

CHAPTER 39. - DEDICATION OF WATER RIGHTS AND FACILITIES FOR RESIDENTIAL SUBDIVISION AND PARCEL MAPS, CONSTRUCTION OF NEW HOMES AND COMMERCIAL AND INDUSTRIAL BUILDINGS^[2]

Footnotes:

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Editor's note— This chapter was originally Chapter 7 of Title 9, Public Works, of the Fernley Municipal Code and has been moved here to the development code at the request of the City.

Sec. 32.39.010. - Dedication.

(a) *For municipal water delivery.*

- (1) An applicant shall dedicate to the city, as a condition precedent to approval of a final subdivision map, final parcel map or issuance of a building permit, the surface water or groundwater rights reasonably necessary to ensure an adequate water supply to serve all parcels or lots within the project or a building. This section applies to projects that will be served by the city's municipal water system, or by domestic wells.
 - (2) As a condition precedent to a final subdivision or parcel map, an applicant also must dedicate facilities for storm drainage, water treatment, supply, storage, transmission and distribution, and any facilities for sewage collection, treatment and disposal, and appurtenances (such as wells, pipelines, pumps and storage tanks) located within or outside of the property, which are reasonably necessary to ensure an adequate water supply to the property, adequate sewage disposal for the property, and adequate storm collection and disposal for the property, along with any easement or legal access reasonably necessary to ensure an adequate water supply to the property.
 - (3) Except as otherwise provided in section 32.28-197(c), the amount of required dedicated water right pursuant to this section is 1.12 acre-feet annually (AFA) (1,000 gallons/day) for each parcel or lot. For commercial and industrial applications, an ERC is the amount of water use estimated for the purposes of the project divided by 1.12 acre-feet. In the event of a parcel splitting subsequent to the initial parcel map, the applicable water right or fee in lieu of dedication of water rights shall be conveyed for each subsequently created parcel or lot. For each mobile or manufactured home on a lot or space, multi-family unit, condominium, commercial or industrial use, the developer's engineer shall calculate the amount of required water rights based on the number of fixture units as defined by the most current version of the plumbing code adopted by the city, multiplied by 25 gallons per day and 365 days, then converted to acre-feet.
 - (4) Dedication of surface water or groundwater rights must meet the following conditions:
 - a. The applicant must submit proof of the validity of the water right and the complete chain of title establishing ownership. The water right must be in good standing and of sufficient quantity and quality to service the needs of the development. In the case of a certified right, the city may request proof of use within the preceding five years.
 - b. The water right must be legally available for the beneficial use of the proposed development. All costs of transfer of any points of diversion or change in manner and place of use shall be the responsibility of the applicant. All water rights transfers are subject to the state water engineer's approval, proof of which must be submitted before acceptance.
- (b) *Domestic well use.*
- (1) For construction of new residences on existing parcels that were created on or after July 8, 1996, and that will be served by domestic wells, water rights shall be dedicated prior to the approval of a building permit for the residence. For vacant parcels that have existing wells, proof of water right dedication shall be submitted with the building permit. Parcels created before July 8, 1996, are exempt pursuant to NRS 534.350. Nothing in this article is intended to supersede the provision of FTO 13.
 - (2) Prior to the approval of any new parcel map or subdivision map that creates new parcels that are five acres or less gross acreage, and which will utilize a domestic well for the property's domestic water supply, rather than the city municipal water system, the applicant shall dedicate to the city, at the applicants cost, 2.02 acre-feet per year of certificated groundwater rights from within the Fernley Area Hydrographic Basin.
 - (3) The city, at its sole discretion, may accept, in lieu of the dedication of part or all of the 2.02 acre-feet of groundwater rights, as required in subsections (b)(1) and (2) of this section, up to 2.02 acre-feet of surface or other water rights that the city can utilize in its municipal water system. Supplemental irrigation water rights may not be dedicated to satisfy the requirements of this article.

- (4) Any water rights that are dedicated to the city under this chapter shall be withdrawn or committed to the use at the applicable parcel or lot pursuant to the policies and requirements of the city and the state.
- (5) In the event a property for which water rights were dedicated to the city and is subsequently connected to the city municipal water system:
 - a. The water rights dedicated pursuant to this chapter may be credited toward the dedication requirements that exist for connecting the subject property to the municipal water system; but
 - b. Said city credit will only be granted if the former domestic well is abandoned and plugged pursuant to state law.
- (6) If the abandonment of a domestic well under this article could qualify the city for a domestic well credit pursuant to NRS 534.350, or any regulations adopted pursuant thereto, no city credit towards the municipal service water dedication requirement will be allowed unless the city receives a domestic well credit pursuant to NRS 534.350, and regulations adopt pursuant thereto.
- (7) If a domestic well credit is granted to the city pursuant to NRS 534.350, and the amount of that credit for a specific well is greater than the credit a property owner is allotted to from the city pursuant to subsection (6) of this section, the property owner will receive the benefit of any such excess and may apply that excess toward another utility connection in the city service area.

(Prior Code, § 9.07.01)

Sec. 32.39.020. - Use of water rights and facilities.

The city may, by contract or written agreement, permit the use of the dedicated water rights and/or facilities by other governmental entities, public or private utilities, or any other person or entity, including those engaged in providing water, storm drainage or sewer services.

(Prior Code, § 9.07.02)

Sec. 32.39.030. - Nature of dedication.

The dedication of water rights and facilities required herein may be satisfied if the applicant enters into an agreement with the city secured by a performance bond or other undertaking acceptable to the city. The agreement must constitute a binding offer to dedicate, conditioned only upon failure to receive final approval of the application for water service.

(Prior Code, § 9.07.03)

Sec. 32.39.040. - Facilities standards.

The facilities which are the subject of a dedication agreement must be designed and constructed in accordance with standards and other requirements established by the public works design standards manual.

(Prior Code, § 9.07.04)

Sec. 32.39.050. - Approval of service, conditional.

Every "willserve" notification and administrative approval of applications for water service is conditioned upon the acceptance of the dedication or the execution of an agreement conforming to this chapter.

(Prior Code, § 9.07.05)

Sec. 32.39.060. - Payment in lieu of dedication of water rights.

- (a) The following properties may pay a fee in lieu of dedication of water rights pursuant to the requirements set forth in subsection (c) of this section:
 - (1) New residences on parcels created by:
 - a. Final subdivision maps;
 - b. Tentative subdivision maps that have not expired; or
 - c. Final parcel maps;that were approved prior to December 14, 2004; or
 - (2) Commercial or industrial properties where the calculated ERC required to serve a proposed improvement is equal to or less than 0.5 ERCs.
- (b) The right to pay a fee in lieu of dedication pursuant to subsection(a)(1) of this section shall expire on January 1, 2018, if not exercised before that date.
- (c) Standards for payment in lieu of fee of dedication of water rights.
 - (1) If a property on which the project listed in subsection (a) of this section has appurtenant water rights, those water rights shall be dedicated to the city, to the extent required for water service. In the event an applicant is unable to convey sufficient water rights because there are insufficient water rights on the subject property for the project, a fee may be paid in lieu of dedication of the unavailable water right or the applicant may acquire and dedicate an equivalent replacement water right.
 - (2) An applicant does not qualify for payment in lieu of dedication of water rights if the property that would otherwise qualify under subsection (a)(1) of this section once had appurtenant water rights, and those rights were previously stripped from the property for use outside of the city. The burden of proof is on the applicant to show the lack of sufficient appurtenant water rights and/or the history of the transfer or unavailability of any appurtenant water rights. Any costs incurred by the city in determining the applicant's eligibility to pay a fee in lieu of dedication shall be the responsibility of the applicant.
 - (3) In the event that a fee in lieu of dedication of water rights is allowed as herein provided, said fee shall be the market rate for water rights as set by Truckee Meadows Water Authority. Any funds that are paid to the city in lieu of a dedication of water rights shall only be spent on:
 - a. The acquisition of additional water rights;
 - b. Projects designed to expand the quantity of water available to the municipal water system. Such projects may include, without limitation, projects for the storage of water during normal water years for use by the municipal water system during drought years; or
 - c. New projects to enhance the quality of water within the municipal water system.
 - (4) The payment of a fee in lieu of dedication of water rights pursuant to this chapter must be made:
 - a. For an eligible tentative subdivision map that has not expired and that was approved prior to December 14, 2004, at or before the time of approval of any final subdivision or final parcel map;

- b. For an eligible final subdivision map or final parcel map approved prior to January 1, 2008, at or before the time the water service connection fee is paid. If, prior to October 12, 2015, the water service connection fee was paid, but the payment of the fee in lieu of dedication of water rights was not paid at or before that time, the payment of the fee in lieu of dedication of water rights shall be paid at or before the time of the physical connection of any structure on the lot to the water service system;
 - c. For all other eligible final subdivision maps or final parcel maps for which the fee was not collected at the time of submittal or recordation of such final subdivision map or final parcel map, at or before a building permit for any lot contained within the final subdivision map or final parcel map is submitted; or
 - d. For improvements to commercial or industrial property eligible to pay an in lieu of fee pursuant to subsection (a)(2) of this section, at the time a building permit is submitted.
- (5) Notwithstanding any provisions of FMC 9.07.01(A)(3) to the contrary, the required dedication rate on which the payment of a fee in lieu of dedication shall be calculated pursuant to this section for each residential lot for which water is allocated from the city's existing pool of ground water rights, shall be the amount of ground water actually allocated to serve such lots as evidenced by the records of the state engineer.

(Prior Code, § 9.07.06; Ord. No. 2016-020, 12-21-2016)

Sec. 32.39.070. - List of qualified appraisers.

- (a) *Purpose.* The purpose of this provision is to meet the minimum requirements set forth by the legislative mandate of Assembly Bill No. 312, as amended by Senate Bill No. 394 of the 73rd Session of the Nevada Legislature, and as further amended by Assembly Bill No. 462 of the 74th Session of the Nevada Legislature. To comply with that legislative mandate, the council adopts an ordinance establishing the procedures for creating and amending a list of appraisers qualified to conduct appraisals of real property offered for sale or lease by the city.
- (1) This provision applies when the city is offering real property for sale or lease except as otherwise provided by state law, including, but not limited to, those exceptions contained NRS 268.059.
 - (2) This provision does not create a legal right, including, but not limited to, a property or other constitutional right, to be placed upon the established appraisal lists or to be awarded a contract for professional services.
- (b) *Procedure.*
- (1) The director shall obtain from the state real estate division a list of all general appraisers qualified to act as a general appraiser in the county.
 - (2) The director shall send a request for qualification to each appraiser on the list to determine if the appraiser is interested in performing appraisals for the city under terms and conditions stated therein, and what types of appraisals the appraiser is qualified to perform based on training and experience. An appraiser who fails to respond to the request for qualifications to the satisfaction of the director shall not be placed on the list.
 - (3) From the responses to the requests for qualifications, the director shall prepare the following five lists:
 - a. Residential appraisers;
 - b. General commercial and/or industrial appraisers;
 - c. Ranches appraisers;
 - d. Open space appraisers; and

- e. Water rights appraisers.
- (4) The names on the five lists set forth in subsection (b)(3) of this section must be organized in a random order in a fashion determined by the director.
 - (5) To create the five lists set forth in subsection (b)(3) of this section, the following standards shall be used to determine minimum qualifications:
 - a. The appraiser must possess all necessary licenses;
 - b. The appraiser must not have violated professional appraiser standards or statutory requirements in the performance of appraisals or cannot have been disciplined or fined by any state or federal agency for conduct that relates to the ability of the appraiser to perform the work to be required by the city;
 - c. The appraiser must have the ability to obtain and maintain insurance coverage as required by the city;
 - d. The appraiser must have the professional qualifications and experience for the specific appraisal required by the city;
 - e. During the five years immediately preceding the date of the appointment by the city, the appraiser cannot have filed as a debtor in a business capacity under the provisions of the United States Bankruptcy Code or breached any contract with a public agency or person in this state or any other state;
 - f. The appraiser's application must be truthful and complete; and
 - g. The appraiser must execute the application form and consent to and have the ability to satisfy all terms and conditions contained in any proposed contract for appraisal services presented by the city.
 - (6) Appraisers on the lists shall keep the director informed of any change in the status of standards listed above in subsection (b)(5)a through g of this section. The change in the appraiser's status or failure to maintain the minimum qualifications is cause for immediate removal from the list by the director. The director shall provide written notice to any appraiser of his removal.
 - (7) The names of appraisers who are organized in a firm of appraisers may be placed on the list independently if each is independently qualified. No two appraisers from the same firm can be selected to appraise the same real property. An appraiser who cannot be selected because of an appraisal firm relationship retains his place on the list for the next appraisal required by the city.
 - (8) From time to time the director shall obtain a new list from the state real estate division and follow the procedures of this article to assemble a new list. An appraiser whose name is stricken from the list as required by this section may be added to the new list if properly qualified and responsive.
- (c) *Appraiser selection process.*
- (1) When an appraisal is required for the sale or lease of real property owned by the city, the director shall send a request for proposal to the appraiser whose name is next on the list for the type of property appraisal required, and who has not been hired by the city for an appraisal since the last time the list was assembled or reordered.
 - (2) The request for proposal shall identify:
 - a. The property to be appraised;
 - b. The desired terms and conditions of appraisal; and
 - c. The requirements for the response to the request for proposal.
 - (3) The response from the appraiser must include:

- a. A statement of specific qualifications to do the type of appraisal required;
 - b. A proposal complying with the terms and conditions of the request;
 - c. The names of other appraisers in the appraiser's firm, if any;
 - d. A statement that the appraiser is not related within the first degree of consanguinity or affinity to any person who has an interest in the real property or an adjoining property; and
 - e. A disclosure statement which includes, without limitation:
 1. All sources of income that may constitute a conflict of interest;
 2. Any prior appraisal by the appraiser of the subject property; and
 3. Any relationship of the appraiser with the city, the owner of the subject property or the owners of any adjoining property to the one being appraised.
- (4) If an appraiser responds to the request in terms that are responsive and satisfactory to the director, the appraiser's proposal shall be presented to the council which shall verify the qualifications of the appraiser. The determination of the council as to qualifications is conclusive. An appraiser's name shall be stricken from the list for the type of appraisal requested if the appraiser does not satisfactorily respond to the request as determined by the director or if the council declines to verify the appraiser's qualifications.
- (5) The director shall use the list and repeat the selection procedures until the council approves an appraiser. To expedite the selection process, the director may send a request for proposal to more than one appraiser on the list. Those appraisers who respond but are not selected shall retain their places on the list. The director may also send the names of more than one appraiser to the council, but shall report to the council the order of the appraisers on the list.

(Prior Code, § 9.07.07; Ord. No. 2009-09; Ord. No. 2015-011)