



ORDINANCE NO. 2017-01

AN ORDINANCE MODIFYING THE TOWN CODE THROUGH THE INCLUSION OF A NEW ARTICLE 2 OF CHAPTER 13 ADOPTING REGULATIONS FOR THE PROTECTION OF THE LOCAL WATERSHED AND WATERWORKS.

WHEREAS, the Town of Silverton (“Silverton” or the “Town”) is a Colorado statutory town organized under Title 31 of the Colorado Revised Statutes; and

WHEREAS, pursuant to C.R.S. § 31-15-707(1)(b), the Silverton Board of Trustees has the authority to enact an ordinance to carry out its power to maintain and protect the Town’s watershed and waterworks from injury and water pollution, and for purposes of this authority, the Town’s jurisdiction extends over the territory occupied by its waterworks and all reservoirs, streams, trenches, pipes, and drains used in and necessary for the construction, maintenance, and operation of the same and over the stream and source from which the water is taken for five miles above the point from which it is taken; and

WHEREAS, the Silverton Board of Trustees desires and wishes to exercise its statutory authority to create a watershed protection district within and without the Town’s boundaries and to adopt regulations pertaining to activities in that defined area as set forth herein; and

WHEREAS, the Board of Trustees seeks to adopt the following regulations in order to promote the health, welfare, and safety of the inhabitants of the Town of Silverton by maintaining and protecting the Town’s watershed and waterworks from damage, harm, or injury, and to prevent pollution of the Town’s water supply without creating an undue hardship on activities that promote the protection of the Town’s watershed and waterworks.

NOW, THEREFORE, BE IT ORDAINED, BY THE BOARD OF TRUSTEES OF THE TOWN OF SILVERTON, COLORADO that:

Section 1. Findings and Intent. The foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Board.

Section 2. Modification of the Municipal Code. This ordinance Chapter 13 by the adoption of a new Article 2 as follows:

CHAPTER 13

Municipal Utilities

ARTICLE 2

Watershed Protection

Sec. 13-2-10. Purpose.

The Board of Trustees finds that the maintenance and protection of an adequate water supply of the highest quality and quantity is essential to the health, welfare and safety of the inhabitants of the Town of Silverton. The purpose of this Article is to maintain and protect the Town's watershed and waterworks from damage, harm or injury, and preventing pollution of the Town's water supply. These regulations shall be periodically reviewed and updated to reflect new technologies and activities that may impact the Town's watershed.

Sec. 13-2-20. Definitions.

As used in this Chapter 13, Article 2, the following terms shall have the following meanings.

Best Management Practice means an effective means of preventing reducing harmful effects of land use activities, and includes recommended methods, structures and practices designed to prevent or reduce pollution of the air, land and/or water from these activities. Best Management Practices may be found in various publications, manuals and documents of the Colorado Department of Public Health and Environment, Colorado Department of Transportation, and other sources that may be acceptable to the Town of Silverton.

Board of Trustees means the Board of Trustees for the Town of Silverton, Colorado.

Director means the Town Administrator or his/her designee or representative.

Diversion or divert means removing water from its natural course or location, or controlling water in its natural course or location by means of a ditch, canal, flume, reservoir, bypass, pipeline, conduit, well, pump, or any other structure or device.

Drilling means drilling for water, oil, gas, or other natural resources, and includes grading, construction, and traffic activities associated with the drilling.

Exigent circumstances means any situation where there is imminent danger of loss of life, harm by injury or damage to or destruction of property, or any other dangerous or harmful situation regarding the public health, safety and wellbeing.

Mining or mineral resource extraction

Mineral means an inanimate constituent of the earth in a solid, liquid, or gaseous state which, when extracted from the earth, is useable in its natural form or is capable of conversion into a useable form as a metal, metallic compound, or compound, or chemical, an energy source or a raw material for manufacturing or construction material, but does not include surface or subsurface water.

Mining extraction mean any removal or development of a mineral from its natural occurrence on affected land or from a water course and includes, but is not limited to, drilling, blasting, scaling, crushing, tunneling, excavating, dredging, panning, or sluicing, and includes any tailings piles, tailing ponds, waste dumps or concentration, milling, evaporation or other on-site processing activities or any buildings, structures or machinery used in such operation. "Mining and extraction" do not include hand panning or the use of battery powered concentrate wheels or mini-sluices.

