

**Department of
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**Rules and Regulations
Governing Cost Recovery Districts**



Approvals

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Executive Director, Department of Transportation & Infrastructure

A handwritten signature in blue ink, appearing to read "John J. Muehl", written over a horizontal line.

Attorney for the City & County of Denver

Date of Final Signature / Effective Date: 5/15/2023

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

ARTICLE I. GENERAL PROVISIONS

Section 1.01 Authority.

These rules and regulations (“Rules and Regulations”) are adopted by the City and County of Denver’s Executive Director of the Department of Transportation and Infrastructure (“DOTI”) pursuant to Article XIV of Chapter 20 and Article VI of Chapter 2 of the Denver Revised Municipal Code of the City and County of Denver (“DRMC”). These rules and regulations are adopted for the specific purpose of establishing, managing, and extinguishing Cost-Recovery Districts in association with the private delivery of public sanitary sewer infrastructure necessitated by a development project in all areas of the City and County of Denver (“City”).

Section 1.02 Intent.

The Executive Director of DOTI desires to employ Cost-Recovery Districts to allow for the recovery of costs, in specific instances and locations as determined by the Executive Director, associated with the private delivery of public sanitary sewer infrastructure required by the City from a Development Project. Nonetheless, nothing within these Rules & Regulations is intended to constrain in any way the City’s established authority to re-route, operate, maintain, repair, or reconstruct any public sanitary sewer, regardless of its association with any Cost-Recovery District.

Section 1.03 Severability.

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

Section 1.04 Definitions.

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

- a. **“Benefiting Development”** means any development project that is within the geographical boundaries of the Cost-Recovery District, has been determined by the Executive Director to be appropriate for cost-recovery

based on an evaluation of the following criteria: is sufficiently substantial to require a Site Development Plan for review and approval; is benefitted by direct access into the upgraded sanitary sewer regarding which the Cost-Recovery District was created but to which it did not financially contribute; and is increasing the net sanitary sewer demand from the property on which it is located.

- b. **“Cost-Recovery”** means the non-refundable funds recovered from Benefiting Developments which are proposing to utilize privately funded sanitary sewer upgrades to which they have not contributed.
- c. **“Cost-Recovery District”** means the area as determined by the Executive Director within which identified properties will be potentially benefitted by sanitary sewer improvements made and completed by the owner of a Triggering Development.
- d. **“Design Average Flow”** means the design flow for all proposed uses on a property less the Existing Average Flow, per DOTI policies and Sanitary Sewer Design Technical Criteria Manual at time of redevelopment. (Where no increase in flow is proposed, the Design Average Flow is zero and not subject to Cost-Recovery.)
- e. **“Development Project”** means construction of three or more dwelling units, or a commercial project reviewed through the Site Development Plan Process.
- f. **Executive Director**” means the Executive Director (or Manager) of DOTI or designee.
- g. **“Existing Average Flow”** means the flows from existing projects based on current legal and verifiable uses of existing structures prior to redevelopment and calculated per DOTI policies and Sanitary Sewer Design Technical Criteria Manual at time of redevelopment. Specifically, actual metered flows are not used to determine Existing Average Flow.
- h. **“Geographical boundaries of cost-recovery district”** means the entirety of the sanitary sewer basin upstream of the most downstream segment of the constructed sanitary sewer infrastructure upgrade and served by said sanitary sewer infrastructure upgrade as determined by the Executive Director.
- i. **“Maximum Recoverable Cost – Provisional”** means the total estimated cost of the sanitary sewer upgrade minus the estimated pro rata share of the total cost accounted for by the Triggering Development’s own demand need from the upgraded sanitary sewer infrastructure.

