

**TITLE 18**  
**UTILITIES**

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**Chapters:**

- 18.03 Well field protection area**
- 18.04 Water rules and regulations**
- 18.06 Water rates and charges**
- 18.08 Removal of Water Utility from IURC**
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- 18.26 Sewer utility rates and charges**
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## Chapter 18.03

### WELL FIELD PROTECTION AREA

#### Sections:

<b>18.03.010</b>	<b>Septic systems</b>
<b>18.03.020</b>	<b>Chemicals</b>
<b>18.03.030</b>	<b>Petroleum products</b>
<b>18.03.040</b>	<b>Animals, trash, garbage</b>
<b>18.03.050</b>	<b>Hazardous waste</b>
<b>18.03.060</b>	<b>Boundaries of the wellhead protection area 2</b>

**18.03.010 Septic systems.** No septic systems may be constructed within a 200' radius of the well field. (Ord. 2000-2, S1, Mar. 13, 2000)

**18.03.020 Chemicals.** No use, storage, or mixing of chemicals that might endanger the wells are permitted within a 200' radius of the well field. (Ord. 2000-2, S2, Mar. 13, 2000)

**18.03.030 Petroleum products.** No storage, mixing of petroleum products in excess of five gallons (heating fuel excepted) is permitted within a 200' radius of the well field. (Ord. 2000-2, S3, Mar. 13, 2000)

**18.03.040 Animals, trash, garbage.** No burying of animals, trash, garbage, etc., is permitted within a 200' radius of the well field. (Ord. 2000-2, S4, Mar. 13, 2000)

**18.03.050 Hazardous waste.** No other source of hazardous waste or contamination is permitted within a 200' radius of the well field. (Ord. 2000-2, S5, Mar. 13, 2000)

**18.03.060 Boundaries of the wellhead protection area 2.** In addition, the activities listed in Sections 18.03.010 through 18.03.050 shall be by permission only from the affected water utilities within the boundaries of the mandated wellhead protection area, defined as follows:

- (1) Part of Sections 5, 6, 7, 8 all in Township 4 South, Range 2 East, in Crawford County, Indiana and being part of Meade County, Kentucky, more particularly described as follows:

Commencing at the Southwest corner of Section 5, thence with the West line of Section 5, North 150.00 feet to the center of Old State Highway 62, this being the point of beginning, thence North 47°-00'00" West 1150.00 feet, thence North 75°-00'-00" West 300.00 feet, thence North 44°-30'-00" West 1200.00 feet, thence North 76°-00'-00" West 500.00 feet, thence South 61°-00'-00" West 600.00 feet, thence South 48°-00'-00" West 500.00 feet, thence South 11°-00'-00" West 600.00 feet, thence South 37°-00'-00" East 2500.00 feet, thence South 16°-00'-00" East 1450.00 feet, thence South 61°-00'-00" East 1050.00 feet, thence South 40°-00'-00" East 1000.00 feet, thence South

18°-00'-00" East 1500.00 feet, thence South 43°-00'-00" East 1600.00 feet, thence North 33°-00'-00" East 800.00 feet, thence East 1500.00 feet, thence North 45°-00'-00" East 500.00 feet, thence North 09°-00'-00" East 900.00 feet, thence South 71°-00'-00" East 500.00 feet, thence North 38°-00'-00" East 800.00 feet, thence North 25°-00'-00" West 700.00 feet, thence North 51°-00'-00" West 700.00 feet, thence North 80°-00'-00" West 1200.00 feet, thence North 42°-00'-00" 1300.00 feet, thence North 29°-00'-00" East 600.00 feet, thence North 76°-00'-00" West 1214.79 feet, thence North 44°-30'-00" West 1666.72 feet, to the point of beginning, containing 637 Acres, more or less.

Subject to any and all easements and/or restrictions apparent or of record.

This being a legal description prepared by Paul Primavera Associates, Inc. on the 19<sup>th</sup> day of October, 1999. (Ord. 2000-2, S6, Mar. 13, 2000)

## Chapter 18.04

### WATER RULES AND REGULATIONS

#### Sections:

- 18.04.010 Application for water service
- 18.04.020 Connections direct and supervised by waterworks personnel
- 18.04.030 Town's expense/Customer's expense
- 18.04.040 Disconnection reasons
- 18.04.050 Notice of discontinuance by customer
- 18.04.060 Change of address
- 18.04.070 Bills due and payable
- 18.04.080 Re-connection fee
- 18.04.090 Deposit
- 18.04.100 Meter installation and maintenance
- 18.04.110 Meter testing
- 18.04.120 Faulty meter
- 18.04.130 Water for building and construction
- 18.04.140 Interruption of service
- 18.04.150 Town not held responsible for claims due to water main breaks  
or interruption of water supply
- 18.04.160 Check valve
- 18.04.170 Inspection by authorized Town employees
- 18.04.180 Special terms and conditions for fire protection etc.
- 18.04.190 Unobstructed meter/Cut off valve
- 18.04.200 Maintenance of customer's service line
- 18.04.210 Repairs due to negligence
- 18.04.220 Customers may not re-sell water
- 18.04.230 Easements for water lines
- 18.04.240 Extensions of water service
- 18.04.250 Refusal of water service
- 18.04.260 Approval from Farmers Home Administration to amend water  
rules and regulations
- 18.04.270 Complaints

**18.04.010 Application for water service.** Property owner or his agent, hereinafter called customer, must make written application for water service at the office of the municipality, and said application including service received thereunder is unassignable by the customer. (Ord. A3, S1, Feb. 6, 1967)

**18.04.020 Connections direct and supervised by waterworks personnel.** All taps and connections to the mains of the municipality shall be made by and/or under the direction and supervision of waterworks personnel. (Ord. A3, S2, Feb. 6, 1967)

**18.04.030 Town's expense/Customer's expense.** The municipality shall install and maintain at its expense that portion of the service from the main to the lot or easement line, including the necessary tap, fittings, and shut-off valve; and the customer shall install and maintain at its expense that portion of the service from said lot or easement line to his premises, including a stop and waste cock at the end of the house side of his service. The minimum earth cover of the customer's service shall be five (5) feet. The company shall determine the size and kind of service to be installed. (Ord. A3, S3, Feb. 6, 1967)

**18.04.040 Disconnection reasons.** Application may be cancelled and/or water service discontinued by the municipality for any violation of any rule, regulation or condition of service, and especially for any of the following reasons:

- (1) Misrepresentation in the application as to the property or fixtures to be supplied or use to be made of water.
- (2) Failure to report to the municipality addition to the property or fixtures to the supplies or additional use to be made of water.
- (3) Resale or giving away of water.
- (4) Waste or misuse of water due to improper or imperfect service pipes, and/or fixtures, or failure to keep same in suitable state of repair.
- (5) Tampering with meter, meter seal, service, or valves, or permitting such tampering by others.
- (6) Connection, cross-connection, or permitting same, of any separate water supply to premises which receive water from the municipality.
- (7) Non-payment of bills. (Ord. A3, S4, Feb. 6, 1967)

**18.04.050 Notice of discontinuance by customer.** Any customer desiring to discontinue the water service to his premises for any reason must give notice of discontinuance in writing at the business office of the waterworks system; otherwise, the customer shall remain liable for all water used and service rendered by the municipality until said notice is received by the municipality. (Ord. A3, S5, Feb. 6, 1967)

**18.04.060 Change of address.** Bills and notices relating to the conduct of the business of the municipality will be mailed to the customer at the address listed on the application, unless a change of address has been filed in writing at the business office of the municipality; and the municipality shall not otherwise be responsible for delivery of any bill or notice, nor will the customer be excused from non-payment of a bill or from any performance required in said notice. (Ord. A3, S6, Feb. 6, 1967)

**18.04.070 Bills due and payable.**

- (1) Bills for water service are due and payable at the business office of the municipality, or to any designated agent, on their date of issue. The past due

date shall be the ten day after the date of issue. Bills will be dated and mailed on the first of each month.

- (2) All bills are not paid on or before the past due date shall be termed delinquent, and the municipality shall serve on the customer a written final notice of said delinquency. If a delinquent bill is not paid within ten days after date of such final notice, the water supply to the customer may be discontinued without further notice.
- (3) Meters will be read monthly between the first and the tenth day of each month. (Ord. A3, S7, Feb. 6, 1967)

**18.04.080 Re-connection fee.** Where the water supply to a customer has been discontinued for non-payment of delinquent bills, a charge of ten dollars (\$10.00) will be made for re-connection of water service, but the re-connection will not be made until after all delinquent bills and other charges, if any, owed by the customer to the municipality have been paid. (Ord. A3, S8, Feb. 6, 1967)

**18.04.090 Deposit.** The municipality reserves the right to request a nominal sum be placed on deposit with the municipality for purpose of establishing or maintaining any customer's credit. (Ord. A3, S9, Feb. 6, 1967)

**18.04.100 Meter installation and maintenance.** All meters shall be installed, maintained and renewed by and at the expense of the municipality, and the municipality reserves the right to determine the size and type of meter used. (Ord. A3, S10, Feb. 6, 1967)

**18.04.110 Meter testing.** Upon the written request of any customer, the meter serving said customer shall be tested by the municipality. Such test will be made without charge to the customer if the meter has not been tested within twelve (12) months preceding the requested test; otherwise, a charge of ten dollars (\$10.00) will be made and then only if the test indicates meter accuracy within the limits of 2 percent. (Ord. A3, S11, Feb. 6, 1967)

**18.04.120 Faulty meter.** Where a meter has ceased to register, or meter reading could not be obtained, the quantity of water consumed for billing purpose will be based upon an average of the prior six (6) months consumption, and the conditions of water service prevailing during the period in which the meter failed to register. (Ord. A3, S12, Feb. 6, 1967)

**18.04.130 Water for building and construction.** Water for building or construction purposes will be furnished by meter measurement, only after suitable deposit has been made, the minimum deposit being ten dollars (\$10.00); and the amount to be determined by the municipality, depending upon the size of the construction work contemplated; and all water for building or construction purposes, as set forth in the permit, must pass through one and the same meter.

Water so supplied shall be discharged through a hose or pipe directly upon material to be wet, or into a barrel or other container, and in no case upon the ground or into or through a ditch or trench and all use of water by other than applicant or use of water for any purpose

or upon any premises not so stated or described in the application must be prevented by the applicant, or water service may be discontinued without notice. (Ord. A3, S13, Feb. 6, 1967)

**18.04.140 Interruption of service.** The municipality shall make all reasonable efforts to eliminate interruption of service, and when such interruptions occur will endeavor to re-establish service with the shortest possible delay. Whenever the service is interrupted for the purpose of working on the distribution system or the station equipment, all consumers affected by such interruption will be notified in advance whenever it is possible to do so. (Ord. A3, S14, Feb. 6, 1967)

**18.04.150 Town not held responsible for claims due to water main breaks or interruption of water supply.** The municipality shall in no event be held responsible for claim made against it by reason of the breaking of any mains or service pipe, or by reason of any other interruption of the supply of water caused by the breaking of machinery or stoppage for necessary repairs; and no person shall be entitled to damages nor have any portion of a payment refunded for any interruption of service which in the opinion of the municipality may be deemed necessary. (Ord. A3, S15, Feb. 6, 1967)

**18.04.160 Check valve.** Customers having boilers and/or pressure vessels receiving a supply of water from the municipality must have a check valve on the water supply line and a vacuum valve on the streamline to prevent collapse in case the water supply from the municipality is discontinued or interrupted for any reason, with or without notice. (Ord. A3, S16, Feb. 6, 1967)

**18.04.170 Inspection by authorized Town employees.** The premises receiving a supply of water and all service lines, meter and fixtures, including any and all fixtures within the said premises shall at all reasonable hours be subject to inspection by duly authorized employees of the municipality. (Ord. A3, S17, Feb. 6, 1967)

**18.04.180 Special terms and conditions for fire protection, etc.** Special terms and conditions may be made where water is used by the municipality or community for public purposes such as fire extinguishment, public parks, etc. (Ord. A3, S18, Feb. 6, 1967)

**18.04.190 Unobstructed meter/cut off valve.** Piping on the premises of a customer must be so installed that connections are conveniently located with respect to the municipal lines and mains. The customer shall provide a place of metering which is unobstructed and accessible at all times. The customer shall furnish and maintain a cut-off valve on his side of the meter and the municipality will provide a like valve on its side of the meter. (Ord. A3, S19, Feb. 6, 1967)

**18.04.200 Maintenance of customers service line.** The customer's service line shall be installed and maintained by the customer at his own expense in a safe and efficient manner and in accordance with the municipal rules and regulations and with the regulations of the Indiana State Board of Health. (Ord. A3, S20, Feb. 6, 1967)

**18.04.210 Repairs due to negligence.** If any loss or damage to the property of the municipality or any accident or injury to persons or property is caused by or results from the negligent or wrongful act of the customer, member of his household, his agent or employee,

the cost of the necessary repairs or replacements shall be paid by the customer to the municipality and any liability otherwise resulting shall be that of the customer. (Ord. A3, S21, Feb. 6, 1967)

**18.04.220 Customers may not resell water.** Water furnished by the municipality may be used for domestic consumption by the customer, members of his household, and employees only. The customer shall not sell or give the water to any other person. (Ord. A3, S22, Feb. 6, 1967)

**18.04.230 Easements for water lines.** Each customer shall grant or convey, or shall cause to be granted or conveyed to the municipality a permanent easement and right-of-way across any property owned or controlled by the customer wherever said easement or right-of-way is necessary for the municipal water facilities and lines, so as to be able to furnish service to the customer. (Ord. A3, S23, Feb. 6, 1967)

**18.04.240 Extensions of water service.** The municipality will construct extensions to its water lines to points within its service area but the municipality shall not be required to make such installations unless the customer pays to the municipality the entire cost of the installation. (Ord. A3, S24, Feb. 6, 1967)

All line extensions shall be evidenced by a contract signed by the municipality and the person advancing funds for said extension, but each contract shall be null and void unless approved by the Farmers Home Administration and other governing bodies.

If refund of the advance is to be made the following method shall apply: 20 percent of the total gross revenue of water sales per year for each service connected to the new extension described in the agreement, for a period not to exceed five years, provided that the aggregate payments do not exceed the total amount deposited.

No refund shall be made from any revenue received from any lines loading up to or beyond the particular line extension covered by contract.

