

**ORDINANCE NS-2242**

**AN ORDINANCE AMENDING BEND MUNICIPAL CODE CHAPTER 15.90 SEWER EXTRA STRENGTH CHARGE**

A. On April 15, 2015, City staff recommended minor administrative amendments to the Bend Municipal Code Chapter 15.90 Sewer Extra Strength Charge created by Ordinance No. 2212, adopted on January 8, 2014.

B. The intent of these amendments is to improve the administrative feasibility of the Extra Strength Charge program and to be consistent with Council Resolution No. 2969, adopted December 17, 2014.

Based on these findings, THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend Municipal Code is amended as depicted in Exhibit A.

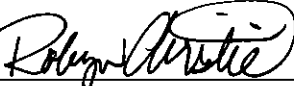
First Reading: May 6, 2015.

Second reading and adoption by roll call vote: May 20, 2015

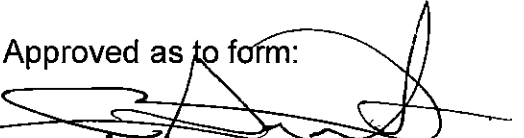
Yes:	Jim Clinton, Mayor	No: None
	Victor Chudowsky	
	Doug Knight	
	Sally Russell	
	Nathan Boddie	
	Casey Roats	
	Barb Campbell	

  
\_\_\_\_\_  
Jim Clinton, Mayor

Attest:

  
\_\_\_\_\_  
Robyn Christie, City Recorder

Approved as to form:

  
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Mary A. Winters, City Attorney



**EXHIBIT A**  
**Chapter 15.90**  
**SEWER EXTRA STRENGTH CHARGE**

Sections:

**15.90.010 Imposition of Sewer Extra Strength Charge.**

**15.90.020 Purpose.**

**15.90.030 Rate Types.**

**15.90.040 New Development and Redevelopment.**

**15.90.050 Reclassification Requests.**

**15.90.060 Appeals.**

**15.90.070 Enforcement.**

**15.90.010 Imposition of Sewer Extra Strength Charge.**

All nonresidential sewer customers are subject to evaluation to determine if they are required to pay a sewer extra strength charge (ESC). Nonresidential sewer customers whose wastewater discharges exceed or have the potential to exceed residential levels of biochemical oxygen demand (BOD) or total suspended solids (TSS) shall pay an ESC in an amount established by Council resolution, consistent with the provisions of this chapter. [Ord. NS-2212, 2014]

**15.90.020 Purpose.**

The purpose of the ESC is to recover the cost of treating extra strength wastewater discharged into the City of Bend sewer system. Extra strength discharges have a concentration of BOD or TSS higher than the concentration assumed as part of the City's base sewer user charge. Additional charges to ratepayers for extra strength wastewater are necessary for rate equity and to prevent the high cost of treatment of extra strength wastewater from being passed on to all other ratepayers. [Ord. NS-2212, 2014]

**15.90.030 Rate Types.**

Ratepayers who discharge extra strength wastewater shall pay an ESC using either the industry average rate or the monitored rate.

A. Industry Average Rate.

1. All nonresidential customers who are not in the monitored program whose wastewater discharges exceed residential strengths for BOD or TSS shall pay the industry average rate.
2. The ESC industry average rate shall be established by Council resolution setting rates based on the following categories: low, medium, high, and super high. The City Council shall establish by resolution an Extra Strength Category Table that lists the industries in each category. The City Manager shall maintain and may amend the Extra Strength Category Table.
3. The ESC sewer volume charge shall be based on the winter quarter average water consumption of the customer, and the amount shall be adjusted annually in the spring based on the most recent winter quarter average data. For new customers, the volume charge shall be based on a default average consumption value established in the City's fee resolution. The rates in the ESC industry average rate may include a phased rate increase, with initial rates that do not cover all extra strength costs, over a period to be established by City Council resolution.
4. Any changes in use of a nonresidential property or in processes that may affect the strength of wastewater discharges shall be reported to the City's Utility Billing Department by the customer.
5. When a single sewer account includes discharges from multiple sources, the account holder shall assign a proportionate share to each use, subject to City review and approval. The sewer volume charge will be applied by the City taking into account the proportionate use provided by the account holder. In the event that the account holder does not provide the City with an assignment of proportionate use, the total volume for the account will be assigned the highest strength among the sources of discharge on the account.
6. Any customer may request reclassification under BC 15.90.050 at the time the classification is initially assigned, after any change in classification, or after any change in use or practice at the property.

