

## **ORDINANCE 1330**

### **AN ORDINANCE OF THE TOWN OF BERTHOUD AMENDING ORDINANCE #1300, CONCERNING DEDICATION OF HISTORICAL WATER RIGHTS**

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

#### **INTRODUCTION**

**WHEREAS, The Town of Berthoud previously adopted Ordinance #1300 in January 2022, commonly referred to as the "Town of Berthoud Water Dedication Ordinance"; and**

**WHEREAS, The Board of Trustees of the Town of Berthoud has determined that certain amendments and modifications to the Town of Berthoud Water Dedication Ordinance are necessary; and**

**WHEREAS, The modifications shall be accomplished by amendment of the Town of Berthoud Water Dedication Ordinance to be incorporated into the Town of Berthoud Development Code, Chapter 30-10, Section 30-10-114 to read as set forth in this Ordinance.**

#### **PART I - AMENDMENTS**

**IT is therefore ordained by the Board of Trustees of the Town of Berthoud that the following Ordinance is adopted, and Section 30-10-114 of the Town of Berthoud Water Dedication Ordinance shall hereinafter read as set forth below:**

<b>30-10-114(C) Definitions</b>
---------------------------------

\* \* \*

- 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:

\* \* \*

15. *Historical Water Rights* mean those water rights associated with a particular parcel of land at the time of annexation and which have been applied to beneficial use on that land.
16. *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.

17. *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.
18. *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.
19. *Person* shall include any individual, partnership, association, organization, firm, district, corporation, group or other legal entity of any nature, public or private.
20. *Phase* means a portion of property that is being platted or has been platted.
21. *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.
22. *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.
23. *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.

<p><b>30-10-114(G) Cash in Lieu of Water Dedications or Dedication of Water Rights for Potable Purposes</b></p>
-----------------------------------------------------------------------------------------------------------------

\* \* \*

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.

- a. *Dedication of Historical Water Rights.* As a condition of annexation of land to the Town, ownership of all Historical Water Rights associated with the land to be annexed shall be dedicated to the Town in accordance with section I hereof, and such dedication shall occur upon meeting all other conditions necessary for the finalization of annexation. For any other development or change in land use on lands already annexed to the Town, ownership of all Historical Water Rights associated with the land shall be dedicated to the Town in accordance with section I hereof, prior to the Town's approval of any final plat.
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. annexation;
  - c. subdivision;
  - d. 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.

\* \* \*

## **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, specifically Section 30-10-114(C) and Section 30-10-114(G), which are inconsistent with the provisions of this Ordinance are hereby repealed.

### **4. EFFECTIVE DATE**

The provisions of this Ordinance shall take effect thirty (30) days following the date of the Board of Trustees' adoption of the Ordinance.

PASSED AND ADOPTED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, this the \_\_\_\_ day of \_\_\_\_\_, 2023.

TOWN OF BERTHOUD

By: \_\_\_\_\_  
Will Karspeck, Mayor

ATTEST:

By: \_\_\_\_\_  
Christian Samora, Town Clerk