



October 29, 2010

IFYI HIGHLIGHTS

TO: Mayor and Members of Council
FROM: Rashad M. Young, City Manager *DNT*
SUBJECT: Items for Your Information *DR*

- Contact Center Feedback
- Snow and Loose Leaf Programs
- Police Community Forums
- Mobile Food Venders
- Neighborhood Walk: Lindley Park
- Charge for Water & Sewer Service to Non-City Residents

Contact Center Feedback

Attached is the weekly report generated by our Contact Center for the week of 10/18/10 – 10/24/10.

Snow and Loose Leaf Programs

Attached is a memorandum from Dale Wyrick, Director of Field Operations, dated October 29, 2010 providing an update on the upcoming seasonal snow and ice removal, and loose-leaf collection programs.

Police Community Forums

As a follow-up to last week's IFYI, attached is a media release from the Greensboro Police Department regarding the upcoming community meetings with dates and locations.

Mobile Food Venders

Attached is a memorandum from Tom Carruthers, Assistant City Attorney, dated September 21, 2010, regarding the mobile food vendors, open-air sales in the Randleman Road area and city proposals for consideration to address the problems raised by the Randleman Road Area Business Association.

Neighborhood Walk: Lindley Park

On Monday, November 1, 2010, the Executive staff will join the residents of Lindley Park in our last neighborhood walk of the season. We will be starting at 5:00 pm due to it getting dark earlier.

Charge for Water and Sewer Service to Non-City Residents

Attached is a memorandum from Jo Peterson-Buie, Interim City Attorney, dated October 29, 2010, providing a follow-up to a question that was raised at the October 26, 2010, Work Session as to whether or not there is a cap on the rates for water and sewer furnished outside of the city limits.

**Public Affairs Department
Contact Center Weekly Report
Week of 10/18/10 - 10/24/10**

Contact Center

4652 calls answered this week

Top 5 calls by area

Water Resources

Balance Inquiry – 1061
New Signup – 190
Bill Extension – 137
General Info – 118
Adjustments – 101

Field Operations

Bulk Guidelines – 71
No Service/Garbage – 65
No Service/Recycling – 45
Repair Can/Garbage – 40
Appliance Pickup – 37

All others

Police/Watch Operations – 363
Landfill/Transfer/HHW – 119
Courts/Sheriff – 101
Police Records - 48
Guilford Metro - 41

Comments

We received a total of 3 comments this week:

Police Department – 1 comment:

- Caller wants to pass on compliment to the police officers who are enforcing the speed limit at the school on New Garden Rd. Caller is very impressed with their efforts.

Water Resources – 2 comments:

- Customer called to tell the crew from water maintenance thank you for their prompt response to his emergency on Saturday. He appreciates what they did and he is sorry he failed to get their names.
- Customer has a neighbor who waters their lawn at 4:00 pm each day and feels something needs to be in the "At Your Service" bulletin stating not to water in the hottest part of the day. Feels this would be helpful. Wanted water customer service manager to know of this concern.

Overall

Calls about the changes to the water bills decreased last week. Call volume was steady through the end of the week.



October 29, 2010

To: Rashad Young, City Manager
From: Dale Wyrick, PE, Director of Field Operations
Subject: Seasonal Programs Update: Leaf Collection and Snow Removal

This memo is to update you on the status of two annual seasonal programs delivered by the Field Operations Department: Loose Leaf Collection and Snow & Ice Removal.

Our annual Loose Leaf Collection program will begin as scheduled on Monday, November 1, 2010, and continues through January 22, 2011. Residents who choose to participate in this program can do so by raking their leaves to the back of the curb (not in the street) and receive collection by the following schedule:

- Leaves that are curbside by November 1 will be picked up by December 11, 2010
- Leaves that are curbside by December 13 will be picked up by January 22, 2011

At the time of this memo, very few leaves have fallen and been raked to the curb. While that can change over the next week to 10 days, we intend to lessen our initial compliment of leaf collection crews deployed on November 1. We will increase that number to full compliment and increase work days and program hours as the volumes of leaves increase and conditions warrant.

