

## Resolution No. 3093

### **A RESOLUTION SETTING FORTH AN INTERIM POLICY FOR THE IMPLEMENTATION OF THE BEND CODE SECTION 15.10.010 SOLELY FOR THE PROJECT AREA OF THE SOUTHEAST BEND SEPTIC TO SEWER SOLUTIONS PROJECT PENDING THE ADVISORY COMMITTEE RECOMMENDATION AND COUNCIL ADOPTION OF A SEWER PLAN AND FINANCE STRATEGY FOR THE AREA IMPACTED BY THE SOUTHEAST INTERCEPTOR**

#### Findings

- A. The City Council anticipated construction of the Southeast Interceptor (SEI), in part, to serve areas of the Bend Urban Growth Boundary and areas within the existing City limits that are without City sewer service in its adoption of the Sewer Public Facility Plan and the Collection System Master Plan in 2014. A citizen group called the Sewer Infrastructure Advisory Group (SIAG), reviewing updates to the City's sewer master plan and public facility plan from 2012-2014, recommended the construction of the SEI. The group also recommended the City evaluate how to transition properties from septic systems to City sewer connections.
- B. On SIAG's recommendation, in July 2017, the City began setting aside \$1 million annually from existing citywide sewer rates to help defray the significant costs of this transition process.
- C. The SEI provides the basis for a sewer system that will ultimately serve approximately 1,200 properties in the southeast area of Bend that are still on septic systems. Approximately 550 homes are on septic in the first transition area (shown on Exhibit A), which is the project study area (Project Area) for the SE Bend Septic Solutions Project (referred to as "the Project"). The Project began in June 2017.
- D. The goal of the Project, which is a multi-year effort, is to help transition property owners from septic systems to City sewer, by developing a financial strategy and designing a residential sewer system for the extension of sewer infrastructure from the SEI to residential property.
- E. The SEI is active at a reduced capacity as of September 2017. Full capacity of the SEI will be available upon completion of the SEI Phase 1 Extension project, anticipated March 2018.
- F. In December of 2016, by Resolution 3058, the City Council formed a Septic to Sewer Advisory Committee of 13 members, to provide recommendations on funding alternatives and policy direction for the City Council to consider regarding septic to sewer transitions in the area of the SEI. The Committee has been

meeting regularly since June of 2017 and will continue to meet through summer 2018.

- G. Council asked the Committee to make recommendations on funding options, including consideration of Local Improvement District(s) (LID), a separate rate classification, surcharges, connection fees/charges, grants, loans, etc. The intent was to have process include discussion of the potential of having City ratepayers share a portion of the cost for this transition to sewer, and/or a combination of the various options. In addition to making recommendations, the Committee is intended to serve the important role of public involvement in the decision-making process, and to be a conduit of information back to the interested neighborhood groups and associations.
- H. The SEI, constructed by the City as part of its master planning and capital improvement process, is referred to as a gravity interceptor. Most of the work for this Project will be completed in residential or local streets versus arterial or collector streets. Replacement of septic systems for approximately 550 homeowners with a residential sewer collection system will typically require 8-inch diameter gravity collection sewer pipes installed in the residential street centerlines. These are called "gravity sewer mains". The "engineering plan" or "residential sewer system design" referenced in this Resolution is for this part of the sewer system. These 8-inch sewer mains in the street are then connected by 4-inch service laterals (often called "stub-outs") to the property lines of each lot. Typically, the 8-inch gravity main and lateral are installed by a property owner or developer as part of a development proposal and the construction of interceptors is part of the City's master planning and capital improvement process. Completing design and construction of localized sewer infrastructure in existing residential developments with septic systems in urban areas is not unique to Bend, but it is not the usual development scenario.
- I. Under the current City Code, Section 15.10.010, properties within 300 feet of a public sewer with available capacity must connect to the system. Connection is mandatory within 90 days if the City provides notice to hook up. In practice, the City has required connection to the City's sewer system upon knowledge of the need for connection (for example, a septic system failure and notification through the County, the sale of property requiring a new or repaired system, etc.).
- J. The Oregon Administration Rules (OAR 340-071-0160(4)(f)) state that a permit for construction, alteration or repair of an on-site sewerage system must be denied if a sewer connection point is legally and physically available within 300 feet of a single family dwelling. The Department of Environmental Quality (DEQ) and the Environmental Soils Division at Deschutes County administer this permit program. The County and DEQ have indicated a willingness to allow the repair of septic systems within 300 feet of sewer with available capacity on an individualized basis while the City is developing an engineering and financing plan, as long as the City is clear with property owners that they will have to connect to the sewer system

within a specified time period, and upon identified conditions, once the Council has adopted a finance and engineering plan. These provisions must be reflected in an agreement between the City and property owners.

