

Initial legalLegal outline – amendment of Chapter 171 of the municipal code
Terms relating to approval and operation of Extra-Territorial Taps
MWHW revised draft 01/2902/05/2023

Key:

- *Italics* = direction or explanation for the client group
- **Boldfaced underlining** = proposed new language for the Code
- **Boldfaced italics** = proposed deletions of current Code provisions
- **[[ALL CAPS AND DOUBLE BRACKETS]]** = placeholders for Thad

1. *The purposes of the ordinance* are to amend Chapter 171 of the municipal code to establish the terms and conditions on which the Town will agree to deliver municipal water to taps outside Town limits while ensuring the sufficiency and stability of the municipal water supply for all Town water users; and to establish parameters for the Town’s evaluation of requests for such taps.
2. *Amend Article I, Section 171-2, to add the following definitions:*
 - a. **BASELINE WATER DELIVERY SUPPLY means 130% of the Town’s Existing Water Delivery Commitment at the time an application for an Extra-Territorial Tap is submitted, plus ~~130%~~% of the New Extra-Territorial Delivery Commitment associated with the tap(s) requested in such application.**
 - b. **CASH IN LIEU OF WATER RIGHT DEDICATION means the monetary payment that, upon satisfaction of certain conditions, an applicant for an Extra-Territorial Tap must make to the Town in lieu of meeting the Water Right Dedication Requirement for Extra-Territorial Taps.**
 - c. **EXISTING WATER DELIVERY COMMITMENT means the water delivery supply required to meet, as of the date of an application for an Extra-Territorial Tap, the In-Town Per-Tap Water Delivery Commitment multiplied by the total number of in-Town taps, plus the Extra-Territorial Per-Tap Water Delivery Commitment multiplied by the total number of Extra-Territorial Taps, plus the average amount of bulk water sold annually by the Town over the immediately preceding ten calendar years.**
 - d. **EXTRA-TERRITORIAL PER-TAP WATER DELIVERY COMMITMENT means 0.2444 acre-feet per year, based on use solely for (i) indoor domestic purposes and (ii) watering of flowers, decorative plants, bushes, and trees, so long as such watering is accomplished by hand using a watering can or hose with an automatic shutoff valve. As used in this Chapter, “tap” has the same meaning as “Capital EQR.” It is the intent of Town Council that the Extra-Territorial Per-Tap Water Delivery Commitment be evaluated on an annual**

basis, with revision as needed and as supported by the Water Department's analysis.

- e. EXTRA-TERRITORIAL TAP means a water tap that (i) the Town agrees to supply with municipal water in accordance with the terms and conditions of this Chapter; and that (ii) is located outside Town limits at the time service to the tap is approved in accordance with such terms and conditions.
- f. EXTRA-TERRITORIAL TAP CONTRACT means the contract required by Article I, § 171-6 for approval of and service to an Extra-Territorial Tap.
- g. EXTRA-TERRITORIAL TAP EVALUATION TOOL means the planning tool that Town officials will use to evaluate applications for Extra-Territorial Taps, to calculate the Water Right Dedication Requirement for Extra-Territorial Taps, and, subject to satisfaction of certain conditions, to calculate the required amount of Cash in Lieu of Water Right dedication.
- h. FIRM-YIELD WATER DELIVERY SUPPLY means the amount of water the Town has determined that it will have physically and legally available, under dry-year conditions, for delivery to customers. The Town will update the Firm-Yield Water Delivery Supply within the Extra-Territorial Tap Evaluation Tool within 30 days of the date on which any water court decree making a new supply available for such delivery and use becomes final and unappealable.
- i. IN-TOWN PER-TAP WATER DELIVERY COMMITMENT means 0.55 acre-feet per year. It is the intent of Town Council that the In-Town Per-Tap Water Delivery Commitment be evaluated on an annual basis, with revision as needed and as supported by the Water Department's analysis.
- j. NEW EXTRA-TERRITORIAL DELIVERY COMMITMENT means the water delivery supply required to meet the Extra-Territorial Per-Tap Water Delivery Commitment for the total number of new taps requested in an application for Extra-Territorial Tap(s).
- k. REGIONAL WASTEWATER TREATMENT SYSTEM means the system operated by the Frisco Sanitation District.
- l. WATER RIGHT DEDICATION REQUIREMENT FOR EXTRA-TERRITORIAL TAPS means the decreed characteristics and the amount of water that an applicant for an Extra-Territorial Tap is required to dedicate to the Town as a condition of approval of such tap. At the Town's sole discretion, Cash in Lieu of Water Right Dedication may be required as a condition of the Town's approval of an application for Extra-Territorial Tap. In exercising its discretion to require Cash in Lieu of Water Right Dedication in place of satisfaction of the Water Right Dedication Requirement for Extra-Territorial

