



ORDINANCE NO. 22-009

AN ORDINANCE AMENDING BRIAN HEAD TOWN CODE, TITLE 9, LAND MANAGEMENT CODE, CHAPTER 9 SUBDIVISIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Brian Head Town has identified a need to amend the Brian Head Land Management Code in order to regulate land use within the Town limits of Brian Head, Utah; and,

WHEREAS, it is a priority of the Town to ensure that sufficient water is available to new subdivisions by requiring developers of new subdivisions to bring water to the Town for their development and ensure for future growth of the Town, and;

WHEREAS, the Brian Head Planning Commission held a public hearing on August 2, 2022, giving at least fourteen (14) days' notice prior to the public hearing to receive public comment. The Planning Commission hereby forward their recommendation of approval to the Brian Head Land Management Code, Chapter 9 Subdivisions with the addition of a new provision for water acquisitions to the Brian Head Town Council for their consideration and adoption, and;

WHEREAS, the Brian Head Town Council held a public hearing on August 9, 2022, giving at least fourteen (14) days' notice to receive public comment on the proposed amendments Brian Head Land Management Cod, and;

WHEREAS, it is in the best interests of Brian Head Town and the health, safety, and general welfare of its citizens to adopt this Ordinance:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF BRIAN HEAD, UTAH, COUNTY OF IRON, STATE OF UTAH, AS FOLLOWS:

Section 1. The Brian Head Land Management Code is hereby amended and incorporated herein by reference as Title 9, Chapter 9 Subdivisions as Attachment "A" of the Brian Head Town Code.

Section 2. Effective Date. This Ordinance shall take effect upon its passage by a majority vote of the Brian Head Town Council and following notice and publication as required by law. Upon this Ordinance being adopted by the Brian Head Town Council of Iron County, Utah, all provisions of this Ordinance shall be codified into Title 9 of the Brian Head Town Code.

Section 3. Conflict. To the extent of any conflict between other Town, County, State, or Federal laws, ordinances or regulations and this Ordinance, the more restrictive is deemed to be controlling.

Section 4. Severability Clause. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of

Adopted September 13, 2022

competent jurisdiction, such portions shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

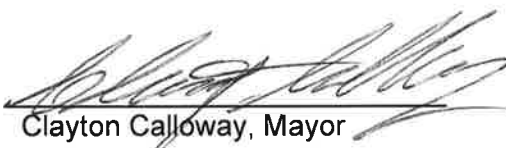
Section 5. Repealer. All provisions of the Brian Head Town Code that are inconsistent with the expressed terms of this Ordinance shall be repealed.

**PASSED AND ADOPTED BY THE BRIAN HEAD TOWN COUNCIL OF IRON COUNTY,
UTAH this 13th day of September 2022 with the following vote.**

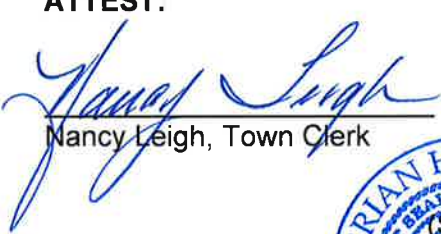
Mayor Clayton Calloway	Aye
Council Member Kelly Marshall	Aye
Council Member Martin Tidwell	Aye
Council Member Larry Freeberg	Aye

BRIAN HEAD TOWN COUNCIL

By:


Clayton Calloway, Mayor

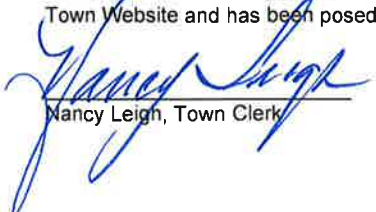
ATTEST:


Nancy Leigh, Town Clerk



CERTIFICATE OF PASSAGE AND POSTING

I hereby certify that the above Ordinance is a true and accurate copy, including all attachments, of the Ordinance, passed by the Town Council on the 13th day of September 2022 and have posted a summary of the adopted ordinance in three conspicuous places within the Town of Brian Head, to-wit: Town Hall, Post Office, and the Mall and a complete copy of the adopted ordinance on the Brian Head Town Website and has been posed on the Utah Public Meeting Notice Website.


