

CITY COUNCIL REPORT
PUBLIC

DATE: May 14, 2015

TO: Mayor and City Council

FROM: Brad Hill, R.G., Utilities Director
Michelle D'Andrea, City Attorney
Sterling Solomon, Deputy City Attorney

CC: Jeff Meilbeck, Josh Copley, Jerene Watson, Leadership Team

SUBJECT: Questions from City Council regarding Reclaimed Water Policy and the Principles of Sound Water Management

Vice Mayor Barotz and Councilmembers Putzova and Evans asked staff a series of questions regarding reclaimed water policy contained within the Principles of Sound Water Management (the "Water Policy") as well as City Code. In order to help frame answers to Council's questions, we thought it would be useful to first provide an overview of how the reclaimed water program is administered. Answers to the specific questions follow the overview.

Reclaimed Water Program Overview

The Utilities Division administers the reclaimed-water program and has done so since its inception in the late 1990s. In 2008, the Utilities Division sought policy guidance from City Council regarding the reclaimed-water program and other water and wastewater issues. Staff's research indicated that only two other municipalities had water policies that were adopted by their city councils and both addressed reclaimed/non-potable water to some degree.

Flagstaff citizens were consulted often as the Water Policy was considered. The Citizens Advisory Water Commission held 29 public meetings. The Commission discussed the proposed Water Policy topic-by-topic over a nearly four-year period. After the Commission adopted the Water Policy in November 2012, the City Council held ten additional public meetings over the following one and a half years. Because reclaimed water is of great interest to the community, 15 of the public meetings addressed reclaimed water.

Council's direction to staff, as a result of the process, is now articulated in the Water Policy. If the City Code and the Water Policy provide no guidance on a subject, staff administers the program using best management practices within the water-reuse industry and from the State, often using other municipalities as a guide.

Tracking of Agreements and Water Supply Availability

The reclaimed-water program has been extremely successful since its inception in the 1990s as a water conservation tool. Because of this success, Utilities has had difficulties keeping up with customer water-delivery requests during the dry summer months. (There is no problem keeping up with customer delivery requests during the cold winter months because demand decreases.) In 2011, staff began to implement a tracking process with two goals: 1) track the peak-month and annual total deliveries of each customer; and 2) determine how much reclaimed water is uncommitted and potentially available to commit in the future.

The Water Commission approved staff's inclusion of volumetric delivery limits within customer Reclaimed Water Agreements (i.e., monthly and annual maximum deliveries). The Commission recommended that these delivery limits be instituted when a customer's Agreement comes up for renewal. Staff uses each customer's historic deliveries over the prior three years as a basis to determine their volumetric limits. Prior to implementing this type of tracking, only three Reclaimed Water Agreements had delivery limits (Pine Canyon G.C., Continental Country Club and Snowbowl) while the rest were left undefined.

The second goal of staff was to determine how much reclaimed water may be available to commit for future uses such as Little America. This calculation is driven by the maximum delivery commitments to existing customers during the peak summer months compared to the reclaimed water supply availability from both the Wildcat Hill and Rio de Flag water reclamation plants. Currently there is some excess reclaimed water supply available from Wildcat Hill during the summer months, but limitations in the reclaimed-water-distribution-system infrastructure prevent that supply from being available. Because of this, Utilities has not issued any reclaimed-water agreements for new connections since December 2012 and has created a "waiting list" of those who have approached the City seeking new reclaimed-water connections. Staff has issued reclaimed-water agreements since December 2012 for existing customers who do not require new connections.

Issuance of Reclaimed Water Agreements

According to the City's Type 3 Reclaimed Water Permit with the Arizona Department of Environmental Quality, the City must maintain valid reclaimed-water agreements with all customers. City Code identifies three types of Agreements pertaining to reclaimed water: 1) reclaimed-water agreements, 2) reimbursement agreements, and 3) conversion agreements. According to City Code, reclaimed-water agreements are issued administratively by the Utilities Director while reimbursement and conversion agreements require City Council approval since they commit the payment of funds on behalf of the City. This process was adopted by City Council in 2002 (Ordinance 2002-07), which modified City Code 7-02-001-0024, and was confirmed by Policy C3.1 of the Water Policy.

