

## Chapter 16

### UTILITIES\*

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\* **Cross References:** Administration, Ch. 2; finance department created, § 2-291 et seq.; public works department, § 2-347 et seq.; buildings and building regulations, Ch. 4; national plumbing code adopted, § 4-2; fire prevention and protection, Ch. 6; health, Ch. 7; housing, Ch. 8; mobile homes and manufactured housing and mobile home parks, Ch. 10; solid waste, Ch. 12; streets, sidewalks and other public places, Ch. 13; subdivisions, Ch. 14; zoning and land use, § 17-1 et seq.

— Pursuant to enabling authority in New Hampshire Revised Statutes Annotated 149-I:6, or revisions thereto, the following is an Ordinance regulating the use of public and private sewers, private wastewater disposal, the installation and connection of sewer laterals, and the discharge of waters and wastes into the public sewer system(s), and providing penalties for violations thereof, in the City of Berlin, County of Coos, State of New Hampshire.

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#### [Art. I. In General](#), §§ 16-1--16-25

#### [Art. II. Water](#), §§ 16-26--16-43

#### [Art. III. Sanitary Sewer System](#), §§ 16-44--16-150

##### [Division 1. Generally](#)

##### [Division 2. Sewer Laterals](#)

##### [Division 3. Sewer Use Regulations](#)

##### [Division 3a. Industrial Discharge Permit](#)

##### [Division 4. Rules and Charges](#)

#### [Art. IV Storm Drain System](#); §§ 16-151—16-180

**ARTICLE I.**

**IN GENERAL**

**Sec. 16-1. Permit required for poles.**

No person shall erect a pole upon any street, highway, avenue, alley or lane within the City without first obtaining a permit from the City council by application to the City clerk.  
(Code 1977, § 4:102)

**Secs. 16-2--16-25. Reserved.**

**ARTICLE II.**

**WATER\***

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\* **State Law References:** Protecting water, RSA 148:1 et seq.; safe drinking water act, RSA 148-B:1 et seq.

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**Sec. 16-26. Water utility, cross connection program.**

To comply with New Hampshire Code of Administrative Rules, Part WS 314, Cross Connections, the Berlin Water Works shall publish an established set of rules and administer a cross connection control program to protect the City-owned municipal water supply system. No cross connection within the water supply system shall be allowed unless protected by an approved backflow preventor device commensurate with the degree of potential hazard. All such devices shall be located at the water service entrance to the premise and all water consumption within the premise shall pass through the backflow preventor device. The Berlin Water Works is empowered to establish and collect certain fees and charges associated with inspection and testing of premises and devices. The fees and charges shall be set and adjusted by the Berlin Water Works Board of Water Commissioners.

(Ord. No. 1985-8, 11-18-85; Ord 2-5-07)

**Secs. 16-27--16-43. Reserved.**

**ARTICLE III.**

**SANITARY SEWER SYSTEM**

**DIVISION 1.**

**GENERALLY**

**16-44. Purpose and Policy**

This Ordinance sets forth uniform requirements for users of the Publicly Owned Treatment Works (POTW) of the City and enables the City to comply with all applicable State and federal laws, including the Clean Water Act (33 United States Code § 1251 *et seq.*) and the General Pretreatment Regulations (40 Code of Federal Regulations Part 403). Recognizing that significant opportunities exist to reduce or prevent pollution at its source through cost effective practices, and that such practices can offer savings through reduced purchases of materials and resources, a decreased need for pollution control technologies, and lower liability costs, as well as assisting to protect the environment, the City establishes the following objectives of this Ordinance:

- A. To promote, consistent with the policy of the federal government:
  - The prevention or reduction of pollutants at the source whenever feasible;
  - Recycling in an environmentally-safe manner when pollution cannot be prevented;
  - Treatment in an environmentally-safe manner of pollution that cannot be prevented or recycled; and
  - Disposal or other release into the environment in an environmentally-safe manner only as a last resort.
- B. To prevent the introduction of pollutants into the POTW that will interfere with its operation;
- C. To prevent the introduction of pollutants into the POTW that will pass through the POTW, inadequately treated, into receiving waters, or otherwise be incompatible with the POTW;
- D. To protect both POTW personnel who may be affected by wastewater and sludge in the course of their employment and the general public;
- E. To promote reuse of sludge from the POTW;
- F. To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the POTW; and
- G. To enable the City to comply with its National Pollutant Discharge Elimination System permit conditions, sludge use and disposal requirements, and any other federal or State law to which the POTW is subject.

This Ordinance shall apply to all users of the POTW. The Ordinance authorizes the issuance of wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

#### **16-45. Administration**

Except as otherwise provided herein, the Public Works Director shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted to or duties imposed upon the Public Works Director may be delegated by the Public Works Director to other qualified City personnel.

#### **Sec. 16-46. Definitions.**

- I. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

##### *1. Authorized Representative of the User.*

- a. If the user is a corporation:
  - i. The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
  - ii. The manager of one or more manufacturing, production, or operation facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five (25) million dollars (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- b. If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively.
- c. If the user is a federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility.
- d. The individuals described in paragraphs (a) through (c), above, may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the

discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City.

2. *BOD* (biochemical oxygen demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter in five (5) days at twenty (20) degrees Centigrade, expressed in pounds per day or milligrams per liter under standard laboratory procedures as prescribed in "Standard Methods for the Examination of Waste and Wastewater" latest edition American Public Health Association, Inc., New York, New York.
3. *Building sewer outlet* shall mean that part of the lowest horizontal piping of a sewer system which receives the discharge from soil, waste, and other sewer pipes inside the walls of the building and conveys it to the sewer lateral, .
4. *Sewer lateral* shall mean the extension from the building sewer outlet to the public sewer or other place of disposal. Use of the terms sewer lateral and building sewer shall be considered all meaning and intending the same.
5. *Bypass*. The intentional diversion of wastestreams from any portion of a wastewater treatment facility.
6. *City* shall mean the City of Berlin, New Hampshire acting through its mayor, City council, City manager and properly authorized representatives.
7. *Combined Sewer*. A sewer intended to receive both wastewater and storm or surface water.
8. *Domestic wastewater* shall mean and include that derived from dwellings due to domestic activities excluding ground, surface or storm water.
9. *Easement* shall mean an acquired legal right for the specific use of land owned by others.
10. *EPA* shall mean the United States Environmental Protection Agency.
11. *Floatable oil* is oil, fat or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable oil if it is properly pretreated and the wastewater does not interfere with the collection system.
12. *Force Main*. A line without access from individual properties, providing a connection from a pump station to a pump station, trunk, or sanitary sewer main.
13. *Garbage* shall mean solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of produce.
14. *Grab Sample*. A sample that is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed fifteen (15) minutes.
15. *Grease*. The material removed from a grease interceptor (trap) serving a restaurant or other facility requiring such grease interceptors. Also means volatile and non-volatile residual fats, fatty acids, soaps, waxes and other similar materials.
16. *Hauler*. Those persons, firms, or corporations, who pump, haul, transport, or dispose of septage and who are licensed by the New Hampshire Department of Environmental Services pursuant to RSA 485-A:4,XVI-a and rules adopted to implement said section.
17. *Industrial Discharge Permit or IDP*. The written permit between the City and an industrial user that outlines the conditions under which discharge to the POTW will be accepted.
18. *Industrial wastes* shall mean the liquid wastes from industrial manufacturing processes, trade, or business as distinct from sanitary sewage.
19. *Instantaneous Discharge Limit*. The maximum concentration of a pollutant allowed to be discharged at any time,

determined from the analysis of any discrete or composite sample collected, independent of the industrial flow rate and the duration of the sampling event.

20. *Interceptor* shall mean a device designed and installed so as to separate and retain deleterious, hazardous or undesirable matter from normal wastes and permit normal sewage or liquid wastes to discharge into building sewer lateral.
21. *Interference* shall mean a discharge by an industrial user which, alone or in conjunction with discharges by other sources, inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal and which is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal by the POTW in accordance with groundwater protection rules, Ws 410, solid waste rules, Env-Wm 1000 and Appendix III, the Clean Air Act, the Toxic Substance Control Act, and the Marine Protection Research and Sanctuaries Act.
22. *Loading* shall mean the quantity of pollutants present in a wastewater discharge, expressed as concentrations or weights.
23. *Local Limits*. Numerical limitations on the discharge of pollutants established by the City of Berlin, as distinct from State or federal limitations for non-domestic wastewater discharged to the POTW.
24. *May* is permissive (see *shall*).
25. *Medical Waste/ Infectious Waste / Pharmaceutical Waste / or Radiological Waste*. as defined by RSA 125-N:2, VIII.
26. *N.H.DES*. shall mean the New Hampshire Department of Environmental Services.
27. *National Categorical Pretreatment Standard* or *categorical pretreatment standard* shall mean any regulations containing pollutant discharge limits promulgated by USEPA in accordance with Section 307(b) and (c) of the Clean Water Act (33 USC 1347) which applies to a specific category of industrial users.
28. *Natural outlet* shall mean any outlet into a watercourse, pond, ditch, lake, or other body of surface or ground water.
29. *Normal strength waste* shall mean wastewater with a concentration of two hundred fifty (250) mg liter BOD and three hundred (300) mg liter SS, such being the upper limits for domestic sanitary waste as stipulated in this article.
30. *Normal Domestic Wastewater or normal strength wastewater* shall mean wastewater with a concentration of two hundred fifty (250) mg liter BOD and three hundred (300) mg per liter SS.
31. *New Source*.
  - a. Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced subsequent to the publication of proposed pretreatment standards under Section 307(c) of the Act that will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
    - i. The building, structure, facility, or installation is constructed at a site at which no other source is located; or
    - ii. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
    - iii. The production or wastewater-generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, will be considered.
  - b. Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

- i. Begun, or caused to begin, as part of a continuous on-site construction program
        - ia. any placement, assembly, or installation of facilities or equipment; or
        - ib. significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities that is necessary for the placement, assembly, or installation of new source facilities or equipment; or
      - ii. Entered into a binding contractual obligation for the purchase of facilities or equipment that are intended to be used in its operation within a reasonable time. Options to purchase or contracts that can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.
    - c. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of Section (a)(ii) or (a)(iii) above but otherwise alters, replaces, or adds to existing process or production equipment.
32. *Non-Contact Cooling Water.* Water used for cooling that does not directly contact any raw material, intermediate product, waste product, or finished product.
33. *Obstruction* shall mean a blockage to a sewer lateral resulting from grease, debris and wasting of corrosive chemicals. Debris includes sticks, rags, plastic bags, toys and rocks.
34. *Operation and maintenance costs* shall mean all costs, direct and indirect, including replacement costs, necessary to insure adequate wastewater treatment on a continuing basis, conforming with state, federal and local requirements and insuring optimal long-term facility management
35. *Owner* shall mean the person requesting the City to complete work on a sewer lateral.
36. *Pass through* shall mean the discharge of pollutants through the POTW into navigable waters in quantities or concentrations which, alone or in conjunction with discharges from other sources, is a cause of a violation of any requirements of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of applicable water quality criteria.
37. *Person* shall mean any individual, firm, company, association, society, corporation or group.
38. *pH* shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.
39. *Pollutant.* Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).
40. *Pretreatment.* The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.
41. *Pretreatment Requirements.* Any substantive or procedural requirement related to pretreatment imposed on a user, other than a pretreatment standard.
42. *Pretreatment Standards or Standards.* Pretreatment standards shall mean prohibited discharge standards, [*categorical pretreatment standards,*] and local limits.
43. *Process waste* shall mean water and liquid waste discharged from any trade or process carried on in that establishment, including pretreated wastes and polluted cooling water, but excluding segregated domestic wastewater or discharges from sanitary conveniences.

