


**CITY MANAGER'S OFFICE
MEMORANDUM
#36-2018**

DATE: October 22, 2018
TO: Honorable Mayor Carol Dodge and City Council Members
FROM: Heather Geyer, City Manager 
SUBJECT: CB-1915 – Croke Reservoir Special Ordinance

PURPOSE

City Council is considering CB-1915 for public hearing and second reading concerning Croke Reservoir. The proposed special ordinance is consistent with the Croke Initiative. Staff received direction from City Council at the October 1, 2018 Study Session to bring the special ordinance, as proposed, forward for consideration. City Council approved the proposed ordinance on first reading at the October 8, 2018 City Council meeting.

BACKGROUND

Ownership

Croke Reservoir #7 was originally owned by the City of Thornton. In 1987, the Reservoir was sold to the City of Northglenn for \$10. Northglenn stores only stormwater in Croke Reservoir.

Citizen Initiative Process

On June 26, 2018, initiative proceedings commenced by the filing of an Affidavit of Petitioners' Committee to propose an ordinance to require the City Council to act on issues regarding Croke Reservoir, or to submit the issues to the electors of the City at the November 6, 2018 election. The following five electors constituted the Petitioners' Committee: Helmut Koeckert, Gale Ortiz, Tava Morgan, Mark D. Johnson, and Gary R. Stribling.

The Petitioners' Committee filed petition sections signed by 723 individuals. Of those signatures, 609 signatures were found to be valid signatures of qualified Northglenn electors, which exceeded the 557 signatures required by Section 5.3(a) of the City Charter for the petition to be deemed sufficient.

On August 24, 2018, the City Clerk's Office determined that the petition to initiate an ordinance to require City Council to act on issues regarding Croke Reservoir was sufficient per Article V of the City of Northglenn Home Rule Charter.

Article V, Section 5.1 of the City Charter allows electors of the city to propose an ordinance. Pursuant to Section 5.6(a) of the City Charter, the City Council has the authority to change the language of the initiative ordinance "so long as the general character of the measure will not be substantially altered." Section 5.1 of the City Charter further limits the power of initiative to exclude budget and capital programs from the reserved power of the initiative.

The attached special ordinance outlines five actions the City can take that is consistent with the Croke Initiative.

1. Designated nature area – Section 2 of the draft ordinance subsection a.

The Croke Reservoir is and shall be preserved as a nature area, consistent with Ordinance No. 1456, Series of 2006, designating it as a nature area.

2. Maintain water quality – Section 2 of the draft ordinance subsection b.
City staff is directed to continue to actively maintain the water quality, care for the surrounding landscaping, and maintain the Croke Reservoir as an amenity where users of the Croke Reservoir can view wildlife, and enjoy the natural environment.
3. Coordination with the Colorado Division of Wildlife – Section 2 of the draft ordinance subsection c.
City staff is further directed to continue to work with the Colorado Division of Parks and Wildlife to coordinate the stocking of Croke Reservoir with fish, and continue to conduct fish surveys and analysis as necessary to assure a healthy and vital opportunity for users of the Croke Reservoir to have a place to fish.
4. City Budget – Section 2 of the draft ordinance subsection d.
The City shall budget and track spending related to water quality of the Croke Reservoir.
5. Parks and Recreation Advisory sub-committee – Section 3 of the draft ordinance.
The City Council hereby directs that the Parks and Recreation Advisory Board create an advisory sub-committee to advise the Parks and Recreation Advisory Board on the Croke Reservoir. Said advisory sub-committee shall consist of Northglenn residents interested in acting on such an advisory sub-committee, in a manner determined by the Parks and Recreation Advisory Board. Said advisory sub-committee shall assist the Parks and Recreation Advisory Board in making recommendations to the City Council regarding the Croke Reservoir, to further enable the public to have additional opportunity to have input on the Croke Reservoir consistent with the Croke Initiative. Provided, however, there shall be no obligation to continue said advisory sub-committee if no interested Northglenn residents desire to participate.

If the special ordinance is adopted by City Council, staff will bring forward the creation of the sub-committee outlined above to the Parks and Recreation Advisory Board on November 8, 2018. Staff will provide an update to the Advisory Board on October 11, 2018. As discussed at the October 1, 2018 Study Session, the proposed sub-committee, once organized, will discuss how they would like to move forward with specific activities related to Croke.