1. New Reclaimed Water Agreements: Utilities currently has 38 customers delivering water to 72 sites. The Agreements are typically for a term of five-years. Utilities and the City Attorney's Office have worked together to develop the language contained within our reclaimed-water agreements. The majority of these agreements were entered into administratively by staff. However, two customers requested and were given a term of 20 years among other specific conditions; Pine Canyon G.C. and Snowbowl both of which were initially approved by City Council in 2000 and 2002, respectively.¹ (Please see Flagstaff City Code Sections 7-02-01-0024.A; 7-02-001-0024.I; 7-02-001-0024.J.)
2. Renewal of Existing Reclaimed Water Agreements: Prior to the adoption of the Water Policy by City Council, it had been customary practice of the Utilities Division to renew all existing reclaimed-water agreements when they expire if the customer is in good standing (paid their bills) and interested in continuing to receive reclaimed-water service. Since City Council adoption of the Water Policy, staff now renews reclaimed-water agreements in accordance with Policy C7 (p. 22) which provides guidance on the priority of uses or future allocations of reclaimed water. Specifically, if a customer is an Existing User, he or she receives first priority. (Please see Policy C7.3.a.)
3. Reimbursement and Conversion Agreements: Over the past several decades, the City has entered into reimbursement and conversion agreements to encourage the use of reclaimed water over potable water. Reimbursement agreements allow the City to reimburse the reclaimed-water user for the cost for extending and connecting to a reclaimed-water pipeline. A conversion agreement requires the reclaimed-water user to reimburse the City for its costs to convert the user's potable water system to a reclaimed water system by extending and connecting the user to a reclaimed-water pipeline. These types of agreements were executed with Northern Arizona University, Flagstaff Unified School District, SCA Tissue, and N.E. Professional Plaza. According to staff, all but a few have been financially repaid, so upon their renewal, these customers are converted to a reclaimed-water agreement. (Please see City Code Section 7-02-001-0024.)

Staff Response to City Council Questions

¹ Pine Canyon Golf Club initially included a reimbursement agreement for a line extension where the City paid Pine Canyon so that reclaimed water agreement went to Council in 2000. Snowbowl is located outside of City Limits so that the initial reclaimed water agreement went to Council in 2002.

City Council Report
May 14, 2015

1. *What portions of the City Code & Policies govern who makes decisions about reclaimed water agreements both inside and outside City limits?*

Inside the City there are categories: 1) Connections that require zone changes, and 2) connections that don't require zone changes. What is the process for the public to have input under either category? Put together a flow chart(s) to see how the public might be able to participate under current Code & Policies.

- i. Flowchart A - inside City limits – existing “built” development: If an applicant within the City requests a new reclaimed-water connection and there are existing reclaimed-water pipelines adjacent to the property, it is an administrative process similar to a request for potable-water service. Flagstaff City Code Section 7-02-01-0024(I) states that the Utilities Director executes reclaimed-water agreements for the purpose of expanding the reclaimed-water program to all residential and nonresidential users located adjacent to exiting public-reclaimed-water pipes.
- ii. Flowchart B - inside City limits – proposed new development: If the property owner applies for a change in zoning and simultaneously requests a new reclaimed water connection, the rezoning request results in a public process. If the property owner does not apply for a change in zoning and requests a new reclaimed water connection, and the property is not adjacent to existing reclaimed-water pipelines, and the owner wants reimbursement for his or her pipeline costs, there is a public process. Anytime reimbursement or conversion agreements are involved, those agreements are also subject to a public process and approved by Council. The City Code does not give the Utilities Director the authority to approve these types of reclaimed-water agreements; therefore the power resides in the Council.
- iii. Flowchart C - Outside City Limits: According to City Code Sections 2-04-001-0007 and 2-04-001-0008, anyone outside City limits requesting a new reclaimed water connection goes through a public process by getting approval from the Water Commission then City Council approval. Water Policy F4 provides additional guidance.

