

**TOWN OF CHARLOTTE**  
**LARGE SCALE WATER EXTRACTION ORDINANCE**

*Draft Copy 2-20-13*

*Adopted March 25, 2013  
Town Meeting, Article 28*

**Article I. Title**

This ordinance shall be known and cited as the "Large Scale Water Extraction Ordinance of The Town of Charlotte.

**Article II. Purpose**

The intent and purpose of this ordinance is:

- A. To protect the quality of groundwater, spring water, and / or underground aquifers and their recharge areas, as well as surface waters such as lakes, ponds, wetlands, streams and rivers, whether located wholly or partially within the Town of Charlotte.
- B. To insure that any large scale water extraction is subject to prior review and approval so as to establish the ongoing sustainability and quality of said water supplies, and to avoid any interruption or degradation of water quality and quantity to members of the general public within the Town of Charlotte.
- C. To protect all private and public property, including all structures and facilities, and to insure no degradation of existing or new roadways or infrastructure occurs.
- D. To minimize or limit the pumping noise, vibration and pollution from all equipment and vehicles related to the water extraction operation.
- E. To insure that any water extraction operation will not negatively affect vegetative growth or animal habitat in surrounding forested areas, wetlands or agricultural areas, and to insure the continued stability and usefulness of wells and other lands in the extraction area.
- F. To provide for equitable access to water extraction.
- G. To permanently protect the health, safety and welfare of those dependent upon said water supplies.

**Article III. Authority**

This ordinance is adopted and enacted pursuant to:

- A. Title 38 M.R.S.A. sec. 401
- B. Maine Constitution, Article VIII, Part Second
- C. 30A M.R.S.A. sec. 2101 et seq. ("Municipal Home Rule")
- D. 30A M.R.S.A. sec. 3001-3006 ("Ordinance Power")
- E. 30A M.R.S.A. sec. 4311 ("Growth Management")
- F. 22 M.R.S.A. sec. 2011 et seq. ("Drinking Water Regulations")
- G. Selectmen, Town of Charlotte

**Article IV. Large Scale Water Extraction**

**A. Permit Required**

It shall be unlawful for any entity, person, consortium, or association of entities or persons acting in concert to extract more than 5000 gallons per day of groundwater, spring water, water from streams or rivers, and/or water from aquifers or their recharge areas, regardless of the number of extraction facilities utilized, without first obtaining a written permit from the Town Of Charlotte Selectmen, following a public hearing.

**B. Activities not requiring a permit**

Fire protection, agriculture, dust control and other one time water uses undertaken by a Charlotte taxpayer, such as the filling of a swimming pool.

