

## **BARNSTEAD WATER RIGHTS & LOCAL SELF-GOVERNMENT ORDINANCE**

Section 1. Name. The name of this Ordinance shall be the “Barnstead Water Rights and Local Self-Government Ordinance.”

Section 2. Preamble and Purpose. We the People of the Town of Barnstead declare that water is essential for life, liberty, and the pursuit of happiness – both for people and for the ecological systems, which give life to all species.

We the People of the Town of Barnstead declare that we have the duty to safeguard the water both on and beneath the Earth’s surface, and in the process, safeguard the rights of people within the community of Barnstead, and the rights of the ecosystems of which Barnstead is a part.

We the people of Barnstead declare that all of our water is held in the public trust as a common resource to be used for the benefit of Barnstead residents and of the natural ecosystems of which they are a part. We believe that the corporatization of water supplies in this community – placing the control of water in the hands of a corporate few, rather than the community – would constitute tyranny and usurpation; and that we are therefore duty bound, under the New Hampshire Constitution, to oppose such tyranny and usurpation. That same duty requires us to recognize that two centuries’ worth of governmental conferral of constitutional powers upon corporations has deprived people of the authority to govern their own communities, and requires us to take affirmative steps to remedy that usurpation of governing power.

**Section 3. Authority.** This Ordinance is adopted and enacted pursuant to the **inherent, inalienable, and fundamental right of the citizens of the Town of Barnstead to self-government and under** authority granted to the people of the Town by all relevant state and federal laws including, but not limited to the following:

Part First, Article 10 of the New Hampshire Constitution, which declares that government is instituted for the common benefit, protection and security of the whole community, and not for the private interest of any class of men;

Part First, Article 1 of the New Hampshire Constitution, which declares that government is founded upon the consent of the people and instituted for the common good;

The spirit of Part Second, Article 5 and Part Second, Article 83 of the New Hampshire Constitution, which subordinate corporations to the body politic;

NH RSA 31:39 I (a), (l) and III which, under powers and duties of Towns, permits bylaws for the care, protection, preservation of the commons; the ordering of their prudential affairs; and the enforcement of such bylaws by suitable penalties.

The Declaration of Independence, which declares that governments are instituted to secure people’s rights, and that government derives its just powers from the consent of the governed;

The General Comment of the United Nations Covenant on Economic, Social, and Cultural Rights, which declares that “the human right to drinking water is fundamental to life and health. Sufficient and safe drinking water is a precondition to the realization of human rights.”

Section 4. Statement of Law. No corporation or syndicate shall engage in water withdrawals in the Town of Barnstead. The term “corporation” means any corporation organized under the laws of any state of the United States or any country. The term “syndicate” includes any limited partnership, limited liability partnership, business trust, or Limited Liability Company organized under the laws of any state of the United States or any country. The term “engage” shall include, but not be limited to, the physical extraction of water, and the buying and/or selling of water extracted within the Town of Barnstead.

Section 5. Statement of Law. No corporation doing business within the Town of Barnstead shall be recognized as a "person" under the United States or New Hampshire Constitutions, or laws of the United States or New Hampshire, nor shall the corporation be afforded the protections of the Contracts Clause or Commerce Clause of the United States Constitution, or similar provisions found within the New Hampshire Constitution, within the Town of Barnstead.

**Section 5.1. Rights. All residents of the Town of Barnstead possess a fundamental and inalienable right to access, use, consume, and preserve water drawn from the sustainable natural water cycles that provide water necessary to sustain life within the Town. Natural communities and ecosystems possess inalienable and fundamental rights to exist and flourish within the Town of Barnstead. Ecosystems shall include, but not be limited to, wetlands, streams, rivers, aquifers, and other water systems.**

Section 6. Exceptions. The people of the Town of Barnstead hereby allow the following exceptions to the Statement of Law contained within §4 of this Ordinance:

(1) Municipal authorities established under the laws of the State of New Hampshire engaged in water withdrawals providing water only to residential and commercial users within the Town of Barnstead;

(2) Nonprofit educational and charitable corporations organized under state non-profit corporation law, and qualifying under §501(c)(3) of the federal Tax Code, which do not sell water withdrawn within the Town of Barnstead outside of the Town of Barnstead;

(3) Utility corporations operating under valid and express contractual provisions in agreements entered into between the Town of Barnstead and those utility corporations, for the provision of service within the Town of Barnstead;

(4) Corporations operating under valid and express contractual provisions in agreements entered into between residents of the Town of Barnstead and those corporations, when the withdrawn water is used solely for on-site residential, household, agricultural, or commercial facilities within the Town of Barnstead, as long as such commercial facilities do not withdraw water for sale outside of the Town of Barnstead, or purchase water withdrawn from the Town of Barnstead for sale outside of the Town.

