

**PRELIMINARY RESOLUTION BY THE BOARD  
OF THE LOUISVILLE AND JEFFERSON COUNTY  
METROPOLITAN SEWER DISTRICT  
AMENDING ITS 2016 SCHEDULE OF RATES, RENTALS AND CHARGES  
FOR WASTEWATER AND DRAINAGE SERVICES  
PURSUANT TO KRS CHAPTER 76**

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WHEREAS, the Louisville and Jefferson County Metropolitan Sewer District was created and established pursuant to Chapter 76 of the Kentucky Revised Statutes (“KRS”) in the interest of public health for the purpose of providing adequate sewer and drainage facilities in the City of Louisville and Jefferson County, Kentucky; and

WHEREAS, on August 12, 2005, MSD entered into a Consent Decree with the United States Environmental Protection Agency and the Commonwealth of Kentucky in the United States District Court for the Western District of Kentucky, pursuant to civil action number 3:05-cv-236-S, subsequently amended and superseded by the Amended Consent Decree entered pursuant to civil action number 3:08-cv-00608-CRS (the “Consent Decree”); and

WHEREAS, the Consent Decree is a negotiated settlement of alleged Clean Water Act violations, whereby MSD identified and committed to \$850 million in capital improvements to reduce combined sewer overflows and eliminate separate sanitary sewer overflows in its regional sewer system; and

WHEREAS, all work under the Consent Decree is to be completed by 2024; and

WHEREAS, since the entry of the Consent Decree, MSD has been required to dedicate its resources agency-wide to satisfy this costly federally mandated undertaking and has deferred major investments in wastewater, drainage and flood protection infrastructure rehabilitation, renewal and replacement in order to keep wastewater and drainage service charges at or below industry averages; and

WHEREAS, deferring the investment in infrastructure has kept wastewater and drainage charges affordable, however, has also resulted in an aging system of pipes, pumps, treatment plants,

and flood protection facilities now in urgent need of rehabilitation, replacement and renewal if they are to continue to protect health and safety; and

WHEREAS, to help identify appropriate levels of investment and priorities, MSD developed a Critical Repair and Reinvestment Plan (“CRRP”) (also known as the 20-Year Comprehensive Facility Plan) which prioritizes and consolidates MSD’s planning for and investment in facility rehabilitation, renewal, replacement, upgrade, and expansion across all MSD service areas; and

WHEREAS, the CRRP, which addresses urgent needs requiring correction over the next 20 years, is estimated to cost \$4.3 billion with recommended capital improvements during the first five (5) years exceeding \$1 billion; and

WHEREAS, completing the projects in the recommended capital improvement plan according to the recommended schedule is necessary in order to mitigate the increasing risk to public health and safety of a higher incidence of infrastructure failure and increased frequency in extreme rain events, and will require a significant investment from the community; and

WHEREAS, on the 10<sup>th</sup> day of May, 1947, by Resolution of its Board, the Louisville and Jefferson County Metropolitan Sewer District (“MSD”) adopted and established a schedule of rates, rentals and charges for its services and thereafter has amended said schedule from time to time as authorized pursuant to KRS Chapter 76; and

WHEREAS, pursuant to KRS Chapter 76, the schedule of rates, rentals and charges shall be established and revised from time to time so as to produce aggregate revenues to MSD sufficient for the payment of interest on and principal of all revenue bonds and other obligations of the District, all cost and expenses of operating and maintaining MSD’s sewer and drainage system, and for the payment of all costs of renewals and replacements of such system; and

WHEREAS, pursuant to KRS Chapter 76, the Board of Aldermen of the City of Louisville, by Ordinance No. 152, Series 1979, as amended by Ordinance No. 388, Series 1986, and the Fiscal Court of Jefferson County, by Ordinance No. 25, Series 1979, as amended by Ordinance No. 32, Series 1986, and Louisville Metro Ordinance No. 62, Series 2003, as amended by Ordinance No. 155, Series

2007, which ratified the aforementioned ordinances, approved a schedule of wastewater and drainage service charges for MSD which includes the following Debt Service Adjustments provision:

“Whenever MSD’s net revenues are less than 1.10 times the debt service on MSD’s outstanding revenue bonds for any consecutive six-month period, by order of the Board of MSD, the schedule of wastewater service charges and drainage service charges shall be amended in order to maintain a 1.10 debt service coverage required by MSD’s 1971 Bond Authorizing Resolution which was approved by City of Louisville Ordinance Number 86, Series 1971; provided the aggregate of such adjustments for any 12-month period shall not generate additional revenue from wastewater service charges and drainage service charges in excess of 7%.

