

Rules & Regulations

Concerning Creation, Management, and Extinguishment of

“Cost-Recovery Districts”

In Association with

Private Delivery of Public Sanitary Sewer Infrastructure

Required by Development Review and Approval

[Standard DOTI Rules & Regs Cover Page]

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DEPARTMENT OF TRANSPORTATION AND INFRASTRUCTURE RULES AND REGULATIONS GOVERNING CITY & COUNTY OF DENVER CREATION, MANAGEMENT, AND EXTINGUISHMENT OF COST-RECOVERY DISTRICTS IN ASSOCIATION WITH PRIVATE DELIVERY OF PUBLIC SANITARY SEWER INFRASTRUCTURE REQUIRED BY DEVELOPMENT REVIEW AND APPROVAL

ARTICLE I. GENERAL PROVISIONS

Section 1.01 Authority.

These rules and regulations (“Rules and Regulations”) are adopted by the City and County of Denver’s Executive Director of the Department of Transportation and Infrastructure (“DOTI”) pursuant to Article XIV of Chapter 20, and Article V of Chapter 49, of the Denver Revised Municipal Code of the City and County of Denver (“DRMC”). These rules and regulations are adopted for the specific purpose of establishing, managing, and extinguishing Cost-Recovery Districts in association with the private delivery of public sanitary sewer infrastructure required by development review and approval in all areas of the City and County of Denver (“City”).

Section 1.02 Intent.

The Executive Director of DOTI desires to employ Cost-Recovery Districts to manage, in specific instances and locations as determined by the Executive Director, the private delivery of sanitary sewer infrastructure required by development review and approval.

Section 1.03 Severability.

Should any section, clause, or provision of these regulations be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof, other than the part declared to be invalid.

Section 1.04 Definitions.

Terms or phrases specific to or introduced in this document are defined below.

- a. *“Triggering Development” means the development project that creates the requirement for a sanitary sewer upgrade.*
- b. *“SSPR” means Sanitary Sewer Plan Review, inclusive of any successor document or process for review and approval of public sanitary sewer construction plans*

c. *“Peak Flow Calculation” means peak sanitary sewer demand as calculated by the design engineer (refer to Sanitary Sewer Design Technical Criteria Manual, Section 2.)*

d. *“SUDP” means Sewer Use and Drainage Permit*

e. *“Sewer basin” means the area served by a particular sanitary sewer main as defined by a design engineer (refer to Sanitary Sewer Design Technical Criteria Manual, Section 2).*

f. *“Pro rata cost” means proportional cost share relative to size of subject project’s demand on the sewer system.*

g. *“Cost-recovery” means the funds recovered from development projects which utilize privately funded sanitary sewer upgrades, but that did not contribute to the subject sanitary sewer upgrade*

h. *“Geographical boundaries of cost-recovery district” means the entirety of sanitary sewer basin upstream of, and served by, cost-recovery eligible sewer upgrade*

i. *“Site Development Plan Process” means the process which requires developer-prepared planning, construction, and entitlement documents for the following types of land development projects: new commercial construction and major additions; new construction of three or more residential units; and some tenant-finish/remodel projects undergoing a change of occupancy.*

ARTICLE II. COST-RECOVERY DISTRICTS ASSOCIATED WITH PRIVATE DELIVERY OF PUBLIC SANITARY SEWER INFRASTRUCTURE REQUIRED BY DEVELOPMENT REVIEW AND APPROVAL

Section 2.01 Purpose and Applicability.

A private upgrade of a sanitary sewer is triggered when the peak-flow calculation of a proposed development project exceeds the remaining flow capacity of the existing sewer main in the local sewer basin. As per existing City practice, the entire cost and construction of the sanitary sewer upgrade is borne solely by the triggering development project. All other subsequent developments, regardless of scale, are permitted to utilize the additional sanitary sewer capacity thus created, at no additional cost.

This practice distorts the redevelopment marketplace, limits the development projects able to move forward, and imposes a random and unfair burden on a single project, thereby impeding the City’s overall redevelopment goals.

Under a Cost-Recovery District the triggering developer that delivers the sanitary sewer upgrade is entitled to a one-time *pro rata* cost-recovery from each subsequent development project within the district that taps into the upgraded sanitary sewer and thereby directly benefits from the increased sewer capacity.

