

**TOWN OF SEVERANCE**

**ORDINANCE NO. 2024-09**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF SEVERANCE, COLORADO, AMENDING CHAPTERS 4 AND 13 OF THE SEVERANCE MUNICIPAL CODE TO CODIFY THE STORMWATER UTILITY FEE AND TRANSPORTATION UTILITY FEE AND TO CREATE SPECIAL FUNDS THEREFOR; AND TO ENACT BILLING, PAYMENT, COLLECTION, ENFORCEMENT, AND LIEN PROCEDURES PERTAINING TO UTILITY FEES AND CHARGES**

**WHEREAS**, Section 9.01 of the Town of Severance Home Rule Charter (“Charter”) authorizes the Town to operate public works, utilities and assets, equipment, and everything in relation to or in connection therewith, in whole or in part, for the use of the Town, its inhabitants, and those it serves; and

**WHEREAS**, Section 9.04 of the Charter provides that the Town Council shall by resolution establish rates, rules, and regulations for services provided by Town-owned utilities; and

**WHEREAS**, on December 8, 2020, the Town of Severance Board of Trustees approved Resolution No. 2020-24R adopting a monthly “stormwater fee” that is collected on Town utility bills or by separate bills to owners and occupants of real property in the Town and which collectively provides for the operation and maintenance of the Town’s stormwater service and system, which consists of the collection of pipes, ditches, detention ponds, and other conveyances that carry outdoor water runoff untreated into local waterways; and

**WHEREAS**, on December 12, 2023, the Town Council approved Resolution No. 2023-15R, establishing a monthly “transportation utility fee” to defray the Town’s costs inherent in administering the Town’s street maintenance program, including but not limited to any and all costs related to maintaining or improving town streets; repairs, renewal, resurfacing, replacement, and reconstruction, resurfacing of existing streets; the repair, replacement or addition of curb and gutters; improving storm drainage; updating ADA access; repair or replacement of the entire existing street structural section; repair or replacement of existing street shoulders, pavement markers, striping and other street markings; repair or replacement of existing channelization devices; adjustment of existing utilities to match finish grades; and any other related work within existing streets; and

**WHEREAS**, the Town Council desires to amend the Severance Municipal Code to codify the stormwater utility fee and transportation utility fee; and

**WHEREAS**, the Town Council desires to amend Article 2, “General and Special Funds,” of Chapter 4, “Revenue and Finance,” to create funds for the stormwater and transportation utility fees and charges; and

**WHEREAS**, the Town Council further desires to amend Article 1, “Utility Services,” of Chapter 13, “Municipal Utilities,” to address the establishment, billing, collection, and enforcement of the Town’s stormwater and transportation utility fees and charges; and

**WHEREAS**, this ordinance is enacted pursuant to the Town of Severance’s home rule authority under Article XX, § 6 of the Constitution of the State of Colorado, and pursuant to the Town of Severance’s police powers, in order to safeguard and preserve the public health, safety and welfare of the community.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SEVERANCE, COLORADO, AS FOLLOWS:**

Section 1. Article 2, “General and Special Funds,” of Chapter 4, “Revenue and Finance,” of the Severance Municipal Code is hereby amended to add two new sections numbered 4-2-70 and 4-2-80 to read as follows:

**Sec. 4-2-70. - Stormwater Utility Fund created.**

There is hereby created a special fund, to be known as the stormwater utility fund, and all fees and charges for stormwater utility costs and services shall be deposited and expended from such fund. No part of the fund may be transferred to any other fund or used for purposes other than operations and maintenance of the stormwater utility. Other revenue sources may also be used for stormwater utility maintenance. Amounts in the stormwater utility fund may be invested by the Town in accordance with state law. Earnings from such investments shall be dedicated to the stormwater utility fund.

**Sec. 4-2-80. – Street (Transportation Utility) Fund created.**

(a) All transportation utility fees received shall be deposited into the street fund or other fund dedicated to the operation and maintenance of the Town’s street system. Other revenue sources may also be used for street maintenance. Amounts in the street fund may be invested by the Town in accordance with state law. Earnings from such investments shall be dedicated to the street fund.

