

ORDINANCE 08- 01

LEEDS CULINARY WATER AUTHORITY ORDINANCE

WHEREAS, The Town of Leeds ("Town") is a municipal corporation, body politic and political subdivision of the State of Utah.

WHEREAS, The Town is empowered pursuant to Utah Code Ann. §§ 10-7-4, 10-8-14 thru 10-8-18 to regulate and control the provision of culinary within the municipal boundaries of the Town.

WHEREAS, for decades previous to the adoption of this Ordinance, the provision of culinary water service to the residents of the Town has been delegated to a single water company known as the Leeds District Waterusers Association ("LDWA").

WHEREAS, the LDWA is a private, non-profit corporation, charged in its By-Laws with the obligation of providing culinary water service to all residents of the Town.

WHEREAS, over the years the LDWA has developed, constructed and otherwise acquired a culinary water source, storage and distribution system throughout the Town.

WHEREAS, in the early 1980's the LDWA placed all of the water rights it owned "in trust" for the Town for the purposes of obtaining quasi municipal status and to avoid the obligation and responsibility of being deemed a "public utility" pursuant to Utah Code Ann. § 54-2-1(15) and thus being regulated by the Public Service Commission of Utah.

WHEREAS, the LDWA has successfully provided culinary water service to the residents of the Town, however over the years various issues and events have arisen which have precipitated the need to have the Town intervene and assert its statutory power to regulate the provision of culinary water service within the Town.

WHEREAS, said issues and events have included, but are not limited to:

- a. Revisions to the LDWA's By-Laws which require new development to physically provide "wet water" or "water in a cup" prior to the LDWA's governing board approval to any proposed development;
- b. The LDWA's governing bodies refusal to approve certain proposed development on the grounds that the applicant will not agree to its "wet water" policy or other exactions or conditions that the Town deems to be unnecessary or unreasonable.
- c. Recent arbitrary increases to user rates for the use of culinary water in excess of a shareholders normal water allocation;

choosing not
d. ~~Refusal by the~~ LDWA's governing board to join in the Regional Water Supply Agreement with the Washington County Water Conservancy District and other local municipalities or make other genuine attempts to secure a long term sources of water supply for Town and its residents,

~~e. The LDWA's refusal or inability to take any steps outlined in the previous sub-paragraph in light of a recent capital facilities plan which it commission that indicates it does not have enough water rights to service all current water connections at its current water allocation prescribed by its By-Laws.~~

f. The LDWA's failure ~~or refusal~~ to report to the Town or the Public Service Commission of Utah regarding its activities, financial affairs, condition of its system and water sources and the reasonableness of its impact fees, and user fees.

g. The LDWA's failure ~~or refusal~~ to comply with the Utah Impact Fee Act (Utah Code Ann. § 11-36-1 *et al*) in setting and administering its connection/impact fee.

h. The LDWA's general usurpation of the Town's inherent power to generally regulate the growth, development, health, safety and general welfare of the Town and its residents.

WHEREAS, based upon the above mentioned, and other reasons, the Town has initiated efforts and conceptually secured the availability of culinary water from alternate sources and intends to provide culinary water service to all areas of the Town unless the Town, in its sole discretion, determines that the provision of culinary water to a certain area is practically or financially impossible or unreasonable and would cause an undue hardship upon a property owner or owners.

WHEREAS, the Town, after careful consideration and study, have determined that revoking any rights and power it has delegated to the LDWA and asserting itself as the sole and exclusive authority for the regulation and provisioning of culinary water within the Town is in the best interests of the health, safety and general welfare of the Town and its residents.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LEEDS AS FOLLOWS:

ORDINANCE 08-_____

LEEDS CULINARY WATER AUTHORITY ORDINANCE

AN ORDINANCE DESIGNATING THE TOWN OF LEEDS AS THE SOLE AUTHORITY FOR THE PURPOSE OF REGULATING AND PROVIDING CULINARY WATER SERVICE TO ALL NEW CONSTRUCTION AND DEVELOPMENT WITHIN THE TOWN'S MUNICIPAL BOUNDARIES; ALLOWING FOR THE DELGATION OF THIS AUTHORITY TO OTHER CULINARY WATER PROVIDERS IN CERTAIN CIRCUMSTANCES AS

DETERMINED BY THE TOWN COUNCIL; PRESCRIBING FOR PENALTIES TO ANY PERSON, ENTITY, GROUP OR ASSOCIATION PROVIDING OR ACCEPTING CULINARY WATER SERVICE SOURCES OTHER THAN THE TOWN INVOLATION OF THIS ORDINANCE.

