



WASHOE COUNTY

Integrity Communication Service

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Finance _____

DA _____

Risk Mgt N/A

HR N/A

Comptroller _____

STAFF REPORT

BOARD MEETING DATE: December 12, 2017

DATE: November 17, 2017

TO: Board of County Commissioners

FROM: Kelly Mullin, AICP, Senior Planner, Planning and Building Division
Community Services Department, 328-3608, kmullin@washoecounty.us

Vahid Behmaram, Water Management Planner Coordinator, Planning &
Building, Community Services, 954-4647 vbehmaram@washoecounty.us

THROUGH: Mojra Hauenstein, Arch., AICP, Division Director, Planning and Building,
Community Services Department, 328-3619, mhauenstein@washoecounty.us

SUBJECT: Public hearing: Second reading and possible action to adopt an ordinance amending Washoe County Code Chapter 110 (Development Code) within Article 422, *Water and Sewer Resource Requirements*, to remove the requirement to dedicate water rights to Washoe County for commercial, industrial, or civic uses in areas not served by the Truckee Meadows Water Authority, or a General Improvement District (formally defined in the proposed amendments); and other matters necessarily connected therewith and pertaining thereto. If the dedication requirement is removed, the new ordinance will allow for the re-conveyance of affected water rights that were dedicated in the past. (All Commission Districts.)

SUMMARY

Amendment of Article 422 of the Washoe County Code (WCC) Chapter 110 to eliminate the requirement to dedicate water rights to the County for commercial, industrial or civic uses in areas not served by the Truckee Meadows Water Authority (TMWA) or a General Improvement District (GID).

Washoe County Strategic Objective supported by this item: Safe, Secure and Healthy Communities

PREVIOUS ACTION

On June 27, 2017, the Board of County Commissioners (Board) initiated an amendment to WCC Chapter 110 to remove the water rights dedication requirement for commercial, industrial, or civic uses in areas not served by the Truckee Meadows Water Authority. This became Development Code Amendment Case Number WDCA17-0002.

On August 23, 2017, a public workshop was held to discuss the proposed amendment.

On October 3, 2017, the Washoe County Planning Commission unanimously recommended approval of WDCA17-0002 by Resolution Number 17-12.

AGENDA ITEM # _____

On November 14, 2017, the Board introduced and conducted the first reading of the ordinance.

BACKGROUND

Currently, WCC Chapter 110, *Development Code*, requires dedication of water rights to Washoe County for all new development with a new water demand in unincorporated Washoe County. The dedicated water rights associated with commercial, industrial and civic uses are then leased back to the project/property owner for 99 years at no cost. The only consideration for the lease is for the property owner to pay all the cost associated with the maintenance of the permit (costs which would be borne by the project/property owner absent the dedication requirement).

The proposed amendment is prompted by recent litigation filed against Washoe County by a commercial property owner subject to the dedication requirement; however, it is also a result of Washoe County's recognition that management of water resources may be best achieved by other means than control of the water rights via the dedication process and the transfer of title. This recognition is in part due to:

- Availability of real-time State water rights data on the Internet;
- The evolution of the processes and procedures in the State Engineer's office; and,
- The evolution of the community's knowledge of water rights requirements and their monetary value and significance.

Consequently, the Board requested the Code be amended to eliminate the mandate for dedication of water rights for commercial, industrial and civic uses to the County with an associated lease-back.

Under the proposed amendment, demonstration of availability or ownership of adequate water rights to support a new commercial, industrial or civic water demand may be substituted for the dedication requirement. The proposed amendment retains the County's ability to require dedication of water rights in special circumstances which may warrant the dedication requirement.

As before, new development with new water demand would still be required to obtain the appropriate water rights as required by the State Engineer's rules and regulations and County Code. However, this amendment would remove the mandate that the water rights be dedicated to the County. This would allow Washoe County's role to shift to reviewing the project for conformance with State water law and County Codes for the amount of water required, as an alternative to the dedication requirement.

Proposed Language Changes

The proposed language changes are organized by Code section and summarized below. Full updated text is included with Exhibit A.

- 110.422.03(g)** Adds a definition for "General Improvement District."
- 110.422.15** Refines and clarifies the intent of the text and introduces the ability to "Demonstrate proof of ownership" as an alternative to dedication.
- 110.422.15 (a)-(g)** Refines and clarifies the intent of the text.

- 110.422.15(h)** Provides a process by which past dedication of water rights and associated 99-year lease-backs may be terminated and water rights re-conveyed to original dedicator or successor in interest.

The Planning Commission made the following four findings in support of their recommendation to approve the proposed amendment:

1. Consistency with Master Plan. The proposed amendment is in substantial compliance with the policies and action programs of the Washoe County Master Plan;
2. Promotes the Purpose of the Development Code. The proposed Development Code amendment will not adversely impact the public health, safety or welfare, and will promote the original purposes for the Development Code as expressed in Article 918, *Adoption of Development Code*;
3. Response to Changed Conditions. The proposed Development Code amendment responds to changed conditions or further studies that have occurred since the Development Code was adopted by the Board of County Commissioners, and the requested amendment allow for a more desirable utilization of land within the regulatory zones; and,
4. No Adverse Effects. The proposed Development Code amendment will not adversely affect the implementation of the policies and action programs of the Conservation Element or the Population Element of the Washoe County Master Plan.

FISCAL IMPACT

No fiscal impact.

RECOMMENDATION

It is recommended the Board conduct a second reading, adopt the ordinance and affirm the four findings of fact that the Planning Commission made on October 3, 2017, as recorded within the resolution in Exhibit B.

POSSIBLE MOTION

Should the Board agree with the recommendation, a possible motion would be:

“Move to adopt Ordinance Number *[insert number as provided by the County Clerk]* and affirm the four findings of fact that the Washoe County Planning Commission made on October 3, 2017, as recorded within Resolution Number 17-12 and attached to the staff report for this item.”

