

Title 12 Water Dedication Requirements

Chapter 12.01 General Provisions

12.01.010 Short Title:

This Title shall be known as the “Water Dedication Requirements of the Town of Elwood.”

12.01.020 Purpose:

The purpose of this Title is to ensure (A) that new development within the Town of Elwood is accompanied by the dedication of water rights or water shares sufficient to provide for the water demands entailed thereby and (B) that the Town, in requiring the dedication of water rights or shares, complies with the laws of the United States and the State of Utah, particularly Utah Code § 109a-5-508 and any other applicable or successor statutes.

12.01.030 Definitions:

- A. “40-year Water Plan” means a written plan of the Town’s reasonable future water requirement in the next 40 years, in conformance with Utah Code § 73-1-4(2)(f).
- B. “Applicant” means any party seeking Town approval for a planned development.
- C. “Town” means Elwood Town, Utah.
- D. “Culinary Water” means water treated to meet the quality standards for drinking water, as set forth in Utah’s Safe Drinking Water Act, Utah Code § 19-4-101 *et seq.* and Utah Administrative Code Rule 309-200.
- E. “Dedicate” means to convey a water entitlement to the Town for culinary use; such a conveyance is a “Dedication.”
- F. “Development” means a subdivision, annexation, the obtaining of a building permit, or any other connection to the Town’s Culinary or Secondary water system which increases water service from the Town.
- G. “ERC” means equivalent residential connection, the unit for calculating the annual amount of water put to indoor use by a typical detached, single-family residence.
- H. “Fee Resolution” is a resolution or ordinance adopted by the Council pursuant to Chapter 12.04 hereof, establishing fees for water service and delivery by the Town or in connection with any provision of this Title.
- I. “Future Water Requirement” means the amount of water needed in the next forty years by the population of the Town’s reasonably anticipated service area, based

upon reasonably anticipated population growth, or as a result of some other water-use demand. See Utah Code § 73-1-4(2)(f)(i).

- J.** “Municipal Use” has the meaning given and used by the Utah Division of Water Rights.
- K.** “Reimbursement Agreement” means a written and executed agreement between the Town and an Applicant requiring that the Applicant reimburse all Town expenses incurred pursuant to a dedication under this Title.
- L.** “Secondary Water” means water distributed for outdoor irrigation and other nonculinary uses which is not treated to meet the standards for Culinary Water.
- M.** “Water Right” means a right granted and recognized by the State of Utah to perpetually divert and beneficially use a specified quantity of water.
- N.** “Water Share” means a proportionate amount of the water right held by a particular private entity, typically a nonprofit mutual water company, represented by shares of stock issued by that entity to its shareholders.
- O.** “Water Entitlement” means the Water Rights or Water Shares dedicated for the Town’s Culinary or Secondary water system as part of the land-use approval process.

Chapter 12.02

The 40-Year Water Plan and Water Record

12.02.010 The 40-Year Water Plan

- A.** Pursuant to the requirements set forth in Utah Code § 73-1-4(2)(f) and Utah Administrative Code Rule 655-18, the Town Engineer or another qualified person retained by the Town, consistent with all applicable procurement laws, shall create a draft 40-year Water Plan to determine the Town’s Future Water Requirement.
- B.** Upon its acceptance, the 40-year Water Plan shall be adopted by Resolution of the Council.
- C.** Based upon the 40-year Water Plan, the Town shall undertake to acquire and maintain sufficient Water Rights, Water Shares, source, storage, and capacity for its present and reasonable Future Water Requirements.
- D.** The Town’s 40-year Water Plan may be updated from time to time as directed by the Council pursuant to Utah Code § 73-1-4(2)(f).

12.02.020 The Water Record

The Town shall create and maintain a record of its Water Rights, Water Shares, water use, water-source capacity, reserve-source capacity, storage capacity, system capacity, service

connections, outstanding letters of commitment, and other system demands, as well as any surplus capacity and the number of ERCs such surplus can serve.

Chapter 12.03 Dedication

12.03.010 Dedication Required for Approval

- A.** As provided in Utah Code § 10-9a-508, any Applicant seeking Town approval of a proposed Development shall Dedicate to the Town a Water Entitlement of sufficient quantity and type to satisfy the proposed Development's anticipated Culinary Water and Secondary Water needs.
- B.** Compliance with this Section shall be a condition precedent to approval of any application for Development subject to this Title.

12.03.020 Type and Amount of Water Entitlement Required for Development:

- A.** To be acceptable for Dedication to the Town, a Water Entitlement must be (1) approved by the Utah State Engineer for year-round Municipal Use within the Town's service area and (2) diverted from the Town's designated points of diversion. The Town may refuse dedication until the approval required in this Subsection is final and non-appealable.
- B.** In determining the required amount of the Water Entitlement to be dedicated for a particular Development, the Town shall consider:
 - 1. The principles set forth in Utah Code §§ 10-9a-508 and 19-4-114;
 - 2. The diversion and depletion limits of the Water Entitlement;
 - 3. The Town's 40-Year Water Plan, and
 - 4. Any other relevant factors.
- C.** Pursuant to Subsection 12.03.020(B), the initial amount of a Water Entitlement Dedicated to the Town shall be as follows:
 - 1. For indoor residential or domestic use, a Water Entitlement with a depletion, of .30 acre-feet per ERC, after conversion to Municipal Use.
 - 2. For commercial, industrial, and other uses, a Water Entitlement based on an engineer's estimate, as approved by the Town Engineer, of the projected water demand of the proposed Development. Until the Town Engineer has sufficient information to approve an engineer's estimate of the Water Entitlement, the Applicant shall place its water shares in escrow by delivering one or more original share certificates to the Town Recorder. The Town Recorder shall notify the issuer of the shares of the escrow and hold the certificates until the Town Engineer is able to provide an

engineer's estimate. The number of water shares to be placed in escrow shall be determined by the Town Engineer.

3. For outdoor secondary or irrigation use, a Water Entitlement consisting of a four-acre-foot diversion and a depletion of 1.87 acre-feet per irrigated acre after conversion to Municipal Use.
- D. The Dedication amounts in Subsection 10.03.020(c) may be amended from time to time by Council resolution or ordinance.
- E. The Town may require the Dedication of additional Water Rights or Water Shares if the Town determines that the proposed Development will consume more water than is required herein.

12.03.030 Town Acceptance of a Dedication:

- A. Subject to the provisions of this Section, the Town shall accept a Dedication of Water Entitlement that meets the requirements of this Chapter.
- B. Prior to accepting a Dedication, the Town may require that the Applicant:
 1. Reimburse the Town's costs and expenses for any administrative or judicial action undertaken to obtain final, non-appealable State-Engineer approval of the Water Entitlement; and
 2. Purchase a policy of water title insurance on behalf of the Town (a) naming the Town as the insured party; (b) in an amount consistent with the value of the Water Entitlement, as determined by the Town; and (c) from an insurance provider, acceptable to the Town. The Town may reject a Dedication if it finds that the Water Rights or Water Shares to be conveyed or transferred thereby are:
 - a. Defective with respect to legal title;
 - b. Subject to forfeiture or quantity impairment due to the lack of beneficial use;
 - c. Insufficient in annual quantity, priority, reliability, or flow;
 - d. Unsuitable for Municipal Use;
 - e. Not reasonably likely to be approved by the State Engineer for Municipal use within the Town's service area pursuant to Subsection 12.03.020(A); or
 - f. Defective in any respect that renders the Town's delivery of the water to the proposed Development impossible or impractical; or

1. For Water Shares, that the issuing entity refuses to transfer the Water Shares to the Town or to consent to the filing of such applications with the State Engineer as the Town may deem necessary.
- C. The final, non-appealable rejection of an application filed under this Chapter shall render the Water Rights or Water Shares ineligible for Dedication to the Town.
- D. A final, non-appealable order of the State Engineer reducing the diversion or depletion amount of a Water Entitlement shall result in a corresponding reduction in the amount of the water Dedication. However, such a reduction shall not reduce the required amount of the Water Entitlement.
- E. Any reduction in the amount or volume of water either, represented by stock in a mutual irrigation company or a water right, moved to a Town point of diversion for Municipal Use by the Town, shall result in a corresponding reduction in the amount of the water Dedication. However, such reduction shall not reduce the required amount of the Water Entitlement.
- F. The Town's rejection of a proposed Dedication shall not constitute a waiver of nor relieve an applicant from its obligation to comply with the requirements of this Title as a condition of Development approval.

12.03.040 Conveyance or Transfer of Water Entitlement to the Town:

Upon the Town's acceptance of a Dedication, an Applicant shall convey to the Town, without cost, the water entitlement delineated therein.

- A.
 1. An Applicant shall convey (a) Water Rights by warranty deed; (b) Water Shares by transferring ownership thereof through a certificate from by the issuing entity, or its successor, showing the Town as the owner of the Water Shares.
 2. In lieu of either of these methods of conveyance, an Applicant may convey the Water Entitlement by any other appropriate instrument of conveyance approved by the Town.
- B. The Water Rights or Water Shares shall be conveyed free and clear of any lien, encumbrance, or adverse claim, except as the Town may expressly approve and accept in writing.
- C. The Applicant shall pay all fees and costs associated with the conveyance or transfer.
- D. The Applicant shall convey the Water Entitlement to the Town before (1) a building permit may be issued or (2) a final plat may be signed or recorded.

**Chapter 12.04
Fees and Charges**

12.04.010 Fees

The Council may establish a Fee Schedule and require an Applicant to enter into a Reimbursement Agreement to defray the Town's cost in evaluating a Water Entitlement offered for dedication and in seeking final, non-appealable approval of the Water Entitlement under Subsection 12.03.030(B)(1).

Chapter 12.05

Repealer and Severability

12.05.010 Repealer

All Town ordinances and resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent of such inconsistency, but this repealer shall not be revive any previously repealed law, order, resolution, or ordinance, nor any part thereof.

12.04.020 Severability

The provisions of this Title 12 are severable: should any part of it be judged to be void or without effect for any reason by a court of competent jurisdiction, such judgment shall not affect the remainder thereof.

APPLICATION FOR DEDICATION OF WATER TO ELWOOD TOWN

Applicant Name _____.

Name and title of Authorized Contact _____.

Phone # _____.

Mailing Address _____.

Email Address _____.

Subdivision name _____ (if applicable).

Parcel Address _____.

Parcel Number(s) _____.

Number of ERCs to receive Culinary Water _____.

Irrigable Acres in the Development _____.

Application Fee paid _____.

Date paid _____.

NOTE: The following information can be obtained from the Utah Division of Water Rights:

Water Right number(s) for water proposed for dedication _____.

Owner of Water Right(s) _____.

Water Right diversion limits _____ cfs / _____ acre-feet.

Water Right Depletion limits _____ acre-feet.

Change Application number(s) _____. Application(s) status _____.

If Water Share(s): name of entity which issued Water Shares _____.

Water Share certificate number(s) _____.

Current uses of Water Right(s) or Water Share(s) _____.

Place of use of Water Right(s) or Water Share(s) _____.

Include the following documents with this Application:

Copy of recorded deed(s) of Water Right(s).

Copy of recorded deed(s) of land where Water Right(s)/ Water Share(s) used.

Division of Water Rights data printout for Water Right(s).

Copy of Water Share certificate for Water Share(s).

I certify that the information provided in and with this Application is true and correct to the best of my knowledge and belief.

Signature of Applicant or
Authorized Representative