

ORDINANCE # 1202

AN ORDINANCE AMENDING ORDINANCE #1194 CONCERNING WATER RIGHTS DEDICATION REQUIREMENTS AND NON-POTABLE WATER SYSTEMS

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, commonly referred to as the "Town of Berthoud Water Dedication Ordinance"; and the "Town of Berthoud Non-Potable Water System"; and

WHEREAS The Board of Trustees of the Town of Berthoud has identified certain amendments and modifications to such Ordinance which will clarify disputes which have arisen relating to its application; and

WHEREAS, the modifications shall be accomplished by amendment of certain provisions in Ordinance #1194 as codified in the Town of Berthoud Development Code in Chapter 30-10, Section 30-10-105, and Section 30-2-112(3) and shall, for the benefit of the health, safety and welfare of the Town citizens, take effect immediately.

PART I

IT is therefore ordained by the Board of Trustees of the Town of Berthoud that the following amendments to Sub-Sections 7 and 8 of Code Section 30-10-105 (The Town of Berthoud Water Dedication Ordinance) of The Berthoud Development Code and Ordinance 1194, such that the specified Code Sections shall hereafter read as follows (amendments are deletions shown by strikethrough):

- (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 for said Phase. 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) 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 and 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 a demand of 1.33 acre feet (3.325 SFE's) per acre for native vegetation, as defined herein. 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. However, 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 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 landscaping plans submitted to the Town in accordance with the Berthoud Development Code, Section 30-2-112 and 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 a demand of 1.33 acre feet (3.325 SFE's) per acre for native vegetation, as defined herein. 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. However, 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 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 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.

(C) **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.

(D) **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; and
 - (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)(l) 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)(l)(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.

PART II

**That the following amendment shall be incorporated into the Town of Berthoud Development Code in Chapter 30-2, Section 30-2-112(3)
(amendment shown in bold italic):**

Irrigation. This Code does not mandate the installation of irrigation systems in all new developments. All required landscaping shall be irrigated, however as required for plant establishment and the maintenance of that landscape in a live and weed-free condition. Irrigation shall be appropriate to the type and scope of the improvements. ***"Appropriate" shall be determined by Town staff, taking into account policies developed by Town Consultants and approved by motion of the Town Board of Trustees.***

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 30-10-105(7) and (8) and 30-2-112(3) of the Development Code are hereby repealed and all Ordinances or parts of Ordinances and Town of Berthoud Development Code Sections inconsistent with the provisions of this Ordinance are hereby repealed.

Section 4. Effective Date.

At its meeting on July 28, 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.

TOWN OF BERTHOUD

By:



David Gregg, Mayor

ATTEST

By: 
Mary K. Cowdin, Town Clerk