44. *Properly shredded garbage* shall mean the wastes from the preparation, cooking, and dispensing of food that have shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch (1.27 centimeters) in any dimension.
45. *Public sewer* shall mean a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.
46. *Public Works Director* shall mean the Public Works Director or his authorized deputy, agent or representative of the City. If there is no person employed as Public Works Director, or in the absence of the Public Works Director, the City Manager shall be the Public Works Director for the purpose of this division.
47. *Publicly Owned Treatment Works or POTW*. A "treatment works," as defined by Section 212 of the Act (33 U.S.C. §1292) that is owned by the City. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if these structures convey wastewater to a POTW wastewater treatment facility. The term also means the municipality that has jurisdiction over discharges to and from such a treatment plant, and any sewer that conveys wastewater to the POTW from persons outside the City who are, by contract or agreement with the City, users of the City's POTW.
48. *Recreational Vehicle or "RV"*. A mobile vehicle or trailer used for temporary living e.g. a camper or wholly self-contained transport and living unit.
49. *Regional administrator* shall mean the regional administrator for Region I of the U.S.E.P.A., John F. Kennedy Federal Building, Boston, Massachusetts.
50. *Replacement cost* shall be expenditures for obtaining and installing equipment, accessories and appurtenances which are necessary during the service life of the treatment facility to maintain the capacity and performance for which such works were designed. Service life shall mean industrial cost recovery period for the treatment facility.
51. *Reserved capacity* shall mean that portion of the treatment works capacity in terms of volume or loading or both, reserved by written agreement between the City and an industry or municipality for that industry or municipality.
52. *Running water problem* shall mean the problem caused by the fact that many City residents must continually run their water during winter months to avoid freezing of water laterals and/or street water mains.
53. *Sanitary sewer* shall mean a sewer which carries sewage and to which storm, surface and ground waters are not intentionally admitted.
54. *Sanitary waste* shall mean the combination of liquid and wastes discharged from toilets, kitchen fixtures, laundry fixtures and other equivalent sanitary facilities.
55. *Screening Level*. That concentration of a pollutant that under baseline conditions would cause a threat to personnel exposed to the pollutant, or would adversely impact structures of the POTW. To be administered as local limits applicable to a particular discharge, the screening levels must be adjusted to account for conditions at the point of discharge that differ from baseline conditions.
56. *Septage or Septic Tank Waste*. Any liquid, solid, or sludge pumped from chemical toilets, vaults, septic tanks, or cesspools or other holding tanks, that have received only domestic wastewater.
57. *Septage Tank Truck*. Any watertight vehicle that is used for the collection and hauling of septage as described above and that complies with the rules of the New Hampshire Department of Environmental Services.
58. *Sewage* shall mean a combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such ground, surface and storm waters as may be present.
59. *Sewage treatment plant* shall mean all facilities for pumping, treating, and disposing of sewage.

60. *Sewage works* shall mean all facilities for collection, pumping, treating, and disposing of sewage.
61. *Sewer* shall mean a pipe or conduit for carrying sewage.
62. *Sewer rental* shall mean sewer user charge.
63. *Sewer user charge* shall mean sewer rental with respect to NH RSA 149.
64. *Shall* is mandatory (see *may*).
65. *Significant Industrial Discharger*
- a. A user subject to categorical pretreatment standards under 40 CFR 403.8 and 40 CFR Chapter I, Subchapter N; or
  - b. A user that:
    - i. Discharges an average of ten thousand (10,000) gpd or more of process wastewater to the POTW (excluding sanitary, non-contact cooling, and boiler blowdown wastewater);
    - ii. Contributes a process wastestream that comprises five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
    - iii. Is designated as such by the City on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.
  - c. Upon determining that a user meeting the criteria in Subsection b.i. or b.ii. has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the [City/Town] may at any time, on its own initiative or in response to a petition received from a user, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such user should not be considered a significant industrial user.
66. *Slug* shall mean any discharge of water, sewage, or industrial waste in which concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four-hour concentration of flows during normal operation or which shall adversely affect the collection system and/or performance of the wastewater treatment works.
67. *Storm sewer* or *storm drain* shall mean a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.
68. *Structural failure* shall mean blockages resulting from the collapse of a sewer lateral pipe, a broken coupling, root intrusion or City-related construction that impacts the lateral. Disputes in occurrence of a structural failure will be resolved by the Public Works Director, whose decision shall be final.
69. *Surcharge* shall mean user charge for that portion of wastewater of any user with strength in terms of BOD and/SS in excess of normal.
70. *SS (Suspended Solids)* shall mean the total suspended matter that either floats on the surface of or is in suspension in water, wastewater or other liquid and that is removable by laboratory filtering as prescribed in the standard methods publication referred to above.
71. *Unpolluted Water*. Water of quality equal to or better than the State Water Quality Standards (Part Env-Ws 430 through Env-Ws 440) or water that would not cause a violation of receiving water quality standards and would not be benefited by discharge to the POTW.
72. *Wastewater*. Liquid and water-carried industrial wastes and/or sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.
73. *Watercourse* shall mean a channel in which a flow of water occurs, either continuously or intermittently.

74. *Wastewater treatment works* shall mean any devices or systems used in the storage, transportation, treatment recycling, and reclamation of municipal sewage or liquid industrial waste, including separation from storm runoff.

(Ord. No. 37, Art. IV, § 1, 11-16-81 Ord 2-5-07 )

(Code 1977, § 4:301; Ord. No. 1984-2, 7-16-84; Ord. of 8-5-91)

**Cross References:** Definitions and rules of construction generally, § 1-2.

#### **Sec. 16-47. Unlawful deposit, discharge on property.**

It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the City, or in any area under the jurisdiction of the City, any human or animal excrement, garbage, or other objectionable waste.

(Code 1977, § 4:302.1; Ord. of 8-5-91 Ord 2-5-07; )

#### **Sec. 16-48. Discharge of polluted waters into natural outlets.**

It shall be unlawful to discharge to any natural outlet within the City, or in any area under the jurisdiction of the City, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this article.

(Code 1977, § 4:302.2; Ord. of 8-5-91 Ord 2-5-07; )

#### **Sec. 16-49. Privies, septic tanks, cesspools, etc., prohibited.**

Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage.

(Code 1977, § 4:303.1; Ord. of 8-5-91; Ord 2-5-07)

#### **Sec. 16-50. New construction sewer connection mandatory.**

All newly constructed houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes situated within the City and abutting on any street, alley, or right-of-way in which there is located a public sanitary sewer of the City, shall be connected, at the expense of the property owner, with the public sewer in accordance with the provisions of this article within ninety (90) days after the date of official notice to do so; provided that such public sewer is within two hundred (200) feet of the building measured on a straight line from the sewer to the building.

(Ord. of 8-5-91; Ord 2-5-07)

#### **Sec. 16-51. Private wastewater disposal.**

Where a public sanitary sewer is not available under the provisions of section 16-50, the sewer lateral shall be connected to a private wastewater disposal system which shall be in full compliance with New Hampshire Department of Environmental Services (NHDES) Subdivision and Individual Sewage Disposal System Rules Env-Ws 1000.

The homeowner shall furnish the Public Works Director with a copy of the State approved design at the time of building permit application. No occupancy permit will be issued until the plan is received by the Public Works Director.

Whenever a resident abandons his septic system, he shall be required to properly fill the septic tank with a granular material acceptable to the Public Works Director.

#### **Sec. 16-52. Existing private Disposal Systems**

A resident shall be required to connect an existing plumbing system to the sanitary sewer system when such system meets the measurement requirements of Section 16-50 and, in the City's opinion, the resident's septic system constitutes a health hazard. When such existing system doesn't meet the measurement requirement under Section 16-50, the existing system must be brought into compliance as provided in Section 16-51. However, in no event shall a resident be permitted more than fifteen (15) years to connect his plumbing system to the sanitary sewer system from the date that the sanitary sewer was available to his residence, or such other lesser period as may be established by state or federal laws or regulations. In no case

shall a resident with an existing septic system be authorized to improve, extend or expand a septic system on his property; however, he shall be permitted to clean and repair the existing system with appropriate state approval. (Code 1977, § 4:304.1; Ord. of 8-5-91; Ord 2-5-07)

**Sec. 16-53 – 16-56 RESERVED**

**Sec. 16-57. Payment of pro rata share by abutting owners.**

Whenever sanitary sewers or portions thereof are laid at the expense of the City without cost of such line or lines being paid for by, or assessed against, all the property owners abutting such lines and benefited thereby, the owners of any of the abutting property to be serviced by such line or lines shall pay their pro rata share of such line or lines before tapping therein, based on street front footage or else the City shall record a lien against said properties, to be recorded at the registry of deeds, for the purpose of recovering the cost of such extensions. (Code 1977, § 4:306.3; Ord. of 8-17-81; Ord. of 8-5-91; Ord 2-5-07)

**Sec. 16-58. Connection permit.**

There shall be two (2) classes of sewer permits: (a) for residential and commercial service producing only domestic wastewater, and (b) for service to establishments producing industrial wastes. For residential and commercial services, the owner(s) or his agent shall make application on a special form furnished by the City at least thirty (30) days prior to said service connection. For an establishment discharging industrial wastes, the application shall be made at least sixty (60) days prior to said service connection. The permit application shall be supplemented by any plans, specifications, or other information (including pollution prevention studies) considered pertinent in the judgment of the Public Works Director. A permit fee of \$10.00 shall be paid to the City at the time the application is filed. Installation by the City will be charged to the applicant based on time and materials. (Code 1977, § 4:307; Ord. of 8-5-91; Ord 2-5-07)

**Sec. 16-59 . RESERVED**

**Sec. 16-60. Penalties.**

- (a) Any person found to be violating any provision of this article, shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The notice shall be served upon said persons in a manner as provided for the service of summons in civil actions. The time allotted for compliance shall not be less than thirty (30) days. The offender shall, within the period of time stated in such notices, permanently cease all violations.
- (b) Any person violating any of the provisions of this article shall become liable to the City for any expense, loss, or damage occasioned the City by reason of such violation.
- (c) The Public Works Director may require any user that has violated or continues to violate any provision of this Ordinance, an Industrial Discharge Permit, or order issued hereunder, or any other pretreatment standard or requirement, to develop a pollution prevention plan in accordance with Section 16-99(d) of this Ordinance. The pollution prevention plan must specifically address violation(s) for which this action was undertaken. The pollution prevention plan shall be developed using good engineering judgment and shall be submitted to the Public Works Director no later than sixty (60) days after the user was notified of this requirement.
- (d) The Public Works Director may publish annually, in the largest daily newspaper circulated in the City where the POTW is located, a list of the users that, during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements.
- (e) The Public Works Director may immediately suspend a user's discharge, subsequent to informal notice to the user, whenever such suspension is necessary to terminate an actual or threatened discharge that reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of POTW personnel or the public. The Public Works Director may also immediately suspend a user's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or that

presents, or may present, an endangerment to the environment.

