



TOWN OF PAONIA
214 GRAND AVE
THURSDAY, JANUARY 19, 2023
SPECIAL TOWN BOARD MEETING AGENDA 2:30 PM
[HTTPS://US02WEB.ZOOM.US/J/82701717682](https://us02web.zoom.us/j/82701717682)
MEETING ID: 827 0171 7682
ONE TAP MOBILE
17193594580

Roll Call

Approval of Agenda

New Business

[Discussion and direction to the Town Attorney and Interim Administrator on code language specific to Ordinance 2020-01 Water Moratorium.](#)

Adjournment

AS ADOPTED BY:
TOWN OF PAONIA, COLORADO
RESOLUTION NO. 2017-10 – Amended May 22, 2018

I. RULES OF PROCEDURE

Section 1. Schedule of Meetings. Regular Board of Trustees meetings shall be held on the second and fourth Tuesdays of each month, except on legal holidays, or as re-scheduled or amended and posted on the agenda prior to the scheduled meeting.

Section 2. Officiating Officer. The meetings of the Board of Trustees shall be conducted by the Mayor or, in the Mayor's absence, the Mayor Pro-Tem. The Town Clerk or a designee of the Board shall record the minutes of the meetings.

Section 3. Time of Meetings. Regular meetings of the Board of Trustees shall begin at 6:30 p.m. or as scheduled and posted on the agenda. Board Members shall be called to order by the Mayor. The meetings shall open with the presiding officer leading the Board in the Pledge of Allegiance. The Town Clerk shall then proceed to call the roll, note the absences and announce whether a quorum is present. Regular Meetings are scheduled for three hours, and shall be adjourned at 9:30 p.m., unless a majority of the Board votes in the affirmative to extend the meeting, by a specific amount of time.

Section 4. Schedule of Business. If a quorum is present, the Board of Trustees shall proceed with the business before it, which shall be conducted in the following manner. Note that all provided times are estimated:

- (a) Roll Call - (5 minutes)
- (b) Approval of Agenda - (5 minutes)
- (c) Announcements (5 minutes)
- (d) Recognition of Visitors and Guests (10 minutes)
- (e) Consent Agenda including Approval of Prior Meeting Minutes (10 minutes)
- (f) Mayor's Report (10 minutes)
- (g) Staff Reports: (15 minutes)
 - (1) Town Administrator's Report
 - (2) Public Works Reports
 - (3) Police Report
 - (4) Treasurer Report
- (h) Unfinished Business (45 minutes)
- (i) New Business (45 minutes)
- (j) Disbursements (15 minutes)
- (k) Committee Reports (15 minutes)
- (l) Adjournment

* This schedule of business is subject to change and amendment.

Section 5. Priority and Order of Business. Questions relative to the priority of business and order shall be decided by the Mayor without debate, subject in all cases to an appeal to the Board of Trustees.

Section 6. Conduct of Board Members. Town Board Members shall treat other Board Members and the public in a civil and polite manner and shall comply with the Standards of Conduct for Elected Officials of the Town. Board Members shall address Town Staff and the Mayor by his/her title, other Board Members by the title of Trustee or the appropriate honorific (i.e.: Mr., Mrs. or Ms.), and members of the public by the appropriate honorific. Subject to the Mayor's discretion, Board Members shall be limited to speaking two times when debating an item on the agenda. Making a motion, asking a question or making a suggestion are not counted as speaking in a debate.

Section 7. Presentations to the Board. Items on the agenda presented by individuals, businesses or other organizations shall be given up to 5 minutes to make a presentation. On certain issues, presenters may be given more time, as determined by the Mayor and Town Staff. After the presentation, Trustees shall be given the opportunity to ask questions.

Section 8. Public Comment. After discussion of an agenda item by the Board of Trustees has concluded, the Mayor shall open the floor for comment from members of the public, who shall be allowed the opportunity to comment or ask questions on the agenda item. Each member of the public wishing to address the Town Board shall be recognized by the presiding officer before speaking. Members of the public shall speak from the podium, stating their name, the address of their residence and any group they are representing prior to making comment or asking a question. Comments shall be directed to the Mayor or presiding officer, not to an individual Trustee or Town employee. Comments or questions should be confined to the agenda item or issue(s) under discussion. The speaker should offer factual information and refrain from obscene language and personal attacks.

Section 9. Unacceptable Behavior. Disruptive behavior shall result in expulsion from the meeting.

Section 10. Posting of Rules of Procedure for Paonia Board of Trustees Meetings. These rules of procedure shall be provided in the Town Hall meeting room for each Board of Trustees meeting so that all attendees know how the meeting will be conducted.

II. CONSENT AGENDA

Section 1. Use of Consent Agenda. The Mayor, working with Town Staff, shall place items on the Consent Agenda. By using a Consent Agenda, the Board has consented to the consideration of certain items as a group under one motion. Should a Consent Agenda be used at a meeting, an appropriate amount of discussion time will be allowed to review any item upon request.

Section 2. General Guidelines. Items for consent are those which usually do not require discussion or explanation prior to action by the Board, are non-controversial and/or similar in content, or are those items which have already been discussed or explained and do not require further discussion or explanation. Such agenda items may include ministerial tasks such as, but not limited to, approval of previous meeting minutes, approval of staff reports, addressing routine correspondence, approval of liquor licenses renewals and approval or extension of other Town licenses. Minor changes in the minutes such as non-material Scribner errors may be made without removing the minutes from the Consent Agenda. Should any Trustee feel there is a material error in the minutes, they should request the minutes be removed from the Consent Agenda for Board discussion.

Section 3. Removal of Item from Consent Agenda. One or more items may be removed from the Consent Agenda by a timely request of any Trustee. A request is timely if made prior to the vote on the Consent Agenda. The request does not require a second or a vote by the Board. An item removed from the Consent Agenda will then be discussed and acted on separately either immediately following the consideration of the Consent Agenda or placed later on the agenda, at the discretion of the Board.

III. EXECUTIVE SESSION

Section 1. An executive session may only be called at a regular or special Board meeting where official action may be taken by the Board, not at a work session of the Board. To convene an executive session, the Board shall announce to the public in the open meeting the topic to be discussed in the executive session, including specific citation to the statute authorizing the Board to meet in an executive session and identifying the particular matter to be discussed “in as much detail as possible without compromising the purpose for which the executive session is authorized.” In the event the Board plans to discuss more than one of the authorized topics in the executive session, each should be announced, cited and described. Following the announcement of the intent to convene an executive session, a motion must then be made and seconded. In order to go into executive session, there must be the affirmative vote of two thirds (2/3) of Members of the Board.

Section 2. During executive session, minutes or notes of the deliberations should not be taken. Since meeting minutes are subject to inspection under the Colorado Open Records Act, the keeping of minutes would defeat the private nature of executive session. In addition, the deliberations carried out during executive session should not be discussed outside of that session or with individuals not participating in the session. The contents of an executive session are to remain confidential unless a majority of the Trustees vote to disclose the contents of the executive session.

Section 3. Once the deliberations have taken place in executive session, the Board should reconvene in regular session to take any formal action decided upon during the executive session. If you have questions regarding the wording of the motion or whether any other information should be disclosed on the record, it is essential for you to consult with the Town Attorney on these matters.

IV. SUBJECT TO AMENDMENT

Section 1. Deviations. The Board may deviate from the procedures set forth in this Resolution, if, in its sole discretion, such deviation is necessary under the circumstances.

Section 2. Amendment. The Board may amend these Rules of Procedures Policy from time to time.

To: Mayor Mary Bachran and Board of Trustees
From: Leslie Klusmire, Interim Town Administrator
RE: Town Administrator's Report
Date: January 19, 2023

The purpose of today's meeting is for the Board to:

1. Review the interpretation issues posed by the current moratorium code wording,
2. Determine by majority what you collectively believe should be the proper implementation of the moratorium based on:
 - a. The legal restrictions placed on the institution of an emergency moratorium
 - b. The intent of the Town in implementing this moratorium.
3. Specifically instruct the Town Attorney to amend the code language so it reflects exactly how you want the code interpreted by staff in the application of that language to specific inquiries and situations posed by individuals seeking property improvements or development.

Staff does not have a recommendation as to how the code should be revised. We ask for a clear direction from the Board that will in the ability to clearly and consistently apply this section of the code to individual development scenarios.

Currently, the code has some conflicts and may be interpreted differently than some people feel it should be interpreted.

Staff cannot interpret the code in any other way than what the code actually says. In this case, there have been other opinions of how the code *should* be interpreted that are not supported by the current language as drafted.

Attachments:

Memo from Town Attorney Nick Cotton-Baez
Memo from former Town Attorney Jeffrey Conklin
Sections of the Town Code regarding water utilities



Nicolas D. Cotton-Baez

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PACKET M E M O R A N D U M

TO: Mayor and Trustees
Town of Paonia

FROM: Nicolas D. Cotton-Baez /s/

DATE: January 18, 2023

RE: Moratorium on the Sale of Water Taps

As discussed in a memorandum previously provided to the Board, the language of the moratorium placed on the sale of domestic water taps by citizen-initiated Ordinance No. 2020-01 (the “Moratorium”) is subject to varying interpretations.

Records suggest the Board has interpreted the Moratorium to prohibit the “extension of a water line”¹ even if it means running a line from one end of a building or property to the other (e.g., for the creation of a second dwelling unit). This interpretation is reasonable if the Board believes the citizens’ intent was to restrict increases in water service.

Alternatively, the Board could have reasonably interpreted the Moratorium not to prohibit the extension of a water delivery pipe to an already, legally-served property. This interpretation is reasonable because the Moratorium was placed on the *sale* of water taps by the Town,² and the Town does not typically engage in a sale when considering the “extension of a water distribution pipe.”³

¹ “Tap” is defined in the Moratorium to “include the extension of water delivery pipes.”

² “Moratorium on the Sale of Water Taps. A moratorium is hereby imposed on the sale of water taps by the Town of Paonia.” PMC § 13-1-131(b).

³ The Town Code requires additional tap fees for properties already connected to the Town’s water distribution system *only when a development activity would trigger the requirement of a larger service line*. See PMC Sec. 13-1-30. In most cases, extensions of water delivery pipes within a property already connected to the Town’s water distribution system would not trigger such a requirement.

The previous memorandum advised⁴ that if the Board desires to adopt an interpretation differing from the one it has adopted, the Board should first lift or amend⁵ the Moratorium.

While Board has expressed a desire to fulfill the conditions⁶ of the Moratorium before lifting it altogether, there are some possible amendment options that the Board could consider as a “middle ground.”

