

ORDINANCE NO. 269

AN ORDINANCE DEFINING CERTAIN TERMS; ESTABLISHING SEWER USER CHARGES; PROVIDING FOR REVIEW AND REVISION OF RATES ON A PERIODIC BASIS; IDENTIFYING THOSE RESPONSIBLE FOR PAYMENT; PROVIDING FOR COLLECTION OF USER CHARGES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, PUBLICATION AND EFFECTIVE DATE.

WHEREAS, in order to protect the waters within and adjacent to the City of Winston from pollution and to promote the health, safety and welfare of the residents, a sewerage system has been developed to be operated by the City for collection, treatment and disposal of wastewater tributary to such a system; and,

WHEREAS, in order to carry out its authorized function of sewage collection and disposal, it is necessary and in the public interest that the City establish the following schedule of rates for sewerage service in amounts sufficient to pay the expenses of operating and maintaining such facilities, to provide debt service and to provide a margin for reserve; and,

WHEREAS, the City has entered into a grant agreement with the Environmental Protection Agency for construction of sewage treatment facilities in which the City has agreed that the costs of operating and maintaining the sewage treatment works shall be distributed among all users of such treatment works in proportion to each user's contribution to the total wastewater loading of that sewerage system; now therefore,

The city of Winston ordains as follows:

DEFINITIONS AND FINDINGS

SECTION 1A. Definitions.

(a) **BOD** (Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20 degrees Centigrade, expressed in milligrams per liter.

(b) **Collection System** shall mean the system of public sewers to be operated by the City designed for the collection of sanitary sewage.

(c) Commercial User shall mean any premises used for non-single family residential purposes, and which is not an industry. [Subsection (c) amended by Ordinance No. 460, passed July 16, 1990.]

(d) Domestic Waste shall mean any wastewater emanating from dwellings or from domestic activities which are performed outside the home in lieu of a home activity directly by or for private citizens.

(e) Dwelling Unit shall mean one or more rooms in a building designed for occupancy by one (1) family and having not more than one cooking facility.

(f) Excess Water Usage shall mean any usage in excess of 7,000 gallons per month. [Subsection (f) amended by Ordinance No. 383, passed October 21, 1985.]

(g) Industrial User shall mean any nongovernmental user of the public treatment works identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented, under the following divisions:

Division A - Agriculture, Forestry and Fishing

Division B - Mining

Division C - Manufacturing

Division D - Transportation, Communications, Electric, Gas and Sanitary services

Division E - Services

A user in these divisions may be excluded from the industrial category if it is determined that it will introduce primarily domestic wastes and wastes from sanitary conveniences.

(h) Industrial Waste shall mean that portion of the wastewater emanating from an industrial user which is not domestic waste or waste from sanitary conveniences.

(i) Net Outside Demand shall mean the number of Equivalent Dwelling Units served by the system outside the City limits. [Subsection (i) added by Ordinance No. 433, passed April 17, 1989.]

(j) Operation and Maintenance shall mean all activities, goods and services which are necessary to maintain the proper capacity and performance of the treatment works for which such works were designed and constructed. The term "operation and maintenance" shall include replacement as defined hereinafter.

(k) Person shall mean any individual, firm, company, association, society, corporation or group.

(l) Public Treatment Works shall mean a treatment works owned and operated by a public authority.

(m) Replacement shall mean acquisition and installation of equipment, accessories or appurtenances which are necessary during the service life of the

treatment works to maintain the capacity and performance for which such works were designed and constructed.

(n) Return on Investment Charge shall mean a separate charge levied against those users which are located outside the City limits and served by the City sewer system and which shall be paid in addition to the basic monthly charge for operation, maintenance and replacement of the sewer system. [Subsection (n) added by Ordinance No. 433, passed April 17, 1989.]

(o) Return on Investment Rate shall mean the annual percentage rate of return on the utility rate base as set by resolution of the City Council. [Subsection (o) added by Ordinance No. 433, passed April 17, 1989.]