- K. As the City reviews the financial and policy decisions related to the SEI with the Septic to Sewer Advisory Committee, interim policies will address circumstances with septic system failure or repair needs, particularly when the developed property is within 300 feet of the SEI. The City also needs to consider how to treat properties that desire to connect to the SEI during this timeframe. This will allow the Committee to make its recommendation for a long-term financing and engineering plan, and Council to consider that recommendation as well as additional public and Neighborhood Association input, without fully implementing the existing code in this area of the City before finance and other policy decisions are made in the late spring/summer of 2018.
- L. The City desires to give as much flexibility as possible under the current code to allow owners to either repair an onsite septic system or connect to the nearby sewer system, while obligating these property owners to possibly participate in a future LID or other financial strategy (including but not limited to a connection charge, a surcharge, a separate rate classification, or other funding mechanism adopted by the City Council after a public process).
- M. The interim policies are intended to address three general scenarios:
  - 1. Properties directly along the SEI that received stub outs during the construction and have failing septic systems.
  - 2. Properties within 300 feet of the SEI that have a failing system in need of repair. This could occur, for example, because physical failure of the system becomes apparent to the property owner or a problem with the system is discovered by a septic inspection at the time of a sale of the property.
  - 3. Properties beyond 300 feet of the SEI that have a failing system in need of repair for the same reasons as No 2, where the property owner desires to work with DEQ/County to do less than a full repair to a septic system because of the Project and possibility of future sewer service.
- N. All of these scenarios require coordination between the County/DEQ and the City on specific property needs. The best scenario for many property owners would be for the County/DEQ to issue a permit to allow the minimal fix of the septic system and investment by the property owner, to keep the septic system working until the final financing and engineering plans are in place for widespread connection to the SEI. However, each property is a unique scenario and could possibly require a substantial investment just to keep the existing system operational.

- O. Requiring property owners to build a residential 8-inch gravity sewer main in the street and then to extend the lateral to their properties, within 300 feet of the SEI on an individual, ad hoc basis is expected to cost from \$30,000 to \$80,000. This is due to the topography, the necessary depth for the lines, the easements required, and other potential difficulties. The City recognizes that piecemeal construction is subject to inherent inefficiencies and increased costs. However, to allow property owners to invest in septic systems rather than extend sewer, when the SEI has been completed, is also inconsistent with the current City code and the public health and safety expectations for properties within cities as they grow and develop, and therefore requires a conscious interim policy.
- P. In its role as a utility provider responsible to all the ratepayers of Bend, Council desires to ensure that while an engineering and financing plan is being developed, it considers the legitimate needs of property owners in SE Bend, while ensuring that it retains the ability to fairly distribute costs of a system that benefits this area of the City.
- Q. Council also desires to make current and future property owners aware of the efforts going on to serve this area and the decisions under consideration, to reduce uncertainty as much as possible and provide notice to current and future property owners in the area.
- R. The design is currently at 30%. Once the project reaches 100% design, construction of a future system of sewer mains and stub outs from the SEI to developed properties in the area will likely be within 3-5 years to completion. This interim policy applies while Council is waiting for the Committee review/recommendation and Council makes decisions out of that recommendation. Council anticipates that a financial strategy for funding improvements will also include further interim policy direction as to how to treat properties while the financial program is being implemented and construction is ongoing.
- S. The Advisory Committee reviewed the direction of this Interim Policy at a public meeting on November 2, 2017 and recommended its approval, and the City Council reviewed it at a work session presentation on November 15, 2017.

Based on these findings, the Bend City Council resolves as follows:

- Section 1. The Council is committed to adopting a funding strategy for the area based on the Committee's recommendation by the fall of 2018. In the interim, for properties covered in Sections 2, 3, and 4 below, staff is directed to work with the County and DEQ to implement the policy intent in this Resolution.

Section 2. Properties with Stub Outs Along the SEI.

