

ORDINANCE NO. 24 - \_\_\_\_\_

AN ORDINANCE REPEALING AND REORDAINING SECTION 116 (SPECIAL CONTRACT SERVICE) OF ARTICLE 1 (GENERAL PROVISIONS) OF CHAPTER 12 (UTILITIES) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO OUTSIDE CITY SERVICE

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

Section 1. Section 116 (Special Contract Service) of Article 1 (General Provisions) of Chapter 12 (Utilities) of the Code of the City of Colorado Springs 2001, as amended, is repealed and reordained to read as follows:

**12.1.116: OUTSIDE CITY SERVICE:**

A. Special Contract Service: Utilities may provide by special contract for the use of or connection to the utility supply system by institutions, plants, districts, governments, Municipal corporations or other similar users.

B. Water and Wastewater Service Without Annexation:

1. Policy: The City's policy regarding Utilities providing water and wastewater service for land outside the City's corporate limits is as follows:

a. The funds collected from development charges, fees, the sale of water, and wastewater treatment charges are necessary to pay for the acquisition, development, construction and maintenance of the water resources, water infrastructure, and wastewater infrastructure needed to provide water and wastewater service.

b. The City shall consider the future water and wastewater needs of areas outside the corporate limits of the City and the population growth of the Pikes Peak urban area. However, in considering the future water and wastewater needs of areas outside the City, consideration shall be given first to current water and wastewater systems users within the corporate limits of the City. Water needs shall be considered in accordance with section 12.4.305.

c. There is no obligation imposed by general law upon the City to permit any of the City's water to be used outside its boundaries.

d. Persons inside City limits have made significant investments in both the water and wastewater systems. Persons outside the City limits who desire water or wastewater services should be required to pay an amount that reflects their pro rata demand on existing and planned infrastructure and resources as well as pay additional fees for such services in recognition of investments made to both systems by persons inside City limits.

e. Water and wastewater services provided outside City limits must not have an adverse impact on the City and its facilities, public and private.

f. There is a need to ensure that land use and development outside of the corporate limits of the City is compatible with land use within the City and will not have an adverse impact on the City and its facilities, public and private. The extension or provision of water or wastewater, or both, is a method of fostering compatible land use and development inside and outside the City limits, and should be handled in a manner which will ensure sound land use relationships and promote orderly development.

2. Rights of the City:

a. This subsection B shall not be construed to create any rights or cause of action in any person or land, whether or not the same is eligible for annexation, to demand or receive water or wastewater or other municipal service. The City has never previously and does not now assert exclusive control over the right to serve areas outside the corporate limits of the City with water and wastewater. Areas and activities outside the corporate limits of the City are free to obtain water and wastewater services from any other sources.

b. City Council's decision whether to authorize the extension of water or wastewater or both services outside the City boundaries shall be considered a matter of legislative discretion and not subject to judicial review. Neither shall such decision constitute a precedent controlling other pending or future applications for extraterritorial service.

c. The right of the City Council to restrict and regulate the use of City water within or outside the City limits shall not be abridged by anything contained in this section. Nothing in this section shall be construed to confer upon undeveloped land within the City limits, as such City limits exist at the time of adoption of this section or as such City limits may be hereafter altered by annexation or disconnection, any right to the reservation of existing water rights or quantities of water for the sole and exclusive use of such land.

3. Availability:

a. The City Council may use its legislative discretion to authorize water or wastewater services outside the City for:

(1) Properties that are or are likely to become legally eligible for annexation under section 30 of article II of the Colorado Constitution and the Municipal Annexation Act of 1965, as amended, C.R.S. §31-12-101 *et seq.*, or any successor provisions, but for which City Council has determined that annexation is not in the best interest of the citizens of the City at the time the property owners petition the City for annexation;

(2) Properties that are or are likely to become legally eligible for annexation under section 30 of article II of the Colorado Constitution and the Municipal Annexation Act of 1965, as amended, C.R.S. §31-12-101 *et seq.*, or any successor provisions, but the property owners are unwilling or unable to petition the City for annexation; or

(3) Special contract service, which is available to serve institutions, organized special districts, governments, municipal corporations, or other similar users which are located outside the corporate limits of the City. Special contract service is governed by sections 12.1.116A, 12.4.304 and 12.5.304 of this Code and not the provisions of this subsection 12.1.116B.

b. Agreement to Annex for City Services:

(1) As a condition precedent to the supplying of City water or wastewater services, or both, to land outside the limits of the City in accord with subsections 3.a(1) and (2) above, the City shall require an agreement executed by fee owners of the real property contracting for the services. This agreement shall provide:

(i) That the owners shall petition for and consent to the annexation of the area to be supplied with City water and wastewater services to the City at such future date as the area supplied, or any portion thereof, becomes both eligible for annexation pursuant to section 30 of article II of the Colorado Constitution and the Municipal Annexation Act of 1965, as amended, C.R.S § 31-12-101 *et seq.*, or any successor provision, and the City Council determines that annexation is appropriate.

