

ORDINANCE #1205

AN ORDINANCE AMENDING ORDINANCES #1194 and #1202 CONCERNING WATER RIGHTS DEDICATION REQUIREMENTS AND THE TOWN OF BERTHOUD DEVELOPMENT CODE SECTIONS 30-1-116, 30-2-103, 30-2-109, 30-2-112, 30-2-119 AND 30-10-105.

BE IT HEREBY ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, COLORADO:

INTRODUCTION

WHEREAS, the Town of Berthoud previously adopted Ordinance #1194, as amended by Ordinance No. 1202, commonly referred to as the "Town of Berthoud Water Dedication Ordinance"; and

WHEREAS, the Board of Trustees of the Town of Berthoud has identified certain amendments and modifications to such Ordinances and the Town's Development Code which will clarify disputes which have arisen relating to their application; and

WHEREAS, the modifications shall be accomplished by amendment of certain provisions in Ordinance #1194 and Ordinance #1202 as codified in the Town of Berthoud Development Code in Section 30-10-105; and

WHEREAS, the modifications shall also be accomplished by amendment of certain provisions in the Town of Berthoud Development Code in Chapters 30-1 and 30-2.

PART I

IT is therefore ordained by the Board of Trustees of the Town of Berthoud that the following Ordinance amendments are adopted, to the "Town of Berthoud Water Dedication Ordinance," codified in the Town of Berthoud Development Code at Section 30-10-105:

Sections:

- 1 TITLE
- 2 INTERPRETATION
- 3 DEFINITIONS
- 4 AGREEMENT TO COMPLY WITH ORDINANCE AND DEVELOPMENT CODE REQUIREMENTS
- 5 OTHER WATER SYSTEMS
- 6 OBTAINING WATER
- 7 CASH IN LIEU OF WATER DEDICATIONS FOR POTABLE PURPOSES
- 8 WATER DEDICATION FOR NON-POTABLE PURPOSES

9 CERTIFICATIONS OF WATER DEDICATION CREDITS
10 PRICES FOR CASH IN LIEU OF WATER DEDICATION

1 TITLES

This chapter shall be known as the TOWN OF BERTHOUD WATER DEDICATION ORDINANCE.

2. INTERPRETATION

This chapter shall be interpreted and construed so as to effectuate its general purposes to make uniform the terms and conditions for the dedication of water rights and cash in lieu of water dedication to the Town for development within the Town. However, this chapter shall not be applied in a manner inconsistent with annexation agreements in existence prior to the effective date hereof.

3 DEFINITIONS

Whenever in this Ordinance, the words hereinafter defined or construed in this Section are used, they shall, unless the context requires other uses, be deemed to have the following meanings:

(A) "Accessory Dwelling" means an apartment integrated within a single-family dwelling, or located in a detached accessory building, such as carriage houses or agricultural-type outbuildings, located on the same lot as single-family dwellings. Accessory dwellings shall be limited to eight hundred fifty square feet in floor area. There shall not be more than one accessory dwelling located on a lot in addition to the single-family dwelling.

(B) "Annexation" means the act of attaching, adding, joining, or uniting a parcel of land to the legal entity known as the Town of Berthoud.

(C) "Cash in lieu of water dedication" means a separate and distinct fee from water taps as required in Section 7 hereof and related sections of this Code, which fee shall be utilized primarily to acquire water rights and necessary facilities for all beneficial uses within the Town. The Town shall issue a Certification of Water Dedication Credits for cash in lieu of water dedication payments for future development in the Town.

(D) "Certification of Water Dedication Credits" means a certificate issued by the Town for raw water credits in exchange for cash in lieu of water dedication payments or water rights dedications for future development in the Town.

(E) "CBT Unit" means a Unit of the Colorado Big Thompson Project. A CBT Unit shall be defined to have a firm yield of 0.6 acre feet.

(F) "Change in Land Use" means a change in the purpose or activity for which a particular piece of land or its buildings is designed, arranged or intended or for which it is occupied or maintained as provided in the zoning regulations for the zone district in which the land is located which change requires water resources.

(G) "Conveyance of water rights" means the process by which legal title to water rights are transferred by appropriate deed, stock assignment, allotment contract or other record transfer.

(H) "Dedicate" or "dedication" means to appropriate an interest in land or water rights to some public use, made by the owner, and accepted for such use by or on behalf of the public.

(I) "Development" means any change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on a tract of land, a material increase in the intensity and impacts of a development, the installation of landscaping within a public right of way, when installed in connection with a development of adjacent property and any man-made change to improved or unimproved real estate which requires additional water resources.

(J) "Dwelling unit" means any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking, and sanitation, as required by the International Building Code or the International Residential Code, as locally amended.

(K) "Extension of water service" means any extension of the Town water service for which a tapping charge is assessed or any increase in Town water service resulting from a Change in Land Use.

(L) "Native Seed Area" means an area that is planted using broadcast native or drought-tolerant seed mix, resulting in a drought-tolerant turf. These areas have a water dedication requirement of 0.8 acre-feet per acre.

(M) "Natural Area" means an area that (a) is appropriately vegetated and free of weeds; (b) is capable of maintaining the existing vegetation without irrigation; (c) has been dedicated to and accepted by the Town; and (d) is a wetland under the criteria in the Wetlands Delineation Manual utilized by the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency in effect at the time of dedication to the Town. All Natural Areas shall be encumbered by a conservation easement. Natural Areas do not require any irrigation. In order to qualify as a Natural Area, the Developer must pay the Town's fees and expenses incurred in determining whether the area is a wetland and appropriately vegetated, and the Natural Area must be accepted by the Town at the Town's sole discretion by and through the Town Administrator.

(N) "Open Water" means a body of water, such as a pond or reservoir, whether existing or created and whether for purposes of water storage, aesthetic, or recreation, that has an adequate physical and legal water supply to maintain the open water condition year round, and that has been accepted by the Town for Open Water land use.

(O) "Owner" shall be any person owning water using property and/or any person owning real property either corporeal or incorporeal, connected or not connected to the Town water system.

(P) "Person" shall include any individual, partnership, association, organization, firm, district, corporation, group or other legal entity of any nature, public or private.

(Q) "Phase" means a portion of property that is being platted or has been platted.

(R) "Raw Water Credit" means the number of S.F.E.s for which dedication credits are certified by the Town in exchange for cash in lieu of water dedication payments or water rights dedications to the Town.

(S) "Single Family Equivalent Unit" ("SFE" or "S.F.E.") means a number related to the volume of water necessary to meet the demand and use requirements including systems losses and consumptive use requirements, of an average single family dwelling unit which is defined herein as 0.4 acre feet. An S.F.E. shall be defined as 0.4 acre feet for all purposes. The S.F.E. unit value assigned to such average dwelling unit is 1.0.

(T) "Sufficient priority" means that a water right has a date as of which it is entitled to use water in relation to other water rights deriving their supply from the same source which is sufficiently senior that it may reasonably be expected to provide a dependable water supply for the requirements of this Ordinance. Factors to be considered in making this determination shall include, but not by way of limitation, the appropriation date and adjudication date of the water right, the decreed use(s), the historical use of the water right, the physical flow available, and the administrative practices of the office of the State Engineer.

(U) "Supplemental Irrigation Water" means additional potable water which will be required for irrigation at times when water is not available through a non-potable irrigation system.

(V) "Town" means the Town of Berthoud, Colorado, or the Town of Berthoud acting by and through a water activity enterprise owned by the Town of Berthoud.

(W) "Town Administrator" means the Town Administrator of the Town of Berthoud, Colorado.

(X) "Town Board" means the Town Board of Trustees of the Town of Berthoud, Colorado.

(Y) "Town water service" means treated water service or non-potable water furnished by the Town of Berthoud, Colorado.

(Z) "Transfer of water rights" means the conveyance of legal title to water rights to the Town of Berthoud, Colorado.

(AA) "Water Court Transfer Fee" means the cost of court filing fees, publication fees,

professional fees and other reasonable and customary costs associated with required proceedings in the Water Court for the Town to make full and lawful use of water rights dedicated to or acquired by the Town for use in its municipal water system.

(AB) "Water right" means a decreed right to use in accordance with its priority a certain portion of the waters of the State by reason of the appropriation of the same. It shall include both direct flow and storage rights. Water right shall also be used in the context of this Ordinance to include allotment contracts with the Northern Colorado Water Conservancy District and its Municipal Subdistrict.

