

CHAPTER 16

UTILITIES

(Adopted Chapter 12/4/2006)

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ARTICLE I: WATER ORDINANCE

SECTION 16.101: DEFINITIONS

1. “*Abutter*” shall mean one whose property abuts, is contiguous to, or joins at the border or boundary of a public right-of-way in which a Main Pipe is to be or has been installed.
2. “*Backflow*” shall mean the flow of water or other liquids, mixtures, or substances into the Utility’s service or Main Pipes from any source other than the intended source.
3. “*Backflow Prevention Device*” shall mean a Utility approved device which operates on the Service Pipe to prevent any material from being forced or drawn into the Main Pipe and contaminating the potable water supply.
4. “*Bypass*” shall mean the pipe extended around the meter from and to the Service Pipe through which the Utility may provide service to the Customer while the meter is out of service.
5. “*Capacity Improvements Multiplier*” shall mean the multiplier used as part of the Capacity Use Surcharge formula to generate funds to be used for capital improvements necessary to serve future users. The Capacity Improvements Multiplier shall be established as part of the rate setting process.
6. “*Capacity Use Surcharge*” shall mean a one-time fee assessed by the Utility at the time of connection. The Capacity Use Surcharge shall be calculated as follows: (projected average daily flow/equivalent dwelling unit) multiplied by Capacity Improvements Multiplier. The equivalent dwelling unit shall be set as part of the rate setting process.
7. “*Cross Connection*” shall mean any actual or potential physical connection or arrangement between two otherwise separate systems, one of which contains potable water and the other which contains unacceptable levels of material of unknown or questionable safety, including water containing any physical chemical, biological, or radiological substance or matter.
8. “*Curb Stop/Curb Shut Off*” shall mean the valve owned and maintained by the Utility, normally located at or adjacent to the Customer’s property line, which the Utility alone may use to turn on or Shut Off service to the Premises.

9. “*Customer*” shall mean any individual, partnership, firm, association, corporation, city government, or governmental division owning or having an interest in property to which the Utility supplies service.
10. “*Customer Unit*” shall mean the occupancy to which meter rates shown herein shall be separately applied.
11. “*Main Pipe*” shall mean the Utility’s supply pipe from which service connections are made to supply water to Customers.
12. “*Outside Reader*” shall mean the device placed by the Utility on the outside surface of the Customer’s Premises permitting the Utility to obtain a meter reading without entering the Premises.
13. “*Petitioner*” shall mean the owner or duly authorized agent of the owner of real property who is requesting Main Pipe extension for any purpose.
14. “*Premises*” shall mean the Customer’s property or building(s) thereon to which service is provided.
15. “*Private Fire Protection*” shall mean private water service located on the Premises, including fire sprinklers, hose lines, and hydrants, connected to or served by the Utility system to provide water for extinguishing purposes.
16. “*Private Meters*” shall mean additional non-Utility owned meters monitoring service to a portion of the Customer’s Premises.
17. “*Rate and Fee Schedule*” shall mean those rates, fees and charges set by the Portsmouth City Council.
18. “*Regular Working Hours*” shall mean the hours, Monday through Friday, excluding holidays, during which time the Utility is normally open for business.
19. “*Service Pipe*” shall mean the pipe running from the Main Pipe into the Customer’s Premises.
20. “*Shut Off*” shall mean the valve owned and maintained by the Customer, located within the Customer’s Premises or on Customer’s property, which may be used to turn on or off service to the Premises.
21. “*Utility*” shall mean the City of Portsmouth’s Department of Public Works, Water Division.
22. “*Utility Specifications*” shall mean those construction guidelines, approved product, policies and practices set forth in the Portsmouth Water Division Utility Manual.
23. “*Zones*” shall mean groupings of multiple sprinkler heads which provide water to one area of a Customer’s lawn at a time.

SECTION 16.102: APPLICABILITY

This Ordinance applies to all retail Customers served by the Utility. Wholesale service shall be per the terms of individual Agreements.

SECTION 16.103: APPLICATION FOR SERVICE AND CONNECTION FEE AND COSTS

a. Procedure.

- (1) Applications for new service shall be made in person by the Customer or a duly authorized agent at the office of the Utility.
- (2) Each application shall be accompanied by an application fee and completed service application data form, identifying each plumbing fixture and estimates of flow and peak demand as may be requested by the Utility for which service will be required. At the discretion of the Utility, this information may be provided in a letter signed by the Customer's architect or engineer.
- (3) The Utility shall review the service data to determine whether it has sufficient capacity to provide adequate water service to the Customer.

(b) Determination

- (1) If the Utility determines that it does not or will not have sufficient capacity to serve it shall not be obligated to provide the service. The Utility may, at its option and discretion, enter into such agreements with applicants to make readiness to serve improvements at Customer's expense.
- (2) If the Utility determines that it has sufficient capacity to provide adequate water service, the Utility will approve the service and assess a connection fee. The connection fee will consist of the following components: labor and material charges related to the work components of connecting to the Main Pipe as well as a Capacity Use Surcharge.
- (3) Service shall not be provided until all required deposits or payments have been made by the Customer.

c. Change of Ownership in a Commercial or Industrial Customer Unit. Upon the change of ownership in a commercial or industrial Customer Unit, the Customer shall be required to reapply and to submit revised service data to the Utility and shall conform to all Utility regulations governing new installations.

