

Attachment #2.

CITY OF STEAMBOAT SPRINGS, COLORADO

ORDINANCE NO. 2244

AN ORDINANCE CREATING A WATER DEDICATION POLICY TO ENSURE THAT WATER SERVICE REQUIRED FOR NEW DEVELOPMENT OUTSIDE OF THE EXISTING CITY MUNICIPAL WATER SYSTEM DOES NOT INTERFERE WITH SERVICE TO EXISTING CUSTOMERS AND DOES NOT INTERFERE WITH THE CITY'S ABILITY TO MEET REASONABLY ANTICIPATED FUTURE WATER SUPPLY NEEDS; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Steamboat Springs has determined that it is an important goal of the City to ensure that water service required for new development does not interfere with service to existing customers and does not interfere with the City's ability to meet reasonably anticipated future water supply needs; and

WHEREAS, the City Council of the City of Steamboat Springs has further determined that it is an important goal of the City to ensure that all new development bears an appropriate share of the expense that may be required to provide reliable water service to the new development, as well as an appropriate share of the investment that current and past residents of the City have made in developing a dependable water supply; and

WHEREAS, the City Council desires to adopt a Water Dedication Policy to achieve the goals set forth above.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STEAMBOAT SPRINGS, COLORADO:

Section 1. Chapter 25 of the Steamboat Springs Municipal Code is hereby amended by the addition of a new Section 25-77, entitled "Water Rights Dedication Policy" in the form attached hereto as Exhibit A and fully incorporated herein by this reference.

Section 2. All ordinances heretofore passed and adopted by the City Council of the City of Steamboat Springs, Colorado, are hereby repealed to the extent that said ordinances, or parts thereof, are in conflict herewith.


Section 3. If any section, subsection, clause, phrase or provision of this Ordinance, or the application thereof to any person or circumstance, shall to any extent, be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and shall in no way be affected, impaired or invalidated.

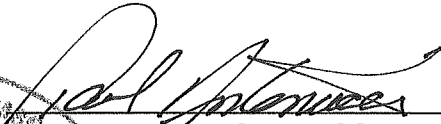
Section 4. The City Council hereby finds, determines and declares that this Ordinance is necessary for the immediate preservation of the public peace, health and safety.

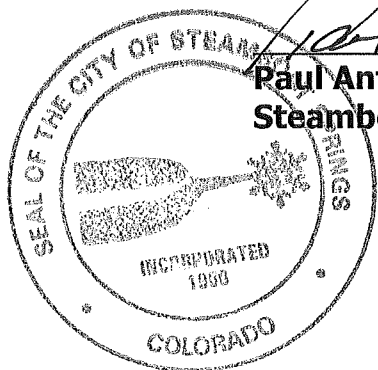
Section 5. This Ordinance shall take effect immediately upon the expiration of five (5) days from and after its publication following final passage, as provided in Section 7.6(h) of the Steamboat Springs Home Rule Charter.

INTRODUCED, READ AND ORDERED PUBLISHED, as provided by law, by the City Council of the City of Steamboat Springs, at its regular meeting held on the 7th day of April, 2009.

ATTEST:



Julie Franklin, CMC
City Clerk

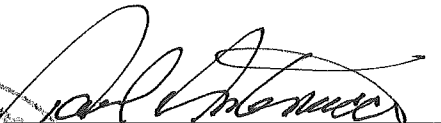

Paul Antonucci, President
Steamboat Springs City Council

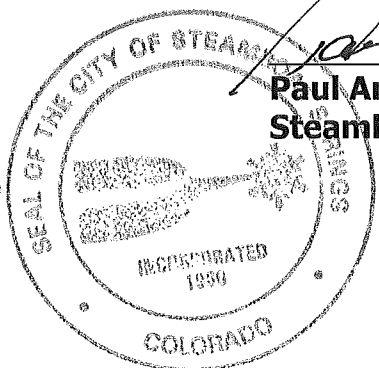


FINALLY READ, PASSED AND APPROVED this 5th day of May, 2009.

ATTEST:


Julie Franklin, CMC
City Clerk


Paul Antonucci, President
Steamboat Springs City Council



**Water Rights Dedication Policy -- Version for Second Reading
May 2009**

Section 25-77.

