

WARD Educational Segments During FYI

August 5, 2025

What is cash in lieu of water rights?

First, it's important to understand where Bozeman's water supply comes from. The City's current water supplies come from multiple sources:

- 20% of the City's water supply comes from Lyman Creek, which is spring water from the Bridger Mountain range.
- 40% comes from Bozeman Creek out of the Sourdough Drainage, which is surface water.
- The remaining 40% comes from Hyalite Creek and Reservoir, which is also surface water.
- The City also uses several non-potable water sources to irrigate parks and open spaces.

Secondly, it's important to know how we're managing supply and demand for water. The City continues to develop new water supply as needed, using strategies outlined in the City's Integrated Water Resources Plan. We also use water in the most efficient and responsible way possible through the City's water conservation program – the most comprehensive in the state. The City's water conservation program has been so effective that Bozeman is 30% more water-efficient than other cities throughout Montana and is even more efficient than other comparable western cities such as Boulder, Bend, and Denver that also have water conservation programs. On average, Bozeman uses 188 gallons-per-household-per-day (gphd) of water compared to 314 gphd across other arid western states and 254 gphd as the national average.

So, what is cash-in-lieu of water rights? Cash-in-lieu of water rights is an element of the water adequacy policy the City implemented in 1984. The policy requires that the projected water demand of new development be offset by one or more of three options: 1) reduce demand with water conservation systems and techniques; 2) pay cash-in-lieu of water rights, and the City uses the cash to develop useable municipal water rights; 3) bring useable water rights to the City. Details of the water adequacy policy are codified in Bozeman Municipal Code in [Section 38.410.130.](#)

Bozeman uses cash-in-lieu of water rights to purchase additional shares from the Hyalite Reservoir as needed. This water is then directed through the city's water treatment plant near Sourdough and included in the overall water supply. The City of Bozeman has found that this is the most efficient way of providing the water necessary for growth.

August 12, 2025

What percentage of new development over the past 40 years has used cash in lieu?

98-99% of new development over the past 40 years involves the use of cash-in-lieu of water rights. Developers are required by the City's codes to install water efficient landscaping and

fixtures. Nonetheless, after installing waterwise fixtures and landscaping, there is still new water demand associated with development. To offset that water demand, nearly all development since the 80's has paid cash-in-lieu of water rights to the City. If your residence was constructed since 1980, it utilized the city's cash-in-lieu of water rights option. The City uses that cash to develop water rights for additional water supply offsetting the impact of development.

Given the nature of water rights in the Gallatin Valley and across Montana, it is a highly complex process to develop water rights for municipal supply if done so outside of the cash-in-lieu option. Generally, it takes 5-8 years to develop those water rights if the cash-in-lieu option isn't used. Also, those water rights must be developed in conjunction with infrastructure, such as water treatment systems, pipes, and storage tanks.

This infrastructure and the associated water rights are much more efficiently developed in large projects that serve significant portions of the City instead of being constructed one development at a time. Imagine if every development had to build a new well and water treatment system, and the City then had to maintain every one of those systems for every subdivision. That includes pumps, addition of chlorine to disinfect the water, treatment units if there are contaminants at a particular well location, water quality sampling and testing at every location, and the list goes on. That many wells and treatment systems would cause the need for an increase in staffing and equipment maintenance representing an order of magnitude increase in water rates to customers.

Instead, the City performs these functions primarily at two locations in the City and does so much more efficiently than if every development were to perform this function. To bring this full circle, if a developer has to bring the water rights to the table, they would have a 5-8 year water rights process without certainty they would reach the end and be able to build. As such, given the level of uncertainty and the time associated with such a process, developers would simply move to areas in the valley with much shorter development timeframes and certainty of outcomes.

That means significant sprawl throughout the County outside of Bozeman City limits, much more traffic on the City's roads from commuters outside city limits, all having significant impacts on Bozeman's infrastructure systems and city services without the tax base to support those services. The cash-in-lieu of water rights tool effectively allows urban development densities within city limits and significantly helps protect our natural and agricultural lands from the impacts of sprawl.

August 19, 2025

– What are the alternatives to cash in lieu?

In a future segment of the discussion of the WARD initiative, we will tackle the issue of whether the affordable housing thresholds required by the initiative are attainable in the housing marketplace. The topic for tonight's FYI is – if a housing supplier was unable to achieve the required thresholds, and cash in lieu of water rights was therefore not available to them, what options would they have to meet the city's water demand requirements?