SECTION 16.104: SERVICE PIPE

a. Installation, Ownership and Maintenance. The Service Pipe as it extends from the Main Pipe and Curb Stop located within the limits of the public right-of-way or Utility easement shall be installed, owned and maintained by the Utility. The

Customer may, subject to prior written approval and inspection by the Utility, install the Utility's portion of the Service Pipe. The Service Pipe from the Curb Stop into the Premises shall be owned by the Customer and installed and maintained at Customer's expense.

- b. Connection. Only the Utility or its duly authorized agents shall install, maintain or repair any Service Pipe connection to a Main Pipe. Such connections shall be made only from the street which is the legal address of the Premises served, unless otherwise authorized in writing by the Utility.
- c. Installation Specifications.
- (1) The Customer's portion of a Service Pipe shall be installed in accordance with Utility Specifications. It shall be composed of a material which is acceptable to the Utility and the installation and pipe shall be in conformance with good engineering practices and in accord the requirements of law.
 - (2) The Service Pipe shall be no less than one (1) inch diameter, and shall have a minimum ground cover of five (5) feet unless authorized in writing by the Utility.
- d. Installation Period. The Utility's portion of a Service Pipe shall be installed during the period of mid-April to mid-November as frost and weather conditions permit. In an emergency and upon the Customer's request, the Utility in its sole discretion may authorize service installation during winter months.
- e. Service.
- (1) Customer shall be provided service through only one Utility owned Service Pipe and Curb Stop/Curb Shut Off per legally subdivided lot. Customer may at Customer's own expense separately meter individual buildings and tenants as Customer determines.
 - (2) When an existing Customer has more than one service per legally subdivided lot, the Utility reserves the right to reduce the number of services provided to one, as part of any conversation of use, renovation or other changes in condition requiring a building permit.
 - (3) Where more than one Customer is currently provided service through one Service Pipe and Curb Stop/Curb Shut Off, any violation of Utility regulations by one or more Customer(s) so serviced shall be deemed a violation by all, and the Utility may take such action against all such Customers as could be taken against a single Customer. The Utility shall make reasonable efforts to advise all Customers served by the common Service Pipe and Curb Stop of the violation and, where appropriate given an opportunity to cure the violation.

- f. Joint Use of Service Pipe Trench. Joint use of a Service Pipe trench with gas pipe, sewer pipe or other Utility service shall only be performed in accord with Utility Specifications.
- g. Shut Offs. The Customer shall install and maintain on that portion of the Service Pipe located on or within the Premises served two (2) Shut Offs, one on either side of the meter. The Shut Offs shall be of a type acceptable to the Utility. The Utility may use the Shut Off for service, maintenance and other purposes.
- h. Thawing. The Customer shall be responsible for thawing Customer's portion of the Service Pipe, and the Utility shall be responsible for thawing its portion of the Service Pipe.
- i. Allocation of Responsibilities.
- (1) Installation. Installation by the Utility of its portion of a Service Pipe shall be at the Customer's expense. If the Customer elects and the Utility allows the Customer to install the Utility's portion of the Service Pipe, inspection by the Utility shall be at the Customer's expense.
 - (2) Reinstallation. Reinstallation of the Utility's portion of the Service Pipe which, in the opinion of the Utility, is required due to increased demand within the Customer's Premises shall be performed by the Utility at the Customer's expense.
 - (3) Relocation. Any relocation or replacement of the Customer's portion of the Service Pipe shall be approved by the Utility and performed at the Customer's expense.
 - (4) Installation During Winter Months. Any Customer requesting emergency service installation during winter months shall pay all extra expenses incurred by the Utility due to frost and weather conditions, including maintenance of the excavation until final paving is installed.
 - (5) Thawing. When the point at which a Service Pipe is frozen cannot be determined and the Utility is requested by the Customer to thaw the pipe, one-half of the thawing cost shall be paid by the Customer.
 - (6) Shut Offs. Shut Offs shall be provided, installed and maintained by the Customer at Customer's own expense.

SECTION 16.105: PRIVATE MAINS, PRIVATE METERS AND PLUMBING TANKS

- a. Private Mains. The Utility recognizes that there exists within its service area water lines servicing multiple Utility Customers that were installed by private

parties, are not within the public right of way easement area, and are not maintained by the Utility. Customers shall maintain private mains in good repair and cooperate and coordinate with the Utility as may be necessary to ensure that the requirements of this ordinance and the delivery of potable water to Utility's Customers is met.

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- b. Private Meters. Customers may install such Private Meters as Customer desires to monitor water usage. All such Private Meters shall be installed, owned, operated and maintained by Customer.
- c. Maintenance of Plumbing. Customers shall maintain the plumbing and fixtures within their Premises in good repair, free from leaks and protected from freezing.
- d. Fees and Expenses. All fees and expenses associated with Private Mains, Private Meters and plumbing and fixtures shall be Customer's responsibility.

SECTION 16.106: BACKFLOW PREVENTION

- a. Prevention.
 - (1) The Customer shall protect against the possibility of Backflow between the public water supply and any plumbing, fixture, device, or appliance by furnishing and installing a Backflow Prevention Device, in accordance with Utility Specifications with the degree of potential hazard in accordance with regulations adopted by the N.H. Department of Environmental Services or any other regulating agency.
 - (2) Customers with presently installed Backflow prevention devices that do not meet the requirements of this Ordinance and Utility Specifications may continue to use nonconforming Backflow Prevention Devices provided they satisfactorily protect the Utility system whenever the nonconforming device is moved from the present location and requires more than minimum maintenance and there is otherwise a hazard to Utility's potable water supply, the Backflow prevention device shall be replaced by a device meeting current requirements.
 - (3) The Backflow prevention device shall be installed on the Service Pipe at or near the property line or immediately inside the building being served, but in all cases before the first branch line leading off the Service Pipe. All water entering the Premises shall pass through the protective device in accordance with Utility Specifications.
- b. Inspection, Testing and Repair. The Customer shall, in accordance with Utility Specifications, periodically inspect and test the Backflow Prevention Device.
- c. Fees and Expenses. The purchase, installation, maintenance, inspection and testing of the Backflow Prevention Device shall be at the Customer's expense and in accord with Utility Specifications.

