

RESOLUTION NO. WD 10-040

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF JOHNSON COUNTY, KANSAS, AMENDING AND RESTATING THE USER CHARGE
SYSTEM FOR PAYMENT OF OPERATION AND MAINTENANCE COSTS OF THE SANITARY
SEWER SYSTEM OPERATED BY JOHNSON COUNTY WASTEWATER

At a regular meeting of the Board of County Commissioners of Johnson County, Kansas, conducted Thursday, the 4th day of November, 2010, there came before the Board for consideration the matter of adopting amendments to and restating the User Charge System for Payment of Operation and Maintenance Costs of the Sanitary Sewer System Operated by Johnson County Wastewater.

The Board, acting in its capacity as governing body of Johnson County Wastewater and the Consolidated Main Sewer District, by motion duly made, seconded and carried, the following Resolution No. WD 10-040 adopting amendments to and restating the User Charge System for Payment of Operation and Maintenance Costs of the Sanitary Sewer System Operated by Johnson County Wastewater was adopted; to wit:

WHEREAS, Johnson County Wastewater is the administrative body for the individual sewer districts maintained within Johnson County Wastewater and as such is the body which operates and maintains the wastewater treatment facilities, including the adoption and implementation of the budgets and payment of the costs of operation and maintenance on behalf of all individual sewer districts within Johnson County Wastewater as authorized by State statute and Charter Resolution No. 29-92 (2008 Version), as amended; and

WHEREAS, pursuant to the Federal Water Pollution Control Act, as amended, also known as the Clean Water Act, and the Administrative Regulations of the United States Environmental Protection Agency (EPA), adopted pursuant thereto, any municipality receiving federal funds from EPA to construct wastewater treatment facilities must have a user charge system for the payment of operation and maintenance costs of the sewerage treatment facilities; and

WHEREAS, on July 11, 2002, the Board implemented a User Charge System for the Payment of Operation and Maintenance Costs of the Sanitary Sewer System Operated by Johnson County Wastewater through the adoption of Resolution No. WD 02-35; and

WHEREAS, the Board has adopted several amendments to Resolution No. WD 02-35, through the adoption of Resolution Numbers WD 02-67, adopted December 5, 2002; WD 03-56, adopted July 3, 2003; and WD 04-069, adopted December 16, 2004; and

WHEREAS, the General Manager of Johnson County Wastewater has recommended that additional amendments to the User Charge Resolution be approved by the Board of County Commissioners and that the User Charge Resolution be updated and restated for, inter alia, the following reasons:

1. New classes of exempt residential customers classified as EX-II and EX-III are required because the current version of the User Charge Resolution assumes that all exempt customers are commercial and does not recognize exempt residential customers. Examples of exempt residential customers include parsonages and not-for-profit organizations that provide single and multi-family residences for people with developmental disabilities. Adding exempt residential customers classified as EX-II and EX-III is important, since residential customers are billed on a winter water use basis, whereas commercial customers are billed based upon monthly water use. This change will allow these residential properties to be billed in the same manner as other residential properties.
2. The order of application of partial payments requires revision in order to be consistent with industry standards and the new Customer Information System that is currently being implemented by Johnson County Wastewater.
3. Certain official titles and department names included in the original User Charge Resolution and amendments thereto have become obsolete and need to be replaced throughout the document. For example, references to the Wastewater Administrator and the County Treasurer's Office needs to be replaced by references to the General Manager and the Department of Treasury and Financial Management.
4. It is also beneficial to restate the User Charge Resolution as one updated document that can be referred to instead of having to refer to multiple documents.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Johnson County, Kansas, as governing body of the Johnson County Wastewater, that the provisions of this Resolution shall supersede the provisions of Resolution No. WD 02-35, as amended by Resolution Nos. WD 02-67, WD 03-56 and WD 04-069, and Resolution No. WD 02-35, as previously amended, is hereby amended and restated to incorporate the provisions of this Resolution and from and after its effective date, the provisions of this Resolution shall be

applicable as the User Charge Resolution for the collection of revenue for the payment of the operation and maintenance costs of the Johnson County Wastewater.

SECTION I: PURPOSE. It is determined and declared to be necessary and conducive to the public health, safety, welfare and convenience and to the efficient and economical operation of the wastewater treatment facilities of the County that a revised user charge system be implemented for Johnson County Wastewater to collect charges from all users of the sewer districts based upon the proportional use of the wastewater treatment facilities by the user's class. The user charge system shall be for the purpose of payment for the operation and maintenance costs of the wastewater collection and treatment facilities owned and operated by Johnson County Wastewater.

SECTION II: AUTHORITY. The revised user charge system is adopted pursuant to the authority provided by Johnson County Charter Resolution No. 29-92 (2008 Version), and any amendments and modifications thereto, the general powers provided under K.S.A. §19-101 et seq., and the powers and authorities established under federal and state laws including but not limited to the Federal Clean Water Act and the Administrative Regulations of the United States Environmental Protection Agency.