All decisions in connection with the manner of installation of any extension and maintenance thereof shall remain in the exclusive control of the municipality and such extension shall be the property of the municipality and no other person shall have any right, title or interest therein. (Ord. A3, S24, Feb. 6, 1967)

**18.04.250 Refusal of water service.** The municipality may refuse service to persons, not presently a customer, when in the opinion of the municipality the capacity of the facilities will not permit such service. (Ord. A3, S25, Feb. 6, 1967)

**18.04.260 Approval from Farmers Home Administration.** These rules may be changed or amended, but so long as the municipality is indebted to the Farmers Home Administration, only with the prior approval of such administration. (Ord. A3, S26, Feb. 6, 1967)

**18.04.270 Complaints.** Complaints may be made to the operator of the system and may be appealed to the Board of Trustees of the Town within ten (10) days. (Ord. A3, S27, Feb. 6, 1967)

## Chapter 18.06

### WATER

#### Sections:

18.06.010	Rates and charges
18.06.011	Fire hydrant rental
18.06.012	Rates for water sales to water tank trucks
18.06.020	Billing/Late charges
18.06.030	Connection charge
18.06.040	Tenant deposit
18.06.050	Rendering bills and collection of monies due
18.06.060	Revenues deposited into separate "Waterworks Fund Account"
18.06.070	Recordkeeping

**18.06.010 Rates and charges.** The following rates and charges for water services provided by the municipal water utility owner and operated by the Town of Leavenworth are hereby established:

#### Metered Rates Per Month

Per 1,000 Gallons

#### Retail Rates:

First	2,000 Gallons	\$ 4.25
Next	8,000 Gallons	2.84
Next	10,000 Gallons	2.28
Over	20,000 Gallons	1.41

#### Wholesale Rates:

All Metered Usage	\$ 1.23
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Minimum Charge Per Month

Meter Size

		<u>Gallons</u>	
5/8	inch meter	2,000	\$ 8.49
3/4	inch meter	3,000	11.33
1	inch meter	5,000	17.01
1 1/4	inch meter	8,000	25.50
1 1/2	inch meter	10,000	30.20
2	inch meter	16,000	44.87
3	inch meter	30,000	68.08
4	inch meter	50,000	96.32

(Ord. 2009-2, S1, Nov. 7, 2009) (Ord. 2002-4, S1, Apr. 8, 2002) (Ord. 1983-21, S1, Feb. 24, 1983) (Ord. A2, S1, Feb. 6, 1967) (Ord. ?, Mar. 18, 1942) (Ord. unnumbered, Apr. 5, 1939) (Ord. 100, S1, July 29, 1937)

**18.06.011 Fire hydrant rental.** The Town of Leavenworth shall pay as rental and service fee for water furnished to fire hydrants in said Town, the sum of Thirty Dollars (\$30.00) per year, per hydrant. (Ord. 2009-2, S2, Nov. 7, 2009) (Ord. 2002-4, S2, Apr. 8, 2002) (Ord. 100, S2, July 29, 1937)

**18.06.012 Rates for water sales to water tank trucks.** The rate to be charged for water sales to tank trucks will be:

<u>Size Tank</u>	<u>Rate</u>	<u>State Tax</u>	<u>Service Charge</u>	<u>Total</u>
250 gallon	\$ 1.06	\$ .07	\$ .08	\$ 1.21
500	2.12	.15	.08	2.35
750	3.18	.22	.08	3.48
1,000	4.25	.30	.08	4.63
1,250	5.30	.37	.08	5.75
1,500	6.37	.45	.08	6.90

(Ord. 2009-2, S3, Nov. 7, 2009) (Ord. 2002-4, S3, Apr. 8, 2002) (Ord. 1983-81, S1, Aug. 8, 1983)

**18.06.020 Billing/Late charges.** Bills for the rates and charges as herein established by the Town shall be sent monthly. All bills shall be payable on the 1<sup>st</sup> day of the month following the reading of the meters and shall be paid at the office of the Clerk-Treasurer of the Town. If any charge for the services of the system shall not be paid by the 10<sup>th</sup> day of the month in which it shall become due and payable, a delayed payment charge of Ten Percent (10%) of the amount of the bill shall be added thereto and collected therewith. If any bills for the service of the water system shall remain unpaid after 10 days following the rendition of the bill therefor, the water supply for the lot, parcel of land or premise affected shall be cut off and shall not be turned on again except on payment in full of the delinquent charges therefor, in addition to the payment of a charge of \$40.00. (Ord. 2002-4, S4, Apr. 8, 2002) (Ord. A2, S2, Feb. 6, 1967)

**18.06.030 Connection charge.** Applications for water service shall be filed with the Clerk-Treasurer of the Town upon a form to be supplied by the Town. The application shall state the name of the applicant and the premises to be served. All applications filed after the commencement of the operation of the water system shall be accompanied by a fee of \$20.00 payable to the Clerk-Treasurer of the Town, for the connection charge. (Ord. 2002-4, S5, Apr. 8, 2002) (Ord. A2, S3, Feb. 6, 1967)

**18.06.040 Tenant deposit.** The owner of the premises served and the occupant thereof and the user of the water service shall be jointly and severally liable for the water service provided said premises. A deposit of \$15.00 shall be required from all tenants. Such deposit shall be applied to any bill for water service delinquent more than 30 days. Upon the disconnection of the water service, any balance of such deposit shall be returned to the applicant without interest. (Ord. 2002-4, Apr. 8, 2002) (Ord. A2, S4, Feb. 6, 1967)

**18.06.050 Rendering bills and collection of monies due.** It is hereby made the duty of the Town Clerk-Treasurer to render bills for water service and all other charges in connection therewith and to collect all monies due therefrom. (Ord. A2, S5, Feb. 6, 1967)

**18.06.060 Revenues deposited into separate “Waterworks Fund Account”.** All revenues and monies derived from the operation of the water system shall be paid to and held by the Clerk-Treasurer separate and apart from all other funds of the Town and all of said sums and all other funds and monies incident to the operation of said system, as may be delivered to the Clerk-Treasurer, shall be deposited in a separate fund designated the “Waterworks Fund Account” and said Clerk-Treasurer shall administer said fund in every respect in a manner provided by the laws of Indiana and all other laws pertaining thereto. (Ord. A2, S6, Feb. 6, 1967)

**18.06.070 Recordkeeping.** The Clerk-Treasurer shall establish a proper system of accounts and shall keep proper records, books and accounts in which complete and correct entries shall be made of all transactions relative to the water system and at regular annual intervals the Leavenworth Town Board of Trustees shall cause to be made an audit by an independent auditing concern of the books to show the receipts and disbursements of the water system. (Ord. A2, S7, Feb. 6, 1967)

## Chapter 18.08

### REMOVAL OF WATER UTILITY FROM IURC

#### Sections:

- 18.08.010**     **Determination to withdraw**
- 18.08.020**     **Written notice provided to ratepayers**
- 18.08.030**     **Repeal of conflicting ordinances**
- 18.08.040**     **Effective when**

**18.08.010 Determination to withdraw.** The Town Council of the Town of Leavenworth hereby determines it to be in the best interest of the Town of Leavenworth and does so withdraw and remove the Utility from the jurisdiction of the Indiana Utility Regulatory Commission pursuant to I.C. 8-1.5-3-9.1. (Ord. 2001-02, S1, Aug. 13, 2001)

**18.08.020 Written notice provided to ratepayers.** The Town Council hereby finds that written notice of this meeting has been provided by mail to all ratepayers of the Utility and to the Indiana Regulatory Commission in accordance with I.C. 8-1.5-3-9.1. (Ord. 2001-02, S2, Aug. 13, 2001)

**18.08.030 Repeal of conflicting ordinances.** All ordinances in conflict herewith are hereby repealed. (Ord. 2001-02, S3, Aug. 13, 2001)

**18.08.040 Effective when.** This ordinance shall be effective sixty (60) days after adoption by the Town Council (Aug. 13, 2001) if a Petition is not filed with the Council requesting that the question of removal from the jurisdiction of the Commission be submitted to the registered voters of the Town at the next election, pursuant to I.C. 8-1.5-3-9.1. (Ord. 2001-02, S4, Aug. 13, 2001)

## Chapter 18.24

### CONNECTION TO AND USE OF SEWER SYSTEM

#### Sections:

18.24.110	Purpose and Policy
18.24.120	Administration
18.24.130	Abbreviations
18.24.140	Definitions
18.24.210	General Requirements
18.24.220	Prohibited Discharge Standards
18.24.230	State Pretreatment Standards
18.24.240	Local Limits
18.24.250	Town's Right of Revision
18.24.260	Dilution
18.24.310	Pretreatment Measures
18.24.320	Pretreatment Facilities
18.24.330	Accidental Discharge/Slug Control Plans
18.24.340	Hauled Wastewater
18.24.410	Wastewater Permit Requirement
18.24.420	Wastewater Analysis
18.24.430	Wastewater Discharge Permitting
18.24.440	Wastewater Discharge Permit Application Contents
18.24.450	Application Signatories and Certification
18.24.460	Reports of Potential Problems
18.24.462	Reports from Unpermitted Users
18.24.470	Discharge of Hazardous Waste
18.24.472	Analytical Requirements
18.24.475	Sample Collection
18.24.477	Timing
18.24.480	Record Keeping
18.24.510	Right of Entry: Inspection and Sampling
18.24.520	Search Warrants
18.24.610	Information & Records
18.24.710	Notification of Violation
18.24.720	Consent Orders
18.24.730	Show Cause Hearing
18.24.740	Compliance Orders
18.24.750	Cease and Desist Orders
18.24.760	Administrative Fines
18.24.770	Emergency Suspensions
18.24.780	Termination of Discharge
18.24.810	Injunctive Relief
18.24.820	Civil Penalties
18.24.830	Criminal Penalties
18.24.840	Remedies Nonexclusive
18.24.910	Upset

18.24.920	<b>Repeal of Conflicting Provisions and Ordinances</b>
18.24.930	<b>Severability</b>
18.24.940	<b>Effective Date</b>

**18.24.110 Purpose and Policy.**

- (1) This Ordinance sets forth uniform requirements for all users of the sewer system components of the Publicly Owned Treatment Works (POTW) of the Town of Leavenworth, Indiana and to enable the Town of Leavenworth to comply with all applicable State and Federal laws, including the Clean Water Act and the General Pretreatment Regulations. The objectives of this Ordinance are:
  - A. To regulate the discharge to, and use of, public and private sewers within the sewer service area of the Town of Leavenworth's Publicly Owned Treatment Works; and the installation and construction of service connections to building sewers within the Town of Leavenworth's sewer service area.
  - 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 the POTW, all POTW personnel and the general public from unregulated discharge of wastewater whose constituents could endanger the POTW system and the health and welfare of the POTW personnel or the general public;
  - E. To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the POTW; and
  - F. To enable the Town of Leavenworth to comply with its National Pollutant Discharge Elimination System (NPDES) permit conditions, sludge use and disposal requirements, and any other Federal or State laws to which the POTW is subject.
- (2) This Ordinance shall apply to all users of the Publicly Owned Treatment Works. (Ord. 2002-5, S1.1, Oct. 14, 2002)

**18.24.120 Administration**

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

persons, such delegation(s) shall be in writing and available for public review. (Ord. 2002-5, S1.2, Oct. 14, 2002)

#### **18.24.130 Abbreviations.**

The following abbreviations, when used in this Ordinance (Chapter), shall have the designated meanings:

- CBOD - Carbonaceous Biochemical Oxygen Demand
- TBOD - Total Biochemical Oxygen Demand
- CFR - Code of Federal Regulations
- COD - Chemical Oxygen Demand
- EPA - U.S. Environmental Protection Agency
- gpd - gallons per day
- IDEM - Indiana Department of Environmental Management
- IU - Industrial User
- NPDES - National Pollutant Discharge Elimination System
- mg/L - milligrams per liter
- POTW - Publicly Owned Treatment Works
- RCRA - Resource Conservation and Recovery Act
- SIC - Standard Industrial Classification
- SIU - Significant Industrial User
- SNC - Significant Non-Compliance
- TSS - Total Suspended Solids

(Ord. 2002-5, S1.3, Oct. 14, 2002)

#### **18.24.140 Definitions.**

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this Ordinance, shall have the meanings hereinafter designated

- (1) Act or "the Act" - The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended.
- (2) Ammonia (or NH<sub>3</sub>-N) - Ammonia measured as nitrogen. The laboratory determinations shall be made in accordance with procedures set forth in the latest edition of 40 CFR Part 136.

- (3) Applicable Pretreatment Standard - Any pretreatment limit or prohibitive standard (federal, state and/or local) contained in the Ordinance and considered to be most restrictive with which non-domestic users will be required to comply.
- (4) Approval Authority - The State of Indiana Department of Environmental Management (IDEM).
- (5) Authorized Representative of the User:
- A. If the user is a corporation:
1. 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
  2. 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, or their designee.
- D. The individuals described in paragraphs 1 through 3, 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 Superintendent.
- (6) Average Monthly Discharge Limitation - The highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.
- (7) Average Weekly Discharge Limitation - The highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all daily

discharges measured during a calendar week divided by the number of daily discharges measured during that week.

- (8) Beneficial Uses - These uses include, but are not limited to, domestic, municipal, agricultural and industrial use, power generation, recreation, aesthetic enjoyment, navigation, and the preservation and enhancement of fish, wildlife and other aquatic resources or reserves, and other uses, both tangible or intangible, as specified by State or Federal law.
- (9) Biochemical Oxygen Demand (BOD) - The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure for five (5) days at 20° centigrade, usually expressed as a concentration (e.g., mg/l). The BOD measurement may be specified as "CBOD" or "TBOD". The laboratory determinations shall be made in accordance with procedures set forth in the latest edition of 40 CFR Part 136.
- (10) Building (or House) Drain - The lowest horizontal piping of building drainage system which receives the discharge from waste, and other drainage pipes inside the walls of the building and conveys it to a point approximately five (5) feet outside the foundation wall of the building.
- (11) Building Sewer (or Drain) - Sanitary - A building drain which conveys sanitary or industrial sewage only.
- (12) Building Drain - Storm - A building drain which conveys storm water or other clean water draining, but not wastewater.
- (13) Building Sewer (lateral) - A pipe which is connected to the building (or house) drain at a point approximately five (5) feet outside the foundation wall of the building and which conveys the building's discharge from that point to the public sewer, to a septic tank or other place of disposal.
- (14) Categorical Pretreatment Standards (Categorical Standards) - Any regulation containing pollutant discharge limits promulgated by EPA in accordance with Sections 307(b) and (c) which apply to a specific category of users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.
- (15) Cooling Water - The water discharged from any use such as air conditioning, cooling, refrigeration, or to which the only pollutant added is heat.
- (16) Combined Sewer - A sewer pipe intended to receive sanitary, commercial and industrial wastewaters as well as stormwater from storm events.
- (17) Compatible Pollutant - Biochemical oxygen demand, suspended solids, pH, and fecal coliform bacteria, plus any additional pollutants identified in the POTW's NPDES permit, where the POTW is designed to treat such pollutants and, in fact, does remove such pollutants to the degree required by

the POTW's NPDES permit or to a substantial degree. Substantial degree is not subject to precise definition but generally contemplates removals in the order of 85 percent or greater. Minor incidental removals in the order of 10 to 65 percent are not considered substantial. Except as prohibited herein or where these materials would interfere with the operation and performance of the POTW, examples of additional pollutants which may be considered compatible, depending on concentration, include: chemical oxygen demand, total organic carbon, phosphorus and phosphorus compounds, ammonia, E-Coli, fats, oils and greases of animals or vegetable origin. Incompatible Pollutant is any pollutant that is not defined as a compatible pollutant.