Attachments:

- Exhibit A – Proposed Ordinance
- Exhibit B – Planning Commission Staff Report and Resolution 17-12

REGULAR TEXT: NO CHANGE IN LANGUAGE

~~STRIKEOUT TEXT: DELETE LANGUAGE~~

BOLD TEXT: NEW LANGUAGE

Notice: Per NRS 239B.030, this document does not contain personal information as defined in NRS 603A.040

Summary: *Amends the Development Code by updating the standards within Article 422, Water and Sewer Resource Requirements, to remove the requirement to dedicate water rights to Washoe County under certain circumstances.*

BILL NO. 1788

ORDINANCE NO. _____

Title:

An ordinance amending the Washoe County Code at Chapter 110 (Development Code), within Article 422, *Water and Sewer Resource Requirements*, to remove the requirement to dedicate water rights to Washoe County for commercial, industrial, or civic uses in areas not served by the Truckee Meadows Water Authority, or a General Improvement District (formally defined in the proposed amendments); and other matters necessarily connected therewith and pertaining thereto.

WHEREAS:

- A. This Commission desires to amend Washoe County Code Chapter 110 (Development Code), Article 422, *Water and Sewer Resource Requirements*; and,
- B. The Washoe County Commission initiated the proposed amendments to Washoe County Code Chapter 110 (Development Code) by Resolution on June 27, 2017; and,
- C. The amendments and this ordinance were drafted in concert with the District Attorney, and the Planning

Commission held a duly noticed public hearing for WDCA17-0002 on October 3, 2017, and adopted Resolution Number 17-12 recommending adoption of this ordinance; and,

- D. Following a first reading and publication as required by NRS 244.100 (1), and after a duly noticed public hearing, this Commission desires to adopt this Ordinance; and,
- E. This Commission has determined that this ordinance is being adopted pursuant to requirements set forth in Chapter 278 of NRS, therefore it is not a "rule" as defined in NRS 237.060 requiring a business impact statement.

THE BOARD OF COUNTY COMMISSIONERS OF WASHOE COUNTY DOES HEREBY ORDAIN:

SECTION 1. Section 110.422.03 is hereby amended to read as follows:

Section 110.422.03 Definitions. These definitions apply specifically to this Article:

- (a) "Development" means any new residential, commercial or industrial development of land, including the division of land into two or more parcels.
- (b) "Relinquishment" means the relinquishment of groundwater rights to the State of Nevada within a hydrographic basin for the purpose of offsetting the impacts of additional groundwater withdrawn from proposed domestic wells to serve individual homes. Relinquishment of groundwater rights are a prerequisite to approval of newly created residential lots utilizing individual domestic wells as their source of water supply. Proof of relinquishment is satisfied when the appropriate approved affidavit from the Nevada State Engineer's Office is recorded with Washoe County.
- (c) "TMWA" means the Truckee Meadows Water Authority.
- (d) "PUC" means the Public Utilities Commission of Nevada.
- (e) "Water purveyor" means:
 - (1) A public water system as defined in NRS 445A.235, as amended;
 - (2) A community water system as defined in NRS 445A.808, as amended;

- (3) A noncommunity water system as defined in NRS 445A.828, as amended;
 - (4) A nontransient water system as defined in NRS 445A.829, as amended; or
 - (5) A transient water system as defined in NRS 445A.848, as amended;
 - (6) A water system as defined in NRS 445A.850, as amended.
- (f) "Will Serve" means a commitment for water service per NAC 445A.6666 and NAC 278.290.
 - (g) **"General improvement district" (GID) and "district" alone each means any general improvement district organized pursuant to NRS Chapter 318.**

SECTION 2. Section 110.422.15 is hereby amended to read as follows:

Section 110.422.15 Water Rights and Water Resource Satisfaction. Developments to be served by the Truckee Meadows Water Authority **or a GID** shall be required to satisfy the water resource dedication requirements of the Truckee Meadows Water Authority **or the GID**. For those developments not served by the Truckee Meadows Water Authority **or a GID**, the development owner or property owner shall be required to dedicate or submit proof of relinquishment to Washoe County as a condition precedent to any permit or approval, any water rights reasonably necessary to ensure an adequate water supply for the intended or permitted use. **For new commercial, industrial, or civic developments not served by the Truckee Meadows Water Authority or a GID, proof of ownership may be accepted in lieu of dedication, provided the requirements of subsection (h) below, other than (h)(1), are met. For any new development not served by the Truckee Meadows Water Authority or a GID, presentation of a valid will-serve from a water purveyor approved and under Nevada Public Utilities Commission jurisdiction or the submittal of proof of the relinquishment of water rights may substitute for the dedication of water rights to Washoe County.** The amount of water rights necessary shall be determined by the Washoe County Community Services Department and the Nevada State Engineer; said water rights amount are singular and not cumulative. In the event the State of Nevada and the County have different requirements under this section, the most stringent of the County or State requirements must be satisfied. No building permit, special use permit, or recordation of a parcel map or subdivision map shall be granted until the dedication, **proof of ownership** ~~or the proof of relinquishment of water rights is~~ accepted by the Washoe County Community Services Department. The Community Services Department will evaluate the ~~proof of relinquishment of water rights, or the water rights offered for dedication to Washoe County or to a water purveyor~~ **water rights** as described above based on, but not limited to, the following criteria:

- (a) Water Resource Requirements. In accordance with this section, in those instances where Washoe County's water resource requirements are more stringent than the State Engineer's, additional water rights will be relinquished, **required** or dedicated as appropriate;
- (b) Adequacy of Amount of Water. The amount of water resources for the intended use is adequate to provide a reliable water supply and is **owned and controlled by the property owner and/or the developer of the project** or offered for

dedication to the County or proof of the relinquishment of water rights is submitted to the County;

- (c) Proximity of Source. The proximity of the hydrologic basin or source of water ~~offered for dedication to the County or proof of the relinquishment of water rights~~ **necessary in support of the project** for the intended use;
- (d) Proof of Ownership. Valid proof of ownership, including a chain of title to the original water right holder, for the water rights ~~offered for dedication to the County or proof of the relinquishment of water rights~~ **necessary in support of the project**;
- (e) Status of Water Right. The priority and yield of the water right, the current manner and place of use, and the status of the permits or certificates issued by the Nevada State Engineer, or the status of the water right established in a court decree, which are ~~offered for dedication to the County or proof of the relinquishment of water rights~~ **necessary in support of the project**;
- (f) Point of Diversion. The ability of the water purveyor, the developer, or the property owner to obtain from the Nevada State Engineer the necessary permits to change the point of diversion, and the manner and place of use of the water right for the intended use; and
- (g) Relinquishment. In the case of parcel or subdivision maps creating new residential parcels with an individual domestic well as their source of water supply, the applicant shall deliver proof of the relinquishment of the water rights to the County.
- (h) **Any water rights previously dedicated to the County pursuant to this section in connection with a commercial, industrial, or civic use may be reconveyed to the original grantor or the original grantor's successor, if good cause exists, either sua sponte by the County at the sole discretion of the Director of the Planning and Building Division of the Community Services Department, or upon application to the Director of the Planning and Building Division of the Community Services Department. For purposes of this subsection, good cause shall at a minimum include the following findings:**
 - (1) The operation for which the water rights were originally dedicated has continued to operate in good standing and in compliance with all applicable conditions and other legal requirements;
 - (2) The water rights will continue to be used in connection with the operation and will be properly maintained with the State Engineer's office and will not be sold or otherwise alienated as long as the operation continues;
 - (3) The applicant and the County cause to be filed with the State Engineer a written request for advance notification to the county of any proceedings and copy of all notices and correspondence concerning the subject water rights; and
 - (4) The County or its lawful designee does not serve as the water provider for the operation or property in question and has no plan to do so for at least the 10 year period following the application.

If water rights are reconveyed pursuant to this subsection and the County or its lawful designee subsequently becomes the water provider for the property in question, then the water rights must again be dedicated to the appropriate water

purveyor pursuant to this section and all regulations and requirements governing the provision of water service by the water purveyor.

SECTION 3. General Terms.

1. All actions, proceedings, matters, and things heretofore taken, had and done by the County and its officers not inconsistent with the provisions of this Ordinance are ratified and approved.
2. The Chairman of the Board and officers of the County are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance. The District Attorney is authorized to make non-substantive edits and corrections to this Ordinance.
3. All ordinances, resolutions, bylaws and orders, or parts thereof, in conflict with the provisions of this Ordinance are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, bylaw or order, or part thereof, heretofore repealed.
4. Each term and provision of this Ordinance shall be valid and shall be enforced to the extent permitted by law. If any term or provision of this Ordinance or the application thereof shall be deemed by a court of competent jurisdiction to be in violation of law or public policy, then it shall be deemed modified, ipso facto, to bring it within the limits of validity or enforceability, but if it cannot be so modified, then the offending provision or term shall be excised from this Ordinance. In any event, the remainder of this Ordinance, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected.

Passage and Effective Date

Proposed on _____ (month) _____ (day), 2017.

Proposed by Commissioner _____.

Passed on _____ (month) _____ (day), 2017.

Vote:

Ayes:

Nays:

Absent:

Bob Lucey, Chair
Washoe County Commission

ATTEST:

Nancy Parent, County Clerk

This ordinance shall be in force and effect from and after
the _____ day of the month of _____ of the year
_____.



Planning Commission Staff Report

Meeting Date: October 3, 2017

Subject: Development Code Amendment Case Number WDCA17-0002

Applicant: Planning and Building Division

Agenda Item Number: 9A

Summary: To amend Washoe County Code Chapter 110 (Development Code), Article 422, *Water and Sewer Resource Requirements*, to remove the requirement to dedicate water rights to Washoe County under certain circumstances.

Recommendation: Recommend approval and authorize the Chair to sign the attached resolution

Prepared by: Vahid Behmaram, Water Management Planner Coordinator and Kelly Mullin, AICP, Planner
Washoe County Community Services Department
Planning and Building Division

Phone: 775.954.4647 (Vahid); 775.328.3608 (Kelly)

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kmullin@washoecounty.us (Kelly)

Washoe County
Commission District: All Commission Districts

Description

Development Code Amendment Case Number WDCA17-0002 (Water Rights) – For possible action, hearing and discussion to amend Washoe County Code Chapter 110 (Development Code) within Article 422, *Water and Sewer Resource Requirements*, to remove the requirement to dedicate water rights to Washoe County for commercial, industrial, or civic uses in areas not served by the Truckee Meadows Water Authority, or a General Improvement District; and other matters necessarily connected therewith and pertaining thereto; and, if approval of the amendment is recommended, to authorize the Chair to sign a resolution to that effect.

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Attachment Contents

Resolution..... Attachment A
 Staff Report Initiating Proposed Amendment Attachment B

Development Code Amendments

The Washoe County Development Code is Chapter 110 of the Washoe County Code (WCC). The Development Code broadly regulates allowable and permitted land uses, subdivision of land, planning permit requirements and procedures, signage, infrastructure availability, land use development standards, and other related matters. Because the Development Code covers so many varying aspects of land use and development standards, it is expected that from time to time it may be necessary to change or amend one or more portions of the Development Code to keep it up to date with the most current and desirable trends in planning and development.

The Development Code amendment process provides a method of review and analysis for such proposed changes. Development Code amendments may be initiated by the Washoe County Board of Commissioners (Board), the Washoe County Planning Commission (PC), or an owner of real property. Development Code amendments are initiated by resolution of the Board or the PC. Real property owners may submit an application to initiate a Development Code amendment.

After initiation, the PC considers the proposed amendment in a public hearing. The PC may recommend approval, approval with modifications or denial of the proposed amendment. The PC records its recommendation by resolution.

The Board hears all amendments recommended for approval, and amendments recommended for denial upon appeal. The Board will hold a first reading and introduction of the ordinance (proposed amendment), followed by a second reading and possible ordinance adoption in a public hearing at a second meeting at least two weeks after the first reading. Unless otherwise specified, ordinances are effective 10 days after adoption.

Background

Washoe County Code Chapter 110, Article 422, *Water and Sewer Resource Requirements*, originated as Washoe County Ordinance #586, which became effective in 1984. Several factors led to the creation of this ordinance, all with the common goal of managing water resources within unincorporated Washoe County in the most sustainable manner. These factors included:

- 1) Parcel maps in unincorporated Washoe County create new residential lots, most often with a domestic well as their source of water supply. A parcel map is very similar to a subdivision map in that both types of maps divide larger lot(s) into smaller lots. The significant differences between the two types of maps are that parcel maps are limited to 4 or fewer lots, and are generally subject to fewer conditions of approval. Furthermore, the State Engineer reviews and approves subdivision maps as to water rights and water supply adequacy per the requirements of Nevada Revised Statutes Chapter 278;

however, the State Engineer is not required to review and approve parcel maps. This difference created a statewide loophole that led to the creation of many residential lots with the potential for a new domestic well without adequate water rights accounted for by the State Engineer. Ordinance #586 addressed this problem by requiring the dedication of 2.02 acre-feet to Washoe County for new residential lots. Later, an update to Article 422 modified this standard to instead require the relinquishment of 2.00 acre-feet to the State of Nevada. The amounts of water rights required are per NRS, which allows a diversion of 1,800 gallons per day from a domestic well. This equates to 2.02 acre-feet annually. NRS was later revised to an even 2.00 acre-feet per year.

- 2) Within unincorporated Washoe County, commercial, industrial and civic projects that needed a special use permit, building permit, or business license also were not subject to State Engineer review and approval. Washoe County closed this gap by requiring such applicants to comply with the applicable provisions of State water laws. Ordinance #586 and Article 422 accomplished this compliance with the water laws by requiring the applicants to acquire and dedicate to Washoe County adequate water rights sufficient to meet the project's annual water demand. Washoe County in turn leases the water rights back to the applicant at no monetary cost for 99 years so that they may meet their water demands.
- 3) In the 1980s, a federal tax applied to the transfer of water rights from private entities and developers to Sierra Pacific Power Company (SPPCo) – the water purveyor in the community at that time. This tax was averted when water rights were dedicated to the local governments (Cities of Reno and Sparks, and Washoe County), and then leased back for 99 years to SPPCo. Ordinance #586 authorized this process of dedication and lease-back. Some years later, this federal tax was repealed or determined to be non-applicable to water rights transfers. At that time, Reno and Sparks discontinued the dedication and lease-back practice. However, Washoe County continued the practice until 2015, when the merger of the County's Water Utility and Truckee Meadows Water Authority (TMWA) water utility occurred. Washoe County's retention of the dedication policy was to emphasize that water rights dedicated to existing development may not be considered as an asset of a private water utility.

Article 422, therefore, affected all types of development within the entire unincorporated portion of Washoe County by requiring a water rights dedication for all new projects with a new water demand for water resources.

A 1998 amendment to Article 422 provided exemptions for all development within the Tahoe Basin and a 2015 amendment (resulting from the merger of the water utilities mentioned earlier) provided exemptions for development within the TMWA service area, and any General Improvement District (GID) water service area. Furthermore, the 2015 amendment replaced the water rights dedication requirement required of parcel maps with a domestic well as their source of water supply, with a relinquishment process administered through the State Engineer's office. The relinquishment process was created/refined by the 2007 State Legislative session, which eliminates the need for dedication to Washoe County; however, with the same goal and end result as Washoe County's Article 422.

Reasons for Amendment

Currently, Article 422 requires dedication of water rights to Washoe County for all new development with a new water demand in unincorporated Washoe County. The dedicated water rights associated with commercial, industrial and civic uses are then leased back to the

project/property owner for 99 years at no cost. The only consideration for the lease is for the property owner to pay all the cost associated with the maintenance of the permit (costs which would be borne by the project/property owner absent the dedication requirement).

The proposed amendment is prompted by recent litigation filed by a commercial property owner subject to the dedication requirement against Washoe County; however, it is also a result of Washoe County's recognition that management of water resources may be best achieved by other means than control of the water rights via the dedication process and the transfer of title. This recognition is in part due to:

- Availability of real-time State water rights data on the Internet;
- The evolution of the processes and procedures in the State Engineer's office; and,
- The evolution of the community's knowledge of water rights requirements and their monetary value and significance.

Consequently, the Washoe County Board of Commissioners has requested the Code be amended to eliminate the mandate for dedication of water rights to the County with an associated lease-back associated with commercial, industrial and civic uses.

Under the proposed amendment, demonstration of availability or ownership of adequate water rights to support a new commercial, industrial or civic water demand may be substituted for the dedication requirement. The proposed amendment retains the County's ability to require dedication of water rights in special circumstances which may warrant the dedication requirement.

As before, new development with new water demand would still be required to obtain the appropriate water rights as required by the State Engineer's rules and regulations and County Code. However, this amendment would remove the mandate that the water rights be dedicated to the County. This would allow Washoe County's role to shift to reviewing the project for conformance with State water law and County Codes for the amount of water required, as an alternative to the dedication requirement.

Proposed Language Changes

The proposed language changes are organized by Code section and summarized below. Full updated text is included with the Resolution (Attachment A).

- | | |
|---------------------------|---|
| 110.422.03(g) | Adds a definition for "General Improvement District." |
| 110.422.15 | Refines and clarifies the intent of the text and introduces the ability to "Demonstrate proof of ownership" as an alternative to dedication. |
| 110.422.15 (a)-(g) | Refines and clarifies the intent of the text. |
| 110.422.15(h) | Provides a process by which past dedication of water rights and associated 99-year lease-backs may be terminated and water rights re-conveyed to original dedicator or successor in interest. |

Findings

WCC Section 110.818.15(e) requires the PC to make at least one of the following findings of fact for approval of the amendment. Staff provides the following evaluation for each of the

findings and recommends that the PC make all four findings in support of the proposed amendment.

1. Consistency with Master Plan. The proposed Development Code amendment is in substantial compliance with the policies and action programs of the Washoe County Master Plan.

Staff comment: The proposed amendment is in compliance with the relevant policies of the Master Plan, including those of the Conservation Element, and Open Space and Natural Resource Management Plan. The amendment does not change the requirement for appropriate water rights as established in various area plan policies to be obtained for new development with new water demand.

2. Promotes the Purpose of the Development Code. The proposed Development Code amendment will not adversely impact the public health, safety or welfare, and will promote the original purposes for the Development Code as expressed in Article 918, Adoption of Development Code.

Staff comment: The proposed amendment will not adversely impact the public health, safety or welfare, as appropriate water rights must still be obtained for new development with new water demand. This amendment is primarily a change in process that shifts the County's role to one of ensuring conformance with State water law and County Codes for the amount of water required for use types.

3. Response to Changed Conditions. The proposed Development Code amendment responds to changed conditions or further studies that have occurred since the Development Code was adopted by the Board of County Commissioners, and the requested amendment allow for a more desirable utilization of land within the regulatory zones.

Staff comment: As described previously in this staff report, the proposed amendment reflects the County's recognition that management of water resources may be achieved by other means than control of the water rights via the dedication process and the transfer of title. In part, this recognition is due to: availability of real-time State water rights data on the Internet; the evolution of the processes and procedures in the State Engineer's office; and the evolution of the community's knowledge of water rights requirements and their monetary value and significance.

4. No Adverse Affects. The proposed Development Code amendment will not adversely affect the implementation of the policies and action programs of the Conservation Element or the Population Element of the Washoe County Master Plan.

Staff comment: The proposed amendment will not negatively affect either the Conservation Element or the Population Element, as it is primarily a change in process. This amendment would shift Washoe County's role to that of conformance review of the project with the State water law and County Codes, but as before, new development with new water demand would still be required to obtain the appropriate water rights as required by the State Engineer and County Code.

Public Notice and Workshop

Pursuant to WCC Section 110.818.20, notice of this public hearing was published in the newspaper at least 10 days prior to this meeting, and the Chair and membership of all Citizen Advisory Boards (CABs) were likewise notified of the public hearing.

CAB members and the public were also invited to attend an open house to discuss the amendment, which was held August 23, 2017. There were two attendees present at the open house to learn more about the amendment. No public comment has been received.

Recommendation

It is recommended that the PC recommend approval of WDCA17-0002, to amend the Development Code within Article 422, *Water and Sewer Resource Requirements* as described in this staff report. The following motion is provided for the PC's consideration:

Motion

I move that, after giving reasoned consideration to the information contained in the staff report and received during the public hearing, the Washoe County Planning Commission recommend approval of WDCA17-0002, to amend Washoe County Code Chapter 110 within Article 422, *Water and Sewer Resource Requirements* as described in Attachment A. I further move to authorize the Chair to sign the resolution contained in Attachment A on behalf of the Planning Commission and to direct staff to present a report of this Commission's recommendation to the Washoe County Board of Commissioners within 60 days of today's date. This recommendation for approval is based on all of the following four findings in accordance with Washoe County Code Section 110.818.15(e):

1. Consistency with Master Plan. The proposed Development Code amendment is in substantial compliance with the policies and action programs of the Washoe County Master Plan;
2. Promotes the Purpose of the Development Code. The proposed Development Code amendment will not adversely impact the public health, safety or welfare, and will promote the original purposes for the Development Code as expressed in Article 918, Adoption of Development Code;
3. Response to Changed Conditions. The proposed Development Code amendment responds to changed conditions or further studies that have occurred since the Development Code was adopted by the Board of County Commissioners, and the requested amendment allow for a more desirable utilization of land within the regulatory zones; and,
4. No Adverse Affects. The proposed Development Code amendment will not adversely affect the implementation of the policies and action programs of the Conservation Element or the Population Element of the Washoe County Master Plan.

Appeal Process

An appeal of the Planning Commission's denial of a Development Code amendment may be made to the Washoe County Board of Commissioners within 10 calendar days from the date that the Planning Commission's decision is filed with the Secretary to the Planning Commission, pursuant to WCC Sections 110.818.25 and 110.912.20.

Staff Report and Action Order xc: David M. Solaro, Assistant County Manager
Nathan Edwards, Deputy District Attorney



WASHOE COUNTY

Integrity Communication Service
www.washoecounty.us

CM/ACM KS
Finance KS
DA NE
Risk Mgt. N/A
Comptroller KA
Clerk CS

STAFF REPORT

BOARD MEETING DATE: June 27, 2017

DATE: May 30, 2017
TO: Board of County Commissioners
FROM: Dave Solaro, Arch., P.E., Director
Community Services Department, 328-3600, dsolaro@washoecounty.us
THROUGH: Kevin Schiller, Assistant County Manager
SUBJECT: For possible action to approve a Resolution to initiate an amendment to Washoe County Code Chapter 110 (Washoe County Development Code), section 110.422.15 [to remove the water rights dedication requirement] for commercial, industrial, or civic uses in areas not served by Truckee Meadows Water Authority. (All Commission Districts.)

SUMMARY

The Community Services Department, through the County Clerk, requests (pursuant to Washoe County Code 2.030) to initiate proceedings to amend Washoe County Code Chapter 110 (Washoe County Development Code) amending the current requirement for dedication of water rights to Washoe County for commercial developments not served by the Truckee Meadows Water Authority.

Washoe County Strategic Objective supported by this item: Safe, secure and healthy communities.

PREVIOUS ACTION

On October 27, 2015 the Board of County Commissioners (Board) held a second reading and adopted ordinance 1568 amending chapter 100 section 422 related to changes necessary due to the merging of the Washoe County Water Utility with the Truckee Meadows Water Authority.

On October 13, 2015 the Board held a first reading and initiation of ordinance 1568 amending chapter 100 section 422 related to changes necessary due to the merging of the Washoe County Water Utility with the Truckee Meadows Water Authority.

BACKGROUND

Currently Washoe County development code requires under Article 422 any commercial, industrial, or civic project which relies on an onsite well as their source of water supply to:

- Acquire the necessary ground water rights,

AGENDA ITEM #

10

WDCA17-0002
ATTACHMENT B

- Acquire necessary permit approval from the State Engineer's office for the change in the point of diversion (POD) place of Use (POU) and Manner of Use (MOU) to conform with the project,
- Dedicate by a water rights deed said water rights to Washoe County,
- Washoe County in turn will execute a Water Sale Agreement (WSA) which leases back the water rights to the applicant for 99 years at no lease cost. The consideration for the lease is that the applicant bear the cost and the effort of maintaining the water right permit in good standing by filing all necessary proofs with the State Engineer,
- If the project discontinues, the WSA is cancelled and the water rights are re-conveyed to the applicant by appropriate deed approved by Board.

A request from the Board to eliminate the requirement for dedication of water rights to Washoe County and subsequent water sale agreement has been received by staff. This initiation of amendment to the Development Code begins the process.

Pursuant to WCC Section 110.818.05(a), the Board of County Commissioners or the Washoe County Planning Commission may initiate amendments to Washoe County Code Chapter 110, Development Code, through resolution. Staff believes it is appropriate for the Board to initiate this specific proposed Development Code amendment.

FISCAL IMPACT

The proposed code changes are not expected to increase costs. This ordinance is exempt from the Business Impact Statement pursuant to NRS 237.060 (2)(c).

RECOMMENDATION

It is recommended that the Board of County Commissioners approve a Resolution to initiate an amendment to Washoe County Code Chapter 110 (Washoe County Development Code), section 110.422.15 for commercial, industrial, or civic uses in areas not served by Truckee Meadows Water Authority.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be: "Move to approve a Resolution to initiate an amendment to Washoe County Code Chapter 110 (Washoe County Development Code), section 110.422.15 for commercial, industrial, or civic uses in areas not served by Truckee Meadows Water Authority."



**RESOLUTION OF THE WASHOE COUNTY
BOARD OF COUNTY COMMISSIONERS**

**INITIATING AN AMENDMENT TO WASHOE COUNTY CODE CHAPTER 110,
DEVELOPMENT CODE, AT ARTICLE 422, WATER AND SEWER RESOURCE
REQUIREMENTS**

Whereas, Section 110.818.05 of the Development Code requires that amendments to the Development Code be initiated by resolution of the Washoe County Commission; and

Whereas, the Board of County Commissioners provided direction to amend the Washoe County water and sewer resource requirements code for commercial, industrial, or civic uses in areas not served by Truckee Meadows Water Authority [by removing the water rights dedication requirement]; and

Now, therefore, be it resolved that pursuant to Washoe County Code Section 110.818.05(a) that an amendment is initiated to the Washoe County Code Chapter 110, Development Code, at Article 422 as set forth in the agenda for the June 27, 2017 meeting of the Washoe County Board of County Commissioners, that a public hearing with the Washoe County Planning Commission on the amendment shall be held within 125 days of this resolution's adoption date, and that this amendment is initiated without prejudice to its final disposition.

ADOPTED on June 27, 2017.

WASHOE COUNTY
BOARD OF COUNTY COMMISSIONERS

ATTEST:

Nancy Parent, Washoe County Clerk

Bob Lucey, Chairman



RESOLUTION OF THE WASHOE COUNTY PLANNING COMMISSION

RECOMMENDING APPROVAL OF AN AMENDMENT TO WASHOE COUNTY CODE CHAPTER 110 (DEVELOPMENT CODE) WITHIN ARTICLE 422, *WATER AND SEWER RESOURCE REQUIREMENTS*, TO REMOVE THE REQUIREMENT TO DEDICATE WATER RIGHTS TO WASHOE COUNTY FOR COMMERCIAL, INDUSTRIAL, OR CIVIC USES IN AREAS NOT SERVED BY THE TRUCKEE MEADOWS WATER AUTHORITY, OR A GENERAL IMPROVEMENT DISTRICT; AND OTHER MATTERS NECESSARILY CONNECTED THEREWITH AND PERTAINING THERETO.

Resolution Number 17-12

WHEREAS

- A. Washoe County Code (WCC) Section 110.818.05 requires that amendments to WCC Chapter 110 (Development Code) be initiated by resolution of the Washoe County Board of Commissioners or the Washoe County Planning Commission; and
- B. Development Code Amendment Case Number WDCA17-0002 was initiated by the Washoe County Board of Commissioners on June 27, 2017 pursuant to WCC Section 2.030; and
- C. Development Code Amendment Case Number WDCA17-0002, came before the Washoe County Planning Commission for a duly noticed public hearing on October 3, 2017; and
- D. The Washoe County Planning Commission gave reasoned consideration to the information it received regarding the proposed Development Code amendment; and
- E. Whereas, pursuant to Washoe County Code Section 110.818.15(e), the Washoe County Planning Commission made the following findings necessary to support its recommendation for adoption of the proposed Development Code Amendment Case Number WDCA17-0002:
 - 1. Consistency with Master Plan. The proposed amendment is in substantial compliance with the policies and action programs of the Washoe County Master Plan;
 - 2. Promotes the Purpose of the Development Code. The proposed Development Code amendment will not adversely impact the public health, safety or welfare, and will promote the original purposes for the Development Code as expressed in Article 918, Adoption of Development Code;
 - 3. Response to Changed Conditions. The proposed Development Code amendment responds to changed conditions or further studies that have occurred since the Development Code was adopted by the Board of County Commissioners, and the

requested amendment allow for a more desirable utilization of land within the regulatory zones; and,

4. No Adverse Affects. The proposed Development Code amendment will not adversely affect the implementation of the policies and action programs of the Conservation Element or the Population Element of the Washoe County Master Plan.

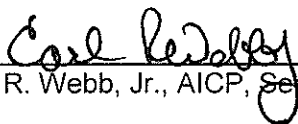
NOW, THEREFORE, BE IT RESOLVED that pursuant to Washoe County Code Sections 110.818.05(a) and 110.818.15(d) and (g):

- 1) The Washoe County Planning Commission does hereby recommend approval of WDCA17-0002 as set forth in Attachment A-1 to this resolution to amend Washoe County Code Chapter 110 (Development Code) within Article 422, *Water and Sewer Resource Requirements*, to remove the requirement to dedicate water rights to Washoe County for commercial, industrial, or civic uses in areas not served by the Truckee Meadows Water Authority, or a General Improvement District; and other matters necessarily connected therewith and pertaining thereto.
- 2) A report describing this amendment, discussion at this public hearing, this recommendation, and the vote on the recommendation will be forwarded to the Washoe County Board of Commissioners within 60 days of this resolution's adoption date.

ADOPTED on October 3, 2017.

WASHOE COUNTY PLANNING COMMISSION

ATTEST:



Carl R. Webb, Jr., AICP, Secretary



Sarah Chvilicek, Chair

REGULAR TEXT: NO CHANGE IN LANGUAGE

~~STRIKEOUT TEXT: DELETE LANGUAGE~~

BOLD TEXT: NEW LANGUAGE

Notice: Per NRS 239B.030, this document does not contain personal information as defined in NRS 603A.040

Summary: *Amends the Development Code by updating the standards within Article 422, Water and Sewer Resource Requirements, to remove the requirement to dedicate water rights to Washoe County under certain circumstances.*

BILL NO. _____

ORDINANCE NO. _____

Title:

An ordinance amending the Washoe County Code at Chapter 110 (Development Code), within Article 310, *Temporary Uses and Structures*, to update the standards within Article 422, Water and Sewer Resource Requirements, to remove the requirement to dedicate water rights to Washoe County for commercial, industrial, or civic uses in areas not served by the Truckee Meadows Water Authority, or a General Improvement District; and other matters necessarily connected therewith and pertaining thereto.

WHEREAS:

- A. This Commission desires to amend Washoe County Code Chapter 110 (Development Code), Article 422, Water and Sewer Resource Requirements; and,
- B. The Washoe County Commission initiated the proposed amendments to Washoe County Code Chapter 110 (Development Code) by Resolution on June 27, 2017; and,

- C. The amendments and this ordinance were drafted in concert with the District Attorney, and the Planning Commission held a duly noticed public hearing for WDCA17-0002 on October 3, 2017, and adopted Resolution Number 17-12 recommending adoption of this ordinance; and,
- D. Following a first reading and publication as required by NRS 244.100 (1), and after a duly noticed public hearing, this Commission desires to adopt this Ordinance; and,
- E. This Commission has determined that this ordinance is being adopted pursuant to requirements set forth in Chapter 278 of NRS, therefore it is not a "rule" as defined in NRS 237.060 requiring a business impact statement.

THE BOARD OF COUNTY COMMISSIONERS OF WASHOE COUNTY DOES HEREBY ORDAIN:

SECTION 1. Section 110.422.03 is hereby amended to read as follows:

Section 110.422.03 Definitions. These definitions apply specifically to this Article:

- (a) "Development" means any new residential, commercial or industrial development of land, including the division of land into two or more parcels.
- (b) "Relinquishment" means the relinquishment of groundwater rights to the State of Nevada within a hydrographic basin for the purpose of offsetting the impacts of additional groundwater withdrawn from proposed domestic wells to serve individual homes. Relinquishment of groundwater rights are a prerequisite to approval of newly created residential lots utilizing individual domestic wells as their source of water supply. Proof of relinquishment is satisfied when the appropriate approved affidavit from the Nevada State Engineer's Office is recorded with Washoe County.
- (c) "TMWA" means the Truckee Meadows Water Authority.
- (d) "PUC" means the Public Utilities Commission of Nevada.
- (e) "Water purveyor" means:
 - (1) A public water system as defined in NRS 445A.235, as amended;

- (2) A community water system as defined in NRS 445A.808, as amended;
 - (3) A noncommunity water system as defined in NRS 445A.828, as amended;
 - (4) A nontransient water system as defined in NRS 445A.829, as amended; or
 - (5) A transient water system as defined in NRS 445A.848, as amended;
 - (6) A water system as defined in NRS 445A.850, as amended.
- (f) "Will Serve" means a commitment for water service per NAC 445A.6666 and NAC 278.290.
- (g) **"General improvement district" (GID) and "district" alone each means any general improvement district organized pursuant to NRS chapter 318.**

SECTION 2. Section 110.422.15 is hereby amended to read as follows:

Section 110.422.15 Water Rights and Water Resource Satisfaction. Developments to be served by the Truckee Meadows Water Authority **or a GID** shall be required to satisfy the water resource dedication requirements of the Truckee Meadows Water Authority **or the GID**. For those developments not served by the Truckee Meadows Water Authority **or a GID**, the development owner or property owner shall be required to dedicate or submit proof of relinquishment to Washoe County as a condition precedent to any permit or approval, any water rights reasonably necessary to ensure an adequate water supply for the intended or permitted use. **For new commercial, industrial, or civic developments not served by the Truckee Meadows Water Authority or a GID, proof of ownership may be accepted in lieu of dedication, provided the requirements of subsection (h) below, other than (h)(1), are met. For any new development not served by the Truckee Meadows Water Authority or a GID, presentation of a valid will-serve from a water purveyor approved and under Nevada Public Utilities Commission jurisdiction or the submittal of proof of the relinquishment of water rights may substitute for the dedication of water rights to Washoe County.** The amount of water rights necessary shall be determined by the Washoe County Community Services Department and the Nevada State Engineer; said water rights amount are singular and not cumulative. In the event the State of Nevada and the County have different requirements under this section, the most stringent of the County or State requirements must be satisfied. No building permit, special use permit, or recordation of a parcel map or subdivision map shall be granted until the dedication, **proof of ownership** or ~~the proof of relinquishment of water rights is~~ accepted by the Washoe County Community Services Department. The Community Services Department will evaluate the ~~proof of relinquishment of water rights, or the water rights offered for dedication to Washoe County or to a water purveyor~~ **water rights** as described above based on, but not limited to, the following criteria:

- (a) Water Resource Requirements. In accordance with this section, in those instances where Washoe County's water resource requirements are more stringent than the State Engineer's, additional water rights will be relinquished, **required** or dedicated as appropriate;

- (b) Adequacy of Amount of Water. The amount of water resources for the intended use is adequate to provide a reliable water supply and is **owned and controlled by the property owner and/or the developer of the project** or offered for dedication to the County or proof of the relinquishment of water rights is submitted to the County;
- (c) Proximity of Source. The proximity of the hydrologic basin or source of water ~~offered for dedication to the County or proof of the relinquishment of water rights~~ **necessary in support of the project** for the intended use;
- (d) Proof of Ownership. Valid proof of ownership, including a chain of title to the original water right holder, for the water rights ~~offered for dedication to the County or proof of the relinquishment of water rights~~ **necessary in support of the project**;
- (e) Status of Water Right. The priority and yield of the water right, the current manner and place of use, and the status of the permits or certificates issued by the Nevada State Engineer, or the status of the water right established in a court decree, which are ~~offered for dedication to the County or proof of the relinquishment of water rights~~ **necessary in support of the project**;
- (f) Point of Diversion. The ability of the water purveyor, the developer, or the property owner to obtain from the Nevada State Engineer the necessary permits to change the point of diversion, and the manner and place of use of the water right for the intended use; and
- (g) Relinquishment. In the case of parcel or subdivision maps creating new residential parcels with an individual domestic well as their source of water supply, the applicant shall deliver proof of the relinquishment of the water rights to the County.
- (h) **Any water rights previously dedicated to the County pursuant to this section in connection with a commercial, industrial, or civic use may be reconveyed to the original grantor or the original grantor's successor, if good cause exists, either sua sponte by the County at the sole discretion of the Director of the Planning and Building Division of the Community Services Department, or upon application to the Director of the Planning and Building Division of the Community Services Department. For purposes of this subsection, good cause shall at a minimum include the following findings:**
 - (1) The operation for which the water rights were originally dedicated has continued to operate in good standing and in compliance with all applicable conditions and other legal requirements;
 - (2) The water rights will continue to be used in connection with the operation and will be properly maintained with the State Engineer's office and will not be sold or otherwise alienated as long as the operation continues;
 - (3) The applicant and the County cause to be filed with the State Engineer a written request for advance notification to the county of any proceedings and copy of all notices and correspondence concerning the subject water rights; and
 - (4) The county or its lawful designee does not serve as the water provider for the operation or property in question and has no plan to do so for at least the 10 year period following the application.

If water rights are reconveyed pursuant to this subsection and the county or its lawful designee subsequently becomes the water provider for the property in question, then the water rights must again be dedicated to the appropriate water purveyor pursuant to this section and all regulations and requirements governing the provision of water service by the water purveyor.

SECTION 3. General Terms.

1. All actions, proceedings, matters, and things heretofore taken, had and done by the County and its officers not inconsistent with the provisions of this Ordinance are ratified and approved.
2. The Chairman of the Board and officers of the County are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance. The District Attorney is authorized to make non-substantive edits and corrections to this Ordinance.
3. All ordinances, resolutions, bylaws and orders, or parts thereof, in conflict with the provisions of this Ordinance are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, bylaw or order, or part thereof, heretofore repealed.
4. Each term and provision of this Ordinance shall be valid and shall be enforced to the extent permitted by law. If any term or provision of this Ordinance or the application thereof shall be deemed by a court of competent jurisdiction to be in violation of law or public policy, then it shall be deemed modified, ipso facto, to bring it within the limits of validity or enforceability, but if it cannot be so modified, then the offending provision or term shall be excised from this Ordinance. In any event, the remainder of this Ordinance, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected.

DRAFT: October 3, 2017

Passage and Effective Date

Proposed on _____ (month) _____ (day), 2017.

Proposed by Commissioner _____.

Passed on _____ (month) _____ (day), 2017.

Vote:

Ayes:

Nays:

Absent:

Robert Lucey, Chair
County Commission

ATTEST:

Nancy Parent, County Clerk

This ordinance shall be in force and effect from and after
the _____ day of the month of _____ of the year
_____.