SECTION III: DEFINITIONS. As used in this Resolution, unless the context specifically indicates otherwise, the terms used in this Resolution shall have the following meanings:

- A. "General Manager" shall mean the General Manager of Johnson County Wastewater.
- B. "Actual Water Use" shall mean actual water consumption based upon meter readings taken during a specified time period.
- C. "Ad Valorem Tax" shall mean a tax or charge levied based upon the value of real property.
- D. "Ad Valorem Real Property Tax Statement" shall mean the tax bill prepared and sent annually by the County Treasurer of Johnson County, Kansas, pursuant to K.S.A. §79-2001.
- E. "Assessable Land" shall mean all land in a sewer district subject to payment of fees except for the following:
 - 1. Publicly-owned roads, parking lots, parks and cemeteries;
 - 2. FAA designated airport operations area;
 - 3. Public utility-owned properties;
 - 4. Railroad rights-of-ways; and;

5. Other similar rights-of-ways or common area determined by the Chief Engineer to be dedicated to public use and/or not capable of development or other private purpose usage.

Notwithstanding the above exceptions, any land connected to a sewer shall be "assessable land".

- F. "Average Annual Daily Equivalents" shall mean a measurement of BOD and suspended solids converted by calculation to units equivalent to the Average Domestic Sanitary Wastes and calculated to show average per day for each day of the year.
- G. "Average Domestic Sanitary Wastes" shall mean wastewater that has a BOD measurement of 188 milligrams per liter (mg/l) and a suspended solids concentration of 213 mg/l.
- H. "Board" or "BOCC" shall mean the Board of County Commissioners of Johnson County, Kansas.
- I. "BOD" shall mean the Biochemical Oxygen Demand which is the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20°C, expressed in milligrams per liter (mg/l).
- J. "BOD Charge" shall mean the amount of charge per pound of BOD calculated as the cost of operation and maintenance allocated to the collection, treatment and processing of each pound of BOD.
- K. "Clean Water Act" shall mean and include the Federal Water Pollution Control Act, Public Law 92-500, and the Clean Water Act of 1977, Public Law 95-217, all as amended and codified in 33 U.S.C. §§ 1251. et seq.
- L. "Commercial User" shall mean a user where commodities or services of whatever kind or nature are exchanged, bought or sold.
- M. "Customer Service Charge" shall mean the calculated Customer Cost Allocation which determines the amount of charge allocated for that portion of the operation and maintenance costs attributable to services performed in the administration of accounts of the users, including billing, mailing and information services and which is included as a component of the user charge.
- N. "Minimum User Charge" shall mean the calculated cost to provide basic sewer service to a user who contributes minimal or no actual volume or strength of

wastewater discharge to the sewerage system and which shall include a basic service charge and the customer service charge.

- O. "County Clerk" shall mean the County Clerk of Johnson County, Kansas, and/or the Office of Records and Tax Administration.
- P. "Department of Treasury and Financial Management" shall mean the county officials assigned the duties of the County Treasurer, Motor Vehicle Department and the Financial Management Department as authorized by Resolution No. 050-10, and amendments thereto.
- Q. "Discharge" shall mean the introduction of or addition of any wastewater or other substance, whether liquid, solid or gas, into the wastewater treatment facilities of Johnson County Wastewater.
- R. "Government User" shall mean any user which is a publicly owned facility performing governmental functions.
- S. "Industrial User" shall mean any user which is an industry identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented under one of the following divisions: Division A; Division B; Division D; Division E; Division I.
- T. "Institutional User" shall mean any user which is an establishment, created or organized to conduct the business of a public institution or recognized society or association.
- U. "Johnson County Wastewater" shall mean the combined sewer districts formed by the Board of County Commissioners of Johnson County, Kansas for the purpose of creating a unified operation and maintenance budget.
- V. "Metered Water Flow" shall mean actual wastewater flow received based upon meter readings taken during a specified time period.
- W. "Office of Records and Tax Administration" shall mean county officials assigned the duties of the County Clerk and Register of Deeds as authorized by Resolution No. 036-01, and amendments thereto.
- X. "Operation and Maintenance Cost" shall mean all expenditures during the useful life of the wastewater treatment facilities for materials, labor, utilities, and other items which are necessary for management and maintenance of the wastewater treatment facilities to achieve the capacity and performance for which such facilities were designed and constructed and shall include replacement costs which are expenditures for obtaining and installing equipment, accessories, or

appurtenances which are necessary during the useful life of the wastewater treatment facilities to maintain the capacity and performance for which such facilities were designed and constructed but shall not include major capital improvements or expenses.

- Y. "Person" shall mean an individual, a corporation, a partnership, an unincorporated association, a governmental entity or any other similar entity.
- Z. "Prescribed Service Area" shall mean the area that lies within the defined boundaries of Johnson County Wastewater and which receives sewerage treatment services from wastewater treatment facilities operated and maintained by Johnson County Wastewater.
- AA. "Pollutant" shall mean any substance discharged into water, which alters the chemical, physical, biological or radiological integrity of the water.
- BB. "Residential User" shall mean any user that is a single family or multifamily dwelling that is used solely as a personal residence of the occupants but shall not include any commercial or institutional dwelling such as a hotel, motel, dormitory or care facility.
- CC. "Shall" is mandatory, "may" is permissive.
- DD. "Subscriber" shall mean any entity, which is not located within the prescribed service area of Johnson County Wastewater but which by contract, utilizes the wastewater treatment facilities and services of Johnson County Wastewater.
- EE. "Suspended Solids" or "TSS" shall mean solids that either float on the surface of or are in suspension in water, wastewater, or other liquids and which are removable by laboratory filtering.
- FF. "Suspended Solids Charge" shall mean that amount of charge per pound of suspended solids calculated as the cost of operation and maintenance allocated to the collection, treatment and processing of each pound of suspended solids.
- GG. "Toxic Pollutant" shall mean any pollutant determined by EPA to be toxic under the Clean Water Act.
- HH. "Unit Cost" shall mean the amount of operation and maintenance cost allocated per unit to the determined component parts of the level and type of services provided; including the wastewater load, the character of the discharge and the customer account administration.
- II. "Useful Life" shall mean the estimated period during which a wastewater treatment facility will be operated without major renovations.

