



CITY OF KIRKLAND

Department of Public Works

123 Fifth Avenue, Kirkland, WA 98033 425.587.3800

www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Daryl Grigsby, Public Works Director
Ray Steiger, P.E., Capital Projects Manager

Date: January 9, 2006

Subject: SEWER MAIN EXTENSION PROGRAM – CLARIFYING ORDINANCE

RECOMMENDATION:

It is recommended that the City Council adopt the attached Ordinance clarifying the City's intent to require repayment of the sewer main extension charge upon refinancing of the property in certain cases, and to provide notice to owners of benefited properties of the applicable lien, connection and extension charge payment requirements.

BACKGROUND DISCUSSION:

The sewer main extension program was adopted in 1998 giving the City the authority to extend sewer lines to those areas of Kirkland, primarily North and South Rose Hill, where septic systems are aged (30-40 years old) and beginning to fail. At that time there were an estimated 1,500 properties that were served by septic systems and did not have economical means to connect to the sanitary sewer system. One of the primary benefits of the program is to safeguard the environment which could be detrimentally impacted by poorly maintained or failed septic systems. The program is unique in that beneficiaries of the sewer line that do not connect upon construction of the new sewer lines, can delay payment of the extension charge for up to ten years after the time of construction with interest accruing during the delay period. Upon connection to the sewer line, the property owner can enter into a low interest loan agreement with the City to pay back the extension charge over ten years. Upon sale of the property, the entire extension charge is due and owing.

The first three "rounds" of the program were constructed in 1999, 2001 and 2003; the fourth (2005) round is now under construction. In the first four rounds, approximately 320 properties were provided with access to sewer lines, and to date, over 13,000 feet of sewer lines have been constructed under the program. The total cost of the 1999, 2001 and 2003 programs was \$2,719,000, and individual assessments have ranged from \$8,000 to \$12,000. To date, approximately \$1,716,000 (63%) has been reimbursed to the utility: 140 property owners have paid in full, 64 property owners have active ten-year loan agreements with the City, and 33 are "inactive" accounts. An inactive account is one that has had no action on the part of the property owner to pay to connect to the sewer line; at ten years after construction of the sewer line, the City requires that payment be made. All unpaid properties have information on their title reports indicating the presence of these assessments.

Most likely due to a strong housing market and low interest rates in last few years, several properties were sold and many were refinanced (approximately 35% of all full payments have been upon refinancing). Through these processes, more assessments were paid in full than had been originally expected. If interest rates continue to remain low, it is anticipated there will be continued early payments of assessments. One issue that has been raised recently, however, is that the sewer extension program does not specifically identify refinancing as a “trigger” for payoff of extension charges; sale of property is the only trigger for full payoff.

During the July, 2005 CIP study session, staff raised this issue and confirmed with City Council that the original intent of the program was to require payoff of extension charges upon sale *and* refinancing of properties. This issue was brought back to the Council at the January 3, 2006 meeting, and at that meeting, Council expressed concerns about requiring payoff at refinancing. As such, staff has reviewed the program objectives, its financial status, looked at the concerns raised by Council and has revised the language of the ordinance. As amended, if a property owner “requests that the City waive its right to collect”, or in other words, if the City is requested to subordinate its lien, full payment will not be required upon refinancing. Working with the City Attorney’s office, staff has modified the language of KMC 15.38.030(d)(4) to clarify this intent.

The language modifications as proposed do not change current KMC requirements for property owners to connect to the City sewer system if they are within 330 feet of the sewer main and go through a significant remodel or addition process. In the case where a property owner is currently served by a septic system and proposes to perform improvements to their property, during the application process they will be required to contact the King County Department of Health, who regulates property on septic system. If the County determines that new “loading” is being introduced into the system, typically the addition of bedrooms is their threshold, and the property is within the established limits (330’ in the KMC), they will be required to hook up to the sewer system. This requirement applies independent of how the sewermain was financed (i.e. developer extension, City, etc.). The property owner in this situation, if within a sewer extension program area, would be required to enter a contract for repayment with the City – they are not required to pay the assessment in full, but may elect to repay the assessment over up to a ten year period after connection.

Recently real estate agents and others have questioned the authority of the City to place a lien on property for the unpaid extension charge. The City has authority to place such a lien on property pursuant to RCW 35.67.360. To avoid questions regarding such lien authority in the future, however, staff recommends that KMC 15.38.030(d) be amended to cite this statute. Further, staff recommends that the property owners who benefit from the sewer line, but elect not to connect immediately to the sewer line, be required to acknowledge in writing the existence of such lien, as well as the requirements for paying the extension charge in the future, so that there is no misunderstanding when the City requests payment of the extension charge in the future. The written acknowledgement would be recorded with the King County office of records and elections, so that real estate agents and others who deal with the property also are placed on notice of such requirements and lien. Again, working with the City Attorney’s office and special legal counsel, staff has modified the language of KMC 15.38.010 and 15.38.030(d) to accomplish this notification.