**B. Monitored Rate.**

1. Nonresidential sewer customers may pay the ESC based on their sewer discharge if they are eligible for and participate in the monitored rate program as established in this subsection (B).

2. Customers are eligible to participate in the monitored rate program if there is a secure and accessible sampling location for the customer's discharge that allows representative samples to be taken; and
3. Customers with an average peak BOD or TSS greater than 3,000 must participate in the monitored rate program.
4. Any nonresidential customer may apply to be in the monitored rate program. The application shall be accompanied by an application fee in an amount established in the City's fee resolution. Customers that paid an ESC to the City prior to January 1, 2013, shall be exempt from the application fee for applications submitted prior to January 1, 2015.
5. An individual monitored program for each customer shall be established and agreed to in writing by the applicant for inclusion in the monitoring program. Each monitoring program shall be consistent with the City's sampling standards and include:
  - a. A description of the sampling location.
  - b. A sampling schedule for the samples to be taken by the customer.
  - c. The ability for the City to access the sampling site and take samples.
  - d. A requirement that the customer samples be analyzed for BOD and TSS by an independent laboratory approved by the City.
  - e. An agreement on when the data will be presented to the City for monthly billing purposes.
6. On determination of the actual strength of the discharge as monitored, the customer shall pay the rate based on monitored load established by the Extra Strength Category Table, based on a 12-month rolling average basis.
7. The application for participation in the monitoring program shall include a consent to the City's inspection of the property where the sewage discharge occurs to take samples and to inspect for compliance with the monitoring program. [Ord. NS-2212, 2014]



#### **15.90.040 New Development and Redevelopment.**

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Any new development that will likely host a business that has the potential to discharge wastewater at strengths above residential levels shall install a sampling manhole at time of development or redevelopment. Sampling manholes shall comply with the City's standards and specifications in effect at the time of installation. [Ord. NS-2212, 2014]

#### **15.90.050 Reclassification Requests.**

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A. Application. Any customer in an industry that is required to pay a sewer extra strength charge may request reclassification at any time by submitting a written application on a City-approved form and payment of a fee in an amount to be established in the City's fee resolution.

B. Standard. The City shall reclassify the applicant's discharge if the applicant establishes by a preponderance of the evidence that:

1. The applicant has in place a process, program and/or facilities that reduce the discharge strength to a lower category than would otherwise be applicable.
2. Reliable published data indicates that the expected discharge strength of the industrial use type would place the use in a lower category.

C. Effect of Reclassification. A reclassification shall be effective for a maximum of 12 months. Reclassifications may be extended for an additional 12 months using the same process and standards applicable to an original reclassification.

D. Conditions. This City may impose conditions on a reclassification, and may terminate a reclassification if the discharge no longer meets the standards established in subsection (B) of this section. [Ord. NS-2212, 2014]

#### **15.90.060 Appeals.**

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A. An applicant for reclassification may appeal a whole or partial denial of the application for reclassification.

B. Any applicant for participation in the monitoring program may appeal denial of participation in the monitoring program or any component of the monitoring program when finally approved.

C. All appeals shall be filed within 10 business days of the date of the decision being challenged. The appeal shall be submitted to the City Recorder and shall be accompanied by payment of the appeal fee established in the City's fee resolution.

D. Within 45 days of filing the appeal, the appellant shall provide written justification, supported by evidence, in support of the appeal. The City shall provide a written response within 60 days of receiving the written materials from the appellant. The City and the appellant may agree in writing that the appeal will be determined on the written submissions.

E. The appeal shall be submitted to the City Manager, who will hold an in-person hearing unless the parties have agreed that the appeal will be determined on written submissions. The City Manager may delegate responsibilities under this section to the Assistant City Manager or the Bend Business Advocate.

F. The decision on appeal shall be reduced to writing and issued within 15 days of (1) the date of hearing, or (2) the date that the written agreement to submit on written submission is submitted.

G. The written decision of the City Manager or designee shall be the City's final decision and reviewable only by writ of review.

H. If a final decision is issued denying the reclassification, the appellant may not seek reclassification or a change to the monitored rate program unless the use is discontinued or new facilities are put in place that would change the strength category. [Ord. NS-2212, 2014]

#### **15.90.070 Enforcement.**

A. A customer's failure to comply with any applicable provision of this chapter is a Class A civil infraction.

B. Knowingly submitting false information on any application provided for in this chapter or knowingly submitting false or erroneous information in connection with any monitoring program, or taking action that would lead to inaccurate or unrepresentative sampling, is a Class A civil infraction. [Ord. NS-2212, 2014]

