

STAFF REPORT

DATE: January 16, 2024

TO: City Council

FROM: Stan Gryczko, Director - Public Works Utilities and Operations
Adrienne Heinig, Deputy Director

SUBJECT: Wastewater Utility Fee Proposition 218 Public Hearing and Introduction to Changes to Chapter 33 of City Municipal Code related to Wastewater Regulations and Utility Fees

Recommendation

1. Conduct the Public Hearing; and
2. Conduct final count of written protests, including any written protests submitted prior to the close of the public hearing, and determine if there is a majority protest; and
3. If no majority protest exists, introduce the Ordinance amending Chapter § 33.04.050 of the Municipal Code (Attachment 1) and find the ordinance amendment exempt from environmental review pursuant to CEQA Section 15378; and
4. Approve the Resolution (Attachment 2) establishing the rates published in the Proposition 218 Notice of Public Hearing with the first increase to be effective beginning February 1, 2024.

Fiscal Impact

The proposed adjustments to wastewater rates will continue to generate adequate revenue in the Wastewater Fund (531) to provide wastewater services to ratepayers for the next 5 years. Current wastewater rates yield revenues of approximately \$14 million annually, supporting operations and maintenance, the maintenance of an appropriate reserve, capital investments and existing debt service. The proposed rates would adjust rates and increase annual revenue to approximately \$17 million annually in 5 years. The anticipated revenue in Fiscal Year 2024/2025 would be just under \$15 million.

This action does not impact the City's general fund.

City Council Goals

Adoption of wastewater utility rates consistent with the fiscal requirements of the utility furthers the City Council Goals to Ensure Fiscal and Economic Stability, Fund, Maintain and Improve Infrastructure, and Foster Excellence in City Services.

Commission Action(s)

Recommendations for utility rate setting and structures that are able to sufficiently meet the financial needs of City utilities, as well as distribute the proportionate share of the operational, regulatory and capital improvement costs of the utility among ratepayers, is a core function of the City's Utilities Commission. Over a number of meetings in 2020 and 2021, the Utilities Commission reviewed the Wastewater Utility's financial needs, regulatory requirements and capital improvement needs, along with adjustments to the methodology of how the City charges for Wastewater Utility services, to ensure that the costs were thoroughly vetted and the methodology was a representative capture of the City's cost to provide Wastewater services. Ultimately, the Commission recommended Council establish a revised fee structure and methodology, as well as adjustments for customer classes for the City's Wastewater Utility fees.

Background

On August 29, 2023, the City Council:

1. Received Wastewater Fee Report and presentation from City staff and Bartle Wells Associates on the Wastewater Utility Cost of Service Study and development of rate structure recommendations; and
2. Directed staff to initiate the Proposition 218 process and take necessary steps including the preparation of Notices to be mailed noticing a public hearing to consider implementation of rate adjustments.

The proposed wastewater rates would result in adjustments to the wastewater rate structure, user classes, and would introduce a new user class for multi-bedroom-style housing with five or more beds per unit. These changes are outlined in the [staff report](#) (linked here) from the August Council meeting.

On December 1, 2023, the Proposition 218 Notice of Public Hearing was mailed to all wastewater utility customers. As of January 12, 2024, the City Clerk has received 15 unvalidated protests. Approximately 8,060 validated protests would need to be received to successfully protest the proposed fees.

Environmental Review

This activity modifies the City's Municipal Code to reflect updates in the nomenclature and methodology for charging customers for wastewater utility services. The California Environmental Quality Act ("CEQA") applies only to "projects" as defined by California Public Resources Code § 21065 and CEQA Guidelines § 15378(a). A project is an activity "which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect change in the environment." CEQA Guidelines § 15378(a). Under § 15061(b)(3) of the CEQA Guidelines (the "common sense exemption") where it can be seen with certainty that there is "no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." Since adjusting wastewater rates under Chapter 33 of the Municipal Code could not result in a direct or foreseeable physical change in the environment, it therefore falls under this exemption.