Attachment

Cc: Robin Jenkinson, City Attorney
Bill Evans, Assistant City Attorney
Marilynne Beard, Director of Finance and Administration
Eileen Sanders, Public Works ASA IV

ORDINANCE 4032

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO SEWER MAIN EXTENSIONS, AND AMENDING SECTIONS 15.38.010 AND 15.38.030(d) OF THE KIRKLAND MUNICIPAL CODE.

WHEREAS, the City Council desires to clarify the process for delaying connection to a City constructed sewer main extension, and to provide for payment of the extension charge upon refinancing of property;

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. Section 15.38.010 of the Kirkland Municipal Code is amended to read as follows:

The owner of an existing single-family or multifamily dwelling within the Kirkland sewer system service area, having a failed or failing septic tank system, may request to connect to the public sewer system, even though such property may be located more than three hundred thirty feet from an existing sewer main (requiring construction of a sewer main extension in order to be connected). Whenever construction of a sewer main extension is required to make such connection possible, the city shall plan, design and construct such extension within a reasonable time pursuant to the criteria for sewer main extension projects and construction priorities authorized by Section 15.38.040 of this chapter. Upon completion of construction and acceptance of the sewer main extension, the city shall:

- (a) ~~give~~ Give notice to the requesting property owner to connect that the property shall, within thirty days of receipt of the notice, connect to the public sewer system within thirty days of receipt of the notice; and
- (b) Give notice to .—Other other property owners benefited by the extension construction ~~to may also~~ connect the property to the public sewer system within thirty days of receipt of the notice; provided, that in lieu of connection, such property owners may delay connection of the property and payment of the extension charge pursuant to Section 15.38.030 by executing a written request and authorization, in a form approved by the director of public works in accordance with Section 15.38.040, that requests delay of connection and payment and that acknowledges filing of the document described in Section 15.38.040(c) and creation of the lien of Section 15.38.030(d)(5). The department of public

works shall record the written request with the King County office of records and elections.

Section 2. Section 15.38.030(d) of the Kirkland Municipal Code is amended to read as follows:

- (d) The extension charge shall be payable to the city as follows:
- (1) For a requesting property owner and for other property owners who do not execute a written request and authorization to delay payment of the extension charge. Upon receipt of the thirty-day notice to connect given by the city to a requesting property owner required by pursuant to Section 15.38.010 of this chapter, or as to other property owners upon connection of the lot or parcel to the public sewer; or
 - (2) For other property owners who execute a written request and authorization to delay payment of the extension charge pursuant to Section 15.38.010, upon connection of the property to the public sewer system pursuant to Section 15.28.010, or As to those lots or parcels which have a properly functioning septic tank system and are not required by Section 15.28.010 of this code to connect to public the public sewer system or vacant parcels of land, ten years following acceptance of the construction of the extension, whichever occurs first; or
 - (3) The city may enter into contracts with the owners of existing single-family residences, multifamily residences and businesses that meet criteria specified by the department of public works for payment of extension charges over ten successive years instead of as a lump sum. In addition to the installment payment on the extension charge principal, each time payment shall include an administrative handling fee to be established by the finance director, together with interest on the unpaid balance of the extension charge principal at a rate to be set quarterly on the first working day of the quarter by the finance director, which shall not exceed ninety-five percent of the market yield to maturity of the most recently issued U.S. Treasury note. The interest rate and administrative handling fee to be set quarterly shall remain in effect for said contracts for the term of the contract. The interest rate shall be set quarterly for time payment contracts entered into during that current year. The contract shall provide that the first annual payment shall be payable as of July 1st following connection with

the remaining payments due on July 1st of each successive year.

(4) Notwithstanding the foregoing, the entire amount of the extension charge or any remaining unpaid balance thereof shall be payable in full at the time of closing upon sale of the property, or upon refinancing of the property unless the owner requests that the City waive its right to collect this charge out of the refinance proceeds, whether or not the property has been connected to the sewer extension.

(5) Pursuant to RCW 35.67.360, ~~The~~the extension charge or any unpaid balance of the time payment contract shall be secured by a lien against the connecting property. The lien shall attach as of the date of recording of the document required to be recorded by the department of public works by subsection (c) of this section and continue thereafter until the extension charge or any unpaid balance of the time payment contract has been fully paid.

Section 3. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2006.

Signed in authentication thereof this ____ day of _____, 2006.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney