

Proposed Goffstown Water Rights Ordinance

Glossary

Word Usage

For the purpose of this Ordinance, certain terms and words shall have the meaning given here.

Words used in the present tense include the future; the singular number includes the plural, and the plural includes the singular; the word "may" is permissive; and the word "shall" is always mandatory and not merely directory.

Words and phrases not defined

Words and phrases not defined in this Glossary shall have their common dictionary meaning.

Definitions of terms

Certain terms or words shall be defined and interpreted as follows:

Corporation: an association of shareholders [(or even a single shareholder)] created under law and regarded as an ARTIFICIAL PERSON by courts, 'having a legal entity entirely separate and distinct from the individuals who compose it, with the capacity of continuous existence or succession, and having the capacity as such legal entity, of taking, holding and conveying property, suing and being sued, and exercising such other powers as may be conferred on it by law, just as a natural person may. (Barron's Law Dictionary isbn 0-8120-3380-9 by S. H Gifis)

Engage in water withdrawals: Includes, but is not limited to, the physical extraction of water, and the buying and/or selling of water extracted from within the Town.

Groundwater: subsurface water that occurs beneath the water table in soils and geologic formations. (RSA485 C-2)

Large Water Withdrawals: "Large groundwater withdrawal" means any withdrawal from groundwater of 57,600 gallons or more of water in any 24-hour period at a single property or place of business. (RSA 485-C:2 IX-a)

Natural Person: a human being, as opposed to artificial or fictitious 'persons' such as corporations." (Barron's Law Dictionary isbn 0-8120-3380-9 by S. H Gifis)

Resident: Residents are natural persons living in the Town. (RSA21:6).

RSA: refers to the New Hampshire Revised Statutes Annotated

Syndicate: a group of individuals or companies who have formed a joint venture to undertake a project which the individuals would be unable or unwilling to pursue alone." (Barron's Law Dictionary isbn 0-8120-3380-9 by S. H Gifis)

Village Water Precincts: Village Districts established under RSA 52.1 I.

Section 1 Authority:

1.1 These regulations relative to protection of water resources, have been prepared pursuant to the authority vested in the Town by Part First, Article 1, and Part First Article 10 of the New Hampshire Constitution, and by RSA Chapter 31 Section 39 I(a), II, and III and RSA Chapter 485-C Section 1.

1.2 These regulations, relative to self-governance, are pursuant to the authority derived from and vested in the people of the United States and all its subdivisions (Article X of the U. S. Constitution; Part First Article 1, Part Second Article 5, and Part Second Article 83 of the New Hampshire Constitution.

Section 2 - GENERAL PROVISIONS

2.1 Title - The Ordinance shall be known and may be cited as the " Water Rights & Local Self-Government Ordinance of the Town of Goffstown , New Hampshire ," and is sometimes referred to herein as the "Ordinance".

2.2 Applicability -

2.2.1 General Applicability: No large water withdrawal shall be undertaken or approved in the Town of Goffstown except in conformance with the Ordinance.

2.2.2 Relationship to other laws, ordinances, and regulations: Whenever the provisions of the Ordinance conflict with any other ordinance, statute, or rule, the more restrictive or the higher standard shall apply. In the event of any conflict between any provisions of the Ordinance with other provisions of the Ordinance, the more restrictive or higher standard shall apply.

2.2.3 Relationship to Private and Public Covenants and Restrictions: The Ordinance shall not affect restrictions placed on property by covenant, easement, deed, or agreement, provided that where the Ordinance imposes a greater restriction or higher standard, the provisions of the Ordinance shall govern.

2.3 Purpose - The Ordinance is designed and adopted for the following purposes:

2.3.1 To safeguard the water on and under the ground as a common resource held in the public trust to be used for the benefit of natural persons in the Town.

2.3.2 To affirm the rights of Goffstown Residents to local self-governance.

2.4 Interpretation of Certain Terms

2.4.1 Certain terms and words used in the Ordinance shall be interpreted in accordance with the definitions contained in the Glossary or otherwise expressly stated herein. All other words used in the Ordinance shall be subject to their customary and ordinary meaning and definition.

2.5 Severability - It is hereby declared to be the intention of the Ordinance that the sections, paragraphs, sentences, clauses, and phrases of the Ordinance are severable, and if any such section, paragraph, sentence, clause or phrase is declared unconstitutional or otherwise invalid by any court of competent jurisdiction in a valid final judgment or decree, such unconstitutionality or invalidity or unenforceability shall not affect any of

the remaining sections, paragraphs, sentences, clauses, or phrases of the Ordinance, and the Ordinance shall thereafter, to the greatest extent allowed by law, be interpreted to give full effect to the intention set forth in the section, paragraph, sentence, clause or phrase so declared unconstitutional or otherwise invalid or unenforceable.

2.6 Effective Date - The Ordinance shall be effective immediately upon its enactment.

Section 3 – Statement of Law

3.1 No corporation or syndicate shall engage in large water withdrawals in the Town.

3.2 No corporation or syndicate doing business within the Town shall be recognized as a “person” under the United States or New Hampshire Constitutions, or laws of the United States or New Hampshire, nor shall the corporation /syndicate be afforded the protections of the Contracts Clause or Commerce Clause of the United States Constitution, within the Town.