SECTION 16.107: METERS

- a. Ownership, Installation and Maintenance. All water service shall be metered by the Utility, and the meter, strainer, and Outside Reader shall be owned, installed and maintained by the Utility.
- b. Location and Placement of Meters.
- (1) Location. The meter shall be located at the point of entry to the Customer's Premises.
 - (2) Placement. The Customer shall provide a clean, dry and warm place, always free from debris, for the installation and placement of the meter. The meter shall be placed in accordance with Utility requirements, either special or general, and in a location which may be safely and easily accessed by a person in an upright position for the purpose of reading, maintaining and changing the meter. In no case shall a meter be placed in an open or concealed area beneath a floor and, if a meter is so placed, the Utility may require the Customer to remove and place the meter in accordance with the requirements of this ordinance.
- c. Meter Specifications.
- (1) Installation. Meters shall be installed according to Utility Specifications available at the Utility office. The size of the meter shall be determined by the Utility after a review of the information submitted by the Customer on the service application data form.
 - (2) Bypass. A properly valved and sealed Bypass shall be provided by the Customer around all meters larger than two (2) inches. The Bypass shall be metered. The Bypass shall not be used or tampered with by the Customer for any reason.
- d. Outside Reader. All meters shall be equipped with an Outside Reader. The Outside Reader shall be installed at a place on the Premises acceptable to the Utility. Unless the Utility authorizes an alternative location, the Outside Reader shall be placed on the Customer's Premises near or adjacent to the driveway or walkway.
- e. Private Meters. If Customer desires Private Meters, they shall be furnished, installed, maintained and read by the Customer for Customer's own purposes.
- f. Testing. Meters will be tested before installation. Thereafter all meters will be tested in accordance with guidelines set forth by the American Water Works Association.
- g. Allocation of Responsibilities.
- (1) Meter. The meter and its installation shall be at the Customer's expense.

- (2) Meter Repairs. Meter repairs or replacements necessitated by ordinary wear will be performed by the Utility at no expense to Customer; those caused by freezing, hot water, or by any other reason shall be paid by the Customer in accordance with the applicable rate schedule.
- (3) Outside Reader. Upon application for service, the Customer shall pay a fee for the cost of providing and installing the Outside Reader. The Customer shall be responsible for the repair or replacement of damaged Outside Readers, and may be billed by the Utility for labor, material and equipment costs associated with such repair or replacement.
- (4) Meter Box. The construction or relocation of a meter box or vault, whether performed by the Customer or the Utility, shall be at Customer's expense. Maintenance of the meter box shall be the responsibility of the Customer.
- (5) Meter Removal. When the Utility requires the Customer to remove a meter from an open or concealed area beneath a floor, the removal and replacement of the meter shall be performed by the Customer at Customer's expense within a reasonable period of time as determined by the Utility.
- (6) Right of Access. The Utility shall have the right of reasonable access to the Customer's Premises to set, read, remove, replace, or repair meters and enforce this ordinance.

SECTION 16.108: INSPECTIONS

The Utility may, with such notice as may be reasonable in the circumstances, have access to and inspect Service Pipes, private mains, meters (Utility's and private) plumbing and all other equipment and facilities connected to the Utility's system to prevent the possibility of contamination of the Utility's potable water supply, to prevent waste or fraudulent use, and to otherwise ensure compliance with all components of this Ordinance.

SECTION 16.109: PROHIBITED USE

- a. Fraudulent Use. Evidence of the existence of an unsealed Bypass, the Bypassing of water around meters, or the unauthorized piping or selling of water, or any other use of un-metered water except for fire extinguishing purposes shall be deemed fraudulent use.
- b. Tampering. All Curb Stop/Curb Shut Off, valves, hydrants, meters, or other property of the Utility shall not be opened, closed, or tampered with in any way by any person not authorized to do so by the Utility.
- c. Cross Connections. No Cross Connection shall be permitted between the public water supply and any other water supply, or between the public water supply and any plumbing fixture, device, or appliance capable of contaminating the public water supply unless the connection is protected at the metering point by a

Backflow prevention device as required by this ordinance. The connection shall be approved by the Utility and the New Hampshire Department of Environmental Services, and shall satisfy in all respects the laws of the State of New Hampshire.

- d. Electrical Ground Wires. No ground wires from any source whatsoever shall be attached to any water pipe inside or outside the Premises served, unless the wires are attached to the Service Pipe at its entrance to the Premises and on the street side of the meter.
- e. Fees and Expenses.
 - (1) Tampering. Any damage to the Curb Stop/Curb Shut Off, valve, hydrants, meters, or other property of the Utility which the Utility determines is caused by tampering caused by the Customer (or Customer's employees, contractors or agents) shall be repaired by the Utility at the Customer's expense.
 - (2) Fraudulent Use. Upon discovery by the Utility of fraudulent use by a Customer, the Customer shall be charged not less than double rates for such quantities of service as the Utility shall estimate to have been fraudulently used.
- f. Civil Penalty. Any person who violates this Ordinance shall be subject to a civil penalty not to exceed \$10,000 per day of such violation.