- (18) Composite Sample - The sample resulting from the combination of individual samples taken at selected intervals based on the increment of flow or time. Composite wastewater samples shall contain a minimum of four (4) discrete samples taken at equal time intervals over the compositing period or proportional to the flow rate over the compositing period.
- (19) Control Authority - The term "Control Authority" shall refer to IDEM.
- (20) Daily Discharge - Discharge measured during a calendar day or any 24 hour period that reasonably represents the calendar day for purposes of sampling.
- (21) Debt Service Costs - The average annual principal and interest payments on all revenue bonds or other long-term capital debt.
- (22) Direct Discharge - The discharge of treated or untreated wastewater directly to the waters of the State of Indiana.
- (23) Easement - An acquired legal right for the specific use of land by others.
- (24) Effluent - Shall mean the water, together with any wastes that may be present, flowing out of a drain, sewer, receptacle or outlet.
- (25) Environmental Protection Agency (EPA) - The U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, or other duly authorized official of said agency.
- (26) Excessive Strength Surcharge - An additional charge which is billed to users for treating sewage wastes with an average strength in excess of "normal domestic sewage."
- (27) Existing Source - Any source of discharge, the construction or operation of which commenced prior to the publication by EPA of proposed categorical pretreatment standards, which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.

- (28) Grab Sample - A sample which is taken from a waste stream on a one time basis with no regard to the flow of the waste stream and without consideration of time.
- (29) Ground (shredded) Garbage - Garbage that has been shredded to such a degree that all particles will be carried freely in suspension under conditions normally prevailing in the sewage system, with no particle being greater than 1/2" in dimension.
- (30) Holding Tank Waste - Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, grease interceptors and traps, and vacuum pump tank trucks.
- (31) Incompatible Pollutant - Any pollutant that is not defined as a compatible pollutant including non-biodegradable dissolved solids.
- (32) Indirect Discharge - The discharge or introduction of non-domestic pollutants into the POTW from any non-domestic source regulated under Section 307(b), (c), or (d) of the Act.
- (33) Industrial Wastes - Industrial wastes shall mean any solid, liquid, or gaseous substance or form of energy discharged, permitted to flow or escaping from an industrial, manufacturing, commercial, or business process or from the development, recovery, or processing of any natural resources carried on by any person, exclusive of sanitary sewage.
- (34) Infiltration - The water entering the sewer system, including building drains, from the ground, through such means as, but not limited to, defective pipes, pipe joints, connections or manhole walls. (Infiltration does not include and is distinguished from inflow.)
- (35) Inflow - Water discharged and entering into the sewer system including building drains, from such sources such as but not limited to roof, down spouts, cellars, yard, area drains, foundation drains, unpolluted cooling water, drains from springs and swampy areas, and combined sewers, catch basins, stormwater run-off, street wash water and drainage. (inflow does not include, and is distinguishable from infiltration).
- (36) Inflow/Infiltration (I/I) - I/I is the total quantity of water from both inflow and infiltration without distinguishing the source.
- (37) Instantaneous Maximum Allowable 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.

- (38) Interference - A discharge, which alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; **OR** is a cause of a violation of the Town's NPDES permit, including an increase in the magnitude or duration of a violation; **OR** prevents sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent State or local regulations: Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.
- (39) Maximum Daily Discharge Limitations - The highest allowable daily discharge for a calendar day or specified 24 hour period.
- (40) Medical Waste - Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.
- (41) 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 after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
1. The building, structure, facility, or installation is constructed at a site at which no other source is located; or
  2. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
  3. 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, should be considered.

- B. 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 (41) A2 or 3 above but otherwise alters, replaces, or adds to existing process or production equipment.
  - C. Construction of a new source as defined under this paragraph has commenced if the owner or operator has:
    - 1. Begun, or caused to begin, as part of a continuous on-site construction program any placement, assembly, or installation of facilities or equipment; or significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
    - 2. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which 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.
- (42) National Pollution Discharge Elimination System (NPDES) Permit - NPDES permit shall mean a permit issued under the National Pollutant Discharge Elimination System for discharge of waste waters to the navigable waters of the United States pursuant to Section 402 of PL 92-500.
- (43) Non-contact Cooling Water - Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.
- (44) Normal Domestic Sewage - Wastewater or sewage having an average daily concentration as follows:
- TSS not more than 200 mg/L
  - CBOD<sub>5</sub> not more than 325 mg/L
  - Ammonia-N not more than 20 mg/L
  - COD not more than 650 mg/L
- As defined by origin, wastewaters from segregated domestic and/or sanitary conveniences are distinct from industrial processes.
- (45) Pass Through - A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a

discharge or discharges from other sources, is a cause of a violation of any requirement of the Town's NPDES permit, including an increase in the magnitude or duration of a violation.

- (46) Person - Any individual, partnership, firm, company, municipal or private corporation, association, society, institutions, enterprise, governmental agency or other legal entity or their legal representatives, agents or assigns. The masculine gender shall include the feminine, the singular shall include the plural where indicated by context.
- (47) pH - The logarithm (base 10) of the reciprocal of the concentration of hydrogen ion expressed in standard units.
- (48) 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, industrial wastes and certain characteristics of wastewater (e.g. pH, temperature, TSS, turbidity, color, TBOD, CBOD, COD, toxicity or odor) discharged or carried in water.
- (49) 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.
- (50) Pretreatment Requirements - Any substantive or procedural requirement related to pretreatment imposed on a user, other than a pretreatment standard.
- (51) Pretreatment Standards - Pretreatment standards shall mean prohibited discharge standards, categorical pretreatment standards, and local limits.
- (52) Prohibited Discharges - Absolute prohibitions against the discharge of certain substances.
- (53) Publicly Owned Treatment Works (POTW) - A "treatment works", as defined by Section 212 of the Act which is owned by the Town. This definition includes any devices or systems used in the collection, pumping, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant.

- (54) Sanitary Sewer - A sewer or system of pipes for conveying sanitary, commercial and industrial wastewaters and into which stormwater and/or water from storm events are not intentionally admitted.
- (55) Septage - Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.
- (56) Sewage - The combination of the liquid and water-carried wastes from residences, business buildings, institutions and industrial establishments singular or in any combination, together with such ground, surface, and storm waters as may be present.
- (57) Sewage Works - The structures, equipment and processes to collect, transport and treat domestic and industrial wastes and dispose of the effluent and accumulated residual solids.
- (58) Sewer - A pipe or conduit or system of pipes and conduits for carrying sewage or other waste liquids.
- (59) "Shall" is mandatory; "May" is permissive.
- (60) Significant Industrial User (SIU):
- A. A user subject to categorical pretreatment standards; or
  - B. A user that:
    - 1. Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, non-contact cooling, and boiler blow-down wastewater);
    - 2. Contributes a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
    - 3. Is designated as such by the Town 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 a finding that a user meeting the criteria in Subsection B has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Town may at any time, on its own initiative or in response to a petition received from a user, and in accordance with the Act, determine that such user should not be considered a significant industrial user.

- (61) Slug Load or Slug - Any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standards this Ordinance. Any discharge of water, sewage, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 30 minutes more than four (4) times the average 24 hour concentration or flows during normal operation.
- (62) Standard Industrial Classification (SIC) Code - A classification pursuant to the *Standard Industrial Classification Manual* issued by the United States Office of Management and Budget.
- (63) State - The State of Indiana.
- (64) Standard Methods - The laboratory procedures set forth in the latest edition, at the time of analysis, of Standard Methods for the Examination of Water and Wastewater prepared and published by the American Water Works Association, the Water Environmental Federal and the American Public Health Association.
- (65) Storm Sewer - A sewer or system of pipes for conveying surface water or ground water from any source and into which sanitary and/or industrial wastes are not intentionally admitted.
- (66) Stormwater - Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snow melt.
- (67) Superintendent - The Wastewater Superintendent designated by the Town of Leavenworth to supervise the operation of the POTW, and who is charged with certain duties and responsibilities by this Ordinance, or a duly authorized representative.
- (68) Total Suspended Solids (TSS) - The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering usually expressed as a concentration (e.g., mg/L). The laboratory determinations shall be made in accordance with procedures set forth in the latest edition of 40 CFR Part 136.
- (69) Town or Town of Leavenworth - The Town of Leavenworth, Crawford County, Indiana, or any duly authorized official acting on its behalf.
- (70) Town Council - The Town Council for the Town of Leavenworth, Crawford County, Indiana, or any duly authorized official acting on its behalf.
- (71) Toxic Amount - Concentrations of any pollutant or combination of pollutants which upon exposure to or assimilation into an organism will cause adverse effects, such as cancer, genetic mutations, and physiological manifestations as defined in standards issued pursuant to Section 307(a) of the Act.

- (72) Toxic Pollutant - Those substances referred to in Section 307(a) of the Act, as well as any other known potential substance capable of producing toxic effects.
- (73) Total Toxic Organics (TTOs) - TTOs are toxic organics, as defined and analytically measured by definition in the Federal Register.
- (74) Upset - An exceptional incident in which a discharger unintentionally and temporarily is in a state of noncompliance with applicable standards due to factors beyond the reasonable control of the discharger, and excluding noncompliance to the extent caused by operator error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation of the facilities.
- (75) User - Any person who contributes, causes, or permits the contribution of residential, commercial, industrial or any other type of wastewater into the Town's POTW. Users may be classified as residential, commercial, industrial, governmental/institutional as may be appropriate to identify the type of wastewater that the user contributes to the wastewater system.
- (76) Wastewater - Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, together with any groundwater, surface water, and stormwater that may be present, whether treated or untreated, which is contributed into or permitted to enter the POTW.
- (77) Wastewater Constituents and Characteristics - The individual chemical, physical, bacteriological and radiological parameters, including volume, flow rate and other parameters that serve to define, classify or measure the quality, quantity and strength of wastewater.
- (78) Wastewater Treatment Plant (Treatment Plant) - That portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste. (Ord. 2002-5, S1.4, Oct. 14, 2002) (Ord. 1981-11, S1, June 1, 1981)

**18.24.210 General Requirements.**

- (1) It shall be unlawful for any person to place, deposit, permit to be deposited or discharge to any natural outlet within the Town or any area under the jurisdiction of the Town any sanitary, commercial, industrial or polluted wastewaters except where suitable treatment has been provided in accordance with this Ordinance.
- (2) Except as herein provided, no person shall construct or maintain any privy, privy vault, septic tank, cesspool or other wastewater treatment facility intended or used for the treatment and/or disposal of sewage.

- (3) No person shall construct, repair, modify or alter a sewer lateral, public sewer, manhole or other sewer system appurtenance without first obtaining a permit from the Superintendent.
- (4) No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, pipe or equipment which is part of the sewage system.
- (5) No person shall discharge or cause to be discharged any stormwater, surface water, ground water, roof run-off, parking lot run-off, cooling water or unpolluted industrial process waters into any sanitary sewer.
- (6) The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purpose situated in the Town and abutting on any street, alley, right-of-way or easement in which there is now located or may in the future be located a public sanitary or combined sewer of the Town, are hereby required at their own expense to install suitable toilet facilities therein and to connect such facilities and industrial waste outlets directly with the public sewer in accordance with this Ordinance within 90 days after the date of official notice to do so, provided that such public sewer is within 300 feet of the property line.
- (7) No statement contained in this Ordinance shall be construed as preventing the Town from entering into an agreement between the Town and any industrial discharger whereby an industrial waste of unusual strength or character may be accepted by the Town for treatment subject to payment for treatment services by the industrial discharger.
- (8) It shall be the responsibility of the property owner to pay for the cost of constructing the sewer lateral from the building to the public sewer. It shall be the responsibility of the property owner to pay for the cost of maintaining the sewer lateral from the building to the public sewer. The Town is responsible for the repair/ replacement of the sewer lateral from the right-of-way or easement line to the public sewer including the sewer lateral fitting which connects the sewer lateral to the public main.
- (9) A separate and independent sanitary sewer lateral shall be provided for each and every building, except present sewer structures in use; and except that where one building stands at the rear of another on the same lot and no sanitary sewer can be constructed to the rear building through an adjoining alley, court, yard or driveway, the sewer lateral from the front building may be extended to the rear building and the whole sewer lateral considered as one sewer lateral for the single property.
- (10) Old building sanitary sewer laterals may be used in connection with new buildings only when they are found on examination and testing by the Town to meet all requirements of new sanitary sewer laterals.

- (11) The Town shall develop and adopt written construction standards for the construction of sewer laterals, sewer mains, manholes and other appurtenances which are connected the Town's sewer system. The Town shall revise the construction standards as appropriate and on a regular basis.
- (12) The construction of all sewers, components, systems or private sewers which connect to the Town's sewer system shall comply with the requirements of the Town's Construction Standards. The acceptance of the applicability of these standards to all sewers shall be considered part of the terms for the approval of connection to the Town's sewer system. (Ord. 2002-5, S2.1, Oct. 14, 2002) (Ord. 1983-41, Apr. 11, 1983) (Ord. 1981-11, S2, June 1, 1981)

#### **18.24.220 Prohibited Discharge Standards.**

- (1) No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which 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 National, State, or local pretreatment standards or requirements.
- (2) No user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:
  - A. Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed-cup flash point of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21;
  - B. Wastewater having a pH less than 6.0 or more than 10.5, or otherwise causing corrosive structural damage to the POTW or equipment;
  - C. Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference but in no case solids greater than 3/4 inch(es) (3/4") in dimension;
  - D. Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;
  - E. Wastewater having a temperature greater than 140°F, or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104°F (40°C).