2. *What does “City” mean within the Policies?*

The term “City” is used on different occasions within the Water Policy. The City Code contains controlling language regarding the allocation of duties related to water, wastewater and reclaimed water. We look, therefore, to City Code for direction on what “City” means in different contexts of the Water Policy. The term “City” means City Council in some instances and City staff in other instances. For example:

City Council Report
May 14, 2015

City Code states that a new connection for outside City users is approved by the City Council. The language can be found in City Code Sections 2-04-001-0007 and 2-04-001-0008. We therefore know that the term “City” in Policy C5.2 of the Water Policy refers to the City Council.

City Code states that the Utilities Director executes reclaimed water agreements for in-City users who are adjacent to existing reclaimed water pipelines. The language can be found in City Code Sections 7-02-01-0024.A and 7-02-001-0024.I–K. We therefore know that the term “City” in Policy C3.1 often means the City’s Utilities Director, depending on the type of reclaimed-water agreement.

City Code states that City Council considers and approves all reimbursement agreements for reclaimed water and all conversion agreements for reclaimed water. The language can be found in City Code Sections 7-02-001-0024.D, 7-02-001-0024.F, and 7-02-001-0024.G. We therefore know that the term “City” in Policy C1.1 refers to the City Council.

Sometimes the definition of the term “City” is clear from context. For example, the term “City” means the physical boundaries of the municipality when the Water Policy discusses the “City’s service area.” If the City Code is silent and the term “City” is referring to a person or group of persons rather than a place, the term “City” will usually mean the City Council because the City’s Charter indicates that the Council determines City policy. The general use of the term “City” in the Water Policy may be considered advantageous because it allows us to amend the City Code without amending the Water Policy.

3. *Can staff explain to the Council the difference between a reclaimed water connection and a reclaimed water agreement (RWA)?*

A new reclaimed-water connection for outside-of-City users is approved by the City Council under City Code Sections 2-04-001-0007 and 2-04-001-0008. After initial City Council approval a reclaimed-water agreement is executed by the Utilities Director for properties adjacent to existing reclaimed-water pipelines and not requiring a reimbursement or conversion agreement. (Please see City Code Sections 7-02-01-0023; 7-02-01-0024.A; 7-02-001-0024.I; 7-02-001-0024.J.) If there is an existing reclaimed-water connection, the Utilities Director executes the reclaimed-water agreement.

4. *Go through the policy and clarify what the “City” means: Is there a possibility to go back through the Water Policy to determine?*

Please see the response to question 2.

5. *Evaluate to ensure there are no internal conflicts within our policy and conflicts between policy and code.*

The Water Policy is substantially consistent with the Flagstaff City Code.

6. *What is the difference between a new agreement and the renewal of an agreement?*

A reclaimed-water agreement for an existing connection already approved by Council does not require council approval for renewal. A renewal of an agreement of an existing connection does not change the terms of the agreement except for the length of the agreement (term). A renewal never requires Council approval because the user is, by definition, an existing user under Policy 7.3 and no City Council approval is required under the City Code. The Utilities Director signs all renewals. (Please see City Code Sections 7-02-01-0023, 7-02-01-0024.A, 7-02-001-0024.I, and 7-02-001-0024.J; Policy C7.3.a).

If a user wishes to make significant modifications to the terms of the Reclaimed Water Agreement, a new agreement will be required. Significant modifications are addressed under Policy C3.1 which states: "Any proposed modifications to the terms of an existing Reclaimed Water Agreement (e.g., change of intended use, place of use, delivery schedule or other modifications) will require the applicant to obtain a new Reclaimed Water Agreement..." However, where the new agreement will not require a new connection, and modifications are not significant to an agreement already approved by Council, it will be signed by the Utilities Director. Please see City Code Sections 7-02-01-0023, 7-02-01-0024.A, 7-02-001-0024.I, and 7-02-001-0024.J; Policies C3.1 and C7.3.a.

