



## **Staff Report**

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### **PUBLIC HEARING TO CONSIDER AN ORDINANCE SETTING SEWER CHARGE RATES AND RESOLUTION APPROVING FISCAL YEAR 2007-08 SEWER CHARGES FOR COLLECTION ON COUNTY TAX ROLL**

Honorable Mayor and Members of the City Council:

#### **Summary**

At the close of the public hearing, and after consideration of testimony given, it is recommended that the City Council adopt an urgency ordinance and introduce a non-urgency ordinance implementing the rate increase based on the results of the protests hearing.

Adopt a resolution so the County of San Mateo is hereby authorized to collect said sewer usage charges as part of the property tax billing process.

#### **Background**

On May 22<sup>nd</sup>, staff provided the Council with a summary report of the proposed sewer rates. As a result of a recent California Supreme Court decision, those rates are now subject to the 45 day noticing provisions of Proposition 218 which includes a protest hearing. Notices (Attachment 1) were distributed to property owners on June 8<sup>th</sup>, this was in order to meet the County's deadline for placement of the sewer charges on the FY 2008 tax roll. The notice itemized the proposed rates and sets July 24<sup>th</sup> for the protest hearing.

Staff and John Farnkopf, P.E, presented to the Council the rate implications and the associated capital improvements to be funded on June 26<sup>th</sup> (Attachment 2 & 7). Each year, John Farnkopf, P.E. performs a review of the sewer operations, maintenance and capital budgets and storm drainage activities to identify any expenses that are related to reducing Infiltration & Intrusion (I&I). Any such expenses would be included from the sewer rates because they provide benefit to sewer customers. Farnkopf has determined that such expenses are includable in the sewer rates. At the conclusion, John Farnkopf's findings based on his review for operational and capital needs, proposed a 12% rate increase for FY 2008.

## **Discussion**

In compliance with the California State Constitution and Proposition 218 requirements, the City Council will conduct a Public Hearing on a Proposed Sewer Rate Increase of 12%. Written notification of this Hearing was mailed to all property owners in early June. The Proposed Sewer Rate Increase is estimated to produce an additional \$71 thousand dollars for operational and capital needs.

The City's proposal is to raise sewer rates for low strength customers (i.e. residential, retail/commercial, institutional/public authorities and industrial) from \$5.00 monthly fee per unit to \$5.60 monthly fee per unit, where one unit equals 100 cubic feet (HCF) of water. However, despite the rate increase, the average residential customer will see a reduction in their annual bill from \$522.00 currently to \$497.28 in fiscal 2008. This is because the sewer bill is based on the December 2006 through March 2007 water meter readings, i.e. the "measurement period", from Mid-Peninsula Water District, and the average residential customer used substantially less water than the prior measurement period. Furthermore, for those low usage customers, using 3.7 HCF or less water per month for the measurement period, they too will see a rate reduction as the annual minimum fee is proposed to be lowered from \$261.00 to \$248.64. It is important to note that the above amounts are based on averages and circumstances will be different for each customer based on their measurement period usage. Some customers will see increases in their bill and the total charge could exceed 12% if their measurement period usage increased.

The City's proposal will also raise sewer rates for high strength customers in the same percentage as low strength customers, i.e. 12% (i.e. restaurants and supermarkets). Those rates are proposed to increase from \$8.49 monthly fee per unit to \$9.51 monthly fee per unit. The minimum fee for restaurants and supermarkets will increase from \$2,720.20 to \$2,989.94 and \$5,720.56 to \$7,800.10, respectively.

To reduce administration costs, the sewer bill is added to the property tax roll. Therefore, should the rate increase be approved, customers can expect to see the increase included in their FY 2008 property tax bill. The first installment of the property tax bill is due November 10th and the second is due on March 10th. Legal counsel has advised that this billing practice is subject to the requirements of Health and Safety Code Section 5741. As a consequence, the City Council may only impose the charges by adoption of an ordinance approved by a two-thirds vote of the members.