Examples:

- Create an exception for the extension of water delivery pipes on properties already connected to the Town’s water distribution system, only when such extension would not trigger a requirement of a larger service line; or
- Allow such extensions only on residential properties, or just for residential properties containing one- or two- family dwellings, when such properties are already connected to the Town’s water distribution system; or
- Allow the extension of water delivery pipes on properties already connected to the Town’s water distribution system, only for certain types of projects providing a large public benefit⁷; e.g., affordable housing projects; or
- Partially “lift” the Moratorium, to allow water line extensions *and* new service connections, only for projects, such as affordable housing, that provide a large public benefit.

⁴ For reasons subject to attorney-client privilege.

⁵ Any amendment should address the conflicting definitions of “tap” in the Moratorium and in the general Chapter 13 definitions. PMC § 13-1-10 (“A physical service connection to the municipal domestic water supply distribution system.”).

⁶ “This moratorium shall be in effect until the following conditions are met: (i) A report, bearing the seal of a licensed engineer experienced in domestic water supply systems, finds that the Town of Paonia has in operation sufficient infrastructure and associated water rights to serve all existing obligations for water into the foreseeable future, and; (ii) A report, bearing the seal of a licensed engineer experienced in domestic water supply systems, quantifies additional obligations, enumerated in the form of water taps, that the Town of Paonia can reasonably supply without the likelihood of adversely affecting the service to existing water tap holders.” PMC § 13-1-131(C).

⁷ A determination for the Board, with citizen input.

Glenwood Springs – Main Office

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P. O. Drawer 2030

Glenwood Springs, CO 81602

Aspen

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Suite 301

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1544 Oxbow Drive

Suite 224

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April 7, 2022

PACKET MEMORANDUM

TO: Town of Paonia, Mayor and Board of Trustees
FROM: Karp Neu Hanlon, P.C.
RE: Review and Recommendations regarding Ordinance No. 2020-01 – Moratorium on the Sale of Water Taps

As a result of a citizen initiative petition and special election, the Town adopted Ordinance No. 2020-01, “An Ordinance of the People of the Town of Paonia Amending chapter 13, Article 1, of the Town of Paonia Municipal Code by the addition of a New Section 13-1-131, Imposing a Moratorium on the Sale of Water Taps and Placing Limits on Future Water Sales.” It is my understanding that there has been some prior discussion and divergence as to the scope of the moratorium under Section 13-1-131 of the Municipal Code and, in particular, whether it precludes the connection of purchased but unconnected taps and the extension of any service lines to/from existing taps. Accordingly, the Board of Trustees requested that I review the scope of the moratorium imposed under Section 13-1-131 and make recommendations regarding the same.

There are two definitions in Section 13-1-131 – “moratorium” and “tap” – which I include here with my underlined emphasis:

“*Moratorium* means suspension of the sale of domestic water taps that the Town of Paonia is not legally obligated to serve on the effective date of this ordinance.”

“*Tap* means a physical service connection to the municipal domestic water supply distribution system or right to water supplied by the Town of Paonia. For the purposes of this Section, tap shall also include the extension of water delivery pipes.”¹

Subsection (b) then states “a moratorium is hereby imposed on the sale of water taps by the Town of Paonia.” Based on my reading, the interrelation of the two definitions (specifically, the underlined language) and operative Code section is incongruent, leading to potential confusion regarding the scope of the moratorium, although not necessarily ambiguous.

¹ Note, in Section 13-1-10 “tap” is defined as “Tap: A physical service connection to the municipal domestic water supply distribution system.”

The “moratorium” suspends the “sale” of taps that the Town is “not legally obligated to serve.” Section 13-1-30 of the Code contains the fees for water taps. The definition of “moratorium” does not include express language to suspend the “connection” of purchased taps, to suspend the provision of water service to purchased but unconnected taps, nor to suspend issuing building permits to install and connect water service lines. Thus, the definition of “moratorium” alone could not be reasonably interpreted to preclude connection of existing taps or extending service lines.

Pairing the definition of “moratorium” with the definition of “tap”, however, may confuse this issue as a result of the problematic phrase “extension of water delivery pipes,” which does not fit within the use and construction of the remaining Code language. The Town does not “sell” water delivery pipes and, thus, it’s unclear how the Code could “suspend the sale” of the “extension of water delivery pipes.”² Further, even if the definition of “tap” were to operate to preclude extension of “water delivery pipes,” there is some question as to what constitutes a “delivery pipe.”

Again, the definition of “tap” refers to “delivery pipes,” not *service* lines. There is not a definition of “delivery pipes” or “delivery lines” in the Code;³ however, “delivery lines,” “distribution lines,” or “main lines” are generally known to be Town-owned lines to which a privately owned service line may connect. The Code refers to “delivery lines” in just one other place, stating “[a]n existing water company may add new lateral lines to a main delivery line of the Town of Paonia that extend its coverage.” *See* Code, § 13-1-30(g). In this context, a “delivery line” is not a service line connection – it’s the Town line. Moreso, the Code contains several references to “service line,” including:

- “Each property owner (residential and commercial) connecting a water service line from their property to any water line constructed or owned by the Town, shall pay a water tap fee prior to being permitted to connect to the main water line. The tap, water service line, and meter shall be sized according to either the existing and/or proposed use.” *See* Code § 11-1-30(a).
- “Regardless of previous service record, length of service or history of the water line involved, it is hereby established that service shall be commenced only where each user is served by a separate water meter and separate service line unless exempt as outlined in this section.” *See* § 13-1-70.
- Section in Public Works Manual on Service Line Installation.

In each of these contexts, the service line is the privately owned line providing water from a delivery or main line for private use.

² If this phrase stood alone in separate subsection apart from the definitions to state “the Town shall not extend water delivery pipes during the term of this moratorium” it would help alleviate this issue.

³ Section 1-2-50(4) provides: “Words and phrases not specifically defined shall be construed according to the context and approved usage of the language.”

Thus, reading the definitions together, if the Code is construed to preclude extension of “water delivery pipes,” this would likely only preclude the Town from extending Town-owned main lines and not preclude the extension of privately owned “service lines.”

Further, other sections of the Code do not clearly require the purchase of an additional water tap to serve an additional unit on Lot with a service line from one tap, instead stating: “If an additional household unit is constructed on an existing lot that has a water tap, the new structure must be provided with an additional water meter.”⁴ See Code § 13-1-70(b).

Nevertheless, subsection (c)(1) provides some support that perhaps the *intent* of the moratorium is to not expand existing water service, as the moratorium cannot be lifted until the Town can confirm it can serve “all existing obligations for water into the foreseeable future.” Such obligations would include purchased but unconnected taps.

Recommendation. At a minimum, the foregoing illustrates it may require legal parsing to apply the water moratorium section of the Code and, thus, be ripe for a clarification through a Code amendment to clarify the meaning and application. Accordingly, I recommend that the Board consider amending the Code to clarify the issues presented in this memo, including:

- Clarify the scope of uses that may be served by a water tap;
- Clarify when an additional water tap is required (e.g. for an ADU);
- If the Board wishes to suspend the “connection” of purchased taps, to suspend the provision of water service to purchased but unconnected taps, or to suspend issuing building permits to install and connect water service lines until the conditions of the Moratorium are met, amend the Code to expressly address these issues;

⁴ Sec. 13-1-70. - Individual meters.

(a) Separate meters shall be required for each residence or commercial building. Properties sharing a common line feeding through one property to another, or utilizing a single meter for two (2) or more units or serviced by only one water line shall be required to install separate meters so that service to each user is independent from every other.

(b) Each household unit shall be serviced by a separate water meter. Multiple household units in a single building owned by a single entity built prior to the enactment of this Article may be served by a single water meter under the condition that all units are included in one bill which is the responsibility of the property owner. New construction of multiple household units in a single building will require separate water meters. If an additional household unit is constructed on an existing lot that has a water tap, the new structure must be provided with an additional water meter. If a lot containing more than a single structure is subdivided to provide separate lots for each structure, each lot without water meters must provide separate water lines and separate water meters as a condition of subdivision. If a lot containing a single household unit is subdivided, each household unit erected upon the new subdivided area must have a separate water line and water meter. Each separate commercial building using water must have a separate water line and water meter.

(c) Regardless of previous service record, length of service or history of the water line involved, it is hereby established that service shall be commenced only where each user is served by a separate water meter and separate service line unless exempt as outlined in this section.

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- Pursue a water supply report to better understand the Town’s water supply and demand limitations, as contemplated by the Moratorium; and

- Amend the Code to clean up and clarify some of the incongruent language in this Section.

ARTICLE 1. - WATER REGULATIONS

*Footnotes:**--- (1) ---*

Editor's note— *Ord. No. 2016-07, § 2, adopted January 10, 2017, repealed the former Art. 1, §§ 13-1-10—13-1-130, and enacted a new Art. 1 as set out herein. The former Art. 1 pertained to similar subject matter. See Code Comparative Table for complete derivation.*

Sec. 13-1-10. - Definitions.

As used in this Article, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

Additional rate: The monthly rate at which the property owner or water user shall be charged for each thousand (1,000) gallons of metered water consumed.

Basic rate: The rate per month per user for having service available to a water tap.

Business: A for-profit or non-profit activity, enterprise or entity properly filed with the Office of the Colorado Secretary of State and occupying a building, room or rooms.

Commercial unit: A room or suite of rooms which is designed for commercial use, or occupied for any purpose not defined herein as a residential use.

Commercial use: Use of water acquired from the Town of Paonia, Colorado, for any purpose not defined herein as a residential use.

Home business: A business situated on the property of the primary household unit of the owner(s) of the business.

Household unit: A room or suite of rooms which is designed for, or occupied by, one family doing its cooking therein.

In-town tap: A water tap within the corporate boundaries of the Town of Paonia, Colorado.

Major subdivision: A subdivision that creates three (3) or more parcels of land or a conversion of existing parcels into five (5) or more apartments, townhouses or condominiums.

Master meter: Any device used to measure the amount and flow of water diverted from any pipeline, conduit, or reservoir constituting a part of the waterworks system of the Town, when from such diversion water is carried to multiple users, whether or not individually metered thereafter.

Meter: Any device used to measure the amount and flow of water diverted from any pipeline, conduit or reservoir constituting a part of the waterworks system of the Town.

Multiple users: An additional use, user, or uses over and above the primary service designated for a single tap.

Municipal water: Water owned by the Town of Paonia, which may be furnished to a water user, whether said user is inside or outside the corporate limits of the Town.

Out-of-town tap: A water tap outside the corporate boundaries of the Town of Paonia, Colorado.

Property: A piece of real estate.

Property owner(s): Any person, individual, family, business establishment, association, corporation, or other entity holding legal or equitable title to real estate situated within the corporate limits or surrounding area of the Town upon which or to which municipal water is provided.