(a) Title. This Chapter shall be known and may be cited as the “Water Rights Dedication Policy.”

(b) Purpose. The purpose of this Water Rights Dedication Policy is to ensure that water service required for new development does not interfere with service to existing customers and does not interfere with the City’s ability to meet reasonably anticipated future water supply needs. The policy is intended to ensure that all new development bears an appropriate share of the expense that may be required to provide reliable water service to the new development, as well as an appropriate share of the investment that current and past residents of the City have made in developing a dependable water supply. For the foregoing reasons, and to promote the general welfare of the City and the public, the City adopts a general policy of conditioning new treated or raw water service from the City’s municipal water system upon either a dedication of water rights or a payment of cash in lieu of water rights by the development to be served.

(c) Applicability. This policy shall apply to all new requests for water service from the City’s municipal water system to properties not within the City’s municipal water utility service area as of the effective date of this policy. Any party that seeks water service under this policy is referred to herein as “Applicant.”

(d) Water Demand Report. Every Applicant requesting an extension of municipal water service under this policy must prepare and submit a report by a registered professional engineer detailing the water supply requirements for the development. At a minimum, the report shall address each of the following:

- (1) An analysis of the annual and monthly water requirements in terms of both the total water demand and estimated consumptive use of the proposed development through full build-out conditions, and at any phases of development that are proposed for the project. The report shall identify peak day summer and winter water demands. The report shall identify uses for the water such as domestic, irrigation, industrial, water features, and/or large demand water features. The report shall include completed water demand worksheet forms, which shall be attached to the report as appendices. Acceptable water demand worksheet forms shall be kept on file with the Public Works Director. The sufficiency of the water demand report and water demand worksheets shall be subject to the discretion of the City Manager, in consultation with the Public Works Director and the City’s retained water experts for engineering and legal analysis.
- (2) An analysis of the ability of the City’s municipal water supply to meet the expected demand under various hydrologic conditions, including a description of the physical source of water supply that may be used to serve the development.

- (3) Water conservation measures that may be implemented within the development.
- (4) Water demand measures that may be implemented within the development to account for hydrologic variability.
- (5) Such other information as the City may require.

(e) *Water Rights Dedication.* The basic dedication requirement for every Applicant under this policy shall be the dedication to the City of a dependable legal supply of water equal to one hundred and ten percent (110%) of the water rights necessary to meet the requirements identified in the water demand report.

- (1) Applicants must dedicate all direct flow, storage, and groundwater rights and permits historically used on the property to be served (the “appurtenant water”).
- (2) Where there is not appurtenant water on the property, or where the appurtenant water will not provide a dependable legal supply equal to 110% of the estimated water requirement, the Applicant shall dedicate sufficient alternative water rights that can be folded into the City system without unreasonable expense or delay so as to meet the 110% water dedication requirement. A strong preference shall be given to water rights senior in priority to 1922, the date of the Colorado River Compact, provided the dedication of such rights to the City will not directly result in the permanent dry-up of historically irrigated acreage that would not otherwise occur but for the preference accorded such rights under this policy. Applicants seeking alternative water rights under this subparagraph (e)(2) are encouraged to explore rotating fallowing arrangements or other similar arrangements with the owners of senior agricultural water rights so that water rights senior to 1922 can be dedicated to the City without causing historically irrigated agricultural land to be permanently dried-up. If no acceptable water rights senior in priority to 1922 are available for dedication, the City may accept other types of alternative water rights, including, but not limited to the following:
 - a. Rights to store water upstream from the City’s Elk River diversion;
 - b. Senior historic consumptive use credits that can be changed for direct use at any of the City’s points of diversion, or storage in any City storage facility;
 - c. Stagecoach Reservoir water rights, and/or other storage rights in the Yampa Basin upstream from the City’s Yampa River infiltration gallery;
 - d. Such other alternative water rights that City Staff, in consultation with the City’s retained water experts, determine will meet the 110% dependable legal supply requirement and enhance the firm yield of the City’s water supply.
- (2) “Dependable legal supply” as that term is used in this policy means that the water rights proposed for dedication may reasonably be expected to provide a dependable water supply through the season of use in the amount for which they are decreed. In

making this determination, factors to be considered shall include, but not by way of limitation, the adjudication date and appropriation date of the water rights, the decreed uses, the historic use of the water under the decree, the physical flow available and the administration practices of the office of the State Engineer.