SECTION 16.110: UTILITY RIGHTS AND LIABILITIES

- a. Service Generally. The Utility will conform to all requirements of the New Hampshire Department of Environmental Services for construction and operation of its water system as pertains to sanitation and potability of the water.
- b. Waste and Improper Use. The Utility shall determine what constitutes waste or improper use and reserves the right to restrict the same when necessary. The Utility assumes no responsibility for any water fixtures or for the use or waste of water on any metered Premises. Delivery of a courtesy notice to a Customer regarding a possible leak or wasteful condition on the metered Premises shall not imply any such care or responsibility, nor shall any omission or delay by the Utility in sending a courtesy notice create any liability.
- c. Conservation. When necessary to conserve supply, the Utility reserves the right to restrict or prohibit the use of water.
- d. Hot Water Tanks. Service will be provided to direct pressure hot water tanks or appliances at the Customer's risk, and the Utility shall not be responsible for any damage caused by the Customer's failure to provide a thermal expansion device or pressure relief valve in the pipe system.

- e. Maintenance of Plumbing. In no event shall the Utility be responsible for any damage caused by water escaping from plumbing and fixtures.

- f. Refusal of Service to Customers Contemplating Building. The Utility reserves the right to refuse water service to any Customer that contemplates building until such time as the Utility shall decide that there is sufficient progress to show that the building will be completed and occupied and that adequate water service, as determined by the Utility, can be supplied.

- g. Private and Public Fire Protection. The Utility will endeavor to maintain reasonable private and public fire service, but does not guarantee adequate service or any aspect of such service.

- h. No Liability. The Utility shall not be responsible for any direct, indirect or consequential damage caused by: service interruption or pressure loss in the Main Pipes or Service Pipes; dirty, discolored or contaminated water; or other failure to provide service.

- i. Electrical Ground Wires. The Utility shall not be responsible for the installation of a water pipe grounding system or for the maintenance or integrity or continuity of any grounding attachment or connection made to a water pipe system.

SECTION 16.111: DISCONTINUATION OF SERVICE

- a. Discontinuation by the Utility Without Notice. Service may be discontinued by the Utility without notice for any of the following reasons:
 - (1) Misrepresentation by the Customer in the application for service or other fraudulent procurement of service.
 - (2) Use of water for purposes other than described by the Customer in the application for service.
 - (3) Willful waste of water.
 - (4) Fraudulent use of or tampering with Utility property.
 - (5) Abandonment of the Premises by the Customer.
 - (6) Cross Connection or unauthorized connection to the Utility's Service Pipe or Main Pipe with any other fixture or supply source in violation of this Ordinance or Utility Specifications.
 - (7) Failure to maintain plumbing and fixtures in good repair that could, in the Utility's judgment, result in contamination of the potable water supply or damage or injury to the Utility's system, persons or property.

- (8) Failure to install, maintain, or repair a Backflow prevention device within the period specified by the Utility.
 - (9) Failure to prevent contamination of potable water.
 - (10) Unauthorized use of private fire protection system.
 - (11) Any other use of the water or the Utility system that could cause an imminent danger or loss to the Utility's system or supply or the persons and property of others.
- b. Discontinuation by the Utility With Notice. Service may be discontinued by the Utility with written notice postmarked at least twelve (12) days in advance of the proposed discontinuation date for any of the following reasons:
- (1) Refusal of reasonable access to the Customer's Premises for inspection;
 - (2) Any refusal or neglect to comply with this ordinance or with Utility Specifications;
 - (3) Customer's failure to comply with terms of payment arrangement entered into between the Customer and the Utility; and
 - (4) For such other reasons as the Utility may designate in writing.
- c. Discontinuation for Non-Payment of Utility Bills. Service may be discontinued by the Utility for non-payment of any Utility bill, including late payment charges, if all of the following conditions are met:
- (1) If the Customer has not paid the bill in full within 30 days from the postmark date on the bill;
 - (2) The Utility has provided the Customer with written notice of its intention to discontinue service, postmarked at least twelve (12) days in advance of the proposed discontinuation date for residential Customers or, in the case of non-residential Customers, at least five (5) days in advance of the proposed discontinuation date; and
 - (3) Prior to the date of notice of discontinuance, the Utility has not received payment in full.
- d. Conference Prior to Discontinuation. A Customer may request a conference with the Utility prior to the proposed date of service discontinuation. Such conference shall be held in accordance with the Utility's standard procedure.
- e. Restoration of Service. If service has been discontinued, the Utility shall restore service promptly upon the Customer's request when the cause of discontinuation

has been removed provided that the Customer has paid the restoration charges required under the rate schedule.

SECTION 16.112: BILLING AND DEPOSITS

a. Billing.

- (1) The Utility shall periodically bill Customers for water service in accordance with the applicable rate schedule.
- (2) If a meter is found not to register, a bill for the period of non-registration shall be estimated based upon consumption recorded prior or subsequent to the period of non-registration, and any other pertinent information supplied by the Customer or known to the Utility.
- (3) In the event that the Utility cannot readily and safely gain access to the meter for the purpose of obtaining the meter reading, the Utility shall make its best estimate of the consumption which might be registered by the meter since the last reading date. The estimate shall be as valid as if the meter reading had actually been determined, and the Customer shall be billed according to the estimate for the period of non-registration. However, there shall be no more than two (2) consecutive estimated bills. After the second estimated bill has been prepared, the Customer shall be required to provide safe and ready access to the meter in accordance with this Ordinance.

b. Payment.

