

As long as the city has a rational basis for the different charges the ordinance should be legally defensible. I see nothing on the face of the ordinance that is obviously illegal or unconstitutional. Cities have a lot of discretion in legislative matters and courts are deferential to the decisions of local governing bodies as long as there are reasons for what they do. This is not to say, of course, that a citizen could not attack the ordinance or an ordinance provision and based upon specific facts have a provision as applied declared illegal. That is always a possibility. The city, however, does not want to be in a position of not having good, nondiscriminatory reasons for enacting each provision of the ordinance.

The ordinance does violate guidelines for ordinance and statute drafting. This is a legal problem only insofar as it makes the ordinance less clear, more difficult to read and understand, and more likely to be misinterpreted. Ordinances and statutes to the extent possible should be written in plain, simple English. Unnecessarily complicated construction and legalese should be avoided, mainly because the people who have to read and apply the language are not lawyers. For example, this monstrous sentence is subsection (D):

(D) If any person obtaining a permit to connect with the sanitary sewer system of the city shall, within ninety (90) days after the issuance of such permit, fail to make the sewer connection covered thereby, and if, in the meantime, the applicable connection charge, installation charge, and/or infrastructure construction charge, if any prescribed by this section shall be increased, then such permit shall be null, void and of no further force and effect unless such person shall pay to the City such additional amount which, together with the amount already paid, will equal such increased connection charge, tap installation charge, and/or infrastructure construction charge.

This can be reworded thus:

If a person issued a permit to connect to the sanitary sewer system fails to make the connection within 90 days of the issuance of the permit and any charge prescribed by this section is increased during that time, the permit is void. To have the permit reinstated, the person must pay the difference between the superseded charge and the newly enacted charge.

The main guideline for drafting that the ordinance violates is one that says ordinances and statutes should be written to the extent possible in the present tense, not the future tense. A simple reason for this is that the future never arrives. We are always in the present, so statutes should speak to the present. To say that something "shall be unlawful," for example, literally means that at sometime in the future the thing prohibited will be unlawful. The question is when. So we should say "It is unlawful..." This also lends clarity by confining the word "shall" to directing action rather than also indicating future tense.

I hope this turns out to be helpful.

Dennis