

No. 70453-2-I

ELLIOTT BAY MARINA,

Appellant,

vs.

CITY OF SEATTLE,

Respondent,

RESPONDENT CITY OF SEATTLE'S BRIEF

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I. INTRODUCTION

Elliott Bay Marina (EBM) argues that the trial court erred in granting the City's motion for summary judgment. The heart of EBM's argument is that it is really only a County sewer customer, and not a City customer, and should be charged a sewer rate significantly lower than that charged any other sewage customer in the City of Seattle. The argument implies that there are two systems of sewerage in the City: a County system and a City system. That is not the case: there is a single comprehensive system that is jointly owned by the City and County. As provided by RCW 36.94.190—authorizing the City and County to contractually divide responsibility for a single system of sewerage—the City and the County have agreed to divide responsibility for the system serving City customers and to charge customers a single rate for use of the jointly-owned system based on volume. The City, which is responsible for collecting all customer payments, recently started showing customers the percentage of each bill that went to the City and County. However, that demonstration does nothing to alter the shared ownership of the comprehensive system.

Thus, the illustration of the percentage of payments that go to the County and City is not a reflection of two separate payments going to

separate utility providers. It reflects the costs of the City and County's responsibilities for the shared system. As in the past, the payment is a single payment to the City and County based on volume for the costs of sewer service provided by the combined City and County system.

Generally, the City is responsible for providing retail sewer service to its many thousands of residential and commercial retail customers, whereas the County is responsible for providing wholesale wastewater treatment services to the City and other local government wholesale customers using a small number of very large pipes connected directly to its treatment plants. The City has many more miles of pipe, but those pipes would serve no purpose without the County's large pipes and treatment facilities. Similarly, the County infrastructure would not be needed without the City infrastructure. The majority of the fees collected by the City for sewer service go to the County to address the cost of treatment.

Given the single sewer system and that the City and County have agreed that all customers are to be charged the same rates, regardless of where they connect, EBM's argument fails. EBM is a City customer who contributes to the system that is jointly owned by the City and County, and must continue to pay the same sewer charges that other City customers do. The County does not provide retail sewer service within the City and does not have retail sewer service rates or customers within the City.

On appeal, EBM argues that the *Covell* test should be applied. However, EBM does not challenge the entire fee charged for its use of the City and County comprehensive sewer system. Rather, it challenges the ratemaking decision to include both City and County sewer charges in the volume rate charged to all City sewer customers. Accordingly, the appropriate test is whether the fee is arbitrary and capricious, not whether it satisfies *Covell*. The fee is not arbitrary and capricious as a matter of law. Even if *Covell* is applied, there is no question of fact and the City is entitled to judgment as a matter of law. EBM contributes sewage to the comprehensive City and County system, and is charged based on its volume contribution to the sewer, just as other customers are. In sum, the trial court did not err in granting the City's motion.

II. QUESTIONS ON APPEAL

1. Elliott Bay Marina asks this court to rule that it may only be charged a portion of the rate charged to all City sewer system customers. Because EBM challenges only a portion of the fee, and recognizes that it is appropriate for EBM to pay for sewer service, must EBM show that there is an issue of fact whether the overall fee is arbitrary and capricious in order to prevail on appeal?
2. Elliott Bay Marina uses the combined sewer services of the City and County, even if none of its sewage goes through City-owned pipes. The County does not operate its own retail sewer system and, by contract with the City, can have no retail customers within the City. Accordingly, is there any issue of fact under *Covell* whether EBM (1) burdens or uses the comprehensive sewer system; (2) the fee charged

regulates EBM or (3) there is a direct relationship between the fee charged and the service received by EBM?

3. Having paid sewer rates for many years without complaint, is EBM now estopped from challenging the portion of its sewer bill that goes to the City of Seattle?

III. STATEMENT OF THE CASE

A. Sewer Service in Seattle

The City of Seattle began building and operating its sewer system in the late 19th century and had completed over half of its current system by 1930.¹ The City's current wastewater system serves about 164,000 residential and 21,000 commercial customer accounts.² The combined net capital assets of the drainage and wastewater utility exceed \$600,000,000³ and include about 960 miles of combined sewers, 450 miles of separate sanitary sewers, 90 Combined Sewer Overflow (CSO) outfalls, 38 CSO storage facilities, and 5.5 miles of forcemains.⁴ Seattle operates its wastewater utility under the authority of RCW 35.67.020.

In 1957 the legislature enacted RCW Chapter 35.58 to authorize a regional effort to rescue Lake Washington from increasing pollution, and

¹ See *Decl. of Maria Coe*, Ex. A p. 15. CP 549.

² See *id.* at Appendix C of Ex. A (2011 Audited Financial Statement, p. 41). CP 664.

³ *Id.* at p. 27. CP 657.

⁴ See *Decl. of Andrew Lee*, Ex. B, pp. 7-8 (Dept. of Ecology Fact Sheet for City's NPDES CSO Permit), CP 450-451. *Decl. of Maria Coe*, Ex. B, p. 2 (2011 – 2016 Capital Improvement Program (CIP) for the Drainage and Wastewater Fund). CP 680.

pursuant to this authority in 1958 the voters approved the creation of the Municipality of Metropolitan Seattle (Metro). In its comprehensive planning documents, Metro laid out a regional system for the interception, conveyance and treatment of sewage delivered to Metro's system by local sewage collection systems, including the City of Seattle's extensive sewer system.⁵ On January 26, 1961, the City of Seattle and Metro entered into the Agreement for Sewage Disposal (Basic Agreement). Under the Basic Agreement the City agreed to deliver to Metro all of the sewage the City collected in its local system, and Metro agreed to treat and dispose of the City's sewage.⁶ Under Section 9 of the Basic Agreement, Metro acquired ownership of significant components of the City's existing sewage system, including numerous sewer trunk lines and other facilities, while Seattle retained ownership of the majority of its system and the responsibility for providing wastewater service to its residents. Under the Basic Agreement the City pays the County for treatment services according to a formula based on the City's residential and commercial customers' water consumption.

⁵ See *Metropolitan Seattle Sewerage and Drainage Survey, 1956-1958*, available for download at <http://www.kingcounty.gov/environment/wtd/About/History/PlanningSystem/1958Plan.a.spx> (last visited April 4, 2013).

⁶ See *Decl. of William C. Foster, Ex. A, 1961 Basic Agreement*. CP 248-271.

Section 2 of the Basic Agreement prohibits Metro from accepting sewage from anyone located within the City without the City's written consent.⁷

The Basic Agreement provides that the City and County shall each be responsible for components of a single, comprehensive system for collecting and disposing of sewage in the City of Seattle. The County is responsible for a subset of sewerage components referred to as the "Metropolitan Sewerage System" and the City is responsible for components that comprise "Local Sewerage Facilities." Together, those components make up the part of the comprehensive system that serves Seattle Public Utilities (SPU) customers.

SPU customers in the City of Seattle generally discharge sewage to a pipe or other infrastructure owned by the City and occasionally to a pipe owned by the County. City and County sewer pipes are both part of the comprehensive sewer system. SPU customers, EBM included, pay a single rate to the City that covers the combined costs of the City and County sewerage activities. The charge is based on the measured volume of water consumed on the premises. SMC 21.28.040. The majority of the fees collected by the City are used to pay the County for treatment services per the terms of the Basic Agreement. All customers pay the

⁷ Likewise, King County Code Section 28.84.050.J also prohibits direct private wastewater connections to county trunk lines without the City's prior written consent.

same volume-based rate regardless of who owns the pipe that the customer's sewage goes into. SMC 21.28.040 and 21.28.090.B.

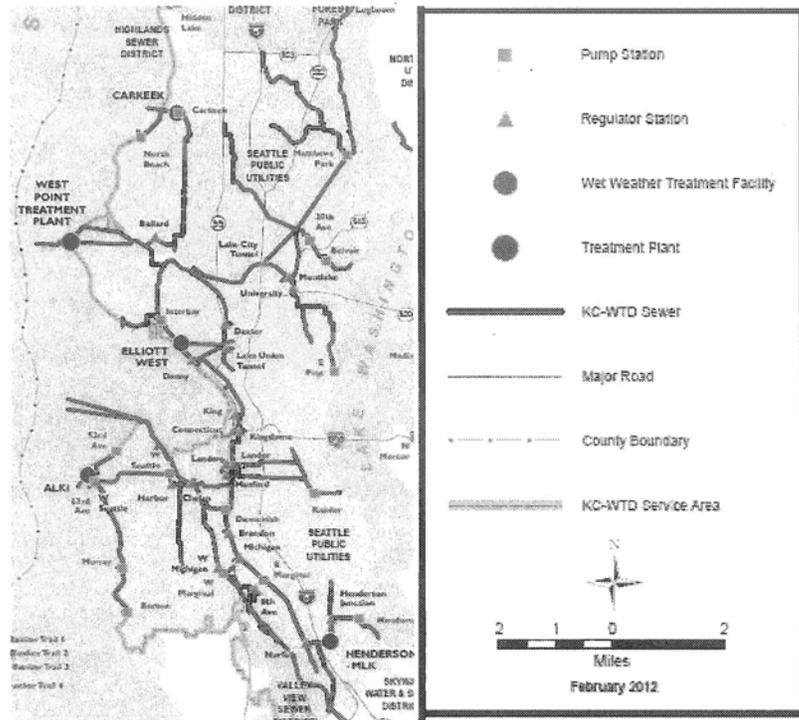
In 1966 Metro constructed the South Magnolia Trunk sewer to serve as part of Metro's sewerage system.⁸ This is an 18-inch trunk line that carries stormwater and sanitary sewage in an easterly direction along the shoreline below the South Magnolia bluffs. It passes through the Port facilities near the Magnolia Bridge and connects to the Elliot Bay Interceptor. In 1987 the City and Metro entered into the Agreement for Joint Use of South Magnolia Trunk Sewer (Joint Use Agreement).⁹ Under the Joint Use Agreement the City acquired the rights to use a portion of the South Magnolia Trunk sewer as a component of the City's Local Sewerage Facility (as that term is used in the Basic Agreement). The wastewater EBM delivers to the system passes through this portion of the South Magnolia Trunk sewer that is subject to the Joint Use Agreement and part of the City's collection system.

A map showing the extent of the County's infrastructure illustrates that the County owns only a limited number of sewer pipes:¹⁰

⁸ See *Decl. of William C. Foster*, Ex. B (Agreement for the Joint Use of the South Magnolia Trunk Sewer). CP 283-286.

⁹ *Id.*

¹⁰ See *Decl. of Joseph G. Groshong*, Ex. I. CP 912.



In 1994, following the U.S. District Court's rulings¹¹ that the structure of the Metro Council was unconstitutional under one-person-one-vote principles, the County under the authority of RCW 36.56.010 assumed the rights, powers, functions, and obligations of Metro.

B. Elliott Bay Marina

Planning for the development of the Elliott Bay Marina began in the late 1980's. Federal, state, and local permitting authorities were all engaged in the review of this substantial shoreline development project. The City

¹¹ *Cunningham v. Municipality of Metropolitan Seattle*, 751 F.Supp 885 (W.D. Wash. 1990) and 751 F.Supp 899 (W.D. Wash. 1990).

approved various real property transactions to facilitate the development.¹² In December 1990, the City's Department of Construction and Land Use (DCLU) approved EBM's water and sewer plan, which provided for EBM's sanitary sewers to be connected to the Magnolia trunk line at a location just downstream of manhole 81A via a wet well pump station and 4-inch force main.¹³ Thus, in lieu of the City requiring EBM to build a new City sewer or very long side sewer, the City consented to EBM's request to connect directly to the trunk line. By connecting to the trunk line, EBM became an SPU wastewater customer. There is no question that the City could have refused EBM's request and required EBM to build additional public sewer or a very long side sewer instead. SMC 21.16.040.A.

In March of 1991, EBM's contractor Frank Coluccio Construction requested permission from Metro to make the connection.¹⁴ In response, Metro advised the contractor to notify the City so that it could "have an

¹² See, e.g., Seattle City Council Resolutions 27343 and 27475 and Ordinance 114006.

¹³ See *Decl. of William C. Foster*, Ex. C, (Water and Sewer Plan, Drawing C-5, Sheet 5 of 22). CP 288.

¹⁴ *Decl. of William C. Foster*, Ex. E (Letter from Frank Coluccio Construction Company to Metro, dated March 25, 1991). CP 296.

operator at their local pump station controlling the flows from their system into the Metro system.”¹⁵

As an SPU wastewater customer, EBM has received and continues to receive the benefits of SPU wastewater services. Prior to EBM connecting to the system, the City’s wastewater utility reviewed EBM’s sewer plan and facilitated EBM’s connection by controlling flows at the pump station. As one of SPU’s commercial customers, EBM pays commercial wastewater rates per SMC 21.28.090, which allows EBM to install submeters to reduce its wastewater charges by deducting the quantities of metered water that are delivered to vessels and that do not enter the sewer system.¹⁶ Generally, EBM gets the same benefits of wastewater service as other SPU customers.

Under the authority of RCW 35.67.020, Seattle establishes wastewater rates by ordinance, and like the compensation formula used by the parties to the Basic Agreement, Seattle uses water consumption as the basis for calculating wastewater rates for its customers. SMC 21.28.090.A provides that commercial wastewater “charges shall be based on the metered water delivered to the premises” SMC 21.28.040.B provides that the

¹⁵ *Id.* at Ex. F (Letter from Metro to Frank Coluccio Construction Company, dated March 26, 1991). CP 298.

