7.5.701: ANNEXATION OF LAND

Review Criteria

A. Purpose:

1. Extension Policies: City Charter section 6-70 requires that extension policies for the services provided by the Utilities be established by the City Council.

2. Water, Wastewater Service Outside City Limits: City Council believes that definite statements need to be made in order to establish a policy pertaining to the provision and extension of water or wastewater, or both, to consumers outside the City limits who own or occupy land not presently eligible for annexation.

3. Policy Statements:

a. The citizens of the City are the owners of water provided to themselves and to consumers outside the City limits. The monies collected from development charges and the revenues generated by sale of water and processing of wastewater are necessary to pay for the acquisition and development of the water and the construction, operation and maintenance of the water and wastewater facilities.

b. The City must consider the future water and wastewater needs of areas outside the corporate limits if the Pikes Peak urban area is to continue to grow to accommodate anticipated population. However, in considering the future water and wastewater needs of areas outside the City, consideration must be given to the capacity to serve within the corporate limits of the City.

c. 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.

d. Persons inside the City limits who receive water or wastewater services must comply with City ordinances including, but not limited to, Construction, Fire Protection, Subdivision, Zoning and Health Codes. Such persons must pay ad valorem taxes upon their real property. It seems only reasonable then, that persons outside the City limits who desire water or wastewater services should be required to do no less than those who receive such services inside the City, as well as pay additional fees for such services.

e. There is a need to sell water and process wastewater for revenues to meet the costs of owning and operating the City's water and wastewater system, and the 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.

f. 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. Neither is there an obligation under general law to reserve water for undeveloped land presently within the City's boundaries.

B. Comply with State Laws: Annexation, consolidation, or disconnection of territory to or from the City shall be in accord with article II of the Colorado Constitution and the Municipal Annexation Act of 1965 as it exists now or may later be amended.

C. Conditions for Annexation:

1. To assist the City Council in its decision, each proposal for annexation shall be studied to determine whether:

a. The area proposed to be annexed is a logical extension of the City's boundary;

b. The development of the area proposed to be annexed will be beneficial to the City. Financial considerations, although important, are not the only criteria and shall not be the sole measure of benefit to the City;

c. There is a projected available water surplus at the time of request;

d. The existing and projected water facilities and/or wastewater facilities of the City are expected to be sufficient for the present and projected needs for the foreseeable future to serve all present users whether within or outside the corporate limits of the City;

e. The annexation can be effected at the time the utilities are extended or at some time in the future;

f. The City shall require as a condition of annexation the transfer of title to all groundwater underlying the land proposed to be annexed. Should such groundwater be separated from the land or otherwise be unavailable for transfer to the City, the City, at its discretion, may either refuse annexation or require payment commensurate with the value of such groundwater as a condition of annexation. The value of such groundwater shall be determined by the Utilities based on market conditions as presently exist;

g. All rights of way or easements required by the Utilities necessary to serve the proposed annexation, to serve beyond the annexation, and for system integrity, shall be granted to the Utilities. Utilities, at the time of utility system development, shall determine such rights of way and easements;

h. If the proposed annexation to the City overlaps an existing service area of another utility, the applicant shall petition the PUC (Public Utilities Commission) or other governing authority to revise the service area such that the new service area will be contiguous to the new corporate boundary of the City.

2. After the foregoing have been studied in such depth as the City Council shall require, the City Council in its discretion may annex or not annex the proposed area. In the event the City Council chooses to annex, it may require a contemporary annexation agreement specifying the installation and the time of installation of certain public and utility improvements, both on site and off site, that are required or not required under this Zoning Code. City Council may specify such other requirements, as it deems necessary. In the event the City Council chooses not to annex, utilities shall not be extended unless Council is assured that an agreement for annexation can be enforced, and that the remaining provisions of this section for annexation subsequent to extension of utilities have been met.

D. Rights of City:

1. This part 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.

2. 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. The City Council hereby declares the policy of the City to be that water belonging to the City is in no way allocated to a particular parcel of land until such land is developed and water applied to

actual use upon such land. 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 hereinafter altered by annexation or disconnection, any right to the preservation of existing water rights or quantities of water for the sole and exclusive use of such land.

3. In the interest of the citizens of the City, City Council will not extend water or wastewater service into any area which is not presently included within the Utilities electric service area. An exception to this policy may be made if the area requesting service can be annexed to the City at the time of utility extension and included in the electric service area upon such annexation or for special contract service for water or wastewater services outside the City.

E. Annexation Agreements for City Services:

1. Except for special contract service for water or wastewater services outside the City, as a condition precedent to the supplying of City water or wastewater services, or both, to land outside the limits of the City, under this part the City shall require an agreement executed by the owners in fee of the real property so supplied, which agreement shall provide, among other conditions as the City Council may impose, that the owners shall petition for and consent to the annexation of the area to be supplied with such City services to the City at such future date as the area supplied or any portion thereof, becomes both eligible for annexation pursuant to section30 of article II of the Colorado Constitution and the Municipal Annexation Act of 1965, as it now exists or may hereafter be amended or as it may be modified by section30 of article II of the Colorado Constitution, and is found by the City Council to be proper for annexation to the City under the provisions of part 1 of this article.

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

3. Such agreement shall be reported to the City Council at the next regular Council meeting following its execution. Such agreement shall then be recorded and shall run with the land and be binding on the heirs, assigns and successors in interest of the signers.