C. Application Requirements

1. The application shall be in writing and accompanied by site plans prepared by a licensed surveyor, licensed engineer or similar appropriate licensed professional.
2. The Selectmen of the Town of Charlotte shall establish an application fee. A nonrefundable application fee shall be submitted with the application. All checks shall be made payable to the Town of Charlotte.
  - a. The Selectmen may assess reasonable impact fees at any time during the permitting process or during the term of the permit to recover costs associated with contracting professional assistance to evaluate compliance. The selectmen shall obtain a proposal from at least one qualified peer reviewer of its choice and notify the applicant or permittee of the expected charges prior to incurring the charge or charges. (Note: this is intended to cover costs associated with contracting any outside resources the Town may require, e.g. site evaluator during construction, hydro geologist to interpret data, etc.).
3. The application shall include:
  - a. Evidence of applicant's right, title and interest in and to property (ies) from which the water is to be extracted. If such evidence is other than ownership evidenced by a deed duly recorded in the Washington County Registry of Deeds, the entire document/documentation (other than reference(s) to purchase price and financing terms, which may be redacted) whether lease, option, contract, or other, shall be submitted with the application.
  - b. A statement of the maximum daily quantity of water to be extracted, from all extraction points operated by the same individual, entity, consortium, association of individuals or entities.
  - c. The location(s) of the points of extraction.
  - d. The methods of extraction
  - e. A copy of all applications, exhibits and reports for such extraction which have been filed or are to be filed with any other municipal authority or any agency or department of the State of Maine, including as required by M.R.S.A. 2660 et seq. (Transport of water for commercial purposes) or, under applicable Department of Health and Human Services rules and regulations.
  - f. A copy of any permit, approval or denial for such extraction as may have been issued by any agency referred to in (e) above.
  - g. A written report, certified to the Selectmen of The Town of Charlotte, procured and paid for by the applicant, detailing the results of a hydro-geologic investigation and study, conducted and prepared by a licensed professional hydrogeologist, geologist, hydrologist, registered professional engineer or other appropriate licensed professional possessing, in the judgment of the Selectmen of the Town of Charlotte, suitable credentials and qualifications. This report must address at least the following:
    - (1) The rates of draw down and recharge of any aquifer or ground water source as may have been determined by a pumping or "stress test" or other similar testing regimen in accordance with standards normally accepted within the geology and engineering professions.
    - (2) The characteristic of the aquifer or other ground water source, including rates of draw down and recharge, sustainable extraction rates, impacts on the water table, and impacts to any and all existing water bodies, including, but not limited to lakes, ponds, rivers, streams, and wetland areas, as well as private wells or other existing extraction locations within the zone of contribution.
    - (3) Possible effects to the aquifer or other ground water resource which might result from the disturbance of existing minerals such as, but not limited to, iron, manganese, arsenic, and uranium, and any health hazards raised by such disturbance(s) or other impacts, including issues such as drinking water turbidity, clarity and odor, shall also be noted.
  - h. The application shall be accompanied by written notification of the application and an explanation of the intent, scope and location of the proposed water extraction, in terms readily understandable to a layman, and to be addressed and mailed to, via certified mail, return receipt, the following:
    - (1) The owner of record of all parcels of land lying above the aquifer or other water source cited in the application
    - (2) The owners of record of all parcels of land lying with 500 feet of the outside perimeter of the aquifer or other water source cited in the application.

- (3) The owners of record of all parcels of land having frontage on a body of water whether lake, pond, river, stream or wetland within 500 feet of the outside perimeter of the aquifer or other water source cited in the application, even if such individual parcels may themselves lie more than 500 feet from the outside perimeter of said aquifer or other water source.
  - (4) For the purpose of these notification requirements, the applicant is entitled to rely on the information on file at the Town Clerk's office as represented by its most recent assessor's maps and mailing addresses maintained by the Town as to the owners of the affected parcels shown thereon. Actual posting of the certified mail notices is not required until the application is declared or deemed to be complete. See D (6) below.
  - (5) For good cause shown, the above notice requirements may be modified by the Selectmen of the Town of Charlotte where, for example, it can be estimated that the outside perimeter of the aquifer or other water source, extends so far from the proposed extraction point(s) that actual notice to the owners of all land having frontage on that body of water is not necessary.
  - i. A small scale site plan depicting at least the following:
    - (1) The limits (outside perimeter) of the aquifer or other water source cited in the application, and the bounds of the land of the application.
    - (2) The location of all water bodies located within 500 feet of the outside perimeter of the aquifer or other water source.
    - (3) The location(s) of the proposed extraction points.
    - (4) The existing network of public or private roads leading to or by the extraction point(s).
    - (5) Any proposed new roads or driveways to be constructed for access to and egress from the extraction point(s), and the point(s) of intersection of the proposed roads or driveways with existing roads.
    - (6) Any existing or proposed utility lines to be utilized in the extraction operation(s).
    - (7) The location and type of test wells or other monitoring methods.
    - (8) Any existing or proposed pipes, pipelines, aqueducts, or similar conduits that are intended to convey extracted water from the extraction point(s) toward the intended end user, if any part of the extracted water is ultimately to be transported outside the geographic limits of the Town of Charlotte.
    - (9) Any other relevant and material detail(s) bearing on the proposed extraction process, the omission of which would tend to hinder the ability of the reviewing authority, affected land owners, or the public from developing a full understanding of the scope and impact of the proposal.
  - j. A large scale site plan depicting at least the following:
    - (1) The detailed plan of the extraction point(s) including without limitation, well heads, pumping facilities monitoring or test wells, building, sheds, paving, vehicular drives, parking and turn arounds, utility lines, fencing, access roads or driveways, elevations and contour lines.
    - (2) Any other relevant and material detail(s) bearing on the proposed extraction process, the omission of which would tend to hinder the ability of the reviewing authority, affected landowners, or the public from developing a full understanding of the scope and impact of the proposal.
- D. Application Process
- The entire application, including studies, reports, site plans, and all other items referred to in Article IV (C), above, shall be submitted to the Selectmen of the Town of Charlotte in triplicate.
1. Within thirty 30 days from the date of submission the Selectmen of the Town of Charlotte shall conduct a preliminary review of the application solely for the purpose of determining whether the application is complete as required by this ordinance
  2. For good cause shown, and upon receipt of confirmatory independent technical advice, the Selectmen of the Town of Charlotte may waive one or more of the application details upon a determination that such details are unnecessary, unobtainable as a practical matter or duplicative and that such waiver would not tend to hinder the ability of the Selectmen of the Town of Charlotte, affected landowners or the public from developing a full understanding of the scope and impact of the proposal.

