 §1)

Sec. 13-2-90. Connections outside Town; feasibility report; required contents.

(a) After the Town Administrator indicates favorably as to the probability of the Town providing the requested water service, the applicant shall prepare an engineering feasibility report, if required by the Town Administrator. Such report may be prepared, at the applicant's expense, by an engineer selected by the applicant and approved by the Town Administrator. The applicant shall pay the costs of report review by the Town's staff. If legal consideration must be investigated, this work shall be accomplished by the Town Attorney, at the applicant's expense. The applicant shall deposit with the Town Clerk an estimated dollar amount, surety bond or approved letter of credit in an amount to cover anticipated legal and engineering expenses.

(b) Engineering report information shall include, but not be limited to, the following:

- (1) Details of information included in the original letter of application;
- (2) Preliminary designs and cost estimates of the water distribution required;
- (3) Preliminary design of connection methods to the Town water system;
- (4) Analysis of the combined water system which will show the effect of the added area on the Town's existing facilities; and
- (5) Preliminary design and cost estimates for any water treatment, transmission or storage and water treatment facilities required to be added as a result of water service to the applicant's area. (Ord. 15-2008 §1)

Sec. 13-2-100. Connections outside Town; contract required; contents.

(a) The Town Administrator and applicant will review the report and, if the conditions for service are mutually agreeable, the applicant shall have prepared by the Town Attorney a contract for water utilities service.

(b) Such contract shall at least require the following:

(1) The amount of the tap fee shall be twenty-five percent (25%) greater than the current in-town rate.

(2) Service charges shall be twenty-five percent (25%) greater than the current in-town rate until the area is annexed.

(3) All water extension lines shall be constructed to quality standards as specified by the Town and may either be installed by the Town or the applicant. If the applicant chooses to install the lines, drawings and specifications must be approved by the Town. Work done by an applicant must also be supervised and inspected by the Town, at the expense of the applicant. Line sizes must be in accordance with the Town's system. The applicant is to pay all project costs, including preliminary engineering, legal, design, engineering review, job inspection, as-built drawings, surveys, easements, etc.

(4) At the Town's option, the applicant shall either deed to the Town the entire water line extension after it has been completed and accepted, or the applicant shall agree to deed the system to the Town upon demand by the Town.

(5) In every case where the Town furnishes water service to properties outside the Town limits, such service shall be considered

a revocable license and the Town reserves the right to discontinue such service when, in the judgment of the Town Council, it is in the Town's best interest to do so. (Ord. 15-2008 §1).

Sec. 13-2-110. Control of hazardous cross-connections.

(a) The Town administers and maintains a program for the prevention and control of hazardous cross-connections. The Town administers this program with the authority and guidelines established by Sections 25-1-114 and 25-1-114.1, C.R.S., Article 12 of the Colorado Primary Drinking Water Regulations, and the *Colorado Cross-Connection Control Manual* ("Manual") (among other authority). The Town shall use, at a minimum, the most current edition of the Manual as the guidance document for implementation of the cross-connection control program. The customer is responsible for complying with all applicable cross-connection control regulations.

(b) An approved backflow prevention device shall be installed on all commercial, industrial and mixed usage properties and all fire sprinkler systems, to protect the public water system from potential cross-connection contamination.

(c) By law, residential properties are required to have a backflow prevention device (e.g., a double-check valve assembly). If the residential property does not contain or present potential hazards to the public water system, the Town does not require an annual inspection but may require testing of the double-check valve assembly or other backflow preventer, at intervals set by the Town. Such hazards include, but are not limited to, home photo labs, solar power systems connected to the water system or auxiliary wells.

(d) Any backflow preventer which is currently installed but not approved by a certified cross-connection control technician shall be replaced with an approved assembly at the time it fails an operational test.

(e) Backflow prevention devices are to be installed in an accessible location, to facilitate maintenance, testing and repair.

(f) The backflow prevention device shall be consistent with the degree of hazard posed by the uncontrolled cross-connection. Approved backflow preventers that provide containment shall be installed on all new service connections, and shall be located downstream of the water meter, prior to any other connections. Single-check valves shall not be considered backflow prevention and shall not be permitted. Backflow prevention assembly valves are not to be used as the inlet or outlet valve of the water meter. Test cocks are not to be used as supply connections. Double-check type backflow prevention assemblies shall not be permitted on systems containing glycol.

(g) Backflow preventers installed on fire sprinkler systems must meet the requirements of the Building Official and shall be reduced-pressure assemblies that provide full containment or isolation when the systems contain glycol or antifreeze. The reduction of pressure through these devices must be incorporated into the design of the fire sprinkler system.

(h) Backflow preventers shall be installed in accordance with the Manual and any requirements of the Town. Backflow preventers shall only be installed by a licensed master plumber or a licensed plumber or cross-connection control technician working directly under the supervision and authority of a licensed master plumber. Backflow preventers shall be inspected and approved by the Town's designated cross-connection control technician. The Town

reserves the right to require the replacement or modification of any backflow preventer that the Town's designated cross-connection control technician deems to present a potential hazard to the public water system.

