ORDINANCE 2021-04-014

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON REGARDING UTILITY BILLING; AMENDING BELLINGHAM MUNICIPAL CODE CHAPTERS 2.56, 15.04 AND 15.16

WHEREAS, the City of Bellingham owns, operates and maintains public water, sewer and surface and stormwater utilities pursuant to state law and Title 15 of the Bellingham Municipal Code; and

WHEREAS, the City desires to amend Bellingham Municipal Code Chapters 2.56, 15.04 and 15.16 to consolidate and clarify the procedures, requirements and limitations for utility billing adjustments and to update terminology; and

WHEREAS, to promote fairness and administrative efficiency, this Ordinance imposes a one-year limitation's period for backcharges and refunds issued to correct administrative billing errors.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BELLINGHAM DOES HEREBY ORDAIN THAT:

Section 1.

Bellingham Municipal Code Chapter 2.56 – Hearing Examiner – is amended as follows. Changes are shown in strikethrough/underline format. Only those sections that are being amended are set forth below; unaltered sections are not shown.

2.56.050

A. [UNCHANGED]

B. The decision of the hearing examiner on the following matters which shall be within the jurisdiction of the hearing examiner, notwithstanding any other provision in the Bellingham Municipal Code, shall be final, subject only to judicial challenge: . . .

8. Appeals from the decisions of the utility hearings board relating to water, ~~and~~ sewer and surface and stormwater services as provided by BMC 15.04.120. . . .

Section 2.

Bellingham Municipal Code Chapter 15.04 – Water and Sewer Administration and Rates – is amended as follows. Changes are shown in strikethrough/underline format. Only those sections that are being amended are set forth below; unaltered sections are not shown.

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Chapter 15.04
~~WATER AND SEWER ADMINISTRATION AND RATES~~ ADMINISTRATIVE PROVISIONS FOR WATER, SEWER AND SURFACE AND STORMWATER UTILITY BILLING

15.04.020 Responsibility for administration and enforcement.

The director~~s~~ of finance and public works are ~~is designated as the city's officer~~ responsible for the administration and enforcement of this title, as provided herein.

15.04.095 Finance director's authority to adjust water, ~~and~~ sewer and surface and stormwater utility bills.

~~A.~~ The finance director or the finance director's designee is authorized to adjust water, ~~and/or~~ sewer and surface and stormwater utility bills as follows: ~~for metered service customers in accordance with the following procedure:~~

A. Breaks or Leaks in Water Service Line. ~~1.~~ When the customer has suffered a ~~service~~ break or leak in the portion of the water service line between the water meter and the external entrance to the structure being served, ~~premises or the first branch off of the service line, whichever occurs first~~ the customer may apply to the finance director for an adjustment of his or her water and sewer bill, subject to the following requirements and limitations: ~~.~~

12. No adjustment for water bills shall be allowed for any leaks or service breaks that occur after the external entrance to the premises. This shall include, by way of example and not limitation, leaks in toilets, faucets, water heaters, and spigots. ~~An adjustment for the sewer bill may be made after the external entrance to the premises when it can be demonstrated that the excess water consumption did not enter the sanitary sewer system.~~ No adjustment for water bills shall be allowed for any leaks or breaks in a metered irrigation line.

23. No customer may obtain more than one leak adjustment for the same metered water account in any ten-year period. Sewer billings may be adjusted for additional leaks in the water service line provided that the owner demonstrates to the finance director's reasonable satisfaction that the excess water consumption did not enter the sewer system. ~~Each metered water service shall only be allowed one administrative adjustment during the life of that metered service.~~

34. The break or leak in the service line and its repair must be documented in a manner that is acceptable to the finance director ~~or the finance director's designee~~. Documentation shall include a licensed plumber's itemized invoice, repair order, city of Bellingham public works department inspection documentation or other

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documentation as necessary to support the adjustment request and to document any repairs.