- JJ. "User" shall mean:
1. All owners of real property which are located within the prescribed service area of Johnson County Wastewater and which are connected to and/or contribute wastewater into the wastewater treatment facilities of Johnson County Wastewater regardless of whether or not such owners reside upon or otherwise occupy the property.
 2. Any person or persons residing upon or otherwise occupying any real property located within the prescribed service area of Johnson County Wastewater who contribute wastewater into the wastewater treatment facilities of Johnson County Wastewater and who are deemed to be the actual user of the sewer service.
 3. Subscribers (i.e., wholesale customers such as other political units and municipal corporations) who are provided the services of the wastewater treatment facilities of Johnson County Wastewater by contract.
- KK. "User Charge" or "User Charge System" shall mean the service charge, or system for establishment of the service charge, which is assessed to recover the cost of operation and maintenance of the wastewater collection and treatment facilities and services of Johnson County Wastewater based upon the proportionate allocation of costs to user classes in proportion to the use of the wastewater treatment facilities by the class.
- LL. "Volume Charge" shall mean that amount of charge per one thousand gallons per day of wastewater discharged calculated as the cost of operation and maintenance allocated to the collection, handling, treatment and process of the volume and delivery flow rate or the discharge.
- MM. "Wastewater" shall mean all pollutant and waste carrying water, liquids or fluids discharged into, transported through, and treated by wastewater treatment facilities.
- NN. "Wastewater Treatment Facilities" shall mean all sanitary sewers, pumping and other equipment and their appurtenances, the treatment plant and other facilities that are an integral part of the wastewater collection and treatment process and treatment residue disposal system.
- OO. "Winter Water Use" shall mean average water consumption based upon meter readings of the volume of potable water used at the property during a specified

time period that reasonably estimates the volume of wastewater discharged to the wastewater treatment facilities of Johnson County Wastewater.

SECTION IV: SYSTEM OF USER CHARGES

- A. ESTABLISHMENT OF USER CHARGE. For the purpose of paying for the costs of the operation and maintenance of the wastewater treatment facilities of Johnson County Wastewater, a user charge system is hereby implemented based upon each user class established under Section V of this Resolution and each user within each user class shall be liable to pay in the manner hereinafter provided in an amount which together with that of each other user in the class provides a total payment which is the proportionate share of the operation and maintenance costs of the wastewater collection and treatment facilities within Johnson County Wastewater's based upon the proportionate contribution/water use of the user class to the total wastewater loading from all user classes. Except as otherwise prohibited by applicable law, the liability of the owners of real property for said user charges is concurrent with that of any person or persons residing upon or otherwise occupying the real property who are deemed to be the actual users of the sewer service. All user charges shall begin accruing on the effective date of this Resolution.
- B. BASIC USER CHARGE. There shall be and hereby is established a basic user charge which shall be assessable to and payable annually by each and every user of the wastewater system. The basic user charge shall be determined, assessed and collected in the manner and amount as specified under Section VI of this Resolution.
- C. MINIMUM USER CHARGE. There shall be and hereby is established a minimum user charge, which shall be assessable to and payable by each and all users who, for whatever reason, do not discharge measurable amounts of wastewater into the sewerage system. The minimum user charge shall be determined annually by the Board of County Commissioners and shall, at least, be in an amount equal to the customer service charge.
- D. DEFAULT VALUE USER CHARGE. There shall be and hereby is established a default value user charge which shall be assessable to and payable by each and every user for whom an accurate, measured or calculated usage is not available. The default value user charge shall be calculated and assessed on the basis of a

prescribed usage equivalent to the defined average usage for each particular class and type of user.

- E. ADDITIVE COST CHARGE. There shall be and hereby is established an additive cost charge which shall be assessed to and payable by any user who discharges or introduces into the sewerage system any toxic pollutants or other substances as described in Subsection VD.2. of this Resolution or as identified in any sewer use regulation or sewer use permit. The amount of the additive cost charge shall be equal to the actual additional operating costs incurred by the wastewater districts which are directly attributable to the discharge of the user.
- F. USAGE SURCHARGE. There shall be and hereby is established a usage surcharge which shall be assessable to and payable by any user whose discharge is determined to contribute an excessive amount of wastewater or pollutants, whether measured by volume or strength components, to the sewerage system. Excessive use shall be established whenever the user discharges, over a period of seven days or more, an average daily equivalent usage that exceeds the standard usage for any component by at least 200 percent. The surcharge rate shall be twice the established basic user charge rate applied to each of the measured units determined to be excessive.
- G. OTHER USE CHARGES. The Board of County Commissioners may from time to time establish and assess other use charges. Such other charges shall be assessed only after notice and public hearing on the proposed charge and adoption of a resolution imposing the charge.
- H. EXISTING CHARGES NOT AFFECTED. The user charges established and assessed under this Resolution shall not supersede nor affect other use charges adopted and imposed by the Board unless expressly identified in this Resolution, and existing charges for maintenance of low pressure sewers and charges assessed under the Capital Finance Plan for the payment of capital costs shall continue in effect and shall not be affected by this Resolution.