1. **DEFINITIONS:** The following definitions shall apply to this Ordinance. In the event a term is not defined herein, it shall first be given any meaning set forth in the Town's general ordinance or state law. In the event any term is not defined in any of the preceding sources it shall be given its normal, everyday meaning.

"Culinary Water Service" shall mean the provisioning of culinary water to a residence, structure or property within the municipal boundaries of the Town. Culinary Water Service shall include the acquisition, storage and distribution of the culinary water and the repair, connection and maintenance of any system of wells, tanks lines, pumps, valves, meters or other equipment and materials used in connection with the provisioning of culinary water.

"LDWA" shall mean the Leeds District Waterusers Association, a private non-profit corporation providing culinary water service with in the municipal boundaries of the Town.

"New Development" shall mean any subdivision of land or construction of any residential, commercial or industrial structure or use which would require the separate and distinct provisioning of culinary water service other than that which is already being provided within the Town's municipal boundaries by the LDWA as of the effective date of this Ordinance. *or approved and paid for prior to 01 Jan, 2008*

"Public Utility" shall mean that definition given it by Utah Code Ann. § 54-2-1(15).

"Town" shall mean the Town of Leeds, a municipal corporation and political subdivision of the State of Utah.

"WCWCD" shall mean the Washington County Water Conservancy District, a special service district and political subdivision of Washington County and State of Utah.

2. **DESIGNATION OF CULINARY WATER AUTHORITY.** The Town hereby designates itself to be the sole and exclusive authority to regulate and provide Culinary Water Service to all New Development within the Town's municipal boundaries. Accordingly all New Development must obtain and receive culinary water service from the Town unless the Town, in its sole discretion, determines that the provision of culinary water to a certain area or individual property is practically or financially impossible or unreasonable and would cause an undue hardship upon a property owner, owners or end user. In the event the Town makes such a finding and determination it may authorize a property owner or end user to obtain Culinary Water Service from the LDWA or other culinary water service provider.

3. **REVOCATION OF ANY CULINARY WATER AUTHORITY DELEGATED TO THE LDWA.** The Town revokes and disavows any power or authority it

may have delegated to the LDWA in the past, whether express or implied. Accordingly the Town officially does not recognize any "quasi-municipal" status LDWA may claim.

4. **RESERVATION OF RIGHT TO REQUIRE A FRANCHISE.** The Town reserves the right to seek an administrative ruling from the Public Service Commission of Utah or a declaratory judgment from a court of competent jurisdiction regarding whether or not the LDWA is a Public Utility. In the event it is determined that the LDWA is not a Public Utility, the Town reserves the right to require ~~the~~ LDWA to apply for and obtain a Franchise for the purpose and ability to maintain ~~its private~~ water lines and facilities within the Town's public rights-of-way or on Town property and to pay any associated franchise fee.

5. **PENALTY:** In the event any person, entity or group is found providing Culinary Water Service to any New Development within the Town's municipal boundaries that person, entity or group shall be subject to a fine of \$1,000.00 per day for each day said provisioning occurs. In addition, any person found to have provided Culinary Water Service to New Development shall be guilty of a class B misdemeanor and, upon conviction, subject to all penalties and fines associated therewith. Each day or incident of violation shall constitute a separate offense hereunder.

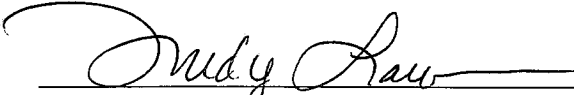
6. **SUPERCEDE PREVIOUS/CONFLICTING ORDINANCE:** This Ordinance supersedes or repeals the provision(s) of any ordinance(s) or resolution(s) that is (are) inconsistent with the provisions of this Ordinance.

7. **SEVERABILITY CLAUSE:** If any part of this Ordinance is held to be illegal, unconstitutional for any reason by a court of competent jurisdiction or is in conflict with Utah State Law the remainder shall not be affected thereby.


8. **EFFECTIVE DATE:** This Ordinance shall become effective immediately upon passage and posting.

PASSED AND ADOPTED by the Leeds Town Council on this 30th day of January 2008

TOWN OF LEEDS


Trudy Law, Mayor

Attest:


Karen Markovich, Town Clerk/Recorder