- F. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;
- G. Pollutants which 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;
- H. Trucked or hauled pollutants, except at discharge points designated by the Superintendent in accordance with this Ordinance;
- I. Noxious or malodorous liquids, gases, solids, or other wastewater which, 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;
- J. Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating the Town's NPDES permit;
- K. Wastewater containing any radioactive wastes or isotopes except in compliance with applicable State or Federal regulations;
- L. Stormwater, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, non-contact cooling water, and unpolluted wastewater, unless specifically authorized by the Superintendent in writing;
- M. Sludges, screenings, or other residues from the pretreatment of industrial wastes;
- N. Medical wastes, except as specifically authorized by the Superintendent in writing;
- O. Detergents, surface-active agents, or other substances which may cause excessive foaming in the POTW; or
- P. Materials causing, alone or in conjunction with other materials normally in the sewer system, an obstruction to the flow in the sewer line or system or injury to sewer system personnel or cause a nuisance or prevention of effective maintenance or operation of the POTW.
- Q. Fats, oils or grease of animal or vegetable origin in concentrations greater than 100 mg/L.

- (3) Pollutants, substances, or wastewater prohibited by this Section shall not be processed or stored in such a manner that they could be discharged to the POTW. (Ord. 2002-5, S2.2, Oct. 14, 2002) (Ord. 1981-11, S5, June 1, 1981)

**18.24.230 State Pretreatment Standards.**

The State of Indiana's pretreatment standards are hereby incorporated by reference. (Ord. 2002-5, S2.3, Oct. 14, 2002) (Ord. 1981-11, S6, June 1, 1981)

**18.24.240 Local Limits.**

- (1) The following pollutant limits are established to protect against pass through and interference. No person shall discharge wastewater containing in excess of the following maximum allowable discharge limits based upon a 24 hour flow composite sample. No single sample portion of the 24 hour flow composite sample or instantaneous sample shall be in excess of the four (4) times the daily maximum concentration.

**MAXIMUM DAILY CONCENTRATION**

0.1 mg/L total arsenic  
1.0 mg/L total cadmium  
2.0 mg/L total chromium  
1.0 mg/L total copper  
0.3 mg/L total cyanide  
10.0 mg/L total iron  
0.2 mg/L total lead  
0.01 mg/L total mercury  
1.0 mg/L total nickel  
0.5 mg/L total silver  
500 mg/L sulfate  
10.0 mg/L sulfide  
4.0 mg/L total zinc  
40.0 mg/L Total Petroleum Hydrocarbon (TPH)\*

\*Item 18.24.220(2)F shall prevail in the event of a conflict

- (2) Any wastewater containing in excess of 325 mg/L of CBOD<sub>5</sub> or 200 mg/L of total suspended solids or 20 mg/L of ammonia-N or 650 mg/L of chemical oxygen demand will be surcharged as high strength wastewater. The issuance of surcharges for treating high strength wastewater shall not be construed as acceptance of high strength wastewaters for treatment by the Town. The Town reserves the right and authority to prohibit the discharge of high strength wastewater when such wastewaters cause or are reasonably expected to cause POTW upsets, overloading or damage to the sewer collection system.

- (3) The above limits apply at the point where the wastewater is discharged into the public sewer. The Superintendent, may at his discretion, designate in writing a sampling point other than that point where the wastewater is discharged into the public sewer so long as that designated sampling point is an accurate representation of the wastewater discharged into the public sewer. (Ord. 2002-5, S2.4, Oct. 14, 2002)

#### **18.24.250 Town's Right of Revision.**

The Town reserves the right to establish, by Ordinance or in industrial wastewater discharge permits, more stringent standards or requirements on discharges to the POTW. (Ord. 2002-5, S2.5, Oct. 14, 2002)

#### **18.24.260 Dilution.**

No user shall ever increase the use of 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 Superintendent 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. (Or. 2002-5, S2.6, Oct. 14, 2002)

#### **18.24.310 Pretreatment Measures.**

- (1) Whenever deemed necessary, the Superintendent may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage waste streams from industrial waste streams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this Ordinance.
- (2) The Superintendent 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 wastewater discharge permit may be issued solely for flow equalization.
- (3) Grease, oil, and sand interceptors shall be provided when, in the opinion of the Superintendent, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interceptor units shall be of type and capacity approved by the Superintendent and shall be so located to be easily accessible for cleaning and inspection. Where installed, all grease, oil, and sand interceptors shall be maintained by the owner at his expense and in continuously efficient operation at all times. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at their expense.

- (4) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter. (Ord. 2002-5, S3.1, Oct. 14, 2002)

#### **18.24.320 Pretreatment Facilities.**

Users shall provide wastewater treatment as necessary to comply with this Ordinance and shall achieve compliance with all pretreatment standards, local limits, and the prohibitions set out in this Ordinance within the time limitations specified by EPA, the State, or the Town, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the Town for review, and shall be reviewed and approved by the Town before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the Town under the provisions of this Ordinance. (Ord. 2002-5, S3.2, Oct. 14, 2002)

#### **18.24.330 Accidental Discharge/Slug Control Plans.**

At least once every two (2) years, the Superintendent shall evaluate whether each significant industrial user needs an accidental discharge/slug control plan. The Superintendent may require any significant user to develop, submit for approval, and implement such a plan. (Ord. 2002-5, S3.3, Oct. 14, 2002)

#### **18.24.340 Hauled Wastewater.**

Hauled wastewater (including septage and industrial waste) may be introduced into the POTW only at locations designated by the Superintendent, and at such times as are established by the Superintendent. Such waste shall not violate Sections 18.24.210 - 18.24.260 of this Ordinance or any other requirements established by the Town. The Superintendent may require any wastewater hauler to obtain wastewater discharge permits. The Superintendent may require wastewater haulers to provide a laboratory analysis of the waste prior to discharge, to ensure compliance with this Ordinance, and may require the wastewater hauler to obtain a wastewater discharge permit. The discharge of hauled wastewater is subject to all requirements of this Ordinance. No load may be discharged without prior consent of the Superintendent. The Superintendent may collect samples of each hauled load to ensure compliance with applicable standards. (Ord. 2002-5, S3.4, Oct. 14, 2002)

#### **18.24.410 Wastewater Permit Requirement.**

- (1) No person shall make any connection or opening into any sewer, the flow of which is directly or indirectly discharged into any Town sewer, without first obtaining a connection permit, tap permit and/or discharge permit.
- (2) Failure of a person to secure the applicable permits shall cause said person to be subject to disconnection or fines and penalties provided in this Ordinance.

- (3) The Superintendent is authorized to develop forms and procedures for the issuance of Wastewater Permits as may be needed to implement the requirements of this Ordinance.
- (4) All fees and charges shall be paid prior to connecting to the Town's sewer.
- (5) If the application is in proper form and the sewer connection indicated therein appears to be in accordance with this Ordinance and all Town requirements, the Superintendent shall issue the permit for connection to the sewer. If otherwise, the application for permit shall be denied by the Superintendent.
- (6) If the application is denied by the Superintendent, he shall state the reason or reasons therefor in writing, mailed or personally delivered to the applicant, within twenty (20) days of receiving the permit application. The applicant shall have the right to either amend such application in conformity with the reasons given for denial or to have such application and denial reviewed by the Town Council provided that he shall give written notice of his request for such review within twenty (20) days after receipt of denial. The Town Board shall review the application, the written denial and other such evidence or matters as the applicant and Superintendent shall present at its next regular meeting following the receipt of the request for its review, and the decision of the Town Council rendered publicly at said meeting shall be final.
- (7) The Superintendent may require other users to obtain wastewater discharge permits as necessary to carry out the purposes of this Ordinance.
- (8) Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this Ordinance and subjects the wastewater discharge permittee to the sanctions set out in Sections 10 through 12 of this Ordinance. Obtaining a wastewater 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. (Ord. 2002-5, S4.1, Oct. 14, 2002) (Ord. 1981-11, S4, June 1, 1981)

#### **18.24.420 Wastewater Analysis.**

When requested by the Superintendent, a user must submit information on the nature and characteristics of its wastewater within twenty (20) business days of the request. The Superintendent is authorized to prepare a form for this purpose and may periodically require users to update this information. Failure to complete and submit this form shall be deemed a violation of this Ordinance and subjects the User to the sanctions set out in this Ordinance. (Ord. 2002-5, S4.2, Oct. 14, 2002)

#### **18.24.430 Wastewater Discharge Permitting.**

Any user, industrial user or Significant Industrial User required to obtain a wastewater discharge permit who proposes to begin or recommence discharging into the POTW must obtain such permit prior to the beginning or recommencing of such discharge. An application for a wastewater discharge permit shall be filed at least thirty (30) days prior to the date upon which any discharge will begin or recommence. (Ord. 2002-5, S4.3, Oct. 14, 2002)

#### **18.24.440 Wastewater Discharge Permit Application Contents.**

- (1) All users required to obtain a wastewater discharge permit must submit a permit application. The Superintendent may require users to submit as part of an application the following information, including but not limited to:
  - A. Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;
  - B. Number and type of employees, hours of operation, and proposed or actual hours of operation;
  - C. Each product produced by type, amount, process or processes, and rate of production;
  - D. Type and amount of raw materials processed (average and maximum per day);
  - E. 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;
  - F. Time and duration of discharges; and
  - G. Any other information as may be deemed necessary by the Superintendent to evaluate the wastewater discharge permit application.
- (2) Incomplete or inaccurate applications will not be processed and will be returned to the user for revision. (Ord. 2002-5, S4.4, Oct. 14, 2002)

#### **18.24.450 Application Signatories and Certification.**

All wastewater discharge permit applications and user reports must be signed by an authorized representative of the user and 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." (Ord. 2002-5, S4.5, Oct. 14, 2002)

#### **18.24.460 Reports of Potential Problems.**

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 potential problems for the POTW, the user shall immediately telephone and notify the Superintendent of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user. (Ord. 2002-5, S4.6, Oct. 14, 2002)

#### **18.24.462 Reports from Unpermitted Users.**

All sewer users shall provide appropriate information on the user's wastewater characteristics and origin to the Superintendent upon receipt of a written request from the Superintendent stating the nature of the information requested. (Ord. 2002-5, S4.7, Oct. 14, 2002)

#### **18.24.470 Discharge of Hazardous Waste.**

Any discharge into the POTW of any waste, substance, material or substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261 is prohibited unless authorized by written permit signed by the Superintendent. (Ord. 2002-5, S4.8, Oct. 14, 2002)

#### **18.24.472 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 must be performed in accordance with procedures approved by EPA. (Ord. 2002-5, S4.9, Oct. 14, 2002)

#### **18.24.475 Sample Collection.**

- (1) When required, except as indicated in Section (2) below, the user must collect wastewater samples using flow proportional composite collection techniques or other technique approved in writing by the Superintendent when provides a sample representative of the discharged wastewater's characteristics. In the event flow proportional sampling is not feasible, the Superintendent 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 show compliance with instantaneous discharge limits.

- (2) Samples for oil and grease, temperature, pH, cyanide, phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques. (Ord. 2002-5, S4.10, Oct. 14, 2002)

#### **18.24.477 Timing.**

When required, written reports will be deemed to have been submitted on the date postmarked. For reports which are not mailed the date of receipt of the report shall govern. (Ord. 2002-5, S4.11, Oct. 14, 2002)

#### **18.24.480 Record Keeping.**

- (1) 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, instrumentation calibration, operation logs, reports, correspondence and sample logs 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 place, method, and time of sampling, and the name of the person(s) taking 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 three (3) years. This period shall be automatically extended for the duration of any litigation concerning the user or the Town, or where the user has been specifically notified of a longer retention period by the Superintendent.
- (2) The Town shall retain and preserve all permit files, records and enforcement activity records for no less than three (3) years. (Ord. 2002-5, S4.12, Oct. 14, 2002)

#### **18.24.510 Right of Entry: Inspection and Sampling.**

- (1) The Superintendent shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of this Ordinance and any wastewater discharge permit or order issued hereunder. Users shall allow the Superintendent ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.
- (2) Where a user has security measures in force which require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that, upon presentation of

suitable identification, the Superintendent will be permitted to enter without delay for the purposes of performing specific responsibilities.

- (3) The Superintendent shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.
- (4) The Superintendent may require the user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated annually to ensure their accuracy.
- (5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the Superintendent and shall not be replaced. The costs of clearing such access shall be born by the user.
- (6) Unreasonable delays in allowing the Superintendent access to the user's premises shall be a violation of this Ordinance. (Ord. 2002-5, S5.1, Oct. 14, 2002) (Ord. 1981-11, S16, June 1, 1981)

#### **18.24.520 Search Warrants.**

If the Superintendent 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 Town 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 Superintendent may seek issuance of a search warrant from a court of competent jurisdiction. (Ord. 2002-5, S5.2, Oct. 14, 2002)

#### **18.24.610 Information & Records.**

Information and data on a user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from the Superintendent'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 Superintendent, 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 which 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 furnishing 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. (Ord. 2002-5, S6.1, Oct. 14, 2002)

#### **18.24.710 Notification of Violation.**

When the Superintendent finds that a user has violated, or continues to violate, any provision of this Ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Superintendent may serve upon that user a written Notice of Violation (NOV). Within thirty (30) days of the receipt of a NOV, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the Superintendent. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the Superintendent to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation. (Ord. 2002-5, S7.1, Oct. 14, 2002)

#### **18.24.720 Consent Orders.**

The Superintendent may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents will include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 18.24.810-18.24.840 of this Ordinance and shall be judicially enforceable. (Ord. 2002-5, S7.2, Oct. 14, 2002)

#### **18.24.730 Show Cause Hearing.**

The Superintendent may order a user which has violated, or continues to violate, any provision of this Ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, to appear before the Superintendent and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least seven (7) days prior to the hearing. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user. (Ord. 2002-5, S7.3, Oct. 14, 2002)

#### **18.24.740 Compliance Orders.**

When the Superintendent finds that a user has violated, or continues to violate, any provision of this Ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Superintendent may issue a Compliance Order to the user responsible for the discharge directing that the user come into compliance within a specified time. If the user does not come into compliance within the time

provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance Orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A Compliance Order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a Compliance Order relieve the user of liability for any violation, including any continuing violation. Issuance of a Compliance Order shall not be a bar against, or a prerequisite for, taking any other action against the user. (Ord. 2002-5, S7.4, Oct. 14, 2002)

#### **18.24.750 Cease and Desist Orders.**

- (1) When the Superintendent finds that a user has violated, or continues to violate, any provision of this Ordinance, a wastewater 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 Superintendent may issue a Cease and Desist 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. Take 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.
- (2) Issuance of a Cease and Desist Order shall not be a bar against, or a prerequisite for, taking any other action against the user. (Ord. 2002-5, S7.5, Oct. 14, 2002)

#### **18.24.760 Administrative Fines.**

- (1) When the Superintendent finds that a user has violated, or continues to violate, any provision of this Ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Superintendent may fine such user in an amount not to exceed \$1,000.00. Such fines shall be assessed on a per violation, per day basis. In the case of monthly or other long term average discharge limits, fines shall be assessed for each day during the period of violation.
- (2) Unpaid charges, fines, and penalties shall, after thirty (30) calendar days, be assessed an additional penalty of ten percent (10%) of the unpaid balance, and interest shall accrue thereafter at a rate of one and one-half percent (1-1/2%) per month. A lien against the user's property will be sought for unpaid charges, fines, and penalties.
- (3) Users desiring to dispute such fines must file a written request for the Superintendent to reconsider the fine along with full payment of the fine amount within thirty (30) days of being notified of the fine. Where a request

has merit, the Superintendent may convene a hearing on the matter. In the event the user's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user. The Superintendent may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.