(i) Except as otherwise provided for residential installations in Subsection (c) above, all backflow preventers shall be tested and maintained as necessary on installation, and at least annually thereafter, by a certified cross-connection control technician. The customer must ensure that all initial and annual testing is completed. Test results must be submitted to the Town on the Town's form, and all information on the form must be completed and legible. The customer must also maintain accurate records of all tests, inspections and repairs for at least three (3) years.

(j) All costs for the design, purchase, installation, maintenance, repair, inspection and testing of backflow preventers shall be borne by the customer.

(k) Colorado law prohibits uncontrolled cross-connections. The requirements of this Section apply regardless of the age of the water-using unit or the service connection.

(l) Violations:

(1) Failure of the customer to cooperate in the installation, maintenance, testing or inspection of required backflow preventers shall be grounds for the discontinuance of water service to the water-using unit or the requirement for an air-gap separation from the public water system.

(2) Service of water to any premises may be discontinued by the Town if unprotected cross-connections exist on the water-using unit. When any defect is found in an

installed backflow preventer, or if the backflow preventer has been removed or bypassed, the water service may be discontinued. Service shall not be restored until such conditions or defects are corrected.

(3) Discontinuance of service may be summary, immediate and without written notice whenever, in the judgment of the Town's designated cross-connection control technician or the Public Works Director, such action is necessary to protect the public water supply or the distribution system.

(4) If disconnection of water service is not feasible, the Town may fine the customer an amount not to exceed five hundred dollars (\$500.00) per day for any or all days the cross-connection is uncontrolled. (Ord. 15-2008 §1)

Sec. 13-2-120. Unauthorized uses of and tampering with systems.

(a) No person shall uncover, alter, disturb, make any connection with or make an opening into, the water system, without a written authorization from the Town. No person shall backfill any component of the water system or the private service line prior to inspection by the Town. Unauthorized uses of or tampering with the Town's systems also include, but are not limited to, change in a customer's equipment, service or use of the property; an unauthorized turn-on or turn-off of water service or a water main; burying valve boxes; modifying or bypassing any water meter. All water use must be metered. Any unmetered use is considered an unauthorized use, unless approved in writing by the Town Administrator.

(b) No person shall maliciously, willfully, or negligently break, damage, destroy, cover, uncover, deface or tamper with any portion of the water system or a water meter.

(c) Any person who violates the provisions of this Section shall be subject to fines and penalties as provided in Section 13-1-110 of this Chapter, and shall be prosecuted to the full extent of state law. (Ord. 15-2008 §1)

Sec. 13-2-130. Water use restrictions; emergency restrictions.

(a) Water shall be used only for beneficial purposes and shall not be wasted. Any instance of flagrant runoff or waste, including but not limited to any installation or use of "bleeding lines," will be considered a violation of these water use restrictions and subject to the penalties provided for in Subsection (e) below. Water for irrigation of lawns and other outside uses shall be used pursuant to any other regulations of the Town.

(b) The Town recognizes that certain conditions may exist when water supply is temporarily limited.

(1) If conditions so limit the water supply available to the Town's water system that unrestricted water use may endanger the adequacy of that supply, the Town Council, exercising its sole discretion in the protection of the public health, safety and welfare, may, by resolution, adopt the emergency water use restrictions in this Subsection and such other or additional regulations and restrictions as are reasonably calculated to conserve and protect the water supply and to ensure a regular flow of water through the system.

(2) Emergency water use regulations and restrictions shall remain in force and effect until the Town Council determines that the conditions requiring their imposition no longer exist.

(3) Subsequent to adoption by resolution of the Town Council and commencing June 1, and continuing through September 30, no

water shall be used for lawn irrigation or other purposes outside the water-using unit, except as follows:

- a. Water-using units with even-numbered addresses may use irrigation water on Sundays, Wednesdays and Fridays.
- b. Water-using units with odd-numbered addresses may use irrigation water on Tuesdays, Thursdays and Saturdays.
- c. No outside irrigation shall occur between the hours of 10:00 a.m. and 5:00 p.m.
- d. Swimming pools will be limited to one (1) filling, unless draining for repairs is necessary.
- e. No irrigation shall be permitted at any time by use of free-running hose without nozzle or sprinkler.
- f. Nothing herein shall prevent the imposition of a total ban on outside water use in the event of an extreme emergency, nor to further create an exception to meet a specific water supply condition.

(c) Any unauthorized use of water shall be paid for at the same rate as if that use had been authorized, together with the costs incurred by the Town in discovering and collecting for the unauthorized use. Such payments shall not in any way affect the right of the Town to disconnect or suspend water service to any customer for unauthorized use, or to charge additional penalties or pursue such other remedies as may be authorized by law or approved by the Town Council; nor shall such payments affect any criminal liability which may have attached by reason of such unauthorized use.

(d) The Town may require that seals be attached to any water-using system in or about a customer's water-using unit, in order to detect any unauthorized use of water from that system. If necessary, the Town may also require that mechanical devices be attached to any water-using system in or upon a customer's water-using unit, in order to detect any unauthorized use of water from such system. Such mechanical devices may be inspected, on behalf of the Town, at any reasonable time.

