

Town of Old Lyme, Connecticut

Water Resources Code

Section A: **DECLARATION OF POLICY**

Whereas, the following are declared to be the goals and policies of the Town of Old Lyme: (1) To preserve and protect water supply watershed lands and prevent degradation of surface water and groundwaters; (2) to protect groundwater recharge areas critical to existing and potential drinking water supplies; (3) to make water resources conservation a priority in all decisions; (4) to conserve water resources through technology, methods and procedures designed to promote efficient use of water and to eliminate the waste of water; (5) to prevent contamination of water supply sources or reduction in the availability of future water supplies; (6) to balance competing and conflicting needs for water equitably and at a reasonable cost to all citizens; and (7) to reduce or eliminate the waste of water through water supply management practices, and;

Whereas, the waters of Old Lyme are a precious, finite and invaluable resource upon which there is an ever increasing demand for present, new and competing uses; and in further recognition that an adequate supply of water for domestic, agricultural, industrial and recreational use and for fish and wildlife is essential to the health, safety and welfare of the people of Old Lyme, it is found and declared that diversion of the waters shall be permitted only when such diversion is found to be necessary, is compatible with long-range water resource planning, proper management and use of the water resources of Old Lyme and is consistent with CGS 7-148 so as to provide for the protection and improvement of the environment including, but not limited to, coastal areas, wetlands and areas adjacent to waterways in a manner not inconsistent with the general statutes;

Section B: **DEFINITIONS**

(1) "Diversion" means any activity which causes, allows or results in the withdrawal from or the alteration, modification or diminution of the instantaneous flow of the waters of Old Lyme;

(2) "Divert" means to engage in any act of diversion;

(3) "Instantaneous flow" means the volume of water that would occur in waters at a given point at any given moment;

(4) "Interbasin transfer" means any transfer of waters for use from one subregional drainage basin to another. Subregional drainage basins are those basins delineated on a map compiled by the Connecticut Geological and Natural History Survey and entitled "Natural Drainage Basins in Connecticut, 1981", as amended;

(5) "Person" means any individual, partnership, association, firm, limited liability company, corporation or other entity, except a municipality, and includes the federal government, the state or an instrumentality of the state, and any officer or governing or managing body of a partnership, association, firm or corporation or any member or manager of a limited liability company;

(6) "Regional drainage basins" means those basins delineated on a map compiled by the Connecticut geological and natural history survey and entitled "Natural Drainage Basins in Connecticut, 1981", as amended;

(7) "Waters" means all tidal waters, harbors, estuaries, rivers, brooks, watercourses, waterways, wells, springs, lakes, ponds, marshes, drainage systems and all other surface or underground streams, bodies or accumulations of water, natural or artificial, public or private, which are contained within, flow through Old Lyme.

Section C: PERMIT & APPLICATION

(1) Permit: Notwithstanding any other provision of the general statutes or any ordinances to the contrary, no person shall, after approval of this ordinance, commence to divert water from the waters of the Old Lyme in excess of 5,000 gallons per day without first obtaining a permit for such diversion from the Board of Selectmen or its designee.

(2) Exclusions: In light of the findings set forth in Section A, foregoing, the following are excluded from the provisions of this code:

- a. Septic tank pumping;
- b. Water used to fill residential swimming pools;
- c. Existing sewer pipelines;
- d. DEEP approved permits predating this ordinance;
- e. Diversion of greater than 50,000 gallons per day as regulated by the DEEP;
- f. Fire emergencies

