

**TOWN OF BUENA VISTA, COLORADO
ORDINANCE NO. 16
(SERIES OF 2023)**

AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF BUENA VISTA AMENDING CERTAIN PROVISIONS OF THE BUENA VISTA MUNICIPAL CODE CONCERNING THE DEDICATION OF AN ADEQUATE WATER SUPPLY TO SUPPORT DEVELOPMENT, THE PROCESS AND REQUIREMENTS FOR EXTRATERRITORIAL SERVICE, AND THE EVALUATION OF ADEQUATE WATER SUPPLY FOR DEVELOPMENT BASED UPON THE TOWN'S WATER ALLOCATION POLICY

WHEREAS, the Town currently has a limited supply of water and is attempting to acquire additional water supplies required to serve further growth;

WHEREAS, development in the Town is progressing at a rate such that the Town may have an insufficient water supply to serve new development in the near future;

WHEREAS, to ensure the Town is able to manage development and to best utilize the Town's limited water supply, the Board of Trustees has adopted a water allocation policy to allocate the available water into classifications for development to promote growth in a measured manner that aligns with the Town's Comprehensive Plan, Water Resource Master Plan and priorities established by the Board of Trustees;

WHEREAS, to ensure the Town is able to manage development and to best utilize the Town's limited water supply, the Board of Trustees desires to regulate water connections for new development in future calendar years;

WHEREAS, the Board of Trustees has found that water allocation restrictions are necessary to make the best use of the Town's water supply, ensure development progresses at a sustainable rate to prevent the over-commitment of the Town's water supply, guide decisions by staff and decision-making bodies as to the availability of water for development and to further the goals set forth by the Town in its Comprehensive Plan and Water Resource Master Plan;

WHEREAS, the Board of Trustees desires to amend the Buena Vista Municipal Code to implement the water allocation policy as part of the development process and to ensure that development proceeds at a pace at which the Town is capable of serving all users of Town services;

WHEREAS, the Town also receives requests for exterritorial service to support development outside the Town's boundaries;

WHEREAS, the Board of Trustees finds that it is necessary to ensure the provision of water outside the Town is compliant with the Town's policies and water system; and

WHEREAS, the Board of Trustees finds that it is in the best interests of the Town and its citizens and in furtherance of the public health, safety and welfare to amend the Municipal Code as provided in this ordinance.

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

Section 1. Section 13-61 of the Buena Vista Municipal Code is renamed “General policies; exterritorial water service”.

Section 2. Section 13-61(c) of the Buena Vista Municipal Code is hereby deleted and the subsequent subsection shall be renumbered accordingly.

Section 3. Section 13-62 of the Buena Vista Municipal Code is hereby repealed and reenacted to read as follows:

Sec. 13-62. Procedures for applying for exterritorial service.

- (1) Applications for extraterritorial service shall comply with the following steps:
 - a. Submission of extraterritorial service application from owner or developer.
 - b. The exterritorial service application shall include the following:
 - i. The legal description of the area to be served.
 - ii. A description of the proposed development, including number of units, type of units, amount of planned outdoor irrigation and such other information regarding the proposed development as shall be deemed necessary by the Public Works Department to fully assess the application.
 - iii. The proposed timing for the commencement and completion of the water delivery system and other infrastructure construction, as well as the timing schedule and anticipated completion date for build-out of the proposed development.
 - iv. Documented proof of approval, or the pending approval, of the proposed development project by the County.
 - v. The estimated water flow requirements for the development at full build-out.
 - vi. An evaluation of adequate water supply, if any, to be dedicated to the Town and an acknowledgment that all individual wells on the property to be served must be abandoned upon the delivery of water service to the property.
 - vii. Written acknowledgment that the Town may require annexation to the Town, in whole or in part, of the property served by the water service extension at such time or times as the Town may deem appropriate, in accordance with the Municipal Annexation Act.

viii. Deposit, in an amount determined by the Town, to pay for the Town's costs associated with processing the application, including any necessary legal and/or engineering services engaged by the Town. Written acknowledgment that the applicant shall be obligated to pay for the Town's legal and engineering costs associated with the request.

ix. Preliminary engineering feasibility report.

