

Town of Frederick, Colorado

Water Reservation and Allocation Policy

1. Definitions.

- a. “Attainable” means rental or for-sale housing affordable to a household with an annual income of at or below one hundred twenty percent of area median income. Attainable includes “affordable” as defined by C.R.S. § 29-32-101(2).
- b. “Board” means the Board of Trustees of the Town of Frederick.
- c. “Initiation of Water Use” means the commencement of the use of the Town’s Water System after installation of a water tap and water meter.
- d. “LUC” means the Town of Frederick Land Use Code.
- e. “Policy” means this Town of Frederick, Colorado, Water Reservation and Allocation Policy.
- f. “Qualified Project” means a new development, changes in use, expansion of use, or redevelopment that qualifies for water reservations and allocations pursuant to this Policy.
- g. “Reservation Term” means the time period in which a Water Reservation is effective.
- h. “Standard Project” means a new development, changes in use, expansion of use, or redevelopment that is not a Qualified Project.
- i. “Town Code” means the Town of Frederick Municipal Code.
- j. “Water Allocation” means an allocation of water credits that occurs at the time a building permit is issued (and paid for in full, including all related water fees and other financial obligations due at the time of building permit issuance) for work that involves installation of a water meter or replacement of an existing water meter to accommodate a larger tap.
- k. “Water Bank” has the same definition as is set out in Town Code § 13-41.
- l. “Water Reservation” means a reservation of water credits from the Town’s Water Bank towards the demand anticipated for a particular Qualified Project for a stated time period, which credits may be applied towards a Water Allocation prior to the expiration of their Reservation Term.
- m. “Water Reservation and Allocation Agreement” means an agreement setting out the terms of Water Reservations and Water Allocations for a Qualified Project.

2. Overview.

- a. *Authority.* This Policy is authorized by Town Code § 13-2-230, and is in alignment with the Town of Frederick Strategic Plan.
- b. *Intent.*
 - i. This Policy is intended to support the Town’s Strategic Plan by providing the opportunity for Qualified Projects (defined herein) to enter into a Water Reservation and Allocation Agreement to reserve otherwise unreserved and unallocated water credits from the Water Bank, in lieu of conveying some or all of the water rights to the Town that would otherwise be required by applicable Town ordinances, resolutions, and regulations.
 - ii. Water Reservation and Allocation Agreements under this Policy implement Town Code § 13-2-230 with respect to water dedication requirements. However, they do not constitute and are not intended as a waiver of any requirements of the Town Code, the LUC, or applicable Colorado law.
- c. *Qualified Projects.* The Board may authorize Water Reservations for Qualified Projects. The Board has established criteria for identifying Qualified Projects based on their contributions to economic opportunity, housing diversity, housing affordability, and quality of life. These criteria are set out in Section 5.
- d. *Standard Projects.* This Policy does not apply to Standard Projects. Standard Projects must provide water to the Town that is of adequate quantity, quality, and reliability for the type of development proposed, in accordance with Chapter 13, Article II, Town Code, the LUC, and applicable Colorado law.
- e. *Existing Agreements.* This Policy does not modify or abrogate rights and obligations under valid, enforceable agreements to which the Town is a party, unless provided for therein.

3. General Requirements.

- a. *Wastewater Connection Required.* No Water Reservation or Water Allocation shall be made pursuant to this Policy unless the sewer service requirement of Town Code § 13-54 is satisfied, whether or not the project is otherwise a Qualified Project, unless the Board finds that an extraordinary public benefit would result from authorizing the Water Reservation or Water Allocation.
- b. *Reservations under Required Water Reservation and Allocation Agreement.* Water Reservations under this Policy will be set aside for the Qualified Project and will not be available for other use during the Reservation Term. All Water Reservations under this Policy shall be documented by a Water Reservation and Allocation Agreement that is approved by the Board, which shall set forth the terms and conditions of the allocation, including (at a minimum) all of the following:

- i. The proposed new development, change in use, expansion of use, or redevelopment will be designed, and / or operated, as a Qualified Project for a period established by the Board, and will demonstrate either:
 - 1) Exemplary water efficiency techniques, as determined by professional judgment of the Town Engineer or designee; or
 - 2) Meet a critical land use need, as determined by the Board according to this Policy.
 - ii. A specified Reservation Term. At the end of the Reservation Term, the Water Reservation shall be converted to a Water Allocation or expire (see Section 6., below) and the subject water made available for other use within the Town's water portfolio or for future reservation or allocation. In general, the Reservation Term shall expire one year from the date of the Water Reservation and Allocation Agreement. However, in the discretion of the Board, for larger developments with an anticipated build-out period of more than one year, the Reservation Term may be for a period not to exceed five years, in which case the Board may also impose annual reductions in the number of available credits (without penalty for credits already applied), in a proportion established by the Board with due regard to the proposed schedule and phasing of the development.¹
 - iii. If the proposed development is also the subject of a development agreement, Reservation Terms should correspond to the development schedules that are set out in the development agreement to the extent consistent with Section 3.b.ii., above. A development agreement may contemplate the potential for the Developer and the Town to enter into multiple sequential Water Reservation and Allocation Agreements. However, a development agreement shall not commit to specific terms for future agreements (including fees for Water Reservations), and shall not establish any priority or right for the Developer with respect to future Water Reservations.
- c. *Water Reservation Fees.* Fees for Water Reservations shall be due and payable upon mutual execution of a Water Reservation and Allocation Agreement, unless otherwise provided in the agreement. Fees for Water Reservations are nonrefundable.