Further, this rate adjustment is a purely administrative, fiscal activity by the City Council. Government “fiscal activity” is categorically excluded from the definition of a “project” under the CEQA Guidelines, which stipulate that the definition of a project under CEQA does not include “government fiscal activities” that do not involve “commitment to any specific project which may result in a potentially significant physical impact on the environment.” CEQA Guidelines § 15378(b)(4). Therefore, the project is categorically exempt from CEQA.

Next Steps

Should City Council find that no majority protest exists, and introduces the ordinance amending Chapter § 33.04.050 of the Municipal Code, as well as approve the resolution regarding wastewater rate changes, customers should see the rate adjustments as soon as February 1, 2024.

Attachments

1. Introduction to Changes to Ordinance § 33.04.050 related to Wastewater Utility Fees
2. Changes to Ordinance § 33.04.050 related to Wastewater Utility Fees (redline version)
3. Resolution

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE TITLE OF CHAPTER 33, “SEWERS AND SEWAGE DISPOSAL,” AND ARTICLE 33.04.050 “SCHEDULE OF CHARGES” OF CHAPTER 33, “SEWERS AND SEWAGE DISPOSAL,” OF THE DAVIS MUNICIPAL CODE, RELATED TO WASTEWATER REGULATIONS AND UTILITY RATES, AND MAKING A DETERMINATION OF EXEMPTION UNDER CEQA PURSUANT TO SECTIONS 15061(b)(3), 15378(a) AND 15378(b)(4)

WHEREAS, the City of Davis, California (“City”) is a municipal corporation, duly organized under the constitution and laws of the State of California;

WHEREAS, on November 6, 1996, Proposition 218 was adopted adding Articles XIII C and XIII D to the California Constitution; and

WHEREAS, Article XIII D of the California Constitution imposes certain procedural and substantive requirements relating to property-related fees; and

WHEREAS, in 2020-2021 the City conducted and prepared a Wastewater Rate Study (“Study”) to determine the amount of the rates on various parcels of land (“Wastewater Rates”) that would, in compliance with Article XIII D of the Constitution, provide funding for certain capital improvements, operations and maintenance needs and National Pollutant Discharge Elimination System (“NPDES”) wastewater compliance needs (collectively, the “Services”); and

WHEREAS, the Study also recommended changes to the City’s Municipal Code Chapter 33 (“Sewers and Sewage Disposal”); and

WHEREAS, on December 15, 2021, the Utilities Commission held a public meeting reviewed the Rate Study and recommended that the City Council approve the Rate Study and on August 30, 2023, the City Council reviewed and approved the Rate Study; and

WHEREAS, this Council now desires to make amendments to Chapter 33 (“Sewers and Sewage Disposal”) of the City’s Municipal Code.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The title of Chapter 33 (“Sewers and Sewage Disposal”), of the City of Davis Municipal Code is hereby amended to read as follows:

“Chapter 33. Wastewater and Sewage Disposal”

SECTION 2. The title of Article 33.04 (“Charges for the Use of Sewers”) of Chapter 33 (“Sewers and Sewage Disposal”), of the City of Davis Municipal Code is hereby amended to read as follows:

“Article 33.04. Charges for the Wastewater Utility”

SECTION 3. Section 33.04.050 (“Schedule of Charges”) of Chapter 33 (“Sewers and Sewage Disposal”), of the City of Davis Municipal Code is hereby amended to read as follows:

“33.04.050 Charges and related regulations for wastewater utility services.

Charges and related regulations for wastewater utility services shall be established and may be amended from time to time, by resolution of the city council.

The base rate is the fixed component of the sewer rate, which includes a monthly base service charge (per account), and a monthly fixed service charge (per residential unit). Commercial customers do not pay the fixed service charge, but instead pay a higher volumetric charge, to better account for varying uses and demands on the sewer system. The variable charge is based on the average of the previous year’s water use for the months of November through February (winter water usage) measured in hundreds of cubic feet (ccf) and multiplied by the established variable rate

For commercial customers, if no previous use is available, the variable rate established for a similar commercial customer may be used. If more than one user class is supplied by one meter, the highest user class factor will be used to compute the total rate. For Industrial uses, the rate will be calculated via the rates established by City Council and/or on an individual basis.

