

ORDINANCE NO. 88-O-431

AN ORDINANCE PRESCRIBING MONTHLY SERVICE CHARGES FOR THE USE AND BENEFITS OF THE SEWERAGE FACILITY OF THE CITY, PROVIDING FOR THE METHODS OF CHARGES FOR SEWERAGE SERVICE, PROVIDING FOR A PENALTY FOR NON-PAYMENT, PROVIDING FOR THE DISPOSITION OF FUNDS COLLECTED FROM THE MONTHLY SEWER USE CHARGES, REPEALING ORDINANCE NOS. 38, 78, 116, 378 AND 379, AND DECLARING AN EMERGENCY. [Effective December 15, 1988]

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The City of Brookings ordains as follows:

Section 1.            Purpose. Pursuant to the general laws of the State of Oregon, and the powers granted in the Charter of the City of Brookings, Oregon, the Council of said City hereby declares its intention to acquire, own, construct, equip, operate, and maintain within and without the corporate limits of the City of Brookings a sewage disposal plant or plants, sewers, equipment, and appurtenances necessary, useful, or convenient for a complete sewer system and disposal plant, and also including the reconstruction of such sewers as may necessarily or conveniently be deemed proper by the Council.

Section 2.            Companion ordinance. This Ordinance is a companion Ordinance to the City of Brookings Ordinance No. 88-O-430 providing for sewer system use and discharge of wastes, and the Development Code of the City. [Section 2 as amended by Ordinance No. 88-O-437, adopted January 9, 1989]

Section 3.            Repeal. Ordinances No. 52-O-038, 55-O-078, 56-O-104, 58-O-116, 75-O-265, 83-O-378, and 83-O-379 are hereby repealed.

Section 4.            Definitions. The definitions of terms used in this Ordinance are the same as defined in the Sewer Use Ordinance No. 430, which terms are adopted by reference and by such reference are applicable as if set out herein.

Section 5.            Application - Terms.

A. Every person desiring sewer service from the City shall make application to the City on a standard form which shall become a contract on the part of the person making the same to pay for the sewer service applied for at the rate adopted and resolved by the City to be the rate schedule, and in the manner and for the time specified in such contract, and shall reserve to the City the right to charge and collect the rates provided for and to change said rates at any time; to discontinue the service at any time without notice to the consumer; to install meter or meters; to register the service consumed or the maximum load or both, and shall specify that said contract is subject to all the provisions of this Code. [Section 5, Subsection A as amended by Ordinance No. 88-O-437, effective January 9, 1989]

B. The contract shall further provide that the City shall not be held responsible for any damage by stoppage or flooding or other cause resulting from plumbing installed by the owner or occupant on premises supplied with sewer service and that the fact that the agents of the City have inspected the plumbing and appliances shall not be pleaded as a basis for recovery in any case of damages to premises from defective plumbing or appliances installed by the owner or occupant of such premises, and shall provide that in case the sewer service is interrupted or fails by reason of accident or any other cause whatsoever. [Section 5, Subsection B as amended by Ordinance No. 88-O-437 effective January 9, 1989]

C. Further, the City shall not be liable for damages for such interruption, nor shall failure or interruption for any reasonable period of time be held to constitute a breach of contract on the part of the City or in any way to relieve the consumer from performing the obligations of his contract. [Section 5, Subsection C as amended by Ordinance No. 88-O-437 effective January 9, 1989]

Section 6.            Contract - Effective date. All contracts shall take effect from the day they are signed, and rates will be charged and bills rendered from the day the premises are connected with the City providing sewer service.

Section 7.            Contract - Refusal right. Nothing contained in this Ordinance

shall be construed as requiring the City or the City Manager to enter into any contract or to furnish sewer service to any person applying therefor. The City Manager is authorized and empowered to refuse to enter into any such contract to furnish such sewer service, subject to the appeal procedure set forth in Subsection 8, Subsection K, below. [Section 7 as amended by Ordinance No. 88-O-437 effective January 9, 1989]

Section 8.            Monthly sewer use charges.

