

ORDINANCE NO. 152, 2024
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 26 OF THE CODE OF THE CITY OF FORT COLLINS
REGARDING ANNUAL WATER ALLOTMENTS FOR NONRESIDENTIAL WATER
SERVICES

A. The City owns and operates a water utility that provides water service to customers in its service area pursuant to the City Charter, City Code, and other applicable laws.

B. The City Council is empowered and directed by the City Charter Article XII, Section 6, by ordinance from time to time, to fix, establish, maintain and provide for the collection of such rates, fees, or charges for utility services furnished by the City as will produce revenues sufficient to pay the costs, expenses, and other obligations of the water utility, as set forth therein.

C. The City has been providing water service to customers since the late 1800s.

D. Through Ordinance No. 18, 1965, as a prerequisite for new water service, the City began requiring customers to furnish acceptable water rights to the City, or a payment of cash in lieu of water rights. This water furnishing requirement was described as a volume of water per acre to be served ("Area Approach"). The required volume of water was determined based on various assumptions that evolved over time. The water rights the City historically accepted to meet this water furnishing requirement were assigned a water volume based on assumptions that evolved over time as new information and analyses became available.

E. The City adjusted the water furnishing requirement in subsequent ordinances, including Ordinance No. 39, 1971 and Ordinance No. 104, 1973. However, the City continued to use the Area Approach until early 1984.

F. Through Ordinance No. 12, 1984, the City renamed the water furnishing requirement the "Raw Water Requirement". The Raw Water Requirement was then based on the volume of water a customer was anticipated to use annually, multiplied by a water supply factor. City Council subsequently amended the water supply factor. The water rights the City accepted to meet this Raw Water Requirement were then assigned a water volume based on assumptions that evolved over time as new information and analyses became available.

G. Under Ordinance No. 12, 1984, the City also began assigning annual allotments on nonresidential water service permits applied *after* March 1, 1984 ("*Post-84 Nonresidential Permits*"). Under that ordinance, the annual allotment amount became based on the water volume the customer was anticipated to use annually, and actual water use over that allotment triggers an excess water use surcharge.

H. Under Ordinance No. 12, 1984, the City did not assign annual allotments on nonresidential water service permits applied for *before* March 1, 1984 (“*Pre-84 Nonresidential Permits*”). To date, the City has not assigned annual allotments to these permits.

I. Under Ordinance No. 116, 2017, the City renamed the Raw Water Requirement the “Water Supply Requirement,” and under Ordinance No. 119, 2021, the City ceased using a water supply factor to calculate the Water Supply Requirement and annual allotments.

J. Under *Post-84 Nonresidential Permits*, water use must stay under the annual allotment or incur an excess water use surcharge. For these permits, annual allotments control system water demands and conserve water supplies, which benefits all water utility ratepayers. Annual allotments and the excess water use surcharge are currently set forth in City Code Section 26-149. As of the date of this Ordinance, approximately two-thirds of nonresidential water service permits are *Post-84 Nonresidential Permits*.

K. Under *Pre-84 Nonresidential Permits*, water use does not have to stay under an annual allotment because there historically has been none. For these permits, there has been no annual allotment or excess water use surcharge to control water demands and conserve water supplies, to the detriment of other water utility ratepayers. Approximately one-third of nonresidential water service permits are *Pre-84 Nonresidential Permits*.

L. The City desires to assign annual allotments to *Pre-84 Nonresidential Permits* for various reasons, including:

- reducing the inequities between *Pre-* and *Post-84 Nonresidential Permits*; and
- increasing incentives to control system water demands and conserve water supplies for the benefit of all water utility ratepayers.

M. City Council has determined that the method described herein for assigning annual allotments to *Pre-84 Nonresidential Permits* is reasonable and fair for various reasons, including:

- the annual allotments will be assigned based on a fair and objective methodology that reflects reasonable expectations and actual, recent water use over a representative and reasonable time period;
- customers with permits dated before Ordinance No. 18, 1965 were not required to furnish water rights to the City and thus there is no water requirements information upon which a specific annual allotment could be based;
- customers with permits dated between Ordinance No. 18, 1965 and Ordinance No. 12, 1984 provided the City with water rights (or cash in lieu thereof) based on assumptions that cannot be reliably translated into the annual allotments assigned to customers with permits dated after Ordinance No. 12, 1984;

- customer outreach prior to this ordinance was significant and indicated that customers will not be meaningfully adversely affected by the annual allotments; and
- annual allotments will further the City’s legitimate policy goals described in Recital K.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That Section 26-149 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-149. - Water supply requirement (WSR); nonresidential service.

- (a) Nonresidential service for WSR shall apply to all services not included in the residential category and shall include, without limitation, all service to customers for: commercial; industrial; irrigation; public entity; group housing, such as nursing homes and long-term care facilities; fraternity and sorority dormitory housing; hotels and motels; and mixed-use purposes, provided that service for irrigation purposes shall not be mixed with other purposes.
- (b) The minimum WSR shall be calculated using the table in this subsection. The Utilities Executive Director shall determine the type of use to be used based on all relevant information and the common meaning of the listed uses. If various portions of a property are used for separate uses, the WSR for the service(s) on various portions of the property shall be calculated separately and aggregated to determine the WSR for the services(s) on the entire property. The WSR for services for any use not addressed by the table shall be calculated pursuant to Subsection (c).

Use	WSR Calculation
...	
Irrigation	Pursuant to water budget chart, Land Use Code Section 5.10.1(E)(3)(b) §3.2.1(E)(3)(b)(1)
...	

- (c) As required by Subsection (b), the WSR for services for such uses shall be the estimated peak annual water use determined by the Utilities Executive Director. The applicant shall provide the Utilities Executive Director with its estimated peak annual water use and any supporting information. The Utilities Executive Director shall consider the applicant's estimate and all relevant and reliable data and information, and shall make the determination following any appropriate investigations, including requests for additional information and analyses from the applicant.
- (d) In order to preserve the value of the water certificates issued by the City or WSR credits in the City's records issued before January 1, 2022, the WSR for

nonresidential service calculated pursuant to this section shall be multiplied by 1.92 to the extent the WSR is met pursuant to §26-150(a)(1) with water certificates issued by the City or WSR credits in the City's records issued before January 1, 2022, provided that such multiplication shall not be considered in the assignment of the annual allotment pursuant to Subsections (e) and (f).

- (e) Nonresidential services with permits issued before March 1, 1984 shall be assigned an annual allotment of water for each service that is equal to the greater of: the appropriate value in the table in this subsection; and the average annual use of the service between January 1, 2019 and December 31, 2023. Any exceedance of an annual allotment assigned under this Subsection shall not be assessed any excess water use surcharge until January 1, 2026.

<i>Meter Size (Inches)</i>	<i>Annual Allotment (gallons per year)</i>
$\frac{3}{4}$	293,270
1	977,550
1 ½	1,955,110
2	3,128,170
3 and larger	4,692,250

- (ef) ~~Upon application for a water service permit after March 1, 1984, each applicant who is a nonresidential user shall be assigned an annual allotment of water for each tap that is equal to the greater of: the WSR as determined pursuant to this Section; any WSR that was satisfied at the time of application for nonresidential water service; any increased annual allotment pursuant to Subsection (i) below; and the volume of the water furnishing requirement of the City under an earlier water supply furnishing or development program, as determined by the City.~~ For any nonresidential service applied for after March 1, 1984, an annual allotment of water for each service shall be assigned that is equal to the WSR as determined pursuant to this Section. For any replacement of an existing nonresidential meter or service with a larger size applied for after March 1, 1984, an annual allotment of water for each service shall be assigned that is the greater of: the WSR as determined pursuant to this Section; or the annual allotment for the service.
- (fg) When a user uses more water than the annual allotment, as determined by monthly billing records in a given calendar year, an excess water use surcharge in the amount prescribed in § 26-129 will be assessed on the volume of water used in excess of the annual allotment; provided that ~~no~~ No excess water use surcharge shall be charged to nonresidential services used exclusively for irrigation purposes during the first three (3) calendar years following the initial installation of the irrigation system, provided that for the purposes of this provision, the first calendar year shall be from the date of installation through December 31.

(gh) ~~The utility shall assign an annual allotment in the application of the WSR pursuant to §26-147. In the case of the replacement of an existing meter with a larger size or other change to an existing water service, the utility will credit the nonresidential user towards the water service permit as follows. If an annual allotment has been assigned, the credit towards the water service shall be for the amount of the annual allotment for the property service. If the credit towards the water service is greater than the annual allotment that would otherwise be assigned for the new water service permit, the credit for the water service shall establish the annual allotment and no cash refund or water certificates issued by the City shall be provided to the applicant. If no annual allotment has been assigned, the credit towards the water service shall be the amount set forth below for the existing meters serving the property. The credit authorized under this subsection is not transferrable to other properties or services.~~

If no annual allotment has been assigned, the credit towards the water service shall be as follows:	
<i>Meter Size (inches)</i>	<i>Annual Allotment (gallons/year)</i>
$\frac{3}{4}$	152,745
1	509,141
1½	1,018,286
2	1,629,255
3	2,443,880
Above 3	169,714 gallons per acre foot of WSR met for the permit or, if such amount cannot be established, the average historical use over a representative time period as determined by the Utilities Executive Director

(h) ~~In the event an applicant applying for a nonresidential water service permit has, prior to March 1, 1984, surrendered water rights or otherwise satisfied the requirements of the City under an earlier water supply furnishing or development program, then the minimum WSR for that property shall be considered satisfied under this Section. However, such nonresidential user shall be subject to the Excess Water Use Surcharge when the annual allotment is exceeded.~~

(i) A nonresidential user may increase the annual allotment for a property service by satisfying additional WSR pursuant to §26-150. Such submission shall raise the user's annual allotment by the amount of additional WSR equivalent water rights

~~submitted~~ in gallons provided that, in order to preserve the value of the water certificates issued by the City or WSR credits in the City's records issued before January 1, 2022, the value of water certificates issued by the City or WSR credits in the City's records issued before January 1, 2022, shall be divided by ~~one and ninety-two one-hundredths~~ (1.92). Any increase of a user's annual allotment will be applied to subsequent billing and other matters and shall not be applied retroactively.

...

Section 2. The modifications above to Subsection 26-149 Water Supply Requirement (WSR); nonresidential, shall be effective as of January 1, 2025.

Introduced, considered favorably on first reading on October 15, 2024, and approved on second reading for final passage on November 4, 2024.

Mayor

ATTEST:

City Clerk

Effective Date: November 14, 2024
Approving Attorney: Eric Potyondy