

ORDINANCE NO. 06-5356

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTIONS 2-538, 26-104, 26-109, 26-202, 26-404, 26-500, 26-501, 26-502, 26-503, 26-504, 26-505, 26-602, 26-610 AND BY ADDING NEW SECTIONS TO BE NUMBERED 26-504 AND 26-506; UPDATING DEFINITIONS; SETTING COMPENSATION CONDITIONS AND PROCEDURES FOR PARTIAL REIMBURSEMENT OF CERTAIN DEVELOPER WATER AND WASTEWATER FACILITY CONSTRUCTION COSTS; AND, REVISING REMEDIES AND PENALTIES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Section 1. That the Billings, Montana City Code be amended by revising Section 2-538 to read as follows:

“Sec. 2-538. Organization.

The public utilities board shall elect from its membership one person to serve as chairperson and the public ~~utilities~~ works department head shall serve as secretary.”

Section 2. That the definition of “Water Service Line” in Section 26-104 of the Billings, Montana City Code be amended to read as follows:

“Sec. 26-104. Definitions.

Unless the context specifically indicates otherwise, the meanings of terms used in this article on municipal water and wastewater utilities and in the rules and regulations authorized herein shall be as follows:

. . .

Water Service Line means all privately-owned facilities, including...on the customer's side of the point of delivery, except the ~~public utilities department's~~ city's water meter and any other equipment owned by the city.”

Section 3. That Section 26-109 of the Billings, Montana City Code be amended so that such section shall read as follows:

“Sec. 26-109. Meters for nonusers of city water system.

Meters or other means of gauging or metering water used on premises not using the city water service but connected to the city wastewater system for wastewater service shall be installed at the expense of the owners of such premises in accordance with city rules and regulations. Said meters shall be accessible to the ~~public utilities department~~ city and its employees to facilitate the determination of the wastewater charges to be paid by the owners or occupants of such premises.”

Section 4. That Section 26-202 of the Billings, Montana City Code be amended so that such section shall read as follows:

“Sec. 26-202. Adoption of service area.

The official water or wastewater service area for the city is that area of the city within the boundaries of the city, any areas presently served outside the city and any subsequently approved amendments thereto. A map depicting the water service area adopted herein, and any enlargements that may be from time to time approved by the city council, shall be made available at all times for public inspection during regular working hours at the ~~Utilities~~ Utility Service Center, 2251 Belknap Avenue, Billings, Montana. A map depicting the wastewater service area shall be developed and maintained in the same manner.”

Section 5. That Section 26-404 of the Billings, Montana City Code be amended so that such section shall read as follows:

“Sec. 26-404. Application and permit fee.

(a) Licensed septage haulers shall make application for septage or trucked waste disposal permits and manifests ~~at the public utilities department~~ on a special form furnished by the city. Permits or manifests will be issued upon compliance with the provisions of this article and any regulations adopted hereunder. The septage disposal permit fee shall be the fee set by city resolution.

(b) The city may refuse to grant or may revoke a permit for the disposal of septage or trucked waste into the waste disposal station to any applicant who has willfully and repeatedly violated the provisions of this article. Only septage pumped from septic tanks situated within Yellowstone County and which receive primarily segregated domestic wastes or wastes from sanitary conveniences shall be allowed to be discharged into the waste disposal station. Only approved trucked waste shall be allowed to be discharged into the waste disposal station.”

Section 6. That the title to Article 26-500 of the Billings, Montana City Code be amended so that such title shall read as follows:

“Article 26-500. REIMBURSEMENT AND COMPENSATION OF WATER AND WASTEWATER EXTENSION AND REPLACEMENT COSTS”

Section 7. That Section 26-501 of the Billings, Montana City Code be amended so that such section shall read as follows:

“Sec. 26-501. Purpose.

The intent and purpose of this article is to provide an equitable procedures for the reimbursement and compensation of a portion of the costs of constructing certain water and wastewater facilities to private parties who paid for the initial installation of those facilities. No person shall acquire any vested rights under the terms and provisions of this article.”

Section 8. That Section 26-502 of the Billings, Montana City Code be amended so that such section shall read as follows:

“Sec. 26-502. Definitions.