Taps, Town Council will consider, without limitation, the following factors: (i) whether the Town is aware of suitable water rights available for purchase and incorporation into the Town’s municipal system; (ii) whether the Town owns water supplies that may be incorporated into the Town’s municipal system only through a new Water Court application (e.g., for a new or amended augmentation plan or a change of water rights); (iii) whether the water rights portfolio already incorporated into the municipal system may be made more efficient through a new Water Court application or through consultation with the Division Engineer for Water Division No. 5; and (iv) whether there is an opportunity for the Town to convert dedicated water supplies to owned water supplies.

3. *Amend Article I, Section 171-2, to amend the following definition: “PLANT INVESTMENT FEE (PIF) — For each new service, there shall be an initial service charge to partially compensate the Town for water rights, pumping facilities, storage and transmission mains. This charge is based on estimated demands put on the system other than fire-fighting demands.*
4. *Amend Article I, § 171-4.A to read as follows: “The Town is the owner of certain water rights and a waterworks system for the purpose of supplying domestic water for the use of the inhabitants of the Town of Frisco. Inhabitants of areas outside the town may be permitted to purchase domestic water service from the town by connection into its distribution system by written **Extra-Territorial Tap Contract, subject to and in accordance with the terms and conditions of such contract and the additional terms and conditions of this Chapter 171.**”*
5. *Amend Article I, § 171-4.B to read as follows: “**Any Extra-Territorial Tap approved in compliance with the terms and conditions of this Chapter 171 will be delivered municipal water on an equal footing with taps within Town limits as long as use of such Extra-Territorial Tap remains in strict compliance with all terms and conditions of the Extra-Territorial Tap Contract and this Chapter. Any water use restriction imposed under and in accordance with Article 5 of this Chapter will apply to all taps supplied by the Town, both within Town limits and extra-territorially.**”*
6. *Amend Article I, § 171-4.D to read as follows: “The Town of Frisco shall have the option to require ~~a large development or an~~ annexation to provide water rights or require payment in lieu of water rights as a condition of water service ~~within Town limits.~~ **Approval of all Extra-Territorial Taps is expressly conditioned upon the applicant’s satisfaction of the Water Right Dedication Requirement for Extra-Territorial Taps or, upon prior satisfaction of specified conditions, payment of Cash in Lieu of Water Right Dedication.**”*
7. *Amend Article I, § 171-4 to add new subsection E., to read as follows: “**E. Nothing in this Chapter grants any user of water delivered to an in-Town tap or an Extra-Territorial Tap any ownership interest in or control over the Town’s water rights, water-related agreements, or water infrastructure.**”*