(p) Service Area shall mean all the area served by the treatment works and for which there is one uniform user charge system.

(q) Sewage shall mean a combination of water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground, surface and storm waters as may be present.

(r) Sewage Treatment Plant shall mean an arrangement of devices and structures used for treating sewage.

(s) Shall is mandatory, May is permissible.

(t) Suspended Solids shall mean solids that either float on the surface or are in suspension in water, sewage or other liquids, and which are removable by laboratory filtering.

(u) Treatment Works shall mean all facilities for collecting, pumping, treating and disposing of sewage. Treatment system and sewerage system shall be equivalent terms for "treatment works".

(v) Total System Demand shall mean the total number of Equivalent Dwelling Units (EDU's) served by the City sewer system. For nonresidential users, one EDU is equal to 7,000 gallons of wastewater per month. [Subsection (v) added by Ordinance No. 433, passed April 17, 1989.]

(w) Unoccupied Property shall mean property which no one has used, stayed in, or resided in since its construction. [Subsection (w) added by Ordinance No. 470, passed July 1, 1991.]

(x) User shall mean every person using any part of the public treatment works of the City of Winston.

(y) Utility Rate Base shall mean the total depreciated cash value of the sewer system as stated in the most recent published audit report of the City. [As amended by Ordinance No. 433, dated April 17, 1989.]

(z) Vacant Property shall mean property which has not been used as a habitation for a period of time and also has not generated any sewage or wastewater during that period of time. [As amended by Ordinance No. 470, dated July 1, 1991.]

SECTION 1B. Findings.

(1) It is the intention of the City of Winston by the following ordinance to make it clear that sewer charges and fees are not a tax on property within the parameters of Section 11(b), Article XI of the Oregon Constitution.

(2) The City of Winston provides a valuable public service by providing a sewer system inside and outside of the City limits. These sewer facilities constitute a public utility (although not necessarily defined as such under State statutes) owned and operated by the City of Winston. The utility exists for the benefit of any person within the City who wants to have the system available for disposing of sewage.

(3) Users of the sewer system ought to be charged rates that reflect the operation of the sewer system as a public utility in the City. Persons who do not use the sewer utility should not pay monthly sewer utility rates. However, some use of the sewer system occurs when even a small amount of sewage or wastewater is generated by premises connected to the sewer system.

(4) Although sewer user charges are intended to constitute service charges, even if they are viewed as charges against property or against a property owner, they should not be viewed as a direct consequence of ownership of property, because the following amendments to Ordinance No. 269, as amended, provide a property owner a means and method for entirely avoiding all sewer user charges. [Subsection 1B amended by Ordinance No. 470, passed July 1, 1991.]

Sewer User Charges

SECTION 2. General. User charges shall be levied on all users of the public treatment works which shall cover the cost of operation and maintenance, debt service, taxes and other administrative costs of such treatment works. The user charge system shall distribute these costs in proportion to each user's contribution to the wastewater loading of the treatment works.

SECTION 3. Classes of Users. There shall be established classes of users such that all members of a class discharge approximately the same volume and strength of wastewater per residence, facility, seat or other appropriate unit.

SECTION 4. Flat Charge. The flat charge per appropriate unit shall be established in proportion to the volume and strength of wastes discharged from that unit such that each user pays his proportionate share of the treatment costs.

SECTION 5. Change in Number of Units. Any change in the number of units on the premises of a user shall be reported by that user to the Public Works Supervisor.

SECTION 6. Appeal. Should any user believe that he has been incorrectly assigned a flat charge, that user may apply for review of his user charge as provided in section 26 of this ordinance.

SECTION 7. Reassignment of a User. Should the City Public Works Supervisor determine that a user is incorrectly assigned to a user class or incorrectly assigned a flat charge, he shall reassign a more appropriate user class to that user and shall notify that user of such reassignment.

SECTION 8. Records. Records of all assigned rates and any assigned wastewater volumes and strengths to user classes shall be kept on a file with the city Recorder and shall be open for public inspection.

