

ORDINANCE NO. 2022- ____

**AN ORDINANCE AMENDING VARIOUS SECTIONS IN CHAPTER 4.04
OF THE CASTLE ROCK MUNICIPAL CODE REGARDING THE
WATER DEDICATION CODE**

WHEREAS, Castle Rock Water has recently updated its Water Resources Strategic Master Plan; and

WHEREAS, changes are required to be made in the Water Dedication Code to account for the update; and

WHEREAS, other clarifying changes to the Water Dedication Code are recommended at this time, including, but not limited to, ensuring that any landowner who seeks to annex property and dedicate water to the Town bears all costs associated with the Town's review of the water title opinion that said landowner is required to provide; and

WHEREAS, the Town Council finds that it is appropriate to amend the Water Dedication Code at this time.

NOW, THEREFORE, IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK, COLORADO, AS FOLLOWS:

Section 1. Amendment. Subsection 4.04.020.C of the Castle Rock Municipal Code is amended to read as follows:

4.04.020 - Policy and purpose.

C. The Water Resources Strategic Master Plan adopted by the Town in 2006 and updated in ~~2010~~ 2022 (water plan) establishes a framework for imposition of user service charges and capital fees sufficient to enable the Town to eventually meet the bulk of system demand from sustainable, renewable water supplies, after developing appropriate water reclamation and reuse facilities. The water plan incorporates a rational methodology for placing on new development the direct future capital costs of acquiring and developing renewable water resources. The water plan does not burden new development with unrelated costs or impacts. The long-term transition from primary dependence on groundwater to renewable sources is necessary and inevitable, and will assure the long-term viability of the Town's water supply and the attendant preservation of public and private property values and investment.

Section 2. Amendment. Section 4.04.030 of the Castle Rock Municipal Code is amended to read as follows:

4.04.030 - Definitions.

Whenever the following words or phrases are used in this Chapter, they shall have the following meanings:

AF means one (1) acre foot, or 325,853 gallons of annual water availability.

Code means Chapter 4.04 of this Municipal Code, entitled “Water Dedication Code,” AS AMENDED.

~~*Council* means the Castle Rock Town Council.~~

Dedication means the conveyance to the Town by deed of marketable title to water rights.

~~*Development contract*~~ *AGREEMENT* means the annexation and/or development contracts entered into between the Town and the landowner.

DIRECTOR MEANS THE DIRECTOR OF CASTLE ROCK WATER OR THE DIRECTOR’S DESIGNEE.

Groundwater rights means the legal right as adjudicated in a final court decree to withdraw water from the groundwater basin of sedimentary rock formations in one (1) or more of the four (4) principal Denver Basin aquifers: ~~(the Lower Dawson, Denver, Arapahoe and Laramie-Fox Hills)~~, which the Town has the legal and economical ability to incorporate into its production system.

Municipal Code means the Castle Rock Municipal Code, as amended.

Renewable water resources means the facilities to withdraw, treat, store and deliver tributary water, capture, reclaim and reuse groundwater and tributary water, and the property interests, legal rights and entitlements that support the use and delivery of such water resources.

TOWN COUNCIL MEANS THE CASTLE ROCK TOWN COUNCIL.

Tributary water means the legal right to divert and consume tributary water, available on a reliable basis in perpetuity, developed from a stream or alluvial aquifer, which the Town has the legal and practical ability to incorporate into its production system.

Water dedication agreement means an agreement between the Town and landowner whereby development entitlements are granted by the Town in exchange for the dedication of water rights.

~~*Water efficiency plan*~~ means a document prepared in accordance with Town of ~~Castle Rock~~ minimum standards and certified by a Colorado professional engineer which includes progressive water conservation designs and water demand calculations that are both enforceable and measurable at agreed development milestones. A minimum of two (2) years of actual data consumption is required to support initial demand assumptions and the plan shall have a maximum of five (5) years between milestones for adequate monitoring of actual usages. Special rate

structures will be instituted for the development to ensure individual compliance with approved water efficiency measures. The rate structure will be described in the WATER EFFICIENCY plan.

Water plan means the Water Resources Strategic Master Plan adopted by the Town Council on January 31, 2006, ~~and AS updated in 2010~~ 2022.

Section 3. Amendment. Section 4.04.045 of the Castle Rock Municipal Code is amended to read as follows:

4.04.045 - Renewable water resources required at annexation.

A. Requirement. Except for ~~annexations~~ THOSE PROPERTIES exempted under SECTION 4.04.045.B, no property shall be annexed to the Town unless the Town is concurrently provided, at the expense of the annexor,:

(i)-1. ~~n~~New renewable water resources,; ~~and/or~~

(ii)-2. ~~a~~Additional or enhancement of existing ~~Castle Rock Water~~ TOWN renewable water resources; ~~and/or~~

(iii)-3. ~~a~~A verifiable reduction in current irrigation demand through THE drying up of existing irrigated lands ~~through~~ BY MEANS OF landscape renovation in accordance with ~~Castle Rock's~~ TOWN landscape criteria sufficient to meet the total projected water demand from full development of the annexed property,; and/or

(iv)-4. ~~a~~Adequate transferred development rights from ~~Eligible P~~properties to offset the incremental water demand for residential and non-residential development in accordance with Section 20.02.015 of the ~~Castle Rock~~ Municipal Code.

Because SECTION 20.02.015 does not provide a methodology for calculating non-residential demand, THE DIRECTOR ~~Castle Rock Water~~ will calculate ADMINISTRATIVELY DETERMINE the number of EQUIVALENT ~~Q~~qualified Residential ~~U~~units needed to meet the demand for non-residential development. The determination as to whether the annexor is able to meet the requirementS of this ~~s~~Section 4.04.045 is SHALL BE at the sole discretion of the Town Council. The provision of such renewable resources or reduction in current water demand needs, and any adjustment in the renewable water fee imposed under SECTION 4.04.150 as a result thereof shall be specified in the ~~annexation and~~ development agreement.

B. Exemptions. ~~The following properties are exempt from this Section 4.04.045:~~

1. ~~—~~Infill properties identified in THE ~~Castle Rock Water's~~ Water Resources Strategic Master Plan, ~~as amended in May 2018,~~ AND AS further depicted on Figure ~~3-3~~ 3.5 OF SAID PLAN, ENTITLED “CASTLE ROCK WATER INCLUSION AND EXCLUSION,” ARE EXEMPT FROM THE REQUIREMENTS OF SECTION 4.04.045.A.

~~2. Those properties for which a petition for annexation was filed with the Town and such petition was found to be in substantial compliance by the Town Council on or before May 1, 2018, further depicted on Figure 3.3. Provided however, if such exempted property has not completed annexation by December 31, 2020, then the annexation requirements under this 4.04.045 shall be applicable to such property.~~

Section 4. Amendment. Subsections 4.04.050.A and B of the Castle Rock Municipal Code are amended to read as follows:

4.04.050 - Required dedication of groundwater rights with land use approval.

- A. Annexation. All groundwater rights to the Denver Basin groundwater underlying the annexed property shall be conveyed to the Town concurrently with and as a condition to the annexation. The severance of ownership or control of the groundwater rights from the annexed property shall preclude its annexation as the Town Council may determine in its sole discretion. The total development entitlements granted annexed property through concurrent zoning approval shall be limited to the development credit (AS calculated ~~under Paragraph PURSUANT TO SECTION 4.04.080.A.1 of this Chapter~~) realized from the required groundwater rights conveyance, absent a finding of the Town Council that the exceptional nature of the development proposed warrants special dispensation, such as preservation of open space, landforms or vistas of community-wide significance or interest, significant primary employment generation, or enhanced urban design and community amenities and aesthetics. Regardless of any other conditions, implementation of a water efficiency plan in accordance with Section 4.04.120 is a requirement of annexation. In the event that the Town Council finds that the development proposal merits special dispensation, the ~~annexation contract~~ DEVELOPMENT AGREEMENT shall prescribe the supplemental water resource dedication and/or cash-in-lieu payment required to support full development of the annexed property.
- B. Rezoning. As a condition to Town Council approval of a rezoning, all groundwater rights to Denver Basin groundwater underlying the subject property shall be conveyed to the Town. The request for rezoning shall constitute an irrevocable offer by the land use applicant and landowner to amend the applicable development ~~contract~~ AGREEMENT to conform to the provisions of the Code in effect at the time of rezoning. The landowner shall execute the necessary development ~~contract~~ AGREEMENT amendment as a condition to the final adoption of the rezoning ordinance.

Section 5. Amendment. Section 4.04.060 of the Castle Rock Municipal Code is amended to read as follows:

4.04.060 - Manner of conveyance.

~~Administratively, t~~The Town DIRECTOR shall ~~establish~~ ADMINISTRATIVELY APPROVE the required deed form and title assurances for the conveyance of water rights to the Town. Such conveyance shall require, at a minimum, the warranty of title given by the grantor in

a special warranty deed. The grantor shall provide Town with an opinion of title from a qualified water rights attorney that grantor has good and marketable title to the water rights. ALL REASONABLE COSTS INCURRED BY THE TOWN IN REVIEWING THE OPINION SHALL BE BORNE BY THE GRANTOR. The water dedication agreement and/or deed shall provide that, in the event it is determined after the recordation of the deed that the deed did not vest in the Town marketable title to the water rights, the development entitlements granted in reliance on the dedication shall be suspended until the title defect is cured or alternative water rights are conveyed to and accepted by the Town in accordance with this Code.

Section 6. Amendment. Subsection 4.04.070.A. of the Castle Rock Municipal Code is amended to read as follows:

4.04.070 - Required adjudications.

- A. It shall be the responsibility of the landowner, at ~~his or her~~ THEIR SOLE expense, to obtain a final decree to the groundwater rights prior to conveyance to the Town. Under special circumstances, as determined by the Town Council in its absolute discretion, the Town may accept un-adjudicated Denver Basin groundwater, provided that the cost of adjudication and yield from the subsequent adjudication are addressed in the applicable development ~~contract~~ AGREEMENT or water dedication agreement.