c. Contents of engineering feasibility report. The developer's engineering feasibility report shall be prepared by professional engineer registered in Colorado and shall include the following:

i. Preliminary design drawings for all proposed water mains and system infrastructure, including a description of line sizes and lengths and all hydrants, storage facilities, pump stations, water treatment facilities and other planned infrastructure;

ii. A listing or description of any and all easements deemed necessary for the installation of the proposed water system extension;

iii. Preliminary cost estimates for the entire water system to be constructed, including connection charges and water distribution costs;

iv. Hydraulic and functional analyses of the proposed water system which will show the effect of the added water service and service area on the Town's existing facilities;

v. Preliminary cost estimates for any required off-site water treatment, transmission, storage or pumping facilities; and

vi. Water flow requirements, including number of taps, anticipated average daily usage, peak flow requirements and fire demand.

d. Review by staff and consultants, as necessary.

e. Consideration of application by the Board of Trustees.

g. If the Board of Trustees approves the application, the applicant shall prepare final construction plans and final costs estimates.

h. Final constructions plans and final costs estimates shall be considered for approval by the Director of Public Works. The Director of Public Works may request revisions to comply with the preliminary engineering feasibility report and the original request, approved by the Board.

(2) Water dedication or fee in lieu.

a. Documented proof of the availability of a water supply acceptable to the Town to be provided by the applicant to meet the anticipated water service demand to be generated by the proposed development. Water acceptable to the Town shall mean such water supply as is determined by the Town, upon the expert advice of its water consultants and in the Town's sole discretion, to be sufficient in quantity and seniority to reliably serve the proposed demands of the proposed development, as determined by the Town in its sole discretion.

b. As an alternative to the dedication of an adequate water supply, and solely at the Town's option, the developer shall provide a cash payment to the Town in lieu of dedicating the necessary adequate water supply, such payment to be in an amount determined by the Town upon the expert advice of its water consultants, and in the Town's sole discretion, to be reasonably necessary to purchase water of sufficient quantity and seniority to reliably provide water satisfying the demands of the development or property to be served.

c. The Town may waive, in whole or in part, the adequate water supply dedication requirement if the Board of Trustees, in its sole discretion, determines that such a waiver would serve the Town's best interests.

(3) Water Services Agreement. If the Town approves the requested extraterritorial service, the owner of the property to be served and developer must enter into a water services agreement with the Town, in a form provided by the Town, which shall run with the property that is the subject of the request and which shall incorporate at a minimum the following:

- a. Construction drawings.
- b. Inspections.
- c. Requirements for easements and permits.
- d. Maintenance responsibilities.
- e. Description of water to be conveyed to the Town or amount of fee in lieu cash payment.
- f. Agreement to annex the property to the Town at such time as the Town deems appropriate.
- g. Commitment to pay Town's fees and costs for processing the request.

(4) Final construction plans. The developer shall furnish the Town with copies of final construction plans, all existing and future surveys, as-built drawings and plans and specifications.

Section 4. Section 13-62.5(3) of the Buena Vista Municipal Code is hereby amended to read as follows:

Unless specifically waived by the Board of Trustees, a dedication of an adequate water supply to the Town, that is acceptable in the Town's sole discretion, to provide sufficient water for service to the property or, alternatively, and at the Town's option, the payment of a cash-in-lieu fee in an amount equivalent to the value of such dedicated water.

Section 5. Section 13-152(b) of the Buena Vista Municipal Code shall be amended to read as follows:

(b) In addition to other requirements imposed by law, all building plans submitted to the Town shall include:

- (1) Water service connection size and location;
- (2) Payment of all fees and costs to connect to the Town's water system, including water dedication or payment of fee-in-lieu pursuant to subsection 16.05.5.3.6;
- (3) Water meter size and location;
- (4) Size, type and location of backflow prevention devices; and
- (5) Size and type of any backflow prevention devices used on service lines of fire sprinkling systems.