Mitigation means processes or methods which:

- a. Avoids an impact upon the land by evaluating alternatives and redesigning an activity;
- b. Minimizes an impact upon the land by substantially limiting the scope of an activity;
- c. Rectifies an impact upon the land through the use of remediation, rehabilitation or restoration techniques; or
- d. Compensates for the impact upon the land by replacing or providing substitute facilities or resources.

Permit means any permit issued pursuant to this Article.

Permittee means a person issued a permit.

Person means and shall include a firm, company, organization, partnership, entity, agency, corporation, association, or other organization acting as a group or unit as well as an individual. It shall also include an executor, administrator, trustee, receiver, or other representative appointed according to law. Whenever the word *Person* is used in any section of this chapter prescribing a penalty or fine, as to firms, associations, and other organizations, the word shall include the partners, members, or agents who are responsible for any violation of such section hereof, and as to corporations, shall include the officers, agents, or members thereof who are responsible for any violation of this article. *Person* includes the singular and the plural.

Pollutant means dredged spoil, dirt, slurry, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, chemicals, chemical waste, biological nutrient, biological material, temperature changes, radioactive material, heat, wrecked or discarded equipment, rock, sand, cellar dirt or any industrial, municipal or agricultural waste.

Pollution means the people-made, people-induced or natural alteration of the physical, chemical, biological, or radiological integrity of water.

Watercourse means any and all rivers, streams, creeks, intermittent washes, gullies, tributaries, reservoirs, lakes, ponds, wetlands or other types of natural or people-made water bodies, including structures or devices to channel water to, or control or retain water within the watercourse, and further includes all groundwater tributary thereto.

Waterworks means all components of the Town's water supply system, including but not limited to all equipment, diversion structures, dams, canals, ditches, flumes, pipelines, conduits, reservoirs, drains, wells, pumps, buildings, structures, roads, watercourses and other facilities necessary for the construction, maintenance and operation of the water supply system.

Wetland means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands includes by illustration swamps, marshes, bogs and similar areas.

Sec. 13-2-30. Authority and Jurisdiction.

Pursuant to Section 31-15-707(1)(b) C.R.S., the Town may enact ordinances and regulations for the purpose of maintaining and protecting the Town's waterworks from injury and to protect the water from pollution in lands and territory occupied by such waterworks and over the streams or sources, including groundwater, from which the water is taken for 5 miles above the point from which it is taken, and the Town's jurisdiction under this Article shall extend over such territory.

Sec. 13-2-40. Watershed District Map.

The Town shall prepare, maintain, and update a map known as the “Watershed District Map” designating the area(s) subject to the Town’s jurisdiction pursuant to this Article. The Watershed District Map is incorporated herein by reference and shall be available for inspection at Town Hall.

Sec. 13-2-50. Interpretation and construction

Nothing in this Article shall infringe upon the authority of any other municipality, county, or other governmental entity to regulate land use or activities within their respective jurisdictions on lands outside the corporate limits of the Town of Silverton that are also within the Town’s jurisdiction pursuant to this Article. Notwithstanding, any lawful regulations, permits or approvals issued by any state or federal agency, municipality, county, or any other governmental entity concerning land use or activities on land that is also within the Town’s jurisdiction described in this Article shall not, in any way, infringe upon, limit, or supersede the terms and conditions of any permit validly issued pursuant to the provisions of this Article and the authority hereunder to regulate such activities and land use.

Sec. 13-2-60. Regulated activities.