SECTION V: CLASSIFICATIONS ESTABLISHED. Based upon the Administrative Regulations, Guidelines, and criteria adopted by EPA and upon the analysis and study of consulting engineers for Johnson County Wastewater, the following classifications of users are established to ensure the equitable allocation of costs for operation and maintenance based upon the proportionate contribution of each user class to the total wastewater loading of all user classes.

- A. USER CLASS R-I (Residential Customers) shall include all single family dwelling residential users with property located within the prescribed service area of Johnson County Wastewater.
- B. USER CLASS R-II (Multi-Family Residential Customers) shall include all non-exempt, multi-family residential users with property located within the prescribed service area of Johnson County Wastewater. User Class R-II is sub-classified as follows for the purpose of calculating the applicable default user charge:
 - 1. Single Meter Single Unit Multi-Family
 - 2. Master Meter Multi-Units Multi-Family
- C. USER CLASS C-I (Small Commercial Customers) shall include all non-exempt, non-residential users, including small commercial users with property located within the prescribed service area of Johnson County Wastewater that introduce or discharge into the wastewater treatment facilities of Johnson County Wastewater less than the average annual daily equivalent of 27,000 gallons per day of domestic sanitary wastes, or wastewater containing less than 42 pounds per day of BOD, or wastewater containing less than 52 pounds per day of TSS, as determined by the Chief Engineer for Johnson County Wastewater from data and measurements of water usage and discharge characteristics, including volume, strength and delivery flow rate.
- D. USER CLASS IC-I (Large Commercial and Industrial Customers) shall include:
 - 1. All non-exempt, non-residential users, including industrial, commercial, institutional, and governmental users with property located within the prescribed service area of Johnson County Wastewater that introduce or discharge into the wastewater treatment facilities of Johnson County Wastewater the average annual daily equivalent of 27,000 gallons per day or more of domestic sanitary wastes, or wastewater containing more than 42 pounds per day of BOD, or wastewater containing more than 52 pounds per day of TSS, as determined by the Chief Engineer for Johnson County Wastewater from data and measurements of water usage and discharge characteristics, including volume, strength and delivery flow rate.
 - 2. All non-exempt, non-residential users with property located within the prescribed service area of Johnson County Wastewater, that introduce or discharge into the treatment facilities of Johnson County Wastewater:

- a. Any pollutant identified by, or designated by EPA under and in accordance with Section 307 of Public Law 95-217, the Clean Water Act, as a toxic pollutant; or
 - b. Any substance, whether solid, liquid, or gas which is generally considered to be poisonous to human, animal, aquatic or plant life; in a quantity which, either singly or by interaction with other pollutants, is determined, through chemical testing, biological monitoring, or data provided by EPA pursuant to Section 304 of the Federal Water Pollution Control Act, Public Law 92-500, as amended by the Clean Water Act of 1977, Public Law 95-217, sufficient to cause any of the following:
 - 1) Contamination of the sludge of the sewerage treatment system; or
 - 2) Obstruction of the sewerage treatment facilities; or
 - 3) Chemical, physical or biological harm or injury to the processes utilized in the sewerage treatment facilities to remove or treat pollutants; or
 - 4) A hazard to human health or the propagation of animal or aquatic life as determined by officials of EPA or the Johnson County Health Department or Kansas Department of Health and Environment; or
 - 5) Creation of a public nuisance as determined by the Kansas Department of Health and Environment pursuant to K.S.A. Section 65-159; or
 - 6) Creation of a hazard in or an adverse effect on the waters receiving any discharge from the sewerage treatment facilities.
- E. USER CLASS S-I (Subscriber Customers) shall include all subscribers (i.e., wholesale customers such as other political units and municipal corporations) who are provided the services of the wastewater treatment facilities of Johnson County Wastewater by contract.
- F. USER CLASS EX-I (Exempt Non-Residential Customers) shall include all non-residential users of real property located within the prescribed service area of the Johnson County Wastewater that is determined to be exempt from Ad Valorem

Taxes by order of the Court of Tax Appeals and/or the County Appraiser pursuant to K.S.A. 79-213, as amended.

- G. USER CLASS EX-II (Exempt Residential Customers) shall include all single family dwelling residential users of real property located within the prescribed service area of the Johnson County Wastewater that is determined to be exempt from Ad Valorem Taxes by order of the Court of Tax Appeals and/or the County Appraiser pursuant to K.S.A. 79-213, as amended.
- H. USER CLASS EX-III (Exempt Multi-Family Residential Customers) shall include all multi-family residential users of real property located within the prescribed service area of Johnson County Wastewater that is determined to be exempt from Ad Valorem Taxes by order of the Court of Tax Appeals and/or the County Appraiser pursuant to K.S.A. 79-213, as amended. User Class EX-III is sub-classified as follows for the purpose of calculating the applicable default user charge:
 - 1. Exempt Single Meter Multi-Family
 - 2. Exempt Master Meter Multi-Family

SECTION VI: USER CHARGE RATES. The Board of County Commissioners of Johnson County, Kansas, shall review the user charge rates at least annually and shall, by resolution, adopt user charge rates sufficient and adequate for the payment of the operation and maintenance costs of Johnson County Wastewater. In reviewing and establishing such rates, the Board of County Commissioners, to the extent practicable, shall utilize the following procedures:

- A. The General Manager for Johnson County Wastewater shall at least annually, and no later than the first week of June, submit to the Board of County Commissioners the proportionate contribution of each user class of the total wastewater loading derived from all user classes to the wastewater treatment facilities of Johnson County Wastewater based upon a calculation of the volume, capacity (rate of flow), BOD, and suspended solids contributed to the system by each user class.
- B. The Board of County Commissioners shall review the adopted and/or proposed Operation and Maintenance Budget for Johnson County Wastewater and, to the extent necessary, establish expenditure guidelines for the Budget. The official Operation and Maintenance Budget shall be adopted annually as required by

state law and in accordance with the standard budget policies and procedures of the Board of County Commissioners.

