

**ORDINANCE 19-O-47** amending the Murfreesboro City Code, Chapter 33, Water Resources, establishing Sewer Capacity Allocation regulations.

**WHEREAS**, the City has developed a wastewater collection, treatment, and disposal system that is critical to the health, safety, and general welfare of the public; and

**WHEREAS**, in 2017, the City expanded a portion of its wastewater system, the Water Resource Recovery Facility, at a cost of approximately \$42 million adding approximately 8 million gallons per day (MGD) of wastewater treatment capacity to the City's Sewer System; and

**WHEREAS**, notwithstanding that expansion, the City's economic development and growth in population over the last 20 years has dramatically increased the demands on the City's wastewater system and at this time the City's projected ability to further expand its wastewater treatment capacity, which would be necessary to support unrestricted future land use in the City's urban growth boundary, is materially restrained by federal and state regulations and other variables beyond the City's control; and

**WHEREAS**, the capacity of the City's wastewater collection infrastructure varies across the basins and sub-basins that make up the City's entire wastewater system;

**WHEREAS**, notwithstanding the limitation on expansion of wastewater collection and treatment capabilities, the City's population growth is projected to continue and encouraging economic development within the City benefits residents is instrumental to increasing new employment opportunities, enhancing conveniently available services, and lowering tax obligations directly imposed upon individuals; and

**WHEREAS**, in order to balance the needs of beneficial economic development with the increases in residential development the City must ensure that its sewer system capacity remains sufficient to support all aspects of a growing community and allocated this limited capacity in a manner deemed in the best interests and general welfare of the City's citizens; and

**WHEREAS**, the City of Murfreesboro Water Resources Board voted on August 26, 2019, to recommend to the Murfreesboro City Council that it adopt the regulations set forth herein.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:**

**SECTION 1.** Chapter 33, Article V., Water Conservation, of the Murfreesboro City Code, as of the first reading of this Ordinance, is re-designated as Chapter 33, Article VI, Water Conservation.

**SECTION 2.** Chapter 33, Article VI., Sanitary Sewer Special Assessment

Districts, of the Murfreesboro City Code, as of the first reading of this Ordinance, is re-designated as Chapter 33, Article VII, Sanitary Sewer Special Assessment Districts.

SECTION 3. Chapter 33, Article VII., Repurified Water, of the Murfreesboro City Code, as of the first reading of this Ordinance, is re-designated Chapter 33, Article VIII, Repurified Water.

SECTION 4. Chapter 33, Article VIII., Human Excrement Disposal, of the Murfreesboro City Code, as of the first reading of this Ordinance, is re-designated Chapter 33, Article IX, Human Excrement Disposal.

SECTION 5. Chapter 33, Article IV., Sewer Connection Service and Tapping Charges, of the Murfreesboro City Code, is hereby amended by deleting “Sections 33-53—33-100 Reserved” and in lieu thereof inserting “Sections 33-53—33-69 Reserved.”

SECTION 6. Chapter 33, of the Murfreesboro City Code, is hereby amended adding a new Article V, to include Sections 33-70 through 33-100 and titled “Sewer Capacity Allocation.” This new Article V shall provide as follows:

## **ARTICLE V. SEWER CAPACITY ALLOCATION**

### **SECTION 33-70           PURPOSES.**

The purposes of the regulations contained in this Article are to promote and protect public health and safety; enhance the City’s economy by establishing reasonable, orderly, equitable and effective means to allocate wastewater collection capacity; and assist in uniform and balanced future development to serve the needs of the community and the City’s tax digest.

### **SECTION 33-71   SHORT TITLE.**

This Article may be cited as the Sewer Capacity Allocation Ordinance.

### **SECTION 33-72   APPLICABILITY.**

This Article shall control the approval of new sewer connections to the extent specified herein. To the extent its provisions conflict with any other provision of the Murfreesboro City Code or any policy of the Water Resources Department, this Article shall supersede such other provisions and control. To the extent the provisions of this Article do not conflict with or otherwise supersede other provisions of the Murfreesboro City Code or any policy of the Water Resources Department, those provisions and policies remain in full force and effect.

### **SECTION 33-73   DEFINITIONS.**

For purposes of this Article, the following words shall have the meanings ascribed to them in this section unless a different meaning is clearly intended from the context:

Available Sewer Capacity means the amount of sewer capacity determined by the Water Resources Department to be available to serve new development projects in accordance with this Article.

Average Daily Usage means a mathematical expression that takes the total volume of water used or proposed to be used during a specified period of time divided by the number of days in that period of time, typically express in terms of million gallons per day (MGD) or gallons per day (gpd).