(ii) Any new development or redevelopment of the land to which the water and wastewater services are to be provided is in conformance with those provisions of this Code as are applicable to land development within the corporate

limits of the City, or adequate assurances are made that development of the land will be in compliance with the Code. Assurances of conformance may be in the form of cash deposit, corporate surety bond, letter of credit or other assurance that the City Attorney shall approve as to form and the City Engineer shall approve as to amount. Compliance with City Codes pertaining to land development may require, but shall not be limited to:

(a) The property will comply with all applicable requirements of Chapter 12 of this Code and Utilities policy, standards, and requirements of this Code.

(b) Provisions for required park sites or fees in lieu thereof to the applicable jurisdictions in accordance with section 7.4.307 of this Code.

(c) Provision for required school sites or fees in lieu thereof to the applicable jurisdictions in accordance with section 7.4.308 of this Code.

(d) Dedication, design and construction of required streets, sidewalks, curbs, gutters, trail connections, transit infrastructure, and utilities, including telephone, to City standards or to the standards of the entity having responsibility for maintenance of those listed improvements, whichever standard is stricter.

(e) Dedication of easements including, but not limited to, utility easements and telephone and drainage easements as required by section 7.4.302.H of this Code.

(f) Provision for necessary drainage facilities or the payment of drainage fees and arterial roadway bridge fees in accordance with section 7.4.701 *et seq.* and section 7.4.702 *et seq.* of this Code.

(ii) It is recognized that a court determination may be required in order to satisfy the provisions of this part.

(iv) Any agreement in accordance with this subsection shall be reported to the City Council at the next available regular meeting of City Council following its execution. Such

agreement shall be recorded and shall run with the land and be binding on the heirs, assigns, and successors in interest of the signers.

c. Service Pending Annexation:

(1) The City Council may approve the delivery of water or wastewater service, or both, pending completion of annexation if:

(i) The pending petition for annexation meets all of the criteria for annexation as defined in Code section 7.5.701 and under the provisions of section 30 of article II of the Colorado Constitution, and has City Council support for annexation; and

(ii) A petition for annexation has been filed before a permit or permits for such water or wastewater service shall be issued or any work shall commence to extend such water or wastewater service beyond the then-existing City limits; and

(iii) Delaying the start of service until annexation would cause unnecessary delay to the annexor in commencing work on the proposed development, or

(iv) Delaying the start of service until annexation would impose an unnecessary hardship upon the annexor, without any compensating advantage or benefit to the City or its citizens.

(2) The City Council hereby declares that its discretion to determine the existence or nonexistence of good cause to approve the delivery of water or wastewater service, or both, before the completion of annexation is a legislative act and is not subject to judicial review.

(3) Once filed, the annexation petition shall not be withdrawn except with express permission of the City Council and shall be pursued by the annexor and affected City departments to a speedy conclusion. Authorization for water or wastewater extension beyond the City limits may be withdrawn by City Council without notice to the annexor at any time prior to any substantial change of position (defined as a significant expenditure of time or money) by annexor in reliance on such authorization.

4. Evaluating Requests for Water and Wastewater Service Without Annexation:

a. In determining whether to extend water or wastewater service without annexation, the City Council shall consider, among other factors, the following:

(1) For water service, whether the proposed extension of water service satisfies the requirements of section 12.4.305 of this Code.

(2) For wastewater service, whether the existing and projected wastewater facilities of the City are expected to be sufficient for the present and projected needs for the foreseeable future to serve all present and projects users whether within and outside the corporate limits of the City.

(3) The proposed use of the land to be served is compatible with the use of adjacent land areas and, to the extent acceptable to and approved by City Council, is in conformance with the plan of the Pikes Peak Area Council of Governments. Such proposed land use shall be submitted to the government entity having land use planning jurisdiction thereover for comment at least thirty (30) days before final action by City Council on the request for services.

(4) Water and wastewater development charges and other applicable utility fees will be paid, and the owner of the land to be served has agreed to abide by all conditions and terms of Utilities' tariffs, water and wastewater extension policies, water efficiency plans, and conservation standards, as are applicable to in-City Utilities' customers.

5. Additional Requirements:

a. All areas receiving water service without annexation pursuant to this section must be included in the Southeastern Colorado Water Conservancy District boundaries at the time service is approved.

b. Any request for a change of use of previously granted municipal utility services shall be considered and administered as a new application for such service and shall be subject to all of the provisions and requirements as set forth in this section.

6. Fees: All required fees shall be paid in advance of the issuance of permit(s) for the requested service(s) and no fee or portion thereof shall be refunded.

7. Limitation:

- a. Except for special contract service, in no event shall utility service be extended to property outside of the City pursuant to this subsection if annexation subsequent to the extension of utilities cannot be assured under the provisions of section 30 of article II of the Colorado Constitution.
- b. Failure to comply with the terms of the Agreement to Annex may result in the termination of the service(s) provided under this section.

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 \_\_\_\_ day of \_\_\_\_\_, 202\_.

**Finally passed:** \_\_\_\_\_

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Randy Helms, Council President

ATTEST:

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Sarah B. Johnson, City Clerk