Section 7. Enforcement. Any corporation planning to engage in water withdrawals within the Town of Barnstead must notify the Town of such activity at least sixty (60) days prior to engaging in water withdrawals. Such notification shall contain a claim to one of the exemptions listed in Section 6 of this Ordinance. Any violation of this Ordinance shall be considered a criminal summary offense, and will subject the Directors of the noncompliant corporation to joint and several liability with the corporation itself.

The Board of Selectmen of the Town of Barnstead authorizes a fine of up to \$1,000.00 per violation. Each act of water withdrawal **[and each day that water is withdrawn]** shall be considered a separate violation of this Ordinance. The Board of Selectmen of the Town of Barnstead may also file an action in equity in the Belknap County Superior Court or any other Court of competent jurisdiction to abate any violation defined in Section 4 of this Ordinance. If the Selectmen of the Town of Barnstead fail to bring an action to enforce this Ordinance, any resident of the Town has standing in front of the Court for enforcement.

**Section 7.1. Civil Rights: Any person acting under the authority of a permit issued by the Department of Environmental Services, any corporation operating under a State charter or certificate of authority to do business, or any director, officer, owner, or manager of a corporation operating under a State charter or certificate of authority to do business, who deprives any Town resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Warrant Article, the New Hampshire Constitution, the United States Constitution, or other laws, shall be liable to the party injured and shall be responsible for payment of compensatory and punitive damages and all costs of litigation to satisfy that liability, including, without limitation, expert and attorney's fees. Compensatory and punitive damages paid to remedy the violation of the rights of natural communities and ecosystems shall be paid to the Town of Barnstead for restoration of those natural communities and ecosystems.**

**Section 7.2. Environmental Protection:** It shall be unlawful for any corporation or its directors, officers, owners, or managers to interfere with the rights of natural communities and ecosystems to exist and flourish, or to cause damage to those natural communities and ecosystems. The Town of Barnstead, along with any resident of the Town, shall have standing to seek declaratory, injunctive,

compensatory, and punitive relief for damages caused to natural communities and ecosystems within the Town, regardless of the relation of those natural communities and ecosystems to Town residents or the Town itself. Town residents, natural communities, and ecosystems shall be considered to be “persons” for purposes of the enforcement of the civil rights of those residents, natural communities, and ecosystems.

**Section 7.3. Civil Rights Enforcement:** Any Town resident shall have standing and authority to bring an action under this Warrant Article’s civil rights provisions, or under state and federal civil rights laws, for violations of the rights of natural communities, ecosystems, and Town residents, as recognized by this Warrant Article.

**Section 7.4. Town Action Against Preemption.** The foundation for the making and adoption of this law is the people’s fundamental and inalienable right to govern themselves, and thereby secure rights to life, liberty, property, and pursuit of happiness. Any attempts to use county, state, or federal levels of government – judicial, legislative, or executive - to preempt, amend, alter, or overturn this Warrant Article or parts of this Warrant Article, or to intimidate the people of the Town of Barnstead or their elected officials, may require the Board of Selectmen to hold public meetings that explore the adoption of other measures that expand local control and the ability of residents to protect their fundamental and inalienable right to self-government. Such consideration may include actions to separate the municipality from the other levels of government used to preempt, amend, alter, or overturn the provisions of this Warrant Article or other levels of government used to intimidate the people of Barnstead or their elected officials.

**Section 7.5. Strict Liability.** Persons using corporations to engage in water withdrawal in a neighboring municipality shall be strictly liable for all harms caused to the health, safety, and welfare of the residents of Barnstead from those activities, and for all harms caused to ecosystems and natural communities within Barnstead.

**Section 7.6. Liability.** No permit, license, privilege or charter issued by any State or federal Regulatory Agency, Commission or Board to any person or any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, which would violate the provisions of this Warrant Article or deprive any Barnstead resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Warrant Article, the New Hampshire Constitution, the United States Constitution, or other laws, shall be deemed valid within the Town of Barnstead. Additionally, any employee, agent or representative of any State or federal Regulatory Agency, Commission or Board who issues a permit, license, privilege or charter to any person or any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, which would violate the provisions of this Warrant Article or deprive any resident, natural community, or

**ecosystem of any rights, privileges, or immunities secured by this Warrant Article, the New Hampshire Constitution, the United States Constitution, or other laws, shall be liable to the party injured and shall be responsible for payment of compensatory and punitive damages and all costs of litigation, including, without limitation, expert and attorney's fees. Compensatory and punitive damages paid to remedy the violation of the rights of natural communities and ecosystems shall be paid to the Town of Barnstead for restoration of those natural communities and ecosystems.**

**Section 7.7. Future Lost Profits. Within the Town of Barnstead, corporate claims to “future lost profits” shall not be considered property interests under the law, and thus, shall not be recoverable by corporations seeking those damages.**

Section 8. Severability. The provisions of this Ordinance are severable, and if any section, clause, sentence, part, or provision thereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts or provisions of this Ordinance. It is hereby declared to be the intent of the people of Barnstead that this Ordinance would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence, part, or provision had not been included herein.

Section 9. Effect. This Ordinance shall be effective immediately upon its enactment.