

ORDINANCE NO. 2023-04

AN ORDINANCE PERTAINING TO IRRIGATION WATER WITHIN THE CORPORATE LIMITS OF BEAR RIVER CITY INCLUDING: THE DISTRIBUTION OF, SALE OF AND TRANSFER OF IRRIGATION WATER; SPECIFICATIONS FOR DITCH ENCLOSURES, AND RIGHTS OF WAY.

WHEREAS, the Bear River Canal Company, Inc. acquired all of the water rights and distribution system having reference to the waters of the Bear River, and

WHEREAS, Bear River City and the Bear River Canal Company have an agreement for all irrigation water within the city, and

WHEREAS, the Utah State Constitution Article XI, Section 6 states, “No municipal corporation, shall directly or indirectly, lease, sell, alien or dispose of any waterworks, water rights, or sources of water supply ...,” and

WHEREAS, Bear River City has property within it that is currently irrigated with secondary water and some of this property is being developed and subdivided for residential or other uses, pursuant to the Bear River City Subdivision Ordinance, and

WHEREAS, secondary water rights or shares previously used on any given properties approved for subdivision under the Bear River City ordinances that are not assigned or dedicated for use on all lots approved for subdivision, may be sold and/or otherwise transferred for use at other locations after the subdivision is approved, but before any building actually occurs, resulting in the possibility that no secondary water would be available as lots approved for subdivision are built out;

WHEREAS, it is desirable and contributes to the health and general welfare of Bear River City residents to incorporate landscaping that includes trees, shrubbery, flowers and other types of foliage around homes, yards and other properties, and

WHEREAS, it is desirable in order to encourage the planting and maintaining of landscaping and foliage described above to provide irrigation or “secondary” water rights and water to encourage irrigation of the landscaping and other foliage on properties within the community to help beautify the community generally, and

WHEREAS, it is in the public interest to maintain the integrity of the secondary water system and provide for the continued irrigation of such land with secondary water wherever possible and to thereby reduce the use of the more expensive and limited culinary water for outdoor uses, and

NOW, THEREFORE, BE IT ORDAINED BY THE BEAR RIVER CITY COUNCIL THAT THE FOLLOWING REGULATIONS SHALL APPLY TO IRRIGATION (SECONDARY) WATER AND DITCHES WITHIN THE CORPORATE LIMITS OF BEAR RIVER CITY:

I. Secondary Water Required for All Lots Approved Under the Bear River Subdivision Ordinance and Lots or Parcels Approved as Provided Under Utah Code Annotated Section 10-9a-605 and for Main Buildings.

- A. Secondary water rights or shares shall be required to be conveyed and transferred to Bear River City for dedication to each building lot (a “building lot” is defined as a parcel of land upon which a residential or non-agricultural commercial structure may be constructed) shown on any subdivision final plat approved under the Bear River Subdivision Ordinance or in the case of a minor subdivision, all lots graphically illustrated on a record of survey map and approved by the City Council for recording as provided under Utah Code Annotated Sec. 10-9a-(2)(b).

Secondary water is also required to be conveyed and transferred to Bear River City for dedication to obtain approval of a building permit for any main building.

Secondary water is not required for existing parcels or land, including parcels of land from which new building lots are created, that are primarily used for agricultural purposes.

- B. Shares of Bear River Canal Company representing secondary water shall be required at the ratio of one (1) share of water per one (1) acre of land to the closest one one-hundredth (0.01) share.
- C. It is the intent of the Council under this ordinance to require the transfer and dedication provided herein to apply to those lots newly created by the approval of a final plat or the approval of 1 to 10 lots as a minor subdivision and exempt from the plat requirements of Utah Code Annotated Sec. 10-9a-603 and Chapter 8 of the Bear River Subdivision Ordinance as provided by Utah Code Annotated Sec. 10-9a-605(2)(a), for which the Town does not currently hold shares or water rights dedicated to provide secondary water to such newly created lots.
- D. If Bear River Town Corporation does not have water rights or shares previously dedicated to it for a particular parcel in the Town, ownership of the required water share(s) shall be transferred and dedicated to Bear River Town Corporation for the benefit of each subdivided lot as provided under Sections of the Bear River Subdivision Ordinance. Shares being transferred do not indicate ownership in the Bear River Canal Company, but a perpetual exclusive right to an irrigation turn associated with the shares. The City shall provide an irrigation turn perpetually to the owner(s) of said property so long as annual payments on the secondary water shares are current and water is available.
- E. The subdivision applicant/land owner may temporarily use the secondary water dedicated for the subdivision lots on other property, until such time as a building permit for any subdivided lot is obtained and secondary water is needed for the subdivided lot, at which time the ability to use the corresponding secondary water

share(s) or fractional share on land other than the lot it is dedicated to serve shall terminate.

F. Exceptions:

1. Any owner of an individual lot (not a subdivision) who, at the time of the original effective date of this ordinance (March 3, 2005), did not have secondary water rights on said lot, will be granted an exception if secondary water rights cannot be acquired at the time of the building permit application. The criteria to be used to demonstrate that an effort has been made to obtain the water rights are:
 - a) Buy water shares from previous owner/s, if possible.
 - b) Contact city recorder to see if the City is aware of extra water shares.
 - c) Post for fourteen (14) days in three (3) public places in Bear River City notices offering to buy extra shares that someone might have. Notices shall be on an 8 X 11 or larger sheet of paper with font and print large enough to read at 10 feet away)
 - d) List the offers that were made for shares identified for sale in the above steps. The offer price must be equal to or greater than the average of three (3) recent sales or offers to sell shares (within the past two (2) years and not involving family members). This information must be collected and presented by the lot owner.
2. Building permits requested to remodel, add on, etc. to an existing structure or for the addition of out buildings shall be exempted from this requirement.
3. Water shares will not be required for land dedicated to Bear River City for public streets.

II. **Sale or Transfer of Secondary Water Shares.** Those secondary water shares that are owned by or co-owned by Bear River City shall not be permitted to be sold or transferred for use outside of the incorporated limits of the city. In no case shall the ownership of water be relinquished by the city. At the time of the original effective date of this ordinance (March 3, 2005) or any time thereafter, no property owner, who owns secondary water shares jointly with Bear River City, shall be permitted to sell or transfer water shares away from that property which would violate the ratio of 1 share per acre.

III. **Sale of Secondary Water Shares from One Lateral to Another.** Secondary water shares shall not be sold from one lateral to another. Application can be made for a special exception to sell shares from one lateral to another in accordance with the following requirements:

- A. The sale of secondary water shares does not reduce the ratio of 1 share per acre from that property which it is located.
- B. The Bear River City Council Member over Irrigation or his/her designated representative determines the requested change can be made without adversely affecting the irrigation system and/or the users thereof.

- C. All costs incurred by the request must be paid by the applicant before final approval is granted (nonrefundable).
- D. The requested special exception, if approved, will only take effect upon the next feasible schedule change.
- E. Final Approval must be obtained from the Bear River City Council at a regular council meeting after proper noticing requirements have been met.

IV. Diversion and Point of Delivery Changes. Secondary water may, at the request of the owner/user of the shares, be transferred amongst the separate streams and ditches for personal benefits or to sublet the water to others in accordance with the following requirements:

- A. Approval of the Council Member over Irrigation or his/her designated representative and the Mayor must be obtained certifying that the requested change can be made without adversely affecting the irrigation system and/or the users thereof. This may, in some instances, require communication with or signatures from others who share the same irrigation ditch (es).
- B. The fee, if any, for diversion or point of delivery changes shall be set by resolution.
- C. The appropriate fee for the requested change must be paid.
- D. The requested change will only take effect upon the next feasible schedule change.

V. Annual Fees, Assessments and Scheduling. Bear River City will impose a yearly water assessment. This fee shall be set annually by resolution. Bear River City will do the scheduling of water turns. So long as it is feasible, the scheduler will try to follow the canal company by moving the scheduled times forward 36 hours per year. Annual assessments will be due within 15-30 days of billing. Late fees shall be added each month assessments are unpaid. The amount of the late fee shall be set by resolution annually. The city reserves the right to rent out water of those users/shareholders who do not keep their account current.

VI. Easements and Infrastructure Required.

- A. All subdivisions shall be required to, as part of their development and approval process, provide a twenty (20) foot easement for new and existing ditches or pipelines with ditches in the center thereof. Initial design and installation of the ditches or pipelines servicing each lot shall be completed to the city's specifications, with the city's approval, and at the developer's expense.
- B. Minor subdivisions and building permits for a main building on existing lots not requiring a subdivision of property shall be required to, as part of their development and approval process, provide a twenty (20) foot easement for new and existing ditches or pipelines with ditches in the center thereof.

- C. Fences, bushes, trees, and permanent objects shall not be allowed within an easement.

VII. **Ditch Enclosures.** The following requirements do not apply to ditch enclosures on private property where there are no other downstream landowners who use water from that ditch. However, if at a later time the property is sold or subdivided, the following requirements must be met for ditch enclosures that supply water to those properties. This may require retrofitting the ditch enclosures because a “grandfather clause” does not apply. Ditch enclosures, including pipelines, head gates, and diversion boxes, shall be allowed in accordance with the following requirements:

- A. Complete a permit application and obtain approval from the Zoning Administrator and Council Member over Irrigation.
- B. For pipe culverts, smooth interior surfaced pipes shall be required to reduce the friction of water flow and to help prevent silt build-up. High-density Polyethylene (HDPE), Concrete and Reinforced Concrete are the only types of culvert pipes to be used for enclosures.
- C. A six-inch, smooth, flat, plumb, concrete head wall shall be required on the inlet side of any culvert pipe and shall be extended into the ditch bank on all sides 12 inches. It shall be formed such that the top of the head wall is at least 4 inches above both the ditch bank and the required cover. The culvert shall be flush with the inlet side of the head wall.
- D. When HDPE is used, if the outlet side is in an area where fire is likely to be used for weed control, it shall be extended by a two-foot corrugated metal pipe that slips over the outside of the HDPE culvert and fully covers the exposed areas.
- E. Culverts, head gates and diversion boxes shall be installed with a uniform flow line that matches the grade established with the culverts going under the city street just upstream and just downstream from the installation site. For installations not bounded by street culverts, the uniform grade shall be established by the inlet and outlet matching the respective downstream and upstream ditch flow lines, as closely as possible, with no positive (uphill) slope. The grade of the pipe shall not vary more than 1/4-inch in 10-feet and not more than 1/2-inch total variance from true grade at any location.
- F. Deeper installations sometimes referred to as a siphon or reverse-siphon shall be permitted but shall match the flow lines described in 6.e. at the inlet and outlet thereof. There shall be a minimum of two (2) feet of cover over such pipe to prevent frost damage.
- G. A concrete pad is required over culverts carrying traffic unless reinforced concrete pipe is used. The minimum cover for culverts not carrying traffic shall be one (1) foot, the side clearance between pipe and trench wall shall be one half diameter.

There shall be a minimum of four inches bedding underneath the pipe. The cover, trench fill, and bedding shall be minus 3/4-inch granular material compacted to at least 85% of the standard Proctor Density. Concrete may be used to replace all or part of the granular material cover. Heavier traffic loads may be required to obtain an engineered design acceptable to Bear River City.

H. For culverts without traffic, the minimum cover shall be six (6) inches. Native soil material may be used for cover, bedding and fill, however, the bedding and fill shall be compacted around the pipe. At any future time that such locations are to be converted for use by traffic, changes shall be made to conform to paragraph 6.G.

I. The following culvert sizes shall be required.

1. Concrete:

- a) Eighteen (18) inch inside diameter pipe shall be the minimum required size in the ditches supplied by the Pump Stream, Lateral 2, Lateral 4, Lateral 5 and Lateral 6.
- b) Twenty-one (21) inch inside diameter pipe shall be the minimum required size in the ditches supplied by the Fort Ditch, Lateral 3 and the West Division.
- c) Twenty-one (21) inch inside diameter pipe shall be the minimum required size in Lateral 1 since it is being considered as an alternate route for the Field Stream.

2. High-density Polyethylene:

- a) Fifteen (15) inch inside diameter pipe shall be the minimum required size in the ditches supplied by the Pump Stream, Lateral 2, Lateral 4, Lateral 5 and Lateral 6.
- b) Eighteen (18) inch inside diameter pipe shall be the minimum required size in the ditches supplied by the Fort Ditch, Lateral 3 and the West Division.
- c) Twenty-one (21) inch inside diameter pipe shall be the minimum required size in Lateral 1 since it is being considered as an alternate route for the Field Stream.

J. A metal grate shall be installed on the inlet side of any enclosure that will extend beyond 20 feet. The grate shall extend from the bottom of the ditch and shall connect to the head wall above the entrance to the enclosure. Gaps between the bars on the grate shall be no more than three (3) inches apart and all water shall go through the grate with no access around it. The slope of the grate shall have a two (2) feet run for every one (1) foot rise. Use the attached Plan and Specifications No. 320 with the exception that the width may be reduced to six (6) inches beyond the pipe ID, and for a concrete lined ditch the metal grate sides may be eliminated as long as the gap between the grate and cement lining is no greater than three (3) inches.

- K. Diversion boxes shall be covered with covers to retard entrance of debris into the pipelines, to prevent children from falling into the boxes, and designed to prevent small children from removing the covers. The covers may be solid, made from 3/16-inch diamond plate steel, or a grate with minimum opening widths of three (3) inches, made from 5/8-inch ASTM A 36 steel bars or other steel configurations of equal or greater strength. Use the specifications from the attached Plan No. 320 for the steel, bars, joints and coating.

VIII. **Costs.** The cost associated with all of the above requirements shall be met by the person(s) desiring or required to make the improvements. From time to time, with the approval of the City Council, the city may participate in a portion of the costs of either the installation or the materials or both if, the city determines that it is in the best interest of the community for safety, general welfare, or for other compelling public reasons.

Ordinance Number 2005-03-03 and its amendments are hereby repealed. The provisions of this ordinance are in addition to all other City ordinances, the laws of the State of Utah, and the laws of the United States. Whenever a conflict exists, the more restrictive provision shall apply to the extent allowed by law.

The City Council of Bear River City finds it in the best interests of the peace, health and safety of the inhabitants of Bear River City that this ordinance take effect as soon as possible. This ordinance shall therefore take effect immediately upon passage and posting. The Town Clerk is directed forthwith to post true and correct copies of this ordinance in three public places within the corporate limits of Bear River City.

Passed and adopted by the City Council of Bear River City in regular session this 12th day of April 2023.

Council Members voting in favor 3. Council Members opposing 0.

MAYOR, Megan Armstrong

ATTEST:

By: _____
TOWN CLERK, Sue Ann Holmgren

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CERTIFICATE OF POSTING ORDINANCE

I, the duly appointed and acting town clerk for the City of Bear River, hereby certify that copies of the foregoing amended Ordinance No. 2023-04 (AN ORDINANCE PERTAINING TO IRRIGATION WATER WITHIN THE CORPORATE LIMITS OF BEAR RIVER CITY INCLUDING: THE DISTRIBUTION OF, SALE OF AND TRANSFER OF IRRIGATION WATER; SPECIFICATIONS FOR DITCH ENCLOSURES, AND RIGHTS OF WAY) were posted at three public places within the municipality this 13th day of April, 2023, which public places are:

1. Bear River City Civic Center
2. Bear River City Town Hall
3. Bear River City Post Office

Dated this 13th day of April 2023.

By: _____
Sue Ann Holmgren, Town Clerk