Also, over this past week, our Snow & Ice Removal program staff has completed their annual operator training. This training involves a comprehensive review of the operator's responsibilities, including equipment preparation and operation, updated route assignments, and proper plowing and salt spreading procedures. Since many of our snow removal operators are also assigned to the Loose Leaf Collection program, we complete this training in October each year in order to avoid conflicts between the two operations.

If further information is needed on the status of these items, please let me know. I can be reached at 336-373-2783.

DW



**CITY OF GREENSBORO
FOR IMMEDIATE RELEASE**

Contact: Anne Gregory
Phone: 336-373-2636

Police/Community Forums

GREENSBORO, NC (October 26, 2010) – The Greensboro Police Department will host four Police/Community Forums in November. Meetings will be held in each of the four patrol divisions. The purpose of these meetings is to educate the public on a variety of topics.

Chief Miller, Senior Command Staff and Patrol Commanders will provide crime statistics as well as discuss the functions of patrol work groups, call prioritization and other facts unique to each patrol district. Chief Miller will also review changes in GPD including mission and core values revisions, the restructuring process, core strategies and discipline process revisions. Members of the community will be asked to comment on or make suggestions concerning the core values and mission statement. There will also be time set aside for Q & A.

All meetings are scheduled to begin at 6:30 p.m. The dates and locations are as follows:

November 4 th	Southern Division	Trotter Recreation Center, 3906 Betula St
November 10 th	Eastern Division	Smith-Fairview Recreation Center, 2401 Fairview St
November 11 th	Western Division	Lewis Recreation Center, 3110 Forest Lawn Dr
November 16 th	Central Division	Greensboro Historical Museum, 130 Summit Avenue

All members of the community are invited to attend one of these meetings.

For more information please contact Police Community Relations Director, Anne Gregory at 373-2636.

The City works with the community to improve the quality of life for residents through inclusion, diversity, and trust. As the seventh largest employer in Greensboro, the City has a professional staff of 2,800 employees who maintain the values of honesty, integrity, stewardship, and respect. The City is governed by a council-manager form of government with a mayor and eight council members. For more information on the City, visit www.greensboro-nc.gov or call 336-373-CITY (2489).

City Attorney
City of Greensboro



September 21, 2010

TO: Rashad Young, City Manager
FROM: Thomas D. Carruthers, Assistant City Attorney
SUBJECT: Mobile Food Vendors, Open Air Sales

Randleman Road Area Business Association has contacted the City numerous times over the last year to express concern over mobile food vendors in their business corridor. They have detailed a problem involving two types of mobile food vendors conducting open-air sales. Attached is a position sheet prepared by the Association, which was distributed at the August meeting.

The first type of vendor operates out of a DMV registered motor vehicle. Typically, these “sandwich trucks” travel to construction and factory sites to sell prepackaged foods to workers on site. A derivation of this type of vendor has developed. These vehicles are almost RV in size and prepare cooked food on site; some also offer bathroom facilities. An example of this type of motorized food vendor can be found on Randleman Road where the operator has rented a lot in a defunct gas station and sells food every day.

The second type of vendor sells food from a pushcart or rolling grill. These individuals operate on private property with the permission of the landlord. These commercial areas permit “Open Air Sales”. Multiple vendors are allowed in one parking lot. The pushcart vendors typically operate with a privilege license from the City as a for profit enterprise. They comply with State Health Department Regulations.

The rolling grill operators operate with permission of local not for profits. These vendors donate a portion of their income to these not for profits in exchange for use of their not for profit exemption status. This allows the vendors to be exempt from municipal privilege tax and regulation and State Health Department Regulations (which would prohibit all rolling grills). Because there is a two-day per month limit on these exemptions under state law, these operators utilize four or five different not for profit exemptions per month.

An example of these vendors is located in the parking lot of ACE Hardware where they sell hot dogs three or four days per week. Two days a week, (the weekend) the vendors at the ACE Hardware operate a rolling grill to prepare and sell ribs.

Randleman Road Area Business Association feels this is unfair competition for the following reasons:

- The not for profit food exemption to allow boy scout and church barbeques is now used to allow full time food sales in direct competition to regulated businesses.
- Local restaurants have much higher overhead costs than these vendors.
 - Rent, mortgage, utilities and insurance costs are higher for a fixed location restaurant.
 - State Health Department compliance costs are more burdensome.