¹⁶ SPU wastewater customer service representatives have worked with EBM to install appropriate submeters and routinely visit EBM’s facilities to read their meters. EBM is now served by an array of about a dozen submeters, each of which requires SPU wastewater staff to make monthly readings. See *Decl. of Jeff Bingaman*, ¶¶3-4. CP 210.

wastewater volume rate is the sum of two components: the system rate and the treatment rate. The treatment rate is “the rate required to pay the wastewater share of ‘treatment cost’ which is the cost of wastewater treatment, interception and disposal services and any associated costs required to meet Drainage and Wastewater Fund financial policies.” *Id.* The cost elements that are included in the system rate include more than simply the direct costs of operating and maintaining the City’s network of sewers that convey sewage into the generally larger County pipes. The system rate is set to recover and meet anticipated revenue requirements associated with all aspects of the wastewater utility, except for the revenue required for making payments to Metro for treatment under the Basic Agreement. Therefore, costs included in the calculation of the system rate appropriately include: taxes, administrative costs, customer service, meter reading, billing, investments in technology, training, inspections and enforcement of the Side Sewer Code, SMC Chapter 21.16, debt service, regulatory compliance (e.g., NPDES CSO Permit) and environmental and other liabilities.¹⁷

Revenue from wastewater rates and charges is deposited into the Drainage and Wastewater Fund (DWF). The DWF is a separate enterprise

¹⁷ *Decl. of Maria Coe* ¶ 5. CP 526.

fund dedicated to funding the City's drainage utility as well as its wastewater utility.¹⁸ As such the DWF also receives revenue from drainage rates and charges.¹⁹ The City's wastewater and drainage systems are integrated. The City's system of combined sewers is a common asset of both the wastewater system and the drainage system, because the combined sewers carry both sanitary sewage and stormwater. Internal accounting practices allocate expenses associated with shared assets or programs between the wastewater and drainage systems on a percentage basis. Likewise, where an asset or program serves the purposes of only one system, then the associated expenses are assigned 100 percent to that system.²⁰

Two elements of wastewater utility expenses demonstrate the variety of activities funded by the system rate. First, the wastewater utility has made significant investments in its CSO program to reduce the number, frequency, and quantities of raw sewage discharges into Elliott Bay. There are several permitted CSOs serving the Magnolia area in the vicinity of EBM, as well as one CSO just to the east that serves the Interbay basin, and that discharge

¹⁸ See SMC 21.33.080 and .090 and SMC 21.28.280.

¹⁹ The wastewater system generates about three times more operating revenue than the drainage system. *Decl. of Maria Coe*, Ex. A, p. 24, Table 8 (Official Statement). CP 558.

²⁰ *Decl. of Maria Coe* ¶ 6. CP 526.

into Smith Cove.²¹ Since 2000, the DWF has invested more than \$40,000,000 on CSO retrofits and related storage facilities.²² The system rate has funded the bulk of these projects.²³ Second, the system rate funds the expense of the administration and enforcement of the City's Side Sewer Code, which is intended to protect the integrity of the City's collection system by regulating those who wish to connect to the system or whose activities could potential interfere with the proper functioning of the system.²⁴ For example, SMC 21.16.040.A generally requires that property owners connect their side sewers to the City's combined or sanitary sewers, while SMC 21.16.040.B requires that service drains connections to combined sewers must comply with the requirements of the Stormwater Code, SMC Title 22.²⁵

²¹ *See Decl. of Andrew Lee*, Ex. A (2010 CSO Reduction Plan Amendment, Figure 4-1 (NPDES CSO outfall Nos. 061, 062, 064 and 068)). CP 332.

²² *See id.* at Table 3-1. CP 325.

²³ *See Decl. of Maria Coe*, Exhibit C, pp. 13-14 (Drainage and Wastewater Fund 2013 - 2015 Rate Study). CP 752-753.

²⁴ *See Decl. of Maria Coe* ¶5. CP 526.

²⁵ Similarly, SMC 21.16.070 requires a permit for the construction or repair of side sewers; SMC 21.16.140 requires that SPU inspect the work performed on side sewers; SMC 21.16.260 imposes construction standards and specifications; and SMC 21.16.358 provides for enforcement and the imposition of penalties for violations of the Side Sewer Code.

EBM produces thousands of gallons of sewage *every day* and is billed under SMC Chapter 21.28.²⁶ Notably, SMC 21.28.090.B provides that “Direct discharge of wastewater ... to points other than the City sewer system shall not be cause for adjustment or reduction of the wastewater charge or rate.”

C. EBM has been paying City sewer charges since it opened

EBM could not connect to the South Magnolia trunk line without first obtaining the written approval of the City of Seattle. This is required by the Basic Agreement, as well as the King County Code.²⁷ In most circumstances, the City requires property owners to connect per the Side Sewer Code to either a City separate sanitary sewer line or a City combined sewer. SMC 21.16.040.A. The City may require and often does require customers to construct an extension to the City’s sewer line before allowing a connection. In fact, the residential parcels located on the shoreline just to the West of EBM were required to fund the construction of the City’s sanitary sewer line before connecting their side

²⁶ See *Decl. of Jeff Bingaman*, Ex. A. CP 212-244.

²⁷ See Section 2 of the Basic Agreement and Section 28.84.050.J of the King County Code.

sewers in 1975.²⁸ Those properties -- situated like EBM with the South Magnolia trunk line at their doorstep -- were not allowed to connect to the South Magnolia trunk line. The City could have required EBM to extend the City's sanitary sewer from the West and connect to it. Instead, the City accommodated EBM by agreeing to allow its connection to the South Magnolia trunk line.

At the time the City made this accommodation to EBM, EBM understood and accepted that it would be subject to the same rates as other customers and that it would not be allowed an adjustment or reduction to its wastewater rates as a result of discharging to the South Magnolia trunk line rather than to the City's sanitary sewer. This was explicit at the time because the Seattle Municipal Code provided as much, and EBM repeatedly ratified that understanding by paying its wastewater charges without protest for more than 20 years.

D. Procedural history.

EBM filed a Complaint for Declaratory Judgment and Injunctive relief in King County Superior Court on June 6, 2012. On cross-motions for summary judgment, King County Superior Court Judge Monica

²⁸ This was accomplished through the creation of Local Improvement District 6657. *See Second Declaration of William C. Foster*, Exhibits A (Ordinance 104497) CP 807-815, B (Ordinance 104739) CP 817-825, and C (Side Sewer Card 4242) CP 827-828.

Benton granted the City's Motion for summary judgment dismissing the Marina's claims. A final amended order dismissing the claims was entered on May 30, 2013.

IV. ARGUMENT

A. Standard of Review

A trial court's grant of summary judgment is subject to de novo review. *Green v. A.P.C.*, 136 Wn.2d 87, 94, 960 P.2d 912 (1998). Summary judgment is appropriate if there is no genuine issue of material fact and the party bringing the motion is entitled to judgment as a matter of law. CR 56(c). If the nonmoving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which the party will bear the burden of proof at trial,' then the trial court should grant the motion." *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989), quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The party opposing a motion for summary judgment may not rely on speculation, argumentative assertions that unresolved factual issues remain, or on having its affidavits considered at face value. *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1(1986). The party must set forth specific facts rebutting the moving party's contentions and disclose that a genuine issue as to a material fact exists. *Id.* at 13.

An ordinance is presumed to be constitutional and the party challenging the ordinance bears the burden of establishing its unconstitutionality beyond a reasonable doubt. *Leonard v. City of Spokane*, 127 Wn.2d 194, 197-8, 897 P.2d 358 (1995). Municipal ordinances must, whenever possible, be interpreted in a manner which upholds their constitutionality. *Brown v. City of Yakima*, 116 Wn.2d 556, 559, 807 P.2d 353 (1991), *City of Tacoma v. Luvane*, 118 Wn.2d 826, 841, 827 P.2d 1374 (1992).

To successfully challenge a ratemaking decision, the challenger must demonstrate that the rate is arbitrary, capricious or unreasonable. *Sudden Valley Community Ass'n v. Whatcom County Water Dist. No. 10*, 113 Wash.App. 922, 926, 55 P.3d 653, 655 (2002). See also *Municipality of Metropolitan Seattle v. Division 587, Amalgamated Transit Union*, 118 Wn.2d 639, 646, 826 P.2d 167, 170 (1992); *City of Tacoma v. Taxpayers of City of Tacoma*, 108 Wn.2d 679, 695, 743 P.2d 793, 801 (1987).

B. EBM mounts a rate challenge, and there is no question of fact whether the City and County's rate setting was arbitrary, capricious or unreasonable

Challenges to a rate structure—*i.e.*, what properties to impose the charge upon or what amount to charge—are reviewed under the arbitrary and capricious standard. Rate making is legislative in character. Rate-

making authority may be directly exercised by the legislature itself or, as in the usual case, by administrative bodies endowed by the legislature with that authority. *People's Organization for Wash. Energy Resources v. Wash. Util. & Transp. Comm'n*, 104 Wn.2d 798, 807, 711 P.2d 319 (1985).

EBM does not contend that it cannot be charged for sewer service, it contends only that it is being charged too much because it is a County customer and not a City customer. EBM's argument relies on the false premise that the City and County systems are separate and independent. They are not; rather, they are two parts of a whole. In other words, there are no County-only customers, and EBM asks this court to order that EBM need only pay a fraction of the sewer rate that all City customers pay. EBM thus challenges the wastewater volume rate set by SMC 21.28.040.B, arguing that, at least as to EBM, the volume rate cannot include the system rate—which goes to the City—but only the treatment rate which the City collects to pay the County for treatment services. EBM challenges the inclusion of the system rate in the volume rate charge. Because EBM attacks the rate it is charged, EBM's argument must be analyzed under the arbitrary and capricious standard.

To establish arbitrary and capricious action, EBM must demonstrate that the rate set by SMC 21.28.040.B was set “without due

deliberation and in defiance of practically uncontradicted factual and opinion evidence dictating a contrary course, or that they were actuated by wholly improper motives.” *State ex rel. Public Utility Dist. No. 1 of Pend Oreille County v. Schwab*, 40 Wn.2d 814, 830, 246 P.2d 1081, 1090 (1952). There is no evidence in the record that the wastewater volume rate was set in an arbitrary and capricious manner. Similarly, there is no evidence that the rate is unreasonable. *See McCormacks, Inc. v. Tacoma*, 170 Wash. 103, 107, 15 P.2d 688 (1932). On the contrary, the record indicates that the rate is that which is sufficient to meet the revenue requirements of the City’s wastewater utility, including the revenue required to compensate the County for treatment services provided under the Basic Agreement.

C. The City’s use-based rates are not taxes as a matter of law.

EBM’s argument under *Covell* focuses on the fact that its pipe connects to a portion of the comprehensive system that is owned by the County. EBM’s hypothesis, that the connection point matters, fails as a matter of law for several reasons. First, it incorrectly supposes that the City and County systems are separate, as opposed to parts of an integrated whole. Second, the argument runs counter to the well-recognized principle that fees charged need not be directly proportional to the burden

of providing a service to a particular customer. Third, it is not useful in determining whether the fee is regulatory, whether the City segregates its share of the fee, or whether EBM contributes to a sewage burden or receives a benefit from the charge.

The City and the County both own parts of the comprehensive sewer system serving properties in the City of Seattle. RCW 36.94.190 provides that:

“Every county in furtherance of the powers granted by this chapter shall be authorized to contract with the federal government, the state of Washington, or any city or town, within or without the county, and with any other county, and with any municipal corporation as defined herein or with any other municipal corporation created under the laws of the state of Washington and not limited as defined in RCW 36.94.010, or political subdivision, and with any person, firm or corporation in and for the establishment, maintenance and *operation of all or a portion of a system or systems of sewerage* and/or water supply.”

(emphasis added). The City and County have a contract authorized by RCW 36.94.190. Jointly, they are responsible for the comprehensive sewer system serving customers like EBM. EBM asks the court to rule that it need only pay for the part of the comprehensive system that it connects to. The argument ignores the comprehensive nature of the sewer system. City customers are served by a single, comprehensive system. Rather than attempt to divvy up the costs of such systems and related sewerage activities on a proportional basis, both the City through its rates

and the County through the compensation formula in the Basic Agreement use water consumption as the basis of calculating wastewater charges. *See, e.g.* SMC 21.28.040. The rate is not based on connection point, or on the costs of providing service to a particular property or area. The City “shows the math” to its customers, demonstrating on each bill the portion of sewer rates that go to each. However, this billing does not reflect that the City and County each operate their own sewer systems. Rather, it is a reflection of the contractual agreement between the City and County regarding shared responsibility for the single sewer system and rates. For the reasons outlined above, this makes EBM’s argument into a rate-challenge, rather than a *Covell* challenge. But, even applying *Covell*, EBM’s argument is fundamentally flawed. EBM’s argument that it cannot be charged the system rate is equivalent to a customer in West Seattle arguing that its sewer rates cannot be used to fund sewerage activities in Madison Valley. It is fundamentally flawed because it rests on a false premise: the notion that the City and County have separate sewer systems. To make another analogy, it is as if EBM believes it is a Comcast customer, but is being billed by Direct TV. That is not the case, as the City and County do not operate separate sewer systems. As noted above, each entity’s system depends on the other. Therefore, the City and the County are not competing to provide retail service; instead, they each

contribute different assets and services to support the comprehensive system as a whole.

Before proceeding to *Covell*, it is worth noting that, as a general matter, use-based utility fees are not taxes. In Washington “[a] local government does not have the power to impose taxes without statutory or constitutional authority.” *Okeson v. City of Seattle*, 150 Wn.2d 540, 551, 78 P.3d 1279 (2003). However, charges imposed for purposes other than raising money to fund the public treasury, such as for regulating activities, are not taxes and are not subject to constitutional taxation constraints. *See, e.g., Samis Land Co. v. City of Soap Lake*, 143 Wn.2d 798, 805, 23 P.3d 477 (2001); *Dean v. Lehman*, 143 Wn.2d 12, 25, 18 P.3d 523 (2001). Indeed, “[l]ocal governments have authority under their general article XI, section 11 police powers to require payment of fees that are ‘akin to charges for services rendered’ in that they are deposited into a segregated fund directly related *either* to the provision of a service received by the entities paying the fees *or* to the alleviation of a burden to which they contribute.” *Samis Land Co.* 142 Wn.2d at 804-805 (footnotes and citations omitted, emphasis in original).