The Town has determined that the activities set forth below may harm the Town’s waterworks or pollute the Town’s water supply. Subject to the exceptions provided for in Section 13-2-170 below, it shall be unlawful for any person to engage in any of the specified activities within the area of the Town’s jurisdiction as defined in this Article without first obtaining a permit from the Town authorizing such activity:

- (1) Excavation, dredging, filling, grading, or compaction of any topsoil, sand, rock, dirt, or other material over an area in excess of 0.25 acre. The area disturbed by the construction and maintenance of a driveway to a single family residence shall not be included in the calculation of the 0.25 acre threshold under this section;
- (2) Any surface or subsurface mining or mineral resource extraction, including any and all oil and/or natural gas drilling, extraction or mining;
- (3) Use of any restricted use pesticide (RUP), herbicide, fungicide, rodenticide, insecticide or any other chemical for eradication or control of any plants or animals that is within 300 feet of any watercourse;
- (4) Removal of any vegetation or trees by any method over an area in excess of 0.25 acre;
- (5) Construction, maintenance and/or operation of any sewage treatment disposal system;

(6) Any of the activities prohibited in this section regardless of the amount of acreage affected if such activities are located in or within 300 feet of any water course, and/or if such activity is associated with the construction of any water diversion, storage or conveyance structure, including but not limited to such structures as diversion headworks, dams, canals, ditches, flumes, pipelines, conduits, reservoirs, drains, wells, (excluding domestic wells serving less than 3 residences) and pumps, and further including any equipment, buildings, structures, roads, and other facilities necessary for the construction, maintenance and operation of the structures;

(7) Alteration, improvements or modifications of any watercourse;

(8) Dumping, depositing or discharging any pollutant into any watercourse, or dumping, depositing or storing any pollutant on land within 300 feet of any watercourse;

(9) Construction, maintenance and/or operation of a surface or subsurface tank that stores chemicals, chemical waste, biological nutrient or material, radioactive material, petroleum product, or any industrial, municipal or agricultural waste, excepting residential propane tanks and septic systems not covered under subsection (5) above;

(10) Construction of any impervious surface with an aggregate area greater than 25,000 square feet that could direct any contamination or pollutant toward a watercourse or Town waterworks;

(11) Construction and operation of a feedlot unrelated to current farming and ranching operations or livestock grazing;

(12) Any other activity that will cause material injury, damage or harm to the Town's water works or pollution of the Town's water supply as reasonably determined by the Town based upon the written recommendation of a licensed engineer or qualified professional which specifies the cause and extent of such injury, damage, harm or pollution;

Any limitation on acreage imposed by this section includes the cumulative amount of acreage encompassed by any and all proposed activities by any person on any contiguous or noncontiguous parcels of land that are part of the same plan, project or development.

Sec. 13-2-70. Activities which require no permit.

This Article shall not apply to and no permit shall be required for the following activities:

(1) Any activity that is a lawful use of any land or structure, where such use and such structure existed prior to March 27, 2017 the effective date of this Article

following adoption by the Town. Any change or enlargement of any pre-existing use of land, or changes to any pre-existing structure, made after adoption of this Article, including any modification, alteration or expansion, except ordinary maintenance, as determined by the Town, is subject to the provisions of this Article. For purposes of clarification, any portion of any activity that has obtained approval from any state or federal agency, municipality, county or any other governmental entity, but that has not yet commenced, is not a pre-existing activity or use.

(2) The following activities are allowed within the area of the Town's jurisdiction as defined in this Article, provided that there is adherence to Best Management Practices:

- a. Road maintenance by governmental entities;
- b. Construction or maintenance of farm or ranch roads, irrigation ditches or ponds, where such roads or ponds are constructed and maintained to assure that flow and circulation patterns and chemical and biological characteristics of all surface and groundwater resources are not impaired, and that any adverse effect on the aquatic environment will be otherwise minimized;
- c. Normal farming and ranching activities including upland soil and water conservation practices;
- d. Normal maintenance of ponds, bridges, riprap, and drainage and irrigation ditches and related structures, including ditch burning whether by hand or with the use of equipment and machinery;
- e. Noxious weed or insect control;
- f. Removal of dead, insect infected or diseased trees;
- g. Construction of a livestock water tank as set forth in C.R.S. § 35-49-101 et seq.;
- h. Maintenance of wetlands;
- i. Modifications to any watercourse for fisheries improvements or riparian habitat creation and/or restoration permitted by the Army Corps of Engineers;

j. Emergency riparian work, provided that any permanent work shall be regulated if otherwise regulated by this ordinance; and

k. Wildland fire mitigation and emergency firefighting activities.

Sec. 13-2-80. Permit application.