- (1) The Customer shall make payment for all water registered by the water meter regardless of leaks or the manner in which the water was used.
- (2) Bills shall be due and payable upon presentation to the Customer. Payment shall be made at the Tax Collector's Office or at such other offices as the Utility may designate to accept payment.
- (3) Any payment received by the Utility later than thirty (30) days after the due date shall be subject to a late payment charge in accordance with the Fee Schedule.
- (4) The Customer shall be responsible for all obligations including payment for service regardless of any lease, contract, agreement, or otherwise between Customer and another person or tenant purporting to assign or transfer the obligation to pay. The City's acceptance of any third party payment shall not constitute a waiver of Customer's responsibility for payment.

c. Non-Payment.

- (1) Service may be discontinued in accordance with this Ordinance for non-payment of any bill.
- (2) Failure to receive a bill shall not discharge the Customer of the obligation of payment or the consequence of non-payment.

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- (3) When a Customer cannot pay a bill in full, the Utility shall continue to serve the Customer if the Customer pays a reasonable portion of the bill as determined by the Utility and the Customer agrees to pay the balance of the outstanding bill in reasonable installments. All payment agreements shall be confirmed in writing and copies will be kept by the Utility and the Customer.
- (4) Whenever a check or draft presented for payment of service is not accepted by the institution on which it is written, a charge shall be imposed by the Utility as specified in the applicable rate schedule.
- (5) All water charges shall become a lien upon real estate as provided by state law.
- (6) Interest and late fees for non-payment shall be assessed as set forth in the rate schedule.
- d. Deposits. The Utility may require a satisfactory cash deposit under the following circumstances: (1) before rendering service to any new Customer; (2) before rendering continued service when the Customer has demonstrated a lack of responsibility in making service payments or committed other acts harmful to the Utility or (3) when the Customer has requested that the Utility provide a special service. The deposit, less any amount due the Utility, shall be refunded either upon termination of service or when the Utility determines, in its sole discretion, that satisfactory credit relations have been established.
- e. Change of Address or Ownership. The Customer shall provide the Utility with prior notice of any change in ownership or change in billing address of a metered Customer Unit. Upon such notice, the Utility shall determine a meter reading and render the Customer a bill for service up to the date of transfer.
- f. Service Discontinuation and Restoration. When the Utility is requested by the Customer to connect or disconnect service for any reason, the Customer shall pay a fixed charge as specified in the applicable rate schedule for such service if performed during the Utility's Regular Working Hours or, if performed outside the Utility's Regular Working Hours, the Customer shall pay all costs incurred by the Utility in providing such service.
- g. Request by Customer for Discontinuation of Service. The Customer shall provide the Utility with reasonable notice of Customer's intention to have service discontinued and shall be responsible for all charges associated with service until expiration of such service.
- g. Seasonal Use: When, due to seasonal use, the Customer requires the Utility to remove and set the meter, the Customer shall be billed for such service and for the resetting and reinstallation of the meter as specified in the Rate and Fee Schedule. The Customer shall be billed for water used in accordance with the Rate and Fee Schedule.

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SECTION 16.113: LAWN SPRINKLER SERVICE

- a. Requirements and Specifications.
- (1) Service. A lawn sprinkler system shall be served through the Customer's domestic service. If the existing pipe capacity is insufficient, a new Service Pipe shall be installed upon reapplication by the Customer.
 - (2) Water Use. Sprinkler heads shall be limited to a maximum water use of forty (40) gallons per minute per zone.
 - (3) Timing. Sprinkler Zones shall be controlled by an automatic time clock or similar device which shall limit the operation of the sprinkler system from 10:00 p.m. to 5:00 a.m.
 - (4) Backflow Prevention. The sprinkler system shall be equipped with a Backflow Prevention Device which meets the requirements of this Ordinance. If the Utility discovers an existing sprinkler system which is not equipped with a Backflow prevention device, the Utility may require the Customer to provide and install the device.
 - (5) Metering. Except as provided under the sewer ordinance for single family residences, separate meters for irrigation are not available unless in existence at the effective date of this Ordinance.
 - (6) Installation and Maintenance. Installation and maintenance shall be in accord with Utility Specifications.
- b. Fees and Expenses.
- (1) The purchase, installation and maintenance of the Backflow prevention device shall be at the Customer's expense.

SECTION 16.114: AIR CONDITIONING

In order to encourage the conservation of water, all water-cooled air conditioning and refrigeration equipment with a total installed cooling capacity in excess of three (3) tons shall include a water conserving device that limits the actual water used for cooling to 10% of the usual amount required for service to the Premises without use of the equipment.

SECTION 16.115: HYDRANTS

- a. Prohibited Use. Public or private hydrants shall not be used for any purpose other than to extinguish fires or for such other purposes as may be authorized by the Utility. In no case shall hydrants or any adaptor installed on a hydrant be operated by any person other than the Utility or its duly authorized agent.
- b. Permitted Use. Where use of water from a hydrant is requested for purposes other than to extinguish fires, and written permission is granted by the Utility, an adapter shall be installed on the hydrant by the Utility. All hydrants, whether public or private, connected to the Utility system shall be of a type approved by the Utility.
- c. Fees and Expenses.
 - (1) The hydrant user shall be required to make a cash deposit as specified by the Rate and Fee Schedules. Deposits made for adapters shall not be credited with any interest.
 - (2) If there is no damage to the hydrant or the adapter, the charge for water will be deducted from the deposit and the balance, if any, returned. If the Utility discovers any damage to the hydrant or adapter, the Utility shall make the necessary repairs at the expense of the hydrant user.
 - (3) The hydrant user shall be charged for either the volume of water used, or on a per diem basis as determined by the Utility, and for setting and removal of the adapter.