The term ‘net revenues’ is defined as gross revenue from wastewater service charges and drainage service charges, less operating expenses and debt payments other than debt service payments on MSD’s outstanding revenue bonds[;]” and

WHEREAS, the Board of MSD has been advised by MSD’s Secretary-Treasurer that net revenues, as defined by Louisville Metro Ordinance No. 155, Series 2007, for the six-month period ended April 30, 2017, will be less than 1.10 times the debt service on MSD’s outstanding revenue bonds for the same six-month period; and

WHEREAS, MSD’s current schedule of rates, rentals and charges (wastewater and drainage service charges) will not continue to generate sufficient revenue for the proper operation and maintenance of the existing sewerage, drainage, and flood protection system and for the retirement of MSD’s outstanding debt and, therefore, will not be in compliance with the Kentucky Revised Statutes, MSD’s Bond Authorizing Resolutions and relevant ordinances; and

WHEREAS, in order to generate sufficient revenue to maintain the required debt service coverage, continue the proper operation and maintenance of MSD’s existing sewerage, drainage, and flood protection system, and to address the public health and safety risk resulting from MSD’s aging system of pipes, pumps, treatment plants, and flood protection facilities now in urgent need of rehabilitation, and the increased frequency in extreme rain events, the Board is proposing that the schedule of wastewater and drainage rates, rentals and charges be amended; and

WHEREAS, the proposed amended schedule represents an average increase in residential sewer bills of approximately ten dollars (\$10.00) per month; and

WHEREAS, the Board recognizes that, while increased spending on aging infrastructure is vital to maintaining public health and safety, the affordability of utility charges is a serious concern for customers in our community living at or near poverty levels; and

WHEREAS, to avoid increasing the financial burden of utilities on the low-income population of our community, the MSD Board is proposing a Wastewater Rate Assistance Program that would provide a significant wastewater rate reduction for low income customers; and

WHEREAS, the Wastewater Rate Assistance Program would offer to customers with incomes equal to or below one hundred thirty percent (130%) of the federal poverty level, a percentage discount on wastewater rates proportional to the increase in wastewater rates proposed in the amended schedule of rates, rentals and charges; and

WHEREAS, pursuant to KRS Chapter 76 and 424, the proposed amended schedule of wastewater and drainage rates, rentals and charges will be published, giving notice that objections and/or comments on the schedule may be filed within a period of thirty (30) days from the date of said publication; and

WHEREAS, pursuant to KRS Chapter 76, the proposed amended schedule of wastewater and drainage rates, rentals and charges will also be presented to the Legislative Council of Louisville Metro Government for approval.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF MSD** that,

The above recitals are hereby incorporated into this Resolution as if set forth fully within, and MSD's schedule of wastewater and drainage rates, rentals, and charges be, and they are hereby amended to include the following new rates in addition to current rates and said new rates shall be used for billings rendered on and after August 1, 2017:

**I.** Sections 1.1, 1.2, 1.3, 2.1, 2.2, 2.3, 2.4, 3.1, 3.2, 3.2.2, 3.2.3, and 4.0 of MSD's current *Schedule of Rates, Rentals and Charges* are hereby amended and shall read as follows:

**1.0 WASTEWATER SERVICE CHARGES**

The Wastewater Service Charge is a fixed service charge based on the size of the water meter and applies to all wastewater service charge billings. The Wastewater Service Charge shall be calculated using the table below and may be prorated based on the number of actual days in a billing cycle:

**1.1 Commercial/Industrial Charges:**

| <u>Meter Size</u><br>Inches | <u>Monthly Billing</u><br>\$/Bill | <u>Bi-Monthly Billing</u><br>\$/Bill | <u>Meter Size</u><br>Inches | <u>Monthly Billing</u><br>\$/Bill | <u>Bi-Monthly Billing</u><br>\$/Bill |
|-----------------------------|-----------------------------------|--------------------------------------|-----------------------------|-----------------------------------|--------------------------------------|
| 5/8 or 3/4                  | 25.39                             | 33.07                                | 6                           | 546.19                            | 1073.45                              |
| 1                           | 44.27                             | 66.42                                | 8                           | 820.92                            | 1610.21                              |
| 1-1/2                       | 66.42                             | 110.51                               | 10                          | 1073.45                           | 2115.43                              |
| 2                           | 85.30                             | 151.56                               | 12                          | 1558.48                           | 3116.95                              |
| 3                           | 180.40                            | 337.87                               | 16                          | 1889.08                           | 3778.06                              |
| 4                           | 284.26                            | 546.29                               | 18 or 20                    | 2479.37                           | 4958.74                              |

**1.2 Residential Charges:**

| <u>Meter Size</u><br>Inches | <u>Monthly Billing</u><br>\$/Bill | <u>Bi-Monthly Billing</u><br>\$/Bill |
|-----------------------------|-----------------------------------|--------------------------------------|
| 5/8 or 3/4                  | 16.54                             | 33.07                                |
| 1                           | 33.22                             | 66.42                                |
| 1-1/2                       | 55.26                             | 110.51                               |
| 2                           | 75.78                             | 151.56                               |
| 3                           | 168.94                            | 337.87                               |
| 4                           | 273.14                            | 546.29                               |

**1.3 Meter Read Charge:**

An additional charge of **\$110.41** shall be applied for each reading of each meter owned by a customer for the purpose of determining billable consumption. Examples of these meters are flow meters, addition and subtraction meters.

**2.0 WASTEWATER VOLUME CHARGES**

The Wastewater Volume Charge is based on either water used as measured by a Louisville Water Company (LWC) meter(s) or wastewater discharged to the public sewer that is directly measured by either a private effluent flow meter(s) or calculated using a combination of addition meters (LWC meters/effluent flow meters) and subtraction meters that have been certified by the MSD Finance Division for billing purposes. Wastewater Volume Charges may be modified from time to time by contractual agreement with individual customers. Wastewater Volume Charges are calculated based on the following rates:

**2.1 Regular Volume Rate**

The Regular Volume Rate shall be applicable to all water used and not meeting the requirements of Optional Volume Rate as described in Section 2.2 below. The

Residential Regular Volume Rate is calculated to provide a year-long 15% discount for lawn watering and other uses of water which does not enter the public sewer. In addition, the Regular Volume Rate is calculated to provide automatic year round volume rate discounts of 10% for Commercial and Institutional customers and 5% for Industrial customers.

**Residential - \$4.51 per 1,000 gallons of volume billed**  
**Commercial - \$5.22 per 1,000 gallons of volume billed**  
**Industrial - \$5.44 per 1,000 gallons of volume billed**

Commercial, Institutional and Industrial facilities on the Regular Volume Rate that are subject to a Quality Charge Rate shall pay Excess Quality Charges as described in Section 3.1 below.

## **2.2 Optional (Clean) Volume Rate**

The Optional Volume Rate shall be available to customers whose average water use or wastewater discharged to the public sewer during any consecutive twelve-month period exceeds 1,000,000 gallons per month. Commercial, Institutional and Industrial customers on the Optional Volume Rate that are subject to a Quality Charge Rate shall pay Total Quality Charges as described in Section 3.2 below.

**\$3.10 per 1,000 gallons of volume billed**

## **2.3 Sewer Only Volume Rate**

The Sewer Only Volume Rate shall be applicable to wastewater discharged to the public sewer that is directly measured by either a private effluent flow meter(s) or calculated using a combination of addition meters (LWC meters/effluent flow meters) and subtraction meters. All effluent flow meters, addition and subtraction meters shall be inspected and certified by the MSD Finance Division prior to being used for billing purposes.