Any person proposing to undertake a regulated activity as set forth in Section 13-2-60 hereof shall file an application for a watershed permit with the office of the Director on a form provided by the Town Clerk. The application shall contain the following information. To reduce preparation time of submittals, the applicant is encouraged to submit relevant information for each appropriate item that may have been prepared of other land management purposes.

- (1) Name, address, and verified signature of the applicant;
- (2) Name and address of the owner of the property on which the activity is proposed;
- (3) Verified consent of the owner of the property if different than that of the applicant;
- (4) The address and/or legal description of the property on which the activity is proposed;
- (5) A full and complete description of the proposed activity, including but not limited to, the acreage of the property, the acreage affected by the proposed activity, the proposed amount of diversion and/or storage, and any activity that may result in a discharge, spill or release of any pollutant into the Town's waterworks or water supply;
- (6) A vicinity topographic map explicitly depicting the location of the property, the proposed activity, access points and proposed routes and land survey, prepared by a licensed engineer, of the property to be affected by the activity;
- (7) Identification and description of all water use anticipated to be necessary for the proposed activity, including but not limited to all water rights owned or to be used by the applicant, amount of consumptive use, location and timing of any expected return flows resulting from diversions, and the amount and type of discharge;
- (8) Identification and description of any impact that the activity may reasonably have on the Town's waterworks and on the quality of the Town's water supply;

(9) Identification and description of all mitigation measures that shall be taken to prevent injury, damage or harm to the Town's waterworks and pollution of the Town's water supply, including, without limitation, compliance with all applicable Best Management Practices, water quality monitoring plans, spill prevention countermeasures and control plan, emergency response plan, soil erosion, sediment, and stormwater pollution and prevention plan, grading plan, reclamation plan, site security plan;

(10) Any other information required by the Director to properly evaluate the application, as determined by the Director; and

(11) Upon request of a rancher, farmer, resident of a single family dwelling or other person subject to the requirements of this Article, the Director may waive one or more of the above requirements if the Director determines that such information is not necessary in the particular circumstances to adequately evaluate risks of pollution or potential of injury to the Town's watersheds, waters or waterworks.

Sec. 13-2-90. Permit fee and reimbursed costs.

Each application for a permit shall be accompanied by payment in full of a fee and deposit for reimbursed costs, as established by the Board of Trustees, and as may be adjusted from time to time. To the extent any application results in the Town paying for outside professional services, including but not limited to engineering, legal, consulting, publication and copying fees associated with the review of the application and/or monitoring, inspection and enforcement of a permit issued pursuant to this Article, the applicant shall pay all such out-of-pocket expenses incurred by the Town. All fees and costs shall be due and payable at the time a statement is presented to the applicant by the Town as a condition of the permit.

Sec. 13-2-100. Permit duration and renewal.

Unless specifically modified by the Board of Trustees in a permit issued pursuant to this Article, a permit shall be valid for a period five years from the date of approval. The applicant must apply for permit renewal at least 3 months prior to the expiration date. The purpose of the permit renewal process is to allow for the incorporation of new Town ordinances, resolutions, or policies that may affect permit content as well as amend or modify the permit in accordance with abandoned or new activities implemented by the permit holder. The permit renewal process may involve minimal to significant documentation depending on the degree of changes in the Town's laws, policies and activities of the permittee. The applicant shall be assessed a permit renewal fee, in accordance with the most current Town fee schedule.

Sec. 13-2-110. Permit suspension or revocation; temporary suspension.

A permit may be suspended or revoked at any time for a violation of any compliance order issued by the Director or for a violation of any of the terms or conditions of the permit or the

provisions of this Article, subject to notice to the permit holder and a hearing by the Board of Trustees. If exigent circumstances exist that require immediate suspension, as determined by the Director, the Director may immediately suspend a permit for a period not to exceed 14 days. In the case of such a summary suspension by the Director, the permittee, upon written request, shall be entitled to a hearing before Board of Trustees as soon as is reasonably possible

Sec. 13-2-120. Permit transfer.

Permits issued hereunder are to a specific user for a specific activity. No permit shall be transferred or assigned to any other person, different premises or a new, different or changed operation. Any such change shall require a new permit application.

Sec. 13-2-130. Permit review; burden; issuance or denial.