SECTION 16.116: PRIVATE FIRE PROTECTION

- a. Application. The Customer shall submit to the Utility a written application for private fire service. The application shall be accompanied by site and plumbing plans of the proposed fire system and a written statement indicating the size and all specific design features.
- b. Pipe Installation. The fire Service Pipe located within the public right-of-way or Utility easement shall be installed and maintained by and shall be the property of the Utility. The Customer may, subject to prior approval and on-site inspection by the Utility, install the Utility's portion of the fire Service Pipe. From the limits of the public right-of-way or Utility easement to the Premises served, the fire Service Pipe shall be owned and maintained by the Customer.

- c. Maintenance. Customer shall be responsible for all maintenance and testing by a qualified person (to be conducted at least annually) of private fire protection systems and shall keep all records of such maintenance and testing for a minimum of three (3) years. Customer shall produce such records of maintenance and testing upon request of the Utility. The Utility shall be given at least 3 business days prior notice of the test date and time and reserves the right to view the test.
- d. Contamination. Where a standpipe, reservoir, pump house or tank is proposed in connection with private fire service, the Customer shall submit complete fire system plans to the Utility for prior approval. The connection shall be protected by a Backflow prevention device as required by this Ordinance.
- e. Access and Utility Inspection. In the construction or installation of such appurtenances as standpipes, reservoirs, pump houses, or tanks, the Customer shall provide a means of easy access to the interior of the appurtenance to permit inspection by the Utility or cleaning by the Customer as required by the Utility. During such construction or installation, the Customer shall connect to the appurtenance a separate pipe to periodically draw off water for sampling and inspection. Such draw off pipe shall not be directly connected with a sewer, drain, or outlet in any way which is not permitted by this Ordinance, or may permit contamination of the public water supply.
- f. Fees and Expenses.
- (1) The Customer shall pay a charge for private fire service as specified in the Rate and Fee Schedule.
 - (2) The Customer shall maintain in good repair all fire service appurtenances located on the Premises at Customer's expense.
 - (3) Installation by the Utility of its portion of the fire Service Pipe shall be at the Customer's expense. If the Customer elects to install the Utility's portion of the fire Service Pipe, on-site inspection by the Utility shall be at the Customer's expense.
 - (4) Any costs associated with the Utility's presence during private fire service testing by the Customer or insurance inspector may be charged to the Customer or to the insurance inspector.

SECTION 16.117: MAIN PIPE EXTENSIONS

- a. Main Pipe Installation.
- (1) All petitions for Main Pipe extensions shall be submitted to, and be subject to the approval of, the Utility.
 - (2) Each petition shall be accompanied by an application fee for the Main Pipe extension as specified in the Rate and Fee Schedules.

- (3) Main Pipe extensions shall be owned and maintained by the Utility and shall be installed by the Utility or its authorized agent.
- (4) Installation and construction of Main Pipe extensions shall continue at the discretion of the Utility as frost and weather conditions permit.
- (5) Prior to installation, sub-divisions shall be approved by the local planning authority, and the right-of-way in which the Main Pipe is to be installed shall be laid out, and lines and grades established.
- (6) The size of the Main Pipe to be installed shall be determined by the Utility.
- (7) Main Pipe extensions shall typically be installed along the frontage of the Petitioner's Premises or, in the case of corner lots, along the frontage abutting the public right-of-way in which the Service Pipe is to be installed.
- (8) Final Approval of the City of Portsmouth Planning Board of a site review application for a Main Pipe extension shall constitute approval from the Utility for such extension.

b. Petitioners.

- (1) Prior to installation, Petitioner (or Petitioners as applicable) shall sign a petition which shall be presented to the Utility for approval. If the Utility approves the petition, each Petitioner shall enter a contract for the Main Pipe extension that shall be binding on the Petitioner's heirs, assigns, successors, executors, and administrators. The contract shall create a lien upon each Petitioner's Premises as provided by state law.
- (2) Each Petitioner shall be charged its proportionate share of the entire cost of installing a Main Pipe and each Petitioner shall deposit with the Utility the estimated amount of Petitioner's proportionate share of the extension cost prior to the installation. Final billing will be based on actual installation cost.
- (3) A Petitioner's proportionate share shall be calculated by dividing the final bill by the total number of properties (whether developed or undeveloped) having frontage along the right of way in which the Main Pipe extension is to be installed.

- c. Charges to Non-participating Abutters. An Abutter who does not participate in a petition for the Main Pipe extension to which the Abutter is connecting shall be required to pay to the Utility, prior to connecting to an installed Main Pipe and in addition to other applicable charges, an amount equal to that Abutter's proportionate share of the original extension costs, adjusted annually by the Engineering News Record (ENR) Construction Cost Index.

- d. Connection to Main Pipes. No connection shall be made to any Main Pipe or to any private main without prior written authorization by the Utility after application by the Customer. Connection to privately owned mains, if authorized by the Utility, shall be installed in accordance with plans and specifications prepared by the Customer and approved by the Utility. After completion of such projects, the Utility may require the Customer to prepare a set of as built plans showing the location, size and depth of all water facilities.
- e. Reservation of Ownership by Utility. Where the Utility elects to maintain ownership of a Main Pipe located on private property, the Customer shall grant the Utility an easement sufficient to provide access by the Utility to the Main Pipe and Utility-owned appurtenances.
- f. Refusal to Install a Main. The Utility reserves the right to refuse or disallow the installation of a Main Pipe extension where it determines that service demand does not warrant the cost of installation, where there are environmental or other impacts unacceptable to the Utility, or where the extension will tend in any way to constitute discrimination against other Utility Customers.