Mobile food vendors and their affiliated not for profits argue the current arrangement is fair:

- These vendors are “start up” small businesses that need locations to sell their products.
- There is room and business enough for everyone.
- They bring additional traffic into the area.
- They provide monetary support to local small not for profits.
- They benefit the other non-food business in the parking lots where they are located.

City legal has developed some proposals for consideration to address these problems.

- Restrict municipal not for profit exemptions for open-air food vendors to only permit sales that pay proceeds exclusively to the sponsoring not for profit. Proceeds are defined as the gross sales minus cost of goods sold. Demonstration of 501 3(c) status will be required.
- Restrict open-air food vendors to food sales only on pushcarts. Apply all design and spacing requirements currently applied downtown pushcart sales in Chapter 26-231. This also requires pushcarts that are approved under Health Department Regulation.
- The not for profit exemption would still permit rolling grill food sales for the traditional Boy Scout and church sales.
- The “special events” exemption would allow unrestricted rolling grill sales and pushcart sales. (A&T homecoming is an example.)
- Limit motorized food vendors to three hours per day.
- Create new City Market Zones that permit open-air food sales.
- Lobby the Legislature to modify the not for profit exemption for food sales under State Health Laws.

Zoning has developed the following proposals for consideration to address these problems;

- Restrict motorized food vendors to L1 and H1 areas and sites with ongoing construction.
- Restrict pushcarts and rolling grills to C-M, C-H, CB, L1 and H1.
- Only allow vendor one per lot up to a specific size. (Allow two vendors in “big box” locations)
- Require vendors to meet setbacks, and require them not to use required parking spaces.

Randleman Road Area Business Association has indicated it will seek input from the High Point Road/ Lee Street Corridor Business Association.

The zoning proposals and other spacing requirements will require public hearings. City legal recommends that all proposals to modify the City Code be addressed together in these hearings to give interested citizens an opportunity to make their views known.

TDC

cc: Becky Jo Peterson-Buie, Interim City Attorney
Andrew Scott, Assistant City Manager
Denise Turner, Assistant City Manager
Michael Speedling, Assistant City Manager
Nelsie Smith, Assistant to City Manager

Office of the City Attorney
City of Greensboro



October 29, 2010

TO: Rashad Young, City Manager
FROM: Jo Peterson-Buie, Interim City Attorney
SUBJECT: Charge for Water and Sewer Service to Non-city Residents

The question was asked at the October 26, 2010, Work Session, whether or not, there is a cap on rates for water and sewer service furnished to customers outside Greensboro city limits.

North Carolina General Statutes § 160A-314 authorizes a city to establish and revise from time to time rates, fees, charges, and penalties for the use of water and sewer services furnished by the city, and specifically allows different fees and charges for services provided outside the corporate limits of the city.

No case law was found that placed a cap on rates charged customers outside city limits. The North Carolina Supreme Court in the case of Atlantic Const. Co. v. City of Raleigh ruled:

“since it is optional with a city as to whether or not it will furnish water to residents outside its corporate limits and permit such residents to connect their sewer facilities with the sewerage system of the city, or with any other sewerage system which connects with the city system, it may fix the terms upon which the service may be rendered and its facilities used. Therefore, a city is free to establish by contract or by ordinance such fees and charges for services rendered to residents outside its corporate limits as it may deem reasonable and proper.”

A copy of the aforementioned statute and case is attached for your information. If you have further questions, feel free to contact me.

JPB
Attachments

cc: Bob Morgan, Deputy City Manager

§ 160A-314. Authority to fix and enforce rates.

(a) A city may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished by any public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary according to classes of service, and different schedules may be adopted for services provided outside the corporate limits of the city.

- (a1) (1) Before it establishes or revises a schedule of rates, fees, charges, or penalties for stormwater management programs and structural and natural stormwater and drainage systems under this section, the city council shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing. The hearing may be held concurrently with the public hearing on the proposed budget ordinance.
- (2) The fees established under this subsection must be made applicable throughout the area of the city. Schedules of rates, fees, charges, and penalties for providing stormwater management programs and structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. Rates, fees, and charges imposed under this subsection may not exceed the city's cost of providing a stormwater management program and a structural and natural stormwater and drainage system. The city's cost of providing a stormwater management program and a structural and natural stormwater and drainage system includes any costs necessary to assure that all aspects of stormwater quality and quantity are managed in accordance with federal and State laws, regulations, and rules.
- (3) No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate stormwater management programs or separate structural and natural stormwater and drainage system services in the same area within a county. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a stormwater management program and structural and natural stormwater and drainage system service in the same area within a county, provided that only one unit may levy a fee for the service within the joint service area. For purposes of this subsection, a unit of local government shall include a regional authority providing stormwater management programs and structural and natural stormwater and drainage system services.

