

ORDINANCE NO. 2011-05-025

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON REPEALING ALL WATER AND SEWER SERVICE ZONES OUTSIDE THE CITY CORPORATE LIMITS AND AMENDING BMC CHAPTER 15.36 REGARDING THE CITY'S POLICIES AND PROCEDURES FOR PROVIDING CITY WATER AND SEWER SERVICE OUTSIDE THE CITY CORPORATE LIMITS.

WHEREAS, the City of Bellingham ("City") enacted Ordinance No. 8728 in January 1979 relating to the extension of City water and sewer systems outside the City's corporate limits;

WHEREAS, Ordinance 8728 was enacted prior to the Growth Management Act (GMA) and was, in certain respects, inconsistent with that law;

WHEREAS, Ordinance 8728 created a number of water and sewer service zones outside the City limits in which the City could contract to provide retail water and/or sewer service directly to customers within these zones;

WHEREAS, Ordinance 8728 also established a procedure for the City to expand or create new water and/or sewer service zones outside the City corporate limits;

WHEREAS, Ordinance 8728 established a procedure for the City to contract to provide wholesale water and/or sewer service to districts and associations outside the City corporate limits;

WHEREAS, in the mid 1980's, prior to the adoption of the GMA, the City and Whatcom County developed an Urban Service Area surrounding the City where urban development was expected along with policies regarding the delivery of City water and sewer service to this area;

WHEREAS, in June 1985, the City adopted Ordinance 9461 which established the initial boundaries of the Urban Service Area and the policy that the City would deliver water and sewer services within the Urban Service Area by means of annexation to the City unless the City Council determined that it was in the best interest of the City and the area seeking service to extend City sewer and water service without annexation;

WHEREAS, in July 1990, the State adopted the GMA which defined: 1) sewer service as an urban but not a rural service; 2) water as both an urban and rural service; however, differentiated between rural and urban water service based on the intensity of the service, with urban water service being at an intensity historically and typically provided in

cities; and 3) "urban growth area" as the place where urban growth is encouraged and urban water and sewer service are allowed;

WHEREAS, in response to the GMA, the City adopted Ordinance 10899 which designated the City's Urban Growth Area (UGA) as its Urban Service Area for City water and sewer service;

WHEREAS, in June 14, 2004, the City revised its policy regarding utility service zone extensions, suspending review of applications for sewer and/or water extensions in the City's UGA and providing, except for three limited exceptions, that the only method available to obtain City utility services for properties in the UGA was to annex to the City;

WHEREAS, in March 2006, the City adopted Ordinance 2006-03-026 repealing all water and/or sewer service zones located both inside and outside the City's UGA created by Ordinance 8728;

WHEREAS, the City still has water and sewer service zones both inside and outside the UGA which were created by ordinances adopted after Ordinance 8728;

WHEREAS, Whatcom County (County) is the regulatory authority which controls the zoning and development in the City's UGA and in the County's rural areas near the City;

WHEREAS, the County and the City had an Interlocal Agreement governing development and annexation within the City's UGA. This Interlocal required coordination between the County and the City regarding proposed development, rezones, and annexations in the UGA. This Interlocal Agreement expired at the end of 2009;

WHEREAS, Whatcom County is now considering zoning, development regulation, and comprehensive plan amendments in the City's UGA and the rural areas near the City which will impact the City's infrastructure and services and how the City grows in the future. Whatcom County has not coordinated these changes with the City;

WHEREAS, the City desires to limit the extension of City water and/or sewer service to property located outside of the City corporate limits until that property annexes to the City except in very limited circumstances that are necessary to protect basic public health and safety and the environment;

WHEREAS, such a limitation on the extension of City water and/or sewer service is consistent with the City's 2009 Water System Plan and 2009 Comprehensive Sewer Plan; and

WHEREAS, City Council finds that passing this Ordinance is in the best interests of the citizens of the City of Bellingham.

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1: Findings and Intent.

A. The Growth Management Act (“GMA”) prohibits the extension or expansion of urban governmental services, including water and sewer services, in rural areas except in very limited circumstances that are necessary to protect basic public health and safety and the environment and which do not permit urban development. City water and sewer service zones that authorize the City to extend or expand City urban water and sewer service to areas outside the City’s UGA are inconsistent with the GMA.

B. City water and sewer service zones which authorize the City to extend or expand City urban water and/or sewer service to areas inside the City’s UGA are inconsistent with the City’s utility service zone extension policy suspending review of applications for sewer and water extensions in the City’s UGA as stated in the “June 14, 2004 Adopted Revisions to City Council Policy Regarding Utility Service Zone Extensions”.