- j. **“Maximum Recoverable Cost – Final”** means the final Total Cost of the sanitary sewer infrastructure upgrade minus the final verified pro rata share of the Total Cost accounted for by the Triggering Development’s own demand on the upgraded sanitary sewer infrastructure, as verified and determined by the Executive Director. It is the maximum amount of money, in a fixed dollar figure, that the Triggering Development can recoup from Benefiting Developments through the life of the Cost-Recovery District.
- k. **“Peak Flow Calculation”** means peak sanitary sewer demand as calculated by the design engineer (refer to DOTI Sanitary Sewer Design Technical Criteria Manual, Section 2) as verified and determined by the Executive Director.
- l. **“Pro rata cost”** means proportional cost share relative to the size of a development project’s additional demand on the upgraded sewer system as verified and determined by the Executive Director.
- m. **“Sewer basin”** means the area served by the upgraded sanitary sewer as defined by a design engineer (refer to DOTI Sanitary Sewer Design Technical Criteria Manual, Section 2) as verified and determined by the Executive Director.
- n. **“Site Development Plan (SDP) Process”** means the City’s project review and approval process which requires developer-prepared planning, construction, and entitlement documents for the following types of land development projects: new commercial construction and major additions; new construction of three or more residential units; and some tenant-finish/remodel projects undergoing a change of occupancy.
- o. **“SSPR”** means Sanitary Sewer Plan Review.
- p. **“SUDP”** means Sewer Use and Drainage Permit.
- q. **“Total Cost”** is the final cost for the design, construction, and as-built drawings of the sanitary sewer upgrade constructed by the Triggering Development and the subject of a Cost-Recovery District as verified and determined by the Executive Director.
- r. **“Total Required Sewer Capacity”** means the average design flow for the entire tributary sanitary sewer basin at full build-out conditions, per current zoning and projected land uses as verified and determined by the Executive Director. Total Required Sewer Capacity does not include, but is the basis for required peaking factors and other buffering capacity contingencies per DOTI’s Sanitary Sewer Design Technical Criteria Manual at the time of redevelopment.

- s. **“Triggering Development”** means the development project that creates the requirement for an upgrade of public sanitary sewer infrastructure.

ARTICLE II. COST-RECOVERY DISTRICTS ASSOCIATED WITH PRIVATE DELIVERY OF PUBLIC SANITARY SEWER INFRASTRUCTURE REQUIRED FOR A DEVELOPMENT PROJECT

Section 2.01 Purpose and Applicability.

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

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

Under a Cost-Recovery District, the Triggering Development that delivers a sanitary sewer upgrade providing public benefit to the City is entitled to a one-time *pro rata* cost-recovery from each subsequent Benefiting Development within the Cost-Recovery District that creates additional sewer demand on the upgraded sanitary sewer and thereby directly benefits from the increased sewer capacity.

Cost-recovery is collected by the City from subsequent Benefiting Developments during permitting, plus appropriate costs for City administration and management of the Cost-Recovery District, and is remitted to the Triggering Development that constructed the sewer upgrade. The Cost-Recovery District expires after a specific period established herein, or once all eligible cost-recovery has been achieved, whichever comes first.

The Executive Director of DOTI has determined that all developments meeting the eligibility requirements outlined in Section 2.02 are able to request creation of a Cost-Recovery District to recover from future Benefiting Development projects each of their own fair and equitable *pro rata* share of the costs of the original private construction of upgraded public sanitary sewer infrastructure. The creation, management, and expiration of such a Cost-Recovery District are governed by these Rules & Regulations.

Section 2.02 Infrastructure Eligible for Cost Recovery.

Only public sanitary sewer infrastructure upgrades that meets **all** the following criteria are eligible for cost-recovery through a Cost-Recovery District:

- a. The sanitary sewer infrastructure upgrade required for the Triggering Development addresses a capacity deficiency in an existing segment of public sanitary sewer serving an existing sewer basin. That is, the upgraded sewer is not an entirely new extension of sewer infrastructure constructed solely to serve a new sanitary sewer basin; and
- b. The upgraded sanitary sewer infrastructure necessary to support the Triggering Development is to be owned by the City; and
- c. The upgraded sanitary sewer infrastructure provides a greater public than private benefit because the anticipated demand from other Benefitting Development projects is greater than that required by the Triggering Development itself. That is, the Triggering Development's demand is less than 50% of the total required additional capacity of the sanitary sewer upgrade.
- d. The primary and necessary condition for the sanitary sewer infrastructure upgrade is a sewer capacity deficiency, not the relocation of a sewer to rearrange or reduce the infrastructure encumbrance on a private property or to facilitate a right-of-way vacation.

Public sanitary infrastructure to be included in a Cost-Recovery District shall have a Storm & Sanitary Plan Review (SSPR), sewer report, cost estimate, application, and surety that are separate and independent from any other public or private storm or sanitary work associated with the Triggering Development. This is to clearly distinguish the eligible infrastructure from other work required of and being performed by the Triggering Development project.

Section 2.03 Geography of the Cost-Recovery District.