(a2) A fee for the use of a disposal facility provided by the city may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal. This section does not prohibit a city from providing aid to low-income persons to pay all or part of the cost of solid waste management services for those persons.

(b) A city shall have power to collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts, and may specify by ordinance the order in which partial payments are to be applied among the various enterprise services covered by a bill for the services. A city may also discontinue service to any customer whose account remains delinquent for more than 10 days. When service is discontinued for delinquency, it shall be unlawful for any person other than a duly authorized agent or employee of the city to do any act that results in a resumption of services. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises, but this restriction shall not apply when the premises are

occupied by two or more tenants whose services are measured by the same meter.

(b1) A city shall not do any of the following in its debt collection practices:

- (1) Suspend or disconnect service to a customer because of a past-due and unpaid balance for service incurred by another person who resides with the customer after service has been provided to the customer's household, unless one or more of the following apply:
 - a. The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred.
 - b. The person was a member of the customer's current household when the service was established, and the person had an unpaid balance for service at that time.
 - c. The person is or becomes responsible for the bill for the service to the customer.
- (2) Require that in order to continue service, a customer must agree to be liable for the delinquent account of any other person who will reside in the customer's household after the customer receives the service, unless one or more of the following apply:
 - a. The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred.
 - b. The person was a member of the customer's current household when the service was established, and the person had an unpaid balance for service at that time.

(b2) Notwithstanding the provisions of subsection (b1) of this section, if a customer misrepresents his or her identity in a written or verbal agreement for service or receives service using another person's identity, the city shall have the power to collect a delinquent account using any remedy provided by subsection (b) of this section from that customer.

(c) Except as provided in subsection (d) of this section and G.S. 160A-314.1, rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the person contracting for them, and shall in no case be a lien upon the property or premises served, provided that no contract shall be necessary in the case of structural and natural stormwater and drainage systems.

(d) Notwithstanding subsection (b1) of this section, rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the owner of the premises served when:

- (1) The property or premises is leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter.
- (2) Charges made for use of a sewage system are billed separately from charges made for the use of a water distribution system.

(e) Nothing in this section shall repeal any portion of any city charter inconsistent herewith. (1971, c. 698, s. 1; 1991, c. 591, s. 1; c. 652, s. 4; 1991 (Reg. Sess., 1992), c. 1007, s. 46; 1995 (Reg. Sess., 1996), c. 594, s. 28; 2000-70, s. 4; 2009-302, s. 3(a), (b).)

*This document (also available in PDF and RTF formats) is not an official document.
Please read the caveats on the main NC Statutes page for more information.*

53 S.E.2d 165
Supreme Court of North Carolina.

ATLANTIC CONST. CO.

v.

CITY OF RALEIGH.

No. 454 May 4, 1949

Appeal from Superior Court, Wake County; Luther Hamilton,
Special Judge.

Action by Atlantic Construction Company against City of
Raleigh to restrain defendant city from collecting fees for
making lateral connection with sewer main outside corporate
limits of city, and to recover fees allegedly paid under protest.
From an adverse judgment, plaintiff appeals.

Judgment affirmed.

West Headnotes (7)

1 **Municipal Corporations** ⇌ Contracts Relating
to Use of Sewer System

Contract between city and owners of subdivision
outside corporate limits of city that connections
by consumers with mains, to be laid under
contract at expense of owners of subdivisions
and connected with water and sewer mains
of city, should be made in accordance with
laws, ordinances, and regulations of city and
its department of public works did not limit
power of city by ordinance to require payment of
sewer connection fee by residents of subdivision
and was sufficient to require those requesting a
sewer connection pursuant to contract to pay such
connection fee as might be fixed by city. G.S. §§
160-240, 160-249, 160-255, 160-256, 160-284.

