

Subject: Ordinance #1559 – Amending RMC 21.01.040 and repealing RMC 21.01.045 to repeal credit system for sewer connection fees.

Proposed Council Action:

This is on for Second Reading and Action.
 Adopt Ordinance No. 1559.

Dept. Origin: Mayor’s Office
Prepared by: Jennifer Robertson,
 City Attorney’s Office
For Agenda of: August 16, 2022
Exhibits: Ordinance #1559

	Initial & Date
Concurred by Mayor:	_____
Approved by City Planner:	_____
Approved as to form by City Atty:	<u>JSR 7-7-22</u>
Approved by Finance Director:	_____
Approved by Department Head:	_____

INFORMATION / BACKGROUND

The City is authorized to provide sanitary sewer services to properties within the City¹ and has the authority² to establish charges for the sanitary sewer facilities and fix the rates for sanitary sewer services³, including establishing connection fees.⁴

Sewer connection fees are meant to help ensure that “growth pays for growth” and that the new customers will pay into a system that has been created by existing customers. The City currently charges \$2,000 per connection for new sewer connections in accordance with RMC 21.01.040. This rate has not been changed in at least 20 years.

In the past, the City has provided credits for development of sewer infrastructure that has includes construction of municipal parts of the sewer system and/or for construction private laterals that are a private part of the City’s sewer system that connects to Tacoma’s interceptor line or main line. Since adopting the credit system under Ordinance No. 1540 on January 5, 2021, no complete application has been submitted to obtain sewer connection fee credits under the adopted code. In addition, two Washington appellate Courts have ruled on the issue of whether a city is required to offer credits for connection fees under RCW 35.92.025.

¹ RCW 35A.11.020, 35A.21.150, and Chapter 35.67 RCW.

² RCW 35.67.020.

³ RCW 35.67.190.

⁴ RCW 35.92.025.

Recent judicial decisions⁵ have made it clear that the City is not obligated to provide connection fee reductions, even if a customer has constructed a portion of the city's system. The recent City of Puyallup case made it clear that under the state law that allows the City to charge sewer connection fees⁶, there is no requirement for a City to provide equitable adjustments or credits based on the unique circumstances presented by any particular parcel, including having built a portion of the system. The Court said that, "Washington law does not require an equitable adjustment based on the [development] project's specific characteristics or infrastructure contributions." Since it now is clear that the City is not required to provide connect fees credits under RCW 35.92.025, the City Council may repeal the credits.

If, in the future, the City finds it desirable to provide credits, it can do so via a City Council authorized development agreement with the developer in accordance with authority granted under RCW 36.70B.170. In addition, if a future development desires to build a portion of the City's sewer system that is beyond what is required to serve its development, the developer could obtain partial reimbursement by entry into a latecomer agreement whereby other properties will provide a partial reimbursement if they later hook into the improvement installed by the developer.

FISCAL CONSIDERATION

Since adopting the credit system, the City had not provided any credits for sewer connection fees, therefore, this Ordinance is not expected to have a fiscal impact.

RECOMMENDATION / MOTION

This is on for Second Reading and Action. Adopt Ordinance No. 1559.

MOTION: I move adoption of Ordinance No. 1559 regarding sewer connection fees, amending Ruston Municipal Code Section 21.01.040 to repeal reference to sewer connection fee credits and to clarify appeal procedures for connection fee calculations, repealing Section 21.01.045 to the Ruston Municipal Code to repeal sewer connection fees credit procedures, providing for severability and corrections, and establishing an effective date.

⁵ See Westridge-Issaquah II LP v. City of Issaquah, ___ Wn.App.2d ___, 500 P.3d 157 (2021) (Slip Op. No. 82025-7-I); Viking JV, LLC v. City of Puyallup, Slip Op. No. 55371-6-II (2022).

⁶ RCW 35.92.025.

ORDINANCE NO. 1559

AN ORDINANCE OF THE CITY OF RUSTON, REGARDING SEWER CONNECTION FEES, AMENDING RUSTON MUNICIPAL CODE SECTION 21.01.040 TO REPEAL REFERENCE TO SEWER CONNECTION FEE CREDITS AND TO CLARIFY APPEAL PROCEDURES FOR CONNECTION FEE CALCULATIONS, REPEALING SECTION 21.01.045 TO THE RUSTON MUNICIPAL CODE TO REPEAL SEWER CONNECTION FEES CREDIT PROCEDURES, PROVIDING FOR SEVERABILITY AND CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, in accordance with RCW 35A.11.020, 35A.21.150, and Chapter 35.67 RCW, the City is authorized to provide sanitary sewer services to properties within the City; and

WHEREAS, in accordance with RCW 35.67.020, the City has the authority to establish charges for the sanitary sewer facilities; and

WHEREAS, in accordance with RCW 35.92.025, the City has the authority to fix the rates for connecting to the City's sanitary sewer system; and

