

## RESOLUTION NUMBER 7455

### **A RESOLUTION REVISING RESOLUTIONS 4100, 4128, 4526, 4578, 5422, 6570, 6755 AND 7411 AMENDING THE CITY'S POLICY FOR REVIEW AND APPROVAL OF REQUESTS FOR SEWER SERVICE TO PROPERTY OUTSIDE THE CORPORATE LIMITS WITH COUNCIL GRANTED EXCEPTIONS UNDER SPECIFIC CIRCUMSTANCES ON A CASE-BY-CASE BASIS.**

**WHEREAS**, Section 7-13-4312 of the Montana Code Annotated authorizes a municipality to extend sewer services to persons owning property outside the incorporated city limits; and

**WHEREAS**, Section 7-13-4314 of the Montana Code Annotated provides that any property owner receiving sewer service outside of the incorporated city limits may be required by the City, as a condition to initiate such service, to consent to annexation of the tract of property served by the City sewer; and

**WHEREAS**, Montana's municipal annexation statutes in Title 7, Chapter 2, Parts 42 through 47 Montana Code Annotated authorize a municipal governing body with the sole authority to determine whether or not annexation of the land receiving sanitary service from the municipality is to occur now or later in the future at the sole determination of the City Council; and

**WHEREAS**, the City of Missoula has by previous action adopted a policy authorizing the extension of sewer services to property outside its corporate boundaries where the property owner waives the right to protest annexation and petitions for annexation; and

**WHEREAS**, the City of Missoula recognizes there may be rare, but serious circumstances involving the immediate need to provide municipal sanitary sewer services to existing developments outside the city limits and within the Wastewater Facility Service Area that have inadequate sewage disposal methods, such as but not limited to, existing private community sewer systems; and

**WHEREAS**, the City of Missoula desires to preserve the Council's ability to be flexible with policy in times of severe circumstances by stating its intent to consider such circumstances on a case-by-case basis; and

**WHEREAS**, the City has the statutory authority to require annexation prior to providing sanitary sewer service, the City is willing to temporarily allow property to receive sanitary sewer service without annexation for a time, when emergency circumstances warrant, without in any way waiving the City's statutory authority and ability to require annexation at any time in the future; and

**WHEREAS**, the City of Missoula desires that all new development obtaining sewer service within the Wastewater Facility Service Area, install urban infrastructure in accordance with city regulations at the time of construction, and that such installation shall be a condition of sewer service; and

**WHEREAS**, the City of Missoula desires that all new development obtaining sewer service within the Wastewater Facility Service Area be subject to City Impact Fees to support installation of future economical urban infrastructure, and that payment of Impact Fees shall be a condition for obtaining a permit for extending sewer service; and

**WHEREAS**, the City of Missoula desires that owners and developers of all new development approved for extension of sewer service with the condition of successful annexation into the City's jurisdiction, negotiate and enter into a development agreement with the City in accordance with city policies related to development agreements; and

**WHEREAS**, prior to adoption of this policy, an inordinate amount of City Council and Committee time was used in reviewing the large number of these requests; and

**WHEREAS**, the City Council is desirous of establishing a revised procedure authorizing these requests to be handled administratively,

### **NOW THEREFORE BE IT RESOLVED:**

**SECTION 1.** The Mayor of the City of Missoula is hereby authorized to review and approve requests for extension of sewer service, and execute contracts on behalf of the City of Missoula for the purpose of extending sewer services to persons owning property outside the city limits as outlined in this resolution:

A. **Sewer Service Review Committee.** The Mayor shall refer requests for the extension of City sewer service to persons owning property outside the city limits to the Sewer Service Review Committee. The Committee shall be composed of a representative from the City Public Works Director's Office, the Office of Planning Grants, the Mayor's Office, the City Attorney's Office, and the chair of the Plat, Annexation and Zoning Committee or their designee.

