

ORDINANCE NO. 2018-05-16

AN ORDINANCE AMENDING SECTION 17.1.400 OF THE AMERICAN FORK CITY CODE RELATING TO THE CONVEYANCE OF WATER IN AMERICAN FORK.

WHEREAS, the City is authorized to enact ordinances as are necessary and proper to promote the health, safety, morals, convenience, order, prosperity, and general welfare of American Fork; and

WHEREAS, the City is authorized by law to enact ordinances establishing regulations for development within the city; and

WHEREAS, it is in the best interest and general welfare of residents of American Fork to amend the city code relating to the conveyance of water for development.

NOW THEREFORE, be it ordained by the City Council of American Fork, Utah that;

PART I

TEXT OF ORDINANCE

1. Section 17.1.400 be amended to read as follows:

17.1.400 - CONVEYANCE OF WATER

Wherever the terms of this code require the conveyance of water, such conveyance shall conform to the terms of this section.

A. *Amount of water right required.* The amount (number of acre-feet) of water required to be conveyed to the city as part of a request for approval of an annexation, subdivision, large scale development, site plan, or building permit shall be the amount considered sufficient to meet the water use requirements of the proposed use, to be determined in accordance with the following:

1. *Residential uses.*

- a. Indoor uses: Indoor residential requirements shall be based on an Equivalent Residential Connection (ERC) basis as shown in the table in c. below. Each ERC shall be required to convey 0.45 acre-feet of water right for indoor use.
- b. Outdoor uses: Outdoor residential requirements shall be based on acreage as shown in the table in c. below. For single-family units and two-family units, requirements shall be based on total gross lot acreage. For multi-family units, requirements shall be based on irrigated acreage.
- c. Water rights requirements are set forth in the following table:

Residential Development		Culinary Uses		Irrigation Uses
		Equivalent Residential Connections (ERC)	Acre-Feet Required (ERC X 0.45)	Acre-Feet Required
Single-Family Unit		1.00	0.45	1.80 acre-feet per acre of lot
Two-Family Unit		2.00	0.90	1.80 acre-feet per acre of lot
Multifamily Units: Number of Bedrooms	One	0.42	0.19	3.60 acre-feet per irrigated acre
	Two	0.83	0.37	
	Three	1.11	0.50	
	Four or more	1.39	0.63	
All other metered culinary uses.		An amount sufficient to meet the projected needs of the proposed development based on an evaluation of demand characteristics for similar uses as determined by the city.		

2. Residential-agricultural projects (one acre or larger lots): Same as (1.) above, except that where there is adequate data to show that the agricultural use requirements will be met using other sources (i.e., a private well or irrigation shares), the city may delay the time of conveyance of the portion devoted to irrigation of agricultural lands until the occurrence of one of the following: (1) the source of water used for irrigation of agricultural lands is from the city's culinary or secondary water system, or (2) the area used for agricultural purposes is proposed to be converted to residential or other urban purpose.
3. Commercial, Industrial, institutional, and all other non-residential uses shall be required to convey water rights per the following table:

Non-residential Development	Culinary Uses	Irrigation Uses
	Acre-Feet Required	Acre-Feet Required
Commercial, industrial, institutional, and all other non-residential uses	An amount sufficient to meet the projected needs of the proposed development based on an evaluation of demand characteristics for similar uses as determined by the city.	3.60 acre-feet per irrigated acre

4. *Exceptions and adjustments to required amounts.*
 - a. Where, because of topographic conditions or other factors, some portion of the lands are permanently restricted from any use or activity requiring water, the city may reduce the amount of water required. Any request for reduction shall include enforceable provisions for ensuring the restricted condition.
 - b. Notwithstanding the provisions of this code, no water will be required for any existing dwelling within the city not previously connected to the city water system,

any existing dwelling which has been previously connected to the city's culinary water system, or any existing one-family dwelling which is subsequently annexed to the city and connected to the city water system.

