

## CHAPTER 26. WATER RIGHTS

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### 7-26-1. Water Rights Acquisition Policy and Conveyance Requirements.

Intent. It is intended that all applicants requesting annexation of land into Tooele City for residential development, all applicants requesting that property already within the boundaries of the City rezone the property to a higher density or more intensive use which increases the need for water service from the City, all applicants requesting the subdivision of land, and all applicants requesting a development permit shall convey water rights in an amount sufficient to satisfy the anticipated future water needs of the respective proposed development to be served and supplied by the City water system as provided in this Chapter. Satisfaction of this water rights acquisition policy and the accompanying conveyance requirements shall be considered as a condition to and requirement of approval for all such applications.

(Ord. 2021-22, 08-18-2021) (Ord. 2015-03, 03-04-2015) (Ord. 1998-31, 08-18-1998)

### 7-26-2. Water Rights Required—Determination of Amount.

(1) (a) Residential Uses—Interior. The amount of water rights to be conveyed in order to satisfy this policy and provide an adequate supply of water for a dwelling unit interior shall be 0.25 acre-feet per dwelling.

(b) Residential Uses—Exterior. The amount of water rights to be conveyed in order to satisfy this policy and provide an adequate supply of water for a dwelling unit exterior shall be 4.00 acre-feet per acre of irrigable land, taking into account such factors as lot size, lot impervious surfaces, and lot irrigable area.

(c) These requirements are a reasonable average and are required despite variations in usage above or below the average in any given application.

(2) Non-Residential Uses. An amount sufficient to satisfy the projected needs of the proposed development shall be determined by the Tooele City Public Works Director. The Public Works Director may delegate responsibilities under this Chapter.

(3) State Engineer Requirements.

(a) For interior use, due to the nature of Tooele City's water reclamation facility, the State Engineer

requires that the quantity of water credited to a development applicant upon the applicant's conveyance of water rights shall be that portion of the water right which the State Engineer has approved for depletion, and that quantity shall not include any diversion amounts which the State Engineer requires to be returned to the hydrologic system. In other words, interior water rights must be approved by the State Engineer for 100% depletion.

(b) For exterior use, the quantity of water credited to a development applicant upon the applicant's conveyance of water rights shall be that portion of the water right which the State Engineer has approved for diversion, which quantity may include any amounts which the State Engineer requires to be returned to the hydrologic system.

(Ord. 2021-22, 08-18-2021) (Ord. 2015-03, 03-04-2015) (Ord. 2000-03, 1-5-2000) (Ord. 1999-34, 12-01-1999) (Ord. 1998-31, 08-18-1998).

### 7-26-3. Type of Water Rights Acceptable for Conveyance.

(1) Water rights proposed for conveyance to the City shall be municipal or municipal-type water rights. Prior to acceptance of such water rights, the City shall evaluate the rights proposed for conveyance and may refuse to accept any right which it determines to be insufficient in annual quantity or flow rate, unsuitable for municipal use, not reasonably likely to be approved for change to municipal purposes within the City by the State Engineer, or otherwise deficient. The City's refusal of such rights shall not constitute a waiver of, and shall not relieve an applicant from complying with, the requirements of this Chapter. In determining the quantity of water available under the water rights, the City will evaluate the priority of the water rights, the historic average quantities of water associated with the water rights, and other relevant factors. The City will require an approved application for the change of use and change of point of diversion, as applicable, with the State Engineer in order to quantify and verify the water rights.

(2) Fee-in-lieu. Pursuant to established City Council policy, in lieu of actual conveyance of water rights pursuant to this Chapter, certain development applicants may pay to the City an amount per acre-foot for access to water rights controlled by the City in a quantity necessary to satisfy the anticipated future water needs of the proposed development to be served and supplied by the City water system.

(3) Supply and Delivery Facilities May be Required. In addition to furnishing water rights pursuant to this Chapter, the applicant will be required to comply with other provisions of the Tooele City Code, including the payment of water impact fees, and also may be required to pay additional costs necessary to construct the facilities necessary to supply, store, and distribute water.

