RESOLUTION NO. 62-94

A RESOLUTION AMENDING SECTION 4, SYSTEM EXPANSION, OF THE SEWER RULES AND REGULATIONS GOVERNING THE MANAGEMENT AND OPERATION OF THE JOINT CITY-COUNTY SEWER SYSTEM

WHEREAS, the City, by contract, is the Manager of the Joint Sewer System; and

WHEREAS, the Manager has begun the process of documenting existing practices and procedures; and

WHEREAS, the City Council finds that such Rules and Regulations are in the public interest and should be approved.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

The attached Section 4, "System Expansion" is hereby adopted as amended and made a part of the Rules and Regulations which shall govern the operation and management of the Joint Sewer System.

PASSED and **ADOPTED** this 20th day of July, 1994.

/s/ R.T. Mantlo
President of the City Council

Attest:

/s/ Stephanie Nye
City Clerk

SECTION 4 – SYSTEM EXPANSION

POLICIES AND RULES FOR SYSTEM EXPANSION AND FINANCING

The City has a duty, as the manager of the system and a co-owner, to plan for, control and restrict, if necessary, future users of the System so that the needs of the System, including capital, are met.

The Manager's policy is to require that all development within the 201 is served by and connected with the System. This policy promotes the public health, welfare and safety by facilitating the annexation of urban and urbanizing lands to the City and by reducing the use of septic systems, package plants and other treatment systems and by, overall, reducing the costs of sanitary sewer.

A. SEWER CAPACITY AND AVAILABILITY

There is a finite limit to the capacity of the System. Such capacity was established in the original planning efforts. When the 201 Plan was adopted it determined what capacity was needed. Persigo was sized to meet that need. The capacity was calculated based on land use assumptions for a defined area. That area is called the 201 Service Area. Requests for service outside the 201 Service Area have occurred. These Regulations establish policies and rules to decide such requests for service inside and outside of the 201 Service Area. Rules may or may not be designated as such.

Facts:

- The design capacity of the plant is 25 million gallons per day. Source: Predesign Report for Wastewater Treatment Facilities - HDR - 1977.
- The adopted per dwelling use per day is 263 gallons. Source: Basin Study - 1993.
- The total population equivalent which can be served by the ultimate design capacity of the Persigo Plant per day is 237,650.
- The total population equivalent which is presently being served by the Persigo Plant per day is 72,337.
- Based on present land use approvals and zoning, the total population equivalent which are "approved" (this includes

all potential future development) is 260,380. Source: Basin Study - 1993.

Policy.

The Manager finds it to be in the best interests of the citizens of the community, and in the interest of the public health and welfare of the public in the City and in the 201 Service Area, that growth be directed, both in the City limits and in the other areas of the 201 Service Area. As indicated in the adopted annexation plans of the City, it is expected that, over time, the City's limits will be co-terminous with the boundaries of the 201 Service Area.

To meet those goals, sewer availability shall be managed, controlled and allocated throughout the 201 Service Area. The method selected to allocate such availability (which means the plant capacity) as to a particular parcel or lot is described in the basin study completed in 1993.

Rule 4.1.

Upon adoption of this Regulation, no development shall be approved which requires sewer service within the 201 Service Area until the Manager finds that the proposed development (as that term is defined in the Zoning and Development Code of the City) can be served by the existing infrastructure, after having duly considered the residual capacity of the existing lines, the Persigo Plant and the System. To determine if the development can be served by the existing infrastructure, the Manager shall examine the sub-basin (as defined in the basin study) within which the development is located.

Rule 4.2.

The Manager shall maintain a compilation of the allocated sewer approvals which have been given. At such time as the calculated allocation of the plant's ultimate design capacity has reached fifty-five percent (55%), and each fifth (5th) percentile thereafter, the Manager may give notice of such calculation to the public.

Rule 4.3.

If any person requests that the Manager modify the boundary of one or more sub-basins which have been established (in the 1993 basin study), or the allocations of density that have been established for each such sub-basin, such person shall deliver such data and studies as the Manager may require in order to decide such a request. The Manager may require that

such person pay a fee calculated to reimburse the Manager for the costs and expenses, including personnel costs, incurred in such review.

Rule 4.4.

