

ORDINANCE NO. 2024-01

SFTA SEWER RATE ORDINANCE

This SFTA Sewer Rate Ordinance ("Rate Ordinance") establishes a schedule of rates and charges to be collected by the Elkhart County Regional Sewer District from the owners of property served by the applicable sewage works of said District and other matters connected therewith.

WHEREAS, the District has heretofore completed construction of the public wastewater infrastructure serving the area known as Heaton Lake Community Sewage Disposal System ("Heaton Lake") and it operates and maintains the sewage works provided therein pursuant to Indiana Code Art. 13-26, as amended.

WHEREAS, the District has heretofore completed construction of the public wastewater infrastructure serving the area known as the State Road 13 Interchange TIF District ("S.R. 13 District") and it operates and maintains the sewage works provided therein pursuant to Indiana Code Art. 13-26, as amended.

WHEREAS, a separate public wastewater infrastructure is being constructed for an area designated as the Southwest Foraker Tecumseh Acres Sewage Disposal System that will be separate and distinct from the wastewater infrastructure that the District operates for Heaton Lake and the S.R. 13 District.

WHEREAS, the nature of the SFTA will be different from the nature of Heaton Lake and the nature of the S.R. 13 District, and so separate rates and charges for the SFTA are required.

WHEREAS, the District wishes to keep in full force and effect all ordinances applicable to Heaton Lake and all ordinances applicable to the S.R. 13 District, which ordinances do not apply to the SFTA.

WHEREAS, Indiana Code § 13-26-11-9(b) requires the District to establish a schedule of rates and charges which produce sufficient revenue to pay maintenance and operation expenses, to provide funds for necessary replacements and improvements to the SFTA, and to pay the principal and interest on acquired revenue bonds.

WHEREAS, the District finds that the rates and charges as set forth in this Rate Ordinance are just and equitable as defined by Indiana Code § 13-26-11-9(a).

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE ELKHART COUNTY REGIONAL SEWER DISTRICT:

1. Definitions. Unless the context specifically indicates otherwise, the following definitions apply throughout this Ordinance:

a. "Applied Flow Calculation Factor" or "AFCF" means the application of each Unit's applicable Rate Payor Units to the Unit's Flow Calculation Factor(s) to determine the total estimated gallons per day for a Unit.

b. "District" means the Elkhart County Regional Sewer District.

c. "Flow Calculation Factor" means the factor listed for any given service connection description under 327 IAC 3-6-11(b) Table 11-1 or the factor approved by the District's Board under Section 2(c)(iii) to determine a Unit's estimated gallons per day.

d. "Non-Residential Unit" means any building, structure, or other enclosed space that is not a Residential Unit, is partitioned or otherwise separated from another building, structure, or other enclosed space and is not used for household purposes.

e. "Person" means any individual, partnership, co-partnership firm, firm, company, corporation, association, society, corporation, group, joint stock company, trust, estate, governmental entity or any other legal entity.

f. "Rate Payor" means any Person who owns any parcel of real estate connected to the SFTA.

g. "Rate Payor Unit(s)" means a Unit's number for each applicable variable (e.g., seats, employee, customer) of the Flow Calculation Factor.

h. "Residential Equivalent Unit" or "REU" means 210 gallons per day.

i. "Residential Unit" means a building, structure, or other enclosed space that:

i. Contains at least one bedroom, kitchen, and bathroom, and

ii. Which is partitioned or otherwise separated from another set of bedrooms, kitchens, and bathrooms.

j. "Southwest Foraker Tecumseh Acres Sewage Disposal System" or "SFTA" means the sewer system owned by the District that will initially service an area which includes the parcels identified in the District's Notice of Intent dated October 13, 2022.

k. "Surcharge" means any and all excessive strength surcharges assessed to the District by the City of Nappanee pursuant to the District and the City's Interlocal

Agreement for Water Pollution Control Treatment Services for the Unsewered Service Areas of Foraker, Southwest, and Tecumseh Acres.

