



**City Commission Special Meeting Agenda**  
**2 Park Drive South, Great Falls, MT**  
**Commission Chambers, Civic Center**  
**August 10, 2022**  
**3:00 PM**

The agenda packet material is available on the City's website: <https://greatfallsmt.net/meetings>. The Public may view and listen to the meeting on government access channel City-190, cable channel 190; or online at <https://greatfallsmt.net/livestream>.

Public participation is welcome in the following ways:

- Attend in person.
- Provide public comments in writing by 12:00 PM the day of the meeting: Mail to City Clerk, PO Box 5021, Great Falls, MT 59403, or via email to: [commission@greatfallsmt.net](mailto:commission@greatfallsmt.net). Include the agenda item or agenda item number in the subject line, and include the name of the commenter and either an address or whether the commenter is a city resident. Written communication received by that time will be shared with the City Commission and appropriate City staff for consideration during the agenda item and before final vote on the matter; and, will be so noted in the official record of the meeting.

**CALL TO ORDER**

**ROLL CALL / STAFF INTRODUCTIONS**

**AGENDA APPROVAL**

**CONFLICT DISCLOSURE / EX PARTE COMMUNICATIONS**

**PETITIONS AND COMMUNICATIONS**

1. Miscellaneous reports and announcements.

*(Public comment on any matter that is not on the agenda of the meeting and that is within the jurisdiction of the City Commission. Please keep your remarks to a maximum of 3 minutes. When at the podium, state your name and either your address or whether you are a city resident for the record.)*

**NEW BUSINESS**

2. ADMINISTRATIVE APPEAL -- Appeal from City Staff Decision to Not Issue a Safety Inspection Certificate (SIC) for the Proposed Operation of an Adult-use Marijuana Dispensary with the City of Great Falls. *Action: Grant or deny the appeal.*
3. ADMINISTRATIVE APPEAL – UTILITY RATE OBJECTION -- Appeal from City Staff Decision to Deny Request for Classification of Property as Residential for Wastewater Rate Purposes. *Action: Grant or deny the utility rate objection.*

**ADJOURNMENT**

*(Please exit the chambers as quickly as possible. Chamber doors will be closed 5 minutes after adjournment of the meeting.)*

*Assistive listening devices are available for the hard of hearing, please arrive a few minutes early for set up, or contact the City Clerk's Office in advance at 455-8451. Wi-Fi is available during the meetings for viewing of the online meeting documents.*



Commission Meeting Date: August 10, 2022

**CITY OF GREAT FALLS  
COMMISSION AGENDA REPORT**

**Item:** ADMINISTRATIVE APPEAL -- Appeal from City Staff Decision to Not Issue a Safety Inspection Certificate (SIC) for the Proposed Operation of an Adult-use Marijuana Dispensary with the City of Great Falls

**From:** City Attorney

**Initiated By:** Emma Albers

**Presented By:** City Attorney

**Action Requested:** Consider Appeal and Uphold, Reverse or Revise the Staff Decision on the SIC Application

**Suggested Motion:**

1. Commissioner moves:

“I move that the City Commission deny the appeal and uphold the decision of City staff to not process or issue a Safety Inspection Certificate to the Appellant for the operation of an adult-use marijuana dispensary within the City of Great Falls”

OR

“I move that the City Commission grant the appeal and reverse the decision of City staff to not process or issue a Safety Inspection Certificate to the Appellants for the operation of an adult-use marijuana dispensary within the City of Great Falls.”

2. Mayor requests a second to the motion, Commission discussion, and calls for the vote.

**Background:** On April 18, 2022, Ms. Albers and another individual (Mr. Mitchell) attempted to have City staff accept and process an application for a Safety Inspection Certificate (SIC) for the operation of an adult-use marijuana dispensary within the City of Great Falls. As had previously occurred with respect to the SIC application submitted by Mr. and Mrs. Yatsko in February of 2022, City staff ultimately advised Ms. Albers that (1) her SIC application for that type of business would not be processed and (2) she could submit an appeal to the City Manager regarding the actions of City staff in not processing her SIC application.

On May 5, 2022, Ms. Albers submitted a letter outlining the grounds for her appeal to the City Manager and he directed a response letter to Ms. Albers on May 11, 2022. His response letter to Ms. Albers outlined the same explanation for the actions by City staff as he had outlined two months earlier in his letter to Mr. and Mrs. Yatsko:

- The City Commission had enacted Ordinance 3054 in June of 2010, codified as OCCGF 17.20.3.070, which provides as follows:

**17.20.3.070 – Prohibited land uses.** No use of land shall be permitted by right or conditionally permitted within the City of Great Falls that is in violation of federal, state or local law.