- c. Subsequent to a determination of water requirement, if the use of an existing non-residential facility or development is modified and results in an increased use of water, an additional amount of water sufficient to meet the projected needs of the modified use shall be required to be conveyed to the city.
- B. *Type of water considered acceptable by the city.* The city council does hereby establish that the preferred type of water acceptable to the city shall be stock in an irrigation company capable of delivering water through the city's water system and used within the city. The specific irrigation company water stock considered acceptable for conveyance to the city and the quantity allowable for each shall be as follows:
1. *Irrigation water stock.* Transfer of title will be by delivery of a stock certificate(s), in the name of American Fork City, from one or a combination of the following irrigation companies:
 - a. American Fork Irrigation Company: 0.50 shares per acre-foot which equates to 2 acre-feet per share.
 - b. Provo Reservoir Water Users Company (PRWUCo)
 1. Alpine District Full Shares: 0.20 shares per acre-foot which equates to 5 acre-feet per share.
 2. Alpine District Full contained Shares: 2.0 shares per acre-foot which equates to 0.5 acre-feet per share.
 3. Alpine District Late Shares: 0.40 shares per acre-foot which equates to 2.5 acre-feet per share.
 4. Alpine District Late contained Shares: 4.0.0 shares per acre-foot which equates to 0.25 acre-feet per share.
 - c. Other Murdock Canal irrigation shares that are deliverable through the established turnout points capable of delivering water through the city's water system and used within American Fork City, including Highland Conservation District and PRWUA deliverable shares at 1.0 acre-foot per full share or 0.1 acre-foot per conserved share.
 - d. Other irrigation stock including Mitchell Hollow, Mitchell Springs, Provo Bench, North Union, or other applicable Surface Irrigation: (quantity as determined by the terms of an approved change application and by conveyance agreement with the city). Any such right will have a source and delivery system capable of delivering water through the city's water system and used within American Fork City.
 - e. Conveyance costs or annual fees associated with irrigation shares identified in sections b, c, and d above, shall be assessed a fee to cover perpetual charges.
 2. *Groundwater rights.* The city, at the sole discretion of the city council, may accept title to water rights from a well or other groundwater source. Transfer of title of rights from a well right or other groundwater source, when approved by the city, shall be by warranty

deed authorizing the diversion of a specific quantity of water in acre-feet and shall be subject to the following:

- a. The dedicator must file an Application for Dedication of Water to American Fork City; pay the applicable fee, as set by the City Council; and comply with all requirements of the Application, including payment or reimbursement of all costs associated with the water dedication (including but not limited to attorney fees, water application filing fees, recording fees, and title insurance premiums).
 - b. The city shall have given prior approval indicating its willingness to accept the water right proposed for conveyance.
 - c. A change application for the water right proposed for conveyance signed by both the applicant and the city, shall have been submitted to the Utah Division of Water Rights and a decision rendered that approves the diversion of the water right through the city's points of diversion for municipal use in the city and that is acceptable to the city.
 - d. Any wells or other points of diversion on the property must be permanently abandoned according to the requirements of the Utah Division of Water Rights, or (at the sole discretion of the city) conveyed to the city.
 - e. Prior to acceptance of a water right by the city, the water right must have a water right title policy issued on it that is clean and approved by the city.
3. *City to approve proposed conveyance.* Prior to acceptance of a water share or a water right the city shall evaluate the water share or water right proposed for conveyance and may refuse to accept any share or right which it believes to be insufficient in amount or flow or otherwise unsuitable for use by the city.

