

RESPONSE TO AUGUST 7, 2024, SEWER/SEPTIC ORDINANCE - LEGAL  
REVIEW

There are two Washington State Laws or RCWs that may be helpful in providing direction for the issues in the Sewer/Septic Ordinance – Legal Review.

They are:

RCW 36.67.190 Revenues from system - Classification of services – minimum rates – Compulsory Use states:

(3) All property owners within the area served by such sewerage system shall be compelled to connect their private drains and sewers with such city or town system, under such penalty as the legislative body of such city or town may by ordinance direct. Such penalty may in the discretion of such legislative body be an amount equal to the charge that would be made for sewer service if the property was connected to such system. All penalties collected shall be considered revenue to the system.

Effective date – 2021c176

RCW 35.67.020 Authority to construct system and fix rates and charges- Classification of services and facilities-assistance for low-income persons states:

(1) Every city and town may construct, condemn, and purchase, acquire, add to, maintain, conduct, and operate systems of sewerage and systems and plants for refuse collection and disposal together with additions, extensions, and betterments thereto, withing and without its limits. Every city and town have full jurisdiction and authority to manage, regulate, and control them and, except as provided in subsection (3) of this section, to fix, alter, regulate, and control the rates and charges for their use.

Effective Date – 2021c176

The first RCW addresses Stevenson Municipal Code 12.08.972 Sewer system stand-by Fee. The City Attorney wrote that “Except for a health or safety

measure, I did not find any authority allowing the City to impose a fee, fine or penalty on a landowner who refuses to connect to an existing sewer line.”

RCW 36.67.190 states “All property owners...shall be compelled to connect...under such penalties the legislative body of such city or town may be ordinance direct. Such penalty...may...be equal to the charge...for sewer service...if the property was connected to such system.

The second RCW gives the City full authority to “regulate and control” the rates and charges for sewerage systems which appears to answer the question of whether sewer rates regulate the fee payers or collect revenue for broad based public improvements that cost money.

It appears that these two Washington State laws effective in 2021 can be considered, if not already considered, along with the four 2004-2005 court cases or caselaw cited in the August 7, 2024, legal review.

The of City Council risk tolerance may be clarified and minimized by these two RCW’s emphasizing “the city...has full jurisdiction and authority to manage, regulate and control...the rates and charges for...” systems of sewerage.

In 2008, City Attorney Woolrich cited RCW 35.67.190 to affirm that the City could compel a property owner to connect to sewer.

I did a computer search for RCW 35.67.020 and RCW 35.67.190 case law and found none. I am unaware of any case law but cannot definitely assert it does not exist.

I respectfully urge the City Council to review the original City attorney opinions provided to city staff to make a careful decision about the standby fee and overall risk tolerance.

The second issue I would like to address is the recent decision on ARPA funding which was interpreted by the Community Development Director as not advancing recommendations of the Sewer Ordinance Committee.

I spoke in favor of allocating the \$298K ARPA funds to pay down the Sewer System debt of \$12 million because the debt was a known, defined problem and the sewer rate payers were facing increased fees.

The alternative was to extend the sewer line north on Frank Johns Street as determined by a benefits matrix developed by city staff to maximize sewer

connections which was consistent with the Sewer Ordinance Committee's recommendations. I spoke in favor of the debt paydown because the Sewer Ordinance was not yet adopted as additional information was being obtained. I did not or anyone else did know what the final Sewer Ordinance looked like, so I believed the most financially conservative decision was to pay down the debt and then make decisions about sewer line extensions within the framework of the new Sewer Ordinance.

I support the Sewer Ordinance Committee recommendation that the cost of extensions be broadly shared and defrayed by grants and other outside money.

I would like to thank the City Council, City Staff and Sewer Ordinance Committee members for their thoughtful work and extensive time commitment to this difficult community project.

I would also like to thank City Staff very much for developing an objective ranking system for sewer line extension. I forgot to express these thanks at the previous City Council meeting in the Public Comments section.

Rick Jessel