(e) Waste of water or the violation of any water use regulation shall be considered grounds for the disconnection or suspension of water service to any customer, or water-using unit. The customer shall be responsible for complying with the regulations and/or restrictions, and violators of said regulations and/or restrictions will be subject to fines imposed by the Town and possible disconnection and/or suspension of water service. (Ord. 15-2008 §1)

ARTICLE 3

Water Line Extensions

Sec. 13-3-10. Authority for extensions.

No extension of the Town water main shall be made by any person without first having obtained approval in writing from the Town Administrator and having complied with the regulations of the Town. (Ord. 15-2008 §1)

Sec. 13-3-20. Approval of plans.

All Town water main extensions shall be made under the supervision of the Town and shall be constructed according to the Town's specifications. Preparation of master plans and/or engineering studies to support an applicant's request for a water line extension shall be at the applicant's expense. (Ord. 15-2008 §1)

Sec. 13-3-30. Locations of water main extensions and additions.

Water main extensions shall be installed in established water line easements or in roads or streets which the Town, State Highway Department or other public agency has accepted for maintenance as a public right-of-way. (Ord. 15-2008 §1)

Sec. 13-3-40. Procedure for water main extension construction.

(a) If the Town has agreed to the engineering layout or design and preliminary cost estimates for the work, it shall enter into a standard line extension contract with the applicant, covering standard regulations on line extensions, and, at the option of the Town, shall either:

(1) Deposit an amount equal to the agreed estimated cost, in which case the Town shall construct the line extension utilizing its own employees or by competitive bid; or

(2) Contract directly with contractors who shall furnish the Town a performance bond guaranteeing the performance of the work, hold the Town harmless from any claims and provide a one-year maintenance bond.

(b) If the provisions of Paragraph (a)(1) above are elected and the deposit is not great enough to equal the lowest reasonable bidder's bid, the applicant shall be so notified, and no contract shall be let until the deficiency is added to the deposit. Upon completion of the work, the final cost shall be certified by the engineer, at the expense of the applicant, and any overage refunded or deficiency made up by the applicant.

(c) Special structures, such as pumping stations, etc., required to ensure proper operation of the water line extension, shall be constructed in accordance with designs prepared by the Town, at the expense of the applicant.

(d) Upon completion of construction of the water line extension, the applicant shall, before the lines are accepted by the Town for taps, deed the water mains and appurtenances to the Town, free and clear of all liens and encumbrances. The bond furnished under the provisions of Paragraph (a)(2) above shall cover all maintenance for one (1) year from the date of acceptance of the lines by the Town.

(e) The applicant shall provide, for the benefit of the Town, easements and rights-of-way necessary for water line extension.

(f) Any work done by the Town at the expense of the applicant shall be negotiated with the Town and accepted by both parties before the start of any work. (Ord. 15-2008 §1)

ARTICLE 4

Water Deposits, Fees and Charges

Sec. 13-4-10. Deposit.

The Town may require at any time from any person using or intending to use the water system a cash deposit intended to guarantee said party's payment of water charges to the Town. (Ord. 15-2008 §1)

Sec. 13-4-20. Turn-on and turn-off fee.

Every customer shall pay to the Town a sum set by the Town Council, payable at the time of turn-on, except in the case where a new tap is being installed, in which case there shall be no charge for turning water on. Individual units in a new multiple-unit building will not be assessed the turn-on fee. Every customer shall pay to the Town an amount set by resolution of the Town Council, plus other direct costs incurred by the Town, at the time water service is turned off. (Ord. 15-2008 §1)

Sec. 13-4-30. Tap, inspection and connection fee; residential units and hotel, lodge, motel, lock-off or accommodation units.

(a) Tap, inspection and connection fees for water shall be established by resolution of the Town Council.

(b) Accessory area uses can be assessed a tap fee and a usage fee separate from the hotel, lodge, motel, lock-off or accommodation unit. (Ord. 15-2008 §1)

Sec. 13-4-40. Tap, inspection and connection fee; commercial, industrial and irrigation.

(a) Tap, inspection and connection fees for water shall be established by resolution of the Town Council.

(b) For purposes of assessing tap fees for commercial connections, all service lines shall be sized using the total water demand from all fixtures, connections, outlets or other water uses, determined by the current section of the International Plumbing Code for metered water. (Ord. 15-2008 §1)

Sec. 13-4-50. Construction use rates.

The water use rate for use of water for any construction purpose shall be established by resolution of the Town Council. (Ord. 15-2008 §1)

Sec. 13-4-60. Unmetered rate.

(a) Residential or commercial water rates not presently metered shall be established by resolution of the Town Council. Water rates are set with consideration of the value of the Town's water rights in addition to covering the cost of the water system operations. Out-of-town unmetered water rates shall be billed at a rate twenty-five percent (25%) higher than in-town unmetered water rates.

(b) In the case of a residential property owner or occupant over the age of sixty-five (65) years, the unmetered residential water rate shall be seventy-five percent (75%) of the unmetered monthly rate per SFE for residential use. (Ord. 15-2008 §1)

Sec. 13-4-70. Metered water rate.

(a) Metered water rates shall be established by resolution of the Town Council. Out-of-town metered water rates shall be billed at a rate twenty-five percent (25%) higher than in-town metered water rates.