**Residential - \$5.21 regular rate**  
**Commercial - \$5.83 regular rate or \$3.31 optional rate/1,000 gallons**  
**Industrial - \$5.88 regular rate or \$3.31 optional rate/1,000 gallons**

## **2.4 EPA Consent Decree Surcharge**

The EPA Consent Decree Surcharge shall be applicable to the following billings:

**Residential - \$13.51 per month or \$27.02 bi-monthly**  
**Condominium complexes without water meters for each condominium - greater of \$13.51 per month or \$2.26 per thousand gallons of water billed**  
**Commercial Regular Volume Rate - greater of \$13.51 per month or \$1.62 per thousand gallons of water billed**  
**Commercial Sewer Only Volume Rate - greater of \$13.51 per month or \$1.80 per thousand gallons of wastewater discharged**  
**Industrial Regular Volume Rate - greater of \$13.51 per month or \$1.68 per thousand gallons of water billed**

**Industrial Sewer Only Volume Rate** - greater of **\$13.51** per month or **\$1.80** per thousand gallons of wastewater discharged

**Optional (clean) Volume Rate** - greater of **\$13.51** per month or **\$.96** per thousand gallons of water billed

**Optional (sewer only) Volume Rate** - greater of **\$13.51** per month or **\$1.03** per thousand gallons of wastewater discharged

### **3.0 WATER QUALITY CHARGES**

Commercial, Institutional and Industrial customers that discharge wastewater to the public sewer characterized by excess strength of Biochemical Oxygen Demand (BOD) and/or Total Suspended Solids (TSS) shall be assessed a Quality Charge Rate established by MSD.

Any Commercial, Institutional or Industrial customer who is deemed eligible to be placed on a Quality Charge Rate by MSD shall have their wastewater tested for the purpose of accessing a quality charge billing rate in addition to the volume rate applied.

MSD shall at all times have access to the premises of a customer for the purpose of determining an appropriate Quality Charge Rate. Quality Charge Rates shall be based on sampling and analyses conducted by MSD personnel using MSD protocols and methods, unless otherwise approved by the MSD Board.

MSD shall set the frequency and duration for Quality Charge Rate sampling events. MSD will take business cycle fluctuations that may affect loadings into consideration when determining sampling frequency and duration.

MSD may establish standard BOD and TSS loadings for a specific customer class which shall be used to assess applicable Quality Charge Rates.

MSD may use other methods such as contractual agreements to determine a Quality Charge Rate for individual customers for which standard sampling and analyses do not represent the actual BOD and/or TSS concentrations being discharged to the public sewer.

#### **3.1. Excess Quality Charges**

Excess Quality Charges shall apply to Commercial, Institutional and Industrial customers paying the Regular Volume Rate as follows:

BOD Concentration: **\$0.004306** per mg/liter in excess of 250 mg/liter billed per 1,000 gallons of water recorded by a LWC meter OR wastewater discharged to the public sewer as directly measured by an effluent flow meter; and/or

TSS Concentration: **\$0.00177392** per mg/liter in excess of 270 mg/liter billed per 1,000 gallons of water recorded by a LWC meter OR wastewater discharged to the public sewer as directly measured by an effluent flow meter.

#### **3.2. Total Quality Charges**

**3.2.1** Total Quality Charges shall apply to Commercial, Institutional and Industrial customers paying the Optional Volume Rate as follows:

3.2.2 BOD Concentration: **\$0.004306** per mg/liter billed per 1,000 gallons of water recorded by a LWC meter OR wastewater discharged to the public sewer as directly measured by an effluent flow meter; and/or

3.2.3 TSS Concentration: **\$0.00177392** per mg/liter billed per 1,000 gallons of water recorded by a LWC meter OR wastewater discharged to the public sewer as directly measured by an effluent flow meter.