Residential use: Use of water acquired from the Town of Paonia, Colorado, for residential uses, both in and outside the household unit, related to its occupancy as a single family residence.

Tap: A physical service connection to the municipal domestic water supply distribution system.

Town: The incorporated Town of Paonia, Colorado.

Town board: The Board of Trustees of the Town of Paonia, Colorado.

Town administrator: The Town Board appointed Administrator of the Town of Paonia or a designee appointed by the Town Board to fulfill the Town Administrator's duties.

Water company: An organization with a contractual agreement with the Town of Paonia allowing them to deliver Town water outside the corporate boundaries of the Town of Paonia.

Water user or users: Any person or business being furnished and/or occupying premises equipped with one (1) or more outlets for municipal water.

(Ord. No. 2016-07, § 2, 1-10-2017)

Sec. 13-1-20. - Rates for water.

- (a) *Water rates.* All water rates and charges shall be established from time to time by resolution of the Board of Trustees.
- (b) *Additional basic water rates for multiple businesses on one lot or in a single building.* A commercial unit with plumbing shall pay one basic rate. Each additional commercial unit on the property or located in a single building with plumbing shall pay one-fifth ($\frac{1}{5}$) of the basic commercial water rate. Each additional commercial business on a property or located in a single building anticipated to use five thousand (5,000) gallons of water per month or more shall pay the full commercial water basic rate. Any commercial business contained on a commercial property, or within a commercial building, that has individual accessory plumbing fixtures but not a kitchen shall pay one-fifth ($\frac{1}{5}$) of the basic commercial water rate. If plumbing fixture(s) are in a communal area and serves the communal needs of more than one of the commercial businesses housed in the same building, or on the property it will be included with the first basic rate.
- (c)

Limited service water rate. A limited service water rate of one hundred and fifty dollars (\$150.00) shall be paid as a minimum fee for special usage, inspections, single weekend use, on a limited time basis. Such fee includes one on and turnoff, with water usage up to seven (7) days and not more than five thousand (5,000) gallons.

- (d) *Billing procedure.* Water meters will be read or usage estimated during the last two (2) weeks of each month. Utility bills will be mailed to the address provided by the water user no later than the fifth day of each month. The due date for utility bills shall remain constant on the fifteenth (15th) day of the month or the following business day should the fifteenth (15th) fall on a weekend. A late charge of five dollars (\$5.00) per residential in-Town base water rate will be added to each residential bill not paid in full within five (5) days following the date due; a late charge of ten dollars (\$10.00) per residential out-of-Town base water rate will be added to each out-of-Town residential bill not paid in full within five (5) days following the due date; a late charge of ten dollars (\$10.00) per commercial in-Town base water rate will be added to each commercial bill not paid in full within five (5) days following the date due; a late charge of fifteen dollars (\$15.00) per commercial out-of-Town base water rate will be added to each out-of-Town commercial bill not paid in full within five (5) days following the date due; a late charge of fifteen dollars (\$15.00) per water company account will be added to each water company bill not paid in full within five (5) days following the date due. All unpaid utility bills are delinquent five (5) days following the date due. A shutoff notice shall be sent on the twentieth of the month or the next Monday if the twentieth falls on a weekend, specifying a shutoff time and date. The penalty fee that shall be charged for shutoff for nonpayment is fifty dollars (\$50.00). This penalty fee, which is in addition to the water charges and late fees, also covers the subsequent turn-on service charge once the outstanding bill is paid. A Public Works Department employee may be accompanied by a Police Officer to terminate service as of the notified date.

The Town shall notify water user(s) and property owner of delinquent accounts. Notification shall be deemed issued by placing shutoff notice in the U.S. mails to the property owner's last known address, as indicated on the County's assessment roll or the Town of Paonia utility billing records, or delivered by personal service.

Restoration of service after a shutoff for delinquent payment will be by a member of the Public Works Department during regular business hours after payment in full of all delinquent and current amount owed including all additional charges. Regular business hours for such payment and for requests for resumption of service are between the hours of 8:00 a.m. and 4:30 p.m. in person at the Town Office, Monday through Friday, except holidays. There will be no after-hours, holiday or weekend turn-on, when there has been a delinquency shutoff, unless it has been approved by the Town Administrator. There will be an additional two hundred dollar (\$200.00) fee for after-hours, holiday or weekend turn-on.

If a utility bill shows an unusual increase in water usage and if the water user notifies the Town within thirty (30) days of the billing date, a Public Works Department employee will re-read the meter. If the original meter reading is in error, the water user will be credited for the amount of the error. If the original meter reading is correct and the water users are served by a master meter, they will be liable for all measured water. No further credit will be made for excess usage after the date the user is informed of the leak nor there do any credit for periods preceding the previous meter reading.

(e) *Effective date for rates.* The effective date for rates for water shall be established by resolution of the Board of Trustees.

(Ord. No. 2016-07, § 2, 1-10-2017)

Sec. 13-1-30. - Fees for water taps.

(a) Each property owner (residential and commercial) connecting a water service line from their property to any water line constructed or owned by the Town, shall pay a water tap fee prior to being permitted to connect to the main water line. The tap, water service line, and meter shall be sized according to either the existing and/or proposed use.

(b) *Town taps.* There is no annual limit on the number of in-Town water taps available for public sale. The basic residential ($\frac{3}{4}$ -inch) water tap fee in-Town is six thousand dollars (\$6,000.00) for each water tap.

The in-Town commercial water tap fee will increase as follows, requiring a 1.0 inch and or larger service line:

$\frac{3}{4}$ inch	\$6,000.00
1.0 inch	\$9,790.00
1.5 inch	\$22,000.00
2.0 inch	\$39,050.00
3.0 inch	\$88,000.00
4.0 inch	\$156,200.00

The required water tap size for a commercial use will be determined by an authorized representative of the Town.

(c) *Sales of water taps to water companies.* There is hereby established a maximum annual limit of five (5) sales of water taps to water companies. The sale of these water taps requires the majority approval of the Town Board upon the recommendation of the Town Administrator. Sales of water taps to water companies will be as follows:

$\frac{3}{4}$ inch	\$15,000.00
1.0 inch	\$22,500.00

1.5 inch	\$40,000.00	15
2 inch	\$75,000.00	
3 inch	\$150,000.00	
4 inch	\$250,000.00	
6 inch	\$400,000.00	
8 inch	\$750,000.00	

(d) *Town tap requirements.* Each in-Town water tap shall meet the following criteria:

- (1) An application to purchase the water tap shall identify the legal description of the property to be served.
- (2) A deposit in the amount of three thousand dollars (\$3,000.00) or full payment shall be received by the Town with the application for the water tap. The balance of the water tap fee shall be paid within one hundred and eighty (180) days from the date of application. In the event that the balance is unpaid within one hundred and eighty (180) days the water tap is void and the deposit is forfeited. No water will be delivered until the water tap is paid in full. The Town Board by a majority vote and at its discretion may provide a full or partial refund should the application to purchase the water tap be withdrawn within the one hundred and eighty (180) days.

(e) *Water company (out-of-town) tap requirements.* Each water company (out-of-Town) water tap shall meet the following criteria:

- (1) An application from the water company to purchase the water tap shall identify the legal description of the property to be served.
- (2) A deposit in the amount of five hundred dollars (\$500.00) shall be received by the Town with the application for the water tap. In the event the Town Board denies the water tap the deposit shall be refunded. The balance of the water tap fee shall be paid within one hundred eighty (180) days from the date of approval. In the event that the water tap is approved by the Town Board and the balance is unpaid within one hundred eighty (180) days the water tap is void and the deposit is forfeited. No water will be delivered until the water tap is paid in full. The Town Board by a majority vote and at its discretion may provide a full or partial refund should the application to purchase the water tap be withdrawn within the one hundred eighty (180) days.
- (3) A pre-annexation agreement on a form approved by the Town Board, signed by all parties listed as owners registered on the last deed of record on the property at the office of the Delta County Clerk and Recorder, shall be delivered to the Town Clerk, such agreement to be recorded at the office of the Delta County Clerk and Recorder, at the expense of the tap purchaser.

- (4) Said owner(s) shall provide a legal agreement binding the owner(s) of the tap to the water ordinances of the Town of Paonia.
- (5) If the tap is attached to the water lines of an out-of-Town water company, a letter of approval from that water company shall be delivered to the Town Clerk, at the time of submitting the application.
- (6) New construction using one of the out-of-Town water taps must be built to Town of Paonia standards, apply for and receive a Town of Paonia building permit and be inspected and approved by a Town of Paonia building inspector.
- (7) All new water lines installed out-of-Town as a consequence of purchasing an out-of-Town tap must be built to Town of Paonia standards and be approved by the Town Administrator.
- (8) All out-of-Town taps must purchase and install an individual water meter that meets Town of Paonia standards.
- (9) The Town of Paonia, at its sole option, may require the water tap purchaser to furnish and install a fire hydrant with associated hardware and an appropriate water line sized to that hydrant. The location of the fire hydrant will be determined by the Town of Paonia and the Delta County Fire Protection District #2. Compliance with this subsection may be evidenced by written agreement with the Town and presented to Delta County Planning Department as a condition of Town water supply to said property.
- (f) *Non-transferability of water taps.* No water tap issued, permitted and/or sold by the Town of Paonia shall be transferable. Water taps which are not bound to a legal property description are null and void. Any violation hereof may result in a revocation of the water tap right to that property after a thirty (30) days written notice is given to the owner thereof and after a public hearing by the Town Board where the revocation will be decided by a majority vote.
- (g) *Water companies.* Out-of-Town taps are to be sold within a water company unless exempted by a majority vote of the Town Board. No new water companies shall be created by the sale of out-of-Town taps unless an exemption is allowed by a majority vote of the Town Board. If a new water company is formed by the majority vote of the Town Board it must have a minimum of five (5) taps and it must agree to allow to its being merged with an adjacent water company at some future time upon the request of a majority vote of the Town Board. An existing water company may add new lateral lines to a main delivery line of the Town of Paonia that extend its coverage. Any new lateral line must be approved by the Town Administrator. No lateral line shall be added within five hundred feet of an existing lateral line unless exempted by a majority vote of the Town Board. Out-of-Town taps cannot be attached to the distribution lines owned by a water company without the written approval of that water company. All private water companies served by the Town of Paonia are required to adhere to the Town of Paonia Water Ordinance. No leak credits shall be given for water companies.
- (h) *Excessive usage.* Both in-Town and out-of-Town water tap users, newly added to the Town of Paonia Water System after the adoption of Ordinance No. 2005-03, who use more than one hundred fifty thousand (150,000) gallons per month or major subdivisions that place additional demands on the Town of Paonia water system may have to supply all or a portion of acceptable raw water rights adequate to serve the

additional demands as determined by the Town Board at no cost to the Town of Paonia.