- A. Any user notified of a suspension of its discharge shall immediately terminate or eliminate its wastewater discharge. In the event of a user's failure to immediately comply with the suspension order, the Public Works Director may implement such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The Public Works Director may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the Public Works Director that the period of endangerment has passed, unless the termination proceedings are initiated against the user.
  - B. A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures implemented to prevent any future occurrence, to the Public Works Director prior to the date of any show cause or termination hearing. Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section.
- (f) When the Public Works Director determines that a user has violated, or continues to violate, any provision of this Ordinance, an Industrial Discharge Permit or order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the Public Works Director may issue an order to the user directing it to cease and desist all such violations and directing the user to:
- A. Immediately comply with all requirements; and
  - B. Implement such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.
- (g) Injunctive Relief: When the City determines that a user has violated, or continues to violate, any provision of this Ordinance, an Industrial Discharge Permit, or order issued hereunder, or any other pretreatment standard or requirement, the City may petition the Coos County Superior Court through the City's Attorney for the issuance of a temporary or permanent injunction, as appropriate, that restrains or compels the specific performance of the Industrial Discharge Permit, order, or other requirement imposed by this Ordinance on activities of the user. The City may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, implementing any other action against a user.
- (h) Civil Penalties:
- A. A user who has violated, or continues to violate, any provision of this Ordinance, an Industrial Discharge Permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the City for a maximum civil penalty of \$10,000 per violation, per day, plus actual damages incurred by the POTW. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.
  - B. The City Council may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the City. The City Council shall petition the Court to impose, assess, and recover such sums.
  - C. In determining the amount of civil liability, the Court shall consider all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.

D. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, implementing any other action against a user.

(i) Criminal Prosecution: Any person or industrial user who willfully or negligently violates any provision of this Ordinance or any orders or permits issued hereunder shall, upon conviction, be guilty of a violation, punishable by a fine not to exceed \$10,000 for each violation. Every separate provision violated shall constitute a separate violation. Every day that a violation occurs shall be deemed a separate violation. Ref. RSA 47:17, I, RSA 149-I:6, RSA 31:39, III.

(j) Nonexclusive Remedies: The remedies provided for in this Ordinance are not exclusive. The City may take any, all, or any combination of these actions against a non-compliant user. Enforcement of pretreatment violations will generally be in accordance with the City's enforcement response plan. However, the City may pursue other action against any user without limitation, including *ex parte* temporary judicial relief to prevent a violation of this Ordinance. Further, the City is empowered to pursue more than one enforcement action against any non-compliant user.

(Code 1977, § 4:329; Ord. of 8-5-91; Ord 2-5-07)

### **Sec. 16-61. Extension of Sewers.**

(a) The extension of public sanitary sewers to any single parcel or parcels of property, within City limits, not currently serviced by public sewers shall be the responsibility of the person or persons who shall benefit from such extension. However, this shall in no way be construed to prevent the City from providing that the whole or a part of the expense of constructing public sewer shall be paid by the City. The connection between a sanitary sewer system within a subdivision and the public sewer system shall be required in accordance with section 3.6 of the City of Berlin Subdivision regulations.

(b) In general, all sewer mains shall be public and shall meet City Utility Standards. These shall be located either in City streets or public rights of way or public easements. Sewer laterals which run from a City sewer main to an individual building or an individual parcel or lot shall remain private and shall be maintained by the owner except as provided in 16-71.

(c) For non-residential development such as shopping center or industrial complexes, the private sewer lateral shall normally be considered to be all of the facilities lines and branch lines that leave the City main to serve various buildings in the development.

(Ord. of 8-17-87, § 4:330.1; Ord 2-5-07)

### **Sec. 16-62. Design.**

(a) No building permits shall be issued for a parcel of property which is to be served by public sewers until a plan showing the proposed extension of public sewers to such property has been submitted to, and approved by, the Public Works Director.

(b) The design of all sewer extensions shall be prepared under the direct supervision of a registered professional engineer qualified to practice sanitary engineering in the state. All plans and specifications shall be submitted to the Public Works Director for approval.

(c) The design of all sewer extensions shall be in accordance with the standards of the State Department of Environmental Services and the Public Works Director. Any design for sewer connection for a major subdivision shall be approved by the New Hampshire Department of Environmental Services.

(d) The Public Works Director shall be allowed up to thirty (30) days to review all plans submitted. Plans submitted to the engineer shall be reviewed and approved as submitted, approved with comments, or not approved. Plans approved with comments may be eligible for issuance of a building permit without resubmission at the discretion of the Public Works Director, assuming all other criteria for the issuance of a building permit have been satisfied. Plans not approved shall be resubmitted after revision, prior to issuance of a building permit.

(e) The Public Works Director shall be provided with two (2) complete sets of blue or black line prints or one (1) reproducible print. One (1) copy shall be returned with the appropriate approval notations.

(Ord. of 8-17-87, § 4:330.2; Ord 2-5-07)

**Sec. 16-63. Participation.**

(a) The City may participate in the cost of any sewer extensions for individual parcels only to the extent of providing, at no charge, the following items for construction within public Right of Way:

- (1) Up to one hundred (100) feet of sanitary sewer pipe.
- (2) One (1) manhole assembly for every three hundred (300) feet of pipe.

(b) All other construction costs shall be the responsibility of the person benefiting from or being served by the sewer extension.

(Ord. of 8-17-87, § 4:330.3; Ord 2-5-07)

**Sec. 16-64. Special circumstances.**

The City council may elect to supply more materials than indicated in section 16-63 in the following special circumstances:

- (1) If more than one hundred (100) feet of sewer pipe is required to service a parcel because the existing public sewer is over one hundred (100) feet from the parcel.
- (2) If existing manholes, pipe or connections require repair or replacement in order to facilitate proper connection of the new sewer.

(Ord. of 8-17-87, § 4:330.4; Ord 2-5-07)

**Sec. 16-65. Construction.**

- (a) Construction of all sewer extensions and appurtenances shall conform to standard practice and the standards set forth by the Public Works Director.
- (b) The person proposing a sewer extension shall be responsible for obtaining all necessary permits, easements and/or releases prior to the start of construction.
- (c) The City shall be held harmless for any damages and any and all claims arising from the construction of the work.
- (d) The Public Works Director, or a designee, shall inspect the construction of all sewer extensions. Any defects found during this inspection shall be corrected prior to the issuance of any occupancy permits for any buildings serviced by the sewer extension.

(Ord. of 8-17-87, § 4:330.5; Ord 2-5-07)

**Sec. 16-66. Acceptance of sewer extensions.**

Upon completion of any sewer extension and contingent upon the correction of any defects found during construction of the extension, the Public Works Director shall petition the City council to accept responsibility for the maintenance and operation of the extension.

(Ord. of 8-17-87, § 4:330.6; Ord 2-5-07)

**Sec. 16-67 to 16-70 RESERVED**

**DIVISION 2.**

**SEWER LATERALS**

**Sec. 16-71. Ownership; expense of installation, maintenance.**

All costs and expenses incidental to the installation and connection of the sewer lateral shall be borne by the owner, except for buildings which existed prior to the date of the dedication of the wastewater treatment plant and which also are determined by the Public Works Director to be within the area serviced by the public sanitary sewer system as it exists as of July 15, 1991. For these exceptions only, the following shall apply:

- (1) The City shall pay all approved costs associated with the installation of the sewer lateral; and
- (2) The sewer connection must have been officially mandated to the individual property owner by the City in writing; and
- (3) Approved costs shall include only those costs which are actually incurred in the installation of the lateral, including excavation, pipe, ledge removal and pavement, within the boundaries of the paved City street, including sidewalks; and
- (4) Approved costs shall not exceed the limits established annually by the Public Works Director; and
- (5) The property owner shall be responsible for performing the work or for hiring a contractor to perform the work; and
- (6) Approved reimbursements shall not exceed the actual cost of the work, nor the limits established in accordance with item (4) above; and
- (7) The property owner must document all actual costs in writing to the Public Works Director who shall then determine the amount to be reimbursed to the property owner. Documented costs must include only those costs outlined in item (2) above; and
- (8) The Public Works Director may waive all fees associated with the appropriate permits needed by the property owner and/or contractor to accomplish the connections in the street; and
- (9) All costs, including materials and equipment, to complete the sewer connections outside of the boundaries of the paved City street shall be the responsibility of the property owner; and
- (10) All work shall be completed in accordance with local ordinances and building codes.

The City shall be responsible for all costs associated with the repair of structural failures caused by traffic or movement due to frost to a sewer lateral which is under paved City streets or sidewalks. In all other cases the sewer lateral is the responsibility of the property owner. Furthermore, in no event shall the City be responsible for costs associated with damages resulting from the operation of the building lateral or repairs completed.

Expense associated with the thawing of a sewer lateral will be borne by the owner. Thawing of a sewer lateral is not the responsibility of the City.

The owner shall be responsible for all costs incurred by the City for work completed under a sewer maintenance request if the work was required for the removal of user related obstructions. This includes costs associated with damage from root obstructions. Payment due the City will be determined as detailed in the sewer maintenance request.

The City will provide a video inspection of a sewer lateral at the request of the building owner provided the owner agrees to reimburse the City the full cost of the video for a maximum pipe length of 100 feet. The cost will be waived if the video documents that the problem with the sewer lateral is a structural failure within the right of way. (Code 1977, § 4:309; Ord. No. 1984-2, 7-16-84; Ord. of 8-5-91; Ord 2-5-07)

**Sec. 16-72. Separate lateral required.**

Each parcel shall have a separate and independent sewer lateral connection installed in individual trenches to the sewer main.  
(Code 1977, § 4:310.1; Ord. of 8-5-91; Ord 2-5-07)

**Sec. 16-73. Use of old sewers.**

Old sewer laterals may be used in connection with new buildings only when they are found, on examination and test by the Public Works Director, to meet all requirements of this article.  
(Code 1977, § 4:310.2; Ord. of 8-5-91; Ord 2-5-07)

**Sec. 16-74. Construction generally.**

The size, slope, alignment, materials of construction of a sewer lateral, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the building and plumbing code, DES Rules Env-Ws 700 or other applicable rules or regulations of the City and shall be approved by the Public Works Director.  
(Code 1977, § 4:311.1; Ord. of 8-5-91; Ord 2-5-07)

Proposed new discharges from residential or commercial sources involving loadings exceeding 50 population equivalents (5,000 gpd), any new sewage, or any alteration in either flow or waste characteristics of existing industrial wastes that are being discharged into the POTW must be approved by DES. A sewer connection permit request form for any proposed sewerage, whether public or private; any proposed wastewater connection or other discharge in excess of 5000 gallons per day; any proposed wastewater connection or other discharge to a wastewater treatment facility operating in excess of 80% design flow capacity; any proposed connection or other discharge of industrial wastewater, regardless of quality or quantity. An industrial wastewater discharge request application for new or increased loadings of industrial waste in accordance with Env-Ws 904.10.

