

Ordinance E-2 C**AN ORDINANCE TO AMEND THE TOWN "ORDINANCE ESTABLISHING REGULATIONS AND CHARGES FOR THE USE OF THE PUBLIC SEWER OF THE TOWN OF GREENWOOD, AND PROVIDING PENALTIES FOR VIOLATION THEREOF" ADOPTED OCTOBER 19TH, 1991, AS SUBSEQUENTLY AMENDED, TO IMPOSE A TEMPORARY CHARGE OF \$20 PER EDU PER MONTH TO PURCHASE ADDITIONAL TREATMENT CAPACITY AND TO FUND THE EMPLOYMENT OF AN EXPERT RATE CONSULTANT**

Whereas, pursuant to a written agreement with the Town of Bridgeville dated October 4th, 1989, the Town "purchased" the right to have the Town of Bridgeville receive, treat, and dispose of the Town of Greenwood's sanitary sewage;

Whereas, that agreement provided an initial allotment of sewage treatment capacity of 80,000 gpd (based upon monthly averages) to the Town of Greenwood for an initial payment of \$140,000 as a "tapping fee" to the Town of Bridgeville;

Whereas, during the intervening 17 years, the amount of sanitary sewage collected by the Town of Greenwood and transferred to Bridgeville for treatment and disposal has gradually increased to the point where, during periods of extensive precipitation, it often exceeds the capacity allotted to Greenwood under the 1989 agreement;

Whereas, the Town of Greenwood has been involved for a number of months in an ongoing dispute with the Town of Bridgeville concerning the amounts Bridgeville is charging the Town of Greenwood to treat and dispose of sanitary sewage collected by Greenwood's sanitary sewage collection system from the residents and property owners of the Town of Greenwood, such dispute involving a number of issues including: (a) Bridgeville's objection that the amount of sanitary sewage transmitted to Bridgeville's treatment plant often exceeds the amount of treatment capacity that has heretofore been allocated to the Town of Greenwood; (b) Bridgeville's refusal to allocate additional treatment capacity to the Town of Greenwood; (c) Bridgeville's attempt to impose a "penalty" of \$250 per "EDU" for sewage flows in excess of Greenwood's previously-allocated capacity; and (4) Bridgeville's unwillingness to provide the Town of Greenwood with full explanations and supporting documentation regarding the amounts Bridgeville is charging or purporting to charge Greenwood for treating and disposing of Greenwood's sewage and/or to obtain additional capacity;

Whereas, the "excess" sanitary sewage transferred by Greenwood to the Town of Bridgeville for treatment and disposal motivated the Town of Bridgeville to amend its ordinances to provide for a "penalty" of \$250 for each "EDU" ("Equivalent Dwelling Unit",

defined as 200 gpd on an average monthly basis) for all sanitary sewage transferred to Bridgeville in excess of 80,000 gpd (on an average monthly basis);

Whereas, Greenwood did, in June of 2007, invoice Greenwood in the amount of \$8,000 as a penalty for exceeding its alleged capacity by 32 EDU's in the month of May;

Whereas, in response thereto, the Town Council took several steps, including: (a) submitting a written objection to Bridgeville as required by Section 9.02 of the sanitary sewage treatment and disposal Agreement with Bridgeville; (b) initiating an attempt to amicably resolve the disputed penalty invoice with Bridgeville; (c) undertaking an attempt to obtain an expert consultant to assist and advise the Town Council and the Town Solicitor with regard to all matters involving the rates and charges Bridgeville is imposing or attempting to impose upon the Town of Greenwood; and (d) imposing a \$20 per month surcharge on all sewer bills issued by the Town of Greenwood in order to establish a dedicated contingency "reserve fund" to fund payment of part or all of any penalties imposed upon Greenwood if, following binding arbitration, such penalty(s) were upheld;

Whereas, the \$20 per month surcharge has been in effect for five months and has resulted in a contingency fund reasonably sufficient to fund payment at least one month's reasonably-anticipated excess flow penalty (in the event that the imposition of such penalty is upheld following binding arbitration);

Whereas, the Towns of Greenwood and Bridgeville have engaged in protracted discussions to resolve their mutual differences, but such discussions appear to have come to a standstill;

Whereas, among other things discussed, the Town of Bridgeville had offered to "sell" the Town of Greenwood additional treatment capacity equal to 25 EDUs (5,000 gpd on an average monthly basis), based upon an "impact fee" of \$1,080 per EDU (200 gpd), which is the same impact fee charged by Bridgeville to new residential sewer customers located within the Town of Bridgeville's existing municipal limits;

Whereas, the acquisition of an additional 5,000 gpd sewage treatment capacity would only be sufficient to allow the Town of Greenwood to eliminate or significantly reduce the number of months each year when Greenwood has "excess" sewage flows (but would not be sufficient to allow the town to lift the current building moratorium and thereby "pass through" the cost of such additional capacity to new customers of the Town of Greenwood);