4 AGREEMENT TO COMPLY WITH ORDINANCE AND DEVELOPMENT CODE REQUIREMENTS

No person may use water from the Town's water utility or provide non-potable water to new development within the Town unless such person agrees to abide by all provisions of this Ordinance, the Town's Development Code, all other applicable ordinances of the Town, and all the rules and regulations of the Town pertaining to the water utility and water utility services. Such agreement to abide by all the provisions of this Ordinance and the Development Code shall include the reasonable right of an authorized Town representative to enter upon the water user's property and to gain access to a building or structure for inspection purposes as set forth in this Ordinance. Acceptance of water service from the Town shall be deemed to constitute such agreement on the part of the water user.

5 OTHER WATER SYSTEMS

No person shall operate, own, manage, control or possess a commercial water system obtaining its water supply from any source for the purpose or with the effect of distributing water therefrom to any water using property or water-using unit for any development within the Town approved after the adoption of this Ordinance without first entering into an agreement therefore with the Town in the manner provided by, through, and under the laws of the State of Colorado.

6 OBTAINING WATER

(A) OTHER WATER SOURCES: Except as the Town Board may otherwise by appropriate resolution allow, no person residing or situated within the Town corporate boundaries shall use or obtain water for usual and ordinary water use purposes for any development within the Town approved after the adoption of this Ordinance except (1) by, through and from the Town; or (2) through other systems specifically approved by the Town in writing.

(B) OTHER WATER SOURCES WITHIN TOWN OF BERTHOUD'S SYSTEM: No person or owner shall in any way, at any time connect or introduce water in, to, or with the Town water system, without the Town's previous written approval.

7 CASH IN LIEU OF WATER DEDICATIONS FOR POTABLE PURPOSES

(A) **INTENT AND PURPOSE:** It is the intent and purpose of this Ordinance to require the dedication of CBT Units or the payment of cash in lieu of water dedication for all potable uses. For non-potable uses, a person may elect to either pay such cash in lieu of water dedication or dedicate water rights to the Town. Any payment of cash in lieu of water dedication hereunder or dedication of water rights shall be sufficient to satisfy any new or additional demands for Town water service resulting from the extension of water service, or any Change in Land Use, within or outside the limits of the Town, which will require new or additional water supply from the Town, and thereby to assure an adequate and stable supply of water to all Town water users, to ensure the financial stability of the Town water utility, and to promote the general welfare of the public.

(B) **WATER RIGHT DEDICATION REQUIREMENT:** It is not the intent of the Town to allow the recalculation of water dedications for existing subdivisions or to increase the water rights requirements for subdivisions for which a final plat has already been approved as of the effective date of this Ordinance. The requirements herein shall apply to all new development, unless otherwise agreed to in an applicable annexation or development agreement with the Town.

(1) From and after the effective date of this Ordinance, any person who seeks approval of any of the following:

- (a) an extension of water service;
- (b) subdivision;
- (c) any Change in Land Use, within or outside the limits of the Town, if such Change in Land Use will increase the demand for Town water service;

shall comply with this Ordinance and the Town's Development Code.

(C) **REQUIRED CASH IN LIEU OF WATER DEDICATION:** Cash in lieu of water dedication or dedication of CBT Units shall be required for all potable uses.

(D) **SFE DETERMINATIONS:** The number of SFE's required for development shall be determined by the Town in accordance herewith. All single family dwelling units shall be assigned an SFE value of 1.0, all duplexes shall be assigned an SFE value of 2.0 and all accessory units shall be assigned an SFE value of 0.5, except as provided herein. Single family dwellings and duplexes on lots sized between 12,000 square feet and 18,000 square feet shall be assigned SFE values of 1.25 and 2.5 respectively. Single family dwellings and duplexes on lots in excess of 18,000 square feet shall require dedication of 0.5 SFE's and 1.0 SFE's respectively for indoor use and the number of SFEs necessary for outdoor irrigation shall be determined at Town staff's sole discretion, with final approval by the Town Administrator. In no event shall the total combined indoor and outdoor uses for single family homes and duplexes on lots in excess of 18,000 square feet be less than 1.25 SFE's and 2.5 SFE's respectively.

(E) **CASH IN LIEU OF WATER DEDICATION FOR PHASES OF DEVELOPMENT:** Prior to issuance of the first building permit for an approved development

with 7 dwelling units or more, or commercial use with potable water requirements of 7 SFE's or more, the person developing said development shall provide the required cash in lieu of water dedication or dedicate CBT Units to the Town for the Phase of the development at which said building permit is to be issued. If said Phase has more than 50 dwelling units or 50 SFE's for commercial use, cash in lieu of water dedication shall be required for a minimum of 50 SFE's. In such case, no additional building permits shall be issued until such time as cash in lieu of water dedication are paid for the lesser of 50 SFE's, the remainder of said first Phase of development or the next Phase of development. In addition, any person may choose to pay cash in lieu of water dedications for a Phase of a subdivision with less than 7 dwelling units or a commercial development with less than 7 SFE's prior to issuance of the first building permit, at the price set forth in Section 10 hereof.

(F) CASH IN LIEU OF WATER DEDICATION FOR INDIVIDUAL BUILDING PERMITS: If a development requires less than 7 SFE's of water for potable uses, cash in lieu of water dedication shall be allowed to be paid for each building permit prior to issuance of said permit in accordance with Section 7(H) hereof.

(G) CASH IN LIEU OF WATER DEDICATION FOR IRRIGATION: Prior to issuance of a Town Stormwater Discharge Permit for a Phase of a development, the person developing the property shall pay cash in lieu of water dedication or dedicate CBT Units to the Town necessary for the irrigation of parks, open space, golf courses, playing fields and similar areas. A person may also elect to dedicate water rights for non-potable irrigation as set forth in Section 8 below.

(H) PRICE OF CASH IN LIEU OF WATER DEDICATION:

- (1) The price per SFE for developments in which cash in lieu of water dedication are paid pursuant to Section 7(E) above is set forth in Section 10 hereof.
- (2) The price per SFE for cash in lieu of water dedication pursuant to Section 7(F) above shall be based upon all costs of acquisition of CBT Units based upon a yield of 0.6 acre feet per CBT Unit and average costs of CBT Units as determined by the Town Administrator based upon the terms of sales which are available to the Town.
- (3) The price per SFE of cash in lieu of water dedication for dwelling units with no outdoor irrigation from the water taps for said dwelling units shall be based upon a requirement of 0.5 SFE's (0.2 acre feet) per dwelling unit, as set forth in Section 10 hereof. This includes dwelling units in developments with all irrigated areas served by a separate irrigation tap.
- (4) Except as set forth in Section 7(D) above regarding single family homes, duplexes and accessory units, a person developing a property shall pay cash in lieu of water dedication or dedicate CBT Units for irrigation with potable water based upon landscaping plans submitted to the Town in accordance with the Berthoud Development Code, Section 30-2-112, applying the following irrigation demands:
 - (1) zero irrigation demand (0 SFE's) per acre for Natural Areas, Open Water and

impervious surfaces; (2) a demand of 0.8 acre-feet (2 SFE's) for Native Seed Areas; (3) a demand of 3.0 acre feet (7.5 SFE's) per acre for lawn grass, which shall include, but shall not be limited to playing fields, parks, turf areas within golf courses and similar situations; and (4) a demand of 1.33 acre feet (3.325 SFE's) per acre for non-turf vegetation except Natural Areas and Native Seed Areas, including but not limited to areas planted with trees, shrubs, flower beds, and low water use ground cover. . The Town shall analyze the landscaping plans and the acreages, which analyses shall be paid for by the person developing the property. The person developing the property may also submit a written analysis by a qualified landscape architect or an irrigation specialist sufficient to allow the Town to fully evaluate the probable water demand and consumption for irrigation uses for the development. In the event that a person elects to submit a written analysis, the Town shall review said analysis, which analysis shall be paid for by the person developing the property. The Town Administrator shall have the authority to make all final determinations of said irrigation water requirements. The price for cash in lieu of water dedication for irrigation with potable water is set forth in Section 10 hereof.