45. A request for an adjustment shall be on form(s) provided by the finance department.

56. The finance director~~'s designee~~ shall determine the amount of the adjustment in his or her discretion. The adjustment amount shall not exceed 50 percent of the amount determined to be the excess usage charge for water and 100 percent of the excess usage charge for sewer; provided, that the excess water consumption did not enter the sewer system. No adjustment for sewer charges shall be allowed if the excess consumption entered the sewer. Historical records may be used to assist in the determination of the adjustment amount.

6. No adjustment shall be made for billings made more than one year prior to the date of the customer's application for adjustment, or the date the city discovered the leak or break, whichever occurred first. No more than two billing cycles may be adjusted per leak adjustment.

B. Utility Billing Errors. If, upon receipt of an application for an adjustment, or during an audit or examination of the customer's account, the finance director determines that the city has overbilled or underbilled a customer for water, sewer or surface and stormwater due to city error, then the finance director shall notify the customer in writing and cause a backcharge, refund or credit to be issued to the customer to correct the error. No backcharge, refund or credit shall be issued to correct billings for a billing cycle that ended more than one year prior to the date that the city discovered the error or received the customer's application for a credit or refund, whichever occurred first. Notwithstanding the foregoing, backcharges to correct under billings resulting from customer fraud shall apply retroactively to the maximum extent permitted by law.

C~~B~~. Appeals. Any determination made under this section may be appealed in accordance with the procedures in BMC 15.04.120.

BMC 15.04.120 Appeals.

A. Any person objecting to any water, ~~or~~ sewer or surface and stormwater charge or fee imposed under this Title 15~~chapter~~ may request a hearing before the city's utility hearing board (the "board") by filing a written request with the finance director within ten~~five~~ (10) business days of notice of the charge, or such later date provided herein. The city shall make forms available for that purpose. If the objection relates to a leak or break in a water service line or utility billing error, the objecting party shall first apply to the finance director for an adjustment pursuant to BMC 15.04.095. The finance director's written decision under BMC 15.04.095 may be appealed to the utility hearing board within ten (10) business days of the date of the finance director's decision. ~~Any persons objecting~~

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~~to surface and stormwater utility charges or fees shall use the procedure outlined in BMC 15.16.060.~~

B. Services shall not be shut off while a hearing is pending. However, the finance director may require that payment of any outstanding balance, or portion thereof, be made pending the outcome of the hearing.

C. The members of the hearing board shall be the finance director, the director of public works, and the assistant directors of public works, or their designees. The city attorney or a representative of the city attorney's office shall serve as the board's legal advisor.

D. At the hearing, the board will consider the objections made by the applicant and will correct, revise, raise, lower, change, or modify the charge or fee, or set aside the charge or fee, as deemed appropriate by the board and as allowed by law~~.~~; provided, however, that the board shall not cause a backcharge, refund or credit to be issued to correct billings for a billing cycle that ended more than one year prior to the date that the city discovered the error or received the customer's application for the adjustment, whichever occurred first.

E. Decisions of the board may be appealed to the city's hearing examiner by filing a written request with the office of the hearing examiner within ten~~five~~ (10) business days of the date of the board's written decision.

Section 3.

Bellingham Municipal Code Chapter 15.16 – Surface and Stormwater Utility – is amended as follows. Changes are shown in strikethrough/underline format. Only those sections that are being amended are set forth below; unaltered sections are not shown.

15.16.010 Definitions.

. . .

"Impervious surface" means a non-vegetated surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development or causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam or other surfaces that similarly impede the natural infiltration of stormwater. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces for the purposes of determining whether the thresholds for application of minimum requirements are exceeded. Open, uncovered retention/detention facilities shall be considered impervious surfaces for purposes of runoff modeling. Impervious surfaces that meet the criteria for full dispersion or that are fully infiltrated in

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compliance with the Ecology Manual shall be excluded in the determination of thresholds for compliance with this chapter.

"Large footprint residential parcel" means a single-family residential parcel with a building footprint of greater than 3,000 square feet. Large footprint residential parcels are billed based on actual hard surface~~impervious~~ area.

. . .