For the purposes of this article, the following words and phrases used herein are defined as follows:

Compensation agreement means a written document between the city and a developer outlining the conditions under which the developer may receive compensation from the city for water and wastewater facilities constructed by and initially paid for by the developer.

Customer means any person receiving water and/or wastewater service either directly or indirectly from the city water and/or wastewater system.

Developer means an applicant who requests use of the city water and/or wastewater general benefit facilities to provide water and/or wastewater service to special benefit facilities which will be installed by the applicant to serve properties owned by the applicant.

Extension means the act or process of extending special benefit facilities for the purpose of providing water and/or wastewater service to properties situated within the city's approved water or wastewater service areas.

Off-site special benefit facilities means special benefit facilities which are located between the existing water or wastewater system and the nearest boundary of the property for which service is to be provided.

Perimeter special benefit facilities means special benefit facilities which are located immediately adjacent to the exterior boundaries of the property for which service is to be provided.

Reimbursement agreement means a written document between the city and a developer outlining the conditions under which a developer may receive reimbursement from other property owners for a portion of water and wastewater facilities constructed by and initially paid for by the developer.

Special benefit facilities means water or wastewater facilities which are owned and controlled by the city and which provide service solely to specific properties located within the city's water or wastewater service areas. Typical special benefit facilities include, but are not limited to; water lines ~~eighteen (18)~~ twelve (12) inches or smaller in diameter, water booster pumping stations serving small areas, wastewater lines ~~twenty-four (24)~~ twelve (12) inches or smaller in diameter, and wastewater pumping stations serving small areas."

Section 9. That Section 26-503 of the Billings, Montana City Code be amended so that such section shall read as follows:

"Sec. 26-503. Requirement for payment of reimbursement fee.

Any prospective customer owning property located outside a developer's subdivision and desiring to connect a service line or lines to any special benefit facility which has been extended at the developer's expense, shall pay a reimbursement fee to the city. This fee shall be determined by the ~~public utilities director~~ city and shall be based upon either the prospective customer's pro rata share of the costs of the special benefit facility involved or upon some other cost formula established by agreement between the developer and the city at the time of approval of the developer's extension. This fee shall be in addition to and not in lieu of any fees which may be imposed by the city for refunding of general benefit facilities. This fee shall not include any interest charges. This fee applies only to connections and does not apply to additional extensions of existing special benefit facilities."

Section 10. That Section 26-504 of the Billings, Montana City Code be renumbered to Section 26-505 so that such section title shall read as follows:

"Sec. ~~26-504~~ 26-505. Reimbursement agreements."

Section 11. That Section 26-505 of the Billings, Montana City Code be renumbered to Section 26-507 so that such section title shall read as follows:

"Sec. ~~26-505~~. 26-507. Applicability."

Section 12. That the Billings, Montana City Code be amended by adding a section to be numbered 26-504 to read as follows:

“Sec. 26-504. Compensation by city.

Developers are responsible for the cost of their fair share portion of all special benefit facilities that front the development or are necessary to bring service to the development. In situations where no other property outside the development is participating in the cost of a project the city will participate in a proportionate share of the cost of eligible portions of the construction.

- (1) Compensation by the city must be made according to the city’s approved Water/Wastewater Extension Policy and Utilities Fees Practice. These policies require necessary funds to be included in the current, approved Capital Improvements Projects budget in order to be eligible for compensation back to the developer. The construction must also comply with all city, state and federal laws, rules and regulations including, but not limited to, standards for design and construction of the facilities, competitive bidding and contract requirements for cities, prevailing wage rates, non-discrimination requirements, etc..

Developers may choose to proceed with an extension or replacement project without waiting for its inclusion in the Capital Improvements Projects. In this case the developer is responsible for paying the entire cost of the construction. A compensation agreement will define the provisions covering payment of the city’s portion of the project costs.”

Section 13. That the Billings, Montana City Code be amended by adding a section to be numbered 26-506 to read as follows:

“Sec. 26-506. Compensation agreements.

- (a) Developers who meet the following conditions shall be entitled to compensation by the city:
- (2) Developer shall provide to the city sufficient verifiable cost data to determine the appropriate amount of compensation within thirty (30) days of final inspection of the water and/or wastewater facilities and approval and acceptance by the city that all construction was completed according to the approved plans and specifications.
- (3) Developer shall enter into a compensation agreement with the city at the time the city approves the developer’s application for extension of water and/or wastewater facilities

or, in the case of a replacement project, prior to submittal of preliminary plans and specifications by the developer.

(4) Upon completion of the extension or replacement of the water and/or wastewater facilities, the developer must convey all right, title and interest in the facilities to the city.

(5) Extension or replacement of water and/or wastewater facilities must be done in compliance with all city, state and federal laws, rules, and regulations including, but not limited to, standards for design and construction of the facilities, competitive bidding and contract requirements for cities, prevailing wage rates, non-discrimination requirements, etc.

(b) All compensation payments to developers shall be subject to the following terms and conditions:

(1) The extent, timing, and manner of the city's participation in a water and/or wastewater facilities extension or replacement is determined in conformance with the city's Water/Wastewater Extension policy, the city's Utilities Fees Practice, and the developer's compliance with city, state and federal laws, rules, and regulations. Extensions or replacements not eligible for compensation according to these city policies and practices must be constructed by the developer at his expense.

(2) Developer shall, at all times, provide to the city a current address for purposes of mailing compensation to developer.

(3) Compensation is limited to costs attributable to water and/or wastewater facilities described in the compensation agreement, less all administrative costs incurred by the city. In no event will compensation exceed the actual cost to the developer of extending or replacing the water and/or wastewater facilities.

(4) Compensation shall not include any interest charges."

Section 14. That the definitions of "Department" and "Harmful contribution" in Section 26-602 of the Billings, Montana City Code be amended to read as follows:

"Sec. 26-602. Definitions.

Unless the context specifically indicates otherwise, the words and terms used herein are defined and shall be interpreted for purposes of this article and the rules and regulations as follows:

...

Department means the public ~~utilities~~ works department of the City of Billings.

...

Harmful contribution means an actual or threatened discharge...any condition of its Montana Pollutant Discharge Elimination System permit-; or which causes the city to expend effort and resources beyond that normally required."

Section 15. That Section 26-610 of the Billings, Montana City Code be amended so that such section shall read as follows:

"Sec. 26-610. Actions for violation; enforcement.

(a) *Notice to violators.* Any person found to be violating the provisions of this article shall be served by the city with written notice stating the nature of the violation and action needed for its satisfactory correction. The offender shall immediately take action to permanently cease all violations as directed by the city. The issuance of a correction notice does not constitute a defense to a criminal charge which is concurrently or subsequently filed for the same violation.

(b) *Harmful contributions or interference with the wastewater system.*

(1) The administrator may cancel a significant industrial user's permission to discharge wastewaters into the WWS, reject such wastewater, may cease wastewater treatment service, and/or suspend a significant industrial user's industrial discharge permit when such suspension is necessary, in the opinion of the administrator, to stop or preclude a harmful contribution to the WWS or a discharge which interferes with or has a deleterious effect upon the WWS.

(2) Any significant industrial user notified of a suspension or cancellation of wastewater treatment service and/or the industrial discharge permit shall immediately stop or eliminate the contribution or discharge. In the event of a failure by such significant industrial user to comply voluntarily with the suspension order, the administrator shall take such steps as are deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the WWS system, danger to individuals or harm to the receiving water. The administrator may reinstate the industrial discharge permit and/or the wastewater treatment service only upon proof of compliance with the suspension order, including payment of any fees or penalties. A detailed written statement submitted by the significant industrial user describing the causes of the harmful contribution and the measures actually taken to

prevent any future occurrence shall be submitted to the city within five (5) business days from the date of occurrence.