(Ord. 2015-03, 03-04-2015) (Ord. 2005-19, 08-03-2005)  
(Ord. 2000-03, 01-05-2000) (Ord. 1998-31, 08-18-1998)

#### **7-26-4. Possible Adjustments or Revisions to Water Rights Conveyance Requirements.**

(1) Annexation; deferral. Where an annexation contains property which is being annexed without the consent of the owner, or where water service will not immediately be provided by the City as a result of an annexation, the City may, in the exercise of the discretion of the City Council, elect to not require the conveyance of water rights at the time of annexation as long as the annexation specifically identifies such parcels and provides either an alternative means to satisfy these water rights conveyance requirements or provides that any subsequent change in zoning classification or subsequent development approval which increases the need for water service by the City will require the conveyance of additional water rights to the extent necessary to provide adequate water to serve such future development. Such an election shall not constitute a waiver of, and shall not relieve an applicant from complying with, the requirements of this Chapter.

(2) Lands Which Are Restricted Against Future Development. Where development of the property in question is restricted by unusual circumstances such as topographic features, environmentally sensitive or fragile conditions, or voluntary limitations on landscape and other activities which will reduce the amount of water to be provided by the City, the Public Works Director may reduce the amount of the water right required to be conveyed to an amount commensurate with the nature of the proposed restricted development. Any such restriction must be accompanied by enforceable provisions for securing compliance in a form to be approved the Tooele City Attorney.

##### **(3) Redevelopment.**

(a) Dwellings. A dwelling building permit application associated with land that contains or once contained a dwelling, which dwelling will be or has been razed, shall not require the conveyance of water rights. The burden shall be upon the applicant to demonstrate by substantial evidence that the land contains or once contained a dwelling. The water rights adjustment made for dwellings pursuant to this Subsection shall apply to the new dwelling and curtelage only. Additional irrigable land added to the parcel upon which the to-be-razed dwelling sits, or the prior dwelling sat, shall require the conveyance of additional water rights or the payment of a fee-in-lieu, as determined by the Public Works Director.

(b) Other primary structures. A building permit application associated with land that once contained a primary structure that was not a dwelling shall require the conveyance of water rights or the payment of a fee-in-lieu of conveyance if the applicant cannot demonstrate by substantial evidence that water rights were previously conveyed to the City for the prior structure. If water rights were conveyed to the City for a prior non-dwelling structure, but those water rights are determined by the

Public Works Director to be insufficient for the structure and associated irrigated areas identified in a new building permit application, the applicant shall convey additional water rights or pay an additional fee-in-lieu of conveyance, as determined by the Public Works Director.

(4) Expansion and change of use. Where a non-residential building alteration or change of use requires a new building permit or a new occupancy permit, and the building alteration or change of use is anticipated to result in increased culinary water usage, the permit applicant shall convey additional water rights or pay an additional fee-in lieu of conveyance, as determined by the Public Works Director. Dwelling alterations or expansions shall not require the conveyance of additional water rights unless resulting in the creation of a new dwelling unit. No rebate or refund shall be owing where a building alteration or change of use may result in decreased culinary water usage.

(5) Water-wise methods. Where a building site, building, or use of a building, including landscaping, incorporates technologies or processes designed to decrease impacts to City water systems and facilities, where the water rights conveyance requirement was reduced in reliance upon those technologies or processes, and where those technologies or processes fail or cease to be used, for any reason or to any degree, the City may require the conveyance of additional water rights or the payment of an addition fee-in-lieu of conveyance corresponding to the increased culinary water usage resulting from such failure or cessation of use, as determined by the Public Works Director. The fee-in-lieu may be invoiced by the City to the building water account through the regular city water bill, to be paid in full over a period of no more than three years. The City may record a Notice with the office of the Tooele County Recorder regarding any property utilizing this provision.

(6) Secondary water. Where site landscaping uses secondary water provided by the City or by an irrigation company, where the water rights conveyance requirement was reduced in reliance upon secondary water usage, and where secondary water usage decreases in favor of an increase in culinary water usage, the City may require the conveyance of additional water rights or the payment of an additional fee-in-lieu of conveyance corresponding to the increased culinary water usage, as determined by the Public Works Director. The fee-in-lieu may be invoiced by the City to the property water account through the regular city water bill, to be paid in full over a period of no more than three years. The City may record a Notice with the office of the Tooele County Recorder regarding any property utilizing this provision.