A. Any property directly along the SEI for whom a stub out was previously constructed must connect to the sewer system at the time their septic system fails. To connect during this interim period, they must pay all applicable SDCs and connection charges, and sign an Agreement, in a form approved by the City Attorney's office consistent with applicable law, to Waive Remonstrance to Formation of a potential future Local Improvement District. In addition, the owner must acknowledge, in writing, that the owner understands the City is formulating an engineering and financing plan for construction and funding of infrastructure laterals for the Project Area, which may include mechanisms applicable to their property such as a LID, connection charges, or a surcharge or separate rate classification for the Project Area, to be determined by the City Council. This Agreement will be recorded and run with the land.

B. Properties that do not have a failing system directly along the SEI for whom a stub out was previously constructed will not be allowed to connect to the SEI during this interim period.

Section 3. Properties Within 300 Feet of the SEI. All property owners within the Project Area, within 300 feet of the SEI, who apply for a septic repair permit must sign an Agreement to connect to the sewer system within a time period as specified by Council in the adopted engineering plan. In addition, such property owners must sign an agreement, in a form approved by the City Attorney's office consistent with applicable law, to: (1) Waive Remonstrance to Formation of a potential future Local Improvement District, and (2) Acknowledge, in writing, that the owner understands the City is formulating an engineering and financing plan for construction and funding of infrastructure laterals for the Project Area, which may include mechanisms applicable to their property such as an LID, connection charges, or a surcharge or separate rate classification for the Project Area, to be determined by the City Council; and (3) agree to connect to sewer within specified time/years of availability, based on sewer plan/adoption strategy adopted by Council. This Agreement will be recorded and run with the land. The City is developing an infrastructure plan, to include financial costs and obligations for property owners, for serving the Project Area with sewer connections within 3-5 years of signing this Resolution.

Alternatively, if a property owner desires to pay 100% of the construction costs for extending the sewer main in the right of way based on the 30% design, prior to the completion of the engineering and funding strategy, the owner may do so. Such owner must work with the City to ensure that the design is completed sufficient to implement and construct the system to

best serve the future buildout of the system and not just to serve their individual property, and pay all other applicable connection fees and charges. This alternative option is allowable at the discretion of the City Engineer.

Temporary, less expensive fixes (such as two inch lines running directly to the SEI) on a case by case basis in the event of property owner hardship or unique circumstances will be *not* considered until the City Council adopts an engineering and financial plan and there is greater certainty with the timing of the area-wide sewer solution. The feasibility of this option will be considered at that time.

Section 4. Properties in the Project Area More than 300 Feet from the SEI. All property owners within the Project Area, which are more than 300 feet of the SEI, who apply for a septic repair permit and DEQ allows them to repair at less than full repair based on the engineering and finance plan anticipated by the process outlined in this Resolution, must sign an agreement to connect to the sewer system within a time period as specified by Council in the adopted engineering plan. In addition, such property owners must sign an Agreement, in a form approved by the City Attorney's office consistent with applicable law, to: (1) Waive Remonstrance to Formation of a potential future Local Improvement District, (2) Acknowledge, in writing, that the owner understands the City is formulating an engineering and financing plan for construction and funding of infrastructure laterals for the Project Area, which may include mechanisms applicable to their property such as an LID, connection charges, or a surcharge or separate rate classification for the Project Area, to be determined by the City Council; and (3) agree to connect to sewer within specified time/years of availability, based on sewer plan/adoption strategy adopted by Council. This Agreement will be recorded and run with the land. The City is developing an infrastructure plan, to include financial costs and obligations for property owners, for serving the Project Area with sewer connections within 3-5 years of signing this Resolution.

Section 5. When Capacity is "Legally Available". Council considers this Resolution a plan related to its legally "available capacity," as requested by the County and DEQ, during the interim when the engineering and financing strategy is being developed, provided all conditions and agreements required by this Resolution are met. This Resolution should be referenced as notice of the process and Council's intent in any agreement entered into pursuant to this interim policy.

Adopted by a roll call vote of the Bend City Council on December 6, 2017.

YES: Casey Roats, Mayor NO: NONE  
Sally Russell  
Bill Moseley  
Bruce Abernethy  
Nathan Boddie  
Justin Livingston  
Barb Campbell

  
\_\_\_\_\_  
Casey Roats, Mayor

ATTEST:

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

Approved as to form:

  
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Mary A. Winters, City Attorney

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Exhibit A  
SE Bend Septic Solutions Project Area



