

RESOLUTION 10-56

INTRODUCED BY:

Councilperson Hamilton-Bruer

Councilperson Shul

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF CASTLE PINES NORTH
ESTABLISHING THE CASTLE PINES NORTH WATER &
WASTEWATER ENTERPRISE**

WHEREAS, the City of Castle Pines North, Colorado (the "City"), is a statutory city and political subdivision of the State of Colorado, duly organized and operating under the constitution and laws of the State of Colorado; and

WHEREAS, Article X, Section 20 of the Colorado Constitution, commonly referred to as the TABOR amendment, provides that an enterprise is a government owned business that is authorized to issue its own revenue bonds, and which does not receive in excess of ten percent (10%) of its total operating budget from other governmental entities; and

WHEREAS, an enterprise is exempt from the provisions of the TABOR amendment; and

WHEREAS, pursuant to Title 31, Article 35, Part 4, C.R.S., the City is authorized to own and operate water facilities and sewer facilities and to issue revenue bonds in connection therewith; and

WHEREAS, pursuant to Title 37, Article 45.1, Part 1, C.R.S. (the "Water Activity Law"), state and local governmental entities which have their own bonding capacity under applicable law are authorized: (i) to establish or continue to maintain water activity enterprises for the purpose of pursuing or continuing water activities, which includes the diversion, storage, carriage, delivery, distribution, collection, treatment, use, reuse, augmentation, exchange, and discharge of water, the provision of wholesale or retail water or wastewater or storm water services and the acquisition of water or water rights; and (ii) to issue or reissue bonds, notes, or other obligations payable from the revenues derived or to be derived from the function, service, benefits, or facility or from any other available funds of the enterprise, the terms and conditions of such bonds or other obligations to be as set forth in the resolution authorizing the same and, as nearly as practicable, as provided in Part 4 of Article 35 of Title 31, C.R.S., relating to water and sewer revenue bonds; and

WHEREAS, the City Council desires to establish an enterprise to be known as the Castle Pines North Water & Wastewater Enterprise, the purpose of which will be to own and operate the current and future water, wastewater and stormwater operations of the City of Castle Pines

North, and to have all powers and authority granted to water activity enterprises set forth in § 37-45.1-101 *et seq.*, C.R.S., as now existing or as hereafter amended.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH, COLORADO, THAT:

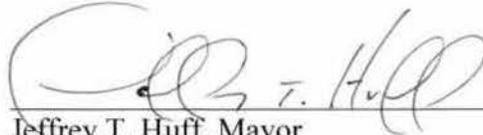
Section 1. There is hereby established the Castle Pines North Water & Wastewater Enterprise (the "Enterprise"). The Enterprise shall be owned by the City of Castle Pines North and shall operate as a government owned business. The Enterprise shall be authorized and empowered to issue revenue bonds as required to finance: (a) the acquisition of water and/or water rights; and (b) the operation of the Enterprise, including acquisition, design, construction and maintenance of facilities required to provide water, wastewater and stormwater related services to the residents of and property owners in the City of Castle Pines North. The Enterprise shall also be authorized to establish, charge and collect such fees and charges as may from time to time be required and established to fund the operation and maintenance of any of the facilities, or acquisition of any of the rights, described above. The Enterprise shall have all of the authority, powers, rights, obligations, and duties as may be provided or permitted by the Water Activity Law and the constitution and laws of the state, and as may be further prescribed by ordinance or resolution of the City.

Section 2. The governing body of the Enterprise shall be the City Council, and shall be subject to all of the applicable laws, rules, and regulations pertaining to the City Council. Whenever the City Council is in session, the governing body of the Enterprise shall also be deemed to be in session, and whenever the City Council acts with regard to the Enterprise, it shall be deemed to be acting as both the City Council and the governing body of the Enterprise. It shall not be necessary for the governing body of the Enterprise to meet separately from the regular and special meetings of the City Council, nor shall it be necessary for the governing body of the Enterprise to specifically announce or acknowledge that actions taken thereby are taken by or as the governing body of the Enterprise. The governing body of the Enterprise may conduct its affairs in the same manner and subject to the same laws which apply to the City Council for the same or similar matters; provided that (i) in accordance with §37-45.1-104(2), C.R.S., the governing body may authorize the issuance of bonds or other obligations by adoption of a resolution; and (ii) adoption of an ordinance by the City Council authorizing the issuance of bonds or other obligations payable from revenue of the Enterprise shall constitute approval of such ordinance by the governing body of the Enterprise.

Section 3. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining issues of this Resolution.

