

ORDINANCE NO. 2026-_____

AN ORDINANCE AMENDING SECTION 52.115(E) OF THE TONTITOWN MUNICIPAL CODE REGARDING SURCHARGES FOR EXCESSIVE-STRENGTH WASTEWATER; ESTABLISHING A MUNICIPAL COLLECTION-SYSTEM COST-RECOVERY COMPONENT; REVISING THE EXCESSIVE-STRENGTH SURCHARGE SCHEDULE; REQUIRING PERIODIC REVIEW OF THE SURCHARGES; DECLARING SEVERABILITY; REPEALING CONFLICTING PROVISIONS; AND FOR OTHER PURPOSES.

WHEREAS, the City of Tontitown owns, operates, maintains, repairs, and improves a municipal wastewater collection system through which wastewater is collected and conveyed for treatment by the Northwest Arkansas Conservation Authority ("NACA"), the City's publicly owned treatment works; and

WHEREAS, Section 52.115(E) of the Tontitown Municipal Code establishes surcharge limits and charges applicable to wastewater containing biochemical oxygen demand, phosphorus, nitrogen, total suspended solids, and other constituents in concentrations exceeding the limits established by the City; and

WHEREAS, wastewater containing excessive concentrations of pollutants imposes treatment costs assessed by NACA and also imposes additional costs and responsibilities upon the City, including costs associated with wastewater collection, conveyance, administration, billing, collections, monitoring, sampling, inspection, regulatory compliance, enforcement, system maintenance, repairs, reserve funding, and capital replacement; and

WHEREAS, historically passing through only the treatment surcharge assessed by NACA does not compensate the City for the reasonable and proportionate costs incurred by the City in collecting, conveying, administering, monitoring, billing, maintaining, repairing, and replacing the municipal sewer system associated with excessive-strength wastewater; and

WHEREAS, the City Council has reviewed a preliminary cost-recovery analysis comparing the City's purchased-water costs with the revenues required to operate, maintain, repair, administer, and replace its water distribution system; and

WHEREAS, that analysis provides a reasonable preliminary financial nexus for establishing a corresponding cost-recovery component for the City's sewer collection system, subject to further periodic review and adjustment based upon actual sewer-system costs and charges assessed by NACA; and

WHEREAS, Arkansas Code Annotated § 14-235-223 authorizes and requires the City Council, by ordinance, to establish and maintain just and equitable rates and charges for the use of and services rendered by the municipal sewer system and permits the Council to change and readjust those rates and charges from time to time; and

WHEREAS, Arkansas Code Annotated § 14-235-223 further requires sewer rates and charges to be sufficient to pay the proper and reasonable expenses of operating, repairing, replacing, and maintaining the sewer system; and

WHEREAS, the City Council finds that the excessive-strength wastewater surcharges established by this Ordinance are intended to recover reasonable wastewater treatment and municipal collection-system costs attributable to excessive-strength discharges and are not intended to constitute a punitive fine, an unrelated revenue assessment, or a source of revenue for purposes unrelated to the municipal sewer system; and

WHEREAS, following introduction of this Ordinance, the City provided notice and conducted a public hearing concerning the proposed rates and charges in accordance with Arkansas Code Annotated § 14-235-223.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TONTITOWN, ARKANSAS:

SECTION 1. PURPOSE AND LEGISLATIVE FINDINGS.

The recitals stated above are adopted as legislative findings of the City Council and incorporated into this Ordinance as though fully set forth herein.

The purpose of this Ordinance is to establish just, equitable, and reasonably proportionate excessive-strength wastewater charges that recover:

- A. The treatment charges and other direct costs assessed against the City by NACA or any successor publicly owned treatment works because of an industrial or commercial user's excessive-strength discharge; and
- B. The City's reasonable costs associated with the collection, conveyance, administration, billing, collection of accounts, monitoring, sampling, inspection, enforcement, operation, maintenance, repair, improvement, reserve funding, capital replacement, and regulatory administration of the municipal sewer system attributable to excessive-strength wastewater.

SECTION 2. AMENDMENT OF SECTION 52.115(E).

Section 52.115(E) of the Tontitown Municipal Code is hereby amended to read as follows:

“(E) Excessive-Strength Wastewater Surcharges.

(1) Applicability.

Any user discharging wastewater containing biochemical oxygen demand, total phosphorus, total nitrogen, total suspended solids, or another regulated constituent in excess of the concentration limits established in this subsection shall pay an excessive-strength wastewater surcharge in addition to all other sewer rates, charges, fees, penalties, monitoring costs, sampling costs, pretreatment charges, or enforcement costs otherwise authorized by law or municipal ordinance.

(2) Excessive-Strength Concentration Limits and Surcharge Schedule.