¹ For example, if 100 credits were reserved, then 100 credits would be available in years 1 and 2. Starting in year 3, the number of credits could be reduced by 25 percent per year, such that 75 credits would be available in year 3, 50 credits in year 4, 25 credits in year 5, and 0 credits at the start of year 6. No penalties would be assessed for the timely (or early) application of reserved water credits, such that if the applicant used 50 of its 100 credits in year 1 (leaving 50 credits for future use), then no further reduction in available credits would occur until year 5, when the number of available credits is reduced from 50 to 25.

d. *Defaults and Remedies.*

- i. In the event the Town determines that the applicant has defaulted as to its obligations under a Water Reservation and Allocation Agreement or development agreement for a Qualifying Project, then the Town shall provide written notice to the applicant pursuant to the notices provisions of the Water Reservation and Allocation Agreement, and thereafter, until the default is corrected (and in the event of water waste, as defined in Town Code, such water waste mitigated to the satisfaction of the Town), the Town Manager or designee may order any one or more of the following:
 - 1) Withholding of pending or new building permits;
 - 2) Prohibition on new connections to the water system, even if a Water Allocation has been made for the connection; or
 - 3) Withholding of certificates of occupancy.
- ii. If a default described by subsection 3.d.i., above, is not corrected within nine months after the date of written notice to the applicant, or such other time period as provided by Town Code or agreed to between the Board and the applicant, unused Water Reservations, or portions thereof, and Water Allocations, or portions thereof, will expire, and shall thereafter be returned to the Water Bank.
- iii. In the event the Town determines that the applicant has committed a flagrant or repeated waste of water in violation of Town Code § 13-80, failed to comply with a watering restriction under a water shortage contingency plan in violation of Town Code § 13-81, or made material misrepresentations as to whether the applicant's project is a Qualified Development, then the Board, after notice and a hearing, may order, in rough proportion to the violation:
 - 1) Before Initiation of Water Use, the termination of Water Reservations or Water Allocations; or
 - 2) After Initiation of Water Use, the installation of flow restrictors.

4. Timing of Policy Application.

- a. *Initial Determination of Qualified Project Status.* An applicant may seek a written initial determination from the Town as to whether a particular proposal likely constitutes a Qualified Project under this Policy. Such determinations do not constitute assurance that a Water Reservation or Water Allocation will be available to the applicant, or that the Town and the applicant will reach agreement as to a Water Reservation and Allocation Agreement. Initial determinations shall be made by the Town Manager or designee, or by the Board, and shall expire after one year

or upon changes to this Policy that affect the guidelines under which the determination was made, whichever comes first.

- b. *Initiation of Review.* An applicant who submits a complete application for an approval under the LUC for which a water demand analysis is required in accordance with Town Code § 13-2-205 (including but not limited to a subdivision, site plan, or conditional use permit, or a building permit for new construction, or an expansion, remodel, or tenant finish that involves a tap or meter size change) may apply for Qualified Project status and negotiate a Water Reservation and Allocation Agreement with the Town.
 - c. *Formal Determination of Qualified Project Status.* The Board or Town Manager (or designee) shall determine whether the application referred to in Section 4.b., above, demonstrates that the request constitutes a Qualified Project pursuant to the guidelines set out in Section 5., below. The Town shall thereafter notify the applicant in writing as to the decision. Town Manager decisions may be appealed to the Board in accordance with LUC § 4.7.7.
 - d. *Reservation of Water.* If it is determined that a proposal constitutes a Qualified Project, then, provided that the Town and the applicant are able to reach terms with regard to a Water Reservation and Allocation Agreement, and provided that water of sufficient quality, quantity, and reliability is legally and physically available for the Town's municipal use, water credits shall be made available for reservation pursuant to a fully-executed Water Reservation and Allocation Agreement. The quantity of water to be made available for Water Reservation shall be at the discretion of the Town Manager or Board, as applicable (see Section 5, below).
 - e. *Allocation of Water.* Within the Reservation Term, Water Reservations shall constitute a contractual right to a Water Allocation, provided that the applicant is not in default of the Water Reservation and Allocation Agreement. For *de minimis* projects (as defined in Section 5.c., below), Water Allocations may be made at the time of building permit without prior Water Reservation or establishment of a Water Reservation and Allocation Agreement, as approved by the Town Manager or designee, provided that they find that water is of sufficient quality, quantity, and reliability is legally and physically available for the Town's municipal use.
5. Qualified Projects. The Town may consider the categories of projects that are listed in this Section to be Qualified Projects. The Board shall determine whether a proposed project meets the criteria set out in subsection 5.a. (Key Economic Development Projects) or 5.b. (Critical Land Use Needs). The Town Manager or designee shall determine whether a proposed project meets the criteria set out in subsection 5.c. (*De minimis* Impacts).
- a. *Key Economic Development Projects.*
 - i. Key economic development projects include the following:

- 1) Research and industrial facilities that are directly involved in biosciences / biotechnology product manufacturing; control, electromechanical, measuring, and navigational instruments; clean technology; medical equipment and supplies manufacturing; and recreational vehicle and equipment manufacturing.
 - 2) Research, industrial, wholesale, or warehousing and distribution facilities that principally provide components, supplies, or professional or technical support for the industries listed above.
 - 3) Hospitals that include inpatient facilities.
 - 4) Child care centers.
 - 5) Projects of Economic Significance as defined by the Board of Trustees, including, but not limited to, strategic types of retail, mixed-use, entertainment, or corporate headquarters development, or projects that the Board determines implement adopted special area plans.
- ii. Key economic development projects shall demonstrate exemplary water efficiency, with design and operational standards specified in (or as an attachment to) the Water Reservation and Allocation Agreement. Such design and operational standards shall result in the development and / or land use materially outperforming (in the aggregate, and from an efficiency standpoint) comparable development that adheres to the minimum standards of the Town Code, LUC, and Colorado Plumbing Code.
- b. *Critical Land Use Needs.*
- i. Critical land use needs are:
 - 1) Attainable housing, which may be subject to a deed restriction to ensure that resales or rentals continue to qualify as attainable, for example, for not less than 50 years.
 - 2) Housing for older persons, as defined in the Federal Fair Housing Act.
 - ii. Projects that address a critical land use need shall provide one or more of the critical land uses listed above, and Water Reservations and Water Allocations under this Policy shall be made only for such uses. Application materials shall also demonstrate that the project will outperform (in the aggregate, and from a water efficiency standpoint) comparable development that adheres to the minimum standards of the Town Code, LUC, and Colorado Plumbing Code.

- c. *De minimis Impact.* Projects with *de minimis* impacts are:
 - i. New construction of a single-family detached dwelling unit on an infill residential lot, provided that the Water Reservation (or Water Allocation, if a Water Reservation is not made) does not exceed 0.6 acre-feet per year.²
 - ii. Establishment of a commercial or industrial use that meets the vision of the Town of Frederick Comprehensive Plan on an infill nonresidential lot, provided that the Water Reservation (or Water Allocation, if a Water Reservation is not made) does not exceed 1.8 acre-feet per year.
- 6. Expiration of Water Reservations and Water Allocations.
 - a. *Expiration of Water Reservations.* Water Reservations, or portions thereof, that are not converted to Water Allocations during the Reservation Term set out in the Water Reservation and Allocation Agreement will expire, and shall thereafter be returned to the Water Bank.
 - b. *Expiration of Water Allocations.* Water Allocations, or portions thereof, that are not timely applied by way of Initiation of Water Use as provided in the Water Reservation and Allocation Agreement (or if silent, the Town Code) will expire, and shall thereafter be returned to the Water Bank.
- 7. Review and Amendment.
 - a. *Annual and Periodic Review.* The Board intends to review the goals, standards, and procedures contained in the Policy in January of each year, and at other times as the Board determines appropriate (e.g., upon acquisition of additional water supply).
 - b. *Amendment.* Upon review, the Board may amend this Policy by resolution as it determines appropriate.

² For the purposes of this subsection 4.c., Infill means the development or redevelopment of one undeveloped or underutilized lot that has been platted for a period of at least 5 years that is within a subdivision within which at least 80 percent of the lots are developed, that is not already subject to an agreement with the Town that addresses the dedication of water to the Town or the payment of fee-in-lieu for same (e.g., a Water Reservation and Allocation Agreement, MOAPI, or other comparable agreement), and where water, sewer, electric, gas, and phone utilities and street access are adjacent to the subject lot and other public services and facilities are available nearby. New designated private landscaped amenities are also considered infill as they are permanent uses for vacant lots.