1. "Unit" means a Non-Residential Unit, Residential Unit, or vacant parcel that is connected to the SFTA.

2. Rate Calculations.

a. Rate Payors will be charged a flat monthly rate for each Unit owned consisting of the following:

i. An administrative fee of \$11.50 per Unit.

ii. A usage fee of \$83.50 per REU.

b. The number of REUs for a Unit is calculated as follows:

i. Each Residential Unit has an REU of 1.

ii. Each vacant parcel that is connected to the SFTA has an REU of 1.

iii. For a Non-Residential Unit that fits the description of at least one listed Service Connection Description in 327 IAC 3-6-11(b) Table 11-1:

A. Divide the Unit's most recently reported AFCF under Section 2(e) by 210, and round up to the nearest whole number [AFCF/210, rounded up to the nearest number].

B. When a Unit is described by more than one service connection description that is inherently included within another, the applicable service connection description that results in the highest AFCF will be used.

C. Examples:

I. *Church without kitchen.* If the Flow Calculation Factor is 3 per sanctuary seat for a church without a kitchen and the church connecting has no kitchen and had at its maximum 150 sanctuary seats in the prior year, then the number of REUs is 3.

$$3 \times 150 = 450;$$

$$450 / 210 = 2.14;$$

2.14 rounded up to the next whole number is 3.

II. *Office building without showers.* If the Flow Calculation Factor is 20 per employee for an office without showers and the office connecting has no shower and had at its maximum 50 employees in the prior year, then the number of REUs is 5.

$$20 \times 50 = 1,000;$$

$$1,000 / 210 = 4.76;$$

4.76 rounded up to the next whole number is 5.

III. *Food service operations: restaurant (not open 24 hours).* If the Flow Calculation Factor is 35 per seat for a restaurant not open 24 hours and the restaurant connecting is only open for breakfast and had at its maximum had 40 seats in the prior year, then the number of REUs is 7.

$$35 \times 40 = 1,400;$$

$$1,400 / 210 = 6.67;$$

6.67 rounded up to the next whole number is 7.

IV. *Food service operations: restaurant (not open 24 hours but located along an interstate).* Using the same information as Example C and knowing that the Flow Calculation Factor for a food service operations: restaurant (not open 24 hours but located along an interstate) is 50 per seat, the number of REUs is 10. Because every "food service operations: restaurant: (not open 24 hours and located along an interstate)" is inherently included in the category of "food service operations: restaurant (not open 24 hours), only the calculation resulting in the higher AFCE number is used.

$$35 \times 40 = 1,400 < 50 \times 40 = 2,000;$$

$$2,000 / 210 = 9.53;$$

9.53 rounded up to the next whole number is 10.

V. *Office building without showers and food service operations: restaurant (not open 24 hours).* Using the information from Examples B and C, a single Unit which meets both the description of an office building without showers and a restaurant (not open 24 hours) would add the two AFCE's together to determine the total number of REUs, which in this situation is 12 REUs.

$$20 \times 50 = 1,000;$$

$$35 \times 40 = 1,400;$$

$$1,000 + 1,400 = 2,400;$$

$$2,400 / 210 = 11.43;$$

11.43 rounded up to the next whole number is 12.