- The specific purpose behind Ordinance 3054 was to prohibit medical marijuana activities within the City of Great Falls; and
- Although the State of Montana has now legalized certain activities relating to adult-use marijuana, there have been no changes in terms of federal law continuing to prohibit marijuana-related activities.

(See Attachment “1”). The City Manager’s letter also advised that none of the federal laws cited by Ms. Albers in her letter (i.e., federal spending bill, the 10<sup>th</sup> Amendment to the U.S. Constitution, or the Rohrabacher-Farr Amendment) have any bearing on or relevance to her request for the issuance of an SIC from the City of Great Falls for the operation of a commercial adult-use marijuana dispensary.

The City Manager’s letter further advised that Ms. Albers could appeal his decision affirming the actions of City staff to the City Commission under the provisions of OCCGF 5.1.030, which provides as follows:

If the City Manager upholds . . . the determination of the . . . certificate, the applicant may appeal the decision to the City Commission within fifteen (15) calendar days. The Commission shall review the application in a public meeting and uphold, reverse or revise the decision on the application. If applicant makes no such appeal, the City Manager’s determination will stand.

On May 17, 2022, Ms. Albers submitted a timely appeal of the City Manager’s decision to the City Commission, so the matter is now before the Commission for its consideration.

**Commission Action / Alternatives:** As noted in the attached correspondence and as the Commission is aware, the State of Montana has now legally authorized certain activities relating to adult-use marijuana, including but not limited to the authorization for the operation of adult-use marijuana dispensaries. There have been no changes, however, on the federal law front with respect to marijuana-related activities, either medical or adult-use. Thus, the City staff decision at issue, i.e., a decision to not process or issue an SIC for a proposed adult-use marijuana dispensary within the City of Great Falls, simply reflects the staff’s application of the City’s current zoning ordinance language.

As the Commission is aware, I-190 as passed by the Montana voters in November of 2020 legalized a range of adult-use marijuana activities on a statewide basis. The language of I-190 as passed actually contained a provision that would have expressly prevented the City of Great Falls (or any other self-governing municipality) from completely prohibiting commercial adult-use activities (*see I-190, Section 37*). However, as the Commission has also been previously advised, the 2021 Legislature **repealed** that specific restriction as part of its passage of the final statutory framework governing both medical and adult-use marijuana activities, i.e., HB 701 (*See HB 701, Section 106*).

As a self-governing local government, the City is allowed to exercise any power not specifically prohibited and any limitation on its authority has to be express, not implied. Thus, it is the City’s legal

position that the Legislature’s action to remove the express limitation on charter municipality authority from the I-190-enacted law means that there can be no “implied” restriction on the City’s authority to prohibit adult-use marijuana activities.

As the Commission is aware, the Yatskos have now filed a lawsuit against the City in which they are asking the District Court to both (1) declare that the City of Great Falls cannot prohibit the operation of adult-use marijuana dispensaries in the City and (2) direct the City to process the Yatsko’s SIC application for such a dispensary. The City is actively defending that lawsuit, however, and actively defending its legal position regarding this matter as set forth in the City Manager’s letters to both the Yatskos and Ms. Albers.

However, at the same time the City Commission took action to deny the previous SIC appeal submitted by the Yatskos, it also took action to direct staff to develop a proposed referendum package to submit an ordinance to the voters specifically prohibiting commercial marijuana activities in the City of Great Falls. That action was completed earlier this month and the electors of the City of Great Falls will now decide in November whether or not to enact an ordinance specifically prohibiting commercial marijuana activities in the City or not. In the event the voters choose **not** to enact that specific prohibition, the Commission is currently in the process of crafting a zoning framework to allow for and regulate commercial marijuana activities in the City.

The options available to the Commission in addressing the current SIC appeal are as follows:

OPTION 1: Deny the appeal and uphold the decision of the City Manager affirming the actions of City Staff to not process or issue an SIC to the Appellants for the operation of an adult-use marijuana dispensary within the City of Great Falls.

OPTION 2: Grant the appeal and reverse the decision of the City Manager, and direct City staff to process and issue an SIC to the Appellants for the operation of an adult-use marijuana dispensary within the City of Great Falls.

