

ORDINANCE NO. 2320

AN ORDINANCE AMENDING SECTION 15.005, DEFINITIONS, AND SECTION 15.10.010, USE OF PUBLIC SEWERS REQUIRED, OF CHAPTER 15.10, GENERAL SEWER REGULATIONS, BEND MUNICIPAL CODE, AND CREATING A CITYWIDE SEPTIC TO SEWER CONVERSION PROGRAM

Findings

- A. Approximately 2,800 homes citywide are currently on septic systems. As reflected in city planning documents for the last few decades, the conversion of onsite septic systems to public sewer has been an ongoing need within the City as it urbanizes, to better serve public health, proactively protect water quality and over time, allow for economic development and urban development opportunities for properties or areas limited by septic system capacity. City sewer provides property owners with reliable waste management that has minimal potential for negative environmental impacts.
- B. 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. At the time of the 1998 annexation of unsewered areas of southeast Bend, the 1991 Sewer Master Plan which supported the annexation also anticipated that major infrastructure, including the SEI, would serve the South Central and East areas before "build out" (when Bend reached a population of 132,413 between 2015 and 2035) and according to available capital improvement budgets.
- C. A citizen group called the Sewer Infrastructure Advisory Group (SIAG), reviewed updates to the City's sewer master plan and public facility plan from 2012-2014 and recommended the construction of the SEI. The group also recommended the City evaluate how to transition properties from septic systems to City sewer service. 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.
- D. 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 503 homes on septic were in the first project study area for the SE Bend Septic Solutions Project (referred to as "the Project").
- E. 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 met regularly from June of 2017 through summer 2018. The Advisory Committee held 12 public meetings between June 20, 2017 and July 12, 2018, when they recommended approval of a set of

recommendations to the Bend City Council on the Project. Additionally, 2 presentations were conducted at neighborhood association meetings during development of the recommendations, and Council held 2 public listening sessions on August 15 and 29 2018, to receive input on the Advisory Committee recommendations. Regular neighborhood newsletters were mailed to affected property owners, as well as multiple door-to-door outreach efforts.

F. The intent was to have the process include discussion of potentially having City ratepayers share a portion of the cost for this transition to sewer, and/or a combination of the various options. As requested, the Committee made recommendations on funding options, including consideration of Local Improvement District(s) (LID), a separate rate classification, surcharges, connection fees/charges, grants, loans, etc. In addition to making recommendations, the Committee served 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.

G. After evaluating the financial impact to residents of the Project area and citywide ratepayers based on the various cost share scenarios and financial strategies recommended by the Committee, and hearing from affected residents in the public listening sessions, by email and at council meetings, Council directed staff to develop a broad program using limited sewer rate revenues that would serve residents with septic systems citywide. Under this program, which is referred to as the septic to sewer conversion program, the City will construct public sewer lines and property owners will be responsible for their own private property costs. The program will be funded annually with sewer rate revenues, and an application process will be established that will allow neighborhoods to apply for funding to have sewer service brought to their neighborhood.

H. A connection fee will be established and assessed in order to recover a portion of the localized cost of extending public sewers to neighborhoods and stub-outs along CIP projects, and to help create a sustainable septic to sewer conversion program. To incentivize connection, the fee will be reduced by 50% if the property owner connects within two years of a Notice of Operational Completion.

I. The City Council desires to use part of the revenue from connection fees to fund a customer assistance program to defray the costs of connection fees for qualifying low income homeowners, meeting specific criteria.

J. 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.).

K. The Oregon Administrative Rule, OAR 340-071-0160, contains the criteria that the Oregon Department of Environmental Quality (DEQ) and County Health Department

use for evaluating permits for septic system construction, installation, repair or alteration. DEQ makes the determination of physical available under the administrative rule, often referred to as the "300-foot rule." Based on discussions with the DEQ and a October 10, 2018 letter from the DEQ Director to the Bend Mayor, the City understands that it can define legal availability under the OAR, and that a long-term plan and program, such as the septic to sewer conversion program proposed in these code amendments, is within the City's discretion. Therefore, these amendments take out the 300 foot connection requirement, and replace it with the provisions in the septic to sewer conversion program.

L. The City Council will revisit this program to assess whether neighborhoods seek funding for neighborhood extension projects as provided for in the code changes and available budget. If the program does not work as anticipated, Council could potentially consider a program in the future where the City installs neighborhood projects with mandatory connection, or other funding mechanisms, and/or changes to the program. It is the City Council's intent to review and revisit this program no later than three years after adoption to assess its effectiveness, and every 3-5 years thereafter, and make necessary changes as needed.

M. Funding for the program will be considered during (Capital Improvement Program (CIP) and biennial budget review, and at such other times as necessary.

N. The City Council has reviewed the proposed changes and determines that it is in the City's best interests to amend the Bend Municipal Code accordingly.

O. This ordinance is supported by all staff reports and materials related to City Council and Committee discussions associated with this Ordinance, all documents on file with the City, and after considering all public testimony at various public meetings and hearings over the past 18 months.