Capacity means the amount of sewer flow per time that may be handled by the City's wastewater treatment, pumping, and collection system, or any component, basin, sub-basin, or district of such system.

Centralized Wastewater Treatment Facility means the Sinking Creek Treatment Plant operating under National Pollutant Discharge Elimination System (NPDES) permit number TN0022586.

Owner/Developer means the legal owner of a property on which a project is proposed or any person, legal entity, or governmental agency proposing a project on a parcel of property and having financial responsibility for the proposed project.

Peak-to-average ratio means the ratio of the maximum wastewater discharge rate to the monthly average daily discharge rate.

Project means: (1) any proposed construction of a new building, facility, or group of buildings and/or facilities requiring one or more new water meters or new or larger connections to the City's Sewer System; or (2) any proposed renovation of an existing building or facility that requires a new water meter or new or larger connections to the City's Sewer System.

Sewer-capacity-allocation Resolution means a resolution adopted by City Council as provided in Section 33-75(A).

Sewer System means the City's wastewater treatment, pumping, and collection system.

Will-serve Letter means a letter issued by the City of Murfreesboro Water Resources Department to an owner or developer that the City is able and willing to provide water and/or sewer service to a particular property as of the date the letter is issued, subject to the fees and conditions, if any, set forth in the letter or applicable law and Department policies.

#### **SECTION 33-74 AVAILABLE WASTEWATER COLLECTION CAPACITY; DETERMINATION, REPORTING AND TRACKING.**

- (A) **Determination of available capacity.** The Water Resources Director will determine the total amount of available wastewater collection capacity within each of the Sewer System's basins, sub-basins, and sewer districts. This determination shall evaluate the capacity of the Sewer System's collection system, including sewer mains, pumping stations, and other collection related facilities.
- (B) **Denial of sewer service due to insufficient wastewater collection capacity.** If in the opinion the of Water Resources Director the wastewater collection capacity in the basin, sub-basin, or sewer in which a proposed Project is located is insufficient to serve the Project, the Water Resources Director may deny an Owner's or Developer's application for sewer service for the Project.
- (C) **Appeal of denial of sewer service.** An Owner or Developer whose application for sewer service for a Project has been denied by the Water Resources Director may appeal that decision to the Water Resources Board. The Water Resources Board shall vacate the Water Resources Director's

decision if and only if the Board finds that the Director's decision was made in an arbitrary or discriminatory manner, was not supported by material evidence, or was inconsistent with established City policy. Upon vacating the Director's decision, the Board may either remand the matter for reconsideration by the Director or reverse the Director's finding that there is insufficient collection capacity to serve the Project.

**SECTION 33-75 AVAILABLE WASTEWATER TREATMENT CAPACITY; DETERMINATION, REPORTING AND TRACKING.**

- (A) **Determination of available capacity.** The Water Resources Director will determine the total amount of sewer capacity available for allocation purposes, taking into account the existing (approved or constructed) development projects in the City. This determination shall evaluate the capacity of all treatment facilities used by the City as well as its sewer mains, pumping stations, and other sewer facilities. In addition to determining the system's overall capacity available for allocation, the Water Resources Director may determine the amount of sewer capacity available for allocation within individual basins, sub-basins, and sewer districts.
- (B) **Annual Report.** The Water Resources Department will present a report on an annual basis to the Water Resources Board and, after approval by the Board, to the City Council regarding the Sewer System's then-existing capacity ("Annual Report"). Each Annual Report shall be submitted to the Board no later than September 30 of each year.
- (C) **Tracking.** The Water Resources department will track the allocation of sewer capacity and will make allocation information available to the public.

**SECTION 33-76 MAXIMUM DAILY WASTEWATER GENERATION ALLOWANCE.**

- (A) City Council shall have the authority to allocate, by resolution, the sewer capacity of the City's Sewer System among properties located within the City's corporate limits and properties currently located outside the City's corporate limits that are served or potentially capable of being served by the City's Sewer System. Such allocation shall be made by assigning a maximum daily wastewater generation allowance to each property based on the actual or projected land use of the property. Based on the recommendation of the Water Resources Board, City Council, in its discretion, may establish maximum daily water generation allowances applicable to all areas served or potentially served by the City's Sewer System or establish separate allowances that differ in amount for the sewer system's various basins, sub-basins, and/or districts.
- (B) For purposes of allocating the City's sewer capacity, a property's actual or projected land use shall be based on either the property's current zoning or the land use of the property indicated on the City's most recently adopted or amended Future Land Use Plan. In the event of a conflict between the property's current zoning and the land use indicated on the Future Land Use Plan, the property use shall be deemed to be the use that would provide the higher maximum daily wastewater generation allowance. Properties not located within the City's corporate limits as of the effective date of a sewer-capacity-allocation resolution and those properties outside the corporate limits that are not served by the City's Sewer System as of the effective date of a sewer-capacity-allocation resolution shall be assigned a maximum daily wastewater generation allowance of zero gallons per acre.
- (C) Projects approved by the City after the effective date of a sewer-capacity-allocation resolution shall maintain an average wastewater generation at or below the maximum daily wastewater generation allowance for the

development's land-use category established in the sewer-capacity-allocation resolution.

