



Request for City Council Committee Action from the Department of Public Works

Date: December 10, 2013

To: Honorable Sandra Colvin Roy, Chair Transportation & Public Works Committee

Subject: **Sewer Availability Charge (SAC) Work Group Update and Recommendations on Metropolitan Council Environmental Services Program Changes**

Recommendation:

- A. Direct staff to implement the following policy and program changes to the City's administration of the Sewer Availability Charge (SAC) program:
 - Excess net credits: Any excess net (paid) SAC credits will remain in the site-specific fund in an effort to provide additional benefit and incentive for future development on the site(s) which the SAC fees were previously paid.
 - Deferral program: The City of Minneapolis should opt to participate in the MCES SAC Deferral Program (including executing a master loan agreement to participate in this program).
 - Transfer of paid SAC credits: The City of Minneapolis does not agree to participate in, administer or facilitate minor (10 credits or less) transfers of paid SAC credits between properties.
- B. Authorize Public Works to negotiate and execute the master loan agreement to participate in the MCES SAC Deferral Program.
- C. Direct staff to return to City Council in one (1) year to report on status and impacts of implementation of the new SAC policies, including staffing and other administrative costs.

Previous Directives:

- August 2, 2012: Council action approving the "Minneapolis position and priorities on SAC"; authorizing staff to communicate the City's position to Metropolitan Council; direction to IGR, Public Works, Regulatory Services and CPED staff to work to implement that position through the SAC Work Group, meetings with Metropolitan Council Members and staff, and, if necessary, through new legislation.
- October 18, 2012: Council action approving support for SAC Work Group recommendations on program changes by Metropolitan Council and directing staff from Regulatory Services, CPED, Public Works and Finance to recommend various program changes.

Department Information:

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Approved by: _____

Steven A. Kotke, P.E., Director of Public Works

Presenters in Committee: Lisa Cerney

Financial Impact

- No additional appropriation is necessary.

Community Impact:

Neighborhood Notification: Not applicable

City Goals: Implementation of these recommendations is consistent with the JOBS & ECONOMIC VITALITY and A CITY THAT WORKS goals.

Comprehensive Plan: Not applicable

Zoning Code: Not applicable

Supporting Information

The Metropolitan Council Environmental Services (MCES) collects and treats wastewater at its seven (7) regional treatment plants. Its services include ensuring that sufficient sewer capacity exists to serve planned development and that wastewater collection and treatment services are provided in a low cost, high quality and competitive manner.

Funds to operate MCES facilities are collected in two ways. Municipal Wastewater Charges (MWC) are paid by municipalities (via utility charges to individual properties) for treatment of their wastewater, supporting ongoing maintenance and operations of the MCES system. The second funding source is Sewer Availability Charge (SAC). SAC is a one-time charge for the reserved capacity costs of the Metropolitan Disposal System (MDS). SAC is levied for new capacity demand or increased volume use to the MDS. It is a method for allocating future costs. SAC is assessed based upon the estimated maximum potential daily wastewater flow, which is in turn based upon the usage of individual properties.

MCES formed a Work Group to discuss the MCES SAC Program and identify opportunities for improvement. As a result MCES adopted changes to the SAC procedures on November 28, 2012 that included:

1. Excess net credits
2. Small business loan (deferral) program
3. Transfer of SAC credits (paid) between properties

Excess net credits

- 2013 SAC Procedure Manual defines "net credit" as:
This is a SAC Credit, based on SAC previously paid, over the amount needed on a Site being redeveloped. At a Communities' option, these are allowed to be accumulated throughout the Community (Community-Wide Credits) or retained for future use on the Site from which they are derived (Site-Specific). Note that no Net Credits are derived from Non-Conforming Continuous Demand (i.e. where SAC was not paid). Net Credit from Non-Conforming Grandparent Demand is allowed to be retained for future use on the Site but only for 5 years after a redetermination first uncovers the Grandparent situation.

- Previous MCES rules eliminated the “net credit” option in 2010 (approved by Metropolitan Council action in 2006).
- Three (3) types of excess net credits: (1) non-conforming grandparent credits if and where it can be shown that the demand (use) had been in existence when SAC started (1973, with evidence permitted from 1968-1978), (2) non-conforming continuous demand credit if and where it can be shown that the demand was created after 1973 and has been continuous for 10 years or more and no SAC has been paid. A new use or tenant can use the necessary SAC credits to cover the new use but any excess credits go to zero, and (3) credits where SAC fees were paid. These are handled differently under the new 2013 MCES SAC policy.
- For SAC credits that have been paid, the City has two options: (1) leave them on the site to offset potential future growth on that specific site or (2) take the excess credits “city-wide” whereby the City would lower the monthly SAC payment to MCES by the amount of the credits.
- Grandparent credits have a five (5) year time limit. If another use or development does not use the grandparent credits on that site within five (5) years after a redetermination first uncovers the grandparent situation, the grandfather credits expire. SAC credits for paid SAC fees do not expire.