3. If the Selectmen of the Town of Charlotte deem the application incomplete in any material or relevant respect, it shall so inform the applicant by the best practical means, either in writing or verbally, at a regularly scheduled meeting of the selectmen at which time the applicant shall have sixty (60) days to complete its application in accordance with this ordinance, upon failure of which the application shall be deemed withdrawn.
  4. Upon finding the application complete, the selectmen will schedule a public hearing on the application.
  5. Any review of the application by the Selectmen of the Town of Charlotte or its agents for completeness is preliminary only and is not to be deemed a substantive review, and confers no vested rights upon the applicant or under the application.
  6. Applicant's obligations of written notification via certified mail or property owners as set forth in Article IV (C) (e) (h) above shall not commence until the application is declared complete under this ordinance.
- E. Review Process; Hearing Process
1. The completed application shall be reviewed by the Selectmen of the Town of Charlotte at a public hearing convened for that purpose, no less than 7 days following published notice in a newspaper of general circulation within the Town of Charlotte and posting of notices at three conspicuous public places within the Town. Confirmation on the hearing date is stipulated on proof that certified mail notices have been sent to all affected landowners, as previously set forth in this ordinance, no less than ten (10) days prior to the public hearing date.
  2. The Selectmen of the Town of Charlotte shall be entitled to adopt whatever procedural rules for the hearing of the applicants, opponents if any, and the general public, that it deems appropriate, fair, and reasonably calculated to afford a full consideration of the issues pertaining to the application.
- F. Decision: Performance Standards
1. Upon the adjournment of the public hearing the Selectmen of the Town of Charlotte shall schedule a public session of the selectmen, to occur not later than thirty (30) days from the final adjournment of the public hearing, to deliberate and render a decision.
  2. The Selectmen may:
    - a. Approve the application;
    - b. Deny the application, or
    - c. Approve the application conditionally, with conditions or stipulations, upon the satisfactory completion of which the application will be finally approved, provided, however, that any approval (conditional or unconditional) shall require the selectmen's determination that the applicant has satisfied all of the performance standards as set forth below.
    - d. The Selectmen of the Town of Charlotte shall issue a written decision, with findings of fact and rulings and conclusions, not later than thirty (30) days from the date on which it votes at a public session to approve, deny or approve the application with conditions. A copy of such written decision shall thereupon promptly be provided to the applicant and otherwise be made available publicly.

#### Article V. Performance Standards

No approval shall be granted any application until and unless the reviewing authority shall have affirmatively found that each of the following performance standards has been or will be met. THE BURDEN OF PROOF IS ON THE APPLICANT. The applicant must also demonstrate to the reviewing authority that it possesses the expertise and financial resources to provide continuing adherence to these standards.

