

EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



Work Session: Stormwater and Parks Service Fee Ordinance

Meeting Date: February 4, 2013
Department: Central Services
www.eugene-or.gov

Agenda Item Number: A
Staff Contact: Glenn Klein
Contact Telephone Number: 541-682-8447

ISSUE STATEMENT

On January 28, 2013, the council directed the City Manager to revise the proposed ordinance related to a stormwater and parks service fee so that the ordinance would only create the mechanism now, and postpone until the Fiscal Year 14 budget adoption in June, any decision by the council to actually establish a monthly fee for FY14. This is an opportunity for the council to review and take action on the revised ordinance.

BACKGROUND

During the council work session on January 28, the council passed a motion directing the City Manager to revise the stormwater and parks service fee ordinance so that:

- Only council, rather than the City Manager, may set the fee for FY14.
- Council will determine the amount of fee, if any, for FY14 as part of the council's FY14 budget approval process.
- Council is limited to setting a fee that includes a progressive tiered rate structure with the following elements to the extent feasible: a low income program social equity component, a rate for residential and small commercial customers not to exceed \$5 per month, and a rate for large commercial and industrial customers not to exceed \$25 per month

Attachment A is the revised ordinance. A new section 4 has been added to the ordinance (page 6) to accomplish the council's direction. Subsection (a) provides that only the council, and not the Manager, may establish the fee for FY14. Subsection (b) prohibits the council from setting the fee, if one is set, until after the Budget Committee and City Council hold public hearings as part of the FY14 budget approval process. Subsection (c) limits the fee for FY14 to a maximum of \$5 per month for residential customers. Subsection (d) requires that the fee be tiered and include a low income program social equity component.

COUNCIL OPTIONS

1. Adopt the revised ordinance.
2. Amend and adopt the revised ordinance.
3. Do not adopt the ordinance.

CITY MANAGER'S RECOMMENDATION

The City Manager recommends that the council adopt the revised ordinance.

SUGGESTED MOTION

Move to adopt Council Bill Number 5088, an ordinance creating a mechanism for a monthly stormwater and parks service fee and limiting council's establishment of a specific fee amount until the FY14 budget approval process.

ATTACHMENTS

A. Proposed Ordinance

FOR MORE INFORMATION

Staff Contact: Glenn Klein

Telephone: 541-682-8447

ORDINANCE NO. _____

AN ORDINANCE CREATING A MECHANISM FOR A MONTHLY STORMWATER AND PARKS SERVICE FEE AND LIMITING COUNCIL'S ESTABLISHMENT OF A SPECIFIC FEE AMOUNT UNTIL THE FY14 BUDGET APPROVAL PROCESS.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. Section 6.411 of the Eugene Code, 1971, is amended to provide as follows:

6.411 Ratemaking.

(1) Ratemaking procedure.

- (a) Investigation of proposed charges. Before proposing to impose or amend a charge for wastewater service, stormwater **and parks** service, or for regional wastewater treatment service, the city manager shall conduct an investigation of the revenue needs of the city in conducting these operations. Based on that investigation, and using the criteria set out in subsection 6.411(2), the city manager shall develop proposed charges for these services.
- (b) Notice. Prior to the imposition of any charge for wastewater service, stormwater **and parks** service or regional wastewater treatment service, the city manager shall give notice of the proposed rate or charge by:
 1. Making copies of the notice of intended charges available to the news media, to any person who has requested such notice, to the mayor and city councilors, and to interested governmental agencies (including the United States Environmental Protection Agency, the Department of Environmental Quality, the Metropolitan Wastewater Management Commission, and the Eugene Water & Electric Board).
 2. Publishing notice of intended charges on two separate occasions in a newspaper of general circulation within the city.
 3. Posting the notice at two locations at city hall.
- (c) Contents of notice. The notice of intended charges shall state the current and proposed charge, the results of the city manager's investigation, and the time, place and manner in which interested persons may present their views on the intended action.