SECTION 9. Charges. The charges for sewer service shall be set periodically by a resolution passed by the City Council and duly signed by the Mayor. Such resolution shall set the following rates to be effective and changed by future resolutions:

- (a) A minimum monthly charge for each unit of residence using the City sewer.
- (b) A minimum monthly charge for every business occupant occupying a portion or unit of each commercial building;
- (c) A minimum monthly charge for each housing unit within an apartment building or building used for apartments;
- (d) A minimum monthly charge for the base unit of each motel or transient accommodation. The term "base unit" means either the community washroom and laundry facility, or the wash unit used by a motel or transient accommodation. An additional monthly charge shall be set for each housing unit of a motel or transient accommodation.
- (e) In addition to the minimum monthly charge under subsection (b), a minimum monthly charge to all commercial users, except for service stations and mobile home parks without laundry room facilities, for every 7,000 gallons of water (prorated) used per month over and above a 7,000 gallon minimum. Water usage shall be determined by examining the water billings for the facility. If the commercial user has installed a city approved separate water meter behind the Winston-Dillard Water Districts meter for the sole purpose of irrigating vegetation, the city will deduct the additional water from the regular water billings for the facility provided the user reports to the city no later than the 17th of each month with a meter reading for the separate meter. The separate meter may be read periodically by the city.
- (f) Wildlife Safari shall pay a minimum monthly charge as specified in Subsection (b) and (e) except that instead of water usage the charges shall be based on effluent deposited into the sewer system. Effluent deposited shall be determined by the reading of meters located on Wildlife Safari's property. Reading of meters shall be reported to the city no later than the 17th of each month by Wildlife Safari and 3-

Read periodically by the City. Payment of sewer charges by Wildlife Safari are allowed in monthly quarterly, and /or semi-annual installments. [Section 9 amended by Ordinance No. 272, sec 1 passed February 25, 1980, Ordinance No. 307, sec. 1 passed February 1, 1982; Ordinance No. 316, sec. 1, passed April 5, 1982; Ordinance No, 328, sec. 3, passed February 7, 1983; Ordinance No. 337, sec 2, passed June 6, 1983; Ordinance No 365, sec. 1, passed June 6, 1984; Ordinance No. 383, sec. 2 passed October 21, 1985; Ordinance No. 429, passed October 17, 1988, Ordinance No. 456, sec. 2, passed February 20, 1990; Ordinance No. 460, passed July 1990, and Ordinance No. 490, passed June 21, 1993.]

SECTION 10. Special Users

(a) Any user which cannot be classified by virtue of the volume of his wastewater in any of the above user classes shall be considered a special user and a special charge based on volume and/or strength shall be assigned to that user by the Public Works Supervisor.

(b) Included among special users are the following which shall be charges:

(1) Users with more than 2000 milligrams per liter BOD. Excess charges 8 cents per 25 milligrams per liter of BOD per 1,000 gallons.

(2) Users with more than 250 milligrams per liter suspended solids (SS). Charge 4.3 cents per 25 milligrams per liter of SS per 1,000 gallons. ; Section 10 amended by Ordinance No. 383, sec. 3. passed October 21, 1985]

SECTION 11. New Users, Vacant or Unoccupied Property and Rebates.

(a) New Users. The sewer user charge for all occupied property shall begin 60 days after the sewer service becomes available or the day the connection is made to the public sewer, whichever occurs first.

(b) Unoccupied Property. The sewer user charge for all unoccupied property shall begin within 30 days after the property is already for occupancy or on the first day of occupancy, whichever occurs first. All unoccupied property which is ready for occupancy at the time the sewer service becomes available shall be treated as occupied property.

(c) Rebates. Notwithstanding any other provisions of this or any other city ordinance, any owner of vacant or unoccupied property shall be entitled to a rebate, refund, credit, waiver or forgiveness of all sewer user charges, including any minimum monthly charges imposed by Ordinance No. 269 as amended, for each complete calendar month in which the property is vacant or unoccupied, upon the following conditions. Such owner or his/her authorized agent shall make written application(s) to the City Recorder for relief under this paragraph within forty-five (45) days after the end of each billing month for which relief is sought .