Where a charge relates to a direct benefit or service, it is generally not considered a tax or assessment. *King County Fire Prot. Dists. No. 16, No. 36, & No. 40 v. Housing Auth. of King County*, 123 Wn.2d 819, 833,

FN 33, 872 P.2d 516 (1994) (noting that sewage charges, in particular, are properly considered regulatory fees and not taxes). “Instead, such charges are considered as regulatory fees, a rather broad category that can ‘include a wide assortment of *utility customer fees*, utility connection fees, garbage collection fees, local storm water facility fees, user fees, permit fees, parking fees, registration fees, filing fees, and license fees.’ *Samis*, 143 Wn.2d at 805, 23 P.3d 477.” *Storedahl Properties, LLC v. Clark County*, 143 Wash.App. 489, 496, 178 P.3d 377, 381 (2008)(emphasis added). In *Samis*, the utility charge at issue was not based on use, and was found to be a tax.

EBM contends that the City is unfairly taxing it by charging it a sewer rate based on use because EBM’s side sewer is connected directly to a King County pipe. EBM’s argument is contrary to the fact that *all courts that have considered whether use-based or burden-based utility charges are permissible fees or impermissible taxes have concluded that they are permissible fees, not taxes.*²⁹ “The rates of a public utility owned by a municipality are not ordinarily characterized as taxes, within the rule requiring all taxes to be uniform, nor so as to entitle the consumer to

²⁹ Eugene McQuillin, *The Law of Municipal Corporations*, 3rd Ed. Rev., §35:69 (2006) (footnotes omitted)(Citing cases from over 20 states for the proposition that utility rates are not ordinarily considered taxes). Although it is possible that contrary cases exist, the City has not found any in its research.

notice and an opportunity to be heard before they are established.”³⁰
Indeed, only where rates are unrelated to actual usage have such rates been determined to be a tax.³¹

For over 100 years, Washington Courts have repeatedly recognized that utility charges based on the provision of services are not taxes. *Twitchell v. City of Spokane*, 55 Wash. 86, 89, 104 P. 150 (1909) provides an early illustration of the principle. In *Twitchell*, the Court rejected the assertion that water rates amounted to improper taxes. *Id.* (“Water rates paid by consumers are in no sense taxes, but are nothing more than the price paid for water as a commodity. The obligation to pay for the use of water rests either on express or implied contract on the part of the consumer to make compensation for water which he has applied for and received.” (quoting 30 *The American and English Encyclopaedia of Law* 422 (2d ed.1905))). As discussed below, courts that have recently considered storm and surface water charges have also concluded that the charges were fees and not taxes.

³⁰ *Id.*

³¹ *Id.* (“[I]f rates for water or light must be paid regardless of the quantity used or whether any is used, and the plant is owned by the municipality, such a rate is a tax, although there is authority to the contrary.”)

a) **Application of the *Covell* Factors
Confirms the General Rule: the Volume
Rate Charge is not a tax**

In Washington, courts apply three factors to decide whether a charge is a regulatory fee or a tax: (1) whether the primary purpose is to raise revenue (tax) or to regulate (regulatory fee); (2) whether the money collected must be allocated only to the authorized regulatory purpose; and (3) whether there is a direct relationship between the fee charged and the service received by those who pay the fee or between the fee charged and the burden produced by the fee payer. *City of Lakewood v. Pierce County*, 106 Wash.App. 63, 75, 23 P.3d 1 (2001) (Setting forth factors stated in *Covell v. City of Seattle*, 127 Wn.2d 874, 879, 905 P.2d 324 (1995)). “If the fundamental legislative impetus [is] to ‘regulate’ the fee payers-by providing them with a targeted service or alleviating a burden to which they contribute-that would suggest that the charge was an incidental ‘tool of regulation’ rather than a tax in disguise.” *Samis Land Co.*, 143 Wn.2d at at 807 (citing *Covell* and other pre-*Covell* authorities, footnotes omitted).

Generally, taxes are charges imposed to supply the public treasury. *State ex rel. Nettleton v. Case*, 39 Wash. 177, 182, 81 P. 554 (1905). Tax revenue may be used for any governmental function and placed in any fund unless specially earmarked by the legislature. *See Taxes vs. Fees; A*

Curious Confusion, Hugh D. Spitzer, 38 Gonz. L. Rev. 335 (2002). As described by Spitzer:

Taxes, then, are vehicles to raise money for allocation to a proper governmental purpose. There is no connection between the property or activities taxed and the use of the proceeds. Further, there is no connection between the burdened tax payer and the person or group benefited. Tax money may be deposited in any fund the legislative body elects. In sum, taxes are a broad-brush method of raising revenue.

38 Gonz. L. Rev. at 341.

The fact that a fee ordinance raises revenue does not mean it is a tax. As explained in *Okeson v. City of Seattle*, 150 Wn.2d 540, 552-53, 78 P. 3d 1279 (2003):

It is a misnomer to simply ask whether the charges raise revenue, because both taxes and regulatory fees raise revenue. What is important is the purpose behind the money raised—a tax raises revenue for the general public welfare, while a regulatory fee raises money to pay for or regulate the service that those who pay will enjoy (or to pay for or regulate the burden those who pay have created).

EBM is a City customer. It receives services from both the City and the County. As explained above, there is a single system serving all City customers. The City and County each own parts of it, and a single bill is paid by each customer based on the customer's usage over the billed period. With that in mind, application of the *Covell* test to the use-based volume rate charge is fairly straightforward.

b) The primary purpose of SPU’s “system rate” is to regulate, i.e. to pay for wastewater services and activities

The first *Covell* factor is whether the primary purpose of the charge is to accomplish desired public benefits that cost money or whether the primary purpose is to pay for a regulatory scheme, a particular benefit conferred, or mitigation of the burden created. *Arborwood Idaho, L.L.C. v. City of Kennewick*, 151 Wn.2d 359, 371, 89 P.3d 217 (2004). If the primary purpose is to regulate the fee payers—by providing them with a targeted service or alleviating a burden to which they contribute—that would suggest that the charge is an incidental tool of regulation. *Id.*

As the court stated in *Margola Associates v. City of Seattle*, 121 Wn.2d 625, 854 P.2d 23 (1993):

[A] court can look to the “overall plan” of regulation in construing the purpose of the challenged fee....[T]his court look[s] beyond the legislation implementing the fee in order to determine the legislation's purpose. Even though ... fee ordinances themselves do not specifically refer to any “overall plan” of regulation or limit the use of revenues, the ordinances should not be viewed in isolation.

Margola, 121 Wn.2d at 637, 854 P.2d 23 (citing *Teter v. Clark County*, 104 Wn.2d 227, 704 P.2d 1171 (1985)). Fees have been upheld “even though the charge is not individualized according to the benefit accruing to each fee payer or the burden produced by each fee payer.” *Covell* 127 Wn.2d at 879 (citation omitted). The fee need not be

proportionate to the cost of the system attributable to the property charged. *Tapps Brewing, Inc. v. City of Sumner*, 106 Wash.App. 79, 85, 22 P.3d 280 (2001). This is a key point: it is permissible to base a fee on the level of usage without regard to the cost of connecting the fee payer to the system or the dollar value of benefits they receive.

It is true that not every activity paid for by the system rate provides a service to or mitigates a burden created by *every* fee payer. However, that is not required—it is the “overall plan” that is considered. *Smith v. Spokane County*, 89 Wash.App. 340, 350, 948 P. 2d 1301 (1997). *See also Teter*, 104 Wn.2d at 229-31 (charges are valid fees even though service is not provided to every fee payer or some fee payers do not contribute to the regulated activity: runoff or pollution to surface water in *Teter*). In perhaps the first regulatory fee case in Washington, *Morse v. Wise*, 37 Wn.2d 806, 226 P. 2d 214 (1951), water and sewer charges were imposed on all customers to pay for the installation of additions to the original system. Customers who did not benefit from the additions challenged the fees. The court stated, “[w]e gather from the argument of appellants that they consider the sewer service charge to pay for the new sewers to be an assessment, and that as such it is illegal because they are not specially benefited.” *Id.* at 810. The court rejected the argument: “[t]he special benefit idea does not enter into the picture at all.” *Id.* at 811.

Washington courts applying *Covell* and considering whether sewage, wastewater, stormwater, and drainage charges based on use or contribution to a general burden have all concluded that such charges satisfied the first *Covell* factor. For instance, in *Smith v. Spokane County*, 89 Wash.App. 340, 349-50, 948 P.2d 1301, 1306-07 (1997), the court, relying on state law authorizing the charges in question, concluded that the County's sewage fees regulated and did not raise general revenue where they were intended to improve the water quality in subterranean aquifers by reducing and preventing sewage pollution. In rejecting the plaintiff's argument, the court noted that, although she was "correct that the use of the water is not being regulated by the fees, she fail[ed] to acknowledge that the pollution and continued degradation of the aquifer [was] being regulated via the fees. The fees imposed by the County are indeed regulatory." *Id.* at 350. In another case involving sewage, *Thurston County Rental Owners Ass'n v. Thurston County*, 85 Wash.App. 171, 178-79, 931 P.2d 208 (1997), the court held that the County's imposition of permit fees for the construction of septic systems was regulatory. The County required permits for construction of septic systems in order to protect groundwater.

Similarly, in *Tukwila School Dist. No. 406 v. City of Tukwila*, 140 Wash.App. 735, 746, 167 P.3d 1167, 1172 (2007) the court concluded

that storm and surface water charges were fees and not taxes where the purpose of the charge was to “protect local water sources, including the Green River, from pollutants caused by storm and surface water runoff discharged by developed property with impervious surfaces.” *Id.* at 747. The court concluded that owners of properties with impervious surfaces contributed to water pollution, and that Tukwila could properly charge a fee to defray the cost of ameliorating it. The primary purpose of the fee was to regulate. *Id.* See also *Storedahl Properties, LLC v. Clark County*, 143 Wash.App. 489, 498, 178 P.3d 377, 382 (2008) (determining that legislative language showing an overall plan of storm water regulation and providing that fees collected pursuant to the plan were to be spent exclusively on storm water purposes was sufficient to allow the court to conclude that the fees were regulatory in nature.).

In another case involving a water services connection charge the Court also concluded that the charge was “regulatory.” *Hillis Homes, Inc. v. Public Utility Dist. No. 1 of Snohomish County*, 105 Wn.2d 288, 300, 714 P.2d 1163, 1169 (1986), the court quoted with approval from *Contractors & Bldrs. Ass'n v. Dunedin*, 329 So.2d 314, 318 (Fla. 1976): “The municipality seeks to shift to the user expenses incurred on his account. A private utility in the same circumstances would presumably do the same thing, in which event surely even petitioners would not suggest

that the private corporation was attempting to levy a tax on its customers.” From *Hillis Homes, Inc.*, and other comparable cases, it is clear that the key question in determining “regulation” is how the collected monies are spent: where the monies are spent on providing a service to customers *or* on addressing the general burden/expense created by those customers, the fee is regulatory.

In sum, all of the post-*Covell* cases addressing comparable issues for use-based fees—like the ones at issue here—concluded that the fees at issue were intended to regulate.

The purpose of the charges paid by EBM and other City customers is not to raise revenue for general purposes. Rather, the charges offset the costs of the overall sewage burden and are used to provide benefits to customers, including customer service, reductions in sewer overflows, and water quality efforts. *See also* SMC 21.28.030 (sewage charges imposed to protect “public health, safety and welfare”); SMC 21.28.230 (providing that the SPU Director is to “develop and update annually a schedule of charges for standard, recurring services which are incidental to the provision of wastewater service. Such charges shall be based on a review of the prevailing actual costs for providing these services.”).

The above cited code provisions flow from RCW 35.67, which authorizes all cities and towns to construct public utilities for the purpose

of managing storm water drainage as well as sanitary sewage disposal and treatment. The language of Chapter 35.67 RCW indicates that the Legislature intended to authorize cities to charge regulatory fees rather than taxes to pay for the building and operation of such utilities.

For example RCW 35.67.020 authorizes cities and towns “to fix, alter, regulate, and control the rates and charges for [the utilities] use.” That same provision provides that “the rates charged under this section must be uniform for the same class of *customers or service and facilities furnished.*” (Emphasis added). Thus, the Legislature did not intend that operation costs of the utilities be paid through taxes imposed on the general public, but rather by charges imposed on those directly served by the utilities.

The Legislature’s references to “customers” and “services” is pervasive throughout the statute. For example, the Legislature specified the factors that could be considered in determining the rates:

In classifying customers served or service and facilities furnished by such system of sewerage, the city or town legislative body may in its discretion consider any or all of the following factors:

- (a) The difference in cost of *service* and facilities to the various *customers*;
- (b) The location of the various *customers* within and without the city or town;
- (c) The difference in cost of maintenance, operation, repair, and replacement of the various parts of the system;
- (d) The different character of the *service* and facilities

furnished various *customers*;

(e) The quantity and quality of the sewage delivered and the time of its delivery;

(f) The achievement of water conservation goals and the discouragement of wasteful water use practices;

(g) Capital contributions made to the system, including but not limited to, assessments;

(h) The nonprofit public benefit status, as defined in RCW 24.03.490, of the land user; and

(i) *Any other matters which present a reasonable difference as a ground for distinction.*

RCW 35.67.020 (2). (Emphasis added).

The Legislature also authorized cities to create a special fund to defray the “cost of the proposed system, or additions, betterments or extensions thereto.” RCW 35.67.120. In doing so, it provided that amounts deposited to defray such costs be comprised of *revenue generated by the utility* not monies from a city’s general fund. *Id.*

The charges in question are regulatory in nature.

c) The Money Collected by SPU is allocated only to the regulated activity

The second *Covell* factor is whether the money collected must be allocated only to the authorized regulatory purpose. Although “segregation of fees for a specific purpose is an essential ingredient in determining whether charges constitute a fee or a tax, this factor alone is not dispositive.” *Covell*, 127 Wn.2d at 885 (citation omitted). *See also Irvin Water Dist. No. 6 v. Jackson Partnership*, 109 Wash.App. 113

(2001) (water connection charge a fee even absent “requirement that funds be placed in a separate account”). Wastewater fees collected by SPU are spent only on wastewater matters. *See* SMC 21.28.280 (wastewater fees must be deposited in the Drainage and Wastewater fund).

