

Ordinance No. 00584

[CITY COUNCIL MEETING MINUTES MAY 5, 2014](#)

ORDINANCE NO. 584

AN ORDINANCE of the City Council of the City of Lakewood, Washington, amending Section 12A.15.020 Lakewood Municipal Code (LMC), amending and retitling Section 12A.15.140 LMC, creating a new sections 12A.15.025 and 12A.15.170 LMC, relative to sanitary sewer connections.

WHEREAS, on or about March 21, 2011, the City Council adopted Ordinance 530 establishing a new Chapter of the Lakewood Municipal Code related to public sanitary sewer systems; and,

WHEREAS, under Section 12A.15.020 LMC, the City assesses a sewer "availability charge" for the privilege of being able to connect to the sewer system in order to offset the costs of operating a low-flow sewerage system, providing for the flushing, treatment, maintenance, operation, potential expansion and other costs related to the provision of sanitary sewer systems within the City of Lakewood; and,

WHEREAS the current Code provides for challenges to these "availability charges," such appeals may be filed a considerable time after liens have been recorded; and

WHEREAS, a revised definition of determining when sewer is "available," to a property is desirable,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON DO ORDAIN as follows:

Section 1: Section 12A.15.020 LMC entitled "Definitions," is amended to read as follows:

"Available" means ~~a property which meets the requirements of LMC 12A.15.025, the existence of a gravity flow sanitary sewer main in part or whole within city right of way that immediately abuts any portion of a property or a private or public utility easement. A private utility easement will be considered for purposes of availability only if it allows for construction and connection to sanitary sewers.~~

"Availability Charge" means a sum of money charged or assessed against a property or property owner when such property has sanitary sewers available to it but the property is not connected to a sanitary sewer. The availability charge shall be in an amount equal to the base monthly sewer rate and applicable surcharges and fees that would be charged against the property, or a similar property or land use, if the property were connected to an available sanitary sewer system.

"Building Sewer" means a sewer line extending from the structure's plumbing facilities to the sewer main.

"City Manager" means the City of Lakewood City Manager or such other duly authorized representative or designee as the City Manager may so authorize to act or ensure the enforcement of this Chapter. The City Manager may designate a City official or an official from the public sanitary sewer purveyor to act upon, implement or enforce any portion of this Chapter.

"Interim On-site Septic System" means an existing on-site septic tank system of sewerage in use upon a property when the public sanitary sewer system is available to the property or property owner.

"Sewage" means waste discharged from the plumbing facilities of structures.

"Sewer Main" means a public sewer system pipe designed for and used to transport sewage and to which a building sewer can connect. The term "sewer main" excludes building sewers.

"Structure" means any building, manufactured home, or enclosure that contains or should contain plumbing facilities for the disposal of sewage.

Section 2: A new section 12A.15.025 entitled, "Determination of Availability," is created to read as follows:

A. Sewer service shall be deemed available to a property if a gravity flow sanitary sewer immediately abuts any portion of a property or a private or public utility easement. A private utility easement will be considered for purposes of availability only if it allows for construction and connection to sanitary sewers;

B. When contiguous properties are either (i) owned in whole or part by the same owner or (ii) are governed by the same

business license, sewer service shall be deemed available to all properties if any one property satisfies any condition in subpart A.

Section 3: Section 12A.15.140 LMC entitled "Reconsideration and Appeals," is retitled to "Appeals," and amended to read as follows:

A. A property owner may ~~seek reconsideration of appeal~~ a determination that a public sewer system is available to their property ~~or any other decision or order issued pursuant to the authority provided by this chapter, as set forth in this section.~~ by making a written request to the City Manager. The City Manager, or the designee thereof, shall respond to such a written request for reconsideration in a timely manner after such a request is received. ~~Determinations of the City Manager, or designee, as to whether the public sanitary sewer system is available to a property shall be made in writing and shall constitute an order, which order may be appealed subject to the provisions set forth herein.~~

B. The following timeframes shall control the filing of the notice of appeal:

1. For a determination that sewer service is available, the notice of appeal shall be filed within the latter of forty-five (45) days after service of a notice of availability or service of a notice of lien.

2. For all other matters, the notice of appeal shall be filed within fourteen (14) days of service of the determination.

C. The notice of appeal shall be filed with the City Clerk and contain the following: (1) be conspicuously identified as a notice of appeal; (2) set forth a brief statement setting forth the legal interest of the appellants; (3) the specific order or action protested, together with any material facts claimed to support the contentions of the appellants; (4) the relief sought, and reasons why it is claimed, and why the protested action or notice and order should be reversed, modified or otherwise set aside; (5) the signatures of all persons named as appellants, and their official mailing addresses; (6) The verification (by declaration under penalty of perjury) of each appellant as to the truth of the matters stated in the appeal. No fee shall be required for the filing of the notice of appeal.

D. As soon as practicable after receiving the written appeal, the City Clerk shall fix a date, time, and place for the hearing of the appeal by the Hearing Examiner. Written notice of the time and place of the hearing shall be given at least ten (10) days prior to the date of the hearing by the City Clerk, by mailing a copy addressed to each appellant at his or her address shown on the notice of appeal.

E. At the hearing, the appellant or appellants shall be entitled to appear in person, and to be represented by counsel and to offer such evidence as may be pertinent and material to the denial or to the notice and order. The technical rules of evidence need not apply.

F. Only those matters or issues specifically raised by the appellant or appellants in the written notice of appeal shall be considered in the hearing of the appeal.

G. Within ten (10) business days following conclusion of the hearing, the Hearing Examiner shall make written findings of fact and conclusions of law, supported by the record, and a decision which may affirm, modify, or overrule the denial or order of the City, and may further impose terms and conditions regarding hook-up to the City sewer.

H. Excepting those instances where, by law, a different time period applies, a decision by the Hearing Examiner under this Chapter shall be final and conclusive unless within twenty-one (21) days from the date of the decision, a party makes application to a court of competent jurisdiction for appropriate relief.

I. If the matter on appeal is a determination that a public sewer system is available to a property, upon the timely filing of a notice of appeal and pending adjudication by the Hearing Examiner, the City shall not undertake efforts to enforce or collect availability charges imposed under this chapter.

J. This section shall not apply to actions governed by LMC 12A.15.130.

B. Any person or entity aggrieved by any decision or order of the City Manager, or the designee thereof, under this Chapter, except a decision to seek redress in the courts through either civil or criminal remedies, may appeal to the City of Lakewood Hearing Examiner pursuant to the provisions of LMC 18A.02.740. Such an appeal will be considered an appeal of a process 1 administrative action as defined in LMC 18A.02.540. Such appeal must be made in writing, served upon the City Clerk of the City and must be accompanied by the Hearing Examiner Fee in the amount specified in the City's Fee Schedule.

Section 4. A new Section 12A.15.170 entitled "Chapter to be Liberally Construed," is created to read as follows:

The provisions of this chapter are to be liberally construed in favor of connection to public sanitary sewers as currently constructed or as may be constructed in the future.

Section 5. Severability. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause, or phrase of this ordinance.

Section 6. Effective Date. This ordinance shall take place thirty (30) days after its publication or publication of a summary of its intent and contents.

ADOPTED by the City Council this 5th day of May, 2014.

CITY OF LAKEWOOD

Don Anderson, Mayor

Attest:

Alice M. Bush, MMC, City Clerk

Approved as to Form:

Heidi A. Wachter City Attorney