(b) In the case of a residential property owner or occupant over the age of sixty-five years, the metered residential water rate shall be seventy-five percent (75%) of the metered residential basic monthly charge per SFE plus seventy-five percent (75%) of the use charge per one thousand (1,000) gallons. (Ord. 15-2008 §1)

Sec. 13-4-80. Noncontinuous service; fee.

(a) If a water-using unit will be vacant for a period greater than six (6) months, the customer may request in writing that the Town discontinue water service. The customer shall pay any applicable disconnect or turn-off fee. Service may later be reinstated upon payment of the applicable reconnect or turn-on fee. During the period that any water service is disconnected under this Section, the customer shall pay a monthly base-rate for the water-using unit.

(b) In the case of a property owner or occupant over the age of sixty-five (65) years who, in advance, notifies the Town in writing of his or her intentions to vacate the property over two (2) consecutive months and also, in advance, requests in writing that the Town discontinue water service temporarily, the turn-off and turn-on fees may be waived when said owner or occupant resumes residence. (Ord. 15-2008 §1)

Sec. 13-4-90. Payments due when; nonpayment penalty.

(a) The Town shall remain solely responsible for routine and customary billing practices. Currently, charges for water service are mailed on the fourth Wednesday of each month and are due ten (10) days from the billing date. The Town reserves the right to alter or vary from that routine procedure without prior notice.

(b) Approximately ten (10) days after bills are mailed, delinquency notices are sent to customers with accounts having a balance due for thirty (30) days or longer. Such notices shall give delinquent customers ten (10) days within which to pay the delinquent balance, and shall notify the customer that, if such balance is not paid within ten (10) days, water service shall be disconnected. The Town shall have the responsibility for sending the delinquency notice.

(c) If payment of the delinquent balance is not paid within the ten-day period, the Town shall post the disconnect notice and disconnect water service to the property. Along with disconnection, the Town shall impose an additional charge to the customer as established by resolution of the Town Council. Water service shall not be resumed until delinquent charges are paid. (Ord. 15-2008 §1)

Sec. 13-4-100. Unpaid bills; lien.

A lien may be placed upon the water-using property for all unpaid charges for which the water is supplied, from the time when said charges become due, and shall be a perpetual charge and lien against said water-using property until paid; and said charges shall be collected and such lien enforced by law. (Ord. 15-2008 §1)

Sec. 13-4-110. Charges not exclusive.

The payment of the fees and charges imposed in this Article shall not relieve the person paying the same from the payment of any other taxes hereafter imposed by ordinance, it being the intent of this Article that said fees and charges prescribed herein shall be cumulative, except where otherwise specifically provided. (Ord. 15-2008 §1)

Sec. 13-4-120. Classification and equivalent units.

The classification for water-using units and the single-family equivalent unit number ("SFE") associated with water-using units shall be established by resolution of the Town Council. (Ord. 15-2008 §1)

Sec. 13-4-130. Civil actions.

The Town shall have the right to recover all sums due by the terms of this Chapter by judgment and execution thereon in a civil action in any court of competent jurisdiction. Such remedy shall be cumulative with all other remedies provided for the enforcement of this Chapter. (Ord. 15-2008 §1)

Sec. 13-4-140. Funds and accounting.

Money received from the water system shall be accounted for in the Water Fund. (Ord. 15-2008 §1)

ARTICLE 5

**Water, Sanitation and
Recreation Activities Enterprise**

Sec. 13-5-10. Establishment.

The Town hereby establishes a water, sanitation and recreation activities enterprise (the "Enterprise") as an agency of the Town and

formally designates it as the "Town of Minturn, Water, Sanitation and Recreation Activities Enterprise." It shall be the purpose of the Enterprise to pursue or continue all of the Town's water, sanitation and recreation activities as defined in Title 37, Article 45.1, Part 1, C.R.S. (the "Act"), including water acquisition or water project or facility activities, including the construction, operation, repair and replacement of water or wastewater facilities, using revenues and income generated by, and earned or acquired in connection with, such water, sanitation and recreation activities, and held and managed in the Town's Water Enterprise Fund. As between the Town and the Enterprise, all water, sanitation and recreation activities will be deemed done and furnished by the Enterprise. (Ord. 15-2008 §1)

Sec. 13-5-20. Enterprise excluded from amendment provisions.

Pursuant to and in accordance with the Act, the Enterprise shall be excluded from the provisions of Article X, Section 20 of the State Constitution ("the Amendment"), and shall be entitled to impose rates, fees, tolls and charges; collect and spend revenues; issue revenue bonds; and construct, operate and maintain facilities and provide water services; all without reference or regard to the limitations contained in the Amendment. (Ord. 15-2008 §1)

Sec. 13-5-30. Governing body.

The members of the Town Council shall serve as the governing body of the Enterprise and shall be known collectively as the Council of Directors of the Enterprise (the "Enterprise Council"). Acting as the Enterprise Council, the Town Council may exercise the Town's legal authority relating to water activities, as defined in the Act. The Enterprise Council hereby is directed to take all actions necessary to cause the Enterprise to comply with all applicable laws. (Ord. 15-2008 §1)

Sec. 13-5-40. Powers of the Enterprise.