Section 6. Section 16.05.5.3.6. D of the Buena Vista Municipal Code shall be amended to read as follows:

D. Water Supply Dedication or Fee in Lieu.

1. The water supply to be dedicated shall be adequate to serve the proposed development. The fee-in-lieu of a water supply dedication to be paid shall be established by Board of Trustees. The fee-in-lieu shall be reviewed periodically by the Board of Trustees and updated accordingly.
2. The Town shall have sole discretion to accept a dedication of a water supply, 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 supply dedication. Dedication of water or payment of fee-in-lieu shall only be made in conjunction with a development application. No pre-payment of fees-in-lieu will be accepted by the Town.
3. Except as set forth in subsection (4), below, dedication of an adequate water supply or payment of the fee-in-lieu shall be made to the Town prior to recording of a final plat of a major subdivision or upon application for a building permit, except as provided herein. Upon application for building permit, the Town will reevaluate the amount of dedication or payment required at the time of recording of any previous applications that included a requirement to dedicate water or pay a fee-in-lieu. Any difference between the amount of dedication or payment calculated at the time of a previous application for the development, if water was dedicated or a

payment was made, and the current building permit application shall be the responsibility of the developer and shall be satisfied at the time of the application for building permit. For purposes of this Section, condominium subdivisions shall be deemed a minor or major subdivision in accordance to the classification under subsection 16.06.6.6.5.B.

4. For minor subdivisions, the Town may accept a dedication of an adequate water supply prior to recording of the minor subdivision plat. The Town will not accept payment of fee-in-lieu prior to recording of a minor subdivision. Such payment will only be accepted at the time of building permit.
5. For major subdivisions, subject to a public improvements agreement, the Town may, in its sole discretion, allow for the payment of a 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.

Section 7. Section 16.05.5.3.6.F.2 of the Buena Vista Municipal Code shall be amended to read as follows:

2. Previously dedicated water 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 8. Section 16.05.5.3.6.F of the Buena Vista Municipal Code shall be amended by the addition of new subsections to read as follows:

5. To the extent water is dedicated for development and no fee-in-lieu is required pursuant to subsection 16.05.5.3.6, the amount of single family equivalents represented by that dedication shall be indefinitely reserved for that development and shall not be subject to subsections 6, 7, and 8 below.

6. Except as provided in subsection 7 below, for a period of ten (10) years from the initial payment of the fee-in-lieu for a major subdivision, the Town will reserve the number of single family equivalents represented by the payment based upon the calculation in subsection 16.05.5.3.6.C for use in the subject subdivision if the maintenance fee described in subsection 8 below is timely paid. Upon expiration of the reservation period, the reservation of single family equivalents shall expire. After the reservation period, if the Town lacks adequate water resources available to serve the subject property given its classification in the Town's water resource allocation policy, the Town will deny service to the subject property and accept no payment of water system development fees for connections to the Town's water system until adequate Town water resources are available to serve the subject property. Notwithstanding any reserved single family equivalent, the developer remains responsible for any increased dedication or fee-in-lieu pursuant to subsection 16.05.5.3.6.D until payment of the water system development fee is

received for the subject property. No refunds shall be provided by the Town for any fees-in-lieu previously paid.

7. Upon payment of a Town fee-in-lieu and water system development fee as part of a complete building permit application, any 10-year reservation period, as applicable to the property which is the subject of the building permit, will automatically expire and the Town shall reserve the number of single family equivalents associated with the fee-in-lieu and water system development fee for a period of eighteen (18) months from the date the building permit is issued for use on the subject property. If a water meter to connect to the Town system the property to be served by the associated fees has not been installed within the 18-month reservation period, the right to connect to the Town's water system represented by payment of the associated fees shall expire. The payment of a new water system development fee, but not a new fee-in-lieu, is required to obtain a right to service. No refunds shall be provided by the Town for any fees previously paid.