- (i) *Installation costs.* All costs of installation, equipment and materials related to the servicing of a water tap to be installed will be paid by the purchaser upon invoice by the Town of Paonia of any such taps and connection to the Town Water System.

(Ord. No. 2016-07, § 2, 1-10-2017)

Sec. 13-1-40. - Standby fees.

- (a) There is no reduced standby fee for taps that are not yet installed or not in service. The minimum monthly fee for any tap shall be the appropriate base rate.

(Ord. No. 2016-07, § 2, 1-10-2017)

Sec. 13-1-50. - Inspection.

- (a) The Town Board and its duly constituted agents and authorities, shall have full power to take such steps as it deems proper to determine, by inspection, the number of water taps for which any property owner shall be charged, to the extent that such power does not violate the Constitution or Laws of the United States of America, the State of Colorado, and or the Town of Paonia Municipal Code.

(Ord. No. 2016-07, § 2, 1-10-2017)

Sec. 13-1-60. - Water certificates.

- (a) The issuance and requirement for Water Certificates was discontinued as of November 1, 1988. No outstanding Water Certificate will be honored by the Town as a water tap. All Water Certificates not bound to a legal property description shall be deemed null and void. There shall be no "floating" or "unassigned" water taps permitted.

(Ord. No. 2016-07, § 2, 1-10-2017)

Sec. 13-1-70. - Individual meters.

- (a) Separate meters shall be required for each residence or commercial building. Properties sharing a common line feeding through one property to another, or utilizing a single meter for two (2) or more units or serviced by only one water line shall be required to install separate meters so that service to each user is independent from every other.
- (b) Each household unit shall be serviced by a separate water meter. Multiple household units in a single building owned by a single entity built prior to the enactment of this Article may be served by a single water meter under the condition that all units are included in one bill which is the responsibility of the property owner. New construction of multiple household units in a single building will require separate water meters. If an additional household unit is constructed on an existing lot that has a water tap, the new structure must be provided with an additional water meter. If a lot containing more than a single structure is subdivided to provide separate lots for each structure, each lot without water meters must provide separate water lines

and separate water meters as a condition of subdivision. If a lot containing a single household unit is subdivided, each household unit erected upon the new subdivided area must have a separate water line and water meter. Each separate commercial building using water must have a separate water line and water meter.

- (c) Regardless of previous service record, length of service or history of the water line involved, it is hereby established that service shall be commenced only where each user is served by a separate water meter and separate service line unless exempt as outlined in this section.

(Ord. No. 2016-07, § 2, 1-10-2017)

Sec. 13-1-80. - System prohibitions.

- (a) *Water system damage.* No person shall: Willfully, negligently or maliciously break, damage, destroy, uncover, deface, tamper with or alter, any structure, property, appurtenance, equipment or any other item which is part of the water system. Remove any in-Town water meter, water pipe, or other water equipment or tools owned by the Town prevent or circumvent a water meter from measuring water supplied by the water system.
- (b) *Obtaining water fraudulently.* Tampering with water system equipment or stealing water service shall be grounds for discontinuance of water service. Theft of water shall include, but not be limited to the following:
- Opening valves at the curb or meter that have been turned off;
 - Breaking, picking or damaging cut-off locks;
 - By-passing meters in any way;
 - Taking un-metered water from hydrants by unauthorized person or department;
 - Removing, disabling or adjusting meter registers;
 - Connecting to or intentionally damaging water lines, valves or other appurtenances for the purpose of stealing or damaging water system equipment;
 - Moving the meter or extending service without permission;
 - Any other intentional act of defacement, destruction or vandalism to water system property or act that affects water system property;
 - Any intentional blockage or obstruction of water system equipment.
- Water service turned on without permission, or by someone not officially designated by the Town to do so, or any unauthorized turn-on, off, or tampering with a meter shall subject the user or the property owner to whom the tap is registered to a penalty fee of two hundred and fifty dollars (\$250.00) for the first offense and a misdemeanor summons to Municipal Court for subsequent offenses. All penalties paid will be in addition to the regular costs of connection and service as well as liability for full damages, repairs, investigations or inspections incurred by their actions. After three (3) prohibition violations by the same user the matter will be sent before the Town Board for a public hearing and further action including possible tap revocation.

- (c) *Responsibility.* The user is responsible for any rules or policy violations that occur regarding the water service to that property. Personal participation by the user in any such violation shall not be necessary to impose personal responsibility on the user.
- (d) *Notification.* A notice of violation may be mailed or otherwise delivered to the user and owner, and the user shall be ordered to immediately cease any unlawful practice if there is evidence suggesting the possibility of theft of water at the user's premises and the violation does not constitute an immediate threat of safety or equipment integrity to the water system. No notice of violation will be mailed or delivered and water service is subject to immediate shutoff in any of the following situations:
- (1) Theft of water is definitely evident on the user's premises;
 - (2) A situation exists that may endanger public health.
- (e) *Punitive billing procedure.* If it is determined theft of water has occurred, the Town reserves the right to adjust the user's current water bill and the user's water bills for the past twelve (12) months of usage. If the approximate amount of water that was stolen cannot be reasonably determined, the user's usage will be set at two times the user's metered usage or the American Water Works Association (AWWA) standard water usage based on the number of occupants. Discontinuance of water service shall not release the user from liability of payment for water service already received or from liability from payments that thereafter become due under the Town water rates and fees. The Town shall not be liable for any loss or damage resulting from the discontinuance of water service.
- (f) *Unpaid charges.* The name that appears on the account for water service shall be billed for payment of all charges. All water charges and fees shall be a lien upon the property furnished with the service, from the date such charges become due until such charges are paid in the full amount. Such lien and liability may be enforced by the Town in an action at law or in a suit to enforce the lien. The Town shall not be required to look to any person or entity other than the property owner for the payment of such charges. No change in ownership or occupation of the premises shall affect the application of this section. In the event such charges are not paid within thirty (30) days after becoming due, the Town Clerk may certify such delinquent payments, together with accrued interest, to the Treasurer of Delta County, such charges to be collected in the same manner as the real property taxes on such premises, plus a ten percent (10%) penalty to defray the costs of collection.

The Town shall have the right to refuse to provide water service to an applicant or to any member of an applicant's household who is living at the same address whenever such person(s) is (are) delinquent on any payment to the Town or had his or her water service discontinued because of a violation of this Article.

- (g) *Restricting water use.* The Town may regulate, limit or prohibit the use by a user of Town-supplied water if it is necessary for the health, safety and welfare of the public, including restricting the amount of water shortage emergencies. All lawn sprinkling and other outside irrigation from the Town's public water supply system shall be prohibited upon published notice if the Board of Trustees shall determine that a public water shortage is likely to occur, or that the amount of pumpage of water from the Town public water supply system has reached such volume that, unless restricted, the public health, safety and welfare is likely to be

endangered. The Board of Trustees may, during such times of water shortage emergency, direct that other measures be taken or restrictions be observed by users of the public water supply system when deemed necessary to protect the health, safety and welfare and, when published, such measures and restrictions shall be followed by users of the public water supply system.

(Ord. No. 2016-07, § 2, 1-10-2017)

Sec. 13-1-90. - Meter accessibility.

- (a) At the option of the Town, property owners may be required to relocate their meter or install a remote radio meter at their own expense if its location is remote from a walkway or roadway, under a mobile home, inside a structure or where regular access is prevented permanently or temporarily by a fence, animal, or other obstruction.
- (b) If the property owner involved has not made satisfactory remedy within forty-five (45) days of a written notice from the Town, the Town may relocate the meter in question, install a radio meter, or make such other appropriate remedy, charging such costs along with the regular billing for water service, or, if necessary, filing a lien against such property.
- (c) No buildings, structures or sidewalks shall be built to block access to water mains or meters.

(Ord. No. 2016-07, § 2, 1-10-2017)

Sec. 13-1-100. - Maintenance of water pipeline.

- (a) The Town of Paonia operates, maintains and supports a water collection and distribution system, primarily for use by residents living within the Town corporate limits.
- (b) The Town of Paonia is not a public utility, nor is it furnishing water or any other service as a public utility, but does so solely as an accommodation to users outside the Paonia Town limits or as a municipal service to residents of the Town.
- (c) All collection lines from springs and other water sources, transmission lines to and from reservoirs or between reservoirs, and main supply lines to the Town is the responsibility of the Town of Paonia.
- (d) Within the boundaries of the Town of Paonia the maintenance of the water distribution system, including main and laterals to the valve or meter at the user's property line, shall be the responsibility of the Town. After the meter the maintenance is the responsibility of the water user.
- (e) Outside the boundaries of the Town of Paonia the maintenance of the water distribution system is limited to the main lines. The maintenance of private lines including the tap and meter is the responsibility of the water company or water user. The Town Administrator will keep a list of water main lines repaired by the Town of Paonia.
- (f) If a leak is detected in water lines that are not the Town's responsibility and if the repairs are not initiated or completed by the owner(s) within thirty (30) days of notification, the Town may contract the necessary repairs and prorate the cost to the owner(s). The Town reserves the right to terminate water service through

lines that are leaking excessively and not being repaired. The Town Administrator shall make the determination as to the timeliness of repair and whether or not the leakage is excessive. No leak credits shall be given to water com

(Ord. No. 2016-07, § 2, 1-10-2017)

Sec. 13-1-110. - Equal access.

- (a) All water users, whether inside or outside the corporate boundaries of the Town of Paonia, have equal access to municipal water. However, water tap fees and water rates may be different inside and outside the corporate boundaries of the Town of Paonia.

(Ord. No. 2016-07, § 2, 1-10-2017)

Sec. 13-1-120. - Existing conditions.

- (a) As a condition of receiving municipal water, users not currently in compliance with the provisions of this ordinance shall comply with this Article upon the sale or transfer of the property receiving and using municipal water, or upon the determination of the Town Administrator that such noncompliance exists. There is no grandfathering of existing noncompliance.

(Ord. No. 2016-07, § 2, 1-10-2017)

Sec. 13-1-130. - Severability.

- (a) All other Ordinances, Resolutions and other provisions of the Town of Paonia, Colorado, or parts thereof, in conflict or inconsistent herewith, and to the extent they are in conflict or inconsistent herewith, are hereby repealed; provided, however, that the repeal of any Ordinance, Resolution, other provisions of the Town of Paonia, Colorado, or parts thereof, shall not revive any other section of the same heretofore repealed and superseded.

(Ord. No. 2016-07, § 2, 1-10-2017)

Sec. 13-1-131. - Moratorium.

- (a) Definitions. As used in this Section, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

Moratorium means suspension of the sale of domestic water taps that the Town of Paonia is not legally obligated to serve on the effective date of this ordinance.