- (a)(1) **Residential sanitary sewer monthly cap (ccf) if winter water use exceeds this maximum.** The cap shall be effective 10-1-2017 and shall remain in force until amended.

Customer Category	Monthly Cap (ccf)
Single-Family	24
Condo	19
Duplex	36
Triplex	56
Quadplex	76
5+ units	19 ccf/unit
Mobile Home Park	19 ccf/unit

- (a)(2) **Rates for premises outside the city.**

(1) The rates to be charged for city sanitary sewer furnished to individual premises outside the city shall be the same as those established for premises within the city.

(2) In those cases where, by special agreement with the county, service is provided to areas outside the city through systems within a county service area, the rates to be charged shall be the same as city customers or as per agreements. (Ord. 2403 § 1, 2013; Ord. 2508 § 1, 2017)”

SECTION 5. CEQA. The City Council finds that this Ordinance is exempt from the California Environmental Quality Act ("CEQA"). CEQA applies only to "projects" as defined by California Public Resources Code § 21065 and CEQA Guidelines § 15378(a). A project is an activity "which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect change in the environment." CEQA Guidelines § 15378(a). Under § 15061(b)(3) of the CEQA Guidelines (the "common sense exemption") where it can be seen with certainty that there is "no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." Since adjusting wastewater rates under Chapter 33 of the Municipal Code could not result in a direct or foreseeable physical change in the environment, it therefore falls under this exemption.

Further, this rate adjustment is a purely administrative, fiscal activity by the City Council. Government "fiscal activity" is categorically excluded from the definition of a "project" under the CEQA Guidelines, which stipulate that the definition of a project under CEQA does not include "government fiscal activities" that do not involve "commitment to any specific project which may result in a potentially significant physical impact on the environment." CEQA Guidelines § 15378(b)(4). Therefore, the project is categorically exempt from CEQA.

SECTION 6. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is 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 or any part thereof. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 7. Effective Date. This Ordinance shall be in full force and effect thirty (30) days from and after the date of its final passage and adoption.

SECTION 8. Certification. The City Clerk shall certify to the adoption of this Ordinance and shall post or publish this Ordinance as required by law.

INTRODUCED on the 16th day of January, 2024 and PASSED AND ADOPTED by the City Council of the City of Davis on this ____ day of _____ 2024 by the following vote:

AYES:

NOES:

Josh Chapman
Mayor

ATTEST:

Zoe S. Mirabile, CMC
City Clerk

Chapter 33 WASTEWATER SEWERS AND SEWAGE DISPOSAL
Article 33.04 CHARGES FOR THE WASTEWATER UTILITY USE OF SEWERS

33.04.050 Charges and related regulations for wastewater utility services.
Schedule of charges.

Charges and related regulations for wastewater utility services shall be established and may be amended from time to time, by resolution of the city council.

~~On and after October 1, 2017, the schedule of charges for sewer use shall be as follows:~~

The base rate is the fixed component of the sewer rate, which includes a monthly base service charge (per account), and a monthly fixed service charge (per residential unit). Commercial customers do not pay the fixed service charge, but instead pay a higher volumetric charge, to better account for varying uses and demands on the sewer system. The variable charge is based on the average of the previous year's water use for the months of November through February (winter water usage) measured in hundreds of cubic feet (ccf) and multiplied by the established variable rate below.

For commercial customers, if no previous use is available, the variable rate established for a similar commercial customer may be used. If more than one user class is supplied by one meter, the highest user class factor will be used to compute the total rate. For Industrial uses, the rate will be calculated via the rates established by City Council and/or on an individual basis.