(b) The street fund shall not be used for other governmental or proprietary purposes of the Town, except to pay for an equitable share of the Town’s overhead costs including accounting, management and other costs related to management and operation of the street maintenance program. Engineering design, pavement evaluation, construction management, and other related costs, including project advertisements for bid, in the implementation of the street maintenance projects shall also be considered as being used for street maintenance.

Section 2. Article 1, “Utility Services,” of Chapter 13, “Municipal Utilities,” of the Severance Municipal Code is hereby amended to read as follows:<sup>1</sup>

## **ARTICLE 1 Utility Services**

### **Sec. 13-1-10. Applicability.**

The provisions of this Article shall be applicable to all Town utilities, including potable water, sanitary sewer, nonpotable water, stormwater, and transportation utilities.

### **Sec. 13-1-20. Definitions.**

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

*[The following definitions shall be added to this section. All other existing definitions in this section shall remain the same and are unchanged by this ordinance.]*

*Occupied unit*, for purposes of the transportation utility fee, means any structure or any portion of any structure occupied for residential, commercial, industrial, or other purposes. For example, in a multifamily residential development, each dwelling unit shall be considered a separate occupied unit when occupied, and each retail outlet in a shopping mall shall be considered a separate occupied unit. An occupied unit may include more than one structure if all structures are part of the same dwelling unit or commercial or industrial operation. For example, an industrial site with several structures that form an integrated manufacturing process operated by a single manufacturer constitutes one occupied unit. Property that is undeveloped or, if developed, is not in current use is not considered an occupied unit.

*Responsible party* means the person or persons who by occupancy, ownership, or contractual arrangement are responsible to pay for utility and other services provided to an occupied unit. Unless another party has agreed in writing to pay and a copy of the writing is filed with the Town, the person(s) paying the Town’s water or sewer bill for an occupied unit shall be deemed the responsible party as to that occupied unit. For any occupied unit not otherwise required to pay a Town water or sewer bill, “responsible party” shall mean the person or persons legally entitled to occupancy of the occupied unit, unless another responsible party has agreed in writing to pay and a copy of the writing is filed with the Town. Any person who has agreed in writing to pay is considered the responsible party if a copy of the writing is filed with the town.

*Stormwater utility* means all facilities used for collecting and conducting outdoor water runoff, drainage, and stormwater to, through, and from drainage areas to the points of final outlet including, but not limited to, any and all of the following: pipes, conduits and appurtenant features, detention ponds, canals, ditches, streams, gulches, gullies, flumes,

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<sup>1</sup> Additions to existing text are indicated by underlining. Deletions from existing text are indicated by ~~strikethrough~~.

culverts, bridges, streets, curbs, gutters, pumping stations and other conveyances that carry untreated stormwater into local waterways.

**Sec. 13-1-30. Establishment of rates and fees.**

- (a) The Town Council shall, from time to time, establish user rates for each municipal utility, including but not limited to potable and nonpotable water, sanitary sewer, stormwater, and transportation utilities. Such rates shall be authorized, and amended from time to time, as may be appropriate by ordinance or resolution as set forth in the current fee schedule to this Code.
- (b) The Town Council shall, from time to time, establish a plant investment fee for certain municipal utilities, including but not limited to a sanitary sewer plant investment fee, a water utility plant investment fee, and a potable water plant investment fee. Such fees shall be set forth and amended from time to time as may be appropriate by ordinance or resolution as set forth in the current fee schedule.
- (c) Out-of-Town fees. Utility services to properties outside the boundaries of the Town shall be at the sole discretion of the Town Council, except as otherwise provided by any applicable service agreement between the Town and a special district or property owner(s). Nothing in this Chapter shall be construed as obligating or otherwise requiring the Town to serve with utilities any property outside the corporate boundaries, except as set forth in this Section. In the event utility service is requested outside the Town boundaries and the Town agrees to provide such service, the out-of-Town service rates and fees shall be as authorized and may be amended from time to time as may be appropriate by ordinance or resolution of the Town Council as set forth in the current fee schedule. Nothing in this Section shall prohibit the Town Council from entering into an agreement with any user or group of users to provide out-of-Town utility services at fees deemed to be reasonable by the Town Council pursuant to a written agreement.

