

ORDINANCE NO. 22-12

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
CASTLE PINES, COLORADO AMENDING CHAPTER 4 AND
ADOPTING A NEW CHAPTER 12 OF THE MUNICIPAL CODE TO
ESTABLISH A CITY STORMWATER UTILITY ENTERPRISE AND
ENTERPRISE FUND**

WHEREAS, the City of Castle Pines is a Colorado home rule municipality (the “City”) authorized by the laws of the State of Colorado and Section 10.10 of its Home Rule Charter to establish a stormwater utility enterprise and enterprise fund, and to adopt a system of charges to fund the implementation of stormwater facilities and systems;

WHEREAS, pursuant to an intergovernmental agreement between the City and the Castle Pines Metropolitan District (“CPNMD”) dated June 29, 2022 (“IGA”), the City and the CPNMD agreed that the CPNMD would transfer all responsibility for the ownership, operation and maintenance of the District’s stormwater system and necessary property rights to the City for the City to own, operate, maintain and manage in perpetuity;

WHEREAS, in accordance with the terms of the IGA, the City agreed to establish a stormwater utility enterprise and to create a special fund into which stormwater management fees would be deposited to be used solely for stormwater related purposes;

WHEREAS, the City desires to establish such stormwater utility enterprise within the meaning of Article X, Section 20 of the Colorado Constitution (“TABOR”) and to authorize the enactment of stormwater management fees based on engineering studies and analysis;

WHEREAS, all real property in the City, including property owned by public and tax- exempt entities, contributes to runoff and either uses or benefits from the stormwater system;

WHEREAS, stormwater runoff contributes to nonpoint source pollution to the streams of the City's watersheds and a stormwater management program can reduce this type of pollution;

WHEREAS, the City is subject to certain stormwater and drainage requirements imposed by federal and state agencies;

WHEREAS, the City Council finds it is necessary for the City to plan for and provide facilities to drain and control stormwater properly within the City so that the pollution of underground and surface waters is reduced and the natural environment is enhanced; and

WHEREAS, it is in the interest of the public to manage stormwater runoff and to fund

stormwater management with a fee system that allocates the costs of stormwater management to all property owners in the City.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Castle Pines, Colorado:

Section 1. Chapter 4, titled *Revenue and Finance*, of the Castle Pines Municipal Code is hereby amended by the addition of a new Article 2 to read as follows:

CHAPTER 4 – REVENUE AND FINANCE

* * *

ARTICLE 2 - Special Funds

Sec. 4-2-10. - Stormwater Utility Fund.

There is established a special fund to be known as the Stormwater Utility Fund, which shall be segregated from the general and other funds of the City, and into such fund shall be deposited all stormwater management fees collected pursuant to Chapter 12 of this Code. Monies in the Stormwater Utility Fund shall not be transferred therefrom to any other account or fund of the City and shall be used only for purposes authorized by Chapter 12.

Section 2. The Castle Pines Municipal Code is hereby amended by the addition of a new Chapter 12 to read as follows:

CHAPTER 12 -STORMWATER UTILITY ENTERPRISE

Sec. 12-1-10. – Legislative Declaration.

(a) The general health, welfare and safety of the people of Castle Pines is protected and safeguarded by the accommodation of stormwater drainage and control. It is necessary for the City to plan for and provide facilities to drain and control stormwater properly within the City so that the pollution of underground and surface waters is reduced and the natural environment is enhanced. In furtherance of this declaration, City Council recognizes the following principles:

- (1) All residents, businesses and properties within the City of Castle Pines benefit from the City stormwater drainage system. These benefits include enhanced public safety and a general improvement to the quality of life

and the business climate within the City of Castle Pines.

- (2) It is just, reasonable and appropriate to recover the costs of the public stormwater drainage system from the individuals, businesses and properties located in the City of Castle Pines through a service charge. Service charges, also known as service fees, are a recognized method by which a home rule city can collect the costs of a service from the individuals, businesses, and properties that benefit from the service.
- (3) An effective and fair funding system for necessary public stormwater facilities is desirable and should be established. Service charges or fees should be established by City Council in amounts sufficient to defray the development, capital improvements, operations and maintenance costs of the public stormwater drainage system and should be charged to properties located within the City of Castle Pines, both residential and nonresidential, that benefit from the stormwater service provided by the City.

