

ANNEXATION-RELATED CODE CHANGES



Proposed Changes to Sections of City Code
Chapters 7 and 12

City Council

March 11, 2024

Renee Congdon—Utilities Division Chief, City Attorney's Office

BACKGROUND



1. Applicable Law

1. State Law: Municipal Annexation Act of 1965
2. City Code: UDC section 7.5.701

2. Purpose of Changes

1. Make Code consistent with practice
2. Clean up annexation section

3. Important to Remember

1. Annexation is a legislative decision
 1. 7.5.701C3: "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."
2. Annexation Agreement vs. Agreement to Annex

NATURE OF CHANGES



1. Reorganization
2. Changes to the Annexation section
Chapter 7, UDC section 7.5.701
3. Changes to Chapter 12
 1. Exceptions to exclusive provider
 2. Added policy considerations and requirements to sections on special contract service to be consistent with other extensions of water service
 3. Streamline water extension ordinance process

REORGANIZATION



1. Made the organization of sections more logical
 1. Put like things together
 2. Moved the sections on outside city service from Chapter 7 to Chapter 12
 3. Moved the “Rights of the City” in the annexation section to the beginning of the section
 4. Made the analysis for annexation consistent with the analysis for outside city service
 1. Example: the section on financial analysis is currently only in the outside city service section. The proposed changes copy the financial analysis into the annexation section.

CHANGES TO SECTION 7.5.701 ANNEXATION



1. Highlights of Changes to 7.5.701

1. No obligation to reserve expanded to include WW
2. Change review from only looking at water and wastewater to looking at all 4 services
3. Clarifies resource and facility requirements*
4. Makes transfer of water rights more robust
5. Clarifies obligation to get necessary easements
6. Clarifies annexor's obligations when annexation invades service territory
7. Improves financial analysis sections

CHANGES TO SECTION 7.5.701 ANNEXATION



1. Example

1. From: “There is a projected available water surplus at the time of request”
2. To: “at the time of request there is projected available surplus capacity and resources across all Utilities’ service lines for the foreseeable future to serve all present users and the projected new users from the area proposed to be annexed, taking into account City Code section 12.4.305, and that performance criteria, as defined for each service line in standards adopted by Utilities, will not be impaired.”
 - 12.4.305 is the water extension ordinance

CHANGES TO CHAPTER 12



1. Exclusive Provider
2. Move outside city service to 12.1.116
3. Add policy considerations to outside city service sections of water and wastewater
4. Streamline water extension ordinance

EXCLUSIVE PROVIDER



1. 12.1.111-Utilities is exclusive provider of all 4 services within City limits
2. Proposed exceptions
 1. Strategic: not in Utilities best interest to provide all 4 services to specific property
 2. Legal: providing all 4 services to specific property would result in breach of contract, violation of law, or actions inconsistent with legal obligation

EXCLUSIVE PROVIDER



1. Process

1. Recommended by CEO, based on financial analysis, risk analysis, and demonstration from property owner that property does not need service or already has service
2. Approved by Utilities Board
3. Strategic exception must support current Board directive or instructions
4. Notice must be recorded to put subsequent owners on notice
5. Must have an agreement between Utilities and property owner
6. Utilities may require an agreement with other service provider

OUTSIDE CITY SERVICE



1. Moved Agreements to Annex
 1. From 7.5.701 to 12.1.116
2. Criteria for Agreements to Annex
 1. Properties that are or are likely to be eligible for annexation, but annexation not in best interest of City or property owners unwilling or unable to annex
 1. Was property eligible to annex
3. Added Policy to Special Contract Service
 1. Acknowledge in-City investment. Justifies increased rates and development charges for outside city service

OUTSIDE CITY SERVICE AGREEMENT TO ANNEX



New Policies for Agreements to Annex

1. 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.
2. Water and wastewater services provided outside City limits must not have an adverse impact on the City and its facilities, public and private.

OUTSIDE CITY SERVICE AGREEMENT TO ANNEX



Existing Policy for Agreements to Annex

1. 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.
2. 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.
3. 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.
4. 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.

OUTSIDE CITY SERVICE SPECIAL CONTRACT SERVICE



1. Added Policy to Special Contract Service

1. Acknowledge in-City investment. Justifies increased rates and development charges for outside city service. Mirrors agreement to annex
2. Outside City service must not have adverse impact on City resources and facilities. Also added to Agreement to Annex
3. No obligation imposed by general law upon the City to permit any of the City's water resources to be used outside its boundaries or to provide wastewater service outside City limits.

OUTSIDE CITY SERVICE SPECIAL CONTRACT SERVICE



Requirements on Special Contract Service

1. City's facilities currently existing or planned must be sufficient to serve present and projected needs for foreseeable future for all users of the system within and outside City, including those served under special contract—as provided in water extension ordinance
2. Special contracts must not interfere with the City's ability to provide service to in-City customers in accordance with the standards adopted by Utilities and the City's existing contractual obligations.
3. Special contracts must comply with all applicable restrictions in Code and permits, contracts, agreements, and decrees.