The Enterprise shall have all powers and authority granted to water activity enterprises by the provisions of the Act, including but not limited to the power to conduct and continue water activities as defined in the Act; the power to contract with any person or entity, including other Towns, as defined in the Act, and other water activity enterprises as defined in the Act; and the power to issue and reissue revenue bonds through its governing body in accordance with, and through the provisions of, Section 37-45.1-104(2), C.R.S. (Ord. 15-2008 §1)

Sec. 13-5-50. Enterprise obligations and Town obligations.

In consideration of the Enterprise's commitment to provide water services for which the Town actually is obligated and to collect and spend revenues from rates, fees, tolls and charges imposed by the Town, the Town hereby agrees to continue to provide administrative services for the Enterprise and its activities, to continue to hold title to and own all of the assets currently owned by the Town and necessary to the operation of the Enterprise, to levy taxes for and pay debt service on general obligation bonds of the Town issued in the past to finance the acquisition of water rights and the construction and installation of water facilities and improvements, and to impose all rates, fees, tolls and charges for water activities. The relationship between the Town and the Enterprise, with respect to the administration of the Enterprise, the operation of the water activities and the duties and responsibilities of each party, shall be as may be delineated and clarified from time to time in a joint ordinance of the Town Council and the Enterprise Council which may be adopted at any time when this Article is in full force and effect ("joint resolution"). (Ord. 15-2008 §1)

Sec. 13-5-60. Transactions in the name of the Town.

Any and all transactions of the Enterprise may be done in the name of the Town or in the name of the Enterprise, and neither this Section nor any transaction entered into pursuant to it shall alter or abrogate the relationship of the Town and the Enterprise as established in Section 13-5-50 above, and as may be further clarified from time to time in a joint resolution. (Ord. 15-2008 §1)

Sec. 13-5-70. Findings of the Town Council.

The Town Council hereby makes the following findings with respect to the establishment of the Enterprise:

(1) The Town's Water Enterprise Fund, water rights, water facilities and appurtenances, solid waste collection facilities and recreational parks all shall comprise the Enterprise, which shall be and is the water, sanitation and recreation activities business owned by the Town.

(2) The Enterprise shall be and is an agency of the Town for the purpose and within the meaning of the following:

- a. Title 24, Article 10, Part 1, C.R.S., the "Colorado Governmental Immunity Act";
- b. Title 29, Article 1, Part 6, C.R.S., the "Colorado Local Government Audit Law";
- c. Title 29, Article 1, Part 1, the "Local Government Budget Law of Colorado"; and
- d. All other local, state and federal laws, rules and regulations.

(3) The establishment of the Enterprise is necessary to provide a secure water supply for domestic use by the inhabitants of the Town and other domestic customers of the Enterprise; to continue to provide water for agricultural use; to supply water for power, milling, manufacturing, mining, metallurgical, fish, wildlife, recreational and all other beneficial uses; to treat, reclaim, conserve, recharge, augment, exchange or reuse water supplies; to provide wholesale and retail water supply and wastewater services; to provide solid waste collection services; and to provide recreational facilities.

(4) The Town has the authority to conduct water, sanitation and recreation activities as defined in the Act, and is the sole owner of the Enterprise as required by the Act. The Town has bonding authority for water, sanitation and recreation activities pursuant to Title 31, Article 35, Part 4, C.R.S., all as required by the Act.

(5) The Enterprise receives under ten percent (10%) of its annual revenues in grants (as defined in the Act) from all Colorado state and local governments combined, having received (as the Town's Water Enterprise Fund) none of its revenues for the 1994 fiscal year from all state and local grants, and expecting to receive none of its revenues for the 1995 fiscal year from such sources.

(6) Pursuant to the Act, the Enterprise is authorized to issue its own revenue bonds.

(7) The Enterprise does not and shall not levy any tax whatsoever, nor shall any rates, tolls, fees or charges collected and spent by the Enterprise, ever be deemed to be taxes for any purpose under any law, rule or regulation, whether local, state or federal. (Ord. 15-2008 §1)

Sec. 13-5-80. Termination.

The Enterprise shall remain in existence at the will of the Town Council and in accordance with law. In the event that the Enterprise is terminated by operation of law or by act of the Town Council, any and all assets of the Enterprise, immediately and without the need for further action, shall be deemed to be and shall be assets of the Town. (Ord. 15-2008 §1)

ARTICLE 6

Watershed Protection Plan

Sec. 13-6-10. Title.

This Article shall be known and may be cited as the "Minturn Watershed Protection Plan." (Ord. 15-2008 §1)

Sec. 13-6-20. Intent.

The purpose of this watershed protection plan is to establish the full exercise of the powers of the Town in maintaining and protecting the Town's water supplies and waterworks from injury, pollution and any other activities that create a risk to health or water quality, or an adverse impact on the water supplies of the Town. The watershed protection plan is created under the authority granted in Section 31-15-707(1)(b), C.R.S., and other state statutes. The Town's authority established herein shall allow review and restriction of any activity within the watershed (as defined below) that creates a foreseeable risk of damage or injury to the Town's water supplies or waterworks. The Town's authority within the watershed shall be coexistent with the authority of the County, or any other governmental entity, to review and/or require permits for the same activity as the Town may regulate. (Ord. 15-2008 §1)

Sec. 13-6-30. Jurisdiction and map.

