

ORDINANCE NO 2003-03

**AN ORDINANCE ESTABLISHING TEMPORARY REGULATIONS
AND A TEMPORARY MORATORIUM FOR SEWER EXCAVATION,
CONSTRUCTION AND RELATED ACTIVITIES WITHIN
THE CITY OF WENDOVER, TOOELE COUNTY, UTAH**

Recitals

A. The City of Wendover, Tooele County, Utah is authorized by Utah Code Annotated Title 10, Chapter 8, and by other provisions of law, to enact ordinances, rules and regulations governing the use, control, construction, maintenance, repair and operation of sewer lines and systems within the City;

B. the City's authority over sewer systems, and construction activities incident thereto, includes regulation of persons and entities other than the /City and its employees and agents;

C. The City is authorized to enact ordinances and rules, and to make regulations, necessary for carrying into effect the powers and duties conferred upon the City by law, and as are necessary for the safety, health, prosperity, good order, comfort and convenience of the City and its inhabitants, and for the protection of property in the City;

D. The City has made a significant investment in its water and sewer systems, and has made significant improvements incident thereto, all for the safety, health, prosperity, good order, comfort and convenience of the City and its inhabitant, and for the protection of property in the City;

E. The City has pledged its water and sewer revenues in support of improvements to its water and sewer systems;

F. The City is presently engaged in litigation with the City of West Wendover, Nevada, and its officers and agents, related to the termination or loss of revenues from the City's water system. The City is also concerned with the possible loss of revenue associated with efforts to change or remove connections to the City's sewer system which may have the effect of reducing or terminating revenues derived by the City from its existing sewer customers;

G. These losses and concerns involve the sale and provision of water and sewer services to entities outside the jurisdictional boundaries of the City and outside the territorial boundaries of the State of Utah;

H. The City finds that some of the issues presented in the pending litigation are similar to those presented by attempts to disconnect existing users from the City's sewer system, and specifically users who may be located outside the jurisdictional limits of the City and outside the jurisdictional boundaries of the State of Utah; and

I. The City desires to, and deems it necessary and appropriate to, adopt temporary rules and regulations and a temporary moratorium on sewer excavation, construction and incidental activities that may negatively impact the City's sale of water or sewer services, and particularly, its sale of water or sewer services to entities outside the jurisdictional boundaries of the City and outside the territorial boundaries of the State of Utah.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF WENDOVER, TOOELE COUNTY, UTAH AS FOLLOWS:

Section 1. Finding of Compelling Public Interest. The Governing Body of the City of Wendover finds there is a compelling public and municipal interest in adopting the temporary moratorium, rules and regulations set forth herein.

Section 2. Moratorium on Issuance of Permits for Construction of Sewer Line Changes, Modifications or Improvements.

A. The City hereby imposes a temporary moratorium on the issuance of any permit, license or approval for excavation, construction, modification or other changes to the City's sewer system, and its pipelines and appurtenances, that may have the effect of disconnecting any current user from the City's sewer system or which may have the effect of discontinuing or reducing the City's revenues from the operations of its sewer system.

B. During the effective time of this Ordinance, any application for a permit, license or approval of any excavation, construction, modification or other change to the City's sewer system, and its pipelines and appurtenances, that may have the effect of disconnecting any current user from the City's sewer system or which may have the effect of discontinuing or reducing the City's revenues from the operation of its sewer system shall be rejected by the City.

C. It shall be unlawful for the City or its employees, officers or agents to issue any permit, license or approval of any application for any excavation, construction, modification or other change to the City's sewer system, and its pipelines and appurtenances, that may have the effect of disconnecting any current user from the City's sewer system or which may have the effect of discontinuing or reducing the City's revenues from the operation of its sewer system.

D. The permits, licenses or approvals contemplated by this ordinance include without any limitations, permits or authorizations for construction of improvements or changes under the City's building code, permits or authorizations for construction of improvements or changes under the City's excavation ordinance, and any and all other permits, licenses or approvals which may have the effect of disconnecting any current user from the City's sewer system or which may have the effect of discontinuing or reducing the City's revenues from the operation of its sewer system.

E. During the effective period of this Ordinance, any permit, license or approval which is issued contrary to the provisions hereof shall be null and void, and of

no meaning or effect.