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

Section 1. The Bend Code is amended by revising Sections 15.10.005 and 15.10.010 of Chapter 15.10, General Sewer Regulations, to read as shown on the attached Exhibit A.

Section 2. The Interim Policy, 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" is hereby repealed.


Section 3. This ordinance shall take effect February 1, 2019.

First Reading: December 5, 2018

Second Reading and Adoption by Roll Call Vote: December 19, 2018

YES: Casey Roats, Mayor
Sally Russell
Bruce Abernethy
Bill Moseley
Justin Livingston
Barb Campbell

NO: Nathan Boddie



Casey Roats, Mayor

ATTEST:



Robyn Christie, City Recorder

APPROVED AS TO FORM:



Mary A. Winters, City Attorney

Exhibit A

Chapter 15.10

15.10.005 Definitions

The following definitions apply in this chapter:

Biochemical oxygen demand (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five days at 20 degrees centigrade expressed in terms of weight and concentration (milligrams per liter (MG/l)).

Building drain means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet (one and one-half meters) outside the inner face of the building wall.

Building sewer means ~~the sewer line extending from the building drain to the public sewer or other place of disposal. Building sewers include not only sewer lines on private property, but lines within rights-of-way up to the point where the line connects with a sewer main. Building sewers the privately owned sewer line in two parts. First part, a building sewer "lateral" wholly contained on private property, which is the line extending from the building drain to the edge of the private property boundary; second part, the sewer "stub out", which is the line extending past the edge of private property boundary into the public rights-of-way up to where it connects to the public sewer. "Stub-outs" are wholly contained within public rights-of-way. Building sewers include not only sewer lines on private property, called "building sewer laterals", but also includes the sewer "stub-outs" within rights-of-way up to the point where the line connects with a public sewer main. "Building sewer laterals" and "sewer stub-outs" are not part of the public sewer, and are not owned by the City, even if located in rights-of-way.~~

Garbage means solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

Natural outlet means any outlet into a watercourse, pond, ditch, lake or other body of surface or groundwater.

Neighborhood sewer extension project means design and construction of a public sewer to provide public sewer service to existing properties within City limits served by on-site septic systems within the city limits as shown on the City of Bend Comprehensive Plan Map at the time of the urban growth boundary expansion by Ordinance No. 2271, effective on acknowledgment on December 6, 2016. It does not include extension of public sewer to existing property within urban growth expansion areas, which are governed by annexation agreements and/or city codes related to new annexation areas.

Private on-site septic system means an individual residential or other property on a septic system or any private sewer system (i.e. drill holes, mounded sand beds, etc.) within the City limits.

Public sewer means any sewer main owned and controlled by the City. A building sewer is not a sewer main and is not a public sewer.

Sanitary sewer means a sewer which carries sewage and to which storm, surface and groundwaters are not intentionally admitted.

Sewage means the water-carried wastes from residences, business buildings, and institutions.

Sewage treatment plant means any arrangement of devices and structures used for treating sewage.

Sewage works means all facilities for collecting, pumping, treating and disposing of sewage.

Sewer means a pipe or conduit for carrying sewage.

Slug means any discharge at a flow rate or concentration which could cause a violation of the discharge standards of this code or any discharge of a nonroutine, episodic nature including an accidental spill or a noncustomary batch discharge.

Storm sewer means a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

Suspended solids means a total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering.

Watercourse means a channel in which a flow of water occurs, either continuously or intermittently. [Ord. NS-2182, 2012; Ord. NS-2146, 2010]

15.10.010 Use of Public Sewers Required—Requirements for New Development and Septic to Sewer Conversion Program.

A. The intent of this section is to:

1. Require connection to the public sewer system for newly developed property as defined in this chapter.
2. Facilitate a comprehensive program whereby individual properties with private on-site septic systems within the city limits shown as on the City of Bend Comprehensive Plan Map at the time of the urban growth boundary expansion by Ordinance No. 2271, effective on acknowledgment on December 6, 2016, will

connect to the public sewer system when a public sewer system becomes legally available as defined in this chapter.

3. Provide for financial assistance for connection fees to qualifying property owners with private on-site sewer systems converting to the public sewer system.

B. A. Except for properties to which City sewer service is not available, no person shall construct any new private sewerage disposal on-site septic system. Existing private sewerage disposal on-site septic systems may be used and maintained if connection to City service is not available or if only as long as continued private septic system connection is authorized under subsection (B) (H) of this section 15.10.010. Any system not operated by the City is a private sewerage disposal on-site septic system.

C. B. New Development. Unless otherwise permitted by this section, aAll newly developed property used for human occupancy or employment within 300 feet of a public sanitary sewer with available capacity within 300 feet of a public sanitary sewer with available capacity shall be hooked up to at the public sewer. The property shall be hooked up to the public sanitary sewer within 90 days after the date official notice is given to hook up, unless the City agrees in writing to extend the deadline. The City will agree to extend the deadline for connection if the property owner had constructed a private sewer system because of a lack of capacity in the City sewer system. The extension may not extend beyond 20 years from the date of construction of the private sewer system, and connection shall be required at any time that repairs are required to the private sewerage disposal system. The hookup shall be accomplished in compliance with all applicable Federal, State and City laws, regulations and policies.

