

ORDINANCE NO. 15-67

**AN ORDINANCE REPEALING AND REORDAINING CHAPTER 13 (MEMORIAL HOSPITAL) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO THE MEMORIAL HEALTH SYSTEM AFFILIATION AS APPROVED BY THE ELECTORS**

WHEREAS, since 1949, the City of Colorado Springs (the "City") has owned Memorial Health System (then known as Memorial Hospital) and was the licensed operator of Memorial Health System facilities from 1949 to 2012; and

WHEREAS, Memorial Health System was established as an enterprise of the City (the "MHS Enterprise") governed through a Board of Trustees; and

WHEREAS, in order to ensure the continued provision of the highest quality of care to the greater Colorado Springs community, careful consideration was given by the Board of Trustees, the City Council, and the citizens of the City to various options for the ownership, governance, and control of Memorial Health System, including the option of leasing the assets of Memorial Health System to an outside independent operator; and

WHEREAS, after determining it to be in the best interest of the public health, safety, and general welfare of the City and its residents, the City Council approved the City's entry into (i) the Health System Operating Lease Agreement dated July 2, 2012 (which contemplated transfer of Memorial Health System assets and the long-term lease of Memorial Health System facilities to a lessee (first Poudre Valley Health Care, Inc., then UCH-MHS)), and (ii) the Integration and Affiliation Agreement, dated July 2, 2012, by and among the City, University of Colorado Health, Poudre Valley Health Care, Inc., and UCH-MHS (such agreements, collectively, the "Memorial Health System Affiliation"); and

WHEREAS, the voters of the City, upon referral by the City Council and through the special election held August 28, 2012, approved the terms of the Memorial Health System Affiliation, and the transactions and actions contemplated thereby (the "Voter Referendum"), and the Memorial Health System Affiliation became effective on October 1, 2012; and

WHEREAS, the MHS Enterprise remains an enterprise of the City, with responsibilities relating to, among other matters, administering and monitoring the Memorial Health System Affiliation, preparing to address and resolve any issues or concerns arising under the Memorial Health System Affiliation or related agreements, evaluating potential future health care services and affiliations or ventures, and managing residual liabilities from the MHS Enterprise's direct

operation of health care facilities prior to the Memorial Health System Affiliation;  
and

WHEREAS, the City Council deems it in the best interests of the City to amend certain provisions of the City Code pertaining to the membership of the MHS Enterprise Board of Trustees in a manner appropriate to the MHS Enterprise's continuing and anticipated functions; and

WHEREAS, the City Council deems it in the best interests of the City to update an applicable section of the City Code consistent with the City's reinstatement of limitations on judgments as accomplished through Resolution No. 6-14; and

WHEREAS, the City Council deems it in the best interests of the City to make various clarifying and conforming modifications to applicable sections of the City Code in recognition of the Memorial Health System Affiliation, as contemplated by the Voter Referendum, including without limitation, to more clearly distinguish between the MHS Enterprise and UCH-MHS or any future operator of leased facilities under the Memorial Health System Affiliation, and thereby conform the City Code to the evident purposes of the electorate.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. Chapter 13 (Memorial Hospital) of the Code of the City of Colorado Springs 2001, as amended, is repealed and reordained to read as follows:

**CHAPTER 13 MHS ENTERPRISE**

**ARTICLE 1 GENERAL PROVISIONS**

**SECTION:**

- 13.1.101: LEGISLATIVE DECLARATION**
- 13.1.102: DEFINITIONS**
- 13.1.103: ENTERPRISE STATUS; FUNDS; CITY ATTORNEY; CITY AUDITOR**
- 13.1.104: DELEGATION OF AUTHORITY; ORGANIZATION**
- 13.1.105: BOARD OF TRUSTEES**
- 13.1.106: CONTRACTS**
- 13.1.107: RULES AND REGULATIONS**
- 13.1.108: POWER TO LEVY TAX**