There are two rate increase ordinances before the Council. One is an urgency ordinance (Attachment 3) which goes into effect immediately upon adoption. The other is a regular ordinance (Attachment 4), which will go into effect 30 days following its second reading. Legal counsel recommends the City Council act on both ordinances, as the non-urgency ordinance provides a backup action in the event there is a challenge to the City's urgency findings. The urgency ordinance and non-urgency ordinance must be approved by four of the five council members.

As of the print date of this report, the City had received 56 valid written protests against the rate. The City Council may proceed with the adoption of the rate increase unless, by the close of the public comment portion of the public hearing, the City has received written protests from 50% of the parcels affected by the increase, or 4,136 (8272 X 50%) parcels.

The resolution approving the actual amounts charged to parcels for Fiscal Year 2008 can be adopted by a simple majority.

Finally, as this hearing is a new legal requirement, the meeting will be administered by Sara Mares of NBS. NBS specializes in this business and will conduct the protest vote count. In addition, Michael Colantuono, special counsel in this area, will join the meeting by phone. Michael is the preeminent Proposition 218 expert in the State. Lastly, John Farnkopf, engineer and rate consultant will also be present to answer questions should they arise. In the future, the City intends to administer the meetings internally.

### **General Plan/Vision Statement**

The City's Vision Statement includes "*Our actions today preserve and enhance Belmont's beauty to make it even lovelier for our grandchildren*", "*Belmont is a wonderfully safe and supportive place to raise a family*" and "*Our economy prospers with a mix of attractive, successful businesses that fit with our community character*".

### **Fiscal Impact**

#### *New Data from NBS – Revenues Lower Than Originally Forecasted*

On July 18<sup>th</sup>, NBS transmitted to staff the preliminary Schedule of Sewer Charges. This report extends the rates to customers based on the most recent measurement period flows. Based on the report, Belmont water customers used considerably less water during the measurement period (which is the base upon which the rate is applied) across a broader spectrum of customers than in the prior measurement period. This significant reduction in forecasted sewer fund revenue yield was not known until the NBS analysis was received. Given the new data from NBS, the proposed 12% sewer rate increase will maintain the current level of effort, but will only allow for a minor increase in the capital plan. This means the FY 2008 sewer capital budget plan as proposed will need to be scaled back significantly.

#### *Future Revenue Forecasting will Continue to be a Challenge*

It is assumed the Mid Peninsula Water District will continue to promote water conservation, potentially lowering the sewer usage base further and making sewer revenue forecasting even more of a challenge.

#### *Net Financial Result of New Rates*

The result of the lower water usage means the proposed 12% rate increase will not yield an additional 12% in revenue. With the base usage down, a 12% rate increase only yields a 1.3% or \$71,316 increase in revenue to \$5,437,255 for the City Sewer fund. For reference purposes, the amount included in the FY 2008 Budget was \$6,009,850.

#### *South Bayside Systems Authority Improvements Costs Not Included*

As reported by John Farnkopf, P.E. in his report attached (Attachment 2), the rates and service charges discussed here do not include the additional cost of the City's share of South Bayside

Systems Authority's (SBSA) improvements, which comprise a pump station and treatment plant upgrades. Preliminary estimates by the City's financial advisor (Fieldman Rolapp) indicate that the cost of these SBSA improvements could add \$3.25/HCF to the City's projected rates. That would mean that an additional 65% increase would be required to increase the \$5.60/HCF projected for low-strength customers in FY 2008 to \$8.95/HCF; high-strength rates would need to increase 38% more.

### **Public Contact**

- Mailing of notice of public hearing to property owners on June 8th (Attachment 1)
- Notice was put on the reader board at Twin Pines Park
- Notice was put on the City's website
- A newspaper ad in the Examiner to appear on July 18<sup>th</sup> (Attachment 6)
- NBS responded to comments and questions by property owners
- Posting of agenda

### **Recommendation**

#### 1) Implementing Ordinances & Resolution

Adopt ordinance, urgency ordinance and resolution to approve proposed sewer rate fees for fiscal 2008 and placement in the San Mateo County property tax roll, so long as there is no majority protest from affected persons.

