

# Northwestern Chester County Municipal Authority

RESOLUTION NO. 2024-   3  

**A RESOLUTION OF THE NORTHWESTERN CHESTER COUNTY MUNICIPAL AUTHORITY AMENDING THE AUTHORITY'S RULES AND REGULATIONS, AS AMENDED, TO ADD A NEW ARTICLE X TITLED "RESERVATION OF SEWER CAPACITY" TO ADOPT A POLICY FOR THE RESERVATION OF SANITARY SEWER CAPACITY.**

**WHEREAS**, by prior resolution, the Northwestern Chester County Municipal Authority (the "Authority") has adopted certain Rules and Regulations, which provide for certain regulations and policies concerning the use of the Authority's Sewer System, as such term is defined in Article I of the Rules and Regulations (the "Sewer System"); and

**WHEREAS**, the Authority desires to amend the Rules and Regulations to amend the process whereby Owners may reserve sewer capacity in the Sewer System;

**NOW THEREFORE, BE IT HEREBY RESOLVED** by the Authority as follows:

**SECTION 1.** Article IV, Section 6.C of the Rules and Regulations shall be deleted.

**SECTION 2.** A new Article X titled "Reservation of Sewer Capacity", shall be added and provide as follows:

**"ARTICLE X. RESERVATION OF SEWER CAPACITY.**

**Section 1. Purpose.**

The Authority has determined that the allocation to and reservation of sanitary sewer capacity in the Authority's Sewer System to Persons and Owners for future use, without a fee, creates an unreasonable and inequitable economic burden upon the Authority and the existing users of the Sewer System. It is therefore determined to be in the interest of the Authority, the existing users of the Sewer System and potential users without reserved capacity that Persons and Owners desiring or required to reserve capacity in the Sewer System pay a charge designed and calculated to amortize the cost of the debt service and operating expenses in proportion to the existing users of the Sewer System. The purpose of this Article is to regulate reservation of sewer capacity and provide for the imposition and collection of a charge to be known as the "Reservation of Capacity Fee" in accordance with the Municipality Authorities Act, 53 P.S. Section 5607(d)(24).

**Section 2. Application for Reservation of Sewer Capacity.**

Any Person or Owner who seeks approval to connect to the Sewer System and requires more than one EDU of sewer capacity shall prepare and submit to the Authority an

Application for Sewer Service Extension on forms provided by the Authority. The Applicant shall submit a plan in accordance with the Authority's Procedures and Standards for Submission to NCCMA for Sewer Extensions. Such plan shall depict the existing and proposed collection and conveyance facilities necessary to serve the proposed subdivision, land development or building project (the "Project"). The Applicant shall submit such information as required by the Authority to determine the amount of sewer capacity to be utilized for the Project, including but not limited to proposed water use data, wastewater flow projections, information necessary to evaluate the existing hydraulic capacity of the Sewer System and any improvements that may be necessary for the proposed Project.

The Applicant shall deposit with the Authority the applicable review fees as adopted by Resolution of the Authority to be used by the Authority to pay all fees and expenses, including those of the Authority consultants, incurred by the Authority in connection with evaluating the Application for Sewer Service Extension.

The Application for Sewer Service Extension shall include an estimated time schedule for when the proposed Project will connect to the Sewer System.

After review of the Application for Sewer Service Extension, the plans for the Project, and the Applicant's Sewage Facilities Planning Module submission, the Authority Engineer shall determine the necessary sewer capacity to be allocated to and reserved by the Applicant for the proposed Project. Thereafter, and before the Authority shall sign Component 3 of the Sewage Facilities Planning Module for the Project for submission to the Pennsylvania Department of Environmental Protection by the Borough or Township, the Applicant shall execute an Agreement for Reservation of Sewer Capacity ("Reservation Agreement") in a form approved by the Authority and pay the applicable Reservation of Capacity Fee as established by Resolution of the Authority.

Upon execution of the Reservation Agreement by the Applicant and the Authority, and compliance by the Applicant with all of the terms and conditions of such Agreement, including payment of the applicable quarterly Reservation of Capacity Fee, sewer capacity shall be reserved for the Project in accordance with the terms and conditions of the Reservation Agreement.

Sewer capacity shall be reserved and allocated by the Authority in the order in which applicants execute the Reservation Agreement and pay the Reservation of Capacity Fee.

Sewer capacity shall not be deemed reserved unless and until an applicant executes the Reservation Agreement and pays the Reservation of Capacity Fee.

**Section 3. Imposition of reservation of capacity fee and sewer charges.**

In order to reserve sewer capacity, the Applicant must pay the applicable quarterly Reservation of Capacity Fee as established and amended from time to time by

Resolution of the Authority. The Reservation of Capacity Fee shall be due and payable until such time as the Applicant pays in full the tapping fees for all sewer capacity purchased. The Reservation of Capacity Fee shall not be credited against the tapping fees imposed for the purchase of capacity. No dwelling units or buildings for which sewer capacity was reserved shall be connected to the Sewer System until the applicant pays in full the applicable tapping fee as established and amended from time to time by Resolution of the Authority. Once the dwelling unit or building is physically connected to the Sewer System, the owner shall begin to pay the quarterly sewer rent as established and amended from time to time by Resolution of the Authority.

