

ORDINANCE NO. 2007-02

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE
VOLCANO COMMUNITY SERVICES DISTRICT
REGARDING APPLICATIONS FOR WATER SERVICE,
WILL SERVE COMMITMENTS, AND ALLOCATION
OF WATER SUPPLY**

BE IT ORDAINED by the Board of Directors of the Volcano Community Services District as follows:

SECTION ONE. PURPOSE AND AUTHORITY.

This Ordinance establishes policies and procedures regarding the application for and allocation of the Volcano Community Services District's limited water supply. The authority for this Ordinance is found at Government Code Section 61060, Water Code Sections 100 et seq., and other applicable law.

SECTION TWO. FINDINGS.

The Board of Directors of the Volcano Community Services District ("District") hereby finds and determines as follows:

- a. The District has a limited water supply which has been allocated fully to existing customers and certain property owners to which commitments of service have been made pursuant to State law and District ordinances, rules and regulations. The District is exerting all reasonable efforts to further augment its water supplies to meet the demands of all new

5

applicants. The District desires to allocate any supplemental supplies consistent with Water Code Section 106 and Sections 350 et seq., and other applicable statutory and case law.

b. The unavailability of water for additional connections has caused the District to declare a moratorium pursuant to Ordinance No. 2007-01, adopted by the District Board of Directors on February 5, 2007.

c. In view of the moratorium, it is necessary to provide rules and regulations regarding the allocation of new water supplies. The system implemented by this Ordinance will conserve the scarce resources of water and will distribute them as equitably as possible and for the greatest public benefit, and in accordance with the District's obligations under the law.

SECTION THREE. WATER ALLOCATION SYSTEM.

The water supply of the District shall be allocated and regulated in accordance with the following policies, priorities and procedures:

A. Creation of Water Waiting Lists.

1. The District shall create two water service waiting lists. One list initially shall contain those property owners within the District who already have applied for or requested service but who have not received commitments of service ("District Property Owner List"). They shall be placed on such waiting list by the date of

the request or application with the oldest request first. The second list initially shall contain those property owners outside of the District who already have requested or applied for service but who have not received a commitment of service (“Outside the District Property Owner List”). They shall be placed on such waiting list by the date of the request or application with the oldest request first.

Within 30 days after the effective date of this Ordinance, the District shall provide each property owner on both waiting lists with a copy of this Ordinance, and notify them that they must complete the application for service, which shall be enclosed with the notice, and pay the non-refundable application fee of \$100.00 within 30 days after the date of the notice in order to retain their position on the waiting list, otherwise they will be removed from the waiting list and will have to re-apply for service at which time they will be placed on the waiting list based on the date of receipt of the new completed application and fee.

2. Within 30 days after the effective date of this Ordinance, the District shall send a copy of this Ordinance to the record owner of each unimproved property owner within the District, other than those property owners initially placed on the District Property Owner List, and notify them of the waiting list and procedure to be placed on the waiting list. The notification shall include an application for service and advise such owners that if the application is completed and returned to the District, along with a non-refundable application fee of \$100, the property

owner will be placed on the waiting list based on the date of receipt of the completed application and fee.

B. Allocation of New Water Supplies.

Any newly developed District water supply source which the District determines can be made available to new users shall be allocated in the following sequence:

- (i) to those on the District Property Owner List who have applied for service at an already legally created parcel within the District based on the applicant's priority on that waiting list;
- (ii) to those on the District Property Owner List who have applied for service for a parcel to be subdivided based on the applicant's priority on that waiting list; and
- (iii) to those on the Outside District Property Owner List based on the applicant's priority on that waiting list.

If an applicant is offered water from the newly developed source consistent with the applicant's application and accepts such offer, the applicant shall pay the applicable water capacity charges consistent with the applicant's application and the provisions of this Ordinance within 60 days after the date of the notice. Upon timely payment of capacity charges, the applicant, depending on his/her application, shall be subject to either the provisions governing completed applications for service set out in Section FOUR hereof, including but not limited to subsection A.3.c of said

Section FOUR, or the provisions governing completed applications for will serve commitments set out in Section FIVE hereof, including but not limited to subsections D and E of said Section FIVE. If the applicant declines such offer, or fails to timely pay the water capacity charges, then the applicant shall be removed from the waiting list and will have to re-apply for water service or a will serve commitment in accordance with District rules, regulations and ordinances. After the waiting list is exhausted, then any remaining supply shall be allocated on a first-come, first-served basis with the date of a completed application establishing the applicant's priority. If the District exhausts any newly developed supply, then it shall re-establish the above-mentioned waiting lists for applicants.

SECTION FOUR. APPLICATION FOR WATER SERVICE.