- (4) Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user. (Ord. 2002-5, S7.6, Oct. 14, 2002)

#### **18.24.770 Emergency Suspensions.**

- (1) The Superintendent may immediately suspend a user's discharge, after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The Superintendent 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 which presents, or may present, an endangerment to the environment.
- (2) Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the Superintendent may take 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 Superintendent may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the Superintendent that the period of endangerment has passed, unless the termination proceedings in Section 18.24.780 of this Ordinance are initiated against the user.
- (3) 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 taken to prevent any future occurrence, to the Superintendent prior to the date of any show cause or termination hearing under this Section of this Ordinance.
- (4) Nothing in this Ordinance shall be interpreted as requiring a hearing prior to any emergency suspension under this section. (Ord. 2002-5, S7.7, Oct. 14, 2002)

#### **18.24.780 Termination of Discharge.**

- (1) In addition to the provisions in other Section of this Ordinance, any user who violates the following conditions is subject to discharge termination:
  - A. Violation of wastewater 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 other Sections of this Ordinance or any Industrial Waste Pretreatment Permit, issued by the Town, State or other governmental agency.
- (2) Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under this Ordinance why the proposed action should not be taken. Exercise of this option by the Superintendent shall not be a bar to, or a prerequisite for, taking any other action against the user. (Ord. 2002-5, S7.8, Oct. 14, 2002)

**18.24.810 Injunctive Relief.**

When the Superintendent finds that a user has violated, or continues to violate, any provision of this Ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the Superintendent may petition a court of competent jurisdiction through the Town's Attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this Ordinance on activities of the user. The Superintendent 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, taking any other action against a user. (Ord. 2002-5, 8.1, Oct. 14, 2002)

**18.24.820 Civil Penalties.**

- (1) A user who has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the Town for a civil penalty of not less than \$500.00 per violation, per day. 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.
- (2) The Superintendent 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 Town.

- (3) In determining the amount of civil liability, the Court shall take into account 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.
- (4) Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user. (Ord. 2002-5, S8.2, Oct. 14, 2002) (Ord. 1981-11, S17, June 1, 1981)

#### **18.24.830 Criminal Penalties.**

Any person who knowingly or willfully makes any false statement, representation or certification in any application, report or other document required by this Ordinance or other regulations adopted by the Town, or who tampers with or knowingly or willfully renders inaccurate any monitoring device so as to render false information may be subject to the provisions of IC 35-44-2-1. The Town's Counsel shall, when appropriate, refer such matters to the Crawford County Prosecutor for consideration of criminal prosecution. The Town also reserves the right to refer suspected knowing or willful violations to the Indiana Department of Environmental Management or the U.S. Environmental Protection Agency, Region 5 for criminal prosecution. (Ord. 2002-5, S8.3, Oct. 14, 2002)

#### **18.24.840 Remedies Nonexclusive.**

The remedies provided for in this Ordinance are not exclusive. The Superintendent 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 Town's Enforcement Response Plan. However, the Superintendent may take other action against any user when the circumstances warrant. Further, the Superintendent is empowered to take more than one enforcement action against any non-compliant user. (Ord. 2002-5, S8.4, Oct. 14, 2002)

#### **18.24.910 Upset.**

- 1) For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of 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.
- (2) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of paragraph (3), below, are met.

- (3) A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - A. An upset occurred and the user can identify the cause(s) of the upset;
  - B. The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
  - C. 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:
    1. A description of the indirect discharge and cause of noncompliance;
    2. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
    3. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- (4) In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.
- (5) Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.
- (6) Users shall control production of all discharges to the extent necessary to maintain compliance with categorical 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. (Ord. 2002-5, S9.1, Oct. 14, 2002)

#### **18.24.920 Repeal of Conflicting Provisions and Ordinances.**

All the provisions of any ordinances previously or now in existence, and regulations which may be in conflict with this Ordinance are hereby repealed as of the date this Ordinance takes effect. (Ord. 2002-5, S10.1, Oct. 14, 2002)

**18.24.930 Severability.**

If any section, subsection, paragraph, sentence, clause, phase or provision of this Ordinance is for any reason held to be invalid, ineffective or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this ordinance shall remain in force and effect. The invalidity of any section, subsection, paragraph, sentence, clause, phase or provision of this Ordinance shall not affect the validity of any other part of this Ordinance which can be given effect without such invalid part or parts. (Ord. 2002-5, S10.2, Oct. 14, 2002) (Ord. 1981-11, S18, June 1, 1981)

**18.24.940 Effective Date**

The provisions of this Ordinance shall be in full force and effect January 1, 2003. (Ord. 2002-5, S10.3, Oct. 14, 2002)

## Chapter 18.26

### SEWER UTILITY RATES AND CHARGES

#### Sections:

18.26.010	Definitions
18.26.020	User classes
18.26.030	Rates and charges
18.26.040	Sewer rates based on water usage
18.26.042	Water obtained from source other than the water utility serving the Town
18.26.044	Water use from multiple sources
18.26.046	Multiple residential lots on a single meter
18.26.047	Multiple units such as mobile homes, apartments on a single meter
18.26.049	Water not entering the sanitary sewer system
18.26.050	Strength and content of sewage as basis for adjustment of charge
18.26.060	Connection charge
18.26.065	Tap-on fees
18.26.070	Billing
18.26.080	Rate study
18.26.090	Enforcement of regulations
18.26.100	Separability of provisions
18.26.110	Special rate contracts
18.26.120	Rates effective when

**18.26.010 Definitions.** Unless the context specifically indicates otherwise, the meaning of terms used in this ordinance shall be as follows:

- (1) "Board" shall mean the Board of Trustees of the Town of Leavenworth, Indiana, or any duly authorized officials acting in its behalf. (Ord. 1981-12, S1(a), June 23, 1981)
- (2) "BOD" (or Biochemical Oxygen Demand) shall have the same meaning as defined in the Use Ordinance. (Ord. 1981-12, S1(b), June 23, 1981)
- (3) "Town" shall mean the Town of Leavenworth, Indiana, acting by and through the Board of Trustees. (Ord. 1981-12, S1(c), June 23, 1981)
- (4) "Debt service costs" shall mean the average annual principal and interest payments on all outstanding revenue bonds or other long-term capital debt. (Ord. 1981-12, S1(d), June 23, 1981)

- (5) "Excessive strength surcharges" shall mean an additional charge which is billed to users for treating sewage wastes with an average strength in excess of "normal domestic sewage". (Ord. 1981-12, S1(e), June 23, 1981)
- (6) "Industrial wastes" shall mean the wastewater discharges from industrial, trade or business processes as distinct from employee wastes from sanitary conveniences. (Ord. 1981-12, S1(f), June 23, 1981)
- (7) "NPDES (National Pollutant Discharge Elimination System) Permit" shall have the same meaning as defined in the Sewer Use Ordinance. (Ord. 1981-12, S1(g), June 23, 1981)
- (8) "Normal domestic sewage" (for the purpose of determining surcharges) shall mean wastewater sewage having an average daily concentration as follows:
- BOD not more than 200 mg/l  
S.S. not more than 240 mg/l
- As defined by origin, wastewaters from segregated domestic and/or sanitary conveniences as distinct from wastes from industrial processes. (Ord. 1981-12, S1(h), June 23, 1981)
- (9) "Operation and maintenance costs" include all costs, direct and indirect, necessary to provide adequate wastewater collection, transport and treatment on a continuing basis and produce discharges to receiving waters that conform with all related Federal, State and local requirements. (These costs include replacement.) (Ord. 1981-12, S1(i), June 23, 1981)
- (10) "Other service charges" shall mean tap charges, connection charges, area charges, and other identifiable charges, other than User Charges, debt service charges and excessive strength surcharges. (Ord. 1981-12, S1(j), June 23, 1981)
- (11) "Person" shall mean any and all persons, natural or artificial, including any individual, firm, company, municipal or private corporation, association, society, institution, enterprise, governmental agency or other entity. (Ord. 1981-12, S1(k), June 23, 1981)
- (12) "Replacement costs" shall mean the expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the service life of the sewage works equipment to maintain the capacity and performance for which such works were designed and constructed. (Ord. 1981-12, S1(l), June 23, 1981)
- (13) "S.S." (or suspended solids) shall have the same meaning as defined in the Use Ordinance. (Ord. 1981-12, S1(m), June 23, 1981)

- (14) "Shall" is mandatory; "May" is permissive. (Ord. 1981-12, S1(n), June 23, 1981)
- (15) "Sewage" shall have the same meaning as defined in the Sewer Use Ordinance. (Ord. 1981-12, S1(o), June 23, 1981)
- (16) "Sewer Use Ordinance" shall mean a separate and companion enactment to this ordinance, which regulates the connection to and use of public and private sewers. (Ord. 1981-12, S1(p), June 23, 1981)
- (17) "User Charge" shall mean a charge levied on users of the wastewater treatment works for the cost of operation and maintenance of such works pursuant to Section 204(b) of Public Law 92-500. (Ord. 1981-12, S1(q), June 23, 1981)
- (18) "User Class" shall mean the division of wastewater treatment customers by source, function, similarities (i.e., residential, commercial, industrial, institutional, and governmental).

Residential User - shall mean a user of the treatment works whose premises or building is used primarily as a residence for one or more persons, including all dwelling units, etc.

Commercial User - shall mean any establishment involved in a commercial enterprise, business or service which, based on a determination by the Town, discharges primarily segregated domestic wastes or wastes from sanitary conveniences.

Institutional User - shall mean any establishment involved in a social, charitable, religious, and/or educational function which, based on a determination by the Town discharges primarily segregated domestic wastes or wastes from sanitary conveniences.

Governmental User - shall mean any Federal, State or local governmental user of the wastewater treatment works.

Industrial User - shall mean any manufacturing or processing facility that discharges industrial waste to a publicly owned treatment works. (Ord. 1981-12, S1(r), June 23, 1981)

**18.26.020 User classes.** Every person whose premises are served by said sewage works shall be charged for the services provided. These charges are established for each user class, as defined, in order that the sewage works shall recover, from each user and user class, revenue which is proportional to its use of the treatment works in terms of volume and load. User charges are levied to defray the cost of operation and maintenance (including replacement) of the treatment works. User charges shall be uniform in magnitude within a user class.

- (1) User charges are subject to the rules and regulations adopted by the United States Environmental Protection Agency, published in the Federal Register September 27, 1978 (43 CFR 44022). Replacement costs, which are recovered through the system of user charges, shall be based upon the expected service life of the sewage works equipment. (Ord. 1981-12, S2(a), June 23, 1981)
- (2) The various classes of users of the treatment works for the purpose of this ordinance, shall be as follows:

Class I -        Residential  
                               Commercial  
                               Governmental  
                               Institutional  
                               Industrial (Ord. 1981-12, S2(b), June 23, 1981)

**18.26.030 Rates and charges.** For the use of and the services rendered by said sewage works, rates and charges shall be collected from the owners of each and every lot, parcel of real estate or building that is connected with the Town sanitary system or otherwise discharges sanitary sewage, industrial wastes, water or other liquids, either directly or indirectly, into the sanitary sewerage system of the Town of Leavenworth. Such rates and charges include User Charges, debt service costs, excessive strength surcharges and other service charges, which rates and charges shall be payable as hereinafter provided and shall be in an amount determinable as follows:

- (1) The sewage rates and charges shall be based on the quantity of water used on or in the property or premises subject to the rates and charges, as the same is measured by the water meter there in use, plus a base charge based on the size of the water meter installed, except as herein otherwise provided. Water meters will be read once each month, and sewage service bills shall be rendered once each month (or period equaling a month). The water usage schedule on which the amount of said rates and charges shall be determined as follows:

USERS INSIDE THE TOWN'S CORPORATE LIMIT

A. Metered Water Users:

1. Treatment Rate - per 1,000 gallons of usage per month: \$3.60

2. Base Rate - per month, as follows:

<u>Meter Size:</u>		<u>Base Rate:</u>
5/8	inch	\$ 34.65
3/4	inch	48.62
1	inch	87.07
1 1/4	inch	138.04
1 1/2	inch	201.36
2	inch	346.88
3	inch	798.99
4	inch	1,429.10
6	inch	3,196.30

B. Unmetered Water Users: Rate per month: \$48.40 (Ord. 2009-3, S1, Nov. 7, 2009) (Ord. 2000-4, June 12, 2000) (Ord. 1981-12, S3(a), June 23, 1981) (Ord. 151, Apr. 15, 1953)

(2) USERS OUTSIDE TOWN'S CORPORATE LIMIT

A. Metered Water Users:

1. Treatment Rate - per 1,000 gallons of usage per month: \$4.35
2. Base Rate - per month, as follows:

<u>Meter Size:</u>		<u>Base Rate:</u>
5/8	inch	\$ 38.28
3/4	inch	48.75
1	inch	96.03
1 1/4	inch	153.30
1 1/2	inch	222.20
2	inch	382.75
3	inch	881.60
4	inch	1,576.86
6	inch	3,526.44

B. Unmetered Water Users: Rate per month: \$54.45 (Ord. 2009-3, S2, Nov. 7, 2009) (Ord. 2000-4, June 12, 2000)

(3) For residential users of the sewage works that are not metered water users or for whom accurate meter readings are not available, the monthly charge shall be as follows:

A.	Base rate (5/8" meter)	\$ 13.35
B.	Treatment rate (based upon 3,700 gallons per month average residential rate)	\$ <u>5.65</u>
	TOTAL	\$ 19.00

Non residential unmetered users shall be charged a rate based upon estimated monthly usage to be determined by Town officials on an individual basis. (Ord. 1981-12, S3(b), June 23, 1981)

