

**FINANCE MEMORANDUM**  
**#18-01**

**DATE:** March 12, 2018

**TO:** Honorable Mayor Carol Dodge and City Council Members

**FROM:** James A. Hayes, AICP, City Manager *NH*  
Jason Loveland, Director of Finance *42*

**SUBJECT:** CB-1904 Sewer Enterprise

**PURPOSE:**

City Council is considering a bill which repeals and reenacts Article 20 of Chapter 16 of the Municipal Code to both conform to and clarify the application of Section 8.17 of the Home Rule Charter by creating a separate water utility and sewer utility.

**BACKGROUND:**

In 1994, the City established a Water Activity Enterprise for the purpose of maintaining water and sewer services, operations, administration, and construction. Section 8.17 of the City's Home Rule Charter was added by the voters in 2005. The Section prohibits spending of water and sewer funds from being spent or loaned for another City purpose other than water or sewer functions.

**UPDATE:**

CB-1904 establishes in clear terms that there are two distinct functions of water and sewer operations in the City and adds language to the Municipal Code restricting the spending of either of the operations funds, both pursuant to and consistent with Section 8.17 of the Charter. The proposed ordinance also creates two separate units for purposes of TABOR to allow one "unit" to be an enterprise, and the other to act as a typical governmental fund. Thus, going forward, the sewer utility would qualify as an enterprise within the meaning of TABOR because it could be supported by customer rates and charges, rather than by taxes.

**BUDGET IMPACT:**

CB-1904 does not have a budgetary impact.

**RECOMMENDATION:**

Staff recommends approval of CB-1904.

**STAFF REFERENCE:**

Contact Jason Loveland at [jloveland@northglenn.org](mailto:jloveland@northglenn.org) or at 303-450-8817.

SPONSORED BY: MAYOR DODGE

COUNCILMAN'S BILL

ORDINANCE NO.

No. CB-1904  
Series of 2018

\_\_\_\_\_  
Series of 2018

A BILL FOR AN ORDINANCE REPEALING AND REENACTING ARTICLE 20 OF CHAPTER 16 OF THE NORTHGLENN MUNICIPAL CODE TO CONFORM TO SECTION 8.17 OF THE CITY OF NORTHGLENN HOME RULE CHARTER BY CREATING A SEPARATE WATER UTILITY AND A SEPARATE SEWER UTILITY BOTH TO BE ACCOUNTED FOR IN THE CITY WATER AND SEWER UTILITY FUND

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. Article 20 of Chapter 16 of the Northglenn Municipal Code is repealed and reenacted to read as follows:

ARTICLE 20  
WATER AND SEWER UTILITY FUND

**Section 16-20-1.** Water and Sewer Utility Fund.

(a) Inclusions. The Water and Sewer Utility Fund established by Section 8.17 of the City of Northglenn Home Rule Charter shall include the separately maintained component funds identified below, to be known as the Water Utility Fund described in Section 16-20-2 and the Sewer Utility Fund described in Section 16-20-3 of the Article 20 of Chapter 16 of the Northglenn Municipal Code.

(b) Exclusions. All urban drainage facilities, programs, revenues and expenses are specifically excluded from the Water and Sewer Utility Fund created herein pursuant to Section 8.17 of the City of Northglenn Home Rule Charter.

**Section 16-20-2.** Water Utility Fund.

(a) Established. The Water Utility Fund is hereby established, which shall be that fund dedicated to account for all activities associated with providing water services, including, but not limited to, water conservation efforts, the acquisition of water rights, maximization of water storage facilities, provision of water services, and the construction, operation, administration, maintenance, repair and replacement of the water supply, water distribution system, and collection system.

(b) Revenues of the Water Utility Fund. The revenues of the Water Utility Fund are defined as all fees, rates, toll charges, availability fees, tap fees, connection fees, penalties, grants, loans, surcharges, investment income, any voter

authorized sales taxes dedicated to water acquisition or capital charge reduction, including food and other sources established by the Council now or in the future for the exclusive use of the Water Utility Fund.

**Section 16-20-3.**      Sewer Utility Fund and Sewer Enterprise.

(a)      Legislative Findings.

