

## MEMORANDUM

**TO: CITY COUNCIL**

**FROM: CHARTER REVIEW COMMITTEE**

**DATE: JULY 16, 2008**

**RE: REPORT ON ISSUES RELEVANT TO NOVEMBER 4, 2008, ELECTION**

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What follows is a report, approved by unanimous vote of the Charter Review Committee (the "Committee") at its July 7, 2008, meeting, setting forth the Committee's initial recommendations to Council. As you know, in order to meet election law deadlines, Council will need to approve the ballot's final language no later than at the August 28, 2008, Council meeting. As such, Committee members have worked hard and swiftly to address what the Committee deemed to be the most pressing matters.

After Council's review of the Committee's recommendations herein, the Committee would respectfully request an opportunity to present and discuss these recommendations with Council on a timeline that continues to accommodate the City's August 28, 2008, deadline for approving ballot language.

### **I. Background.**

Since the Charter Review Committee's creation by Resolution 08-58, the Committee has met weekly since May 19, 2008. At the initial meeting, the Committee identified fifteen top priorities and then immediately began addressing the items in order, so that recommendations on the most pressing issues would be presented to Council in time to be included on the November ballot. The Committee identified five issues as most pressing:

1. City Manager residency – proposing a residency requirement for the Charter.
2. City Clerk's Office staff – proposing a Charter amendment that clarifies for whom these individuals work.
3. City utility charges – proposing a Charter amendment limiting utility charges to the direct cost of providing service.
4. ½% sales tax extension – proposing a ballot question extending the soon-to-expire sales tax for voter approval in November.
5. City Manager severance – proposing a Charter amendment to limit severance paid to a departing City Manager.

The following report provides the Committee’s recommendation on only four of those five issues. Careful consideration was given to the fifth recommendation concerning a City Manager’s severance pay. A Charter Amendment relating to the City Manager’s severance package was proposed to the Charter Review Committee in response to an action taken by an outgoing or “lame duck” City Council to increase the City Manager’s severance package from six months to nine months. This act appears to have been taken to discourage the incoming council from terminating the employment of the City Manager. Within approximately six months time following the change to increase severance, the City Manager voluntarily left employment with the City and received the full enhanced nine month severance package costing City taxpayers over thirty thousand dollars (dollar cost added to the severance package due to the change to nine months). In order to preclude future councils from a similar action and following lengthy discussion and deliberation, a Charter Amendment was drafted that, if accepted, would establish terms and conditions for the City Manager’s severance package. Consideration was given to the impact this change would have in limiting the powers of the Council in negotiating for the best candidate for the City Manager position. If severance terms were set in the Charter, severance would not be a negotiable term of employment. The Committee discussed the idea of a salary and severance package that would relate to the economic standing of Northglenn taxpayers; that is to say a formula that would mathematically connect the Manager’s pay and benefit package to the average pay and benefit package of an average Northglenn tax-paying family. Through extensive discussion and debate at multiple meetings, the Committee developed a concept for phasing in the severance payments and even went so far as considering and refining draft language for a Charter amendment.<sup>1</sup> Yet, out of respect and deference for the City’s Charter – the City’s governing document or constitution and the powers granted to Council under the Charter - the Committee took action to table the proposed Charter Amendment relating to

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<sup>1</sup> The Committee’s draft proposed language on the topic read as follows:

Section 6.1 – City Manager - Qualifications and Appointment:

...

(b) *The City Manager’s* His salary shall be fixed by the City Council. *The City Manager* He shall be appointed for an indefinite period, and shall be removable by the Council at pleasure. *The City Manager shall be entitled to severance pay limited to a cash payment only as determined by his or her length of employment specifically as City Manager as follows:*

| <b><i>Length of employment</i></b> | <b><i>Months of pay</i></b>            |
|------------------------------------|--|
| <i>Six (6) months or less</i>      | <i>Probation Period – No Severance</i> |
| <i>Seven months to one year</i>    | <i>Three months salary</i>             |
| <i>One year to two years</i>       | <i>Four months salary</i>              |
| <i>Two years to three years</i>    | <i>Five months salary</i>              |
| <i>Three years and more</i>        | <i>Six months salary</i>               |

severance pay *at this time* and to defer the matter for City Council's consideration. The committee welcomes feedback from council regarding this issue.

Thus, what follows are the Committee's recommendations on the four top priorities.

**II. Committee Recommendations.**

**A. Amendment to Charter Section 6.1 regarding City Manager residency.**

We believe the City Manager, if required to be a full time City resident, will make decisions that better serve the community; our proposed residency requirement would require any new City Manager to live the "Northglenn experience" first hand.

