

Environment Committee

Meeting date: July 24, 2018

For the Metropolitan Council meeting of August 8, 2018

Subject: Closure of 2016-2017 Sewer Availability Charge (SAC) Task Force

District(s), Member(s): All

Policy/Legal Reference: Council Admin Policy 3-2-5; Water Resources Policy Plan; & MS 473.517 subd. 3

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Proposed Action

That the Metropolitan Council accept the report of the 2016-2017 SAC Task Force, discharge the Task Force, and thank them for their work and input.

Background

The 2016-2017 SAC Task Force members were appointed by the Chair and approved by the Council in November of 2016 to evaluate and make recommendations to simplify the fair and equitable collection of SAC fees in the metropolitan area. The task force met 8 times throughout 2016 and 2017 and developed recommendations to improve the existing SAC program. The final report is provided in Attachment A.

Overall, these recommendations will address concerns with the SAC program with minimal impact to revenue generated. By simplifying the determination process and adjusting the grandparent credit date, businesses should experience fewer surprise charges during remodels and expansions. These changes will also simplify some of the more complex SAC criteria which will make the SAC program easier to understand.

These recommendations were accepted by the Council on Wednesday, March 21, 2018. The recommendations went in to effect on July 1, 2018.

Rationale

SAC is a critical revenue source for MCES: it collects approximately \$40 million each year; pays 35-40% of MCES debt service; and allows the Council to build and rehabilitate facilities in anticipation of additional capacity and collect as capacity demand occurs. As SAC is a service-based fee, it is applied equally across all users of the Metropolitan Disposal System. It is important that customer and stakeholder input is solicited to develop SAC criteria and procedures.

Thrive Lens Analysis

These recommendations will ensure Thrive outcomes of Stewardship and Prosperity and the principles of collaboration and accountability.

- Stewardship: SAC ensures MCES can develop and rehabilitate the \$7 billion in assets in the Metropolitan Disposal System, as well as working with our customers to ensure we are optimizing the use of SAC dollars.

- Prosperity: SAC allows growth to occur anywhere in the region without concern for wastewater conveyance or treatment.
- Collaboration: The Task Force is the means by which MCES seeks input and ideas on how to run the SAC program better; in a way that meets financial needs of the system balanced with customer concerns.
- Accountability: The Task Force allows MCES to share in detail the use of SAC dollars and holds staff accountable to developing a process that is driven by customer needs and concerns.

Funding

The approved changes are not expected to have a material impact on total SAC collection.

Known Support / Opposition

Metro Cities and the individual Task Force members support the recommendations. Additional community and business feedback was requested via approximately 150 e-mails to chambers of commerce and Disadvantaged Business Enterprises (DBEs) as well as multiple outreach meetings held throughout the region with positive feedback received.

Introduction

Metropolitan Sewer Availability Charge (SAC) is required by state statute MS 473.517 subd. 3. This charge to communities (cities and other building authorities) is determined on a site-by-site basis. The revenue is used to pay for the “reserve capacity” built into the metropolitan wastewater system for future users (typically about 1/3 of the debt service costs of the system). SAC helps keep our regular, volume-based sewer fees among the lowest for U.S. metropolitan areas. It also means the costs of growing wastewater demand are borne by those communities where wastewater infrastructure is being added or rehabilitated and paid only as needed. The SAC fee system was implemented metro-wide in 1973 and, by law, is used only to fund the construction or betterment of the metropolitan wastewater system.

2016-2017 SAC Task Force

In 2016, legislators introduced a bill in the Minnesota House and Senate to exclude outdoor seating from SAC charges. The bill did not pass, but in response to the proposed legislation Metropolitan Council Environmental Services (MCES) committed to convene a task force to review the policy with SAC customers. Along with outdoor seating, additional policies arose that warranted further review, including manufactured homes, SAC determination criteria, and the SAC credit process.

The 2016-2017 SAC Task Force was convened by a joint effort of MCES and Metro Cities. Task force members were selected to ensure representation across the region and include business and community representatives. The task force reviewed current policies, examined different approaches, conducted financial and other impact analyses (with the help of an outside consultant), and made final recommendations.

The final report as printed contains the supporting documentation used for the Task Force recommendations. However, some of the supporting documentation (i.e., the complete third-party analysis) has been shortened. The 2016-2017 Task Force report and unabridged appendices can be found on the Metropolitan Council website in their entirety at metro council.org/SACTaskForce.

The 2016-2017 Task Force was approved by the Council in November 2016, and met eight times from December 2016 through August 2017. Task force members included:

- Wendy Wulff, Metropolitan Council Member & Chair
- Patricia Nauman, Executive Director of Metro Cities
- Tom Thomasser, Minnesota Chamber of Commerce representative (Summit Brewing)
- Dan McElroy, Minnesota Hospitality representative (Minnesota Restaurant Association)
- James Dickinson, Andover City Administrator
- Ron Hedberg, Apple Valley Finance Director
- Kyle Klatke, Brooklyn Park Plans Examiner
- Bob LaBrosse, Cottage Grove Building Official
- Kevin Schmieg, Eden Prairie Building Official
- Sue Virnig, Golden Valley Finance Director
- Loren Olson, Minneapolis Government Relations
- Katrina Kessler, Minneapolis Public Works Director
- Merrill King, Minnetonka Finance Director
- David Englund, Roseville Building Official
- Brian Hoffman, St. Louis Park Building Official
- Steve Ubl, St. Paul Building Official

Executive Summary

Summary of Recommendations

Over the course of eight meetings, the Task Force made recommendations on four major topics: outdoor seating policy; discounts for manufactured homes; simplifying the SAC determination process; and simplifying the SAC credit process. Overall recommendations were generated from conversation, technical analysis, and feedback from the task force. These recommendations include:

1. Continue outdoor seating policy as is but simplify criteria to 40 seats/SAC.
2. Continue current residential rate for manufactured homes, monitor flow studies and encourage grants.
3. Revise the SAC determination process to utilize gross square feet of tenant space versus net square feet of individual uses for certain SAC criteria.
4. Adjust the grandparent credit date from January 1, 1973 to January 1, 2009.

Review current outdoor seating policy

When the task force convened, a standing 2009 SAC Task Force recommendation for a discount on outdoor seating was already in place, approved at 75% by the Metropolitan Council. The 2009 Task Force reasoned that charging SAC for outdoor seating was appropriate because outdoor seating increases the maximum potential flow from the business by increasing the number of patrons a restaurant may serve. The discount addresses the fact that during periods of rain, which increases flows into the system, the outdoor seating cannot be used. With no other building renovations, a restaurant could add up to 19 outdoor seats with no SAC charged. The legislative proposal to exempt outdoor seating would have resulted in increases for other businesses to make up for the lost revenue.

Eliminating SAC for outdoor seating would also set a problematic precedent of exempting certain business uses. The 2013 SAC Work Group was very clear in its conclusions that there be no excluded businesses or business uses, no matter the cause.

Some 2016-2017 Task Force members suggested eliminating the discount entirely and charging the full SAC rate for exterior seating, as the addition of outdoor seating does increase the maximum potential flow from a restaurant.

Task Force members discussed other options including a prorated SAC rate, as outdoor seating areas are not used 12 months of the year. It was determined that this is not an accurate representation of SAC usage, as SAC should represent the maximum potential daily flow capacity and not the average usage.

Overall, members agreed to maintain the status quo with regards to outdoor seating (i.e., 75% discount on SAC rates charged to exterior seating). But they simplified the language by adjusting the criteria to reflect 40 seats per SAC in place of using the word “discount.” In addition, changes in square feet criteria from the Task Force will double the number of square feet per SAC, and therefore, the number of “free” seats when no other changes are made.

Review discounts for manufactured homes

Several manufactured home communities in the metropolitan area will be transitioning to the regional wastewater system in the next few years. A new connection to the system requires a SAC payment, with each residence owing one SAC unit. This fee can be a material burden on manufactured home owners who are often at or below poverty levels.

In fall 2016, the Metropolitan Council's Community Development division issued a report requesting analysis of manufactured home discharge to determine if the output was equal to or less than the standing SAC residential rate of 274 gallons/day per household. MCES staff have changed SAC criteria in the past if flow study data has proven a change of use within a given criteria (e.g., restaurants were changed from 2 criteria to 1 criteria in 2010 based on a water study showing there was not a material difference between fast food and full service).

The Manufactured Home Park Equity Grant Report can be found here:

<https://metrocouncil.org/sactaskforce>

The Task Force reviewed the existing manufactured home park flow data and discovered that very limited data is available statewide. In addition, of the available data, the results are inconclusive due to missing data points during suspected high flow days, poor inflow and infiltration system maintenance, and other variables.