**Sec. 13-1-40. Notice of action by resolution.**

At such time as the Town Council takes any action by resolution pursuant to this article, notice of such action shall be sent by mail to residents of the Town. Any action taken by resolution shall not go into effect until at least thirty (30) days after passage of the resolution.

**Sec. 13-1-50. Fees and charges.**

- (a) The Town Council shall have the authority to adopt by resolution fees and charges for utilities which may include, but need not be limited to, the following:
  - (1) Water utility:
    - a. Fees for turning water on or off at the curb stop;
    - b. Fees for permit applications;

- c. Fees for connection, repairs and disconnection of service lines;
- d. Fees for inspections, surveys, development and expansion;
- e. Standby fees;
- f. Plant investment fees;
- g. Meter installation charges;
- h. Water pumping station surcharges; and
- i. Other fees and charges as the utility deems necessary to cover costs of inspections, testing, maintenance and operations required by this Article.

(2) Sewer utility:

- a. Fees for all wastewater utility costs, including maintenance and operation;
- b. Fees for reimbursement of costs of establishing and operating the wastewater utility's pretreatment program;
- c. Fees for monitoring, inspections and surveillance procedures, including laboratory analysis;
- d. Fees for permit applications;
- e. Fees for connection, repairs and disconnection;
- f. Fees for inspections, surveys, development and expansion;
- g. Plant investment fees;
- h. Standby fees;
- i. Wastewater strength and lift station surcharges; and
- j. Other fees as the utility may deem necessary to carry out the requirements of this Article.

(3) Stormwater utility:

- a. Fees on each and every lot and parcel of land within the Town for stormwater service and for stormwater utility costs, including the operation, maintenance, construction, improvement, and replacement of the Town's stormwater utility system, which consists of the collection of pipes, ditches, detention ponds, and other conveyances that carry outdoor water runoff untreated into local waterways;

- b. Fees for funding stormwater quality issues and improvements; and
- c. Other fees as the Town deems necessary to cover costs of inspections, testing, maintenance, operations, and management of the stormwater utility and facilities, and to carry out the requirements of this Article.

(4) Transportation utility:

- a. Fees for the operation and maintenance of the Town's street system to be charged to the responsible party for each occupied unit of residential and nonresidential real property, as provided in Resolution No. 2023-15R approved by the Town Council on December 12, 2023, and subject to the sunset clause therein;<sup>2</sup> and
  - b. Other fees as the Town deems necessary to cover costs for accounting, management, and other costs related to management, operation, and implementation of a street maintenance program, and to carry out the requirements of this Article.
- (b) The Finance Director shall maintain accounting records and account for all fees and charges collected pursuant to this Article in a manner that ensures such funds shall be used for the purpose for which such fees and charges were created, and for the purposes allowed by law, and as otherwise provided in Article 2 of the Chapter 4 of this Code.
- (c) If any person fails or refuses to pay when due any fee or charge imposed under this Chapter, the Town Council authorizes the Town Manager or their designee to collect the unpaid amounts in accordance with any remedies permitted by statute or by this Code and any regulations promulgated thereunder. The Town Council authorizes the Town Manager or their designee to commence collection procedures against the owner or occupant of the property and/or the property itself for which fees and charges are past due.

**Sec. 13-1-60. Service charges.**

*[No amendments are made to this section by this ordinance. Section shall remain unchanged.]*

**Sec. 13-1-70. Water and sewer – usage spike/surcharge authorized.**

- (a) Sewer usage. Whenever there is a spike or unusual increase of at least twenty-five percent (25%) in the sewer usage, either on a daily or monthly basis, the Town is authorized to impose a surcharge on the usage rate. Such surcharge is designed to minimize usage spikes and to compensate the Town for additional infrastructure, capacity and equipment required to maintain the ability to service such spikes.
- (b) Water usage. The Town Council is authorized to act by resolution to set a surcharge for water usage over a property's annual allotment. Such annual allotment is determined by the

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<sup>2</sup> The Town Council established the transportation utility fee and terms pertaining to the application and allocation of the fee in Resolution No. 2023-15R on December 12, 2023.

Town Council in response to the allocation set by the Northern Colorado Water Conservancy District.

