ORDINANCE NO. 4593

AN ORDINANCE TO AMEND CHAPTER 13.16.130 COMPUTATION OF CHARGES; OF THE CODE OF THE CITY OF ELIZABETH ENTITLED "SEWER SERVICE SYSTEM", SPECIFICALLY TO SET NEW SEWER RATES EFFECTIVE JULY 1, 2015.

WHEREAS, the Chief Financial Officer has advised that it is necessary to set new Sewer Utility rates, effective July 1, 2015 in order to maintain the financial viability of the Sewer Utility; and

WHEREAS, the objective of the new rates is to present fair and equitable sewer charges to customer classes based on several factors including cost allocations and City policy decisions; and

WHEREAS, the new rates are based on the creation of three customer classes based on several factors including cost allocations and City policy decisions; and

WHEREAS, the tariff design is based on the creation of three customer class users; and

- Class (1) User means a residential, commercial, governmental or institutional users served by a 5/8 or 3/4" water meter.
- Class (2) User means a residential, commercial, governmental or institutional users served by a water meter with a size of 1" or greater.
- Class (3) User means any Industrial user, regardless of size, subject to JMEUC permits.

WHEREAS, the impact of the new rates is as follows:

- Customers served by 5/8" and 3/4" meters Rate increase - Approximate 15%
- Customers served by 1" and above meters Rate increase - Approximate 25%
- Industrial customers with JMEUC permits Rate increase - Approximate 37%

WHEREAS, the increase for customers served by 5/8" and above water meters is due to the allocation of BOD (Biochemical Oxygen Demand) and TSS (Total Suspended Solids) costs not previously allocated to this customer class. The recent lawsuit requires that all customer classes share in the costs of BOD and TSS based on cost allocations heretofore charged only to those customers subject to JMEUC permits. The Director of Public Works may reclassify a Class (2) User to Class (1) based on supporting documentation, provided that the use is entirely residential. Periodic Sewer Utility rate increases are necessary to upgrade the aging infrastructure and increased operating and maintenance costs;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELIZABETH AS FOLLOWS:

SECTION 1. - 13.16.120 - Definitions. -As used in this chapter, the following terms shall have the meanings indicated:

"BOD (denotes 'biochemical oxygen demand')" means the quantity of oxygen utilized in the biological oxidation of organic matter under standard laboratory procedure for five days at twenty (20) degrees centigrade, expressed in milligrams per liter.

"City" means the City of Elizabeth, in the County of Union and the State of New Jersey.

"Class (1) User" means a residential, commercial, governmental or institutional users served by a 5/8" or ¾" water meter.

"Class (2) User" means a residential, commercial, governmental or institutional users served by a water meter with a size of 1" or greater.

"Class (3) User" means any Industrial User, regardless of meter size.

"Commercial User" means all retail stores, restaurants, office buildings, laundries and other private business, manufacturing and service establishments that are not classified as Industrial Users.

"Director of Finance" means the Director of the Department of Finance of the City or authorized representative.

"Director of Public Works" means the Director of the Department of Public Works of the City or authorized representative.

"Governmental User" shall include any building, site or facility used for legislative, judicial, administrative, educational, and regulatory activities of Federal, State and County governments. (Buildings, sites or facilities owned by the City of Elizabeth and used for municipal purposes are excluded from this classification and shall be exempt from sewer user charges).

"Industrial waste" means any liquid, gaseous, solid or other waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business or from the development or recovery of any natural resources.

"Institutional User" means social, charitable, religious, and educational facilities such as schools, churches, hospitals, nursing homes, penal institutions and similar users.

"Joint Meeting" means the municipalities of the City of East Orange, the Township of Hillside, the Town of Irvington, the Township of Maplewood, the Township of Millburn, the City of Newark, the Borough of Roselle Park, the Village of South Orange, the City of Summit, the Township of Union and the Town of West Orange, organized in joint meeting pursuant to statute under the terms of a contract dated June 1, 1926, as amended and supplemented, in the matter of a joint trunk and outlet sewer and treatment plant for the sewage wastewater emanating from said municipalities.