(5) The price of cash in lieu of water dedication for commercial use shall be based upon a calculation of the SFE's required to provide water service for said commercial use multiplied by the applicable price set forth in Section 10 hereof. All commercial uses shall require a minimum of 0.5 SFE's.

8 WATER RIGHTS DEDICATIONS FOR NON-POTABLE PURPOSES

(A) **WATER DEDICATION REQUIREMENTS:** A person developing a property shall pay cash in lieu of water dedication or dedicate water rights for irrigation with non-potable water based upon a requirement of 0.5 SFE's (0.2 acre-feet) per single-family detached dwelling unit and 1.0 SFE (0.4 acre-feet) per duplex, except as provided herein. Single family dwellings and duplexes on lots sized between 12,000 square feet and 18,000 square feet shall be assigned an SFE value for irrigation of 0.75 and 1.5 respectively. Single family dwellings and duplexes on lots of excess of 18,000 square feet shall require a minimum of 0.75 and 1.5 SFE's for irrigation respectively and such additional water necessary for outdoor irrigation as determined by the Town's staff, with final approval by the Town Administrator. All other properties requiring outdoor irrigation shall require cash in lieu of water dedication or dedication of water rights in accordance with this Section 8 based upon landscaping plans submitted to the Town in accordance with the Berthoud Development Code, Section 30-2-112 and based on the following irrigation demands: (1) zero irrigation demand (0 SFE's) per acre for Natural Areas, Open Water and impervious surfaces; (2) a demand of 0.8 acre-feet (2 SFE's) per acre for Native Seed Areas; (3) a demand of 3.0 acre feet (7.5 SFE's) per acre for lawn grass which shall include, but shall not be limited to playing fields, parks, turf areas within golf courses and similar situations in which irrigation water is supplied through a separate non-potable irrigation tap or system; and (4) a demand of 1.33 acre feet (3.325 SFE's) per acre for non-turf vegetation except Natural Areas and Native Seed Areas, including but not limited to areas planted with trees, shrubs, flower beds, and low water use ground cover. The Town shall analyze the landscaping plans and the acreages, which analyses shall be paid for by the person developing the property. The person developing the property may also submit a written analysis by a qualified landscape architect or irrigation

specialist sufficient to allow the Town to fully evaluate the probable water demand and consumption for irrigation uses for the development. In the event that a person elects to submit a written analysis, the Town shall review said analysis, which analysis shall be paid for by the person developing the property. The Town Administrator shall have the authority to make all final determinations of said irrigation water requirements. The price of cash in lieu of water dedication for irrigation with non-potable water is set forth in Section 10 hereof.

(B) **WATER DEDICATION FOR AUGMENTATION PURPOSES:** The person dedicating any feature to the Town that requires augmentation or replacement water shall be solely responsible for any ongoing water augmentation or replacement obligations that may be required by dedicating to the Town an adequate amount of water to replace out-of-priority evaporative losses and paying all costs associated with the adjudication of a Plan for Augmentation, which amount Town staff determines, in its sole discretion, with final approval of the Town Administrator and with the assistance of consultants and/or attorneys as needed, on a case-by-case basis.

(C) **WATER DEDICATION ALTERNATIVES:** A person who will be developing or using a non-potable irrigation system may elect to pay cash in lieu of water dedication based upon the prices set forth in Section 10 hereof. A person may also elect to dedicate water rights in accordance with this Section 8 for use within a non-potable system.

(D) **TIME FOR NON-POTABLE WATER DEDICATION:** Prior to issuance of a Town Stormwater Discharge Permit for a Phase of development, a person shall dedicate all water rights and pay all cash in lieu of water dedication including supplemental irrigation water for non-potable irrigation of parks, open space, golf courses, playing fields and similar areas.

(E) **WATER RIGHTS DEDICATIONS:** In cases where a person desires to dedicate water rights rather than paying cash in lieu of water dedication for use within non-potable irrigation systems, a written agreement with the Town shall be required and the following requirements shall apply.

(1) **Water Sources.** The amount and suitability of a given water right necessary to

provide firm yield water shall be determined by the Town at its sole discretion. The person dedicating water rights for non-potable purposes shall pay for an analysis by the Town through a qualified water engineer with supporting data which shall include the following:

(a) the quantity and quality of the water which will be delivered pursuant to said water rights;

(b) a calculation of the volume of water which the non-potable system will be able to provide on a monthly basis;

(c) the amount of potable supplemental irrigation water which will be required when water under non-potable water rights is not available;

(d) the amount of required water storage, if any;

- (e) the proposed use of the water rights through the proposed facilities;
- (f) the amount and suitability of a dry up covenant to change the use of said water rights in Water Court, as necessary;
- (g) compliance with Chapter 30-2-130 hereof, and
- (h) such other analysis as the Town deems necessary.

The person dedicating water rights shall also pay for an analysis by the Town by an attorney who specializes in water law as to whether the use of the non-potable water as it is presented will be in full compliance with the adjudicated usage of the decreed water rights, or will need a change in the use of the water rights.

- (2) Handy Ditch Shares. The amount of water for which a person will receive credit relative to the shares in the Handy Ditch Company ("Handy") will be based upon four and four-tenths (4.4) acre feet per share if the historic use of the specific shares to be dedicated support said yield at the Town's sole discretion pursuant to Section 8(D)(1) above.
- (3) CBT Units. The amount of water for which a person will receive credit relative to a CBT Unit shall be 0.6 acre feet per Unit. The analyses set forth in Section (8)(D)(1)(a) and (f) shall not apply to the dedication of CBT Units for non-potable purposes.
- (4) Conveyance of Water Rights to the Town. Conveyance of any water to the Town must be made in a manner that warrants free and clear title to the water. The Town shall also require documentation evidencing said free and clear title. Said water rights shall be conveyed to the Town by general warranty deed and assignment of an original share certificate for the water rights or as determined by the Town in its sole discretion. A dry-up covenant for the lands historically irrigated shall also be required if deemed necessary by the Town.
- (5) Non-Potable Water Rights Fee. The person dedicating said water rights to the Town shall pay to the Town \$1,250/acre foot for any water rights which will need to be changed in Water Court to pay for Water Court fees.

9 CERTIFICATIONS OF WATER DEDICATION CREDITS

Upon payment of cash in lieu of water dedication or the dedication of water rights, the Town shall issue a Certification of Water Dedication Credits to the person so paying said cash in lieu of water dedication or dedicating water rights which shall set forth the amount of water dedication credits which are available for future development in the Town. The water dedication credits under any such certificate shall be fully transferrable and shall be usable for water dedication purposes anywhere within the Town of Berthoud. However, a water certificate holder shall not be entitled to encumber said certificate in any manner and the Town will not recognize any encumbrances, including but not limited to liens, financing statements, rights of first refusal, or use of said certificate for collateral. This limitation shall

not apply to certificates issued prior to the enactment of this Ordinance. The person paying cash in lieu of water dedication or dedicating water right shall be responsible for any legal fees incurred by the Town in issuing said Certificate. In the case of any assignment of Water Dedication Credits, the Assignor of said credits shall be responsible for any legal fees incurred by the Town in preparing said Assignment and issuing a new Certificate. The Town may suspend any Water Dedication Credits for failure to pay said legal fees and suspend the issuance of any new building permits associated with said Water Dedication Credits until such legal fees are paid in full.

10 PRICES FOR CASH IN LIEU OF WATER DEDICATION

The following prices for cash in lieu of water dedication shall apply based on 0.4 acre feet/ SFE:

Use	Cash In Lieu of Water Dedication
Single Family Dwelling Unit (less than 12,000 sq. ft. lot) (1 SFE)	\$12,500 per Dwelling ¹
Single Family Dwelling Unit (12,000-18,000 sq. ft. lot) (1.25 SFE)	\$15,625 per Dwelling ¹
Single Family Dwelling Unit (18,000 sq. ft. lot or greater) (at least 1.25 SFE or more, as calculated pursuant to Section 8 hereof)	a minimum of \$15,625 per Dwelling or more (calculated at rate of \$12,500 per SFE) ¹
Duplexes (less than 12,000 square feet lot) (2.0 SFE)	\$25,000 per Duplex ¹
Duplexes (12,000 – 18,000 square foot lots) (2.5 SFE) ¹	\$31,250 ¹
Duplexes (18,000 square foot lot or greater) (at least 2.5 SFE or more, as calculated pursuant to Section 8 hereof)	A minimum of \$31,250 per duplex or more, as calculated at rate of \$12,500 per SFE ¹
Multi-Family (3 or more Units) (1/2 SFE per Unit for indoor use). Additional irrigation requirement calculated pursuant to Section 8 hereof.	\$6,250 per Unit
Accessory Dwelling (0.5 SFE Per Dwelling)	\$6,250 per Unit
Commercial Use	\$12,500/SFE
Potable Irrigation, including Supplemental Irrigation Water	\$12,500/SFE
Non-Potable Irrigation	\$6,250/SFE

¹The price for cash in lieu of water dedication which is paid at time of each building permit in accordance with Section 7(F) hereof shall be calculated in accordance with Section 7(H)(2) hereof.