There would be two options.

- 1) They could reduce water demand with water conservation systems and techniques or 2) bring useable water rights to the City.

Almost all new development uses a combination of water conservation and cash-in-lieu of water rights to provide the necessary water. Water conservation techniques are now used on every development project to reduce the demand side of the equation as this is the cheapest solution regarding water supply. For example, the City recently instituted code that requires all new development to construct water efficient landscaping in its landscaped areas. These types of efforts significantly reduce water use making water use in Bozeman sustainable and more reliable, but water conservation options don't offset water demand enough to eliminate the use of cash in lieu.

However, regarding Option 2, bringing useable water rights to the table is complex given the State's process to convert agricultural water rights that are connected to specific properties to municipal water rights. The process of converting a seasonal agricultural irrigation right into a municipal water right – or developing a new water right for a community well - takes approximately 5-8 years to accomplish – outside the timeframe of developers. Further, developers are not guaranteed the ability to complete a water right conversion to a municipal right at the end of a 5-8 year timeframe, which creates a level of risk developers simply won't take on.

These realities leave the cash-in-lieu of water rights a function of almost every development in the City of Bozeman. Further, water rights must be connected with construction of water supply infrastructure. Water supply infrastructure doesn't lend itself to "one-off" development projects (i.e. constructing a well with every development). Faced with these options, it is reasonable to assume that developers will choose to not annex the land in question into the city but rather develop the land in the county. What are the consequences of forcing additional development into the county?

Land would be developed at county densities rather than city densities, meaning larger swaths of land would be used to accommodate the same number of people, which increases sprawl.

Developing in the county means drilling more individual or community wells as well as increasing the number of septic systems discharging waste into the soil. The city-county Board of Health and the Gallatin Local Water Quality District have both identified the

proliferation of local septic systems as a chief concern in the degradation of local streams and rivers.

In our next FYI segment, we'll discuss what the city does with cash-in-lieu funds.

August 26, 2025

– What has the City done with cash in lieu funds? What will the City do with these funds?

In previous FYI segments, we've described what cash in lieu of water rights is – and what the impact might be if this tool was restricted or heavily conditioned. Tonight, we discuss how the city uses the funds generated by cash in lieu to turn those funds into water that reaches your sink and shower, as well as commercial buildings and city swimming pools.

To date, the city has used cash in lieu funds to purchase additional water shares in the Hyalite Reservoir. Over the years, and when necessary, the City has relied on willing sellers to come forward and offer the shares for purchase. To date, the City owns approximately 60% of the water shares in the Hyalite Reservoir. Water from the reservoir can be directly used in the City's water infrastructure, routing the water via a pipeline from the Hyalite drainage to the City's water treatment plant at Sourdough and into the water distribution after the water is treated. The City believes that this has been the most efficient, effective way to reliably address our water needs over the past 40 years.

The cash-in-lieu of water rights fund may also be used to further develop the City's water conservation program. Although, to date, the City has not used the cash-in-lieu fund for this purpose.

Next week, we'll start digging into the housing component of the WARD initiative, specifically the topic of whether the proposed affordability thresholds are attainable in the Bozeman marketplace.

September 9, 2025

– Are the affordable housing income and percent of unit thresholds proposed by the WARD initiative achievable or attainable for future rental units?

When it comes to future rental units, the WARD initiative would require developers of 3 or more residential dwelling units that use Cash-in Lieu of Water Rights to deliver 33% of the total rental units at 60% of Bozeman's area median income (AMI), deed restricted for 99 years or as long as law allows. Further, those affordable units must be of the same quality and size as those offered at market rate.

A key question is - is the required 60% AMI threshold for rental units realistically achievable in the current Bozeman housing market?

Based on the analysis of third party housing consultants and based on rental market history over the past decade, the proposed WARD requirement of 33% of new rental units at 60% AMI would not be achievable in the current Bozeman housing market without significant federal, state or local subsidies or unless significant rental cost shifting were to occur.

One of the ways to consider the question is to look at what the marketplace for new rental development has produced in the past decade. A review of rental units produced at 60% or less of AMI over the past decade indicates that zero rental units have been produced in Bozeman at the 60% AMI threshold without significant federal, state, or local subsidies or relaxations.