A. Application for Service.

1. Information Required.

Each applicant for water service shall be required to pay a non-refundable application fee in the sum of \$100.00 and sign an application form, provided by the District, which will set forth:

- a. Name, address and telephone number of applicant, and of the person to whom bills shall be mailed ("customer").
- b. Whether applicant is owner or tenant of, or agent for the premises. If an agent or tenant will act for the owner of the subject premises in matters concerning the application, the agent or tenant shall submit to the District written evidence of

such agency and authority, having a notarized signature of the owner of the subject premises.

- c. Date of application.
- d. Legal description (Assessor's Parcel No.(s)) of premises to be served.
- ✓e. The number and size of meters required for requested services.
- ✓f. Date applicant will be ready for service.
- ✓g. Whether the premises have been previously served by the District.
- ✓h. Purpose for which water is to be used.
- ✓i. Whether capacity charges have been previously paid for such premises, and, if so, the amount of such charges, and the date that they were paid.
- ✓j. Number of equivalent dwelling units proposed for the subject premises (an equivalent dwelling unit is equal to one single family residence, and for commercial projects shall be equal to 375 gallons per day ("gpd")).
- k. Such other information as the District may reasonably require.

2. Service to Premises for Which Capacity Charges Already Have Been Paid.

If the application is for service to premises for which a will serve commitment is outstanding and effective, and the number of equivalent dwelling units applied for such premises do not exceed that stated in the will serve commitment, then a water service permit shall be issued for the premises upon submission of the information required in subsection A.1., payment of any applicable charges and compliance with

other District rules and regulations governing water service. The permit shall not be transferable to other property. There shall be no time limit on the permit.

3. Service to Premises for Which a Will Serve Commitment is Not Outstanding and Effective.

a. Determination of Water Availability.

Once the applicant has supplied the information required in subsection A.1. and paid the non-refundable application fee of \$100, the District shall determine within 60 days whether there is water supply and facility capacity available to provide the requested service. If the determination is affirmative, then within 60 days after such determination, the District shall notify the applicant to pay all applicable charges, including the requisite water capacity charges in effect at the time of the notice, which shall be paid within 60 days after the date of the request.

b. Determination of Non-Availability.

If the District determines there is not available water supply or facility capacity to provide the required service at the time of application, then the application shall be denied without prejudice and placed on the applicable District waiting list. At the time water supply and/or facility capacity becomes available to serve the applicant on the waiting list, the applicant shall be so notified, and if the applicant still desires

service, the application that was denied without prejudice shall be reconsidered, and the District shall proceed in accordance with the provisions of Sections THREE and FOUR hereof.

c. Completed Applications.

Once the applicant has supplied all of the information required pursuant to subsection A.1. above, has paid all applicable fees and charges pursuant to A.3.a., and has otherwise complied with other District rules and regulations governing water service, then the application shall be deemed complete. The date of such completion shall be stated on the application. The applicant shall have 2 years to connect to the District water system. As of the date of connection, the applicant shall be entitled to a water service permit for the service provided to the subject premises, and billings for water service shall commence as of the date of such permit. The permit shall not be transferable to other property. If connection to the District water system does not occur within 2 years from the date that the application for service is deemed complete, then the application will be deemed denied, and the applicant will have to re-apply for water service and be subject to any waiting list at the time of such application.

B. Refunds of Water Capacity Charges.

1. The applicant shall not be entitled to any refund of capacity charges paid pursuant to Sections THREE and FOUR hereof, except that the applicant shall be entitled to a refund of 95% of the capacity charges paid, if service is not initiated by the applicant within 2 years from the date that the application is deemed complete and a request for refund is made in writing and is received by the District prior to the expiration of said 2 year period. The District shall make the refund in accordance with subsection G of Section FIVE. The Board finds that it incurs certain administrative costs with respect to the processing of applications for service and requests for refunds, and that 5% of the total capacity charge reasonably covers the District's costs incurred in such processing.

C. Limitations on Water Use.

Use of water by an applicant on different premises, through more and/or larger meters, or for more equivalent dwelling units than stated in the application shall be considered an unauthorized use and is prohibited. Water service to the applicant may be entirely disconnected pursuant to District ordinances, rules and regulations for any such unauthorized use. Use of water on any unauthorized premises, through an unauthorized meter, or for more equivalent dwelling units shall require the submittal of a new application, and shall be subject to the availability of water supply and/or facility capacity at the time of such application, the payment of all applicable fees and charges then in effect, and the District ordinances, rules and regulations then in effect.

D. Property Owner's Liability.

Applicants for service to rental units may be the lessee or renter of the premises for which service is requested or may be the owner of said premises. Bills shall be mailed to the person designated as the customer on the application who shall be liable for payment of all District rates and charges, and shall otherwise be subject to the District ordinances, rules and regulations. In any situation where the lessee or renter is the designated customer for the premises to be served by the District, the owner of the premises so leased or rented shall guarantee payment of all District rates and charges incurred for service to his/her premises, shall otherwise be subject to District ordinances, rules and regulations, and shall be responsible jointly and severally with the designated customer for payment of any delinquent bill.