The following surcharge shall be imposed for each pound of the identified constituent discharged above the applicable concentration limit:

Constituent	Concentration Limit	Surcharge
Biochemical Oxygen Demand (BOD ₅)	250 mg/L	\$0.35 per pound above the concentration limit
Total Phosphorus	15 mg/L	\$0.18 per pound above the concentration limit
Total Nitrogen (TKN + NO _x)	50 mg/L	\$0.90 per pound above the concentration limit
Total Suspended Solids	250 mg/L	\$0.35 per pound above the concentration limit

(3) Calculation of Excessive-Strength Loading.

The pounds of each constituent discharged above the applicable concentration limit shall be calculated using the wastewater volume attributable to the user, the measured or reasonably estimated concentration of the constituent, the applicable concentration limit, and the standard conversion factor necessary to convert concentration and flow into pounds. Unless another technically appropriate calculation is approved by the City Engineer, the excessive pounds shall be calculated substantially as follows: Excess Pounds = Wastewater Flow in Million Gallons × Excess Concentration in Milligrams per Liter × 8.34. For purposes of this calculation, “Excess Concentration” means the measured concentration of the constituent less the concentration limit established in subsection (E)(2). No surcharge shall be calculated for a negative excess concentration.

(4) Minimum Cost-Recovery Requirement.

Notwithstanding the surcharge schedule stated in subsection (E)(2), the total excessive-strength wastewater charge assessed to a user for a billing period shall not be less than the sum of: (a) the actual treatment surcharge, excessive-strength charge, sampling charge, monitoring charge, administrative charge, or other direct cost assessed against or incurred by the City because of that user's discharge by NACA or any successor publicly owned treatment works; and (b) the City's adopted municipal collection-system cost-recovery component reasonably attributable to that discharge. If the calculation under subsection (E)(2) produces a charge that is less than the amount required under this subsection, the greater amount shall be charged.

(5) Municipal Collection-System Cost-Recovery Component.

The municipal collection-system cost-recovery component is intended to recover the City's reasonable and proportionate costs associated with wastewater collection and conveyance; sewer billing and account collection; administrative and financial management; wastewater sampling, testing, inspection, and monitoring; pretreatment-program administration and regulatory compliance; investigation and enforcement relating to excessive-strength or prohibited discharges; operation and maintenance of sewer lines, manholes, lift stations, pumps, meters, monitoring equipment, and related infrastructure; repairs and corrective maintenance; reserve funding for reasonably anticipated sewer-system expenses; and capital improvement, rehabilitation, replacement, and expansion of the municipal sewer collection system. The cost-recovery component shall be deposited into and accounted for as sewer-system revenue and shall be used only for lawful sewer-system purposes, subject to applicable bond covenants, financial obligations, and state law.

(6) Initial Cost-Recovery Factor.

For purposes of implementing this section, the initial municipal collection-system cost-recovery factor shall be based upon the excessive-strength surcharge rates stated in subsection (E)(2). The rates stated in subsection (E)(2) reflect a preliminary cost-recovery relationship of approximately seventy-six percent (76%) above the former direct-cost surcharge schedule, rounded to reasonable billing increments. The stated percentage is an analytical basis for the adopted fee schedule and shall not require the City to separately state or apply a percentage markup to each NACA invoice unless the City Council subsequently adopts such a billing method by ordinance.

(7) Sampling and Determination of Concentration.

The City may determine wastewater volume and constituent concentrations using sampling and laboratory analysis conducted by or for the City; sampling and laboratory analysis conducted by NACA; monitoring reports or sampling data submitted by the user; flow-meter, water-meter, sewer-meter, or other reliable usage data; representative sampling approved by the City Engineer; an industrial-user discharge permit, pretreatment permit, compliance schedule, or other regulatory document; or another technically reasonable method approved by the City Engineer and consistent with applicable law. When sampling results vary during a billing period, the City may use a flow-weighted average, time-weighted average, highest representative concentration, or another technically reasonable method that fairly reflects the wastewater discharged during the billing period. Nothing in this subsection limits the City's authority to require additional sampling, monitoring, reporting, pretreatment, corrective action, or enforcement.

(8) Billing and Supporting Documentation.

Excessive-strength wastewater surcharges may be billed as part of the user's regular sewer bill or as a separate invoice. Upon reasonable request, the City shall make available to the affected user a summary showing the applicable wastewater volume; the concentration used for each constituent; the applicable concentration limit; the calculated excess pounds; the applicable rate per pound; any direct charge assessed by NACA and included in the bill; and any other material component used to calculate the surcharge. The City's failure to attach the calculation to the original bill shall not invalidate an otherwise lawful charge.

(9) Annual Review.

No later than September 30 of each year, or at another time designated by the City Council in connection with preparation of the annual municipal budget, the Mayor or the Mayor's designee, in consultation with the City Engineer and the City's financial personnel or retained financial professionals, shall review the excessive-strength treatment rates and other charges assessed by NACA; the City's sewer collection, conveyance, billing, monitoring, inspection, administration, maintenance, repair, replacement, reserve, and capital costs; changes in wastewater volume and pollutant loading; revenue collected under this subsection; whether the adopted surcharge schedule remains reasonably related to the City's costs; and whether an amendment to the surcharge schedule should be presented to the City Council. A written summary of the review shall be provided to the City Council and maintained with the City's sewer-rate records.