A.    Charges levied. There are hereby levied and imposed upon all property owners and users having a connection with the sewer system of the City of Brookings, Oregon, whether directly or by contract through a third party, both within and without the corporate limits of said City, and upon all subsequent users, whether served directly or by a contracting third party, just and equitable charges for debt service, service, maintenance, operation and replacement of the treatment works, which shall be established from time to time by Resolution of the City Council.

B.    Financial self-sufficiency. The just and equitable charges shall be fixed at such amounts so as to assure the financial self-sufficiency of the treatment works, and thereafter shall be reviewed annually and amended as necessary by Resolution of the City Council to maintain such self-sufficiency.

C.    Sewer use charges. The sewer use charges for sewer service are hereby levied and imposed upon:

1.    All property and sewer users served by the City of Brookings sewerage system, whether directly or by contract through a third party both within and without the corporate limits of the City, and

2.    Upon other property served by the City of Brookings sewerage system requiring sewage disposal on which there is a dwelling or other building to which sewer service is readily available.

D.    A "sewer user" means a person, corporation, firm, association, or partnership being the:

1.    Owner or agent to the owner of the property described in subparagraph C., 1., above which uses and receives the benefits of the City of Brookings treatment works.

(a)    The property owner or the sewer service contracting agent defined in this section as sewer user, shall be billed monthly for the use of the City's sewer system unless written notice is received by the City from the property owner stating to whom it is desired the monthly billing be sent.

(b)    The property owner or sewer service contracting agent, herein called the sewer user, shall be responsible for the sewer use charges levied

in accordance with this ordinance and such charge shall attach to the property served.

(c) Owner or agent to the owner of the property described in subparagraph C., 2., above which enjoys the availability of the City of Brookings sewerage system.

E. Customer classes defined. For the purpose of determining rates and assigning service charges, users shall be grouped into one of the following customer classifications:

1. Residential - all single-family residential services, and multi-family residential services which have individual water meters or are billed separately for each dwelling unit.
2. Multi-family residential or standard discharge strength - all multi-family dwellings, mobile home parks and recreational vehicle parks in which a single water meter provides service to more than one dwelling unit.
3. Restaurants or food service establishments - all restaurants or other food service establishments or users with discharge strengths (BOD or SS) in excess of 240 mg/liter.
4. Other commercial - establishments discharging commercial wastewater, as defined in this Ordinance.

[Section 8, Subsection E as amended by Ordinance No. 88-O-437 effective January 9, 1989]

F. Rate structure. Sewer service rates for each of the respective customer classifications enumerated in Subsection E. of this Section shall be derived and calculated in accordance with the following standards and fixed by Resolution of the City Council:

1. Residential - a monthly flat fee based on average residential sewage discharge.
2. Multi-family residential - a monthly flat fee based on average multi-family residential sewage discharge.
3. Restaurants or food service establishments - a base monthly charge plus a rate per hundred cubic feet of water used, which rate is calculated to reflect the estimated cost of wastewater treatment.

4. Other commercial - a base monthly charge plus a rate per hundred cubic feet of water used calculated for commercial users.

[Section 8, Subsection F as amended by Ordinance No. 88-O-437 effective January 9, 1989]

G. Equivalent dwelling unit rate. The monthly sewer usage rate for each user shall be established by Resolution of the City Council.

H. Unspecified rates. Rates or proportional parts thereof which are not specified in Section 8., G., above, shall be calculated and determined by the City Manager with consideration given for similarity of conditions, equity and reasonableness in the collection of such charges.

I. Review and revision of rates. The sewer service rates established in Section 8.,A., of this Ordinance shall, as a minimum, be reviewed annually and revised periodically by Resolution of the City Council to reflect actual costs of design, construction, operation, maintenance, and replacement of the treatment works and to maintain the equitability of the user charges with respect to proportional distribution of those costs in relation to the total wastewater loading of the treatment works. [Section 8, Subsection I as amended by Ordinance No. 88-O-437, effective January 9, 1989]

J. Notification. Every user will be notified, at least annually, in conjunction with a regular bill, of the rate and that portion of the user charges which are attributable to sewage services. In addition, on or before July 1 of each year, the City Manager shall post for public review at City Hall a listing of the sewage parameters and corresponding categories of all classes of customers which serve as the basis for derivation of regular and extra-strength fees for users. [Section 8, Subsection J, as amended by Ordinance No. 88-O-437, effective January 9, 1989]

K. Appeals. Any sewer user, regardless of customer classification, who believes the sewer user charge as applied to his or her premises is not within the intent of the foregoing provisions, may make written application to the City Manager within ten (10) days after having paid the account balance in full, requesting a review of the user charge. The written request shall, where necessary, show the actual or estimated flow of the user's wastewater in comparison with the values upon which the charge is based, including how the measurements or estimates were made.

Review of the request shall be made by the City Manager who shall respond within ten (10) days of the receipt of the appeal. If the sewer user desires to appeal further, he or she shall request in writing within seven (7) days of the date of the finding of the City Manager, that the City place the appeal on the next regular City Council meeting. The decision of the City Council shall be final. If the City Council determines that the user's charges should be recomputed, based on approved, revised flow and/or strength data, the new charges thus recomputed may be applied retroactively for a period not exceeding six (6) months.

Section 9.            Payment of charges. The monthly sewer use charges outlined above shall be due and payable on or before the twenty-fifth (25th) day of the month in which billings are mailed. A late payment fee may be established by Resolution of the City Council for bills which are not paid by the twenty-fifth (25th) day of the month in which billings are mailed. Interest may be charged and collected on any sewer use charges not so paid, at the rate of one and one-half percent (1-1/2%) per month until paid. A fee shall be charged for payment by check which is not honored by the customer's bank, as determined by Resolution of the City Council. Discounts may be made for timely payment in full. [Section 9, as amended by Ordinance No. 88-O-437 effective January 9, 1989]

Section 10.           Liability for payment. All bills for sewage service shall be charged against the premises where supplied and to the owner thereof and/or to the applicant for sewage service. The premises shall be held liable for the payment of such service, together with such fines and penalties as may accrue against the same by reason of any of the provisions of this chapter, and no change of ownership, business or occupancy or manner of billing for sewage service shall affect the application of this section.

Section 11.            Collection of charges; liens.

A.    Collection of charges. Such sewer use charges levied in accordance with the ordinance shall be a debt due the City. If this debt is not paid within thirty (30) days after it shall be due and payable, it shall be deemed delinquent and may be recovered by civil action at law against the sewer user. All sewer use charges accruing, accrued or delinquent accounts may be enforced in any lawful manner and also pursuant to provisions of ORS 224.010 through 224.120 and 454.225. Administrative costs for collecting said sewer use charges and administering this Ordinance shall be payable in addition to the said sewer use charges.

B.    Liens. In the event any of the fees or charges provided by these Ordinances are not paid promptly when due, the City Recorder is authorized to enter the amount of such charges immediately in the docket of City liens as a lien against the real property described in the application for the sanitary sewer connection. Payment made by a check which is not honored by the customer's bank constitutes a continuing delinquency from the posted past-due date.

Section 12.            Discontinuance of service.

A.    In the event of failure to pay sewer use charges or assessments after they become delinquent, or failure to comply with the provisions of this Ordinance, or failure to have flow or sampling devices in proper operating condition for more than ten (10) days, the City shall serve the sewer user with a written notice stating the nature of the violation and providing a reasonable time limit not to exceed thirty (30) days for satisfactory correction thereof. If the sewer user shall continue the violation beyond the time limit stated, the City shall have the right to discontinue, remove or close sewer connections and to terminate and cut off water service if provided by the City and enter upon the property for accomplishing such purposes.

B. The expense of discontinuance, removal or closing as well as the expense of restoring service, shall be a debt due to the City and may be recovered by civil action against the sewer user and also pursuant to provisions of ORS 454.225.

C. Restoration of service. Water or sewer service shall not be restored until all charges, including the expense of removal, closing, and restoration have been paid.

D. Ownership and occupancy. Change of ownership or occupancy of premises found delinquent shall not be cause for reducing or eliminating these penalties.

E. Any sewer user wishing to obtain a discontinuance of billing for a period of time due to "non-use" for any reason shall be required to physically disconnect the service lateral from the public main and properly cap the stub-out as directed by the City and with inspection by the Public Works Director or his duly authorized representative.

Section 13. Sewer service account fee. Any new application for a sewer service account shall be charged a ten dollar (\$10.00) non-refundable fee at the time of application.