(7) Exemption for *de minimus* usage. Notwithstanding the requirements of this Chapter, the City Council may establish a policy whereby building alterations or changes of use resulting in *de minimus* increases of culinary water usage shall not require the

conveyance of additional water rights or the payment of a fee-in-lieu of conveyance. The term *de minimus* shall be defined in the policy.  
(Ord. 2015-03, 03-04-2015) (Ord. 1999-34, 12-01-1999)  
(Ord. 1998-31, 08-18-1998)

#### **7-26-5. Time of Conveyance.**

(1) The conveyance of title to the water rights, free and clear of all liens, encumbrances, and claims of any nature not expressly approved in writing by Tooele City, shall be an express condition to the City's approval of any final annexation, rezoning, or development permit. Tooele City may require a water rights title insurance policy or the equivalent.

(2) The water rights conveyance required by this Chapter shall occur promptly following the earliest development approval for which the amount of water rights necessary to satisfy the anticipated future water needs of the development can be ascertained with reasonable certainty. An approved residential final plat shall not be signed or recorded, nor any building permit issued, prior to conveyance of the water rights or payment of the fee-in-lieu. Notwithstanding City review of a land use application, a land use application shall not be considered complete until the associated water rights are conveyed or the fee-in-lieu paid, as applicable. Should the amount reasonably anticipated fall short of the amount actually required, the applicant shall convey additional water rights or pay an additional fee-in-lieu, as determined by the Public Works Director, as soon as possible following written notice to do so, but no later than a subsequent development permit for the subject development.

(3) Notwithstanding Subsection (2), above, the City may approve a non-residential building permit prior to the conveyance of the required water rights where:

(a) the applicant has filed a change application with the State Engineer for sufficient water rights for the development;

(b) there is no indication that the State Engineer will deny approval of the change application; and,

(c) the applicant has executed and recorded a water rights agreement on a form approved by the City Attorney.

(Ord. 2015-03, 03-04-2015) (Ord. 1999-34, 12-01-1999)  
(Ord. 1998-31, 08-18-1998)

#### **7-26-6. Appeals and Requests for Adjustment, Modification, Exemption, or Waiver of Water Rights Conveyance Requirements.**

(1) Any applicant, person, or entity which is subject to this water rights acquisition policy and conveyance requirement may file, in writing, either prior to or concurrent with the application that triggers the water rights conveyance requirement, an appeal or a request for adjustment, modification, exemption, or waiver of the requirement with the City Council seeking relief from all or a portion of the water rights acquisition policy requirements as contained in this Chapter.

(2) Supporting Information to be Submitted. Any such appeal or request for relief shall be signed by the applicant and contain adequate information and documentation in support of the relief requested. The City Council may request additional information which they deem reasonably necessary in order to make a decision on the application. The burden shall be upon the applicant in any such appeal or request for adjustment, modification, exemption, or waiver of this water rights conveyance requirement to demonstrate that the strict application of the policy under their particular facts and circumstances is inequitable, unreasonable, or unlawful.

(3) Decision by City Council. Within 30 days of the filing of the completed appeal or request, together with all supporting information and documentation required by the City Council, the City Council shall schedule a public meeting with appropriate notice. At the public meeting, the applicant and all interested persons shall be entitled to present information, documentation, and witnesses in support of or in opposition to the application. At the conclusion of the meeting, the City Council shall either issue its decision or vote to study further the appeal or request and issue its decision at the next regular City Council meeting.  
(Ord. 2015-03, 03-04-2015) (Ord. 1998-31, 08-18-1998)

#### **7-26-7. Effective Date.**

Tooele City specifically finds that it is necessary for the immediate preservation of the health, safety, and welfare of the present and future inhabitants of the City that this ordinance shall take effect retroactive to the date of subdivision final plat or site plan application for those subdivisions or site plans that fail to do any one of the following:

(1) (a) for residential subdivisions or the residential portion of mixed-use subdivisions, obtain subdivision final plat approval from the City Council prior to August 1, 2005;

(b) for non-residential subdivisions or the non-residential portion of mixed-use subdivisions, obtain site plan approval from the Planning Commission prior to August 1, 2005;

(2) complete public improvement bonding pursuant to Tooele City Code §7-19-12 prior to August 1, 2006; or

(3) complete all bonded public improvements prior to August 1, 2007.

(Ord. 2015-03, 03-04-2015) (Ord. 2007-07, 04-04-2007) (Ord. 2006-15, 07-05-2006) (Ord. 2005-19, 08-13-2005) (Ord. 2005-07, 05-04-2005) (Ord. 19 98-31, 08-18-1998)