(1)      The City of Northglenn desires to establish its sewer utility activities as a water activity enterprise in the manner provided by state law, the financial operations of which shall be accounted for in the City's Sewer Utility Fund;

(2)      The members of the governing body of the City Council shall act as the governing body of the Sewer Enterprise;

(3)      Pursuant to Title 37, Article 45.1, Part 1, Colorado Revised Statutes (the "Act"), the establishment of water activity enterprises within or by entities of state and local government is critical to the health and welfare of the people of the State of Colorado;

(4)      The Act defines a "water activity enterprise" to include any water activity business owned by a district, including the provision of wastewater services, which enterprise receives under ten percent (10%) of its annual revenues in grants from all Colorado state and local governments combined and which is authorized to issue its own revenue bonds pursuant to this article or any other applicable law;

(5)      A "district" is defined in the Act to include municipalities;

(6)      "Water activity" is defined in the Act to include those activities provided by the Sewer Utility Fund of the City, including, but not limited to, the treatment, use, reuse, augmentation, exchange, or discharge of water as well as the provision of wholesale or retail wastewater services;

(7)      A "grant" in the context of the Act means a cash payment of public funds made directly to a water activity enterprise by the state or a local governmental entity or a district, which cash payment is not required to be repaid;

(8)      The City is a district under the Act which under Title 31, Article 35, Part 4, Colorado Revised Statutes, has its own bonding authority and which will be the sole owner of the Sewer Enterprise;

(9)      The City's Sewer Utility Fund at present operates on a fee-for-service basis and receives under ten percent (10%) of its annual revenues in grants from all Colorado state and local governments combined and the City intends to continue to operate in such manner that the

wastewater activity enterprise will receive under ten percent (10%) of its revenues from such grants;

(10) The Act provides at Section 37-45.1-104, Colorado Revised Statutes, that each water activity enterprise, through its governing body, may issue or reissue revenue bonds in accordance with and through the provisions of Section 37-45.1-104(2), Colorado Revised Statutes; and

(11) The City Council has determined that it is in the best interest of the City to designate its Sewer Utility Fund and its wastewater activities as a "water activity enterprise" pursuant to the Act and Article X, Section 20 of the Colorado Constitution ("TABOR").

(b) Established. The Sewer Utility Fund is hereby established, which shall be that fund dedicated to account for all activities associated with providing sewer and/or wastewater services, including, but not limited to, the provision of wastewater services, and the construction, operation, administration, maintenance, repair and replacement of the wastewater distribution, collection and treatment system.

(c) Revenues of the Sewer Utility Fund. The revenues of the Sewer Utility fund are defined as all fees, rates, toll charges, availability fees, tap fees, connection fees, penalties, grants, loans, surcharges, investment income, and other sources established by the Council now or in the future for the exclusive use of the Sewer Utility Fund.

(d) Establishment of the Sewer Utility Fund as an Enterprise. The City hereby reestablishes the Sewer Enterprise as an agency of the City and formally designates it as the "City of Northglenn, Colorado, Water Activity Wastewater Enterprise" (the "Sewer Enterprise"). It shall be the purpose of the Sewer Enterprise to pursue or continue all of the City's wastewater activities as defined in Title 37, Article 45.1, Part 1, Colorado Revised Statutes (the "Act"), as applicable to wastewater, including the construction, operation, repair, and replacement of wastewater facilities, using revenues and income generated by and earned or acquired in connection with such wastewater activities and held and managed in the City's Sewer Utility Fund. As between the City and the Sewer Enterprise, all wastewater activities will be deemed done and furnished by the Sewer Enterprise.

(e) Sewer Enterprise Excluded from the Provisions of TABOR. Pursuant to and in accordance with the Act, the Sewer Enterprise shall be excluded from the provisions of TABOR and shall be entitled to impose rates, fees, tolls, and charges; collect and spend revenues; issue revenue bonds; and construct, operate, and maintain facilities and provide wastewater services; all without reference or regard to the limitations contained in TABOR.

(f) Governing Body. The members of the City Council shall serve as the governing body of the Sewer Enterprise and shall be known collectively as the Board of Directors of the Sewer Enterprise. Acting as the Board, the City Council

may exercise the City's legal authority relating to wastewater activities as defined in the Act. The Board hereby is directed to take all actions necessary to cause the Sewer Enterprise to comply with all applicable laws.

(g) Powers of the Sewer Enterprise. The Sewer Enterprise shall have all powers and authority granted to wastewater activity enterprises by the provisions of the Act, including, but not limited to, the power to conduct and continue wastewater activities as defined in the Act; the power to contract with any person or entity, including other districts as defined in the Act and other water activity enterprises as defined in the Act; and the power to issue and reissue revenue bonds through its governing body in accordance with and through the provisions of Section 37-45.1-104(2), Colorado Revised Statutes.

