

Council Business Meeting

May 2, 2017

Title: Second Reading of an Ordinance re Water Connections Outside City Limits
From: Doug McGeary Asst. City Attorney
legalcontractor@ashland.or.us

Summary:

This agenda item is the second reading of an ordinance regarding the City's water supply and water conservation ever-present concerns. AMC 14.04.060 has been routinely interpreted to have addressed these concerns by prohibiting premises outside the City from connecting to the City water system, with a few clearly-defined exceptions. The amendment to AMC 14.04.060 proposed in this agenda item is intended to unambiguously confirm that routine interpretation.

At its first reading on April 18, 2017, a typographical error was noted in the ordinance and is corrected in Section 1. 14.04.060B.3.i. changing the word "*direction*" to "*discretion*" and passed first reading without any other changes.

Actions, Options, or Potential Motions:

1. Approve second reading of an Ordinance titled, "An Ordinance Amending AMC 14.04.060 Water Connections Outside the City Limits" [*with the correction of one word in Section 1. 14.04.060B.3.i. "direction" to "discretion"*] as presented.
2. Council could take no action.

Staff Recommendation:

Approve second reading of the proposed Ordinance as presented.

Resource Requirements:

N/A

Policies, Plans and Goals Supported:

N/A

Background and Additional Information:

AMC 14.04.060A currently says, "no premises located outside the City of Ashland may be connected to the city water system except as provided herein". To avoid possible misinterpretation of the word *connected* in this limitation, staff proposes amending the provision to make clear that using water from the City water system on premises outside the City – whether the water is obtained by direct connection or otherwise – is disallowed except upon Council approval, in the narrow circumstances already set forth in AMC 14.04.060B and C.

This proposed amendment does not change City policy as it apparently has been interpreted ever since the enactment of AMC 14.04.060. The amendment simply clarifies and confirms that interpretation. Past enforcement of this provision may have been sporadic as a result of necessarily being complaint-driven, but enforcement that has occurred has been consistent with that broad interpretation.

An additional change in language in AMC 14.04.060C is intended to clarify that all of the requirements in subsections B.3 and C.1-4 must be met before Council can approve use of water on premises outside the City, except in the case of connections authorized by the Council for City or other governmental facilities or those authorized prior to June 18, 1997.

Lastly, the proposed amendment modifies existing AMC 14.04.060E to make clear that violation of Chapter 14.04 could result in restriction or termination of service, in addition to a fine of up to \$325 per day for individual and \$500 per day for a business entity. The current provision makes \$500 per day the maximum penalty for violation.

After passing a version of the proposed ordinance on First Reading at its November 15, 2016 meeting, Council decided to table the proposed Second Reading until it could explore the issues involved at a study session. At its [March 6, 2017](#), Study Session, the Council gathered additional information and directed staff to clarify the proposed ordinance with respect to the Council's discretion, and bring a new version to Council at a future meeting.

Attachments:

Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE AMENDING AMC 14.04.060
WATER CONNECTIONS OUTSIDE THE CITY LIMITS

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are **~~bold lined through~~** and additions are **bold underlined**.

WHEREAS, Article 2. Section 1 of the Ashland City Charter provides:

Powers of the City. The City shall have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing; and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.

WHEREAS, water provided through the city water system is a precious, limited resource;

WHEREAS, transporting and treating water delivered through the city water system are services provided for the benefit of premises within the City of Ashland;

WHEREAS, the current Chapter 14.04.060 of the Ashland Municipal Code evidently is intended to preclude the use of water from the city water system on premises located outside the City of Ashland except under clearly specified conditions; and

WHEREAS, the addition of clarifying language in Chapter 14.04.060 to set forth more explicitly the limitation on using water from the city water system on premises located outside the city would be beneficial for purposes of public understanding and enforcement.

THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:

SECTION 1. Ashland Municipal Code 14.04.060 Water Connections Outside City the Limits is amended to read as follows:

14.04.060 Water Connections Outside ~~City~~ the City Limits

A. **Except as provided herein, No** premises located outside the City of Ashland may be connected to the city water system **except as provided herein or make use of water obtained through a direct or indirect connection to the city water system.**

B. Premises outside the city may be connected to the city water system only as follows:

1. Connections authorized by the council prior to June 18, 1997.
2. Connections authorized by the council for city or other governmental facilities.
3. Connections authorized by resolution of the council where the council finds:
 - i. The connection is determined, **at the Council's direction discretion**, to be in the best interest of the City of Ashland and to not be detrimental to the City's water facilities or resources.
 - ii. The applicant secures, in writing, a statement from the Environmental Health Division, Health Department, Jackson County, Oregon, that the existing water system for the premises has failed.
 - iii. The failed water system cannot feasibly be repaired or improved and there is no other feasible source of water for the premises.
 - iv. An Ashland water main or line exists within 100 feet of the premises.
 - v. The connection is to premises within the city's urban growth boundary.

C. Connections authorized under **subsection B.3.** above shall be made only **after all the criteria in subsection B.3. and upon** the following conditions **have been met:**

1. The applicant for water service pays the water connection fee for connections outside the city and the systems development charges established by the City.
2. In the event dwellings or buildings connected to the water system are subsequently replaced for any reason, then the replacement building or dwelling may continue to be connected to the water system of the City as long as the use of the water system will not be increased as determined by the Director of Public Works.
3. The applicant furnish to the City a consent to the annexation of the premises and a deed restriction preventing the partitioning or subdivision of the land prior to annexation to the City, signed by the owners of record and notarized so that it may be recorded by the City and binding on future owners of the premises. The cost of recording the deed restriction shall be paid by the property owner.
4. The property owner shall execute a contract with the City of Ashland which provides for: payment of all charges connected with the provision of water service to the property; compliance with all ordinances of the city related to water service and use; termination of service for failure to comply with such ordinances and that failure to pay for charges when due shall automatically become a lien upon the property. A memorandum of the contract shall be recorded in the county deed records with the cost of recording to be paid by the property owner.

D. The requirements of this Section are in addition to, and not in lieu of, land use approvals and authorizations necessary for extra-territorial extension of water service required by Oregon law.

E. ~~A violation of any provision of this chapter shall be punishable as a Class I Violation as set forth in AMC 1.08.~~ **Any person who violates any provision of this Chapter shall be punished as set forth in Section 1.08.020 of the Ashland Municipal Code, in addition to other legal and equitable remedies available to the City of Ashland, including restriction or termination of service.**

SECTION 2. Savings. Notwithstanding this amendment/ repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinances or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

SECTION 3. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 4. Codification. Provisions of this Ordinance shall be incorporated in the City Code, and the word “ordinance” may be changed to “code”, “article”, “section”, or another word, and the sections of this Ordinance may be renumbered or re-lettered, provided however, that any Whereas clauses and boilerplate provisions (*i.e.*, Sections 2-4] need not be codified, and the City Recorder is authorized to correct any cross-references and any typographical errors.

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the ____ day of _____, 2017, and duly PASSED and ADOPTED this ____ day of _____, 2017.

Barbara M. Christensen, City Recorder

SIGNED and APPROVED this ____ day of _____, 2017.

John Stromberg, Mayor

Reviewed as to form:

David H. Lohman, City Attorney