SECTION 16.118: RATES, FEES AND CHARGES

All rates, fees and charges including the Capacity Improvements Multiplier shall be established by the City Council in accord with its customary policies and practices.

SECTION 16.119: SEVERABILITY

If any provision of this Ordinance is held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in force and effect.

ARTICLE II: REGULATION OF DISCHARGES INTO STORM WATER DRAINAGE SYSTEM

SECTION 16.201: – PURPOSES

This Regulation of Discharges into the Storm Drainage System (the "Ordinance") is intended to: provide for the health, safety, and general welfare of the citizens of the City of Portsmouth; provide additional protection to local natural resources; and facilitate municipal compliance with federal and state environmental laws and regulations

SECTION 16.202: – DEFINITIONS

For the purpose of this Ordinance, the terms listed below are defined as follows:

- A. Discharge: "Discharge" includes any spilling, leaking, pumping, pouring, emptying, dumping, disposing or conveying.
- B. Enforcement Authority: "Enforcement Authority" means the Director of Public Works, or his or her designee, who shall administer, implement, and enforce the provisions of this Ordinance.
- C. Person: "Person" means any individual, firm, corporation, trust, partnership, municipality, State agency, Federal agency or other legal entity.
- D. Pollutant: "Pollutant" means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.
- E. Premises: "Premises" means any building, lot, parcel of land, parking areas or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the City from which Discharges into the Storm Drainage System are or may be created, initiated, originated or maintained.
- F. Storm Drainage System: "Storm Drainage System" means the publicly owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures. The privately owned and maintained service pipe extending from the Premises to the municipally maintained main pipe, culvert, manhole or other device in the public right of way shall not be considered part of the Storm Drainage System.

- G. Storm Water: "Storm Water" means any natural precipitation including rain storm water runoff, snowmelt runoff, and surface runoff and drainage; "Stormwater" has the same meaning as "Storm Water."

SECTION 16.203: – APPLICABILITY

This Ordinance shall apply to all Discharges into the Storm Drainage System.

SECTION 16.204: – ALLOWED DISCHARGES

The following Discharges are allowed:

- A. Storm Water as defined.
- B. Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)); uncontaminated pumped ground water; flows from uncontaminated springs; lawn watering runoff; flows from riparian habitats and wetlands;
- C. Uncontaminated flows from foundation drains; air conditioning and compressor condensate; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains;
- D. Residual street wash water (where spills/leaks of toxic or hazardous materials have not occurred, unless all spilled material has been removed and detergents are not used);
- E. Hydrant flushing and fire fighting activity runoff; water line flushing and discharges from potable water sources;
- F. Discharges specified in writing by the Enforcement Authority as being necessary to protect public health and safety;
- G. Dye testing, with written notification to the Enforcement Authority prior to the time of the test;
- H. Individual residential car washing; or
- I. A discharge permitted pursuant to:
 - 1. A National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit issued by the Environmental Protection Agency or by the Department of Environmental Services including a NPDES Industrial Permits as defined in 40 CFR, Section 122.26(b)(14); or
 - 2. A waste discharge license or order issued to the discharger and administered under the authority of the U.S. Environmental Protection Agency ("EPA") or the Department of Environmental Services.

SECTION 16.205: – PROHIBITED DISCHARGES

- A. All Discharges not allowed under Section 16.204 are prohibited. This includes without limitation all Pollutants defined in Section 16.202. Discharges may be prohibited notwithstanding that the City may have approved the connections, drains or conveyances by which a Person Discharges into the Storm Drainage System. Persons therefore have a responsibility for ensuring compliance with this Ordinance regardless of prior City approvals.
- B. The construction, use, maintenance or continued existence of illicit or prohibited connections to the storm drain. This prohibition expressly includes, without limitation, connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

SECTION 16.206: - PRIVATE DRAIN STRUCTURES

The Enforcement Authority recognizes that there exist private drainage structures on both public and private property. The owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

SECTION 16.207: – ACCESS BY PERMIT ONLY

- A. No Person shall connect to the Storm Drainage System unless the City has issued a permit for such connection.
- B. Any Person wishing to connect to the Storm Drainage System (the Applicant) shall make application on a form furnished by the City. The permit application shall be supplemented by any plans, specifications, engineering studies or other information considered pertinent in the judgment of the Enforcement Authority. Such supplemental information will be supplied at Applicant's cost.
- C. The Applicant shall pay such application fee, annual permit fee and inspection fees, as determined in accord with Chapter 1, Article XVI of the City of Portsmouth Ordinances.
- D. The Enforcement Authority shall review the service data to determine whether it has sufficient capacity to provide storm water drainage service to the Applicant.
 - (1) If the Enforcement Authority determines that it does not or will not have sufficient capacity to serve it shall not be obligated to provide the service. The Enforcement Authority may, at its option and discretion, enter into such agreements with Applicant to make readiness to serve improvements at Applicant's expense.

