

14-R-079

RESOLUTION AMENDING THE COST PARTICIPATION POLICY TO PROVIDE AN OPTION FOR PROPERTY OWNERS TO INCLUDE CONNECTION FEES IN THE TWENTY YEAR ASSESSMENT AND TO OTHERWISE UPDATE THE POLICY TO REFLECT CURRENT PRACTICES.

WHEREAS, the City Council has determined that the Cost Participation Policy, adopted by the City Council on September 26, 2006, and amended on July 22, 2014, (the "Policy") serves an important public purpose as a mechanism to provide reliable and safe public water and sewer services to unserved areas in the City of Chesapeake, Virginia (the "City"); and

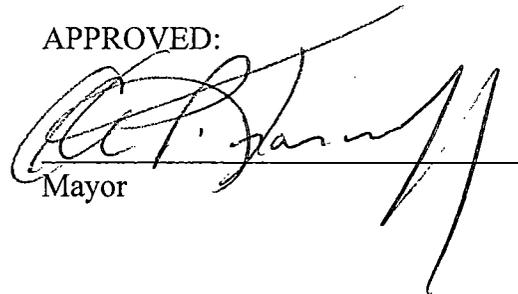
WHEREAS, the Policy is in need of revisions to reflect current law and practice, including recent amendments to Section 30-567 of the City Code allowing the inclusion of connection fees as a component of the assessment paid by property owners for a twenty year period.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Chesapeake has determined that the attached revisions to the Cost Participation Policy are necessary and appropriate and hereby approves same. The amendments to the Cost Participation Policy shall become effective immediately.

ADOPTED by the Council of the City of Chesapeake, Virginia, on this 23rd day of

September, 2014.

APPROVED:



Mayor

ATTEST:



Clerk of the Council

COST PARTICIPATION POLICY

1. Purpose and Intent.

The purpose and intent of this policy (the "Policy") is to establish a written, uniform, systematic, and calculable approach to providing City water and/or sewer utilities on a shared cost participation basis to predominantly residential neighborhoods that are within the Public Utility Franchise Area, except for areas zoned as A-1 (Agricultural) and RE-1 (Residential Estate) districts. This written policy shall replace all previous cost participation policies approved by City Council or administered by the Department of Public Utilities.

2. Council Findings.

Recent studies prepared by the Director of the Department of Public Utilities reveal that there are a significant number of residential subdivisions and developments within the Public Utility Franchise Area that are not served with City water and/or sewer. These studies indicate that public health concerns exist with regard to failing septic tanks, non-functional wells and other sewer and water problems that exist in areas not served by public utilities. In an effort to directly address these health concerns, City Council has developed a uniform approach toward providing properties in the Public Utility Franchise Area with public water and/or sewer facilities on a shared cost basis. This shared cost basis serves to fairly and accurately apportion the cost between the Owners and the City. After review of the aforementioned studies and reports, and consideration of relevant legislative authority, the City Council has determined that this Cost Participation Policy serves a public purpose and will benefit the citizens of the City of Chesapeake.

3. *Definitions.*

Affected Area shall mean a residential subdivision or development located wholly within the Public Utility Franchise Area and HRSD Service Area that does not have public water and/or sewer service. A residential subdivision shall include all lots bordering a public street as shown on the list of Affected Areas as identified in Exhibit "A." A residential development shall include all dwelling units constructed on one or more parcels of land pursuant to an approved final site plan.

Affected Property shall mean each individual lot or dwelling unit within the Affected Area that will benefit from the utility improvements.

Assessment shall mean a special levy on each Affected Property necessary to fund the Owners' share of the Total Cost, as authorized by Section 15.2-2404, 15.2-2045 and 15.2-2413 of the Code of Virginia, 1950, as amended. The amount of the Assessment shall be the Owner's Cost and, at the option of the Owner, the Owner's Connection Fees.