Tap means a physical service connection to the municipal domestic water supply distribution system or right to water supplied by the Town of Paonia. For the purposes of this Section, tap shall also include the extension of water delivery pipes.

- (b) Moratorium on the Sale of Water Taps. A moratorium is hereby imposed on the sale of water taps by the Town of Paonia.
- (c) Requirements for termination of the moratorium and limits on future sales.

(1) This moratorium shall be in effect until the following conditions are met:

- (i) A report, bearing the seal of a licensed engineer experienced in domestic water supply systems, finds that the Town of Paonia has in operation sufficient infrastructure and associated water rights to serve all existing obligations for water into the foreseeable future, and;
- (ii) A report, bearing the seal of a licensed engineer experienced in domestic water supply systems, quantifies additional obligations, enumerated in the form of water taps, that the Town of Paonia can reasonably supply without the likelihood of adversely affecting the service to existing water tap holders.

(d) The Town of Paonia shall not incur obligations for more water taps than the number quantified in the report required by subsection (c)(1)(ii) above, unless another report meeting the conditions of subsection (c)(1)(ii) establishes a new limit.

(e) This moratorium shall not apply to water delivered at a stand pipe or public tap operated by the Town of Paonia.

(Ord. No. 2020-01, § 1, 1-27-2020)

ARTICLE 2. - PUBLIC TAP

Sec. 13-2-10. - Containers.

Since the water is primarily intended for human consumption, all containers used to receive water from the public tap of the Town must be clean and free of any chemicals, herbicides, pesticides or other contaminant.

(Ord. No. 95-06, § 1, 1995; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-2-20. - Contamination prohibited.

- (a) All persons acquiring water from the public tap of the Town must take care and make every effort to avoid any contamination of the water, equipment and appurtenances delivering water at such source.
- (b) Upon completion of acquiring water from the public tap of the Town, the person involved shall return to a protected position the equipment and appurtenances and leave them in a clean and uncontaminated condition.

(Ord. No. 95-06, §§ 2, 3, 1995; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-2-30. - Fire Department use.

The Fire Department of the Delta County Fire Protection District No. 2 is permitted, as an emergency service agency, to use the public tap for water supply without restriction by the terms of this Article. Other situations may receive a permit, following proper request, upon such terms as the Town Administrator or the Board of Trustees determines appropriate, provided that the applicant establishes, to the satisfaction of the Town Administrator or the Board of Trustees, that the permit is necessary and the risk of harm minimal.

ARTICLE 3. - WATERSHED

Sec. 13-3-10. - Intent.

There is established by the Town a Watershed Designation ("Watershed") pursuant to Section 31-15-707(1)(b), C.R.S. The Watershed is that area in which the Town shall exercise its powers to maintain and protect the Town's waterworks from injury and the Town's water supply from pollution. This Watershed is created under the authority granted in Section 31-15-707(1)(b), C.R.S. The Watershed and these regulations are created only for the purpose of protecting the Town's waterworks and water supply, and not for the purpose of regulating land use activities, which activities shall continue to be regulated by the County, State, federal government and any other authority with jurisdiction over land use activities within the Watershed. The Town shall implement and enforce these regulations for the purpose of reviewing and permitting any activity within the Watershed which creates a foreseeable risk of injury to the Town's waterworks or pollution of the Town's water supply. The Town's review authority within the Watershed shall be exercised concurrently with the authority of the County or any other government entity to review and/or permit the same activity as the Town may regulate; provided, however, that, in the event no review, approval or permit requirement exists, the Town's review authority shall occur prior to the commencement of any activity covered herein.

(Ord. No. 2003-02, § 9-1-11, 2003; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-3-20. - Jurisdiction and map.

- (a) The jurisdiction of the Watershed shall extend over the territory owned, occupied or controlled by easement by the Town waterworks and all reservoirs, streams, trenches, pipes and drains used in and necessary for the construction, maintenance and operation of the waterworks, over the spring stream or source from which water is taken and all water sources and drainage areas tributary thereto, for five (5) miles above such points from which water is diverted for use by the Town.
- (b) The Watershed Map shall be amended in the event any change in the Town's waterworks or diversion points for its water supply materially alter the geographical extent of the Town's jurisdiction under this Article.
- (c) The Watershed Map, with all notations, references and other information shown thereon, is incorporated herein as part of this Chapter. The official Watershed Map is located and can be reviewed in the office of the Town Clerk, and copies thereof are available on request at a cost of fifteen dollars (\$15.00) per copy.

(Ord. No. 2003-02, § 9-1-2, 2003; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-3-30. - Definitions.

Whenever the following words or phrases are used in this Chapter, they shall have the following meaning:

Best Management Practices (BMPs) means a schedule of activities, prohibitions of practices, maintenance procedures, management procedures and other management and activity practices to prevent or reduce potential actual injury to the Town waterworks or pollution of the Town water supply. BMPs also include treatment requirements, operating procedures and other practices to control runoff, erosion, drainage, sediment accumulation and similar events.

Emergency means a situation created by an unforeseen event with immediate adverse consequences or conditions.

Excavate or *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 two hundred fifty (250) cubic yards.

Fill or *filling* means the artificial movement of earth leaving a fill earth bank over two (2) feet in vertical height or filled earth over two (2) feet deep, or artificial addition of earth above a line sloping up at a grade of one (1) vertical to two (2) horizontal from the ground.

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

Grade or *grading* means the artificial movement of over two hundred fifty (250) cubic yards of material, movement of any earth or material affecting or creating a drainage channel or pioneering of roads by the artificial movement of soils, trees or shrubbery creating a roadway or driveway in excess of two hundred fifty (250) feet in length; or the use of vehicles or keeping of any animals upon any land that would lead to a movement of one hundred (100) cubic yards of material within one (1) year of the commencement of such use or which use, if continued, would result in the movement of any earth or material affecting or creating a drainage channel.

Person means any individual, corporation, government subdivision or agency, limited liability company, business trust, estate, trust, partnership, association or any other legal entity.

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

Remove vegetation means to artificially cut, chemically kill or in any other manner remove any tree greater than fifteen (15) 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 an *individual sewage disposal system* as defined in Section 25-10-103(10), C.R.S.

Surface or *surfacing* means any action resulting in the hardening or covering of the preexisting ground in an area greater than one hundred (100) square feet such that rain or other water striking the area will accumulate or run off the surface to a greater extent than prior to the hardening or covering of the preexisting 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.

Tributary means any watercourse, stream, creek, spring or drainage area which provides a source of supply to the Town's point of potable water diversion, all water sources, drainage areas thereof and any tributary thereof, from, above and/or affecting such points of diversion or related thereto.

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

(Ord. No. 2003-02, § 9-1-3, 2003; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-3-40. - Prohibited activities.

(a) It is unlawful for any person:

(1) To cast, place, dump or deposit in any part of the waterworks any substance or material which may injure or obstruct the same or tend to contaminate or pollute the water or obstruct the flow of water through the Town's water facilities. For a distance of five (5) miles upstream from points where the water supply is diverted, no person shall:

- a. Throw cast, put or deposit any pollutant or contaminant into or in close proximity to the spring, stream or source from which water is taken or any of the related tributaries or drainage areas;
- b. Store or retain any offensive or unwholesome substance on any premises in such position that the substance or drainage therefrom may be carried by natural causes into the spring, stream or source from which water is taken or any of the related tributaries or drainage areas; or
- c. Permit to flow into the spring, stream or source from which water is taken or any of the related tributaries or drainage areas from any place or premises, any foul or contaminating fluid.

(2) To cause injury or damage to the Town waterworks.

(b) In addition to the general prohibitions contained within this Code, it shall be unlawful for any person to engage in any of the following activities within the Watershed, which activities the Board of Trustees finds pose a potential or threat of injury to the waterworks or pollution to the Town's water supply, unless such person shall, prior to commencement of such activity, receive a permit for such activity under the provisions of this Chapter:

- (1) Excavation, grading, filling, blasting or surfacing, including rebuilding.
- (2) Removal of vegetation.
- (3) Timber harvesting involving one (1) or more acres but excluding the removal of dead or diseased trees for firewood or for noncommercial domestic purposes.
- (4) Drilling operations.
- (5) Alteration of water drainage courses.
- (6) Surface and subsurface mining operations.
- (7) The out-of-doors spraying or using of herbicides or pesticides unless performed by licensed applicators in compliance with applicable laws, but excepting noncommercial applications for domestic household or gardening purposes.
- (8)

Using, handling, storing or transmitting toxic or hazardous substances, including but not limited to radioactive materials, except for noncommercial domestic household purposes as permitted by law.

(9) Using, handling, storing or transmitting flammable or explosive materials, except for domestic purposes, agricultural purposes or within vehicular fuel storage tanks.

(c) Construction or installation of a sewage disposal system must have a permit pursuant to Subsection (b) above, unless the Town has been notified and has participated in the process of another appropriate government agency that has issued a permit for the same.

(Ord. No. 2003-02, § 9-1-4, 2003; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-3-50. - Permitted activities requiring notice.

(a) The following activities are permitted, without fee, within the District:

(1) Activities performed by or on behalf of the U.S. Forest Service or Bureau of Land Management.

(2) Farming activities normal and common within the agricultural community of the County.

(3) Stock grazing.

(4) Road maintenance and improvement by governmental entities.

(5) Maintenance by or on behalf of owners and/or a water users' association upon their reservoirs, provided that the same is approved and permitted by the Bureau of Land Management or the U.S. Forest Service.

(6) Application of herbicides or pesticides by a licensed applicator for or on behalf of owners and/or a water users' association near their reservoirs, provided that the same is approved and permitted by the Bureau of Land Management or the U.S. Forest Service.

(b) In the event that any activity not listed in Subsection 13-3-40(a) above is being conducted in such a manner that the Board of Trustees finds that there exists a foreseeable risk of injury to the waterworks or pollution to the Town's water supply, the person responsible for such activity shall be notified by the Town of such finding, and the Town may require that the activity cease and desist until a permit is obtained for the activity under the provisions of this Chapter.

(Ord. No. 2003-02, § 9-1-4, 2003; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-3-60. - Permit procedure.

(a) Application and fees. An applicant for a Watershed use permit shall submit the following to the Town Clerk no later than ninety (90) days prior to commencement of a proposed activity:

(1) A completed application form as prescribed by the Town. The application shall be completed by the owner of the property on which the proposed activity will occur, or its authorized representative, the latter of whom shall provide evidence satisfactory to the Town of his or her authority to act with respect to the property and who shall also provide a statement setting forth his or her interest in the proposed activity.

(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.

