

TOWN OF KILLINGTON

AN ORDINANCE TO LEVY A SPECIAL ASSESSMENT TO FINANCE THE TOWN OF KILLINGTON SEWAGE SYSTEM ON ANTHONY WAY

Pursuant to the authority of 24 V.S.A., Chapters 87, the written Consents to Assessment authorized therein, and such other statutes as may be applicable, the Board of Selectmen of the Town of Killington, acting as a Board of Sewage Disposal Commissioners, and in its capacity as a Selectboard, as applicable, hereby levys and imposes the following Special Assessment upon each Owner's Property described below, for the construction of a Sewage System:

SECTION I - DEFINITIONS

As used herein, the following terms shall have the following meanings:

(a) Alpine Pipeline Agreement. An agreement required by the Alpine Pipeline Company of an Owner, executed by the Owner and the Alpine Pipeline Company, as a condition precedent to the Owner's Connection of a Building on such Owner's Property to the Public Sewer and/or Discharge to the Public Sewer from the Owner's Property.

(b) Board of Sewage Disposal Commissioners, or Board. The Town Selectboard acting as the Town's Selectboard and as a Board of Sewage Disposal Commissioners under 24 V.S.A. Sections 3506 and 3614, as applicable.

(c) Capacity. The number of people a building is designed to accommodate for its proposed use.

(d) Community Center. A public or private meeting hall, place of assembly, museum, art gallery, library, and uses of a similar nature.

(e) Connection of a Building to the Public Sewer. Includes a direct connection to the Public Sewer, and an indirect connection to a private line or lines discharging to the Public Sewer.

(f) Cost of Construction of the Sewage System. The design of the Sewage System, its construction, the acquisition of land, easements, rights, personal property and equipment necessary or incidental thereto, debt service charges, and all other direct and indirect costs and charges necessary or incidental to the acquisition and construction of such Sewage System.

(g) Craft Shop. A building or portion thereof where hand crafted articles are produced and/or sold.

(h) Debt Instrument. The Town's debt instrument signed or to be signed, being an agreement between the Town of Killington and Kenneth G. Crompton, III and Britt E. Crompton entitled "Anthony Way Sewer Line Construction Agreement", to pay the Cost of Construction of the Sewage System.

(i) Discharge to the Public Sewer. Includes a discharge directly to the Public Sewer, and an indirect discharge to a private line or lines discharging to the Public Sewer.

(j) Dwelling Unit. A building or portion thereof used by one family and providing housekeeping facilities for the family.

(k) Equivalent Residential Unit (ERU). A discharge to the Public Sewer of an amount of sewage equivalent to the amount generated by a three bedroom single family dwelling in a 24 hour period based on the gallons/person/day specified for such a use in Schedule A. Provided, however, that if the number of units purchased by an Owner pursuant to the Owner's Alpine Pipeline Agreement as of the effective date thereof (without regard to any subsequent modifications) differs from the number of ERU's calculated under Schedule A, then the number of ERU's of an Owner shall be deemed to be equal to the number of units purchased by the Owner under the Owner's Alpine Pipeline Agreement.

(l) Family. One or more persons living together in the same dwelling unit and sharing the same kitchen and other facilities as a single housekeeping unit.

(m) Hotel, Motel, Lodge. A building or portion thereof used, advertised, or held out to the public to provide overnight accommodations to the public for compensation, by the renting of rooms or bed or beds within a room or rooms.

(n) Multiple Family Dwelling. A building or portion thereof containing two or more dwelling units, including but not limited to, apartments and condominiums.

(o) Owner. An Owner of record of property in the Town, or of any interest therein, (other than a mortgagee or lien holder), who has executed and filed with the Town, prior to the adoption date of this Ordinance, a Consent to this Special Assessment pursuant to 24 V.S.A. Section 3254, and the successors in title to the Owner's Property described in such Consent.

(p) Owner's Property. A parcel of an Owner located within the Town and described in such Owner's Consent to this Special Assessment; all lands described therein shall be deemed an "Owner's Property".

