

# ORDINANCE 1729

**AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, AMENDING NORTH BEND MUNICIPAL CODE SECTION 13.24.010(G) RELATING TO THE DELIVERY OF SEWER SERVICE TO USERS OBTAINING WATER FROM A PURVEYOR OTHER THAN THE CITY OF NORTH BEND; AMENDING THE TAXES, RATES AND FEES SCHEDULE TO PROVIDE FOR A NEW CLASS BASE RATE; AMENDING SECTION 5.06.160(D) REQUIRING WATER PURVEYORS TO PROVIDE RECORDS FOR EXAMINATION; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE**

**WHEREAS**, the City Council desires to amend the North Bend Municipal Code relating to the delivery of sewer service to users who obtain water service from a purveyor other than the City of North Bend (City) and to ensure the delivery of records to the City for purposes of calculating sewer rates and for the collection of utility taxes; and

**WHEREAS**, the North Bend Municipal Code (NBMC) and the Taxes, Rates and Fees Schedule adopted by the North Bend City Council provide that a sewer user shall pay a base sewer charge plus an additional charge per cubic meter of water consumed over an initial allowed cubic meters depending on the classification (single family, multi family, mixed use, commercial and other uses); and

**WHEREAS**, the City requires water use data in order to properly calculate sewer rates based upon a customer's usage; and

**WHEREAS**, there are approximately 361 sewer users within the City who obtain their water from Sallal Water Association, a water purveyor other than the City ("Sallal"); and

**WHEREAS**, in Washington State, the majority of utilities such as water and sewer are delivered by public entities within urban growth areas (UGA) defined by the Washington State Growth Management Act (GMA); and

**WHEREAS**, public utilities are subject to both the Washington State Public Records Act (PRA) and the Open Public Meetings Act (OPMA) to ensure transparency in all discussions and decisions concerning the delivery of utility services; and

**WHEREAS**, Sallal is not subject to the PRA, OPMA or other transparency laws; and

**WHEREAS**, for over ten (10) years, Sallal has provided water usage data for Sallal customers residing within the City to enable the City to calculate sewer rates and calculate utility taxes; and

**WHEREAS**, in August of 2020, Sallal notified the City after the Sallal Board had voted to cease providing such utility records to the City; and

**WHEREAS**, utilities are enterprise funds within municipal budgets and as such, all costs of providing the utility services are financed primarily through user charges; and

**WHEREAS**, enterprise funds are established in order to properly maintain the utility infrastructure and to cover all operating costs including debt service; and

**WHEREAS**, the City has issued revenue bonds to cover necessary capital improvements to its utilities and projected future rate collections have been relied upon in issuing such debt service; and

**WHEREAS**, Sallal's refusal to provide water usage data to allow the City to collect user fees puts the payment of such debt at risk; and

**WHEREAS**, ratepayers must pay their pro rata share of all utility costs associated with the delivery of the utility service and North Bend sewer users cannot subsidize Sallal sewer users; and

**WHEREAS**, cities may impose a utility business and occupation (B&O) tax upon the income of public and private utilities providing services within the boundaries of the City and on utility services provided outside the city boundaries delivered by the City; and

**WHEREAS**, the City imposed such a utility tax pursuant to Section 5.06.110 of the NBMC on "the selling or furnishing of water to customers in the City of North Bend" levied against the total gross income from such business conducted within the City; and

**WHEREAS**, Sallal previously provided the City water usage data on its approximately 1,100 water customers located within the City to allow the City to determine the appropriate utility tax; and

**WHEREAS**, Section 5.06.160 of the NBMC requires Sallal to "keep and preserve" all water usage records and to make such records "open for examination at any time" by the Finance Director or the City's duly authorized agent; and

**WHEREAS**, Sallal's failure to provide water usage records as required by Section 5.06.160 of the NBMC will require unnecessary costs and burden to the City in performing inspections and audits of its business and in determining and billing alternative sewer rates to Sallal customers; and

**WHEREAS**, state law authorizes the City to permit and regulate all use of its public streets or other public rights of way and to grant franchise agreements to public and private utility operators covering the installation, maintenance and repair of utility facilities (RCW 35A.47.040); and

**WHEREAS**, Sallal has water utility systems and infrastructure in City rights of way but does not have a franchise agreement regulating such use of City rights of way; and