EBM’s argument with respect to the second factor mirrors its argument with respect to the first. EBM posits that, because it does not connect to the City system, and the system rate goes towards the costs of the City system, EBM’s payments are not going towards any EBM activity that is regulated by the City. Again, EBM’s argument misses the mark: the payments are volume based charges for EBM’s use of the comprehensive sewer system, not separate payments to the City and County. The question is not whether EBM’s sewage goes through a City pipe, but whether EBM contributes sewage to the City/County comprehensive sewer system.

Recent cases confirm that the City’s system charges are allocated as required by *Covell*. For instance, in *Storedahl Properties, LLC*, the court concluded that, where the County did not spend storm water fees on anything other than “the cost and expense of regulating, monitoring and evaluating storm water impacts; maintaining and operating storm water control facilities; educating the public on issues related to storm water; and all or any part of the cost and expense of planning, designing,

establishing, acquiring, developing, constructing, and improving any such facilities” the fees were appropriately segregated. *Storedahl Properties*, 143 Wash.App. at 500. In another case, the court rejected the assertion that funds were not segregated where they were used on capital projects: “[t]he construction of capital facilities is a recognized regulatory activity.” *Tukwila School Dist. No. 406*, 140 Wash.App. at 748 (citing RCW 35.67.020(1) and noting it authorizes municipalities to “construct ... purchase, acquire, add to, maintain, conduct, and operate systems of sewerage [including storm and surface water systems] ... together with additions, extensions, and betterments thereto.”).

There is no question of fact: SPU wastewater charges are segregated and pass the second part of the *Covell* test as a matter of law.

- d) The third Covell factor is met twice over: EBM both contributes to the sewage burden and receives a benefit from the fee it pays.**

The third *Covell* factor requires that there be a “direct relationship” between the fee charged and either a service received by the fee payers or a burden to which they contribute. *Covell*, 127 Wn.2d at 879, 905 P.2d 324; *Samis*, 143 Wn.2d at 811, 23 P.3d 477. The charge does not need to be individualized according to the exact benefit accruing to, or burden

produced by, the fee payer. *Covell*, 127 Wn.2d at 879, 905 P.2d 324. “[O]nly a *practical* basis for the rates is required, not mathematical precision.” *Teter*, 104 Wn.2d at 238. As discussed above, there is a very practical basis for rates: all ratepayers pay based on the amount of water they consume. Moreover, there can be no question that EBM contributes to the overall sewage burden to the City/County comprehensive system. Nor can there be any question that EBM receives benefits related to its payments. Both provide a practical basis for assessing the standard rate against EBM.

D. EBM is estopped from now claiming it should pay a reduced rate based on a sewer connection made over twenty years ago

At the time the City authorized EBM to make its connection, the Seattle Municipal Code expressly provided, just as it does so today, that the “direct discharge of wastewater . . . to points other than the City sewer system shall not be cause for adjustment or reduction of the wastewater charge or rate.”³² It is this provision of the City’s wastewater rates that EBM is essentially attacking today. But this provision was in effect at the

³² At the time of EBM’s connection in 1991, this provision was codified at SMC 21.28.070.A, but it is presently codified at SMC 21.28.090.B. *See Second Decl. of William Foster*, Exhibits D (Ordinance 110368) CP 831 and E (Ordinance 116393) CP 840-41.

time EBM made its connection and became a City wastewater customer, and EBM then understood and agreed that it would not be allowed any adjustment or reduction based on its discharge into the South Magnolia trunk line rather than into the City's sewer system. The City would not have agreed to allow EBM to connect to the South Magnolia trunk line otherwise. Accordingly, the City charged EBM the going rate, applicable to all Seattle's customers, and EBM agreed to pay and has continued to pay the going rate without objection or complaint – until now, more than 20 years later. The court should not permit EBM to shirk its responsibilities to pay its fair share. The court should apply the doctrine of equitable estoppel and reject EBM's attempt to renege on the agreement EBM made with the City so long ago.

The elements of equitable estoppel are (1) an act inconsistent with a claim afterwards asserted, (2) reasonable reliance upon that act by the party asserting equitable estoppel, and (3) injury to the relying party from allowing the first party to contradict or repudiate the prior act. *Lybbert v. Grant County*, 141 Wn.2d 29, 35 (2000), citing *Board of Regents v. City of Seattle*, 108 Wn.2d 545, 551 (1987).

Where a person with actual or constructive knowledge of facts induces another, by his words or conduct, to believe that he acquiesces in or ratifies a transaction, or that he will offer no opposition thereto, and that other, in reliance on

such belief, alters his position, such person is stopped from repudiating the transaction to the other's prejudice.

Board of Regents at 553 (citing *Huff v. Northern Pac. Ry.*, 38 Wn.2d 103, 114-15 (1951)). In *Board of Regents*, the court ruled that the University of Washington was equitably estopped from denying that the City of Seattle's street use easement entitled the City to regulate a skybridge the University had erected over the street where the University obtained a permit and paid fees to the City regarding the skybridge for over a decade.

In this instance, the afterwards asserted claim is that EBM should enjoy a reduction in its rates and not have to pay the system rate component of its wastewater charge because it does not discharge into the City's sewer system. EBM has acted repeatedly over the course of more than 20 years in a manner inconsistent with this claim afterwards asserted. From day one it accepted that it would not get any special treatment or adjustment to its wastewater charges based on its being allowed to discharge into the South Magnolia trunk line.

The City has reasonably relied on EBM to accept and honor its obligations to pay its standard commercial wastewater charges without request or assertion of any right to an adjustment or reduction in such charges based on its discharge into the South Magnolia trunk line. It was reasonable for the City to expect EBM to accept and honor its obligations

because the City's municipal code made it clear at the time that there would be no such adjustment or reduction. Moreover, the reasonableness of the City's reliance has been demonstrated by EBM's history of honoring its obligations over the last 20 years.

Finally, as the relying party, the City would suffer injury were EBM allowed to contradict or repudiate its prior commitments. The City as well as the City's other wastewater customers would suffer from a loss of revenue if EBM were allowed a reduction to its wastewater charges. But the City's injury would also include the lost opportunity the City had to have EBM extend the City's sanitary sewer, which the City could have required. The City would not have let that opportunity pass had it been apparent that EBM would ever attempt to use the favor of the City as a sword against it.

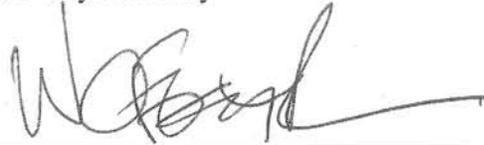
V. CONCLUSION

For the reasons stated herein, the City requests that the trial court's order dismissing EBM's complaint against the City be affirmed. EBM must continue to pay the same sewer rate paid by other sewer customers.

Respectfully submitted

PETER S. HOLMES
Seattle City Attorney

By:

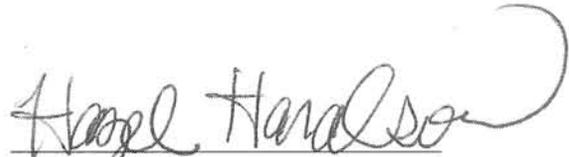


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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of October 2013, I filed the foregoing document with the Court of Appeals, Division I, and served on counsel listed below via legal messenger.

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[RCWs](#) > [Title 35](#) > [Chapter 35.67](#) > [Section 35.67.020](#)

[35.67.010](#) << [35.67.020](#) >> [35.67.022](#)

RCW 35.67.020

Authority to construct system and fix rates and charges — Classification of services and facilities — Assistance for low-income persons.

(1) Every city and town may construct, condemn and purchase, acquire, add to, maintain, conduct, and operate systems of sewerage and systems and plants for refuse collection and disposal together with additions, extensions, and betterments thereto, within and without its limits. Every city and town has full jurisdiction and authority to manage, regulate, and control them and, except as provided in subsection (3) of this section, to fix, alter, regulate, and control the rates and charges for their use.

(2) Subject to subsection (3) of this section, the rates charged under this section must be uniform for the same class of customers or service and facilities furnished. In classifying customers served or service and facilities furnished by such system of sewerage, the city or town legislative body may in its discretion consider any or all of the following factors:

(a) The difference in cost of service and facilities to the various customers;

(b) The location of the various customers within and without the city or town;

(c) The difference in cost of maintenance, operation, repair, and replacement of the various parts of the system;

(d) The different character of the service and facilities furnished various customers;

(e) The quantity and quality of the sewage delivered and the time of its delivery;

(f) The achievement of water conservation goals and the discouragement of wasteful water use practices;

(g) Capital contributions made to the system, including but not limited to, assessments;

(h) The nonprofit public benefit status, as defined in RCW [24.03.490](#), of the land user; and

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(i) Any other matters which present a reasonable difference as a ground for distinction.

(3) The rate a city or town may charge under this section for storm or surface water sewer systems or the portion of the rate allocable to the storm or surface water sewer system of combined sanitary sewage and storm or surface water sewer systems shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(4) Rates or charges for on-site inspection and maintenance services may not be imposed under this chapter on the development, construction, or reconstruction of property.

(5) A city or town may provide assistance to aid low-income persons in connection with services provided under this chapter.

(6) Under this chapter, after July 1, 1998, any requirements for pumping the septic tank of an on-site sewage system should be based, among other things, on actual measurement of accumulation of sludge and scum by a trained inspector, trained owner's agent, or trained owner. Training must occur in a program approved by the state board of health or by a local health officer.

(7) Before adopting on-site inspection and maintenance utility services, or incorporating residences into an on-site inspection and maintenance or sewer utility under this chapter, notification must be provided, prior to the applicable public hearing, to all residences within the proposed service area that have on-site systems permitted by the local health officer. The notice must clearly state that the residence is within the proposed service area and must provide information on estimated rates or charges that may be imposed for the service.

(8) A city or town shall not provide on-site sewage system inspection, pumping services, or other maintenance or repair services under this section using city or town employees unless the on-site system is connected by a publicly owned collection system to the city or town's sewerage system, and the on-site system represents the first step in the sewage disposal process. Nothing in this section shall affect the authority of state or local health officers to carry out their responsibilities under any other applicable law.

[2003 c 394 § 1; 1997 c 447 § 8; 1995 c 124 § 3; 1991 c 347 § 17; 1965 c 7 § 35.67.020. Prior: 1959 c 90 § 1; 1955 c 266 § 3; prior: 1941 c 193 § 1, part; Rem. Supp. 1941 § 9354-4, part.]

Notes:

Finding -- Purpose -- 1997 c 447: See note following RCW 70.05.074.

Purposes -- 1991 c 347: See note following RCW 90.42.005.

Severability -- 1991 c 347: See RCW [90.42.900](#).

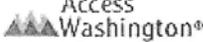

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RCW 35.67.120

Revenue bond fund — Authority to establish.

After the city or town legislative body adopts a proposition for any such public utility, and either (1) no general indebtedness has been authorized, or (2) the city or town legislative body does not desire to incur a general indebtedness, and the legislative body can lawfully proceed without submitting the proposition to a vote of the people, it may create a special fund or funds for the sole purpose of defraying the cost of the proposed system, or additions, betterments or extensions thereto.

The city or town legislative body may obligate the city or town to set aside and pay into this special fund: (1) A fixed proportion of the gross revenues of the system, or (2) a fixed amount out of and not exceeding a fixed proportion of the gross revenues, or (3) a fixed amount without regard to any fixed proportion, and (4) amounts received from any utility local improvement district assessments pledged to secure such bonds.

[1967 c 52 § 24; 1965 c 7 § [35.67.120](#). Prior: 1941 c 193 § 4, part; Rem. Supp. 1941 § 9354-7, part.]

Notes:

Alternative authority to issue revenue bonds: RCW [39.46.150](#), [39.46.160](#).

Funds for reserve purposes may be included in issue amount: RCW [39.44.140](#).



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RCWs > [Title 36](#) > [Chapter 36.56](#) > [Section 36.56.010](#)

Beginning of Chapter << [36.56.010](#) >> [36.56.020](#)

RCW 36.56.010

Assumption of rights, powers, functions, and obligations authorized.

Any county with a population of two hundred ten thousand or more in which a metropolitan municipal corporation has been established pursuant to chapter [35.58](#) RCW with boundaries coterminous with the boundaries of the county may by ordinance or resolution, as the case may be, of the county legislative authority assume the rights, powers, functions, and obligations of such metropolitan municipal corporation in accordance with the provisions of *this 1977 amendatory act. The definitions contained in RCW [35.58.020](#) shall be applicable to this chapter.

[1991 c 363 § 72; 1977 ex.s. c 277 § 1.]

Notes:

***Reviser's note:** "this 1977 amendatory act" or "this act" [1977 ex.s. c 277] consists of chapter [36.56](#) RCW and the amendment to RCW [35.58.020](#) by 1977 ex.s. c 277.

Purpose -- Captions not law -- 1991 c 363: See notes following RCW [2.32.180](#).



[RCWs](#) > [Title 36](#) > [Chapter 36.94](#) > [Section 36.94.190](#)

[36.94.180](#) << [36.94.190](#) >> [36.94.200](#)

RCW 36.94.190

Contracts with other entities.

Every county in furtherance of the powers granted by this chapter shall be authorized to contract with the federal government, the state of Washington, or any city or town, within or without the county, and with any other county, and with any municipal corporation as defined herein or with any other municipal corporation created under the laws of the state of Washington and not limited as defined in RCW [36.94.010](#), or political subdivision, and with any person, firm or corporation in and for the establishment, maintenance and operation of all or a portion of a system or systems of sewerage and/or water supply.

The state and such city, town, person, firm, corporation, municipal corporation and any other municipal corporation created under the laws of the state of Washington and not limited as defined in RCW [36.94.010](#), and political subdivision, is authorized to contract with a county or counties for such purposes.

[1967 c 72 § 19.]