Section 14. Abutting property. When charges are made in those instances where sewer service is not in fact furnished, but the service is available or abutting the property charged (as referred to in Section 8.,D.,1,(c),) said charges may but are not required to be waived by the City. Application for such a waiver shall be made by the property owner to the City Manager stating fully the grounds for the application. Before a waiver of the sewer charge may be granted, the City shall first determine:

A. That the property cannot be developed or used except through the installation of private sewer service facilities.

B. That the owner(s) agree that at such time as future access to public sewer service facilities becomes available they will connect to such facilities and pay any costs required to obtain access to public sewer service facilities.

C. That the waiver of the sewer service complies with the spirit of these regulations and will not be detrimental to the public health, safety or welfare, or injurious to other persons or properties in the vicinity.

D. The applicant must bear the burden of proof that the property can and will be provided with adequate sewer service through non-public facilities which will be properly operated and maintained in compliance with Ordinance No. 430, Article VIII, as determined by a registered professional engineer. [Section 14, Subsection D., as amended by Ordinance No. 88-O-437, effective January 9, 1989]

E. Any person aggrieved by failure to obtain approval for private sewer service, shall have the right to appeal the decision of the City Manager for denial of the application to the City Council. The appeal shall be taken within ten (10) days after receipt of notice

and shall be made by depositing the amount of all the estimated costs of the service and by submitting written request to the City Council that the aggrieved person appeals the denial of the application and stating the grounds for the appeal. The City Council shall act upon the appeal at the next regular scheduled City Council meeting after receipt of said notice of appeal. The decision of the City Council shall be final.

Section 15.            Payments and collections. All payments and collections under this Ordinance shall be paid into the "Sanitary Sewer Maintenance and Operation Fund" established by this Ordinance, and shall be used exclusively for the operation, maintenance, replacement, construction and reconstruction of a sewage disposal plant, equipment, and appurtenances necessary, useful, or convenient for said plant, and also for the operation and maintenance of the City sewer system, and for the construction, reconstruction, and installation of sewer lines in the City sewer system. The money may also be used for the purpose of paying reasonable administration costs and expenses of the collection of the charges imposed by this Ordinance.

Section 16.            Right of entry. The Public Works Director or his representative shall have free access at reasonable hours to all parts of buildings and premises to which sewer service is provided by the City for the purpose of inspecting and testing the pipes, wastewater fixtures and the manner in which sewer service is being provided and used.

Section 17.            Violations. When any condition becomes known which constitutes a violation of the sewer Ordinances of the City the Public Works Director shall provide notice to the customer to correct the violation. If correction is not made within the time limit stated in the notice, then sewer service and water service, if provided by the City, shall be immediately terminated and cut off until the violation shall have been rectified in accordance with Federal, State and City regulations.

Section 18.            Recovery of Damages. Any person or persons who, as the result of violating any of the provisions of this Ordinance or otherwise cause any expense, loss, or damage to the City of Brookings, shall immediately become liable to the City for the full sum of such expense, loss or damage. The Council may, at its discretion, instruct the City Attorney to proceed against any such person or persons, in any court of competent jurisdiction, in a civil action to be brought in the name of the City of Brookings, Oregon, for the recovery of the full sum of any such expense, loss or damage sustained by the City.

Section 19.            Penalties. Any person violating any provision of this Ordinance, or who shall fail to do any act required to be done under the provisions of this Ordinance, shall, upon conviction, be punished by a fine not exceeding \$500.00, or imprisonment not exceeding six (6) months, or by both such fine and imprisonment. Each day any violation of this Ordinance shall occur or continue shall constitute a separate offense.

Section 20.            Severability. If any provision, part or parts of this ordinance shall be held to be unconstitutional, invalid, or otherwise inoperative, such invalidity shall not affect other provisions hereof which can be given effect without the invalid provision, the remainder hereof shall remain in full force and effect as a valid and subsisting

Ordinance until repealed, and to this end the provisions of this Ordinance are declared to be severable.

Section 21.            Emergency clause. The matters contained herein concern the peace, health, safety and welfare of the people of the City of Brookings and therefore an emergency is hereby declared to exist and this ordinance shall become immediately effective upon its final passage by the Council and approval by the Mayor.

Effective December 15, 1988.