Historically, our citizens always expected the City Manager to reside within Northglenn. Yet, in 2006, the Council allowed the new City Manager to live in another city, to the disapproval of many Northglenn citizens. A great many citizens of Northglenn find this to be unacceptable practice and wish to prevent it from occurring again.

Reasons for a City Manager residency requirement are many and will not be discussed in detail here. The primary reason, in the Committee's view, is the idea that an individual responsible for so many critical decisions affecting the City should be invested in the City as a resident, not just as an employee. Thus, the Committee feels that Northglenn's City Manager should be required to reside within the City so that he or she can come to know and understand the true Northglenn.

As such, the Committee recommends that City Council consider proposing the following amendment to Section 6.1 of the Northglenn Home Rule Charter. Proposed new language appears in *bold italics*.

Section 6.1 – City Manager – Qualifications and Appointment:

(a) The City Manager shall be the chief administrative officer of the City. As such, he shall possess, have and exercise all the administrative powers vested in the City. He shall be chosen by the City Council solely on the basis of his administrative qualifications. The choice need not be limited to the inhabitants of the City or State. *However, within six (6) months following his or her appointment, the City Manager shall reside within the limits of the City.*

**B. Amendment to Charter Section 6.4 regarding City Clerk staff.**

Even though CB 1647 is now in effect regarding to whom the City Clerk's staff reports, the Committee feels that the citizens of Northglenn should have a say in a more permanent document, that is to say, one that is not easily changed by Councils.

As such, the Committee recommends that City Council consider proposing the following

amendment to Section 6.4 of the Northglenn Home Rule Charter. Proposed new language appears in *bold italics*.

Section 6.4 – City Clerk:

(a) The City Council shall appoint a City Clerk who shall be custodian of the City Seal and who shall keep a journal of Council proceedings and record in full all ordinances, motions and resolutions. The City Clerk shall have the power to administer oaths and take acknowledgements under Seal of the City and shall perform such other duties as required by this Charter or Ordinance. All records shall be made available for public inspection when and if requested, subject to the Colorado Open Records Law.

*(b) The City Clerk may employ such deputies and other employees of the City Clerk's Office as the City Clerk deems necessary and appropriate, and such employees shall be employees of the City of Northglenn, but subject to the direction of the City Clerk.*

C. Amendment to Charter Section 11.3 regarding utility rates.

We propose to limit utility charges to the direct cost incurred by the City in providing those services and to thereby prohibit graduated rates that are not directly related to the city's "direct cost" of providing water, sewer and trash collection service.

Since 1982, our water and sewer utility has been the most, or nearly the most, expensive around the metropolitan area. For more than 15 years, our "usage charges" (as that term is defined in Section 16-10-2(u) of the Northglenn Municipal Code<sup>2</sup>) for water have been more than the direct cost of service. In other words, we have been forced to pay a "surcharge" to have enough water to keep our lawns, trees and shrubs healthy, and the Committee feels this practice should be stopped. Because of the nature of the service we get in Northglenn, we understand that we can expect to pay more for our sewer costs, as well as for our trash collection system. Yet, what we are proposing would ensure that the users of the utilities pay only the real costs incurred by the City in providing those utility services. In other words, City utility charges should equal, and not exceed, the direct cost of actually providing the services, specifically operating and maintaining the utility systems.

Stated in another way, municipal utility charges (as shown by our City water bills' two types of charges) can be considered in one of two categories of expenses. The first category is how much service and or commodity is actually used. For example, this is the actual number of trash cans emptied or the actual number of gallons of water that flow into the house. This we call the "usage charge."

The second category is the expense of having and maintaining the capacity or ability to

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<sup>2</sup> Definitions of relevant terms are attached hereto and incorporated herein as **Exhibit A**. In addition, a flow chart graphically illustrating the City's utility system is attached hereto and incorporated herein as **Exhibit B**.

provide the service or utility, even if no actual use is made. This is the cost of creating and maintaining the treatment plants, the pipelines, the meters, the cost of owning trash trucks, and it is the cost of all of the maintenance that goes into keeping the whole utility in working order. This we call the “capital charge.” Taken together, the “usage charge” plus the “capital charge” equal the “direct cost” that each utility user can reasonably be asked to pay.

As such, the Committee recommends that City Council consider proposing the following amendment to Section 11.3 of the Northglenn Home Rule Charter. Proposed new language appears in *bold italics*.

Section 11.3 – Utility Rates:

...

(b) The City shall have the power to regulate the rates and charges of any utilities within the City not regulated by the Public Utilities Commission of the State of Colorado, *provided that all usage charges for utilities services shall be imposed at a rate directly dependent on the annualized cost of direct expenses for the actual operation and maintenance of the utility service.*

**D. Proposed sales tax question extending ½% sales tax.**

Without water, we have no City. As you may know, the City of Northglenn was conceived by Perl Mack as a planned community with fairly large lots, which have been and are still thought of as a good amenity for people looking to buy a home. We take great pride in our “Tree City USA” designation and encourage our residents to plant trees on their lots.

