



VILLAGE OF LOS LUNAS ORDINANCE 454

An Ordinance Amending Ordinance 426, which Established the Village of Los Lunas Requirements for the Provision of Water Rights for New and Existing Development, in Order to Add Requirements for Multifamily Development, Establish Usage Categories for Non-Residential Development, and Revise Text for Clarity.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE VILLAGE OF LOS LUNAS, COUNTY OF VALENCIA, STATE OF NEW MEXICO THAT,

ORDINANCE 426 IS HEREBY AMENDED AS FOLLOWS:

TITLE 13 – PUBLIC SERVICES, CHAPTER 13.24 – WATER RIGHTS REQUIRED, BE AMENDED AS FOLLOWS:

§13.24.010– Transfer of Water Rights.

- A. An applicant for subdivision approval, multi-family development, or the commercial development of property shall agree that if the village approves the subdivision, the multi-family development, or the commercial development, in consideration of that approval the applicant will make water rights available to the village in amounts specified in this chapter.
- B. New development. At the time of application for preliminary plat, multi-family development, or commercial development, the village will determine the amount of water rights that will be required by the proposed development. In the case of a preliminary plat, the applicant shall convey these water rights to the village before the approval of the final plat. In the case of a multi-family or commercial development, the applicant shall convey these water rights to the village in accordance with the rules and procedures of the State Engineer of New Mexico before the approval of any necessary building permit(s), or upon the approval of the Village Council in a water agreement entered into in accordance with §13.24.050(C), transfer of use of the necessary water rights to the village in accordance with the rules and procedures of the State Engineer of New Mexico before the approval of any necessary building permit(s).
- C. Existing development. When substantial changes are proposed for an existing commercial or multi-family use that require a permit to be issued as stated in Chapter 17.28 of the Los Lunas Municipal

Code, the village shall review the water rights requirements in accordance with this chapter. If the review of the water rights requirements establishes that additional water rights are necessary, the village shall require the conveyance of ownership and location of the necessary water rights to the village in accordance with the rules and procedures of the State Engineer of New Mexico before the approval of any necessary building permit(s); or, upon the approval of the Village Council in a water agreement entered into in accordance with §13.24.050(C), the transfer of use of the necessary water rights to the village in accordance with the rules and procedures of the State Engineer of New Mexico before the approval of any necessary building permit(s).

§13.24.020- Residential subdivision water rights requirements.

- A. The amount of water rights required for any subdivision whose primary land use is residential shall be not less than 0.336 acre-feet per year of consumptive use for each dwelling unit in the subdivision.
- B. A residential subdivision may require fewer water rights than specified in Section 13.24.020 (A). Reduced water rights must be approved by the village through a water budget.
 - 1. Regardless of the results of the water budget, no applicant for a residential subdivision shall be allowed to transfer less than 0.2 acre-feet per year of consumptive use water rights per dwelling unit.

§13.24.030- Multi-family development water rights requirements.

- A. Applicants for a multi-family development that exceeds 4 dwelling units must transfer water rights to the village, or provide compensation in lieu of transfer to the village pursuant to Section 13.24.070, for the consumptive use determined by an approved water budget for the development.
- B. Applicants for a multi-family development that consists of 4 dwelling units or less shall not be required to submit a water budget, and instead may provide compensation in lieu of transfer pursuant Section 13.24.070, for the minimum transfer of 0.12 acre-feet per year per dwelling unit.
 - 1. A multi-family development consisting of multiple 4 dwelling unit structures will not be considered as separate 4 dwelling unit developments, but rather as one development composed of the total number of dwelling units in all structures for the purposes of transfer of water rights.
- C. Regardless of the results of a water budget, no applicant for a multi-family development shall be allowed to transfer less than 0.12 acre-feet per year of consumptive use water rights per dwelling unit.

§13.24.040- Non-residential water rights requirements.

- A. Except as permitted by Village Municipal Ordinance Chapter 2.46 (Local Economic Development Act Plan) and Sections 5-10-1 through 5-10-13 NMSA 1978, all non-residential developments are required to transfer water rights to the village in accordance with Section 13.24.040(B) herein.

- B. Any non-residential development in the village is allowed consumptive water use of 3.0 acre-feet per year without being required to convey or transfer water rights to the village or, pay the in lieu fee for water rights pursuant to §13.24.070. At the time of application for any permit required by Chapter 17.28 of the village municipal code for non-residential development, for both new construction and improvements to existing buildings, village staff will review the development documents and determine if consumptive water use may exceed 3.0 acre-feet per year per user. If staff determines that consumptive water use could exceed 3.0 acre-feet per year per user, the applicant must submit a water budget for the development.
 - 1. If, based on the water budget, total consumptive use is estimated to be no more than 3.0 acre-feet per year, the applicant shall not be required to transfer water rights to the village or provide compensation in lieu of transfer.
 - 2. If, based on the water budget, total consumptive use is shown to be in excess of 3.0 acre-feet per year, the applicant shall be required to either convey or transfer water rights to the village or provide compensation in lieu of transfer pursuant Section 13.24.070 for the consumptive use in excess of 3.0 acre-feet per year.