SAC Deferral Program

To promote small business development, MCES has established the SAC Deferral Program which – at the municipality’s option to participate or not – allows deferral of up to 80% of SAC due for the wastewater demand created by small businesses. Small businesses are those with a total SAC determination of 10 or fewer SAC units (before credits). MCES defines a “commercial property” as “any property connected either directly or indirectly to the MDS that is not considered a Residential or Industrial Property per MCES definitions. This includes governmental and institutions, such as schools, hospitals, churches, etc.”

A Community must execute the standard master loan agreement to participate in this program.

Implementation options specific to the SAC Deferral Program (these are determined by the local jurisdiction):

1. Maximum percent of SAC that can be deferred
 MCES allows the community to defer up to 80% of SAC due; however, a community can set a maximum that is lower than this. Once the community maximum is set, the percentage deferred for each individual site deferral can be lower than this maximum but cannot be higher.
2. Deferment period
 Per MCES Deferral Program document (Small Business SAC Loan Report), the community may choose a deferment period of either five (5) or ten (10) years. This term will apply to all deferments from the community. Prepayment is allowed at any time.
3. Timing of payments
 While MCES prefers annual payments due each year on the anniversary of the date the Agreement was signed, the Communities may request a different payment schedule. A schedule may be preferred that corresponds with local SAC collections, assessments, or other payments from small businesses (such as business licenses).

Principal on the deferred amount will be amortized monthly at a fixed interest based on MCES’ average cost of debt per statute. This cost of debt is calculated on December 31 each year and will be used as the interest rate for all new deferrals in the following year.

On December 31, 2012, the average rate was 2.37% which is the rate for all deferrals originating in 2013 and the rate will be fixed for the duration of each individual deferral.

If a participating small business closes, the community has an option to discontinue making deferral payments to MCES. If this option is chosen, it requires a notification to MCES and a certification of the business closing. In this situation, the site will not be credited with the unpaid wastewater capacity (for future SAC determinations) but will only get credit for each SAC unit paid. No payments will be refunded and no net credits will be transferrable off the site (unless and until a redevelopment requires less wastewater capacity). Another option is for the community to continue to finish the outstanding SAC payments to MCES which will result in full SAC credit for the next use of the site.

Based on a review of the 2012 SAC Determination letters for paid charges submitted to MCES (i.e. projects that paid SAC to City of Minneapolis via construction permit or business license), 138 of approximately 366 of these letters (38%) would have met the SAC Deferral Program base criteria if that program had been available .

Transfer of Paid SAC Credits

Prior to 2013, MCES only permitted "major" transfers of paid SAC credits between municipalities or, in limited cases, within the same jurisdiction. This major SAC credit transfer process was typically facilitated by the Minnesota Department of Employment and Economic Development (DEED) based on "statewide economic significance" of the transfer.

Effective January 1, 2013, MCES rules allow for a minor (paid) SAC credit transfer (where a determination is 10 SAC units or less) and only for the benefit of an identified, current business moving from one site to another (per Section 5.7.2 of the 2013 SAC Procedure Manual) . This would allow communities to move up to 10 credits from the former site of a business to its new site, before a new use occurs on the former site (credits generally would not be available until a new use is determined on a site and the availability of any credits is known). Also, a minimal use of the transferring site must be retained (e.g. at least one (1) SAC must be left on the transferring site).

Customer Service Enhancements

MCES has created its SAC Customer Brochure in four (4) languages (English, Spanish, Hmong, and Somali) in an effort to reach a more diverse small business community. In addition, they will be reviewing their website for other alternative language options. MCES leadership has agreed to specifically partner with the City of Minneapolis' Neighborhood and Community Relations Department in order to broaden their outreach.

MCES has agreed to limit the timeframe for Community Review (audit) of on-site, SAC-related activity to three (3) years (reduced from seven (7) year "Look-Back" period).

MCES has pledged to provide more frequent training and education to both city staff as well as the larger business community and property owner groups.

Representatives from Community Planning & Economic Development (CPED), Public Works, City Attorney's Office, Finance & Property Services, City Coordinator's Office, Regulatory Services and the Business Advisory Committee reviewed and discussed the MCES policy changes. Based on these discussions staff has the following recommendations.

Recommendation

1. Staff recommends excess net (paid) SAC credits remain with the properties and not be applied citywide.
2. Staff recommends the City of Minneapolis should opt to participate in the MCES SAC Deferral Program (including executing a master loan agreement to participate in this program), with the following parameters:

- a. Up to 70% of the overall SAC charge may be deferred with a minimum 30% down payment; no limit to minimum number of SAC charges;
 - b. Term of the deferments: Five (5) years;
 - c. Payment schedule: Annual payment on deferment agreement anniversary date;
 - d. Interest: Any interest required by MCES of the City of Minneapolis would be passed on to the applicant; and
 - e. Coordination of the deferred payments: Administered by Development Review Customer Service Center (formerly Minneapolis Development Review) similarly to how businesses that are captured in the Community Review audit currently use the payment plan system.
3. Staff does not recommend the City of Minneapolis participate in the SAC minor credit transfer program.

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