- (3) Two (2) sets of plans and specifications which shall contain the following information:
 - a. A vicinity sketch map or 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 buildings or structures within fifty (50) feet of the proposed activity.
 - d. Accurate contours establishing the topography of the existing ground at a minimum of five-foot contour intervals for areas with a grade of less than ten percent (10%) and at a minimum of twenty-foot contour intervals for areas with a grade greater than ten percent (10%).
 - e. Elevations, dimensions, location, 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.
 - i. A vicinity map at a scale of not less than one (1) inch equals two thousand (2,000) feet depicting the location of streets, highways, watercourses and natural drainage courses of streams within one-half (½) mile of the proposed activity site.
 - j. The location of the one-hundred-year floodplain of any drainage on or adjacent to the site of the proposed activity.
- (4) A document identifying any activity that may present or create a foreseeable risk of injury to the waterworks or pollution to the Town's water supply, 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 hydrologic geologic analysis of the site and adjacent areas.
 - e. An operational and maintenance analysis of the proposed activity.
 - f. Water use analysis for the proposed activity, including source, quality, amount of consumptive use, impact on groundwater and discharge characteristics.

(6)

An application will not be deemed to be complete until all information required by the Town has been submitted. The Public Works Director shall have the authority to waive one (1) or more submittal requirements if compliance with the requirements waived is not necessary for proper evaluation of a permit application.

- (7) The applicant shall submit to the Town a Watershed use permit application fee of two hundred fifty dollars (\$250.00) at the time of filing an application. The fee set forth in this Paragraph shall be considered a minimum for each application. To the extent any application results in the Town paying for outside professional services, including but not limited to engineering, legal, consulting, publication and copying fees associated with the review of the application, the applicant shall pay all such out-of-pocket expenses incurred by the Town. All fees and costs shall be due and payable at the time a statement is presented to the applicant by the Town. No Watershed use permit shall be issued until all fees have been paid.
 - (8) In the event an emergency situation occurs, the responsible party shall contact the Public Works Director with all information available concerning the emergency and the actions taken, planned to be taken or for discussion to determine the appropriate activity for resolving the emergency situation. Promptly following the response to the emergency situation, the responsible party shall file an application containing all relevant information, with the applicable fee, with the Town Clerk.
- (b) Review, analysis and classification. Within sixty (60) days following receipt of a completed application and site inspection, if necessary as determined by the Town, the Public Works Director shall review the application and prepare an analysis of the proposed activity, including a discussion of any factor that may present or create a foreseeable risk of injury to the waterworks or pollution to the Town's water supply, including a discussion of the measures, including best management practices, if any, that are proposed by the applicant to obviate such risks.
- (c) In undertaking the analysis of any proposed activity, the Public Works Director shall consider the following factors and any others that may be relevant:
- (1) Nature and extent of the proposed activity.
 - (2) Proximity of the activity to existing water courses, Town water supplies and Town waterworks.
 - (3) Drainage patterns and control measures.
 - (4) Soil criteria and erosion potential.
 - (5) Slope steepness and stability.
 - (6) Effects of denudation.
 - (7) Geologic hazards, including but not limited to avalanche paths, floodplains, high water tables, fault zones and similar factors.
 - (8) Ambient and nonpoint source discharges into water.
 - (9) Fire hazard.
- (d) The Public Works Director may classify in writing an application as Minor Impact if the Public Works Director finds, based upon the Public Works Director's analysis, that the proposed activity does not present or create a clear or foreseeable risk of significant injury to the waterworks or pollution to the Town water supply. If the

Public Works Director designates an application as Minor Impact, the Public Works Director shall forward the application, analysis and Minor Impact finding to the Board of Trustees. The Board of Trustees shall conduct the hearing required under Section 13-3-70 below, at a regularly scheduled meeting within thirty (30) days of the Public Works Director's determination. The Board of Trustees shall render a decision regarding the issuance or denial of a district permit to such applicant within the time limits contained in Section 13-3-70. The failure of the Board of Trustees to render such decision within the time limits herein set forth shall be deemed affirmative action on the issuance of the requested permit for any application classified as Minor Impact.

- (e) If, upon receipt of an application and review thereof in accordance with the criteria set forth in this Section, the Public Works Director determines that the proposed activity is of a type or location that will have no negative impact on the waterworks or water supply, the Public Works Director may classify the application as "No Impact." If such a "No Impact" finding is made, the Public Works Director shall immediately issue a District permit for the proposed activity. After issuance of said permit, the Public Works Director shall report the same to the Board of Trustees at its next regular or special meeting, and shall also keep a record of such "No Impact" permits for the purpose of assessing the cumulative impact of "No Impact" activities. If the Public Works Director does not make a "No Impact" determination, that decision may be appealed to and considered by the Board of Trustees at that meeting at which the application is otherwise reviewed. At said meeting, the Board of Trustees may, based upon the same standards as set forth above, grant a "No Impact" permit for the proposed activity.
- (f) If, upon receipt of an application and review thereof in accordance with the criteria set forth in this Section, the Public Works Director finds that the proposed activity poses a foreseeable and significant risk of injury to the waterworks or pollution of the Town's water supply, the Public Works Director shall forward the application, analysis and finding to the Board of Trustees, together with a recommendation that the Board of Trustees deny the permit or issue the permit with conditions. The Board of Trustees shall then review the application and recommendation as provided in Section 13-3-70 below.

(Ord. No. 2003-02, § 9-1-5, 2003; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-3-70. - Hearing; notice.

- (a) Upon receipt of an application, analysis and finding from the Public Works Director, the Board of Trustees shall conduct a public hearing to review the application and shall render a decision regarding the issuance or denial of a Watershed use permit to such applicant within sixty (60) days of receipt of the Public Works Director's analysis. However, if the activity requires approval or a permit from any agency of the county, state or federal government, and the approval time lines for the county, state or federal action exceed that required in this Section, the Town shall have thirty (30) days following the issuance of the County, State or federal permit or approval to render a decision regarding the issuance or denial of a Watershed use permit to such applicant. The Board of Trustees 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.
- (b)

Notice of hearing. Notice of any public hearing required hereunder shall be given at least ten (10) days in advance of the public hearing by publication in the official newspaper of the Town and by notice to the applicant by certified mail.

(Ord. No. 2003-02, § 9-1-5, 2003; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-3-80. - Standards for issuance of permit.

A Watershed use permit shall be issued when the Board of Trustees finds that the applicant has sustained the burden of proof that the proposed activity, including best management practices, if any, does not present or create a foreseeable risk of injury to the waterworks, pollution to the Town's water supply or injury or pollution to any water sources tributary thereto for five (5) miles above any point from which water is diverted for use by the Town. A Watershed use permit shall be denied when the Board of Trustees finds that the applicant has not sustained such burden of proof.

(Ord. No. 2003-02, § 9-1-5, 2003; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-3-90. - Joint review process.

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.

(Ord. No. 2003-02, § 9-1-5, 2003; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-3-100. - Permit conditions.

The Board of Trustees, in issuing any Watershed use permit, may prescribe any conditions it may deem necessary to effect the intent of this Article, including a water augmentation plan acceptable to the Board of Trustees. The Board of Trustees may require any applicant to post a surety bond or cash, based upon the Board of Trustees' analysis of the impact of the proposed activity, in an amount sufficient to ensure compliance with the Watershed use permit, including but not limited to the cost of maintenance, operation, revegetation, reclamation and other requirements intended to further the intent of this Article. The Board of Trustees may release to the applicant portions of any such bond or cash, from time to time, when no longer necessary to ensure compliance with the Watershed use permit.

(Ord. No. 2003-02, § 9-1-5, 2003; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-3-110. - Duration of permit.

If any proposed activity for which a Watershed use permit is issued is not commenced within twelve (12) months from the date of issuance of such permit, the permit shall expire and become void.

(Ord. No. 2003-02, § 9-1-5, 2003; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-3-120. - Enforcement; right of entry.

When it is necessary to make an inspection to enforce the provisions of this Article or the terms and conditions of any permit, or where reasonable grounds exist to believe that a condition, activity or facility on any premises presents a threat of pollution or injury to any of the Town's water sources, supplies or waterworks, the Public Works Director, may enter onto such premises at reasonable times to inspect and/or perform such investigation and duties as called for under this Article; provided that, if the premises are occupied, proper identification shall be shown to the person on the premises and notification of entry made. If the premises are unoccupied, reasonable efforts shall be made to locate and/or provide notice to the owner or operator of the land or facility in question of the desired access.

(Ord. No. 2003-02, § 9-1-6, 2003; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-3-130. - Stop work order.

Whenever any work or activity is being done contrary to the provisions of this Article or is in violation of the terms of any Watershed use permit issued hereunder, the Town 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 such person shall cease such activity until authorized by the Town to proceed. The Town shall reserve the right to revoke or suspend any permit issued hereunder if work is not done in accordance therewith.

(Ord. No. 2003-02, § 9-1-6, 2003; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-3-140. - Other remedies.

In addition to any other remedies provided by this Article, this Code, state or federal law, the Town Attorney, on behalf of the Town, may commence an action in a court of competent jurisdiction for a temporary restraining order or preliminary or permanent injunctive relief restraining any violation of this Article.

(Ord. No. 2003-02, § 9-1-7, 2003; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-3-150. - Activity in progress.

The lawful continuance of any activity in progress at the time of the enactment of the ordinance codified herein may be continued even though it does not conform to the requirements of this Article. For purposes of this Section, an *activity in progress* is a building, construction, land use or other activity which has been finally permitted by all other governmental agencies having jurisdiction thereover, and which has been physically commenced. 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 Article.

(Ord. No. 2003-02, § 9-1-8, 2003; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-3-160. - Appeal.

Any person desiring to appeal any decision or determination by the Board of Trustees hereunder must file such appeal within thirty (30) days following such decision or determination with the District Court of the County.

Sec. 13-3-170. - Violation and penalty.

- (a) *Offense.* Any person who violates any of the provisions of this Chapter shall be fined in accordance with the provisions of Section 1-4-20 of this Code.
- (b) *Remedies.* The remedies herein provided shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law. Nothing herein shall be construed a waiver of any civil remedies available to the Town.

(Ord. No. 2003-02, § 9-1-9, 2003; Ord. No. 2014-04, § 1, 1-13-2015)

ARTICLE 4. - WATER AND SEWER ACTIVITY ENTERPRISE

Sec. 13-4-10. - Establishment.

There is hereby established, pursuant to the terms and provisions of the Water Activity Law, Title 37, Article 45.1, C.R.S., the Town Water and Sewer Enterprise, hereinafter referred to as the "Enterprise." Funds related to the Enterprise are set forth in Sections 4-2-60 and 4-2-70 of this Code. The Enterprise shall consist of the business represented by the system, being all of the Town's water and sanitary sewer facilities and properties, now owned or hereafter acquired, whether situated within or without the Town boundaries, including all present or future improvements, extensions, enlargements, betterments, replacements or additions thereof or thereto. The Enterprise shall have all of the authority, powers, rights, obligations and duties as may be provided or permitted by the Water Activity Law and the Colorado Constitution and as may be further prescribed by ordinance or resolution of the Town.