- (d) Public hearing and opportunity to comment. No earlier than ten days after the first publication of notice of the intended charges, the city manager or the manager's designee shall conduct a public hearing on the proposed charge. The city manager shall give interested persons reasonable opportunity to submit data or views in writing on the proposed charge.
 - (e) Decision. The city manager, on the basis of his or her investigation and the comments of interested persons, shall approve, modify, or disallow the proposed charge by order. The order shall contain written findings and conclusions based on the standards set forth in subsection 6.411(2). The city manager shall mail copies of the decision to all persons who have submitted written or oral comments on the charge or who have requested a copy of the decision. The city manager shall also promptly deliver copies of the decision to the mayor and city councilors. Unless reviewed by the council, the decision is final on the eleventh day after it is rendered.
 - (f) Review of decision. At the request of the city manager or a majority of the members of the council, made within ten days of the city manager's decision, the decision, or any part thereof, shall be reviewed by the council. The council may conduct a public hearing on the proposed charge or review the order solely on the basis of the administrative record before the city manager. After this review, the council shall approve, modify or disallow the proposed charge by order. The order shall contain written findings and conclusions based on the standards set forth in subsection 6.411(2), and shall be mailed to all interested persons. The order is final on the date rendered.
- (2) Standards. Unless the city manager determines in writing that one or more of the following factors is irrelevant or inapplicable, the amount or rate of any charge for wastewater service, stormwater **and parks** service, or regional wastewater treatment service shall be based on the following:
- (a) The amount charged for such service in the past;
 - (b) For regional wastewater treatment services the recommendation, if any, of the Metropolitan Wastewater Management Commission, or any successor agency;
 - (c) Applicable federal or state regulations or conditions imposed as part of a federal or state grant or financial assistance agreement;
 - (d) The amounts charged or proposed to be charged by the city of Springfield and other providers of stormwater or wastewater services for comparable services;
 - (e) The revenue needed to pay for the direct and indirect expected costs of constructing, operating, maintaining, and replacing local and regional sewerage facilities based on the adopted budgets of the city of Eugene and the Metropolitan Wastewater Management

- Commission or its successor, the debt obligations of the city or other entities for construction of the facilities, adopted capital improvement plans of the council, the expected need for financial reserves and contingencies, and other sources of revenue;
- (f) For an individual stormwater service customer that discharges stormwater that requires extraordinary expense to the city, special surcharge rates based on the type, concentration, quantity, quality and frequency of the discharge[-];
 - (g) For the parks component of the stormwater and parks service charge, the cost of operating and maintaining parks, open space and natural areas owned, operated or maintained by the city;**
 - (gh) Other relevant adopted policies of the council;
 - (hi) The terms of any applicable intergovernmental agreement relating to wastewater or stormwater services or regional wastewater treatment service;
 - (ij) The obtaining of equity between different classes of customers so that one class of customers does not pay more than its proportionate share of the expenses of providing sewer service; and
 - (jk) In addition to the forgoing considerations, in determining the amounts or rates to be charged for stormwater and wastewater service, the city manager shall consider the value of the use and occupancy of the city's right-of-way by the city stormwater system and city wastewater system.
- (3) If the city manager determines that one or more of the factors listed in subsection (2) of this section is irrelevant or inapplicable, the manager shall notify the mayor and council of that determination.
- (4) Limitations. The following limitations apply to charges set by the city manager for wastewater service, stormwater **and parks** service and regional wastewater treatment service:
- (a) Charges shall be imposed on a monthly basis. Each customer shall be notified, in at least one annual billing for the service, of the rate or the amount of the charge and the allocation of revenue expected from application of the charge.
 - (b) The charges for regional wastewater treatment service shall distinguish between the following classes of customers: single dwelling units, duplexes, and general wastewater customer use based on loading strengths.
 - (c) The charges for local wastewater service may, but need not, distinguish between classes of customers.
 - (d) The monthly charge for wastewater service and regional wastewater treatment service shall be a fixed fee together with a fee based on volume of use of water (partial flow-based rate).
 - (e) When the wastewater service rate is based on volume, the volume shall be calculated by actual measurement of the wastewater discharged (the costs of measurement to be borne by the customer) or by an estimate based on the wastewater customer's average monthly water consumption during the

- previous December through April period, or, if no water consumption figures are available for at least three full months during this period, the consumption of other similar customers (for residential customers) or actual monthly water consumption (for non-residential customers).
- (f) The charges for **the stormwater component of the stormwater and parks** service shall distinguish between the following classes of customers: small residential, medium residential and general stormwater customer, based upon the actual number of equivalent service units for each developed property or an average number of equivalent service units for a specific class. Special surcharges for stormwater service customers who receive extraordinary service shall be in addition to the standard charges for the customer's classification.
 - (g) **The charges for the parks component of the stormwater and parks service shall consist of flat monthly fees.**

Section 2. Subsection (3) of Section 6.416 of the Eugene Code, 1971, is

amended to provide as follows:

6.416 Charges - Adjustments.

- (3) Any stormwater service **component of the stormwater and parks service** charge shall be reduced or eliminated, and the appropriate credit given, if the customer shows to the city engineer's satisfaction one or more of the following:
 - (a) the amount of permanent reduction to the runoff from the property;
 - (b) the amount of stormwater being discharged directly from the property into the Willamette or McKenzie Rivers or other body of water that does not drain directly or indirectly use the city stormwater system;
 - (c) the calculation of the number of ESUs assigned to the customer's property was in error;
 - (d) When the stormwater service charge has been surcharged because of the quality of the stormwater being discharged, the amount of permanent improvement in the water quality for the property due to mitigation measures implemented on the property to treat the stormwater before it is discharged into the city stormwater system.