**Sec. 13-1-80. System review fee.**

*[No amendments are made to this section by this ordinance. Section shall remain unchanged.]*

**Sec. 13-1-90. Water service – billing and payment; past-due accounts.**

- (a) Water usage is billed to the property owner or property manager of a service address, at the end of a billing period, for water usage during the billing period. A service account is considered past due when the billing for the current period reflects an unpaid balance from a previous billing period.
- (b) Holders of interest, as shown on the Water Works Department records, of past-due service accounts shall be notified by first class mail. Notification shall include the date and time the water is scheduled to be shut off, the amount of penalty assessments, the amount of the notification fee and actions necessary to avoid penalties and discontinuation of service.
- (c) The Town shall physically post notification to the premises at least twenty-four (24) hours prior to the scheduled shutoff for nonpayment. A notification fee will be added to the past due balance.
- (d) The failure of any such person to receive notification of the impending shutoff shall not affect the validity of any actions taken under this Section and shall not relieve any person from obligations imposed on him or her by this Section.
- (e) The Town shall discontinue water service for nonpayment at or after the specified date and time. When payment of a past due balance is not received by 1:00 p.m. on the scheduled shutoff date, a shutoff fee, as set forth in the current fee schedule to this Code, will be added to the past-due balance to cover costs to the Town in activating shutoff procedures.
- (f) Whenever it is necessary to make a shutoff of water service from inside a user's building or premises, the Town Manager or their designee may enter such building or premises, but shall present proper credentials and request entry. If such building or premises are unoccupied, he or she shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If such entry is refused, the Town Manager shall have recourse to every remedy provided by law to secure entry. When the Town Manager has first obtained a warrant or other remedy provided by law to secure entry, no owner, occupant or any other person having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry by the Town Manager or their designee.
- (g) Water service which has been shut off for nonpayment shall be restored when the total past due balance, plus all assessments including interest, notification fees, attorney fees and court costs, has been paid in full.

- (h) If, after water service is shut off for nonpayment, an owner of such property fails to reestablish water service within twelve (12) months of shutoff and fails to pay the minimum tap fees, the water tap allocated to that property shall be deemed abandoned and shall revert to the Town's ownership. Notice of this provision shall be mailed to the property owner and posted on the property by the Code Enforcement Officer at least sixty (60) days before such abandonment becomes effective. The owner may redeem such tap by paying all costs incurred by the Town, past due fees, minimum tap fees and interest within thirty-six (36) months after abandonment. Thereafter, the owner must apply for a water tap as a new user, subject to all current fees and water dedication requirements.
- (i) The Town Manager may continue water service to a customer who can verify exigent circumstances, or make a recommendation to the Town Council to continue service. Any recommendation shall include a written alternative arrangement for payment of past-due balances, assessments and fees. The Town Council shall act on such a recommendation at the first regular meeting scheduled after such recommendation has been made.

**Sec. 13-1-100. Water and sewer - Liens.**

When any fee payable to the Town as required by this Chapter or set forth in the current fee schedule is not paid, including user fees, such unpaid amounts shall be a charge and lien upon the premises for which the amount is due from the date the same becomes due until paid, and the owner of every building, premises, lot or house shall be liable for the cost of taking and treating sewage or the provision of water to the premises. The lien and liability for such treating and taking of sewage or provision of water may be enforced by action at law or suit to enforce collection, or the Town may place a lien upon the property served by the wastewater collection treatment system, the potable water system or nonpotable system and certify such amount due to the County Commissioners for collection as taxes as provided by Section 31-5-708, C.R.S.

**Sec. 13-1-110. Water and sewer - Unpaid charges to become lien.**

- (a) All water rates and rents shall be a charge and lien upon the premises to which water is delivered, from the date the same become due and until paid, and the owner of every building, premises, lot or house shall be liable for all water delivered to or taken and used upon his or her premises, which lien and liability may be enforced by the Town by action at law or suit to enforce the lien. In case the tenant in possession of the premises or building pays the water rent or rates, it shall relieve his or her landlord from such obligation and lien; however, the Town shall not be required to look to any person whatsoever other than the owner for the payment of water rents and rates as provided in this Chapter.
- (b) If such water rates and rents remain unpaid after a thirty-day demand for payment of the same has been made, such water rates and rents may be certified by the Town Clerk to the Board of County Commissioners, to be placed upon the tax list for the current year and to be collected in the same manner as other taxes are collected, together with all fees and costs of collection and a ten-percent penalty for administrative costs.