The Manager may modify the capacity allocated to any sub-basin based on other available infrastructure (such as water, streets, schools, and the like) and based on the Council's willingness to provide urban level of services.

Rule 4.5.

The principle of "first come-first serve" shall apply when determining if capacity is available.

B. TYPES OF SYSTEM EXPANSION

System Expansion can occur by providing sewer service to developing areas, sub-basins, and basins and to developed, unsewered areas, sub-basins, and basins. Each requires different rules and considerations, and financing mechanisms or charges.

1. DEVELOPING AREAS

Typically, System expansion in developing areas occurs at the time of subdivision or development approval: the developer pays the costs needed to extend/expand the System to serve the subdivision or development. This system expansion occurs when lines are installed within a development or through trunk lines extensions to a development. The latter circumstance is outlined in Rule 4.8.

Sewer Reimbursement Policy.

The Manager determines that if a developer extends the System to the benefit of other property near or adjacent to the extension, the developer should be allowed to recoup some of the costs of System expansion from the benefitted property when that property receives the benefit of the expanded System. Additional System expansion which further extends an extension will not be required to reimburse for the costs of a previous extension. The extent of property benefitted by the System expansion shall be determined by the Manager.

Rule 4.6.

The Manager, at present, chooses the method of Sewer Reimbursement Agreement to provide a mechanism to allow a developer to recoup some of the costs described above. A copy of a standard form Sewer Reimbursement Agreement is

attached as Appendix X. The Manager may negotiate different terms as circumstances may require.

The term of such agreements shall not exceed 10 years. The rate at which interest shall accrue on the developer's costs of extension shall be established by the Manager based on then current conditions.

2. DEVELOPED AREAS

Policy.

Some areas have already developed as individual lots and uses without sewer service. Circumstances where sewer needs to be provided to such lots and uses include:

a. a residential unit served by an ISDS (septic system) which fails and the unit is within 400 feet of a sewer, or

b. an existing non-residential use the owner of which wishes to expand or redevelop the property.

Providing sewer service to such areas means that the property owners must pay the costs of sewer extensions and service facilities. The Manager finds that the System should not pay for such costs, except as provided for herein. The costs of retrofitting an area for sewer service is typically much higher than if done at the time of development and many times means that the costs attributable to each lot, especially residential lots or parcels, is high. The Manager finds that some form of financing may be required, under certain circumstances, to promote the public health by providing sewer service in some areas of the 201 Service Area.

c. An improvement district is a useful financing tool which allows for payments over time of the costs of retrofitting an area. The Manager endorses and approves the use of improvement district(s).

Typically, an improvement district is used when a neighborhood or other identifiable area needs sewer service and the owners in the area can garner sufficient owner consent to form a district. For areas within the City limits, the City improvement district process is available. For areas not wholly within the City limits, other improvement districts, requiring the oversight and consent of the County Commissioners, may be available.

d. In an area where insufficient owners consent to form a district, other mechanisms are needed to

allow the continuing use of a property which does not have sewer service available, but for which sewer service is required. Such a situation may arise in an area generally served by ISDS where one septic system fails or does not meet current standards.

Rule 4.7.

In the case of 2a. and 2b., if a developer/property owner demonstrates to the satisfaction of the Manager that the following two conditions exist: (1) the construction of a sewer line is impracticable and (2) adequate disposal and treatment facilities exist, or that a failed ISDS can be repaired; the Manager may authorize, at or prior to review of development plans or septic system approval, that the approval or permit be issued based on the following conditions which shall be specifically agreed upon by the developer pursuant to a written agreement:

(a) The developer/property owner shall deliver an executed power of attorney for formation of a future sewer improvement district; and

(b) The developer/property owner shall pay that amount of money which the Manager calculates to be the proportionate share of the sewer line construction costs, as defined by the Manager, attributable to the development or property, plus an administrative charge of six percent (6%) of the principal amount of such proportionate share (the "Payment"); and

(c) The Manager may authorize the Payment, described in Rule 4.7(b), above, over a term of years, not to exceed ten, upon the execution and delivery by the developer of a promissory note and mortgage or deed of trust sufficient, in the judgment of the Manager, to reasonably ensure that the Payment will be timely made; and