(4) For the service rendered to the Town of Leavenworth, Indiana, said Town shall be subject to the same rates and charges hereinabove provided, or to charges and rates established in harmony therewith. (Ord. 1981-12, S3(c), June 23, 1981)

(5) In order to recover the cost of monitoring industrial wastes the Town shall charge the user not less than \$25.00 per sample. This charge will be reviewed and revised on the same basis as all other rates and charges in this Ordinance. (Ord. 1981-12, S3(d), June 23, 1981)

(6) During the months of July and August, residents on the sewer system will be charged a sewer rate not greater than the average sewer rate charged for the preceding three months of April, May and June. (Ord. 1984-60, S3(e), June 11, 1984)

**18.26.040 Sewer rates based on water usage.** The quantity of water discharged into the sanitary sewerage system and obtained from sources other than the utility that serves the Town shall be determined by the Town in such manner as the Town shall reasonably elect, and the sewage service shall be billed at the above appropriate rates; further, as is hereinafter provided in this section, the Town may make proper allowances in determining the sewage bill for quantities of water shown on the records to be consumed, but which are also shown to the satisfaction of the Town that such quantities do not enter the sanitary sewerage system. (Ord. 1981-12, S4, June 23, 1981)

**18.26.042 Water obtained from source other than the water utility serving the Town.** In the event a lot, parcel of real estate or building discharging sanitary sewage, industrial wastes, water or other liquids into the Town's sanitary sewerage system, either directly or indirectly, is not a user of water supplied by the water utility serving the Town, and the water used thereon or therein is not measured by a water meter, or is measured by a water meter not acceptable to the Town, then the amount of water used shall be otherwise measured or determined by the Town. In order to ascertain the rate or charge provided in this Ordinance, the owner or other interested party shall at his expense, install and maintain

meters, weirs, volumetric measuring devices or any adequate and approved method of measurement acceptable to the Town for the determination of sewage discharge. (Ord. 1981-12, S4(a), June 23, 1981)

**18.26.044 Water use from multiple sources.** In the event a lot, parcel of real estate or building discharging sanitary sewage, industrial wastes, water or other liquids into the Town's sanitary sewerage system, either directly or indirectly, is a user of water supplied by the water utility serving the Town, and in addition, is a user of water from another source which is not measured by a water meter or is measured by a meter not acceptable to the Town, then the amount of water used shall be otherwise measured or determined by the Town. In order to ascertain the rates or charges, the owner or other interested parties shall, at his expense, install and maintain meters, weirs, volumetric measuring devices or any adequate and approved method of measurement acceptable to the Town for the determination of sewage discharge. (Ord. 1981-12, S4(b), June 23, 1981)

**18.26.046 Multiple residential lots on a single meter.** In the event two or more residential lots, parcels of real estate, or buildings discharging sanitary sewage, water or other liquids into the Town's sanitary sewerage system, either directly or indirectly, are users of water and the quantity of water is measured by a single water meter, then in each such case, for billing purposes, the quantity of water used shall be averaged for each user and the base charge and the flow rates and charges shall apply to each of the number of residential lots, parcels of real estate or buildings served through the single water meter. (Ord. 1981-12, S4(c), June 23, 1981)

**18.26.047 Multiple units such as mobile homes, apartments on a single meter.** In the event two (2) or more dwelling units such as mobile homes, apartments or housekeeping rooms discharging sanitary sewage, water or other liquids into the Town's sanitary sewerage system, either directly or indirectly, are users of water and the quantity of water is measured by a single water meter, then in such case, billing shall be for a single service in the manner set out elsewhere herein, except that the minimum bill shall not be less than the number of such dwelling units times \$13.35 per month. In the case of mobile home courts, the number of dwelling units shall be computed and interpreted as the total number of mobile home spaces available for rent plus any other dwelling units served through the meter. A dwelling unit shall be interpreted as a room or rooms or any other space or spaces in which cooking facilities are provided. (Ord. 1981-12, S4(d), June 23, 1981)

**18.26.049 Water not entering the sanitary sewer system.** In the event a lot, parcel of real estate or building discharges sanitary sewage, industrial waste, water or other liquids into the Town's sanitary sewerage system, either directly or indirectly, and uses water in excess of 25,000 gallons per month, and it can be shown to the satisfaction of the Town that a portion of water as measured by the water meter or meters does not and cannot enter the sanitary sewerage system, then the owner or other interested party shall, at his expense, install and maintain meters, weirs, volumetric measuring devices or any adequate and approved method of measurement acceptable to the Town for the determination of sewage discharge. (Ord. 1981-12, S4(e), June 23, 1981)

**18.26.050 Strength and content of sewage as basis for adjustment of charge.** In order that the rates and charges may be justly and equitably adjusted to the service rendered to users, the Town shall base its charges not only on the volume, but also on strength and character of the stronger-than-normal domestic sewage and wastes which it is required to treat and dispose of. The Town shall require the user to determine the strength and content of all sewage and wastes discharges, either directly or indirectly into the sanitary sewage system, in such manner and by such method as the Town may deem practicable in the light of the conditions and attending circumstances of the case, in order to determine the proper charge. The user shall furnish a central sampling point available to the Town at all times.

- (1) Normal sewage domestic waste strength should not exceed a biochemical oxygen demand of 200 milligrams per liter of fluid or suspended solids of 240 milligrams per liter of fluid. Additional charges for treating stronger-than-normal domestic waste shall be made on the following basis:
  - A. Rate Surcharge Based Upon Suspended Solids. There shall be an additional charge of Forty (40) cents per pound of suspended solids for suspended solids received in excess of 240 milligrams per liter of fluid.
  - B. Rate Surcharge Based Upon BOD. There shall be an additional charge of Forty-five (45) cents per pound of biochemical oxygen demand for biochemical oxygen demand received in excess of 200 milligrams per liter of fluid. (Ord. 2000-4, S5(a), June 12, 2000) (Ord. 1981-12, S5(a), June 23, 1981)
- (2) The determination of Suspended Solids and five-day Biochemical Oxygen Demand contained in the waste shall be in accordance with the latest copy of "Standard Methods for the Examination of Water Sewage and Industrial Wastes," the American Water Works Association and the Water Pollution Control Federation, and in conformance with Guidelines Establishing Test Procedures for Analysis of Pollutants," Regulation CFR Part 136, published in the Federal Register on October 16, 1973. (Ord. 1981-12, S5(b), June 23, 1981)

**18.26.060 Connection charge.** The owner of any lot, parcel of real estate or buildings connecting to the sewage works shall, prior to being permitted to make a connection, pay a connection charge in the amount of Two Hundred Fifty (\$250.00) Dollars or the actual cost to the Town of construction, whichever is larger, for each connection. The Town Council now finds such a connection charge to be a reasonable and equitable pro rata cost of construction of a local or lateral sewer adequate to serve the property so connecting, and the cost of providing a connection to the sewer, excavation, backfilling, pavement replacement and installation of a sewer line from the sewer to the property line. (Ord. 2000-07, Dec. 11, 2000) (Ord. 1981-12, S6, June 23, 1981)

**18.26.065 Tap-on fees.** The Town of Leavenworth hereby determines that tap fees should be amended to establish new tap-on fees for all connections to the Town of Leavenworth

Sewer System, including subdivisions, commercial and residential purposes, and, determines that such reasonable fees are, as follows:

- (1) The owner of any lot, parcel of real estate or buildings connecting to the sewage works shall, prior to being permit to make a connection, pay a connection charge of (\$250.00) two hundred fifty dollars in addition to any cost incurred by the town in making connection.
- (2) The town has entered into an agreement with Wyandotte Community Corporation for construction of waste water transmission facilities from an area of Leavenworth known as Old Leavenworth.
- (3) Wyandotte Community Corporation has agreed to pay all cost incurred in construction. And upon completion to render ownership to the town, all main sewer lines, lift station and easements.
- (4) The town and Wyandotte Community Corporation have agreed that any private individual or business connecting to said facility should pay a fee in addition to the normal fee to allow Wyandotte Community Corporation to be reimbursed a portion of their cost of construction.
- (5) The town council finds the following to be a reasonable charge: (i) an additional connection fee for each single family residential in the amount of \$1,500.00 and an additional connection fee for each commercial connection based on the following \$1,500.00 per each 4000 gal per month.
  - A. Gallons per month is the average use during the months of May through September.
  - B. In no event shall the charge be less than \$1,500.00.
  - C. No later than the 60<sup>th</sup> day after the additional fee is collected, the town shall remit the fee to Wyandotte Community Corporation. (Ord. 2007-2, S1, June 10, 2007) (Ord. unnumbered, Oct. 11, 1999)

**18.26.070 Billing.** Such rates and charges shall be prepared, billed and collected by the Town in the manner provided by law and Ordinance.

- (1) The rates and charges for all users shall be prepared and billed monthly. (Ord. 1981-12, S7(a), June 23, 1981)
- (2) The rates and charges may be billed to the tenant or tenants occupying the properties served, unless otherwise requested in writing by the owner, but such billing shall in no way relieve the owner from the liability in the event payment is not made as herein required. The owners of properties served, which are occupied by a tenant or tenants, shall have the right to examine the collection records of the Town for the purpose of determining whether bills have been paid by such tenant or tenants, provided that such examination

shall be made at the office at which said records are kept and during the hours that such office is open for business. (Ord. 1981-12, S7(b), June 23, 1981)

- (3) As is provided by statute, all rates and charges not paid when due are hereby declared to be delinquent and a penalty of ten percent (10%) of the amount of the rates and charges shall thereupon attach thereto. The time at which such rates or charges shall be paid is now fixed at fifteen days after the date of mailing of the bill. (Ord. 1981-12, S7(c), June 23, 1981)

**18.26.080 Rate study.** In order that the rates and charges for sewage services may remain fair and equitable and be in proportion to the cost of providing services to the various users or user classes, the Town shall cause a study to be made within a reasonable period of time following the first 2 years of operation, following the date on which this ordinance goes into effect. Such study shall include, but not be limited to, an analysis of the costs associated with the treatment of excessive strength effluents from industrial users, volume and delivery flow rate characteristics attributed to the various users or user classes, the financial position of the sewage works and the adequacy of its revenue to provide reasonable funds for the operation and maintenance, replacements, debt service requirements and capital improvements to the waste treatment systems.

Thereafter, on a biennial basis, within a reasonable period of time following the normal accounting period, the Town shall cause a similar study to be made for the purpose of reviewing the fairness and equity of the rates and charges for sewage services on a continuing basis. Said studies shall be conducted by officers or employees of the Town, or by a firm of certified public accountants, or a firm of consulting engineers which firms shall have experience in such studies, or by such combination of officers, employees, certified public accountants, or engineers as the Town shall determine to be best under the circumstances. (Ord. 1981-12, S8, June 23, 1981)

**18.26.090 Enforcement of regulations.** The Town shall make and enforce such by-laws and regulations as may be deemed necessary for the safe, economical and efficient management of the Town's sewerage system, pumping stations and sewage treatment works, for the construction and use of house sewers and connections to the sewerage system, and for the regulation, collection, rebating and refunding of such rates and charges.

The Town is hereby authorized to prohibit dumping of wastes into the Town's sewage system which, in its discretion, are deemed harmful to the operation of the sewage treatment works of said Town or to require methods affecting pretreatment of said wastes to comply with the pretreatment standards included in the National Pollution Discharge Elimination System (NPDES) permit issued to the sewage works. (Ord. 1981-12, S9, June 23, 1981)

**18.26.100 Separability of provisions.** The invalidity of any section, clause, sentence, or provision of this ordinance shall not affect the validity of any other part of this ordinance which can be given effect without such invalid part or parts. (Ord. 1981-12, S10, June 23, 1981)

**18.26.110 Special rate contracts.** The Board is hereby further authorized to enter into special rate contracts with customers of the sewage works where clearly definable reduction in cost to the sewage works can be determined, and such reduction shall be limited to such reduced costs. Said contract shall be in compliance with Public Law 92-500 and 95-217. (Ord. 1981-12, S11, June 23, 1981)

**18.26.120 Rate effective when.** The rates and charges as herein set forth shall become effective on the first full billing period occurring after the start-up of the new plant. (Ord. 1981-12, S12, June 23, 1981)

Chapter 18.29

WYANDOTTE COMMUNITY CORPORATION AND TOWN SEWER AGREEMENT

Sections:

18.29.010 Agreement to provide connection to sewer

18.29.010 Agreement to provide connection to sewer. Be it here ordained that the Town of Leavenworth and Wyandotte Community Corporation enter into an agreement, which is attached and shall be called Exhibit (A). Which shall be for the good of Wyandotte Community Corporation, the Town of Leavenworth and its residents. (Ord. 2005-4, Dec. 12, 2005)

SEWER FACILITIES AGREEMENT

THIS AGREEMENT, is made and entered into on the 12th day of December, 2005, between **Wyandotte Community Corporation** ("WCC") and the **Town of Leavenworth, Indiana** ("Leavenworth").

RECITALS

A. Leavenworth operates and maintains a sanitary sewer system for the benefit of the residents of Leavenworth, other property owners and the public health;

B. WCC currently owns certain real property located in an area commonly known as Old Leavenworth and more particularly described in **Exhibit A** ("the "Property") which does not currently have access to the Sewer; and

C. WCC and Leavenworth have agreed that WCC can construct pipelines and pumping stations to pump waste water and sewage into Leavenworth's sanitary sewer system subject to the terms and conditions set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, WCC and Leavenworth agree as follows:

AGREEMENT

1. Construction.

1.1 Prior to commencement by WCC of construction of any sanitary sewer connections or facilities, but no later than December 12, 2005, Leavenworth shall pass an ordinance approving the construction of sewer collection lines, sewer mains and pumping

stations (the "WCC Sewer System") and WCC's connection to Leavenworth's sanitary sewer system binding Leavenworth to the obligations under this Agreement.

1.2 After passage of the ordinance described in Section 1.1, WCC shall construct a system to allow for access to Leavenworth's sanitary sewer system from the Property in accordance with all applicable local and state requirements, consisting of a main sewage pumping station with two submersible, non-clog sewage pumps of approximately 50 HP each, a six inch force main from the main pumping station to the WCC Sewer System, and a duplex grinder pumping station, and a two inch force main connecting the grinder pumping station to the main pumping, station (collectively the "WCC Connection"). The location of the WCC Sewer System and WCC Connection are more particularly described in **Exhibit B**.

1.3 WCC shall at its sole cost apply for all necessary ordinances, permits, easements, and other approvals in order to complete construction of the WCC Sewer System and WCC Connection in accordance with applicable laws and regulations. Leavenworth shall provide all necessary permits, easements and other approvals upon proper application and compliance with laws by WCC.