No claim(s) may be made for any such relief nor for any refund of sums paid absent such timely application(s). Application(s) for relief shall be made in such form as may be prescribed by the City Recorder, and shall be supported by sufficient evidence that the property was vacant or unoccupied for the entire billing month for which relief is sought, and that no sewage or wastewater passed from the property into the sewerage system during the billing month for which relief is sought. Sufficient evidence for such relief may include the water billing for the property showing that no water was used during the entire month for which relief is sought. If the evidence presented is deemed sufficient by the City Recorder or City Administrator, either shall have authority to grant a refund of previous amounts paid and/or a credit on future billings and/or such other relief as deemed appropriate. The decision of the City Recorder or City Administrator may be appealed to the City Council using the same procedure as set forth in Section 26 of Ordinance No. 269, as amended. The determination of the City Council upon such appeal shall be reviewed only as provided in ORS 34.010 to 34.100, and not otherwise.

[Section 11 amended by Ordinance No. 470, sec. 4, passed July 1, 1991.]

SECTION 12. Discontinuance of Sewer Service. When any improvement which is connected to the municipal sewer system is destroyed by fire or is torn down and no longer connected to the sewer system, the owner shall file a certificate with the City Recorder stating the date of destruction or removal of said improvement and pay all sewer service charges to the date of said destruction or removal, and shall have the sewer connection sealed off and approved by the Public Works Supervisor. Thereafter, there shall be no monthly service charge made to said property until new improvements are placed on the premises and connected to the sewer system. At the time of any reconnection to the sewer system there shall be paid by the applicant a fee of \$100. [Section 12 amended by Ordinance No. 354, passed February 6, 1984.]

SECTION 13. Multiple Classifications. A single user having more than one classification of use shall be charged the sum of the charges for those classifications.

SECTION 14. Review and Revision of Rates. The sewer user charges established in Section 9 of this ordinance shall, as a minimum, be reviewed biennially and revised periodically to reflect actual costs of operation, maintenance, replacement and financing of the treatment works and to maintain the equitability of the user charges with respect to proportional distribution of the costs of operation and maintenance in proportion to each user's contribution to the total wastewater loading of the treatment works.

Responsibility, Payment, Delinquencies and Penalties

SECTION 15. The person who owns the premises served by the sewerage system shall be responsible for payment of the sewer user charge for that property notwithstanding the fact that the property may be occupied by a tenant or other occupant who may be required by the owner to pay said charges.

SECTION 16. The users of the sewerage system shall be billed on a monthly basis in advance in accordance with the rate schedule as set forth in Section 9 of this ordinance.

SECTION 17. The date of billing shall be the 1st day of the month for which the sewer user charge is calculated as provided in Section 9 of this ordinance.

SECTION 18. Sewer user charges shall be due and payable to the City Recorder by the 15th day of the month of billing. [Section 18 amended by Ordinance No. 383, passed October 21, 1985.]

SECTION 19.

(a) Delinquent charges at the rate of 1-1/2 percent per month shall accrue on all accounts from the date of delinquency. The date of delinquency shall be the twenty-fifth (25th) day of the month. Delinquent charges shall be a minimum of \$.50 per month. The delinquent amount shall be any amount due, after applying payments received which remain unpaid. In addition to these delinquent charges, the second consecutive delinquency shall result in an additional penalty of \$5 being accrued. In the third and all subsequent consecutive delinquencies an additional \$5 penalty, in addition to the delinquency charge, shall be added until account is paid in full.