#### 2) Recommended Process

To facilitate the protest hearing, staff recommends the following actions be taken:

- Step 1 Open for Public Comment on Proposed Sewer Rates
- Step 2 Council hears all Public Comment. All protests must be submitted prior to close of Public Comment.
- Step 3 Council Closes Public Comment.
- Step 4 Notice by NBS to announce result of Protest Hearing.
- Step 5 Council based on result and discussion to approve Sewer Rates.
- Step 6 Make motion to adopt FY 2008 Sewer rates. As proposed or determined by Council see the attached Urgency Ordinance (Attachment 3). Entertain a second to that motion.
- Step 7 Make motion and take vote on Urgency Ordinance.
- Step 8 Make motion to adopt FY 2008 Sewer rates. As proposed or as determined by Council see the attached Non-Urgency Ordinance (Attachment 4). Entertain a second to that motion.
- Step 9 Make motion and take vote on Non-Urgency Ordinance.
- Step 10 Open for Public Comment on charges submitted to County for placement on property tax roll.
- Step 11 Council hears all Public Comment.
- Step 12 Council Closes Public Comment.
- Step 13 Make motion to approve charges be submitted to County for placement on property tax roll see Resolution

- Step 14 (Attachment 5) Entertain a second to that motion.  
Make motion and take vote on resolution.

3) Other Direction

City Council should direct staff to return with a list of capital projects which could be deferred to accommodate the revenue reduction from the lower measurement period flows and rate implications from lower approved rates, if so adopted.

Alternatives

1. Do not adopt rate increase ordinances.
2. Adopt the ordinances with a smaller increase than was proposed.
3. Adopt ordinances at the current rate but the new minimums at the new rates.
4. Adopt ordinances at new rate schedule and cap them at the prior year rates.
5. Do not adopt resolution, in which case the City will have to collect its sewer charges by mailed bills.
6. With direction, refer to staff for further consideration.

Should City Council take no action to increase or set rates, the existing rates remain in effect. However, since the existing rates were not approved pursuant to Proposition 218, they could be subject to legal challenge unless and until they are approved after the required protest notice and hearing. Therefore, legal counsel strongly suggest that should the increase not be authorized, the City Council should take action to adopt either (i) the existing rates, but with the new minimums to the extent those minimums are lower than current or (ii) the new rates, but with the amount due capped at what would have been due under the old rates. It is important to point out all of these actions require the four-fifths vote of Council.

With regard to the urgency ordinance, should City Council elect not to adopt the rates by this method, there is the potential risk the San Mateo County Controller's Office will not accept the Schedule of Sewer Charges as it has not been formally adopted by the July 31<sup>st</sup> deadline.

**Attachments**

1. Mailed Notice
2. Report of HF&H Consultants
3. Urgency Ordinance
4. Ordinance
5. Resolution
6. Public Notice Published in the San Francisco Examiner and City Website
7. Staff Report on June 26<sup>th</sup> – Discussion and Direction on the 2007 Sewer Rehabilitation Master Plan and Storm Drain Master Plan

Respectfully submitted,

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Thomas Fil  
Finance Director

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Jack Crist  
City Manager

**Staff Contact:**

Thomas Fil, Finance Director  
(650) 595-7435  
tfil@belmont.gov

ORDINANCE NO. \_\_\_\_\_.

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
BELMONT REVISING AND INCREASING THE CITY'S  
SEWER CHARGES AND SETTING FORTH THE URGENCY  
THEREFOR.

WHEREAS, Section 21.93 of the Belmont Municipal Code and Section 5471 of the California Health & Safety Code permit the City Council of the City of Belmont to set the City's sewer charges; and

WHEREAS, on July 24, 2007, the City Council held a full and fair public hearing, properly noticed as required by law, at which all persons interested, were given an opportunity to provide oral and written testimony with respect to a proposed revision and increase of the City's sewer charges; and

WHEREAS, the City Council desires to revise and increase the City's sewer charges.

The City Council of the City of Belmont does ordain as follows:

**SECTION 1:** The City Council hereby establishes the schedule set forth in Exhibit A to this Ordinance, which is incorporated herein by reference as the City's schedule of sewer charges.