**WHEREAS**, franchise agreements typically provide for permitting procedures, fees, provision of records, insurance and indemnification, length of franchise and bonding for any work and/or repair in public rights of way; and

**WHEREAS**, it is in the public interest and promotes the public health, safety and welfare for the City to be able to fairly bill all sewer users; have access to records in order to calculate proper utility taxes and have a franchise agreement with Sallal as a condition of operating its utility in public rights of way;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1. NBMC 13.24.010(G), Amended:** North Bend Municipal Code Section 13.24.010(G) is hereby amended to read as follows:

G. In the event that a user of the sewage system obtains water from a water purveyor having a metered system other than the city's water system, the charges for sewer system usage shall either be:

- (i) a base rate and a usage rate set forth in the Taxes, Rates and Fees Schedule based on the meter readings from the purveyor of the water supply if the purveyor has delivered such records to the city; or
- (ii) a rate based upon the base rate plus the average water use for this class of customer over the prior two (2) years plus a ten percent (10%) administrative fee as determined by the city to cover its administration costs in calculating and billing this alternative base rate.

All water purveyors delivering service to customers within the city shall provide the city with water meter reading records for each separate water customer residing in the city in form and content acceptable to the City for each full or partial calendar month of water use. Such water meter reading records are deemed to be timely provided to the City if the water purveyor provides such records to the City by the fifteenth day of the calendar month for the preceding month's water meter reading. Failure of the water purveyor to timely provide such records shall constitute a civil violation pursuant to NBMC 1.20 and shall subject the water purveyor to a daily penalty pursuant to NBMC 1.20.100 of up to \$2,000.00 for each day that a violation exists; provided, however, that such penalty shall in no event be less than \$500.00 for each day that a violation exists.

~~As a condition of sewer service, the property owner shall sign an agreement with the city authorizing the water purveyor to provide the city water use records for the building to be served by sewer.~~

**Section 2. Sewer Base Rate:** The Taxes, Rates and Fees Schedule shall be amended to provide a separate base rate for any sewer users who obtain water from a water purveyor other than the City when the water purveyor has refused to provide water usage records to the City. This alternative base rate shall be calculated as follows:

- (i) The base rate for the customer classification set forth in the Taxes, Rates and Fee Schedule plus;
- (ii) The average water usage for this class of customer over the prior two (2) years above the allowed cubic meters of water use for this customer class plus;
- (iii) A ten percent (10%) administrative fee as determined by the city to cover its administration costs in determining and billing this alternative base rate.

This alternative base rate shall be effective for the next billing cycle following the effective date of this Ordinance. This base rate shall be subject to the same annual CPI-W increases to cover inflationary costs to the utility.

**Section 3. Duty to Provide Records:** Section 5.06.160(D) of the NBMC shall be amended as follows:

D. NBMC 5.05.060, Records to be preserved – Examination – Estoppel to question assessment. Any business selling or furnishing water or sewer services to customers in the city of North Bend shall provide monthly records of water usage data in form and content acceptable to the city.

**Section 4. Franchise Agreement:** Consistent with RCW 35A.47.040) city staff is directed to immediately commence negotiations for a franchise agreement covering Sallal Water Association’s use of city rights of way. Staff shall return to the City Council for its review of such franchise agreement upon the City Attorney completing review and both city staff and the City Attorney recommending approval of such franchise agreement to the City Council. City staff shall not grant right of way use permits for the installation of new water system infrastructure until such time as Council has approved such franchise agreement unless such work is associated with a building permit issued by the City. City staff will continue to issue right of way use permits for the repair and maintenance of all existing water system infrastructure in order to continue with the orderly delivery of water services to all water users.

**Section 5. Severability:** Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

**Section 6. Effective Date:** This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND WASHINGTON, AT A SPECIAL MEETING THEREOF, THIS 25<sup>TH</sup> DAY OF AUGUST, 2020.**

**CITY OF NORTH BEND:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Rob McFarland, Mayor**

\_\_\_\_\_  
**Michael R. Kenyon, City Attorney**

Published: September 4, 2020  
Effective: September 9, 2020

**ATTEST/AUTHENTICATED:**

\_\_\_\_\_  
**Susie Oppedal, City Clerk**