Director or designee shall mean the Director of Public Utilities or someone whom he/she designates to act in his/her place and stead.

Eligible Applicant shall mean Owners of property in the Affected Area who have submitted a completed Extension Application signed by no less than three-fourths (3/4) of the Owners.

Extension Application shall mean a written request to extend public water and/or sewer service to an Affected Area, which shall in every case include a petition for cost participation signed by no less than three-fourths (3/4) of the property Owners.

Franchise Area shall mean the area identified in the Chesapeake Comprehensive Plan as the Public Utility Franchise Area, as may be expanded from time to time by City Council approval.

HRSD Service Area shall mean those areas in the City of Chesapeake that can be served by the Hampton Roads Sanitation District as outlined in the most recently adopted City HRSD Service Area Expansion Policy.

Installment Payment Period shall mean the time frame for which installment payments made by Owners shall not exceed twenty (20) years.

Owners shall mean the title holders and record owners of Affected Property within the Affected Area that is recorded in the Clerk's Office of the City of Chesapeake, Virginia.

Owner's Cost shall mean the separate and individual expense for each lot or dwelling unit to cover the cost of design and installation of all pipes, pump stations and other appurtenances in the public system necessary to provide City water and/or sewer to each Affected Property within the Affected Area. At the option of the Owner, the Owner's Cost may include Connection Fees.

Owner's Combined Cost shall mean the individual Affected Property Owner's costs for the extension of both public water and sewer.

Owner's Connection Fees shall mean the individual Affected Property Owner's fee for connection to the City's water and/or sanitary sewer system as authorized by Section 78-86 of the City Code.

Owner's Sewer Cost shall mean the individual Affected Property Owner's cost for the extension of public sewer only.

Owner's Water Cost shall mean the individual Affected Property Owner's cost for the extension of public water only.

Priority List shall mean a list of Affected Properties that is prepared and prioritized by the Chesapeake Health Department.

Project shall mean the design, construction, installation and extension of City water and/or sewer facilities and all action necessary to administer the same, which shall be based on the submission of an Extension Application by an Eligible Applicant. *Project* may be used in the plural or singular form.

Project Cost shall mean the total cost of the design, engineering, materials, site preparation, installation, construction, inspection, testing and other expenses related to the extension of City water and/or sewer facilities, including but not limited to, fees and expenses associated with financing all or any portion of the costs. At the option of the Owner, Project Cost may include the Owner's Connection Fees.

Report shall mean a written document prepared by the Director of Public Utilities or designee, which shall set forth its conclusions, recommendations and supportive analysis relative to all aspects of the completed Extension Applications.

4. *Application for Extension of Public Utilities.*

One or more Owners of residential lots or dwelling units not currently served by public water and/or sewer may request the City Council to extend needed public utilities to all lots or dwelling units in the neighborhood or residential development. The request shall be initiated by submitting a signed Extension Application to the Director. The Extension Application must include a petition supporting the request, signed by no less than three-fourths ($\frac{3}{4}$) of the Owners. The Extension Application must also identify the location and boundaries of the Affected Area and specify whether an extension of public water, sewer or both is requested.

In the event that landowners in an area that is not identified on the Priority List contained in Exhibit "A" request to be included as an Affected Area, then the Director of Public Utilities, in consultation with the City Manager, or designees, shall recommend to City Council whether or not the new area should be included on the List. The new area shall be identified in accordance with an approved site plan or a recorded subdivision plat. City Council action shall be required to determine which new areas get placed on the List of Affected Areas.

