



## **ORDINANCE 2043**

### **AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA AMENDING SECTION 38.410.130 OF THE BOZEMAN MUNICIPAL CODE TO REVISE WATER ADEQUACY REQUIREMENTS AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, the City of Bozeman (the “city”) has adopted land development and use standards to protect public health, safety and welfare and otherwise execute the purposes of Sections 76-2-304 and 76-3-102, MCA; and

**WHEREAS**, Sections 76-2-304 and 76-3-102, MCA identify provision of adequate water supply as a purpose for municipal zoning and subdivision regulations; and

**WHEREAS**, it is in the interests of the city and public welfare to ensure that provision of water is done in a manner that is timely and proportionate to demand for services; and

**WHEREAS**, the city has identified water conservation as an important element of meeting future water needs and the city’s land use regulations need to be revised to facilitate conservation and recognize the influence of conservation on reducing water demand from development.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA:**

## Section 1

That Section 38.410.130 of the Bozeman Municipal Code be amended as follows:

~~Sec. 38.410.130. Water rights.~~

~~A. Prior to a final approval of all development reviewed as a site plan, conditional use permit, planned unit development, or subdivision and prior to an annexation of any land, one of the following must occur:~~

- ~~1. Payment must be made to the city of a payment in lieu of water rights, calculated based on the annual demand for volume of water the development will require multiplied by the most current annual unit price; or~~
- ~~2. The city may elect to accept a transfer to the city of ownership of water rights if the water rights proposed to be transferred are legally and physically adequate as determined by the city to provide the annual volume of water the development will require. A transfer of ownership of water rights must be in a form and manner suitable for municipal purposes and as approved by the review authority.~~
- ~~3. In addition to but notwithstanding the above, a development may propose the installation of non-potable water systems for irrigation or other approved uses. The installation of a non-potable water system may result in a reduction in the payment required under subsection A.1 or amount of water rights under subsection A.2. To receive credit against the water demand calculation, the development must meet all physical requirements for such systems as established by the city and must comply with all applicable administrative requirements.~~

~~B. If adequate water rights were transferred or a payment in lieu was previously provided to the city for the subject property, evidence of those rights or payment in lieu may be offered to demonstrate compliance with this section. If the expected demand for water by the proposed development increases by more than one acre-foot over that for which water rights or payment in lieu of water rights were previously provided, additional water rights or payment in lieu of water rights pursuant to subsection A equal to the difference between the previously provided water rights or payment in lieu and the estimated current demand or payment in lieu price must be provided.~~

~~C. Provision of water rights or payment in lieu may be deferred:~~

- ~~1. By phase for phased developments.~~
- ~~2. For annexations of vacant land when the annexation is in excess of ten acres.~~
- ~~3. For annexation of parcels of ten acres or less, or for any size parcel if development exists on the area being annexed prior to the annexation and provision of water rights or payment in lieu pursuant to subsection A is provided at the time of annexation for the uses present on the site at the time of~~

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~~annexation. Subsequent development is subject to the provisions of subsection A.~~

~~4. For additional development beyond one dwelling unit per lot for lots zoned residential within a subdivision if water rights or payment in lieu is provided pursuant to subsection A prior to final plat for at least one residential unit on that lot. Additional development requires compliance with this section. A notice of restriction on future development in a form acceptable to the city must be recorded with the Gallatin County Clerk and Recorder prior to the city granting a waiver under this section.~~

~~5. For commercial, industrial and institutional uses, until final site plan approval or the issuance of any building permit, whichever occurs first.~~

~~D. The city manager must adopt administrative procedures to implement this section. The director of public works must adopt standards for the calculation of demand for water use. The unit cost for payment in lieu must be established by commission resolution. The administrative procedures must include but need not be limited to standards governing acceptance of water right transfers, and a means to establish credits against the transfer of excess rights. The standards governing acceptance of water right transfers may enable a deferral of payment in lieu, provided that the party obligated for the payment in lieu executes a fee deferral agreement and related documents as approved by the city attorney to be recorded at the Gallatin County Clerk and Recorder's office securing the amount due.~~

~~E. The amount paid for a payment in lieu must be calculated using the per unit price in effect on the date the payment in lieu of water rights is to be made to the city. The director of public works must make proper distribution to the funds for which such payments are made of all money collected.~~

Sec. 38.410.130. - Water adequacy.

- A. Subject to subsections B and C, prior to final approval by the review authority of development occurring under this chapter or chapter 10, the applicant must offset the entire estimated increase in annual municipal water demand attributable to the development pursuant to subsection D.
- B. Compliance with this section is triggered if the estimated increase in annual municipal water demand attributable to the development exceeds 0.25 acre-feet after accounting for the following items as they relate to the development:
  - 1. Current average annual municipal metered water demand;
  - 2. Water demand offsets from a prior payment of cash-in-lieu of water rights;
  - 3. Water demand offsets from a prior transfer of water rights into city ownership, and;
  - 4. Water demand offsets from an existing water adequacy agreement or similarly purposed document.

