



City Council Agenda Item

City Council Meeting Date: December 4, 2018

TO: Jim Throop, City Manager

FROM: Katrina Dorsey, Wastewater Resources Protection Technician
k_dorsey@ci.lompoc.ca.us

SUBJECT: Introduction of Ordinance No. 1660(18) Related to Administrative Fines for Violations of the Sewer System Regulations

Recommendation:

Staff recommends the City Council introduce Ordinance No. 1660(18) (Attachment 1) for first reading by title only with further reading waived, amending Section 13.16.450 and adding Subdivision 13.16.455 to the Lompoc Municipal Code (LMC) establishing administrative fines for violations of the regulations related to the City's sewer system. (Additional clean-up revisions are also included to change the terms Utilities Director and Public Utilities Department to Utility Director and Utility Department.)

Background:

The City's wastewater treatment plant operates under a permit issued by the Central Coast Regional Water Quality Control Board (Board). As part of that permit, the City is required to meet and maintain certain thresholds for discharge. If those requirements are not met, then the City may be fined by the Board at a minimum of \$3,000 per day per violation. In 2017, for instance, the City of Paso Robles was fined approximately \$500,000 for 173 violations of their permit. (See Holden, Lindsey "Paso Robles fined nearly \$500,000 for wastewater plant permit violations" The Tribune January 23, 2017.)

The City has established various regulations and requirements for connection to, and usage of, the City's sewer system. Those regulations include general and specific discharge prohibitions (see LMC Chapter 13.16, Article 3 for more information concerning the various regulations). The LMC provides both criminal and civil penalties and the avenues to collect those damages through the court system. It also allows collection of direct costs and reimbursement of any fines imposed upon the City. However, in order to collect that reimbursement, the City would have to be able to identify which user caused the violation and subsequent fine. In most cases, that would be nearly impossible to pinpoint.

Therefore, strict compliance with the LMC is of paramount importance in order to keep the City's exposure to state fines at a minimum.

Discussion:

LMC subdivision 13.16.450 provides administrative penalties that may be established by the Utility Director and specified the City's wastewater service rates and charges. However those administrative fines have never been established. A more effective tool to administer an administrative fine would be for those fines to be established in the LMC. The purpose of administrative fines is to alert the City's customers to the issues they are creating for the City's sewer system and provide a monetary incentive for them to correct those issues. (Attachment 2 highlights the changes proposed to the LMC.)

Following are the proposed fine amounts:

- 1) First violation – not to exceed \$2,500;
- 2) Second violation – not to exceed \$10,000;
- 3) Each additional violation – not to exceed \$25,000.

Changes to the LMC have been proposed consistent with the flexible fine structure provided in the U.S. Environmental Protection Agency's (EPA's) guidance for authorizing and implementing wastewater oversight program administrative fines. (See EPA's *Guidance for Developing Control Authority Enforcement Response Plans*, Chapter 5.2 Administrative Fines, Attachment 3).

Per EPA's guidance, the proposed penalty schedule sets forth maximum fine amounts per violation (i.e., first violation, second occurrence of the same violation, etc.), while allowing the Director the discretion to impose lower fine amounts as appropriate. This discretion is particularly necessary given the difference in scale of customers regulated under the LMC. For example, the same fine that provides monetary incentive towards compliance for a large customer such as the Vandenberg Air Force Base would be inappropriate to assess upon a customer such as a small restaurant. Therefore, the proposed LMC changes have *not* established a specific and/or universally applied penalty schedule, but rather only establish a maximum penalty per violation.

Fiscal Impact:

As mentioned above, the City's wastewater treatment plant operates under a permit issued by the Central Coast Regional Water Quality Control Board (Board). As part of that permit, the City is required to meet and maintain certain thresholds for discharge. If

those requirements are not met, then the City may be fined by the Board at a minimum of \$3,000 per day per violation. Said another way, enforcement of discharge requirements by City wastewater customers is imposed upon the City by the Board. Without a mechanism to enforce established general and specific discharge regulations and requirements for connection to, and usage of, the City's sewer system, the cost of possible fines by the Board would be borne by all wastewater customers rather than the customers causing the violations. The City is performing the functions and services in order to comply with the Board issued permit but without a mechanism to be reimbursed for the services from those specific customers generating the reporting activities.

The cost of administering an administrative fine program will not be significant, as fines will only be imposed as a last resort. The inability to issue administrative fines, however, would leave the City without an efficient and cost-effective mechanism to stop violations occurring in the City, which could lead to the Board imposing significant fines against the City's permit. The City's Wastewater Treatment Plant is already operating at the top of its permitted levels in several categories (see Attachments 4, 5, and 6). Unlawful discharges also put significant strain on the City's sewer system resulting in replacement of equipment and damage to the Wastewater Treatment Plant which can be exceedingly expensive to repair. The proposed fine program will help to minimize future sewer rates, as protecting our current infrastructure reduces maintenance and repair expenses, and extends the life of the infrastructure.

Currently, violations must be enforced through civil or criminal court proceedings brought by the City Attorney. This is extremely time consuming and could be remedied on a smaller scale by Wastewater Division staff, saving City resources and at the same time more efficiently bringing customers into compliance.

Conclusion:

Adoption of Ordinance No. 1660(18) will provide a cost-effective tool to gain compliance with the City's sewer regulations and thereby avoid penalties issued to the City by the Board.

Respectfully submitted,

Katrina Dorsey, Wastewater Resources Protection Technician

APPROVED FOR SUBMITTAL TO THE CITY MANAGER:

Tikan Singh, Acting Utility Director

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL:

Jim Throop, City Manager

- Attachments:
- 1) Ordinance No. 1660(18)
 - 2) Ordinance No. 1660(18) with Revisions Highlighted
 - 3) EPA's *Guidance for Developing Control Authority Enforcement Response Plans*, Chapter 5.2 Administrative Fines
 - 4) Lompoc Wastewater Treatment Objectives and Limitation
 - 5) Salt Management Plan
 - 6) Lompoc Wastewater 3rd Quarter Report