



**TOWN OF MILLIKEN
BOARD OF TRUSTEES
AGENDA MEMORANDUM**

To: Mayor Tokunaga and Town Board of Trustees		Meeting Date: June 24, 2015	
From: Bruce Fickel, Town Attorney			
Via: Kent Brown, Town Administrator			
Agenda Item #	Action: x	Discussion:	Information:
Agenda Title: To Consider and Approve Ordinance 715; An Ordinance of the Town of Milliken, Weld County, Colorado Adopting By Reference An Amendment to the <i>Milliken Municipal Code</i> and Repealing All Ordinances in Conflict Therewith.			
Attachments: Ordinance 715 Code Changes			

PURPOSE

To consider and approve Ordinance 715; An Ordinance of the Town of Milliken, Weld County, Colorado adopting by reference an amendment to the *Milliken Municipal Code* and repealing all Ordinances in conflict therewith.

RECOMMENDATION

Town Staff recommends approval of Ordinance 715; An Ordinance of the Town of Milliken, Weld County, Colorado adopting by reference an amendment to the *Milliken Municipal Code* and repealing all Ordinances in conflict therewith.”

SUGGESTED MOTION

“I move to approve Ordinance 715; An Ordinance of the Town of Milliken, Weld County, Colorado adopting by reference an amendment to the *Milliken Municipal Code* and repealing all Ordinances in conflict therewith.”

ORDINANCE NO. 715

AN ORDINANCE OF THE TOWN MILLIKEN, WELD COUNTY, COLORADO ADOPTING BY REFERENCE AN AMENDMENT TO THE *MILLIKEN MUNICIPAL CODE* AND REPEALING ALL ORDINANCES IN CONFLICT THEREWITH.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF MILLIKEN, WELD COUNTY, COLORADO:

Section 1. Adoption

Pursuant to parts 1 and 2 of Article 16 of Title 31 C.R.S., an amendment to chapter 13 of the Town of Milliken's *Municipal Code* is hereby adopted by reference. The amendment is titled Town of Milliken Sewer Code and the subject matter of the amendment corrects the omission of regulations pertaining to Milliken's Wastewater Department/Sewer Code as part of the *Milliken Municipal Code*. Three copies of the Town of Milliken Sewer Code are filed in the office of the Clerk of the Town of Milliken, Colorado and may be inspected during regular business hours.

Section 2. Application

This Ordinance shall apply to all future development throughout the Town of Milliken.

Section 3. Validity.

If any part or parts of this Ordinance are for any reason held to be invalid, such decision shall not affect the validity 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 thereof, irrespective of the fact that any one part or parts be declared invalid.

Section 4. General Provisions

It shall be unlawful to fail to do anything mandated by the Town of Milliken Sewer Code or to do something that is prohibited by the Town of Milliken Sewer Code. Upon conviction, each and every day that the violation continues is a separate violation.

Section 5. Civil and Criminal Penalties

A. *Injunction.* When the director finds that a user has violated, or continues to violate, any provision of this Code, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the director may petition the Nineteenth Judicial District of the State of Colorado through the Town's attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this Code on activities of the user. The director may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against the user.

B. *Civil Penalties.* Any user who is found to have failed to comply with any provision of this Code, or the orders, rules, regulations and permits issued thereunder, may be fined a civil penalty in an amount up to ten thousand dollars (\$10,000.00) per day for each violation/offense, pursuant to the authority of 25-8-608(1) C.R.S., as amended, and the Federal Water Pollution Control Act, commonly referred to as the "Clean Water Act". Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense. In determining the amount of civil liability, the court shall take into account all relevant circumstances, including, but not

limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires. In addition to the penalties provided herein, the Town may recover reasonable attorney's fees, court costs, court reporter's fees and other expenses of litigation by appropriate suit at law against the person found to have violated this Code or orders, rules, regulations and permit issued pursuant to this Code.

C. Criminal Penalties.

1. A user who discharges any pollutant into the Town's Publicly Owned Treatment Works (POTW) commits criminal pollutions if such discharge violates any provision of this Code, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, and the discharge is made:

a. With criminal negligence or recklessly, in which case the user shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than three hundred dollars (\$300.00) per violation, per day, or imprisonment for not more than ninety (90) days for each violation, or both such fine and imprisonment; or,

b. Knowingly or intentionally, in which case the user shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than three hundred dollars (\$300.00) per violation, per day, or imprisonment, or both such fine and imprisonment for not more than ninety (90) days for each violation.