(a) In evaluating each application, the Director may consider, but is not limited to, the following factors:

- (1) Nature and type of the proposed activity;
- (2) Proximity of the proposed activity to a watercourse and whether it is located within a floodway;
- (3) Nature and type of the soils, rock or other material;
- (4) Nature and type of vegetation;
- (5) Scope and stability of the land and drainage patterns;
- (6) Any increase of effect in or on the fire hazard;
- (7) Nature, type and amount of effluents or pollutants reasonably anticipated from the proposed activity discharged either into a watercourse or underground, including the toxicological characteristics of hazardous substances, chemicals or materials to be used or produced;
- (8) Nature, type and amount of each regularly processed new material;
- (9) Nature, type and amount of each regularly produced product;
- (10) Nature and type of any and all erosion control measures;

(11) Any anticipated impact on the waterworks or water quality of the Town's water supply resulting in any way from the activity, including but not limited to direct discharges, nonpoint or indirect discharges, reduction in flows within a watercourse, or the concentration of any pollutant;

(12) Amount and type of mechanized or motorized vehicles associated with the activity;

(13) Any water rights obtained, needed, necessary or related to the proposed activity;

(14) Any permits or other governmental or private approval required to proceed with the proposed activity or already obtained where such permits or approvals are based on standards at least as stringent; and

(15) Cumulative effect of the proposed activity with other activities.

(b) The burden shall be upon the applicant to demonstrate, by preponderance of the evidence and in compliance with the provisions of this Article, that the activity will not harm, damage or injure the Town's waterworks or pollute the Town's water supply.

(c) Within thirty (30) days following the filing of a completed application, which shall not be considered complete until all necessary information required by this Article is provided, the Director shall review the application and classify the proposed activity according to its impact on either the Town's waterworks and/or the quality of the Town's water supply. The Director may continue the review of the application an additional thirty (30) days if he or she deems such additional time necessary, in his or her sole discretion, to adequately review the application.

(1) If the Director determines that the proposed activity will not have any harmful impact on the Town's waterworks or water supply, then the Director may issue a No Impact Permit which shall include any conditions and mitigation which allows the Director to make such determination. The No Impact Permit shall be reported to Board of Trustees at its next regularly scheduled meeting.

(2) If the Director determines that the proposed activity does impact and/or present or create a foreseeable risk of injury to the Town's waterworks or pollution to either the Town's waterworks and/or the Town's water supply, then the Director shall schedule the application for a public hearing before the

Board of Trustees as set forth in Section 13-2-180 within 60 days of such determination. The Board of Trustees shall consider the application, any recommendations of the Director, and may issue the permit, with or without conditions and mitigation, upon a determination that the requirements of this Article have been satisfied, or may deny the permit application at the hearing.

Sec. 13-2-140. Permit terms and conditions.

The Board of Trustees may prescribe any terms and conditions in the issuance of any permit in accordance with any provisions of this Article and as the Board of Trustees deem necessary to prevent harm, damage or injury to the Town's waterworks and/or the pollution of the Town's water supply, including compliance with all applicable Best Management Practices. The Board of Trustees may also make any permit conditional upon the applicant obtaining any and all necessary permits and other governmental or private approvals or obtaining financial security for performances or requirements of the permit. This Article allows the Town to limit discharge of water pollutants to prevent nuisances and prevent damage, harm or injury to the Town's waterworks or pollution of the Town's water supply. It does not allow the Town to authorize a discharge of pollutants into State waters, which is the jurisdiction of the Water Quality Control Commission.

Sec. 13-2-150. Performance bond.

The Board of Trustees may require as a condition of any permit issued hereunder that the permittee obtain a performance bond in an amount necessary to ensure completion of all measures required to prevent both injury to the Town's waterworks and the pollution of the Town's water supply. The Board of Trustees may also require as a part of the performance bond an additional amount necessary to clean up or mitigate the effects of any spill, release or discharge by the permittee.

Sec. 13-2-160. Containment facilities; reporting requirements.

Each permittee shall provide and maintain at its expense any facilities necessary to prevent and contain any spill, release or discharge of any pollutant that may cause damage, harm or injury to the Town's waterworks or pollution to the Town's water supply. Any such spill, release or discharge shall be reported immediately to the Director and to all other persons or entities that may be affected thereby. The permittee shall inform the Director as to the location, the nature and type of the pollutant, concentration, volume, and any measures taken to contain or remediate the spill, release or discharge and to assure that such discharge does not occur again. Within 5 days of such discharge the permittee shall submit a written report to the Director explaining the spill, release or discharge including a description of measures which have and shall be taken to prevent recurrence.