These prices may be amended at any time by the Board.

PART II

That the following Ordinance is adopted to amend certain provisions in the Town of Berthoud Development Code in Chapters 30-1-116, 30-2-103, 30-2-109, 3-2-112, 30-2-113 and 30-2-119 as set forth below and the necessary changes to pagination and paragraph numbers to incorporate such revisions. Said revisions are made in order to make the Development Code Chapters 30-1 and 30-2 consistent with the Water Dedication Ordinance in Section 30-10.

CHAPTER 30 – BERTHOUD DEVELOPMENT CODE **SECTION 1 – GENERAL PROVISIONS**

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Adopted March 27, 2012
Amended October 27, 2015

amusements. Accessory uses may include the preparation, serving and sale of food and/or sale or rental of equipment related to the uses.

15. Amusement park means an outdoor enterprise whose main purpose is to provide the general public with entertaining activity, where tickets are sold or fees collected at the activity. Commercial amusements include miniature golf courses, outdoor arcades, Ferris wheels, children's rides, roller coasters, skateboard parks, go-cart tracks, water parks and similar uses.
16. Animal boarding means the operation of an establishment in which domesticated animals other than household pets are housed, groomed, bred, boarded, trained or sold. This term shall not include the operation of a kennel.
17. Animals, domestic means common household pets, such as dogs and cats, kept for amusement, companionship, decoration or interest.
18. Animals, food means fish, fowl, cattle, swine, sheep and others raised for the purpose of food consumption.
19. Animals, wild means animals, such as wolves, tigers, lions and snakes that are not normally a domestic animal or farm animal and would ordinarily be confined in a zoo or found in the wild.
20. Animated sign means a sign having an intermittent or continuing variation in the illumination or physical position of any part of the device, except such variations necessary for displaying time-of-day information or temperature information.
21. Annexation means the act of attaching, adding, joining, or uniting a parcel of land to the legal entity known as the Town of Berthoud.
22. Appeal means a request by an applicant to the Board of Adjustment or Town Board for a review of and administrative interpretation of any provision of this Chapter or a request for a variance.
23. Applicant means the owner of land; the owner's authorized representative, or the optionee of the land, as well as mineral owners and lessees; or the Developer applying for an approval by the Town pursuant to this Chapter.
24. Appurtenances mean the visible, functional, or ornamental objects accessory to and part of a building.
25. Aquifer recharge area means an area where water is absorbed into a natural aquifer adding to the zone of saturation.
26. Arcade means a series of arches supported on piers or columns.
27. Area light means a light that produces over 2,050 lumens. Area lights include, but are not limited to, street lights, parking lot lights and yard lights.
52. Building code(s) means the set of standards that must be followed in the construction and remodeling of buildings and structures.

53. Building frontage means the horizontal, linear dimension of that side of a building, which abuts a street, a parking area, a mall, or other circulation area open to the public and has either a main window display or a public entrance to the building.

54. Building height is measured from the average of finished grade at the center of all walls of the building to the top of the parapet or highest roof beam (whichever is higher) on a flat or shed roof, to the top of the parapet or deck level (whichever is higher) of a mansard roof, or the average distance between the highest ridge and its eave of a gable, hip, or gambrel roof.

55. Building Official means a person or persons charged with implementing and enforcing provisions of the Building Code.

56. Bulb means the source of electric light - to be distinguished from the whole assembly (See Luminaire).

57. Business means any lawful commercial endeavor to engage in the manufacturing, purchase, sale, lease or exchange of goods and/or the provision of services.

58. CBT Unit means a Unit of the Colorado Big Thompson Project. A CBT Unit shall be defined to have a firm yield of 0.6 acre-feet.

59. Caliper means the American Association of Nurserymen standard for trunk measurement of nursery stock, as measured at six inches above the ground for trees up to and including four-inch caliper size, and as measured at twelve inches above the ground for larger sizes.

60. Candela (cd) means a unit of luminous intensity.

61. Canopy means an ornamental or functional roof-like structure which is supported from the façade of a building. It may or may not be supported by columns.

62. Canopy sign means a sign that is permanently affixed to a roofed shelter attached to and supported by a building, by columns extending from the ground or by a combination of a building and columns.

63. Cantilever means an architectural element which projects from a structure and is supported at only one end.

64. Cash in lieu of water dedication means a separate and distinct fee from water taps, as required in Section 30-1-105 hereof, which fee shall be utilized primarily to acquire water rights and necessary facilities for all beneficial uses within the Town. The Town shall issue a Certification of Water Dedication Credits for cash in lieu of water dedication payments for future development in the Town.

30-1-12

65. Cash-in-lieu (also known as "fee-in-lieu") for all purposes except water dedication means that the applicant, at the discretion of Town staff with final

approval by the Town Administrator, shall pay the Town money instead of dedicating land in those cases where such delivery or dedication is required.

66. Cemetery means land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including mausoleums and mortuaries when operated in conjunction with, and within the boundaries of, such cemetery.

67. Center line means a line running midway between the bounding right-of-way lines of a street or alley. Where the bounding lines are irregular, the center line shall be determined by the Town Planner or Town Engineer.

68. Certificate of occupancy means a certificate issued by the Town only for the benefit of the Town after final inspection and upon a finding that the building, structure, site and/or development complies with all provisions of the applicable Town codes, permits, requirements and approved plans.

69. Certification of Water Dedication Credits means a certificate issued by the Town for raw water credits in exchange for cash in lieu of water dedication payments or water rights dedications for future development in the Town.

70. Change in use or Change in Land Use means a change in the purpose or activity for which a particular piece of land or its buildings is designed, arranged or intended or for which it is occupied or maintained as provided in the zoning regulations for the zone district in which the land is located.

71. Chapter means Chapter 30 of the Berthoud Municipal Code, also referred to as the Berthoud Development Code, both also referred to as this Code.

72. Character means those attributes, qualities and features that make up and distinguish a building or development and give it a sense of purpose, function, definition and uniqueness.

73. Child care center shall have the same definition as C.R.S. §26-6-102 (1.5) in effect at the time of interpretation.

74. Child care home means a residential home providing care to no more than six children.

75. Child care home, large means a family child care home that provides care for seven to twelve children.

30-1-13

122. Dwelling, single-family means a building designed exclusively for occupancy by one family, but not including mobile homes, except as otherwise provided herein.

123. Dwelling, single-family attached means a residential building containing dwelling units, each of which primary ground floor has access to the outside and which are attached to each other by party walls without

openings. The term is intended primarily for such dwelling types as townhouses and duplexes.

124. Dwelling, single-family detached means a single-family dwelling which is not attached to any other dwelling or building by any means, excluding mobile homes.
125. Dwelling, two-family means a building designed for occupancy by two families living independently of each other.
126. Dwelling unit means any building or a portion thereof which contains living facilities, including provisions for sleeping, eating, cooking, and sanitation, as required by the International Building Code or the International Residential Code, as locally amended.
127. Easement means a right generally established in a real estate deed or on a recorded plat to permit the use of land by the public, a corporation or particular persons for specified uses.
128. Eave means the overhanging lower edge of a roof.
129. Eighty-five (85) degree full cut-off type fixtures means fixtures that do not allow light to escape above an 85-degree angle measured from a vertical line from the center of the lamp extended to the ground.
130. Elevation means the external vertical plane of a building.
131. Employment campus means an area characterized by single and multi-tenant uses commonly including corporate headquarters, research and development facilities, laboratories, offices and light industrial uses.
132. Engineer means a professional engineer licensed by the State of Colorado.
133. Entertainment facilities and theaters mean a building or part of a building devoted to showing motion pictures or dramatic, musical or live performances.