Why? Remember the WARD initiative requires 33% of the units in certain housing developments to be affordable. Based on an analysis conducted by a 3rd party consultant, the cost of land, lumber, labor and lending in the Bozeman market make the achievement of even 5% of the units in a housing development being designated as affordable unrealistic without significant financial subsidies or the relaxations in the current Affordable Housing Ordinance.

WARD requires these units to be affordable to those making 60% of area median income. In addition to an unrealistic goal for the number of units in a development, the only instances over the past decade where new rental units have achieved a 60% AMI threshold have involved significant public financial subsidies, without which the projects would not have been possible. Some examples of recent or current projects and their related subsidies include:

- The Beaumont: \$26 million in subsidies.
- Westlake Heights: \$36 million in subsidies.
- Aspen Project: \$28 million in subsidies.
- Hidden Creek: \$31 million in subsidies.

It's important to note that the primary subsidies that have enabled these projects' achievement of the 60% of AMI threshold involve use of federal Low Income Housing Tax Credit funding, and that those funds are limited and competitively awarded. Further, those subsidies are most often geographically targeted to be used within Qualifying Census Tracts aligned with federal poverty levels. Qualifying Census Tracts only cover 28% of the Bozeman City limits and only 9% of Bozeman's future growth boundary. Therefore, the most effective subsidy to produce 60% AMI rents would not be available to help achieve the WARD thresholds in the majority of land within the current or future Bozeman city limits.

The WARD supporters developed a policy briefing document, which indicates that the affordability targets chosen were on a desired affordability outcome, not based on what was feasible based on the actual cost of constructing housing. Since WARD says we need 33% of units to be affordable rather than 5%, we can expect that no units – market rate or affordable – will be feasible without outside subsidy, since projects may not be able to meet the unattainable target.

Based on the analysis of third party housing consultants and based on rental market history over the past decade, the proposed WARD requirement of 33% of new rental units at 60% AMI would not be achievable in the current Bozeman housing market without significant federal, state or local subsidies or unless significant rental cost shifting were to occur.

In recent public comments before the City Commission, a co-author of the WARD ballot initiative has offered that if the WARD affordability goal of 33% of new units is not considered achievable by the City Commission, the City Commission should adjust that percentage downward to 25% or 20% or 15%. Despite this suggestion, the City Commission cannot adjust the ballot language for this initiative at this late date. If passed, the WARD proposed affordability threshold of 33% would be imposed upon the community.

Given these factors, the only path that staff can envision to achieve the proposed affordability thresholds called for in the WARD initiative could be for developers and property managers to significantly increase the rental rates for 67% of the renters in their projects in order to achieve the affordability thresholds for 33% of the renters. Put simply, renters who do not qualify for the affordable units may be subsidizing the construction and rental of the affordable units.

The cost-shifting of rents to make 33% of units affordable would necessarily increase the rental rates for two-thirds of future Bozeman renters, who would be living in units of the same size and quality as the affordable units. Given the fact that 55% of Bozeman renters are already deemed cost-burdened, would making rental units more expensive for the vast majority of future Bozeman renters be a positive thing for the community?

Next week, we'll look at the affordability thresholds in for ownership units.

September 23, 2025

- Are the affordable housing income thresholds proposed by the WARD initiative achievable or attainable for future **ownership units?**

When it comes to opportunities for future home ownership, the WARD initiative would require developers of 3 or more residential dwelling units that use Cash-in Lieu of Water Rights to deliver 33% of the total ownership units at 120% of AMI, deed restricted for 99 years or as long as law allows. Further, those affordable homes must be of the same quality and size as those homes offered at market rate.

A key question is - is the required 120% AMI threshold for ownership units realistically achievable in the current Bozeman housing market?

Based on the analysis of third party housing consultants and based on the Bozeman housing market history over the past decade, the proposed WARD requirement of 33% of new ownership units at 120% AMI would not be achievable in the current Bozeman housing market without significant subsidies or unless significant cost shifting were to occur.

One of the ways to consider the question is to look at what the marketplace for new home development has produced in the past decade. A review of ownership units produced at 120% or less of AMI since 2021 indicates that zero housing units have been produced in Bozeman at the 120% AMI threshold without significant financial subsidies or regulatory relaxations.