"Predeveloped Condition." For areas that drain directly or indirectly to a river or stream, "predeveloped conditions" shall mean the native vegetation and soils that existed at a site prior to the influence of Euro-American settlement. The predeveloped condition shall be assumed to be a forested land cover unless reasonable, historic information is provided that indicates the site was prairie prior to settlement. For areas that only drain directly or indirectly to marine or estuarine waters, "predeveloped conditions" shall mean the site conditions as of September 1, 1995.

. . .

15.16.040 Exemption, credits and adjustments – Authorized.

The following exemption, credits and adjustments are authorized:

A. Partial Exemption from System Development Charge for Low-Income Housing Developments. Upon application by the owner, a partial exemption of not more than 80 percent of the system development charge imposed in this chapter may be granted to a low-income housing development, as defined below:

1. The director of planning and community development, after consultation with the director of public works, may grant an exemption to a low-income housing project listed in an annual consolidated action plan approved by city council.

2. The city council may grant an exemption to a low-income housing project not included in an annual consolidated action plan.

3. The decision to grant, partially grant or deny an exemption shall be based on the public benefit of the specific project, the extent to which the applicant has sought other funding sources, the financial hardship to the project of paying the system development charge, the impacts of the project on public facilities and services, and the consistency of the project with adopted city plans and policies relating to low-income housing.

4. An exemption granted under this subsection must be conditioned upon requiring the developer to record a covenant approved by the director of planning and community development that prohibits using the property for any purpose other than for low-income housing. At a minimum, the covenant must address price restrictions and household income limits for the low-income housing, and require

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that, if the property is converted to a use other than for low-income housing as defined in the covenant, the property owner must pay the applicable storm and surface water utility system development charges in effect at the time of any conversion. Covenants required by this subsection must be recorded with the Whatcom County auditor.

5. "Low-income housing" means housing with a monthly housing expense that is no greater than 30 percent of 80 percent of the median family income adjusted for family size, for Bellingham, as reported by the United States Department of Housing and Urban Development.

B. Reduced Rates for Low-Income Senior and Disabled Citizens. The surface and storm water utility service rates imposed by this chapter may be reduced for qualified low-income senior or disabled persons pursuant to BMC 15.04.070.

C. Credits for Qualified Properties with Special Discharge Limits. Properties or portions of properties that meet one of the listed criteria below to the city's satisfaction shall be eligible for a reduction of 70 percent of the monthly fee (prior to application of any reduction or credit) charged under BMC 15.16.030 as currently enacted or hereafter amended.

1. Discharge of storm water is directly to marine waters or waters under tidal influence with no connection to city systems; or

2. Discharge of storm water is to an infiltration facility meeting the requirements of the Department of Ecology for storm water treatment and ground water protection. The facility shall be capable of fully infiltrating the 100-year developed storm within the subject property. The design, performance and construction shall be certified by a licensed and qualified engineer with the state of Washington.

D. Public Education Credits. Publicly funded primary and secondary educational institutions that provide a curriculum in environmental science shall be eligible for a reduction of the monthly fee charged under BMC 15.16.030 as currently enacted or hereafter amended. The amount of the credit shall be established by contract between the educational institution(s) and the city; but in no case shall said credit exceed 70 percent for the calendar year beginning January 1, 2021, 56 percent for the calendar year beginning January 1, 2022, 42 percent for the calendar year beginning January 1, 2023, 28 percent for the calendar year beginning January 1, 2024, 14 percent for the calendar year beginning January 1, 2025, of the amount of the monthly fee (prior to application of any reduction or credit) charged under BMC 15.16.030 as currently enacted or hereafter amended. The public education credit is not available after January 1, 2026. The credit shall be calculated and applied after application of any other credit or adjustment from this section. The curriculum requirements shall be set forth in the contract and shall include, at a minimum, information on the cause and effects of storm water pollution.

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E. Credit for Permissive Rainwater Harvesting Systems. Any new or remodeled commercial building that utilizes a permissive rainwater harvesting system to offset potable water use shall be eligible for a 10 percent reduction in the monthly fee for the roof area used for rainwater harvesting. Areas other than the roof area are subject to the regular rate. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building.