8. Subsequent to payment of a fee-in-lieu pursuant to subsection 16.05.5.3.6.D, the Board of Trustees may establish a recurring maintenance fee for continued reservation of the number of single family equivalents associated with the initial payment. The maintenance fee, as established by the Board of Trustees, shall be per single family equivalent and may differ over the period of time the reserved single family equivalents remain unused for the subject property. Upon a failure to timely pay the maintenance fee, the Town shall send written notice to the developer at the most recent address provided to the Town. If no payment is made within thirty (30) days of the date of the notice, the SFEs represented by the unpaid maintenance fees shall expire and a new fee-in-lieu is required to obtain a right to any SFEs. After the expiration due to nonpayment, if the Town lacks adequate water resources available to serve the subject property given its classification in the Town's water resource allocation policy, the Town will deny service to the subject property and accept no payment of a fee-in-lieu for connections to the Town's water system until adequate Town water resources are available to serve the subject property. No late payments will be accepted more than thirty (30) days after the date of the written notice described in this subsection. Upon issuance of a certificate of occupancy, the future maintenance fee obligations for that single family equivalent represented by the certificate of occupancy shall no longer be due to the Town. No refunds, or partial refunds, shall be provided by the Town for any maintenance fee previously paid.

9. The Board shall assess and allocate the number of water connections available for development based upon Board of Trustees' determination of how best to manage the Town's water supply, taking into consideration long-term and short-term water and development planning. Such allocation shall be considered an administrative act and adopted by resolution of the Board of Trustees. The allocation may be based on type of development, certain development characteristics, priority areas for development, contractual obligations of the Town, reservations of water connections as outlined in subsections 5, 6, and 7 above, or categories which the Board of Trustees determines are in the best interests of the Town. Staff shall follow water allocation policy when reviewing applications for development and assessing the availability of water for the development.

Section 9. Section 16.06.6.4.1.C.5.c.ii(b) of the Buena Vista Municipal Code is amended to read as follows:

Public facilities and services are available to adequately serve the subject property while maintaining an adequate level of service to existing development, including, but not limited to, public water supply, infrastructure, and water supply available, pursuant to subsection 16.04.4.8.1, to serve development that is likely to occur in the proposed new zone district.

Section 10. Section 16.06.6.5.1.C.3 of the Buena Vista Municipal Code is amended by the additional a new subsection d to read as follows:

d. There is adequate water available from the Town's water system to serve the subject property pursuant to the Town's water allocation policy and the requirements of subsection 16.04.4.8.1.

Section 11. Sections 16.06.6.5.2.C.5.b.i.(e) and (f) of the Buena Vista Municipal Code are amended and new subsection (g) is added to read as follows:

(e) Impacts of the use on the surrounding neighborhood have been adequately minimized;

(f) The proposed use does not adversely impact the public health, safety, and welfare of the Town; and

(g) There is adequate water available from Town's water system to serve the subject property pursuant to the Town's water allocation policy and subsection 16.04.4.8.1 at the time of application.

Section 12. Sections 16.06.6.6.1.C.3.c.iii. and iv of the Buena Vista Municipal Code are amended and a new subsection v is added to read as follows:

iii. Does not affect a recorded easement without approval from the easement holder;

iv. Will not limit the Town's ability to provide adequate and sufficient facilities or services, including, but not limited to, public water supply, infrastructure, and water supply available to the proposed subdivision; and

v. There is adequate water available from the Town's water system to service the proposed subdivision pursuant to the Town's water allocation policy and subsection 16.04.4.8.1 at the time of application.

Section 13. Section 16.06.6.6.2.C.5.b.iv of the Buena Vista Municipal Code is amended to read as follows:

iv. Provides evidence of public water, pursuant to the Town's water allocation policy subsection 16.04.4.8.1, and sewer system connections;

Section 14. Sections 16.06.6.6.3.C.5.d.vi and vii of the Buena Vista Municipal Code are amended to read as follows:

vi. Provides evidence of public water, pursuant to the Town's water allocation policy and subsection 16.04.4.8.1, and sewer system connections;

vii. Provides water to lots that are in compliance with the Town's water supply, infrastructure, and water supply.

Section 15. Section 16.07.7.2 of the Buena Vista Municipal Code is amended by the addition of the following new definition:

Adequate Water or Adequate Water Supply. A supply of water as determined by the Town pursuant to subsection 16.04.4.8.1.

Section 16. 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 17. 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 25th day of July, 2023.

THIS ORDINANCE SHALL BECOME EFFECTIVE THIRTY (30) DAYS FROM PUBLICATION.

TOWN OF BUENA VISTA, COLORADO

By: Libby Fay
Libby Fay, Mayor

ATTEST:

Paula Barnett
Paula Barnett, Town Clerk