#### **Section 4. Reservation and Use Periods; Relinquishment of Capacity; Refunds.**

If the Project is a subdivision or land development and Applicant does not obtain final approval of the subdivision or land development within two (2) years from the date of execution of the Reservation Agreement, unless extended by the agreement of the Applicant and the Authority, the Reservation Agreement shall terminate and the sewer capacity reserved for Applicant shall be relinquished back to the Authority. All payments by the Applicant to the Authority pursuant to the Reservation Agreement are nonrefundable.

If the Project for which the Applicant reserved capacity is a final subdivision and/or land development plan, the reservation of capacity shall be valid for a period of five years from the date of preliminary plan approval by the Borough or Township. If the Applicant has not made physical connection of the building(s) or structure(s) to the Sewer System within five years from the date of preliminary plan approval for a subdivision and/or land development, the Reservation Agreement shall terminate and the sewer capacity reserved for Applicant shall be relinquished back to the Authority. All payments by the Applicant to the Authority pursuant to the Reservation Agreement are nonrefundable. Alternatively, the Applicant may retain any unused sewer capacity by paying in full the tapping fees for the unused sewer capacity; and upon default of any such payment, following reasonable written notice from the Authority with an opportunity to cure, the unused sewer capacity shall be relinquished by the Applicant to the Authority. All payments of tapping fees shall be nonrefundable.

If the Project for which the Applicant reserved sewer capacity required only the approval of a building permit plan and issuance of a building permit and did not constitute a subdivision or land development, the reservation of capacity shall be valid for a period of one year from the date of issuance of the building permit by the Borough or Township, unless extended by agreement of the Authority. If the Applicant has not made physical connection of the building(s) or structure(s) to the Sewer System within one year from the date the building permit is issued, the Reservation Agreement shall terminate and the sewer capacity reserved for Applicant shall be relinquished back to the Authority. All payments by the Applicant to the Authority pursuant to the Reservation Agreement are nonrefundable. Alternatively, the Applicant may retain any unused sewer capacity by paying in full the tapping fees for the unused sewer capacity and upon default of any such payment, following reasonable written notice from the

Authority with an opportunity to cure, the unused sewer capacity shall be relinquished by the Applicant to the Authority. All payments of tapping fees shall be nonrefundable.

The Authority shall have no monetary obligation to refund the Applicant for any tapping fees or user fees paid by the Applicant for any unused EDU(s) if the unused EDU(s) is/are relinquished.

### **Section 5. Adjustments to Reserved Capacity.**

In the event that the amount of reserved capacity for any Project shall be determined to be insufficient during the term of any Reservation Agreement, the Applicant shall be permitted to request additional sewage capacity to be reserved. Such request shall be processed as a new application in accordance with the terms in this Article X.

### **Section 6. Cancellation.**

An Applicant may at any time, upon written request to the Authority, relinquish all or any portion of the reserved capacity allocated to and reserved by the Applicant and terminate the Reservation Agreement. Such relinquishment shall be effective as of the date of the next billing quarter, provided that the request shall have been made at least 30 days prior thereto. All reservation of capacity fees paid before the date of relinquishment are nonrefundable to the Applicant. In the case of relinquishment under Section 4 hereinabove or this Section 6, the Authority shall require the Applicant to execute and submit to the PaDEP through the Borough or Township the appropriate form and authorization to relinquish and revoke the planning module approval.

### **Section 7. Assignment of Reserved Capacity.**

The reserved capacity shall apply to and be valid only for such persons, or their successors in title to the property which is the subject of the Project referenced in the Reservation Agreement. If the Applicant/owner who executes the Reservation Agreement desires to assign its rights to a new owner, the Applicant shall notify the Authority in writing of the proposed assignment and the Authority shall approve the same provided all terms in the Reservation Agreement shall remain in full force and effect and the reserved capacity shall only be available for the Project approved and referenced in the Reservation Agreement.”

**SECTION 3. Severability.** The provisions of this Resolution shall be severable and if any provision or provisions shall be held to be unconstitutional, invalid, or void, such unconstitutional, invalid, or void provisions shall not affect the validity of any of the remaining provisions of this Resolution. It is hereby declared that this Resolution would have been adopted if such unconstitutional, invalid, or void provision or provisions had not been included herein.

**SECTION 4. Inconsistent Provisions.** All resolutions or parts of resolutions insofar as they are inconsistent herewith are hereby rescinded.

**SECTION 5. Effective Date.** This Resolution shall be effective immediately.

ADOPTED by the Board of the Authority on the 24<sup>th</sup> day of April 2024.

ATTEST:

NORTHWESTERN CHESTER  
MUNICIPAL AUTHORITY

  
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Michael Kern, Secretary

  
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David Eames, Chairman