5. *Eligibility Criteria and Standard of Review.*

Upon receipt of an Extension Application, the Director shall evaluate same pursuant to the following eligibility criteria and standards of review:

(a) The Director shall determine whether the Extension Application includes all necessary components, including without waiver i) identification of the Affected Area;; (ii) a statement that the entire Affected Area lies within the Franchise Area and the HRSD Service Area (for sewer projects); (iii) a petition signed by at least three-fourths (3/4) of the Owners supporting the requested utility extension and acknowledging that a portion of the costs shall be borne by all Owners, in accordance with Section 15.2-2405 of the Code of Virginia, 1950, as amended; and (iv) each Owner must sign the Petition. If the Extension Application does not include one or more of the these components, or contains inaccurate statements, then the Director shall declare the Extension Application incomplete and notify the applicants in writing that the Extension Application is not eligible for review. Properly completed Extension Applications shall be submitted no later than September 1 for consideration and inclusion in the City's Capital Improvement program for the next fiscal year.

(b) Upon determining that an application is complete and accurate, the Director shall meet and confer with the Director of the Chesapeake Health Department and other City department heads, or designees, to discuss and determine the following:

(i) Whether any environmental and/or public health issues may arise by extending or failing to extend public water and/or sewer;

(ii) Whether there is any potential for depletion or contamination of groundwater at or near the Affected Area;

(iii) Whether any of the Affected Properties in the Affected Area contain any failing septic disposal systems or non-functioning and/or contaminated drinking water wells as the result of changes to the aquifer from which the well draws water;

(iv) Priority based on health and safety concerns for addressing Projects under consideration;

(v) Whether there are any other factors or issues that may negatively impact the health, safety and welfare of Chesapeake residents; and

(vi) Whether there are any other factors or issues that may negatively impact the public utility system.

(c) A preliminary design of the City's Facilities will be developed by Public Utilities to identify any significant issues associated with the Project. During this design the Department of Public Utilities has the right to determine the route and method or methods in order to provide service to the Affected Area.

(d) The Director shall also confer with the City Manager, or designee, to develop an analysis to determine whether the requested extension of public utilities is financially feasible. This analysis shall include an estimate of the Project Cost; the proposed Owner's Cost; an

estimate of the minimum Assessment needed to finance the Owner's Cost; and any rate increase needed to fund the City's share of the Project Cost.

(e) After the Director of Public Utilities or designee has provided written notice to the Owners that their application is complete, ~~they~~ the Owners will each be allowed to pay the Connection Fees for their respective Affected Property. At least fifty percent (50%), plus one (1) of the Owners shall pay 100% of the connection fees for the Affected Properties prior ~~;~~ which shall be subsequent to City's Council's consideration of the Extension Application. In the event that City Council, does not approve the Application as submitted or revised, then the Connection Fees will be refunded without interest.

6. *Cost Sharing Calculations.*

The Owner's Cost shall be calculated and paid in accordance with the following:

(a) *Extension of Water Only or Sewer Only:* The extension of water or sewer utilities, but not both, is applicable only when the Director determines that the Owner's Affected Property is served by one utility and not the other. ~~Any Owner who does not have both City water and sewer shall not be eligible to receive just one (1) utility service.~~ All Owners shall pay their respective Connection Fees for water, sewer, or both as the case may be, and as required in Chapter 78 of the Chesapeake City Code. Each Owner shall pay an Assessment in the amount of \$2,600.00 for the extension of City water to the Affected Property, plus the current connection fee ("Owner's Water Cost"). Each Owner shall pay an Assessment in the amount of \$5,200.00 for the extension of City sewer to the Affected Property, plus the current connection fee ("Owner's Sewer Cost"). At least fifty percent (50%), plus one (1) of the Owners shall pay 100% of the connection fees for the Affected Properties prior ~~;~~ which shall be subsequent to City's Council's consideration of the Extension Application. The remaining Owners shall pay

100% of their respective connection fees within six (6) months from the date that the requested service is made available for use or, at the Owner's option, the Owner's Connection Fees may be included as a component of the Project Cost and the Assessment. Payments made for and on behalf of Owners are acceptable on the condition that the Owners submit a signed and notarized statement to the Director of Public Utilities indicating their approval of such payment. The Owner's Water Cost and Owner's Sewer Cost, or Connection Fees, or any portion thereof, shall not be borne by the City.