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Title 21 - UTILITIES

Subtitle II - Sewers

Chapter 21.16 - SIDE SEWERS

21.16.040 Connection or abandonment of side sewers.

- A. Wastewater Side Sewer Connections. The owner or occupant of any lands, premises or habitable structures shall connect all buildings, habitable structures, sanitary plumbing outlets, and other sources of polluted water located thereon, unless exempt under subsection C of this section, with the nearest accessible sanitary sewer or combined sewer, whenever such sewer is located within 300 feet of the closest point of the building, habitable structure, sanitary plumbing outlet, or source of polluted water. Except in conjunction with activity requiring a development permit, the Director of Seattle Public Utilities shall determine whether a sanitary sewer or combined sewer is accessible and whether the connection shall be made by a side sewer or by an extension of the public sewer system. In conjunction with activity requiring a development permit, the Director of the Department of Planning and Development, in consultation with the Director of Seattle Public Utilities, shall communicate the decision to the owner or occupant based on the determination of the Director of Seattle Public Utilities.
- B. Service Drain Connections. Connections of service drains to combined sewers or public storm drains shall meet the requirements specified in Chapters 22.800 through 22.808 of the Seattle Municipal Code.
- C. Exemptions from Connection. In conjunction with activity requiring a development permit, the Director of the Department of Planning and Development, after consulting with the Director of Seattle Public Utilities, may exempt any otherwise accessible developed property from connecting to the public sewer system; and except in conjunction with activity requiring a development permit the Director of Seattle Public Utilities may exempt any otherwise accessible developed property from connecting to the public sewer system; provided, in all cases, that the following conditions are met:
1. The owner or occupant has agreed to pay to the City a charge in an amount equal to the charge that would be made for sewer service if the property were connected to the sewer system, which amount shall be paid and collected at the times and in the manner provided by ordinance for the payment and collection of sewer service charges; and
 2. The Director of Seattle Public Utilities has waived the requirement as provided in subsection A of this section that properties within 300 feet of a sanitary sewer or combined sewer must connect to that sewer; and
 3. The property has a currently functioning on-site sewage disposal system as determined by the Director of Health.

The exemption will remain in effect until the on-site sewer system fails, or the property is sold or otherwise transferred, or the owner or occupant fails to timely pay the charges referred to in subsection C1 of this section, whichever

occurs first, at which time the property shall be connected to the public sewer system as required in subsection A herein.

- D. Abandonment of Side Sewers. Whenever a side sewer is abandoned, the owner or occupant shall secure a permit from the Director of Seattle Public Utilities to cap the side sewer.

(Ord. No. [123494](#) , § 4, 2010; Ord. [121276](#) § 37, 2003; Ord. [118396](#) § 88, 1996; Ord. 117432 § 3, 1994; Ord. 114298 § 3, 1988; Ord. 111442 §§ 1, 2, 1983; Ord. 97016 § 3, 1968.)

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Title 21 - UTILITIES

Subtitle II - Sewers

Chapter 21.16 - SIDE SEWERS

21.16.070 Permit and fee required for connection and repairs.

- A. It is unlawful to connect any property or premises to a sanitary or combined sewer, or storm drain, as defined in Section [21.16.030](#), or to construct or to make repairs, alterations, additions to, or to abandon, remove, or cap any side sewer or service drain connecting to the sanitary or combined sewer, or storm drain, without first applying for and securing a permit for such work from the Director of Seattle Public Utilities and without first paying the fee as prescribed in Section [21.16.071](#). This requirement shall apply to all property, including that of the United States of America, the State of Washington, and any political subdivisions thereof.
- B. When an existing structure is removed from a site and a new structure is constructed, a side sewer permit is required to connect the new structure to the public sewer system or approved outlet.
- C. Unless an emergency exists, as determined by the Director of Seattle Public Utilities, a side sewer permit must be obtained from the Director of Seattle Public Utilities before any work may be started on a side sewer located within areas served by the City's sewer and drainage infrastructure, either on private property or within a public place.
- D. No work shall be performed on a side sewer other than that work provided for in the permit or any revised permit issued by the Director of Seattle Public Utilities. If additional work is necessary, the Director may require a permit revision, an additional permit, and/or additional fees.

(Ord. No. [123494](#) , § 9, 2010; Ord. [122036](#) § 6, 2006; Ord. [118396](#) § 92, 1996; Ord. 117432 § 4, 1994; Ord. 114298 § 7, 1988; Ord. 111650 § 3, 1984; Ord. 97016 § 6, 1968.)

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Title 21 - UTILITIES
 Subtitle II - Sewers
 Chapter 21.16 - SIDE SEWERS

21.16.140 Inspections.

- A. Any person performing work pursuant to the provisions of this chapter shall notify the Director of Seattle Public Utilities when the work will be ready for inspection, and shall specify in such notification the location of the premises by address and the file number of the permit.
- B. The Director of Seattle Public Utilities shall schedule inspection times. On any call for inspection, 48 hours notice plus Saturday, Sunday and holidays may be required by the Director of Seattle Public Utilities.
- C. If the Director of Seattle Public Utilities finds the work performed or materials used not in accordance with this chapter and rules and regulations and/or the City Standard Plans and Specifications for side sewer construction, the Director shall notify the person doing the work and/or the owner or occupant of the premises by posting a notice on or near the permit face or near said work. Such posted notice shall be all the notice that is required to be given of the defects in the work or materials found in such inspection.
- D. The inspection shall include a test in the presence of the Director of Seattle Public Utilities to determine that the side sewer is of tight construction and does not allow infiltration or exfiltration of water. Specifications for such a test shall be included in the rules and regulations referred to in Section [21.16.350](#)
- E. If the permittee is a registered side sewer contractor, either the contractor or a competent representative shall be on the premises, whenever so directed to meet the inspector. A property owner shall also meet the inspector at a mutually convenient time during the regular hours of business when requested.

(Ord. No. [123494](#) , § 16, 2010; Ord. [118396](#) § 97, 1996; Ord. 114298 § 14, 1988; Ord. 111650 § 4, 1984; Ord. 97016 § 13, 1968.)

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Title 21 - UTILITIES

Subtitle II - Sewers

Chapter 21.16 - SIDE SEWERS

21.16.260 Construction requirements and specifications.

- A. Materials and workmanship in connection with the installation of any side sewer shall be as required by this chapter, the City's Standard Plans and Specifications, Chapters 22.800 through 22.808 of the Seattle Municipal Code, all associated rules issued by the Director, and as designated by the Director of Seattle Public Utilities. If any requirements or standards conflict, or if special circumstances exist, the Director of Seattle Public Utilities will determine which requirements or standards will be applicable.
- B. Unless authorized by the Director of Seattle Public Utilities, an owner or occupant who is required, or wishes, to connect to a public sewer shall be required to build a main sewer line extension if a public sewer is not accessible within an abutting public place.
- C. Unless authorized by the Director of Seattle Public Utilities, no more than one building shall be connected to a side sewer. If more than one building is allowed to connect to one side sewer, in addition to requirements in Section [21.16.250](#), the pipe downstream of the point of shared connection shall be not less than 6 inches in diameter.
- D. All multiple-unit buildings, industrial buildings, and commercial buildings shall be connected with not less than 6 inch diameter pipe on private property.
- E. Unless authorized by the Director of Seattle Public Utilities, all side sewers shall be constructed with not less than 2 percent grade and not more than 100 percent grade.
- F. Unless authorized by the Director of Seattle Public Utilities, all side sewers shall have not less than 60 inches of cover at the curblin e or in a public alley, 30 inches of cover at the property line, and 18 inches of cover on private property.
- G. Unless authorized by the Director of Seattle Public Utilities, all side sewers serving one dwelling unit shall have minimum pipe size of 4 inches in private property and 6 inches in the public place.
- H. Ductile or cast iron pipe shall be used for all side sewers crossing over water mains for a distance of at least 5 feet measured perpendicular from the center of the water main. Side sewer lines must be laid at least 6 inches below and 1 foot away from any water service line or water main, unless ductile or cast iron pipe is used for the side sewer.
- I. Whenever a side sewer is to be abandoned, said sewer shall be capped as close to the property line as possible without interrupting service to any other building.

(Ord. No. [123494](#), § 29, 2010; Ord. [119688](#) § 3, 1999; Ord. [118605](#) § 3, 1997; Ord. [118396](#) § 106, 1996; Ord. [114298](#) § 27, 1988; Ord. [97016](#) § 26, 1968.)

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Title 21 - UTILITIES

Subtitle II - Sewers

Chapter 21.16 - SIDE SEWERS

21.16.358 Enforcement actions.

- A. Investigation. The Director of Seattle Public Utilities may investigate any site where there is reason to believe that there may be a failure to comply with the requirements of this chapter.
- B. Notice of Violation.
 1. Issuance. The Director of Seattle Public Utilities is authorized to issue a Notice of Violation to a responsible party, whenever the Director determines that a violation of this chapter has occurred or is occurring. The Notice of Violation shall be considered an order of the Director.
 2. Contents.
 - a. The Notice of Violation shall include the following information:
 - i. A description of the violation and the action necessary to correct it;
 - ii. The date of the notice; and
 - iii. A deadline by which the action necessary to correct the violation must be completed.
 - b. A Notice of Violation may be amended at any time to correct clerical errors, add citations of authority, or modify required corrective action.
 3. Service. The Director of Seattle Public Utilities shall serve the Notice of Violation upon a responsible party either by personal service, by first class mail, or by certified mail return receipt requested, to the party's last known address. If the address of the responsible party cannot be found after a reasonable search, the notice may be served by posting a copy of the notice at a conspicuous place on the property. Alternatively, if the whereabouts of the responsible party is unknown and cannot be ascertained in the exercise of reasonable diligence, and the Director makes an affidavit to that effect, then service may be accomplished by publishing the notice once each week for two consecutive weeks in the City official newspaper.
 4. Nothing in this chapter shall be deemed to obligate or require the Director to issue a Notice of Violation or order prior to the initiation of enforcement action by the City Attorney's Office pursuant to Subsection 21.16.358E.
- C. Stop Work and Emergency Orders.
 1. Stop Work Order. The Director of Seattle Public Utilities may order work on a site stopped when the Director determines it is necessary to do so in order to obtain compliance with or to correct a violation of any provision of this chapter or rules promulgated hereunder or to correct a violation of a permit or approval granted under this chapter.
 - a. The stop work notice shall contain the following information:

- i. A description of the violation; and
 - ii. An order that the work be stopped until corrective action has been completed and approved by the Director.
 - b. The stop work order shall be personally served on the responsible party or posted conspicuously on the premises.
2. Emergency Order.
 - a. The Director of Seattle Public Utilities may order a responsible party to take emergency corrective action and set a schedule for compliance and or may require immediate compliance with an emergency order to correct when the Director determines that it is necessary to do so in order to obtain immediate compliance with or to correct a violation of any provision of this chapter, or to correct a violation of a permit or approval granted under this chapter.
 - b. An emergency order shall be personally served on the responsible party or posted conspicuously on the premises.
 - c. The Director of Seattle Public Utilities is authorized to enter any property to investigate and correct a condition associated with a side sewer when it reasonably appears that the condition creates a substantial and present or imminent danger to the public health, safety or welfare, the environment, or public or private property. The Director may enter property without permission or an administrative warrant in the case of an extreme emergency placing human life, property or the environment in immediate and substantial jeopardy which requires corrective action before either permission or an administrative warrant can be obtained. The cost of such emergency corrective action shall be collected as set forth in Section 21.16.364
 3. Director's Review of Stop Work Order and Emergency Order. A stop work order or emergency order shall be final and not subject to a Director's review.
- D. Review by Director.
 1. A Notice of Violation, Director's order, or invoice issued pursuant to this chapter shall be final and not subject to further appeal unless an aggrieved party requests in writing a review by the Director within ten days after service of the Notice of Violation, order, or invoice. When the last day of the period so computed is a Saturday, Sunday or federal or City holiday, the period shall run until 5:00 p.m. on the next business day.
 2. Following receipt of a request for review, the Director shall notify the requesting party, any persons served the Notice of Violation, order or invoice, and any person who has requested notice of the review, that the request for review has been received by the Director. Additional information for consideration as part of the review shall be submitted to the Director no later than 15 days after the written request for a review is mailed.
 3. The Director will review the basis for issuance of the Notice of Violation, order, or invoice and all information received by the deadline for submission of additional information for consideration as part of the review. The Director may request clarification of information received and a site visit. After the review is completed, the Director may:
 - a. Sustain the Notice of Violation, order, or invoice;
 - b. Withdraw the Notice of Violation, order, or invoice;

- c. Continue the review to a date certain for receipt of additional information;
or
 - d. Modify or amend the Notice of Violation, order, or invoice.
4. The Director's decision shall become final and is not subject to further administrative appeal.
- E. Referral to City Attorney for Enforcement. If a responsible party fails to correct a violation or pay a penalty as required by a Notice of Violation, or fails to comply with a Director's order, the Director shall refer the matter to the City Attorney's Office for civil or criminal enforcement action. Civil actions to enforce a violation of this chapter shall be brought exclusively in Municipal Court.
- F. Appeal to Superior Court. Because civil actions to enforce this chapter are brought exclusively in Municipal Court, notices of violation, orders, and all other actions made under this chapter are not subject to judicial review under chapter 36.70C RCW. Instead, final decisions of the Municipal Court on enforcement actions authorized by this chapter may be appealed under the Rules for Appeals of Decisions of Courts of Limited Jurisdiction.
- G. Filing of Notice or Order. A Notice of Violation, voluntary compliance agreement, or an order issued by the Director or court may be filed with the King County Department of Records and Elections.
- H. Change of Ownership. When a Notice of Violation, voluntary compliance agreement or an order issued by the Director or court has been filed with the King County Department of Records and Elections, a Notice of Violation or an order regarding the same violations need not be served upon a new owner of the property where the violation occurred. If no Notice of Violation or order is served upon the new owner, the Director may grant the new owner the same number of days to comply as was given the previous owner. The compliance period for the new owner shall begin on the date that the conveyance of title to the new owner is completed.

(Ord. No. 123494 , § 39, 2010)

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Title 21 - UTILITIES

Subtitle II - Sewers

Chapter 21.28 - WASTEWATER RATES AND CHARGES

21.28.030 Rates and charges—Purpose.

The public health, safety, and welfare require that the City fix and collect wastewater rates and charges measured by water consumption and impose the same upon premises in the City for the carrying and discharge of all wastewater and drainage into the municipal sewerage system of the City as presently maintained and operated, together with additions and improvements thereto and extensions thereof, and for the payment of charges of King County Department of Natural Resources (herein called "King County" and formerly Municipality of Metropolitan Seattle ("Metro")) and of Southwest Suburban Sewer District (herein called "Southwest Suburban") for wastewater interception, treatment, and disposal, which sewerage utility rates and charges are fixed in the Seattle Municipal Code; provided that the local improvement district method of providing for the construction of sewers and trunk sewers to serve abutting property shall be continued in the manner provided by law.

(Ord. [118176](#) § 2(part), 1996; Ord. [111425](#) § 1, 1983; Ord. [110201](#) § 1, 1981; Ord. [99454](#) § 1, 1970; Ord. [91208](#) § 1, 1962; Ord. [84390](#) § 3, 1955.)

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Chapter 21.28 - WASTEWATER RATES AND CHARGES

21.28.040 Wastewater volume charge.

- A. There is hereby imposed upon all premises for which Seattle Public Utilities provides wastewater services and on which water is consumed a wastewater volume charge for wastewater services. The wastewater volume charge shall be calculated in accordance with this SMC Chapter 21.28 and shall be based on the measured volume of water from all sources consumed on the premises, except that there shall be a minimum wastewater volume charge for one (1) CCF per month to cover billing and general administrative costs. The following premises shall be exempt from the wastewater volume charge:
1. Premises which are not connected and not required under SMC Section 21.16.040 (Section 3 of Ordinance 97016) to be connected to the public sewer system;
 2. Premises, the owner, agent, lessee, or occupant of which has not been notified in accordance with SMC Section 21.16.040 (Section 4 of Ordinance 97016) to connect to the public sewer system.
- B. The wastewater volume rate shall be the sum of the treatment rate and the system rate, as follows:
1. Treatment rate: The "treatment rate" shall be the rate required to pay the wastewater share of "treatment cost" which is the cost of wastewater treatment, interception and disposal services and any associated costs required to meet Drainage and Wastewater Fund financial policies. The treatment rate shall be the amount obtained when (a) the projected wastewater treatment cost is divided by (b) the projected billed wastewater consumption, each for the next calendar year, and the result is multiplied by 116.9 percent to cover the costs of taxes and low income rate assistance. The projected treatment cost shall be the treatment cost anticipated for the upcoming calendar year, which may include an adjustment to reflect the difference, whether positive or negative, between the total expected treatment cost for the current year and the total wastewater volume charge revenues attributable to the treatment rate expected for the current year. The treatment rate is designed to pass through cost changes driven by King County and may be adjusted by ordinance at any time in response to such charges.
 2. System rate: The "system rate" shall be the rate required to pay the cost of carrying and discharging all wastewater and any wastewater funded-share of stormwater into the City sewerage system, as presently maintained and operated and as may be added to, improved and extended.
 3. The wastewater volume rate per CCF shall be in accordance with the following schedule:

	Effective Jan. 1, 2012	Effective Jan. 1, 2013	Effective Jan. 1, 2014	Effective Jan. 1, 2015
Treatment Rate	\$6.94	\$7.69	\$7.69	\$7.69
System Rate	\$3.74	\$3.96	\$4.06	\$4.15
Wastewater Volume Rate	\$10.68	\$11.65	\$11.75	\$11.84

C. For so long as any franchise fee is imposed by the City of Shoreline on The City of Seattle's operation of its sewer system in the City of Shoreline, the wastewater volume charge imposed on premises within the City of Shoreline shall include a City of Shoreline franchise charge of Two Dollars and Thirty-one Cents (\$2.31) per month.

(Ord. [124051](#) , § 1, 2012; Ord. [124050](#) , § 1, 2012; Ord. [123538](#) , § 5, 2011; Ord. [123468](#) , § 1, 2010; Ord. [123449](#) , § 1, 2010; Ord. [123172](#) , § 1, 2009; Ord. [122868](#) , § 1, 2008; Ord. [122518](#) , § 1, 2007; Ord. [122292](#) , § 1, 2006; Ord. [122020](#) § 1, 2006; Ord. [121675](#) § 1, 2004; Ord. [121327](#) § 2, 2003; Ord. [120970](#) § 1, 2002; Ord. [120615](#) § 1, 2001; Ord. [120176](#) § 1, 2000; Ord. [119768](#) § 1, 1999; Ord. [119268](#) § 2, 1998; Ord. [118396](#) § 127, 1996; Ord. [118380](#) § 2, 1996; Ord. [118176](#) § 2 (part), 1996; Ord. [111425](#) § 2, 1983; Ord. [110201](#) § 2, 1981; Ord. [109504](#) § 1, 1981; Ord. [108639](#) § 1, 1979; Ord. [106896](#) § 1, 1977; Ord. [106158](#) § 1, 1977; Ord. [104184](#) § 1(part), 1975; Ord. [104060](#) § 1, 1974; Ord. [99788](#) § 1, 1971; Ord. [99454](#) § 2, 1970; Ord. [92113](#) § 1, 1963; Ord. [91208](#) § 2, 1962; Ord. [84390](#) § 4, 1955.)

Section 21.28.040 B1 says "The wastewater rate shall be Eight Dollars (\$7.91)" but \$7.91 is the rate intended by the Department and is the rate more favorable to the ratepayers.

New legislation may amend this section!

The above represents the most recent SMC update, which includes ordinances codified through Ordinance 124220 except 124105 with effective dates prior to July 24th, 2013.

Recently approved legislation may not yet be reflected in Seattle Municipal Code. See the legislative history at the bottom of each section to determine if new legislation has been incorporated.

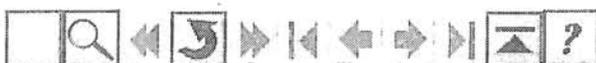
Search for recently approved legislation referencing this section. (Searches for legislation approved within the past six months, which may not yet be incorporated into the SMC. See the legislative history for each section to confirm whether an ordinance is reflected.)

Search for proposed legislation that refers to this section. (Searches for Council Bills introduced since 01/2012 and not yet passed.)

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For research assistance, contact the Seattle City Clerk's Office at (206) 684-8344, or by e-mail, clerk@seattle.gov.

For interpretation or explanation of a particular SMC section, please contact the relevant City department.





Seattle Municipal Code

Information retrieved October 17, 2013 5:13 PM

Title 21 - UTILITIES

Subtitle II - Sewers

Chapter 21.28 - WASTEWATER RATES AND CHARGES

21.28.090 Calculation of commercial wastewater volume charge.

A. It is the intent of this section to charge commercial customers for water that should enter the sewer system. Wastewater charges shall be based on the metered water delivered to the premises except as noted below:

1. Water metered exclusively for fire service, sprinkling, irrigation or delivery of water to ships shall not be subject to any wastewater charge or rate.
2. Where the use of water is such that a portion of all water used is lost by evaporation, irrigation, sprinkling or other cause, or is used in manufactured goods and commodities, customers may install, at their own expense, submeters approved by the Director of Seattle Public Utilities to enable measurement of the amount of water so used or lost. These submeters must measure in CCF, must be calibrated on a regular basis, and must be easily accessible for meter reading. If the submeter is unable to be read or if the reading is unreliable, an estimate can be used, but the Seattle Public Utilities must get at least one (1) accurate meter reading per year. It will be the responsibility of the Seattle Public Utilities or its designee to inspect and approve the installation of a new submeter.

Where it is impractical to install a meter as described above, customers may apply to the Director of Seattle Public Utilities for an evaporation allowance or an irrigation allowance, provided that customers provide proof of the amount of water so used or lost. Evaporation loss allowances of eleven (11) percent for industrial laundries and three (3) percent for laundromats are established. Irrigation allowances shall apply from June 1st through September 30th and will be calculated based on the residential methodology in Section [21.28.080](#).

B. Direct discharge of wastewater or industrial waste to salt or fresh water or to points other than the City sewer system shall not be cause for adjustment or reduction of the wastewater charge or rate.

(Ord. [118396](#) § 129, 1996; Ord. [118176](#) § 3(part), 1996.)

New legislation may amend this section!

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[Search for recently approved legislation referencing this section.](#) (Searches for legislation

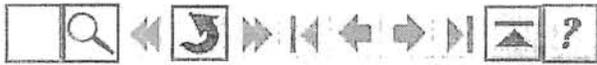
approved within the past six months, which may not yet be incorporated into the SMC. See the legislative history for each section to confirm whether an ordinance is reflected.)

Search for *proposed* legislation that refers to this section. (Searches for Council Bills introduced since 01/2012 and not yet passed.)

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Title 21 - UTILITIES
Subtitle II - Sewers
Chapter 21.28 - WASTEWATER RATES AND CHARGES

21.28.230 Standard and Administrative Charges.

- A. The Director shall develop and update annually a schedule of charges for standard, recurring services which are incidental to the provision of wastewater service. Such charges shall be based on a review of the prevailing actual costs for providing these services.
- B. Any standard charges, including administrative charges, shall be developed and adopted pursuant to the provisions of the Administrative Code (Seattle Municipal Code Chapter 3.02).

(Ord. 123468 , § 3, 2010.)

New legislation may amend this section!

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Title 21 - UTILITIES

Subtitle II - Sewers

Chapter 21.28 - WASTEWATER RATES AND CHARGES

21.28.280 Drainage and Wastewater Fund.

There exists a special fund of the City known as the "Drainage and Wastewater Fund." Any and all revenues received for the use of sewers and for wastewater service as set forth in this chapter, or in connection therewith, shall be credited to the Drainage and Wastewater Fund, and all expenses for the operation and maintenance of the existing sewerage system of the City, for the servicing of bonds of the Drainage and Wastewater Utility and the Sewerage Utility, as the utility was named prior to adoption of Ordinance 116455, and as these utilities were named prior to the creation of the Seattle Public Utilities, and for the cost of operation and maintenance of the sewerage plant and system of the City, as newly constructed or added to, and for maintenance of the utility in sound financial condition, shall be charged to the fund in the manner and to the extent provided by ordinance. Such expenses shall include the cost of billing and collection by the Seattle Public Utilities and all other interdepartmental charges for services related to wastewater functions rendered by other departments for the Seattle Public Utilities, and payments to King County and Southwest Suburban for wastewater interception, treatment and disposal.

(Ord. [118396](#) § 134, 1996; Ord. [118176](#) § 2(part), 1996; Ord. 91208 § 4, 1962; Ord. 84390 § 9, 1955.)

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Title 21 - UTILITIES
Subtitle II - Sewers
Chapter 21.33 - STORM DRAINAGE UTILITY RATES AND CHARGES

21.33.080 Drainage and Wastewater Fund.

The existing Sewer Fund is hereby renamed the Drainage and Wastewater Fund, and is to be used in the operation of the drainage and wastewater functions of the Seattle Public Utilities. Changing the name of the fund to the Drainage and Wastewater Fund shall not in any way impair any obligations of the City where reference to the "Sewer Fund" may have been made.

(Ord. 118396 § 137, 1996; Ord. 114155 § 8, 1988.)

New legislation may amend this section!

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Title 21 - UTILITIES

Subtitle II - Sewers

Chapter 21.33 - STORM DRAINAGE UTILITY RATES AND CHARGES

21.33.090 Revenue disposition and expenditure conditions.

All moneys obtained pursuant to this chapter shall be credited and deposited in the Drainage and Wastewater Fund. Moneys deposited in the Drainage and Wastewater Fund from drainage service charges shall be expended for administering, operating, maintaining, or improving the stormwater system, including all or any part of the cost of planning, designing, acquiring, constructing, repairing, replacing, improving, regulating, educating the public, or operating present or future stormwater management facilities owned by the Utility, or to pay or secure the payment of all or any portion of any debt issued for such purpose and the related reserve and coverage requirements. Moneys shall not be transferred to any other funds of the City except to pay for expenses attributable to the stormwater system.

(Ord. [122682](#) , § 6, 2008; Ord. [114155](#) § 10, 1988.)

New legislation may amend this section!

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For interpretation or explanation of a particular SMC section, please contact the relevant City department.

MB:cb:4/9/75

(Improvement Ordinance - Bond Form)

ORDINANCE NO. 104497

AN ORDINANCE providing for the improvement of

An EASEMENT, across private property in the production west of WEST GALER STREET
from 32nd Avenue West to Clise Place West;

and a certain other easement;

by constructing sanitary sewers and otherwise improving the same;

all in accordance with Resolution No. 24843 of the City Council of the City of Seattle, creating a local improvement district therefor, and providing that payment for said improvement be made by special assessments upon property in said district payable by the mode of installment notes.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. That

An EASEMENT, across private property in the production west of WEST GALER STREET
from 32nd Avenue West to Clise Place West; and
An EASEMENT across private property, and across Clise Place West from the south
line of West Galer Street to a point approximately 480 feet southeasterly of
the west line of Clise Place West at approximately 175 feet south of West
Galer Street;

be improved by the construction of sanitary sewers together with the necessary
appurtenances; and otherwise improving the same; providing for the acquisition
of the right of way necessary therefore; and authorizing application for Federal
and State permits when required; and that such other work be done as may be
necessary in connection therewith, according to the plans and specifications
therefor as prepared by the City Engineer and approved by the Board of Public
Works.

Assessed: 0.000
104739

Section 2. That the cost and expense of said improvement, including all necessary and incidental expenses, shall be borne by and assessed against the property included in the assessment district hereinafter created in accordance with law. The City of Seattle shall not be liable in any manner for any portion of the cost and expense of said improvement, except as herein provided; provided, however, that the sum of Ninety-Three Thousand Two Hundred Seventy and No/100 Dollars (\$93,270.00) shall be paid from the Municipal Sewerage 1971 Construction Fund, as a loan to said Local Improvement District, to be repaid first, and to the extent possible, from any money remaining in the Local Improvement Fund of said district, after all installment notes, warrants or other obligations thereof, together with the interest thereon have been paid; and provided further, that the City of Seattle shall pay from the General Fund any sums which would have been levied against United States Government property within the assessment district herein created, if said property were assessable in the same manner as other property in said district.