Nancy Leigh, Town Clerk

ATTACHMENT "A"
Title 9 – Land Management Code

Chapter 9
SUBDIVISIONS

PROPOSED CHANGES IDENTIFIED IN RED FONT

9-9-1: PURPOSE:

9-9-2: SUBDIVISION PROCESS:

9-9-3: PLAT AMENDMENTS:

9-9-4: SUBDIVISION BY METES AND BOUNDS:

9-9-5: CONVERTIBLE OR EXPANDABLE AREA FOR CONDOMINIUMS:

9-9-6: WATER ACQUISITION:

9-9-6: WATER ACQUISITION

A. Purpose and Findings:

1. Brian Head's primary purpose for establishing this ordinance is to acquire the water rights necessary to serve its expanding population.
2. Based off studies done by Brian Head, the Town likely has enough rights to provide water to all existing parcels (as of August 11, 2022). The Town does not have many extra water rights to provide water for potentially hundreds of new parcels that can be created when Brian Head expands.

B. Time to acquire water rights:

1. 100 acre feet of water rights (the "Pool") will be reserved for certain subdivisions on a first come, first served basis.
 - a. Sixty (60) acre feet of the Pool will be reserved for commercial subdivisions.
 - b. Thirty-seven (37) acre feet of water will be reserved for R1, R2, and R3 subdivisions of more than two (2) lots. For R3 subdivisions, the acre feet may only be accessed through a development agreement with the Town.
 - c. Three (3) acre feet of water will be reserved for single-family lot splits (an individual who wishes to divide their parcel into two (2) lots only).
 - d. Once the Pool has been allocated, any property owner wishing to subdivide must follow all the regulations below in this section.

2. All property that has not previously dedicated water rights shall be required to dedicate water rights at the time of annexation, or if already in Town limits, at the time the property subdivides.

C. Amount of Water Rights:

1. Prior to final approval or recordation of the final plat of any subdivision or other development activity requiring culinary water service from the Town, the developer shall transfer and dedicate to the Town, the unencumbered, clear title to a sufficient quantity of water rights and/or sources necessary to provide and deliver culinary water to each lot, dwelling unit and/or other use within the new development.
2. Sufficient Quantity of Water Defined: A "sufficient quantity of water" shall be decided as a result of the developer's produced water study. The water study shall include open space and all other real property included in the proposed subdivision and/or development. The Planning Commission and Town Council must review and approve the proposed amount of water based on the buildout study provided by Staff. The Council may reasonably adjust this amount depending on the type of subdivision and development requested and the water requirements thereof. The Town Council may elect to waive the water study requirement and require 0.3 acre feet per residential unit and 1.5 acre feet per commercial unit.

D. Acquisition of Excess Water Rights:

1. If at any time an owner is required to deed water rights to the Town, and if that owner owns more water rights which have been used on the property relating to the land use application than the owner is required to deed to the Town, then the Town shall request that the owner either sell the excess rights to the Town or enter into an agreement with the Town, giving the Town the first right of refusal should the owner decide to sell said water rights in the future.

E. Type of Water Rights: Water rights shall be sub-surface water rights that have a priority date prior to January 1, 1934 and be available for use in water right area 75.

F. Transferring Water Rights:

1. The developer shall submit a title report showing the type of water right, ownership of the right, and any liens or encumbrances. The developer shall also provide a title insurance policy in such a sum that is adequate to cover the appraised value of the water rights the policy is covering.
2. A change application with the State of Utah shall be completed at the expense of the party developing the land. Information to be included in the change application will be provided by Brian Head Town, including the points of diversion. The change

application must be approved by the State Engineer prior to transferring water rights to the Town on the books of the State of Utah Division of Water Rights. This transfer may also be conditioned on approval of the land use application pending before the Town that caused the developer to transfer the water rights.

3. A deed transferring the water rights to Brian Head Town shall be completed and held prior to the land use application approval. The deed transferring ownership may be held either by the Town or in an escrow account paid for by the developer. Once the land use application and change application receive approval, the deed will be recorded.
4. If the Division of Water Rights has not made a final decision on the change application prior to the land use approval, then the land use application will be tabled until a final decision is made.
5. If at any point in this process, the change application is denied by the Division of Water Rights then the request will be denied and the land use application will die.

G. Exceptions:

1. Public Lands Exception: If at the time of annexation, the annexed property is owned by the Bureau of Land Management or the US Forest Service then that acreage is not subject to the requirements of this ordinance that mandate the deeding of water rights. This exception only applies to annexation and not when the property is platted as a residential subdivision or receives a building permit.
2. Brian Head Town Exception: Nothing in this ordinance shall require the Town to deed water or pay a fee if the Town develops land.
3. Lot Line Vacation Exception: For purposes of this chapter, lot line vacations shall be considered as "putting water back into the Pool". For example, if two lots vacate one line and become one property, then the equal amount of water rights for one lot shall be added into the three (3) acre feet of water reserved for single-family residential lots.

End.