- iv. For any Unit to which neither Section 2(b)(i), (ii), or (iii) applies, the Rate Payor will multiply the Flow Calculation Factor determined under Section 2(c)(iii) or Section 2(d) if subsequently altered by the District, for the Rate Payor, by the most recent number of reported Rate Payor Units (see Section 2(e)), divide by 210, and round up to the nearest whole number.
- c. Prior to obtaining a permit to connect to the SFTA under the SFTA's Use Ordinance, each Rate Payor subject to Section 2(b)(iv) must:
 - i. Submit to the District a study conducted at the Rate Payor's expense showing:
 - A. The most appropriate Flow Calculation Factor to be used for the Unit.
 - B. The greater of:
 - I. The Unit's highest number of Rate Payor Units in the previous 12 months, or
 - II. The Unit's highest anticipated number of Rate Payor Units in the next 12 months.
 - C. The total number of REUs by applying the Flow Calculation Factor determined under Section 2(c)(i)(A) to the Unit's Rate Payor Units submitted under Section 2(c)(i)(B), dividing by 210, and rounding up to the nearest whole number.
 - ii. Pay for all expenses incurred by the District to review the study.
 - iii. Obtain final approval by the District's Board of the Flow Calculation Factor which will be used for the Unit as selected by the District's Board after the District's review of the Study.
- d. The District may, at its discretion, conduct a meter run time and draw down test to evaluate the District's ongoing satisfaction with the Flow Calculation Factor approved under Section 2(c)(i). After reviewing the results of a test conducted under this Subsection, the District's Board may change or modify the Flow Calculation Factor for the Unit. A Unit to which this Clause applies is still subject to Section 2(e).
- e. For Non-Residential Units, a Rate Payor must report to the District all applicable Flow Calculation Factors, applicable Rate Payor Units, and the total AFCF for a Unit in the following circumstances:

i. The then current Flow Calculation Factors, the Rate Payor Units formula listed under Section 2(c)(i)(B), and AFCF prior to obtaining a permit to connect under the SFTA's Use Ordinance,

ii. The then current Flow Calculation Factors, Rate Payor Units, and AFCF if the AFCF increases by 25% or more since the most recent report of the AFCF to the District,

iii. The then current Flow Calculation Factors, Rate Payor Units, and AFCF if the Unit's service connection description changes, and

iv. On or before January 31 of each year, the Flow Calculation Factors, Rate Payor Units, and AFCF that existed at the same time in the prior calendar year which resulted in the highest AFCF for the Unit.

f. For any Unit that fails to timely submit a certified report to the District under Section 2(e)(iv), the AFCF used to calculate the previous year's December bill will be increased by 25% for all bills generated for the calendar year the report was due. After a report is submitted, a Rate Payor will be required to pay any additional amounts that would have been owed if the report was submitted on time, but will not be entitled to any refund for over payment during such period of time. Nothing in this Subsection may be construed to limit or eliminate a Rate Payor's obligation, or the District's ability to enforce a Rate Payor's obligation, to submit any report required under Section 2(e).

3. Billing Administration

a. Rate Payors will be billed the total amount calculated under Section 2 of this Ordinance each month for the prior month connected.

b. A Rate Payor is liable for the entire amount under Section 2 regardless of the number of days in the month the Rate Payor is connected.

c. A Rate Payor is solely responsible for the amount calculated under Section 2 and for any charges imposed under Section 4.

d. A bill will be sent to the Rate Payor at the address of the Unit unless the Rate Payor, in a signed writing, requests an alternative address be used.

e. As provided by Indiana Code § 13-26-14-4, all rates and charges not paid within 15 days after the billing date will be declared delinquent and a late payment charge will be added to each delinquent bill in the amount of 10% of the past due amount unless a different amount is required by law.

f. Nothing in this Ordinance may be construed as a waiver of any other remedy available to the District, including the right to record a lien and include in the recording and collection of such lien the amount owed and all penalties, fees, charges, and other related expenses allowed by law.