30-1-20

134. Environmentally sensitive areas mean aquifer recharge areas, significant wildlife habitat and migration corridors, unique vegetation and critical plant communities, and ridge lines.
135. Exhaust pipe means a pipe used to guide waste exhaust gases away from a controlled combustion inside an engine or stove.
136. Exhaust vent means a continuous open passageway from the flue collar or draft hood of the appliance to the outside atmosphere for the purpose of removing flue gases.
137. Exotic animals means all animals raised or boarded that are not commonly classified as household pets or livestock, but are wild in nature and

may have the ability to inflict bodily harm on humans, including snakes in excess of four feet in length.

138. Extension of water service means any extension of the Town water service for which a tapping charge is assessed or any increase in Town water service resulting from a Change in Land Use.

139. Exterior lighting means temporary or permanent lighting that is installed, located or used in such a manner to cause light rays to shine outside. Fixtures that are installed indoors that are intended to light something outside are considered exterior lighting.

140. Façade means the elevation or exterior face of a building.

141. Family means an individual living alone, or either of the following groups living together as a single housekeeping unit and sharing common living, sleeping, cooking and eating facilities:

a. Any number of persons related by blood, marriage, adoption, guardianship or other duly authorized custodial relationship; or

b. Any unrelated group of persons consisting of:

i. Not more than three persons; or

ii. Not more than two unrelated adults and their children, if any; or

iii. Not more than eight developmentally disabled persons and appropriate staff occupying a dwelling unit and living as a single, housekeeping unit; or

c. Not more than one (1) individual related by blood, marriage or adoption who is required to register as a sexual offender under the provisions of Colorado law

30-1-21

269. Modified grid pattern means a grid pattern of streets and blocks adapted to the topography, unique natural features, environmental constraints, and peripheral open space areas.

270. Mullion means a slender vertical member dividing the opening for a pair of double doors, sometimes removable to permit the passage of large objects, or also, a vertical member between the lights of a window.

271. Multiple family dwelling means a structure containing three or more dwelling units, including what is commonly known as an apartment building, but not including group, row or townhouses, or hotels, motels or

condominiums, fraternity and sorority houses and similar group accommodations.

272. Municipality means an incorporated city or town.

273. Muntin means a rabbeted member for holding the edges of windowpanes within a sash.

274. Native Seed Area means an area that is planted using broadcast native or drought-tolerant seed mix, resulting in a drought-tolerant turf. These areas have a water dedication requirement of 0.8 acre-feet per acre.

275. Natural Area means an area that a) is appropriately vegetated and free of weeds; (b) is capable of maintaining the existing vegetation without irrigation; (c) has been dedicated to and accepted by the Town; and (d) is a wetland under the criteria in the Wetlands Delineation Manual utilized by the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency in effect at the time of dedication to the Town. All Natural Areas shall be encumbered by a conservation easement. Natural Areas do not require any irrigation. In order to qualify as a Natural Area, the Developer must pay the Town's fees and expenses incurred in determining whether the area is a wetland and appropriately vegetated, and the Natural Area must be accepted by the Town at the Town's sole discretion by and through the Town Administrator.

276. Natural preserve/open lands means areas identified on the Town Comprehensive Plan Preferred Land Use map or related maps including but not limited to: parks, bodies of water, the Hwy. 287 buffer area, trails corridors, conservation easements, irrigation ditches, floodplains and flood ways, natural drainage and water ways, significant native trees and vegetation, wildlife travel corridors, special habitat features, remnant native prairie habitat, plains cottonwood galleries, and any wetland greater than one-quarter acre in size.

277. Neighborhood means a geographical area, the focus of which are residential uses, but also may include a mixture of activities that people need

30-1-35

288. Oil and gas operation means any structure, facility or activity which is constructed on or disturbs land in association with oil or gas drilling, production or waste treatment and disposal, including but not necessarily limited to wells, tanks or tank batteries, pits, access roads for ingress and egress and pipelines.

289. Oil or gas well means a well that produces oil or gas.

290. Open space means any land or water area with its surface open to the sky, which serves specific uses of providing park and recreation opportunities, conserving natural areas and environmental resources and protecting areas of agricultural, archeological or historical significance. Open space shall not be considered synonymous with vacant or unused land. Usable open space shall exclude areas used for off-street parking, off-street loading, service driveways, setbacks from oil and gas wells and their appurtenances, or other hazards to the public, native open areas on steep slopes, floodways, or easements for utilities.

291. Open space, common means a parcel of land, an area of water, or a combination of land and water within a development designed and intended primarily for the use or enjoyment of residents, occupants and owners of that development.

292. Open space, public means an open space area conveyed or otherwise dedicated to the Town for public recreational or conservation uses. Public open spaces are to be unencumbered by oil and gas wells, their appurtenances or other hazards to the public.

293. Open Water means a body of water, such as a pond or reservoir, whether existing or created and whether for purposes of water storage, aesthetic, or recreation, that has an adequate physical and legal water supply to maintain the open water condition year round, and that has been accepted by the Town for Open Water land use.

294. Outdoor light fixture means when an outdoor illuminating device, outdoor lighting or reflective surface, luminous tube, lamp or similar device, permanently installed or portable, used for illumination, decoration, or advertisement. Such devices include, but are not limited to, lights used for:

- a. parking lot lighting;
- b. roadway lighting;
- c. buildings and structures;
- d. recreational areas;
- e. landscape lighting;

30-1-37

wastewater systems or facilities, storm drainage systems or facilities, fire, police and emergency systems or facilities, electric, gas, telecommunication utilities or facilities, and publicly owned buildings or facilities.

328. Public hearing means a meeting called by the Board of Trustees, Planning Commission, or the Board of Adjustment for which public notice has been

given and which is held in a place at which interested parties may attend to hear issues and to express their opinions.

329. Public improvement means any drainage ditch, roadway, parkway, sidewalk, pedestrian way, tree lawn, landscaped open space, off-street parking area, lot improvement or other facility which benefits the public.

330. Public school means a school that derives all or a portion of its support from moneys raised by a general state, county or school district tax and is controlled and operated by the Thompson R2J or Weld County School District.

331. Public utility means a common carrier supplying electricity, wire telephone service, natural gas, water, wastewater or storm water service or similar public services, but shall not include railroads or other forms of rail mass transit or depots or terminals supporting the same; or wireless telecommunication facilities.

332. Raw water means water rights acceptable to the Town for domestic purposes after treatment, or water rights acceptable to the Town that may be used for irrigation of public facilities.

333. Raw Water Credit means the number of SFE's for which dedication credits are certified by the Town in exchange for cash in lieu of water dedication payments or water rights dedications to the Town.

334. Recessed light means when a light is built into a structure or portion of a structure such that the light is fully cut-off and no part of the light extends or protrudes beyond the underside of a structure or portion of a structure.

335. Recreational vehicle (RV) means a vehicle primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own motive power or is drawn by another vehicle. The following shall be considered a recreational vehicle:

a. Camping trailer or tent trailer means a folding structure, constructed of canvas, plastic or similar water repellent material designed to be mounted on wheels and designed for travel and recreation.

b. Motorized camper, motor home, recreational conversion van or bus means a recreational vehicle consisting of a portable, temporary

30-1-41

364. Sign, projecting means any sign supported by a building wall and projecting from that wall.

365. Sign, wall means any sign painted on, incorporated in or affixed to the building wall, or any sign consisting of cut-out letters or devices affixed to the

building wall with no background defined on the sign other than the building wall itself.

366. Sign, window is a sign that is painted on, applied or attached to a window or that can be read through the window from the public right-of-way.

367. Significant wildlife habitat and migration corridors are areas designated by the Colorado Division of Wildlife and/or the Colorado Natural Diversity Information Source (www.ndis.nrel.colostate.edu) as areas of landscape that provide food, cover and water sufficient to meet the needs of a given species to survive and reproduce.

368. Single Family Equivalent Unit ("SFE" or "S.F.E.") means a number related to the volume of water necessary to meet the demand and use requirements including systems losses and consumptive use requirements, of an average single family dwelling unit which is defined herein as 0.4 acre-feet. An SFE shall be defined as 0.4 acre-feet for all purpose. The SFE unit value assigned to such average dwelling unit is 1.0.