#### 4.0 FLAT RATE CHARGE FOR RESIDENTIAL CUSTOMER

The following flat rate wastewater service charges shall be applicable to any single-family residential customer without a metered public water service:

**\$52.60 monthly plus \$13.51 EPA Consent Decree Surcharge**

**-OR-**

**\$87.46 bi-monthly plus \$13.51 EPA Consent Decree Surcharge**

II. Section 8.0 of MSD's current *Schedule of Rates, Rentals and Charges* pertaining to Connection Fees, is hereby amended to incorporate a new subsection 8.9 which shall add a fee for the inspection and location of existing sewer connections as follows:

#### 8.9 Sewer Connection Inspection and Location Fees

8.9.1 Upon written request, MSD will provide a field inspection, and/or will verify through field inspection, the approximate location and approximate depth of an existing sewer connection (tap).

8.9.2 The fee for a field inspection, field verified location and/or field verified depth of an existing sewer connection (tap) shall be \$250 per connection, must be paid in advance, and shall cover the cost of the inspection and/or location only.

III. Sections 10.3 and 10.4 of MSD's current *Schedule of Rates, Rentals and Charges*, which establish MSD's Drainage Charges, are hereby amended and shall read as follows:

#### 10.3 Class A properties or Single-Family Residential

The single-family residential charge rate shall be **\$10.39** per month for each parcel having one or two residential dwelling unit(s). This flat rate fee is based on each single-family residential parcel being equal to one equivalent service unit (ESU). MSD shall determine the number of single-family residential parcels in the drainage service area and designate each as a single ESU irrespective of the size of parcel is segregated or the use of the land is modified to other than single-family. Drainage Charges may be pro-rated based on the number of actual days in a billing cycle.

#### 10.4 Class B or other Parcels

The charge for all other parcels within the drainage service area shall be based upon the number of square feet of measured impervious surface, as determined by MSD through aerial photography and surface feature evaluation processes, expressed in whole ESUs by rounding to the next highest ESU (an ESU has been determined to be

2,500 square feet of impervious surface). The charge for Class B property may be computed by multiplying the number of ESUs for a given parcel by the unit rate established by MSD of \$10.39 per month. Drainage Charges may be pro-rated based on the number of actual days in a billing cycle. Any owner of Class B property may request a drainage charge credit adjustment for approved on-site stormwater retention or detention facilities provided:

**10.4.1** The property owner remains responsible for all costs of operation and maintenance of the facility;

**10.4.2** The facility has been constructed in accordance with all approved plans, “and drainage service charges” following the term “Wastewater Service Charges” whenever said term appears in said provision;

**10.4.3** The owner has obtained MSD required permits for the facility; and

**10.4.4** MSD has access to the facility for purposes of inspecting for compliance with design, maintenance and operating standards.

**IV.** Section **17.0 SENIOR CITIZEN DISCOUNT** is hereby renumbered as Section 18.0. MSD’s current *Schedule of Rates, Rentals, and Charges* is hereby amended to include a new section 17.0 to incorporate a wastewater rate assistance program which shall read as follows:

**17.0 WASTEWATER RATE ASSISTANCE PROGRAM**

**17.1 Definitions**

For purposes of this Section only, the words or phrases below shall have the following meanings:

**17.1.1 “Household”** means an individual or group of individuals who are living together in the principal residence sharing common living arrangements.

**17.1.2 “Household income”** means all earned and unearned income, including lump sum payments received by a household during the calendar month preceding the month of application.

**17.1.3 “Low-income residential customer”** means a direct residential customer of MSD having a gross total household income at or below one hundred thirty percent (130%) of the official poverty income guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services under authority of 42 U.S.C. 9902(2), or who is eligible for the Low Income Home Energy Assistance Program state plan prepared by the Kentucky Cabinet for Health and Family Services, Department for Community Based Services at the time of application.

**17.1.4 “Principal residence”** means the place where the customer is living voluntarily and not on a temporary basis; the place the customer considers home, and the place to which, when absent, the customer intends to return.

**17.2 Wastewater Discount**

All eligible low-income residential customers may receive a thirty percent (30%) discount on the wastewater charges on their sewer bill. The discount, known as the Wastewater Rate Assistance Program discount, shall apply to wastewater service charges, wastewater volume charges and EPA Consent Decree surcharges.

### **17.3 Eligibility Criteria**

The Wastewater Rate Assistance Program discount shall be available to low-income residential customers who:

- 17.3.1** Apply for and are approved for the discount. Customers shall provide required information upon forms and in the manner required by Program rules to certify their eligibility.
- 17.3.2** Are receiving water by separate metered water service for a property or dwelling used solely for residential purposes owned or leased by the customer as his or her principal residence.
- 17.3.3** Are named customers with MSD and are responsible for paying the sewer bill received from the Louisville Water Company for the customer's principal residence.
- 17.3.4** Verify and certify household income and ownership or leasehold of their principal residence in the manner required by the Program.
- 17.3.5** Have total household income, when computed annually, including the income of all occupants, and regardless of age, that does not exceed 130% of the official poverty income guidelines referenced in section 17.1.3 computed annually.
- 17.3.6** Satisfy all other terms and conditions established by the Program for eligibility.

### **17.4 Grandfather Clause for Senior Citizens**

MSD customers, age 65 years of age or older, receiving MSD's Senior Citizen's Discount as of July 31, 2017, shall automatically be approved for the Wastewater Rate Assistance Program on August 1, 2017 and shall receive the wastewater charge discount through July 31, 2019. After July 31, 2019, customers 65 years of age or older will no longer qualify unless they have previously applied for the Wastewater Rate Assistance Program, met all eligibility requirements, and been approved to receive the wastewater charge discount after July 31, 2019. (See Sections 17.3 and 17.6 for further information.)

### **17.5 LIHEAP Customer Qualification**

MSD Customers approved for the Low Income Home Energy Assistance Program (LIHEAP) state plan prepared by the Kentucky Cabinet for Health and Family Services, Department for Community Based Services at the time of application for the Wastewater Rate Assistance Program discount, shall automatically qualify for the wastewater charge discount. If a customer's LIHEAP approval is terminated or ends,

however, and for any reason, the customer's automatic eligibility for the Wastewater Rate Assistance Program Discount shall also terminate or end and the customer must apply for the discount and meet the eligibility requirements set forth in Section 17.3 to qualify.

#### **17.6 New and Reapplying Customers**

For new and reapplying low-income residential customers, the wastewater charge discount shall commence on the next subsequent billing date following approval of the customer's application and shall continue for a period of twenty-four (24) months conditioned upon the customer's continued eligibility.

#### **17.7 Program Administration**

The Executive Director or his designee may prescribe such policies, regulations and procedures, consistent with the provisions of this Section, as deemed necessary and appropriate to administer and enforce the Wastewater Rate Assistance Program and may, consistent with MSD's Procurement Regulations, and if deemed to be in MSD's best interest, enter into a cooperative agreement with Louisville Metro Department of Community Services or another entity, public or private, to perform all or a portion of the administrative services necessary to administer the Wastewater Rate Assistance Program, provided the services are carried out under the Executive Director's, or his designee's oversight and supervision.

- V. The new Section **18.0 SENIOR CITIZENS DISCOUNT** is hereby amended and shall read as follows:

Effective August 1, 2017, the Senior Citizens Discount offered under this Section shall expire. Any Senior Citizen approved for a 30% discount off wastewater service charges, wastewater volume charges and the EPA Consent Decree Surcharge as of July 31, 2017, however, will be grandfathered into MSD's Wastewater Rate Assistance Program and shall automatically qualify for and receive the Wastewater Rate Assistance Program discount until July 31, 2019. (See Section 17.0 above for further information.)

- VI. Section **18.0 ADJUSTMENTS OF SURCHARGES AND APPEALS** is hereby renumbered as Section **19.0**.

- VII. Section **19.0 SEVERABILITY** is hereby renumbered as Section **20.0**.

#### **VIII. ADDITIONAL PROVISIONS AFFECTING SCHEDULE:**

All remaining provisions of MSD's current schedule of wastewater rates, rentals and charges not amended herein shall continue in full force and effect. MSD's *Schedule of Rates, Rentals and Charges* as amended herein shall become effective **August 1, 2017**.