(b) A stormwater management fee benefits all users of the City's stormwater facilities by allowing for the construction, improvement, operation and maintenance of public stormwater facilities and a public stormwater system in the City. These facilities and the system, in turn, promote the general health, safety and welfare of users during storms and floods, and provide other benefits, including, but not limited to: 1) protecting the movement of emergency vehicles and emergency personnel; 2) keeping access open to necessary and critical public and private facilities and buildings; 3) preventing death and injury to persons; 4) preventing damage to public and private property; 5) protecting the continued operation of other public utility services; and 6) allowing compliance with the clean water requirements of federal law.

(c) The provision of stormwater drainage and control through a stormwater enterprise, a financially self-sufficient activity supported by the fees it collects, best serves the public interests identified in this declaration.

Sec. 12-1-20. - Definitions.

Director means the City Manager or designee.

Project costs means those costs of administration, operation, management, planning, financing, engineering, testing, installation, construction, maintenance, reconstruction, replacement, land acquisition, contingencies, fiscal and legal costs of stormwater facilities, including those costs incurred to comply with federal, state or local laws regulating stormwater facilities or runoff.

Property owner means the current owner as shown in the records of the Douglas

County Assessor, including an individual, corporation, firm, partnership, or group of individuals acting as a unit, and any trustee, receiver, or personal representative.

Revenue bonds means bonds, notes or other obligations lawfully issued or otherwise contracted for, payable from the revenues derived or to be derived from the functions, services, benefits, or facilities of the stormwater utility enterprise or from other available funds of the stormwater utility enterprise.

Runoff means that part of snowfall, rainfall or other stormwater that is not absorbed, transpired, evaporated, or left in surface depressions and that then flows controlled or uncontrolled into a watercourse or body of water.

Stormwater facilities means any one or more of the various devices used in the collection, disposition, or treatment of storm, flood or surface drainage waters, including without limitation manmade structures and natural watercourses for the conveyance of runoff, conduits and appurtenant features, canals, ditches, streams, gulches, gullies, flumes, culverts, streets, curbs, gutters, detention areas, pumping stations, pipes and related equipment and appurtenances; all extensions, improvements, remodeling, additions and alterations thereof; and any and all rights or interest in such stormwater facilities.

Stormwater management fee means the fee authorized under this Chapter in the amount set by resolution of the City Council.

Stormwater system means the network of stormwater facilities located in whole or in part in the City, including without limitation inlets, conduits, manholes, channels, ditches, drainage easements, retention and detention basins, infiltration facilities and other components, as well as all-natural waterways.

Sec. 12-1-30. - Stormwater utility enterprise.

(a) There is hereby created a stormwater utility enterprise in the City. The stormwater utility enterprise is an enterprise operation of the City of Castle Pines. The stormwater utility enterprise may not levy a tax which is subject to Section 20(4) of Article X of the Colorado constitution.

(b) The Director shall operate the enterprise to ensure:

(1) The enterprise functions as a self-sustaining government-owned business which may issue its own revenue bonds; and

(2) The enterprise receives less than ten percent (10%) of its annual revenues in grants from all Colorado state and local governments combined.

(c) The stormwater utility enterprise is empowered to coordinate, design, conduct, manage, operate and maintain the stormwater and flood management systems and stormwater facilities of the City and implement the provisions of this Chapter.

(d) The City Council shall act as the governing body of the stormwater utility enterprise. The mayor shall serve as chair and the mayor pro-tem shall serve as vice-chair of the board. The city clerk shall serve as secretary of the board. City Council may conduct all business and actions of the enterprise at City Council meetings in accordance with city council meeting procedures, and the record of the enterprise's proceedings may be incorporated into such meeting minutes.

Sec. 12-1-40. - Stormwater utility fee.

(a) There is hereby imposed a stormwater management fee in an amount to be set by resolution of the City Council that allocates the costs of stormwater management to all property owners in the City. All fees collected shall be placed in the Stormwater Utility Fund established in Section 4-2-10 of this Code.

