

**TOWN OF BUENA VISTA, COLORADO
ORDINANCE NO. 05
(SERIES OF 2021)**

AN ORDINANCE AMENDING VARIOUS SECTIONS OF THE BUENA VISTA MUNICIPAL CODE, RENAMING AND AMENDING ARTICLE 16.05 BY THE ADDITION OF A NEW SUBSECTION 16.05.5.3.6 CONCERNING WATER DEDICATIONS AND FEES-IN-LIEU FOR DEVELOPMENT, AMENDING ARTICLE 16.04 BY THE ADDITION OF A NEW SUBSECTION 16.04.4.8.1 CONCERNING THE ADEQUACY OF WATER FOR DEVELOPMENT, AMENDING SUBSECTION 16.03.3.3.4.A CONCERNING ACCESSORY DWELLING UNITS, AND AMENDING SECTION 16.07.7.2 WITH A NEW DEFINITION FOR SINGLE FAMILY DWELLING UNIT

WHEREAS, the Town of Buena Vista generally, within the limits of availability, provides water services to residents of the Town;

WHEREAS, the Town's water supply is limited and the Board of Trustees foresees that unrestricted growth will increase water demand beyond the available supplies and recognizes development must have a role in increasing the Town's water supply; and

WHEREAS, although the Municipal Code establishes permissible dimensional standards and allowed uses for lots, the Town has reached a point where new development necessitates that the Town acquire water to service additional subdivisions.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BUENA VISTA, COLORADO, THAT:

Section 1. Article 16.05 of Buena Vista Municipal Code is hereby renamed as follows: "Dedications and fee-in-lieu requirements".

Section 2. Article 16.05 of the Buena Vista Municipal Code is hereby amended by the addition of a new subsection 16.05.5.3.6 to read as follows:

5.3.6 Water Dedications

- A. **Purpose.** The purpose of this Article is to ensure that new development contributes to the purchase or acquisition of water rights or to the payment of augmentation of water to offset the impact of the new development on the Town's water supply.
- B. **Applicability.** This subsection shall apply to all development proposed under this Article, except as provided in this subsection.
- C. **Calculation.**

1. Basis for Calculation. Water dedications and fee-in-lieu payments shall be based on the potential development of the property pursuant to the development application, including, but not limited to, the uses by right under the applicable zone district, the uses proposed on the property and division of property. Each single family dwelling unit shall constitute a single family equivalent for purposes of determining the necessary water right dedication or fee-in-lieu.
2. Multiple Developments, One Application. If a development application involves both subdivision and a site plan, the water dedication or fee-in-lieu requirement shall be calculated based the site plan portion of the application; provided, the site plan portion of the application is for the entire property. If the site plan portion of the application involves only a portion of the property subject to the subdivision application, the Town may calculate the water dedication or fee-in-lieu based on a combination of the site plan and subdivision.
3. Effect Of Previous Annexation or Development Approval. Annexation or approval of a subdivision plat shall not exempt property from the requirements of this Article. For properties previously annexed or subdivided in compliance with this Code, submission of a new development or building permit application shall require compliance with this Article. For developments for which there is a credit for a previously-made water rights dedication or fee-in-lieu payment, such dedication or payment shall be subtracted from any additional required dedication or payment upon further development of the property.
4. Subdivisions. Upon receipt of an application for a subdivision, Town staff shall determine the possible number of single family dwelling units based upon the zoning of the property and manner of division of the property, including but not limited to the number of lots.
5. Residential Site Plans or Building Permits. Upon receipt of an application for a residential site plan or building permit, as applicable, Town staff shall determine the number of new single family dwelling units proposed by the site plan or building permit. For residential building permit that involves a change in use or alteration to an existing building, the owner shall only be required to dedicate water or pay a fee in lieu if the fixtures subject to the building permit application require a meter size larger than three-quarter inch ($\frac{3}{4}$ ").
6. Non-Residential and Mixed Use Site Plans or Building Permits. Upon receipt of an application for a nonresidential site plan or building permit, Town staff shall determine the size and number of taps necessary to serve the development as proposed by the site plan or building permit. For nonresident building permits, the owner shall only be required to dedicate water or pay a fee in lieu if the fixtures subject to the building permit application require a meter size larger than three-quarter inch ($\frac{3}{4}$ "'). Upon receipt of an application for a mixed use site plan or building permit, Town staff shall determine the number of single family units and

the size and number of taps for the nonresidential component of the development. For these uses, one three-quarter inch ($\frac{3}{4}$ "") tap shall be equivalent to one (1) single family dwelling unit. For mixed use building permits, the owner shall only be required to dedicate water or pay a fee in lieu if the fixtures subject to the building permit application require a meter size larger than three-quarter inch ($\frac{3}{4}$ "").

7. ADUs. The possibility of ADUs on a property shall not be considered at the time of subdivision, unless the ADU is part of site plan pursuant to subsection C(2) above. However, additional water rights dedication or payment of fee-in-lieu shall be imposed for an ADU within a subdivided property at the time of request for approval of an ADU.