## 2. **Dedication.**

2.1 Upon completion of construction of the WCC Sewer System and WCC Connection and upon final approval by the State of Indiana Department of Environmental Protection, WCC shall transfer, assign, and convey ownership of the WCC Sewer System to Leavenworth to be operated as part of Leavenworth's sewer system subject to the terms, conditions and obligations of this Agreement (the "Dedication"). WCC shall retain ownership of the WCC Connection.

2.2 Both parties agree that WCC will transfer the WCC Sewer System to Leavenworth. Included in such transfer will be any guarantees or warranties in favor of WCC from any contractor or manufacturer related to the construction of the WCC Sewer System to the extent such guarantees or warranties are assignable and/or transferable.

2.3 Upon the date of Dedication, WCC shall grant to Leavenworth all necessary easements and rights of way on, in, over, and under WCC's property to allow for Leavenworth's operation and maintenance of the WCC Sewer System.

2.4 Upon the date of Dedication, Leavenworth shall grant to WCC all necessary easements and rights of way on, in, over, and under Leavenworth's property to allow for WCC's operation and maintenance of the WCC Connection.

2.5 After the date of Dedication, WCC shall pay to Leavenworth, all applicable capacity charges or other fees for use of the Sewer as would be charged to a regular customer in the ordinary course of business.

## 3. **Additional Customers.**

3.1 **Priority Use.** Leavenworth shall grant access to tap into the WCC Sewer System (including following dedication) to any person or entity who purchases or leases

property from WCC that is adjacent to or can be served by the WCC Sewer System so long as such access does not exceed the capacity of the WCC Sewer System.

### 3.2 Tap-in-Fees.

3.2.1 In addition to the ordinary fees charged by Leavenworth to customers for connecting to Leavenworth's Sewer through the WCC Sewer System, Leavenworth shall charge the following fees for connection to the WCC Sewer System: (i) a connection fee for each single family residence in the amount of one thousand five hundred dollars (\$1,500.00) (the "Residential Tap-in Fee"); and (ii) a connection fee for each commercial connection based on the following formula:  $pwsu/4000 \times \$1500$ , where pwsu is the estimated average water and sewer usage for the proposed connection in gallons per month during the peak months of May through September (the "Commercial Tap-in Fee"). However, in no event shall the connection fee in subsection (ii) above be less than \$1500.00. (the Residential Tap-in Fee and the Commercial Tap-in Fee shall collectively be called the "Tap-in Fee")

3.2.2 No later than the sixtieth (60th) day after the Tap-in Fee is collected, Leavenworth shall remit the Tap-in Fee directly to WCC.

3.2.3 Leavenworth shall not agree to forgive the payment of any Tap-in Fee, nor offer any rebates or incentives to potential customers who would establish their connection to the Leavenworth Sewer through the WCC Sewer System without the express written approval of WCC.

### 3.3. Reserved Capacity.

3.3.1 Until the date of the 20<sup>th</sup> anniversary of the Dedication, Leavenworth may apply no more than 50% of the total capacity of the WCC Sewer System toward new customers that are not purchasers or lessees of WCC property. The remaining 50% capacity of the WCC Sewer System shall be reserved for the exclusive use of WCC and its designated assignees.

3.3.2 Upon written request by Leavenworth, WCC may at its sole discretion grant Leavenworth the right to exceed its capacity limit for new customers on a case-by-case basis.

## 4. Maintenance.

4.1 Requirements. Upon and after the date of Dedication, Leavenworth shall perform all necessary maintenance and repairs to the WCC Sewer System including maintaining and repairing the power supply to the system.

4.2 Standards. Leavenworth shall conduct all such maintenance and repairs in accordance with prudent industry practices; including performance of all preventive and periodic maintenance as may be warranted for a sewer of the type and design contemplated by this Agreement.

4.3 Failure to Maintain.

4.3.1 Should Leavenworth fail to properly maintain the WCC Sewer System, and such failure continues beyond the 30<sup>th</sup> day after delivery of written notice by WCC to Leavenworth of such failure, WCC shall have the right, but not the obligation, to undertake any necessary maintenance and repair, and to seek reimbursement from Leavenworth.

4.3.2 No later than 30 days after receipt of a bill from WCC, Leavenworth shall reimburse WCC for all maintenance undertaken by WCC or at WCC's direction under Section 4.3 including accrued interest at the prime rate.

5. **Indemnification.** Leavenworth shall protect, indemnify, and hold WCC harmless from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs, and expenses (including, without limitation, attorneys' fees and court costs) arising from or relating to the WCC Sewer System after Dedication or imposed upon or incurred by WCC in exercising, performing, enforcing, or protecting its rights under this Agreement, and any claim or demand whatsoever which may be asserted against WCC by reason of any alleged obligation or undertaking to be performed or discharged by WCC under this Agreement

6. **No Waiver.** Both WCC and Leavenworth agree that failure to enforce any provision of this Agreement by either party shall not constitute a waiver by that party.

7. **Third Parties.** Both parties agree that there are no third party beneficiaries intended or implied under this agreement.

8. **Recitals.** Recitals A, B, and C are hereby incorporated into this Agreement.

9. **Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. However, if any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable under law of mandatory application, such invalidity or unenforceability shall not invalidate or render unenforceable the remaining provisions of this Agreement, which shall remain in full force and effect.

10. **Captions.** The captions used in this Agreement are inserted solely for convenience of reference and are not a part of, nor intended to govern, limit or aid in the construction of, any provision thereof.

11. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana. The venue of any action or proceeding initiated with respect to this Agreement shall be Crawford County, State of Indiana, and shall be tried by the court sitting without a jury.

12. **Amendments.** This Agreement may not be amended, altered or changed other than by an instrument in writing signed by the parties.

13. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

14. **Attorneys Fees.** Costs or expenses incurred in the enforcement of this Agreement, including attorneys fees and court costs, shall be recoverable by the prevailing party in such enforcement action from the party against whom enforcement is sought.

RIGHT-OF-WAY EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That in consideration of one dollar (\$1.00) and other good and valuable consideration paid to Wyandotte Community Corporation hereinafter referred to as GRANTOR, by the Town of Leavenworth, Indiana

hereinafter referred to as GRANTEE, the receipt of which is hereby acknowledged, the GRANTOR does hereby grant, bargain, sell, transfer and convey unto the GRANTEE, its successor and assigns, a perpetual easement with the right to erect, construct, install and lay, and thereafter use, operate, inspect, repair, replace, and remove,

Sewage lines, Pump Station and related appurtenances

over, across and through the land of the GRANTOR situated in Crawford County, State of Indiana, said land being described as follows:

Part of Property described in Deed Book 152, Page 64

together with the right of ingress and egress over the adjacent lands of the GRANTOR, his successors and assigns for the purpose of this easement.

The Easement shall be For Permanent sewer line Easement: A strip of land 10 feet either side of the following described centerline: Beginning at a point on the Grantor's East property line and the West right-of-way of Court Street, said point being 165 feet plus or minus from the centerline of Nelson Street. Thence westerly 132 feet plus or minus to a point in the East line of the Pump Station parcel described below.

For Permanent Pump Station Easement: A parcel of land described as follows: Beginning at a point on the Grantor's property said point being 150 feet plus or minus from the centerline of Nelson Street and 138 feet plus or minus from the West right-of-way of Court Street. Thence southerly 70 feet plus or minus to the North right-of-way of Old State Road 62, thence westerly 40 feet plus or minus, thence northerly 100 feet plus or minus, thence easterly 20 feet plus or minus to the point of beginning.

The consideration hereinabove recited shall constitute payment in full for any damages to the land of the Grantor, his successors and assigns, by reason of the installation, operation, and maintenance of the structures or improvements referred to herein. The Grantee covenants to maintain the easement in good repair so that no unreasonable damage will result from its use to the adjacent land of the Grantor, his successors and assigns

Grantee agrees that upon completion of construction, Grantee's contractor shall repair any damage to the Grantor's property and return the property to conditions existing prior to construction, all at the Grantee's expense.

The grant and other provisions of this easement shall constitute a covenant running with the land for the benefit of the Grantee, its successors and assigns

Wyanoke Community Corp by Grantor  
Barb Collins, V.P. Grantor

In Witness Whereof, the Grantors have executed this instrument this 15th day of September, 2005.

Sara J. Wilkins (Witness)

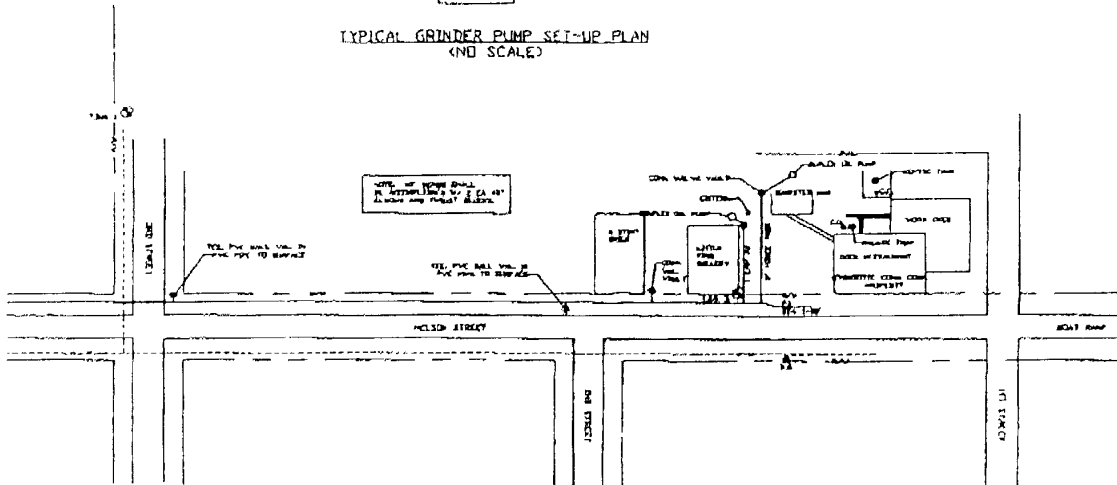
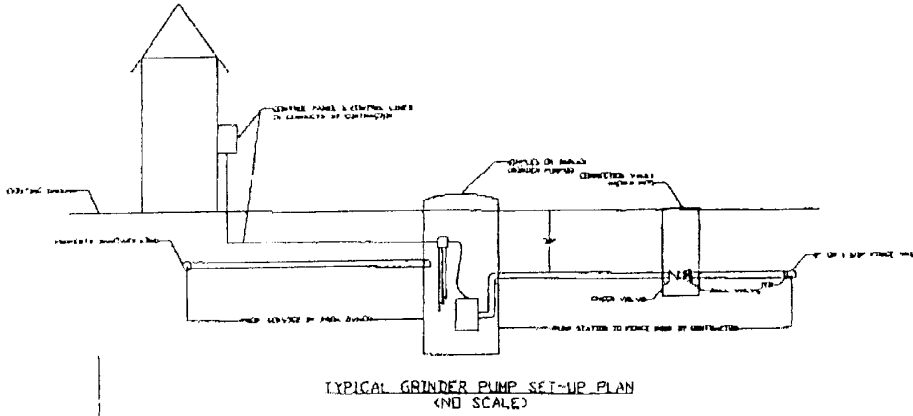
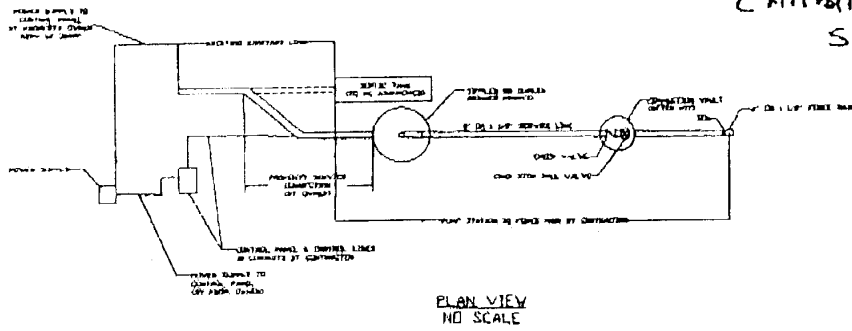
Seal:

Conditions:

**Exhibit B**

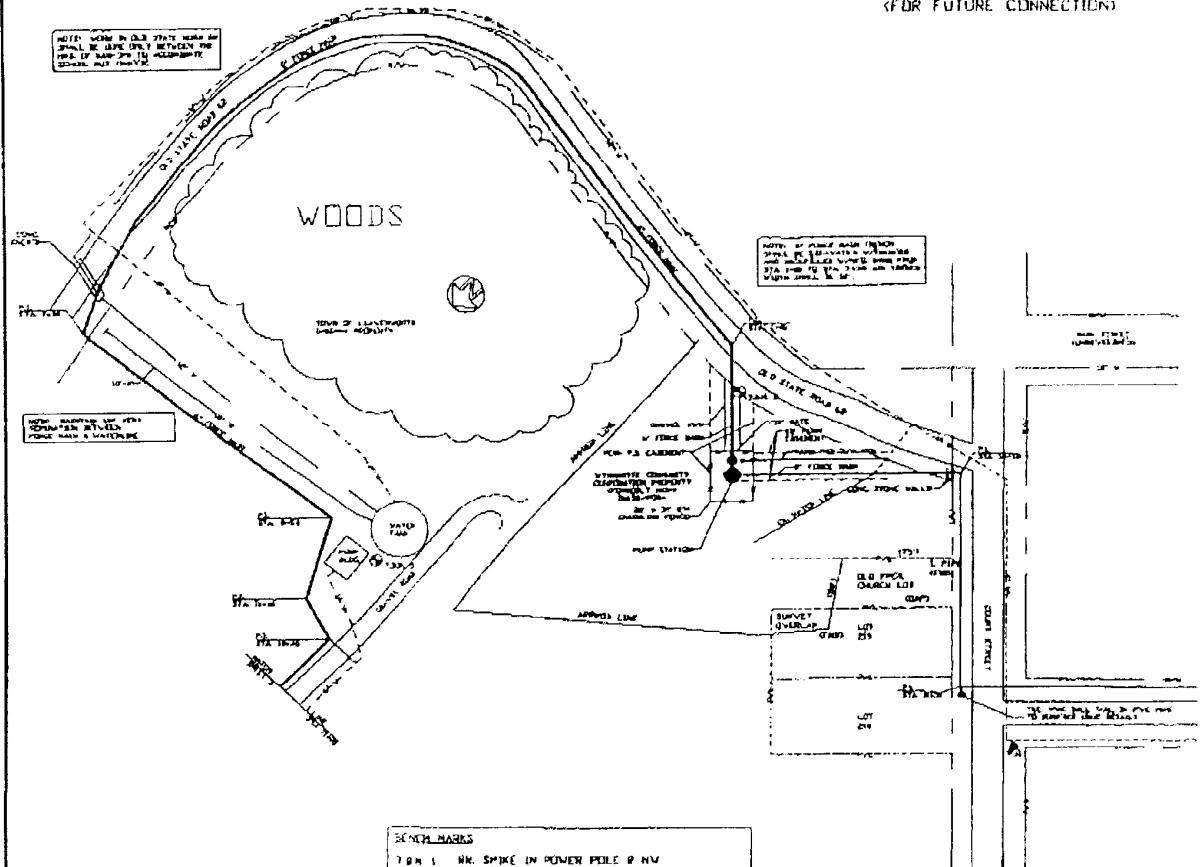
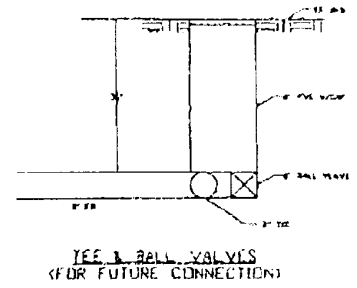
[Attach drawings showing location of the Sewer System and WCC Connection]