(b) In addition to the above charge, any such charges that are delinquent and certified to the Tax Assessor of Douglas County for collection shall also incur a handling charge of \$25, and a penalty of \$175 for the first unit plus \$100 for each additional unit as defined in Section 9 of this ordinance. Should it become necessary to certify such delinquent accounts to the Tax Assessor of Douglas County for a second or subsequent time the penalty shall be increased to \$350 for the first unit plus \$200 for each additional unit. [Section 19 amended by Ordinance No. 383, sec. 5, passed October 21, 1985; Ordinance No. 434, passed May 1, 1989; and Ordinance No. 476, secs. 1 and 2, passed July 8, 1992.]

SECTION 20. Change of ownership or occupancy of premises found delinquent shall not be cause for reducing or eliminating these penalties.

SECTION 21. Enforcement. The City may enforce the collection of rates and charges for use of the sewerage system by withholding sewer service to any premises the sewer charges for which are delinquent, and may use such other and further means of collection as may be provided by the laws of the State or permitted by the City Charter and Ordinances. Any delinquency may be certified to the tax assessor of Douglas County for collection in the manner and as provided by ORS 454.225. Any charge due hereafter which shall not be paid when due may be recovered in an action at law by the City.

Handling of Funds

SECTION 22. Bills for sewer user charges shall be mailed to the address specified in the application for permit to make the connection unless or until a different owner or user of the property is reported to the City Recorder.

SECTION 23. All collections of sewer user charges shall be made by the City Recorder. Sewer user charges shall be computed as provided in Section 9 of this ordinance and shall be payable as provided in Section 18 of this ordinance.

SECTION 24. The City Recorder is hereby directed to deposit in the Sewer Fund all of the gross revenues received from charges, rates and penalties collected for the use of the sewerage system as herein provided.

SECTION 25. The revenues thus deposited in the Sewer Fund shall be used exclusively for the operation, maintenance and repair of the sewerage system; reasonable administration costs; expenses of collection of charges imposed by this ordinance and connection fees provided for in Ordinance No. 195; and payments of the principle and interest on any debts of the sewerage system of the City.

Appeals

SECTION 26. Any sewer user who feels his user charge is unjust and inequitable as applied to his premises within the intent of the foregoing provisions may make written application to the City Council requesting a review of his user charge. Said written request shall, where necessary, show the actual or estimated average flow and/or strength of his wastewater in comparison with the values upon which the charge is based, including how the measurements or estimates were made.

SECTION 27. Review of the request shall be made by the City Council and shall determine if it is substantiated or not, including recommending further study of the matter by the Public Works Supervisor.

SECTION 28. If the request is determined to be substantiated, the user charges for that user shall be recomputed based on the approved revised flow and/or strength data and the new charges thus recomputed shall be applicable beginning on the first day of the following month.

Validity

SECTION 29. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 30. The invalidity of any section, clause, sentence or provision of this ordinance shall not affect the validity of any other part of this ordinance which can be given effect without such invalid part or parts.

Ordinance in Force

SECTION 31. This ordinance shall be in full force and effect from and after its passage, approval, recording and publication as provided by law.

Repeal

SECTION 32. Ordinance No. 194, enacted 1 October, 1975, and amended by Ordinance No. 256, dated 20 February , 1979, is hereby repealed.

SECTION 33. Return on Investment. Recognizing that properties within the city limits of the City of Winston have paid for the installation of the City sewage system partly through the payment of City property taxes and that properties outside the City have not so contributed, and that properties within the City limits assume all the risks and liabilities of the sewer system and that properties outside the City are free of said risks and liabilities, there is established, in addition to the basic monthly charge for operation, maintenance and replacement set forth in Section 9 of this ordinance, a separate Return on Investment charge which shall be paid by those users located outside the City limits which are served by the City sewer system. Notwithstanding anything stated elsewhere in this ordinance or other City ordinances, the property currently owned and operated by

Wildlife Safari shall be exempt from the Return on Investment charge, and such exempt property of Wildlife Safari shall not be included as an out-of-city user for any purposes of calculating the Return on Investment charge. [Section 33 amended by Ordinance No. 385, passed March 3, 1986; Ordinance No. 426, passed September 19, 1988; Ordinance No. 433, sec. 12, passed April 17, 1989; Ordinance No. 456, passed February 20, 1990.]

