

April 1, 1987

REPORT TO THE COMMITTEE ON PUBLIC SERVICES AND SAFETY
WATER UTILITIES FINANCING: ANNUAL REVIEW
OF WATER AND SEWER UTILITY RATES

The March 18, 1987 meeting of the Public Services and Safety Committee continued consideration of Manager's Report No. 87-124 to allow the City Attorney's office a review of the Manager's recommendation for increases in sewer rates and the manner of the increases. Specifically Recommendation No. 4 contemplates a variable sewer fee based on a fixed rate plus a variable rate based on water use.

Since the City operates under certain revenue restrictions to satisfy requirements of the Clean Water Grant Program, its user charge system must comply with the restrictions set out in 40 CFR . 35.929-1 as follows:

- . 35.929-1 Approval of the user charge system.

The Regional Administrator may approve a user charge system based on either actual use under paragraph (a) of this section or ad valorem taxes under paragraph (b) of this section. The general requirements in .. 35.929-2 and 35.929-3 must also be satisfied.

(a) User charge system based on actual use. A grantee's user charge system based on actual use (or estimated use) of waste water treatment services may be approved if each user (or user class) pays its proportionate share of operation and maintenance (including replacement) costs of treatment works within the grantee's service area, based on the user's proportionate contribution to the total waste water loading from all users (or user classes). To insure a proportional distribution of operation and maintenance

costs to each user (or user class), the user's contribution shall be based on factors such as strength, volume, and delivery flow rate characteristics.

The key standard is then devising a user charge system

whereby each user pays a "proportionate share of operation and maintenance." Tested against this standard, we believe Recommendation No. 4 satisfies this proportionate standard. The sewer rate is a composite of fixed rate plus a charge that is tied directly to water use that rises or falls according to amount of water consumed. Hence it is in part proportioned to use.

Such a combination appears implicitly approved in Revenue Program Guidelines for Wastewater Agencies, No. 54C, June 15, 1983 at pp. 7-8:

D. Regulations Affecting Rate Determination

1. A user charge based on actual use may take the form of a flat rate, unit rate on water consumption, fixture unit rate, equivalent dwelling unit, or other type of charge which recovers the cost equitably.

Recommendation No. 4 actually integrates the "flat rate" and "unit rate on water consumption" therein approved. Therefore in light of the proportionate requirement and approval of the listed examples, we find no legal restriction on Recommendation No. 4.

Respectfully submitted,

JOHN W. WITT

City Attorney

JWW:TB:js(x043.1)

RC-87-13