- (3) Application for permit. Information required: The applicant shall submit an application on such form as the Board of Selectmen or its designee may prescribe and with such information as it deems necessary to fulfill the purposes of Section A including but not limited to:
- a. The need for the diversion;
 - b. The reasons for the diversion and the use of the diverted water;
 - c. A description of the existing water system where the diversion is proposed;
 - d. The locations of withdrawals and discharges of water the applicant proposes to divert;
 - e. The quantity, frequency and rate of water the applicant proposes to divert;
 - f. The length of time for which the diversion permit is sought;
 - g. The effect of the proposed diversion on public water supplies, water quality, wastewater treatment needs, flood management, water-based recreation, wetland habitats, waste assimilation, agriculture, fish and wildlife and low flow requirements;
 - h. The alternatives, if any, to the proposed diversion including a study of cost factors, feasibility and environmental effects of such alternatives;
 - i. Conservation measures instituted by the applicant prior to the application and the applicant's long-range water conservation plan to be implemented or continued after the issuance of a permit. The plan shall provide for: (A) The identification of and cost effectiveness of distribution system rehabilitation to correct sources of lost water; (B) measures which encourage proper maintenance and water conservation; (C) a public information program to promote water conservation, including industrial and commercial recycling and reuse and (D) contingency measures for limiting water use during seasonal or drought shortages;
 - j. In the case of a proposed interbasin transfer the Board of Selectmen or its designee may request the applicant to file an environmental impact report on the transfer which (A) considers the effect of the transfer on present and future water uses in the proposed donor basin; (B) includes a plan for meeting water supply needs and demands in the donor basin for a minimum of twenty-five years; and (C) analyzes the alternative solutions to the water supply or wastewater problem including comparative cost analysis of the proposed transfer relative to alternative measures. In making such request, the Board of Selectmen or its designee shall indicate which aspect of such report enumerated in subparagraphs (A), (B) and (C) of this subdivision requires the submission of the environmental impact report with the application.

- (4) Diversion permit. Fee: Each person holding a diversion permit authorizing a consumptive use of waters of Old Lyme shall pay an annual fee as determined by the Board of Selectmen.

Section D: Hearings

- (1) Request for additional information. Notice of completed application. Notice of hearing:

- a. Within one hundred eighty days of receipt of an application for a permit, the Board of Selectmen or its designee shall determine if there is any additional information that it deems necessary to carry out the purposes of this code. The applicant shall provide such information to the Board of Selectmen or its designee upon request.
- b. If the applicant does not furnish the requested information, the Board of Selectmen or its designee shall publish notice of its tentative determination on the application in and shall hold or waive a public hearing in accordance with the provisions of subsection (e) of this section.
- c. If the Board of Selectmen or its designee finds that an application is complete, it shall notify the applicant by certified mail, return receipt requested. The Board of Selectmen or its designee shall also notify the applicant of the time, date and location of any public hearing to be held on the application.
- d. Upon notifying the applicant in accordance with subsection (c) of this section that the application is complete, the Board of Selectmen or its designee shall immediately provide notice of the application and a concise description of the proposed diversion to chairmen of the Conservation Commission, Zoning Commission, Inlands Wetlands Commission and the Water Pollution Control Authority, and to any person who has requested notice of such activities.
- e. The Board of Selectmen or its designee shall hold a public hearing before approving or denying an application, except that, when the Board of Selectmen or its designee determines that the proposed diversion (1) is necessary, (2) will not significantly affect long-range water resource management or the environment, and (3) will not impair proper management and use of the water resources of the Town of Old Lyme, it may waive the requirement for a hearing after publishing notice of his tentative decision regarding the application and of its intent to waive the requirement for a hearing in a newspaper having general circulation in the area where the proposed diversion will take place or have effect; provided the Board of Selectmen or its designee shall hold a hearing upon receipt, within thirty days after such notice is published or mailed, of a petition signed by at least twenty-five persons. If a hearing is to be held, the Board of Selectmen or its designee, at the applicant's expense, shall (A) cause notice of the time, date and location of the commencement of the hearing, a concise description of the proposed diversion, and the Board of Selectmen or its designee's tentative determination regarding the application to be published not less than thirty days prior to the commencement of the hearing in a newspaper having a general circulation in the area where the proposed diversion will take place or have effect, and (B) provide the same notice to the officials listed in subsection (d) of this section not less than thirty days prior to the commencement of the hearing.