Section 7. Amendment. Subsection 4.04.070.A. of the Castle Rock Municipal Code is amended to read as follows:

4.04.080 - Manner of compliance.

- A. PURPOSE. Land use approvals of every nature are dependent and conditioned upon the dedication of groundwater rights in the quantity prescribed by this section, after accounting for all applicable conditions, restrictions and qualifications on the acceptance and quantification of groundwater rights under this Code.
- B. WATER DEMAND. The gross water production required to support the Town's service commitment TO ANNEXED PROPERTY shall be calculated at 0.55 AF per single-family equivalent (SFE) assignment made under Subsection 13.12.080.A OF THE MUNICIPAL CODE; provided, however, that for ~~the~~ purposeS of calculating water rights dedication requirements ~~under Section 4.04.080 only~~ WITHIN AN AREA GOVERNED BY A WATER EFFICIENCY PLAN, the SFE assignment for calculated water demand under Section 13.12.080 shall not be limited to the .67 SFE minimum assignment prescribed in Section 13.12.080. Consequently, an SFE assignment of less than .67 SFE may be utilized under Section 4.04.080, if otherwise qualifying under the applicable water efficiency plan and ~~established~~ THE ENGINEERING criteria adopted ADMINISTRATIVELY by ~~Castle Rock Water~~ THE DIRECTOR.
- C. DEDICATION REQUIREMENT. For each AF of water demand so calculated, ~~there~~ THE LANDOWNER shall be dedicated:

~~A-1.~~ Two (2) AF of groundwater rights THAT qualifying for credit under Section 4.04.050; or,

~~2.~~ ~~i~~ If all such qualifying groundwater rights are insufficient, then, at the election of the Town (AND subject to prior Town contractual commitments), either:

~~1-a.~~ Two (2) AF of Denver Basin groundwater rights underlying other properties within the ~~municipal~~ boundaries of the Town; or

~~2-b.~~ Cash in lieu of such rights in the amount of five thousand dollars (\$5,000.00) for residential uses and three thousand dollars (\$3,000.00) for nonresidential uses; provided, however, if a different price is warranted based on a market study obtained by ~~Castle Rock Water~~ THE DIRECTOR, such amount shall equal either:

~~a-i.~~ The current market price for equivalent groundwater rights; or

~~b-ii.~~ If ~~Castle Rock Water~~ THE DIRECTOR determines that groundwater rights are not readily available for purchase within the Town boundaries, the current market price for equivalent groundwater rights plus the transmission cost AS ESTIMATED BY THE DIRECTOR IN ACCORDANCE WITH STANDARD PROCEDURES of bringing extraterritorial groundwater to ~~the~~ Town boundaries from locations where such groundwater rights may be available for purchase.

~~B D.~~ DEDICATION OF WATER OUTSIDE OF TOWN BOUNDARIES. At the sole discretion of the Town Council, ~~the~~ GROUNDWATER rights ~~to~~ IN the Denver or Arapahoe aquifers BASINS underlying properties outside the Town boundaries may be accepted for credit against the calculated water demand. Because such rights cannot be included in the Town's combined wellfield water, ~~the dedication of extraterritorial groundwater rights shall meet the following criteria:~~

~~1.~~ ~~S~~ subject to the determination of the Town Council, THE LANDOWNER SHALL DEDICATE a minimum of three (3) AF per AF of demand of Denver OR ARAPAHOE Basin groundwater rights underlying properties outside the Town boundaries; ~~and~~ PROVIDED, HOWEVER, THAT

~~2.~~ ~~N~~ no Laramie-Fox Hills BASIN GROUNDwater rights outside the Town boundaries will be accepted for credit towards the calculated water demand.

Section 8. Amendment. Subsection 4.04.110 of the Castle Rock Municipal Code is amended to read as follows:

4.04.110 - Surplus water credit.

If, after the subject property has been fully platted and the water demand determined in accordance with this Code, the dedication made pursuant to Subsection 4.04.050B or 4.04.050C exceeds the required dedication imposed under Section 4.04.080 of this Chapter, the surplus water dedication credit shall revert to the Town, unless the landowner has retained the right to such surplus under the applicable development ~~contract~~ AGREEMENT or water dedication agreement.

Section 9. Severability. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect the remaining provisions of this ordinance.

Section 10. Safety Clause. The Town Council finds and declares that this ordinance is promulgated and adopted for the public health, safety and welfare and this ordinance bears a rational relation to the legislative object sought to be obtained.

APPROVED ON FIRST READING this 19th day of April, 2022 by a vote of 7 for and 0 against, after publication in compliance with Section 2.02.100.C of the Castle Rock Municipal Code; and

PASSED, APPROVED AND ADOPTED ON SECOND AND FINAL READING this 3rd day of May, 2022, by the Town Council of the Town of Castle Rock by a vote of _____ for and _____ against.

ATTEST:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to form:

Approved as to content:

Michael J. Hyman, Town Attorney

Mark Marlowe, Director, Castle Rock Water