

# **SANITATION DISTRICT NO. 1 ASSESSMENT POLICY**

## **I. INTRODUCTION**

Sanitation District No. 1 (hereinafter, the "SD1") is governed by the provisions of Kentucky Revised Statutes (KRS) Chapter 220 and other statutes incorporated therein, including KRS Chapter 107. The provisions of KRS Chapter 220 authorize SD1 to extend sanitary sewer facilities to previously unserved areas at the request of those to be directly served by such facilities. Pursuant to the provisions of KRS 220.380(2), SD1 is authorized to utilize the procedures delineated in KRS Chapter 107 for financing the construction of extensions to sanitary sewer facilities.

These guidelines are intended to implement the provisions of KRS 220.380(2) and KRS Chapter 107 and to serve as guidance for the Board of Directors of SD1 (hereafter, the "Board"), Management of SD1 and the public at large when the Board elects to extend sanitary sewer facilities into previously unserved areas and to equitably assess the costs of such improvements to the owners of lots or parcels directly served thereby. This process will generally be used in existing communities and neighborhoods or developments lacking centralized sanitary sewer facilities or served by inadequate sanitary sewer facilities or onsite disposal systems.

## **II. PROJECT INITIATION PROCESS**

In general, SD1 shall use these guidelines to assess the costs of sanitary sewer facilities to be installed under the following circumstances:

- Where SD1 is directed by the Kentucky Department for Environmental Protection, Division of Water, court order or similar mandate to serve the area in question because of real or potential health and/or environmental problems; or
- Where SD1 receives a petition requesting sanitary sewer services from SD1,

signed by two-thirds of the owners of lots or parcels to be directly served by the proposed extension(s) of SD1 sanitary sewer facilities where such lot or parcel owners are subject to payment of assessment costs for such extensions(s).

- Such other circumstances as SD1 believe will serve the public interest.

### **III. ASSESSMENT PROCESS**

Where additional SD1 sanitary sewer facilities are proposed by those lot or parcel owners to be directly served thereby, the owners of two-thirds of the lots or parcels<sup>1</sup> to be directly served or duly elected representatives of the County or City in which such parcels are located shall petition SD1 to extend SD1 sanitary sewer facilities to the area proposed. Preliminary discussions between any community or neighborhood and representatives of SD1 are permitted without the necessity of a petition. SD1 will accept and consider all such written petitions and shall forward such petitions to the designated SD1 staff person(s) for preliminary evaluation and response including, but not limited to, (1) ascertaining the precise boundary of the area to be served by the proposed extension(s) and (2) where applicable, determining whether the petition contains the signatures of two-thirds of the owners of the lots or parcels to be directly served by the proposed extension(s) of SD1 sanitary sewer facilities.

**A. SD1 staff will coordinate and meet with petitioners, as necessary, to initially determine the feasibility of the proposed project.**

**B. The SD1 staff will then prepare and deliver to the Board a written report summarizing the circumstances and feasibility of the petition and recommending that the petition be either rejected, withdrawn or accepted for further study.** After Board review of said staff report concerning the feasibility of the proposed project, the Board may accept or reject the recommendations of the staff or request additional information. If five (5) of eight (8) Board members vote to accept the petition for further study, the Board will authorize SD1 staff

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<sup>1</sup> For purposes of this policy, a single lot or parcel shall consist of an area of land described in a separate and distinct deed of record in the County Court Clerk's office which is the subject of a separate and distinct tax bill.

to prepare a non-binding cost estimate of the cost of the proposed facilities to each lot or parcel owner proposed to be served thereby and a nonbinding estimate of the cost of the Preliminary Engineering Report and communicate the amount thereof to Petitioners. SD1 staff will also inform those persons signing the initial petition that SD1 will require owners to advance 50 percent of the cost of the Preliminary Engineering Report. The amount advanced by each lot or parcel owner toward the cost of the Preliminary Engineering Report shall be deducted from the Guaranteed Maximum Assessment applicable to such lot or parcel owner in the event the project is undertaken and completed. If SD1 staff determine that the Petitioners or any of them, are willing to advance 50 percent of the cost of the Preliminary Engineering Report, SD1 staff will prepare or have prepared a Preliminary Engineering Report which will encompass the following objectives:

1. **Identify the Specific Area and Each of the Lots or Parcels to be Directly Served by the Proposed Extension of Sanitary Sewer Facilities.** For purposes of these guidelines, the phrase “lots or parcels to be directly served by the proposed extension of sanitary sewer facilities” includes those developed and undeveloped lots or parcels (as well as those publicly owned and/or normally tax exempt properties, to the extent permitted by law) which are to be served by those sewers. Only one (1) lateral connection shall be allowed for each lot or parcel to be directly served. Further, the costs of construction and connection of lateral sewers from SD1 line wyes to building plumbing will be the responsibility of individual property owners and not SD1.

2. **Determine the Total Estimated Cost of the Project.** The amount to be assessed against all lots or parcels directly to be served by proposed extension of sanitary sewer facilities will include the following project related costs:

- Fees for engineering services, including geotechnical engineering;
- Fees for all related legal services;

- Fees for permits, licenses, performance bonds, payment bonds or other approvals and instruments usually associated with sewer facility construction, including applicable Capacity Connection Fees as authorized by the Rules and Regulations of SD1;<sup>2</sup>
- Costs for facility construction, including all labor, materials and equipment necessary for the completion of construction, including materials or equipment purchased directly by SD1 for use in the project;
- Fees for construction, inspection and construction management;
- Costs for easements and land acquisition and surveys, special assessments as provided in KRS 107.130 and any related costs;
- Costs related to issuance of bonds, if any;
- Capitalized interest and interest on funds borrowed to finance the project, as specified in KRS Chapter 107; and
- Other project related costs as may be authorized by applicable statutes.

3. **Determine the Proposed Assessment Methodology.** The assessment costs shall be based upon the costs to serve the lots or parcels to be directly served by the proposed extension(s) of sanitary sewer facilities. The staff of SD1 may recommend that the board adopt a First Resolution incorporating one (1) of the following assessment methodologies:

- a. If the staff of SD1 determine that groups of, or all of, the lots or parcels to be directly served by the proposed extension(s) of sanitary sewer facilities will be affected or benefitted in substantially the same manner and to substantially the same degree, the Board may adopt such determination of the staff as a finding of

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<sup>2</sup> In the event the owner of an undeveloped lot or parcel to be directly served by the proposed extension of sanitary sewer facilities does not wish to have his/her Guaranteed Maximum Assessment include the applicable Capacity Connection Fee in effect at time the Guaranteed Maximum Assessment is calculated, such owner shall pay the applicable Capacity Connection Fee at the time he/she makes application for the building sewer connection permit applicable to such lot or parcel which is required by Section 811 of the Rules and Regulations of SD1.

fact and classify such lots or parcels into one (1) or more assessment zones based upon the similarity of the benefits of the proposed extension(s) to the lots or parcels to be directly served thereby. If the Board has determined that all lots or parcels within an assessment zone are substantially equally benefitted, the same assessment levy shall be made against each lot or parcel within each classified assessment zone; or

b. If the staff of SD1 determines that all lots or parcels situated within the area to be served, as identified in the Preliminary Engineering Report, will not receive substantially equal benefits from the proposed project, the Board may adopt such determination as a finding of fact and thereafter assess such lots or parcels based upon the relative assessed valuation of each lot or parcel (land only) as it relates proportionately to the aggregated assessed land valuation of all lots or parcels within the area to be served by the proposed extension(s) of SD1 sanitary sewer facilities as shown by the records upon which city or county taxation may be based. Where there is no such record, as in the case of public property or property owned by religious, charitable or educational institutions, such property (except that owned by the United States Government) shall be specially assessed, to the extent permitted by law, by the proper assessing officers and for such special assessment, reasonable compensation may be made. Any such special assessment shall be subject to all procedures for equalization and judicial review as may be provided by law in connection with ordinary assessments.

Prior to assessing any lots or parcels owned by any public entity, SD1 staff shall employ the notification procedures embodied in KRS 107.140, where applicable.