**SECTION 2:** The City Council hereby finds and determines that:

- A. The City has complied with each of the requirements of Section 6 of Article XIID of the California Constitution with respect to the actions taken by this Ordinance.
- B. The rates established by this Ordinance do not exceed the amounts permissible under Article XIID for a fee for sewer service, and the sewer service charge is not a tax.
- C. A majority protest, as defined by Section 6(b) of Article XIID of the California Constitution does not exist with respect to the reestablishment and increase of the sewer service charge.

**SECTION 3:** The City Council hereby declares that it would have passed this Ordinance word by word, sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that any provisions of this Ordinance are severable and, if for any reason any word, sentence, paragraph or section of this Ordinance shall be held invalid, such decision shall not affect the validity of the remaining parts of this Ordinance.

**SECTION 4:** Pursuant to Section 36937 of the California Government Code, this Ordinance shall take effect immediately because its passage is required for the immediate preservation of the public peace, health and safety. The facts constituting this urgency are that: (i) the revenues generated by the charges set forth herein are needed to pay the usual and current expenses of the City's sewer enterprise and to ensure the provision of sewer services, (ii) in order to ensure that the ratepayers of the City's sewer enterprise pay the full cost of providing services to such customers, it is necessary that this ordinance be effective immediately, and (iii) in order to ensure proper calculation of the sewer rate revision (and avoid potentially setting a rate that either would not generate sufficient revenues or would result in an overcharge to ratepayers), the City was unable to adopt these charges at some earlier meeting.

**SECTION 5: Severability.**

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Belmont hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, phrase or portion may be declared invalid or unconstitutional.

**SECTION 6:** Pursuant to Section 36937 of the Government Code of the State of California, this Ordinance shall take effect and be in full force and effect thirty (30) days after its final passage.

**SECTION 7:** The City Clerk shall cause this Ordinance to be published and posted in accordance with the requirements of Section 36933 of the Government Code of the State of California.

Introduced this \_\_\_\_ day of \_\_\_\_\_, 2007.

\* \* \* \* \*

PASSED AND ADOPTED as an Ordinance of the City of Belmont at a regular meeting thereof held on the \_\_\_\_ day of \_\_\_\_\_, 2007.

AYES, COUNCILMEMBERS: \_\_\_\_\_

NOES, COUNCILMEMBERS: \_\_\_\_\_

ABSENT, COUNCILMEMBERS: \_\_\_\_\_

ABSTAIN, COUNCILMEMBERS: \_\_\_\_\_

\_\_\_\_\_  
Mayor of the City of Belmont

ATTEST:

\_\_\_\_\_  
Clerk of the City of Belmont

## EXHIBIT A

### SEWER CHARGE SCHEDULE

Customer Class	Rate Per HCF	Minimum Annual Charge
<u>Residential</u>		
Single Family Dwelling	\$5.60	\$248.64
Duplex	\$5.60	\$248.64
Multiple Family	\$5.60	\$248.64
Apartments	\$5.60	\$248.64
<u>Retail/Commercial</u>		
Motels/Hotels	\$5.60	\$248.64
Commercial	\$5.60	\$248.64
Office Buildings	\$5.60	\$248.64
Food Markets	\$5.60	\$248.64
<u>Industrial</u>		
Industrial	\$5.60	\$248.64
<u>Institutions/Public</u>		
Government Institutions	\$5.60	\$248.64
Schools	\$5.60	\$248.64
<u>High Strength Uses</u>		
Restaurants	\$9.51	\$2,989.94
Supermarkets (w/ grinders)	\$9.51	\$7,800.10

Notes:

1. The standby charge imposed pursuant to Ordinance No. 907 for non-metered parcels remains at \$20.45 per month (\$245.40 annual) and is unaffected by this Ordinance.
2. The "Restaurant" charge shall apply only where there is food preparation on premises.

ORDINANCE NO. \_\_\_\_\_.

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
BELMONT REVISING AND INCREASING THE CITY'S  
SEWER CHARGES.

