

ORDINANCE NO. 2009-35

AN ORDINANCE of the City of Bainbridge Island, Washington, relating to the City Sewer Utility; setting sewer treatment plant capital facility surcharges; adding a new Section 13.12.305 to Chapter 13.12 of the Bainbridge Island Municipal Code establishing for a limited period of time a sewer treatment plant capital facility surcharge for customers of the Bainbridge Island Wastewater Treatment Plant in order to pay for costs related to upgrades of said Plant.

**THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND,
WASHINGTON, DO ORDAIN AS FOLLOWS:**

Section I. Recitals and Findings.

- A. The City operates a Sewer Utility, including a Wastewater Treatment Plant located at 1220 Donald Place NE (the "Plant").
- B. A structure for establishing water and sewer rates, charges, and fees was established by Ordinance No. 82-20, which has been subsequently amended, and as codified in Bainbridge Island Municipal Code ("BIMC") 13.12.300.
- C. The City Council in 2007 authorized construction of Project No. 00086, Winslow Wastewater Treatment Plant Upgrade Project, Liquids and Solids Improvements (the "Project"), which consists of carrying out certain additions and alterations to, and upgrades, betterments and extensions of the Plant, all as set forth in the 2008 Capital Facilities Plan approved by the Council on January 13, 2008, and which are of particular benefit to the customers of the Sewer Utility whose wastewater is treated at the Plant ("customers of the Plant").
- D. Completion of the Project will enable the Plant to meet the requirements of its discharge permit with the Washington State Department of Ecology.
- E. The City has contracted with a number of parties to design, construct and provide equipment for the Project.
- F. The Project is approximately 80% completed, and it is expected to be completed between March and April 2010.

- G. On January 14, 2009, the City Council adopted Resolution No. 2009-01 expressing its official intent for the City to reimburse itself for certain expenditures related to the Project from proceeds of a future borrowing.
- H. The City Council passed Ordinance Nos. 2009-02 and 2009-07 ("Bond Ordinances"), and Resolution Nos. 2007-19, 2009-01, 2009-08, and 2009-13 ("Bond Resolutions"), in order to authorize the issuance of bonds ("Bonds") and/or bond anticipation note ("Note") for the purpose of funding the Project and paying for the costs of the issuance of the Bonds and/or Note.
- I. On April 22, 2009, the Bainbridge Ratepayers Alliance ("BRA") filed a lawsuit against the City in Kitsap County Superior Court, and an amended lawsuit on July 6, 2009 against the City (collectively referred herein to as the "Lawsuit").
- J. Among the various claims and relief sought, the Lawsuit sought "a judgment declaring the proposed bond issue void".
- K. On July 17, 2009, the City filed a motion for summary judgment seeking to validate the Bond Ordinances, and to dismiss the claims that the Bond Ordinances were void.
- L. On August 27, 2009, the City filed a motion to sever the claims related to the validity of the Bond Ordinances from the other claims presented in the Lawsuit.
- M. On September 4, 2009, the City's motions were granted, and orders were entered by the Superior Court for Kitsap County that validated the Bond Ordinances, dismissed with prejudice the claims that the Bond Ordinances were void, and that severed the claims related to the validity of the Bond Ordinances from the other claims presented in the Lawsuit.
- N. On September 14, 2009, BRA filed a motion for reconsideration with the Court which was denied by the Court on September 17, 2009.
- O. On October 7, 2009, BRA filed a Notice of Appeal with the Washington Division II Court of Appeals.
- P. The City has been unable to issue the Bonds or enter into a Bond Anticipation Note due to the pending appeal and litigation, and this has negatively impacted the sewer fund and severely jeopardized the City's ability to pay for costs associated with the completion of the Project.
- Q. Without the issuance of the Bonds and/or Bond Anticipation Note and/or other project debt financing in 2009 or 2010 in the amount of \$1.5

million or more, the City currently projects that the sewer fund will have a negative balance in early 2010 and be unable to fund further payments for costs associated with the completion of the Project.