F. During the effective period of this Ordinance, no person or entity shall engage in any excavation, construction or related activity which would change the City's sewer system, and its pipelines and appurtenances, in such a way as to have the effect of disconnecting, or which would tend to disconnect, any current user from the City's sewer system or which may have the effect of discontinuing or reducing the City's revenues from the operation of its sewer system.

Section 3. Exceptions. The temporary moratorium, rules and regulations established by this Ordinance shall not apply to:

A. Repairs or maintenance of sewer facilities required for the health and safety of the City and its residents and businesses;

B. Construction incident to improvements or changes to property, the primary or incidental purposes or effects of which are not to permanently disconnect any current user from the City's sewer system;

C. Construction incident to improvements or changes to property, the primary or incidental purposes or effects of which are not to permanently discontinue or reduce the City's revenues from the operation of its sewer system;

D. Circumstances where water or sewer services to a user are terminated by the City due to non-payment of fees associated with a user's use of the City's services.

E. Circumstances where water or sewer services are terminated with the approval of the City, where done for reasons such as a user's extended absence from the property, a temporary or permanent abandonment of the property, or similar facts.

Section 4. Definition: Sewer System. The terms "City" Sewer System(s) , and its pipelines and appurtenances and similar terms, shall have the meaning and be interpreted in a broad and encompassing manner so as to enforce and effectuate the intent of this Ordinance. Those terms shall include the City's sewer pipelines, transmission facilities, fixtures and appurtenant property whether lying in or on public property, or within any public or private right of way. For purposes of this Ordinance, those terms shall include all sewer pipelines, sewer transmission facilities, fixtures and appurtenant property connected to the City's sewer pipelines from locations in a public or private right-of-way and extending to any location at which a sewer pipe or transmission facility is connected to any structure, building or improvement in which sewer waste is generated.

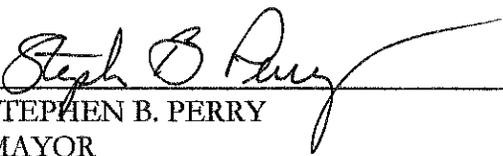
Section 5. Effective Period for this Ordinance. This Ordinance shall become effective immediately upon passage by the Governing Body of the City, and shall continue in effect on a temporary basis for the duration of, and until the final resolution of, the City's litigation with the City of West Wendover, Nevada, related to the loss of its water revenues, and thereafter until repealed or until permanent rules and regulations are established by the City.

Section 6. Penalty and Remedies. Any person or entity who violates the requirements of this Ordinance shall be guilty of a Class B misdemeanor, and subject to the penalties provided by law. The City is authorized to initiate a civil action to enforce the provisions hereof, or to abate any violation of the provisions of this Ordinance. In the event a civil action is filed to enforce the provisions of this Ordinance or to abate a violation of this Ordinance, the City shall be entitled to recover its reasonable costs and attorney's fees.

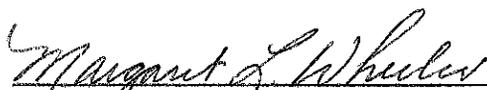
Section 7. Severability. If any section, paragraph, clause or provision of this ordinance shall be held invalid, unlawful or unenforceable, the same shall not effect the validity or enforceability of the remaining provision of this Ordinance.

PASSED AND ADOPTED BY THE CITY COUNCIL OF WENDOVER,
TOOELE COUNTY, UTAH THIS 19th DAY OF NOVEMBER, 2003.

THE CITY OF WENDOVER, UTAH

BY: 
STEPHEN B. PERRY
MAYOR

ATTEST:


MARGARET WHEELER
CITY RECORDER

CERTIFICATE OF POSTING ORDINANCE

I, THE DULY APPOINTED AND ACTING RECORDER FOR THE CITY OF WENDOVER, HEREBY CERTIFY THAT COPIES OF THE FOREGOING ORDINANCE NO. 2003-03 WERE POSTED A THREE PUBLIC PLACES WITHIN THE MUNICIPALITY THIS 20th DAY OF NOVEMBER, 2003 WHICH PUBLIC PLACES ARE:

1. Wendover Utah City Offices
2. Wendover Utah Post Office
3. Fred's Market

Dated this 20th day of November, 2003.

Margaret L. Wheeler
RECORDER