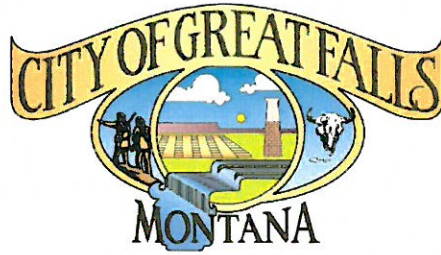
Staff does not recommend Option 2, as Ms. Albers has not presented any grounds – either factual or legal – for the Commission to address her SIC appeal in any manner different than the manner in which it addressed the Yatsko SIC appeal in April. Moreover, the Commission has taken additional steps since its denial of the Yatsko SIC appeal in April to both (1) refer the question of whether commercial marijuana activities should be allowed in the City to the voters of the City and (2) initiate the process of developing a zoning framework to allow for commercial marijuana activities should either (a) the voters or (b) a Court ruling dictate that outcome.

From City staff’s perspective, there is nothing about Ms. Albers’ SIC appeal that should alter the course already charted by the Commission with regard to the subject of commercial marijuana activities. Accordingly, staff recommends Option 1 and recommends that the Commission deny Ms. Albers’ appeal.

#### **Attachments/Exhibits:**

Attachment “1”: May 11, 2022 Letter from the City Manager to Ms. Albers

# ATTACHMENT “1”



May 11, 2022

**VIA E-MAIL**

Ms. Emma Albers  
Great Falls, MT

RE: *Appeal from Denial of Request for Safety Inspection Certificate*

Dear Ms. Albers:

I am responding to your May 2, 2022 letter regarding the above-referenced matter, a copy of which is attached for your convenience as *Attachment "A"*.

As your letter indicates, you attempted on April 18, 2022 to secure a Safety Inspection Certificate (SIC) from employees of the City of Great Falls for the proposed operation of an adult-use marijuana dispensary site within the City and your application was not processed. The City Attorney advised you by email dated that same day (April 18, 2022) that you could advance an appeal to my office from the actions of City staff under Official Code of the City of Great Falls (OCCGF) 5.1.030, and your letter constitutes a timely appeal.

By way of background, the City Commission adopted Ordinance 3054 in June of 2010 to enact what is now OCCGF 17.20.3.070, which provides as follows:

**17.20.3.070 – Prohibited land uses.** No use of land shall be permitted by right or conditionally permitted within the City of Great Falls that is in violation of federal, state or local law.

That amendment to the City's zoning regulations was enacted specifically to prohibit any medical marijuana activities inside the City and was similar to provisions enacted in other cities for that same purpose.

Although the State of Montana has now legally authorized certain activities relating to adult-use marijuana, there have been no changes on the federal law front with respect to marijuana-related activities, either medical or adult-use. From the City's perspective, its zoning ordinance currently stands with respect to both medical marijuana (a context in which it was never challenged during its decade-plus existence) and adult-use marijuana.



Emma Albers  
May 12, 2022  
Page 2

The actions of City staff in refusing to accept an application (and payment) for an SIC that they know cannot be issued have not violated any “due process” or other rights on your part. None of the laws you reference in your letter (i.e., any federal spending bill, the 10<sup>th</sup> Amendment to the U.S. Constitution or the Rohrabacher-Farr Amendment) have any bearing on or relevance to your request for the issuance of an SIC from the City of Great Falls for the operation of a commercial adult-use marijuana dispensary.

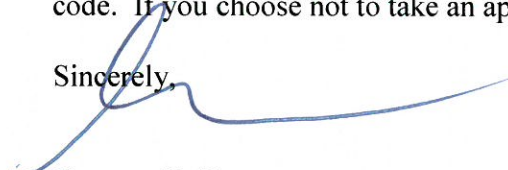
In terms of the vote by Cascade County residents that you’ve referenced, the law enacted by that vote (I-190) did contain language that would have prevented the City of Great Falls (or any other self-governing municipality) from completely prohibiting commercial adult-use activities (*see I-190, Section 37*). However, the 2021 Legislature **repealed** that specific restriction and removed that language from I-190 as part of its passage of HB 701 (*see HB 701, Section 106*).

As a self-governing local government, the City is allowed to exercise any power not specifically prohibited and any limitation on its authority has to be express, not implied. As noted, the Montana Legislature specifically repealed the express limitation on the City’s authority in this area as previously enacted by I-190. Since the Legislature’s actions have meaning and intent, the Legislature’s action to remove that express limitation from the law means that there can be no “implied” restriction on the City’s authority to prohibit adult-use marijuana activities.