Cost-recovery is collected by the City from subsequent developments during permitting and, minus appropriate costs for City administration and management, is remitted to the development that triggered and constructed the sewer upgrade. The Cost-Recovery District expires after a specific period established by these Rules & Regulations, or until eligible cost-recovery has been achieved, whichever comes first.

The Executive Director of DOTI has determined that all development projects requiring review through the Site Development Plan Process are eligible to request creation of a Cost-Recovery District in order to recover from future development projects the fair and equitable *pro rata* costs associated with the private construction of a public sanitary sewer. The creation, management, and expiration of such a Cost-Recovery District are governed by these Rules & Regulations.

Section 2.02 Geography of the Cost-Recovery District.

The geographic boundaries of the Cost-Recovery District are established at the time of SSPR approval (Storm & Sanitary Plan Review) for the new sanitary sewer by the triggering development project. SSPR submittal materials currently already include a map of the affected properties in the sanitary sewer basin, and this map is subject to review, modification, and approval by City review staff. This map thereby establishes the geographic boundaries of the Cost-Recovery District.

Once approved, the Cost-Recovery District is added to the City's GIS and plan review and permitting system. This ensures that all affected properties can be searched-for, identified, and flagged for appropriate cost-recovery from subsequent development projects on those properties.

In addition, upon the formal establishment of the Cost-Recovery District, all affected properties within the "District" boundaries are notified by the permitting authority with all appropriate details and are enjoined to include such information in all property disclosures to potential buyers.

Section 2.03 Maximum Recoverable Cost.

"Maximum Recoverable Cost" is also established at the time of SSPR approval for the new sanitary sewer by the triggering development project. The developer submits a detailed and documented cost-estimate and estimated construction schedule for the new sanitary sewer. That cost estimate is then subject to review, revision, and approval by City review staff.

While based on the total cost of the sanitary sewer upgrade, the Maximum Recoverable Cost also accounts for the pro rata share of the new sanitary sewer flow capacity required by the triggering development itself. This is to ensure that the triggering development does not recover from other subsequent developments the costs of its own needs for expanded sanitary sewer capacity.

Maximum Recoverable Cost is established provisionally upon initiation of the sanitary sewer upgrade and establishment of the Cost-Recovery District. Upon completion of the sanitary sewer upgrade and its inspection and acceptance by the City, the triggering developer submits materials certifying the actual costs of constructing the sewer upgrade. Subject to review, revision, and approval by City staff, the Maximum Recoverable Cost may be adjusted accordingly.

To maximize simplicity of administration and compliance, the Maximum Recoverable Cost, once established as described above is fixed as a dollar amount and not indexed to inflation or subject to an earned-interest factor.

Section 2.04 Calculation of Pro Rata Cost-Recovery.

The pro rata cost-recovery for each subsequent development project in the Cost-Recovery District (beginning with the triggering development itself) can be understood intuitively as the share of the total cost of the sanitary sewer upgrade, based on each development's demand on the new sewer capacity.

Specifically, this calculation consists of the following three factors:

- a) the calculated average-flow demand from each individual development:
divided by:
- b) the total required additional flow capacity that the sanitary sewer upgrade is required to add to the sanitary sewer basin;
multiplied by:
- c) the total cost of the sanitary sewer upgrade.

i.e. Pro Rata Cost Recovery = Project's Flow / Total Flow x Total Cost

Section 2.04a Explanatory Note Regarding "Total Required Capacity" versus "Total Additional Capacity"

It is necessary to highlight here an important detail of factor (b) above – the total required additional flow capacity. Specifically, the importance of the word "required" in correctly formulating the denominator for calculating each development's pro rata cost-

recovery share, rather than simply using the more intuitive “total additional new flow capacity”.

When a sanitary sewer upgrade is triggered, the SSPR for the triggering development project includes analysis of existing land area, land uses, and development entitlements in the sewer basin. Following the City’s current sanitary sewer design criteria manual, this exercise results in an estimate of future flow capacity demand, which the upgrade is required to meet – the total required additional flow capacity.

Sanitary sewer flow capacity is not sized, however, to meet predicted demand precisely. Sewers are designed with a buffer of capacity to leave room for error or unanticipated demand. Specifically, sanitary sewers in Denver are currently required to be built such that the total anticipated flow demand fills only 86% of the total flow capacity constructed.

In addition, sanitary sewers are not custom size-able but rather come in discrete pipe-size upgrades. By way of example, an estimated future flow demand could be met by upgrading an existing 8” sanitary sewer to an 8.75” pipe. But no such pipe size exists; instead, the new sewer must be built with a 9” pipe. Further, application of the 86% rule may require upgrade to a 9.25” pipe. But no such pipe size exists; instead, the sewer must be built with a 10” pipe.

Consequently, in the process of ensuring the minimum adequate flow capacity required per the City’s current sanitary sewer design criteria manual, a sanitary sewer upgrade will provide considerably more flow capacity than is strictly necessary.

Therefore, for the purposes of calculating the pro rata share of the cost of new sewer capacity, the fair and equitable denominator is not the grand total of new flow capacity added to the system. After all, this may vary significantly, based on coincidental factors not related to the actual requirements of the sewer basin. Instead, the fair, equitable, and consistent denominator is the total additional flow capacity *required* to be added to the sewer basin system to meet projected future demand – the total “required additional flow capacity”.

Section 2.05 A Hypothetical Example

The following hypothetical example (using improbable but easy math) illustrates how all the various factors described above interact to determine the key components of the Developer-Delivered Sanitary Sewer Cost-Recovery District:

- The existing sanitary sewer serving a particular sewer basin is close to capacity. A development project, as determined through the ordinary project-review SUDP process (Sewer Use & Drainage Permit), will exceed that capacity. Therefore, the development triggers the requirement to upgrade the sanitary sewer. Upon request of the developer, the City creates a Cost-Recovery District to more fairly and effectively allocate the costs of this

expensive piece of public infrastructure from which all subsequent development will benefit.

- The SSPR for the triggering development project defines the geographical boundaries of the sewer basin – this is the Geography of the Cost-Recovery District.
- The SSPR also predicts the total future demand on the new sewer – the total required additional flow capacity. In this hypothetical case, it is determined that the total required additional flow capacity for the new sanitary sewer is 10 cfs (cubic feet / second).
- As explained above, the sanitary sewer upgrade itself will provide more flow capacity than 10 cfs precisely, based upon the 86% rule and the happenstance of sewer pipe sizes to meet it. This may increase the cost of the sewer upgrade, but that cost must nonetheless be borne by the triggering development. In this case, the total cost of the sanitary sewer upgrade, as reviewed and approved by City staff, is \$1M.
- Nonetheless, despite whatever excess capacity the new sewer actually provides, the fair share distribution of the total cost is based only on the total required additional flow capacity – in this case 10 cfs. Therefore, calculated based on new average flow demand placed on the new sanitary sewer, the pro rata cost-recovery is \$100,000 per cfs. (i.e., \$1M total cost divided by 10 cfs of total required additional flow capacity).
- As determined by the SUDP, the triggering development itself will place 1 cfs of new average flow demand on the new sanitary sewer – 1 cfs above and beyond what could have been served by the existing sanitary sewer. Therefore, 1 cfs at \$100,000 is deducted from the total cost of the sanitary sewer upgrade. This accounts for the triggering development's own demand on the new sewer – its own fair share of the cost of the new infrastructure.
- Thus, the Maximum Recoverable Cost from the Cost-Recovery District is \$900,000. (\$1M total cost minus the triggering development's pro rata share). Once that sum has been remitted to the triggering development, through cost-recovery from subsequent developments benefiting from the new sewer capacity, the Cost-Recovery District is dissolved.
- Each subsequent development, through their own SUDP process at the time of development, produces an approved calculation of their own average flow demand on the new sanitary sewer. For example, the first such development is calculated to impose 0.5 cfs of average flow demand on the new sanitary sewer. At \$100,000 per cfs, therefore, this subsequent development's pro rata cost-recovery is \$50,000 – their fair share of the total cost of the new sewer that makes their development possible.
- Therefore, in addition to all ordinary fees and charges, the subsequent developer pays \$50,000 to the Cost-Recovery District with the issuance of their SUDP. The City then remits this sum – minus the established fee for administration of the Cost-Recovery District – to the original triggering developer,

- Likewise, all subsequent developments in the Cost-Recovery District each pay their own fair share of the total cost of the new sewer until the Maximum Recoverable Cost has been remitted to the original triggering development, or until the Cost-Recovery District expires.