(Ord. No. 1998-02, § 1, 1998; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-4-20. - Governing body.

The governing body of the Enterprise, hereinafter referred to as the "Governing Body," shall be the Board of Trustees and shall be subject to all of the applicable laws, rules and regulations pertaining to the Board of Trustees. Whenever the Board of Trustees is in session, the Governing Body shall also be deemed to be in session. It shall not be necessary for the Governing Body to specifically announce or acknowledge that actions taken thereby are taken by the Governing Body of the Enterprise. The Governing Body may conduct its affairs in the same manner and subject to the same laws which apply to the Board of Trustees for the same or similar matters; provided that, in accordance with Section 37-45.1-104(2), C.R.S., the Governing Body may authorize the issuance of bonds by adoption of a resolution.

(Ord. No. 1998-02, § 2, 1998; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-4-30. - Maintenance of Enterprise status.

The Enterprise shall, at all times and in all ways, conduct its affairs so as to continue to qualify as a "water act enterprise" within the meaning of Section 37-45.1-102, C.R.S., and as an "enterprise" within the meaning of Article X, Section 20, of the State Constitution. Specifically, but not by way of limitation, the Enterprise is not authorized to, and shall not, receive ten percent (10%) or more of its annual revenue in grants from all state and local governments combined. Any grant or portion thereof which would cause the Enterprise to exceed the above limitation may nonetheless be made to the Town or such other entity as the Town may designate; and to the extent such grant or portion thereof is used for the purpose of improving or extending the system, the Enterprise will execute a bond, note or other obligation to the Town or such other entity evidencing a loan in the amount of such grant or portion thereof. In no event shall the system or the Enterprise have any ability to levy taxes to pay bonds or any other expenses of the Enterprise or the system.

(Ord. No. 1998-02, § 3, 1998; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-4-40. - Issuance of bonds.

The Enterprise is authorized to issue bonds, notes or other obligations payable from the revenues derived or to be derived from the system, or any part thereof, in accordance with the Water Activity Law. The Board of Trustees may also authorize the issuance of such bonds, notes or other obligations in accordance with applicable law, and in so doing shall be deemed to be acting as both the Governing Body and the Board of Trustees.

(Ord. No. 1998-02, § 4, 1998; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-4-50. - Ratification and approval of prior actions.

All actions heretofore taken by the officers of the Town and the members of the Board of Trustees, not inconsistent with the provisions of this Article, relating to the authorization, issuance or delivery of the notes, are hereby ratified, approved and confirmed.

(Ord. No. 1998-02, § 5, 1998; Ord. No. 2014-04, § 1, 1-13-2015)

ARTICLE 5. - SEWER SYSTEM

DIVISION 1. - GENERAL PROVISIONS

Sec. 13-5-10. - Applicability.

- (a) All users of the Town Wastewater Treatment Plant and Wastewater Collection System shall be subject to the terms and conditions as set out in this Article and shall be subject to all applicable regulations of this Article and other ordinances, resolutions and regulations of the Town as they now exist or as they may be amended in the future.

(b)

Sec. 13-7-10. - General policy.

(a) *Purpose.* The purpose of this Article is to:

- (1) Protect the public potable water supply from contamination of pollution by containing within the consumer's internal distribution system or private water system contaminants or pollutants which could backflow through the service connection into the potable water supply system.
- (2) Promote the elimination, contamination, isolation or control of existing cross connections, actual or potential, between the public or consumer's potable water system and nonpotable water systems, plumbing fixtures and industrial process systems.
- (3) Provide for the maintenance of a continuing program of cross connection control which will systematically and effectively prevent the contamination or pollution of all potable water systems.

(b) *Application.* This Article shall apply to all premises served by the public potable water system of the Town.

(c) *Policy.*

- (1) This Article will be reasonably interpreted by the water purveyor. It is the water purveyor's intent to recognize the varying degrees of hazard and to apply the principle that the degree of protection shall be commensurate with the degree of hazard.
- (2) The water purveyor shall be primarily responsible for protection of the public water distribution system from contamination or pollution due to backflow of contaminants or pollutants through the water service connection. The cooperation of all consumers is required to implement and maintain the program to control cross connections. The water purveyor and consumer are jointly responsible for preventing contamination of the water system.
- (3) If, in the judgment of the water purveyor or his or her authorized representative, cross connection protection is required through either piping modification or installation of an approved backflow prevention device, due notice shall be given the consumer. The consumer shall immediately comply by providing the required protection at his or her own expense; and failure, refusal or inability on the part of the consumer to provide such protection shall constitute grounds for discontinuing water service to the premises until such protection has been provided.

(Ord. No. 2008-01, § I, 2008; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-7-20. - Definitions.

The definitions listed in Appendix A to this Code, incorporated herein by this reference, shall apply in the interpretation and enforcement of this Article.

(Ord. No. 2008-01, § II, 2008; Ord. No. 2014-04, § 1, 1-13-2015)

- (a) No water service connection shall be installed or maintained to any premises where actual or potential cross connections to the public potable or consumer's water system may exist unless such actual or potential cross connections are abated or controlled to the satisfaction of the water purveyor, and as required by the laws and regulations of the Colorado Department of Public Health and Environment.
- (b) No connection shall be installed or maintained whereby an auxiliary water supply may enter a public potable or consumer's water system unless such auxiliary water supply and the method of connection and use of such supply have been approved by the water purveyor and the Colorado Department of Public Health and Environment.
- (c) No water service connection shall be installed or maintained to any premises in which the plumbing system, facilities and fixtures have not been constructed and installed using acceptable plumbing practices considered by the water purveyor as necessary for the protection of health and safety.

(Ord. No. 2008-01, § III, 2008; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-7-40. - Survey and investigation.

- (a) The consumer's premises shall be open at all reasonable times to the water purveyor or his or her authorized representative for the conduction of surveys and investigations of water use practices within the consumer's premises to determine whether there are actual or potential cross connections to the consumer's water system through which contaminants or pollutants could backflow into their or the public potable water system.
- (b) On request by the water purveyor or his or her authorized representative, the consumer shall furnish information on use practices within his or her premises.
- (c) It shall be the responsibility of the water consumer to conduct periodic surveys of water use practices on the consumer's premises to determine whether there are actual or potential cross connections to their water system through which contaminants or pollutants could backflow into their or the public water system.

(Ord. No. 2008-01, § IV, 2008; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-7-50. - Type of protection required.

The type of protection required by this Article shall depend on the degree of hazard which exists, as follows:

- (1) An approved air gap separation shall be installed where the public potable water system may be contaminated with substances that could cause a severe health hazard.
- (2) An approved air gap separation or approved reduced pressure principal backflow prevention assembly shall be installed where the public water system may be contaminated with a substance that could cause a system or health hazard.
- (3)

An approved air gap separation, an approved reduced pressure principal backflow prevention assembly or an approved double check valve assembly shall be installed where the public potable water system may be polluted by substances that could cause a pollution hazard not dangerous to health.

(Ord. No. 2008-01, § V, 2008; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-7-60. - Where protection is required.

- (a) An approved backflow prevention assembly shall be installed on each service line to a consumer's water system serving premises where, in the judgment of the water purveyor or the Colorado Department of Health and Environment, actual or potential hazards to the public potable water system exist. The type and degree of protection required shall be commensurate with the degree of hazard.
- (b) An approved air gap separation or reduced pressure principal backflow prevention assembly shall be installed at the service connection or within any premises where, in the judgment of the water purveyor or the Colorado Department of Health and Environment, the nature and extent of activities on the premises, the materials used in connection with the activities or materials stored on the premises would present an immediate and dangerous hazard to health should a cross connection occur, even though such cross connection may not exist at the time the backflow prevention device is required to be installed. This includes, but is not limited to, the following situations:
 - (1) Premises having auxiliary water supply, unless the quality of the auxiliary supply is acceptable to the water purveyor and the Colorado Department of Health and Environment.
 - (2) Premises having internal cross connections that are not correctable, or intricate plumbing arrangements which make it impractical to ascertain whether or not cross connection exists.
 - (3) Premises where entry is restricted so that inspection for cross connection cannot be made with sufficient frequency or at sufficiently short notice to assure the cross connection does not exist.
 - (4) Premises having a repeated history of cross connections being established or reestablished.
 - (5) Premises which, due to the nature of the enterprise therein, are subject to recurring modification or expansion.
 - (6) Premises on which any substance is handled under pressure so as to permit entry into the public potable water supply, or where a cross connection could reasonably be expected to occur. This shall include the handling of process waters and cooling waters.
 - (7) Premises where materials of a toxic or hazardous nature are handled such that, if back siphon or backpressure should occur, a serious health hazard may result.

The types of facilities listed in Appendix B to this Code, incorporated herein by this reference, fall into one (1) or more of the categories of premises where an approved air gap separation or reduced pressure principal backflow prevention assembly is required by the water purveyor and the Colorado Department of Public Health and Environment to protect the public water supply and must be installed at these facilities unless all hazardous conditions have been eliminated or corrected by other methods to the satisfaction of the water purveyor and the Colorado Department of Public Health and Environment.

Sec. 13-7-70. - Backflow prevention assemblies.

- (a) Any backflow prevention assembly required to protect the facilities listed in Appendix B shall be of a model or construction approved by the water purveyor and the Colorado Department of Public Health and Environment.
- (b) Air gap separation to be approved shall be at least twice the diameter of the supply pipe, measured vertically above the top rim of the vessel, but in no case less than one (1) inch.
- (c) A double check valve assembly or a reduced pressure principal backflow prevention assembly shall be approved by the water purveyor and shall appear on the current list of approved backflow prevention assemblies established by the Colorado Department of Public Health and Environment.
- (d) Existing backflow prevention assemblies approved by the water purveyor at the time of installation and properly maintained shall, except for inspection and maintenance requirements, be excluded from the requirements of this Article so long as the water purveyor is assured that they will satisfactorily protect the water system.

(Ord. No. 2008-01, § VII, 2008; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-7-80. - Installation.

- (a) Backflow prevention assemblies required by this Article shall be installed at a location and in a manner approved by the water purveyor and shall be installed at the expense of the water consumer.
- (b) Backflow prevention assemblies installed on the service line to the consumer's water system shall be located on the consumer's side of the water meter, as close to the meter as is reasonably practical, and prior to any other connection.
- (c) Backflow prevention assemblies shall be located so as to be readily accessible for maintenance and testing, protected from freezing. No reduced pressure principal backflow prevention assembly shall be located where it will be submerged or subject to flooding by any liquid.