4. Additional Charges. In addition to the rates in Section 2, Rate Payors are subject to the following fees:

a. *Bad Check Fee.* For any payment submitted to the District by check or draft on a financial institution that is not honored by the financial institution, the Rate Payor must reimburse the District all costs and expenses it incurs as a result of the financial institution not honoring the check or draft.

b. *Connection Fee.* A Rate Payor must pay a Connection Fee of \$5,000.00 per REU calculated under Section 2 for each connection added to the SFTA more than 60 days after the date on which the SFTA is available for connection to any Unit that existed or could have existed on a property. A zoning or other legal restriction does not create a limit on a Unit's existence or ability to exist under this Subsection.

c. *Disconnection Fee for Disconnections Occurring within 30 Days of Permit.* A Rate Payor who disconnects from the SFTA within 30 days of the issuance of a permit under Section 10 of the SFTA's Use Ordinance must pay a Disconnection Fee of \$150.00 or the actual costs incurred by the District as a result of the disconnection, whichever is greater.

d. *Disconnection Fee for Disconnections Occurring After 30 Days of Permit.* A Rate Payor who disconnects from the SFTA more than 30 days after the issuance of a permit under Section 10 of the SFTA's Use Ordinance must pay a Disconnection Fee of \$500.00 or the actual costs incurred by the District as a result of the disconnection, whichever is greater. A fee assessed under this Subsection is in addition to and separate from any amounts owed by a Rate Payor under the SFTA's Use Ordinance.

e. *Excessive Strength Proportional Fee.* For any Surcharge or portion of a Surcharge for which the District cannot in good faith determine which Rate Payor caused the District to incur the Surcharge or portion of the Surcharge, each Rate Payor will be charged an Excessive Strength Proportional Fee. The Fee will be proportional to the Rate Payor's REUs compared to the total REUs serviced by the SFTA and in an amount that, in aggregate across all Rate Payors, is equal to the Surcharge or portion of the Surcharge for which the District cannot in good faith determine the Rate Payor responsible and any costs incurred by the District associated with the Surcharge or portion of the Surcharge, including the costs of investigating the cause of the Surcharge.

f. *Direct Excessive Strength Fee.* A Rate Payor causing the District to incur a Surcharge will be charged a Direct Excessive Strength Fee equal to the Surcharge the Rate Payor caused the District to incur and any costs incurred by the District associated with the Surcharge, including the costs of determining the Rate Payor was responsible.

g. *Service Call Fee.* All related expenses incurred by the District due to a call for service to a Rate Payor's Unit or \$150.00, whichever is greater, unless the call is due to normal wear and tear on the SFTA.

5. Enforcement.

a. Nothing in this Ordinance may be construed to limit the District's ability to enforce this Ordinance by any means permitted under Indiana law, including the right to seek injunctive relief.

b. Any violation of this Ordinance is subject to the maximum penalties permitted by law, including a fine of up to \$2,500.00 for the first violation and a fine of up to \$7,500.00 for each subsequent violation.

c. The District may refuse its services for a Rate Payor who fails to pay any rate or other charge owed to the District.

d. Each provision of this Ordinance that is violated constitutes a separate violation.

e. Each day a violation continues constitutes a new and separate violation.

f. The District may recover attorney's fees, court costs, and any other expenses associated with the enforcement of this Ordinance as permitted by law.

6. Miscellaneous.

a. The invalidity of any section, clause, sentence, or provision of this Ordinance will not affect the validity of any other part of this Ordinance which may be given effect without such invalid part or parts.

b. Throughout this Ordinance, the singular includes the plural and the plural includes the singular. A reference to any Person includes the Person's agent.

c. This Ordinance will be in full force and effect from and after its passage, approval, recording, and publication as provided by law.

d. All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this Ordinance are hereby repealed to the extent of such inconsistency or conflict.

ORDAINED AND ADOPTED January 10, 2024.

ELKHART COUNTY REGIONAL SEWER DISTRICT

By: Scott Robinia
Scott Robinia, President

By: Mary Cripe
Mary Cripe, Secretary

By: Mae Kratzer
Mae Kratzer, Treasurer

By: George Cornish
George Cornish, Member

By: Dustin K. Sailor
Dustin Sailor, Member

By: Daragh Deegan
Daragh Deegan, Member

By: Absent
Gale Gerber, Member

ATTEST:

By: Jackie Cuatrecasas

Jackie Cuatrecasas, Administrative Assistant