**Sec. 16-75. Elevation of sewer; approved lifting method.**

Whenever possible, the sewer lateral shall be brought to the building at an elevation below the basement floor. In all buildings in which any building sewer lateral is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building sewer lateral shall be lifted by an approved means and discharged to the sewer lateral.  
(Code 1977, § 4:311.2; Ord. of 8-5-91; Ord 2-5-07)

**Sec. 16-76. Reserved**

(Code 1977, § 4:312; Ord. of 8-5-91; Ord 2-5-07)

**Sec. 16-77. Conformance with building, plumbing codes.**

The connection of the sewer lateral, building sewer outlet and connections into the public sewer lateral shall conform to the requirements of the building and the plumbing code or other applicable rules and regulations of the City, or the procedures set forth in appropriate specifications of the A.S.T.M. and the W.P.C.F. Manual of Practice No. 9. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the Public Works Director before installation.  
(Code 1977, § 4:313; Ord. of 8-5-91; Ord 2-5-07)

**Sec. 16-78. Inspection.**

The applicant for the sewer lateral permit shall notify the Public Works Director when the sewer lateral is ready for inspection. The connection between the building and the sewer lateral and the connection to the public sewer or existing lateral, as well as the entire sewer lateral, shall remain uncovered until approved by the Public Works Director, or his designee.  
(Code 1977, § 4:314; Ord. of 8-5-91; Ord 2-5-07)

**Sec. 16-79. Barricades for excavations.**

All excavations for sewer lateral installations shall be adequately guarded with barricades and lights so as to protect

the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City.  
(Code 1977, § 4:315; Ord. of 8-5-91; Ord 2-5-07)

**Sec. 16-80. Appeals.**

Any property owner aggrieved by any portion of this article shall first attempt to resolve the grievance through the Public Works Director. If the concerns cannot be satisfactorily resolved through the Public Works Director, the property owner may submit a written appeal to the City Manager. If the concerns cannot be resolved through the City Manager, the property owner may submit a further written appeal to the City Council, which shall make a determination in the matter. The City Manager and City Council reserve the right to take no action on any appeal which is not submitted in writing or which has not first been discussed with the Public Works Director.  
(Ord. of 8-5-91; Ord 2-5-07)

**Secs. 16-81--16-90. RESERVED.**

**DIVISION 3.**

**SEWER USE REGULATIONS**

**Sec. 16-91. Discharge of surface water.**

No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof run-off, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer. No person shall make connection of roof downspouts, exterior or interior foundation drains, areaway drains, or other sources of surface run-off, or groundwater to a sewer lateral or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

Storm water and all other surface or groundwater drainage shall be discharged to storm drains or to a natural outlet approved by the Public Works Director. Industrial cooling water or unpolluted process waters may be discharged, on approval of the Public Works Director, to a storm drain, or natural outlet.  
(Code 1977, § 4:316.2; Ord. of 8-5-91; Ord 2-5-07)

**Sec. 16-92. Prohibited materials.**

No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers except as otherwise permitted by NHDES and the Public Works Director:

- (1) Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas.
- (2) Any water or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant. All discharges containing toxic materials shall be regulated as provided in section 16-94.
- (3) Any waters or wastes having a pH lower than 5.0 or greater than 11.0, or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works.
- (4) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails, and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.
- (5) Solid or viscous substances including water or wastes containing fats, wax, grease, or oils, whether

emulsified or not, or containing substances that may solidify or become viscous at temperatures between thirty-two (32) and one hundred fifty (150) degrees (0-65 degrees C), in amounts that will cause obstruction of the flow in the POTW resulting in interference.

- (6) Pollutants, including oxygen-demanding pollutants (BOD, COD, etc.), or chlorine demand requirements released in a discharge at a flow rate and/or pollutant concentration that, either singly or by interaction with other pollutants, will cause interference with the POTW.
- (7) Wastewater having a temperature greater than 150°F (65°C), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater that causes the temperature at the introduction into the POTW treatment plant to exceed 104°F (40°C).
- (8) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass-through.
- (9) Pollutants that result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
- (10) Trucked or hauled pollutants, except at discharge points designated by the Public Works Director in accordance with Section 16-124 of this Ordinance.
- (11) Medical wastes, infectious waste, pharmaceutical waste or radiological waste except as specifically authorized in a discharge permit.
- (12) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent or sludge to fail a toxicCity test.
- (13) Household hazardous wastes including but not limited to paints, stains, thinners, pesticides, herbicides, anti-freeze, transmission and brake fluids, motor oil and battery acid.
- (14) No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater that causes pass-through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other federal, State, or local pretreatment standards or requirements.
- (15) Wastewater that imparts color that may not be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently may impart color to the treatment facility's effluent, thereby violating the City's NPDES permit.
- (16) Noxious or malodorous liquids, gases, solids, or other wastewater those, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair.
- (17) Wastewater containing any radioactive wastes or isotopes except in compliance with applicable State or federal regulations.
- (18) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, non-contact cooling water, or otherwise unpolluted wastewater.
- (19) Sludges, screenings, or other residues from the pretreatment of industrial wastes.
- (20) Detergents, surface-active agents, or other substances that may cause excessive foaming in the POTW.
- (21) Wastewater causing a reading on an explosion hazard meter at the point of discharge into the POTW, or at any point in the POTW, of more than 10 percent (10%) of the Lower Explosive Limit of the meter.

- (22) Garbage that has not been properly shredded (garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments, or similar places where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers).
- (23) Any quantities of flow, concentrations, or both that constitute a "slug" as defined in Section 16-46 of this Ordinance.
- (24) Waters or wastes that, by interaction with other water or wastes in the POTW, release dangerous or noxious gases, form suspended solids that affect the operation of the collection system, or create a condition deleterious to structures and treatment processes.
- (25) Any materials that exert or cause unusual concentrations of inert suspended solids (such as, but not limited to, Fullers earth, lime, slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate).
- (26) Hazardous Waste as defined under Env-Wm 400.  
(Code 1977, § 4:317; Ord. of 8-5-91; Ord 2-5-07)

**Sec. 16-94. Written statement required.**

Any person whose operations entail the discharge of water or wastes containing toxic or poisonous substances shall file with the Public Works Director a written statement setting forth the nature of the operation contemplated or presently carried on, the amount of water required to be used and its source, the proposed point of discharge of such wastes into the sewage system of the City, the estimated amount so to be discharged, and a fair statement setting forth the expected bacterial, physical, chemical, and other known characteristics of such wastes. Within thirty (30) days of receipt of such statement, it shall be the duty of the Public Works Director to make an order stating such minimum restrictions as in the judgment of the Public Works Director may be necessary to guard adequately against the unlawful uses of the City's sewage system.  
(Code 1977, § 4:319; Ord. of 8-5-91; Ord 2-5-07)

**Sec 16-94a Pretreatment Measures and Standards**

- A. The categorical pretreatment standards are found at 40 CFR Chapter I, Subchapter N, Parts 405-471 and are hereby incorporated into the Ordinance.
  - 1. Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the Public Works Director may impose equivalent concentration or mass limitations in accordance with 40 CFR 403.6(c).
  - 2. When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the Public Works Director shall impose an alternate limit using the combined wastestream formula in 40 CFR 403.6(e).
  - 3. A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.
  - 4. A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.]
- B. EPA shall be the Control Authority for industrial users subject to categorical pretreatment standards. As the Control Authority, industrial users are responsible to the EPA for compliance with categorical pretreatment standards and the requirements of 40 CFR Part 403. Categorical industrial users shall provide the City with copies of any reports to, or

correspondence with EPA relative to compliance with the categorical pretreatment standards. The industrial user is responsible for determining the applicability of categorical pretreatment standards. The user may request that EPA provide written certification on whether the user is subject to the requirements of a particular category. Upon promulgation of the federal categorical pretreatment standards for a particular industrial subcategory, the federal standard, if more stringent than limitations imposed under this Ordinance for sources in that subcategory, shall, on the compliance date of the categorical pretreatment standards, immediately supersede the limitations imposed under this Ordinance. Compliance with categorical pretreatment standards shall be achieved within three (3) years of the date such standards are effective, unless a shorter compliance schedule is specified in the standards. An industrial user subject to categorical pretreatment standards shall not discharge wastewater directly or indirectly to the City's POTW subsequent to the compliance date of such standards unless an amendment to its Industrial Discharge Permit has been issued by the City.

- C. All persons discharging industrial process wastes into public or private sewers connected to the City's POTW shall comply with applicable federal requirements, State standards or standards established by the Public Works Director whichever is more stringent for pretreatment of wastes as they may be amended from time to time in addition to the requirements of this Ordinance.
- D. If any waters or wastes are discharged or are proposed to be discharged to the POTW that exceed the standards or restrictions established in Sections 16-92, 16-94 of this Ordinance, which in the judgment of the Public Works Director may have a deleterious effect upon the POTW, processes, equipment, or receiving waters, or that otherwise create a hazard to worker safety or health, or constitute a public nuisance, the Public Works Director may:
1. Reject or prevent any discharge to the POTW after notice has been served to the discharger and the discharger has had reasonable opportunity to respond;
  2. Require pretreatment prior to discharge to the POTW;
  3. Require control (e.g., equalization) over the quantities and rates of discharge; and/or
  4. Require payment to cover additional cost of handling and treating the wastes.
- E. Special Agreements. No statement contained in this Section except for section 16-92 and 16-94a paragraphs A shall be construed as preventing any special agreement or arrangement between the City and any industrial user whereby an industrial waste of unusual strength or character may be accepted by the City for treatment provided that said agreements do not contravene any requirements of existing federal or State laws, and/or regulations promulgated thereunder, are compatible with any user charge system in effect, and do not waive applicable federal categorical pretreatment standards. Special agreement requests shall require submittal of a pollution prevention plan that specifically addresses the discharge for which a special agreement is requested. For pollutants with numerical local limits, the City has allocated a percentage of its allowable industrial loadings for such special agreements. Requests for special agreements that exceed this allocation will not be approved.
- F. City's Right of Revision. The discharge standards and requirements set forth in this section are established for the purpose of preventing discharges to the POTW that would harm the sewers, wastewater treatment process, or equipment; would have an adverse effect on the receiving stream; or would otherwise endanger lives, limb, public property, or constitute a nuisance. To meet these objectives, the Public Works Director may, from time to time, review and set more stringent standards or requirements than those established in this section if, in the Public Works Director's opinion, such more stringent standards or requirements are necessary. At a minimum, this review will be performed at least once every five years. In forming this opinion, the Public Works Director may give consideration to such factors as the quantity of waste in relation to flows and velocities in the sewers, materials of construction of the sewers, the wastewater treatment process employed, capacity of the wastewater treatment facility, degree of treatability at the wastewater treatment facility, pollution prevention activities, and other pertinent factors. The limitations or restrictions on materials or characteristics of waste or wastewaters discharged to the sanitary sewer shall not be exceeded without the approval of the Public Works Director. The Public Works Director shall allow affected industrial users reasonable time to comply with any changes to the local limits. The conditions and schedule for compliance shall accompany the written notification of amended local limits.
- G. Dilution. No user shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly

authorized by an applicable pretreatment standard or requirement. The Public Works Director may impose mass limitations on users who are using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate.

- H. **Mass-Based Limitations.** Users implementing process changes may request that compliance be determined based on mass limitations in lieu of concentration limitations. Such mass-based limitations will be calculated from the permitted concentration-based limitations and flows, and shall be equivalent to or less than the mass discharge in effect at the time of the request. The intent of a mass-based limit is to encourage and allow pollution prevention and/or water conservation measures that might cause a facility to increase pollutant concentrations in its discharge even though the total mass of the pollutant discharged does not increase, and may in fact decrease. Decisions on granting requests for mass-based compliance limitations will be based on user-specific information and current operating conditions of the POTW, and will be at the discretion of the Public Works Director. Implementation of mass-based limitations may not contravene any requirements of federal or State laws and/or regulations implemented thereunder, and may not waive applicable categorical pretreatment standards.