### **13.1.101: LEGISLATIVE DECLARATION:**

On September 20, 1949, the citizens of Colorado Springs approved electoral ordinances 1854 and 1856 which: a) approved Municipal ownership of Memorial Hospital (now MHS Enterprise), b) created a Board of Trustees and detailed its operational duties and responsibilities, and c) established a tax levy for the operation and maintenance of Memorial Hospital. In order to ensure the continued provision of the highest quality of care to the greater Colorado Springs community, careful consideration was given by the Board of Trustees, the City Council, and the citizens of the City to various options for the ownership, governance, and control of Memorial Hospital, including the option of leasing the assets of Memorial Hospital to an outside independent operator. After determining it to be in the best interest of the public health, safety, and general welfare of the City and its residents, the City Council ultimately approved the City's entry into the Memorial Health System Affiliation dated July 2, 2012, which contemplated transfer of Memorial Hospital assets and the long-term lease of Memorial Hospital facilities to a lessee (first Poudre Valley Health Care, Inc., d/b/a Poudre Valley Health System, an affiliate of University of Colorado Health, then UCH-MHS, also an affiliate of University of Colorado Health). The Attorney General of the State of Colorado approved the Memorial Health System Affiliation, and the transactions and actions contemplated thereby, as required by Colorado law. The voters of the City by referendum approved the Memorial Health System Affiliation, and the transactions and actions contemplated thereby. The Memorial Health System Affiliation became effective on October 1, 2012. Today, MHS Enterprise remains an enterprise of the City of Colorado Springs. City Council hereby finds and determines that it is essential to the health, safety and welfare of the citizens of Colorado Springs and the Pikes Peak Region that City owned MHS Enterprise continue to operate and be maintained as a self-sustaining government owned business which issues its own revenue bonds, receives over seventy five percent (75%) of its annual nondebt revenue from nongovernment sources and receives under ten percent (10%) of its annual revenues in grants from all Colorado State and local governments combined.

The City Council hereby finds, determines and declares that it is in the interest of the public health, safety and general welfare for the City to own, operate and maintain (and that the City may own, operate and maintain) MHS Enterprise.

### **13.1.102: DEFINITIONS:**

As used in this chapter, the following terms shall have the meanings ascribed below:

**EMPLOYEES:** Shall include all persons employed by MHS Enterprise. In the interest of clarity, "employees" shall not include employees of any current or future operator of leased facilities under the Memorial Health System Affiliation.

MHS ENTERPRISE: The health system enterprise of the City, formerly referenced as Memorial Hospital or Memorial Health System. In the interest of clarity, "MHS Enterprise" does not refer to any current or future operator of leased facilities under the Memorial Health System Affiliation.

MHS ENTERPRISE CHIEF EXECUTIVE OFFICER: The chief executive and administrative officer of MHS Enterprise appointed by the MHS Enterprise Board of Trustees, and in the absence of such an appointee, the Chair of the MHS Enterprise Board of Trustees. In the interest of clarity, the "MHS Enterprise Chief Executive Officer" does not refer to the chief executive and administrative officer of any current or future operator of leased facilities under the Memorial Health System Affiliation.

MHS ENTERPRISE MEDICAL STAFF: To the extent in operation, shall include all practitioners who have met the qualifications of medical, dental and podiatric staff membership and affiliated doctors, as established by the MHS Enterprise Board of Trustees. In the interest of clarity, the "MHS Enterprise Medical Staff" does not refer to the medical staff of any current or future operator of leased facilities under the Memorial Health System Affiliation.

MUNICIPAL: City government related operations.

**13.1.103: ENTERPRISE STATUS; FUNDS; CITY ATTORNEY; CITY AUDITOR:**

- A. MHS Enterprise shall operate as a City owned enterprise and shall ensure:
  - 1. MHS Enterprise remains a self-sustaining government owned business which may issue its own revenue bonds (subject to the terms and conditions of the Memorial Health System Affiliation during its duration); and
  - 2. MHS Enterprise continues to receive over seventy five percent (75%) of its annual nondebt revenue from nongovernment sources; and
  - 3. MHS Enterprise continues to receive under ten percent (10%) of its annual revenues in grants from all Colorado State and local governments combined.
- B. Absent private insurance protection, all claims on behalf of or against MHS Enterprise shall be in accord with chapter 1 of this Code.
- C. In accord with the provisions of chapter 1 of this Code, and subject to the terms and conditions of the Memorial Health System Affiliation during its duration, the City Auditor shall have those duties and responsibilities imposed by City Council to ensure the public accountability of MHS Enterprise.

**13.1.104: DELEGATION OF AUTHORITY; ORGANIZATION:**

A. Subject to the terms and conditions of the Memorial Health System Affiliation during its duration, City Council hereby delegates the responsibility for daily operation and management of MHS Enterprise to the Board of Trustees.

