

BARNSTEAD WATER RIGHTS & LOCAL SELF-GOVERNMENT

- **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 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 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 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 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.

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This ordinance was petitioned by dozens of Barnstead residents and has won unanimous support from all of Barnstead’s selectmen.

These residents are available to explain the proposed ordinance and the importance of discussing and approving it by your vote during Town Meeting at Barnstead School, Saturday, March 18:

Gail Darrell
269.8541 darmusfx@worldpath.net

Diane St. Germain
269.7851 dianes33@worldpath.net

Bruce Shearer and Carolyn Namaste
776.7776 namaste@yahoo.com

Stuart Leiderman
776.0055 leiderman@mindspring.net

“For Water in the Public Trust...”

✓ PLEASE ATTEND
TOWN MEETING AND
VOTE TO APROVE

✓ BARNSTEAD’S
WATER RIGHTS AND
LOCAL SELF-
GOVERNMENT
ORDINANCE

“...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...”

**Barnstead Annual Town Meeting
Saturday, March 18, 2006
Barnstead School, Maple Lane**

**Information: 269.8541, 269.7851,
776.7776, 776, 0055**