

RESOLUTION NO. 14-2010

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON ADOPTING A TEMPORARY SURCHARGE FOR WASTEWATER TREATMENT SERVICE DUE TO UNILATERAL TERMINATION OF THE CITY'S SERVICE CONTRACT BY CLACKAMAS COUNTY SERVICE DISTRICT NO. 1.**

**WHEREAS**, the Board of County Commissioners (BCC), acting as the governing body of Clackamas County Service District No. 1 (the District), is a decision-making body on matters regarding the use and operation of the Kellogg Wastewater Treatment Plant; and

**WHEREAS**, the City of Milwaukie has, over time, paid several million dollars for construction and operation of the Kellogg Plant in exchange for treatment of Milwaukie's wastewater; and

**WHEREAS**, this arrangement between the City and the District, initially formed through an Intergovernmental Agreement entered into by the parties in November 1970 and amended several times thereupon, constituted a contract for wholesale treatment service (Wholesale Contract); and

**WHEREAS**, in 2007, the BCC determined that the City of Milwaukie must pay a share of the actual cost of the entire District operations, which was not a term in the Wholesale Contract; and

**WHEREAS**, the estimated cost of District operations includes large capital costs associated with the expansion of pipelines and treatment facilities that do not serve the City of Milwaukie, but which are required because of residential and commercial growth that Clackamas County and others permitted outside the City of Milwaukie; and

**WHEREAS**, the City of Milwaukie has repeatedly communicated to the BCC that charging the City of Milwaukie for the cost of past growth in the District is unfair and that accepting such charges would be fiscally irresponsible for the City; and

**WHEREAS**, in 2009, the BCC unanimously voted to unilaterally terminate the Wholesale Contract; and

**WHEREAS**, on July 23, 2009, the BCC notified Milwaukie that the City had until February 28, 2010, to agree to the District's terms for continued wastewater treatment service, which included a new rate of \$25.31 per EDU per month (approximately \$14.00 per month more than the historical cost per month per EDU); and

**WHEREAS**, the BCC's imposed rate of \$25.31 per month equates to a treatment charge to the City of approximately \$2.5 million per year, a service charge the City has neither accepted nor budgeted for; and

**WHEREAS**, the City of Milwaukie is currently receiving wastewater treatment services from the District without a contract to fix the price for those services, which has created instability in the Wastewater Fund budget; and

**WHEREAS**, the City of Milwaukie received wastewater treatment services during fiscal years 2007-08 and 2008-09 for which the District is now seeking \$944,939 from Milwaukie, although the actual amount due is still being reconciled by the City and the District; and

**WHEREAS**, the BCC's unilateral action to cancel the Wholesale Contract, and related actions have caused the Wastewater Fund to incur significant legal and professional consulting expenses; and

**WHEREAS**, the City of Milwaukie must maintain revenue in the Wastewater Fund sufficient for necessary capital improvement, maintenance projects, minimum working capital and inflation factors; and

**WHEREAS**, unanticipated expenses due to the BCC's unilateral termination of the Wholesale Contract and related BCC actions threaten to deplete the City's Wastewater Fund, including its reserve account, by May 2010; and

**WHEREAS**, in November 2009, the Citizens Utility Advisory Board, which is composed of residents tasked with advising the Council on wastewater and other utility issues, recommended a wastewater rate increase of approximately \$2.00 per month to maintain the financial health of the wastewater utility given the current crisis with treatment rates; and

**WHEREAS**, the Budget Committee and Citizens Utility Advisory Board met jointly on January 28, 2009, and recommended adoption of a temporary wastewater service surcharge; and

**WHEREAS**, Milwaukie Municipal Code Section 13.12.070(A) authorizes the City Council to establish sewer service charges by resolution;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council that wastewater rates established by Resolution 52-2005 be amended as follows:

**SECTION ONE:** a Wastewater Service Surcharge of \$1.00/ccf (each 100 cubic feet of water used) is hereby adopted for commercial accounts, and a fixed rate of \$1.00 per average water household water use for residential accounts. Average household water use shall be the most up-to-date winter average water use as measured for each household over two winter season billing cycles (four months). (A typical household uses 7 ccf of water per month. This amounts to a \$7/month surcharge for a typical water customer in Milwaukie).

**SECTION TWO:** The surcharge will not be applied to low-income utility customers eligible for reduced rates under MMC section 13.2.010.

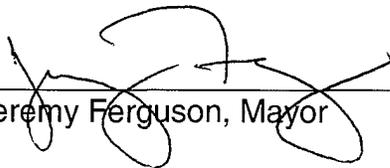
**SECTION THREE:** The Wastewater Service Surcharge shall remain in effect at least through the June/July 2010 billing cycle, but only until a new Wholesale Agreement is reached with the District. The Surcharge will terminate effective the first billing cycle after execution of a new Wholesale Agreement. Should a new Wholesale Agreement not be reached with the District by July 30, 2010, the Surcharge shall be extended through the December/January 2011 billing cycle, or until a new Wholesale Agreement is reached, whichever occurs first.

**SECTION FOUR:** Upon execution of a new Wholesale Agreement with the District, all funds collected by the City under this resolution shall remain in the Wastewater Fund to cover costs or contribute to reserve accounts associated with wastewater management.

**SECTION FIVE:** An explanatory insert describing the Wastewater Service Surcharge shall be included with the first billing to each utility customer.

**SECTION SIX:** Previously adopted wastewater rates shall remain in effect until the new rate is in effect.

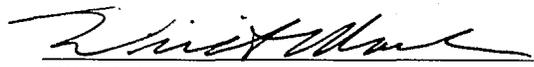
Introduced and adopted by the City Council on **February 2, 2010**.

  
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Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

  
\_\_\_\_\_  
Pat DuVal, City Recorder

  
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City Attorney