(q) Person. An individual, corporation, partnership, or any other incorporated or unincorporated entity.

(r) Public Assembly Use. Auditorium, theater, public hall, school hall, meeting hall, church or temple.

(s) Public Sewer. The municipal sewer line of the Sewage System.

(t) Retail Store. A building or portion thereof used for the sale of goods or services to the general public.

(u) Route 4/Killington Road Sewage System. A Town of Killington sewage system to which the Sewage System is connected. Separate Town approval under other Town ordinances to connect to the Route 4/Killington Road Sewage System is a condition precedent to the Owner's Connection of a Building on such Owner's Property to the Public Sewer and/or Discharge to the Public Sewer from the Owner's Property.

(v) School. A building or portion thereof used as a daycare center, or for the teaching of students.

(w) Sewage System. A municipal sewer line or lines of the Town along or in the Anthony Way right of way, including associated sewer mains over Town easements on lands of others, and all associated manholes, pump stations, wires, and other related facilities.

(x) Single Family Dwelling. A building containing only one dwelling unit.

(y) Town. Town of Killington.

(z) Used. Includes and shall be considered as followed by "or intended, arranged, or designed to be used."

(aa) Year. The year April 1 - March 31; "annual" shall refer to such year.

SECTION II - APPORTIONMENT OF COST OF CONSTRUCTION OF SEWAGE SYSTEM

1. Apportionment of Construction Cost

The Cost of Construction of the Sewage System shall be apportioned among all the Owners. The amount of the Debt Instrument, including interest to be paid thereon, if any, shall establish the Cost of Construction of the Sewage System.

2. Cost of Equivalent Residential Units

The cost (Owner Assessment) of one (1) Equivalent Residential Unit of an Owner shall be Ten Thousand Dollars (\$10,000.00). The Owner Assessment shall be paid as follows:

- (a) Portion to be Paid Upon Submission of Consent Agreement.
This portion representing \$1,000.00 per ERU shall be paid with the submission of the Owner's Consent to this Special Assessment.
- (b) Portion to be Paid Upon Acceptance of Sewage System.
This portion representing \$9,000.00 per ERU shall be paid within fifteen days of notice by the Town of acceptance of the Sewage System for use.

3. Reserve Fund

Any amounts received in any Year by the Town from sources which are not Town Owner Assessments pursuant to this Special Assessment may in the sole discretion of the Board be held, invested and reinvested by the Town in a special Reserve Fund, to be used at such time or times as the Board in its sole discretion deems necessary or advisable to repair, replace, reconstruct, extend, add capacity to, improve the capability of, or otherwise improve the Sewage System.

SECTION III - DISCHARGE OF EQUIVALENT RESIDENTIAL UNITS

1. Method of Establishing Number of ERU's Discharged.

The amount of sewage discharged in any 24 hour period from buildings on the Owner's Property to the Public Sewer shall be measured in Equivalent Residential Units. The number of Equivalent Residential Units discharged from a building in any 24 hour period shall conclusively be presumed to be that number as calculated in accordance with Schedule A, which is attached and incorporated by reference, depending upon the purpose for which the building is used, and notwithstanding that actual flows may be less. If different portions of a building are used for different purposes, the ERU's discharged from each portion of the building shall be separately calculated, depending on the purpose for which such portion is used, and the total ERU's from all portions combined shall determine the building's total ERU discharge. In the event a building use not specified in Schedule A is proposed, or there is a dispute as to the number of ERU's discharged from a building, the Board upon notice and hearing shall determine such building's ERU discharge.

