

PROOF OF PUBLICATION

STATE OF COLORADO)
)
COUNTY OF EAGLE)

I, Jenny Rakow, Town Clerk for the Town of Eagle, do solemnly swear and affirm that I published in full a true and correct copy of AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF EAGLE, COLORADO, PROVIDING FOR A UTILITY ENTERPRISE AS AN ENTERPRISE OF THE TOWN UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION " on the Town of Eagle's web site, www.townofeagle.org, on the 26th day of March 2021.

Witness my hand and seal this 26th day of March 2021.



Jenny Rakow
Town Clerk



TOWN OF EAGLE, COLORADO
ORDINANCE NO. 3
(Series of 2021)

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF EAGLE, COLORADO,
PROVIDING FOR A UTILITY ENTERPRISE AS AN ENTERPRISE OF THE TOWN UNDER
ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION

WHEREAS, the Town of Eagle, Colorado (the "**Town**") is a "home rule" city pursuant to Article XX of the Constitution (the "**Constitution**") of the State of Colorado (the "**State**"); and

WHEREAS, the Town has all powers as a home rule city under State law; and

WHEREAS, pursuant to the Town's Home Rule Charter (the "**Charter**"), which serves as the organic law of the Town as to all local matters, the Town has and may exercise with regard to all utilities, public services, and franchises, including water and water rights and acquisition thereof and bonded indebtedness in connection therewith, all municipal authority and functions now existing and that may be hereafter provided by the Colorado Constitution and Colorado Revised Statutes; and

WHEREAS, the Town is authorized, pursuant to Article X, Section 20 of the Colorado Constitution ("**TABOR**"), to establish one or more enterprises, as defined by TABOR, each such enterprise being authorized to issue its own revenue bonds, but provided that each such enterprise receives under 10% of its annual revenue in grants from all Colorado state and local governments combined; and

WHEREAS, the Town has historically provided certain water, wastewater, and stormwater services by means of an enterprise; and

WHEREAS, the Town Council of the Town of Eagle, Colorado (the "**Council**"), has determined, in order to better provide certain services and operate certain government business, it would be in the best interests of the Town and its residents to operate a utilities enterprise (the "**Utility Enterprise**"), with such Utility Enterprise authorized from time to time by ordinance adopted by the Council to operate certain utility activities owned by the Town, which utility activities may include, but are not limited to, as the Town may undertake from time to time, the diversion, storage, carriage, delivery, distribution, collection, treatment, use, reuse, augmentation, exchange or discharge of electricity, water, wastewater, fiber optics, or storm drainage services, and the acquisition of electricity and water or water rights, all in accordance with the applicable provisions of State law, the Charter, and the Town's Code of Ordinances (the "**Code**"); and

WHEREAS, the Council has further determined that it would presently be in the best interests of the Town to establish under the Utility Enterprise a separate Broadband Fund (the "**Broadband Fund**"), through which the Town would own and operate certain fiber optic and related and necessary facilities, incidentals, and appurtenances, for the purpose of serving areas

within and outside the limits of the Town with broadband internet access (the ***“Broadband System”***); and

WHEREAS, the Council intends that the Broadband System be operated as an enterprise, as defined by TABOR, so as to exclude it from the application of Article X, Section 20 of the Constitution; and

WHEREAS, the Council has further determined that it would presently be in the best interests of the Town to operate the Town’s existing wastewater system, consisting of a sewage treatment and disposal plant and facility, certain sewage collection and outfall lines, and necessary incidentals and appurtenances thereto, for the purpose of serving areas within and outside the limits of the Town (the ***“Wastewater System”***), currently owned and operated by the Town as a TABOR enterprise (the ***“Wastewater Enterprise”***), by and through the Utility Enterprise as a separate Wastewater Fund (the ***“Wastewater Fund”***); and

WHEREAS, the Council intends that the Wastewater System be operated as an enterprise, as defined by TABOR, so as to exclude it from the application of Article X, Section 20 of the Constitution; and

WHEREAS, to effect the establishment and operation of the Utility Enterprise, the Council has determined that it is most efficient and effective to modify and expand the purposes of the Wastewater Enterprise to comprise the ownership and operation of both the Wastewater System and the Broadband System as of the Effective Date (as defined below), and such other systems as may be included within the Utility Enterprise following the Effective Date by ordinance of the Council;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF EAGLE, COLORADO AS FOLLOWS:

Section 1. Definitions. Unless the context specifically indicates otherwise, as used in this Ordinance, the following words and phrases shall have the following meanings:

“Effective Date” means March 23, 2021.

“Grant” means any direct cash subsidy or other direct contribution of money from the State or any local government in Colorado which is not required to be repaid. The term ***“Grant”*** does not include:

(a) any indirect benefit conferred upon the Utility Enterprise from the State or any local government in Colorado;

(b) any revenues resulting from rates, fees, assessments, or other charges imposed by the Utility Enterprise for the provision of goods or services by the Utility Enterprise; or

(c) any federal funds, regardless of whether such federal funds pass through the State or any local government in the State prior to receipt by the Utility Enterprise.