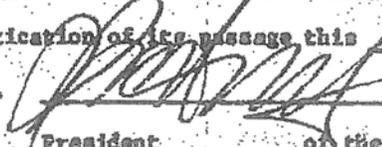
Section 3. That by reason of the nature of this improvement the special benefits conferred on the property are not fairly reflected by the termini and zone method as specified in Sections 35.43.080, 35.44.010, 35.44.030, 35.44.040, and 35.44.050 R.C.W., or by the enlarged district method prescribed in Section 35.43.080 R.C.W. Therefore, in accordance with provisions of Section 35.43.080 R.C.W., there is hereby established a local improvement district, to be called "Local Improvement District No. 6659," the property of which district shall be assessed in accordance with the special benefits to be derived from the improvement. The boundaries of said district are described as follows:

Beginning at the intersection of the east line of Lot 16, Block 1, Minor's Addition and the north line of West Oakes Street; thence west along said north line to the northeasterly line of Block 102, Seattle Tide Lands; thence northwesterly along said northeasterly line to the east line of Cliss Place West; thence southwesterly to the intersection of the west line of Cliss Place West and the northeasterly line of Logan Avenue West; thence northwesterly along said northeasterly line to the east line of 32nd Avenue West; thence north along said east line to the southwesterly line of West Galer Street; thence southeasterly along said southwesterly line to the west line of Cliss Place West; thence south along said west line to the production west of the south line of West Galer Street; thence east along said produced and said south line to the east line of Lot 9, said Block 1; thence south along said east line and along the east line of Lot 16, said Block 1 to the beginning.

Section 4. Local Improvement installment notes, substantially in the form provided by ordinance and bearing interest at the rate of 6-1/2 percent per annum, payable within 12 years in annual installments beginning with the date of issue thereof, shall be issued to the City Employees' Retirement Fund pursuant to Chapter 165, Laws of Washington, 1961 (Ch. 35.45 R.C.W.), in lieu of local improvement bonds, to pay the cost and expense of this local improvement, which notes shall be paid from the special assessments to be levied and assessed upon the property within said district payable in 10 equal annual installments, with interest at the rate of 6-1/2 percent per annum. These notes, and the warrants issued on the local improvement fund of said district on estimates by the City Engineer, shall be sold and delivered to the City Employees' Retirement Fund at not less than face value and accrued interest, and the funds obtained therefrom shall be used to pay the contractor in cash.

Section 5. The collection of any assessment levied by this local improvement district created by this ordinance may be deferred pursuant to the provisions of Chapter 137, Laws of 1972, First Extraordinary Session, in accordance with Ordinance No. 102560, which provides general terms and conditions for such deferral to implement the policy therefor adopted by Resolution No. 24262.

Section 6. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise, it shall take effect at the time it shall become a law under the provisions of the City Charter.

Passed by the City Council the 5 day of May, 19 75,
 and signed by me in open session in authentication of its passage this 5 day
 of May, 19 75. 
 President of the City Council.

Approved by me this 13 day of May, 19 75.


 Mayor

Filed by me this 13 day of May, 19 75.

Attest: 
 City Comptroller and City Clerk

(SEAL)

Published _____ By J. H. Alper
 Deputy Clerk

CA
 HB:pc:7/9/75

ORDINANCE NO. 104739

AN ORDINANCE relating to the improvement of an EASEMENT, across private property in the production west of WEST CALER STREET from 32nd Avenue West to Cline Place West; and a certain other easement, by constructing sanitary sewers and otherwise improving the same, as authorized by Ordinance No. 104497, creating Local Improvement District No. 6657, increasing the Municipal Sewerage 1971 Construction Fund to aid said local improvement district and amending Section 2 of said ordinance.

WHEREAS the lowest of the bids received by the Board of Public Works for the L.I.D. sanitary sewer construction exceeded the City Engineer's preliminary estimate by 21%,

WHEREAS construction of the project during favorable tidal conditions cannot be accomplished this year unless a contract is awarded in the very near future, additional money will be needed to finance this L.I.D.; and

WHEREAS it appears the City will not receive more favorable bids if re-advertised; Now Therefore,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. That Section 2 of Ordinance No. 104497 entitled

"AN ORDINANCE providing for the improvement of an EASEMENT, across private property in the production west of WEST CALER STREET from 32nd Avenue West to Cline Place West;

and a certain other easement;

by constructing sanitary sewers and otherwise improving the same;"

all in accordance with Resolution No. 24843 of the City Council of the City of Seattle, creating a local improvement district therefor, and providing that payment for said improvement be made by special assessments upon property in said district payable by the mode of installment notes,

approved May 13, 1975, be and the same is hereby amended to read as follows:

Section 2. That the cost and expense of said improvement, including all necessary and incidental expenses, shall be borne by and assessed against the property included in the assessment district hereinafter created in accordance with law. The City of Seattle shall not be liable in any manner for any portion of the cost and expense of said improvement, except as herein provided; provided, however, that the sum of One Hundred Twenty-Three Thousand, Thirty and no/100 Dollars (\$123,030.00) shall be paid from the Municipal Sewerage 1971 Construction Fund, as a loan to said Local Improvement District, to be repaid first, and to the extent possible, from any money remaining in the Local Improvement Fund of said district, after all installment notes, warrants or other obligations thereof, together with the interest thereon have been paid; and provided further, that the City of Seattle shall pay from the General Fund any sums which would have

(To be used for all Ordinances except Emergency.)

been levied against United States Government property within the assessment district herein created, if said property were assessable in the same manner as other property in said district.

Section 3.... This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 21 day of July 1975 and signed by me in open session in authentication of its passage this 21 day of July 1975

Raymond W. Seibert
President RPO Term of the City Council

Approved by me this 25 day of July 1975

Robert M. ...
Acting Mayor

Filed by me this 25 day of July 1975

W. H. ...
City Comptroller and City Clerk

(SEAL)

Published

By *D. H. DePuy*
Deputy Clerk

CLB:12-16-81

ORDINANCE 110368

1
2
3 AN ORDINANCE relating to the Sewer Utility; amending Section 21.28.070
4 of the Seattle Municipal Code (Section 4.2 of Ordinance 84390) to
5 authorize suspension of the Sewer Customer Service Charge under
6 certain conditions.

7 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

8 Section 1. In order to authorize suspension of the Sewer Customer
9 Service Charge under certain conditions, Section 21.28.070 of the Seattle
10 Municipal Code, and Ordinance 84390, Section 4.2, as last amended by
11 Ordinance 110201, are each amended as follows:

12 Section 21.28.070. A. Where the use of water is such that
13 a portion of all water used is lost by evaporation, irrigation,
14 sprinkling or other cause, or is used in manufactured goods and
15 commodities, and either (1) the person in control provides proof
16 thereof and installs a meter or measuring device approved by the
17 Director of Engineering to enable measurement of the amount of
18 water so used or lost, or (2) an evaporation loss allowance is
19 established by ordinance which specifies the percentage of all
20 water used that is lost by evaporation, no charge shall be made
21 for sewerage because of water so used or lost. Except for premises
22 exempted from the Sewer Customer Service Charge and/or the Volume
23 Rate imposed in Section 21.28.040 of the Seattle Municipal Code
24 (Section 4 of Ordinance 84390, as last amended by Ordinance
25 109504), direct discharge of sewage or industrial waste to salt
26 or fresh water or to points other than the city sewer system
27 shall not be cause for adjustment or reduction of the sewage
28 charge or rate. Evaporation loss allowances of 11% for industrial
laundries and 3% for laundromats are established.

B. Water metered exclusively for fire service, sprinkling,
irrigation or delivery of water to ships shall not be subject to
any sewerage charge or rate.

C. Upon receipt of satisfactory evidence of hidden or under-
ground water leakage, the Director of Engineering shall adjust

CS 10.2

ORDINANCE

114006

1
2
3 AN ORDINANCE authorizing the Mayor to execute an agreement
4 between the City of Seattle, the Port of Seattle and the
5 Elliott Bay Marina Group which provides for the exchange
6 of certain parcels of property, and for the dedication
7 and release of certain rights of way.

8 WHEREAS, the City issued a shoreline substantial development
9 permit to Elliott Bay Marina Group for a twelve hundred
10 slip marina to be developed at the base of Magnolia Bluff;
11 and

12 WHEREAS, access to the marina is proposed to be by public
13 street across from the Port of Seattle's Terminal 91 pro-
14 perty from off ramps to be added to the Magnolia Bridge
15 and;

16 WHEREAS, the Port of Seattle is willing to dedicate the required
17 area for street purpose upon the condition that the
18 existing access roadway to Smith Cove Park north of West
19 Garfield Street be terminated; and

20 WHEREAS, as a result of an appeal to the Shoreline Hearing
21 Board by certain residents of the Magnolia area and the
22 Magnolia Community club, by stipulated order the boundary
23 of the marina project was shifted eastward in order to
24 ameliorate impacts of the marina development on private
25 property in the vicinity; and

26 WHEREAS, an eastward shift of the marina project would
27 encroach upon the City's Smith Cove Open Water Park,
28 acquired from the Port of Seattle by quitclaim deed dated
October 28, 1980, which deed provides for the Port's
recapture of the property if the City uses it for purposes
inconsistent with the provision of the deed or attempts to
transfer it to another party; and

WHEREAS, the Port is willing to modify the deed to permit the
shift of the marina boundary eastward 280 feet and the
exchange of that portion of the park to be so occupied for
a parcel to the west of the marina site upon the City's
request to do so; and

WHEREAS, the Transportation Committee and the Parks and Public
Grounds Committee of the City Council held a joint public
hearing on June 25, 1986 and thereafter recommended to the
full Council that the City enter into agreements with the
Port of Seattle and the Elliott Bay Marina Group to
accomplish the street dedications and property exchange;
and

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE,
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

WHEREAS, by Resolution 27475 the Council directed that such agreements be negotiated; NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Mayor is hereby authorized for and on behalf of The City of Seattle to execute a Property Exchange and Access Development Agreement, substantially in the form of Exhibit "1" hereto, providing for amendment of the quit-claim deed from the Port to the City dated October 25, 1980 establishing Smith Cove Open Water Park; for the disposition of the following described City property:

Lots 1 through 5 and 20 through 24, Block 10, minor's addition and Lots 1 through 5 Block 113, Seattle Tidelands,

AS WELL AS

That portion of the Northwest quarter of Section 26, Township 25 North, range 3 East, W. M., in King County, Washington, being a parcel of aquatic lands described as follows:

Beginning at a point on the Inner Harbor Line, said point being on the West line of the East 50 feet of Lot 4, Block 111, Seattle Tide Lands, as shown on the official maps on file in the office of the Commissioner of Public Lands at Olympia, Washington; thence North $00^{\circ}08'22''$ West, 1179.30 feet; thence North $89^{\circ}51'38''$ East, 6.18 feet; thence North $00^{\circ}51'47''$ West, 134.11 feet; thence North $74^{\circ}49'48''$ East, 221.92 feet; thence North $89^{\circ}00'00''$ East, 61.20 feet; thence South $00^{\circ}08'22''$ East, 1225.00 feet; thence North $89^{\circ}51'38''$ East, 90.00 feet; thence South $19^{\circ}00'34''$ East, 219.13 feet, more or less, to the Inner Harbor Line; thence North $82^{\circ}19'41''$ West along the Inner Harbor Line, 445.00 feet, more or less, to the point of beginning;

AND

Beginning at a point on the Inner Harbor Line, said point being on the West line of the East 50 feet of Lot 4, Block 111, Seattle Tide Lands, as shown on the official maps on file in the office of the Commissioner of Public Lands at Olympia, Washington; thence North $00^{\circ}08'22''$ West, 1179.30 feet; thence North $89^{\circ}51'38''$ East, 6.18 feet; thence North $00^{\circ}51'47''$ West, 134.11 feet to the true point of beginning of the parcel herein described;

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thence North 00°51'47" West, 36.12 feet to the toe of the existing riprap; thence North 74°49'48" East along said toe, 258.19 feet; thence North 89°00'00" East continuing along said toe, 230.00 feet; thence South 01°00'00" East, 45.00 feet; thence South 89°00'00" West, 265.26 feet; thence South 74°49'48" West, 221.92 feet, more or less, to the true point of beginning;

in exchange for the following described real property:

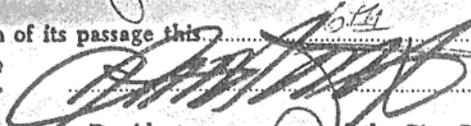
Lot 5 through 8, Block 97; Lots 5 through 8, Block 98; Lot 1 and Lots 4 through 8, Block 99; Lot 1 and Lots 4 through 8, Block 100; Lots 1 through 12, Block 102; Lots 1 through 6, Block 103; Lots 1 through 7, Block 104; and Lot 1 of Block 105, Seattle Tidelands.

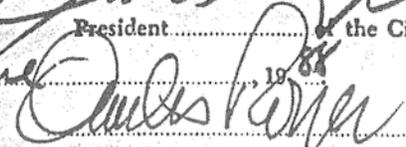
for the dedication of right-of-way by the Port and construction of street improvements thereon by Elliott Bay Marina Group in exchange for the City's release of a certain public access easement; and for certain other matters in connection therewith all as more fully described in Exhibit "1" which is by this reference incorporated herein.

Section 2. Any acts consistent with and prior to the effective date of this ordinance are hereby ratified and confirmed.

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Section 3. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 6th day of June, 1988
and signed by me in open session in authentication of its passage this 6th day of June, 1988.

President of the City Council.

Approved by me this 13th day of June, 1988.

Mayor.

Filed by me this 13th day of June, 1988.