7. *Brad, have you learned anything since last April that will make this document (Water Policy) better?*

The first thing I've learned is Flagstaff has been recognized both nationally and within Arizona for being progressive with City Council adopting a set of comprehensive water policies. Specifically, staff has been invited to speak at two water conferences on the Water Policy; one in Denver and in Phoenix this month to present the details of each policy and the process undertaken to accomplish. The second thing I have learned is that the Water Policy makes the Utilities decision-making process more transparent.

8. *Can we add a chapter within the Policies to specific water resources like Red Gap and others?*

Staff recommends that City Council discuss and provide direction on future water resources during the development and adoption of a water-resources master plan. The Water Policy will continue to provide over-arching guidelines and direction to staff on a variety of topics important to City Council. Staff would then implement these Council policies through a variety of mechanisms such as revision of the City Code when appropriate, creation of master plans, etc.

Policy G1 of the Water Policy lays out the elements of master planning that Utilities should undertake every five (5) years (Policy G1.1). Specific details that need to be addressed within a water-resources master plan are identifying and recommending future water-supply options while considering the City's adequate-water-supply designation (e.g., Red Gap Ranch, reclaimed water, etc). Many municipalities within Arizona ask staff and consulting experts to identify future water supply options for a community, calculate their comparative costs, define their volume of water, and provide other details of each supply option. Staff then brings the draft master plan to City Council for their review and approval on an overall water-supply strategy that aligns with the Water Policy. Staff suggests that Flagstaff continue with that methodology.

Staff developed the City's first Water Resources Master Plan in 2011 and met with a variety of stakeholders city-wide; specifically the Water & Sustainability Commissions, Coconino Plateau Water Advisory Council, F³ Board of Directors, Northern Arizona Homebuilders Association, and the Chamber's Economic Development Committee. The report, however, was never finalized and brought forward to City Council for consideration or adoption because Brad was promoted from Water Resources Manager to interim Utilities Director in May 2011. Erin Young, the City's Water Resources Manager, has been tasked with leading the update of this Plan starting in 2015.

9. *Can we charge an "in-lieu fee" for those out-of-City customers?*

We assume by an "in-lieu fee" the question is: Can the City charge more to out-of-city customers? We cannot charge a significantly different rate to an out-of-city customer unless there is a justification related to the cost-of-service.