WHEREAS, Section 21.93 of the Belmont Municipal Code and Section 5471 of the California Health & Safety Code permit the City Council of the City of Belmont to set the City's sewer charges; and

WHEREAS, on July 24, 2007, the City Council held a full and fair public hearing, properly noticed as required by law, at which all persons interested, were given an opportunity to provide oral and written testimony with respect to a proposed revision and increase of the City's sewer charges; and

WHEREAS, the City Council desires to revise and increase the City's sewer charges.

The City Council of the City of Belmont does ordain as follows:

**SECTION 1:** The City Council hereby establishes the schedule set forth in Exhibit A to this Ordinance, which is incorporated herein by reference as the City's schedule of sewer charges.

**SECTION 2:** The City Council hereby finds and determines that:

- D. The City has complied with each of the requirements of Section 6 of Article XIID of the California Constitution with respect to the actions taken by this Ordinance.
- E. The rates established by this Ordinance do not exceed the amounts permissible under Article XIID for a fee for sewer service, and the sewer service charge is not a tax.
- F. A majority protest, as defined by Section 6(b) of Article XIID of the California Constitution does not exist with respect to the reestablishment and increase of the sewer service charge.

**SECTION 3:** The City Council hereby declares that it would have passed this Ordinance word by word, sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that any provisions of this Ordinance are severable and, if for any reason any word, sentence, paragraph or section of this Ordinance shall be held invalid, such decision shall not affect the validity of the remaining parts of this Ordinance.

**SECTION 4:** Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Belmont hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, phrase or portion may be declared invalid or unconstitutional.

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**SECTION 6:** The City Clerk shall cause this Ordinance to be published and posted in accordance with the requirements of Section 36933 of the Government Code of the State of California.

Introduced this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\* \* \* \* \*

PASSED AND ADOPTED as an Ordinance of the City of Belmont at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

AYES, COUNCILMEMBERS: \_\_\_\_\_

NOES, COUNCILMEMBERS: \_\_\_\_\_

ABSENT, COUNCILMEMBERS: \_\_\_\_\_

ABSTAIN, COUNCILMEMBERS: \_\_\_\_\_

\_\_\_\_\_  
Mayor of the City of Belmont

ATTEST:

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Clerk of the City of Belmont

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Notes:

3. The standby charge imposed pursuant to Ordinance No. 907 for non-metered parcels remains at \$20.45 per month (\$245.40 annual) and is unaffected by this Ordinance.
4. The "Restaurant" charge shall apply only where there is food preparation on premises.

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT  
CONFIRMING AND APPROVING THE REPORT OF SEWER CHARGES FOR  
FISCAL YEAR 2007-08 AND DIRECTING THE FILING OF CHARGES FOR  
COLLECTION BY THE COUNTY AUDITOR**

**WHEREAS**, pursuant to Section 21.70 of the Belmont Municipal Code and Section 5473 of the California Health & Safety Code, the City has received a report of sewer charges for Fiscal Year 2007-08, computed in conformity with the City's schedule of Sewer Charges (which Report has been on file in the Office of the City Clerk and available for public inspection and is incorporated herein by reference); and,

**WHEREAS**, on July 24, 2007, the City Council held a full and fair public hearing with respect to the Report, and at such hearing the City Council heard and considered all protests and objections to the Report; and,

**WHEREAS**, the City Council desires to approve the Report and to submit the charges described therein to the San Mateo County Auditor for collection on the 2007-08 tax roll.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Belmont hereby overrules all protests and objections to the Report and confirms and approves the Report as submitted, and,

**BE IT FURTHER RESOLVED** that the City Clerk is hereby instructed and authorized to transmit the Report to the County Auditor and to file the necessary documents with the Auditor to insure that the said fees will be included on the County Tax Roll for Tax Year 2007-08.

\* \* \* \* \*

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of Belmont at a regular meeting thereof held on July 24, 2007 by the following vote:

AYES, COUNCILMEMBERS: \_\_\_\_\_

NOES, COUNCILMEMBERS: \_\_\_\_\_

ABSTAIN, COUNCILMEMBERS: \_\_\_\_\_

ABSENT, COUNCILMEMBERS: \_\_\_\_\_

\_\_\_\_\_  
CLERK of the City of Belmont

APPROVED:

\_\_\_\_\_  
MAYOR of the City of Belmont