D. Existing Development and Legal Availability. Existing development within the city limits as shown on the City of Bend Comprehensive Plan Map at the time of the urban growth boundary expansion by Ordinance NS-2271, approved on November 14, 2016, and served by a private on-site septic system, will not be required to hook up to the public sewer until the City has provided notice that public sewer service with capacity exists along the frontage of the property, following privately or publicly funded extension of sewer service. Development annexed into the City served by private, on-site septic systems shall connect to sewer as set forth in the annexation agreement(s), policies or decisions of the City Council.

E. Septic to Sewer Conversion Program. There is hereby established a City of Bend Septic to Sewer Conversion Program with the goal of connecting properties served by private on-site septic systems to the City's public sewer system over time. The Program applies to properties within the city limits shown on the City of Bend Comprehensive Plan Map at the time of the urban growth boundary expansion on December 6, 2016, Ordinance NS-2271. In furtherance of the Septic to Sewer Conversion Program, the City will engage in neighborhood sewer extension projects in a systematic manner, as funds are available and allocated. Neighborhood sewer extension projects may be selected based on a pool of applicants. The City Manager is authorized to solicit and receive applications from property owners who wish their neighborhood or street(s) be

considered for a sewer extension project. Applications will be considered at least annually, based on the following considerations:

1. Cost of the sewer extension project, including design;
2. Total number of homes or properties to be connected to the public sewer system from the project;
3. Whether other City construction projects are planned for the street identified in the application;
4. The percentage of property owners who would be served by the neighborhood sewer extension project who have joined or signed onto the application;
5. The age of existing septic systems that would be replaced by the proposed neighborhood sewer extension project and evidence of failing septic systems; and
6. Other factors established by the City Manager.

F. A committee, to include 1-3 City Councilors, the City Engineer, the Engineering, Infrastructure and Planning Director, and the City Manager, or their designees, will review submitted applications in light of the available funds and the factors in subsection (E). The committee will select one or more neighborhood sewer extension projects for funding and construction to proceed pursuant to applicable city processes.

G. Capital Improvement Program. In addition, there may be areas of the City that receive public sewer service through the extension of a sewer main or interceptor along their frontage and a stub-out from the construction of a project associated with the City's Collection System Master Plan and Capital Improvement Program (CIP Projects).

H. Timing of Connection and Payment of Fees for Neighborhood Sewer Extension Projects and CIP Projects.

1. Upon completion of a neighborhood sewer extension project or CIP project, the City will issue a Notice of Operational Completion to all property owners with frontage along the newly completed public sewer line within 30 days of operational completion. The Notice will be recorded and will run with the land, explaining the provisions of this section (H).
2. Property owners who submitted the successful application for the neighborhood sewer extension project are required to connect to the public sewer within two years of the Notice of Operational Completion.
3. Connection by either property owners with frontage along a neighborhood extension project who did not sign the application for the project, or connection by properties with frontage along a CIP project, is voluntary, **except that**

connection is always mandatory when either of the following occurs at any time: 1) the existing on-site septic system fails or needs repair or otherwise requires a County OAR 340 Division 71 or 73 permit, or (2) the property owner applies to the City or County for any improvements adding capacity to the dwelling or to the existing septic system (which could be a subdivision of the property, an ADU, additions to the property, etc.).

4. Connection Fees and System Development Charges (SDCs): The connection fee will be established by the City Council in the annual fee resolution, adjusted annually for inflation (using the Engineering News Record (ENR) construction cost index). Except as provided in Section 6 below, a property owner must pay all connection fees in effect at the time at the time of hook-up, **except that** any property that connects within two years from the Notice of Completion will be granted a 50% discount to the current sewer connection fee. Properties that do not connect within the two year frame must pay the full sewer connection fee established by Council at the time of application for connection. All property owners must pay the SDCs in effect at the time of application for connection.

5. All connections ~~The hookup to public sewer~~ shall be completed accomplished in compliance with all applicable Federal, State and City laws, regulations and policies.

6. A qualifying property owner required or requesting to connect to public sewer under the Septic to Sewer Conversion Program can request that the City fund their connection fees under the City's customer assistance program. "Qualifying property owner" means a property owner with a household income at or below 80% of the area medium income based on the most recent HUD calculation available (US Census Bureau's ACS estimate for Bend, Redmond, OR MSA), or senior citizens over the age of 62 and disabled persons who meet the income qualifications of the City's customer assistance program. The application process and program is further set forth on the City's utility billing website.

I-G. City water service may be terminated to any property that has not hooked up to the sewage system in compliance with the provisions of this title or any other applicable law, rule or regulation.

J. D—All persons receiving sewer service from the City shall pay the monthly fee for the service and connection established by Council resolution and all applicable system development charges. The Council may set sewer rates based on type of use, on volume discharged, on strength of the discharge, and/or on any other basis the Council determines to be appropriate.

K. The City Manager shall have the authority to establish administrative rules and regulations and departmental procedures to clarify, carry out and enforce the provisions

of this chapter, and to implement the Septic to Sewer Conversion Program consistent with the intent of this chapter.