- (2) If the Enforcement Authority determines that it has sufficient capacity to provide adequate service, the Enforcement Authority will approve the service and assess a permit fee.
 - (3) Service shall not be provided until all required deposits or payments have been made by the Applicant.
- E. All costs and expenses incident to the installation and connection to the Storm Drainage System shall be borne by the Applicant. The Applicant shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the connection to the Storm Drainage System.
 - F. The method of connection the Storm Drainage System shall be acceptable to the Enforcement Authority and shall conform to the requirements of the building and plumbing code, Public Works Department specifications or to other applicable rules and regulations.
 - G. The Applicant shall notify the Enforcement Authority when the connection to the Storm Drainage System is ready for inspection and connection to the Storm Drainage System. The connection shall be made under the supervision of the Enforcement Authority or his/her designee. No back-filling shall occur prior to inspection.
 - H. All excavations for connections to the Storm Drainage System shall be adequately guarded with barricades and lights and so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City. Prior to any excavating on any public property, an excavation permit must be obtained from the Department of Public Works. This provision does not relieve any Person from any applicable state or federal laws or regulations relating to excavation.
 - I. Connection to the Storm Drainage System is at the Person's own risk.
 - J. Any Person connected to the Storm Drainage System shall be responsible for the ownership and maintenance of the service pipe extending from the Premises to the Storm Drainage System and all equipment and devices as approved by the Permit.

SECTION 16.208: - SUSPENSION OF ACCESS TO THE STORM DRAINAGE SYSTEM

- A. When it is necessary to stop an actual or threatened prohibited Discharge, the Enforcement Authority may issue an order to any Person to suspend Discharge to the Storm Drainage System. If the Person fails to comply with an order, the Enforcement Authority may take such steps within the public way or on public property as deemed necessary to prevent or minimize the Discharge. This may include physically suspending access to the Storm Drainage System. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures to physically block the Discharge to prevent or minimize a non-permitted Discharge to the Storm Drainage System.

- B. The Enforcement Authority may physically suspend Discharge access to the Storm Drainage System without prior notice to the Person Discharging when:
1. it is not practical or reasonable to give such notice; and
 2. it is necessary to stop an actual or threatened non-permitted discharge that presents or may present an imminent and substantial danger to the environment, or to the health or welfare of persons, or to the Storm Drainage System or the discharge may cause the City to violate the terms of its environmental permits.
- C. Any drain or conveyance that has not been documented in plans, maps or equivalent and which may be connected to the Storm Drainage System shall be located by the owner or occupant of the property upon receipt of written notice of violation from the Enforcement Authority requiring such locating to be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm drain, sanitary sewer system or other sewer system or other discharge point to be identified. Results of the investigations are to be documented and provided to the Enforcement Authority.

SECTION 16.209: - MONITORING OF DISCHARGES

In order to ensure compliance with this Ordinance, the Enforcement Authority may enter upon and inspect any Premises subject to this Ordinance with the consent of the Premises' owner, occupant, tenant, agent, or legal representative. The Enforcement Authority shall have the power to inspect the Premises and connections thereon to the Storm Drainage System and to conduct monitoring, sampling and testing of the Discharge to the Storm Drainage System as often as may be necessary to determine compliance with this ordinance. The Enforcement Authority shall have the authority to require that discharges into the Storm Drainage System be monitored at owner's cost. Failure of any Person to consent to a request for inspection may result in suspension of access to the Storm Drainage System and enforcement action under this ordinance.

SECTION 16.210: - PROTECTION FROM DAMAGE

No Person shall maliciously, willfully or negligently break, damage, destroy, deface or tamper with any pipe, drain, equipment or other part of the Storm Drainage System.

SECTION 16.211: – ENFORCEMENT AND FINES

- A. Notice of Violation. Whenever the Enforcement Authority believes that a Person has violated this Ordinance, the Enforcement Authority may order compliance with this Ordinance by written notice of violation to that Person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
1. Disconnection of the Premises from the Storm Drainage System;

2. The cessation of discharges, practices, or operations in violation of this Ordinance;
3. At the Person's expense, the abatement of non-allowed Discharges and the restoration of any affected property; and/or
4. The payment of fines, of the City's remediation costs, and of the City's reasonable administrative costs and attorneys' fees and costs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed.

B. Penalties/Fines/Injunctive Relief.

1. Any Person who knowingly violates the provisions of this Ordinance shall be guilty of a misdemeanor, and on conviction thereof may be fined in an amount not to exceed \$1,000. Each day in which any such violation shall continue shall be deemed a separate offence.
2. Any Person who violates this Ordinance shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the City for violation of federal and state environmental laws and regulations caused by or related to that Person's violation of this Ordinance. This responsibility shall be in addition to any penalties, fines or injunctive relieve imposed under this Section.
3. Any Person who violates this Ordinance may be subject to orders for injunctive relief and shall be responsible for the City's attorney's fees and costs related thereto if injunctive relief is ordered by the Court.

C. Consent Agreement. The Enforcement Authority may enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this Ordinance, for the purposes of eliminating violations of this Ordinance, and of recovering fines, costs and fees without court action.

D. Ultimate Responsibility of Discharger. The standards set forth herein are minimum standards; therefore this Ordinance does not intend nor imply that compliance by any Person will ensure that there will be no contamination, pollution, nor authorized discharge of Pollutants into waters of the U.S. caused by such Person. This ordinance shall not create liability on the party of the City, or any officer agent or employee thereof for any damages that result from any Person's reliance on this Ordinance or any administrative decision lawfully made hereunder.

E. Restoration/Remediation/Losses. The Enforcement Authority shall also have the right to levy an assessment of costs related to the restoration or impacted property,

the remediation of non-permitted discharges and such other quantifiable losses and damages caused by any non-permitted Discharge.

- F. Nothing in this ordinance precludes the City's Zoning Enforcement Officer from exercising concurrent enforcement powers arising from the City's planning, subdivision, site review and zoning regulations as they may relate to Storm Water.

SECTION 16.212: - SEVERABILITY

The provisions of this Ordinance are severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this Ordinance.

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