#### **Sec. 16-95. Remedies.**

(a) If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in section 16-93 and which in the judgment of the Public Works Director may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Public Works Director may:

- (1) Reject the wastes.
- (2) Require pre-treatment to an acceptable condition for discharge to the public sewers.
- (3) Require control over the quantities and rates of discharge. The Public Works Director may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. An Industrial Discharge Permit may be issued solely for flow equalization.
- (4) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter and alarm
- (5) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of section 16-99.

(b) If the Public Works Director permits the pre-treatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the Public Works Director and subject to the requirements of all applicable codes, ordinances, and laws.

(Code 1977, § 4:320; Ord. of 8-5-91; Ord 2-5-07)

#### **Sec. 16-96. Interceptors.**

Grease, oil, and sand interceptors shall be provided when, in the opinion of the Public Works Director, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Public Works Director and shall be located as to be readily and easily accessible for cleaning and inspection.

(Code 1977, § 4:321; Ord. of 8-5-91; Ord 2-5-07)

#### **Sec. 16-97. Standard for maintenance.**

Where preliminary treatment or flow-equalizing facilities or interceptors are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense. They shall be maintained in accordance with the manufacturer's requirements and in accordance with the Public Works Director's requirements.

(Code 1977, § 4:322; Ord. of 8-5-91; Ord 2-5-07)

**Sec. 16-98. Manholes.**

When required by the Public Works Director, the owner of any property serviced by a sewer lateral carrying industrial wastes shall install at his expense a suitable control manhole together with such necessary meters and other appurtenances in the sewer lateral to facilitate observation, sampling, and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the Public Works Director. The manhole shall be maintained by the owner so as to be safe and shall be accessible to the City at all times.

(Code 1977, § 4:323; Ord. of 8-5-91; Ord 2-5-07)

**Sec. 16-99. Monitoring and tests.**

(a) All industries discharging into a public sewer shall perform such monitoring of their discharges as the Public Works Director and/or other duly authorized employees of the City may reasonably require, including installation, use, and maintenance of monitoring equipment, keeping records and reporting the results of such monitoring to the Public Works Director. Such records shall be made available upon request by the Public Works Director to other agencies having jurisdiction over discharges to the receiving waters.

(b) All measurements, tests, and analysis of the characteristics of waters and wastes to which reference is made in this ordinance shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at such manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the sewer lateral is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property.

(Code 1977, § 4:324; Ord. of 8-5-91; Ord 2-5-07)

(c) Accidental Discharge/Slug Control Plans At least once every two (2) years, the Public Works Director shall evaluate whether each significant industrial user needs an accidental discharge/slug control plan. The Public Works Director may require any user to develop, submit for approval, and implement such a plan. Alternatively, the Public Works Director may develop such a plan for any user. An accidental discharge/slug control plan shall address, at a minimum, the following:

1. Description of discharge practices, including non-routine batch discharges;
2. Description of stored chemicals;
3. Procedures for immediately notifying the Public Works Director of any accidental or slug discharge, as required by Section 16-99k-f of this Ordinance; and
4. Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

(d) Pollution Prevention Plans In accordance with the provisions of Section 16-60 of this Ordinance, the Public Works Director may require any person discharging wastes into the POTW to develop and implement, at that person's own expense, a pollution prevention plan. The Public Works Director may require users to submit as part of the pollution prevention plan information that demonstrates adherence to the following elements:

1. Management Support. For changes to be effective, the visible support of top management is required. Management's support should be explicitly stated and include designation of a pollution prevention coordinator, goals, and time frames for reductions in volume and toxicity of wastestreams, and procedures for employee training and involvement.
2. Process Characterization. A detailed process waste diagram shall be developed that identifies and characterizes the input of raw materials, the outflow of products, and the generation of wastes.

3. Waste Assessment. Estimates shall be developed for the amount of wastes generated by each process. This may include establishing and maintaining waste accounting systems to track sources, the rates and dates of generation, and the presence of hazardous constituents.
4. Analysis of Waste Management Economics. Waste management economic returns shall be determined based on the consideration of:
  1. Reduced raw material purchases;
  2. Avoidance of waste treatment, monitoring and disposal costs;
  3. Reductions in operations and maintenance expenses;
  4. Elimination of permitting fees and compliance costs; and
  5. Reduced liabilities for employee/public exposure to hazardous chemicals and cleanup of waste disposal sites.
5. Development of Pollution Prevention Alternatives. Current and past pollution prevention activities should be assessed, including estimates of the reduction in the amount and toxicity of waste achieved by the identified actions. Opportunities for pollution prevention must then be assessed for identified processes where raw materials become or generate wastes. Technical information on pollution prevention should be solicited and exchanged, both from inside the organization and out.
6. Evaluation and Implementation. Technically and economically feasible pollution prevention opportunities shall be identified and an implementation timetable with interim and final milestones shall be developed. The recommendations that are implemented shall be periodically reviewed for effectiveness. The review and approval of such pollution prevention plans by the City shall in no way relieve the user from the responsibilities of modifying facilities as necessary to produce a discharge acceptable to the City in accordance with the provisions of this Ordinance.

### **DIVISION 3A INDUSTRIAL DISCHARGE PERMIT**

#### **16-99a Wastewater Characterization**

When requested by the Public Works Director a user must submit information on the nature and characteristics of its wastewater within sixty (60) days of the request. The Public Works Director is authorized to prepare a form for this purpose and may periodically require users to update this information.

#### **16-99b Industrial Discharger**

- A. No significant industrial discharger shall discharge wastewater into the POTW without first obtaining an Industrial Discharge Permit from the Public Works Director, except that a significant industrial discharger that has filed a timely and complete application pursuant to the permitting of this Ordinance may continue to discharge for the time period specified therein.
- B. The Public Works Director may require other users to obtain Industrial Discharge Permits, or submit an application for an Industrial Discharge Permit, as necessary to execute the purposes of this Ordinance.
- C. Any violation of the terms and conditions of an Industrial Discharge Permit shall be deemed a violation of this Ordinance and shall subject the industrial discharge permittee to the enforcement actions set out in Section 16.60 of this Ordinance. Obtaining an Industrial Discharge Permit does not relieve a permittee of its obligation to comply with all federal and State pretreatment standards or requirements or with any other requirements of federal, State, and local law.

#### **16-99c Discharge Permit Request Requirement**

All industrial users must receive DES approval for any new industrial discharge, or any significant alteration in either flow or waste characteristics, in accordance with the City's NPDES permit.

#### **16-99d Industrial Discharge Permitting: Existing Connections**

Any user required to obtain an Industrial Discharge Permit who was discharging wastewater into the POTW prior to the effective date of this Ordinance, and is not currently covered by a valid Industrial Discharge Permit, and who wishes to continue such discharges in the future, shall, within sixty (60) days after said date, apply to the Public Works Director for an Industrial Discharge Permit in accordance with Section 16-99.f of this Ordinance, and shall not cause or allow discharges to the POTW to continue after one hundred twenty (120) days of the effective date of this Ordinance except in accordance with an Industrial Discharge Permit issued by the Public Works Director.

#### **16-99e Industrial Discharge Permitting: New Connections**

Any user required to obtain an Industrial Discharge Permit who proposes to begin or recommence discharging into the POTW shall obtain an Industrial Discharge Permit prior to the beginning or recommencing of such discharge. An application for this Industrial Discharge Permit shall be filed at least ninety (90) days prior to the date upon which any discharge will begin or recommence.

#### **16-99f Industrial Discharge Permitting: Categorical Standards**

Within 120 days subsequent to the effective date of a categorical pretreatment standard, an industrial user subject to such standards shall submit an application for an Industrial Discharge Permit amendment.

#### **16-99g Industrial Discharge Permit Application Contents**

All users required to obtain an Industrial Discharge Permit, and other users subject to these rules, as required by the Public Works Director, shall submit a permit application, which shall contain the following provisions:

1. Indirect discharger name, street address, mailing address, and daytime telephone number;
2. Dates of issuance and expiration
3. The general and specific prohibitions from the sewer use ordinance which apply to the discharge
4. A list of pollutants, allowable parameters and discharge limits;
5. Identification of applicable EPA categorical standards
6. A list of pollutants to be monitored and the monitoring requirements applicable thereto;
7. Sampling frequency, techniques, and locations;
8. Reporting requirements;
9. Inspection requirements
10. Notification requirements, including for
  - a. Slug loading
  - b. Spills, bypasses, and upsets
  - c. Changes in volume or characteristics of the discharge for which a permit revision is not required; and
  - d. Permit violations
11. Record keeping requirements
12. Applicable definitions and special conditions from the sewer use ordinance
13. Applicable civil and criminal penalties for violations;
14. Notification requirements prior to any new or increased discharge
15. A requirement to submit a complete new application at a specified frequency, which shall be not less than once every five years; and
16. A requirement to provide a copy of the permit to the department if the department so requests.

The Public Works Director may require all users to submit as part of an application the following information:

1. Description of activities, facilities, and production processes on the premises, including a list of all raw materials and chemicals used or stored at the facility that are, or could accidentally be, discharged to the POTW;
2. A list of all environmental permits held by or for the facility.
3. Each product produced by type, amount, process or processes, and rate of production;
4. Type and amount of raw materials processed (average and maximum per day);
5. Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge and sampling locations;
6. The estimated average, maximum and total daily flow for each discharge and the time and duration of discharges;

7. Copies of existing pollution prevention plans and/or a description of all known pollution prevention opportunities that may exist at the facility;
8. An indication of whether the conditions referenced in the application are existing or proposed; and
9. Any other information as may be deemed necessary by the Public Works Director to evaluate the Industrial Discharge Permit application.

Incomplete or inaccurate applications will not be processed and will be returned to the user for revision.

#### **16-99h Signatories and Certification**

All Industrial Discharge Permit applications and user reports shall be signed by an authorized representative of the user and shall contain the following certification statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

#### **16-99i Hauled Wastewater Permits**

A. Septic tank waste may be introduced into the POTW only at locations designated by the Public Works Director, and at such times as are established by the Public Works Director. Transport and discharge of such waste shall comply with all applicable ordinances.

B. The Public Works Director shall require generators of hauled industrial waste to obtain Industrial Discharge Permits. The Public Works Director may require haulers of industrial waste to obtain Industrial Discharge Permits. The Public Works Director may also prohibit the disposal of hauled industrial waste. All other requirements of this Ordinance apply to the discharge of hauled industrial waste.

C. Industrial waste haulers may discharge loads only at locations designated by the Public Works Director. No load may be discharged without prior consent of the Public Works Director. The Public Works Director may collect samples of each hauled load to ensure compliance with applicable standards. The Public Works Director may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.

D. Industrial waste haulers shall provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and a certification that the wastes are not hazardous wastes as defined in the State's Hazardous Waste Rules (Env-Wm 110, 211-216, 351-353, 400-1000).

#### **16-99j Industrial Discharge Permit Issuance Process**

##### **A. Industrial Discharge Permit Decisions**

The Public Works Director will evaluate the data provided by the industrial user and may require additional information. Within thirty (30) days of receipt of a complete Industrial Discharge Permit application (or ninety (90) days in the case of an application for a new or increased discharge requiring review and approval by DES), the Public Works Director will determine whether or not to issue an Industrial Discharge Permit. The Public Works Director may deny any application for an Industrial Discharge Permit, with just cause.