4. **Determine the Guaranteed Maximum Assessment.** It shall be the purpose of this policy to treat all developed and undeveloped lots or parcels within the

project area equitably and to assign the lowest equitable guaranteed maximum assessment cost to each and all such lots or parcels.

The amount determined by the SD1 to be assessed against each lot or parcel to be directly served by the proposed extension(s) of SD1 sanitary sewer facilities shall constitute a **Guaranteed Maximum Assessment**. The **Guaranteed Maximum Assessment** shall be such that the total costs assessed equals the assessable project costs based upon the Preliminary Engineering Report.

The actual assessment amount for any lot or parcel to be directly served by the proposed extension(s) of SD1 sanitary sewer facilities shall not exceed the **Guaranteed Maximum Assessment** for the assessment zone in which that property is located. All **Guaranteed Maximum Assessments** shall be approved by the Board based upon the preconstruction costs estimate described in the Preliminary Engineering Report and shall be furnished to the respective owners of the lots or parcels to be assessed. When actual construction costs as determined from public bids exceed preconstruction estimates, SD1 may, at its sole option, (1) reject said bids and rebid the project, (2) go forward with the project with SD1 paying the cost overrun(s) on the project, or (3) begin the process again with a new **Guaranteed Maximum Assessment** based upon a new Preliminary Engineering Report.

If the actual construction costs as determined through public bids are less than the preconstruction estimate from which the **Guaranteed Maximum Assessment** was calculated, an assessment figure based upon the lower actual project costs will be calculated and owners of lots or parcels to be directly served by the proposed extension of SD1 sanitary sewer facilities will be assessed the lesser sum.

**5. Describe the Proposed Method of Financing the Project to the Extent Necessary.**

**IV. BOARD AND PUBLIC APPROVAL PROCESS**

**A. The Preliminary Engineering Report, encompassing those determinations discussed in III.B.1-5 above, will be presented to the Board in the form of a First Resolution.** Upon the approval of five (5) of the eight (8) Board members, the First Resolution will be approved and published.

In the First Resolution, the Board shall adopt an Assessment Methodology from among those described in III.B.3. above.

**B. Public Hearing.**

The First Resolution shall also provide for a public hearing at a time and place not less than a week after publication of the First Resolution in the manner provided in KRS Chapter 424, which publication shall give notice that, at the hearing, any owner of lots or parcels to be directly served by the proposed extension(s) of SD1 sanitary sewer facilities may appear and be heard as to (1) whether the proposed project should be undertaken or abandoned; (2) whether the nature and scope of the proposed project should be altered; or (3) whether the chosen Assessment Methodology should be altered. The First Resolution may designate the person(s) to preside at and conduct such public hearing. Such presiding person(s) shall make or cause to be made reasonable notes and minutes of the public hearing and shall submit same at a subsequent, regularly scheduled meeting of the Board for review and consideration. Any owner of a lot or parcel to be directly served by the proposed extension(s) of SD1 sanitary sewer facilities may be heard at the public hearing in person, or by representative, and may submit any written statement in support of, or objecting to, any aspect of the proposed extension(s). All such written statements shall be attached to or included in, the written report of the hearing.

**C. Property Owner Vote.**

Notwithstanding the submission of any written statements at the public

hearing, as soon as practicable after the conclusion of the public hearing, SD1 shall send, by certified mail, written ballots to the owners of all lots or parcels to be directly served by the proposed extension(s) of SD1 sanitary sewer facilities. Such ballots shall request the owners of such lots or parcels to be directly served (a) to vote in favor of, or against, the proposed extension(s) of SD1 sanitary sewer facilities described in the First Resolution and (b) to deliver to SD1 such ballots within seven (7) days of their representative receipt from SD1.