10. *Who gets to approve what & when on Policy C7.3a ?*

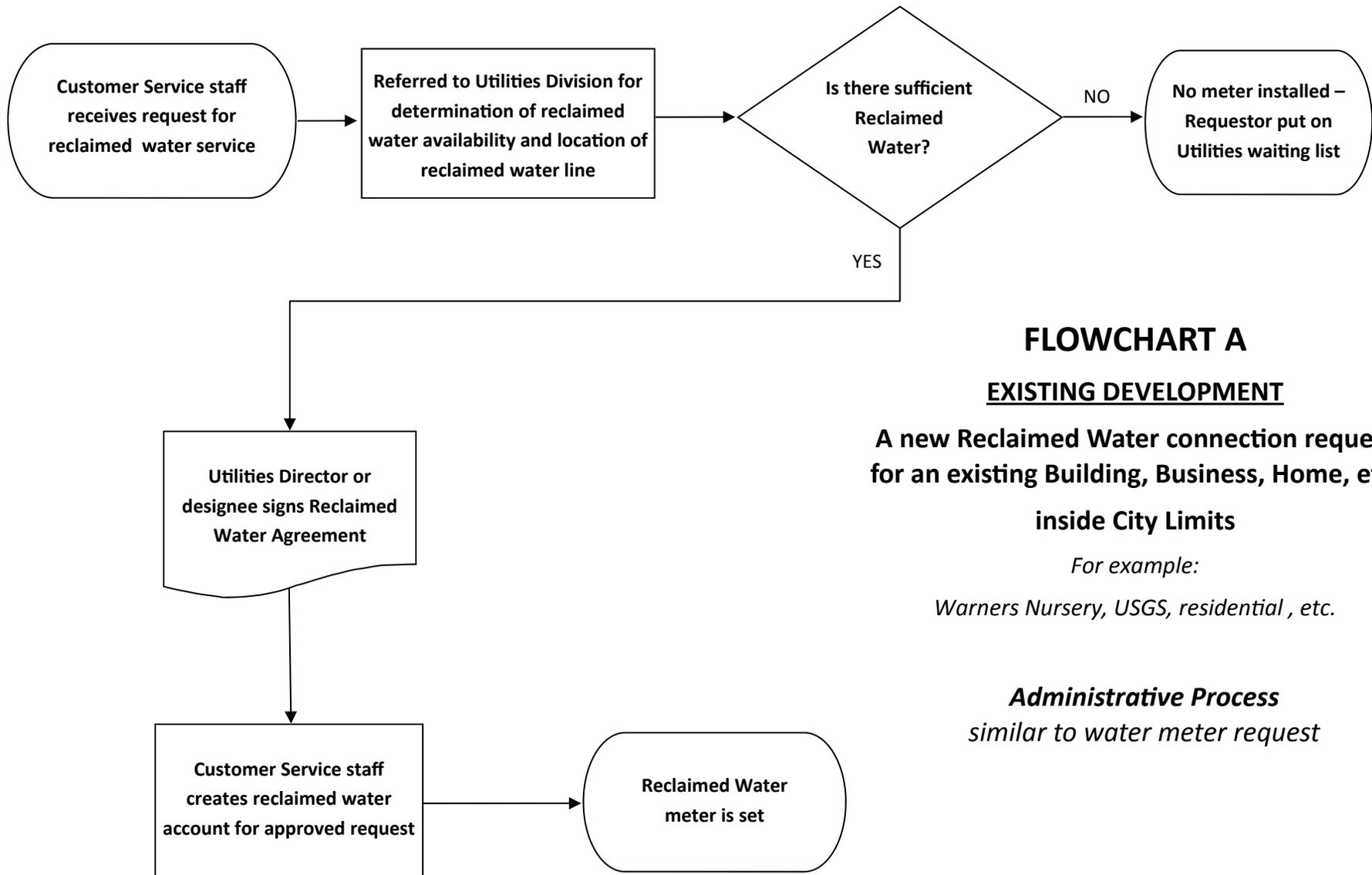
Please see the responses to questions 3. and 6. above.

11. What is the definition of “stored water?”

The definition of “Stored Water” is contained within the Arizona statutes that govern *Underground Storage, Savings and Replenishment (§Title 45 – Chapter 3.1)*. Stored Water is defined as “water that has been stored or saved underground pursuant to a storage permit issued under this chapter” (*§45-802.01*). In simple terms, water (e.g., reclaimed water) can be stored underground at a storage facility and then recovered by the storer and used annually pursuant to Arizona Revised Statutes Section *45-851.01*. These statutes are administered by the Arizona Department of Water Resources.

12. What is the definition of “discretion” as used in Policy C3.1 and C5.2?

No definition of discretion is given in either the City Code or the Water Policy but Merriam-Webster’s Dictionary defines discretion as: “The right to choose what should be done in a particular situation.”