Based on the above, I am upholding the City staff decision to not issue an SIC to you for the proposed operation of an adult-use marijuana dispensary within the City of Great Falls.

Under OCCGF 5.1.030(B), you may appeal my decision to the City Commission within fifteen (15) days of the date of this letter. If you submit an appeal to the City Commission, we will schedule the matter for consideration by the Commission in a public meeting as outlined in City code. If you choose not to take an appeal, then my determination in this matter will stand.

Sincerely,



Gregory T. Doyon  
City Manager

Encl: May 2, 2022 Letter

c: COGF Legal Department  
GFFR / Fire Protection Bureau

# **ATTACHMENT “A”**



Dear Mr. Doyon,

My name is Emma Albers. I am writing an appeal for the attempted SIC submission on April 18, 2022, for a new business license in Great Falls City for Montana Dispensary.

By the 14<sup>th</sup> amendment right I should have had due process without discrimination, this was violated. On trying to submit this application at the Great Falls Fire Dept I was redirected to take the application to the Great Falls City Attorney, for they would not accept it. Great Falls city Attorneys office redirected me to city planning, to be returned to Great Falls Attorneys office. After walking back to Great Falls City planning accompanied by the Great Falls City Prosecutor, I was told due to me being in violation with Federal Law they would not accept my application. I was never given due process for the application to even be processed properly.

It is not the cities authority to determine if I am in violation of a federal law. That is left up to the executive branch of the Federal Government. When the head of the executive branch our president, Joe Biden signed the spending bill which our legislative branch drafted and voted into law proves to me I am not in violation of Federal Law.

The 10<sup>th</sup> amendment also allows a state to establish business within their borders without interference of Federal Government. As well as the Rohrabacher- Farr amendment, prohibiting the Dept of Justice from spending funds to interfere with Medical Marijuana and Adult Marijuana Use laws.

The building in which Montana Dispensary would be occupying is zoned commercial and has met all state requirements. With Cascade County voting in favor of Adult Marijuana Use and the city of Great Falls having no current regulations or zoning, this allows state approved Marijuana businesses to be established in city limits.

Thank you for your time,

Kindly,

Emma Albers

May 2, 2022

406-219-7220

[mtdispensary@gmail.com](mailto:mtdispensary@gmail.com)



Commission Meeting Date: August 10, 2022

**CITY OF GREAT FALLS  
COMMISSION AGENDA REPORT**

**Item:** ADMINISTRATIVE APPEAL – UTILITY RATE OBJECTION -- Appeal from City Staff Decision to Deny Request for Classification of Property as Residential for Wastewater Rate Purposes

**From:** Public Works Department, Engineering Division

**Initiated By:** Property Owner – Steve Gillespie

**Presented By:** City Attorney

**Action Requested:** Consider Utility Rate Objection and Accept or Reject the Staff Recommendation Regarding the Utility Rate Objection.

**Suggested Motion:**

1. Commissioner moves:

“I move that the City Commission deny the utility rate objection on the grounds that the challenged utility rate provisions are not unfair, inequitable or unreasonable”

OR

“I move that the City Commission grant the utility rate objection on the grounds that the challenged utility rate provisions are unfair, inequitable or unreasonable”

2. Mayor requests a second to the motion, solicitation of public comment, Commission discussion, and calls for the vote.

**A. Background:** This matter involves an objection by a property owner (Mr. Gillespie) to the decision of City staff to classify his real property as “commercial” for purposes of the City’s wastewater rate structure. The subject real property is located at 812 3<sup>rd</sup> Ave SW and consists of an apartment building with four (4) rental units. Mr. Gillespie’s objection is dated May 27, 2021 and states as follows:

The basis of this complaint is that the water billing section of the City Code allows for single family and some multi-family residential properties to enjoy a residential rate and as well as use a winter average to calculate a more fair summer sewer-treatment bill; while other multi-family residential properties shall pay a higher commercial rate, and are not allowed the “winter-average” opportunity.

The result is that the City Code supports unfair, predatory, discriminatory and inequitable treatment of water/sewer charges for certain “residential” zoned/use properties. (Discrimination based on “family density” is the City Code’s contribution to un-affordable housing).

My property at 812 3<sup>rd</sup> Avenue Southwest is zoned multi-family residential and is home to four families. The water/sewer charges are being calculated at a commercial rate and there is no allowance for a “winter average”; even though there is irrigable space, gardens, trees, planter-boxes, kids-pools, roll-up hoses used for washing cars, spraying off sidewalks and driveways, etc., i.e., These are typical “family residential” summertime uses; the same is for the lower density residential properties.

My bill is in dispute for this reason and to settle the matter. I feel it should be recalculated to reflect the property’s actual zoning and it’s [sic] historical use, residential not commercial. Then the City Code can be updated accordingly.

Even though the outcome of this complaint is predictable, I appreciate your time and consideration.

(See attached Exhibit “A”). The Public Works Department then sent a letter to Mr. Gillespie on June 2, 2021 advising that his complaint would be reviewed under OCCGF 13.2.060, which provides as follows:

**13.2.060 – Rates – complaint – procedure.**

The rates, charges and rentals specified in Title 13 shall be deemed prima facie fair, reasonable and equitable. In any case where any contention is made that the rates are unfair, inequitable or unreasonable, the party objecting thereto shall apply to the City, stating the facts and grounds of complaint, and the City shall investigate and report with recommendations to the City Commission.

(See attached Exhibit “B”). City staff has now reviewed this matter and it is now before the City Commission for its review and consideration of this report and recommendations regarding Mr. Gillespie’s objection.

**B. Applicable Utility Rate Structure.** Under Montana law, the City has the power and authority to regulate, establish, and change – as it considers proper – rates, charges and classifications for utility services to its inhabitants and other persons served by municipal utility systems. See § 69-7-101, MCA. The City’s rates, charges and classifications must, however, be “reasonable and just.” *Id.*

The City has exercised its authority to set rates, charges and classifications for its wastewater utility through a combination of ordinance (OCCGF 13.18.010 *et seq*) and resolution (Resolution 10316). The purpose of the City’s wastewater rate and classification structure is “to generate sufficient revenue to pay all costs for the operation and maintenance of the complete wastewater system” and the costs of the system “shall be distributed equitably to all users of the wastewater system.” OCCGF 13.18.010. Mr. Gillespie’s objection is specifically centered on both (1) the manner in which the City’s rate structure **classifies** its wastewater utility customers and (2) the manner in which that structure extends a **winter average** rate to only certain types of customers.

In terms of how customers are **classified**, the Code provides as follows:

**13.18.030 Customer classification.**

The classes of customers shall be residential, commercial, and industrial:

- A. A residential customer is a user in a dwelling structure having not more than two (2) living units.
- B. A commercial customer is a user discharging primarily segregated domestic wastes or wastes from sanitary conveniences. These wastes must have concentrations equivalent to or less than the wastes from a residential user with respect to suspended solids and five-day twenty (20) degrees centigrade biochemical oxygen demand.
- C. An industrial customer is a user discharging any wastes requiring more treatment than wastes from sanitary conveniences. Any waste with a higher concentration than from a residential user with respect to suspended solids and five-day twenty (20) degrees centigrade biochemical oxygen demand is classified as an industrial waste.

In short, the Code sets three (3) different **classifications** for utility customers based on their type of waste discharges – residential, commercial and industrial. The “residential” customer classification is limited to only single-family residences and duplexes, i.e., no more than two living units. Any residential structure larger than two living units – whether a tri-plex or a 400 unit apartment complex – is classified as a “commercial” customer.

In terms of the wastewater “rate” for the “residential” classification, OCCGF 13.18.040 provides as follows:

**13.18.040 Residential rates.**

All residential customers of the City water system, discharging sewer into the sewer system, shall be charged a flat rate based upon a **winter average** for the months of December, January, February and March water meter reads. These fees will change annually in May. The exact rates shall be determined by resolution.

(emph. supplied). The wastewater “rate” for the “commercial” classification is set forth at OCCGF 13.18.050:

**13.18.050 Commercial rates.**

- A. All commercial customers of the City water system, discharging sewage into the sewer system, shall be charged a fee based upon monthly water meter reads. The exact rates shall be determined by resolution.
- B. Commercial customers who choose not to install a separate meter to measure irrigation water and who have landscaped area of living plant material (inclusive of the boulevard area adjacent to their property) equivalent to twenty-five (25) percent of the total square feet of their property may apply to the City billing department for an averaged sewer rate. Areas covered by materials such as rock, gravel or bark and/or poly sheeting shall not

be counted as landscaping. For those commercial customers who request the averaged sewer rate, the total annual volume of all sewage would be charged as a flat rate based upon a **winter average** for the months of December, January, February and March water meter reads. These fees will charge annually in May. The exact rates shall be determined by resolution.

