

**ORDINANCE NO. 03-05-12**

**AN ORDINANCE AMENDING THE SEVERAL PROVISIONS OF THE DEVELOPMENT CODE RELATING TO THE CONVEYANCE OF WATER RIGHTS AS A CONDITION OF ANNEXATION AND DEVELOPMENT APPROVAL; AND PROVIDING FOR THE ENFORCEMENT OF SAID PROVISIONS.**

**BE IT ORDAINED BY THE CITY COUNCIL OF AMERICAN FORK CITY, UTAH:**

**SECTION 1.** Chapter 2-1 of the Development Code of American Fork City, Utah, is hereby amended by adding a new Section, to read as follows:

**2-1.4 Conveyance of Water Rights**

Wherever the terms of this Code require the conveyance of water rights, such conveyance shall conform to the terms of this Section.

1. **Amount of Water Right Required** - The amount of water right 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:

A. **Residential Uses**

- 1) One and two-family dwellings on individual lots having an area of 16,000 square feet or less:

**One acre foot per dwelling unit.**

- 2) One and two-family dwellings on individual lots having a area greater than 16,000 square feet)

**.45 acre feet per dwelling unit plus 1.66 acre feet per acre of lot area.**

- 3) 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 .7 acre feet per dwelling unit for all units over two.

- 4) Residential-Agricultural projects (one acre or larger lots):

Same as 2) 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.

B. Commercial Uses

- 1) Retail stores:

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) Office Buildings:

For 1 and 2 story structures - 3 acre feet per acre of lot area.

For 3 story and higher structures - same as for 1 and 2 story structures, plus an amount to meet the projected additional demand, if any.

- 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,

C. Exceptions and Adjustments to Required Amounts

1) 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 right required. Any request for reduction shall include enforceable provisions for ensuring the restricted condition.

2) Notwithstanding the provisions of this Code, no water right 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.

2. **Type of Water Right considered acceptable by the City** - The City Council does hereby establish that the preferred type of water right acceptable to the City shall be surface water -- primarily in the form of stock in an irrigation company or similar source capable of delivering surface water 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:

A. Irrigation Water Stock (Surface Water Right)

Transfer of title shall be by delivery of stock certificate(s), in the name of American Fork City, from one or a combination of the following irrigation companies:

- 1) American Fork Irrigation Company - .50 shares per acre foot.
- 2) Pleasant Grove Irrigation Company - .62 shares per acre foot.
- 3) Provo Reservoir Canal - .20 shares per acre foot

- 4) Other irrigation Stock - (quantity as determined by the terms of a previously approved change application or by City, if not known). Any such right shall have a source and delivery system capable of delivering surface water within American Fork City.

B. Well Water Rights

The City, at the sole discretion of the City Council, may accept title to water from a well or other sub-surface source. Transfer of title of rights from a well right or other sub-surface source, when approved by the City, shall be by Special Warranty Deed authorizing the diversion of a specific quantity of water in acre feet and shall be subject to the following:

- 1) The City shall have given prior approval indicating its willingness to accept the right proposed for conveyance.
- 2) The current point of diversion of the well right proposed for conveyance shall be upon the real property proposed for annexation or development.
- 3) A change application for the well right proposed for conveyance, signed by both the applicant and the City, shall have been submitted to the Utah State Engineer and a decision rendered approving the well source for municipal use in the City.

C. City to Approve Proposed Conveyance

Prior to acceptance of a water right, the City shall evaluate the water right proposed for conveyance and may refuse to accept any right which it believes to be insufficient in amount or flow or otherwise unsuitable for use by the City.

3. **Time of Conveyance** - Actual conveyance of the water shall be as follows:

A. For Annexations

For all parcels signatory to the request for annexation, the conveyance of title to water rights shall occur concurrently with final action on the annexation by the City Council. Provided, however, where, because a proposed annexation is large (fifty acres or greater), 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 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:

- 1) The Council, with the recommendation of the Planning Commission, determines that there is good and sufficient reason to delay the time of conveyance.
- 2) The specific water rights proposed to be delayed are clearly identified.
- 3) There is adequate assurance that the water rights proposed for conveyance in the future are irrevocably committed to the City through placement of the 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:
  - a) The timing and/or condition for actual conveyance are clearly stipulated in the agreement,
  - b) In the instance of well rights, an application seeking approval of a change to municipal use shall have been filed with the Utah State Engineer.
  - c) There are no encumbrances on said rights which may prohibit their subsequent conveyance without cost to the City.
  - d) No development which requires the delivery of water shall be approved for the parcel until actual conveyance has occurred.

B. For Subdivision and Large Scale Development Projects

- 1) 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.

- 2) Any water rights previously conveyed as part of an annexation shall be considered as a credit toward satisfying the requirements.

C. For Building Permit

- 1) No building permit shall be issued for the construction of a dwelling, commercial building or other structure intended for human occupancy without first conveying to the City water right in amount sufficient to meet the needs of the proposed use.
- 2) Any water rights previously conveyed as part of an annexation or project development approval shall be considered as a credit toward satisfying the requirements.
- 3) 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 (1) 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.

**SECTION 2.** Section 2-5.29 of the Development Code of American Fork City, Utah, is hereby amended to read as follows:

**2-5.29** Water Rights to be Conveyed as Condition of Building Permit

1. No building permit shall be issued for the construction of a dwelling or other habitable structure without first conveying to the City water rights, in an amount sufficient to meet the anticipated demand for the proposed use, as determined in accordance with the provisions of Section 2-1.4 of this Code.
2. Any water rights previously conveyed as part of an annexation or project development approval shall be considered as a credit toward satisfying the conveyance requirements.

**SECTION 3.** Subsection 2-6.2-P of the Development Code of American Fork, Utah, is hereby amended to read as follows:

P. Water Rights to be Conveyed as Condition of Project Approval

1. All developers of large scale developments shall, as a condition of approval, convey to the City water rights, in an amount sufficient to meet the anticipated demand for the proposed project, as determined in accordance with the provisions of Section 2-1.4 of this Code.
2. Any water rights previously conveyed as part of an annexation shall be considered as a credit toward satisfying the conveyance requirements.

**SECTION 4.** Subsection 3-8.8 of the Development Code of American Fork, Utah, is hereby amended to read as follows:

**3-8.8** Water Rights to be Conveyed as Condition of Subdivision Approval

1. All subdividers shall, as a condition of approval, convey to the City water rights, in an amount sufficient to meet the anticipated demand for the proposed project, as determined in accordance with the provisions of Section 2-1.4 of this Code.
2. Any water rights previously conveyed as part of an annexation shall be considered as a credit toward satisfying the conveyance requirements.

**SECTION 5.** Section 5-5.1 of the Development Code of American Fork, Utah, is hereby amended to read as follows:

**5-5.1** Water Rights to be Conveyed as Condition of Annexation

1. It is the intent of the City that all land annexed to the City shall be accompanied by water rights sufficient in amount to satisfy the needs of the existing and future occupants of the annexed territory as determined in accordance with the provisions of Section 2-1.4 of this Code. Conveyance of the water rights shall be considered solely as a condition of annexation.
2. Any person annexing land to the City, shall as a condition of annexation, convey to the City title to water rights having an amount which is sufficient to meet the water use requirements of future developments on the annexed property.

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.

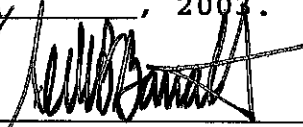
**SECTION 3. - Amendment to be Added to Development Code.**

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.

**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 13 DAY OF May, 2003.

  
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Mayor

ATTEST:

  
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City Recorder