Water Rights Application

On an item, separate but related to the Croke Initiative, on September 12, 2018 the City received notification from Corey DeAngelis, Division Engineer at the State Engineer's Office that the City does not have the right to store stormwater in Croke Reservoir. Storing stormwater legally requires an augmentation plan approved through the Colorado Water Court. Following direction from City Council, staff formally submitted an application to the State Engineer's Office on Friday, September 28, 2018. The City expects this process to take two years if not longer. As part of the City's application to the State, staff will be moving forward with updating the area capacity curve and implementing a temporary staff gauge. Both of these items are unbudgeted but can be absorbed in the Water Resources operating budget.

UPDATE

On October 8, 2018, City Council approved CB-1915 on first reading and set a public hearing on the proposed ordinance for October 22, 2018. Notice of the public hearing was posted on October 10, 2018.

BUDGET IMPLICATIONS

For 2018, the City will need to spend approximately \$6,000 to conduct work required as part of our application to the State Engineer’s Office. Again, both of these items can be absorbed in the 2018 Water Resources operating budget. During 2019, installation of a permanent staff gauge should be completed, the anticipated cost of installing a permanent staff gauge is expected to be around \$10,000.00. This work, is not in the 2019 proposed budget, but can be absorbed into the 2019 Water Resources operating budget. The City spends \$3,300 annually to maintain Croke Reservoir. Approximately 170 hours of staff time is also dedicated to water quality/reservoir activities.

TIME IMPLICATIONS

Second reading and public hearing on the proposed special ordinance is scheduled for October 22, 2018. If CB-1915 is adopted on second reading, it will take effect five days after publication in the Northglenn-Thornton Sentinel.

RECOMMENDATION

This item is provided for public hearing and second reading. Staff recommends approval of CB-1915 approving the Croke Reservoir proposed special ordinance.

STAFF REFERENCE

Heather Geyer, City Manager, hgeyer@northglenn.org, 303.450.8706.

CB-1915 – Croke Reservoir special ordinance

SPONSORED BY: MAYOR DODGE

COUNCILMAN'S BILL

ORDINANCE NO.

No. CB-1915
Series of 2018

Series of 2018

A BILL FOR A SPECIAL ORDINANCE CONSIDERING THE INITIATED ORDINANCE REGARDING THE CROKE RESERVOIR, APPROVING THE SAME WITH CHANGES THAT DO NOT SUBSTANTIALLY ALTER THE GENERAL CHARACTER OF THE INITIATED ORDINANCE TO IMPLEMENT THOSE PORTIONS OF THE INITIATED ORDINANCE CONSISTENT WITH THE CITY OF NORTHGLENN HOME RULE CHARTER AND COLORADO LAW

WHEREAS, on August 24, 2018, the City Clerk of the City of Northglenn determined that the petition to initiate an ordinance to require the City Council to act on issues regarding Croke Reservoir (the "Croke Initiative") was sufficient pursuant to Article V of the City of Northglenn Home Rule Charter (the "Charter");

WHEREAS, pursuant to Section 5.6(a) of the Charter, the City Council may "change the detailed language of any proposed initiative ordinance so long as the general character of the measure will not be substantially altered";

WHEREAS, under the Charter and Article V of the Colorado Constitution, the power of initiative is limited to the creation of legislation, and may not address issues of administrative concern;

WHEREAS, Section 5.1 of the Charter further limits the power of initiative to exclude, *inter alia*, budget and capital programs from the reserved power of initiative;

WHEREAS, the City Council desires to approve the Croke Initiative in accordance with Section 5.6 of the Charter, by approving it with changes that do not substantially alter the general character of the Croke Initiative, and implementing those portions that Council can implement consistent with the Charter and Colorado law;

WHEREAS, in order to approve the Croke Initiative as set forth above, the City Council makes the following specific findings of fact:

A. Current Use of the Reservoir for Stormwater Detention. The City finds as follows:

1. The City finds that it does not have a conveyance structure to convey any water other than stormwater into the Croke Reservoir because the City neither owns nor has a right to use any conveyance structure that can convey water from the Farmers' Highline Canal into the Croke Reservoir;