C. The City is under no legal obligation to extend or expand water and/or sewer service outside its corporate limits, absent a contractual duty. The City ordinances creating water and/or sewer service zones were not intended to create any such contractual duty, express or implied. Rather, they were intended to create an opportunity to apply for an extension, which the City, in its discretion, could grant or deny based upon listed criteria.

D. The City desires to extend or expand City water and/or sewer service to areas only after they annex to the City.

E. The City does not intend to terminate any water or sewer service that is “in existence” as of this Ordinance’s effective date. However, the City does not intend these existing services to be modified, expanded, or extended. For purposes of this Ordinance, “in existence” means the property is currently receiving service and/or has a fully signed, valid, and recorded utility service zone agreement.

G. The City finds that enacting this Ordinance is categorically exempt from a State Environmental Policy Act (“SEPA”) threshold determination.

Section 2: Repealer.

A. Water and sewer service outside the City's UGA. All remaining City water and/or sewer service zones outside the City's UGA are hereby repealed including, but not limited to, the water and/or sewer service zones created by Ordinances 8821, 9228, 9461, 9576, 10013, 10125, 10257, 10339, 10358, 10370, 10761, 10806, 10686, and 10815. The City will not extend or expand City water and/or sewer service outside the City's UGA except in very limited circumstances that are necessary to protect basic public health and safety and the environment and which do not permit urban development.

B. Water and sewer service within the City's UGA. All remaining water and/or sewer service zones inside the City's UGA are hereby repealed including, but not limited to, the water and/or sewer service zones created by Ordinances 8766, 8998, 9034, 9175, 9183, 9184, 9235, 9245, 9315, 9382, 9461, 9523, 9531, 9576, 9859, 9958, 9863, 9980, 10000, 10058, 10064, 10146, 10231, 10330, 10370, 10463, 10518, 10554, 10569, 10570, 10635, 10636, 10676, 10680, 10681, 10708, 10762, 10725, 10908, 1999-03-006, 1999-12-080, 2000-03-004, 2000-06-028, 2000-12-087, 2001-03-015, 2001-12-101, 2002-09-065, and 2003-07-046. The City will extend or expand City water and/or sewer service to areas within the City's UGA only after the areas annex to the City except if the extension or expansion is necessary to protect basis public health and safety and the environment.

C. Current water and sewer utility services inside or outside the City's UGA. This Ordinance does not terminate any water or sewer service that is "in existence" inside or outside the City's UGA, as of this Ordinance's effective date. However, these existing services shall not be modified, expanded, or extended.

Section 3: Bellingham Municipal Code Chapter 15.36 is amended as follows:

15.36.010 Policies for Expansion or Extension of City Water and/or Sewer Service Outside Corporate Limits

The City Council adopts the following policies regarding the extension or expansion of water and/or sewer service outside the City's corporate limits:

A. Historically, the City has contracted to provide retail water and/or sewer service directly to some customers outside the City's corporate limits. The City does not intend to terminate any such water or sewer service that is in existence as of this Ordinance's effective date. For purposes of this Ordinance, "in existence" means the property is currently receiving service and/or has a fully signed, valid, and recorded utility service zone agreement. However, the City will not modify, expand, or extend this existing direct retail

water and/or sewer service except as provided in subsections B. and C. below and BMC 15.36.040.

B. The City will provide new direct retail water and/or sewer service to areas within the City's Urban Growth Area only after the areas annex to the City. The City will not modify, extend, or expand direct retail water and/or sewer service in the City's Urban Growth Area without annexation unless the City Council determines that such modification, extension, or expansion is necessary to protect basic public health and safety and the environment.

C. The City will not modify, extend, or expand direct retail water and/or sewer service outside the City's Urban Growth Area unless the City Council determines that such modification, extension, or expansion is necessary to protect basic public health and safety and the environment and the modification, extension, or expansion will not permit urban development.

D. The City has also contracted to provide wholesale water and/or sewer service to some districts and associations outside the City's corporate limits. The City will continue to provide wholesale water and/or sewer service in accordance with the terms of these contracts. The City will not extend or expand wholesale City water and/or sewer service unless the City Council determines that such extension or expansion meets the requirements of BMC 15.36.020 and 15.36.040.

15.36.020 Wholesale Services To Districts And Associations

A. All contracts for wholesale water and/or sewer service, whether new or extensions of existing agreements shall be executed by the Mayor as provided in Section 5.02 of the City Charter. In no event shall the Mayor execute such contracts without the express authorization of the City Council. Requests for such wholesale service contracts shall first be directed to the Director of Public Works, and shall thereafter be processed as provided in BMC 15.36.030. Existing contracts with districts and associations for water and/or sewer service may be renewed or extended and contracts negotiated with newly formed districts or associations, but all such contracts shall be subject to the terms and conditions of this chapter.