- C. The Board of County Commissioners, or its designated agent, shall allocate according to the information submitted by the General Manager of Johnson County Wastewater the proportionate cost of the operation and maintenance costs determined from the budget to each user class.
- D. The Board of County Commissioners, or its designated agent, shall at least annually establish a customer service charge for all users to recover, at a minimum, the billing and collection costs.
- E. The Board of County Commissioners, or its designated agent, shall at least annually establish a minimum user charge for all users to recover the costs of maintaining sewer service for users, regardless of the actual volume and strength of wastewater discharged to the wastewater treatment facilities of Johnson County Wastewater, but inclusive of the customer service charge.
- F. Based on the determinations made in Subsections A, B, and C of this Section, the General Manager shall recommend for approval by the Board of County Commissioners a Volume charge rate, a BOD charge rate, and a Suspended Solids (TSS) charge rate for all classes. These rates, upon approval and publication, shall be and become effective upon the date of commencement for the first billing cycle after July 1 of the year of adoption unless the resolution adopting such rates provides for a different effective date, in which case the rates shall go into effect for the first billing cycle following that effective date.
- G. The user charge to be paid by each user shall be the greater of the minimum user charge determined under Subsection E. of this Section, or the user charge based upon the allocable cost of the prior year's winter water use for users in class R-1, R-II, EX-II and EX-III; actual monthly water use for users in classes C-I, IC-I, and EX-I; and actual monthly metered wastewater flow for users in class S-I; calculated under the following formula:

The (Volume charge rate x water use by the user, based on the criteria described in Section VI.G. for the various classes, measured per 1,000 gallons) + (the BOD charge rate x the number of pounds of BOD discharged annually by the user) + (the Suspended Solids {TSS} charge rate x the number of pounds of

suspended solids discharged annually by the user) + (the customer service charge).

- H. For those users in Class EX-I, who elect to have the user charge included on the current Ad Valorem Tax Statement, the user charge shall be based on the current user charge rate and actual monthly water use for the previous twelve (12) months. For those users in Classes EX-II and EX-III who elect to have the user charge included on the current Ad Valorem Tax Statement, the user charge shall be based on the current user charge rate and prior year's winter water use.
- I. Nothing in this Section shall prevent the Board of County Commissioners from reviewing and/or adopting user charge rates at any time as and when the Board determines it necessary and advisable, and the rates may be adopted by the Board as a part of the Resolution approving and authorizing the annual budget of the County and/or Johnson County Wastewater.

SECTION VII: SUBSCRIBERS. All subscribers to the wastewater treatment facilities or services of Johnson County Wastewater shall:

- A. Provide, within thirty (30) days of the receipt of written request, to Johnson County Wastewater, all information necessary to properly classify all users located within the prescribed service area of the subscriber and shall fully cooperate in providing information necessary for the General Manager to determine actual use of any such user based upon the criteria provided in Section VI of this Resolution.
- B. Pay to Johnson County Wastewater the user charge determined by the Board of County Commissioners as the allocated cost of operation and maintenance attributable to the contributed wastewater loading of the subscriber in accordance with the provisions of Section VI of this Resolution.
- C. Adopt a user charge system in accordance with Section 204(b)(1)(A) of the Clean Water Act and Sections 35.929 through 35.929-3 of 40 CFR Part 35, Subpart E of the Rules and Regulations of the EPA as required by Section 35.929-2(e) of such Rules and Regulations.

This Resolution shall not apply to contracts entered into between Subscribers and Johnson County Wastewater prior to the effective date of the Resolution unless otherwise agreed to by the parties.

SECTION VIII: ADJUSTMENTS AND REVIEW. The Board of County Commissioners or its designated agent shall at least biennially review the wastewater contribution of users and

user classes, the total costs of operation and maintenance, the allocation and determination of costs, and the user charge system. The Board of County Commissioners shall revise the charges for users or user classes to:

- A. Maintain the proportionate distribution of operation and maintenance costs among users and user classes;
- B. Generate sufficient revenue to pay the total operation and maintenance costs necessary for the proper operations and maintenance of the wastewater collection and treatment facilities; and
- C. Apply excess revenues collected from a class of users to the costs of operation and maintenance attributable to that class for the next year and adjust the rate accordingly.

SECTION IX: ASSESSMENT OF CHARGES.