8. *Amend Article I, Section 171-6 to read as follows:*

- A. Unless and except as expressly provided to the contrary in this Chapter, all requirements applicable to in-Town taps apply equally to Extra-Territorial Taps.**
- B. Approval of Extra-Territorial Taps is subject to and expressly conditioned upon satisfaction of all of the following requirements. References to the “Applicant” in this Section are to the Applicant for an Extra-Territorial Tap.**
- (i) **The Applicant must submit, in writing, a complete Application for Approval of Extra-Territorial Tap on the form provided by the Water Department; and must attach to the Application all designated documentation.**
- (ii) **Along with the Application for Approval of Extra-Territorial Tap, the Applicant must submit a non-refundable application fee of \$1,000 (“Extra-Territorial Tap Application Fee”), the purpose of which is to reimburse the Town for its costs in evaluating the application, engaging in follow-up with the Applicant, and preparing the Extra-Territorial Tap Contract. It is the intent of Town Council that the Extra-Territorial Tap Application fee be evaluated on an annual basis, with revision as needed to cover the Town’s costs described in this Article I, § 171-6.B(ii).**
- (iii) **The Applicant must agree, in the Application for Approval of Extra-Territorial Tap, to reimburse the Town for its reasonable outside consulting fees incurred in the evaluation of such application and of any water right offered to the Town in satisfaction of the Water Right Dedication Requirement for Extra-Territorial Taps (“Extra-Territorial Tap Reimbursement for Outside Consultants”). The Applicant must make an initial deposit of \$1,000 to cover the Extra-Territorial Tap Reimbursement for Outside Consultants; and the Town will refund to the Applicant any amount of such deposit remaining after the Town has been reimbursed in full for all of said outside consulting fees. The Applicant must agree that upon exhaustion of the initial deposit, the Applicant shall make an additional deposit of \$1,000 for the Extra-Territorial Tap Reimbursement for Outside Consultants, and shall continue to make such deposits until the said reimbursement has been made in full.**
- (iv) **The Applicant must acknowledge and agree, in the Application and the Extra-Territorial Tap Contract, that outdoor use of water delivered to an Extra-Territorial Tap is prohibited, with the following exceptions: (a) watering of flowers, decorative plants, bushes, and trees is**

permitted, but only if such watering is accomplished by hand using a watering can or hose with an automatic shutoff valve; and (b) watering for purposes of revegetation following construction is permitted for a limited period to be established and defined within the Extra-Territorial Tap Contract (“Limited Extra-Territorial Tap Revegetation Period”), but only if such watering is accomplished without the installation of a dedicated sprinkler system or other permanent or semi-permanent irrigation system. The Limited Extra-Territorial Tap Revegetation Period may be extended only by a written amendment to the Extra-Territorial Tap Contract. With the exception described in this Article I, § 171-6.B(iv), lawn irrigation with an Extra-Territorial Tap is prohibited.

- (v) The Applicant must document, with written confirmation of the Frisco Sanitation District, that the property to be served by the tap is connected to and served by the Regional Wastewater Treatment System; and must acknowledge and agree, in the Application and the Extra-Territorial Tap Contract, that the Town’s continuing obligation to deliver water to the Extra-Territorial Tap is subject to the Applicant’s maintaining such connection and service as active by virtue of remaining a Frisco Sanitation District customer in good standing.
- (vi) At the Town’s request, made in the Town’s sole discretion, the Applicant must agree to plug and abandon any existing well(s) on the property to be served by the Extra-Territorial Tap, and to deliver to the Town a copy of Division of Water Resources (“DWR”) Form GWS-09, file-stamped as received by the State Engineer’s Office.
- (vii) The Applicant must grant the Town an enforceable right of first refusal to acquire any water right historically used on the property to be served by the Extra-Territorial Tap (“ROFR”). The ROFR must run with such property and must provide that the Town will be entitled to acquire such water right(s) on the terms established in a bona fide purchase offer made to the owner of the property. The Town’s exercise of the ROFR must occur within 120 days of the property owner’s delivery to the Town of notice of such bona fide purchase offer.
- (viii) The Water Department must have used the Extra-Territorial Tap Evaluation Tool to determine whether, as of the date of the Application for Extra-Territorial Tap, the Town’s Baseline Water Delivery Supply is, on an annual basis, equal to, less than, or greater than the Town’s Firm-Yield Water Delivery Supply on an annual basis.
- (ix) If the Town’s Baseline Water Delivery Supply is, on an annual basis, equal to or less than the Town’s Firm-Yield Water Delivery Supply on an annual basis, the Water Department must have used the Extra-

Territorial Tap Evaluation Tool to determine the amount of the Water Right Dedication Requirement for Extra-Territorial Taps, the alternative Cash in Lieu of Water Right Dedication, and any acceptable combination of the two alternatives; and must have determined whether to exercise the Town's discretion to require Cash in Lieu of Water Right Dedication.

