

ORDINANCE NO. 2212

AN ORDINANCE ADOPTING A NEW BEND CODE CHAPTER 15.90 SEWER EXTRA STRENGTH CHARGE

Findings:

A. In January 1983, the City adopted Ordinance NS-1368, which regulated industrial wastewater discharges. Ordinance NS-1368 expressly authorized a sewer extra strength charge.

B. The city imposed a sewer extra strength charge until 2012, when the city council suspended the sewer extra strength charge. The sewer extra strength charge was suspended because of a concern that many industrial and commercial sewer customers should have been paying the extra strength charge and were not paying. The Council did not deem it advisable to continue the program if some entities were paying the extra strength charge while other similar entities were not paying the charge. Council provided direction to develop a revised sewer extra strength charge program that would include all extra strength dischargers and that would be revenue neutral.

C. A sewer extra strength charge committee was formed to discuss all aspects of the sewer extra strength charge program and to develop a recommendation to the city council. That committee met frequently over the past year and recommends adoption of code provisions re-imposing the extra strength charge.

Based on these findings, the City of Bend ordains as follows:

Section 1. The Bend Code is amended by adding a new Chapter 15.90 Sewer Extra Strength Charge to read as shown in Exhibit A.

First reading: December 18, 2013

Second reading and adoption by roll call vote: January 8, 2014

YES: Mayor Jim Clinton
Councilor Jodie Barram
Councilor Scott Ramsay
Councilor Mark Capell
Councilor Victor Chudowsky
Councilor Doug Knight
Councilor Sally Russell

NO: none



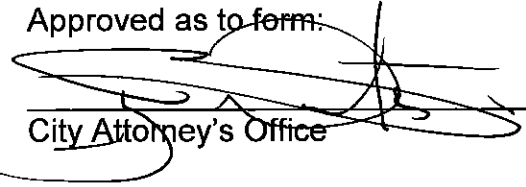
Jim Clinton, Mayor

ATTEST:



Robyn Christie, City Recorder

Approved as to form:



City Attorney's Office

Exhibit A

Chapter 15.90 Sewer Extra Strength Charge

15.90.010 Imposition of Sewer Extra Strength Charge

All non-residential sewer customers are subject to evaluation to determine if they are required to pay a Sewer Extra Strength Charge (ESC). Non-residential sewer customers whose wastewater discharges exceed or have the potential to exceed residential levels of Biochemical Oxygen Demand (BOD) or Total Suspended Solids (TSS) shall pay an ESC in an amount established by Council resolution, consistent with the provisions of this Chapter.

15.90.020 Purpose

The purpose of the ESC is to recover the cost of treating extra strength wastewater discharged into the City of Bend sewer system. Extra strength discharges have a concentration of BOD or TSS higher than the concentration assumed as part of the City's base sewer user charge. Additional charges to ratepayers for extra strength wastewater is necessary for rate equity and to prevent the high cost of treatment of extra strength wastewater from being passed on to all other ratepayers.

15.90.030 Rate Types

Ratepayers who discharge extra strength wastewater shall pay an ESC using either the Industry Average Rate or the Monitored Rate.

A. Industry Average Rate

1. All non-residential customers who are not in the Monitored Program whose wastewater discharges exceed residential strengths for BOD or TSS shall pay the Industry Average Rate.
2. The ESC Industry Average Rate shall be established by Council resolution setting rates based on the following categories: low, medium, high, and super high. The City Council shall establish by resolution an Extra Strength Category Table that lists the industries in each category. The City Manager shall maintain and may amend the Extra Strength Category Table.
3. The ESC Industry Average Rate shall be based on the Winter Quarter Average discharge amounts of the customer, and the amount shall be adjusted annually in the spring based on the most recent Winter Quarter Average data. For new customers, the amount shall be based on base rate without a volume charge. The rates in the ESC Industry Average Rate may include a phased rate increase, with initial rates that do not cover all extra strength costs, over a period not to exceed 3 years.

4. Any changes in use of a non-residential property or in processes that may affect the strength of wastewater discharges shall be reported to the City's Utility Billing Department.
5. When a single sewer account includes discharges from multiple sources, the account holder shall assign a proportionate share to each use, subject to City review and approval. The account charges will be calculated by the City taking into account the proportionate use.
6. Any customer may request reclassification under Section 15.90.060 at the time the classification is initially assigned, after any change in classification, or after any change in use or practice at the property.