Attest: Howard J. Brooks
City Comptroller and City Clerk.

By: Margaret Carter
Deputy Clerk.

(SEAL)

Published

ORDINANCE 116393

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AN ORDINANCE relating to the Drainage and Wastewater Utility; amending Section 21.28.070 of the Seattle Municipal Code to revise adjustments to charges; amending Section 21.28.080 to adjust for non-sewer water usage; amending Section 21.28.370 to increase wastewater rates; and amending Section 21.33.030 of the Seattle Municipal Code to increase drainage rates.

WHEREAS, most of the Seattle Drainage and Wastewater Utility costs are for wastewater treatment by the Municipality of Metropolitan Seattle (Metro), Seattle wastewater rates usually must be revised as often as Metro changes its rate; and

WHEREAS, on April 16, 1992, Metro Council adopted Resolution 6351 to amend the agreement for sewer disposal with the City of Seattle and other component agencies and changed the Residential Customer Equivalent from nine hundred (900) cubic feet to seven hundred and fifty (750) cubic feet effective January 1, 1993; and

WHEREAS, the Mayor and Seattle City Council continued their efforts to hold down the Metro treatment rate by closely reviewing the rate proposal made by Metro staff; and

WHEREAS, as a result of these efforts, on June 4, 1992, Metro Council adopted Resolution 6393 to fix and determine total monetary requirements for the disposal of wastewater for 1993 and set the Metro treatment rate at \$13.62 per Residential Customer Equivalent per month, rather than the \$13.80 proposed by Metro staff; and

WHEREAS, said Metro treatment rate will increase the City of Seattle's wastewater treatment expense by \$3.9 million in 1993; and

WHEREAS, said Metro treatment is expected to increase the City of Seattle's wastewater treatment expense again in 1994 and therefore wastewater rates will need to be increased in 1994 to reflect the increased expenses associated with this change; and

WHEREAS, the drainage rate has not been increased since 1990 despite inflation during this period; and

WHEREAS, the Drainage and Wastewater Utility has proposed a revenue bond sale to fund 1993 and 1994 drainage and wastewater capital improvement projects, resulting in increased debt service; and

WHEREAS, on July 6, 1992, City of Seattle Council adopted Resolution 28554 providing policy and work program items for developing Drainage and Wastewater rates; Now, Therefore,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. As of January 1, 1993, Section 21.28.070 of the Seattle Municipal Code (Ordinance 84390, as last amended by Ordinance 110368) is further amended as follows:

21.28.070 Exemptions and adjustments to charges:

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A. Where the use of water is such that a portion of all water used is lost by evaporation, irrigation, sprinkling or other cause, or is used in manufactured goods and commodities, and either (1) the person in control provides proof thereof and installs a meter or measuring device approved by the Director of Engineering to enable measurement of the amount of water so used or lost, or (2) an evaporation loss allowance is established by ordinance which specifies the percentage of all water used that is lost by evaporation, no charge shall be made for ((sewerage)) wastewater because of water so used or lost. Except for premises exempted from the ((Sewer)) Wastewater Customer Service Charge and/or the Volume Rate imposed in Section 21.28.040 of the Seattle Municipal Code (Section 4 of the Seattle Municipal Code (Section 4 of Ordinance 84390, as last amended by Ordinance 109504), direct discharge of sewage or industrial waste to salt or fresh water or to points other than the City sewer system shall not be cause for adjustment or reduction of the sewage charge or rate. Evaporation loss allowances of eleven percent (11%) for industrial laundries and three percent (3%) for laundromats are established.

B. Water metered exclusively for fire service, sprinkling, irrigation or delivery of water to ships shall not be subject to any ((sewerage)) wastewater charge or rate.

C. Upon receipt of satisfactory evidence of hidden or underground water leakage, the Director of Engineering shall adjust the Volume Rate to the premises for water so lost and ((he)) shall not use the period during which such leakage occurs in computing the winter or minimum average water consumption when to do so would result in a higher ((sewerage)) wastewater charge to such premises, provided that no such adjustment shall be made for leakage occurring

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RESOLUTION 27343

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2 A RESOLUTION expressing the City Council's approval of a procedure for
review of the Elliott Bay Marina project.

3 WHEREAS, the Elliott Bay Marina Group has proposed the development of
4 a marina at the base of Magnolia Bluff on Elliott Bay; and

5 WHEREAS, the City Council will have before it decisions with respect
6 to the Elliott Bay Marina project, including the acceptance of
right-of-way dedications and review and recommendation to the
State Department of Natural Resources concerning the project pro-
ponent's petition for a plat vacation; and

7 WHEREAS, the project sponsor has applied to the City's Department of
8 Construction and Land Use for certain land use approvals and per-
mits, including a Shoreline Substantial Development Permit; and

9 WHEREAS, the City Council Transportation Committee has previously
10 expressed the desire that any City Council approvals required for
a project precede DCLU Land Use permit decisions on the same
project; and

11 WHEREAS, DCLU is ready to make its shoreline and SEPA decisions on
12 the project; and

13 WHEREAS, the City Council Transportation Committee will be unable to
make its decisions related to the project until January 1986, due
14 the Committee's hiatus for the annual City budget review; and

15 WHEREAS, resolution of any appeal of DCLU's permit decision will not
be finished before January 1986; and

16 WHEREAS, delay for the project sponsor could be reduced if DCLU deter-
17 minations could be made and the appeal periods permitted to run
immediately rather than after a City Council decision in January,
1986;

18 NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
19 SEATTLE:

20 That DCLU may issue its shoreline and SEPA decisions upon the
21 Elliott Bay Marina project, prior to City Council actions related to
22 the project, provided that any DCLU decision to grant a permit or
23 other approval must be conditioned upon positive subsequent City
24 Council decisions on the right-of-way dedications and DNR's vacation
25 of the plat.

26 This decision on procedure shall have no effect on the substantive
27 decisions of DCLU, nor shall it be construed as a waiver of any
28 Council authority to condition or deny its decisions or recommen-
dations on the project.

1 ADOPTED by the City Council of the City of Seattle this 30th
2 day of September, 1985, and signed by me in open session in authen-
3 tication of its adoption this 30th day of September, 1985.

4 
5 _____
6 President of the City Council

7 Filed by me this 30th day of September, 1985.

8
9 ATTEST: 
10 _____
11 City Comptroller and City Clerk

12 BY: 
13 _____
14 Deputy

15 THE MAYOR CONCURRING:
16 
17 _____
18 Charles Royer, Mayor
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RESOLUTION 27475

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4 A RESOLUTION relating to the proposed Elliott Bay Marina,
5 authorizing the Engineering Department and the Department
6 of Parks and Recreation to negotiate for and enter into
7 agreements with the Port of Seattle and the owners of
8 Blocks 102 through 113, Seattle Tidelands for the dedica-
9 tion of certain rights of way, for amendment and modifica-
10 tion of the quit-claim deed from the Port to the City
11 dated October 28, 1980 establishing Smith Cove Open Water
12 Park, and for the exchange of park property for other
13 property in the vicinity.

14 WHEREAS, THE City has issued a shoreline substantial develop-
15 ment permit to Elliott Bay Marina Group for a twelve
16 hundred slip marina to be developed at the base of
17 Magnolia Bluff; and

18 WHEREAS, access to the marina is proposed to be by public
19 street across from the Port of Seattle's Terminal 91 property
20 from off ramps to be added to the Magnolia Bridge and;

21 WHEREAS, the Port of Seattle is willing to dedicate the
22 required area for street purpose upon the condition that
23 the existing access roadway to Smith Cove Park north of
24 West Garfield Street be terminated; and

25 WHEREAS, certain residents of the Magnolia area and the
26 Magnolia Community Club desire that the boundary of the
27 marina project be shifted eastward in order to ameliorate
28 impacts of the marina development on private property in
29 the vicinity; and

30 WHEREAS, an eastward shift of the marina project would
31 encroach upon the City's Smith Cove Open Water Park,
32 acquired from the Port of Seattle by quitclaim deed dated
33 October 28, 1980, which deed provides for the Port's
34 recapture of the property if the City uses it for purposes
35 inconsistent with the provision of the deed or attempts to
36 transfer it to another party; and

37 WHEREAS, the Port has indicated its willingness to modify the
38 deed to permit the shift of the marina boundary eastward
39 280 feet and the exchange of that portion of the park to
40 be so occupied for a parcel to the west of the marina site,
41 upon the City's request to do so; and

42 WHEREAS, the Transportation Committee and the Parks and Public
43 Grounds Committee of the City Council held a joint public
44 hearing on June 25, 1986 and thereafter recommended that
45 the City enter into agreements with the Port of Seattle
46 and the Elliott Bay Marina Group to accomplish the street
47 dedications and property exchange; NOW, THEREFORE

1
2 BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE:

3 The Engineering Department is hereby authorized to
4 negotiate for and enter into an agreement with the Port of
5 Seattle for the dedication of certain port property at
6 Terminal 91 for a street providing access from the Magnolia
7 Bridge to Smith Cove Park and the proposed Elliott Bay Marina
8 project, in exchange for relinquishment of that portion of the
9 public roadway lying north of West Garfield Street which
10 currently provides access to Smith Cove Park from West
11 Halladay Street.

12 The Engineering Department is further authorized to
13 negotiate with the owners of the property proposed to be
14 developed with the Elliott Bay Marina project the boundaries
15 of the area required to be dedicated for street and public
16 parking purposes and the terms and conditions for acceptance
17 of such dedication.

18 The Department of Parks and Recreation is hereby
19 authorized to negotiate with the Port of Seattle amendment and
20 modification of the quitclaim deed from the Port to the City
21 dated October 28, 1980 establishing Smith Cove Open Water Park
22 to permit landfill on the northern edge of the Park for use
23 for street purposes, and to permit exchange of a portion of
24 the Park for another parcel in the vicinity.

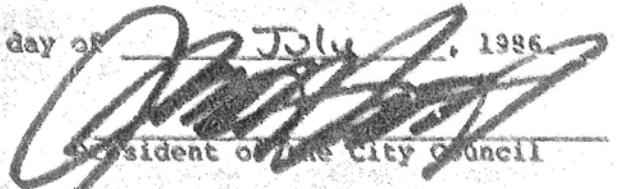
25 The Department of Parks and Recreation is further
26 authorized to negotiate with the owners of land to be
27 developed in part with the Elliott Bay Marina project for the
28 exchange of park property, including a portion of Smith Cove
Under Water Park, as well as Lots 1 through 5 and 20 through
24 of Block 10 Minor's Addition, and parts of Lots 1 through 5
of Block 113 Seattle Tidelands, for a parcel or parcels to the
west of the Marina's site.

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Any agreement, conveyance or dedication negotiated pursuant to this resolution is subject to further City Council approval.

PASSED the City Council this 7th day of July, 1986, and signed by me in open session in authentication of its passage this 7th day of July, 1986.



President of the City Council

Filed by me this 7th day of July, 1986.

ATTEST: Norward J. Brooks
City Comptroller and City Clerk

By: Theresa Dunbar
Deputy

3. Each local public sewer connection to a department special manhole or chamber shall be hydraulically designed so as not to interfere with the measuring and sampling of flow;

Upon its completion, each such a structure and connection shall be owned, operated and maintained by the department, provided that the local public agency may use the chamber for measuring and sampling flows at reasonable times with the concurrence of the director; and

4. The director may require a metering manhole or chamber on extensions constructed after January 1, 1961, to local public sewers in existence on that date. The manhole or chamber shall be located on the extension near its connection with the local public sewer. The department shall construct and pay for any manhole or chamber required for extensions constructed prior to April 17, 1969. The local public agency shall construct any required manhole or chamber for any local public sewer extension constructed after the adoption of this section. The construction shall be performed in accordance with plans and specifications prepared or approved by the director and the department shall pay the additional cost of the manhole or chamber as follows:

a. For pipe sizes eight inches in diameter through twenty-one inches in diameter, and with the measuring device placed in a department standard, four-foot diameter, manhole, the department shall pay one hundred fifty dollars per each such measuring manhole.

b. For special chambers and pipe sizes larger than twenty-one inches in diameter, the department shall pay as per agreement for each specific case. Upon its completion, each such manhole or chamber shall be owned, operated and maintained by the local public agency, provided that the department may use the chamber for measuring and sampling flows at reasonable times with the concurrence of the local public agency.

J. The following provisions shall govern relating to private sewers:

1. The department shall not directly accept wastewater from the facilities of any person that are located within the boundaries of, or discharge wastewater into the local sewerage facilities of, any local public agency without the prior written consent of the local public agency;

2. Connection of private sewers may be made at the discretion of the director, either by the director or by others subject to inspection and approval by the director. Whenever a local public sewer becomes available, the private sewer shall be disconnected from the metropolitan sewerage system under the inspection of and in a manner approved by the director, and shall be connected to the available local public sewer in accordance with the requirements of the local public agency. All work of making connections, disconnections and reconnections of private sewers to the metropolitan sewerage system shall be at the expense of the owner or developer of the private sewers;

3. Two sets of plans and specifications for proposed private sewers shall be submitted to the department for review and approval. Written approval must be obtained prior to advertising for bids or proceeding with the work if bids are not called; and

4. The provisions of this section applying to local public sewers of local public agencies shall also apply to private sewers and to owners of private sewers.

K. The following regulations shall apply to the use of local public sewers:

1. The discharge into any sewer by direct or indirect means of any of the following is hereby prohibited: subsoil foundation, footing, window-well, yard or unroofed basement floor drains; overflows from clean water storage facilities; clear water from refrigeration, reverse-cycle heat pumps and cooling or air-conditioning equipment installed hereafter, except for the periodic draining and cleaning of the systems; roof drains or downspouts from areas exposed to rainfall or other precipitation; and surface or underground waters from any source;

2. Where manholes in sewers have open, perforated or grating covers resulting in surface waters entering the manhole, the director may require the local public agency to adjust or modify the manholes, at the expense of the local public agency so that the entry of surface water is reduced to a minimum. Openings in manholes for new construction shall be limited to not more than three one-inch diameter holes; and