WHEREAS, the sewer connection fees are meant to help ensure that "growth pays for growth" and that the new customers will pay into a system that has been created by existing customers; and

WHEREAS, the City charges \$2,000 per connection for new sewer connections in accordance with RMC 21.01.040, which rate has been unchanged since at least 2002; and

WHEREAS, the City has provided credits in the past for development that has constructed municipal parts of the sewer system and/or constructed private laterals that are a private part of the City's sewer system that connects to Tacoma's interceptor line or main line in accordance with the City's interlocal agreement with Tacoma; and

WHEREAS, the City adopted a formal sewer connection fee credit procedure by adoption of Ordinance No. 1540 on January 5, 2021; and

WHEREAS, since that time, no complete application for such credits has been received by the City; and

WHEREAS, since adopting the credit system, state law has been clarified by the Courts, including recent judicial decisions which made clear that the City is not obligated to provide connection fee reductions, even if a customer has constructed a portion of the sewer system. The recent *Westridge-Issaquah II, LP v. City of Issaquah*, 500 P.3d 157 (2021) and *Viking JV, LLC v. City of Puyallup*, Slip Opinion No. 55371-6-II (2022), clarified that under RCW 36.92.025, there is no requirement for a City to provide equitable adjustments or credits based on the unique circumstances presented by any particular parcel, including having built a portion of the system; and

WHEREAS, since the Courts have made it clear that the City is not required to provide connection fees credits under RCW 35.92.025, the City Council finds it in the best interest of the City to repeal the credit system; and

WHEREAS, if the City finds it desirable to provide credits in the future, the City Council may do so via a development agreement as authorized under RCW 26.70B.170; and

WHEREAS, on July 19, 2022, the City Council held first reading of this ordinance; and

WHEREAS, on August 16, 2022, the City Council adopted this Ordinance during its regular meeting at the second reading; **NOW, THEREFORE**

THE CITY COUNCIL OF THE CITY OF RUSTON DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Section 21.01.040 of the Ruston Municipal Code is hereby amended to read as

follows:

21.01.040 – Application to Connect; Connection Fees.

A.—Any person desiring such connection to be made, or such pipe or drain to be laid, shall make an application for permit therefor in writing to the City Clerk on a form to be prescribed by the Mayor. Such application shall specify the plumber or other person who is to perform the work and shall be accompanied by a permit fee as prescribed by the Uniform Plumbing Code and a one-time connection fee of \$2,000.00 per unit being developed. The definition of a "unit" shall be per "dwelling unit", per "commercial unit" or per "hotel room". An area shall not be considered a separate "unit" if it does not have any plumbing fixtures in the space. If there is an issue as to how many units are being connected under this section, then the City Planning Director shall have the discretion to make a determination as to the number of units being connected. Such determination shall be appealable under the procedures for interpretations under Chapter 19.09 RMC. In addition, if an applicant believes there is a mathematical error, such matter is also appealable under the procedures for interpretations under Chapter 19.09 RMC. If there is a partial unit, the number of units shall be rounded up to the nearest whole number. The Clerk shall issue a permit after being satisfied that such person is qualified or authorized as provided in this code and all fees have been paid.

~~B.— In calculating connection fees, the City may provide credits towards such fees in accordance with RMC 21.01.025. The fees charged shall be as described in subsection A above, minus any applicable credits. In order to obtain such credits, the request for a credit must be received by the City at the same time as the application to connect is submitted. If the allowable credit exceeds the connection fees charged, no refund is due from the City, however, any such excess credit may be carried over for use on future connection fees in accordance with the provisions of this Chapter.~~

Section 2. Section 21.01.045 of the Ruston Municipal Code is hereby repealed.

Section 3. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 4. Corrections. Upon the approval of the city attorney, the city clerk and/or code publisher is authorized to make any necessary technical corrections to this Ordinance, including

but not limited to the correction of scrivener's/clerical errors, references, Ordinance numbering, section/subsection numbers, and any reference thereto.

Section 5. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 6. Effective Date. This Ordinance shall be effective five days after publication as provided by law.

ADOPTED by the City Council of the City of Ruston and attested by the City Clerk in authentication of such passage on this ____ day of August, 2022.

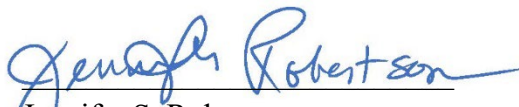
APPROVED by the Mayor this ____ day of August, 2022.

Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

Judy Grams, City Clerk

APPROVED AS TO FORM:



Jennifer S. Robertson
Office of the City Attorney

FILED WITH THE CITY CLERK: _____

PASSED BY THE CITY COUNCIL: _____

PUBLISHED: _____

EFFECTIVE DATE: _____

ORDINANCE NO: 1559