Why? Remember the WARD initiative requires 33% of the units in certain housing developments to be affordable. Based on an analysis conducted by a 3rd party consultant, the cost of land, lumber, labor and lending in the Bozeman market make the achievement of even 5% of the units in a housing development being designated as affordable unrealistic without significant financial subsidies or the regulatory relaxations in the current Affordable Housing Ordinance.

WARD requires these units to be affordable to those making 120% of area median income. In addition to an unrealistic goal for the number of units in a development, the only instances since 2021 where new ownership units have achieved a 120% AMI threshold have involved significant subsidies, without which the projects would not have been possible. Some examples of recent or current projects and their related subsidies include:

- Bridger View Redevelopment: \$15 million in philanthropic subsidies.
- Willow Springs Townhomes: \$3M in federal subsidies.
- Bozeman Cohousing - \$38,020 in subsidy from Bozeman Community Housing Fund.

It is important to note that there are fewer federal, state and local subsidies available in the home ownership development market than there are in the rental market. Based on the analysis of third party housing consultants and based on recent housing market history, the proposed WARD requirement of 33% of new ownership units at 120% AMI would most likely not be achievable in the current Bozeman housing market without significant philanthropic or other financial subsidies unless 67% of homebuyers in the same development subsidized the 33% of affordable housing units.

The WARD supporters developed a policy briefing document, which indicates that the affordability targets chosen were on a desired affordability outcome, not based on what was feasible based on the actual cost of constructing housing. Since WARD says we need 33% of units to be affordable rather than 5%, or at most, 13% for small townhomes on small lots (800 SF townhomes on 3,000 SF lots), we can expect that no units – market rate or affordable – will be feasible without outside subsidy, since projects may not be able to meet the unattainable target.

In recent public comments before the City Commission, a co-author of the WARD ballot initiative has offered that if the WARD affordability goal of 33% of new units is not considered achievable by the City Commission, the City Commission should adjust that percentage downward to 25% or 20% or 15%. Despite this suggestion, the City Commission cannot adjust the ballot language for this initiative at this late date. If passed, the WARD proposed affordability threshold of 33% would be imposed upon the community.

Given these factors, the only path that staff can envision to achieve the proposed affordability thresholds called for in the WARD initiative could be for developers to significantly increase the housing prices for 67% of the homeowners in their projects in order to achieve the affordability thresholds for 33% of the owners. Put simply, would-be homeowners who do not qualify for the affordable units may be subsidizing the construction and ownership of the affordable homes.

The cost-shifting of housing costs to make 33% of units affordable would most likely increase the housing prices for two-thirds of future Bozeman homeowners, who would be living in homes of the same size and quality as the affordable units. Would making homes more expensive for the vast majority of future Bozeman homeowners be a positive thing for the community when Bozeman's housing market is already one of the most expensive in the nation?

October 7, 2025

– If the rental and home ownership income and percentage thresholds being proposed by the WARD initiative are most likely not achievable, what are the implications for Bozeman's future?

In previous FYI segments, I've discussed the question of whether the proposed rental and home ownership income and percentage thresholds required by the WARD initiative are achievable in the current Bozeman housing market. In this segment, we'll discuss the impacts of instituting unachievable housing targets on our community.

The city of Bozeman does not build housing. Since its inception, Bozeman has relied upon the private housing market to build the homes to meet the needs of the community. That system relies upon some level of predictable return for investors, but is also heavily influenced by housing cost factors – land, lumber, labor and lending - and by the supply and demand dynamics in play in our community.

Anything that creates scarcity in our housing market has an upward pressure on rental and home ownership costs, creating a bidding contest for limited supply among our citizens. We've seen this in the past and it's how we got to where we are today. Requiring housing creators to meet artificial affordability and percentage targets that aren't based on market realities may cause the Bozeman housing market to become less palatable to developers and those who finance their projects, potentially forcing development out of the Bozeman city limits into areas of the county that are less suited for development.

Our economy and community does not stop at the city limits. There are thousands of acres in the surrounding communities that could be developed if housing development within Bozeman city limits were constrained. We should expect sprawl to the surrounding communities. Those residents may work, go to school, or do business in Bozeman increasing commuting into Bozeman, increasing traffic on our arterials, causing wear and tear on our infrastructure, placing demands on our public services and facilities such as our police and fire departments, recreation facilities, parks and trails, all without contributing to the tax base to pay for it and increased emissions from the additional commuting.