1. Subject to the terms and conditions of the Memorial Health System Affiliation during its duration, and subject to the general supervision and control of City Council, the Board of Trustees shall exercise complete control over the operation, expenditures, personnel and employee matters, betterments, improvements, repairs, equipment, fiscal and other policies of MHS Enterprise.

2. Subject to the terms and conditions of the Memorial Health System Affiliation during its duration, the Board of Trustees shall generally be empowered and authorized to do all things, not in conflict with the City Charter or this Code, for the operation, maintenance and development of MHS Enterprise.

B. Subject to the authorization of the MHS Enterprise Board of Trustees, and to the general supervision and control of the City Council, and subject to the terms and conditions of the Memorial Health System Affiliation during its duration, the MHS Enterprise Chief Executive Officer shall, where appropriate:

1. Develop MHS Enterprise services;

2. Develop other services as necessary to benefit citizens and other persons served by MHS Enterprise;

3. Develop community health and education services to enable people served by MHS Enterprise to maintain and enhance their health;

4. Develop strategic and operating plans to guide MHS Enterprise's long term and short term decision making;

5. Review annually organizational bylaws, development, education and training programs for Board members, MHS Enterprise staff, physicians and their staffs; and

6. Perform other duties as assigned by the MHS Enterprise Board of Trustees.

In the interest of clarity, "MHS Enterprise" does not refer to any current or future operator of leased facilities under the Memorial Health System Affiliation.

C. Subject to the terms and conditions of the Memorial Health System Affiliation during its duration, City Council shall retain all responsibility for land use decisions including the exercise of eminent domain, authorization for bond issuance and repayment, Board appointment and approval of the annual budget and appropriation for MHS Enterprise, and may grant on the City's behalf any approvals or consents related to the Memorial Health System Affiliation.

D. In accord with the provisions of the City Charter and chapter 1 of this Code, the City Attorney shall be responsible for the legal affairs of MHS Enterprise and may, as necessary, employ assistants or other counsel.

**13.1.105: BOARD OF TRUSTEES:**

A. Created: There is hereby created a MHS Enterprise Board of Trustees. The Board of Trustees shall be subject to and comply with the provisions of City Charter subsection 3-60(d) and section 9-10, all applicable provisions of this Code, and the rules and procedures of Council.

B. Board Members:

1. The regular members of the Board of Trustees of MHS Enterprise shall be appointed by the City Council for terms of three (3) years. Pursuant to the authority granted to the City Council in Ord. No. 3131, adopted by vote of the electors of the City, the Board of Trustees shall consist of nine (9) members, who may be any individuals deemed qualified by the City Council.

2. In its discretion, City Council may remove any Board member at any time.

C. Standing Or Special Committees: The Board of Trustees shall, in accord with its rules of procedure, appoint standing or special committees as needed to carry out its duties.

D. Rules Of Procedure: The Board of Trustees shall adopt and amend rules of procedure for the conduct of its meetings and other business.

**13.1.106: CONTRACTS:**

A. MHS Enterprise is authorized to execute its business contracts in the name, "MHS Enterprise". Business contracts executed in the name "MHS Enterprise" (or, prior to October 1, 2012, "Memorial Hospital" or "Memorial Health System") shall be deemed to have been executed by the City of Colorado Springs on behalf of MHS Enterprise and shall be legally enforceable by the City or MHS Enterprise against third parties and by third parties against the City or MHS Enterprise to the

same extent that would occur if the business contract had been executed by the City of Colorado Springs on behalf of MHS Enterprise. In addition, all contracts executed in the name of "MHS Enterprise" (or, prior to October 1, 2012, "Memorial Hospital" or "Memorial Health System") shall be interpreted or construed by any reviewing court as having been executed by the City of Colorado Springs on behalf of MHS Enterprise. In the interest of clarity, "MHS Enterprise" does not refer to any current or future operator of leased facilities under the Memorial Health System Affiliation.

B. Subject to the terms and conditions of the Memorial Health System Affiliation during its duration, the Chief Executive Officer is authorized to execute all business contracts entered into by MHS Enterprise and all other MHS Enterprise contracts and agreements except those which require approval by the Board of Trustees under any applicable Board policy or which the City Charter, this Code or other controlling law require or requires to be executed by a municipal officer of the City. The Chief Executive Officer may delegate this signatory authority by administrative regulation to staff reporting to the Chief Executive Officer and may provide by administrative regulation for the further delegation of this signatory authority.