Discussions included continuing the flow study and determining if the additional data supports a modification of criteria at that time; creating a manufactured home discount or exemption; or no change while promoting deferral programs and grants.

The Task Force unanimously voted to continue ongoing flow studies and promote payment deferral programs and grants in order to ease the burden on manufactured home owners.

Evaluate criteria for SAC determination process

The SAC Determination process is a complex system built around criteria such as square footage, flow rates, business type, and business usage. The Task Force wanted to simplify the application process and make it easier to understand for the businesses and communities impacted by it. Various options were considered, including using water meter size, building code occupancy, fixture units and gross square feet.

The 2016-2017 Task Force reviewed the work of the 2013 SAC Work Group, which investigated the option of using water meter sizes to determine SAC due. Findings from that study indicated that water meters would not be recommended because of the lack of correlation between the size of a meter installed and the business type. In addition, SAC would not be collected at change-of-use remodels (no change to water meters), and businesses that drew water from private wells would not require a meter. These issues would result in fewer SAC collections, resulting in an increase of the SAC rate.

The 2016-2017 Task Force discussed a second option: using building codes to determine the maximum number of people onsite. As occupancy codes are consistent across the region and would be determined by the community, they could simplify the determination process for businesses. However, further discussion revealed that occupancy codes are not applicable to all business types. This would result in needing individual usage criteria to cover those businesses. In addition, occupancy codes could be revised at any time, which would impact SAC determinations as well.

A third proposed option was the use of a criteria based on fixture units. This system was used to develop many of the original SAC criteria in the 1970s. While it would simplify the determination process, such a change would negatively impact the overall revenue of SAC. There would also be less nuance in making determinations as a fixture at a restaurant would have the same rate as a fixture at a bookstore, for example.

During discussion of the above proposals, the Task Force proposed an alternative method of determination: using gross square feet of the business rather than the net square feet of individual

rooms based on usage. After additional conversation, an MCES hired an independent consulting firm to conduct a study of 4,264 SAC determinations from 2013-2015 that showed the proposed changes to certain category criteria would result in minimal impact to SAC revenue. The Task Force then reviewed the results and recommended adopting changes to certain usage criteria to simplify the SAC determination process. (See Appendix B for the gross-square-foot study.)

The Task Force approved revising SAC criteria for certain usages to use gross square feet in place of individual net square feet for room usages.

Simplify SAC credit process

SAC credit is capacity that has been freed up within a community at a specific site that will be applied when new capacity is demanded at that same site. There are three major credit types:

1. SAC paid to MCES – record of payment to MCES is sufficient evidence for credit
2. Non-conforming grandparent (pre-1973) – record of demand prior to January 1, 1973 is evidence for credit
3. Non-conforming long continuous demand – after a change in business or property owner, record of use starting more than 10 years before the current determination and continuing through 3 years or closer to the current determination is evidence for credit.

An initial proposal was to eliminate long continuous demand as it generates inequity in SAC collection. When introduced after the 2012 Task Force, it was intended to be a rare occurrence as a compromise to “no pay, no credit.” However, more than 200 units of non-conforming continuous demand have been granted each year since 2013.

Members discussed the burden placed on communities to keep records of use for more than one audit cycle. After discussion, the Task Force recommended updating the grandparent date from January 1, 1973 to January 1, 2009, while also allowing owners to pay at historic rates, eliminating the need for a formal appeal. This change would simplify the credit process for customers as they would need only provide record of demand prior to January 1, 2009 to receive potential credit. With this change, long continuous demand will no longer be applicable prior to 2009.

The Task Force approved updating the grandparent date from January 1, 1973 to January 1, 2009, while also allowing owners to pay at historic rates without the need for a formal appeal.

Outcomes

Once the Task Force finalized its recommendations, MCES shared the proposed changes and solicited feedback at three community outreach meetings, five business outreach meetings across the region, and a briefing to the Senate Committee on Local Governance (where a version of the 2016 exemption bill was introduced). Overall, the response to the proposed changes was positive. (See Appendix C for public and city outreach feedback.)

In March 2018, the Council reviewed and approved the Task Force recommendations, to take effect July 1, 2018. During the interim, the SAC team will prepare and complete training with impacted communities. The team will also implement a ‘soft start’ of the new determination charges by completing affected determinations submitted in February through June via both methods to determine if minor adjustments are needed to insure directional consistency in SAC unit determinations from the old to new methods.