##### **B. Industrial Discharge Permit Duration**

An Industrial Discharge Permit shall be issued for a specified time period, not to exceed five (5) years (or three (3) years in the case of a significant industrial discharger from the effective date of the permit. An Industrial Discharge Permit may be issued for a period less than these intervals at the discretion of the Public Works Director. Each Industrial Discharge Permit will indicate a specific date upon which it will expire. Industrial Discharge Permits shall be terminated upon cessation of

operations or transfer of business ownership, unless notification of such transfer is provided in accordance with Section 16-99.j(F) of this Ordinance. All Industrial Discharge Permits issued to a particular user are void upon the issuance of a new Industrial Discharge Permit to that user.

### **C. Industrial Discharge Permit Contents**

An Industrial Discharge Permit shall include such conditions as are deemed reasonably necessary by the Public Works Director to prevent pass through or interference, protect the quality of the water body receiving the treatment facility's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

Industrial Discharge Permits shall contain:

1. A statement that indicates Industrial Discharge Permit duration, which in no event shall exceed five (5) years;
2. A statement that the Industrial Discharge Permit is nontransferable without prior notification to the City in accordance with Section 16-99.j(F) of this Ordinance, and provisions for providing the new owner or operator with a copy of the existing Industrial Discharge Permit;
3. Effluent limitations based on applicable pretreatment standards and requirements;
4. Self-monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include identification of pollutants requiring pollution prevention reports and, for pollutants to be monitored, the following: sampling location, sampling frequency, and sample type based on this Ordinance, and State and federal laws, rules and regulations;
5. For users with reporting requirements, such reports at a minimum shall require:
  - a. Periodic monitoring results indicating the nature and concentration of pollutants in the discharge from the regulated processes governed by pretreatment requirements and the average and maximum daily flow for these process units;
  - b. A statement as to whether the applicable pretreatment standards and requirements are being met on a consistent basis and, if not, than what additional operation and maintenance practices and/or pretreatment systems are necessary; and
  - c. Submittal of any monitoring results performed in addition to the requirements of the Industrial Discharge Permit using procedures prescribed in the permit.
6. A description of identified pollution prevention opportunities at the facility;
7. A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. This schedule may not extend the time for compliance beyond that required by this Ordinance, applicable State and federal laws, rules and regulations; and
8. A statement that compliance with the Industrial Discharge Permit does not relieve the permittee of responsibility for compliance with all applicable federal and State pretreatment standards, including those that become effective during the term of the Industrial Discharge Permit.

Industrial Discharge Permits may contain, but need not be limited to, the following conditions:

1. Limitations on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
2. Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the POTW;
3. Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or non-routine discharges;
4. Development and implementation of pollution prevention plans to reduce the amount of pollutants discharged to the POTW;
5. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW;
6. Requirements for installation and maintenance of inspection and sampling facilities and equipment; and
7. Other conditions as deemed appropriate by the Public Works Director to ensure compliance with this Ordinance, and State and federal laws, rules, and regulations.

### **D. Industrial Discharge Permit Appeals**

Any person, including the user, may petition the Public Works Director to reconsider the terms of an Industrial Discharge Permit within thirty (30) days of its issuance.

- A. Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.
- B. In its petition, the appellant user must indicate the Industrial Discharge Permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the Industrial Discharge Permit.
- C. The effectiveness of the Industrial Discharge Permit shall not be stayed pending the appeal.
- D. If the Public Works Director fails to act within thirty (30) days, a request for reconsideration shall be deemed to be denied.
- E. Aggrieved parties may appeal the conditions of the Industrial Discharge Permit in accordance with Section 16-80 of this Ordinance.

#### **E. Industrial Discharge Permit Modification**

The Public Works Director may modify an Industrial Discharge Permit for good cause, including, but not limited to, the following reasons:

- A. To incorporate any new or revised federal, State, or local pretreatment standards or requirements;
- B. To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of Industrial Discharge Permit issuance;
- C. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
- D. Information indicating that the permitted discharge poses a threat to the City's POTW, City personnel, or the water quality in the receiving waters;
- E. Violation of any terms or conditions of the Industrial Discharge Permit;
- F. Misrepresentations or failure to fully disclose all relevant facts in the Industrial Discharge Permit application or in any required reporting;
- G. Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13;
- H. To correct typographical or other errors in the Industrial Discharge Permit; or
- I. To reflect a transfer of the facility ownership or operation to a new owner or operator.

#### **F. Industrial Discharge Permit Transfer**

Industrial Discharge Permits may be transferred to a new owner or operator only if the permittee provides at least sixty (60) days advance notice to the Public Works Director, and the Public Works Director approves the Industrial Discharge Permit transfer. The notice to the Public Works Director shall include a written certification by the new owner or operator that:

- A. States that the new owner and/or operator has no immediate intent to change the facility's operations and processes that generate wastewater to be discharged to the POTW;
- B. Identifies the specific date on which the transfer is to occur; and
- C. Acknowledges full responsibility for complying with the existing Industrial Discharge Permit.

Failure to provide advance notice of a transfer shall render the Industrial Discharge Permit void as of the date of facility transfer.

#### **G. Industrial Discharge Permit Re-issuance**

A user with an expiring Industrial Discharge Permit shall apply for re-issuance of the Industrial Discharge Permit by submitting a complete permit application, in accordance with Section 16-99.j(C) of this Ordinance, a minimum of sixty (60) days prior to the expiration of the user's existing Industrial Discharge Permit. Under no circumstances shall the permittee continue to discharge without an effective permit. An expired permit will continue to be effective and enforceable until the permit is reissued if:

The industrial user has submitted a complete permit application at least sixty (60) days prior to the expiration date of the user's existing permit; and the failure to reissue the permit, prior to expiration of the previous permit, is not due to any act or failure to act on the part of the industrial user.

#### **H. Reports of Changed Conditions**

Each industrial user shall notify the Public Works Director of any planned significant changes to the user's operations or system that might alter the nature, quality, or volume of its wastewater at least ninety (90) days before the change.

- A. The Public Works Director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submittal of an Industrial Discharge Permit application under Section 16-99g of this Ordinance.
- B. Upon approval of the request by the City, an Industrial Discharge Request will be submitted by the City to DES on behalf of the discharger. All applicable DES review fees shall be provided by the user.
- C. Upon approval of the industrial Discharge Request by the NHDES, the Public Works Director may issue an Industrial Discharge Permit under Section 16-99j(A) of this Ordinance or modify an existing Industrial Discharge Permit under Section 16-99j(E) of this Ordinance in response to changed conditions or anticipated changed conditions.

#### **I. Reports of Slug/Potentially Adverse Discharges**

- A. In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug load, that may cause adverse impacts to the POTW, the user shall immediately telephone and notify the Public Works Director of the incident. This notification shall include identifying the location of the discharge, type of waste, concentration and volume, if known, and corrective actions conducted by the user.
- B. Within five (5) days following such discharge, the user shall, unless waived by the Public Works Director, submit a detailed written report describing the cause(s) of the discharge and the measures to be conducted by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability that may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability that may be imposed pursuant to this Ordinance.
- C. A notice shall be permanently posted on the user's employee bulletin board or other prominent place advising employees whom to call in the event of a discharge described in paragraph (A), above. Employers shall ensure that all employees who may cause such a discharge to occur or who may be present when a discharge occurs are advised of the emergency notification procedure.

#### **J. Reports from Unpermitted Users**

All users not required to obtain an Industrial Discharge Permit shall provide appropriate reports the Public Works Director may require.

#### **16-99k Notice of Violation/Repeat Sampling and Reporting**

If the results of sampling performed by a user indicate a violation, the user shall notify the Public Works Director within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Public Works Director within thirty (30) days subsequent to becoming aware of the violation. The user is not required to resample if the Public Works Director monitors at the user's facility at least once a month, or if the Public Works Director samples between the user's initial sampling and when the user receives the results of this sampling.

#### **16-99l Analytical Requirements**

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses shall be performed in accordance with procedures approved by EPA.

### **Sample Collection**

A. Except as indicated in paragraph (B), below, the user shall collect wastewater samples using flow proportional composite collection techniques. In the event flow proportional sampling is infeasible, the Public Works Director may authorize the use of time proportional sampling or a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. In addition, grab samples may be required to demonstrate compliance with instantaneous discharge limitations (e.g., screening levels established to protect worker health and safety). A single grab sample may also be used in place of a composite sample with approval of the Public Works Director when:

- The effluent is not discharged on a continuous basis (i.e., batch discharges of short duration), and only when the batch exhibits homogeneous characteristics (i.e., completely mixed) and the pollutant can be safely assumed to be uniformly dispersed;
- Sampling a facility where a statistical relationship can be established between previous grab samples and composite data; and
- The waste conditions are relatively constant (i.e., are completely mixed and homogeneous) over the period of the discharge.

B. Samples for temperature, pH, phenols, sulfides, and volatile organic compounds shall be obtained using grab collection techniques.

### **Timing**

Written reports will be deemed to have been submitted on the date postmarked. For reports that are not mailed, the date of receipt of the report by the person designated in the Industrial Discharge Permit shall govern.

### **Record Keeping**

Users subject to the reporting requirements of this Ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this Ordinance and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact location, method, and time of sampling, and the name of the person(s) obtaining the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least five (5) years. This period shall be automatically extended for the duration of any litigation concerning the user or the City, or where the user has been specifically notified of a longer retention period by the Public Works Director. Before destroying the records, the industrial user shall request and receive permission from the City.

### **16-99m Re-issuance of Industrial Discharge Permit**

A. The Public Works Director may decline to issue or reissue an Industrial Discharge Permit to any user who has failed to comply with any provision of this Ordinance, a previous Industrial Discharge Permit, or order issued hereunder, or any other pretreatment standard or requirement, unless such user first files a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the Public Works Director to be necessary to achieve consistent compliance.

B. The Public Works Director may decline to issue or reissue an Industrial Discharge Permit to any user who has failed to comply with any provision of this Ordinance, a previous Industrial Discharge Permit, or order issued hereunder, or any other pretreatment standard or requirement, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

### **16-99n Industrial Discharge Permit Termination**

Any industrial user who violates the following conditions of this Ordinance or a wastewater discharge permit or order, or any applicable State or federal law, is subject to permit termination:

- A. Violation of permit conditions;
- B. Failure to accurately report the wastewater constituents and characteristics of its discharge;

- C. Failure to report significant changes in operations or wastewater constituents and characteristics;  
or
- D. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling.

Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 16-60 of this Ordinance why the proposed action should not be taken. Exercise of this option by the Public Works Director shall not be a bar to, or a prerequisite for, taking any other action against the user.

**16-99o Termination of Discharge**

In addition to the provisions in Section 16-60 of this Ordinance, any user who violates the following conditions is subject to discharge termination:

- A. Violation of Industrial Discharge Permit conditions;
- B. Failure to accurately report the wastewater constituents and characteristics of its discharge;
- C. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
- D. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling; or
- E. Violation of the pretreatment standards in Division 2 of this Ordinance.

Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 16-60 of this Ordinance why the proposed action should not be taken. Exercise of this option by the Public Works Director shall not be a bar to, or a prerequisite for, taking any other action against the user.

