

# TOWN OF WILMINGTON WATER CODE

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## Chapter 1

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**SECTION I**  
**Terminology****§ 1-1 Definitions.**

**TOWN WATER SYSTEM** - All property, plant, pipes, tanks, pump stations and other facilities and appurtenances existing for the purpose of supplying and distributing water which are owned by the Town of Wilmington.

**CROSS-CONNECTION** - Any unprotected connection between any part of the water system and any service or system containing water or substance that is not approved as equally safe for human consumption.

**CUSTOMER** - A property owner with water service installed from a public water system in the Town of Wilmington to a premise on said property

**DEVELOPER** - Any person who subdivides or improves land for the purpose of constructing or causing to be constructed buildings for which potable water is required;

**DISTRICT** - A water district of the Town of Wilmington duly formed in accordance with the laws of New York State.

**EASEMENT** - An acquired legal right for the specific use of land owned by others.

**ENGINEER** - A person or firm appointed by the Town Board to advise the Town Board on matters related to the public water system possessing licenses to practice engineering and conduct business in New York State.

**EXTENSION** - Attachment of a waterline, with more than one user, to an existing waterline.

**PERSON** - Any individual, public or private corporation, political subdivision, federal, state or local agency or entity association, trust, estate or any other legal entity whatsoever.

**PREMISES** - Any parcel of real 'property, including land, improvements or appurtenances, as buildings, grounds, etc.

**SERVICE AREA** - The legally defined bounds of real property within the Town of Wilmington In which water may be distributed from the public water system. The bounds shall be established, altered, changed, modified, reduced, enlarged, combined or consolidated only by action of the Town of Wilmington Town Board.

**SERVICE LINE** - Water lines commencing at the corp. stop and running from this point to the inlet side of the house.

**SUPERINTENDENT** - The person(s) appointed by the Town Board to oversee operation and maintenance of the public water system and otherwise carry out duties and functions defined herein and as may be prescribed by the Town Board.

**TOWN** - The Town of Wilmington, Essex County, State of New York and may, as appropriate, mean the Town of Wilmington acting on behalf of a district.

**TOWN BOARD** - Town Board of the Town of Wilmington, Essex County, New York, acting on behalf of the town or on behalf of a district, as appropriate.

**TOWN ENGINEER** - The engineer appointed by Town Board for the purposes of this chapter or his authorized agent or representative,

## **SECTION II**

### **Superintendent; Billing Clerk and Collection Clerk**

#### **§ 1-2 Water Superintendent.**

There shall be appointed for the town water district, in the same manner and for such term and on such basis as the Town Board may determine, a Superintendent of Water Supply who, on behalf of the Town Board, shall have general supervision of the operation and maintenance of the water system, issue all permits required hereby, read meters, inspect service installations and perform other such duties as required for operation and maintenance of the water systems as the Town Board may direct.

#### **§ 1-3 Authority of Superintendent.**

A. Wherever it is referred to herein that permission be granted by or that an application be made to or that an act be done by, or that an act be approved by the district, it shall mean the Superintendent of Water Supply of the district.

B. Whenever any of the provisions of these rules, regulations and ordinances are violated, the water supply may be shut off and the meter removed by the Superintendent

C. The Superintendent of the district or his authorized agents shall have full power to enter the premises of any consumer, at all reasonable hours, to read the meter or to examine fixtures, plumbing and the manner of using water.

#### **§ 1-4 Billing Clerk and Collection Clerk.**

There shall be appointed by the Town Board both a Billing Clerk and a Collection Clerk whom shall serve at the direction of the Board. The Billing Clerk shall render bills for water furnished or other service given. The Collection Clerk shall collect all accounts due and owing, file a monthly report of accounts with the Town Board and make such other reports as the Board may require.

- A. All money received by the Collection Clerk on behalf of the district shall forthwith be deposited in such banks or trust companies as the Town Board may from time to time direct.
- B. Claims and charges against the district shall be audited and paid in the same manner as town charges.
- C. The Collection Clerk shall give bond for the faithful performance of his or her duties and for rendering a just and true account of all moneys received by him or her on behalf of the water district in said sum as the Town Board may premium of such bond shall be a district charge, from time to time direct. The premium of such bond shall be a district charge.

### SECTION III Permits

#### § 1-5 Permit required.

No person shall use the water supplied by the district for any purpose whatsoever without having first obtained a permit upon written application therefore, after having first paid the charges pertaining to the introduction of water to the premises. The district and/or Town Board shall have the right to reject any application where cause exists or to stipulate such conditions as may be necessary to maintain acceptable operating conditions in the system.