2 **Municipal Corporations** ⇌ Compelling
Connection

Municipalities are expressly authorized by statute
to require all owners of improved property,
located upon or near any line of a sewerage
system, to connect with such sewer all water
closets, bath tubs, lavatories, sinks, or drains upon
their properties, so that their contents may be
made to empty into such sewer and municipalities

may fix charges for such connections. G.S. §
160-240.

3 **Municipal Corporations** ⇌ Compelling
Connection

Municipality has no authority under statute to
compel owners of improved property located
outside city but upon or near a city sewer
line or line which empties into city's sewerage
system to connect with sewer line but, since
it is optional with city whether it will furnish
water to residents outside corporate limits and
permit them to connect sewer facilities with city
sewerage system or any other sewerage system
which connects with city system, city may fix the
terms upon which the service may be rendered
and its facilities used. G.S. § 160-240.

4 Cases that cite this headnote

4 **Municipal Corporations** ⇌ Nonresidents

Utilities Commission has no jurisdiction to fix
or supervise fees to be charged by municipality
for connection with city sewerage system either
within or without its corporate limits and city is
free to establish by contract or ordinance such
fees for services rendered to residents outside
corporate limits as city may deem reasonable and
proper. G.S. §§ 62-27, 62-30(5), 62-122, subd. 3,
160-240, 160-249, 160-284.

10 Cases that cite this headnote

5 **Municipal Corporations** ⇌ Compelling
Connection

Residents living outside corporate limits of
city cannot, in absence of contract providing
otherwise, compel city to make its public utilities
services available to them. G.S. §§ 160-255,
160-256.

1 Cases that cite this headnote

6 **Municipal Corporations** ⇌ Nonresidents

City ordinance requiring owner or occupant of
property outside corporate limits of city to pay
stated fee for making a lateral connection with
sewer main, connecting with or emptying into

city's sewerage system, merely fixed charges to be paid by such owners accepting tendered use of city's facilities and is not invalid as levying a "tax" on such property.

7 Municipal Corporations - Nonresidents

Owners of property outside corporate limits of city could not challenge validity of fees charged by city for making lateral connection with sewer mains connecting with city's sewerage system on ground that such charges were unnecessary to meet payment of city's bonded indebtedness or pay for repairs, maintenance and operation of city's water and sewer systems. G.S. § 160-256.

****166 *365** This is an action to restrain the City of Raleigh from collecting any fees or charges, by virtue of the provisions of an ordinance duly adopted by the governing body of said city, on 18 November, 1947, which ordinance reads as follows: 'Every property owner or occupant desiring to make a lateral connection with a sewer main lying outside of the corporate limits of the City, connecting with or emptying into the mains of the City sewerage system, shall pay to the City of Raleigh a fee of \$100 for ***366** each such connection before the connection is made.' And the plaintiff also seeks to recover the fees heretofore paid to the City of Raleigh, pursuant to the terms of the ordinance, which fees, it is alleged, were paid under protest.

R. A. Bashford and J. C. Bashford entered into a contract, on 12 March, 1947, with the City of Raleigh, whereby the Bashfords, owners of a parcel of land outside the city limits of Raleigh, subdivided their land into building lots, and at their cost and expense laid water and sewer mains according to plans and maps submitted to and approved by the officials of the City of Raleigh, and connected the same with the water and sewer mains of the defendant city, as authorized by said contract.

The pertinent parts of the contract involved in this action are as follows: 'That the connections by consumers of water in said subdivision or development with the pipe lines, water mains or sewer mains to be laid under this contract and agreement, shall be in accordance with the laws, ordinances, rules and regulations of the City of Raleigh, and its Department of Public Works, and the use of water through

said pipe lines or water mains shall be in accordance with the said laws, ordinances, rules and regulations. City shall have supervision and control over said mains, pipe lines, laterals, taps and connections for the purpose of making any and all necessary inspections, reading of meters, and turning the water on or off. The water rents charged by City to the consumers of water through said water mains or pipe lines shall be the same as those charged all other consumers residing outside the corporate limits of the City, and City shall collect all water rents from consumers connected with said mains, pipe lines or laterals, and shall retain and have the same as its own.'