Section 2.06 Establishment, Commencement, Duration

The Cost-Recovery District (including Maximum Recoverable Cost, geographic boundaries, and pro rata cost-recovery) is established following final SSPR approval of the triggering development. Prior to formal establishment of the Cost-Recovery District, the City shall notify and hold a public meeting for the owners of property within the proposed boundaries of the Cost-Recovery District. With establishment of the “District,” the triggering development shall establish or designate a specific legal entity that will be the recipient of cost-recovery remittances for the duration of the “District.” Also, upon establishment, all properties within the “District” are notified, with all appropriate details, and are enjoined to include such information in all disclosures to potential buyers.

For a period of one year following the adoption of these Rules & Regulations, a Cost-Recovery District can be requested by a triggering development and can be approved, at the City’s discretion, subsequent to the commencement of construction of a previously required sewer upgrade, with the proviso that no Cost-Recovery District will be established for a sanitary sewer upgrade that has already been inspected and accepted by the City.

The commencement of collection of cost-recovery from subsequent development does not take place until the new sanitary sewer is constructed and inspected, as-built drawings approved, and the new facility accepted by the City. Nonetheless, developments that embark on the permitting process prior to City acceptance of the upgraded sanitary sewer and would themselves trigger the sanitary sewer upgrade if it were not being constructed by the triggering development, are subject to cost-recovery, and such will be noted on their permits and approvals and collected in due time.

The Cost-Recovery District shall persist for 15 years, or until the Maximum Recoverable Cost has been remitted to the legal entity established or designated by the original triggering development, whichever comes first. By request of the owner of the triggering development, and at the sole discretion of the City, the Cost-Recovery District may be extended for an additional 10 years, in 5-year increments, to a maximum of 25 years of total potential duration.

In the rare event that a subsequent development in the Cost-Recovery District will exceed the flow capacity of the upgraded sanitary sewer, the new triggering development is required to pay any remaining balance of the Maximum Recoverable Cost. A new Cost-Recovery District may be created to recapture the costs of the second facility upgrade.

Section 2.07 Cost-Recovery Collection, Management, and Remittance

Properties within a Cost-Recovery District are identified through the City's GIS and plan review and permitting system such that a development project on any of these properties is flagged for the reviewing wastewater engineer for cost-recovery. The calculation of the pro rata cost-recovery, per the terms established by the Cost-Recovery District, is determined through the SUDP process, using the standard calculations and methodology in practice by the City at that time for SUDP approval. The cost-recovery assessment is collected by the City at issuance of the SUDP. In the case of projects seeking SUDP approval prior to the inspection and acceptance of the sewer for which a Cost-Recovery District is created, a note shall be placed on the project's SUDP and any other appropriate permits and approvals, and cost-recovery will be assessed in due time, but no later than Certificate of Occupancy.

Receipt of cost-recovery, management and record-keeping for the Cost-Recovery District, and remittances of cost-recovery to the legal entity established or designated by the original triggering development, are the responsibility of the City. With establishment of each Cost-Recovery District, the City shall analyze and estimate the real administrative costs associated with these tasks and establish the appropriate and reasonable administrative overhead to be charged against cost-recovery remittances in each District. Prior to such analysis, this appropriate and reasonable administrative overhead is assumed to be 10%. Such overhead charges retained by the City are not counted towards satisfaction of the Maximum Recoverable Cost.

The City will, on a quarterly basis, remit any assessed cost-recovery, minus administrative overhead, to the legal entity established or designated by the original triggering development. Such remittances will continue until the sum of those remittances equals the Maximum Recoverable Cost, or the expiration of the Cost-Recovery District, whichever comes first. Upon expiration of the Cost-Recovery District or the full satisfaction of the Maximum Recoverable Cost, the City shall dissolve the Cost-Recovery District. Should the Cost-Recovery District expire before full satisfaction of the Maximum Recoverable Cost, the City is in no way responsible for the difference.