"Industrial User" means any industry required to obtain an industrial user permit pursuant to the Rules and Regulations of the Joint Meeting.

"Other wastes" includes garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dye stuffs, acids, chemicals and all other discarded matter not sewage or industrial waste.

"Part" as used in relation to the term "sewer system," includes all lateral sewers, or all branch sewers, or all interceptor sewers, or all trunk sewers, and any sewage treatment and disposal works, each part with necessary appurtenances, including sewage pumping stations.

"Permit" or "Industrial User Permit" means a permit issued by the Joint Meeting including, a letter of agreement entered into between the Joint Meeting and a User of its Treatment Works, setting effluent limitations and other conditions on the User of the Joint Meeting's Treatment Works.

"Residential User" means any contributor to the City's sewerage system whose lot, parcel or building is used for domestic dwelling purposes only.

"Sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such groundwater infiltration and surface water as may be present. The admixture with sewage, as above defined, of industrial waste or other wastes, as defined in this section, also shall be considered "sewage" within the meaning of this chapter.

"Sewer system" means all sewer pipes and other appurtenances which are used or useful in whole or in part in connection with the collection, treatment or disposal of sewage, industrial waste and other wastes and which are owned, operated, maintained or used by the City, individually or with other municipalities, including sewage pumping stations and sewage treatment and disposal works.

"TSS (denotes "total suspended solids' or 'suspended solids') means those solids that either float on the surface of or are in suspension in water, sewage or other liquids and which are removable by laboratory filtration.

"User" means an individual, firm, company, partnership, association, society, corporation (public or private) or group who discharges, causes or permits the discharge of wastewater into the wastewater system of the City and/or Joint Meeting.

"User charge" means a charge levied upon users of the sewerage system for the use and service of that system.

(Prior code § 118-13)

SECTION 2. - 13.16.130 Computation of charges.

A. Pursuant to N.J.S.A. 40A:26A-1, et seq., the City establishes and imposes user charges in the City for the use of the sewer system or any part or parts thereof and establishes and imposes such computed user charges as shall be hereinafter provided.

B. The user charge shall consist of a fixed facility charge and a volumetric charge. In addition, Industrial Users shall pay separate BOD and TSS charges.

C. All users (with the exception of Industrial Users) shall be billed quarterly in arrears. Industrial Users shall be billed monthly in arrears for facility and volumetric charges and quarterly in arrears for BOD and TSS charges.

D. Facility Charges.

1. The Facility Charge shall be based on the size of the water meter serving the user. A separate Facility Charge will be charged for each meter.
2. The Facility Charge for each metered service shall be as follows:

Meter Size in inches	Charge per Quarter
5/8	$ 3.82
¾	$ 10.19
1	$ 26.37
1 ½	$ 72.62
2	$ 137.37
3	$ 322.36
4	$ 581.36
6	$ 1,321.33
8	$ 2,357.31
10	$ 3,689.87

E. Volumetric Charges.

1. There shall be three separate volumetric rates as follows: Class (1) users with a water meter size of less than 1"; Class (2) users with a water meter size of 1" or greater; and Class (3) comprising all industrial users regardless of water meter size.
2. Volumetric rates for users in Class (1) and Class (2) shall be based on allocated shares of flow-related costs and allocated shares of BOD and TSS-related costs.
3. The volumetric rate for Class (3) Industrial Users shall be based only on an allocated share of flow-related costs and not upon any allocated shares of BOD and TSS-related costs, which shall be billed separately.
4. The volumetric charge for Class (1) and Class (2) users shall be based upon the amount of water supplied by the City water utility or by such other system supplying water to the user as shown by the water meter readings for the most recent quarterly period prior to billing; provided, however, that whenever water consumption is metered but the charge for the measuring period is based upon an estimated consumption due to the fact that a meter reading was not made for the measuring period, the sewer charges shall likewise be based upon the estimated consumption.

    a. The volumetric rate for Class (1) users shall be $ 4.000 per 100 cubic feet of water.