- (3) Determination of the sufficiency of any water proposed for dedication under this policy shall be subject to the discretion of the City Manager or the Public Works Director, in consultation with the City's expert water consultants.

(f) *Cash In Lieu of Water Rights.* As an alternative to the water rights dedication required under paragraph (e) above, Council may, at its discretion, allow an Applicant to provide a cash payment in lieu, or other valuable consideration, the sufficiency of which shall be calculated according to what it would cost the City to acquire 110% of the water requirement for the proposed development. City Council discretion to accept cash in lieu or other valuable consideration under this section is subject to the following conditions:

- (1) The City must have sufficient water rights to meet the estimated water service requirement for the property to be served;
- (2) Any cash in lieu or other alternative arrangement shall be documented in a contemporaneous written agreement;
- (3) Cash payments received by the City under this paragraph (f) shall be used to address the City's most pressing water supply needs.

(g) *Payment of Costs.*

- (1) Every Applicant shall be required to place an initial deposit with the City to cover the cost to the City for the legal and engineering analysis required to determine whether water proposed for dedication will provide a dependable legal supply equal to 110% of the estimated water requirement for the property to be served. The amount of the required initial deposit shall be indicated on the water demand worksheet forms kept on file with the Public Works Director. The Public Works Director shall have the discretion to raise or lower the amount required for the initial deposit based on a reasonable estimate of what the anticipated costs of the necessary legal and engineering review will actually be. The initial deposit shall be used to pay the costs of staff, legal consultants, engineering consultants, and other expenses that may be incurred by the City. This initial deposit is a cost reimbursement charge and is not related or credited to any other fee required by the City unless otherwise agreed by the City. Initial deposit amounts in excess of the actual cost of the analysis will be refunded to the Applicant or credited against any agreed upon cash in lieu obligation. Where the initial deposit is not sufficient to cover the actual cost to the City of the required engineering and legal analysis, the Applicant shall be required to pay any such excess amount reasonably incurred. The City shall make a good faith effort to generally account for the costs incurred, but the City shall not be obligated to provide a specific accounting of costs.

- (2) In addition to the dedication of water rights under paragraph (e) or cash in lieu or other arrangement under paragraph (f) above, Applicants shall be required to pay the City for all legal, engineering, and other costs incurred by the City to evaluate and/or adjudicate any augmentation plan or other water court application, if necessary, to provide new or increased water service to Applicant's property.

(h) *Exceptions.* The City Council shall have the authority to substitute or waive any of the conditions or requirements of this policy, provided that any such substitution or waiver is consistent with and furthers the purpose of this policy as set forth in paragraph (b) above, and further provided that such substitution or waiver is rationally related to the water demand of the proposed development as indicated by the water demand report required under paragraph (d) above.

(i) *Phased Water Dedication.* Council may exercise its discretion to waive the upfront water dedication and/or cash in lieu requirements of this policy for a phased development subject to a written agreement whereby the Applicant agrees to dedicate water, or make payments in lieu, in phases as the development proceeds and requires water service. Any such phased dedication shall be documented in a written agreement. The sufficiency of the future water dedication, or cash in lieu, shall remain subject to the discretion of the City Council, and must meet the requirements of the water dedication policy, as it exists when water service for any phase of a development is requested. Any such phased dedication agreement should be recorded in the Routt County records so there is clear notice on the contingent nature of future water service.

(j) *Open Space Annexation.* This Water Rights Dedication Policy shall also apply to property proposed to be annexed to the City for open space, park, aesthetic, recreation or agricultural purposes. In such circumstances, the required dedication shall only be the appurtenant water. If the owner of such property desires to retain the property for open space or agricultural purposes, Council shall allow the owner to lease back any dedicated appurtenant water, on an annual basis, and for irrigation, aesthetic and recreational purposes only. The terms of this lease shall be negotiated with the City Manager.