369. Site plan means a scale drawing of a lot, showing the actual measurements, the size and location of any existing or proposed buildings, the location of the lot in relation to abutting streets, and other details such as parking areas, access points, landscaped area, building areas, setbacks from lot lines, building heights, floor areas, densities, utility locations and easements.

370. Site specific development plan shall mean and be limited to the Final Plat of a subdivision, Conveyance Plat, a Final Development Plan of a PUD, or a Site Plan when approved as a site specific development plan by the Planning Commission or Board.

371. Special events sign means a temporary sign directing attention to an activity of limited duration.

372. Split garages means having at least two separate garages that are oriented in different directions.

373. Spotlight or floodlight means any lamp that incorporates a reflector or a refractor to concentrate the light output into a directed beam in a particular direction (see definition for floodlight).

30-1-49

384. Subdivider or developer means any person, partnership, joint venture, limited liability company, association or corporation who participates as owner, promoter, developer or sales agent in the planning, platting, development, promotion, sale or lease of a development.

385. Subdivision means the platting of a lot or the division of a lot, tract or parcel of land into two or more lots, plots or sites.

386. Subsidence means a local mass movement that involves the downward settling or sinking of the solid Earth's surface. Subsidence may be due to natural geologic processes or man's activity such as coal mining.

387. Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would be equal to, or exceed, fifty percent of the market value of the structure before it was damaged.

388. Substantial improvement means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure either:

- a. Before the improvement or repair is started; or
- b. If the structure has been damaged and is being restored, before the damage occurred.
- c. For the purpose of this definition, *substantial improvement* is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

Substantial improvements shall be calculated cumulatively over a period of the previous ten years.

The term does not, however, include either:

- a. Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or
- b. Any alteration of a structure listed on the National Register of Historic Places or the State Inventory of Historic Places.

389. Supplemental Irrigation Water means additional potable water which will be required for irrigation at times when water is not available through a non-potable irrigation system.

390. Swing-in garage means a garage that is oriented so that the garage doors are perpendicular to the street.

391. Tandem garage means a garage that allows for the parking of one car in front of another.

392. Tandem parking means parking two cars in a driveway or parking space so that one car is right in front of the other and the front car can not move until the back car is moved.

393. Tavern means an establishment providing or dispensing fermented malt beverages, and/or malt, special malt, vinous or spirituous liquors and in which the sale of food products such as sandwiches or light snacks is secondary.

394. Technical Review Committee (TRC) means the committee established to review development proposals and subdivision applications on behalf of the Town.

395. Temporary business means a business commonly recognized as being conducted for regularly scheduled or occurring portions of a year – not to exceed four consecutive months. Examples of a temporary business include, but are not limited to, Christmas tree sale lots, farmer's markets, circuses, carnivals, new home sales operations, etc.

396. Temporary directional sign means a free-standing sign giving direction to an open house, house for sale, garage sale or a temporary business.

397. Temporary lighting means lighting that is intended to be used for a special event for seven days or less.

398. Temporary use means a prospective use intended for limited duration, is to be located in a zoning district not permitting such use, and shall not include continuing a nonconforming use or building.

399. Title commitment means formal documentation from a title insurance company licensed by the State of Colorado listing the name of the owner of the property under consideration, the legal description of the property and any encumbrances of the property such as easements, rights-of-way, liens or mineral interests.

400. Tourist facility means an establishment set up to primarily provide local tourist information to visitors.

401. Town means the Town of Berthoud, a municipal corporation of the State of Colorado. The Town may act through the Board or an official of the Town specifically authorized to perform the act.

402. Town Administrator means the Town Administrator of the Town of Berthoud, Colorado.

403. Tract means a parcel platted in a subdivision set aside as unsuitable for development or for a public or community-wide purpose which shall be shown on the plat. A public or community-wide purpose may include a drainage area, stormwater detention or retention basins, areas for signs, parks, open space, utilities, or land areas reserved for other public facilities. Except for restricted tracts, a tract is further defined as having been dedicated to the Town or a quasi-public agency having an easement to the Town or quasi-public agency, or as being owned by a homeowners' association for the subdivision in which the tract is located.

404. Tree lawn means a strip of landscaping within the right-of-way, generally between the street and an adjacent sidewalk.

405. Truck stop means an establishment engaged primarily in the fueling, servicing, repair or parking of tractor trucks or similar heavy commercial vehicles, including the sale of accessories and equipment for such vehicles. A truck stop may also include overnight accommodations, showers or restaurant facilities primarily for the use of truck crews.

406. Undermining means land that has been mined under the surface of the ground.

407. Uplighting means lighting that is directed in such a manner as to shine light rays above the horizontal plane.

408. Use by right means a use that is permitted by the zoning district regulations

409. USGS datum means United States Geological Survey basis of elevations.

410. Vacant land means land that does not have structures or other development on it.

411. Variance means a grant of relief from the requirements of this Code which permits construction in a manner that would otherwise be prohibited by this Code.

412. Vegetation means plants growing in a place, including, but not limited to trees, shrubs, vines, grasses and groundcover.

413. Vehicle major repair, servicing and maintenance means any building, or portion thereof, where heavy maintenance activities such as engine overhauls, automobile/truck painting, body or fender work, welding or the like are conducted. Such use shall not include the sale of fuel, gasoline or petroleum products.

excluding bulk storage of materials that are inflammable or explosive or that create hazardous or commonly recognized offensive conditions.

423. Warehousing means a business which stores or stocks merchandise or commodities.
424. Water right means a decreed right to use in accordance with its priority a certain portion of the waters of the State by reason of the appropriation of the same. It shall include both direct flow and storage rights. Water right shall also be used in the context of water right dedications to include allotment contracts with the Northern Colorado Water Conservancy District and its Municipal Subdistrict.
425. Water surface elevation means the height, in relation to the NGVD of 1929 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.
426. Wetland means lands as defined by Federal standards where there is a transition between terrestrial and aquatic systems, where the water table is usually at or near the surface, or the land is covered by shallow water.
427. Wireless telecommunication equipment means any equipment used to provide wireless telecommunication service which is not affixed to or contained within a wireless telecommunication facility, but is instead affixed to or mounted on an existing building or structure that is used for some other purpose. Wireless telecommunication equipment also includes a ground mounted base station used as an accessory structure that is connected to an antenna mounted on or affixed to an existing building.
428. Wireless telecommunication facility means any freestanding facility, building, pole, tower or structure used to provide only wireless telecommunication services, and which consists of, without limitation, antennae, equipment and storage and other accessory structures used to provide wireless telecommunication services.
429. Wireless telecommunication services means services providing for the transmission of wireless communications utilizing frequencies authorized by the Federal Communications Commission for paging systems, enhanced specialized wireless telecommunication, television, personal communication services or cellular telephone.
430. Workshop and custom small industry means a facility wherein goods are produced or repaired by hand, using hand tools or small-scale equipment, including small engine repair, furniture making and restoring, upholstering, restoration of antiques and other art objects, or other similar uses.

CHAPTER 30 – BERTHOUD DEVELOPMENT CODE

SECTION 2 – DESIGN STANDARDS

ORDINANCE #	1
1 TITLE	1
1 TITLES	2
No person may use water from the Town's water utility or provide non-potable water to new development within the Town unless such person agrees to abide by all provisions of this Ordinance, the Town's Development Code, all other applicable ordinances of the Town, and all the rules and regulations of the Town pertaining to the water utility and water utility services. Such agreement to abide by all the provisions of this Ordinance and the Development Code shall include the reasonable right of an authorized Town representative to enter upon the water user's property and to gain access to a building or structure for inspection purposes as set forth in this Ordinance. Acceptance of water service from the Town shall be deemed to constitute such agreement on the part of the water user.....5	
6 OBTAINING WATER	5
7 CASH IN LIEU OF WATER DEDICATIONS FOR POTABLE PURPOSES	5
10 PRICES FOR CASH IN LIEU OF WATER DEDICATION	11
PART III-GENERAL PROVISIONS	38
2. VALIDITY	38
3. REPEAL OF OLD ORDINANCES	38
4. EFFECTIVE DATE	39
By: _____	39
Daivd Gregg, Mayor	39

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6 OBTAINING WATER	5
7 CASH IN LIEU OF WATER DEDICATIONS FOR POTABLE PURPOSES	5
10 PRICES FOR CASH IN LIEU OF WATER DEDICATION	11

PART III-GENERAL PROVISIONS	38
2. VALIDITY	38
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Adopted March 27, 2012
Amended October27, 2015

30-2-101 General provisions

A. Applicability. All development shall comply with the applicable standards contained in this Section.

B. Purpose. These requirements are established to guide and direct future development in a way that reinforces and builds upon the existing character of the Berthoud community. The requirements will enable persons wishing to develop or redevelop property to have sufficient direction to enable them to properly plan proposed residential subdivisions, mixed use projects, new or renovated commercial properties and industrial lands within the Town.