1. The Committee shall review each request for sewer service to determine if it meets all of the conditions set forth in this resolution.
2. The Committee shall have authority to recommend approval or denial of the request and/or to impose additional conditions that are necessary to ensure compliance with this resolution.
3. The Committee shall forward to City Council any request that does not meet the property compliance requirements outlined in this resolution.
4. The Mayor shall, upon receipt of a favorable report from the Sewer Service Review Committee and a recommendation for the property owner to execute a sewer service contract in accordance with this resolution:
  - a. Prepare a sewer service contract with waiver of the right to protest annexation including a petition to annex, and referencing the conditions of sewer service including but not limited to, construction of urban infrastructure to city regulations and payment of Impact Fees, for the property owners' signatures;
  - b. Collect \$50 + filing fees for the cost of preparing and recording the sewer service contract from the property owner;
  - c. Execute the sewer service contract and any related documents once it has been signed by the property owner and approved by the City Attorney's Office;
  - d. Forward completed contracts and documents to the City Clerk's Office for filing at the Missoula County Clerk and Recorder's Office;
  - e. Forward any petitions requesting annexation related to a sewer service to the City Council's Plat, Annexation, and Zoning Committee. These petitions shall be maintained in City files until such time in the future that City officials are interested in reviewing or considering that particular land area for annexation to the City.
5. Upon receipt of an unfavorable report from the Sewer Service Review Committee, the Mayor shall inform the property owner that the request has been denied.
6. The Mayor shall also inform the owner that the decision can be appealed to the City Council within deadlines outlined within this resolution.
7. The Committee shall forward a written report of its meetings to the City Council. If the City Council believes that there are any land areas subject to contract sewer that the City Council should consider annexing, a Council member shall make a referral to the City Council's Plat, Annexation, and Zoning Committee.

B. **Property Compliance.**

1. The property for which sewer service is being requested is capable of being serviced by existing sewer facilities.
2. The property must be located within the wastewater facilities plan service area.
3. Property to be served should be within an area that a logical and orderly annexation plan would incorporate.
4. Extension of sewer service to a property must be consistent with good sewer and land-use planning practices.

5. The property requesting sewer service must be zoned at the time the sewer request is submitted.
6. Any proposed new use of the property and related development standards must be consistent with applicable city zoning and city ordinances.

**C. Owner's Obligations.**

1. Owner shall submit an application for sewer service extension outside the corporate city limits to the Mayor including:
  - a. Street address of property to be served by the sewer;
  - b. Legal description of the property to be served by the sewer;
  - c. Proof of ownership of the property;
  - d. Current land-use of the property;
  - e. Proposed new land use of the property;
  - f. Vicinity map of the property;
  - g. Property location in relation to the current city limits;
  - h. Site plan of proposed new development;
  - i. Number of units to be served;
  - j. Sewer main capacity to be utilized (if needed);
  - k. Current zoning of the property;
  - l. A check for \$100 for the purposes of convening the Sewer Service Review Committee to research, review and process the request.
2. Owner shall pay all costs associated with the extension of sewer services to the property.
3. If approved for a sewer service contract by the Sewer Service Review Committee, the owner of property must:
  - a. Execute a sewer service contract containing a waiver in writing of the right to protest annexation, must make such waiver part of the property deed restrictions, and must execute a petition for future annexation;
  - b. Pay \$50 + filing fees for the cost of recording the sewer service contract document at the Missoula County Clerk and Recorder's Office;
  - c. Install all urban infrastructure for the new development in accordance with adopted City regulations and pay City Impact Fees in an amount that would be required of a similar new development within the city limits prior to obtaining a permit for sewer service;
  - d. Upon execution of the contract extending City sewer services, the property owner shall proceed with plans to extend sewer service after securing all the necessary permits and approvals from the City Public Works Department and paying the appropriate hookup fees.
4. If approved for sewer service with the condition of the property owner petitioning the City for annexation, the owner of property must:
  - a. Execute a petition to annex if the property connecting to City sewer is already developed and has no plans to increase density or expand the existing development; or