FLOWCHART A

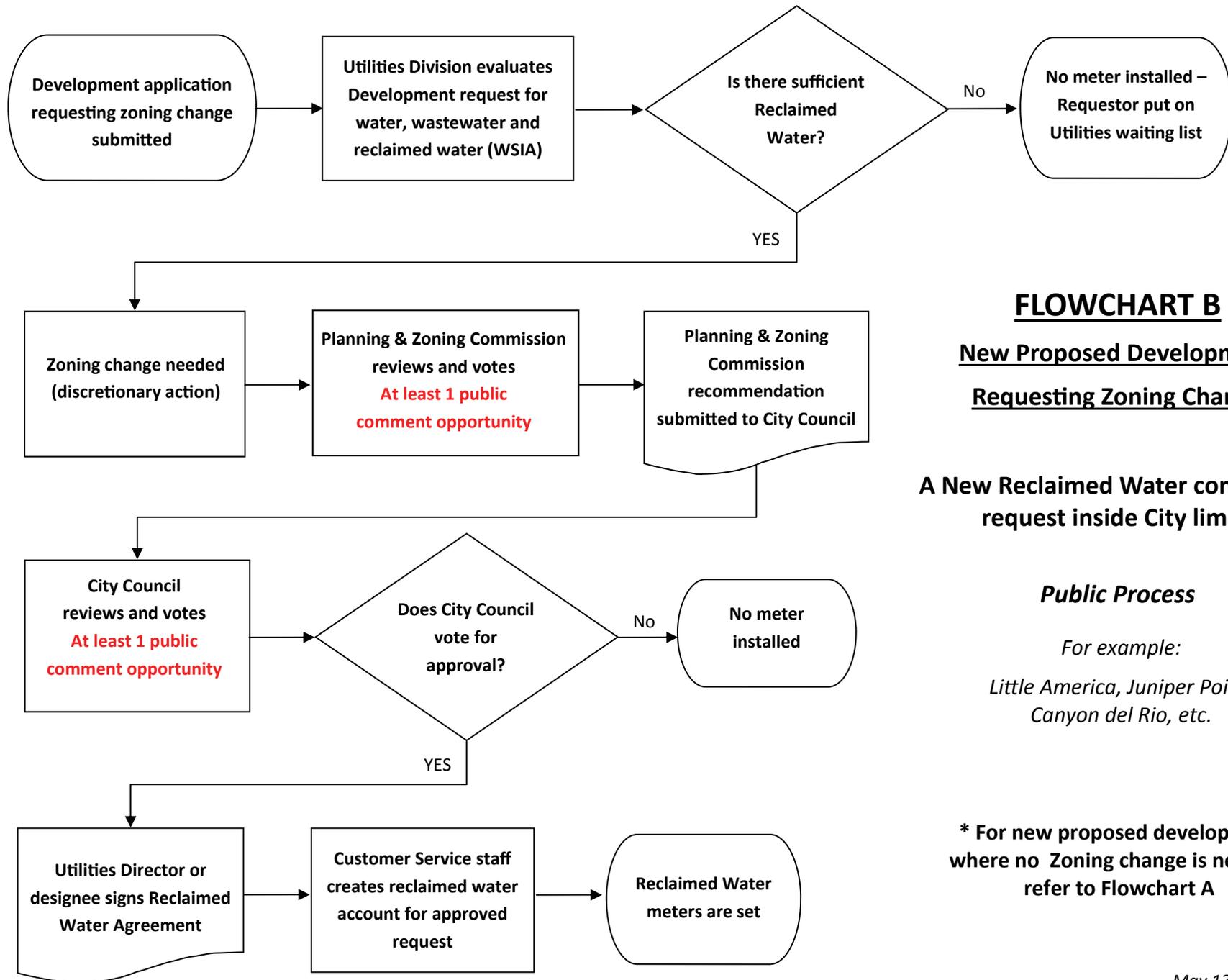
EXISTING DEVELOPMENT

A new Reclaimed Water connection request for an existing Building, Business, Home, etc. inside City Limits

For example:

Warners Nursery, USGS, residential , etc.