- C. For users having a water service line larger than three-fourths (3/4) of an inch, the minimum monthly charge will be per City resolution.

(emph. supplied).

In sum, the City's wastewater utility rate structure involves a combination of:

- **Classification** of the customer (residential, commercial or industrial); and
- A **rate** for each classification:
  - Residential is a flat rate (\$2.48 per CCF) based on **winter average** consumption figures;
  - Commercial is a flat rate (\$2.48 per CCF) based on EITHER:
    - Straight consumption figures OR
    - *For certain qualifying commercial customers who wish to elect it, **winter average** consumption figures*

As indicated above, the limited category of commercial customers who can access a winter average rate are those who (1) choose not to install a separate meter to measure irrigation water and (2) have the requisite amount of landscaped area [at least 25% of the total] on their property. A commercial customer who meets those eligibility requirements can apply to the City for the winter average rate. (See attached Exhibit "C").

D. **Mr. Gillespie's Rate Objection – Staff Assessment.** Mr. Gillespie is not asserting (1) that City staff has "misclassified" his property or (2) that he is being charged an incorrect rate. Rather, as noted on Exhibit "A", Mr. Gillespie's rate objection asserts two separate points:

- The City Commission's legislative decision to only classify dwelling structures with one or two living units as "residential" is "unfair, inequitable or unreasonable"; and
- The City Commission's legislative decision to make the winter average rate available only to (1) "residential" customers and (2) a limited category of "commercial" customers, i.e., those who can demonstrate property conditions indicating that a portion of their water consumption is being used to support living plant material (and thus not impacting the wastewater system) is "unfair, inequitable or unreasonable."

In adopting its classification and rate structure, the Commission has already determined that such rates "shall be deemed prima facie fair, reasonable and equitable" and that anyone objecting to those rates must "stat[e] the facts and grounds of [their] complaint. See OCCGF 13.2.060. As outlined below, Mr. Gillespie has not advanced any meaningful or relevant "facts and grounds" to demonstrate that the Commission's legislative judgments regarding its rate structure are "unfair, inequitable or unreasonable."

## 1. *The Residential Classification Issue*

As a threshold matter, Mr. Gillespie’s assertion that the base zoning designation for the portion of the City (R-3 Single Family High Density) where his apartment complex is located should somehow relate to his wastewater rate is meritless – the two subjects (i.e., zoning and wastewater rates) are literally less comparable than apples and oranges. The former has to do with the legislative judgments made by elected officials as to which portions of the community are best suited for certain types of land uses and incompatible with other types of land uses. The latter subject (wastewater rates) is based entirely on the impacts of certain types of properties on the global wastewater utility.

With that in mind, the only question is whether the Commission’s legislative decision – as part of its wastewater rate structure – to only extend a residential classification to properties with two living units or less is somehow “unfair, inequitable or unreasonable.” Based on City staff’s inquiries regarding the comparative rate structures of other large communities in Montana, it is not. For example, the City of Kalispell operates with the same type of structure as the City of Great Falls, i.e., all any residential property larger than a duplex is classified as “commercial”. Similarly, up until approximately ten (10) years ago, the City of Billings also treated every residential property of four (4) units or larger as “commercial.”

While there are other municipalities in Montana that have a classification structure that recognizes “multi-family residential” or “large residential”, those communities typically have a base “service charge” – in addition to the volume charge – that is either (A) higher than single-family residence rate [Bozeman] or (B) applies on a “per residential unit” basis [Missoula]. In other words, even where the rate structure treats “multi-family” as “residential” use, the rate structure still differs from single-family residential.

In sum, it is staff’s assessment that there is nothing inherently “unfair, inequitable or unreasonable” about that portion of the Commission’s wastewater rate structure that characterizes multi-family residential structures of more than two (2) units as “commercial” for classification purposes.

## 2. *The Winter Average Issue*

The second point of Mr. Gillespie’s rate complaint concerns the Commission’s legislative decision – as an element of its wastewater rate structure – to only make the winter average rate available to (1) “residential” customers and (2) those “commercial” customers who can demonstrate property conditions indicating that a portion of their water consumption is being used to support living plant material (and thus not impacting the wastewater system). An example of the “public policy” rationale for distinguishing between residential and multi-family residential uses in a wastewater rate structure is described in the City of San Diego’s 2006 *Wastewater Cost of Service Rate Study*:

. . . . The methods used in estimating wastewater flows differ between [Single Family Residential] and [Multi-Family Residential] due to the differences in their water consumption patterns.