C. *Time of conveyance.* Actual conveyance of the water shall be as follows:

1. *For annexations.* For all parcels signatory to the request for annexation, the conveyance of title to water shares and/or water rights shall occur concurrently with final action on the annexation by the city council. Provided, however, where, because a proposed annexation is large, or the proposed zone classification is for agricultural or other non-urban purpose, or there exist other conditions, deemed sufficient by the city, which prohibit actual conveyance of the water right at the time of annexation, the city council may authorize a delay in the time of conveyance of the water shares and/or water rights to a time following completion of annexation proceedings. Any proposal to delay the actual time of conveyance shall be subject to the following findings and conditions:
 - a. The council, with the recommendation of the planning commission, determines that there is good and sufficient reason to delay the time of conveyance.
 - b. The specific water shares and/or water rights proposed to be delayed are clearly identified.
 - c. There is adequate assurance that the water shares and/or water rights proposed for conveyance in the future are irrevocably committed to the city through placement of the shares and/or rights in a third party escrow arrangement and/or execution of a

water transfer agreement. The documentation establishing the terms of delay shall be established prior to the action to annex and shall include the following: (i) the timing and/or condition for actual conveyance are clearly stipulated in the agreement, (ii) in the instance of water rights, an application seeking approval of a change to municipal use shall have been filed with the Utah State Engineer, (iii) there are no encumbrances on said shares and/or rights which may prohibit their subsequent conveyance without cost to the city, (iv) no development which requires the delivery of water shall be approved for the parcel until actual conveyance has occurred.

2. *For subdivision and large scale development projects.*

- a. Water shares and/or water rights, in an amount sufficient to meet the requirements for the proposed subdivision, large scale development or similar development project shall be conveyed concurrently with the action granting approval of a final plat of a project, approval of a site plan, or similar action which has the effect of authorizing a building permit or permission to commence construction of a project.
- b. Any water shares and/or water rights previously conveyed as part of an annexation shall be considered as a credit toward satisfying the requirements.

3. *For building permit.*

- a. No building permit will be issued for the construction of a dwelling, commercial building or other structure intended for human occupancy without first conveying to the city water shares and/or water rights in an amount sufficient to meet the needs of the proposed use.
- b. Any water shares and/or water rights previously conveyed as part of an annexation or project development approval shall be considered as a credit toward satisfying the requirements.
- c. Notwithstanding the other provisions of this section, any parcel of real property which existed as an independent parcel, capable of development, within the city prior to January 1, 1980, shall be entitled to a water right credit in the amount of one acre-foot, to be applied in meeting the water right requirements for any subsequent development of the property. This grant of credit is appurtenant to the land and shall not be alienated from the parcel to which it applies.

D. *Water Banking*

As recommended by the City Engineer and approved by the City Council, water may be banked with the city (i.e., conveyed to the city in exchange for water credits that can be used, or assigned to another person to be used, to meet the city's water dedication requirements), provided that:

- a. The water shares and/or water rights have gone through the full dedication process provided in Subsection B;
- b. The city and the person banking the water enter into a Water Banking Agreement that is acceptable to the city; and

c. A water banking fee, as set by the City Council, is paid in full.

The city shall be granted full use of the banked water at the time of the execution of the Water Banking Agreement.

PART II

PENALTY AND ADOPTION

SECTION 1 – Conflicting Provisions. Whenever the provisions of this Ordinance conflict with the provisions of any other ordinance, resolution or part thereof, the more stringent shall prevail.

SECTION 2 – Provisions Severable. This Ordinance and the various sections, clauses and paragraphs are hereby declared to be severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or invalid it is hereby declared that the remainder of the ordinance shall not be affected thereby.

SECTION 3 – Amendment to be Added to Development Code. The City Council hereby authorizes and directs that insert pages reflecting the provisions enacted hereby shall be made and placed in the Official copies of the American Fork Development Code in the office of the City Recorder.

SECTION 4 – Penalty. Hereafter these amendments shall be construed as part of the Development Code of American Fork City, Utah, to the same effect as if originally a part thereof, and all provisions of said Code shall be applicable thereto, including, but not limited to, the enforcement, violation and penalty provisions.

SECTION 5 – Effective Date. This Ordinance shall take effect upon its passage and publication as required by law.

PASSED AND ORDERED PUBLISHED BY THE CITY COUNCIL OF AMERICAN FORK CITY, UTAH, THIS 8 DAY OF MAY, 2018.


Bradley J. Frost, Mayor

ATTEST:


Terilyn Lurker, City Recorder