E. Outside District Service.

With respect to any applicant for service to property outside of the District, such applicant shall either have such property annexed into the District or LAFCO shall approve extension of service outside the District to such property before any water permit is issued and any water service commences. The applicant shall be responsible for all costs of any such annexation or LAFCO approval of an extension request.

F. Individual Liability for Joint Service.

Two or more parties who join in one application for service shall be jointly and severally liable for payment of bills. One person shall be designated on the application for receipt of the bills.

G. Change in Applicant's Equipment.

Applicants desiring to make any material change in the size, character or extent of the equipment utilized in receiving District service, as such equipment may be stated in the completed application for service, shall give the District advance written notice of the extent and nature of the change. If the proposed change is for more and/or larger meters, then the applicant shall submit a new application for service, and shall be subject to the availability of water supply and/or facility capacity at the time of such application, the payment of all applicable charges then in effect, and the District ordinances, rules and regulations then in effect.

SECTION FIVE. WILL SERVE COMMITMENTS.

A. Water Availability Letter.

Upon receiving a written request, the District shall issue a letter giving the current status of water availability to a project or parcel of land. This letter will state, in general terms and without making a commitment to serve the project or parcel,

whether the project or parcel is within the boundaries of the District, if water supply and facility capacity are currently available to serve the project or parcel, and under what conditions service would be made available. The District will attempt to identify potential problems that may be associated with making water service available to the project or parcel.

B. Application for a Will Serve Commitment.

Any person or entity desiring a will serve commitment for water service for a proposed subdivision, development plan, use permit, site plan, plot plan or other use that must be submitted to Amador County for discretionary approval shall submit an application to the District on a form and in such manner as determined by the District, along with a non-refundable application fee of \$100.

1. Information Required.

- a. Date of application.
- b. Name, address, and telephone number of owner and agent of the subject premises.
- c. Location and legal description of the subject premises, number of lots to be served, and proposed zoning.
- d. Number of proposed equivalent dwelling units for each lot, and expected size and number of meters for needed service.
- e. Date that water service is expected for all or any part of the subject premises.

- f. Purpose for which water service will be used.
- g. Such other information as the District may reasonably require.

The District shall be notified by the applicant of any change in the information provided above within 30 days after such change.

2. Applicant's Agent.

If an agent will act for the owner of the subject premises in matters concerning the application, the agent shall submit to the District written evidence of such agency and authority, having a notarized signature of the owner of the subject premises.

3. Proof of Ownership.

All applications for a will serve commitment shall be accompanied by a property profile issued no more than 30 days prior to the date of the application. The property profile shall be issued by a title company located within Amador County.

C. Determination of Water Availability.

Upon the furnishing of the information required in subsection B above, the District shall determine within 60 days whether there is available water supply and facility capacity to serve the subject premises at the time of application. If the District determines there is not available water supply or facility capacity to serve the subject

premises at the time of application, then the application shall be denied without prejudice and placed on the applicable District waiting list. At the time water supply and/or facility capacity becomes available to serve the subject premises on the waiting list, the applicant or his/her successor shall be so notified, and if the applicant or his/her successor still desires water service, the application that was denied without prejudice shall be reconsidered and the District shall follow the procedures set forth below and in Section THREE.

If the determination is affirmative, then the District will so notify the applicant.

D. Deposit Required for Will Serve Commitment.

The applicant, within 30 days after the date of an affirmative notice provided in subsection C above, shall submit proof from the County that it has accepted the applicant's application for a proposed tentative map, development plan, site plan, use permit, plot plan or other project approval application for the subject premises ("County Accepted Application") and shall deposit 100% of the total water capacity charges in effect at the time of the notice for the service requested in the application for a will serve commitment. As of the date of such submission and deposit with the District, the application for a will serve commitment shall be deemed complete. The deposit is non-refundable, except as provided in subsection G below.

E. Issuance of Will Serve Commitment.

1. The District shall issue the applicant a will serve commitment for such premises upon payment of the deposit, submission of proof the County Accepted Application and compliance with any other requirements of the District.
2. If the County Accepted Application is withdrawn, expires, is denied or fails for any reason in whole or in part, then the will serve commitment shall be deemed forfeited in whole or in part, as applicable, as of the date of such withdrawal, expiration, denial or other failure. Refunds of capacity charges deposited shall be refunded in accordance with subsection G below.
3. If County approval of the project reduces the number of equivalent dwelling units required for the subject premises from that stated in the completed application, then the will serve commitment as to those equivalent dwelling units not so approved shall be forfeited as of the date of the County approval. Refunds of capacity charges deposited in relation to equivalent dwelling units for which the will serve commitment has been forfeited shall be refunded in accordance with subsection G below.
4. Upon forfeiture of a will serve commitment, the applicant must apply for a new will serve commitment for the subject premises in accordance with District rules, regulations and ordinances.
5. Once the final map is recorded or other development project is finally approved by Amador County, the will serve commitment issued pursuant to this subsection E shall obligate the District to provide water service to the subject premises to the extent that applications for water service to any portion

or all of the subject premises are consistent with the equivalent dwelling units approved in connection with the recorded final map or finally approved by Amador County in connection with its discretionary approval of other development projects. There shall be no time limit on the will serve commitment once the final map is recorded or other County final approval of a development project occurs.