    b. The volumetric charge for Class (2) users shall be $ 5.519 per 100 cubic feet of water.

    c. Multi-family Residential Users served by a 1" meter or larger may submit a request to the Director of Public Works that the City charge them under the 5/8"-3/4" classification. Such requests shall be on application forms prescribed by the City and accompanied by sketches, narrative and certifications listed on the application or subsequently requested by the City. The City shall

have the right to enter and inspect the premises in question to clarify and verify information submitted by the applicant. A determination of such request shall be based on information furnished to the City and/or collected by the City. Where a User in the 1" and larger classification is strictly residential in nature and metered separately from other classifications, the City may reclassify the user. The City reserves the right to return the User to the 1" and above classification if determined by the City that the characteristics of the User's discharge are not consistent with those of the 5/8"-3/4" classification.

5. The volumetric charge for Class (3) Industrial Users shall be based upon the amount of water supplied by the City water utility or by such other system supplying water to the user as shown by the water meter readings for the most recent quarterly period prior to billing; provided, however, that whenever water consumption is metered but the charge for the measuring period is based upon an estimated consumption due to the fact that a meter reading was not made for the measuring period, the sewer charges shall likewise be based upon the estimated consumption. The volumetric rate for Class (3) Industrial Users shall be $ 3.270 per 100 cubic feet of water.
6. In the case of consumers of water who discharge into the sewer system an amount of sewage substantially less than or substantially greater than the amount of water supplied to such consumer, the amounts of the sewage discharged into the sewer system shall be determined by meters, gauges or other suitable measuring devices furnished or approved by the City and installed by such consumer at the consumer's expense and at no cost or expense to the City, and the user charge thereon shall be computed at the rates stipulated herein for sewage discharged into the sewer system.
7. The Department of Public Works may require the owner of any real property subject to user charges of the City to install a meter, gauge or other suitable measuring device which is acceptable to the Department of Public Works and installed at the consumer's expense and at no cost or expense to the City, provided, however, that any determination of the Department of Public Works is subject to review and modification by a court of competent jurisdiction.
8. Any owner of real property subject to user charges discharging into the City sewer system who claims to be unable to install a meter, gauge or other suitable measuring device after being so ordered by the Director of Public Works may submit to the Department of Public Works a written application requesting that the Department of Public Works grant to the owner a specified extension of time within which to install such meter, gauge or other suitable measuring device. In the event the Department of Public Works shall grant such specified extension of time, such owner shall install a meter, gauge or other suitable measuring device on or before the date fixed and prescribed therefore by the Department of Public Works and shall pay user charges on or before the times fixed and prescribed there-for by the Department of Public Works. Prior to such installation, the Department of Public Works shall estimate the amount of sewage discharged by such owner into the sewer system. Such estimate by the Department of Public Works shall be submitted to the City Council for its approval or modification, and the decision of the City Council with respect thereto shall be binding and final unless modified by a court of competent jurisdiction following any review thereof permitted by law. Such owner shall thereupon, prior to the aforementioned installation of a meter, gauge or other suitable measuring device, pay user charges computed at the rate defined in this section for the estimated sewage discharged into the sewer system, and the decision of the Department of Public Works with respect to the amount thereof shall be binding and final unless

modified by a court of competent jurisdiction following any review thereof permitted by law. Such user charges computed at the rate defined in this section for the estimated sewage discharged into the sewer system shall be due and payable at such time as the Director of Finance shall fix and prescribe therefore.

9. Any owner of real property in the City subject to User Charges who fails to submit to the Department of Public Works a written application requesting that the Department of Public Works grant to such owner a specified extension of time within which to install a meter, gauge or other suitable measuring device and any owner of real property in the City subject to User Charges whose written application is denied by the Department of Public Works shall pay sewer User Charges equal to one hundred and twenty five (125) percent of the estimate computed by the Department of Public Works in the manner set forth in subsection E.8 of this Article.
10. In all cases in which users of the sewerage system are not supplied with water from the City water utility, the charge for the use of sewerage system shall be based upon the actual discharge as measured by a meter to be installed by the consumer; provided, however, that when in the judgment of the Director of Public Works such charges may be reasonably accurately estimated, the initial charges may be based upon his or her estimate of actual discharge volume.
11. In any other case where the charges for sewer services cannot be reasonably measured based on water consumption during the measuring period, the initial and any subsequent charges shall be based upon an estimate, which may be revised from period to period.

