

**THE TOWN OF CASTLE VALLEY, UTAH
ORDINANCE 2017 – 1**

**AN ORDINANCE ESTABLISHING PROCEDURES FOR GOVERNING, AMENDING,
CONDITIONING, REVOKING, AND ENFORCING TOWN WATER USE
AGREEMENT AND PERMITS**

PREAMBLE: This Ordinance is to administer use of the Town of Castle Valley’s (“Town”) water rights. This Ordinance is enacted with reference to the following considerations, purposes, and authorities:

WHEREAS, water is a valued and important natural resource.

WHEREAS, the Town is situated above the Valley-Fill aquifer which is designated as the sole and principal source of water for the Town.

WHEREAS, prudent use of this aquifer is necessary to preserve and promote both a thriving Town and healthy local environment.

WHEREAS, there is a need for the Town to update and improve existing Town procedures to ensure water is responsibly managed for today and future generations.

WHEREAS, Utah Code Ann. § 73-1-1 establishes water in Utah, whether above or under the ground, to be the property of the public, subject to all existing rights to the use thereof.

WHEREAS, the Utah Code Ann. § 73-2-1 establishes the Utah State Engineer as the body responsible for the general administrative supervision of the State’s waters and to secure the equitable apportionment and distribution of water according to the respective rights of appropriators.

WHEREAS, the Town is a political subdivision of the State of Utah.

WHEREAS, supplying, managing, and equitably distributing water is an inherent component of the Town’s duties to protect the public health, safety, and welfare.

WHEREAS, the Town owns certain water rights (“Town water”) and has a duty to maintain these rights in good standing.

WHEREAS, the Town holds Town water for the benefit of its citizens and use of Town water is subject to duly enacted Town Ordinances and other applicable law.

WHEREAS, the Town is a political entity that supplies water to the public for municipal purposes and is therefore a Public Water Supplier under Utah Code Ann. § 73-1-4. In this

capacity, the Town is actively planning for the reasonable future water requirements of Town citizens.

WHEREAS, Utah Code Ann. § 10-7-14 grants the Town the authority to enact ordinances, rules, and regulations for the management and conduct of its waterworks.

WHEREAS, Utah Code Ann. § 10-8-22 grants the Town the power to fix the rates to be paid for the use of water furnished by the Town.

WHEREAS, until a different municipal delivery system is installed, the Town seeks to authorize, regulate, and record use of Town water through a Water Use Agreement and Permit (“Water Use Permit”) to be governed by this Ordinance.

WHEREAS, Water Use Permits are necessary to equitably distribute and manage Town water and are integral for long term Town water management and planning.

WHEREAS, long-term sustainable management of Town water requires citizens owning lots in the Town (“Lot Owners”) to generally use no more than 8 acre-feet of Town water annually and at no point may a Lot Owner use more than 20 acre-feet of Town water annually.

WHEREAS, the Town seeks to formalize with this Ordinance a public process for issuing, approving, and enforcing Water Use Permits.

WHEREAS, the Town seeks to establish with this Ordinance a public process to hear requested amendments to a Water Use Permit if a Lot Owner desires to use water in excess of 8 acre-feet.

WHEREAS, the Town seeks to establish with this Ordinance a public process where the Town can amend, condition, or revoke a Water Use Permit.

WHEREAS, Utah Code Ann. § 10-7-13 explicitly grants Town officials the right to enter Town Lots using Town water to inspect water diversion facilities and water use for emergency and/or enforcement purposes.

WHEREAS, Utah Code Ann. § 10-8-84 authorizes the Town to enforce ordinances with fines or penalties.

WHEREAS, Utah Code Ann. § 73-2-25 authorizes the Town to submit an Enforcement Referral Action to the Utah State Engineer to protect Town water rights.

WHEREAS, the Town has remedies provided by law or common law to protect its water rights or otherwise enforce Water Use Permits.

**THEREFORE, BE IT ORDAINED BY
THE TOWN COUNCIL OF THE TOWN OF CASTLE VALLEY:**

SECTION 1: GOVERNANCE OF TOWN WATER AND WATER USE PERMITS

- A. The Town holds Town water for the benefit of Town citizens and has the authority and jurisdiction to manage Town water on behalf of its citizens.

- B. To administer use of Town water, the Town has the authority to approve, issue, and maintain jurisdiction over Water Use Agreement and Permits (“Water Use Permit”).
 - i. A Water Use Permit represents a Lot Owner’s right to use Town water, subject to the provisions of this Ordinance, an approved Water Use Permit, or other applicable law.
 - ii. Use of Town water shall only occur in accordance with this Ordinance, an approved Water Use Permit, and other applicable law.

- C. A Water Use Permit is required for:
 - i. Citizen use of Town Water.
 - ii. Town of Castle Valley use of Town water, for which the Town reserves the right to condition or issue a Water Use Permit appropriate for the purposes of performing municipal or related duties.
 - iii. The Grand County Service Area for Castle Valley Fire Protection use of Town water, for which the Town reserves the right to condition or issue a Water Use Permit appropriate for the purposes of performing fire prevention, training, or related duties.
 - iv. Any other municipal, commercial, or similar entity seeking to use Town water, for which the Town reserves the right to condition or issue a Water Use Permit appropriate for the purpose and scope of activities of that entity.

- D. Only Water Use Permits and associated documents approved after the enactment of this Ordinance will be recognized by the Town as valid permission to use Town water.
 - i. Lot Owners currently using Town water shall sign a Water Use Permit within 3 months of the enactment of this Ordinance.
 - ii. The Town Mayor may take any lawful action to notify the public that all prior Water User Agreements, Water Permit Agreements, or similar documents have been superseded and are no longer recognized by the Town as authorizing use of Town water.

E. Approved Water Use Permits:

- i. Are only applicable to the Lot, are appurtenant to the Lot, and are not transferable separate from a sale or transfer of the Lot;
- ii. Shall be assigned to a new Lot Owner upon the sale or transfer of the Lot; and
- iii. Are binding on Lot Owners, heirs, executors, administrators, successors, legal representatives, assigns and lessees.

F. The Town may:

- i. Periodically review use of Town water under approved Water Use Permits to ensure use comports with immediate and long-range Town water planning and management;
- ii. Review use of Town water in light of circumstances including, but not limited to, the impact of water use on the Lot on other Lots, drought or other natural conditions, or actions of the State Engineer or other governmental entities; and
- iii. Reallocate use of Town water to accommodate Town needs as the Town deems necessary and to do so may amend, condition, or revoke an approved Water Use Permit, subject to this Ordinance;
- iv. Upon passing a resolution stating the justification for doing so, adjust, amend, revise, or reissue Water Use Permits to supersede existing Water Use Permits, which may or may not require Lot Owners to re-sign a new Water Use Permit;
- v. Without the passage of a resolution, adjust the Water Use Permit fee collected with a new Water User Permit which is necessary to cover reasonable Town costs to review, approve, and implement the Water Use Permit;
- vi. Without the passage of a resolution, make any clerical or non-substantive changes to the Water Use Permit form.

G. The Town will make best efforts to secure water for its citizens, but the establishment, use of, and/or approval of Water Use Permits does not:

- i. Guarantee the Town has sufficient water to provide Lot Owners with any specific quantity or quality of water;
- ii. Guarantee there is sufficient Town water to supply an approved use;
- iii. Obligate the Town to obtain additional water rights or water sources to supply Lot Owners with water to fulfill their approved use;
- iv. Guarantee Lot Owners' wells will access water of sufficient quantity or quality to supply an approved use;
- v. Limit other's rights to oppose or protest Lot Owners' use of Town water;
- vi. Obligate the Town to resolve disputes over Water Use Permits or defend a Water Use Permit on behalf of a Lot Owner;

- vii. Limit the Town’s ability to amend, condition, or revoke use of Town water due to drought, Town water management priorities, or other conditions that may affect the amount of, quality, or availability of Town water; or
 - viii. Affect the ability of the State Engineer or a court of competent jurisdiction to determine that the Town is not the owner of any water rights claimed by the Town, to reduce the quantity of water allowed to be diverted under rights owned by the Town, or otherwise condition the use of Town water.
- H. Holding and administering Town water for the benefit of its citizens accrues costs to the Town. The Town has the authority to fix water rates or charges for the use of Town water, and may seek reimbursement from Lot Owners with an approved Water Use Permit for their proportional share of expenses reasonably necessary to maintain Town water rights in good standing, including, but not limited to engineering costs, professional services, legal fees, administrative time, or other expenses, as follows:
- i. The Town of Castle Valley may incur expenses as needed to resolve an emergency situation without prior approval, and may seek reimbursement for such expenses from Lot Owners who have Water Use Permits. The Lot Owners to be held responsible for such reimbursement, if any, will be determined by the Town Council at a regularly scheduled meeting.
 - ii. When an expense is incurred on behalf of or because of specific Lot Owners who have Water Use Permits, only those Lot Owners will be responsible for reimbursement of the expenses.
 - iii. Any non-budget expense other than those described in (i) and (ii) above that may be subject to reimbursement from Lot Owners with Water Use Permits must be approved by the Town Council at a regularly scheduled meeting.
- I. In any and all matters calling for the exercise of judgment regarding Water Use Permits and use of Town water, the Town's judgment shall be deemed controlling.

SECTION 2: APPROVAL OF WATER USE PERMITS

- A. The Town may approve and issue a Water Use Permit when the following conditions are met:
- i. Lot Owner represents s/he is the owner of the Lot and agrees to furnish proof of ownership if requested.
 - ii. Lot Owner submits:
 - 1. The stated administrative fee;
 - 2. A Water Use Accounting Form demonstrating existing and/or anticipated beneficial uses of Town water on the Lot and that this use does not exceed 8 acre-feet;

3. A Lot Plan ("Lot Plan") showing, at a minimum, the location of the well from which Lot Owner will divert Town water and its distance from each Lot boundary line and the road easement line(s) of any road(s) that abut the Lot; and
 4. Any other relevant information requested by the Town.
- iii. Lot Owner signs the Water Use Permit.

B. For Lot Owners seeking to drill a new well:

- i. Upon issuance of a Water Use Permit, the Town will file with the Utah State Engineer the necessary documents to obtain permission for the Lot Owner to drill a well on the Lot from which the Lot Owner will divert Town water;
- ii. The Town may cease its efforts to obtain a well approval if other parties protest the proposed well and reasonably demonstrate that they will be harmed by the intended well location or use of water. The Town has no obligation to address or resolve such protests;
- iii. The Town is not liable for the failure of the State Engineer to approve a well;
- iv. Upon receiving permission to drill the well, the Lot Owner is responsible for securing the construction of the well by a qualified and licensed well driller at Lot Owner's sole expense;
- v. The Town is not responsible if the well fails to provide water of sufficient quantity or quality to satisfy the approved use; and
- vi. A completed Well Driller's Report shall be delivered to the Town before the Lot Owner may use the well to divert Town water and put it to use as approved in the Water Use Permit.

C. To maintain the validity of an approved Water Use Permit, Lot Owners shall:

- i. Complete the necessary facilities and place the water to its approved beneficial use within two (2) years of the Town approving and issuing the Water Use Permit; and
- ii. Complete and submit a new Water Use Accounting Form, to be provided to the Lot Owner by the Town, every six years updating uses of Town water on the Lot.

SECTION 3: REQUESTS TO AMEND A WATER USE PERMIT

A. A Lot Owner, or Lessee with written permission from Lot Owner, seeking to amend an approved Water Use Permit shall:

- i. File a Request to Amend Water Use Permit with the Town detailing the request for additional water. Requests to Amend can be obtained from the Town;
- ii. The Request must include proposed revisions to their current Water Use Accounting Form or Lot Plan, if applicable; and

- iii. Submit an administrative fee set by the Town sufficient to cover related administrative costs and the cost of filing notice of the Request to Amend in the local newspaper.
- B. Upon receipt of a complete Request to Amend, the Town shall:
- i. Publish notice of the Request to Amend in the local newspaper for two consecutive weeks;
 - ii. Post written notice at City Hall, and on the Utah Public Notice website; and
 - iii. Ensure any notice published states the nature of the matter and state that it is set for hearing at the next Town Council meeting following the end of the notice period.
- C. Any interested person desiring to oppose the Request to Amend may file a written Protest with the Town any time preceding 3 days before the Town Council meeting at which the Request to Amend will be considered.
- D. The burden of persuasion lies with the Protestor to demonstrate to the Town that the Applicant fails to meet the criteria of (3)(F).
- E. The Council shall provide an opportunity for the Lot Owner and any Protestants to be heard at the Town Council meeting and shall accept relevant evidence related to the Request to Amend.
- F. Within sixty (60) days following the Town Council meeting, upon reviewing the record and relevant evidence presented to the Town Council, the Town shall approve or deny the Request to Amend and make written findings that:
- i. There is adequate Town water to fulfill the request;
 - ii. The Request to Amend:
 - 1. Does not request use of Town water in excess of 20 acre-feet;
 - 2. Does not impair use of Town water under existing approved Water Use Permits or such impairment can be reasonably mitigated;
 - 3. Is physically and economically feasible;
 - 4. Is not detrimental to the public welfare; and
 - iii. Any other factors the Town considers relevant to the Request to Amend.
- G. The Lot Owner and Protestants will be notified of the Town's decision on the Request to Amend by certified mail sent to the address most recently provided to the Town by the Lot Owner and Protestants or as made available by the Grand County Assessor's Office. Notice will be considered complete upon the deposit of the decision in the United States mail by the Town or its agent.

**SECTION 4: TOWN INITIATED AMENDMENT, CONDITIONING, OR
REVOCAION OF AN APPROVED WATER USE PERMIT**

- A. At times the Town may have a reason to seek to amend, condition, or revoke an approved Water Use Permit.

- B. To commence action on a Town initiated amendment, condition, or revocation, the Town shall:
 - i. Publish notice of the Town’s proposed amendment, condition, or revocation in the local newspaper for two consecutive weeks;
 - ii. Post written notice at City Hall, and on the Utah Public Notice Website;
 - iii. Attempt to deliver written notice to the Lot Owner via certified mail sent to the address most recently provided to the Town by the Lot Owner or as made available by the Grand County Assessor’s Office; and
 - iv. Ensure any notice published states the nature of the matter and that the matter is set for hearing at the next Town Council meeting following the end of the notice period

- C. At the Town Council meeting, the Council shall:
 - i. State its reasons and support for the proposed amendment, condition, or revocation;
 - ii. Provide an opportunity for the Lot Owner to be heard;
 - iii. Accept any relevant evidence.

- D. Upon review of the record, the Town may amend, condition, or revoke an approved Water Use Permit and make a written finding based on the evidence presented that:
 - i. The Lot Owner is violating the terms and requirements of the approved Water Use Permit, this Ordinance, or other applicable law, and state the appropriate remedy for the violation;
 - ii. The uses approved in the Water Use Permit are negatively impacting neighboring water users;
 - iii. Mitigation of the negative impact is not reasonably possible, or if mitigation is possible, state the grounds and means of mitigation as an amendment or condition to the Water Use Permit;
 - iv. The Town’s long range water planning requires the amendment, condition, or revocation;
 - v. Drought or other natural condition, environmental circumstance, or Court, State Engineer, or other governmental entity with regulatory power over Town water, requires the amendment, condition, or revocation; or

- vi. The uses approved in the Water Use Permit are detrimental to the public welfare; or
 - vii. Other reason supportable on the record.
- E. Lot Owners will be notified of the Town's decision to amend, condition, or revoke a Water Use Permit by certified mail sent to the address most recently provided to the Town by the Lot Owner or as made available by the Grand County Assessor's Office. Notice will be considered complete upon deposit in the United States mail by the Town or its agent.
- F. Lot Owner shall comply with any Town required amendments or conditions with 30 days of notice of the Town's decision, or other timeframe determined in the Order. Newly amended or conditioned use of Town water must occur by the date indicated in the decision or the Lot Owner is in violation of this Ordinance and subject to fines and penalties listed herein.
- G. Revocation of a Water Use Permit will be effective 30 days from notice of the Town's decision unless emergency conditions require differently. In the case of emergency conditions, the Town shall state its reasons and support for why revocation is necessary prior to the established 30 day revocation period. All use of Town water must cease by the date indicated in the revocation decision or the Lot Owner is in violation of this Ordinance and subject to fines and penalties listed herein.
- H. Any Town decision regarding amendment, conditioning or revocation may be appealed by the Lot Owner, as follows:
- i. The Appeal Authority for the Town of Castle Valley shall be the person currently serving as the Town Variance and Appeal Officer.
 - ii. A Notice of Appeal letter must be delivered by the Lot Owner to the Town within 7 days after the decision.
 - iii. Upon receipt of a Notice of Appeal letter the Variance and Appeal Officer will schedule a hearing of the appeal. Hearings by the Officer shall be held at the Town Community Building unless the Officer determines that an alternate location better meets the purpose and need of the hearing. All hearings shall be properly noticed and held in accordance with the open meetings law set forth in Utah Code Annotated section 52-4-1 et seq., as amended. The Town Council shall, if requested by the Officer, appoint or hire a person to document the hearing.

- iv. The Variance and Appeal Officer will either nullify or uphold the Council decision being appealed. Notice of the Officer decision will be sent by mail to Town and Lot Owner within 7 days of the appeal hearing.
 - v. If upheld, the decision is final. If nullified, the Town may decide to alter the amendment, conditioning or revocation and initiate a new process as described in Section 4 above.
- I. The Town is not liable for damages incurred by the Lot Owner cause by or related to the Town amending, conditioning, or revoking a Water Use Permit in accordance with this Ordinance.

SECTION 5: INSPECTION, ENFORCEMENT, PENALTIES AND FINES

Utah Code Ann. § 10-7-13 grants Town officials a right of entry on all Town Lots to inspect water diversion facilities and the amount and manner of water use for emergency and/or for enforcement purposes. Officials appointed by the Town of Castle Valley may, at reasonable times during normal business hours and upon providing written notification to the Lot Owner at least 48 hours in advance, enter a Lot for the purpose of determining whether or not the requirements of this Ordinance and the applicable Water Use Permit are being complied with, or may without notification or permission enter the Lot at any time to respond to an emergency pertaining to water facilities or water use.

- A. If the Town has a reasonable belief a Lot Owner is violating a provision of this Ordinance, or their Water Use Agreement the Town may enforce this Ordinance by seeking to amend, condition, or revoke the Water Use Permit pursuant to the process outlined in Section 4.
- B. It shall be a class B misdemeanor to violate any provision of this Ordinance with a fine not to exceed \$1000. The Grand County Sheriff is hereby authorized by the Town of Castle Valley to enforce the provisions of this Ordinance.

The Town may seek an Enforcement Referral Action with the Utah State Engineer under Utah Code Ann. § 73-2-25 or any other remedies provided by law or common law for interference with its water rights.

- C. A Lot Owner found in violation of this Ordinance, a Water Use Permit, or other applicable law, is responsible for all fees or costs accrued by the Town to enforce the Ordinance against the Lot Owner.
- D. Enforcement of Water Use Permits and use of Town water and resolution of water disputes is exempt from Town Ordinance 2008-2 “An Ordinance Establishing a Complaint Resolution Process and Board and a Uniform Procedures for Ordinance

Enforcement.” Governance and enforcement of the use of Town water is to occur solely according to this Ordinance or other applicable law noted herein.

SECTION 6: SEVERABILITY

If any provision of this Ordinance or its application to any person(s), entity, or circumstance is held to be invalid, the remaining provisions and its application other person(s), entities, or circumstances shall not be affected,

SECTION 7: EFFECTIVE DATE

This Ordinance shall become effective immediately upon public posting.

PASSED, ADOPTED, AND APPROVED by the Town Council of the Town of Castle Valley in open session this ____ day of _____, 20__, by the following vote:

Aye:

Nay:

Absent:

TOWN OF CASTLE VALLEY

David D. Erley, Mayor

ATTEST:

_____, Town Clerk

Official Seal of the Town of Castle Valley

Effective Date