**16-99p Upset**

- A. For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with pretreatment standards due to factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- B. An upset shall constitute an affirmative defense to an action brought for noncompliance with pretreatment standards if the requirements of paragraph (C), below, are met.
- C. A user who intends to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - 1. An upset occurred and the user can identify the cause(s) of the upset;
  - 2. At the time being of the upset, the facility was operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
  - 3. The user has submitted the following information to the [Superintendent] within twenty-four (24) hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five (5) days):
    - a. A description of the discharge and cause of noncompliance;
    - b. The period of noncompliance, including exact dates and times or, if not corrected, the amount of time the noncompliance is expected to continue; and
    - c. Action being implemented and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- D. In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.
- E. Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with pretreatment standards.
- F. Users shall control all discharges to the extent necessary to maintain compliance with pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

**Sec. 16-100. Special agreement.**

No statement contained in this division shall be construed as preventing any special agreement or arrangement between the City and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment, subject to payment therefore by the industrial concern.  
(Code 1977, § 4:325; Ord. of 8-5-91; Ord 2-5-07)

**Sec. 16-101. Protection from damage.**

No unauthorized person shall maliciously, willfully, or negligently destroy, break, damage, uncover, deface, or tamper with any structure, appurtenance, or equipment which is part of the sewage works. Any person violating this provision shall be deemed guilty of criminal mischief.  
(Code 1977, § 4:326; Ord. of 8-5-91; Ord 2-5-07)

**Sec. 16-102. Authority of Public Works Director.**

The Public Works Director is authorized to adopt and enforce specifications and regulations in accordance with the provisions of this article for the purpose of providing control of the installation of sewer connections and the inspection thereof. The Public Works Director shall maintain accurate and complete records of all permits issued and inspections made. The Public Works Director is empowered to require the abandonment and removal of connections to the public storm sewers which violate the provisions of this article.  
(Code 1977, § 4:327; Ord. of 8-5-91; Ord 2-5-07)

The City shall investigate instances of noncompliance with the industrial pretreatment standards and requirements. The City shall, as necessary, sample and analyze the wastewater discharges of contributing users and conduct surveillance and inspection activities to identify, independently of information supplied by such users, occasional and continuing noncompliance with industrial pretreatment standards. Each industrial user will be billed directly for costs incurred for analysis of its wastewater.

**Sec. 16-103. Power and authority of inspectors.**

(a) The Public Works Director and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this article. The Public Works Director or his representatives shall have no authority to inquire into any processes, including metallurgical, chemical, oil, refining, ceramic, paper, or other industries, beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment.

(b) While performing the necessary work on private properties referred to in subsection (a) above, the Public Works Director or duly authorized employees of the City shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the City employees and the City shall indemnify the company against loss or damage to its property by City employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions.

(c) The Public Works Director and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, repair, sampling, and maintenance of any portion of the sewage works lying within the easement. All entry and subsequent work, if any, on the easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.  
(Code 1977, § 4:328; Ord. of 8-5-91; Ord 2-5-07)

(d) If the Public Works Director has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, or that there is a

need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with this Ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the Public Works Director may seek issuance of a search warrant from the Berlin District Court.

(e) Confidential Information. Information and data on a user obtained from reports, surveys, Industrial Discharge Permit Applications, Industrial Discharge Permits, and monitoring programs, and from the Public Works Director's inspection and sampling activities, shall be available to the public without restriction, unless the user specifically requests, and is able to demonstrate to the satisfaction of the Public Works Director, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable State law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the user furnishing a report that such information should be held confidential, the portions of a report that might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person providing the report. Wastewater constituents and characteristics and other "effluent data" as defined by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction.

(f) Publication of Pollution Prevention Achievements. The Public Works Director may publish annually a list of users whom during the previous twelve (12) months, demonstrated a commitment to reducing the volume and toxicity of waste discharges. All pollution prevention efforts, not just those that affect wastewater discharges, are subject to recognition. The intent of the publication is to notify local consumers of the environmental responsiveness of local businesses, and to encourage industrial users to identify and implement opportunities for preventing pollution. As part of this publication, the City shall provide an evaluation of the impact of these changes to the POTW, and summarize the current status of pollutant loadings to the POTW and goals established by the POTW for pollution prevention efforts.

**Secs. 16-104--16-116. Reserved.**

#### **DIVISION 4.**

#### **RATES AND CHARGES**

**Sec. 16-117. Federal regulations generally.**

The City has received various federal grants for the planning, design and construction of wastewater treatment works. The grant programs assisting the City are established by the federal water pollution control act, as amended. The acceptance of the grants by the City requires that the City comply with the water pollution control act, as amended, and the regulations established by the federal environmental protection agency to implement the federal act. Such regulations are published in the Federal Register from time to time.

(Ord. No. 37, Art. I, § 1, 11-16-81; Ord 2-5-07)

**Sec. 16-118. Charges required.**

One (1) of the requirements of the federal act and regulations is that local governments which receive federal grants establish a system of user charges to assure that each recipients of wastewater treatment services pays its proportionate share of the costs of operating and maintaining the wastewater treatment works. These costs must include replacement costs necessary to maintain the capacity and performance of the wastewater treatment works throughout its designed service life. The system of user charges established by the City must be approved by the federal government acting through the environmental protection agency or, if so delegated, the New Hampshire Department of Environmental Services.

(Ord. No. 37, Art. I, § 2, 11-16-81; Ord 2-5-07)

**Sec. 16-119. New Hampshire Department of Environmental Services approval.**

This division establishing sewer user charges has received the approval of the New Hampshire Department of

Environmental Services, to which the environmental protection agency has delegated approval authority. The approval is stated in a letter of January 7, 1980, a copy of which is on file in the City clerk's office. Commission approval of the amendment of November, 1981 is on file in the City clerk's office.  
 (Ord. No. 37, Art. I, § 3, 11-16-81; Ord 2-5-07)

**Sec. 16-120. Adoption of state law.**

The provisions of RSA Chapter 149-I on sidewalks and sewers are hereby adopted and included herein. For the purposes of this division the term sewer user charge is synonymous with sewer rental as used in RSA Chapter 149.  
 (Ord. No. 37, Art. I, § 4, 11-16-81; Ord 2-5-07)

**Sec. 16-121 – 16-123 RESERVED**

**Sec. 16-124. Septage charges.**

The City reserves the right to accept for treatment only such septage that can be documented as originating from properties located in the City. The charge for septage is hereby set at \$100/1000 gallons.  
 (Ord. No. 37, Art. II, § 4, 11-16-81; Ord 2-5-07)

**Sec. 16-125. Annual operating, maintenance and replacement costs--For industrial users.**

Operating, maintenance and replacement costs for treating industrial process waste will be recovered from each industrial user by a surcharge calculated in accordance with the following:  
 (Ord. No. 37, Art. II, § 5, 11-16-81; Ord 2-5-07)

Group 1	Suspended solids	250-400mg/l
	BOD	250-400mg/l
Group 2	Suspended solids	In excess of 400mg/l
	BOD	In excess of 400mg/l

Surcharge: Where the strength or characteristics of sewage accepted into the public sewers exceeds the standards set forth in the table above, a surcharge shall be added to the normal sewer service bill. All of the sewage in Group 1 exceeding either of the standards shall have a surcharge of 20 percent of the normal bill, and all of the sewage in Group 2 exceeding either of the standards shall have a surcharge of 50 percent of the normal bill.

All industrial users contributing wastewater with a strength greater than 250 mg/l in BOD and/or 250 mg/l TSS shall prepare and file with the City Public Works Director a report that shall include pertinent data relating to the wastewater characteristics, including the methods of sampling and measurement to obtain these data. The City shall have the right to gain access to the waste stream and take samples. Should these sample results be substantially different from those submitted by the user, as determined by the City, the user charge for that user shall be revised for the next billing period. Any user who discharges any substance which causes an increase in the cost of treating the wastewater or resulting biosolids, or any user who discharges any substance which singly or by interaction with other substances causes identifiable increases in the cost of treatment shall pay for such increased costs. The charge for such treatment will be determined by the City.

For industrial users, the volume of discharge to the treatment works is defined as the metered water consumption or the metered water consumption less sub-metered non-wasted process water consumption or the metered waste flow.

**Sec. 16-125a One-time Assessment Levy - Connection Fee**

A large commercial or industrial sewer user as defined herein may be charged a one-time assessment levy - connection fee to offset the cost of immediate improvements which have to be made as a result of the new connection to the sanitary sewer and treatment system because of the flow, strength, makeup of the discharge or the location of the sewer user in relation to the sanitary sewer system.

With respect to flow, a large commercial or industrial user is defined as any commercial or industrial user with estimated average flow in excess of 50,000 gpd.

In the case of sewer extensions including gravity mains, force mains and pump stations which need to be installed to provide service to the user, the one-time fee charged may be up to 78% of the city's estimated cost of the improvement.

In the case of the removal of I&I needed to offset the estimated new flow, the one-time fee charged may be up to 78% of the city's estimated cost of the I&I removal.

In the case of improvements needed at the WWTF to handle the strength or makeup of the discharge, the one-time fee charged may be up to 78% of the city's estimated cost of the improvements.

Any amount less than the 78% referred to in the previous three sentences will be approved by the City Council.

In the case of an industrial user which is required to pay the above one-time connection fee to offset improvements needed at the WWTF, the surcharge called for in Section 16-125 shall be waived, except that if the Suspended Solids or biochemical oxygen demand (BOD) limits for a Group 1 user later increases to the standards of a Group 2 user, then a surcharge will also be charged in the amount of 30 percent of the normal sewer bill."

All other provisions of said Chapter 16 remain in effect. (Ord 5-17-10)

#### **Sec. 125b Special rate for high volume low strength industrial users**

A large commercial or industrial sewer user which meets the following criteria may qualify for a special sewer rate:

- Flow > 150,000 gpd
- BOD < 50 mg/l
- TSS < 50 mg/l
- User is not a Categorical Industrial User (CIU) as defined by U.S. EPA and does not discharge a prohibited waste
- No other factor(s) in the wastewater of User which is likely, as determined by the City's Engineer, to create a significant conveyance, treatment or odor issue for the City's collection system and/or WWTF.

In the event such a factor(s) is/are determined to exist in User's wastewater, but it can be otherwise mitigated either by pretreatment by the User or by WWTF improvements paid for by the User, the User may still qualify for this special rate. Any User which qualifies for the above special rate agrees that it will cooperate with the City in modifying the chemicals added to their effluent or adjust other factors as necessary to avoid creating problems for the City's WWTF. Refusal on the part of the User to maintain such cooperation shall be grounds for the City to discontinue the special rate. Further, any User which qualifies for such special rate shall enter into a User Agreement with the City which establishes various requirements pertinent to the proper monitoring of the User's wastewater to include metering, flow and loading limits, rates, and sampling and analytical requirements. User shall also be required to comply with any and all State and Federal requirements that apply to such waste discharge (e.g., priority pollutant scan, permit applications, etc.)

Such special sewer rate will be calculated based on the following formula:

User annual charge = CC+PC+DC+SC, where

CC = QU \* Sewer Rate (4 quarter basis) \* % of OMR budget related to collection system

PC = QU/QT \* % of OMR budget related to flow + BODU/BODT \* % of OMR budget related to BOD + TSSU/TSST \* % of OMR related to TSS

DC = costs that are 100% associated with User such as laboratory costs, agreement compliance costs, odor control related to User, etc.

SC = metered sanitary water usage \* Sewer Rate (4 quarter basis)

CC = User's portion of collection system costs  
PC = User's portion of plant costs  
DC = Direct costs 100% associated with User  
SC = Sanitary Charge  
QU = User's metered process water flow  
QT = Total billable flow including User's  
BODU = User's BOD load, lbs.  
BODT = Total BOD load to WWTF including User's  
TSSU = User's TSS load, lbs.