2. The City is in the process of applying for necessary rights to allow the storage of stormwater in the Croke Reservoir consistent with historical practice;
3. In the absence of the water rights necessary to allow the storage of stormwater in the Croke Reservoir, the City would no longer be able to maintain Croke Reservoir as a stormwater control facility and would be required to drain the Croke Reservoir;
4. As a stormwater control structure, the Croke Reservoir reduces the risk of significant flooding to residents and businesses to the east, along Grange Hall Creek;
5. Extra space (freeboard) in the Croke Reservoir also provides flood protection to the homes located to the south and west of the Croke Reservoir, and the storage of water in addition to stormwater would adversely impact the stormwater control ability of Croke Reservoir creating the likelihood of additional flooding in the area; and
6. The City is therefore only to use the Croke Reservoir to store stormwater once it acquires the necessary rights to do so, and the attempt in the Croke Initiative to require the storage of water rights other than stormwater that the City is unable to deliver violates Section 5.1 of the Charter.

B. Use of the Reservoir as a Nature Area. Consistent with the Croke Initiative, the City finds as follows:

1. The City Council desires to preserve the Croke Reservoir as a nature area and manage it an urban fishery in cooperation with the Colorado Division of Wildlife;
2. The City Council further desires to continue to dedicate staff time and budgetary resources to continue to manage water quality in the Croke Reservoir, including attempting to minimize the presence of blue-green algae blooms;
3. The City has historically allocated resources and identified funds in the budget, and shall identify such funds in the 2019 budget to continue to address the use of the Croke Reservoir as a nature area; and
4. Provided, however, Croke Reservoir is not "toxic," and the City shall continue to utilize best practices in the management of the Croke Reservoir as a significant and important amenity of the City.

C. Administrative, Budget and Capital Program Restrictions. The City finds that in addition to the restrictions related to water rights, the City is further constrained as follows:

1. A moratorium on future capital programs is not subject to the power of initiative under Section 5.1 of the Charter;
2. The City is constitutionally prohibited from indemnifying the general public; and
3. In addition to the reasons associated with the City's water rights for the Croke Reservoir, a specific redesign of the Croke Reservoir in a manner inconsistent with the City's water rights is prohibited by Section 5.1 of the Charter as initiating a component of a capital program.

WHEREAS, the City nonetheless by the adoption of this Special Ordinance seeks to approve the Croke Initiative in accordance with Section 5.6 of the Charter, by approving it with changes that do not substantially alter the general character of the Croke Initiative, and implementing those portions that Council can implement consistent with the Charter and Colorado law.

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

Section 1. The recitals set forth above are incorporated herein by this reference.

Section 2. The City Council further determines as follows consistent with the Croke Initiative:

- A. The Croke Reservoir is and shall be preserved as a nature area, consistent with Ordinance No. 1456, Series of 2006, designating it as a nature area;
- B. City staff is directed to continue to actively maintain the water quality, care for the surrounding landscaping, and maintain the Croke Reservoir as an amenity where users of the Croke Reservoir can view wildlife, and enjoy the natural environment;
- C. City staff is further directed to continue to work with the Colorado Division of Parks and Wildlife to coordinate the stocking of Croke Reservoir with fish, and continue to conduct fish surveys and analysis as necessary to assure a healthy and vital opportunity for users of the Croke Reservoir to have a place to fish; and
- D. The City shall budget and track spending related to water quality of the Croke Reservoir.

Section 3. The City Council hereby directs that the Parks and Recreation Advisory Board create an advisory sub-committee to advise the Parks and Recreation Advisory Board on the Croke Reservoir. Said advisory sub-committee shall consist of Northglenn residents interested

in acting on such an advisory sub-committee, in a manner determined by the Parks and Recreation Advisory Board. Said advisory sub-committee shall assist the Parks and Recreation Advisory Board in making recommendations to the City Council regarding the Croke Reservoir, to further enable the public to have additional opportunity to have input on the Croke Reservoir consistent with the Croke Initiative. Provided, however, there shall be no obligation to continue said advisory sub-committee if no interested Northglenn residents desire to participate.

INTRODUCED, READ AND ORDERED POSTED this 8th day of October, 2018.



CAROL A. DODGE
Mayor

ATTEST:



JOHANNA SMALL, CMC
City Clerk

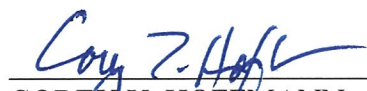
PASSED ON SECOND AND FINAL READING this ____ day of _____, 2018.

CAROL A. DODGE
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:



COREY Y. HOFFMANN
City Attorney