“Infrastructure” means any and all infrastructure and facilities, including administrative facilities, owned or operated by the Town solely in the operation of the Utility Activity, and specifically includes Infrastructure for the Wastewater System (**“Wastewater Infrastructure”**) and the Broadband System (**“Broadband Infrastructure”**).

“Utility Activity” includes, but is not limited to, the diversion, storage, carriage, delivery, distribution, collection, treatment, use, reuse, augmentation, exchange or discharge of wastewater and fiber optics, all in accordance with the applicable provisions of State law, the Charter, and the Code, and specifically includes the Wastewater System and the Broadband System. The scope of the Utility Activity may be expanded from time to time to include such other utility activity as the Council may determine from time to time by Ordinance.

“Utility Enterprise” means the Utility Activity business owned by the Town, which business receives under 10% of its annual revenues in Grants from all State and local governments combined and is authorized to issue its own revenue bonds pursuant to this Ordinance or other applicable law.

Section 2. Utility Enterprise. As of the Effective Date, the purposes of the Wastewater Enterprise are modified and expanded to include all Utility Activity, and the Wastewater Enterprise is and shall on and after the Effective Date be and be known as the Utility Enterprise; provided, however, that each and every asset owned and all fees and revenues earned or received through the Effective Date by the Wastewater Enterprise are and shall from and after the Effective Date remain dedicated solely to the operation of the Wastewater System. All obligations of the Wastewater Enterprise as of the Effective Date, whether contractual or otherwise, shall remain and continue from and after the Effective Date and be satisfied by the Utility Enterprise. In addition to any of the powers it may have under the applicable provisions of State law and the Charter, the Utility Enterprise shall have the following powers to be exercised in accordance with applicable provisions of State law and the Charter:

- (a) to acquire by gift, purchase, lease, or exercise of the right of eminent domain, to construct, to reconstruct, to improve, to better, and to extend Wastewater Infrastructure and Broadband Infrastructure, wholly within or wholly without or partially within and partially without the boundaries of the Town, and to acquire in the name of the Town by gift, purchase, or the exercise of the right of eminent domain lands, easements, and rights in land in connection therewith;
- (b) to operate and maintain Wastewater Infrastructure and Broadband Infrastructure for its or the Town’s own use and for the use of public and private consumers and users within and without the territorial boundaries of the Town;

- (c) to accept federal funds under any federal law in force to aid in financing the cost of engineering, architectural, geological, hydrological, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other action preliminary to the construction, operation, or remediation of Wastewater Infrastructure and Broadband Infrastructure;
- (d) to accept federal funds under any federal law in force for the construction, operation, or remediation of Wastewater Infrastructure and Broadband Infrastructure;
- (e) to enter into joint operating agreements, contracts, or arrangements with consumers concerning Utility Activity and related Infrastructure, whether acquired or constructed by the Utility Enterprise or the consumer, and to accept grants and contributions from consumers for the construction of Wastewater Infrastructure and Broadband Infrastructure;
- (f) to prescribe, revise, and collect in advance or otherwise, from any consumer served by the Utility Activity, rates, fees, rents, and charges or any combination thereof for the services furnished by, or the direct or indirect connection with, Wastewater Infrastructure and Broadband Infrastructure; and in anticipation of the collection of revenues of such Utility Activity and Wastewater Infrastructure and Broadband Infrastructure or any joint system, to issue revenue bonds to finance in whole or in part the cost of acquisition, construction, reconstruction, improvement, betterment, or extension of Wastewater Infrastructure and Broadband Infrastructure;
- (g) to pledge to the punctual payment of said bonds and interest thereon all or any part of the revenues of the Wastewater Infrastructure and Broadband Infrastructure and Utility Activity, including the revenues of improvements, betterments, or extensions thereto thereafter constructed or acquired, as well as the revenues from existing Wastewater Infrastructure and Broadband Infrastructure;
- (h) to enter into and perform contracts and agreements with other governmental entities and Utility Activity enterprises for or concerning the planning, construction, lease, or other acquisition and the financing of Wastewater Infrastructure and Broadband Infrastructure and the maintenance and operation thereof;
- (i) to make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers granted in this Ordinance or elsewhere in State law, or in the performance of its covenants or duties, or in order to secure the payment of its bonds if no encumbrance, mortgage, or other pledge of property, excluding any pledged revenues, of the Utility Enterprise or the Town is created thereby, and if no property, other than money, of the Utility Enterprise or

the Town is liable to be forfeited or taken in payment of said bonds, and if no debt on the credit of the Town is thereby incurred in any manner for any purpose; and

- (j) to issue refunding bonds pursuant to this Ordinance or other applicable law to refund, pay, or discharge all or any part of its outstanding revenue bonds issued under this Ordinance or under any other law, including any interest thereon in arrears or about to become due, or for the purpose of reducing interest costs, effecting a change in any particular year or years in the principal and interest payable thereon or effecting other economies, or modifying or eliminating restrictive contractual limitations pertaining to the issuance of additional bonds or to any Wastewater Infrastructure and Broadband Infrastructure.