(a) The watershed shall include:

- (1) The territory within the Town;
- (2) The Town's water plant and all associated facilities, including diversion structures, storage facilities, wells, filters, discharges, trenches, pipes and drains used in, and necessary for the construction, maintenance and operation of, the Town's water supplies and waterworks;
- (3) The Eagle River Restoration Project; and
- (4) The portions of Cross Creek and the Eagle River five (5) miles above the points described in Paragraphs (1), (2) and (3) above.

(b) The Minturn Watershed Map is attached as Appendix A to this Code and, with all notations, references and other information shown thereon, is incorporated herein as part of this Article. The official Watershed Map is located in the office of the Town Clerk. (Ord. 15-2008 §1).

Sec. 13-6-40. Definitions.

Whenever the following words or phrases are used in this Article, they shall have the meanings indicated:

Best management practice means the most effective means of preventing or reducing harmful effects of certain activities to the watershed, to a level compatible with Town standards.

Excavating means the artificial movement of earth leaving any cut bank over three (3) feet in vertical height or a movement of material in excess of ten (10) cubic yards.

Filling means the artificial movement of earth leaving a fill earth bank over two (2) feet deep or artificial addition of earth above a line sloping up at a grade of one (1) vertical to five (5) horizontal from the ground.

Foreseeable risk means the reasonable anticipation that harm or injury may result from acts or omissions.

Grading means the artificial movement of over five (5) cubic yards of material; movement of any earth or material affecting or creating a drainage channel; pioneering of roads, meaning the artificial movement of trees and shrubbery creating a roadway or driveway in excess of twenty-five (25) feet in length; or the use of vehicles or keeping of any animals upon any land that would lead to a movement of five (5) cubic yards of material within five (5) years of the commencement of such use or which use of, if continued, would result in the movement of any earth or material affecting or creating a drainage channel.

Pollution means the man-made, man-induced or natural alterations of the physical, chemical, biological and radiological integrity of water.

Removing vegetation means the artificial cutting, chemical killing or any other manner of removing any tree greater than thirty (30) feet in height, any shrubs or trees covering an area of more than one hundred (100) square feet or any grasses covering an area of more than one thousand (1,000) square feet.

Sewage disposal system means a septic tank or other facility designed and constructed for the purpose of receiving and disposing of sewage.

Surfacing means any action resulting in the hardening or covering of the pre-existing

ground in an area greater than one hundred (100) square feet such that rain striking the area will accumulate or run off the surface to a greater extent than prior to the hardening or covering of said pre-existing ground. Surfacing includes, but is not limited to such things as compacting the surface of the earth, placing gravel, concrete or like substances on the surface of the earth or placing structures upon the ground.

Water plant means any and all man-made or designed components of the Town's water system, including but not limited to all transmission, storage and filtration facilities, and all reservoirs, streams, trenches, pipes and drains used in and necessary for the construction, maintenance and operation of the Town's water system.

Water supplies means the water available to the Town from its water rights on Cross Creek and the Eagle River and groundwater tributary thereto, and any future water diversions from which the Town obtains water.

Watershed means the definition given in Section 13-6-30 above.

Waterworks means the water plant and all associated facilities, including diversion structures, storage facilities, wells, filters, discharges, trenches, pipes, distribution lines and drains used in, and necessary for, the construction, maintenance and operation of the Town's water supply system and the Eagle River Restoration Project. (Ord. 15-2008 §1)

Sec. 13-6-50. Prohibited activity, permitted activity and notice of other activity.

(a) It is unlawful for any person to engage in any of the following activities within the watershed, which activities the Town Council

finds pose a risk to the water supplies or waterworks, unless such person, prior to undertaking such activity, obtains a watershed permit for such activity under the provisions of this Article:

- (1) Constructing a sewage disposal system.
 - (2) Excavating, grading, filling or surfacing.
 - (3) Removing vegetation.
 - (4) Timber harvesting, excluding the removal of dead trees for firewood or domestic purposes.
 - (5) Drilling operations.
 - (6) Altering water drainage courses.
 - (7) Surface and subsurface mining operations.
 - (8) Spraying or using herbicides.
 - (9) Using, handling, storing or transmitting toxic or hazardous substances, including but not limited to radioactive materials.
 - (10) Using, handling, storing or transmitting flammable or explosive materials, except for domestic purposes or within vehicular fuel storage tanks.
- (b) It shall be unlawful for any person to cause injury or damage to the water supplies or waterworks.
- (c) Activities within the watershed which are allowed hereunder without a watershed permit, but which require written notification to the Town prior to undertaking such activity are:
- (1) Stock grazing; and

- (2) Road maintenance and improvement by governmental entities.

Written notification shall include the name and address of the person undertaking the activity, a description of the proposed activity and its site and such other information as the Town may require. The purpose of this notification requirement is to allow the Town an opportunity to protect the watershed by suggesting a best management practice for such activity prior to its undertaking.