3.3 All residents of the Town possess a fundamental and inalienable right to access, use, consume, and preserve water drawn from within the Town.

3.4 Natural communities and ecosystems possess inalienable and fundamental rights to exist and flourish within the Town. Ecosystems shall include, but not be limited to, wetlands, streams, rivers, aquifers, and other water systems.

3.5 Exceptions: The residents of the Town hereby allow the following exceptions to Section 2 of this Ordinance.

(a) Village Water Precincts established under the laws of the State of New Hampshire (RSA 52) engaged in water withdrawals providing water only to residential and commercial users within the Town.

(b) Nonprofit educational and charitable corporations organized under state non-profit corporation law, and qualifying under §501(c)(3) of the federal Tax Code, which do not sell water withdrawn within the Town outside of the Town;

(c) Utility Corporations operating under valid and express contractual provisions in agreements entered into between the Town and that utility corporation for provision of service within the Town.

(d) Corporations operating under valid and express contractual provisions in agreements entered into between Residents and those corporations, when the withdrawn water is used solely for on-site residential, household, agricultural, or commercial facilities within the Town,

(e) Municipal corporations operating under a valid and express contract with the Town which has been approved by a majority vote of the Residents at a regularly scheduled or special election.

(f) All contractual agreements referred to in Section 3.5 (d) shall include a provision that enables the Town to suspend or nullify the contractual agreement without penalty in the event of a water emergency as determined by the Town, State, or Federal government or by Residents in a subsequent Ordinance. Contractual agreements lacking this provision shall be deemed null and void.

Section 4 - ADMINISTRATION & ENFORCEMENT

4.1 Authority. The Town shall, from time to time, establish and/or designate such boards, commissions, committees and officials as may be necessary and convenient for the proper administration and enforcement of this ordinance. Such boards, commissions, committees and officials shall have the authority, powers and duties as are authorized, conferred or imposed by State law and Town ordinance.

4.2 Notification: Any corporation planning to engage in water withdrawals within the Town must notify the Town of such activity at least sixty (60) days prior to engaging in water withdrawals. Such notification shall contain a claim to one of the exemptions listed in Section 3.5 of this Ordinance.

4.3 Violation: Any violation of this Ordinance shall be considered a criminal summary offense, and shall subject the Involved persons of the noncompliant corporation to joint and several liability with the corporation itself.

4.4 The Board of Selectmen of the Town may also file an action in equity in any Court of competent jurisdiction to abate violations defined in Section 2 of this Ordinance. If the Selectmen of the Town fail to bring an action to enforce this Ordinance, any Resident has standing in front of the Court for enforcement. Appropriate fines and/or civil penalties or other sanction or penalty may be sought in connection with any such court proceeding.

4.5 The Board of Selectmen of the Town or the Court may assess a fine consistent with RSA 485-C:19.

Section 5 - Civil Rights, Liabilities, and Other Protections

5.1 . Environmental and Civil Rights any natural person or corporation shown to interfere with the rights of natural communities and ecosystems to exist and flourish, or to cause damage to those natural communities and ecosystems is deemed a violation of the Ordinance . The Town, along with any Resident of the Town, shall have standing to seek declaratory, injunctive, compensatory, and punitive relief for damages caused to natural communities and ecosystems Residents, natural communities, and ecosystems shall be considered herein as “natural persons” for purposes of the enforcement

5.2 .Rights Protection and Enforcement: Any Resident may bring an action under this Ordinance's civil rights provisions, or under state and federal civil rights laws, for violations of the rights to natural communities, ecosystems, and Residents, as recognized by this Ordinance. Compensatory and punitive damages paid to remedy the violation of the rights of natural communities and ecosystems shall be paid to the Town for restoration of those natural communities and ecosystems.

5.3 . Town Action Against Preemption. A foundation of this law is the people's fundamental right to government. Board of Selectmen is remanded to hold public meetings for the purpose of reinforcing self-government should an attempt at preempting this ordinance by other levels of government deemed to have occurred.

5.4 . Strict Liability. Persons using corporations /syndicates to engage in water withdrawal in a neighboring municipality shall be strictly liable for all harms caused to the health, safety, and welfare of the residents of Goffstown from those activities, and for all harms caused to ecosystems and natural communities within Goffstown.

5.5 . Liability. No permit, license, privilege or charter not authorized by the Town under this Ordinance shall preempt this Ordinance. Compensatory and punitive damages assessed to remedy the violation of the rights of natural communities and ecosystems shall be paid to the Town for restoration of those natural communities and ecosystems.

5.6 . Future Lost Profits. Within the Town, corporate claims to "future lost profits" shall not be considered property interests under the law, and thus, shall not be recoverable by corporations/syndicates seeking those damages.

5.7 . Prohibition on Select Board Challenge. The Select Board of the Town or any other agent or agency of the Town shall be prohibited from taking any action to annul, amend, or overturn this Ordinance, unless such action is approved by a prior Town Meeting/Deliberative Session at which two-thirds (2/3) of the residents of the Town attending the Town Meeting approve such action.