(d) Interest shall accrue on the Payment at a rate established by the City Council, by resolution, or in the absence of such a resolution, at a rate which is equal to the rate of return on City investments obtained by the Finance Director of the City on the City's long-term investments; and

(e) The obligation to pay the Payment, in addition to the mortgage or deed of trust, shall constitute a lien upon the property and shall be equivalent to the lien provided for in the City Code establishing a water lien, presently § 31-3. All remedies available

pursuant to such § 31-3 shall equally apply to the lien described and created herein; and

(f) In the event that an improvement district is formed and some or all of the Payment has been paid, the assessment which would otherwise be payable shall be reduced by the amount of principal of the construction cost which has been paid; and

(g) The developer shall dedicate, at no cost to the City, such right-of-way or easements as the Manager shall deem necessary to construct, operate, and maintain the System, in accordance with City specifications and standards. In the event that insufficient information is available to determine the legal description of the required rights-of-way or easements at the time of approval or permit issuance, the developer shall promise and covenant to make such a conveyance or grant at such time in the future as the Manager shall require.

If adequate disposal and treatment facilities do not exist or a failed ISDS can not be repaired so that such a system can adequately serve a property during an interim period before sewer lines are constructed, the property shall be abandoned or vacated until adequate treatment or disposal is available. Adequate disposal may include regular and periodic pumping and disposal of accumulated waste at the Plant.

C. SEWER TRUNK LINE EXTENSIONS IN DEVELOPED OR DEVELOPING AREAS

In some circumstances, the extension of a trunk sewer or interceptor to serve one or more sub-basins is in the public interest. Resolution 47-93, as amended from time to time, establishes the applicable policy and requirements for Sewer Trunk Line Extensions.

In the past, certain developments outside the City were approved which were not connected to the System; in some of such cases, "dry lines" were constructed with the expectation that such "dry lines" would be later connected to the System when a trunk or other line was built. However, no provision was made for payment by the developer or the lot owner of the costs of extension of such trunk and the costs of interconnection. The Manager finds that such approvals are not in the public interest.

Rule 4.8.

No development within a basin or sub-basin in the 201 Service Area for which inadequate or no lines exist, as determined by the Manager, shall be permitted to proceed to final plat or

other final approval, whichever is earlier, until the developer thereof has paid to the Manager, for retention by it within an appropriate fund, the trunk line fee established pursuant to City Resolution 47-93. Nothing contained herein shall limit the obligation of the Developer to pay for additional costs required to provide sewer service to the development, such as but not limited to the costs of collection lines.

The Manager shall collect such amount from each such developer in accordance with Resolution 47-93.

Should the developer desire to extend a trunk line before the Manager is prepared to build such trunk line, the developer may request approval from the Manager to do so at the expense of the developer. Upon completion and acceptance by the Manager of the extension, the developer may apply to the Manager to be reimbursed for the cost of the extension (less any trunk extension fees required of the developer). Any such reimbursement by the System shall apply only to a trunk extension which the Manager has planned, as approved in the current two-year budget, to construct within twenty four months of the developer's completion of such work. The developer would then, with approval of the Manager, be reimbursed from the Trunk Line Extension Fund. Interest on the cost of construction would not be included as a part of the reimbursement.

D. DEVELOPMENT AND INFRASTRUCTURE STANDARDS

(Reserved)

E. SEWER SERVICE OUTSIDE THE 201 SERVICE AREA

Rule 4.10.

Sewer service outside the 201 Service Area is prohibited, unless the Manager determines, by resolution of the City Council:

a. that the area proposed to be served is urban or urbanizing, *i.e.*, the City is willing to provide urban services to such area, in the reasonable future; and

b. the Manager determines that sufficient capacity to serve such area is available; and

c. the Manager determines that other necessary infrastructure to provide urban services is reasonably available.

d. the Manager has evaluated the probability of including the area proposed to be served pursuant to Rule 4.11 and has found that such inclusion is reasonably likely to occur in the reasonable future. The Manager shall seasonably initiate the process to cause such area to be included within the 201 Service Area.

F. LIMITS OF THE 201 AREA

Rule 4.11.

Any person desiring that the boundary of the 201 Service Area be modified, including a political subdivision, shall begin by making application to the Manager. The application shall include such information as the Manager shall require in order to evaluate the effect of such modification on the plant capacity, the ability of the City to serve such included area, and the ability of the City to control the infrastructure standards which shall apply, and to ensure continued compliance with applicable federal and state law.