SFR Wastewater Flow Estimation: SFR water consumption includes two types of water usage: domestic use (water used inside the home) and irrigation use (water used in the yard). While the domestic water usage is expected to remain fairly stable throughout the year, fluctuation in irrigation usage could occur due to seasonal changes, which in turn causes significant variations in total monthly water usage during the year. Irrigation usage is at its minimum levels during the



winter period and therefore the water used during the winter period can be associated with domestic usage. Typically, domestic water returns to the sewer system and irrigation water does not. *Therefore, for SFR users it is appropriate to use winter water usage as a direct approximation of annual wastewater flows returned to the sewer . . . . .*

\*\*\*\*\*

MFR Wastewater Flow Estimation: MFR water consumption relates predominantly to domestic use with very little or no irrigation use, since most MFR complexes have small green areas. MFR complexes with very large green belts are likely to have separate irrigation water meters. *Therefore, MFR water usage levels remain relatively stable throughout the year and it is appropriate to use actual monthly water usage in estimating wastewater flows.*

(emph. supplied).

The Commission's current rate structure is based on that very straightforward reality, i.e., that the irrigation uses associated with both (1) single-family and duplex residential properties and (2) commercial properties with greenspace have a different impact on wastewater flows than the purely consumptive uses of larger residential and commercial properties without the greenspace. With that in mind, the Commission's winter average rate structure cannot – in any way, shape or form – be characterized as “unfair, inequitable or unreasonable.”

Again, from a comparative standpoint, the City of Kalispell structure is similar to the City of Great Falls structure in this respect as well, i.e., no winter average available to any commercial property without a separate irrigation meter. While other municipalities in Montana have opted to utilize a winter average for multi-family residential (Billings / Missoula) and even commercial (Bozeman), those rate structures are (again) set up differently than the Great Falls structure, i.e., a “service charge” component and a “volume” charge.

### **E. Conclusion.**

For the reasons set forth above, it is the assessment of City staff that Mr. Gillespie's rate complaint should be denied. While there are a range of legislative options available to a municipality in setting up its wastewater rate structure and those options include both (1) different classification structures for residential vs. commercial properties and (2) the extension [or non-extension] of a winter average rate, there has been argument (factual or legal) advanced by Mr. Gillespie that even remotely demonstrates that the Commission's current wastewater rate structure is in any fashion “unfair, inequitable or unreasonable.”

The options available to the Commission in addressing Mr. Gillespie's rate appeal include the following:

OPTION 1: Deny the appeal; or

OPTION 2: Grant the appeal by making a formal determination that the current rate resolution as adopted by the Commission is “unfair, inequitable or unreasonable” to the extent it both (A) classifies multi-family properties with more than two (2) living units as “commercial” property and (B) extends a winter average rate to only those commercial properties with the requisite amount of green space [or separately metered irrigation water]; or

OPTION 3: Deny the appeal but direct City staff to have the City's water / wastewater utility rate consultant consider alternative classification structures and/or alternatives for the availability of the winter average rate calculation when the next water / wastewater utility rate review study is conducted.

**Attachments/Exhibits:**

- Exhibit "A": May 27, 2021 Utility Rate Complaint
- Exhibit "B": June 2, 2021 Letter from Public Works Director
- Exhibit "C": Application Form – Commercial Customer Winter Average

# EXHIBIT “A”

**From:** City of Great Falls Montana <[webmaster@greatfallsmt.net](mailto:webmaster@greatfallsmt.net)>  
**Sent:** Thursday, May 27, 2021 2:14 PM  
**To:** Krista Artis <[kartis@greatfallsmt.net](mailto:kartis@greatfallsmt.net)>  
**Subject:** Form submission from: Online Citizen Complaint & Request Form

## Online Citizen Complaint/Request

Sent from website on: **Thursday, May 27, 2021 - 2:13pm**

### Violation Location / Property Owner Information

**Street Address**  
**and/or** 812 3rd Avenue SouthWest  
**Location:**  
**Property**  
**Owner Name:** Steve Gillespie  
**Property**  
**Owner Phone:** 406-761-0001

### Complaint/Request Information

**Type of**  
**Complaint:** Other  
**Nature of**  
**Complaint:** Overcharged for sewer treatment during summer months, also at commercial rate, (vs residential rate) when in fact this is a residential property and zoned as such.

To: CITY OF GREAT FALLS, MT

May, 27, 2021

The basis of this complaint is that the water billing section of the City Code allows for single family and some multi-family residential properties to enjoy a residential rate and as well as use a winter average to calculate a more fair summer sewer-treatment bill; while other multi-family residential properties shall pay a higher commercial rate, and are not allowed the “winter average” opportunity.

