

ORDINANCE NO. 1270

AN ORDINANCE AMENDING CHAPTER 18, ARTICLE 2 OF THE CITY OF FORT MORGAN MUNICIPAL CODE CONCERNING WATER SYSTEM ANNEXATION AND DEVELOPMENT

WHEREAS, the City of Fort Morgan, Colorado (the "City"), is a Colorado home rule municipality, duly organized and existing pursuant to Section 6 of Article XX of the Colorado Constitution; and

WHEREAS, the City Council (the "Council") has authority pursuant to the Home Rule Charter and C.R.S. §31-16-101, et seq. to adopt and enforce all ordinances; and

WHEREAS, pursuant to that authority, the City has previously adopted Water System regulations for the safety and welfare of the community, including those found within Chapter 18, Article 2 of the Fort Morgan Municipal Code (the "Code"); and

WHEREAS, due to the completion of recent annexations of unincorporated land into the City limits, areas of enclave have occurred, which are surrounded by incorporated City limits on all sides, thus allowing the City to annex such properties without requiring an annexation petition from the unincorporated landowners after a period of three years from the date of enclave; and

WHEREAS, the City Director of Utilities and Public Works has recommended, and City Council has directed at its last two annual retreats, certain amendments to the City's Water System regulations to accommodate such current unincorporated landowners within said areas of enclave, under specified conditions, as it relates to connecting to the City's Water System; and

WHEREAS, the Council finds it desirable and appropriate, and in the best interest of the general health, safety and welfare of its residents, customers and neighbors to amend Chapter 18, Article 2 to implement the referenced updates.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF FORT MORGAN,

SECTION 1: Section 18-2-210 of the Fort Morgan Municipal Code, is hereby amended to read as follows:

Sec. 18-2-210. Annexation and domestic water wells.

(a) On annexed parcels where a domestic water well is in service prior to annexation, the property owner shall be allowed to continue to use the domestic well ~~only for outside irrigation purposes~~ following the annexation with written

permission of the City Manager. A property owner shall not sell or distribute irrigation **well** water to any property other than his or her own.

(b) If the domestic well ~~used for outside irrigation~~ should become inoperable following the annexation and the well would require to be re-drilled to become operable again, then the City shall require the property owner to be supplied water for all demands by the City. No domestic water well shall be drilled after annexation unless authorized by ordinance passed by City Council.

(c) At the time of annexation, property owners shall transfer all other water rights associated with the property to be annexed. Notwithstanding the foregoing, property owners, who are annexing property where the water rights were severed prior to the annexation petition, shall transfer to the City water rights from a source approved by City Council in an amount equivalent to the duty of water associated with the property to be annexed. This transfer shall not be credited toward any future development of the property. The property owner shall also purchase water from a source that can be integrated into the City's potable water system sufficient to meet the needs of the property development or the current use of the property.

(d) All potable water shall be supplied by the City following annexation **unless prior approval is received in writing from the City Manager, pursuant to the terms of this section.**

SECTION 2: Section 18-2-220 of the Fort Morgan Municipal Code, is hereby amended to read as follows:

Sec. 18-2-220. Water right transfer and EHR.

(a) EHR by use.

(1) Single-family or two-family residences. All single-family or two-family residences shall require one (1) EHR.

(2) Multi-family residences. All multi-family residences shall require one (1) EHR for the first unit; one-half (0.5) EHR shall be required for each additional housing unit. If the total number of units required is a partial unit, then the total is rounded-up to the nearest whole unit.

(3) EHR Schedule. For all other uses, the EHR requirements shall be in accordance with the EHR Schedule as set by the City Manager.

(4) Commercial, industrial and dual water system users. For all commercial, industrial or dual water system users not identified, or those uses that are not adequately addressed, in the EHR Schedule, the initial EHR estimate shall be made by the City Manager.

(b) Development of a single-family or two-family residence or multi-family units.

(1) For the development of a single any lot and up to fifty (50) lots under this subsection, the property owner, developer and/or builder may either purchase the required water on the open market and transfer the rights to that water to the City or ~~have the City acquire the water on his or her behalf~~ shall furnish to the City a cash-in-lieu fee. Should the property owner, developer and/or builder choose to ~~have the City acquire water on his or her behalf~~ pay the cash-in-lieu fee, the property owner, developer and/or builder shall be charged the ~~purchase price plus a service~~ cash-in-lieu fee as established from time to time by the City Council.

(2) ~~For the development of more than fifty (50) lots, the property owner, developer and/or builder shall purchase the required water and transfer the rights to the City.~~

(3) ~~(2)~~ Property owners, developers and/or builders shall pay the ~~tap~~ plant investment fees, as established from time to time by the City Council, and pay for all costs incurred by the City for the labor and materials required to install all service lines from the water main to the meter pit and to install water meters, meter pits and other appurtenances as necessary.

(4) ~~(3)~~ Should any development require the extension of a water main or service line, the cost of such extension, including any easement acquisition, shall be paid by the developer. Notwithstanding this requirement, the following provisions shall apply to any developer-furnished extension:

a. The construction shall conform to standards established by the City Manager.

b. In the event that the City determines the need for a pipeline larger than that which is needed to service the new development, the City shall pay the difference in cost of upsizing the new pipeline and its fittings.

c. Any developer who installs a pipeline at his or her expense, which can be utilized by others at a later time, will be eligible for a reimbursement by future developers. The reimbursement amount shall be calculated by the City Manager based on a percentage of their respective use. Any eligibility for reimbursement under this Subsection shall expire ten (10) years from the date of installation of the qualifying pipeline.

(c) Commercial and industrial businesses.

~~(1) For all commercial businesses where the EHR estimate is greater than fifty (50) units, the property owner, developer and/or builder shall purchase the required water and transfer the rights to the City. In all other instances, the property owner, developer and/or builder may either purchase the required water and transfer the rights to that water to the City or have the City acquire the water on his or her behalf. Should the property owner, developer and/or builder choose to have the City acquire the required water on his or her behalf, the property owner, developer and/or builder shall be charged the current market price and a per-transaction fee as adopted from time to time by the City Council.~~

For the development of any lot under this subsection, the property owner, developer and/or builder may either purchase the required water on the open market and transfer the rights to that water to the City or shall furnish to the City a cash-in-lieu fee. Should the property owner, developer and/or builder choose to pay the cash-in-lieu fee, the property owner, developer and/or builder shall be charged the cash-in-lieu fee as established from time to time by the City Council.

(2) The City shall monitor all commercial user's usage and, if it is determined that the initial or current number of EHR units are insufficient to supply the volume of water actually used, the City will notify the user by certified mail of the actual number of additional EHR units of water that the user will be required to purchase and/or transfer to the City **or pay the**

necessary cash-in-lieu fee. The user shall make arrangements for the purchase and transfer of any such additional EHR units within forty-five (45) days of receipt of the notification by the City. Failure to obtain the necessary EHR units within the specified time frame shall be cause for termination of water service by the City Water Works.

(3) After a commercial or industrial user's first year of water usage is established, any increase or decrease in EHR will be rounded up to the nearest ~~one-half (1/2)~~ or whole EHR unit, and in no case will the final equivalency be less than ~~one-half (0.5)~~ unit of water.

(4) If there is a reduction in EHR from the City Manager's initial estimate, the purchaser may request a refund; however, there will be no refund granted under the following circumstances:

- a. If the decrease in EHR is less than one (1) EHR;
- b. The EHR is set by EHR Schedule; or
- c. The decrease occurs in any year after the first full year of operation.

(5) Property owners, developers and/or builders shall pay the regular ~~tap~~ **plant investment** fee, as established from time to time by the City Council, and pay for all costs incurred by the City for labor and materials required to install a service line from the water main to the meter pit and to install a water meter, meter pit and other appurtenances as necessary.

(6) Should any development require the extension of a water main or service line, the cost of such extension, including any easement acquisition, shall be paid for by the developer. Notwithstanding this requirement, the following provisions shall apply to any developer-furnished extension:

- a. The construction shall conform to standards established by the City Manager;
- b. In the event that the City determines the need for a pipeline larger than that which is needed to service the new development, the City shall pay the difference in cost in upsizing the new pipeline

and its fittings;

c. Any developer who installs a pipeline at his or her expense, which can be utilized by others at a later time, will be eligible for a reimbursement by future developers. The reimbursement amount shall be calculated by the City Manager based on a percentage of their respective use. Any eligibility for reimbursement under this Subsection shall expire ten (10) years from the date of installation of the qualifying pipeline.

SECTION 3: Section 18-2-230 of the Fort Morgan Municipal Code, is hereby amended to read as follows:

Sec. 18-2-230. ~~System development~~ Plant investment fee.

Notwithstanding anything in this Chapter to the contrary, any water consumer who elects or is required to obtain a ~~two-inch meter tap or greater~~ new water service, whether due to new construction or upsizing, shall be assessed a system development plant investment fee ~~as determined by the City Manager.~~ established from time to time by the City Council.

SECTION 4: Section 18-2-260 of the Fort Morgan Municipal Code, is hereby amended to read as follows:

Sec. 18-2-260. Dual and nonpotable water systems.

Dual water systems providing non-potable water for landscape purposes may be permitted upon written application to the City Council Manager and upon a determination that permitting the dual system is in the best interest of the City.

SECTION 5. If any section, provision, paragraph, clause or phrase of this Ordinance is held, or decided to be unconstitutional, invalid or enforceable for any reason, such decision shall not affect the constitutionality, validity or enforceability of the remaining portions of this Ordinance.

SECTION 6. All other ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

INTRODUCED, READ, ADOPTED ON FIRST READING AND ORDERED PUBLISHED on the 20th day of September, 2022.

THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO



By: Lyn Deal
Mayor

Attest:
John Brennan
John Brennan
City Clerk

PASSED, APPROVED AND ADOPTED ON FINAL READING AND ORDERED PUBLISHED this 4th day of October, 2022.

THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO



By: Lyn Deal
Mayor

Attest:
John Brennan
John Brennan
City Clerk

STATE OF COLORADO)
COUNTY OF MORGAN) ss. **CERTIFICATE**
CITY OF FORT MORGAN)

I, John Brennan, the duly appointed, qualified Clerk of the City of Fort Morgan, Colorado, do hereby certify that the foregoing **Ordinance No. 1270** was, as a proposed Ordinance, duly and legally presented to the City Council of the City of Fort Morgan, Colorado, on the 20th day of September, 2022. Said ordinance, as proposed, was duly read at length at said meeting, and thereafter the same was, on the 23rd day of September, 2022, published in *The Fort Morgan Times*, a daily newspaper of general

circulation published and printed in the City of Fort Morgan, Morgan County, Colorado. Said proposed ordinance was again taken up and read a second time, duly and legally, passed, approved and adopted at a regular meeting of the City Council held on the 4th day of October, 2022. Within five (5) days after its final passage, said **Ordinance No. 1270** was published in *The Fort Morgan Times*, a daily newspaper of general circulation published and printed in the City of Fort Morgan, Morgan County, Colorado.



John Brennan
City Clerk