- b. Execute a petition to annex with the condition of Council approval of the new development, and negotiate the terms of a development agreement in accordance with City policies related to development agreements.
  - 5. All sewer facilities constructed by property owner must be constructed according to plan specifications approved by the City Engineer in easements dedicated to the City where necessary, and with the exception of private service lines, shall be transferred to the City's ownership.
  - 6. Owners of property receiving City sewer service shall pay all sewer hookup fees and charges as established by the Missoula City Council.
- D. **Contiguous Property.** The Public Works Director is authorized to approve the issuance of permits for sewer service connection to property that is contiguous to the city limits, as that term is defined in Montana annexation laws at the time of the sewer service request, is subject to the following criteria:
  - 1. The property contiguous to the city limits has an existing land-use and the owner does not propose any changes or expansions of the existing land-use at the time of sewer connection.
  - 2. The property meets all the criteria outlined in the "Property Compliance" section of this resolution.
  - 3. The property owner is willing and able to meet all the obligations outlined in the "Owner Obligations" section of this resolution.
  - 4. The owner executes a petition requesting City annexation of the property and pays all hookup fees and charges prior to obtaining a connection permit.
  - 5. Annexation proceedings shall be initiated immediately upon receipt of the owner's petition to annex or at the City's convenience.
  - 6. When such property which is capable of being annexed is denied annexation by the City Council, the Public Works Director may approve a contract for City sewer service in accordance with the requirements of all other provisions of this resolution including the waiver of protest to annexation and attached annexation petition. The property will then be subject to future annexation plans as the City shall determine.
- E. **New Development and Subdivisions.** Property seeking extension of sewer service for a new development proposal must make application to the Sewer Service Review Committee. The Committee shall require a petition requesting annexation and forward the request with a recommendation for annexation and sewer approval to the City Council for consideration if the following apply:
  - 1. The property must comply with the criteria outlined in the "Property Compliance" section of this resolution.
  - 2. The owner must be willing and able to meet the obligations outlined in the "Owner Obligations" section of this resolution.
  - 3. If approved by the Sewer Service Review Committee, the owner executes the required petition requesting annexation with conditions.
  - 4. The owner negotiates with the City Council the terms and conditions of a development agreement to be adopted as a condition of annexation of the property.
  - 5. If the City Council approves the annexation and extension of sewer to the property, the owner:
    - a. Must meet the conditions of annexation, sewer service and new development approval;

- b. Pays all new development and sewer connection fees and charges prior to obtaining a connection permit;
  - c. May proceed with extension of sewer service as outlined in this resolution.
6. If the City Council denies the annexation of the property and delays sewer approval, the owner may elect to:
- a. Notify the City in writing of the intent to return with a revised or amended request within 6-months of the date City Council denied the annexation; or
  - b. Notify the City in writing of the withdrawal of the request for extension of sewer service and all related requests.

F. **Emergency Sewer Connections and Developed Non-Contiguous.** The Public Works Director is authorized to permit sewer connections for existing developed property and for emergency sewer connections when a property meets the following criteria:

1. The property has an existing land-use and the owner does not propose any changes or expansions of the existing land-use at the time of sewer connection;
2. The property meets all the criteria outlined in the "Property Compliance" section of this resolution.
3. The property is adjacent to and is able to physically access an existing sewer collector main.
4. The existing on-site sewer disposal system has failed and no longer functions to sufficiently treat liquid waste or the property ineligible to obtain a septic repair permit from the City-County Environmental Health Division.
5. The owner executes a sewer service contract with a petition requesting annexation. Upon execution of the sewer service contract and/or the petition to annex, the property owner shall proceed with plans to extend service after securing all the necessary permits and approvals from the City Public Works Director's office and paying the appropriate hookup fees.
6. The petition requesting annexation that is attached to the sewer service contract shall be forwarded to the City Council Plat, Annexation, and Zoning Committee and maintained in City files until such time that City officials are interested in reviewing or considering that particular land area for annexation to the City.
7. The property will then be subject to future annexation plans as the City shall determine.
8. The City Council may, under severe or unusual circumstances, grant a temporary exception to the requirement for executing sewer service contracts by individual property owners when the emergency circumstances are deemed to be sufficient to warrant such an exception. However, such exceptions shall be temporary in nature and the City Council may at any time in the future annex and has the option to terminate sanitary sewer service if the property owner does not agree to annexation in accordance with Section 7-13-4312 of the Montana Code Annotated.
  - a. The exception shall be documented by more than 50% of the property owners executing sewer contracts describing each property owner's property receiving sewer service along with the nature and reason for the temporary exception and the City shall file a notice for each parcel of property receiving emergency sanitary sewer service at the Missoula County Clerk and Recorder's Office; OR
  - b. The exception shall be documented by the execution of a single sewer service contract describing all the properties granted the temporary exception, the nature and reason for the temporary exception, and signed by the President of the Homeowner's Association or other authorized individual on behalf of the owners and residents affected by the emergency circumstances generating the need for

municipal sanitary sewer service. The City shall file a notice for each parcel of property receiving emergency sanitary sewer service at the Missoula County Clerk and Recorder's Office.