2. Discharge Limitations.

An Owner shall not:

- (a) Connect or permit the Connection of any Building on the Owner's Property to the Public Sewer, or change the use of any building on the Owner's Property connected to the Public Sewer, or extend or enlarge any such building or increase the capacity thereof, if the amount of sewage to be discharged after such connection, use, change, extension, enlargement or increase in capacity (expressed in ERU's as provided herein), when added to the amount of sewage discharged to the Public Sewer from other buildings on the Owner's Property would exceed the total ERU's specified in such Owner's Consent to this Special Assessment with respect to such property. The foregoing shall not apply if and to the extent the Owner pays the connection fee for such additional ERU's under other Town ordinances.
- (b) Connect or permit the Connection of any Building not on the Owner's Property to the Public Sewer.
- (c) Connect or permit the Connection of any Building on the Owner's Property to the Public Sewer until the Owner has furnished to the Town an Alpine Pipeline Agreement and an approval to connect to the Town Route 4/Killington Road Sewage System, nor Discharge or permit a Discharge to the Public Sewer (i) unless an Alpine Pipeline Agreement and an approval to connect to the Town Route 4/Killington Road Sewage System relating to such Discharge are in effect or (ii) during any period of default under such Agreement beyond any applicable grace period.

3. Reduction of Number of Equivalent Residential Units

Upon approval of the Board, the number of Equivalent Residential Units for which an Owner or Owner's Property is assessed may be reduced. Such approval shall only issue on the following terms:

- (a) A written application, on such form as the Board may prescribe, shall be filed with the Board. The application shall identify each building then on the Owner's Property and specify the number of ERU's then being discharged to the Public Sewer from each building. The applicant shall also furnish the Board with such other information as may reasonably be required to process the application.
- (b) Applications to accomplish payment of the Debt Instrument shall have first priority.
- (c) Each application thereafter shall be considered and approved in the order of its filing priority.

(d) A reduction approved by the Board shall be effective in the year following the year of approval.

(e) A reduction shall not affect or reduce any delinquency, or interest or collection fees due thereon.

(f) A reduction shall in no event exceed the difference between the number of ERU's described in the Owner's Consent to this Special Assessment and the number of ERU's being discharged from the buildings on the Owner's Property described therein.

(g) A reduction shall not be retroactive unless authorized by the Board.

(h) Fractional ERU reductions are not permitted.

(i) The Board may, in its sole discretion, in addition to the uses of the Reserve Fund specified in Section II(3), use such Fund to make retroactive adjustments with respect to ERU reductions. Such adjustments, if made, shall be limited to the Cost of an Equivalent Residential Unit with respect to such reduced ERU's and no interest shall be payable thereon. Such adjustments, if made, shall be made at and as of the time of approval of the reduction and no claim may be made for a retroactive adjustment after the approval of the reduction.

(j) Upon the Board's approving a reduction, the discharge limitations in Section III (2) as to the Owner or Owner's Property shall be reduced accordingly.

4. Entitlement to Connection

An Owner who is in compliance with this ordinance shall be entitled to connect buildings on the Owner's Property to the Public Sewer which have ERU discharges equal the number specified in such Owner's Consent to Special Assessment, subject to other applicable Town ordinances.

5. Termination of Service by Alpine Pipeline Company Due to Owner's Default.

The Town shall not be liable to any Owner for damages or losses any Owner sustains if the Owner is unable to Discharge to the Public Sewer due to such Owner's default in the performance of any agreement between such Owner and the Alpine Pipeline Company. Each Owner shall defend, indemnify, and hold the Town harmless for any damages, losses, liabilities, cost, and expenses (including reasonable attorneys fees) the Town sustains or incurs as a result of any such default.

SECTION IV - LIEN STATUS OF ASSESSMENT

The assessments to which the Owner hereby consents shall constitute a lien on the Owner's Property in the same manner and to the same extent as taxes assessed on the grand list of a municipality, and all procedures and remedies for the collection of taxes shall apply to such assessments, collection fees and interest.

SECTION V - BILLING AND APPLICATION OF LIEN IN THE CASE OF SUBDIVISION OR COMMON INTEREST COMMUNITY

This section is intended to provide, in the situation where an Owner's Property is subdivided, or all or a portion subjected to a Common Interest Community (as defined in the Vermont Common Interest Ownership Act, 27A V.S.A. Chapter 17, as amended, (the "Act")), for a proportionate allocation of ERU's among the various successors in title to the Owner's Property, including the Owners of individual Units (as defined in the Act).