Sec. 13-2-170. Site inspections, right of entry.

Whenever necessary to assure compliance with any terms or conditions of the permit or the provisions of this Article, the Director has the right to enter the property to make an inspection. Refusal by the permittee or property owner to allow such right of entry to inspect the property shall

constitute sufficient grounds to suspend or revoke the permit by the Director. Upon such refusal, or if exigent circumstances are present that require immediate entry, the Director may obtain a search warrant from a court of competent jurisdiction, including the municipal court of the Town, entitling the Director to enter and inspect the property for compliance with a permit or with the provisions of this Article. Upon obtaining a search warrant, or if exigent circumstances exist, the Director may use such reasonable force as is necessary to enter and inspect the property.

Sec. 13-2-180. Hearings by the Board of Trustees on applications.

The Board of Trustees shall schedule a hearing and publish notice of a hearing at least 10 days prior to the date set for hearing. At such hearing, the applicant (and/or the applicant's attorney, consultants, and representatives) and the Director (and/or Town attorney, special counsel, consultants and representatives) may make a presentation and/or present information and evidence. All interested parties may also testify or present information and evidence. The applicant shall have the burden of establishing by a preponderance of the evidence that the proposed activity will not injure, harm or damage the Town's waterworks or pollute the Town's water supply. The Board of Trustees may continue the public hearing if additional information is necessary for its review of the application. The Board of Trustees' decision shall be the final action by the Town.

Sec. 13-2-190. Hearings.

Testimony, evidence and information presented at all hearings held pursuant to this Article shall be open to the public and quasi-judicial in form, under oath and recorded.

Sec. 13-2-200. Compliance order.

Whenever the Director determines that any permittee has violated or is violating any terms or conditions of a permit or the provisions of this Article, the Director may issue an order requiring the permittee to comply within a specified period of time. Any violation of the compliance order by the permittee shall be cause for the suspension or revocation of the permit. Whenever the Director determines that a person is proceeding with a prohibited activity under Section 13-2-60 hereof without permit, the Director may issue an order requiring the person to cease and desist such activity until such a time as a permit is obtained pursuant to this Article.

Sec. 13-2-210. Violation, penalties, legal action.

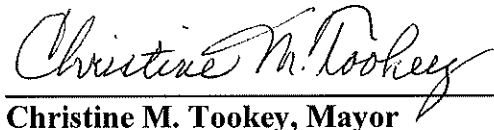
It shall be unlawful for any person to cause injury or damage to the Town's waterworks, including all springs, seeps, streams, surface intakes, ditches, drains, pipelines and reservoirs used in and necessary for the construction, maintenance and operation of the same. If any person violates any provision of this Article, in addition to utilization of the enforcement and penalty powers of the Town, the Town may commence an action for appropriate legal or equitable relief in a court of competent jurisdiction, including the municipal court. Any person upon conviction of a violation of these regulations shall be punished by the imposition of a fine in the amount not to exceed \$1,000.00 per day for each offense, or by imprisonment not exceeding 90 days for each offense, or both. Any person shall be guilty of a separate offense for each and every day during

any portion of which any violation of these regulations is committed, continued or permitted. In addition to the penalties provided herein, the Town shall be entitled to reasonable expert fees and attorneys' fees and costs of litigation.

INTRODUCED, APPROVED ON FIRST READING AND ORDERED PUBLISHED ONCE IN FULL on this 23rd day of January, 2017.

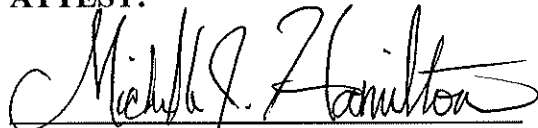
INTRODUCED AND ADOPTED ON SECOND READING on this 27th day of February, 2017.

TOWN OF SILVERTON, COLORADO



Christine M. Tookey, Mayor

ATTEST:



Michelle J. Hamilton, Town Clerk