The development or subdivision is known as Sunset Hills Extended. The plaintiff purchased from the Bashfords approximately forty-five building lots in said subdivision, on 18 April, 1947, for the purpose of building residences thereon, and has constructed a number of residences in the development; and since the adoption of the above ordinance the plaintiff has paid the defendant for nine sewer connections at \$100.00 each, some of which payments were made under verbal protest.

****167** It is alleged the contract referred to herein between the Bashfords and the defendant, runs with the land, and the plaintiff being a successor in title to R. A. and J. C. Bashford, is entitled to all the benefits, terms and conditions of the contract, and that the contract does not authorize the City of Raleigh to collect any fees for connections with the private sewerage system constructed and laid by the Bashfords.

His Honor heard this cause on an Agreed Statement of Facts, the parties having waived a trial by jury, and stipulated that the presiding ***367** Judge should make his conclusio of law and enter judgment accordingly.

The Court held the plaintiff is not entitled to injunctive relief nor to a refund on account of any payments made pursuant to the provisions of the ordinance referred to herein, and entered judgment in accordance therewith.

The plaintiff appeals and assigns error.

Attorneys and Law Firms

Brassfield & Maupin and J. Russell Nipper, all of Raleigh, for plaintiff.

Wm. C. Lassiter and James H. Walker, both of Raleigh, for defendant.

Opinion

DENNY, Justice.

The plaintiff does not challenge the authority of the City of Raleigh, acting through its governing board, to fix a different schedule of rates for services supplied outside of the corporate limits of the city from that fixed for such services rendered within the corporate limits. G.S. s 160-249 and G.S. s 160-256. Moreover, the plaintiff concedes in its brief that ordinarily municipalities may impose reasonable conditions and regulations in regard to making sewer connections and may fix and determine the fees and charges therefor, but it contends the regulations, as well as the charges for such connections, must be reasonable.

The validity of the ordinance set out herein is challenged on the following grounds:

1. That the sewer connection charge, or fee, imposed in the ordinance is, in effect and in fact, a revenue measure imposing an excise tax, and bears no relation to fees or charges imposed to defray the expense incident to the inspection of sewer connections. An inspection fee in addition to the charge or fee fixed in the ordinance, is charged and collected under and by virtue of Chapter XX, Sec. 64 of the Raleigh City Code.
2. That the ordinance is discriminatory for that: (a) No charge or fee is made by the defendant City of Raleigh to owners or occupants of property lying within the corporate limits of the city for sewer connections; and (b) owners or occupants of property lying outside of the City of Raleigh and who made sewer connections prior to 18 November, 1947, were not and are not required to pay any fee or charge for sewer connections and for the use of the sewerage system.
3. That the fees and charges provided for by said ordinance are not on a basis of equality, a flat charge or fee of \$100.00 being made for each lateral connection, regardless of the number of outlets, the size of pipes, or the number of persons or families served.
4. That the fee provided for by said ordinance is unreasonable and unfair, since the defendant city has neither paid out any money nor incurred any expense in making said sewer connections.
- *368 5. That the connection fee provided for by the ordinance, is in violation of the contract between the Bashfords and the City of Raleigh, which contract is pleaded as a bar of the defendant's right to make any charges or collect

any fees for connections with the private sewerage system constructed by the Bashfords.

A careful consideration of this record leads us to the conclusion that the defendant is free to require such sewer connection charges to consumers of water, residing in the development known as Sunset Hills Extended, as it may deem just and reasonable, unless the contract between the Bashfords and the City of Raleigh prohibits the city from charging a sewer connection fee.

1 The provision in the contract upon which the plaintiff relies, as a bar to the defendant's right to charge a connection fee, is as follows: 'That the connection of **168 consumers * * * with sewer mains to be laid under this contract * * * shall be in accordance with the laws, ordinances, rules and regulations of the City of Raleigh, and its Department of Public Works * * *. ' If it be conceded this provision is directed solely to the manner in which the connections are to be made and not to include conditions which might be imposed, we do not think the provision places any limitation upon the power of the city to enact an ordinance requiring the payment of a sewer connection fee by one residing in Sunset Hills Extended. But we think the provision is sufficient to require those requesting a sewer connection pursuant thereto, to pay such connection fee as may be fixed 'in accordance with the laws, ordinances, rules and regulations of the City of Raleigh.' It seems clear to us the provision was not inserted merely to insure proper installation. For it is further provided in the same paragraph of the contract that the City of Raleigh is also given 'supervision and control over said mains, pipe lines, laterals, taps and connections for the purpose of making any and all necessary inspections,' etc.