- R. In order to fund completion of the Project, it appears both necessary and reasonable that the City implement a short-term sewer surcharge for customers of the Plant.
- S. The surcharge imposed by this ordinance will be suspended upon issuance of the Bonds and the City Council will take immediate legislative action to cause each ratepayer to experience a reduction in future obligations to the sewer utility reflecting the amount of the surcharge previously paid.
- T. During the term of the surcharge the City will continue to explore reduction of the total amount of funds needed to be generated by this surcharge, as described below.
- U. This Ordinance has been referred to and reviewed by the City's Utility Advisory Committee, and said Committee has issued a written report (attached) to the City Council that makes certain recommendations which have been incorporated in the Ordinance.
- V. The City caused to be published in the City's legal newspaper and mailed to each of the City's sewer customers a notice of a public hearing on sewer treatment plant capital facility surcharge proposed in this Ordinance held on November 9, 2009 and continued to November 23, 2009.
- W. The City Council has determined that it is necessary to implement a short-term sewer surcharge for customers served by the City's Plant in order to fund completion of the Project.

Section 2. A new Section 13.12.305 is added to BIMC Chapter 13.12 and shall read as follows:

"13.12.305 Wastewater Treatment Plant Capital Facility Surcharge.

A. The City has found it both reasonable and necessary to the funding of the City Sewer Utility's Wastewater Treatment Plant Upgrade Project (the "Project") to fix the following temporary surcharges for the purpose of meeting temporary cashflow needs for Project expenses that are paid or payable in 2010 prior to the City's obtaining at least \$1.5 million in proceeds of one or more anticipated 2009 or 2010 Project debt financing transactions (the "Project Debt Financing").

B. Charge imposed for users of the Winslow Waste Water Treatment Plant only. In addition to the sewer flat rate, base rate and volume charges (collectively, "Monthly Charges") imposed pursuant to BIMC 13.12.300 for customers of the City's Wastewater Treatment

Plant, there shall be added a monthly capital facility surcharge equal to a percentage of the customer's Monthly Charges. The surcharge percentage shall be 111%, unless and until the percentage is changed pursuant to D below. The surcharge percentage applicable to each such customer in a given month shall be uniform.

C. The surcharge otherwise imposed under this section shall not apply to participants in the City's low-income and senior discount program.

D. The amount of the surcharge shall be reevaluated during the term and the City Council may, with the advice of the Finance Director, adjust the percentage prospectively to correct for any material amount of over/under collection of the funds necessary to complete the Project, or to adjust for the amount of any Project Debt Financing where the proceeds to the City Sewer Fund are less than \$1.5 million.

E. Collection and billing. These charges shall be billed and paid on a monthly basis in the same manner as other sewer utility billings.

F. Effective dates. The surcharge shall be in force and take effect for Monthly Charges that are first billed in January 2010 and shall apply monthly thereafter until and including the Monthly Charges that are first billed in the earlier of: (i) June 2010, or (ii) the first calendar month following the City's receipt of Project Debt Financing proceeds amounting to \$1.5 million or more."

Section 3. A subfund, entitled "Wastewater Treatment Plant Capital Facility Surcharge Subfund" (hereinafter "Subfund") is hereby established within the City Sewer Fund. All collected surcharges authorized under this Ordinance shall be accounted for in the Subfund and shall be used exclusively for the payment of expenses for the Project and repayment of the interfund loan authorized by Resolution No. 2009-13.

Section 4. This ordinance shall take effect and be in force five (5) days after passage, approval, and publication as required by law.

PASSED by the City Council this 9th day of December, 2009.

APPROVED by the Mayor this 11th day of December, 2009.



Christopher Snow, Mayor

ATTEST/AUTHENTICATE:



Rosalind D. Lassoff, City Clerk

FILED WITH THE CITY CLERK:	November 20, 2009
PASSED BY THE CITY COUNCIL:	December 9, 2009
PUBLISHED:	December 18, 2009
EFFECTIVE DATE:	December 23, 2009
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