Section 3. Sections 6.421, 6.426, 6.431, 6.436, 6.600, and 6.605 of the Eugene

Code, 1971, are amended to provide as follows:

6.421 Charges - Collection and Payment. The Eugene Water & Electric Board is directed to collect the charges provided for in sections 6.401 through 6.610. Charges levied pursuant to sections 6.401 through 6.610 shall be determined by the city manager or his/her designee and certified to the Eugene Water & Electric Board and any other water utility obligated to collect such charges.

Revenue collected by the Eugene Water & Electric Board shall be paid monthly to the city and shall be deposited in the appropriate fund for wastewater operations or for stormwater **or parks** operations for use in providing sewer service including debt service, **parks operations and maintenance**, and such other services as the council may direct, except that revenue collected based on the criteria contained in subsection [(2)(j)] **(2)(k)** of section 6.411 of this code shall be deposited in the appropriate fund for road operations to be used for the reconstruction, repair, maintenance, operation, and preservation of city-owned roads and streets within the city, roads and streets which the city is contractually or legally obligated to operate and maintain, or roads and streets for which the city has accepted responsibility under intergovernmental agreement. Revenue collected based on the criteria contained in subsection [(2)(j)] **(2)(k)** of section 6.411 of this code may not be used for capacity-enhancing street improvements.

- 6.426** **Charges - Delinquencies**. The water utility providing service to the sewer service customer shall enforce the collection of rates and charges for [sewer] services **covered by sections 6.401 through 6.610 of this code**, and may do so by withholding delivery of water, steam or electricity to the delinquent customer, or by any other means of collection provided by the laws of the state or permitted by the charter and ordinances of the city. [Sewer service c]Charges **for services covered by sections 6.401 through 6.610 of this code** shall be collected monthly and if not paid on or before 10 days from and after the date the same shall be payable, the charges shall be deemed to be delinquent. Any charge due which shall not be paid when due may be recovered in an action at law by the city.
- 6.431** **Charges - Penalty for Nonpayment**. In the event a customer becomes delinquent in the payment of [sewer service] charges **for services covered by sections 6.401 through 6.610 of this code**, there shall be added to the charges a penalty in the amount of 10 percent of the delinquency and the total amount due shall bear interest at the rate established in section 2.022 of this Code from the date of the delinquency.
- 6.436** **Charges - Cost of Collection**. The water utility collecting the [sewer service] charges **for services covered by sections 6.401 through 6.610 of this code**, may withhold from payments received a reasonable fee for its actual costs of billing, collecting and remitting [sewer service revenue]**the charges**. The fee shall be based on actual costs and established annually by agreement between the city manager and the water utility.
- 6.600** **Charges for Stormwater and Parks Service**.
(1) Except as the charges may be reduced under subsection 6.416(3), the obligation to pay stormwater **and parks** service charges arise when a person responsible uses stormwater services. It is presumed that stormwater services are used whenever there is an improved premises.

- (2) Unless another person responsible has agreed in writing to pay and a copy of that writing is filed with the city, the person(s) paying water utility charges shall pay the stormwater **and parks** service charges. If there is no water service to the property or if water service is discontinued, the stormwater **and parks** service charges shall be paid by the person(s) having the right to possess the property. The stormwater **and parks** service charges shall be set by the city manager using the procedures, criteria and limitations set out in section 6.411 of this code. The city manager shall review and determine the monthly charges for stormwater **and parks** service on at least an annual basis.

6.605 **Initiation and Adjustment of Billing.** Using stormwater service or receiving final approval of improvements authorized by a plumbing permit, whichever first occurs, will automatically initiate appropriate billing for stormwater **and parks** services as established by section 6.600 of this code. If development of a parcel does not require a plumbing permit, the creation or modification of any impervious surface from which stormwater may be discharged into city stormwater system shall initiate the obligation to pay the **charges for** stormwater **and parks** service[~~charges~~].

Section 4. Notwithstanding Sections 1 and 3 of this Ordinance, any charge for FY14 for the parks component of the stormwater and parks service may be imposed only under the following conditions and limitations:

(a) the amount of the charge, if any, for FY14 shall be set by the City Council and not the city manager;

(b) the City Council may establish such a fee only after the budget committee and City Council hold public hearings as part of the FY14 budget adoption process;

(c) if the City Council decides after those public hearings to establish such a fee for FY14, the fee shall not exceed \$5 per month for residential customers; and

(d) any such fee shall include a progressive tiered rate structure with the following elements to the extent feasible: (1) a low income program social equity component; (2) a rate for residential and small commercial customers not to exceed \$5

per month; and (3) a rate for large commercial and industrial customers not to exceed \$25 per month.

Section 5. The City Recorder, at the request of, or with the consent of the City Attorney, is authorized to administratively correct any reference errors contained herein, or in other provisions of the Eugene Code, 1971, to the provisions added, amended or repealed herein.

Passed by the City Council this

____ day of _____, 2013

City Recorder

Approved by the Mayor this

____ day of _____, 2013

Mayor