Section 3. Revenue Bonds.

- (a) In accordance with and through the provisions of this Ordinance, and subject to all applicable provisions of State law, the Charter, and the Code, the Utility Enterprise, through its governing body, is authorized to issue bonds or other obligations payable solely from the revenues derived or to be derived from the functions, services, benefits, or facilities of the Utility Enterprise or from any other available funds of the Utility Enterprise. Such bonds or other obligations shall be authorized by ordinance, adopted by the governing body of the Utility Enterprise in the same manner as other ordinances of the Town. Such bonds or other obligations may be issued without voter approval; provided that, during the fiscal year of the Town preceding the year in which the bonds or other obligations are authorized, the Utility Enterprise received under 10% of its annual revenue in grants or, during the current fiscal year of the Town, it is reasonably anticipated that the Utility Enterprise will receive under 10% of its revenue in grants. Nothing in this Ordinance shall be construed so as to require voter approval where such approval is not otherwise required by the Constitution and laws of the State or the Charter.
- (b) The terms, conditions, and details of said bonds, or other obligations, and the procedures related thereto shall be set forth in the ordinance authorizing said bonds or other obligations and shall, as nearly as may be practicable, be substantially the same as those provided in the Charter for bonds or other obligations of the Town. Said bonds, or other obligations may be sold at public or private sale in accordance with the provisions of the Charter. Each bond, note, or other obligation issued under this Ordinance shall recite in substance that said bond, note, or other obligations, including the interest thereon, is payable from the revenues and other available funds of the Utility Enterprise pledged for the payment thereof. Notwithstanding any other provision of law to the contrary, such bonds or other obligations may be issued to mature at such times as are authorized by the Charter, shall bear interest at such rates, and shall be sold at, above, or below the principal amount thereof, all as shall be determined by the

governing body of the Utility Enterprise. Notwithstanding anything in this Ordinance to the contrary, the governing body of the Utility Enterprise may delegate to enterprise officials, in accordance with the Supplemental Public Securities Act, Colorado Revised Statutes Section 11-57-201 et seq., the ability to make such determination as set forth in Colorado Revised Statutes Section 11-57-205 (or such amended or replacement statute thereof), subject to such parameters as the governing body of the Utility Enterprise shall prescribe. The powers provided in this Ordinance to issue bonds, or other obligations are in addition and supplemental to, and not in substitution for, the powers conferred by any other law, and the powers provided in this Ordinance shall not modify, limit, or affect the powers conferred by any other law either directly or indirectly.

- (c) Any pledge of revenue or other funds of the Utility Enterprise shall be subject to any limitation on future pledges thereof contained in any ordinance of the governing body of the Utility Enterprise or of the Town authorizing the issuance of any outstanding bonds or other obligations of the Utility Enterprise or the Town payable from the same source or sources. Bonds or other obligations, separately issued by the Town and the Utility Enterprise, but secured by the same revenues or other funds shall be treated as having the same obligor and as being payable in whole or in part from the same source or sources.

Section 4. No Authority to Tax. The Utility Enterprise shall have no authority to levy, collect, or use in its operations taxes, whether sales taxes, use taxes, or ad valorem taxes; provided however, that the Utility Enterprise may receive less than 10% of its revenues in grants (including taxes) from all Colorado state and local governments combined.

Section 5. Governing Body. For all purposes under the Charter and the Constitution, the governing body of the Utility Enterprise shall be the Council.

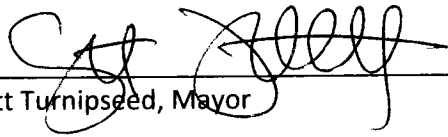
Section 6. Ratification. All actions heretofore taken by the Town and by the officers thereof not inconsistent with the provisions of this Ordinance toward recognizing and confirming the Utility Enterprise as an “enterprise” under TABOR are hereby ratified and confirmed.

Section 7. Severability. 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 Town Council hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one, or part, or parts be declared unconstitutional or invalid.

Section 8. Safety. This Ordinance is deemed necessary for the protection of the public health, safety and welfare.


INTRODUCED, READ, PASSED, ADOPTED AND ORDERED PUBLISHED ON MARCH, 2021.

TOWN OF EAGLE, COLORADO



Scott Turnipsæd, Mayor

ATTEST:



Jenny Rakow, Town Clerk