F. Infill Incentive Program Reduction. The ~~storm and surface water~~surface and stormwater utility system development charge imposed by this chapter may be reduced for qualifying projects in targeted urban villages pursuant to BMC 20.37.030.

G. Hard Surface Area Adjustment. Property owners may apply to the city for a hard-surface-area adjustment based on survey data or other reliable information demonstrating to the finance director's reasonable satisfaction that an adjustment is warranted.

15.16.060~~050~~ Deposit and use of utility charges.

All charges received shall be deposited into the surface and stormwater utility fund created in Chapter 4.39 BMC, and shall be used for the purposes specified therein.

15.16.050~~060~~ Exemption, credits and adjustments – Application and Decision~~Impervious surface area or rate adjustments.~~

A. Applications for the system development charge exemption and adjustment authorized in BMC 15.16.040(A) and (F) shall be made to the director of planning and community development, as provided therein. Applications for all other credits and adjustments provided in BMC 15.16.040 shall be in writing to the finance director or the finance director's designee and shall be determined in accordance with this section. ~~Any person receiving a billing statement for storm and surface water service and after making a timely payment thereof, may apply to the public works department for an impervious surface area adjustment or storm and surface water rate adjustment. Applications for impervious surface area adjustments and/or storm and surface water rate adjustments shall be made to the director of public works within 45 days of the billing statement being mailed by the city.~~

B. The burden of proof shall be on the applicant to show that the ~~impervious surface area and/or storm and surface water rate~~ credit or adjustment sought should be granted.

C. No credit or adjustment shall be applied to billings made more than thirty calendar days prior to the date of the owner's application for such credit or adjustment. ~~To be effective for the current billing cycle, applications for impervious surface area and/or storm and surface water rate adjustment must be made within 15 calendar days of the billing date. Applications received after 15 calendar days of the billing date shall only be effective for subsequent billing cycles.~~

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D. The finance director ~~of public works, or authorized designee,~~ shall make a determination on the application ~~to adjust the impervious surface area and/or storm and surface water rate~~ within 30 calendar days of receiving the application. The finance director ~~of public works~~ may consider, in the director's discretion, any information submitted by the applicant or the city together with any other relevant information. The finance director's review may include consultation with other relevant city departments. The finance director ~~of public works~~ shall notify the applicant in writing of the director's decision.

E. If the finance director ~~of public works, or authorized designee,~~ grants an adjustment, which reduces the charge for the current billing cycle, the applicant's account shall be credited the amount overpaid. If the director, or authorized designee, determines that an adjustment should be made which increases the charge due, the charge increase will be effective on the next billing cycle.

F. The director's ~~of public works'~~ determination shall be final unless the applicant appeals that decision to the city's utility hearing board~~hearing examiner~~ pursuant to BMC 15.04.120 within ten (10) business ~~30 calendar~~ days of the date the director's ~~of public works'~~ written determination ~~was mailed to the applicant~~.

G. An applicant shall only be allowed to apply for an adjustment to the hard~~impervious~~ surface area of a parcel once unless the applicant can demonstrate to the director ~~of public works~~ that the hard~~impervious~~ surface area on that property has decreased.

H. Nothing herein shall be construed to preclude the city from independently examining any surface and stormwater account. If, upon independent examination, the city determines that a property has been underbilled due to the incorrect application of a credit or adjustment described in BMC 15.16.040, the finance director shall correct the account on a prospective basis only; no backcharge shall issue.

I. This section does not apply to adjustments for utility billing errors, except as provided herein. Adjustments for all other utility billing errors are governed by Chapter 15.04 of the Bellingham Municipal Code.

~~Exception: Any application for adjustment within the calendar year 2001, that is found to be valid under the terms above, shall be eligible for reimbursement of any overcharge to March 1, 2001.~~

PASSED by City Council this 26th day of April, 2021.

Hannah Stone, Council President

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APPROVED by me this 7 day of May, 2021.

Seth Fleetwood, Mayor

ATTEST:

Andy Asbjornsen, Finance Director

APPROVED AS TO FORM:

Office of the City Attorney

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