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- C. Compliance with this section is deferred for the following developments until the occurrence of future development if the applicant records a notice of restriction on future development in a form acceptable to the review authority with the Gallatin County Clerk and Recorder:
1. An annexation that expressly defers this section under an annexation agreement;
  2. Individual lots of a subdivision final plat planned for future multiple-household development;
  3. Individual lots of a subdivision final plat planned for future commercial, industrial, or institutional development, or;
  4. Future phases of a phased site development.
- D. The city will determine the estimated increase in annual municipal water demand attributable to the development. The applicant must offset the estimated increase in annual municipal water demand attributable to the development through one or more of the following means:
1. Transfer of water rights into city ownership that are appurtenant to the land being developed, or other water rights that may be available for transfer, that the city determines to be useful.
  2. Implementation of onsite and/or offsite water efficiency and conservation measures that reduce the estimated annual municipal water demand attributable to the development by one or more of the following methods:
    - a. Installation of high efficiency indoor water using fixtures, appliances, and products that are more water efficient than city-adopted plumbing codes or state or federal minimum standards.
    - b. Installation of unirrigated, or minimally irrigated, drought resistant or drought tolerant landscaping that exceeds the minimum requirements of division 38.550 of this chapter.
    - c. Installation of high efficiency or water conserving irrigation componentry that exceeds the minimum requirements of division 38.550 of this chapter.
    - d. Installation of non-potable water supply systems for landscaping irrigation purposes.
    - e. Other water efficiency and conservation methods brought forward as part of the development by the applicant that the review authority may at its discretion approve.
  3. Payment to the city of cash-in-lieu of water rights for that portion of the estimated annual municipal water demand attributable to the development that is not offset under subsections D.1 and D.2.
- E. The unit cost for payment of cash-in-lieu of water rights will be established by city commission resolution. The cash-in-lieu of water rights payment amount provided by the applicant under subsection D.3 must be calculated using the unit cost effective on the date the payment is made to the city. The director of public works must deposit all payments received under this section, upon receipt, in the cash-in-lieu of water rights fund.

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- F. The city manager may adopt, and from time to time amend, administrative procedures to implement this section. The administrative procedures may at a minimum include the following items:
1. Standards established by the director of public works to determine the estimated increase in annual municipal water demand attributable to development.
  2. Standards established by the director of public works to determine water demand offset amounts for implementation of water efficiency and conservation measures and water rights transferred into city ownership
  3. Standards governing acceptance of water rights transferred into city ownership.
  4. Standards to establish and govern the use of water demand offsets credits for that portion of demand offsets provided by an applicant that are in excess of the estimated increase in annual municipal water demand attributable to the development.
  5. A process that provides for administrative appeals of determinations made by the review authority under this section.
  6. Specific criteria that if met may authorize the review authority to waive this section.
  7. Standards governing acceptance of water right transfers and establishing water demand offset credits may enable a deferral of payment of cash-in-lieu of water rights provided that the applicant records with the Gallatin County Clerk and Recorder an executed water adequacy agreement and related documents as approved by the city attorney securing the amount due.

## **Section 2**

### **Repealer.**

All provisions of the ordinances of the City of Bozeman in conflict with the provisions of this ordinance are, and the same are hereby, repealed and all other provisions of the ordinances of the City of Bozeman not in conflict with the provisions of this ordinance shall remain in full force and effect.

## **Section 3**

### **Savings Provision.**

This ordinance does not affect the rights and duties that matured, penalties that were incurred or proceedings that were begun before the effective date of this ordinance. All other provisions of the Bozeman Municipal Code not amended by this ordinance shall remain in full force and effect.

## **Section 4**

**Severability.**

That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof, other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Bozeman Municipal Code as a whole.

**Section 5**

**Codification.**

This Ordinance shall be codified as indicated in Section 1.

**Section 6**

**Effective Date.**

This ordinance shall be in full force and effect thirty (30) days after final adoption.

**PROVISIONALLY ADOPTED** by the City Commission of the City of Bozeman, Montana, on first reading at a regular session held on the 3<sup>rd</sup> day of August, 2020.

DocuSigned by:

*Chris Mehl*

CHRIS MEHL

Mayor

ATTEST:

DocuSigned by:

*Mike Maas*

MIKE MAAS

City Clerk

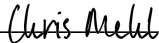
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**FINALLY PASSED, ADOPTED, AND APPROVED** by the City Commission of the City of Bozeman, Montana on second reading at a special session thereof held on the 18<sup>th</sup> of August, 2020. The effective date of this ordinance is September 17, 2020.

DocuSigned by:

  
**CHRIS MEHL**  
Mayor

ATTEST:

DocuSigned by:

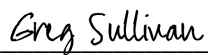
  
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**MIKE MAAS**  
City Clerk

DocuSigned by:



APPROVED AS TO FORM:

DocuSigned by:

  
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**GREG SULLIVAN**  
City Attorney