(d) In the event that any activity not set forth in Subsection (c) above is being conducted in such a manner that the Town Council finds that a foreseeable risk of injury or pollution to the water supplies or waterworks exists, the person responsible for such activity shall be notified by the Town of such finding, and the Town may require that such activity cease and desist until such person obtains a watershed permit for such activity under the provisions of this Article. (Ord. 15-2008 §1)

Sec. 13-6-60. Permit and hearing procedure.

(a) Application and fees. An applicant for a watershed permit shall submit the following to the Town:

- (1) A completed application form as prescribed by the Town. If the applicant is not the owner of the subject property, the owner shall also sign such application and the applicant shall set forth its interest in the proposed activity. An application will not be deemed to be complete until all information required by the Town has been submitted to the Town.

- (2) A full and complete description of the proposed activity for which a permit is sought, including, if applicable, a discussion of any future activity anticipated by the applicant with respect to the subject property for which a watershed permit may be required hereunder.

- (3) Two (2) sets of plans and specifications, which shall contain the following information:
- a. A vicinity sketch of other data indicating the site location and legal description of the subject property.
 - b. Boundary lines of the property for which the permit is sought, if applicable.
 - c. Location of any building or structure within fifty (50) feet of the proposed activity.
 - d. Accurate contours establishing the topography of the existing ground.
 - e. Elevations, dimensions, locations, extent and the slopes of all proposed excavating, grading, filling or surfacing, shown by contours and/or other means.
 - f. Details of all drainage devices in connection with the proposed activity.
 - g. A statement of the amount and location of any matter proposed to be deposited in areas other than that shown on the plans.
 - h. Nature and location of existing vegetation and a statement as to the effect of the proposed activity on such vegetation.
- (4) Identification of any activity that may present or create a foreseeable risk of pollution to the water supplies or waterworks of the Town, along with a specific description of the measures, including best-management practices, that will be employed by the applicant to obviate such risks.

(5) Any and all additional information that may be specifically requested by the Town, including but not limited to the following:

- a. A map showing the drainage pattern and estimated runoff of the area of the proposed activity.
- b. Revegetation and reclamation plans and specifications.
- c. A soils analysis, including the nature, distribution and strength of existing soils, and recommendations for earth-moving procedures and other design criteria.
- d. A geologic analysis of the site and adjacent area and its impact on the proposed activity.
- e. An operational and maintenance analysis of the proposed activity.
- f. Water use analysis including legal basis, source, quality, amount of consumptive use, impact on groundwater, augmentation plan and discharge characteristics.

(6) Any applicant shall submit a watershed permit application fee to the Town at the time of filing such application. The applicant shall be assessed a fee sufficient to cover the costs of publication, hearing, processing, administration, inspection and enforcement of such requested permit. The minimum fee hereunder shall be established by resolution of the Town Council. In the event the application fee is determined to be insufficient to cover the Town's costs, the Town shall have the right to charge an additional fee prior to the issuance or denial of any watershed permit to reimburse the Town for any and all costs, including legal,

engineering, planning and any other costs incurred, or which may be incurred, by the Town to evaluate or process the application. No watershed permit shall be issued until all such assessed fees and costs have been paid.

(b) Review, analysis and risks.

(1) Within thirty (30) days following receipt of a completed application and site inspection, if necessary as determined by the Town, as weather conditions permit, the Town Administrator shall review the same and prepare an analysis of the proposed activity, including a discussion of any factor that may present or create a foreseeable risk to the water supplies or waterworks of the Town, along with an analysis of the measures, including best-management practices, if any, that are proposed by the applicant to obviate such risks. The Town Administrator shall submit such analysis to the Town Council with recommendations for approval, denial or approval subject to specified modifications.

(2) In undertaking the analysis of any proposed activity, the following factors, among any others that may be deemed relevant, shall be considered:

- a. The nature and extent of the proposed activity;
- b. The proximity to existing watercourses;
- c. Drainage and erosion patterns and control measures;
- d. Soil criteria;
- e. Slope steepness and stability;
- f. Effects of the proposed activity and denudation;

- g. Geologic hazards, including but not limited to avalanche paths, floodplains, high water tables, fault zones and similar factors;
- h. Point source discharges and emissions into air and water;
- i. Ambient and nonpoint source emissions into air or water;
- j. Vehicular and motorized activity; and
- k. Fire hazard.

(3) The Town Administrator may recommend in writing that an application be considered as "minor impact," based upon the analysis set forth above, if the proposed activity clearly does not present or create a significant foreseeable risk to the water supplies or waterworks of the Town. The Town Administrator shall include in his or her recommendation any conditions required to ensure that no injury or damage will occur to the water supplies or waterworks. The Town Council shall consider the recommendation, within thirty (30) days after such "minor impact" recommendation, if reasonably possible, and render a decision regarding the issuance or denial of a watershed permit to such applicant.

