

DRAFT SUBJECT TO FURTHER REVISION AND REVIEW

Division 3.12 - Water Adequacy Determinations

Section 3.12.1 - Purpose.

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

- (A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City “shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate.
- (B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
- (C) Ensure that growth and development in the City occur in a planned and coordinated manner;
- (D) Ensure that the City is provided with reliable information concerning the adequacy of developments’ proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
- (E) Promote safe, efficient, and economic use of public resources in developing and providing water;
- (F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

Section 3.12.2 - Applicability.

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

Section 3.12.3 Application.

- (A) An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for Final Plan or Basic Development Review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to any of the following:
 - (1) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Development Construction Permit (Division 2.6);
 - (2) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Building permit (Division 2.7), if the provider is an Established Potable Water Supply Entity; or
 - (3) Applications for Water Adequacy Determinations for non-potable systems shall be submitted at the same time as Development Construction Permit for review, as outlined in Division 2.6.

DRAFT SUBJECT TO FURTHER REVISION AND REVIEW

- (B) The applicant shall file separate applications for Water Adequacy Determinations for each portion of the development served by different water supply entities or water supply systems. The Director shall have the discretion to determine whether separate applications are required. Subsequent sections in this Division provide distinctions in the evaluation process for Established Potable Water Supply Entities, Other Potable Water Supply Entities, and Non-Potable Water Supply Entities.
- (C) **Material Changes.** The City shall make a Water Adequacy Determination only once for each portion of a development served by a different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a water adequacy determination. The Director's determination is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Section 3.12.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities

(A) Application Requirements.

- (1) Requests for a Water Adequacy Determination for all or portions of a development to be served with potable water by an Established Potable Water Supply Entity shall be in a form as required by the Director. Such requests shall include the following:
- (1) Identification of the portions of a development to be served with potable water by the Established Potable Water Supply Entity; and
 - (2) A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating its ability to provide an adequate water supply for the proposed development.
 - (3) A letter prepared by a water supply expert from the Established Potable Water Supply Entity stating it is willing to commit to provide an adequate water supply for the proposed development.
- (2) Requests under this section shall also include a letter as described in subsection (1), unless exempted pursuant to subsection ((2) or (3), or both).
- (a) A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating:
1. An estimate of the water supply requirements for the proposed development through build-out conditions;
 2. A description of the physical source of water supply that will be used to serve the proposed development. If the proposed source includes groundwater, this description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;

DRAFT SUBJECT TO FURTHER REVISION AND REVIEW

3. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions including long term variability and future climate risk;
 4. Water conservation measures, if any, that may be implemented within the proposed development;
 5. Water demand management measures, if any, that may be implemented to address hydrologic variations;
 6. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development in all hydrologic conditions; and
 7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.
- (b) The letter described in subsection (1) shall not be required if the Established Potable Water Supply Entity has a water supply plan that:
1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the Established Potable Water Supply Entity;
 2. Has a minimum twenty-year planning horizon;
 3. Lists the water conservation measures, if any, that may be implemented within the service area;
 4. Lists the water demand management measures, if any, that may be implemented within the development;
 5. Includes a general description of the water supply entity's water obligations;
 6. Includes a general description of the water supply entity's water supplies;
 7. Includes an estimate of the water supply requirements of the proposed development through build-out conditions and demonstrates the entity's water supplies can meet these demands; and
 8. Has been reviewed by City Council and is on file with the City's Community Development and Neighborhood Services Department. The Director may defer the Council review requirement until such time as the Established Potable Water Supply Entity updates their existing water supply plan.

(B) **Review of Application.** The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.

(C) **Standards.**

To issue a Water Adequacy Determination under this section, the Director must find that:

- (1) The statements in the application and associated materials are complete, correct, and reliable; and
 - (2) The provider submitted appropriate documentation establishing that they are in compliance with all applicable regulations.
- (D) **Decision.** The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and those decisions shall become part of the plan set for the associated development application, if approved. The Director's

DRAFT SUBJECT TO FURTHER REVISION AND REVIEW

decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Section 3.12.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities

- (A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a Water Adequacy Determination for all or portions of a development to be served with potable water by Other Potable Water Supply Entities shall be in a form as required by the Director. Such applications shall include the following:
- (1) A summary document linking the information to the standard of review; and
 - (2) Report including information required under Section 29-20-304(1), C.R.S.:
 - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
 - (b) A description of the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer;
 - (c) A description of the water rights either owned or planned for acquisition required for proposed water supply;
 - (d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;
 - (e) Water conservation measures that may be implemented within the development including how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2;
 - (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
 - (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.
 - (3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
 - (4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the Established Potable Water Supply Entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees that are also uniquely applicable to the proposed development.
 - (5) Approval documentation from other regulatory agencies such as CDPHE.
 - (6) Detailed information on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed.
 - (7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.
- (B) **Review of Application.**
- (1) **Agreement on Costs.** Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired

DRAFT SUBJECT TO FURTHER REVISION AND REVIEW

to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) Review.