(Ord. No. 2008-01, § VIII, 2008; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-7-90. - Inspection and maintenance.

- (a) It shall be the duty of the consumer at any premises on which backflow prevention assemblies required by this Article are installed to have inspections, tests and overhauls made in accordance with the following schedule or more often where inspections indicate a need.
 - (1) Air gap separations shall be inspected at the time of installation and at least every twelve (12) months thereafter.
 - (2) Double check valve assemblies shall be inspected and tested for tightness at the time of installation and at least every twelve (12) months thereafter.
 - (3)

Reduced pressure principal backflow prevention assemblies shall be inspected and tested for tightness at the time of installation and at least every twelve (12) months thereafter.

- (4) Vacuum breaker assemblies shall be inspected and tested for tightness at the time of installation and at least every twelve (12) months thereafter.
- (b) Inspections, tests and overhauls of backflow preventions assemblies shall be made at the expense of the water consumer and shall be performed by a Colorado-certified backflow prevention assembly tester.
- (c) Whenever backflow prevention assemblies required by this Article are found to be defective, they shall be repaired or replaced at the expense of the consumer without delay.
- (d) The water consumer must maintain a complete record of each backflow prevention assembly from purchase to retirement. This shall include a comprehensive listing that includes record of all tests, inspections and repairs. Copies of inspections, tests, repairs and overhaul results shall be given to the Town or made available upon request.
- (e) Backflow prevention assemblies shall not be bypassed, made inoperative, removed or otherwise made ineffective.

(Ord. No. 2008-01, § IX, 2008; Ord. No. 2014-04, § 1, 1-13-2015)

Sec. 13-7-100. - Violations.

- (a) The water purveyor shall deny or discontinue, after reasonable notice to the occupants thereof, the water service to any premises wherein any backflow prevention assembly required by this Article is not installed, tested and maintained in a manner acceptable the water purveyor, if it is found that the backflow prevention assembly has been removed or bypassed or if an unprotected cross connection exists on the premises.
- (b) Water service to such premises shall not be restored until the consumer has corrected or eliminated such conditions or defects in conformance with this Article to the satisfaction of the water purveyor.

(Ord. No. 2008-01, § X, 2008; Ord. No. 2014-04, § 1, 1-13-2015)

Samira V

From: Bill Brunner <bill@paoniairon.com>
Sent: Tuesday, January 17, 2023 11:16 AM
To: Mary B; Corinne Ferguson; Dave K; Paige S; Rick S; John V; Thomas M; David Weber; Paonia
Subject: Moratorium Special Meeting

Oops, subject should be moratorium special meeting.

On 1/17/2023 9:56 AM, Bill Brunner wrote:

Mary, et all.

Copied here and included as a pdf attachment are comments appropriate to the January 19th special meeting. Please review and include in the meeting packet.

I have included the Board and others in this communication but could not find an email for the interim Administrator, so please forward this to her.

Thank you

Bill Brunner

Summary

The Moratorium Ordinance should be considered in conjunction with the Town Code on Water and Sewer, as they are an integral service of the Town.

The requirements of the Moratorium, Water and Waste Water Ordinances are clear.

The Moratorium prohibits the extension of Town lines and the provision of water the Town is not already obligated to supply at the passage of that ordinance.

The Ordinances require each household unit to have an individual "tap, water service line, and meter" for water and an individual service line for sewer.

Each household unit receiving municipal water from the Town of Paonia must pay for both the Water and Sewer Tap and pay the monthly charges.

There are no exceptions to the monthly service charge for water. There is a mandatory stand-by fee for sewer taps not in service. If these fees have not been paid, the service cannot be considered "existing".

There are narrow exceptions such as commercial units without a kitchen and buildings with existing multiple dwelling units that exempt them from the requirements for individual service lines, but no exceptions to the requirement for the tap charges and monthly fees.

Taken together, clearly, the Town is in violation of the Water Moratorium and the Water and Sewer ordinances.

The following are edited excerpts from the Town Code with some comments.

The Town Ordinances

Sec. 13-1-131. (the Moratorium)

Tap: a physical service connection or right to water supplied by the Town of Paonia. The Moratorium prohibits the extension of water delivery pipes. (Such extension required for each individual meter)

Moratorium: suspension of the sale of domestic water taps that the Town of Paonia is not legally obligated to serve on the effective date of this ordinance.

Sec. 13-1-120. Existing conditions. (Water) (a) There is no grandfathering of existing noncompliance.

Sec. 13-1-10

Household unit: A room or suite of rooms which is designed for, or occupied by, one family doing its cooking therein.

Residential use: Use of water ... for residential uses..., related to occupancy as a single family residence.

Tap: A physical service connection to the municipal domestic water supply distribution system.

Sec. 13-1-30. Fees for water taps.

(a) Each property owner (residential and commercial) connecting a water service line from their property to any water line constructed or owned by the Town, shall pay a water tap fee prior to being permitted to connect to the main water line. The tap, water service line, and meter shall be sized according to either the existing and/or proposed use. (A service line shall only serve one unit, each unit requires it's own connection. A larger line does not permit multiple family units on one tap.)

Sec. 13-1-70. Individual meters.

(a) Separate meters shall be required for each residence or commercial building. Properties sharing a common line feeding through one property to another, or utilizing a single meter for two (2) or more units or serviced by only one water line shall be required to install separate meters so that service to each user is independent from every other.

(b) Each household unit shall be serviced by a separate water meter.

(c) Regardless of previous service record, length of service or history of the water line involved, it is hereby established that service shall be commenced only where each user is served by a separate water meter and separate service line unless exempt as outlined in this section.

Sec. 13-5-210. - Units. (Sewer)

For residential or commercial sewer each room or suite of rooms which is designed for, or occupied by, no more than one family doing it's cooking therein shall be considered one unit.

Sec. 13-5-220. - Tap fee.

The sewer tap fee for each unit within Town shall be five thousand dollars (\$5,000.00). Outside Town the sewer tap fee for each unit shall be ten thousand dollars (\$10,000.00). The tap fee for a connection having more than one unit is calculated by multiplying the number of units by units by the basic tap fee.

Sec. 13-5-330. - Independent connections. Each house, dwelling, building, store, premises, and other structures connected to the sewer system shall have an independent connection with the sewer, except in the cases of apartments and mobile home parks, which may allow a single connection assessed on the number of units served. Increases in the number of units will result an upgrade in the size of service and a related increase in fees.

Sec. 13-5-260. - Standby fees. Standby fees for taps that are not yet installed or not in service shall be charged to all users. (If these charges have not been paid, there can be no existing use.)

Compiled by Bill Brunner.

**State of Colorado
Town of Paonia
Ordinance
2020-01**

AN ORDINANCE OF THE PEOPLE OF THE TOWN OF PAONIA AMENDING CHAPTER 13, ARTICLE 1, OF THE TOWN OF PAONIA MUNICIPAL CODE BY THE ADDITION OF A NEW SECTION 13-1-131, IMPOSING A MORATORIUM ON THE SALE OF WATER TAPS AND PLACING LIMITS ON FUTURE WATER SALES.

WHEREAS, pursuant to C.R.S. § 31-11-101 et. seq., Colorado law recognizes the initiative and referendum powers granted to municipal electors; and

WHEREAS, on or about August 25, 2019, Mr. Bill Brunner, a citizen of the Town of Paonia, submitted an Affidavit of Circulator to the Paonia Municipal Clerk to receive approval of the Town of Paonia to the form of a proposed citizen’s initiative petition; and

WHEREAS, on September 4, 2019, Mr. Bill Brunner and Ms. Kathy Martinez (hereinafter the “Petitioners”), as citizens of the Town of Paonia, filed a citizen’s initiative petition seeking the adoption of an ordinance of the Town of Paonia, amending Chapter 13, Article 1, of the Paonia Municipal Code by the addition of a new Section 13-1-131, imposing a moratorium on the sale of future water sales (hereinafter the “Citizen’s Initiative Petition”).

WHEREAS, on October 3, 2019, the Town Clerk for the Town of Paonia deemed the Citizen’s Initiative Petition complete and provided written notice to the Petitioners of the same; and

WHEREAS, on October 8, 2019, the Board of Trustees undertook a review and consideration of the Citizen’s Initiative Petition and, thereafter, the Board approved submitting the Citizen’s Initiative Petition to the registered electors of the Town of Paonia; and

WHEREAS, on January 7, 2020 the Town of Paonia held a special election regarding the Citizen’s Initiative Petition; and

WHEREAS, the people of the Town of Paonia voted in favor of the Citizen’s Initiative Petition 286 to 203; and

NOW THEREFORE, BE IT ORDAINED BY THE PEOPLE OF THE TOWN OF PAONIA, COLORADO, AS FOLLOWS:

Section 1. Amendment of Town Code.

Chapter 13, Article 1, of the Town Code is amended by the addition of the following:

Sec. 13-1-131 Moratorium.

- (a) Definitions. As used in this Section, unless the context clearly indicates otherwise, the following terms shall have the following meanings.

Moratorium means suspension of the sale of domestic water taps that the Town of Paonia is

not legally obligated to serve on the effective date of this ordinance.

Tap means a physical service connection to the municipal domestic water supply distribution system or right to water supplied by the Town of Paonia. For the purposes of this Section, tap shall also include the extension of water delivery pipes.

(b) Moratorium on the Sale of Water Taps.

A moratorium is hereby imposed on the sale of water taps by the Town of Paonia.

(c) Requirements for termination of the moratorium and limits on future sales.

(1) This moratorium shall be in effect until the following conditions are met:

(i) A report, bearing the seal of a licensed engineer experienced in domestic water supply systems, finds that the Town of Paonia has in operation sufficient infrastructure and associated water rights to serve all existing obligations for water into the foreseeable future, and;

(ii) A report, bearing the seal of a licensed engineer experienced in domestic water supply systems, quantifies additional obligations, enumerated in the form of water taps, that the Town of Paonia can reasonably supply without the likelihood of adversely affecting the service to existing water tap holders.

(d) The Town of Paonia shall not incur obligations for more water taps than the number quantified in the report required by subsection (c)(I)(ii) above, unless another report meeting the conditions of subsection (c)(1)(ii) establishes a new limit.

(e) This moratorium shall not apply to water delivered at a stand pipe or public tap operated by the Town of Paonia.

Section 3. Severability.

If any provision of this ordinance or the application of it to any person or circumstance is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provisions or applications. The provisions of this ordinance are expressly declared to be severable.

Section 4. Effective Date.

This ordinance shall become effective upon publication, January 29, 2020.

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