#### § 1-6 Application for permit.

Any application for introduction of water to any premises or for the use of water shall be made upon a blank furnished by the district for such purpose and shall be signed by the owner or his, her or its duly authorized agent. Such application shall contain a statement of all *uses* for which water is desired, and a use of water for any Purpose other than mentioned in the application shall be sufficient cause to justify discontinuance of water service. Application for additional uses may be made at any time and permit may be granted therefore. Upon acceptance by the Water Superintendent acting for and in behalf of the district, the application shall constitute a binding contract between the water district and the customer obligating the customer to pay the water district the established rates and to comply with rules and regulations herein.

### SECTION IV Water Service Installations and Maintenance

#### § 1-7 Authority to connect to the water district.

A. No person shall make any attachment to or connection with any of the pipes or mains or meters of the districts nor make any repairs, additions or alterations to these pipes, unless he or she is an employee of the district acting within the scope of his or her employment or a person authorized by the Town Board.

B. The Town of Wilmington will be responsible for the Tap to the main and the corporation stop. New service connections that are pre-tapped shall be \$750.00. Connections requiring a new tap shall be \$950.00 for up to 1" with larger sizes done on a case-by-case basis. Road Crossings in the District will be \$850.00, outside the District, \$1050.00. This fee will cover one day of attempting to cross. In the event the Town is unable to complete a crossing the Applicant shall be responsible for the cost of a Contractor to complete it. All parts of the Town of Wilmington Connection Policy are to be followed. This policy may be modified from time to time by resolution of the Town Board.

#### **§ 1-8 Bond requirements.**

Any person may make application to the Town Board for the purposes set forth in section VIII Except in the case of work done wholly within the owner's property, such application shall be accompanied by a bond in an amount as established and/or modified from time to time by resolution of the Town Board, with one or more sureties authorized to transact business in New York State, conditioned that he, she or it will comply with these regulations, rules and laws, will pay to the district all fees, penalties or other charges required hereby in consequence of the work undertaken and that he, she or it will restore openings made in streets, roads, lanes and other public places and pavements thereon and therein, to the same standard of condition as before the work started and keep and maintain the same in such condition for a Period of one year after the work has been completed and, in case of failure so to do, will pay to the proper authority in the premises the cost of putting the same in such condition. The Town Board may, in its discretion, grant or deny such application. Such permission so given may be revoked by the Town Board at any time.

#### **§ 1-9 Insurance requirements.**

A. Before application for the purposes set forth in section VIII is approved, and, before commencing work, the applicant shall file insurance certificates with the Town Clerk. Insurance coverage shall be provided for the types and in the amounts as established and/or modified from time to time by resolution of the Town Board.

B. All insurance policies must be provided within 15 business days notice to the Town of Wilmington before cancellation and must cover all liabilities of the Town of Wilmington and be in a form approved by the Town of Wilmington Town Board.

#### **§ 1-10 Inspection by Superintendent.**

A. No person shall tap any main or distributing pipe or make or interfere with any connection with the water system unless under the direction of and in the presence of the Superintendent or unless he is an employee of the district or unless specific permission in each case is given by the district; nor shall any person make any alterations or additions in and about water pipes other than on the consumer's side of the curb stop, unless a written permit shall have been given by the district upon written application therefore.

**§ 1-11 Highway work permits may be required.**

No street, highway or any part of the right-of-way thereof shall be opened by any person for the purpose of making a connection with the mains or for the laying of water pipes or fixtures, unless permission, in the form of an authorizing permit or other written document, shall have been granted by the authority having jurisdiction therein.

**§ 1-12 Installation requirements.**

Service taps, pipes, valves and other appurtenances shall be installed in accordance with Town of Wilmington. Standard Specifications and Details for Water Facilities, as adopted and/or modified from time to time by resolution of the Town Board.

**§ 1-13 Maintenance customer's responsibility.**

Service lateral from corp. stop to residence is customer's responsibility. Pipes and meters and the appurtenances thereto shall be kept in good repair and protected from the frost by the consumer at his own expense.

**§ 1-14 Notice required for service shutoff.**

In case a house or other building is to be closed or becomes vacant, notice thereof should be given to the district in order that the meter may be read and curb stop closed. Where such notice is not given and pipes burst from freezing or other cause, the value of water lost by reason thereof, as estimated by the Superintendent, together with the fee established by the Town Board to cover labor and expense to the district, shall be added to the next bill and be paid in like manner as regular water charges. The Water Dept. can, at the owner's request, close the curb stop and drain the meter. Either the owner or their representative must be present. The Town of Wilmington claims no responsibility or liability from any adverse effect caused by performing this service. The owner can petition the Town Board to be removed from the billing schedule. Upon the Town Boards approval of this request the Water Superintendent shall lock or remove the meter from service.

**§ 1-15 Reactivation of discontinued service.**

Where water has been turned off by direction of the district or at the request of the customer, it shall not be again turned on without the permission of the district. No person other than the Superintendent or an employee of the district shall turn on any water service. Prior to reactivation, a fee, as may be established and modified from time to time by resolution of the Town Board, shall be paid to the district.

**§ 1-16 Resale of water prohibited**

No water shall be resold or distributed by the recipient thereof from the district supply to any premises other than that for which application has been made and the meter installed, except in case of emergency where approved by the Superintendent.

**§ 1-17 Separate meters required.**

Separate and independent meters shall be installed for each and every parcel for which water is to be provided.

**§ 1-18 Temporary water service or usage.**

Application shall be made to the Superintendent who may solely, at his discretion, permit the temporary usage of water. The Superintendent shall establish the requirements for such usage, including provisions for monitoring water usage. An application fee equivalent to the fee established for reactivation of a service shall be paid to the district and water rent shall be charged as though said temporary usage was a residential service. Where connection to a district line is required, the appropriate fee shall be assessed and paid by the applicant.



**ARTICLE V**  
**Water Meters**

**§ 1-19 Water Meters required.**

A. Permanent water service shall be rendered by meter only. In order that there may be a uniformity of make and design and to give the greatest efficiency in operation and maintenance, All meters shall be of such make and type as specified in the Town of Wilmington Standard Specifications and Details for Water Facilities as adopted by the Town Board. Meters shall be owned by the district and shall be obtained from the district at cost as may be established and modified from time to time by the Town Board.

B. Failure to comply with meter installation shall result in Water Service termination. The user shall be notified 15 days prior to shut off by certified mail. Every effort shall be made to work with the user to avoid shut off. In the event the user turns the water back on, the bill will be the base rate plus \$250.00 for residential users and \$500.00 plus the base rate for commercial users, per billing cycle.

**§ 1-20 Maintenance and replacement of meters.**

- A. Where a water meter fails to register the correct quantity of water delivered through it or where it otherwise becomes Out of Order or in need of repair, notice thereof shall, be given the district by the customer, Where repairs are found necessary due to negligence of the user, the same shall be made by the district and the cost thereof borne by the customer. Negligence is to include, but not be limited to, freezing, improper draining, or tampering by the user. When, in the opinion of the Superintendent of the district, a meter becomes unsuitable for further use, except when due to negligence or lack of care of the user, it shall be replaced by the district. The district shall have the right to test meters suspected of improper function at the discretion of the Superintendent.
- B. The Superintendent, or any persons delegated by him, must at all reasonable hours have access to all meters and to all parts of the premises to which water is delivered, for the purpose of inspection, examination of fixtures, reading meters, etc. All persons using water must at all times, frankly and without concealment, answer all questions put to them relating to its consumption. No person shall tamper with or remove a meter without the consent of the Superintendent.
- C. The Town of Wilmington shall own and maintain responsibility of the water meter, meter pit, and corner horn, up to and including the compression fittings. The Town of Wilmington shall be responsible for any mechanical failure other than tampering or negligence on part of the owner.

**§ 1-21 Tile set meters required.**

A. Whenever the distance from the water main to the point of entry of the water service line into the building exceeds 500 feet, a tile set meter installation shall be required. Such connection shall be in accordance with Town of Wilmington Standard Specifications and Details for Water Facilities.

B. On any dwelling or building structure that is individually owned the user shall cover the cost of the meter and all components in their tap fee. On any dwelling or building structure that is owned by an association or group, the meter and all reading components are to be supplied and installed by the building contractor according to the Water Districts specifications.

**SECTION VI**  
**Cross-Connection Control**

**§ 1-22 Requirements for cross-connection control.**

A. Cross-connection control shall be provided by the customer to protect the public water system by containment of any existing or potential contamination within the premises of the customer in the following manner.

(1) By installing an acceptable air gap, reduced pressure zone device, or equivalent backflow prevention device acceptable to the New York State Department of Health and approved by the Superintendent, consistent with the degree of hazard posed by the premises;

**§ 1-23 Customer responsibility**

It shall be the responsibility of each customer at his own expense to furnish, install and keep in good working order and safe condition any and all protective devices or meters required. The district shall not be responsible for any loss or damage directly or indirectly resulting from or caused by the improper or negligent installation, operation use, repair or maintenance of, or interfering with, any protective device by any customer or other person.