(10) Periodic Formal Cost-of-Service Review.

At least once every three years, the City shall consider whether a formal sewer cost-of-service or rate study is appropriate. The City Council may direct that such a study be performed more frequently when NACA materially changes its treatment rates or excessive-strength surcharge methodology; the City incurs substantial sewer-system capital or regulatory costs; the character or volume of an industrial discharge materially changes; revenue collected under this subsection materially exceeds or falls below the costs reasonably attributable to excessive-strength wastewater; or the City Council otherwise determines that a review is in the public interest.

(11) Adjustment of Rates.

The surcharge rates established in this subsection may be changed only by ordinance and in accordance with the notice and hearing requirements of Arkansas Code Annotated § 14-235-223, when applicable. Nothing in this section authorizes an administrative officer or employee to establish a new sewer rate or increase a rate without City Council approval when an ordinance is required by law.

(12) Separate Remedies and Charges.

The payment of an excessive-strength wastewater surcharge does not authorize a user to discharge wastewater in violation of a prohibited-discharge provision; a pretreatment standard; an industrial-user permit; a compliance schedule; a state or federal environmental requirement; a City order or directive; or any other applicable law or ordinance. An excessive-strength wastewater surcharge is separate from and cumulative of any lawful fine, civil penalty, remediation cost, sampling cost, monitoring cost, attorney's fee, enforcement expense, damage claim, injunctive remedy, service suspension, or other remedy available to the City.

(13) No Waiver.

Acceptance of payment by the City shall not constitute approval of the discharge, waive a violation, limit future enforcement, or prevent the City from recovering additional amounts determined to be lawfully due.”

SECTION 3. PRESERVATION OF REMAINING PROVISIONS.

Except as expressly amended by this Ordinance, all remaining provisions of Section 52.115 and Chapter 52 of the Tontitown Municipal Code shall remain unchanged and in full force and effect.

SECTION 4. IMPLEMENTATION AND ADMINISTRATION.

The Mayor, City Treasurer, City Engineer, and other appropriate City officers and employees are authorized and directed to implement this Ordinance, subject to the appropriations, policies, contracts, and legislative directives approved by the City Council. Before the first billing under the amended surcharge schedule, the City shall establish a written calculation form or billing worksheet that identifies the information reasonably necessary to calculate and document each excessive-strength wastewater surcharge.

SECTION 5. APPLICATION TO BILLING PERIODS.

The amended surcharge schedule shall apply prospectively to wastewater discharged on or after the effective date of this Ordinance. Nothing in this Ordinance shall retroactively increase a charge for wastewater discharged before its effective date. However, nothing herein waives or compromises any properly calculated charge, contractual obligation, enforcement claim, damage claim, or other amount lawfully due to the City under the ordinances and rates in effect when the discharge occurred.

SECTION 6. PUBLIC HEARING AND NOTICE.

The City Council finds that the notice and public-hearing requirements of Arkansas Code Annotated § 14-235-223 have been satisfied before final passage of this Ordinance. The City Clerk-Recorder shall retain in the official legislative file the published notice of the public hearing; proof of publication; the proposed surcharge schedule included with or described in the notice; the minutes or other official record of the public hearing; the excessive-strength surcharge analysis considered by the City Council; any written comments received concerning the proposed rates; and the final ordinance and adopted surcharge schedule.

SECTION 7. CODIFICATION.

The codifier is authorized to renumber, reformat, and correct manifest clerical or typographical errors in this Ordinance, provided that no substantive change is made to the legislation adopted by the City Council.

SECTION 8. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or provision of this Ordinance is held invalid or unconstitutional by a court of competent jurisdiction, that determination shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, and provision independently of any provision determined to be invalid.

SECTION 9. REPEALER.

All ordinances, resolutions, code provisions, policies, or parts thereof in conflict with this Ordinance are repealed only to the extent of the conflict.

SECTION 10. EFFECTIVE DATE.

This Ordinance shall become effective as provided by Arkansas law following its passage, approval, authentication, and publication or posting.

PASSED AND APPROVED by the City Council of the City of Tontitown, Arkansas, on this ____ day of _____, 2026.

APPROVED:

Angela Russell, Mayor

ATTEST:

Rhonda Ardemagni, City Clerk-Recorder

APPROVED AS TO FORM:

City Attorney

SPONSORSHIP AND LEGISLATIVE HISTORY

Sponsor (Initiated By): _____

Motion to Introduce Made By: _____

Seconded By: _____

Adopted / Passed: _____

Vote: Ayes ____ Nays ____ Abstain ____ Absent ____

This requirement is in addition to, and does not supersede, any authentication, attestation, or signature requirements imposed by state law or other provisions of the Tontitown Municipal Code.