(b) *Extension of Water and Sewer Combined:* All Owners who do not have City water and sewer must request the extension of both utility services. The Owners shall pay the Connection Fees for water and sewer as required by Chapter 78 of the Chesapeake City Code, or, at the Owner's option, the Owner's Connection Fees may be included as a component of the Project Cost and the Assessment. The Owners shall pay an Assessment in the amount of \$7,800.00, plus or including, as the case may be, the current connection fees (the "Owner's Combined Costs"). At least fifty percent (50%), plus one (1) of the Owners shall pay 100% of the connection fees for the Affected Properties prior, ~~which shall be subsequent to~~ City's Council's consideration of the Extension Application. The remaining Owners that did not pay Connection Fees prior to consideration of the Extension Application by the City Council shall pay 100% of the Connection Fees within six (6) months from the date that the requested service is made available for use. In the alternative, such an Owner may elect to include the Owner's Connection Fees as a component of the Project Cost and the Assessment. The Owner's Combined Costs, or any party thereof, shall not be borne by the City.

(c) For Projects approved by City Council, if fifty percent (50%), plus one (1) of the Owners² fail to pay one hundred percent (100%) of the Connection Fees not later than the last

day of September for the current year, then the Project shall be terminated. Upon termination of the Project based on the Owners' failure to pay the connection fees as provided in this paragraph, the City shall have no further obligation to the Owners.

(d) If fifty percent (50%), plus one (1) of the Owners pay one hundred percent (100%) of the connection fees by the last day of September for the current year and the remaining Owners fail to pay their connection fees within six (6) months from the date that the requested service is made available, then City shall place a lien on each Affected Property. The City shall have all other forms of recourse available as provided in the City's Ordinances and under Virginia laws, which includes, but is not limited to, the right to charge a minimum monthly charge for water and sewer when the same are available for use by each Affected Property.

7. *Payment of the Owner's Cost.*

(a) The Owner's Cost including at the Owner's option, the Owner's Connection Fees shall be funded by an Assessment on each Affected Property in accordance with Section 15.2-2405, 15.2-2406, and 15.2-2413 of the Code of Virginia, 1950, as amended. Owners who benefit from the utility improvements shall be entitled to make ~~monthly installment~~ quarterly payments of the assessment to the City; however, the Installment Payment Period shall not exceed a period of twenty (20) years.

(b) The Owner's Cost including at the Owner's option, the Owner's Connection Fees need not be funded by an Assessment on each Affected Property if the Owners agree to pay one hundred percent (100%) of the Owner's Cost prior to the connection of utilities by the City.

(c) Any Owner who is required to pay the Assessment of the Affected Property may pre-pay the fees resulting from said Assessment, and the same shall be made without penalty to the Owner.

(d) The City ~~may~~ shall place a lien against any Affected Property for which an Assessment has been made.

8. *Funding the City's Share of the Project Cost.*

(a) The Director shall conduct necessary studies to determine whether a City-wide increase in public utility service rates is needed to fund the City's share of the Project Cost.

(b) The Director shall confer with the City Attorney's Office and all necessary City departments to determine whether any proposed rate increase, or other financing mechanism, contravenes any state or local laws and whether the same would constitute a breach of any existing City contracts or bond agreements.

9. *Report.*

Upon the completion of all necessary review of the Extension Application, and as a portion of the Public Utilities Capital Budget Request, the Director shall provide the City Manager and the City Attorney with a report setting forth conclusions, recommendations and supportive analysis relative to all aspects of the Extension Applications received by the December 1st deadline for fiscal year 2006-2007, and thereafter, by September 1st of each and every fiscal year, including without limitation, the conclusions reached with regard to public health and environmental issues, the analysis of the Project Costs, the estimated Project Cost, the proposed Owner's Cost, the estimated Assessment, and recommended funding mechanisms and amounts for the Project(s) (the "Report"). The Report shall identify the relative ranking of the various Projects by the Director of the Chesapeake Health Department, or designee, and also

propose a schedule for construction and completion of the Projects in the event that City Council approves the requested extension(s) of public utilities.