(c) *Revocation of permit/termination of service.* Any significant industrial user who violates the following conditions of this article, the city's rules or regulations or applicable state and federal laws is subject to permit revocation or service termination, or both, in accordance with the procedures set forth in said rules and regulations or this section:

- (1) Failure to factually report wastewater constituents and characteristics or permit violations.
- (2) Failure to report significant changes in operations or wastewater constituents and characteristics.
- (3) Refusal or physical obstruction of reasonable access to the user's premises for the purposes of inspection, monitoring, review of records concerning wastewater or any purpose listed under section 26-607(G).
- (4) Violation of conditions of the industrial discharge permit.
- (5) Failure to obtain or maintain a valid industrial discharge permit.
- (6) Failure to file required reports or give notices.
- (7) Failure to comply with a city order or compliance schedule.
- (8) Failure to provide for protection against spills, slug discharges or accidental discharges.
- (9) Use of excessive discharge per section 26-604(e).
- (10) Failure to properly sample discharge with intent to deceive.
- (11) Failure to pay the applicable charges and fees.

(d) *Remedies.* If any person violates any order of the administrator or otherwise fails to comply with any provisions of this article or rules and regulations or the orders, rules, regulations and permits issued hereunder, or discharges sewage, industrial wastes or other wastes, into the WWS or into state waters contrary to the provisions of this article, federal or state pretreatment requirements, or contrary to any order of the city, or to the extent that the discharge constitutes a harmful contribution, the city may commence an action in a court of record for appropriate legal and equitable relief. In such action, the city may recover from the defendant reasonable attorney fees, court costs, deposition and delivery costs, expert witness fees, and other expenses of investigation, enforcement action, administrative hearings, and litigation if the city prevails in the action or settles at the request of the defendant. Any person who violates any of the provisions of this article or rules and regulations shall become liable to the city for any expense, loss, or damage to the city or to the WWS occasioned by such violation including, but not limited to, investigative/monitoring expenses, fines, penalties, cleaning, repair or replacement work caused by and in connection with the violation. In addition, upon proof of willful or intentional meter bypassing, meter tampering, or unauthorized metering, the city shall be entitled to recover as damages three (3) times the amount of actual damages.

(e) *Misdemeanor.* Any person who violates or fails to comply with any provision of this article or with any orders, rules, regulations, permits and

permit conditions issued hereunder, shall be guilty of a misdemeanor. The penalty for such misdemeanor shall be a fine not to exceed five hundred dollars (\$500.00) or by imprisonment not to exceed six (6) months, or both. Each day in which any such violation occurs or persists shall be deemed a separate and distinct offense.

(f) *Penalty for false statement and tampering.* Any person who knowingly makes, authorizes, solicits, aids, or attempts to make any false statement, representation or certification in any hearing, or in any permit application, record, report, plan or other document filed or required to be maintained pursuant to this article, or who falsifies, tampers with, bypasses, or knowingly renders inaccurate any monitoring device, testing method, or testing samples required under this article, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars (\$500.00) or imprisonment not to exceed six (6) months, or both.

(g) *Civil penalty.* Any person who violates or fails to comply with any provision of this article or with any orders, rules, regulations, permits or permit conditions issued hereunder shall forfeit and pay to the city a civil penalty of one thousand dollars (\$1,000.00) per violation. Each day in which any violation occurs or persists shall be deemed a separate and distinct violation. Said civil penalty, if not immediately paid, is enforceable by petition to a court of competent jurisdiction. In addition to the civil penalty contained herein, violators shall be liable to the city for any expense, loss or damage to the city or to the WWS including, but not limited to, investigative/monitoring expenses, fines, penalties, loss or damage, cleaning, repair or replacement work caused by and in connection with the violation. The city shall bill the violator for such expenses. Refusal to pay the assessed costs shall constitute a separate and distinct violation."

(h) *Remedies cumulative.* The remedies provided for in state and federal law, this section and this article, including but not limited to, criminal prosecution, recovery of costs, administrative fines, and treble damages, shall be cumulative. One or all of the penalties, sanctions, fines and remedies may be imposed at the discretion of the city.

Section 16. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

Section 17. REPEALER. All resolutions, ordinances and sections of the City Code inconsistent herewith are hereby repealed.

Section 18. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

PASSED by the City Council on first reading this 19th day of December, 2005.

PASSED, ADOPTED and APPROVED on second reading this 9th day of January, 2006.

CITY OF BILLINGS

By _____
Ron Tussing Mayor

ATTEST:

By _____
Marita Herold, CMC/AAE City Clerk