OUTSIDE CITY SERVICE SPECIAL CONTRACT SERVICE



Requirements on Special Contract Service

1. Special contract customer must
 1. Pay all system availability fees and other applicable Utilities' fees.
 2. Obtain all contracts, permits, administrative approvals and water rights decrees as may be required to allow Utilities to provide special contract service without impairing Utilities' ability to operate the water system for the benefit of Utilities' customers.

WATER EXTENSION ORDINANCE



City Code section 12.4.305

1. Removed requirement for Board approval
2. Revised 128% test to remove 25% contiguity

WATER EXTENSION ORDINANCE



12.4.305: SERVICE; EXTENSION LIMITATION:

A. Due to increasing demands on the City's water supply, and to ensure that the City's water rights will meet existing and anticipated water service obligations, extending water service into any area not within either the existing City limits or the water service boundary as of the effective date of this section is subject to ~~the recommendation of approval by the Utilities Board,~~ and approval by City Council.

B. City Council approval shall require a finding that the proposed water extension is warranted based on a substantiated and written record demonstrating that:

1. The City's available water supply is sufficient to meet at least 128% of existing usage (calculated using a five (5) year rolling average of weather normalized unrestricted usage data) and the projected demand for water services within the proposed extension(s) of services, ~~and not less than 25% of the perimeter of the area is contiguous with the City (as defined by State law);~~ or

2. A unique and extraordinary event or circumstance necessitates an extension of water services to serve critical interests of the City; or

3. The area is an enclave (as defined by State law), or the area is owned or leased by the City, or extension of water service to the area will have a de minimis impact on the overall City's available water supply.

C. This section shall apply to any extension of **Utilities** water services notwithstanding any provision to the contrary.

APPROVAL PROCESS



- City and Utilities staff and administration reviewed and approved proposed changes
- Chapter 12 changes were recommended for approval by Utilities Board on January 17, 2024
- Chapter 7 changes were recommended for approval by City Planning Commission on February 14, 2024
- Each Ordinance will require 2 readings by Council

REQUEST



- Approval of ordinances:
 - UDC (City Code) § 7.5.701 (Annexation)
 - City Code § 12.1.111 (Exclusive Provider Exceptions)
 - City Code § 12.1.116 (Outside City Service)
 - City Code §§ 12.4.302-305 (Water Service, including water extension ordinance)
 - City Code §§ 12.5.302-304 (Wastewater Service)

Questions?

Proposed Changes to the Annexation Section of UDC

Chapter 7, Section 7.5.701

Change	Old Language	New Language	Purpose
<p>No obligation to reserve expanded to include resources and capacity for water and wastewater</p>	<p>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. § 7.5.701A3f</p>	<p>There is no obligation under general law to reserve water resources or capacity in the City's water system and wastewater system for undeveloped land presently within the City's boundaries. § 7.5.701A1</p> <p>Water belonging to the City is in no way allocated to a particular parcel of land until the land is developed and water applied to actual use upon that land. § 7.5.701A1</p>	<p>Consistent with standard practice</p> <p>Acknowledges constraints on wastewater capacity</p>
<p>Change from only looking at water and wastewater to review of all four services</p> <p>Includes consideration of what annexation's impact on performance criteria for all four services</p> <p>Acknowledges proposed exception to exclusive provider requirement in 12.1.111</p> <p>Points to water extension ordinance to determine whether sufficient water to support annexation</p>	<p>There is a projected available water surplus at the time of request. § 7.5.701C1c</p> <p>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; § 7.5.701C1d</p>	<p>Unless an exception granted under section 12.1.111 will be in effect at the time of annexation, whether at the time of request there is projected available surplus capacity and resources across all Utilities' service lines for the foreseeable future to serve all present users and the projected new users from the area proposed to be annexed, taking into account City Code section 12.4.305, and that performance criteria, as defined for each service line in standards adopted by Utilities, will not be impaired. § 7.5.701A2b(3)</p> <p>Whether the existing and projected utility facilities of the City are expected to be sufficient for the present and projected needs for the foreseeable future to serve all present and projected users whether within or outside the corporate limits of the City. § 7.5.701A2b(4)</p>	<p>Recognizes the constraints on 4 services</p>

Proposed Changes to the Annexation Section of UDC
Chapter 7, Section 7.5.701

Change	Old Language	New Language	
Cleans up ambiguous language	The annexation can be effected at the time the utilities are extended or at some time in the future § 7.5.701C1e	Whether utility services and facilities can be extended to serve the property proposed to be annexed at the time of annexation or sometime in the future. § 7.5.701A2b(5)	
<p>Old version only included groundwater rights.</p> <p>New version includes transfer of groundwater, water rights appurtenant to the property, and water rights historically used on the property.</p>	<p>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. § 7.5.701C1f</p>	<p>The City shall require as a condition of annexation the transfer to the City of title to all water rights appurtenant to, including without limitation all groundwater underlying, the land proposed to be annexed. Should such groundwater or appurtenant water rights 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 and/or appurtenant water rights as a condition of annexation. The value of such water rights shall be determined by Utilities based on market conditions as presently exist. City Council may, in its discretion, waive the requirement to convey groundwater rights or pay the value of groundwater and/or appurtenant water rights by resolution. § 7.5.701A4a</p> <p>The City shall require as a condition of annexation the transfer to the City of title to any additional water rights historically used on or for the benefit of the area to be served that Utilities determines are necessary to ensure it has sufficient water supplies to serve the property or payment of any fees in leu thereof, as determined by City Council. § 7.5.701A4b</p>	<p>Makes transfer of water rights more robust.</p> <p>Ensures City has right to receive all water rights associated with annexing property</p>

Proposed Changes to the Annexation Section of UDC
Chapter 7, Section 7.5.701

Change	Old Language	New Language	
Clarifies obligation to obtain necessary easements to serve the annexation	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 § 7.5.701C1g	The City shall require as a condition of annexation that all rights of way or easements required by Utilities necessary to serve the proposed annexation, to serve beyond the annexation, and for system integrity, shall be granted to Utilities by the applicant or other property owner on forms approved by Utilities. Utilities, at the time of utility system development, shall determine such rights of way and easements § 7.5.701A4c	Change makes it clear that the annexor has to transfer the easements it has control over and annexor has to get the easements on properties it does not have control over. This is consistent with other development in the City.
Clarifies annexor’s obligations with respect to if an annexation overlaps an existing service territory of another utility service provider	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. § 7.5.701C1h	If the proposed annexation to the City overlaps an existing service area of another utility under the jurisdiction of the Colorado Public Utilities Commission (PUC), if no exception has been granted under section 12.1.111 and if required by the City, the applicant shall petition the PUC to revise the service area such that the new service area will be contiguous to the new corporate boundary of the City and the applicant shall pay any and all fees or costs associated with revising the service area, including without limitation any required condition assessment, system improvements, and just compensation due to the existing service provider. If the proposed annexation overlaps the service territory of a special district, the applicant shall either have the property removed from the service territory of the special district or shall obtain permission from the special district for the property to receive utility services from Utilities and shall pay any and all fees and costs associated therewith. City Council may waive or modify the requirements in this subsection by resolution. § 7.5.701A4d	Acknowledges possibility of exception to exclusive provider requirement in 12.1.111. Allows City to decide whether annexor or City will apply to PUC for boundary adjustment. Makes it clear that annexor will pay any costs associated with adjusting the service territory boundary, including the costs of condition assessments, system improvements, and just compensation to the other service provider.

Proposed Changes to the Annexation Section of UDC
Chapter 7, Section 7.5.701

Change	Old Language	New Language	
<p>Adds more robust financial analysis requirements</p>	<p>(This is in the outside city service section): Estimated immediate and long range costs to the City under development plans proposed by the annexor, 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 annexor 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. § 7.5.701J1</p>	<p>The estimated immediate and long-range costs to the City under development plans proposed by the annexor, which cost estimates shall include, but need not be limited to:</p> <p>(i) The cost of extending City services. Examples of required improvements are bridges, arterial streets, major drainage improvements, parks and park improvements, regional and urban trails systems, and the maintenance and operation of required improvements.</p> <p>(ii) The nature and cost of City-financed capital improvements made necessary by the proposed annexation when developed. The City may also include the expense that would be incurred by other governmental entities, such as school districts.</p> <p>(iii) The time schedule as proposed by the annexor over which such costs would be extended. § 7.5.701A3b(6)</p> <p>The revenues expected to be generated by proposed development within the area proposed to be annexed. This may include ad valorem taxes from the land and improvements situated and to be situated on the land, sales, and use taxes from commercial development, increased revenue sharing or other grant funds resulting from increased population, and increased income taxes. § 7.5.701A3b(7)</p>	<p>Acknowledgment that there is cost associated with annexation.</p> <p>Changes are consistent with the analyses currently undertaken when an annexation is being reviewed.</p> <p>Acknowledges that there may be non-financial costs and benefits that should be considered.</p>

Proposed Changes to the Annexation Section of UDC
Chapter 7, Section 7.5.701

Change	Old Language	New Language	
Added Utilities-specific financial analysis		Whether the Utilities’ revenues expected to be generated by the development of the proposed annexation will offset the estimated immediate and long-range costs to Utilities for the acquisition of utility resources, extension of utilities services, development of utilities infrastructure, and operations and maintenance as required by Utilities Rules and Regulations. § 7.5.701A3b(8)	
Bolstered “other benefits” element of analysis	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; § 7.5.701C1b	Other benefits to the City for which there is no readily acceptable method of computation except subjective judgment, such as increased employment opportunity, improved wastewater management, improved drainage control, improved public transportation, and increased diversification of the City’s economic base. § 7.5.701A3b(9)	