C. Relation to zone district standards. In the event of a conflict between a standard or requirement contained in Chapter 30, Section 3: Zoning, and material in this Section 2, the standards in Section 3: Zoning shall prevail.

30-2-102 Design standards based on Comprehensive Plan

The intention of the Town in enacting this Section is to clearly describe the Town's vision for the physical development of land in Berthoud. The Design Standards in this Section are intended to further the goals and objectives in the Town of Berthoud Comprehensive Plan and create a vital, cohesive, well-designed community that preserves and enhances the small-town character of this community. Those interested in developing property in the Town of Berthoud are encouraged to review the full Town of Berthoud Comprehensive Plan, 2007 (as amended) with a particular focus on the following Goals and Objectives:

- Land use and growth management
- Circulation and transportation
- Community character and urban design
- Public infrastructure

30-2-103 Application of design standards

Town staff in its discretion, with final approval by the Town Administrator and the Planning Commission will evaluate each proposal based on these standards and the context within which each project is located. The standards are intended to be specific enough to guide development but not so specific as to preclude creative design solutions. Applicants must conform to the design standards in this Section unless it can be demonstrated that an acceptable alternative meets one or more of the following conditions:

1. The alternative better achieves the stated intent;

or less than widths stated if the specific utility indicates in writing a width other than those required by this Code. Utility easements shall be subject to the approval of the Town.

- A. **Multiple installations within easements.** Easements shall be designed so as to provide efficient installation of utilities. Public utility installations shall be located as to permit multiple installations within the easements. The developer will establish final utility grades prior to utility installations.
- B. **Underground utilities.** Telephone lines, electric lines, cable television lines and other like utility services shall be placed underground. The applicant or developer shall be responsible for complying with the requirements of this Section, and shall make the necessary arrangements including any construction or installation charges with each utility provider for the installation of such underground facilities. Transformers, switching boxes, meter cabinets, pedestals, ducts and other facilities necessarily appurtenant to such underground utilities shall be placed underground or on the surface but not on utility poles. Screening or fencing is required subject to approval of the Town. Electric transmission and distribution feeder lines and necessary appurtenances thereto may not be placed above ground unless they are carrying greater than 115 kV. Upon approval of the Town, such facilities shall be placed within easements or rights-of-way provided for particular facilities.
- C. **Street lighting.** Street lighting shall be full cut-off and installed as provided in Section 30-2-118 of this Code and as specified in the Town of Berthoud Construction Specifications for Public Improvements. Lighting will be in compliance with Berthoud's Dark Sky standards. Minimum lighting requirements and spacing of light fixtures is per the applicable electric utility.

30-2-109	Parks, trails and open space
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- A. **Intent.** To ensure that a comprehensive, integrated network of parks and open space is developed and preserved consistent with any adopted Parks, Open Space and Recreation (PORT) Plan as the Berthoud community grows.
- B. **Parks, Trails and open space.**
 - 1. **Irrigation.** Areas dedicated to and accepted by the Town as parks and open space shall require irrigation in accordance with Section 30-2-112(B)(7) and Section 30-10-105 of this Code.
 - 2. **Pocket park.** Berthoud does not require the development of small "pocket" parks within neighborhoods. Should a developer choose to provide and maintain a pocket park per Town standards and that park is open the

general public; the Town will credit that pocket park land area towards the overall park and open space dedication requirement.

3. Neighborhood park. Every residential development shall provide land for and/or develop a neighborhood park. Cash-in-lieu of developed park land may be required by the Town. A homeowners' association, the landowner, or the Town, at its discretion, shall be responsible for the ownership, operation and maintenance of the neighborhood park. A neighborhood park shall be at least three acres in size and include active play areas, shelter(s), paths and irrigation necessary to establish landscaping and maintain it in a live condition.
4. Community park. Community parks serve the residents of several neighborhoods. Community parks are to be located on or near arterial streets, at the edge of residential areas or in non-residential areas. The developer shall dedicate land and build the park including all improvements. Cash-in-lieu of developed park land may be required by the Town. A community park shall be at least ten acres in size and include active play area(s), ball fields, shelter(s) and paths. It shall feature irrigated landscaping in accordance with Section 30-2-112(B)(7) and Section 30-10-105 of this Code. Community parks are intended to be dedicated to and maintained by the Town.
5. Regional park. Regional parks serve a broader purpose than the other park types listed above. Regional parks focus on meeting community and regional recreation needs as well as preserving unique landscapes and open space. They should maintain a balance between programmed sports activities (approx. 50%) and other community activity areas such as urban forests, gardens, historic features, performance areas, festival spaces, etc. Regional parks are intended to be dedicated to and maintained by the Town.
6. Trails. The trail system shall link neighborhoods, parks, schools, open spaces, employment centers, community facilities and neighboring communities. The Berthoud trail system will provide important transportation connections as well as recreational opportunities and access across the community. Developers shall dedicate and build trail connections to both the Town's trail system and destinations within the neighborhood.
7. Regional open space. Berthoud's regional open space system includes: drainage ways, floodplains, natural areas, natural area buffer zones, wetlands, agriculture preservation areas and lands of archeological or

B. **General provisions.** All land development applications except for building permits for individual single-family residences shall be accompanied by an appropriate landscape plan. New landscaping within the community shall comply with the intent of these regulations.

1. Tree lawns or trees along public streets. While tree lawns are not required in Berthoud, historically they have been accepted in order to meet the requirement in Section 30-2-105 of this Code that there be tree-lined streets in the community. Landscape improvements in urban settings shall create an orderly, managed landscape and all urban neighborhoods shall have tree-lined streets. Tree lawns require water dedication or cash-in-lieu of water dedication based on an irrigation demand of 1.33 acre-feet per acre in accordance with Section 30-10-105 of this Code.
2. If tree lawns are provided, trees in those areas shall include a mix of species, be aligned in straight rows, and shall be placed within the right-of-way. Spacing of trees shall allow for their mature spread. Trees installed along streets without a tree lawn shall include a mix of species, be generally aligned along the street frontage and may be placed outside of the public right-of-way. Trees installed along streets that will be widened in the future shall take into account plans for future widening of streets so that established trees will not be disturbed during future construction.

Landscape improvements in environmentally sensitive areas and lower density, rural developments shall be informal. Trees along rural streets shall be planted to create irregular clusters of trees to reinforce the design and character of each project and frame views. Landscape improvements within commercial or industrial settings may be clustered in order to frame views into commercial and industrial properties as appropriate.

3. Site landscape design. Landscape improvements shall be an integral part of the overall site design for each property. Landscape improvements shall be designed to complement and enhance the character of neighborhoods and shall follow these guidelines:
 - a. Configured to maximize connections within the site to Natural Areas and to landscaped areas in adjacent developments. Small, isolated islands of landscaping should be avoided except as required in parking lots and for screening along roadways.
 - b. Enhance functional open space through the creation of outdoor "rooms" appropriate to the location and purpose of the open space

irrigation for trees and shrubs and shall feature no impact or spray irrigation heads. For grass areas within parking lots, only drought tolerant grasses shall be permitted.

6. Plant materials.

- a. The minimum planting sizes on all required landscaping shall be two inch caliper deciduous trees, one and one-half inch caliper ornamental trees, six foot tall evergreen trees and five gallon shrubs.
- b. Plants shall be healthy, well-branched vigorous stock with a growth habit normal to the species and variety and free of diseases, insects and injuries. A variety of plant species should be installed to prevent the spread of disease.
- c. All plants shall conform to standards for measurements, grading, branching, quality, ball and burlapping as stated in the current edition of the *American Standard for Nursery Stock*, American Association of Nurserymen, Inc., (AAN-ASNS) and the Colorado Nursery Act of 1965 (CNA).