(b) Monies in the Stormwater Utility Fund and income earned thereon shall be used only for the following purposes:

a. The acquisition by gift, purchase or condemnation of real and personal property, and interests therein, necessary to construct, operate, and maintain stormwater facilities;

b. Costs of administration and implementation of the City's stormwater management program, including the establishment of reasonable operating and capital reserves to meet unanticipated or emergency stormwater management requirements;

c. Engineering and design, debt service and related financing expenses, construction costs for new facilities, and enlargement or improvement of existing facilities;

d. Operation and maintenance of the stormwater system;

e. Monitoring, surveillance, and inspection of stormwater control devices;

f. Water quality monitoring and water quality programs;

g. Retrofitting developed areas for pollution control;

- h. Inspection and enforcement activities;
- i. Billing and administrative costs;
- j. Implementation of programs designed for education, public involvement, elimination of illicit discharges, construction site erosion control, post-construction monitoring, and municipal operations; and
- k. Other activities reasonably required to manage stormwater runoff in the City or to comply with applicable federal and state laws, rules and regulations that regulate the flow, treatment and discharge of runoff into the waters of the United States or the waters of the State of Colorado.

Section 12-1-50. - Debt issuance.

- (a) The stormwater utility enterprise is authorized to issue revenue bonds for the payment or other financing of eligible project costs or for the purpose of refunding any revenue bonds issued for such purpose.
- (b) The City may pledge all or any portion of the Stormwater Utility Fund, including revenues anticipated to be collected, to the payment of principal, interest, premiums, if any, and reserves for revenue bonds, issued for the payment or other financing of any of the activities of this Chapter, including without limitation to eligible project costs, or for the purpose of refunding any revenue bonds issued for such purposes.

Section 12-1-60. -Administration and review.

- (a) The Director shall administer this Chapter and may prescribe forms and rules and regulations in conformity with this Chapter. The Director is authorized to issue determinations related to the interpretation of this Chapter or any rules and regulations adopted hereunder.
- (b) Every determination of the Director related to a specific property owner shall be in writing and notice thereof shall be served upon or mailed by first-class mail, postage prepaid to the affected person at his or her address shown on the records of the City. Service by first- class mail as provided herein shall be conclusive evidence of service of such decision or determination.
- (c) Any person aggrieved by any determination of the Director may petition the Director for a hearing on such determination no later than thirty (30) days after the date of the determination, on a form provided by the Director.
- (d) The petition shall specify in detail the reasons that the determination

should be modified or overturned and shall be accompanied by all documents or other evidence supporting the petition.

(e) The Director shall schedule a hearing on the petition not less than sixty (60) days from the date the Director receives the petition, before the City Council or an appointed hearing officer. Notice of the hearing shall be given to the petitioner by first-class mail addressed to the petitioner at the address shown on the petition. At the hearing, the petitioner shall have the burden of proof.

(f) Failure to timely file a petition or the failure of the petitioner or his or her representative to appear at the hearing shall constitute and be deemed to be a waiver of the right to a hearing by the aggrieved person.

(g) Within thirty (30) days after the hearing, the City Council or hearing officer shall make findings of fact based upon information and evidence submitted at the hearing. The decision after hearing shall be final, subject only to judicial review as permitted by state law.

Section 12-1-70. - Nonliability of City.

Runoff may occur that exceeds the capacity of City's stormwater facilities. This Chapter does not imply that real property liable for the charges and fees established herein will be free from runoff or flood damage. This Chapter does not create any liability on the part of, or cause of action against, the City or any officer or employee thereof for runoff or flood damage. This Chapter does not reduce the need or necessity for property owners to obtain flood insurance.

Section 3. Severability. If any portion of this Ordinance is found to be void or ineffective, it shall be deemed severed from this Ordinance and the remaining provisions shall remain valid and in full force and effect, in accordance with Section 6.8 of the Charter.

Section 4. No Existing Violation Affected. Nothing in this Ordinance shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any ordinance hereby repealed or amended by this Ordinance, or any just or legal right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 5. Publication and Effective Date. The City Clerk is hereby directed to cause publication of this Ordinance in accordance with Section 6.5 of the Charter. This Ordinance shall be effective thirty (30) days after final publication on the City's official website and posting at the City Clerk's office pursuant to Section 1-3-40 of the Municipal Code.

INTRODUCED, READ, AND PASSED ON FIRST READING, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO the 13th day of SEPTEMBER, 2022.

READ, PASSED, AND ADOPTED ON SECOND READING, FOLLOWING A PUBLIC HEARING, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO the 27th day of SEPTEMBER, 2022.

Tracy Engerman
Tracy Engerman (Oct 10, 2022 10:42 MDT)

Tracy Engerman, Mayor

ATTEST:

Approved as to form:

Tobi Duffey

Linda Michow
Linda Michow (Oct 10, 2022 07:50 MDT)

Tobi Duffey, MMC, City Clerk

Linda C. Michow, City Attorney

CERTIFICATION OF PUBLICATION

I hereby attest and certify that the within and foregoing Ordinance was introduced and read on first reading on September 13, 2022; published by title only in the Douglas County News-Press, together with the statement that “[t]he complete text of the ordinance is available through the City Clerk’s office and on the City’s official website with second reading and public hearing to be held on September 27, 2022”; and finally passed and adopted by the City Council on September 27, 2022, following a duly noticed public hearing and published on the City’s official website and posted at the City Clerk’s office on September 28, 2022.

ATTEST:

Tobi Duffey

Tobi Duffey, MMC, City Clerk

ORDINANCE NO. 22-13

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO AMENDING SECTION 11-1-30 OF THE MUNICIPAL CODE OF CASTLE PINES TO AMEND THE DEFINITION OF DUMPSTERS

WHEREAS, the City of Castle Pines (the "City") previously created a right-of-way permit that would allow dumpsters and storage pods to be placed temporarily in the public right-of-way; and

WHEREAS, the City previously defined dumpster that would require a right-of-way permit to include a container exceeding a capacity of thirty (30) cubic yards; and

WHEREAS, City Staff believes that this large capacity is insufficient to protect City streets because dumpsters that have a capacity of five (5) cubic yards still require heavy equipment trucks to place and can damage the streets; and

WHEREAS, the City Council desires to amend Section 11-1-30 to make clear that containers that equal or exceed five (5) cubic yards must obtain a right-of-way permit; and

WHEREAS, the City Council finds that these changes are necessary for the protection of health, safety, and welfare of the public.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Castle Pines, Colorado:

Section 1. Section 11-1-30 of the Castle Pines Municipal Code is hereby amended as follows with deletions shown in ~~strike through~~ and additions shown in underline text:

Sec. 11-1-30. Dumpsters and Storage Pods Prohibited on Public Right-of-Ways.

(a) Definitions.

(1) *Dumpster* means any container equal to or exceeding a capacity of ~~thirty (30)~~ five (5) cubic yards designed or intended to be used for the storage or hauling of any trash, refuse garbage, yard debris, discarded construction materials, or other waste materials.

* * *

Section 2. **Severability.** If any portion of this Ordinance is found to be void or ineffective, it shall be deemed severed from this Ordinance and the remaining provisions shall remain valid and in full force and effect, in accordance with Section 6.8 of the Charter.

Section 3. **No Existing Violation Affected.** Nothing in this Ordinance shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability

incurred, or any cause or causes of action acquired or existing, under any ordinance hereby repealed or amended by this Ordinance, or any just or legal right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 4. Publication and Effective Date. The City Clerk is hereby directed to cause publication of this Ordinance in accordance with Section 6.5 of the Charter. This Ordinance shall be effective thirty (30) days after final publication on the City’s official website and posting at the City Clerk’s office pursuant to Section 1-3-40 of the Municipal Code.

INTRODUCED, READ, AND PASSED ON FIRST READING, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO the 13th day of SEPTEMBER, 2022.

READ, PASSED, AND ADOPTED ON SECOND READING, FOLLOWING A PUBLIC HEARING, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO the 27th day of SEPTEMBER, 2022.



Tracy Engerman
Tracy Engerman (Oct 10, 2022 10:42 MDT)

Tracy Engerman, Mayor

Approved as to form:
Linda Michow
Linda Michow (Oct 10, 2022 07:50 MDT)

Linda C. Michow, City Attorney

ATTEST:
Tobi Duffey

Tobi Duffey, MMC, City Clerk

CERTIFICATION OF PUBLICATION

I hereby attest and certify that the within and foregoing Ordinance was introduced and read on first reading on September 13, 2022; published by title only in the Douglas County News-Press, together with the statement that “[t]he complete text of the ordinance is available through the City Clerk’s office and on the City’s official website with second reading and public hearing to be held on September 27, 2022”; and finally passed and adopted by the City Council on September 27, 2022, following a duly noticed public hearing and published on the City’s official website and posted at the City Clerk’s office on September 28, 2022.

ATTEST:
Tobi Duffey

Tobi Duffey, MMC, City Clerk