**D. Board Approval and Second Resolution.**

If more than fifty (50) percent of the property owners, both in numbers of lots or parcels and in aggregate assessed values (land only) of the properties to be benefitted by the proposed extension(s) of SD1 sanitary sewer facilities, cast votes in opposition to the proposed project within seven (7) days of their receipt of ballots, the Board shall then have the right (a) to adopt a resolution abandoning the project or (b) to nevertheless go forward with the proposed project but only if five (5) or more of eight (8) Board members vote in favor of said project. In the case of proposed extensions of SD1 sanitary sewer facilities where it is alleged that such extension is necessary to help alleviate health concerns, the Board members may consider a letter from the Northern Kentucky District Health Department in determining whether or not to go forward with the proposed project where more than fifty (50) percent of the property owners, both in numbers of lots or parcels and in aggregate assessed values (land only) of the properties to be benefitted by the proposed extension cast votes in opposition to the proposed project.

However, upon the receipt of sufficient, timely ballots confirming that fewer than fifty (50) percent of the property owners, both in numbers of lots or parcels and in aggregate assessed values (land only) of the properties to be benefitted by the proposed extension(s) of SD1 sanitary sewer facilities object to the proposed project, the Board may, at its next regularly scheduled meeting or at a special Board meeting, consider a Second

Resolution providing for the undertaking of the proposed project in the manner described in the First Resolution. At such Board meeting, owners of lots or parcels to be directly served by the proposed extension(s) of SD1 sanitary sewer facilities may again be heard, in person or by a representative, after which the Board may adopt a Second Resolution. In the alternative, the Board may adopt another resolution providing for the abandonment of the project or altering the nature and scope of the proposed project. In the event the scope or nature of the proposed project is altered during the review and approval process, a new Preliminary Engineering Report shall be prepared and the Board and public approval process described above shall be repeated. **In all cases where property owner ballots are cast, SD1 shall count a property owners' failure to cast and deliver a timely ballot as a vote in favor of the project.**

In the event that the board adopts a Second Resolution approving the proposed extension(s) of SD1 sanitary sewer facilities in the manner described in the First Resolution, the Board shall then request the approval of the Second Resolution by the County Judge/Executives pursuant to KRS 220.035.

**E. Preparation of Bid Documents.**

Simultaneously with the Board seeking the approval of the County Judge/Executive(s), the Board shall direct the staff to prepare final engineering design and bid documents.

**F. Thirty (30) Day Remonstrance Period.**

Any owner of a lot or parcel to be directly served by the proposed extension(s) of SD1 sanitary sewer facilities may, within thirty (30) days after passage and publication of the Second Resolution, (1) file a legal action in the circuit court of the county in which the project is located seeking relief against such proposed project by declaratory judgment, injunction or otherwise in the manner contemplated by KRS 107.060 or (2) file a notice of intent to file such an action in the manner provided in KRS 107.060(1)(b), in which case the time for filing such an action shall

be extended by fifteen (15) days. In the case of the filing of such an action or notice of intent to file such an action, all actions of SD1 with respect to such proposed extension of SD1 sanitary sewer facilities shall be abated until final determination of the controversies presented thereby. In the absence of such legal actions or notices of intent being filed by any owner of a lot or parcel to be directly served by the proposed extension(s) of SD1 sanitary sewer facilities, the provisions of the Second Ordinance shall be final and binding after approval of the County Judge/Executive(s) and after the lapse of thirty (30) days from the date of passage of the Second Resolution, after which all legal actions by owners of lots or parcels to be directly served by the proposed extension(s) of SD1 sanitary sewer facilities shall be forever barred.

**G. Bid Letting and Approval Process.**

After the expiration of the thirty (30) day period during which the owners of lots or parcels may file legal actions in circuit court objecting to the proposed project, a request for bids for the construction of the proposed project shall be publicly issued by SD1 seeking competitive, sealed bids after advertisement, by publication, pursuant to KRS Chapter 424. The request for bids shall specify that there will only be one (1) lateral connection allowed for each lot or parcel to be directly served by the proposed extension(s) of SD1 sanitary sewer facilities and that the costs of (a) construction of the private lateral sewer(s) and (b) connecting the lateral sewer(s) to building plumbing on the respective parcel owners(s). SD1 shall select a bid for the proposed improvements that conforms to the requirements of KRS 424.260. Upon acceptance by SD1 of a bid, the actual amount of each lot or parcel owner's assessment, not to exceed the **Guaranteed Maximum Assessment**, shall be computed. All contracts awarded following the acceptance of bids shall be supported by a performance bond for the full amount thereof with good corporate surety to be approved by the Board.