D. Water Rights Dedication or Fee in Lieu.

1. The water rights to be dedicated shall be sufficient to serve the proposed development. The fee-in-lieu of a water rights dedication to be paid shall be established by Board of Trustees. The fee-in-lieu shall be reviewed annually by the Board of Trustees and updated accordingly.
2. Dedication of the water rights or payment of the fee-in-lieu shall be made to the Town prior to recording of the final plat, minor subdivision plat, or in the case of site plans and building permits, prior to the issuance of the certificate of occupancy, except as provided herein. The Town will reevaluate the amount of dedication or payment at the time of issuance of the certificate of occupancy, or approval of final plat or minor subdivision plat. Any difference between the amount of dedication or payment calculated at the time of application and issuance of the certificate of occupancy, or approval of final plat or minor subdivision plat shall be the responsibility of the developer and shall be paid prior to the issuance of the certificate or approval of final plat or minor subdivision plat.
3. For major subdivisions, subject to a public improvements agreement, the Town may, in its sole discretion, allow for the payment of fee-in-lieu at the time for preliminary acceptance of the public improvements. If permitted by the Town, the developer/subdivider shall secure payment of the fee-in-lieu by letter of credit. The water fee-in-lieu security shall be in addition to any security required under the public improvements agreement for public improvements.
4. The Town shall have sole discretion to accept a dedication of water rights, to impose conditions on such an acceptance, and to determine how much development such a dedication will support. The Town shall also have sole discretion to accept a fee-in-lieu of a water rights dedication.

- E. **Waiver**. A developer may seek a waiver from the Town Administrator for ADUs which will not be used as a short-term rental for a period of at least three (3) years from the issuance of the certificate of occupancy. Such a waiver, if approved, will be recorded against the property by the Town and any use of the ADU as a short-term rental will

cause the fee-in-lieu applicable to development at the time of the use of the ADU as short term rental to become due and payable immediately to the Town. The Town shall send the owner of the property a notice of assessment of the fee-in-lieu and if such payment is not made within thirty (30) days of the date of the notice of assessment, the Town is authorized to record a lien against the property for the amount of the fee-in-lieu due and certify the same to the County Treasurer, to be collected and paid over in the same manner as taxes, together with the costs of collection. Cessation of the ADU as a short term rental after receipt of the notice of assessment shall not alleviate the property owner from payment of the fee-in-lieu as required.

F. Limitations.

1. Consolidation of lots shall not entitle the subdivider to any credit for any fee-in-lieu.
2. Previously dedicated rights and paid fees-in-lieu are credited to the property which was the subject of the development and may not be transferred as a credit to any other property.

Section 3. Article 16.04 of the Buena Vista Municipal Code shall be amended by the addition of new subsection 4.8 to read as follows:

4.8. Water Supply.

4.8.1. Adequate Water Supply.

- A. **Purpose.** The purpose of this section is to ensure that developments demonstrate the availability of water for the type of use proposed and that the Town, as the water utility, has adequate water capacity to supply water to a development.
- B. **Applicability.** For every development, the Town shall evaluate whether it has adequate water to supply for the development. In making this evaluation, the Town may take into consideration the type of use, density, long-term water goals of the Town, water quality and any other factor relevant to the evaluation of whether an adequate water supply exists. No development is ensured water from the Town and the lack of adequate water supply may be a basis for denial of a development or building permit application. For developments involving more than thirty-two (32) single-family equivalents, which shall include both possible primary and accessory uses based upon the type of permitted uses, evaluation of an adequate water supply shall occur during preliminary plat phase in accordance with Sec. 16.06.6.6.3 and if adequate water supply is found, no further evaluation shall be made for the specific project, except as allowed by C.R.S. § 29-20-303.
- C. **Water Report.** A development which results in a new water use in an amount more than that used by thirty-two (32) single-family equivalents must submit a water report with the following information:

1. An estimate of the water supply requirements for the proposed development through build-out conditions;
2. A description of the physical source of water supply that will be used to serve the proposed development;
3. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;
4. Water conservation measures, if any, that may be implemented within the development;
5. Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
6. Such other information as may be required by the Town.

Section 4. Section 16.07.7.2 of the Buena Vista Municipal Code is hereby amended by a new definition as follows:

Dwelling, single-family. A dwelling unit to be used by one (1) person or group of persons acting as one (1) household unit.

Section 5. Section 16.03.3.3.4.A of the Buena Vista Municipal Code is hereby amended by the addition of a new subsection 6 to read as follows:

6. Inference of ADU.

- a. The Town may infer the creation of an ADU in a primary structure and require compliance with this Section if actions indicate the intent to creation an independent dwelling unit or other similar arrangement for a separate dwelling unit by the presence of any of the following:
 - i. The existence of a separate exterior entrance to separate living space;
 - ii. The ability or practice of blocking access to the separate living space from the remainder of primary structure or vice versa;
 - iii. The existence of secondary cooking facilities; and/or
 - iv. A separate living space which could be used for sleeping, either sanitary or cooking facilities, or both.
- b. The Town may infer the creation of an ADU in an accessory detached structure and require compliance with this Section if actions indicate the intent to creation an independent dwelling unit or other similar arrangement for a separate

dwelling unit by the presence of any of a living space which could be used for sleeping, either sanitary or cooking facilities, or both.


Section 6. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board of Trustees hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any part or parts be declared unconstitutional or invalid.

Section 7. Safety. This Ordinance is deemed necessary for the protection of the health, welfare and safety of the community.


INTRODUCED, READ, ADOPTED AND ORDERED PUBLISHED this 23rd day of March, 2021.

THIS ORDINANCE SHALL BECOME EFFECTIVE THIRTY (30) DAYS FROM PUBLICATION BUT NO EARLIER THAN JUNE 1, 2021.

TOWN OF BUENA VISTA, COLORADO

By: 
Duff Lacy, Mayor

ATTEST:


Paula Barnett, Town Clerk