**§ 1-24 Separate sources of water restricted.**

A. The owner(s) of all houses, buildings, or properties used for human occupancy, employment, recreation or other purposes, situated within the Town of Wilmington and abutting on any street, alley or right-of-way in which there is now located, shall not establish or maintain a separate source of water without the approval of the district.

B. In order to receive approval of a separate source, the customer must justify the need. If approved, separate sources of water shall not be physically connected to the public water system in any way, either directly or through building plumbing systems. Any and all separate sources must have separate and independent plumbing and distribution systems.

C. All users of the public water system shall prevent cross-connections, within their premises, between the potable water piping system and any other piping system. Failure to comply with any cross-connection regulations shall result in termination of water services to the affected property.

## SECTION VII

### Operation and Use of Hydrants and Valves

#### § 1-25 Use restricted.

No person shall open, interfere with or draw water from any fire hydrant, or open or close any valves in the district without permit from the district therefore, except that hydrants may be opened by or on the order of any member or a Fire Department or any fire commissioner within the district in case of fire for the purpose of attaching thereto fire hose and equipment, where contract for the purpose has been entered into with the district.

#### § 1-26 Notification of use required.

Whenever a hydrant has been opened and used, notification of such fact shall be promptly, given to the district.

#### § 1-27 Tools for hydrant and valve operation.

No tools or implements shall be used to open hydrants and valves except such as are furnished by the district or by a Fire Department operating with the district's permission.

## SECTION VIII

### Extensions of Water System

#### § 1-28 Engineering plans and approval required.

Engineered plans and specifications prepared and stamped by a professional engineer licensed to practice in New York State shall be required for any new water system extensions. Plans shall be subject to review and approval of the town's Engineer. Where extension is proposed by someone other than the Town Board on behalf of the district; all cost associated with the extension, including the cost of such review shall be borne by the person proposing the extension. Funds to cover review expenses shall be deposited in escrow with the town prior to review work being performed.

**§ 1-29 Standard specifications and details.**

Extensions to the water system shall be made in accordance with Town of Wilmington Standard Specifications and Details for Water Facilities, as adopted by resolution of the Town Board.

**§ 1-30 Construction inspection required.**

Construction of water system extensions shall be inspected by the Town, or, at the discretion of the Town Board, the Superintendent. Where extension is proposed by someone other than the Town Board on behalf of the district, the cost of inspections shall be borne by the person proposing the extension. Funds to cover inspection expenses shall be deposited in escrow with the town prior to construction work being performed. No work shall advance unless inspected to the satisfaction of the Superintendent and the Town Board.

**§ 1-31 Testing and certification.**

All water system extensions must be successfully leak tested in accordance with American Water Works Association (AWWA) specifications, and disinfected and tested for bacteriological contamination in accordance with regulations prior to acceptance by the district. Written certification by a New York State licensed professional engineer attesting as such shall be provided to the Superintendent by the person making the extension prior to the Town Board's acceptance of the extension.

**§ 1-32 Record drawings.**

Record drawings shall be prepared for all water system extensions by the design engineer which reflect any substantive modifications to the original plans and specifications made during construction. As built drawings are required, and shall be turned over to the Superintendent prior to acceptance of a water line.

**§ 1-33 Dedication of facilities.**

Upon written acceptance by the Town Board, completed facilities for water system extensions, which have been privately constructed, shall be dedicated to the district, at which time they will become the property of the district. At the time of dedication, the person dedicating the facilities to the town shall provide a guarantee against defects in materials and workmanship for a period of one year. The guarantee shall be in such form and contain such provisions as deemed necessary by the Town Board, secured by a surety bond or such other security as the Town Board may approve. Any and all repair work and testing done in this time frame shall be born by the contractor.

**§ 1-34 Easements.**

Any extension of the water system constructed on or adjacent to private property which property must be entered upon for the purposes of maintaining or reconstructing said water system extension will require easements. Any such easements will be written such that the town and the district has the right to access for maintenance and reconstruction of the waterlines. Easements shall extend along the length of the waterline a minimum width of 30 feet: 15 feet on each side of the centerline of the waterline. For extensions made by someone other than the Town Board on behalf of the District, all costs associated with obtaining any such easements shall be borne by the developer.