The result is that the City Code supports unfair, predatory, discriminatory and inequitable treatment of water/sewer charges for certain “residential”

zoned/use properties. (Discrimination based on “family density” is the City Code’s contribution to un-affordable housing).

My property at 812 3rd Avenue Southwest is zoned multi-family residential and is home to four families. The water/sewer charges are being calculated at a commercial rate and there is no allowance for a “winter average”; even though there is irrigatable space, gardens, trees, planter-boxes, kids-pools, roll-up hoses used for washing cars, spraying off sidewalks and driveways, etc., i.e. These are typical “family residential” summertime uses; the same as for the lower density residential properties.

My bill is in dispute for this reason and to settle the matter I feel it should be recalculated to reflect the property's actual zoning and it’s historical use, residential not commercial. Then the City Code can be updated accordingly.

Even though the outcome of this complaint is predictable, I appreciate your time and consideration.

Steve Gillespie  
406-761-0001

Hard Copy sent to Paul Skubinna

**Date Reported:** Thu, 05/27/2021

### Reporting Party Information

**Reporting Party Name:** Steve Gillespie  
**Physical Address:** 9 12th Street North  
**Reporting Party Phone:** 406-761-0001  
**Reporting Party Email:** [stevejgillespie@gmail.com](mailto:stevejgillespie@gmail.com)  
**Signed:** Steve Gillespie

# EXHIBIT “B”





P.O. Box 5021, 59403-5021

June 2, 2021

Steve Gillespie  
812 3 Avenue Southwest  
Great Falls, MT 59404

Dear Mr. Gillespie,

This letter is to confirm receipt of your Citizen Complaint Form dated 5/27/21. We are reviewing this complaint under the regulations of City Code 13.2.060, Rate – complaint – procedure, which states:

The rates, charges and rentals specified in Title 13 shall be deemed prima facie fair, reasonable, and equitable. In any case where any contention is made that the rates are unfair, inequitable or unreasonable, the party objecting thereto shall apply to the City, stating the facts and grounds of complaint, and the City shall investigate and report with recommendations to the City Commission.

(Ord. 2645, 1993; Ord. 2386 Exh. A (part), 1985, prior code §13.20.530 (part)).

(Ord. No. 3050, § 1, 8-3-2010)

We understand your grounds of complaint to be as follows:

1. The City's classification of your property as a "commercial" customer under City Code 13.18.030 is "unfair, inequitable or unreasonable"; and/or
2. The City's extension of a winter-averaged rate to only those commercial customers with landscaped area equivalent to 25% or more of their property is "unfair, inequitable or unreasonable."

If this characterization of your complaint is not correct, please contact us to revise your statement in writing so that we may review your complaint with the correct information.

We must advise you that your utility delinquencies will continue to accrue during the pendency of the City's consideration of your contentions.

Thank you for contacting the City of Great Falls.

A handwritten signature in black ink, appearing to read "Paul Skubinna".

Paul Skubinna, Public Works Director

# EXHIBIT “C”



Utilities Department, P.O. Box 5021, Great Falls, MT 59403 Telephone: (406) 727-7660

APPLICATION FOR WINTER QUARTER AVERAGE COMMERCIAL SEWER RATES

Date of Application \_\_\_\_\_ Effective Date \_\_\_\_\_

Owner of Property \_\_\_\_\_

Address of Property \_\_\_\_\_

Legal Description of Property: Parcel Number \_\_\_\_\_

Lot \_\_\_\_\_ Block \_\_\_\_\_ Addition \_\_\_\_\_

Number of Square Feet in Applicant's Property \_\_\_\_\_

+ Number of Square Feet in City's Boulevard \_\_\_\_\_

= Total Number of Square Feet in Property \_\_\_\_\_

Number of Square Feet of Irrigated Living Plant Material \_\_\_\_\_

PLAT PLAN

[Empty box for PLAT PLAN]

For Office Use Only

Percent of Irrigated Living Plant Material –

Ratio of Number of Square Feet of Irrigated Living Plant Material to Number of Square Feet in Applicant's Property + **Boulevard** -- The Ratio Must be 25% or More of Total Property Not Including Trees, Pots or Rock Gardens \_\_\_\_\_

Approved \_\_\_\_\_ Rejected \_\_\_\_\_

Supervisor's Signature \_\_\_\_\_