C. Subject to the terms and conditions of the Memorial Health System Affiliation during its duration, real and personal property donated to or acquired by MHS Enterprise shall be held in the name of the City of Colorado Springs.

**13.1.107: RULES AND REGULATIONS:**

A. Subject to the terms and conditions of the Memorial Health System Affiliation during its duration, and subject to the approval of the Board of Trustees, the MHS Enterprise Chief Executive Officer shall adopt and promulgate administrative regulations consistent with the provisions of the City Charter, this Code or the policies of the Board of Trustees concerning matters that are applicable to all operations and finances of MHS Enterprise including:

1. Administrative organizational structure;
2. Institutional fiscal responsibility;
3. Operational effectiveness, efficiency and evaluation.

B. All other rules and regulations, including MHS Enterprise medical staff bylaws, personnel policies and procedures and regulatory compliance shall be subject to the approval of the Board of Trustees. In the interest of clarity, "MHS Enterprise" does not refer to any current or future operator of leased facilities under the Memorial Health System Affiliation.

**13.1.108: POWER TO LEVY TAX:**

Subject to the terms and conditions of the Memorial Health System Affiliation during its duration, the City shall continue the operation and maintenance of MHS Enterprise, now owned by the City, and the City Council shall have the power annually, commencing with the annual tax and appropriation ordinance for the year 1950, to levy a separate tax and appropriate its proceeds solely for the use of MHS Enterprise as necessary. The tax shall be sufficient to pay the estimated deficit in all expenses incurred in conducting, maintaining and improving MHS Enterprise in the next ensuing fiscal year, including payment of bonds and related interest, repairs, upkeep, betterments, equipment, supplies, depreciation, insurance, employees' salaries and all other expenses incident to the operation and maintenance of MHS Enterprise. In the interest of clarity, "MHS Enterprise" does not refer to any current or future operator of leased facilities under the Memorial Health System Affiliation.

Section 2. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 3. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this 8<sup>th</sup> day of September, 2015.

**Finally passed:** September 22, 2015

  
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Merv Bennett, Council President

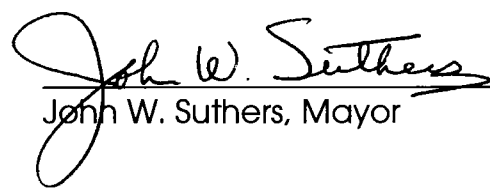
Delivered to Mayor on \_\_\_\_\_.

**Mayor's Action:**

- Approved on 9/25/2015.
- Disapproved on \_\_\_\_\_, based on the following objections:



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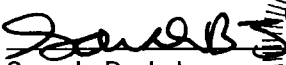
  
\_\_\_\_\_  
John W. Suthers, Mayor


**Council Action After Disapproval:**

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of \_\_\_\_\_, on \_\_\_\_\_.
- Council action on \_\_\_\_\_ failed to override the Mayor's veto.

\_\_\_\_\_  
Merv Bennett, Council President

ATTEST:

  
\_\_\_\_\_  
Sarah B. Johnson, City Clerk

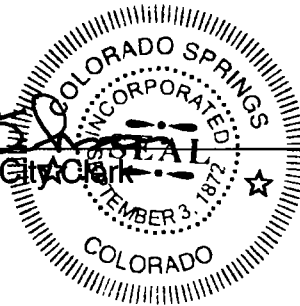


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I HEREBY CERTIFY, that the foregoing ordinance entitled **“AN ORDINANCE REPEALING AND REORDAINING CHAPTER 13 (MEMORIAL HOSPITAL) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO THE MEMORIAL HEALTH SYSTEM AFFILIATION AS APPROVED BY THE ELECTORS”** was introduced and read at a regular meeting of the City Council of the City of Colorado Springs, held on September 8, 2015; that said ordinance was finally passed at a regular meeting of the City Council of said City, held on the 22<sup>nd</sup> day of September, 2015, and that the same was published by title and summary, in accordance with Section 3-80 of Article III of the Charter, in the Transcript, a newspaper published and in general circulation in said City, at least ten days before its passage.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City, this 25<sup>th</sup> day of September, 2015.

  
Sarah B. Johnson, City Clerk



1<sup>st</sup> Publication Date: September 11, 2015

2<sup>nd</sup> Publication Date: September 30, 2015

Effective Date: October 5, 2015 Initial: SBS

City Clerk