Administrative Process similar to water meter request



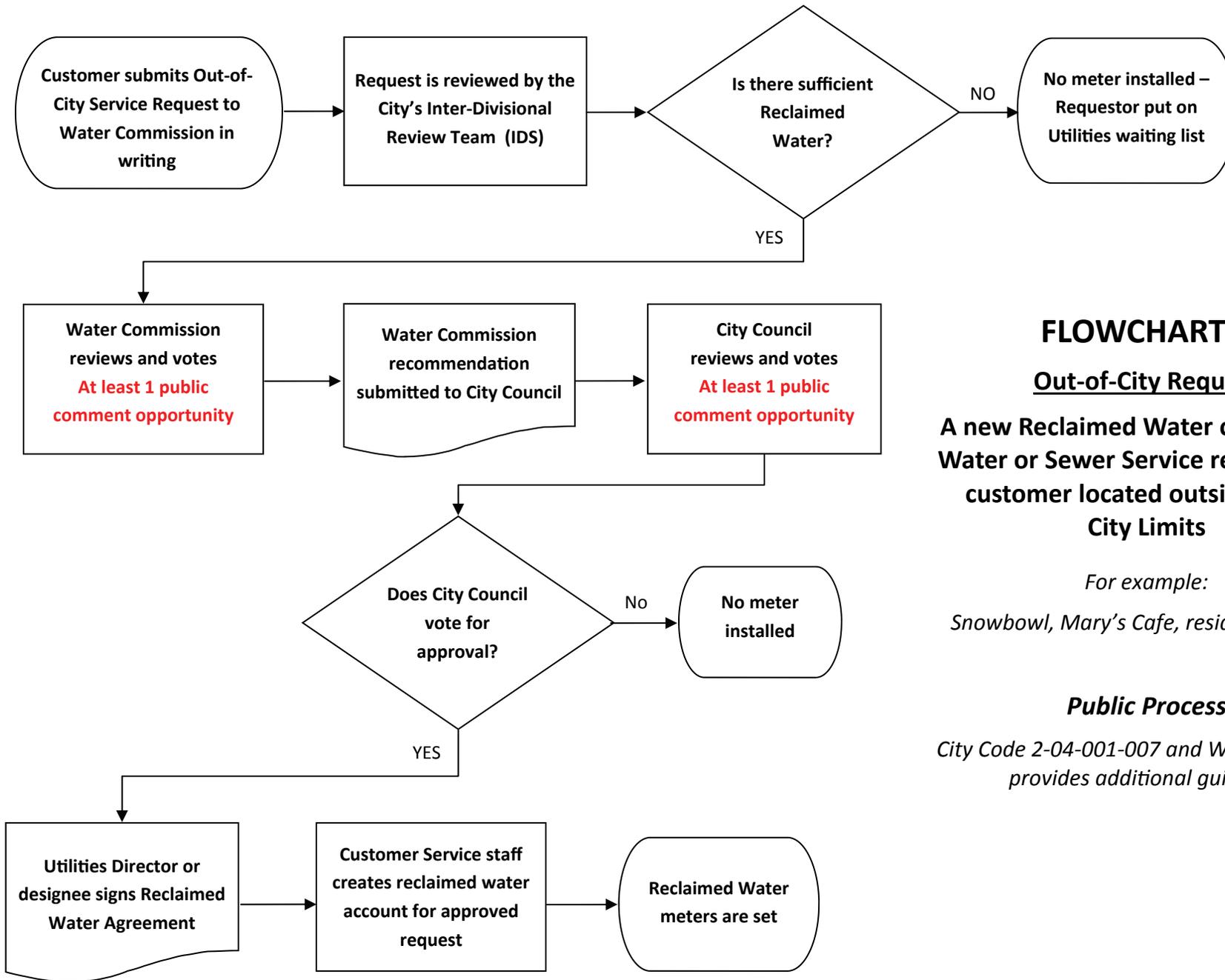
FLOWCHART B
New Proposed Development
Requesting Zoning Change

A New Reclaimed Water connection request inside City limits

Public Process

*For example:
 Little America, Juniper Point,
 Canyon del Rio, etc.*

*** For new proposed development where no Zoning change is needed, refer to Flowchart A**



FLOWCHART C

Out-of-City Request

A new Reclaimed Water connection, Water or Sewer Service request for a customer located outside of the City Limits

For example:

Snowbowl, Mary's Cafe, residential , etc .

Public Process

City Code 2-04-001-007 and Water Policy F4 provides additional guidance