**§ 1-35 Restoration.**

All surface features and landscaping shall be fully restored to at least as good a condition as existed prior to construction by the person making the water system extension. Restoration shall be included in the warrantee and covered by the bond required in § 1-33

**SECTION IX**  
**Right to Restrict Water Use**

**§ 1-36 Circumstances warranting restriction.**

A. The district reserves the right to limit the amount of water furnished to any customer, should circumstances warrant such action, even though no limit be stated in the application or permit for use; or the district may entirely shut off the water supply used for any manufacturing purposes, or for furnishing power, or for lawn sprinkling, at any time, by giving reasonable notice of such intended action. Or, in case of making or constructing new work or in making repairs, the right is reserved to shut off the water from any customer without notice for as long a period as may be necessary.

The Superintendent has the right to invoke the following restrictions in time of drought or emergency:

- (1) No water is to be used for sprinkling of lawns.
- (2) No washing of automobiles, trucks or any motor vehicle of any kind shall be allowed.
- (3) No water shall be used for air conditioning or air-conditioning units.
- (4) Other restrictions as deemed necessary and appropriate.

**§ 1-37 Water conservation.**

All new construction and renovations of building plumbing systems shall be made with water saving plumbing fixtures. Other water conservation measures may be implemented by the district upon approval by resolution of the Town Board.

**§ 1-38 Moratorium.**

At the recommendation of the Superintendent who determines that one or more segments of the public water system is at or beyond its hydraulic capacity to serve portions of the service area tributary to it; any specific purpose of this chapter is being violated; if additional demands are placed on the system, the Town Board shall have the authority to limit or deny new connections to the public water system until the conditions leading to the moratorium are corrected. Such correction may be by:

- A. Construction of new facilities.
- B. Enlarging existing facilities.
- C. Repairing existing facilities.

**SECTION X**  
**Charges and Bills**

**§ 1-39 User fees.**

User fees shall be assessed to each property within the service area for the purposes of retiring debt. User fees and formulas for determining user fees shall be established in accordance with New York State and Town Law and may be modified from time to time by resolution of the Town Board. User fees will be included on the tax bills for each property within the service area, and payment for the same shall be made at the same time and at the same place as specified for other town charges.

**§ 1-40 Water rates and billing schedule.**

Any service connected to the public water system shall pay a water service charge, which shall be collected as a water rent. Water rents shall be fixed from time to time by resolution of the Town Board. Bills shall be payable at such times and places as may be designated by the Town Board. The Town Board may provide appropriate penalties for nonpayment of bills, including a shutoff of the water supply.

**Water Rents Per Billing Cycle.****Residential**

- 0 - 20,000 gallons: \$90.00
- 20,001 – 70,000: \$2.00 per thousand gallons of usage
- 70,001 – 120,000: \$3.00 per thousand gallons of usage
- 120,001 – 170,000: \$4.00 per thousand gallons of usage
- 170,001 and up: \$5.00 per thousand gallons of usage.

**Commercial**

- 0 – 40,000 gallons: \$180.00
- 40,001 – 90,000: \$2.00 per thousand gallons of usage
- 90,001 – 140,000: \$3.00 per thousand gallons of usage
- 140,001 – 190,000: \$4.00 per thousand gallons of usage
- 190,000 and up: \$5.00 per thousand gallons of usage

**Senior**

- 0 - 20,000 gallons: \$81.00
- 20,001 – 70,000: \$2.00 per thousand gallons of usage
- 70,001 – 120,000: \$3.00 per thousand gallons of usage
- 120,001 – 170,000: \$4.00 per thousand gallons of usage
- 170,001 and up: \$5.00 per thousand gallons of usage

**§ 1-41 Delinquent payments.**

A. If there shall be any payments which are due to the Town of Wilmington, or any department or district thereof, pursuant to any article or section of this chapter, which shall remain due and unpaid, in whole or in part, for a period of 30 calendar days from the date of billing by the Town of Wilmington, the same shall constitute a default, and there shall be added to the entire amount of the original bill a penalty equal to 10% of the original billing.

In the event that there are any water bills, taxes, assessments, fees, rents or other service charges which shall have been delinquent for a period of at least 60 calendar days as of October 30th of any year, the Collection Clerk shall report the names of the defaulting persons to the Town of Wilmington Town Board, the Town of Wilmington Clerk, the Town of Wilmington Tax Assessor and the Town of Wilmington Supervisor on or before October 30th of the same year. The Town of Wilmington Tax Assessor is hereby directed to add the entire amount of the water tax, assessment or other service charge which shall be in default, plus penalty and interest, as provided for in this chapter, to the real property taxes due and owing to Town of Wilmington in the next succeeding year, and the Town of Wilmington Tax Assessor is directed to collect the same in the same manner as real property taxes due and owing to the Town of Wilmington are collected.