##### A. Geologic and Hydrologic Standards

1. The quantity of water to be extracted will not have an adverse effect upon ground water flow patterns relating to the aquifer, its recharge areas, or other ground water sources within the Town.
  2. The quantity of the water to be extracted will not adversely impact, diminish or alter any surface water within the Town, including during any periods of drought.
  3. The quantity of the water to be extracted will not cause any ground subsidence beyond the property lines of applicant's property.
  4. The quantity of water to be extracted will not adversely affect the long term sustainability of the aquifer, or its recharge areas, or other groundwater source, including during periods of drought.
  5. The proposed extraction will not create a health risk or adversely affect drinking water turbidity, clarity or odor. Ongoing follow up monthly testing for this purpose is to be undertaken by the developer with results of such tests provided in writing to the Town of Charlotte Selectmen and Code Enforcement Officer (CEO) on a monthly basis.
  6. The establishment of an ongoing follow up monitoring system and development of a system of recording and documenting extraction and recharge data, within the zone of contribution, which is to be reported in writing to the Town of Charlotte CEO on at least a monthly basis. At least 25% of monitoring locations shall be at private wells located within the zone of contribution, provided the applicant obtains landowners' permission for such testing.
- B. Impact on the General Vicinity.
1. The reviewing authority shall require the furnishing of a bond or other performance guaranty it deems appropriate to secure the applicant's obligation under this section.
  2. Vehicular access to extraction facility (ies) for activities such as loading and unloading shall occur in such a manner as to safeguard against hazards to traffic and pedestrians on adjacent streets or roads to avoid traffic congestion and traffic safety hazards or other safety risks.
  3. The applicant must provide proof that the proper permits for any driveways or access roads to the extraction facility(ies) are issued,
  4. Additional vehicular demand on existing town roads or public easements occasioned by the operation of the extraction facility(ies) will not exceed the capacity of those roads, or cause premature failure, aging or diminish utility of those roads.
  5. If extraction facility(ies) will be served by pipes, pipelines, aqueducts or similar devices, such installation will be sited and constructed in a manner that will not interrupt the public's access to any public facility or great pond, interrupt private access to private property, or pose the risk of damage to any property along or through which the installation traverses, or as a result of any failure or malfunction which might cause ponding, erosion, run off or similar condition.

**Article VI. Independent Expert Review**

If the Board of Selectmen of the Town of Charlotte reasonably determines it requires independent expert assistance to assist it in its preliminary review of the application, or in evaluating the substance of the application or in developing appropriate conditions for approval, it may engage the services of an expert to assist the Board. The applicant shall pay to the Town, in advance of the scheduling of any public hearing, a sum equal to said projected or estimated cost, the failure of which payment shall excuse the reviewing authority from scheduling any public hearing until such payment is made in full.

**Article VII. Concurrent Jurisdiction**

As applicable, jurisdiction of the Selectmen of the Town of Charlotte under this ordinance is concurrent with such jurisdiction as may be presently vested in Charlotte's CEO. The CEO shall confirm and attest that any activities in the recharge area are in compliance with all Maine Laws.

**Article VIII. Enforcement and Severability.**

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not invalidate or affect the enforcement of any other section or provision of this ordinance. As an additional means of enforcement, the Board of Selectmen of the Town of Charlotte may suspend or revoke any permit issued hereunder if it determines, after notice and hearing, that the permit was issued in error or upon false information, or that the applicant has failed to comply with any condition addressed by said permit. All activity shall cease until approval or a permit is obtained under this ordinance by the applicant.

**Article IX. Annual Reports From Extracting Entity**

Annual reports to the Selectmen of the Town of Charlotte shall include, but not be limited to:

- A. Amount of water extracted and dates of extraction
- B. Test results of extracted water

**Article X. Effective Date**

This ordinance shall become effective immediately upon its adoption and enactment by a majority at a Town Meeting of the registered voters of The Town of Charlotte. Any modification of this ordinance shall be done by a majority vote at a Town Meeting. I certify the foregoing was duly adopted at the Town Meeting dated \_\_\_\_\_.

\_\_\_\_\_  
Town Clerk