The Manager may initiate such a modification.

Upon the determination by the Manager that the information supplied is sufficient to make an informed decision on the request for modification, the Manager shall schedule a public hearing thereon with prior notice of such hearing to be published at least twice, thirty days prior to such hearing.

The decision on the question of modification shall be made by the City Council, and if required by applicable law, shall be forwarded to other agencies whose decision is required.

The Manager may require that such person pay for the costs incurred, including personnel costs, in evaluating and deciding such a request.

G. UTILITY AGREEMENTS

BACKGROUND AND POLICY

The importance of the use of the availability of sewer service to obtain annexation of properties to the City cannot be understated. The City annexes: to control the location, quality and density of development; to ensure that the development standards of the City are complied with; to control the impacts on City streets and other City infrastructure; to prevent a decaying core City by adding to the City newly developing areas, and already developed areas which are urban or urbanizing; and to provide planning and fiscal responsibility.

For decades, the City has required powers of attorney to be delivered to the City at the time that permission to physically connect to the System has been granted. At times, this has occurred when the Plant Investment Fee has been paid and a planning clearance issued. Where the only approval is a building permit, this method has an inherent weakness: because the annexation process requires significant lead time and procedural steps, development can occur faster than annexations can be completed. Thus, a developer can obtain permission to install infrastructure for subdivisions/developments without City inspection and without City specifications being met. Additionally, because at times in the past some county adopted standards have been waived, the City finds that it must, to protect its taxpayers from bearing the burden of upgrading deficient infrastructure upon annexation, implement a supplementary method of obtaining control over the infrastructure which is installed.

A second inherent weakness in the method used in the past is that the discretionary planning and land use decisions are made by entities other than the City for lands which the City annexes shortly thereafter. The City finds that its citizens are best served, and the public welfare is best served, if the land use review process occurs under the City's jurisdiction. Earlier acquisition of powers of attorney facilitates that important public policy decision.

The following rule will assist in promoting the City's annexation policies and is therefore adopted.

Rule 4.12.

The Manager requires, prior to its review or approval of construction drawings for sanitary sewer and prior to approval of sewer service related to any plat or other development approval, whichever occurs first, that the Manager receive an approved executed power of attorney (POA) for annexation. POAs shall be provided using the forms furnished by the City, and shall include a full legal description of the entire parcel(s) and property intended to be developed, or which are subject to review.

To implement Rule 4.12, the City has requested the assistance of the County Planning Department to:

a. At the time of the County pre-application conference, make developers aware of the City POA requirement and inform them that the Manager requires an executed POA before it will review or approve any sewer construction plans, preliminary or final plat and in any event prior to connection to the system;

b. Provide the Manager with a full legal description of the entire parcel(s) (not just the portion being final platted) at the time the County refers development proposals in the 201 Service area to the Manager for review, comment and/or approval.

c. The Manager will not begin the review of, nor approve preliminary or final sewer construction plans, or preliminary or final plat approval or other development approval, without first having obtained a proper and completed POA. Should preliminary plans be submitted without the signed POA, the Manager may inform the property owner/developer that no further review will occur, nor approval be given, nor connection allowed, until the Manager's requirements for a signed POA are satisfied.

H. PLANT INVESTMENT FEE

The present plant investment fee, $750.00, is not intended to pay for the expansion of the sewer plant; rather, it is intended only to pay part of the payments due on the 1992 bonds on the existing plant and infrastructure. Based on the number of current and projected users, it is insufficient to pay for completing the infrastructure that is needed to utilize the existing plant capacity and other System expansion. Source: City Audits, the Bond Documents, *et al*. The Manager has analyzed the financial requirements of plant and System expansion(s).

The Manager's philosophy, which is adopted herein, is that current users should pay only for current capacity and current operations. When the capacity is used up, the System should borrow to expand the System and future users should pay for such bonds and the then current operational costs.

The City finds that it would be improper to require the present users of the System to subsidize future System expansion(s) -- such expansion should be paid for by those future users which necessitate such expansion. Hence, the Manager's policy, hereby adopted, is that there should not be a charge, paid by present users of the System, to be used to pay for System or plant expansion.