**§ 1-42 Charges when meter malfunctions.**

If the meter fails to accurately record the quantity used, it shall be determined and the charge made based upon the quantity used in the preceding billing period, or the corresponding period of the preceding year, or upon a corrected water bill as shown by a meter test, as the Superintendent may, at his discretion, determine.



**SECTION XI**  
**Miscellaneous Provisions**

**§ 1-43 Steam boilers and hot water tanks.**

In all places where steam boilers or hot-water tanks are supplied with water from the water system, the owner or customer must see that the plumber places a suitable safety valve, vacuum valve or other proper device to prevent damage from collapse or explosion when the water is shut off. There will be no cross-connections allowed. Neither the district, the Town of Wilmington nor the Superintendent shall be liable for any damage resulting from sudden shutting off of the supply of water from any steam boiler or other fixture deriving its supply from the district water system.

**§ 1-44 Water flow and pressure.**

Neither the district, the Town of Wilmington nor the Superintendent shall be liable for any damage or loss of any name or kind to property or persons which may arise from or be caused by any change, diminution in or increase of the water pressure or water flow from any cause.

**SECTION XII**  
**Enforcement**

**§ 1-45 Administrative remedies.**

A. Notification of violation. Whenever the Superintendent finds that any user has violated or is violating this chapter or any permit, order, prohibition, limitation or requirement permitted by this chapter, the Superintendent may serve upon such person a written notice stating the nature of the violation. Within 15 calendar days of the date the Superintendent mails the notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof shall be submitted to the Superintendent, by the user. The correction and prevention plan shall include specific actions. Submission of this plan in no way relieves the user of liability for any violations caused by the user before or after receipt of the notice of violation.

B. Consent orders. The Superintendent is hereby empowered to enter into consent orders, assurances of voluntary compliance or other similar documents establishing an agreement with the user responsible for the noncompliance. Such orders shall include specific action to be taken by the user to correct the noncompliance within a time period also specified by the order.

## C. Administrative or compliance orders.

- (1) When the Superintendent finds that a user has violated or continues to violate this chapter or a permit or administrative order issued there under, he may issue an administrative order to the user responsible at the direction of the Town Board directing that, following a specified time period, water service shall be discontinued, severed and abated unless the violation is corrected and that there is no reoccurrence of the violation. Administrative orders may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance.
- (2) The user may, within 15 calendar days of receipt of such order, petition the Superintendent to modify or suspend the order. Such petition shall be in written form and shall be transmitted to the Superintendent by registered mail. The Superintendent shall then:
  - (a) Reject any frivolous petitions;
  - (b) Modify or suspend the order; or
  - (c) Order the petitioner to show cause in accordance with Subsection H and may as part of the show cause notice request the user to supply additional information.

## D. Administrative fines.

- (1) Notwithstanding any other section of this chapter, any user who is found to have violated any provision of this chapter, or permit or administrative order issued hereunder, shall, at the discretion of the Town Board, be fined in an amount not to exceed \$1,000 per violation. Each day on which noncompliance shall occur or continue shall be deemed a separate and distinct violation.
- (2) The user may, within 15 calendar days of notification of the Superintendent's notice of such fine, petition the Town Board to modify or suspend the order. Such petition shall be in written form and shall be transmitted to the Town Board by registered mail. The Town Board shall then:
  - (a) Reject any frivolous petitions;
  - (b) Modify or suspend the fine; or
  - (c) Order the petitioner to show cause in accordance with Subsection H and may, as part of the show cause notice, request the user to supply additional information.

## E. Cease and desist orders.

- (1) When the Superintendent finds that a user has violated or continues to violate this chapter or any permit or administrative order issued hereunder, the Town Board may issue an administrative order to cease and desist all such violations and direct those persons in noncompliance to:

- (a) Comply forthwith.
  - (b) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations or terminating the service.
- (2) The user may, within 15 calendar days of the date the Town Board issues notification of such order, petition the Town Board to modify or suspend the order. Such petition shall be in written form and shall be transmitted to the Town Board by registered mail. The Town Board shall then:
- (a) Reject any frivolous petitions;
  - (b) Modify or suspend the order; or
  - (c) Order the petitioner to show cause in accordance with Subsection H and may, as Part of the show cause notice, request the user to supply additional information.