(h) Sewer Enterprise Obligations and City Obligations. In consideration of the Sewer Enterprise's commitment to provide wastewater services, the City hereby agrees to continue to provide administrative services for the Sewer Enterprise and its activities, to continue to hold title to and own all of the assets currently owned by the City and necessary to the operation of the Sewer Enterprise, and to impose and collect all rates, fees, tolls, and charges for wastewater activities pursuant to Title 31, Article 35, Part 4, Colorado Revised Statutes. The relationship between the City and the Sewer Enterprise with respect to the administration of the Sewer Enterprise, the operation of the wastewater activities, and the duties and responsibilities of each party shall be as is delineated and clarified from time to time in that certain joint resolution of the City and the Board to be adopted when this Enterprise Ordinance is in full force and effect (the "Joint Resolution").

(i) Transactions in the Name of the City. Any and all transactions of the Sewer Enterprise may be done in the name of the City or in the name of the Sewer Enterprise and neither this subsection (h) of Section 16-20-3 nor any transaction entered into pursuant to it shall alter or abrogate the relationship of the City and the Sewer Enterprise as established in this Section 16-20-3, and further clarified from time to time in a Joint Resolution.

(j) Findings of the City Council. The City Council hereby makes the following specific findings with respect to the establishment of the Sewer Enterprise:

(1) The operations conducted, properties held, and funds accounted for in the City's Sewer Utility Fund, including the City's wastewater facilities and wastewater appurtenances all shall comprise the Sewer Enterprise which shall be and is the wastewater activity business owned by the City.

(2) The Sewer Enterprise shall be and is an agency of the City for the purposes and within the meaning of the following:

A. Title 24, Article 10, Part 1, Colorado Revised Statutes, the "Colorado Governmental Immunity Act";

- B. Title 29, Article 1, Part 6, Colorado Revised Statutes, the "Colorado Local Government Audit Law";
- C. Title 29, Article 1, Part 1, the "Local Government Budget Law of Colorado"; and
- D. All other local, state, and federal laws, rules, and regulations.

(3) The establishment of the Sewer Enterprise is necessary to assist in providing a secure water supply for domestic use by the inhabitants of the City and other domestic customer of the Sewer Enterprise; and to treat, reclaim, conserve, recharge, augment, exchange, or reuse water supplies; and to provide wastewater services.

(4) The City has the authority to conduct water activities as defined in the Act and is the sole owner of the Sewer Enterprise as required by the Act. The City has bonding authority for wastewater activities pursuant to Title 31, Article 35, Part 4, Colorado Revised Statutes, all as required by the Act.

(5) The Sewer Enterprise receives under ten percent (10%) of its annual revenues in grants (as defined in the Act) from all Colorado state and local governments combined, having received (as the Sewer Utility Fund of the City's Water and Sewer Utility Fund), less than ten percent (10%) of its revenues for the preceding one (1) year from all state and local grants and expecting to receive none of its revenues for the next calendar year from such sources.

(6) Pursuant to the Act, the Sewer Enterprise is authorized to issue its own revenue bonds.

(7) The Sewer Enterprise does not and shall not levy any tax whatsoever, nor shall any rates, tolls, fees, or charges imposed or collected by the Sewer Enterprise ever be deemed to be taxes for any purpose under any law, rule, or regulation, whether local, state, or federal.

(k) Termination. The Sewer Enterprise shall remain in existence at the will of the City Council and in accordance with law. In the event that the Sewer Enterprise is terminated by operation of law or by act of the City Council, any and all assets of the Sewer Enterprise, immediately and without the need for further action, shall be deemed to be and shall be assets of the City.

**Section 16-20-4.** Certain Expenditures Prohibited. The City Council, the City Manager and other administrative officials are prohibited from expending, transferring or loaning any revenues or unencumbered appropriation balances of the Water Utility Fund or the Sewer Utility Fund permanently or temporarily for any purpose not reasonably related to the purpose of the Water Utility Fund or the Sewer Utility Fund as set forth herein

INTRODUCED, READ AND ORDERED POSTED this \_\_\_\_ day of \_\_\_\_\_,  
2018.

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ANTONIO B. ESQUIBEL  
Mayor Pro Tem

ATTEST:

\_\_\_\_\_  
JOHANNA SMALL, CMC  
City Clerk

PASSED ON SECOND AND FINAL READING this \_\_\_\_ day of \_\_\_\_\_,  
2018.

\_\_\_\_\_  
CAROL A. DODGE  
Mayor

ATTEST:

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JOHANNA SMALL, CMC  
City Clerk

APPROVED AS TO FORM:

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COREY Y. HOFFMANN  
City Attorney