- A. EFFECTIVE DATE AND ASSESSMENT PERIOD. The user charges and other charges established under this Resolution shall be and become effective from and after January 1, 2003. The user charge shall be assessed on an annual basis for users within user class R-I, R-II, EX-II and EX-III, on a monthly basis for users in the user classes C-I, IC-I and S-I, and on either an annual or monthly basis as designated by users in the EX-I class.
- B. INITIAL ASSESSMENT PERIOD. The initial assessment period for all user classes shall commence on January 1, 2003, and initial assessments shall be calculated based upon historical data and rates set for the initial assessment period.
- C. REGULAR ASSESSMENT PERIOD. The annual assessment rates and water use data shall be established and affect rate adjustments and charges effective with the first billing period commencing after January 1 of each year following the conclusion of all billing periods for customers based upon the prior years rates and water use data, or such other date as may be established by the Board of County Commissioners as part of the Resolution approving and adopting the rates or charges.
- D. USAGE DETERMINATION AND RATE APPLICATION. The user charge assessed to and payable by users shall be determined in the manner provided under Section VI of this Resolution by applying the effective rate charges to the measured or calculated usage. Usage shall be determined by measured flow for users in the IC-I class, by actual monthly water use for user classes C-I, IC-I and

EX-I, and by extrapolated annual water use for users in user classes R-I, R-II, EX-II and EX-III. The extrapolation of the annual water use shall be based upon the winter water use determined for the property based upon winter month water consumption. The winter month water consumption shall be based upon records available from the water district serving the property and the records used shall cover the prior year winter months. The winter water use calculations shall be reviewed and revised annually, with changes in the determined water usage calculation to be made effective consistent with determinations made by the water supplier. In the event that the water supplier does not separately calculate the winter water usage, then Johnson County Wastewater shall make the calculation in a manner consistent with the method used for the majority of users in the same class. For users who receive water from on-site or non-measured sources, the usage shall be determined from records and documentation kept by the user. In the event that water use data, for whatever reason, is not available either for a particular property or for a particular period of time, then the water usage may be determined and assessed utilizing the default usage charge.

- E. WATER DATA RECORDS. As a condition to the use of the public sewerage system, each and every user shall be and hereby is required to have and to maintain reasonable documents and records to reflect the use, by volume and strength, of the sewerage system. Unless otherwise expressly required, records showing the monthly water use and billing from the water supplier to the property shall be sufficient and adequate records. Upon reasonable request or in the event of a dispute, the property owner or other user shall provide the wastewater district with copies of or access to such records. For convenience of administration, Johnson County Wastewater will make reasonable efforts to obtain the required data and information directly from the water suppliers. Johnson County Wastewater may share such data and information with the property owner and/or occupant of the property, and shall upon the request of any property owner, provide use data and information related to the property including account status even if the user is not the owner.
- F. RECOVERY OF DATA CHARGES. In the event that any user shall fail or refuse to keep and provide records as required by subsection E of Section IX of this Resolution or provides false, incomplete or inaccurate data or information related to sewer use, then, in addition to the recovery of charges not assessed and/or

collected as a result of such lack of records or such false or inaccurate data, Johnson County Wastewater may assess a recovery fee to the user. The amount of the recovery fee shall be based upon the allocated cost of staff time and expense expended to obtain, correct or verify the data, records and information.

- G. USER CHARGES. As and when the owner of a property or other user of the sewer services changes at any particular property or user facility, the user charge assessment, classification, and/or usage determination shall be reviewed and considered for modification upon application of the new owner or other user or upon confirmed receipt of information by Johnson County Wastewater of the change. Changes shall be made in the manner authorized by the procedures adopted by the General Manager of Johnson County Wastewater, but no changes in the assessment shall be made when the change of user or use has no demonstrable change in the annual use or the change in use is temporary only. In the event that a change in the assessment is warranted but adequate usage data is not available, then the default usage charge will be assessed. In the event that a user in the R-I, R-II, EX-II or EX-III bi-monthly classification moves into or out of a dwelling unit during a billing cycle, then the charges will be pro-rated to reflect appropriate days of usage, upon request of the user.

SECTION X: BILLING AND COLLECTION.

- A. PROCEDURE. All users shall be billed by separate itemized statement in the following manner:
1. Subscribers shall be billed in the manner provided in the contract between the Subscriber and JCW.
 2. The bills of users provided water service through a municipal or other public water utility company shall be sent by U.S. Mail to the same address where water bills are currently being sent by the water company serving the property, unless a user requests that Johnson County Wastewater send the bill to an alternative mailing address and/or by pre-authorized electronic transmission to an electronic address requested by the user.
 3. The bills of users who receive water from on-site sources shall be sent by U.S. Mail to the mailing address of the owners of the property listed on the tax records at the Department of Treasury and Financial

Management, unless a user requests that Johnson County Wastewater send the bill to an alternative mailing address and/or by pre-authorized electronic transmission to an electronic address requested by the user.

4. The bills of users in Class EX-I, EX-II and EX-III shall be sent by U.S. Mail and/or by pre-authorized electronic transmission to the same address where water bills are currently being sent by the water company serving the property, unless written request is received from the owner on or before July 15 requesting that the user charge for the year be included on the current Ad Valorem Real Property Tax Statement for the property.

- B. BILLING CYCLE. The user charge provided for in this Resolution shall be billed as follows:

R-I users and R-II shall receive statements on a bi-monthly basis

C-I users shall receive statements on a monthly basis

IC-I users shall receive statements on a monthly basis

S-I users shall receive statements on a monthly basis

EX-I users shall have the option of receiving statements on a monthly basis or at the request of the owner of the real property, the user charge for the year shall be included as a special assessment on the current Ad Valorem Real Property Tax Statement.