F. Termination of permit.

- (1) Any user who violates the following conditions of this chapter or permit or administrative order, or any applicable state and federal law, is subject to permit termination:
- (a) Violation of permit conditions or conditions of an administrative order;
  - (b) Failure to terminate, relieve or remove a cross-connection;
  - (c) Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or
  - (d) Failure to pay administrative fines, fees or user charges.
- (2) The user may, within 15 calendar days of the date the Town Board issues such, notification, petition the Town Board to permit continued use of the service by the user. Such petition shall be in written form and shall be transmitted to the Superintendent by registered mail. The Town Board shall then:
- (a) Reject any frivolous petitions; or
  - (b) Order the petitioner to show cause in accordance with Subsection H and may, as part of the show cause notice, request the user to supply additional information.

G. Water supply severance.

- (1) Whenever a user has violated or continues to violate the provisions of this chapter or an order or permit issued hereunder, water service to the user may be severed and service will only recommence, at the user's expense, after it has satisfactorily demonstrated its compliance or ability to comply.
- (2) The user may, within 15 calendar days of severance, petition the Superintendent to reconnect water supply service. Such petition shall be in written form and shall be transmitted to the Superintendent by registered mail. The Superintendent shall then:
- (a) Reject any frivolous petitions;
  - (b) Reconnect the water supply; or

- (c) Order the petitioner to show cause in accordance with Subsection H and may, as part of the show cause notice, request the user to supply additional information.

#### H. Show cause hearing.

- (1) The Town Board may order any user appealing administrative remedies for violations of this chapter to show cause, before the Town of Wilmington Town Board, why an enforcement action, initiated by the Superintendent, should not be taken. A notice shall be served on the user specifying the time and place of a hearing to be held by the Town of Wilmington Town Board regarding the violation, the reasons why the action is to be taken, the proposed enforcement action and directing the user to show cause before the Town of Wilmington Town Board why the proposed enforcement action should not be taken. The notice of the hearing shall be served at least 10 calendar days before the hearing in accordance with Subsection J. Service shall be made on any principal or executive officer of a user's establishment or to any partner in a user's establishment or to owner or owners occupant in the case of a residential service. The notice of the hearing shall be served at least 10 calendar days before the hearing, in accordance with Subsection J.
- (2) The Town of Wilmington Town Board may itself conduct the hearing or may designate any of its members or any officer or employee of the Town of Wilmington to conduct the hearing and may:
  - (a) Issue, in the name of the Town of Wilmington Town Board, notices of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings.
  - (b) Take the evidence
  - (c) Take sworn testimony
  - (d) Transmit a report of evidence and hearing, including transcripts and other evidence, together with recommendations to the Town of Wilmington Town Board for action there on.
- (3) After the Town of Wilmington Town Board has reviewed the evidence and testimony, it may order the user to comply with the Superintendent's order or fine, modify the Superintendent's order or fine or vacate the Superintendent's order or fine.

#### I. Failure of user to petition the Superintendent.

In the event that the Superintendent issues any administrative order, terminates the user's permit or makes any fine as set forth in this section and the user fails, within the designated period of time set forth, to petition the Superintendent, as provided in appropriate subsections of this section, the user shall be deemed in default and its rights to contest the administrative order or fine shall be deemed waived.

## J. Notice.

The notices, orders, petitions or other notification which the user or Superintendent shall desire or be required to give pursuant to any sections of this chapter shall be in writing and shall be served personally or sent by certified mail or registered mail, return receipt requested, postage prepaid and the notice, order, petition or other communication shall be deemed given upon its mailing as provided herein. Any notice, administrative order or communication mailed to the user pursuant to the sections of this chapter shall be mailed to the user where the user's service is connected into district lines. Any notice, petition or other communication mailed to the Superintendent shall be addressed and mailed to the Town of Wilmington, P. O. Box 180, Wilmington, NY 12997.

## K. Right to choose multiple remedies.

The Superintendent shall have the right, within the Superintendent's sole discretion, to utilize any one or more appropriate administrative remedies set forth in this section. The Superintendent may utilize more than one administrative remedy established pursuant to this section, and the Town Board may hold one show cause hearing combining more than one enforcement action.