- (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
- (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.
- (c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.12.3.

(C) Standards.

- (1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:
 - (a) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:
 - 1. providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;
 - 2. providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects ; and
 - 3. establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.
 - (b) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:
 - 1. relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
 - 2. having ability to acquire the water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
 - 3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.

DRAFT SUBJECT TO FURTHER REVISION AND REVIEW

- (c) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
1. establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
 2. if the water supply system includes a water treatment facility, demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products. ;
 3. establishing that the water supply system can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and
 4. establishing and maintaining a water supply entity that can oversee and maintain the water supply system for the lifetime of the development.
- (d) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
1. establishing the applicant has the necessary property rights and resources to build and operate the proposed water supply system;
 2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and
 3. for lands within the water service area of an Established Water Provider, establishing that: the lands to be served by the Other Potable Water Supply Entities have been removed from the water service area of an Established Potable Water Supply Entity; or the Established Water Supply Entity consents to the proposed service by the Other Potable Water Supply Entity.
- (D) Modification of Standards. If a Potable Water Supply Entity cannot meet the Fort Collins **Utility Standards set forth above, then they may seek a modification of standards** pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the standards set forth in Section 2.8.2(H), the Director must find that the modified standard is comparable to an existing standard already being employed by another Established Potable Water Entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (E) **Decision.**
- (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
 - (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant:

DRAFT SUBJECT TO FURTHER REVISION AND REVIEW

acquiring the required water right decrees and water contracts for the water supply system; and/or completing construction of all infrastructure for the water supply system.

- (3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (4) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for this development is being provided by the approved entity.

Section 3.12.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities

(A) **Application Requirements for Non-Potable Water Supplies.** Applications for a Water Adequacy Determination for all or portions of a development to be served with untreated water shall include the following:

- (1) Summary document linking the information to the standard of review; and
- (2) Report including information required under Section 29-20-304(1), C.R.S.:
 - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
 - (b) A description of the physical source of water supply that will be used to serve the proposed development. This description must include water quality test results and results of an analysis investigating any limitations of use due to poor quality;
 - (c) A description of the water rights either owned or planned for acquisition required for the proposed water supply;
 - (d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year based on augmentation requirements;
 - (e) Water conservation measures, if any, that may be implemented within the development;
 - (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
 - (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the development code;
- (3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
- (4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.

DRAFT SUBJECT TO FURTHER REVISION AND REVIEW

- (5) Approval documentation from other regulatory agencies, including the Established Potable Water Supply Entity whose service area contains the proposed non-potable system.
- (6) Such other information as may be required by the Director.

(B) Review of Application.

- (1) Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.
- (2) Review.
 - (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
 - (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.
 - (c) Applications for Water Adequacy Determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.

(C) Standards

- (1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:
 - (a) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
 1. providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;
 - (b) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
 1. relying upon a renewable and/or sustainable physical supply of water;
 2. having water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations; and
 3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.

DRAFT SUBJECT TO FURTHER REVISION AND REVIEW

- (c) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
 - 1. if the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products;
 - 2. establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.
- (d) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:
 - 1. establishing the applicant has the necessary property rights and resources to build and operate the proposed non-potable water supply system;
 - 2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.

(D) Decision.

- (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
- (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant acquiring the required water right decrees for the water rights system.
- (3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Water Adequacy Determination Definitions to Place in LUC Art. 5

Adequate shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the lifetime of the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

Established Potable Water Supply Entities shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

DRAFT SUBJECT TO FURTHER REVISION AND REVIEW

Non-Potable Water shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

Non-Potable Water Supply Entities shall mean the water supply entities, either Established Potable Water Supply Entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of Non-Potable Water.

Other Potable Water Supply Entities shall mean the water supply entities other than the Established Potable Water Supply Entities that provide potable water service, including new proposed water supplies.

Potable water, shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

Water Adequacy Determination shall mean a determination whether the proposed water supply for a development is adequate.

Water supply entity shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that, at the time of the application, or within three years of application, supplies, distributes, or otherwise provides water at retail.

Water supply system shall mean all infrastructure planned or used to divert and deliver water to a development.