2. A user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this Code, wastewater discharge permit, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this Code shall, upon conviction, be punished by a fine of not more than three hundred dollars (\$300) per violation, per day, or imprisonment for not more than six (6) months or both.

3. If two separate offenses under this Code occur in two (2) separate occurrences during a period of two (2) years, the maximum fine for the second offense shall be double the amounts specified in Paragraphs (C)(1) and (C)(2) of this Subsection.

4. **Performance Bonds.** The director may decline to issue or reissue a wastewater discharge permit to any user who has failed to comply with any provision of this Code, a previous wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, unless such user first files a satisfactory bond, payable to the Town, in a sum not to exceed the value determined by the director to be necessary to achieve consistent compliance.

5. **Liability Insurance.** The director may decline to issue or reissue a wastewater discharge permit to any user who has failed to comply with any provision of this Code, a previous wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

6. **Water supply severance.** Whenever a user has violated or continues to violate any provision of this Code, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, water service to the user may be severed. Service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply with the Code.

7. **Contractor listing.** Users which have not achieved compliance with applicable pretreatment standards and requirements are not eligible to receive a contractual award for the sale of goods or services to the Town. Existing contracts for the sale of goods or services to the Town held by

a user found to be in significant noncompliance with pretreatment standards or requirements may be terminated at the direction of the director.

D. *Enforcement.* The remedies provided for in this Code are not exclusive. The director, directly or through judicial processes, or both, may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the Town's Industrial Pretreatment Program; however, the director may take other action against any user when the circumstances warrant. Further, the director is empowered to take more than one (1) enforcement action against any noncompliant user.

Section 6. Repeal.

Existing or parts of ordinances covering the same matters as embraced in this Ordinance of the *Milliken Municipal Code* are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance.

Section 7. Certification

The Town Clerk shall certify to the passage of this Ordinance and make not less than three (3) copies of the adopted portion of the code available for inspection by the public during regular business hours.

Section 8. Effective Date.

After introduction at the regular meeting of the Board of Trustees of the Town of Milliken at its meeting on the 24th day of June 2015, this Ordinance was introduced, and a public hearing held. Notice of the public hearing was published in a newspaper of general circulation in the town of Milliken.

The Board of Trustees of the Town of Milliken herewith finds, determines and designates that this Ordinance shall take effect and be in force thirty (30) days after publication.

The Ordinance was read, passed and ordered published by the Board of Trustees at its meeting on the 24th day of June, 2015.

TOWN OF MILLIKEN:

ATTEST:

Milt Tokunaga – Mayor

Cheryl Powell – Town Clerk

APPROVED AS TO FORM:

R. Bruce Fickel II, Attorney

A. Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the director may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6 (c).

B. When wastewater subject to categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the director shall impose an alternate limit using the combined wastewater formula in 40 CFR 403.6 (e).

C. A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by the EPA when developing the categorical pretreatment standard.

D. A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.

13-5-17-4 Compliance with State Requirements

Requirements and limitations on discharges established by the State shall apply in any case where they are more stringent than national requirements and limitations or those in this Pretreatment Program. Such State standards, and as amended, are located at 5 CCR 1002-20, and hereby adopted by reference as if fully set forth herein.

13-5-17-5 LOCAL LIMITATIONS AND DISCHARGE STANDARDS

A. The following pollutant limits are established to protect against pass through and interference. No person shall discharge wastewater containing in excess of the following maximum allowable discharge limits using twenty-four hour flow proportional composite or grab sampling or the applicable more restrictive discharge limits which may be in effect and applicable:

Pollutant Composite Sample (mg/L)

Arsenic, Total 0.036

Cadmium, Total 0.026

Chromium, Total 2.0136

Copper, Total 1.019

Lead, Total 0.132

Mercury, Total 0.0002

Molybdenum, Total 0.081

Nickel, Total 0.323

Selenium, Total 0.028

Silver, Total 0.554

Zinc, Total 1.105