**Sec. 13-1-115. Other utilities – Billing and payment; Past-due accounts; Collection; Liens.**

- (a) Utility fees and charges shall be billed to the owner or occupant of the property at the same time as the close of their respective water billing cycle. The obligation to pay such bill shall not be affected by the failure of the owner or occupant to receive a statement for such fees and charges.
- (b) Bills for utility fees and charges shall be due and payable upon receipt and is considered delinquent when the billing for the current period reflects an unpaid balance from a previous billing period. There shall be added to all utility bills that are delinquent, a delinquent payment fee as set by resolution of Town Council.
- (c) All unpaid utility service charges, plus delinquent payment fees and costs of collection, shall constitute a perpetual lien against the real property served, occupied, or improved, as applicable, and such lien shall have priority over all other liens except general tax liens.
- (d) The Finance Director shall cause a notice of the lien, stating the amount of the unpaid utility fees and charges, plus delinquent payment fees and costs of collection (including the cost of recording), and describing the property served, to be recorded in the office of the Weld County Clerk and Recorder.
- (e) The Finance Director is authorized and empowered to certify to the County Treasurer the amount of the unpaid utility fees and charges, plus delinquent payment fees and costs of collection, describing the property served upon which the lien is imposed, which shall be collected and paid over to the Town by the County Treasurer in the same manner authorized for the collection of property taxes.
- (f) Alternatively, upon authorization by the Town Council, the Town may institute proceedings for the enforcement and foreclosure of a lien in accordance with the provisions of the statutes of the State of Colorado.
- (g) The Town may treat any unpaid utility fees and charges, delinquent payment fees, and costs of collection as a debt due to the Town and may recover the amount thereof from the owner and/or occupant of the property being charged such fees, charges, and costs.
- (h) In the event of a suit to exercise any of the remedies available to the Town for recovery or collection of unpaid utility fees and charges, delinquent payment fees, and costs of collection, the Town shall also be entitled to judgment against the owner or occupant of the property served for the costs and expenses of such suit, including attorneys' fees, in addition to the unpaid fees, charges, and costs.
- (i) The remedies for the collection of the unpaid utility fees and charges, delinquent payment fees, and costs of collection are cumulative and the exercise of any one remedy shall not bar the exercise of any other. The remedies herein provided shall be in addition to any other lawful or equitable remedies for the collection thereof available to the Town.

**Sec. 13-1-120. Calculation of equivalent residential unit (ERU) value for premises.**

*[No amendments are made to this section by this ordinance. Section shall remain unchanged.]*

**Sec. 13-1-130. Malfunctioning meter or remote meter.**

*[No amendments are made to this section by this ordinance. Section shall remain unchanged.]*

**Sec. 13-1-140. Owner-requested meter testing and shutoff procedures and assessments.**

*[No amendments are made to this section by this ordinance. Section shall remain unchanged.]*

**Sec. 13-1-150. Lawn irrigation restrictions.**

*[No amendments are made to this section by this ordinance. Section shall remain unchanged.]*

**Sec. 13-1-180. Penalties.**

*[No amendments are made to this section by this ordinance. Section shall remain unchanged.]*

Section 3. If any article, section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The Town Council hereby declares it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 4. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 5. This ordinance is deemed necessary for the immediate protection of the health, welfare and safety of the community.

Section 6. Violations of this ordinance shall be punishable in accordance with Section 1-4-20 of the Severance Municipal Code.

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INTRODUCED, READ, ADOPTED, APPROVED, AND ORDERED PUBLISHED IN  
FULL this 23<sup>rd</sup> day of April, 2024.

TOWN OF SEVERANCE, COLORADO



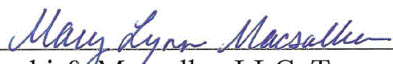
  
Matthew Fries, Mayor

ATTEST:

  
Leah Vanarsdall, MMC, Town Clerk

APPROVED AS TO FORM:

**DocuSigned by:**

  
Hayashi & Macsalka, LLC, Town Attorney  
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