~~(a)(1) — Sewer Rates.~~

Customer Category	Effective October 1, 2017		
	Base Rate		cost/ ccf
	cost/acct.	cost/unit	
Single-Family	\$3.94	\$18.26	\$3.13
Single-Family Condo	\$3.94	\$12.46	\$3.13
Duplex	\$3.94	\$14.22	\$3.13
Triplex	\$3.94	\$15.02	\$3.13
Quadplex	\$3.94	\$15.32	\$3.13
5 + units	\$3.94	\$12.88	\$3.13
Mobile Home Park	\$3.94	\$12.85	\$3.13
Office/Retail	\$3.94	n/a	\$4.53
Laundry	\$3.94	n/a	\$4.69
All Other	\$3.94	n/a	\$4.69
Convalescent Hospital	\$3.94	n/a	\$4.96
Auto/Service Station	\$3.94	n/a	\$5.33
Restaurants	\$3.94	n/a	\$8.12
Industrial	\$3.94	n/a	\$6.74
City Accounts	\$3.94	n/a	\$4.53

- (a)(1) **Residential sanitary sewer monthly cap (ccf) if winter water use exceeds this maximum.** The cap shall be effective 10-1-2017 and shall remain in force until amended.

Customer Category	Monthly Cap (ccf)
Single-Family	24
Condo	19
Duplex	36
Triplex	56
Quadplex	76
5+ units	19 ccf/unit
Mobile Home Park	19 ccf/unit

~~For each group living dwelling, including fraternities, sororities, senior citizen houses, convents, rectories, residence halls, lodging houses, and any other dwelling in which five or more unrelated individuals reside, the rate shall be based on an equivalent number of dwelling units calculated by dividing the total number of people by five within allowable facility occupancy according to the use permit or building code.~~

~~(b) **Water quality component.** In addition to the above sewer charges, a water quality component will be charged to all parcels on a per square foot basis up to one hundred thousand square feet according to the following:~~

~~(1) Single-family and duplex residential parcels and mobile home parks: \$0.0000529 per parcel square foot per month.~~

~~(2) Multifamily dwellings having more than two dwelling units and group dwelling facilities: \$0.00006818 per parcel square foot per month.~~

~~(3) Schools, churches, day care facilities, open space parcels and department of forestry: \$0.0000271 per parcel square foot per month.~~

~~(4) Commercials and industrial parcels: \$0.00009465 per parcel square foot per month.~~

(a)(2e) **Rates for premises outside the city.**

(1) The rates to be charged for city sanitary sewer furnished to individual premises outside the city shall be the same as those established for premises within the city.

(2) In those cases where, by special agreement with the county, service is provided to areas outside the city through systems within a county service area, the rates to be charged shall be the same as city customers or as per agreements. (Ord. 2403 § 1, 2013; Ord. 2508 § 1, 2017)

RESOLUTION NO. 24-XXX, SERIES 2024

**RESOLUTION ENACTING MODIFICATION TO CITY OF DAVIS CUSTOMER RATES
FOR WASTEWATER SERVICE FEES EFFECTIVE JANUARY 16, 2024
TO IMPLEMENT RATE ADJUSTMENT ON FEBRUARY 1, 2024**

WHEREAS, Article 33.04.050 of the Davis Municipal Code authorizes the City Council to periodically amend, by resolution, fees for wastewater utility services; and

WHEREAS, the City of Davis conducted a wastewater rate study, completed in December 2021 to review and recommend any necessary modifications to the City wastewater rates; and

WHEREAS, pursuant to the provisions of Article XIII D of the California Constitution, the City provided 45-day written mailed notice of a public hearing to each record owner of parcels of real property subject to the Wastewater Rate, which was held at a regular meeting of the City Council on January 16, 2024 on the issue of whether the proposed Wastewater Rate should be levied and collected as proposed in the Rate Study; and

WHEREAS, at the conclusion of the public hearing, the City Clerk tabulated the number of written protests received and reported that there was not a majority protest by property owners or customers of record of the identified and affected properties; and

WHEREAS, Article 33.04.050 of the Davis Municipal Code authorizes the City Council, by resolution to adjust the rates; and