1. Allocation of Portion of ERU's to Transferred Property or Units

If a portion of an Owner's Property is transferred, or all or a part of an Owner's Property subjected to the Act, upon application to and approval of the Board, only the specified number of ERU's set forth below assessed on the Owner's Property shall be a lien on the transferred portion or individual Units. Conversely, the specified number of ERU's shall not thereafter be a lien on those remaining parts of the Owner's Property not transferred or subjected to the Act. Such approval shall only issue on the following terms:

(a) Application for Allocation

A written application, on such form as the Board may describe, shall be filed with the Board. The application may be made before the transfer by the transferor or thereafter by the transferor and transferee, or by the Declarant before the land is subjected to the Act, or thereafter by any individual

Unit owners. In the case of a transfer of a portion of the Owner's Property, the application shall specify the number of ERU's to be allocated to the transferred portion. In the case of an application by a Declarant (as defined in the Act), the application shall specify the purpose for which each Unit is to be used, and the number of ERU's to be allocated to the property subjected to the Act. In the case of an application by an individual Unit owner, the same information shall be given for each Unit. The application shall include a good and sufficient description of the portion transferred, or the land subjected to the Act, the number of acres involved, and such other information as the Board may require. A copy of the instrument of transfer, or if a Common Interest Community is involved, the Declaration (as defined in the Act), shall be attached.

(b) Allocation Effective Date

The allocation described above shall be effective for the year following the year of transfer or filing of a Declaration, or for the year following the year in which the application is filed, whichever is later.

(c) Limitation on ERU Discharge after Approval

Upon such Board approval, the number of ERU's discharged to the Public Sewer from a transferred portion or Unit shall not exceed the number set forth in the Board approval.

2. Rule as to Time Shared Estates

In the case of ownership of a Unit or other property for a specified period of time ("time sharing", so-called), all persons who own of record such an estate in such Unit or property shall be deemed Owners of record of such Unit or property, in the same manner as tenants in common or joint tenants are deemed Owners of record, and all such persons shall be billed and be responsible, attributable to the entire Unit or property as its Owners of record. The Town shall not be required to allocate any portion of ERU's or assessments among such Owners on a time basis, and any assessment shall be a lien on the entire Unit or property, regardless of any division of title on a time basis. Alternatively, at the Town's option, the Town may bill the association, corporation, or whatever entity is authorized by the Declaration to manage the Units, pursuant to 32 V.S.A. Section 3619, as amended, and such association, corporation or entity shall be responsible for all payments and the Town shall have a lien for collection of the same in the same manner as for the collection of taxes and may proceed in the same manner, all as authorized by 32 V.S.A. Section 3619 (c) as amended.

SECTION VI - FEES, DELEGATION TO ADMINISTRATIVE OFFICER

The Board may prescribe reasonable fees for filing any application specified herein. The Board may delegate to an Administrative Officer the processing of applications under this Ordinance, and the granting or denial thereof; any person aggrieved by a decision of the Administrative Officer may appeal to the Board.

SECTION VII - APPLICABILITY OF OTHER LAWS AND REGULATIONS

Any discharge to the Public Sewer or Sewage System referred to herein by the Owner shall be subject to all applicable federal, state, and municipal laws, and lawful ordinances and regulations, now or hereafter enacted, and applicable Sewage System permits and approvals.

SECTION VIII - DISPUTED ISSUES

The Board shall decide any dispute arising as to any issue herein after notice and hearing.

SECTION IX - CONSTRUCTION WITH OTHER LAWS AND ORDINANCES

In accordance with 24 V.S.A. Section 3256, nothing contained herein shall prohibit the financing of the Sewage System or any improvement thereto by other means.

SECTION X - BOARD'S AUTHORITY TO ADOPT RULES AND REGULATIONS

The Board may adopt reasonable rules and regulations to clarify or implement the provisions of this Special Assessment.

SECTION XI - NOTICES

All notices and billings shall be deemed delivered by the Town when deposited in the United States Mail, first class, postage prepaid.

SECTION XII - SEVERANCE CLAUSE

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Special Assessment, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Special Assessment, or any part thereof

SECTION XIII - SCHEDULE A

Nothing contained in this Schedule A shall be deemed to alter the prohibition in each Owner's Consent to this Special Assessment against consenting to assessment to fractional ERU's.

FLOW QUANTITIES

<u>ESTABLISHMENT</u>	<u>GALLONS/PERSON/DAY</u> (unless otherwise noted)
Assembly Areas, Conference Room.	5
Airports (per passenger).	5
Bathhouses and Swimming Pools	5
Bowling Alley (no food service)(per lane).	75
Camps:	
Campground with central comfort stations (4 people/site)(per site).	100
With flush toilets, no showers (4 people/site)(per site) .	75
Construction camps (semi-permanent)	50
Day camps (no meals served)	15
Resort Camps (night & day) with limited plumbing .	50
Cafeterias (per seat).	50
Churches:	
Sanctuary seating x 25 %	5
Church suppers	8
Cottages	50
Country Clubs (per resident member)	100
Country Clubs (per non-resident member present)	25
Day Care Centers:	
Without meals:	15
With one meal:	20
With two meals:	25
Dentists:	
Staff Member	35
Per Chair	200
Doctor's Office:	
Staff Member	35
Patient	10

ESTABLISHMENTGALLONS/PERSON/DAY
(unless otherwise noted)

Dwellings:	
Staff Member	75
Boarding Houses	50
Addition for non-resident boarders	10
Multiple Dwellings (condominiums, townhouses, clustered housing) (minimum 2 people/bedroom)	75
Rooming Houses (per occupant bed space)	40
Single Family Dwellings (per bedroom)	150
Factories (gallons per person, per shift, exclusive of industrial waste)	15
Gyms:	
Participant	10
Spectator	3
Hairdressers:	
Operator	10
Per Chair	150
Hospitals (per bed space)	250
Hotels with Private Baths (per person sleeping space)	50
Institutions other than hospitals (per bed)	125
Laundries, self-service (gallons per machine)	500
Mobile Home Parks:	
For disposal systems serving 4 or fewer trailers (per space)	450
For disposal systems serving 5 or more trailers (per space)	250
Motels with bath, toilet* (per person sleeping space)	50
Picnic Parks (toilet wastes only/picnicker)	5
Restaurants (toilet and kitchen wastes/seat, including restaurant and bar seats	30
Additional per seat for restaurant serving 3 meals per day	15
Restaurants (fast food - see cafeterias	
Schools:	
Boarding	100
Day, without gyms, cafeterias, or showers	15
Day, with gyms, cafeterias, and showers	25
Day, with cafeteria, but without gyms or showers	20
Service Stations (first set of gas pumps)	500
(each set thereafter)	300
Sewer Line Infiltration (where applicable) 300 gal/in pipe/dia/mile/day	

<u>ESTABLISHMENT</u>	<u>GALLONS/PERSON/DAY</u> (unless otherwise noted)
**Shopping Centers/Stores:	
Large Dry Goods	5 GPD/100 ft ²
Large Supermarkets with meat department without garbage grinder	7.5 GPD/100 ft ²
Large Supermarket with meat department with garbage grinder	11 GPD/100 ft ²
Small Dry Good Stores (in shopping centers)	100 GPD/store
Subdivision per lot (or 150 per bedroom, whichever is greater	450
Theaters:	
Movie (per auditorium seat)	5
Drive-in (per car space)	5
Travel Trailer Parks without individual water & sewer hookups	
Comfort Station (per trailer space)	90
Dumping Station (per trailer space)	35
Travel Trailer Parks with individual water & sewer hookups (per trailer space)	125
Veterinary Clinic (3 or less doctors):	
without animal boarding	750/clinic
with animal boarding	1,500/clinic
Workers:	
Construction (at semi-permanent camps)	50
Day at schools and offices (per shift)	15

Adopted this 24th day of MARCH, 2008

Town of Killington
Board of Selectmen