- (D) At least once every two years, City Council shall review the existing allocation of the City's Sewer System's capacity and the established maximum daily wastewater generation allowances and adopt any changes to the allocation and/or allowances that are necessary and appropriate to fulfill the purpose and intent of the Sewer Capacity Allocation Ordinance. In adopting changes to the allocation and/or allowances, City Council may consider the recommendations presented by the Water Resources Department in its Annual Report, the recommendations of the City Manager, and other factors relevant to fulfilling the purpose and intent of the Sewer Capacity Allocation Ordinance.

#### **SECTION 33-77 DETERMINATION OF DAILY AVERAGE USAGE.**

The water-meter readings by the Water Resources Department (or the Consolidated Utility District of Rutherford County, as applicable) shall be determinative and govern daily average usage. Nothing herein, however, shall prevent the developer from installing and maintaining a meter, provided that such meter is of a type approved by the Water Resources Department and measures water consumed on the property and not returned to the City's Sewer System. Annual calibration of privately installed meters by an independent entity shall be part of the property owner's ongoing responsibility under this Article.

#### **SECTION 33-78 APPLICATION FOR ALLOCATION.**

An owner or developer of a project shall apply for a sewer allocation at the time the owner requests a Will-serve Letter from the Water Resources Department. The application shall include: (a) any documentation necessary to demonstrate the amount of the request allocation; and (b) the proposed land-use category for the project. The Water Resources Department may establish additional application policies and procedures reasonably necessary to achieve the purpose and intent of the Sewer Capacity Allocation Ordinance.

#### **SECTION 33-79 COMPLIANCE.**

- (A) After the City has issued a certificate of occupancy for a project, the Water Resources Department shall monitor the water consumption at or within the project for such time as is reasonably necessary under the circumstances to establish the normal water usage at or within the project.
- (B) In the event the daily average usage is greater than the maximum daily wastewater generation allowance established for the project, the project's owner shall be assessed an additional service fee for exceeding the limits established in the sewer-capacity-allocation resolution then in effect. This additional service fee shall be calculated and assessed, along with any applicable administrative fees, in accordance with the sewer-capacity-allocation resolution then in effect.
- (C) An additional fee may be assessed, as provided by the sewer-capacity-allocation resolution then in effect, if the peak-to-average ratio exceeds 3.0.

#### **SECTION 33-80 PETITION FOR ADDITIONAL ALLOWANCE; FEE APPLICABLE TO EXEMPT LAND CLASSIFICATIONS.**

- (A) If the Water Resources Department determines that a project proposed by an applicant for sewer service is likely to exceed the maximum daily wastewater generation allowance established for the proposed land use and the City's Sewer System capacity is sufficient to serve the project, the

applicant may petition the City for a waiver of the applicable limits. Upon review by City staff, the application and staff recommendation shall be presented to the City Council to approve or deny the request for an additional allowance.

- (B) In evaluating a petition, City Council, Water Resources Board, and staff may consider the following factors:
- (1) The current performance of the City's wastewater treatment facilities;
  - (2) The character and nature of wastewater that is likely to be discharged from the project relative to any applicable limits or restrictions established by federal, state, or local law;
  - (3) The current daily flow at the City's treatment facility that would receive the project's wastewater;
  - (4) The impact of additional flow on the receiving treatment plant's ability to achieve NPDES permit limits; and
  - (5) The available hydraulic capacity of the City's sewer lines and other sewer system components.
- (C) The City Council may authorize an additional daily wastewater generation allowance to a project provided:
- (1) The technical factors listed set forth in subsection (B), either individually or collectively, do not militate against the approval of the requested allowance;
  - (2) Sufficient sewer capacity exists within the system and within the basin or sub-basin in which the project is located;
  - (3) The proposed project is, in the opinion of the City Council, consistent with the City's adopted land use plans and policies concerning growth and development; and
  - (4) The additional daily wastewater generation allowance granted by the City is not greater than ten percent (10%) of the total available capacity of the basin or sub-basin in which the project is located.
- Provided the application satisfies these requirements, the City Council, in deciding whether to authorize an additional allowance, may consider any other factor identified in the Council's deliberations related to whether a particular application promotes or undermines public health or safety or the general welfare of the City and its residents.
- (D) The City Council may condition the approval of an additional allowance on the owner or developer incorporating certain public infrastructure improvements into the project's site plan.
- (E) In the event City Council grants an additional allowance, the applicant shall remit, as provided in Section 33-50(a)(2), a one-time fee equal to \$2,550.00 for every 260 gallons per day of additional volume over the maximum daily wastewater generation allowance applicable to the project plus any applicable special sanitary sewer assessment fees.