EXHIBIT B  
SHEET 1



<b>ENGINEERING, INC.</b> <b>ENGINEERS</b> 357 (740) 221-1111	PROJECT NO. 493 SCALE 1"=50'		<b>OLD LEAVENWORTH SEWER SYSTEM</b>	<b>2</b>
	DESIGNED BY: IWC 2000	NAME: DATE		
	DRAWN BY: LWB 2000	CHECKED BY: JDD 2000	RECORDED BY:	DATE:

EXHIBIT B  
SHEET 2



- BENCHMARKS**
- BM 1 NW SPIKE IN POWER POLE @ NW CORNER AT 2ND & FRANKLIN EL. 42033
  - BM 2 NW SPIKE IN TOP OF ELN ON W SIDE OF ROAD, 40' E OF P.S. SITE, EL. 42005
  - BM 3 PAINTED SQ. ON SIDEWALK @ LITTLE FRDG GALLERY, EL. 41765
  - BM 4 PAINTED SQ. ON SW OF OLD FOUNDATION @ HWY 62 & OLD HWY 62, EL. 61131
  - BM 5 PAINTED SQ. ON TOP STEP OF WATER PUMP HOUSE EL. 59108

NO	DATE	REVISION	CHK'D	APP'D	DATE



**DERRICK EN**  
CONSULTING  
1397 S. THIRTI  
LOUISVILLE, KY



## Chapter 18.41

### NATURAL GAS FRANCHISE

#### Sections:

18.41.010	Indiana Natural Gas Corporation
18.41.020	Non interference with existing utilities
18.41.030	Report of proposed pipe locations
18.41.040	Temporary gas shut off for repairs, extensions, etc.
18.41.050	Hold harmless clause
18.41.060	Extensions
18.41.070	Adequate supply of gas
18.41.080	Amending and adding rules and regulations
18.41.090	Seperability of provisions
18.41.100	Effective when
18.41.110	Publication
18.41.120	Obligation to terms and provisions

**18.41.010 Indiana Natural Gas Corporation.** That subject to the terms, conditions and provisions hereinafter stated and set forth, there is hereby granted to Indiana Natural Gas Corporation, its successors and assigns, the right to construct, erect, maintain and operate a gas works and storage facilities within the corporate limits of the Town of Leavenworth, Indiana, for the purpose of supplying gas to the said Town and the inhabitants thereof, and territory in the vicinity of said Town and is hereby granted the right-of-way along, through and under the streets, avenues, alleys, lanes, sidewalks, public squares and public places in said incorporated Town of Leavenworth, Indiana, for the purpose of laying, constructing, maintaining, removing, using and operating one or more lines of gas main and branch pipe with the necessary feeders, service pipes, valves, regulators and other devices necessary or convenient to the successful operation of such lines and pipes in the supplying, storing, conducting and delivering of gas to the Town of Leavenworth, Indiana, and inhabitants thereof and territory in the vicinity of said Town. (Ord. ?, S1, June 13, 1967)

**18.41.020 Non interference with existing utilities.** In the work of laying, removing, changing, repairing, or replacing its pipes, mains, feeders, equipment, or appurtenances, the said Indiana Natural Gas Corporation shall not unnecessarily obstruct or interfere with nor change any existing arrangements such as sewers, water mains, or other public or private works in said incorporated Town. (Ord. ?, S2, June 13, 1967)

**18.41.030 Report of proposed pipe locations.** That the said Indiana Natural Gas Corporation, its successors and assigns, shall before beginning the laying of any pipes, mains or conduits, make a report to the Town Clerk or the Superintendent of Streets for the Town of Leavenworth , Indiana, stating the locations within the Town limits where such pipes, mains and conduits are proposed to be laid. Said Indiana Natural Gas Corporation after doing any excavating shall replace all materials, excepting surfacing materials or pavement which have been removed and shall leave the fill in a neatly graded condition. After said

excavations have been sufficiently settled, filled and are ready for repaving and resurfacing, said Indiana Natural Gas Corporation will so notify the Town authorities. Upon receipt of notice as aforesaid that excavations made hereunder have been refilled and are ready for resurfacing, or repaving, the Town shall thereupon undertake such resurfacing or repaving and shall do the same in a proper manner. All expenses properly incident to the cost of repaving or resurfacing shall be borne by said Indiana Natural Gas Corporation and the amount thereof shall be paid promptly to the said Town within a reasonable time after receipt by the said Indiana Natural Gas Corporation of invoices covering same. (Ord. ?, S3, June 13, 1967)

**18.41.040 Temporary gas shut off for repairs, extensions, etc.** Said Indiana Natural Gas Corporation shall have the right to temporarily shut off gas, to be supplied hereunder for any of the purposes by this ordinance permitted, from its main and service pipes, or any part thereof, provided, however, that such action shall in each case be taken for the sole and express purpose of making repairs or extensions to works or mains or service pipes or for safety reasons and said Indiana Natural Gas Corporation shall not be liable to the said Town or to any customer or consumer of gas for any damage caused by each temporary suspension of the supply of gas; provided, however, that said repairs and extensions are made with due diligence by the said Indiana Natural Gas Corporation. (Ord. ?, S4, June 13, 1967)

**18.41.050 Hold harmless clause.** That the said Indiana Natural Gas Corporation, its successors and assigns, shall at all time hold and save the incorporated Town of Leavenworth, Indiana, harmless from any and all liability, loss, cost, damage, or expenses which may accrue to said incorporated Town of Leavenworth, by reason of the neglect, default or misconduct of the Indiana Natural Gas Corporation, in the construction, operation, or maintenance of its facilities hereunder. (Ord. ?, S5, June 13, 1967)

**18.41.060 Extensions.** Indiana Natural Gas Corporation, successors, and assigns, shall be required to extend its lines to take care of any consumer in the incorporated Town of Leavenworth, who desires to use gas at any time, provided, however, that said Indiana Natural Gas Corporation shall not be required to extend its lines beyond the curb immediately adjacent to the abutting properties or the property line of customers, nor more than one hundred (100) feet of main for each customer to be served. (Ord. ?, S6, June 13, 1967)

**18.41.070 Adequate supply of gas.** That Indiana Natural Gas Corporation, its successors and assigns, hereby agree to make available to the Town of Leavenworth, Indiana, and its inhabitants an adequate supply of gas for normal purposes, except that the Indiana Natural Gas Corporation shall not be responsible or liable for delay or failure in the performance of the premises and agreement on its part to be performed hereunder, if such delay or failure be due to any cause beyond their control, such as but not limited to strikes, fires, floods, storms, accidents, acts of public enemies, mobs or rioters, and acts of God, or inability of Indiana Natural Gas Corporation to obtain adequate gas from its pipe line suppliers. (Ord. ?, S7, June 13, 1967)

**18.41.080 Amending and adding rules and regulations.** Said Indiana Natural Gas Corporation shall have the power to make all needful rules and regulations for the collection

of its revenues, the prevention of waste of its property and gas supply, and the conduct and management of business as it may, from time to time, deem necessary. (Ord. ?, S8, June 13, 1967)

**18.41.090 Separability of provisions.** In the event that the Public Service Commission of Indiana or any other body, board, commission or court of competent jurisdiction shall adjudge any provision or provisions of this ordinance invalid or illegal, or direct a change by Indiana Natural Gas Corporation in any matter or thing therein contained, such invalidity or illegality or change shall in no way affect the remaining provisions of this ordinance, or their validity or legality, and this ordinance, in all other respects shall continue in full force and effect, as if said provision or provisions had not been so adjudged invalid or illegal or such change directed. (Ord. ?, S9, June 13, 1967)

**18.24.100 Effective when.** This Ordinance shall take effect and be in force from and after its passage and publication in accordance with law and shall thereafter continue in effect as an indeterminate permit pursuant to statute and under and upon such terms and conditions as prescribed by the Public Service Commission of the State of Indiana. Said Indiana Natural Gas Corporation agrees that within six (6) months from the date of this franchise that it will furnish to the Town of Leavenworth a report showing whether it is or is not feasible to furnish natural gas service as provided herein. If in the opinion of said Indiana Natural Gas Corporation it is not feasible to furnish Natural gas service as provided herein it will forthwith surrender this franchise. If in its opinion it is feasible to furnish Natural gas service as provided herein it shall proceed with due diligence to that end. If, however, Natural gas service is not available as herein provided at the end of two (2) years from the date of acceptance of this franchise the Town of Leavenworth, may terminate said franchise provided such failure is not due to the unavailability of Natural Gas. (Ord. ?, S10, June 13, 1967)

**18.24.110 Publication.** Indiana Natural Gas Corporation shall pay for the publication of this Ordinance. (Ord. ?, S11, June 13, 1967)

**18.24.120 Obligation to terms and provisions.** This Ordinance and all of its terms and provisions shall inure to the benefits of and be obligatory upon the parties hereto and the successors and assigns of the parties, and shall be in full force and effect from and after the date of its being approved and adopted by the Town of Leavenworth. (Ord. ?, S12, June 13, 1967)

## Chapter 18.52

### CABLE TELEVISION FRANCHISE

#### Sections:

<b>18.52.010</b>	<b>Transfer of Franchise Ordinance</b>
<b>18.52.020</b>	<b>Ordinance affirmed</b>
<b>18.52.030</b>	<b>Effective date</b>
<b>18.52.040</b>	<b>Inconsistency</b>
<b>18.52.050</b>	<b>Publication</b>
<b>18.52.060</b>	<b>Consent to assignment</b>

**18.52.010 Transfer of Franchise Ordinance.** Pursuant to the Franchise Ordinance, consent and approval is hereby granted by the Franchise Authority for the transfer and assignment of the Franchise Ordinance by Regional to NewPath. The presiding officer of the Franchise Authority or his designate is hereby authorized to execute the Consent to Assignment/Section 18.52.060. (Ord. 1996-07, S1, Aug. 13, 1996)

**18.52.020 Ordinance affirmed.** All terms and provision of the Franchise Ordinance shall continue in full force and effect. As set forth in the Consent to Assignment, the Franchise Authority consents to the grant by NewPath of a security interest in the Franchise Ordinance to its lenders to secure indebtedness or other obligations incurred by NewPath with respect to the cable television system to be operated by NewPath pursuant to the Franchise Ordinance. (Ord. 1996-07, S2, Aug. 13, 1996)

**18.52.030 Effective date.** The transfer of the Franchise Ordinance shall be effective upon the closing of the sale by Regional to NewPath of the cable television facilities. NewPath shall notify the Franchise Authority of the transfer of the Franchise Ordinance within thirty (30) days of such closing, and provide therewith a copy of the Assignment and Assumption of Franchise to the County by which the Franchise Ordinance was transferred and assigned by Regional to NewPath. (Ord. 1996-07, S3, Aug. 13, 1996)

**18.52.040 Inconsistency.** In the event any of the terms and provisions of any other ordinance or regulation of the Town are inconsistent with the terms and provisions of this Ordinance, the terms and provisions of this Ordinance shall govern and control. (Ord. 1996-07, S4, Aug. 13, 1996)

**18.52.050 Publication.** The Town/City/Township/County Clerk, as applicable, is hereby directed to publish and caption of this Ordinance in an appropriate local official newspaper and to comply otherwise with all applicable notice requirements of law. (Ord. 1996-07, S5, Aug. 13, 1996)

**18.52.060 Consent to assignment.** The Town of Leavenworth, Indiana (the "Franchise Authority") hereby consents to the Assignment and Assumption of Franchise between NewPath Communications, L.C. ("Buyer"), and Regional Cable TV (USA) Inc., ("Seller"),

attached hereto as Exhibit 1 (the "Assignment and Assumption of Franchise"), which provides for the transfer and assignment by the Seller to Buyer of the cable television franchise for the Town of Leavenworth granted by an Ordinance dated 6/12/89, (the "Franchise") in the matter and form set herein.

The Franchise Authority further consents (i) to NewPath's Communications, L.C. collateral assignment of, or grant of a security interest in, the Franchise to NewPath Communications, L.C. lenders to secure indebtedness or other obligations which may be incurred by NewPath Communications, L.C. with respect to the cable television system to be operated by NewPath Communications, L.C. pursuant to the Franchise; and (ii) to the exercise by such lenders of their rights as secured parties in and to the Franchise in the event of a default by NewPath Communications, L.C. in the payment of its indebtedness or the performance of its obligations secured by such security interest; provided, though, that nothing contained herein shall constitute a waiver of any rights of the Franchise Authority to approve any subsequent transfer or assignment of the Franchise.

The Franchise Authority hereby confirms that said cable television Franchise is valid and binding and in full force and effect, that Seller is the present franchisee thereunder and,

The Franchise Authority understands that the execution of the Assignment and Assumption of Franchise by Buyer and Seller, and the assumption by Buyer of the Franchise shall agree to abide all terms, conditions and provisions of the cable television franchise are contingent upon, and shall occur at the time of, the consummation of the Purchase Agreement referred to in the Assignment and Assumption of Franchise. The consent to assignment shall also be contingent upon receipt by the Franchise Authority of a fully executed document citing the Buyer's agreement to faithfully perform and carry out all terms, conditions and provisions of the cable television franchise. (Ord. 1996-07, Consent to Assignment, Aug. 13, 1996)