**V. PAYMENT OF ASSESSMENTS AND PROJECT FINANCING**

After final determination of the actual assessment amount for each lot or parcel to be directly served by the proposed extension(s) of SD1 sanitary sewer facilities, owners of such

lots or parcels are to be notified of their assessments in writing by certified mail. Owners shall then pay to SD1 the amount levied in full within ninety (90) days of receipt of said notice unless alternative payment or financing arrangements are approved by SD1's Board of Directors. In the event that SD1 agrees to any deferral of payment or alternative financing of the amount levied in this fashion, pursuant to KRS 107.160, SD1 shall have and record a lien attaching to each lot or parcel of benefitted property. Such lien shall attach to such benefitted property as the same is described by the owner's deed of record in the County Clerk's office at the time of the publication of the First Resolution, as herein provided, and thereupon shall take precedence over all other liens, whether created prior to or subsequent to the publication of said Resolution, except State and County taxes, general municipal taxes, and prior improvement taxes and shall not be defeated or postponed by any private or judicial sale, by any mortgage, or by any error or mistake in the description of the property or in the names of the property owners. No error in the proceedings of SD1 shall exempt any benefitted property from the lien for the improvement assessment, or from the payment thereof, or from any other obligation as provided in KRS Chapter 107.

At the conclusion of the ninety (90) day period for the lump sum payment of assessments, the aggregate principal amount of assessments paid in full shall be deposited in an escrow account used solely and exclusively to pay the costs of construction of the project. The balance of the project costs to be financed shall then be calculated.

Thereafter, in the event the Board elects to finance the balance of the project costs through third party financing, or other contribution(s), including but not limited to federal or state grants, the Board shall adopt and publish a Third Resolution authorizing the mode of financing. This resolution shall in all respects conform to the provisions of KRS 107.080-220, including providing for assessments on lots or parcels to be directly served which have not yet paid the lump sum amount in full.

In the event that SD1 elects not to undertake third party financing for the balance of

construction costs, SD1 may advance sufficient funds to complete the project and collect any unpaid Guaranteed Maximum Assessments in the manner authorized by KRS 220.515, the amount of which shall constitute a lien, pursuant to KRS 107.160 with interest thereon in the amount determined by SD1, as provided in KRS 220.515, unless not permitted by other laws, regulations or contractual terms associated by the mode of financing.

#### **VI. REQUEST FOR WAIVER OF FORMALITIES**

Pursuant to KRS 107.085, in the event the owner or owners of all lots or parcels which will be subject to assessment for an improvement proposed to be undertaken shall tender to SD1 their written request or requests that the improvement be undertaken and financed according to the provisions of these guidelines and KRS Chapter 107, and shall waive the formalities of the First Resolution, the holding of a public hearing, the Second Resolution, and the provisions of KRS 107.060 permitting litigation, the Board of SD1 may, in its discretion, dispense with all of said proceedings and formalities and may proceed as provided in KRS 107.090 with reference to the Third Resolution; but in all such instances, the written requests of the owners of all lots or parcels which will be subject to the assessment shall be in recordable form and shall be recorded in the Office of the County Clerk of the county wherein the respective properties may be situated, and said Clerk is authorized to record such instruments as in the case of mortgages, and may charge and receive fees therefore as in the case of mortgages. Each Resolution by which an improvement is undertaken according to this waiver provision shall contain a recitation of the receiving of written requests and waivers from the owners of all lots or parcels which will be subject to assessment for each such improvement. In such instances, the lien for which provision is made in KRS 107.160 shall attach upon the publication of the Resolution (equivalent to the "Third Resolution").

#### **VII. LAWS INCORPORATED BY REFERENCE**

In all cases, matters not addressed by these guidelines shall be governed by the

provisions of KRS Chapters 107 and 220, where applicable, as construed by the courts of the Commonwealth of Kentucky and the United States of America.

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