- (x) If the Town's Baseline Water Delivery Supply is, on an annual basis, greater than the Town's Firm-Yield Water Delivery Supply on an annual basis, the Water Department must have used the Extra-Territorial Tap Evaluation Tool to determine the amount of the Water Right Dedication Requirement for Extra-Territorial Taps; and must have set an effective date for the Extra-Territorial Tap Contract as no earlier than 90 days after a water court decree approving use of the dedicated water right(s) for all of the Town's required purposes has become final and unappealable.
- (xi) If the Applicant is required to satisfy a Water Right Dedication Requirement for Extra-Territorial Taps, the Town's water rights counsel must have reviewed and approved the water right(s) proposed for dedication; must have advised the Town in writing of the estimated timetable for incorporation of the dedicated water right(s) into the municipal system, as well as any recommended conditions to be imposed on the dedication; and must have reviewed and approved in writing the form of the deed by which the Applicant will convey the subject water right(s) to the Town.

C. If any condition described in Article I, Section 171-6.B is not satisfied, ~~the Water Department~~**Town Council** shall deny the Application for Extra-Territorial Tap.

D. Commencement of water service to approved Extra-Territorial Taps is subject to and expressly conditioned upon satisfaction of the following requirements:

- (i) Following Town Council's approval, Applicant and the Mayor or the Town Manager, or her or his designee, must have executed the Extra-Territorial Tap Contract.
- (ii) In the Extra-Territorial Tap Contract or in a separate instrument, the Applicant must have granted to the Town the ROFR described in § 171-6.B(vii).
- (iii) The Applicant must have paid the full Extra-Territorial Tap Reimbursement for Outside Consultants owed to the Town under § 171-6.B(iii).

- (iv) The Applicant must have paid in full the required Cash in Lieu of Water Right Dedication identified in the Extra-Territorial Tap Contract.
- (v) The Applicant must have conveyed to the Town, in a form satisfactory to the Town Attorney and the Town's water rights counsel, the Water Right Dedication Requirement for Extra-Territorial Taps identified in the Extra-Territorial Tap Contract.
- (vi) The Applicant must have delivered to the Water Department written confirmation from the Frisco Sanitation District that the property to be served by the Extra-Territorial Tap is connected to and served by the Regional Wastewater Treatment System, and that Applicant is a customer of the District in good standing.
- (xii) At the Town's request, made in the Town's sole discretion, the Applicant must have plugged and abandoned any existing well(s) on the property to be served by the Extra-Territorial Tap; and must have delivered to the Town a copy of executed DWR Form GWS-09, file-stamped as received by the State Engineer's Office.
- (vii) Under the conditions described in § 171-6.B(x), at least 90 days must have elapsed since the date on which the Town has obtained a final and unappealable water court decree approving use, for all required purposes, of any water right dedicated in satisfaction of the Water Right Dedication Requirement for Extra-Territorial Taps.

E. Subject to and in compliance with applicable decrees of the water court, the Town will maintain legal dominion and control over all water supplied through its water system, including return flows attributable to the first use of such water by the Town's customers.

F. The Town is entitled, in its sole discretion, to accept, reject, accept in part, or reject in part any water rights offered to the Town in satisfaction of the Water Right Dedication Requirement for Extra-Territorial Taps.

G. All costs and expenses related to the dedication of water rights to the Town will be borne by the Applicant for an Extra-Territorial Tap.

H. All mains and piping outside the Town must be of the materials and size required by the Town of Frisco Water Construction Standards, Chapter 171, Article IV; and must be approved in writing by the Water Superintendent.

I. Water mains may be installed by the Town or by a developer or user but always at the expense of the developer or user. If the work is performed by persons other than the Town of Frisco or its representative, the drawings and specifications for the

work must be approved **in writing** by the Water Superintendent before the work commences; and the final installation **must be** approved **in writing** by the Water Superintendent before water **is** supplied through the system. If the installation is to be done by a developer or user, the developer or user shall furnish the town with a performance bond before the work commences in the amount of the estimated cost as determined by the Water Superintendent. The estimated cost **must** include design engineering, construction, job inspection and drawings.

J. At the Town's request, the developer **or user** shall deed to the Town the water system and rights-of-way, and **any easement associated therewith**, after completion.

K. Upon and after any annexation to the Town, the water rates to be charged and all fees **applicable to formerly extra-territorial property will** be the same as those within the Town.

L. The Town Council, at its discretion, shall have the authority to deny **Applications for Approval of Extra-Territorial Taps** should it deem **such denial** in the best interest of Town residents.

(i) **Before exercising its discretionary authority to deny an Application for Approval of Extra-Territorial Tap, Town Council will consider, without limitation, whether the scope of requested Extra-Territorial Taps will result in detrimental secondary impacts to Town residents.**

(ii) [[PLACEHOLDER FOR THAD – ADDITION OF POTENTIAL TRIGGER FOR SECONDARY REVIEW BASED ON PLANNING/COMMUNITY DEVELOPMENT; POTENTIAL FINANCIAL IMPACTS ON TOWN TAXPAYERS FROM CERTAIN SCOPE/SIZE OF DEVELOPMENT. REVISIT TRIGGER NUMBER ANNUALLY, BASED ON CUMULATIVE NUMBER OF EXTRA-TERRITORIAL TAPS (i.e., not just those taps requested in subject application)?]]

M. **Any out-of-Town tap to which the Town is providing service as of the date of adoption of this Ordinance will be considered an Extra-Territorial Tap for purposes of this Chapter 171, and will be subject to all requirements imposed upon and all benefits accruing to Extra-Territorial Taps hereunder (i.e., will be on an equal footing with Extra-Territorial Taps approved in accordance with the terms and conditions of this Chapter).**

9. *Amend Article I, § 171-11.A to read as follows:* “Plant investment fees, Capital EQR schedules, delivery charges, flat rates, **the per-acre-foot valuation used to calculate required Cash in Lieu of Water Right Dedication**, and fees shall be determined and adopted by Council Ordinance from time to time.”

10. [[PLACEHOLDER FOR THAD: WILL REVIEW ARTICLE I, § 171-11.B.1 (2019 AMENDMENT) OR B.2 (WEBSITE VERSION OF THE CODE) RE: WAIVING A PORTION OR ALL OF THE TAP FEE FOR AFFORDABLE HOUSING-DESIGNATED UNITS; ISSUE OF BACKFILLING ANY WAIVED AMOUNTS INTO THE WATER FUND, WITH A REFERENCE TO THAT BACKFILLING IN THE CODE.]]
11. **Amend Article I, § 171-11.B to DELETE subsection 14.** ~~[(That subsection, as added to the Code by Ordinance 19-07, reads as follows: Out-of-town tap fee will be one and one-half (1-1/2) the otherwise applicable capital EQR:”].)]~~
12. **Amend Article I, § 171-11 to DELETE subsection H.** ~~[(That subsection currently reads as follows: “For supplying water to users outside the Town, the charge shall be two (2) times the applicable rate within the Town; provided, however, that for any dwelling unit outside the Town that was in existence as of July 1, 2022, the charge shall be the same as the applicable rate within the Town if the dwelling unit is deed restricted as affordable housing or work force housing:”].)]~~
13. **Amend Article II, § 171-15.A to read as follows:** “No water tap shall be sold by the Town except in conjunction and simultaneously with the issuance of a building permit **by the appropriate authority having jurisdiction.**”