### **SECTION 33-81 VESTING OF SEWER-CAPACITY ALLOCATION AND OTHER SEWER-SERVICE RIGHTS.**

- (A) **Rights Vest to Property.** Any vesting of a sewer-capacity allocation or other sewer-service rights (collectively, "sewer-service rights") obtained through a successful application for sewer service vests to the property itself for the specific project identified in the application rather to the applicant personally. Any change in ownership or change in legal rights subsequent to approval shall not affect the vesting of the sewer-service rights and the time periods described herein.
- (B) **Rights Not Transferrable.** Sewer-service rights may not be transferred from the property designated in an application for service to a different piece of property under any circumstances.
- (C) **Initial Vesting Period.** No sewer-service rights shall vest in a property until such allocation is approved pursuant to this article and the applicant

has paid at least ten percent (10%) of the overall water and sewer connection fees required for the requested connection(s). The initial sewer-service rights vested in a property shall expire and lapse for all development and construction on the property thirty (30) months after the allocation's approval, unless:

- (1) In the case of a project where approval of a development plan is not required under the City Code, including the City's Zoning Ordinance, the owner or developer obtains a building permit for the project within the initial vesting period; or
- (2) In the case of a project where approval of a development plan is required under the City Code, including the City's Zoning Ordinance, the owner or developer obtains the required approval(s) within the initial vesting period; or
- (3) The owner or developer pays an additional ten percent (10%) of the overall water and sewer connection fees for the project within the initial vesting period to extend initial vesting period an additional thirty (30) months. An owner or developer may renew the initial vesting period three times, for a total initial vesting period of ten years.

Any payments made to initiate or extend the initial vesting period shall be credited to the total water and sewer connection fees for the project and are nonrefundable. Extension of the initial vesting period may be approved administratively by the Water Resources Director upon receipt of the additional payment.

(D) **Vested Property Rights.** Sewer-service rights shall vest as provided in T.C.A. § 13-4-310 and City of Murfreesboro Resolutions 14-R-28 and 15-R-05 upon the approval by the City, in accordance with applicable state law and the City Code, of: (1) a preliminary development plan; (2) a final development plan where no preliminary development plan is required by ordinance; or (3) a building permit allowing construction of a building where there is no need for prior approval of a preliminary development plan for the property on which that building will be constructed; provided, however, no sewer-service rights shall vest in the property under this subsection (D) unless or until the owner or applicant has first successfully applied for sewer-service rights in accordance with this Article. Once sewer-service rights have vested under this section, no extension of the initial vesting period under subsection (C) shall be required.

(E) **Expiration of Vesting.** Without regard to the payment of fees, renewals, or term of vesting, sewer-service rights vested in a property pursuant to subsection (D) shall expire immediately:

- (1) if a right vested as provided in T.C.A. § 13-4-310 expires in accordance with the vesting periods set forth in that statute; or
- (2) it becomes necessary to terminate or modify the vested rights as permitted by T.C.A. §13-4-310.

SECTIONS 33-82—33-100

RESERVED.”

SECTION 6. That this Ordinance shall take effect fifteen (15) days after its passage upon second and final reading, the public welfare and the welfare of the City requiring it.

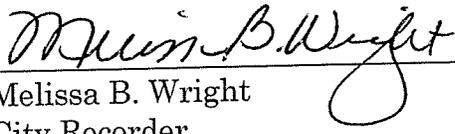
Passed:

  
Shane McFarland, Mayor

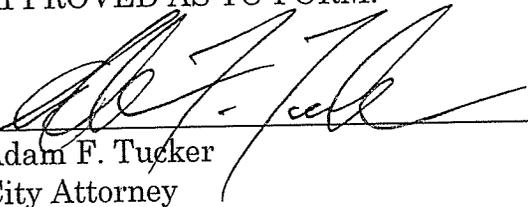
1<sup>st</sup> reading November 21, 2019

2<sup>nd</sup> reading December 5, 2019

ATTEST:

  
\_\_\_\_\_  
Melissa B. Wright  
City Recorder

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Adam F. Tucker  
City Attorney