F. Procedure for Handling Requests:

1. An application for water or wastewater service for premises outside the corporate limits of the City may be granted by the City Council upon finding that all conditions set forth in this part have been met by the applicant. In its discretion, the City Council may require that studies addressing the considerations expressed in this part, be prepared as a condition precedent to the granting of water or wastewater services or both.

2. In no event is City Council legally obligated to serve water or wastewater outside the City limits.

3. In the event that the City Council authorizes the extension of water or wastewater or both services outside the City boundaries, such decision 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.

G. Water Service Previously Granted Outside City: Any request for a change of use of previously granted municipal services shall be considered and administered as a new application for such municipal service and shall be subject to all of the provisions and requirements as set forth in this part.

H. Service Subsequent to Annexation: Except as otherwise provided in this section, land which at the time of request for service is eligible for annexation to the City under section 30 of article II of the Colorado Constitution and the Municipal Annexation Act of 1965 as it now exists or may hereafter be amended and which meets the provisions of this part, as

determined by City Council, shall be annexed to the City before receiving City water or wastewater service or both except as provided in this part.

I. Service Pending Annexation:

1. For good cause shown, the City Council may approve the delivery of water or wastewater service, or both, pending completion of annexation. As used in this subsection, good cause is any reason which in the opinion of City Council:

a. Would cause unnecessary delay to the annex or in commencing work on the proposed development; or

b. Would impose an unnecessary economic hardship upon the annex or, without any compensating advantage or benefit to the City or its citizens. In any event, the City Council hereby declares that its discretion in determining the existence or nonexistence of good cause is a legislative act and is not subject to judicial review.

2. A petition for annexation, subject to such conditions as City Council in its discretion may impose, must be first filed before a permit or permits for such water or wastewater service shall be issued or any work commence to extend such water or wastewater service beyond the City limits existing at that time. Once filed such petition cannot be withdrawn except with express permission of the City Council and shall be pursued by the annex or and affected City departments to a speedy conclusion. Authorization for water or wastewater extension beyond the City limits may be withdrawn by the City Council without notice to the annex or at any time prior to any substantial change of position (expenditure of time or money) by them in reliance on such authorization.

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

4. In no event shall this section be used if annexation subsequent to the extension of utilities cannot be assured under the provisions of section 30 of article II of the Colorado Constitution.

J. Service Without Annexation: In its legislative discretion, the City Council may authorize special contract service for water or wastewater services outside the City, or service without annexation. Special contract service shall only be considered when the area to be served is legally ineligible for annexation or when City Council determines that annexation is not in the best interest of the citizens of the City, and shall comply with the provisions of section 12.4.304 of this Code.

Service without annexation is available for the delivery of water or wastewater services or both to land otherwise eligible for annexation under the criteria of the Municipal Annexation Act of 1965 but which the Council decides not to annex for failure to meet the provisions of this part. Further, in exercising its discretion for service without annexation, the City Council shall consider, among such other values and matters as may be presented to it, the following:

1. Estimated immediate and long range costs to the City under development plans proposed by the annex or, which cost estimates shall include, but need not be limited to:

a. The Cost Of Extending Existing City Services: Examples of capital improvements are bridges, arterial streets, major drainage improvements, parks and park improvements and the maintenance and operation of such improvements;

b. Capital Improvements: The nature and the cost of City financed capital improvements made necessary by the proposed annexation when developed;

c. Time Schedule: The time schedule as proposed by the annex or over which such costs would be extended.

2. Revenues expected to be generated by proposed development within the area proposed to be annexed;

3. Other benefits to the City for which there is no readily acceptable method of computation except subjective judgment.

4. In addition, the City Council shall consider whether:

a. There is a projected available water surplus at the time of request.

b. The existing and projected water facilities and/or wastewater facilities of the City are expected to be sufficient for the present and projected needs for the foreseeable future to serve all present users whether within or outside the corporate limits of the City.

c. The owner of the land to be served has executed an annexation agreement in the form required by the City. Such annexation agreement shall be attached to the application.

d. 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 the City Council is in conformance with the plan of the Pikes Peak Area Council of Governments Urban Area Policy Committee. 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 Council action on the request for services.

e. Water and wastewater development 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 the Colorado Springs Utilities. Water and wastewater extension policies are available at the Office of the Utilities Executive Director.

f. The development of the land to which the water and wastewater services are to be provided is in conformance with those provisions of this Code, as amended, 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 City codes. Assurances of such conformance may be in the form of cash deposit, corporate surety bond, letter of credit or other assurance which 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:

(1) Provision for required school/park sites or fees in lieu thereof to the applicable jurisdictions.

(2) Dedication, design and construction of required streets, sidewalks, curbs, gutters and utilities, including telephone, to City standards or to the standards of the entity having responsibility for maintenance thereof, whichever standard is more strict.

(3) Dedication of easements including, but not limited to, utility, including telephone and drainage easements as required by the Zoning Code.

(4) Provision for necessary drainage facilities or the payment of drainage fees and arterial roadway bridge fees 8.

(5) The City shall require, as a condition of service without annexation, the transfer of title to all groundwater underlying the land proposed to be served with water and wastewater services. Should such groundwater be separated from the land or otherwise be unavailable for transfer to the City, the City, at its discretion, may either refuse such service without annexation or require payment commensurate with the value of such groundwater as a condition of service without annexation. The value of such groundwater shall be determined by the Utilities, based on market conditions as presently exist.

5. Whether the annexation agreement referred to in subsection D3 of this section can be legally enforced under section 30 of article II of the Colorado Constitution and the Municipal Annexation Act of 1965 as modified by section 30 of article II of the Constitution. (Ord. 23-03)