7. Irrigation. This Code mandates landscaping and installation of permanent automatic underground sprinkler systems containing moisture sensors in all parks and open spaces within new developments, except for (i) Natural Areas, (ii) Open Water (iii) all impervious surfaces, (iv) and as allowed in Section 7.c. below. All irrigated landscaping shall be established and maintained in a live and weed-free condition. Irrigation shall be appropriate to the type and scope of the improvements.

- a. Water Dedication Requirements. Water dedication for irrigation purposes shall be in accord with Section 30-10-105 of this Development Code.

- b. Criteria and process for determining Natural Areas and Open Water: Town staff in its discretion, with final approval of the Town Administrator, may determine that areas qualify as Natural Areas or Open Water in accord with the definitions in Chapters 30-1-116 and 30-10-105.

- c. Use of non-treated water for irrigation is encouraged if a permanent, suitable supply is available. Gravity flow irrigation using irrigation ditches for Native Seed Areas may be permitted as an alternative to installing permanent automatic underground sprinkler where deemed acceptable and appropriate by the Town staff in its discretion, with final approval by the Town Administrator.
- d. Sleeving for the future installation of irrigation lines shall be provided under walkways and paved areas where irrigation may be installed in order to prevent or minimize damage and replacement to paved areas.
- e.
- f. Irrigation systems shall be drip irrigation where possible in planting beds and for shrubs, trees, etc. All irrigation systems shall be designed to prevent overspray and runoff onto paved or other non-landscaped areas.

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- 8. Guarantee of installation. Required landscape improvements shall be installed prior to issuance of a Certificate of Occupancy for all structures. If weather conditions prevent installation, the developer, builder or applicant shall post a financial guarantee for the improvements. This guarantee shall be released by the Town upon completion of the installation of the landscaping and expiration of any warranty period.
- 9. Maintenance & replacement. All property owners/occupants shall be responsible for maintenance and replacement of landscaping within the portion of the public right-of-way between the back of the curb or street pavement and the adjacent property. All property owners/occupants of mixed use, commercial or industrial property with an approved Final Development Plan or Site Plan are responsible for the maintenance and replacement of landscaping as shown on that approved plan.

B. Landscaping design standards.

- 1. Landscaping within the right-of-way and required common open space. The developer or assigns shall provide:

- a. Tree lined streets or tree lawns – live groundcover as appropriate with an average of at least one deciduous or ornamental tree for

every forty linear feet of block frontage or portion thereof. Trees planted within any tree lawn shall have a 3 foot diameter mulch ring and adequate spacing to allow for the mature spread of the trees.

- b. Collector and local streets – live groundcover as appropriate including a combination of grass, trees, flowers, grass or shrubs. In commercial areas this area may be paved if it functions as pedestrian access to storefronts and is integrated into the overall design of the other improvements on the site. Trees planted within paved environments shall have a four foot wide tree well with grate.
- c. Arterial streets – live groundcover as appropriate to the use and function of the area, including a combination of grass, trees, flowers, paving and one shrub for every one hundred fifty square feet of landscape area clustered into planting beds. Developer shall

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- a) If a proposal is made to dedicate a Detention basin or Retention basin to the Town, the Town shall determine if it serves the public interest. Public interest shall be based on ease of maintenance, potential use of the area for open space or recreation uses by the public, whether the area would complement the Town's park or greenway system, and/or whether the applicant shall provide for ongoing maintenance of the facility.
- b) If the Town accepts dedication of a Detention basin or Retention basin, or if the Detention basin or Retention basin is intended to be part of a pocket park or common open space area, regardless of ownership or maintenance, the following standards shall apply:
 - i. Slopes shall comply with Town standards but in no case shall exceed a slope of 6:1.
 - ii. Adequate access shall be provided to the detention area for pedestrians, the physically disabled and for maintenance equipment.
 - iii. Drainage structures shall be designed and located to facilitate maximum use of the detention area for recreational use.
- c) Amenities such as benches, play equipment, game courts and playing fields appropriate to the size and location of the detention pond shall be required

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and based upon proposed/existing adjacent uses unless the location or design does not reasonably accommodate the acre or less, fewer amenities are required. The applicant responsible for installing all amenities per Town standards. detention pond amenities. On one shall be

C. Submittal standards for landscape plans. Land development applications listed below will be accompanied by the appropriate landscape plan:

Table 2.5: Submittals necessary for Landscape Plans

TYPE OF APPLICATION	PRELIMINARY LANDSCAPE PLAN	FINAL LANDSCAPE PLAN
Preliminary Plat/PDP	Yes	
Final Plat/FDP		Yes
Minor Subdivision		At Town discretion
Conditional Use Review		Yes
Site Plan		Yes

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designed to ensure that disturbances which occur to any Natural Area as a result of development shall be minimized through the use of natural buffer zones. If any development materially disturbs a Natural Area, the development project shall mitigate such lost natural resource either on - or off-site and any such mitigation shall be roughly proportional to the loss suffered as a result of the disturbance. The Town shall encumber Natural Areas accepted by the Town with conservation easements.

- a. Natural areas are defined to include: floodplains and floodways, natural drainage and water ways, significant native trees and vegetation, wildlife travel corridors and habitats, special habitat features such as raptor nest sites, key nesting, breeding or feeding areas for birds; fox and coyote dens, remnant native habitat, cottonwood galleries, and any wetland greater than one-quarter acre in size as identified on the 1975 National Wetland Inventory.
- b. The natural area buffer zone shall be used between natural areas and proposed development to ensure that the proposed development does not degrade the natural area. The size of the buffer zone shall be determined by the Town which may choose to consult with other agencies or individuals. The Town may decrease this buffer when strict application of this subsection can be proven to impose an exceptional

hardship upon the property owner and appropriate mitigation measures approved by the Town are taken.

- c. Exceptions. The Board may allow disturbance or construction activity within the natural area or natural area buffer zone for the following limited purposes: mitigation of development activities, restoration of previously degraded areas, emergency public safety activities and utility installations when such activities and installations cannot reasonably be contained within other nearby developed areas, construction of a trail that will provide public access for educational or recreational purposes, or the enhancement of the habitat value and/or other natural resource values of a natural area.
- d. Ecological characterization. If the Town determines that the site likely includes areas with wildlife, plant life, and/or other natural characteristics in need of protection, the Town may require the developer to provide a report prepared by a professional qualified in the areas of ecology, wildlife biology, or other relevant

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PART III-GENERAL PROVISIONS

1. INTERPRETATION

This Ordinance shall be so interpreted and construed as to effectuate its general purpose to make uniform the terms and conditions for the sale of treated water from the Town water system contained herein. However, this Ordinance shall not be applied in a manner inconsistent with annexation agreements in existence prior to the effective date of this Ordinance. Section headings of this Ordinance shall not be deemed to govern, limit, modify or in any way or manner affect the scope, meaning intent or extent of the provisions of any article or section thereof.

2. VALIDITY

If any part or parts of this Ordinance is/are, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Board hereby declares that it would have codified these provisions and each part or parts thereof, irrespective of the fact that any one part or parts be declared invalid.

3. REPEAL OF OLD ORDINANCES

Existing Ordinances or parts of Ordinances and Town of Berthoud Development Code Sections covering the same matters as embraced in this codification including but not limited to, Sections 30-1-116, 30-2-103, 30-2-109, 30-2-112, 30-2-119 and 30-10-105 of the Development

Code are hereby amended and all Ordinances or parts of Ordinances and Town of Berthoud Development Code Sections inconsistent with the provisions of this Ordinance are hereby amended as set forth herein.

4. EFFECTIVE DATE

At its meeting on October 27, 2015, this Ordinance was read, passed, and ordered published by the Board of Trustees.

The Board of Trustees of the Town of Berthoud herewith finds, determines, and designates that this Ordinance shall take effect and be in force thirty (30) days after publication.

PASSED AND ADOPTED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, this the 27th day of October, 2015.

TOWN OF BERTHOUD

By:



David Gregg, Mayor

ATTEST

By: Mary K. Cowdin
Mary K. Cowdin, Town Clerk