F. BOD and TSS Charges

1. In addition to facility and volumetric charges, Industrial Users shall be subject to a separate charge for BOD and TSS.
2. Charges for TSS and BOD shall be based on total suspended solids and five-day BOD loadings computed by the Joint Meeting and reported quarterly to the City.
3. Each Industrial User shall perform sampling and analysis in accordance with its Industrial User Permit and the Rules and Regulations of the Joint Meeting.
4. An Industrial User may sample and analyze its discharge for suspended solids and five-day BOD at a greater frequency than specified in its industrial user permit provided that the results of all such testing are included in the periodic monitoring reports submitted to the Joint Meeting. All such additional sampling and analyses shall be the sole responsibility of and at the expense of the Industrial User.
5. Samples and measurements taken by Industrial Users as required by the Joint Meeting Industrial User Permit and such additional sampling and analyses taken at the option of the Industrial User shall be representative of the volume and nature of the monitored discharge.
6. The rates for BOD and TSS charges for Industrial Users shall be 120% of the rates charged by the Joint Meeting to the City as those rates may be changed from time to time.

(Ord. No. 4085, §§ 1—4, 11-24-2009; Ord. No. 4019, §§ 1—4, 2-10-2009; Ord. 3833 §§ 1—4, 2006; prior code § 118-14)

SECTION 3. - 13.16.140 - Payment of charges—Interest charge for late payment.

A. Sewer user charges shall be due and payable upon submission and may be paid to the Department of Finance within a period of thirty (30) days after they are due and payable without any charge for interest.

B. Interest will be charged at the legal statutory rate as defined by N.J.S.A. 40A:26A-1, et seq., on any sewer user bill which is not paid within thirty (30) days from date of issue.

C. The rates and charges herein established shall be effective with the billing commencing August 1, 2014.

(Ord. 3122 § 1, 1999; prior code § 118-15)

SECTION 4. - 13.16.150 - Charges to constitute lien.

Sewer user charges shall constitute a lien upon the real property served by the sewer system to the extent set forth in N.J.S.A. 40A:26A-12.

(Prior code § 118-16)

SECTION 5. - 13.16.160 - Collection of delinquent charges.

The City may enforce the collection of delinquent sewer user charges pursuant to N.J.S.A. 40A:26A-1 et seq.

(Prior code § 118-17)

SECTION 6. - 13.16.170 - Application for refund.

If any owner of real property on which a sewer user charge has been imposed deems himself or herself aggrieved because such real property is not served by the sewer system or an error has been made in computing such sewer user charge, he or she may file an application for a refund of all or part of such sewer user charge. Such application shall be verified by him or her and shall set forth the amount of refund sought and the grounds therefore. Such application shall be presented to the Director of the Department of Finance and he or she shall forward such application to the City Council with his or her recommendations in relation thereto. The Director of the Department of Finance may refund all or part of such sewer user charge upon proper resolution by City Council.

(Prior code § 118-18)

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SECTION 7. - All ordinances or parts of ordinances inconsistent with the provisions of this ordinance be and the same are hereby repealed.

SECTION 8. - If any portion or clause of this ordinance is declared invalid for any reason whatsoever, same shall not affect the validity or constitutionality of any other part or portion of this ordinance.

SECTION 9. - The effective date of this ordinance shall be twenty (20) days after its final passage by City Council and approval by the Mayor at the time and in the manner provided by law.

PASSED: May 26, 2015

PATRICIA PERKINS-AUGUSTE
President of City Council

APPROVED: 5/26/15

J. CHRISTIAN BOLLWAGE
Mayor

ATTEST:

YOLANDA M. ROBERTS, R.M.C.
Municipal Clerk