G. **Sewer Service Stubs.** The Public Works Director is authorized to issue a sewer stub contract for a sewer service stub (also known as a lateral, stub-in or stub-out) to the property line of a property outside the city limits under the following conditions:

1. The service stub is to be extended from the sewer main to the property line only.
2. No residential units, buildings or structures on the property will be connected to the sewer service stub at the time the stub is constructed.
3. The property receiving the sewer stub meets the criteria outlined in the "Property Compliance" section of this resolution.
4. The property owner is willing and able to meet the obligations outlined in the "Owner Obligations" section of this resolution, then a sewer stub contract may be issued with the following conditions:
  - a. City annexation shall not be implemented until the sewer service stub is connected to residential units, buildings, or structures on the property subject to the sewer stub contract; and
  - b. When the property owner desires to connect the service stub to buildings or structures, a request to connect must be submitted to the Mayor stating the proposed use of the property; and
  - c. The request is reviewed and approved by the Sewer Service Review Committee for compliance with this resolution; then
  - d. After approval by the Committee, sewer connection fees as required in this resolution shall be paid by the property owner and a connection permit may be issued as outlined within this resolution; and
  - e. Nothing herein or in the sewer stub contract shall impair or hinder the City's ability to annex the property at any time pursuant to the annexation methods set forth in Montana state law.

**SECTION 2.** City staff shall be responsible for receiving and processing owner applications for the extension of sewer service to property outside the corporate city limits as follows:

A. **Public Works Department.**

1. Shall receive the application and collect the related fees for the purposes of convening the Sewer Service Review Committee to review and process the request.
2. Verify the application contains:
  - a. The status of the property as outlined in the "Property Compliance" section of this resolution;
  - b. The legal description and map of the property;
  - c. A description of the existing or proposed use of the property and, if applicable, a site plan of the existing or proposed development;
  - d. Current zoning designation.
3. Shall perform any additional research necessary to assist the Sewer Service Review Committee with its review and processing of the request.
4. Place the request on the agenda of the next scheduled Sewer Service Review Committee meeting.

5. Send a meeting reminder to all members of upcoming Sewer Service Review Committee meetings as well as contact the owners or representatives of applications scheduled for review at said meetings.
6. Record a written summary record of the Sewer Service Review Committee meetings for forwarding to City Council and maintain the summary records in accordance with municipal record retention and disposal requirements.
7. Shall assist the applicant with completion of the property owner's obligations as outlined in this resolution.
8. Shall draft all sewer service connection, stub or emergency connection contracts as outlined in this resolution and collect all fees related to the processing and filing of said contracts.
9. Shall collect fees for and shall issue sewer service permits upon approval in accordance with this resolution by the Sewer Service Review Committee, City Council or Public Works Director.
10. Shall refer to City Council, on behalf of the Sewer Service Review Committee, any request for sewer service that does not meet the property compliance requirements outlined in this resolution.

**B. City Clerk's Office.**

1. Shall file all sewer service contracts and sewer service annexation petitions at the Missoula County Clerk and Recorder's Office.
2. Maintain records of sewer service contracts that have been approved by the Sewer Service Review Committee, Public Works Director, or City Council in accordance with municipal record retention codes.
3. Keep on file all petitions for annexation related to sewer service contracts that have been referred to the Plat Annexation and Zoning Committee and designated for future annexation consideration.

**PASSED AND ADOPTED** this 3rd day of August, 2009.

**ATTEST:**

**APPROVED:**

/s/ Martha L. Rehbein  
 Martha L. Rehbein  
 City Clerk

/s/ John Engen  
 John Engen  
 Mayor

(SEAL)