

ORDINANCE #1227

**AN ORDINANCE AMENDING ORDINANCE #1209, AN ORDINANCE OF THE
TOWN OF BERTHOUD CONCERNING WATER RIGHTS DEDICATION
REQUIREMENTS AND ADOPTING NEW WATER RIGHTS DEDICATION
REQUIREMENTS**

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

INTRODUCTION

WHEREAS, The Town of Berthoud, previously adopted Ordinance #1209 in January, 2016 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 Ordinance; and

WHEREAS, the modifications shall be accomplished by amendment of Ordinance 1209 to read as set forth in this ordinance as the current "Town of Berthoud Water Dedication Ordinance" to be incorporated into the Town of Berthoud Development Code in Chapter 30-10, Section 30-10-105.

PART I

IT is therefore ordained by the Board of Trustees of the Town of Berthoud that the following Ordinance is adopted, and shall hereafter be referred to as the "Town of Berthoud Water Dedication Ordinance":

30-10-105 Water Right Dedication Requirements

- A. Titles.** This section shall be known as the TOWN OF BERTHOUD WATER DEDICATION ORDINANCE.
- B. Interpretation.** This section 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 section shall not be applied in a manner inconsistent with annexation agreements in existence prior to the effective date hereof.
- C. Definitions.** Whenever in this section, 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:
 - 1. "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.

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

3. "Cash in lieu of water dedication" means a separate and distinct fee from water taps as required in section G 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.

4. "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.

5. "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.

6. "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.

7. "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.

8. "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.

9. "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.

10. "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.

11. "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.

12. "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.

13. "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.

14. "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.

15. "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.

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

17. "Phase" means a portion of property that is being platted or has been platted.

18. "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.

19. "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.

20. "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 section. 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.

21. "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.

22. "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.

23. "Town Administrator" means the Town Administrator of the Town of Berthoud, Colorado.

24. "Town Board" means the Town Board of Trustees of the Town of Berthoud, Colorado.

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

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

27. "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.

28. "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 section to include allotment contracts with the Northern Colorado Water Conservancy District and its Municipal Subdistrict.

D. Agreement to Comply with this Section 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 section, 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 section 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 section. Acceptance of water service from the Town shall be deemed to constitute such agreement on the part of the water user.

E. 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 section 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.

F. Obtaining Water.

- 1. 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 section except (1) by, through, and from the Town; or (2) through other systems specifically approved by the Town in writing.
- 2. 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.

G. Cash in Lieu of Water Dedications for Potable Purposes.

- 1. Intent and Purpose.** It is the intent and purpose of this section 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.
- 2. 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 section. The requirements herein shall apply to all new development, unless otherwise agreed to in an applicable annexation or development agreement with the Town.
- 3. From and after the effective date of this section, 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 section and the Town's Development Code.

4. **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.
5. **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.
6. **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, which may be comprised of a combination of potable and non-potable SFE's in instances where individually metered non-potable water will be provided for dwelling units in the development. 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 J hereof.
7. **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 G(9) hereof.

8. **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 to provide for one half (1/2) of water necessary for the irrigation of parks, open space, golf courses, playing fields and similar areas within the entire property to be developed. The remaining one half (1/2) shall be due and owing upon issuance of one half (1/2) of the building permits for the entire property to be developed. No further building permits shall be issued for that Phase of development until the second one half (1/2) of cash in lieu of water dedication is paid or CBT Units are dedicated to the Town. A person may also elect to dedicate water rights for non-potable irrigation as set forth in Section H.4 below.

9. **Price of Cash in Lieu of Water Dedication.**

- a. The price per SFE for developments in which cash in lieu of water dedication are paid pursuant to section G(6) above is set forth in section J hereof.
- b. The price per SFE for cash in lieu of water dedication pursuant to section G(7) 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.
- c. 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 J hereof. This includes dwelling units in developments with all irrigated areas served by a separate irrigation tap.
- d. Except as set forth in section G(5) 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 J hereof.

- e. 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 J hereof. The Town shall analyze water requirements for a proposed commercial use. The person developing the property may also submit a written analysis by a qualified consultant sufficient to allow the Town to fully evaluate the probable water demand and consumptive use for the commercial 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 commercial water requirements. All commercial uses shall require a minimum of 0.5 SFE's.

H. Water Rights Dedications for Non-Potable Purposes

- 1. 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 H 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

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:

- (1) the quantity and quality of the water which will be delivered pursuant to said water rights;
- (2) a calculation of the volume of water which the non-potable system will be able to provide on a monthly basis;
- (3) the amount of potable supplemental irrigation water which will be required when water under non-potable water rights is not available;
- (4) the amount of required water storage, if any;
- (5) the proposed use of the water rights through the proposed facilities;
- (6) the amount and suitability of a dry up covenant to change the use of said water rights in Water Court, as necessary;
- (7) compliance with Chapter 30-2-130 hereof; and
- (8) 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.

- b. 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 H(5)(a) above.
- c. 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 (H)(5)(a)(1) and (6) shall not apply to the dedication of CBT Units for non-potable purposes.
- d. 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.

e. **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.

I. 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. Said certificates shall designate the water dedication credits as potable or non-potable. 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 section. 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.

J. 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 H 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 H hereof)	A minimum of \$31,250 per duplex or more, as calculated at rate of \$12,500 per SFE ¹

Use	Cash In Lieu of Water Dedication
Multi-Family (3 or more Units) (1/2 SFE per Unit for indoor use). Additional irrigation requirement calculated pursuant to section H 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

¹ The price for cash in lieu of water dedication which is paid at time of each building permit in accordance with section G(7) hereof shall be calculated in accordance with section G(9)(b) hereof.

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

PART II –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 portions of Ordinances and portions of the Town of Berthoud Development Code Sections, including but not limited those contained in Section 30-10-105, which are inconsistent with the provisions of this Ordinance are hereby repealed.

4. EFFECTIVE IMMEDIATELY

The Town Board hereby finds, determines and declares that this Ordinance is necessary and proper for the health, safety and welfare of the Town of Berthoud and the inhabitants thereof, and shall become effective immediately upon final adoption.

PASSED AND ADOPTED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, this the 10th day of October, 2017.

TOWN OF BERTHOUD

ATTEST:

By:

Christian Samora, Town Clerk

By:

Steve Mulvihill, Mayor