(2) Commencement of hearing. Application and documents available for public inspection:

- a. The Board of Selectmen or its designee or the Board of Selectmen or its designee's designated hearing officer shall commence a hearing on the application at the time, date and location specified in the notification and may continue the hearing on such additional dates as may be necessary. Notice of the continuance shall be by announcement by the Board of Selectmen or its designee or the Board of Selectmen or its designee's designated hearing officer prior to the close of a scheduled session.
- b. The application and all other documents related to the proceedings shall be available for inspection by the public at the Board of Selectmen or its designee's office during any business day prior to the close of the hearing.
- c. The parties to the proceedings shall include: (1) The applicant; (2) each person receiving notice pursuant to subsection D(1)d; and (3) such other persons as the Board of Selectmen or its designee or the Board of Selectmen or its designee's designated hearing officer may deem appropriate at any time prior to the close of the hearing.

(3) Decision:

- a. The Board of Selectmen or its designee shall, not later than one hundred twenty days after the close of the hearing, make a decision either granting or denying the application, or granting the application upon such terms, limitations or conditions, including, but not limited to, provisions for monitoring, schedule of diversion, duration of permit and reporting as the Board of Selectmen or its designee deems necessary to fulfill the purposes of this code. The Board of Selectmen or its designee shall state in full the reasons for the Board of Selectmen or its designee's decision.
- b. In making the Board of Selectmen or its designee's decision, the Board of Selectmen or its designee shall consider all relevant facts and circumstances including, but not limited to:
 - (i) The effect of the proposed diversion on related needs for public water supply including existing and projected uses, safe yield of reservoir systems and reservoir and groundwater development;
 - (ii) The effect of the proposed diversion on existing and planned water uses in the area affected such as public water supplies, relative density of private wells, hydropower, flood management, water-based recreation, wetland habitats, waste assimilation and agriculture;
 - (iii) The effect of the proposed diversion on the existing water conditions, with due regard to watershed characterization, groundwater availability potential, evapotranspiration conditions and water quality;

- (4) Appeals: The applicant shall have the right to appeal the findings of the Board of Selectman or its designee within thirty (30) days of receipt of its findings to Superior Court subject to the provisions of the Connecticut General Statutes, if any.

SECTION E: **PENALTIES**

(1) If the Board of Selectmen or its designee finds that any person is conducting or maintaining any activity, facility or condition which violates any provision of this Code or any regulation or permit adopted or issued thereunder, the Board of Selectmen or its designee may issue a written order by certified mail, return receipt requested, to such person conducting such activity or maintaining such facility or condition to cease such activity immediately or to correct such facility or condition. Within ten days of the issuance of such order the Board of Selectmen or its designee shall hold a hearing to provide the person an opportunity to be heard and show cause why the order should not remain in effect. The Board of Selectmen or its designee shall consider the facts presented at the hearing and, within ten days of the completion of the hearing, notify the person by certified mail, return receipt requested, that the original order remains in effect, that a revised order is in effect, or that the order has been withdrawn. The original order shall be effective upon issuance and shall remain in effect until the Board of Selectmen or its designee affirms, revises or withdraws the order. The issuance of an order pursuant to this section shall not delay or bar an action pursuant to subsection (2) of this section.

(2) Any person who commits, takes part in, or assists in any violation of any provision of this Code, shall be assessed a civil penalty of not more than two hundred and fifty dollars for each offense. Each violation of said sections shall be a separate and distinct offense, and, in the case of a continuing violation, each day's continuance thereof shall be deemed to be a separate and distinct offense. The Superior Court, in an action brought by the Board of Selectmen or its designee shall have jurisdiction to restrain a continuing violation of said sections, to issue orders directing that the violation be corrected or removed, and to assess civil penalties pursuant to this section. All costs, fees and expenses in connection with such action shall be assessed as damages against the violator together with reasonable attorney's fees which may be allowed, all of which shall be awarded to the Town of Old Lyme.