**§ 1-46 Judicial remedies**

## A. Civil actions for penalties.

(1) Any person who violates any of the provisions of or who fails to perform any duty imposed by this chapter, or any administrative order or determination of the Superintendent promulgated under this chapter or the terms of any permit issued hereunder shall be liable to the Town of Wilmington for a civil penalty not to exceed \$ 1,000 for each such violation, to be assessed after a hearing (unless, the user waives the right to a hearing) held in conformance with the procedures set forth in this section. Each violation shall be a separate and distinct violation, and in the case of continuing violation, each days' continuance thereof shall be deemed a separate and distinct violation. Such penalty may be recovered in an action brought by the Town of Wilmington Attorney, or his designated attorney, at the request of the Superintendent in the name of the Town of Wilmington, in any court of competent jurisdiction giving preference to courts local to the Town of Wilmington. In addition to the above described penalty, the Superintendent may recover all damages incurred by the Town of Wilmington from any persons or users who violate any provisions of this chapter, or who fail to perform any duties imposed by this chapter or any administrative order or determination of the Superintendent promulgated under this chapter, or the terms of any permit issued hereunder. In addition to the above described damages, the Superintendent may recover all reasonable attorney's fees incurred by the Town of Wilmington in enforcing the provisions of this chapter, including reasonable attorney's fees incurred in any action to recover penalties and damages, and the Superintendent may also recover court costs and other expenses associated with the enforcement activities, including sampling and monitoring expenses.

(2) In determining the amount of civil penalty, the Court shall take into account all relative circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user and any other relative factors as justice may require.

(3) Such civil penalty may be released or compromised by the Superintendent before the matter has been referred to the Town of Wilmington Attorney, and where such matter has been referred to the Town of Wilmington Attorney, any such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the Town of Wilmington Attorney, with the consent of the Superintendent.

B. Court orders.

(1) In addition to the power to assess penalties as set forth in this section, the Superintendent shall have the power, following the hearing held in conformance with the procedures set forth in this section, to seek an order:

(a) Suspending, revoking or modifying the violator's permit; or

(b) Enjoining the violator from continuing the violation.

(2) Any such court order shall be sought in an action brought by the Town of Wilmington Attorney, at the request of the Superintendent, in the name of the Town of Wilmington, in any court of competent jurisdiction giving precedence to courts local to the Town of Wilmington.

(3) The Town of Wilmington Attorney, at the request of the Superintendent shall petition the Court to impose, assess and recover such sums imposed according to this section. In determining amount of 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, 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.

C. Criminal penalties.

(1) Any person who willfully violates any provision of this chapter or any final determination or administrative order of the Superintendent made in accordance with this section shall be guilty of a Class A Misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than \$500 nor more than \$1,000, or imprisonment not to exceed one year or both. Each offense shall be a separate and distinct offense, and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense.

Any user who knowingly makes any false statements, representations or certifications in any application, record, report, plan or other document filed or required to be maintained pursuant to this chapter or permit or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this chapter shall be guilty of a Class A Misdemeanor and, upon conviction, shall be punished by a fine of not more than \$ 1,000 per violation per day or imprisonment for not more than one year or both.

(3) No prosecution under this section shall be instituted until after final disposition of a show cause hearing, if any, was instituted.

D. Additional injunctive relief. Whenever a user has violated or continues to violate the provisions of this chapter or permit or order issued hereunder, the Superintendent, through counsel, may petition the Court, in the name of the Town of Wilmington, for the issuance of a preliminary or permanent injunction or both (as may be appropriate) which restrains the violation of or compels the compliance with any order or determination thereunder by the Superintendent.

E. Summary abatement, notwithstanding any inconsistent provisions of this chapter, whenever the Superintendent finds, after investigation, that any user is causing, engaging in or maintaining a condition or activity which, in the judgment of the Superintendent, presents an imminent danger to the public health, safety or welfare or to the environment or is likely, to result in severe damage to the water system or the environment and it therefore appears to be prejudicial to the public interest, to allow the condition or activity to go unabated until notice and an opportunity for a hearing can be provided, the Superintendent may, without prior hearing, order such user by notice, in writing, wherever practicable or in such other form as practices are intended to. be proscribed, to discontinue, abate or alleviate such condition or activity, and thereupon such person shall immediately discontinue, abate or alleviate such condition or activity; or where the giving of notice is impracticable, or in the event of a users failure to comply voluntarily with an emergency order, the Superintendent may take all appropriate action to abate the violating condition as promptly as possible. Thereafter, not to exceed 15 calendar days, the Superintendent shall provide the user an opportunity to be heard, in accordance with the provisions of this section.

#### **§ 1-47 Conflicts.**

The provisions, of any local law in conflict with any provision of this Chapter are hereby repealed: