

Local Law Number 3 of 2018

Amending Local Law No. 3 of 2007 entitled
"Water District #1 Rules and Regulations Local Law of the Town of Windham"

Be it enacted by the Town of Windham Town Board as follows:

§ 1 – Amendment to Add a New Section 23 Regulating Connections for Parcels Outside the Water District.

Section 23 - Parcels Outside Water District

- (A) A Water Connection Agreement with the Town of Windham will be required before any property located outside of the Water District may connect to the collection system. The Water Connection Agreement will set forth all essential terms and service will be provided in accordance with such terms. The Water Connection Agreement shall run with the land and be binding on future property owners. A fully executed copy of the Water Connection Agreement must be filed at the Greene County's Clerk's Office.
- (B) All out of district users must apply for the right to connect to the water system in accordance with Section 1 of this local law and obtain the approval of the Town Board before making such connection. The out of district user will not be entitled to make connections to the water system or provide water service to any facilities outside the boundaries approved by the Town Board.
- (C) An allocation of water capacity for the outside user will be determined by the Town Board as part of its approval and will apply for so long as the Town continues to provide water service. The capacity allocation will be determined based on a 30-day average of gallons per day (hereinafter, "GPD"). The allocated GPD will be assigned to the subject tax parcel and will be limited to the units and area identified by the Town Board in its approval. Any usage above the allocated GPD will require separate approval by the Town Board and will be subject to any and all restrictions under the Town's local laws.
- (D) The Water Connection Agreement will require a connection fee to compensate the Water District for the value of its water system which will now be shared with properties outside the Water District. The Water Connection Agreement will require a connection fee of \$5,000 per unit or "EDU" to compensate the Water District for its embedded costs. An EDU is defined herein as the water usage proportional to a typical single-family residence. For purposes of this Section, all single family residences are assigned one EDU which is equivalent to 300 gallons of water use per day.
- (E) The out of district user shall have 24 months from the date the Town Board approves its connection to the water system to pay 50% of the total connection fee, with the balance to be paid over a period of 10 years in equal annual installments. In no case will a unit be permitted to connect to the water system unless the connection fee for that unit is paid in full, nor shall any building permits be issued

for the construction of such unit until the connection fee for that unit is paid in full. The Town Board may adjust or modify the connection fee by resolution on a case by case basis when entering into a Water Connection Agreement with an outside user. The amount charged shall be reasonable and the charge shall be applied in a non-discriminatory fashion among outside users who are similarly situated.

- (F) The Water Connection Agreement shall provide that upon notice to the out-of-district user, and after being afforded a reasonable opportunity to be heard, the Town Board may terminate an allocation for a unit or units if no building permit for such unit or units has been obtained within a 10 year period after the allocation is approved, if at that time, the water system lacks capacity for any new connections or a moratoria has been issued for new connections. This provision is not intended to place a limit on the time to use an allocation; rather this provision is intended to provide the Town with an option to terminate an allocation in a situation on which there is a capacity emergency with regard to the Town's water supply and distribution system.
- (G) All out of district users shall enter into a Water Connection Agreement consistent with the terms and conditions of this law. The Town Board may modify the terms and conditions of the Water Connection Agreement on a case-by-case basis to address the unique circumstances of each water connection. To the extent there is a disagreement between the terms and conditions of the Water Use Law and the Water Connection Agreement, the terms of the Water Connection Agreement shall govern.
- (H) The Water Connection Agreement shall be for a period of 10 years. The agreement shall automatically renew at the expiration of each term for an additional 10 year unless one party serves notice on the other party six (6) months prior to the renewal date of the intention not to renew the agreement for the reason that the owner is no longer using the Town's water system. The out of district user agrees to comply with the terms of this local law and any other applicable law relating to the use of the Water District facilities.
- (I) In the event the Town suffers property damage, bodily injury, sickness or disease (including death) and/or monetary damage, in whole or in part arising out of or resulting from any portion of the services provided hereunder, and such property damage, bodily injury, sickness or disease (including death) is caused by the sole or combined negligence of the out of district user, out of district user shall indemnify and hold harmless the Town for the amount of any and all claims, liabilities, losses, damages and expenses (including attorney fees) arising from out of district user, its agents' and employees' activities under the Water Connection Agreement. No claim whatsoever shall be made by out of district user against any individual officer, agent or employee of the Town for, or on account of, anything done or omitted in connection with the sewer connection.
- (J) A water rent will be charged to the out of district user commencing upon connection to the water system. The water rent for outside users will be 133% of the water rent charged to users with the Water District. The Town reserves the right to charge the out of district user as a user of the system a charge for out of district user's share of

future debt service ("surcharge"). The delinquent payments of the water rent or a surcharge will be subject and addressed as delinquent water charges under Section 2 and Section 5 of this local law.

- (K) If more than one separately owned units or facilities will share a common water main not owned by the Water District, the out of district user must form a "Water-Works Corporation" under Article 10 of the New York State Transportation Corporation Law ("TLC") and comply with the laws applicable to Transportation Corporations including the approval and filing requirements applicable to Water-Works Corporations under New York State Public Service Law §89-e. The Town Board may waive the requirement to form a Water-Works Corporation by resolution if it determines that the purpose of the Transportation Corporation can be achieved through some form of Homeowner Association Agreement.
- (L) The out of district user will remain responsible for and will continue to own, maintain and repair the out of district user's water distribution system and appurtenances necessary for its connection that are not owned by the Water District.
- (M) The Town reserves the right and shall be provided access to out of district user's water distribution system to make repairs at the expense of the out of district user if the out of district user fails to adequately maintain the water distribution system. The cost associated with the out of district user's maintenance obligations that are performed by the Town shall be paid by the out of district user as additional water rent in accordance with the terms of this local law and the Town's fee schedule. The out of district user is responsible for compliance with the provisions of this local law.
- (N) The Town reserves the right as part of the Water Connection Agreement to assess an annual administrative fee against the out of district users of up to two hundred dollars (\$200) for each EDU allocated for which a building permit has not been issued. The administrative charge is to offset the cost to the Water District to maintain the excess capacity and to compensate for a proportionate share of overhead and other fixed costs.
- (O) The Town may require the out of district user to monitor and/or meter the water usage and to report the usage data on a periodic basis. If the Town has probable cause to suspect that water is being permitted to run to waste or is being wasted through defective faucets or other fixtures or equipment, the Town may require the out of district user to conduct an investigation and to submit the results of that investigation together with a mitigation plan (if necessary) to the Town. The out of district user will correct any deficiencies and implement any needed repairs in accordance with a schedule approved by the Town and to the extent required by the Town.
- (P) The Town may require an out of district user to post security to ensure that there are adequate funds to maintain the water distribution system owned and/or controlled by the out of district user. The security obligation will be included in any Water Connection Agreement.

- (Q) Upon request by the Town, the out of district user shall provide the Town with the names, addresses and e-mail address of all current customers being served by the out of district user.
- (R) The Town has the right to inspect and/or investigate the water distribution system and all connected facilities within the proposed out of district service area. Except in situations of an emergency, the Town will provide notice prior to conducting any inspection/investigation. The out of district user will identify a person to serve as the emergency coordinator to address any upset within the out of district water distribution system. That person's name and contact information will be provided to the Town.
- (S) The out of district user will reimburse the Town for any costs incurred by the Town in responding to an emergency at the out of district user's water distribution system provided the conditions giving rise to the emergency are not caused by a negligent act or omission of the Town.

§2 - Severability.

If any provisions of this local law is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the local law shall remain in effect.

§ 3 - Effective Date.

This local law shall take effect upon filing with the Secretary of State.