WHEREAS, a rate adjustment as established is necessary to ensure the fiscal resilience of the wastewater fund and prevent a future fund deficit.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Davis does hereby resolve that the maximum wastewater rates shown on the attached Exhibit 1 are incorporated herein by reference, and shall become effective February 1, 2024 with maximum authorized annual increases thereafter through May 1, 2028; and

BE IT FURTHER RESOLVED that each year of the Proposition 218 noticed period, prior to the approval of wastewater rates for each year, staff will return to Council with a report on the state of the wastewater fund and recommendation for the rate setting for that year and whether to impose the maximum rates set forth in Exhibit 1 of this Resolution; and

BE IT FURTHER RESOLVED that the City Council of the City of Davis does hereby find that the fees established by this resolution are for the purpose of maintaining and continuing the provision of the City's wastewater services, including the following:

- 1) Fund current and projected increases in the costs of operations and maintenance of wastewater infrastructure; and
- 2) Fund utility repair, replacement, and capital improvement costs; and

- 3) Distribute costs equitably between customer classes while minimizing the impact on ratepayers; and
- 4) Further refine the treatment costs to include the cost of treating ammonia.

PASSED AND ADOPTED by the City Council of the City of Davis on this 16th day of January, 2024, by the following vote:

AYES:
NOES:

Josh Chapman
Mayor

ATTEST:

Zoe S. Mirabile, CMC
City Clerk

Exhibit 1
Wastewater Rates

Residential

	Current Rates	Fixed/Volumetric Rate Restructure
Fixed Rates - Monthly \$/account		
All Users	\$3.94	\$4.24
Monthly per Dwelling Unit Rate		
Single Family	\$18.26	\$26.33
Multi Family	varies	\$18.81
Dormitory ** (per bed)	N/A	\$8.78
Volumetric Rate* - Per CCF		
Residential	\$3.13	\$1.99

Rate Adjustment By Year				
2024	2025	2026	2027	2028
January 1	May 1	May 1	May 1	May 1
Fixed Rates				
\$4.45	\$4.67	\$4.90	\$5.15	\$5.41
Monthly per Dwelling Unit Rate				
\$27.65	\$29.03	\$30.48	\$32.01	\$33.61
\$19.75	\$20.74	\$21.78	\$22.87	\$24.01
\$9.22	\$9.68	\$10.16	\$10.67	\$11.20
Volumetric Rate				
\$2.09	\$2.19	\$2.30	\$2.42	\$2.54

(1 CCF = 748 gallons)

*billable use equal to average monthly winter water use (in CCF) from November – February of prior year, subject to a cap

**dormitory rates apply to multi-family apartments with more than 5 beds per dwelling unit.

Commercial

	Current Rates	Fixed/Volumetric Rate Restructure
Fixed Rates - Monthly \$/account		
Base Rate	\$3.94	\$4.24
Volumetric Rates* - Per CCF		
Low Strength	\$4.67	\$4.48
Standard Strength	\$4.96	\$4.82
Medium Strength	\$5.11	\$5.00
High Strength	\$7.46	\$7.85

Rate Adjustment By Year				
2024	2025	2026	2027	2028
January 1	May 1	May 1	May 1	May 1
Fixed Rates				
\$4.45	\$4.67	\$4.90	\$5.15	\$5.41
Volumetric Rates				
\$4.71	\$4.94	\$5.19	\$5.45	\$5.72
\$5.06	\$5.32	\$5.58	\$5.86	\$6.16
\$5.25	\$5.52	\$5.79	\$6.08	\$6.39
\$8.24	\$8.65	\$9.08	\$9.54	\$10.01

(1 CCF = 748 gallons)

*billable use equal to average monthly winter water use (in CCF) from November – February of prior year

If no previous use is available, the variable rate established for a similar commercial customer may be used. If more than one user class is supplied by one meter, the highest user class factor will be used to compute the total rate. For Industrial uses, the rate will be calculated via the rates above and/or on an individual basis.