

ORDINANCE NO. 8

AN ORDINANCE DESIGNATING AND ESTABLISHING THE TOWN OF JAMESTOWN WATER ACTIVITY ENTERPRISE.

WHEREAS, Section 20 of Article X of the Colorado Constitution provides that "enterprises" as defined therein are exempt from all provisions thereof; and

WHEREAS, pursuant to the provisions of Title 37, Article 45.1, Colorado Revised Statutes (the "Water Activity Law"), state and local governmental entities which have their own bonding capacity under applicable laws are authorized: (i) to establish or continue to maintain water, wastewater and stormwater activity enterprises for the purpose of pursuing or continuing water activities, which includes the diversion, storage, carriage, delivery, distribution, collection, treatment, use, reuse, augmentation, exchange, or discharge of water; and (ii) to issue or reissue bonds, notes, or other obligations payable from the revenues derived or to be derived from the function, service, benefits, or facility or from any other available funds of the enterprise, the terms and conditions of such bonds or other obligations to be as set forth in the resolution authorizing the same and, as nearly as practicable, as provided in Part 4 of Article 35 of Title 31, C.R.S., relating to water and sewer revenue bonds; and

WHEREAS, the Board of Trustees desires to take advantage of its legislative authority and finds that it would be in the public interest to expressly recognize its water activity as an enterprise of the Town of Jamestown within the meaning of said Section 20 of Article X, effective January 1, 1995; and

WHEREAS, the Board of Trustees finds and declares that the authority of Senate Bill 93-130, adding Article 45.1 to Title 37, C.R.S., is in addition to all other authority provided by law and that the Board of Trustees has the authority to utilize other policies and procedures for operating or continuing water activity enterprises for any other lawful purposes; and

WHEREAS, as a statutory municipality of the State of Colorado, the Town of Jamestown has its own bonding authority under various provisions of the Colorado Constitution and the Colorado Revised Statutes; and

WHEREAS, the Town's water activity enterprise receives under ten percent of its annual revenue in grants from all Colorado state and local governments combined; and

WHEREAS, the Board of Trustees considers it to be in the best interests of the Town that the Town's water activity enterprise be designated as an enterprise; and

#8, 1994

WHEREAS, the Board of Trustees declares that an emergency exists because of the need to designate the water activity enterprise for fiscal year 1995.

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

Section 1. Definitions. As used in this ordinance, unless the context otherwise requires:

(a) "Grant" means the cash payment of public funds made directly to a municipal activity enterprise by the state or a local governmental entity or district, including the Town of Jamestown, which cash payment is not required to be repaid. "Grant" does not include public funds paid or advanced to a municipal activity enterprise by the state or local governmental entity or district, including the Town of Jamestown, in exchange for an agreement by a municipal activity enterprise to provide service including the provision of water, the capacity of project works, materials, or other water activities; nor does "grant" include refunds made in the current or next fiscal year, gifts, any payments directly or indirectly from federal funds or earnings on federal funds, collections from another government, pension contributions by employees and pension fund earnings, reserve transfers or expenditures, damage awards, or property sales.

(b) "Water activity" includes but is not limited to the diversion, storage, carriage, delivery, distribution, collection, treatment, use, reuse, augmentation, exchange, or discharge of water and includes the provision of wholesale or retail water services and the acquisition of water or water rights.

(c) "Water Activity Enterprise" means that water activity business wholly owned by the Town of Jamestown which receives under ten percent of its annual revenues in grants from all Colorado state and local governments combined and which is authorized to issue its own revenue bonds pursuant to this ordinance or any other applicable law.

(d) "District" shall have the meaning set forth in Section 37-45.1-102, C.R.S., as amended.

Section 2. Establishment of Enterprise. There is hereby recognized, established and designated the "Town of Jamestown Water Activity Enterprise" (the "Enterprise"). The Enterprise shall consist of the business represented by all of the Town's water facilities and properties, now owned or hereafter acquired, whether situated within or without the Town boundaries, including all present or future improvements, extensions, enlargements, betterment, replacements, or additions thereof or thereto. The monies in the Town's water fund shall constitute the funds of the Enterprise. The Enterprise shall have all of the authority,

powers, rights, obligations, and duties as may be provided or permitted by the laws of the State, and the Colorado Constitution, and as may be further prescribed by ordinance or resolution of the Town.

The Enterprise shall continue to be a wholly owned business of the Town of Jamestown and shall not be combined with any municipal activity enterprise owned by another district. The Enterprise may continue to conduct the activities and provide the services as provided for in the ordinances of the Town and the regulations adopted pursuant thereto. This paragraph shall not limit the authority of the Enterprise to contract with any other person or entity, including other districts or enterprises.

Section 3. Governing Body. The governing body of the Enterprise (the "governing body") shall be the Board of Trustees of the Town of Jamestown, and shall be subject to all of the applicable laws, rules, and regulations pertaining the Board of Trustees. Whenever the Board of Trustees is in session, the governing body shall also be deemed to be in session. It shall not be necessary for the governing body to meet separately from the regular and special meetings of the Board of Trustees, nor shall it be necessary for the governing body to specifically announce or acknowledge that actions taken thereby are taken by the governing body of the Enterprise. The governing body may conduct its affairs in the same manner and subject to the same laws which apply to the Board of Trustees for the same or similar matters; provided that in accordance with §37-45.1-104(2), C.R.S., the governing body may authorize the issuance of bonds by adoption of a resolution or and ordinance.

The governing body of the Enterprise may exercise the Town's legal authority relating to water activities.

Section 4. Maintenance of Enterprise Status. The Enterprise shall at all times and in all ways conduct its affairs so as to continue to qualify as a "water activity enterprise" as defined in §35-45.1-102, C.R.S., and as an "enterprise" as defined in Article X, Section 20, Colorado Constitution. Specifically, but not by way of limitation, the Enterprise is not authorized, and shall not receive 10% or more of its annual revenue in grants from all Colorado state and local governments combined.

Section 5. Issuance of Bonds. The Enterprise maintained pursuant to this ordinance, through the Board of Trustees of the Town of Jamestown, may issue or reissue revenue bonds, notes, or other obligations payable solely from the revenues derived or to be derived from the functions, services, benefits, or facilities of the Enterprise or from any other available funds of the Enterprise, in accordance with and through provisions of C.R.S. §37-45.1-104,

provided however, the powers provided in said section shall not modify, limit, or affect the powers conferred by any other law either directly or indirectly.

Section 6. The Water Activity Enterprise designation shall be effective on January 1, 1995.

Section 7. 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 Board of Trustees hereby declares that 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.

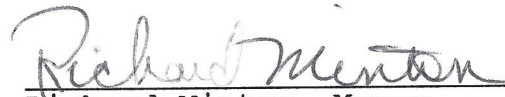
Section 8. The repeal or modification of any provision of the ordinances of the Town of Jamestown by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 9. 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 10. The Board of Trustees herewith finds, determines, and declares that this ordinance is necessary to the immediate preservation of the public health and safety. This ordinance shall be effective upon adoption and approval by the Mayor.

INTRODUCED, READ, ADOPTED, APPROVED, AND ORDERED PUBLISHED IN FULL this 12th day of DECEMBER, 1994.

TOWN OF JAMESTOWN, COLORADO


Richard Minton, Mayor

ATTEST:


Patsy Taylor, Town Clerk

112394/1642[dkm]c:jamestown\watrentr.ord