Trees, shrubs, grass, and flowers all contribute to our feeling of well being. If we didn’t have these living things around us, we would be a rather depressing community. Consistent with this, the City has put in place ordinances that make it an obligation of each property owner to maintain their property in a reasonable manner. Previous Councils have made this a high priority, with a stated “beautiful City” goal.

This priority is reflected in our Municipal Code requirements. For example, consider Section 11-6-14 of the Northglenn Municipal Code titled “Minimum Landscape Maintenance Requirements for Single Family, Two Family, Townhouse or Patio Homes” regarding landscaping requirements. It reads, in part, as follows, “...These minimum maintenance requirements are intended to enhance the appearance and maintain the value of residential neighborhoods...” Section 11-6-14(a). Section 11-6-14(d)(1), contains the following requirement: “The entire front, side and rear yards shall be landscaped except for hard-surfaced driveways and sidewalks.” Thus, by mandate of our own City code, the largest portion of “landscaping” of our homes now and for the foreseeable future requires water in order to be properly maintained.

As Council is aware, doubts have recently come to light about the sufficiency and reliability of the City’s current water rights, and a new crisis at the Bull Reservoir has the City

scrambling to make an expensive reservoir repair. Thus, in order to ensure that the City has enough water to meet this goal of a being a beautiful tree City, to continue to serve City residents and businesses' other water needs, and to continue to have the funds on hand needed to respond to emergencies within our water and sewer systems, the Committee proposes extending the sales tax that was enacted in 2001 by Resolution No. 01-40, which is set to expire on December 31, 2009.

Under the language the Committee proposes, revenue from the extended tax would go toward paying capital expenses for water and sewer utility services and would go toward efforts to enhance or increase the City's water and sewer system, including adding water rights.

As such, the Committee recommends that City Council consider proposing the following ballot question to the City's voters at the upcoming the November 4, 2008, special election. Please note that language for the type of ballot question posed here, one extending an existing tax that is set to expire, was reviewed by the Colorado Supreme Court in *Bruce v. City of Colorado Springs*, 129 P.3d 988 (Colo. 2006). The following language reflects wording that the Court found to be acceptable in that case.

QUESTION NO. \_\_\_\_:

WITHOUT RAISING ADDITIONAL TAXES, SHALL THE CITY OF NORTHGLENN'S EXISTING ONE-HALF PERCENT (1/2%) SALES AND USE TAX BE EXTENDED FROM ITS CURRENT EXPIRATION OF DECEMBER 31, 2009, UNTIL SUCH TIME AS THE CITY DETERMINES THAT IT HAS OBTAINED ULTIMATE BUILD-OUT WITH ADEQUATE AND PERMANENT WATER AND SEWER SYSTEMS, THE PROCEEDS OF SUCH ONE-HALF PERCENT (1/2%) SALES AND USE TAX TO BE USED EXCLUSIVELY FOR THE REDUCTION OF WATER AND SEWER CAPITAL EXPENSES OR TO ENHANCE OR INCREASE THE CITY'S WATER AND SEWER SYSTEMS; PROVIDED THAT SUCH SALES AND USE TAX SHALL CONTINUE NOT TO APPLY TO SALES OF FOOD FOR HOME CONSUMPTION?

### **III. Conclusion.**

In short, the Committee has worked diligently to transform its priorities into recommendations for Council's consideration in a time frame that will permit Council to place these items on the ballot in the upcoming special election. The Committee will make itself available at Council's convenience to further present, explain, or discuss our foregoing proposals.

At this time, the Committee would like to thank Council for the opportunity to conduct this important work of the citizens of Northglenn.

Definitions:

1. **Capital Charge:** To mean (as part of [16-10-2 (o)] “Operating, Maintenance, Direct, General and Accounting Costs.” Shall mean costs incurred by the City in operating and maintaining the water, wastewater, and trash collection systems. Excluding the “Annual Utility Capital Cost.” [16-10-2 (b)]. Such costs shall include, but not limited to: Labor, repairs, equipment replacement, necessary modification, power, sampling, laboratory testing, system administration, billing and reasonable contingency funds.
2. **Utility Usage Charge:** per [16-10-2 (u)], in part shall mean the City’s charges for fresh water usage, wastewater collection, Annual Utility Capital Cost (outstanding bonded indebtedness [#1, sunsets 2009, #2, wastewater indebtedness, sunsets, Dec. 1, 2022], trash collection/disposal and other associated costs of collection and/or rates and penalties.
3. **Base Charge:** Shall mean the minimum monthly charge as shown on Northglenn utility bills, which shall be the result of “Capital Charge”, plus “Utility Usage Charge”, which is presently on 7/6/08 including 3,000 gallons of water.
4. **Return Flow:** per [16-10-2 (r)] shall mean that water quantity which is used in any manner that enables the collection of the water for direct return to the City’s sewer/wastewater collection system.
5. **Non-return Flow:** per [16-10-2 (n)] shall mean the water quantity which is used in a manner that generally preclude the collection of that water, for direct return to the City’s wastewater treatment facilities.

Exhibit A  
CRC  
July, 2008

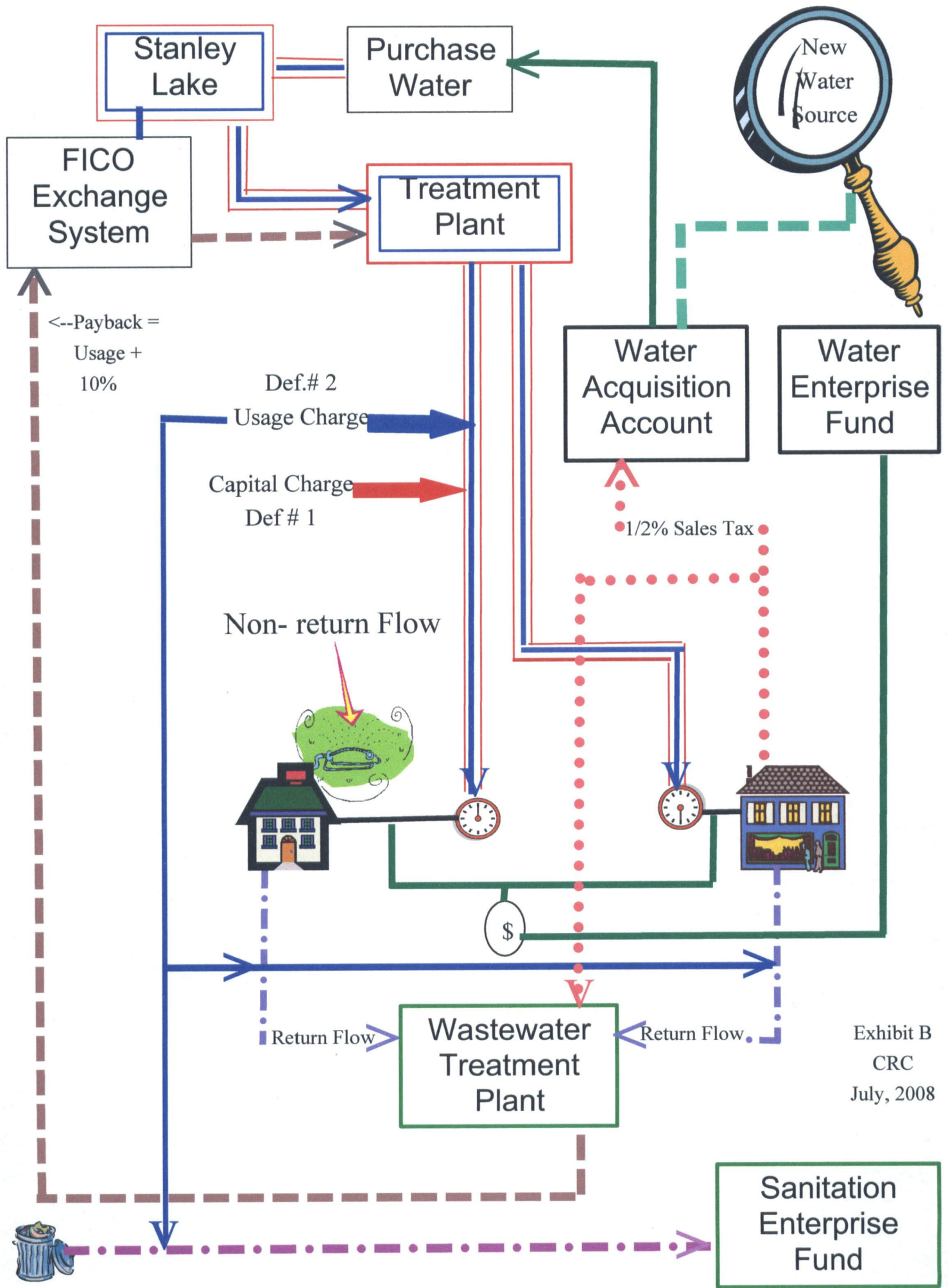


Exhibit B  
 CRC  
 July, 2008