10. *City Council Action.*

(a) If the City Manager is satisfied with the conclusions and recommendations in the Report, the City Manager shall present the question of extending public utilities to City Council for consideration as part of the Capital Budget review process at a duly advertised public hearing. The City Manager shall provide written notice of the public hearing date to all Owners.

(b) The City Manager shall ensure that City Council is fully informed of all relevant facts and necessary action required to implement the requested extension, including without limitation, determination of (i) the Owner's Cost, ~~and/or~~ including, if applicable, the Owner's Connection Fees; (ii) the amount of the mandatory Assessment required to fund the Owner's Cost, and/or including if applicable, Owner's Connection Fees; (iii) the total amount to be appropriated for the proposed Project(s), and (iv) any proposed increase in utility service rates necessary to fund the cost of the Project(s). All supporting calculations shall also be made available to City Council.

(c) The City Attorney shall provide all necessary ordinances, resolutions, motions and agreements required to implement City Council's approval of the Extension Application, as recommended by the Director and City Manager, or as modified by City Council.

(d) City Council has the option to (i) approve all or a portion of the Projects under consideration; (ii) deny all or a portion of the Projects; or (iii) defer taking action on all or a portion of the Projects. Approval of all or a portion of the Projects shall require the adoption of

an ordinance designating such approved Projects as one or more "Service Districts" under Section 30-567 of the Chesapeake City Code.

11. The following action shall be taken regarding City Council approved, denied and deferred Projects.

(a) For all Projects that are **approved** by City Council, the requirements in paragraph 6(a)-(d) must be satisfied and Service Districts must be created by an ordinance amending Section 30-567 of the Chesapeake City Code. After the creation of a new Service District, any property owner who pre-paid connection fees shall have the right to request a refund of same. Upon electing to receive a refund of pre-paid connection fees, the property owner shall also opt to include the current connection fees as a component of the assessment to be paid incrementally over a period not to exceed twenty years.

(b) For those Projects that are **denied** by City Council, any Owner's Connection Fees paid prior to the City Council action will be refunded without interest to the Owners. The Owners may submit a new Extension Application; however, such submission shall not occur less than one (1) year from the date of the previous Extension Application.

(c) For those Projects that are **deferred** by City Council, the Eligible Applicants will not be required to resubmit an Extension Application.

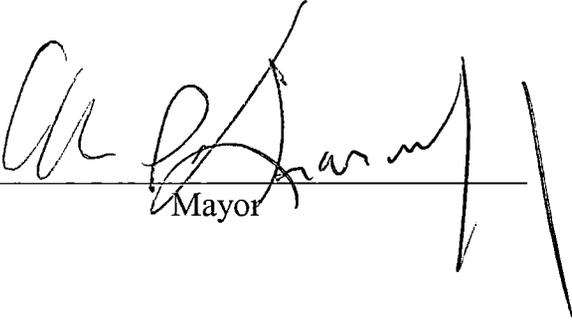
(i) The Affected Area(s) will have the highest priority when additional areas that are not Affected Areas are considered by City Council; and

(ii) Owners will have the option, upon their written request to the City, to have their paid Owner's Connection Fees refunded without interest or to allow the City to maintain possession of such fees. Those Owners who have Owner's Connection Fees refunded

will be required to pay the Owner's Connection Fees that is in effect at the time that the fees are paid.

12. Nothing in this Policy shall be deemed to abridge the authority and powers granted unto the City of Chesapeake and its City Council by law.

This Policy as amended was adopted by the City Council on this ___ day of _____, 2014.



Mayor

ATTEST:

Clerk of the Council