(4) The Town Administrator may classify a proposed activity as "no impact," based upon the analysis set forth above, if the proposed activity clearly does not present or create any foreseeable risk to the water supplies or waterworks of the Town. An applicant for a watershed permit may apply for a "no impact" finding relative to the proposed activity. Such application shall be accompanied by the information, in writing, specified above. Upon such application, the Town Administrator shall determine whether the

proposed activity is of a type or location such that no negative impact on the water supplies or waterworks is reasonably foreseeable. If such a "no impact" finding is made, the Town Administrator shall immediately issue a watershed permit for the proposed activity. After issuance of said permit, the Town Administrator shall report the same to the Town Council at its next regular or special meeting, and shall also keep a record of such. If the Town Administrator does not make a "no impact" determination, that decision shall be final. The applicant shall then follow the process described herein to obtain a watershed permit.

(c) Hearing. Upon receipt of an analysis and recommendation from the Town Administrator , the Town Council shall conduct a public hearing to review the application and analysis and shall render a decision regarding the issuance or denial of a watershed permit to such applicant within three (3) months, if reasonably possible, unless the activity requires approval, a permit from any agency of the county, state or federal government and which approval or permit procedures exceed the time requirements of this Article. If such governmental approval or permit procedures are applicable, the Town shall have an additional sixty (60) days following the final decision of such county, state or federal government approval or permit procedure to conduct the public hearing required hereunder and render a decision regarding the issuance or denial of a watershed permit to such applicant. The Town Council may require additional information from any applicant, in which event the public hearing and decision may be delayed or continued until receipt of such additional information.

(d) Standards for issuance of permit. A watershed permit shall be issued when the Town Council finds that the applicant has sustained the burden of proof that the proposed activity, undertaken with any required conditions,

including best-management practices, does not present or create a foreseeable risk to the water supplies or waterworks. A watershed permit shall be denied when the Town Council finds that the applicant has not sustained such burden of proof.

(e) Permit conditions. The Town Council, in issuing any watershed permit, may prescribe any conditions it may deem necessary to accomplish the intent of this watershed plan. The Town Council may require any applicant to post a surety bond or cash, in an amount sufficient to ensure compliance with the watershed permit, including but not limited to the cost of maintenance, operation, revegetation, reclamation and other requirements of proposed activities. The Town Council may release to the applicant portions of any such bonds or cash from time to time, when no longer necessary to ensure compliance with the watershed permit.

(f) Duration of permit. If any proposed activity for which a watershed permit is issued is not commenced within nine (9) months from the date of issuance of such permit, the permit shall expire and become void. The watershed permit shall continue until the activity is completed or two (2) years from the date of issuance, whichever first occurs. If the activity is not completed within two (2) years, the applicant shall apply for renewed approval of the watershed permit. Such approval shall require the same burden of proof as the initial permit.

(g) Notice of hearing. Notice of any public hearing shall be given at least ten (10) days in advance of the public hearing in a newspaper of general circulation within the Town.

(h) Joint review processes. Any permit required hereunder can be reviewed and issued pursuant to a joint review process with any other government entity or agency charged with the review and approval of the same activity or activities. (Ord. 15-2008 §1)

Sec. 13-6-70. Enforcement.

(a) Right of entry. Whenever necessary to make an inspection to enforce any provision of this Article, an authorized representative of the Town may go upon any land, at any reasonable time, to inspect the same or to perform any duty imposed hereunder, provided that he or she identifies himself or herself, and, if such land is unoccupied, that he or she makes a reasonable effort to locate the applicant or other persons having control of such land to notify them of such entry.

(b) Stop work order. Whenever any work or activity is being done contrary to the provisions of this Chapter or in violation of the terms of any watershed permit issued hereunder, the Town or its authorized representatives may order the work stopped by notice in writing, served on the applicant or any person engaged in or causing such activity to be done, and any such person shall cease such activity until authorized by the Town to proceed. The Town shall reserve the right to revoke or suspend any watershed permit issued hereunder, if work is not done in accordance therewith. (Ord. 15-2008 §1)

Sec. 13-6-80. Regulations.

The Town Council may issue regulations providing guidelines and criteria to carry out the purposes of this Chapter. (Ord. 15-2008 §1)

Sec. 13-6-90. Activity in progress.

The lawful use of any buildings, structure or land existing at the time of the enactment of this Chapter may be continued, even though it does not conform to the requirements of this Chapter. Ordinary repairs and maintenance of any existing building, structure or land shall be allowed. Any change, expansion, alteration or enlargement of such existing lawful use shall be subject to all requirements of this Chapter. (Ord. 15-2008 §1)

Sec. 13-6-100. Violation and penalty.

(a) Offense. Any person who willfully violates any provisions of this Chapter shall be fined not to exceed one thousand dollars (\$1,000.00) for each offense or punished by imprisonment not exceeding one (1) year, or by both such fine and imprisonment, for each offense. Each day any person is in violation of any provision of this Chapter shall constitute a separate offense.

(b) Actions. Any activity or use which is continued, operated or maintained contrary to any provision of this Chapter is unlawful. The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove such violation, in which event the Town shall be entitled to recover court costs and its reasonable attorney's fees.

(c) Remedies. The remedies herein provided shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law. (Ord. 15-2008 §1)

Sec. 13-6-110. Appeal.

Any person desiring to appeal any decision or determination by the Town Council hereunder must file such appeal within thirty (30) days following such decision or determination with the District Court of Eagle County. (Ord. 15-2008 §1)