2 Furthermore, municipalities are expressly authorized by statute, G.S. s 160-240, to require all owners of improved property which may be located upon or near any line of a sewerage system to connect with such sewer all water-closets, bathtubs, lavatories, sinks, or drains upon their respective properties or premises, so that their contents may be made to empty into such sewer, and may fix charges for such connections.

3 Obviously the municipality is not authorized by the statute, to compel owners of improved property located outside the city, but which may be located upon or near one of its sewer lines or a line which empties into the city's sewerage system, to connect with the sewer line. But since it is optional with a city as to whether or not it will furnish water to residents outside its corporate limits and permit such residents

to connect their sewer facilities with the sewerage system of the city, or with any *369 other sewerage system which connects with the city system, it may fix the terms upon which the service may be rendered and its facilities used. G.S. s 160-255; G.S. s 160-256; Kennerly v. Town of Dallas, 215 N.C. 532, 2 S.E.2d 538; Williamson v. City of High Point, 213 N.C. 96, 195 S.E. 90; George v. City of Asheville, 4 Cir., 80 F.2d 50, 103 A.L.R. 568.

4 The North Carolina Utilities Commission has no jurisdiction to fix or supervise the fees and charges to be made by a municipality for connections with a city sewerage system, either within or without its corporate limits. G.S. s 62-30(5); G.S. s 62-122(3). Therefore, a city is free to establish by contract or by ordinance such fees and charges for services rendered to residents outside its corporate limits as it may deem reasonable and proper. G.S. s 160-240; G.S. s 160-249; G.S. s 160-284.

The status of a municipal corporation that extends the services of its public utilities beyond its corporate limits, is quite different from that of a public service corporation which holds a franchise from the State and whose rates are fixed by the North Carolina Utilities Commission, G.S. s 62-27.

5 The relationship existing between the plaintiff and the defendant is contractual, whether it is based on the Bashford contract or the ordinances and rules and regulations adopted by the governing board of the City of Raleigh. The defendant has no legal right to compel residents living outside its corporate limits to avail themselves of the services which may be offered by its public utilities. On the other hand, in the absence of a contract providing otherwise, such residents are not in position to compel the city to make such services available to them. Childs v. City of Columbia, 87 S.C. 566, 70 S.E. 296, 34 L.R.A.,N.S., 542; Board of Sup'vrs of Henrico

County v. City of Richmond, 162 Va. 14, 172 S.E. 356; City of Phoenix v. Kasum, 54 Ariz. 470, 97 P.2d 210.

6 Likewise, the contention that the service connection fee fixed in the ordinance is a tax, is untenable. City of Lexington v. Jones, 289 Ky. 719, 160 S.W.2d 19. We think the contract and ordinance constitute a tendered use of the sewerage system of the City of Raleigh to residents in Sunset Hills Extended, according to the **169 terms of the contract. And in the absence of any constitutional or statutory restriction, the rates and fees that may be charged to such residents in connection with the use of its public utilities, are matters that may be determined by its governing body in its sound discretion.

7 The plaintiff in its brief also contends that the fee charged is not necessary in order to meet the payment of the defendant's bonded indebtedness or the repair, maintenance and operation of its water and sewer system, as authorized in G.S. s 160-256. In our opinion the plaintiff is not in a position to challenge the validity of the fees or rates established by *370 the city pursuant to the provisions of this statute, since the property in question is located outside the city limits of the City of Raleigh.

In view of the conclusion we have reached, the plaintiff is not entitled to an order restraining the defendant from collecting further sewer connection fees, pursuant to the provisions of the ordinance it challenges, nor to a refund of the fees heretofore paid in accordance with its requirements.

The judgment of the Court below will be upheld.

Affirmed.

Parallel Citations

53 S.E.2d 165

End of Document

© 2010 Thomson Reuters. No claim to original U.S. Government Works.