B. All new contracts as well as existing contracts being negotiated for renewal relating to sewer service shall include provisions specifically providing the maximum quantities of effluent that will be accepted for transmission and treatment, and prohibiting the extension of new sewer mains outside urban growth areas and limited areas of more intensive rural development. All new contracts as well as existing contracts being negotiated for renewal relating to water service shall include provisions specifically providing the maximum quantities that will be supplied at the point of distribution.

C. Such contracts shall further specifically prohibit the district or association from enlarging its area of jurisdiction or service without the express approval of the City Council.

15.36.030 Requests For Contracts For Direct Retail Service or Wholesale Service – Procedure

All requests for retail or wholesale water and/or sewer service outside the City corporate limits shall be made to the Director of Public Works and shall include a fee as set by City Council Resolution. The Director shall review each request for compliance with the City's policies regarding the modification, extension, or expansion of water and/or sewer service as stated in BMC 15.36.010. If the Director determines that the request does not comply with the policies, the Director shall notify the applicant that the request is denied. If the applicant requests that the denial be reviewed by the City Council, such request along with the Director of Public Works recommendation shall be forwarded to the City Council for review.

If the Director determines that the request meets the City's policies regarding the modification, extension, or expansion of water and/or sewer service as stated in the BMC 15.36.010 or the applicant requests City Council review of the Director's denial of the request, the request along with the Director's recommendation shall be presented to City Council for review. As part of its review of the request, City Council may request that the Public Works Department prepare a feasibility report regarding the provision of water and/or sewer service based on system related criteria and/or that the Planning and Community Development Department prepare an impact report with recommendations addressing those criteria set out in BMC 15.36.040.

Following further consideration of the matter by the City Council, the City Attorney shall be advised as to whether or not a contract for water and/or sewer service should be prepared and what terms should be included in the contract for services. In making its determination, the City Council shall consider the recommendation of the administrative departments, the policies set out in BMC 15.36.010, and the criteria set out in BMC 15.36.040 as well as any other applicable statutes, ordinances, or policies and procedures of the City.

City Council shall consider a motion to authorize the Mayor to execute a contract for the modification, extension, or expansion of water and/or sewer service only after the formal contract has been prepared and presented to the City Council for review.

15.36.040 Criteria For Determining Whether Services Should Be Provided

The criteria to be considered in determining whether water and/or sewer service should be provided are:


- A. The consistency of the proposed development with the following land use plans, regulations, statutes, and development standards acceptable to the City:
1. Consistency with the goals, policies and land use designations in Whatcom County's adopted subarea plan for the area; the applicable goals and policies in Bellingham's Comprehensive Plan; and the provisions of the city/county interlocal agreement related to annexation and development in Bellingham's urban growth area;
 2. Consistency with all City design and development standards and environmental regulations;
 3. Consistency with the City water and sewer extension policies in BMC 15.36.010; and
 4. Consistency with all relevant state statutes and regulations, including the Growth Management Act.
- B. The expected impact such development might have on City streets and arterials as currently developed;
- C. For property located within the Lake Whatcom watershed, whether the proposed development might be expected to adversely impact the watershed;
- D. Whether or not adequate consideration has been given to retention and discharge of stormwater so as to preclude adverse impact upon the City; and
- E. Whether it is in the best interests of the City to authorize the requested extension or expansion of water or sewer services even though sufficient capacity is available within existing transmission lines.

15.36.050 Boundary Review Board Approval Required

As required by RCW 36.93.090(4) relating to the jurisdiction of the county wide boundary review board, no extension of permanent water and/or sewer services outside City's existing service area, as defined in RCW 36.93.090(4) shall be approved unless the initiators thereof have gained the approval of the Whatcom County boundary review board. For the purposes of this section "extension of permanent service" shall be deemed to be limited to that service which requires the installation of additional water mains or sewer mains whether to be a part of the City's system or a district's or association's system.


While it shall be the obligation of the requesting party to process the application through the boundary review board, such requests should not be made in advance of the City's approval to provide service and in the event the applicant gains the approval of the board prior to City approval, the City reserves the right to refuse or to condition any such service.

PASSED by the Council this 23rd day of May, 2011.



Council President

APPROVED by me this 2nd day of June 2011.



Mayor

Attest: 

Finance Director

Approved as to form:



Office of the City Attorney

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