B. Monitored Rate

1. Non-residential sewer customers may pay the ESC based on their sewer discharge if they are eligible for and participate in the Monitored Rate Program as established in this Subsection B.
2. Customers are eligible to participate in the Monitored Rate Program if:
 - a. There is a secure and accessible sampling location for the customer's discharge that allows representative samples to be taken; and
 - b.
 - (1) The use on the discharging property is not included in the Extra Strength Category Table; or
 - (2) The customer has pre-treatment practices, programs or facilities that reduce the BOD and/or TSS to the extent that the customer would qualify for a lower category based on actual discharge; or
 - (3) The customer has variable discharge, either in volume or strength, that would make the Industrial Average Rate inappropriate.
 - (4) The discharge from the property has an average BOD or TSS greater than 2000.
3. Customers with an average peak BOD or TSS greater than 3000 must participate in the Monitored Rate Program.
4. Any non-residential customer may apply to be in the Monitored Rate Program. The application shall be accompanied by an application fee in an amount established by Council resolution. Customers that paid an ESC to the City prior to January 1, 2013, shall be exempt from the application fee for applications submitted prior to January 1, 2015.

5. An individual Monitored Program for each customer shall be established and agreed to in writing by the applicant for inclusion in the monitoring program. Each monitoring program shall be consistent with the City's sampling standards and include:
 - a. A description of the sampling location.
 - b. A sampling schedule for the samples to be taken by the customer.
 - c. The ability for the City to access the sampling site and take samples.
 - d. A requirement that the customer samples be analyzed for BOD and TSS by an independent laboratory approved by the City.
 - e. An agreement on when the data will be presented to the City for monthly billing purposes
6. On determination of the actual strength of the discharge as monitored, the customer shall pay the rate based on monitored load established by Extra Strength Category Table, based on a 12-month rolling average basis.
7. The application for participation in the monitoring program shall include a consent to the City's inspection of the property where the sewage discharge occurs to take samples and to inspect for compliance with the monitoring program.

15.90.040 New Development and Redevelopment

Any new development that will likely host a business that has the potential to discharge wastewater at strengths above residential levels shall install a sampling manhole at time of development or redevelopment. Sampling manholes shall comply with the City's Standards and Specifications in effect at the time of installation.

15.90.050 Reclassification Requests

A. Application. Any customer in an industry that is required to pay a sewer extra strength charge may request reclassification at any time by submitting a written application on a City-approved form and payment of a fee in an amount to be established by Council resolution.

B. Standard. The City shall reclassify the applicant's discharge if the applicant establishes by a preponderance of the evidence that:

1. The applicant has in place a process, program and/or facilities that reduce the discharge strength to a lower category than would otherwise be applicable.
2. Reliable published data indicates that the expected discharge strength of the industrial use type would place the use in a lower category.

C. Effect of Reclassification. A reclassification shall be effective for a maximum of 12 months. Reclassifications may be extended for an additional 12 months using the same process and standards applicable to an original reclassification.

D. Conditions. This city may impose conditions on a reclassification, and may terminate a reclassification if the discharge no longer meets the standards established in Subsection B.

15.90.060 Appeals

A. An applicant for reclassification may appeal a whole or partial denial of the application for reclassification.

B. Any applicant for participation in the Monitoring Program may appeal denial of participation in the monitoring program or any component of the Monitoring program when finally approved.

C. All appeals shall be filed within 10 business days of the date of the decision being challenged. The appeal shall be submitted to the City Recorder and shall be accompanied by payment of the appeal fee established by Council resolution.

D. Within 45 days of filing the appeal, the appellant shall provide written justification, supported by evidence, in support of the appeal. The City shall provide a written response within 60 days of receiving the written materials from the appellant. The City and the appellant may agree in writing that the appeal will be determined on the written submissions.

E. The appeal shall be submitted to the City Manager, who will hold an in-person hearing unless the parties have agreed that the appeal will be determined on written submissions. The City Manager may delegate responsibilities under this section to the Assistant City Manager or the Bend Business Advocate.

F. The decision on appeal shall be reduced to writing and issued within 15 days of (1) the date of hearing or (2) the date that the written agreement to submit on written submission is submitted.

G. The written decision of the City Manager or designee shall be the City's final decision and reviewable only by writ of review.

H. If a final decision is issued denying the reclassification, the appellant may not seek reclassification or a change to the Monitored Rate Program unless the use is discontinued or new facilities are put in place that would change the strength category

15.90.070 Enforcement

A. A customer's failure to comply with any applicable provision of this Chapter is a Class A civil infraction.

B. Knowingly submitting false information on any application provided for in this chapter or knowingly submitting false or erroneous information in connection with any monitoring program, or taking action that would lead to inaccurate or unrepresentative sampling is a Class A civil infraction.

