

ORDINANCE NO. 2017-09-55

CONVEYANCE OF WATER. AN ORDINANCE AMENDING SECTION 17.1.400 AND ADDING SECTION 17.1.400(D) 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;

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. One- and two-family dwellings on individual lots having an area of 16,000 square feet or less: One acre foot per dwelling unit.
  - b. One- and two-family dwellings on individual lots having an area greater than 16,000 square feet: 0.45 acre feet per dwelling unit plus 1.66 acre feet per acre of lot area.
  - c. Multi-family dwellings (three dwelling units or more per building) on individual lots or when part of a large scale development: One acre foot per dwelling unit for the first two dwelling units in a structure, plus 0.7 acre feet per dwelling unit for all units over two.
  - d. Residential-agricultural projects (one acre or larger lots): Same as (b) 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.

2. *Commercial uses (including retail stores and office buildings)*. 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. *Industrial uses*. An amount sufficient to meet the projected needs of the proposed development based on an evaluation of demand characteristics for similar uses, including any water required for processing of products, as determined by the city.
  4. *Institutional uses (schools, churches, etc.)*. 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.
  5. *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.
    - b. Provo Reservoir Water Users Company (PRWUCo)
      1. Alpine District Full Shares: 0.20 shares per acre foot.
      2. Alpine District Full contained Shares: 0.02 shares per acre foot.
      3. Alpine District Late Shares: 0.1 shares per acre foot.
      4. Alpine District Later contained Shares: 0.01 shares per acre foot.

- 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.

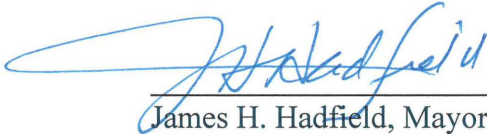
D. *Water Banking*

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.

PASSED AND ADOPTED BY THE CITY COUNCIL ON THE 26 DAY OF SEPTEMBER, 2017.

  
James H. Hadfield, Mayor

ATTEST:

  
Terilyn Lurker, City Recorder