F. Non-Transferability of Will Serve Commitments.

A will serve commitment issued to the premises described in an application for a will serve commitment shall not be transferable to any other premises.

G. Refunds.

No refunds on water capacity charges paid shall be allowed, except under the following circumstances:

1. With respect to capacity charges paid pursuant to subsection D above, the applicant may request a refund of the capacity charges paid for any equivalent dwelling unit no longer required by the applicant, as long as a written request therefor is made prior to commencement of service to any such equivalent dwelling unit. The amount of the refund shall be equal to 95% of the paid capacity charges for those equivalent dwelling units. All refunds shall be made in accordance with subsection G.2. below. The District finds that it

incurs certain administrative costs with respect to the processing of applications for will serve commitments and requests for refunds, and that 5% of the total capacity charges for each equivalent dwelling unit applied for and for which a refund request is made reasonably covers the District's costs incurred in such processing.

2. a. Upon the timely submittal of a request for refund, the District shall make the equivalent dwelling units no longer required available to the next applicant for a will serve commitment or application for service consistent with his/her application. Within 14 days after the date of the District's notice of availability for such units, the next applicant shall provide the District with written notice as to the acceptance of all or any portion of the equivalent dwelling units made available. The capacity charges due on the accepted equivalent dwelling units shall be deposited with the District within 60 days after the date of the District's notice referenced above. The amount of the capacity charges due for each accepted equivalent dwelling unit shall be in accordance with subsection A.3.a. of Section FOUR or subsection D of Section FIVE, depending on the nature of the applicant's application, but in no event shall the capacity charges to be paid per equivalent dwelling unit be less than the refund amount per equivalent dwelling unit due the applicant who relinquished the equivalent dwelling unit. Upon payment of the capacity charges due, the District shall make the refund due within 30 days after the date of receipt of the payment.

- b. If the next applicant does not accept all or any portion of the equivalent dwelling units made available to him pursuant to G.2.a., then the applicant shall retain his position on the waiting list with respect to any equivalent dwelling units covered by his application and not accepted pursuant to the notice of availability.
 - c. If the next applicant's application is for a will serve commitment and will be submitted to Amador County in connection with the discretionary approval of a project for the subject premises, as specified in subsection D, then the will serve commitment issued to such applicant shall be pursuant to subsection E and the applicant shall fully comply with the provisions thereof.
3. In the event that the District is unable to provide the requested service to the applicant due to a local, state or federal law, or court decision prohibiting the District from providing such service, then the applicant may request a refund of the capacity charges paid for the requested service. The refund shall be made within 30 days after the date of the request. The amount of the refund shall be determined pursuant to subsection G.1. above.

H. Request for More Units of Use.

If an applicant for a will serve commitment for any premises requests a commitment for additional equivalent dwelling units for such premises over that amount stated in the initial application after the will serve commitment has been issued, then the

applicant shall re-apply for such additionally requested commitment in accordance with the provisions of this Section FIVE.

SECTION SIX. INCONSISTENCIES.

If any provision of this Ordinance is inconsistent with any provision of any other District ordinance, resolution, regulation or policy, the provisions of this Ordinance shall prevail.

SECTION SEVEN. SEVERABILITY.

If any provision of this Ordinance is declared or found by a court for any reason to be invalid, illegal or unenforceable, no other provision shall be affected by such declaration or finding.

SECTION EIGHT. EFFECTIVE DATE.

This Ordinance shall take effect 30 days from its adoption.

SECTION NINE. PUBLICATION.

The District Secretary is directed to publish a summary of this Ordinance within 15 days after its adoption.

PASSED AND ADOPTED by the Board of Directors of the Volcano Community Services District on this 7th day of May, 2007, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

By: _____
President, Board of Directors

ATTEST:

Secretary, Board of Directors

6.

PASSED AND ADOPTED by the Board of Directors of the Volcano Community Services

District on this 7th day of May, 2007, by the following vote:

AYES: 3
NOES: 0
ABSENT: 0
ABSTAIN: 0

By: Nancy M Bailey
President, Board of Directors

ATTEST:

Sharon R Owens
Secretary, Board of Directors

6.