EX-II and EX-III users shall have the option of receiving statements on a bi-monthly basis or at the request of the owner of the real property the user charge for the year shall be included as a special assessment on the current Ad Valorem Tax Statement.

- C. PAYMENT. All user charges or other charges assessed under this Resolution, except for those class EX-I, EX-II and EX-III users which opt to utilize tax statement billing, shall be due and payable 30 days from the billing date. Users receiving bills on a monthly or bi-monthly basis shall pay the assessed charges in full within thirty (30) days from the date posted on the bill. Failure to timely pay the assessed charges as billed shall be a violation of this Resolution and may result in the assessment of interest, additional delinquency charges or penalties. User charges included as special assessments on the Ad Valorem Real Property Tax Statement at the owner's request pursuant to Section X A.4. shall become due and payable and subject to collection in the same manner as Ad Valorem Taxes under State law. The user charge provided for in this Resolution shall be

payable by the user to the Johnson County Wastewater and upon receipt thereof, the funds shall be deposited in the operation and maintenance fund of Johnson County Wastewater.

- D. DISPUTE AND RESOLUTION. Any user may dispute the amount of the assessment or the method of its calculation by filing an appeal form with the General Manager of Johnson County Wastewater. The General Manager shall adopt procedures for processing the dispute application and for consideration and resolution of the dispute. In all such dispute proceedings, it shall be the responsibility of the user to demonstrate the inaccuracy of the data or charges and to provide documentation sufficient for an accurate determination of the usage contributed by the user. Users in user classes R-I, R-II, EX-II and EX-III may dispute only the annual calculated charge or its basis, and may not dispute individual billings. Any user which files multiple appeals in any one regular assessment period (annually from January 1 to December 31) without submission of credible and accurate data to support the appeal shall be subject to an additional assessment of costs for the appeals, which shall be determined and assessed for each appeal, other than the first, which is not supported by the required documentation and the amount of the cost assessed shall be equivalent to the cost attributable to the staff time and expense expended to process the appeal, but not less than \$100.00.

SECTION XI: ANNUAL NOTICE: The General Manager shall on at least an annual basis cause notice to be mailed to the user, which shall state the user charge rate currently being charged to such user or user class. This Notice may be included in the monthly or bi-monthly bill sent to the user by including the information as a separate line item notation on the bill or may be provided in the form of a separate itemized billing notice mailed to the user.

SECTION XII C: LIEN: Except as otherwise prohibited by applicable law, all user charges established and levied by and pursuant to this Resolution if not paid as required by law, shall be and become a lien upon the real property against which the user charge is assessed from the date said user charge becomes due and may be collected in the same manner as a lien securing delinquent Ad Valorem Taxes under State Law.

SECTION XIII: ENFORCEMENT.

- A. DELINQUENCY: The account of any user that is not paid in full on the due date shall be considered delinquent and subject to the accrual of interest from the date thereof and may be collected in the same manner that delinquent Ad

Valorem Taxes are collected under State law. In addition thereto, the Board of County Commissioners may cause suit to be commenced against any user or subscriber that has failed to make timely payment of the such user charges levied upon such user or subscriber in any Court of competent jurisdiction for the purpose of collecting the user charge, and the County shall be entitled to recover all costs of such suit, including reasonable attorneys' fees.

- B. BANK FEES. Johnson County Wastewater shall charge and be entitled to recover any bank fees or charges, including but not limited to fees or charges assessed for returned checks, insufficient funds checks, and stop payments, at the same rate such fees or charges are assessed from time to time by the Department of Treasury and Financial Management.
- C. LATE FEE. Johnson County Wastewater shall impose and collect, in addition to any interest payable on the past due balance, a late payment fee in the amount of Five Dollars (\$5.00) for each late payment. A late payment shall be any amount paid or balance due accruing more than thirty (30) days from the date of the billing statement.
- D. INTEREST ON DELINQUENT USER CHARGES. Any user charge established by or under this Resolution if not paid in full on the due date shall be considered delinquent and subject to the accrual of interest from the date thereof at the same rate interest accrues against delinquent Ad Valorem Taxes under State Law.
- E. FEES ON DELINQUENT USER CHARGES. In addition to interest and other late penalty charges, the wastewater districts may impose and collect from any user whose user charge payments are delinquent the fees and charges incurred by the wastewater districts for collection of the delinquency, including but not limited to:
1. Any Right Party Contact fees;
 2. A lien certification fee in an amount of Two Hundred Dollars (\$200.00);
and
 3. Reasonable attorneys' fees.
- F. CERTIFICATION OF LIEN: On or before August 15 of each year, the General Manager may certify to the Office of Records and Tax Administration the legal description of any real property (except for User Class EX-I, EX-II and EX-III properties the owners of which have previously elected to place the user charges

on the Ad Valorem Real Property Tax Statement and are subject to a lien under K.S.A. 79-1804) that is subject to delinquent user charges along with the amount of such charges and interest accrued through the date of certification. Upon receipt of certification, the Office of Records and Tax Administration shall place such delinquent user charges and interest on the tax rolls of the property for collection in the same manner that a lien securing delinquent Ad Valorem Taxes is collected under State Law.