(a) The Return on Investment charge shall reflect each out-of-city sewer user's proportionate share of the utility rate base. The Return on Investment charge shall be calculated using the following method:

The utility rate base, multiplied by the percentage of the total system demand from out-of-city users, multiplied by the annual return on investment rate, divided by the net outside demand, divided by twelve months, rounded to the nearest whole dollar amount.

(b) Within thirty days of the effective date of this section, the City Council shall determine and set by resolution the Utility Rate Base, the Total System Demand, the Return On Investment Rate and the Net Outside Demand, and shall within the same resolution

calculate the Return on Investment Charge to be added to the basic monthly charge for operation, maintenance and replacement expenses of the system. The resolution shall prescribe the effective date of the Return on Investment Charge.

(c) In setting the Return on Investment Rate, the Council shall consider the following factors:

- (i) The current depreciated cash value of the City sewer system.
- (ii) Programmed capital investment in the sewer system.
- (iii) The interest expenses accruing on outstanding debts of the system.
- (iv) The basic monthly charge for operation, maintenance and replacement expenses of the system.
- (v) The rate of return on other investments of a similar risk.

(d) During the month of January following the effective date of this section, and no less frequently than each January thereafter, the City Council shall by resolution recalculate and set the Utility Base Rate, the Total System Demand, the Return on Investment Rate, and the Net Outside Demand, and shall within the same resolution recalculate the Return On Investment Charge to be added to the basic monthly charge for operation, maintenance and replacement expenses of the system. The resolution shall prescribe the effective date of the revised Return On Investment Charge.

(e) Disregarding any additional charges for special users as provided for in Section 10 of this ordinance, the Return On Investment Charge shall be in addition to, but not more than, the basic service charge for operation, maintenance and replacement as established in Section 9 of this ordinance.

(f) The Return On Investment Charge shall be separately and distinctly listed on the sewer user's monthly billing statement.

SECTION 34.

(a) Rates for Senior Citizen households shall be twenty-five (25%) percent less than the rates set forth in Section 9 of this ordinance. Senior Citizen household means any household having as full-time resident any person 62 years or older on the date the application for discount is submitted. Furthermore, the household must have a combined income which does not exceed the Very Low Income level established in the latest HUD, Section 8 Income Guidelines for Douglas County for the tax year last past.

(b) Any household desiring a Senior Citizen household discount shall file application therefor on forms provided by the City. The City, as a condition of the discount, shall be allowed to require reasonable financial records verifying income and age and shall defer or suspend the discount until such documentation is provided.

(c) The discount herein set forth is available to the owner of the real property served by the City sewer, except in the case where said property is rented to others. In such cases, the renters may qualify for the discount hereunder upon furnishing in addition to all other information required by the City, a written statement from their landlord that the rent for subject premises has been paid and includes all sewer user charges for which a discount is allowable. It is unlawful for any landlord to refuse to furnish to any renter such a statement on request. No claim for refund shall be paid by the City for any rent paid a landlord more than 180 days before filing the claim for refund. [Section 34 added by Ordinance No. 272, sec. 3, passed February 25, 1980; amended by Ordinance No. 348, sec. 1, passed Sept. 6, 1983; and Ordinance No. 428, passed October 10, 1988.]

SECTION 35. An additional discount of 3% is available to those who are charged monthly sewer charges and pay twelve (12) months in advance. The discounted annual payment shall be calculated as follows: Monthly sewer charge multiplied by twelve months multiplied by a discount factor of .97%. This discount is not available to users who pay a monthly charge based on water consumption, nor to any account that is currently delinquent or has been certified, within the previous 18 months, to the Tax Assessor of Douglas County. This discount is available in addition to any other discount taken and is to be applied to the remaining monthly sewer charge after any other discount taken. During the prepaid period the rate shall not be increased for those paying in advance. [Section 35 added by Ordinance No. 476, sec. 3, passed July 6, 1992.]

Passed by the council and approved by the mayor January 21, 1980.