Whereas, the cost of such additional capacity (25 EDUs x \$1,080, or \$27,000) would thus have to be borne by the town's existing sewage customers who are, and who have been, contributing to the town's past "excess" sewage flows;

Whereas, the Towns of Greenwood and Bridgeville had also discussed the possibility of renegotiating the existing Sewage Treatment Agreement to resolve a number of ambiguities, to

provide for future sewage treatment capacity allotments to the Town of Greenwood, and to establish the appropriate amounts to be charged to the Town of Greenwood for such additional future allotments;

Whereas, the Town Council has retained the services of an expert consultant in the field of rate design for sanitary sewage and water services to assist and advise the Town in connection with the ongoing dispute with Bridgeville and/or the renegotiation of the Agreement between the two Towns;

Whereas, the Town Council has determined to establish a reasonable reserve fund to fund the cost of such consultant;

BE IT HEREBY ENACTED by the Town Council of the Town of Greenwood, a majority thereof concurring in Council duly met, that the Town's existing ordinance entitled "An Ordinance Establishing Regulations and Charges for the Use of the Public Sewer of the Town of Greenwood, and Providing Penalties for Violation Thereof" adopted October 19th, 1991, as subsequently amended, be and hereby is further amended by adding, as a new Section 17, the following:

Section 17. Temporary Surcharge for Reserve Fund To Purchase of Additional Treatment Capacity and Pay the Cost of Expert Rate Consultant.

(a) Termination of Existing \$20 per month Penalty Reserve Fund Surcharge; Institution of New Temporary Surcharge to Establish A Reserve Fund To Purchase of Additional Treatment Capacity and Pay the Cost of Expert Rate Consultant., Effective with the November, 2007 sewer bill:

(i) The current \$20 per month penalty reserve sewer bill assessment is hereby terminated, effective October 31st, 2007, provided that all monies previously collected pursuant to such assessment and all late payments on account thereof received hereafter, shall continue to be held in a separate bank account until such time as they are utilized toward payment of any such penalty imposed upon the Town of Greenwood following binding arbitration, or refunded to the customers who paid those amounts by check or as a credit against their then-current sewer bill.

(ii) Each billed customer shall be charged the sum of \$20.00 per EDU for the purposes hereafter stated. Such new surcharge shall cease and terminate after 7 months (i.e. terminate after the May, 2008 billing) unless the Town Council shall amend this ordinance to extend the imposition of the surcharge. The Town Council may, at any time, amend this ordinance to decrease the amount of the monthly surcharge prospectively.

(b) Purpose of Surcharge. All such amounts collected shall be deposited into a reserve account to be used to: (a) fund the cost of purchasing 25 additional EDU's sewage treatment capacity (5,000 gpd on an average monthly basis) from Bridgeville (if such purchase can be

consummated) and /or (b) fund a reserve account to pay the cost of an expert rate consultant to advise the town council regarding the ongoing dispute with the Town of Bridgeville concerning sewer treatment charges to Greenwood and/or renegotiating the terms of the sewage treatment agreement

(c) Segregated Account. All amounts so collected shall be deposited into a separate checking account entitled "Town of Greenwood Additional Capacity Purchase and Consultant's Fees Fund" to be expended by the Town Council solely for either or both of the purposes stated herein. The Town Council shall, from time to time, determine the amounts to be paid out of such special account and applied to the stated purposes.

(d) Refund of Excess Amounts. Any amounts remaining in the designated reserve fund account after the purposes for which it has been established have been fulfilled shall be credited back or refunded to those sewage customers who paid the surcharge, pro rata.

Synopsis

This ordinance amends the Town's sewer fee ordinance to terminate the existing \$20 per month "Penalty Reserve Fund" sewer bill surcharge and to impose a new temporary surcharge of \$20.00 per month per EDU to establish a reserve to fund: (1) the Town's purchase of an additional 5,000 gpd (on an average monthly basis) of sewage treatment capacity from the Town of Bridgeville to allow the Town to reduce the number of months each year when it has "excess" sewage flows to the Bridgeville sewage treatment plant (thereby avoiding a potentially expensive and protracted legal proceeding to challenge the Town of Bridgeville's imposition of a "penalty" of \$250 per EDU in excess of Greenwood's allotted sewage treatment capacity); and (2) the Town's employment of an expert consultant in sewage rate design and charges to assist the Town in evaluating the amounts it is charged by the Town of Bridgeville and to assist in a contemplated renegotiation of the existing sewage treatment agreement with the Town of Bridgeville. The \$20.00 per EDU per month special charge is "temporary" in nature and, unless extended by further ordinance of the Town Council, will cease after the May, 2008 sewer billing. Any amounts remaining in the fund after the purposes for which it has been established have been fulfilled shall be credited back or refunded to those sewage customers who paid the surcharge, pro rata.

This shall certify that this is a true and correct copy of the ordinance duly adopted by the Town Council of the Town of Greenwood, at a duly-noticed and convened meeting at which a quorum was present, on November 6th, 2007.

Attest: Doris A. Atkins
Town Clerk

So Certifies:

Ronald Brown
Mayor