- G. NOTICE OF INTENT TO CERTIFY LIEN: Written Notice of the intent of the General Manager to certify delinquent user charges and interest to the Office of Records and Tax Administration for placement on the tax rolls shall be sent by certified mail at least thirty (30) days prior to certification to the mailing address of the owners of the subject property listed on the real estate tax records at the Office of Records and Tax Administration or other known address and to the current billing address of any person, or persons residing upon or otherwise occupying the real property who are deemed to be the actual users of the sewer service that shall state:
1. The intent of the General Manager to certify the delinquent user charges and interest to the Office of Records and Tax Administration for placement on the tax rolls of the subject property unless the user charge and any interest is paid in full within thirty (30) days from the date of the Notice.
 2. The date the General Manager intends to certify the lien.
- H. DISCONNECTION: The General Manager, after notice and opportunity for hearing as hereinafter provided, and upon a finding that a user charge assessed by or under the provisions of this Resolution is delinquent and unpaid, may issue an order directing that wastewater treatment facilities and services be disconnected to the delinquent user or subscriber unless, within thirty (30) days of receipt of the order by the user, subscriber, or person in charge thereof, the user charge is paid in full, together with any accrued interest, or the user demonstrates sufficient cause why the property should not be disconnected.
- I. NOTICE OF INTENT TO DISCONNECT: Notice of the intent to issue an order to disconnect pursuant to Subsection H of this section shall be given at least twenty (20) days prior to issuance of the order to the user or subscriber, in writing, sent by certified mail to the mailing address of the owners of the subject property

listed on the real estate tax records at the Office of Records and Tax Administration or other known address, and to the current billing address of any person or persons residing upon or otherwise occupying the real property who are deemed to be the actual users of the sewer service that shall state:

1. The intent of the General Manager to issue an order directing that the property be disconnected unless the charge is paid in full together with any accrued interest, unless cause is shown by the user not to disconnect the property;
2. The date the General Manager intends to issue the order; and
3. That the user or subscriber has the right to request within the twenty (20) days an opportunity to appear before the Board of County Commissioners and be heard to show cause why such order should not be issued.

J. RECONNECTION: Wastewater collection and treatment facilities and services shall be reconnected to the user or subscriber upon payment by the user or subscriber of all delinquent user charges, accrued interest, penalties, fees, costs associated with collecting amounts, and all costs for disconnection and reconnection to Johnson County Wastewater.

K. APPLICATION OF PAYMENTS: Any partial payments received after an account becomes delinquent for user charges, interest, penalties, fees and other costs prior to being placed on the ad valorem real property tax statement shall first be applied in the following order:

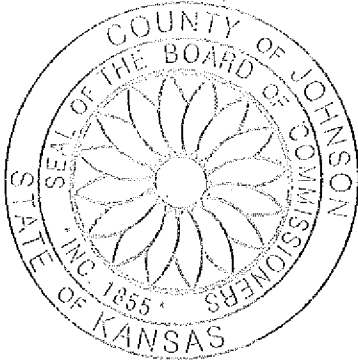
1. Satisfaction of any utility deposits ordered to be funded by a bankruptcy court;
2. Satisfaction of any accrued interest, penalties, fees and other costs associated with the collection of the delinquent balance in order of oldest to newest; and
3. Satisfaction of any remaining principal balance of delinquent or current user charges in order of oldest to newest.

Payments for current and delinquent user charges, interest, penalties, fees and other costs received prior to their being placed on the ad valorem real property tax statement shall be made by the user to Johnson County Wastewater and deposited in the operation and maintenance fund of Johnson County Wastewater. Following the placement of user charges, interest, penalties, fees and other costs on the ad valorem real property tax statement, all payments for


such charges shall be made by the user to the Department of Treasury and Financial Management and shall be subject to the same procedures under which delinquent ad valorem real estate tax payments are accepted, applied and distributed by the Department Treasury and Financial Management under State Law.

SECTION XIV: SEVERABILITY. In the event any section or part thereof of this Resolution shall be found to be unenforceable by a competent Court of jurisdiction, then the remaining provisions of this Resolution shall remain valid and in full force and effect.

SECTION XV: EFFECTIVE DATE. This Resolution shall become effective on the date the new Customer User Charge System goes live following adoption and publication of this resolution in a newspaper of general circulation within Johnson County, Kansas.

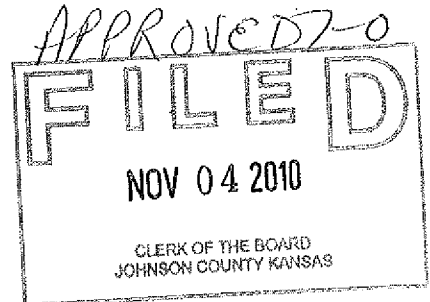


The Board of County Commissioners of Johnson County, Kansas, setting as the governing body of Johnson County Wastewater

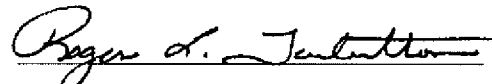

Annabeth Surbaugh, Chairman

ATTEST:


Donald Jarrett, Board Clerk



APPROVED AS TO FORM:


Roger L. Tarbutton, Assistant County Counselor

RESOLUTION NO. W.D. 10-040 OF THE BOARD OF COUNTY COMMISSIONERS OF JOHNSON COUNTY, KANSAS, AMENDING AND RESTATING THE USER CHARGE SYSTEM FOR PAYMENT OF OPERATION AND MAINTENANCE COSTS OF THE SANITARY SEWER SYSTEM OPERATED BY JOHNSON COUNTY WASTEWATER