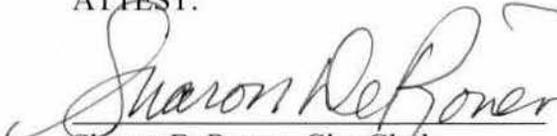
Section 4. **Effective Date.** This Resolution shall take effect upon its approval by the City Council.

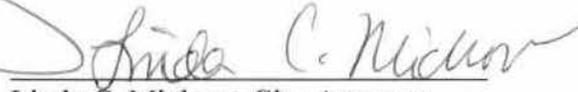
INTRODUCED, READ AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH by a vote of five (5) in favor, none against, and two (2) absent this 22nd day of June, 2010.


Jeffrey T. Huff, Mayor

ATTEST:

APPROVED AS TO FORM:


Sharon DeRouen, City Clerk


Linda C. Michow, City Attorney



City of Castle Pines North, Colorado

CITY COUNCIL COMMUNICATION FORM

AGENDA ITEM – Resolution No. 10-56

FROM: Marcus McAskin, Assistant City Attorney

DATE: June 14, 2010

ITEM: Resolution Establishing the Castle Pines North Water & Wastewater Enterprise

NEXT STEP: Direct Hammersmith Management to establish Enterprise Fund, and continue staff-level discussions with the Castle Pines North Metropolitan District regarding integration of services

- I. **REQUEST OR ISSUE:** Resolution No. 10-56, as proposed, establishes the Castle Pines North Water & Wastewater Enterprise (the "Enterprise"). Article X, Section 20 of the Colorado Constitution, commonly referred to as the TABOR amendment, provides that an enterprise is a government owned businesses that is authorized to issue its own revenue bonds, and which does not receive in excess of ten percent (10%) of its total operating budget from other governmental entities. As set forth in the proposed Resolution, the primary purpose of the Enterprise is to own and operate the current and future water, wastewater and stormwater operations of the City of Castle Pines North.
- II. **RECOMMENDED ACTION / NEXT STEP:** It is Staff's recommendation that the City create the Enterprise at the current time, such that water, wastewater and stormwater services may be provided by the City of Castle Pines North, through the Enterprise, at a future date. Assuming City Council approves Resolution No. 10-56, the Enterprise will be created and the City's accountant, Hammersmith Management, will be directed to establish an Enterprise fund.
- III. **FISCAL IMPACTS:** Establishment of the Enterprise will currently have minimal financial impact, as Resolution No. 10-56 designates City Council as the governing body of the Enterprise and no significant accounting activity required for the Enterprise is expected to occur in the short term.
- IV. **BACKGROUND INFORMATION:** Currently, water, wastewater and certain stormwater related services are provided to property owners within the City by the Castle Pines North Metropolitan District (the "District"). City Staff, including the City's Interim Utility Director, is currently meeting with the District to discuss how the City and District can best integrate or consolidate services in order to effect cost savings that will benefit the residents and taxpayers of both entities. The Interim Utility Director has recommended that the City establish the Enterprise at the current time in order to ensure that the City will be ready to provide utility services to all properties located within its municipal boundaries (as those may change from time to time) once the City and District have agreed on a mutually acceptable transition of services date, or the City otherwise becomes responsible for providing the utility services presently provided by the District.
- V. **LEGAL ISSUES:** Pursuant to Title 37, Article 45.1, Part 1, C.R.S., state and local governmental entities which have their own bonding capacity under applicable law are authorized: (i) to establish or continue to maintain water activity enterprises for the purpose of pursuing or continuing water activities, which includes the diversion, storage, carriage, delivery, distribution, collection, treatment, use, reuse, augmentation, exchange, and discharge of water, the provision of wholesale or retail water or wastewater or stormwater services and the acquisition of water or water rights; and (ii) to issue or reissue bonds, notes, or other obligations payable from the revenues derived or to be derived from the function, service, benefits, or facility or from any other

available funds of the enterprise. The City's authority to issue bonds for water and wastewater purposes is set forth in Title 31, Article 35, Part 4, C.R.S.

VI. CONFLICTS OR ENVIRONMENTAL ISSUES: None.

VII. SUMMARY AND ALTERNATIVES: Resolution No. 10-56 establishes the Castle Pines North Water & Wastewater Enterprise and designates the City Council as the governing body of the Enterprise. The City Council can:

- (1) Approve Resolution No. 10-56;
- (2) Amend Resolution No. 10-56 and direct Staff to schedule consideration of the Resolution, as amended, at a future public meeting of City Council; or
- (3) Reject or deny Resolution No. 10-56.

cc: CPN Elected Officials via Council Meeting Packet
CPN Staff via Email