TSSST = Total TSS load to WWTF including User's  
(Ord. 5-2-11)

**Sec. 16-126. Same--For other users.**

Operating, maintenance and replacement costs for treating discharges other than those of section 16-125 will be apportioned annually among all users according to the extent of their use of the treatment works, as determined from metered water consumption in accordance with the following:

- (1) Measured metered water consumption shall be adjusted as follows:
  - a. For residential users the volume of discharge to the treatment works is defined as the metered water consumption multiplied by 0.8.
  - b. For all other users, the volume of discharge to the treatment works is defined as the metered water consumption or the metered water consumptions less sub-metered non-wasted process water consumption or the metered waste flow. For purposes of this ordinance, all other users are all users whose properties are determined to be commercial or tax exempt by the City's assessing office.
  - c. For units not metered, the water consumption shall be considered to be the average metered water consumption for similar customers in their class.
  - d. For users with broken meters, the most normal consumption based on the customers past history shall be the basis for consumption. Until historical data is readily available, customers with broken meters shall have consumption determined in the same manner as customers having no meters.

All metering devices for determining the volume of discharge to the treatment works shall be installed, owned and maintained by the customer at no cost to the City. Users who install wells after January 1, of 2007 shall be required to have standard water meters installed and paid for to Berlin Water Works simultaneously with the installation of the well. Accordingly, such users are hereby required to obtain a permit from the City Public Works Department for such well at no cost to the user prior to the installation of such well. Existing well users who choose to install meters shall also receive a permit from the City Public Works Department at no cost prior to the installation of the meter. Unless, the City begins quarterly billing, meters for existing well users which are installed on or before July 31st in any year will have their bills based entirely on the meter readings prorated for the entire billing year. Existing well users who choose to have meters which are installed after July 31st in any year will have their bills based entirely on the method used prior to the meter installation, the readings from which will not be used for billing purposes until the next billing year begins. If the City moves to quarterly billing, in no event will new meter readings for existing well users who chose to have meters installed be used for billing purposes until a full quarter of readings from a billing quarter is obtained. Following approval and installation, such meters may not be removed without the consent of the Public Works Director and may be read by the Public Works Director, or his designee, at all reasonable times.

- (2) An annual expense to be recovered for operating, maintenance and replacement of the waste treatment works

project shall be determined based on the approved municipal budget adjusted for expenditures to date and for the previous year end surplus (or deficit) for the waste treatment works project.

(3) Anticipated septage treatment revenues shall be subtracted from the anticipated operating, maintenance and replacement cost (OMR) expense and the balance which is the net OMR cost, shall be recovered by a charge per one hundred (100) cubic feet of adjusted water consumption charged annually to all customers connected to the system.

(4) The charge per one hundred (100) cubic feet shall be determined by dividing the net OMR cost by the total adjusted metered water consumption of all users.

(Ord. No. 37, Art. II, § 6, 11-16-81; Ord 2-5-07)

#### **Sec. 16-127. Frequency of billing.**

User charges shall be billed annually or quarterly as determined by the City Council. Under either of these billing alternatives, the last billing of the year will be no later than the end of May. The user charge revenues shall be applied to the fiscal year beginning on the previous July 1<sup>st</sup>, and the user charges shall be based on adjusted metered water consumption for the billing year ending on January 31<sup>st</sup>.

(Ord. No. 37, Art. III, § 1, 11-16-81; Ord 2-5-07)

#### **Sec. 16-128. Terms of payment.**

(a) User charges are payable to the City within thirty (30) days of issuance.

(b) Interest shall be as specified in RSA 252:12 which states "Such assessments shall be subject to the interest and such other charges as are applicable to delinquent taxes."

(c) User charges shall become a lien upon the lands on account of which they are made. In accordance with RSA 149-I:11, in the collection of sewer charges under RSA 149-I:7 and 149-I:8, municipalities shall have the same liens and use the same collection procedures as authorized by RSA 38:22. Interest on overdue charges shall be assessed in accordance with RSA 76:13.

(d) The City Council may order the Berlin Water Works to discontinue water service to customers with overdue sewer user charge accounts. The Berlin Water Works shall comply with said orders as per Chapter 294 of the Laws of 1925 quoted as follows: "All authority granted to the City by this act and not otherwise specifically provided for shall be vested in the board of water commissioners, who shall be subject however to such instructions, rules and regulations, not inconsistent with this act, as the City may impose by ordinance.

(Ord. No. 37, Art. III, § 2, 11-16-81; Ord 2-5-07)

#### **Sec. 16-129. Issuance of warrant.**

The Public Works Director is hereby authorized to commit to the collector of taxes a warrant requiring the annual collection of sewer user charges in accordance with the provisions of this division.

(Ord. No. 37, Art. III, § 3, 11-16-81; Ord 2-5-07)

#### **Sec. 16-130. Abatements and appeals.**

(a) Requests from users for abatements and/or appeals shall be made to the Public Works Director in writing on prescribed forms. The Public Works Director is hereby empowered to grant abatements resulting from errors in the meter-reading calculation and clerical process of producing invoices.

(b) Other abatement requests and/or appeals shall be reviewed by a sewer user charge appeal committee of the City council. The committee shall adopt formal abatement policies and publicize these in the general news media.

(c) All abatement requests and/or appeals must be made to the committee within thirty (30) days of the date of invoice.

- (d) The decision of the committee shall be final and subject only to the superior court relief under RSA149-I:15..
- (e) All abatement requests must be accompanied by documentation sufficient to prove the extent of the abatement requested.
- (f) No abatements shall be provided for prior years' sewer charges. No abatement shall be provided for swimming pools.
- (g) The sewer user charge appeal committee reserves the right to make one-time abatements for special or unique circumstances.
- (h) Abatements may be based on any percentage of the billed amount, up to and including but not exceeding one hundred (100) percent, as the sewer user charge appeal committee deems fit.
- (i) In cases where it is impossible or impractical to submeter water flows which do not enter the City's sewer system or to meter actual sewer outfall flows, and because the nature of the water use indicates that the billable consumption for sewer use should not be based on the total water consumption, the sewer user charge committee reserves the right to establish automatic abatements for a period not to exceed three (3) years. In such cases, it is the responsibility of the customer to request extensions of the abatements after each three-year period, and the customer shall be required to provide proof that the water use patterns have remained the same or to substantiate any claims for greater or lesser abatements.
- (j) Submission of an abatement request does not relieve the customer of payment of the original billed amount. Payment shall be required within thirty (30) days of the invoice date, regardless of whether an abatement is pending or not. Refunds of excess principal and interest shall be provided for accounts which are abated.  
(Ord. No. 37, Art. III, § 4, 11-16-81; Ord. of 8-7-89(2); Ord 2-5-07)

**Sec. 16-131. Cooperation of Water Works.**

The Berlin Water Works, under the law as cited in section 16-128(d), shall fully cooperate with the City Manager, Public Works Director and City Council in organizing and executing the sewer user charge system, which depends upon measured metered water consumption.  
(Ord. No. 37, Art. III, § 6, 11-16-81; Ord 2-5-07)

**Sec. 16-132 - 16-150. RESERVED**

**ARTICLE IV**

**STORM DRAIN SYSTEM**

**Sec. 16-151. Ownership; expense of installation, maintenance.**

- (a) All costs and expenses incidental to the installation and connection of a drain lateral to the City's storm drain system shall be borne by the owner, except for buildings which existed prior to the date of the dedication of the wastewater treatment plant and which also are determined by the Public Works Director to be within the area serviced by the public storm drain system as it existed as of July 15, 1991. For these exceptions only, the following shall apply:
  - (1) The City shall pay or reimburse the property owner for all approved costs associated with the installation of the drain lateral specified below; and
  - (2) Approved costs shall include only those costs which are actually incurred in the installation of the lateral, including excavation, pipe, ledge removal and pavement, within the boundaries of the paved City street, including sidewalks; and

- (3) Approved costs shall not exceed the limits established annually by the Public Works Director; and
  - (4) The City may do the work or depending on its work load, allow the property owner to be responsible for performing the work or for hiring a contractor to perform the work; and
  - (5) Approved reimbursements shall not exceed the actual cost of the work, nor the limits established in accordance with item (4) above; and
  - (6) The property owner must document all actual costs in writing to the Public Works Director who shall then determine the amount to be reimbursed to the property owner. Documented costs must include only those costs outlined in item (3) above; and
  - (7) The Public Works Director may waive all fees associated with the appropriate permits needed by the property owner and/or contractor to accomplish the connections in the street; and
  - (8) All costs, including materials and equipment, to complete the drain connections outside of the boundaries of the paved City street shall be the responsibility of the property owner; and
  - (9) All work shall be completed in accordance with local ordinances and building codes.
- (b) The City shall be responsible for all costs associated with the repair of structural failures caused by traffic or movement due to frost to a drain lateral which is under paved City streets or sidewalks. In all other cases the drain lateral is the responsibility of the property owner. Furthermore, in no event shall the City be responsible for costs associated with damages resulting from the operation of the building lateral or repairs completed.
  - (c) Expense associated with the thawing of a drain lateral will be borne by the owner. Thawing of a drain lateral is not the responsibility of the City.
  - (d) The owner shall be responsible for all costs incurred by the City for work completed under a drain maintenance request if the work was required for the removal of user related obstructions. This includes costs associated with damage from root obstructions. Payment due the City will be determined as detailed in the drain maintenance request.
  - (e) The City will provide a video inspection of a drain lateral at the request of the building owner provided the owner agrees to reimburse the City the full cost of the video for a maximum pipe length of 100 feet. The cost will be waived if the video documents that the problem with the drain lateral is a structural failure within the right of way.

**Sec. 16-152. Separate drain lateral required.**

Each parcel shall have a separate and independent drain lateral connection installed in individual trenches to the drain main.

**Sec. 16-153. Use of old drain laterals.**

Old drain laterals may be used in connection with new buildings only when they are found, on examination and test by the Public Works Director, to meet all requirements of this article.

**Sec. 16-154. Construction generally.**

The size, slope, alignment, materials of construction of a drain lateral, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the building and

plumbing code, or other applicable rules or regulations of the City and shall be approved by the Public Works Director.

**Sec. 16-155. Elevation of drain; approved lifting method.**

Whenever possible, the drain lateral shall be brought to the building at an elevation below the basement floor.

**Sec. 16-156. Conformance with building, plumbing codes.**

The connection of the drain lateral, building drain outlet and connections into the public drain lateral shall conform to the requirements of the building and the plumbing code or other applicable rules and regulations of the City. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the Public Works Director before installation.

**Sec. 16-157. Inspection.**

The applicant for the drain lateral permit shall notify the Public Works Director when the drain lateral is ready for inspection. The connection between the building and the drain lateral and the connection to the public drain or existing lateral, as well as the entire drain lateral, shall remain uncovered until approved by the Public Works Director, or his designee.

**Sec. 16-158. Barricades for excavations.**

All excavations for drain lateral installations shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City.

**Sec. 16-159. Appeals.**

Any property owner aggrieved by any portion of this article shall first attempt to resolve the grievance through the Public Works Director. If the concerns cannot be satisfactorily resolved through the Public Works Director, the property owner may submit a written appeal to the City Manager. If the concerns cannot be resolved through the City Manager, the property owner may submit a further written appeal to the City council, which shall make a determination in the matter. The City Manager and City Council reserve the right to take no action on any appeal which is not submitted in writing or which has not first been discussed with the Public Works Director.

**Sec. 16-160 – 180 Reserved**