§13.24.050- Non-residential water usage categories

All non-residential development projects shall be categorized as a low, moderate or high water user, as provided below. The usage category shall determine how the village may negotiate with the developer for the transfer of water rights or compensation in lieu of transfer:

- A. Low water user. A low water user has a consumptive use of no more than 3.0 acre-feet per year, and is not required to transfer water rights or provide compensation in lieu of transfer, pursuant to Section 13.24.040.
- B. Moderate water user. A moderate water user has a consumptive use of greater than 3.0 acre-feet per year, but no more than 13 acre-feet per year, as determined by a water budget review. Moderate users may either transfer water rights to the Village or may provide compensation in lieu of transfer. The method of provision of water rights shall be determined administratively.
- C. High water user. A high water user has a consumptive use of greater than 13 acre-feet per year, as determined by a water budget review. High water users shall ensure the provision of adequate water rights to the village as follows:
 - 1. Determine the method of water rights provision. High water users may transfer water rights to the village, convey water rights to the village, or provide compensation in lieu of conveyance transfer, or utilize a combination thereof. Any compensation in lieu of transfer of water rights must be approved by village council at a regularly advertised meeting; and
 - 2. Enter into a water agreement with the village. Following the determination of the provision of water rights, high water users shall be required to enter into a water agreement with the village regulating their average daily and peak water use, impact to village infrastructure, and provision of water rights. Water agreements shall be approved by village council in a regularly advertised meeting.

§13.24.060- Water budgets

A water budget is utilized by the village to determine an accurate consumptive water use for applicable development projects.

- A. Water budgets must be prepared by the applicant for a development project, and shall consist of a written request for consumptive use review containing sufficient information for a determination of the total amount of water rights required by the village for the development.
- B. Water budgets for projects that require significant and prolonged earthmoving must include anticipated construction water needs.

§13.24.070- Compensation in lieu of transfer of water rights.

Where authorized by the village, rather than transfer water rights to the village an applicant may instead be allowed to pay compensation in lieu of conveyance of water rights or transfer of water rights to obtain the ability to utilize excess water rights in the village wells. The amount of compensation required for each project shall be determined by a water budget created for that project. The village, working in consultation with its water rights consultant shall determine the current cost of 1 acre-foot per year of water rights annually. An applicant utilizing compensation in lieu of conveyance or transfer shall pay 125% of the current cost of water rights for the required village water credits for their project.

§13.24.080- Transfers of water rights in excess of requirements.

Where an applicant transfers more water rights than required, the applicant shall be given credit for water rights in an amount equal to the difference between the rights transferred and the rights required. The applicant may use this credit in one of three ways.

- A. The credit may be used to help meet the requirements of this chapter with respect to a different subdivision, multi-family or commercial development owned by the applicant.
- B. The credit may be used to help meet the requirements of this chapter with respect to a different subdivision, multi-family or commercial development owned by a different applicant, if and when the original applicant so assigns the credit for whatever consideration he deems adequate.
- C. Upon application of the owner of water rights credits to the village administrator, the credits may be assigned to the village provided that each of the following criteria are established:
 - 1. The village has sufficient funds to acquire the water rights credits;
 - 2. The applicant is currently actively developing an existing subdivision or master planned community within the village;
 - 3. The acquisition of the water rights credit by the village will promote economic development within the village;
 - 4. The acquisition of the water rights credits by the village will not cause the applicant to be in violation of Section 13.24.020, Section 13.24.030 or Section 13.24.040 of the Village Municipal Code as they currently exist or as they are amended from time to time;
 - 5. The water credits were created by the applicant providing excess water rights to the village in compliance with Section 13.24.010 of the Village Municipal Code as it currently exists or is amended from time to time; and

6. The funds derived from the sale of the water rights credit will be used by the applicant to further the development of the applicant's subdivision or master planned community.
- D. The village may compensate an applicant with any funds that are available, provided that the use of said funds does not violate state law.
 - E. The amount of compensation for the credit shall be based on the current cost of 1 acre-foot per year of water rights determined through the procedure in Section 13.24.070. The village shall then pay the applicant the current price for the excess water rights credits less the following discount:
 1. For the purchase of three hundred acre feet or more of water credits, seven percent;
 2. For the purchase of two hundred acre feet or more of water credits, but less than 300 acre feet of water credits, ten percent;
 3. For the purchase of fifty acre feet or more of water credits, but less than 200 acre feet of water credits, fifteen percent; and
 4. For the purchase of one acre feet or more of water credits, but less than fifty acre feet of water credits, twenty percent.

§13.24.090- Fees

- A. Any and all engineering, water rights consultant, or other professional fees incurred by the village under the chapter shall be paid for by the applicant at the time they are incurred.
 1. For single family residential subdivisions, the fee incurred by the village for services of the water rights consultant is included in the 1.5% engineering fee assessed with the preliminary plat application, pursuant to Section 16.12.030.
 2. For multi-family and non-residential development, the village shall invoice the applicant for the cost incurred by the village for the water budget review.

PASSED, APPROVED, SIGNED, AND ADOPTED THIS DAY OF DECEMBER 2, 2021.



Charles Griego, Mayor

SEAL:

ATTEST:



Gregory D. Martin, Village Administrator