The developer, with DOTI's review and approval, will determine the geographic boundaries and the properties to be included in the Cost-Recovery District at the time of SSPR approval for the sanitary sewer upgrade required of the Triggering Development project. SSPR submittal materials, as per existing practice, shall include a map of the properties within the sewer basin served by the upgraded sanitary sewer and a table of projected design average sewer flows assumed to come from development of each property within the basin. This map is subject to review and approval by City staff. This map thereby establishes the geographic boundaries of the Cost-Recovery District.

Certain properties within the boundaries of the Cost-Recovery District, however, may be excluded from the Cost-Recovery District. Specifically, properties shall be excluded that

are already included as part of a Metropolitan or other special district created specifically to fund the construction of the sanitary sewer upsizing in question. The City may determine that other categories of property are also to be excluded from the Cost-Recovery District.

Once the properties for inclusion in the Cost-Recovery District are properly identified and the Cost-Recovery District is formally established, they are added to the City's Geographic Information System (GIS) and plan review and permitting system. This ensures that all affected properties can be searched-for, identified, and flagged for appropriate cost-recovery from Benefiting Development projects upon initiation of the SDP process, or upon specific inquiry. In addition, upon the formal establishment of the Cost-Recovery District, the City may use reasonable efforts to notify the registered owners of all such affected properties.

Section 2.04 Total Cost and Maximum Recoverable Cost.

Total Cost and Maximum Recoverable Cost are established provisionally with the establishment of the Cost-Recovery District and conclusion of the SSPR approval for the sanitary sewer upgrade by the Triggering Development. The developer shall submit a detailed and documented Total Cost estimate and estimated construction schedule for the sanitary sewer upgrade. This Total Cost estimate is subject to review and approval by DOTI review staff and, upon approval, the Triggering Development is required to post a bond to ensure the construction of the proposed upgrade and comply with all other requirements of existing laws, ordinances, permits, rules, and regulations.

Upon completion of the sanitary sewer upgrade and its final inspection and acceptance by the City, the Triggering Development shall submit materials certifying the actual cost of constructing the sewer upgrade. Subject to review and approval by City staff, this is the final Total Cost, from which is derived the Triggering Development's own *pro rata* share, the final Maximum Recoverable Cost that the Triggering Development is eligible to receive from subsequent Benefiting Development projects, and the final *pro rata* cost-recovery that will be assessed from each such subsequent Benefiting Development. The verified Total Cost may differ from the provisional estimated Total Cost by greater than 20% only with the approval of the DOTI Executive Director. With the finalization of these values, cost-recovery from subsequent Benefiting Developments commences and the Total Cost, Maximum Recoverable Cost, and *pro rata* cost are fixed for the duration of the Cost-Recovery District. The City will retain the submitted cost records for the duration of the Cost-Recovery District.

Distinct from the Total Cost of the sanitary sewer upgrade, the Maximum Recoverable Cost accounts for the *pro rata* share of the upgraded sanitary sewer flow capacity required by the Triggering Development itself. This is derived by subtracting the Triggering Development's own *pro rata* cost from the Total Cost. This is to ensure that the triggering development does not recover from other subsequent Benefiting Developments the cost of its own needs for expanded sanitary sewer capacity.

In order to prevent the diminishment of the value of the Cost-Recovery District over time, the Total Cost and Maximum Recoverable Cost, and the calculation of the *pro rata* cost share for each subsequent Benefiting Development, the Executive Director may, in their sole discretion, adjust such *pro rata* cost share by the CPI-U Index Rate (as hereinafter defined) prorated for the period of time from payment of the Total Cost by the Triggering Development until payment by each Benefiting Development. As used herein, the term "CPI-U Index Rate" shall mean the United States Department of Labor Statistics (Bureau of Labor Statistics) Consumer Price Index for All Urban Consumers, All Items, for the Denver-Boulder-Greeley, Colorado metropolitan area (1982-84-100), or in the event that the CPI-U Index Rate is substantially changed, re-named, or abandoned by the United States Government, then in its place the Executive Director may substitute another index rate established by the United States Government that most closely resembles the CPI-U Index Rate.

Section 2.05 Calculation of Pro Rata Cost-Recovery.

The *pro rata* cost-recovery for each subsequent Benefiting Development in the Cost-Recovery District (beginning with the Triggering Development itself) can be understood intuitively as the share of the Total Cost of the sanitary sewer upgrade, based on each development's demand on the upgraded sewer capacity.

Specifically, this calculation consists of the following three factors:

- a) the calculated Additional Average Daily Flow *Demand* from each individual development:

divided by:
- b) the Total Required Additional Average Daily Flow *Capacity* that the sanitary sewer upgrade is required to add to the sanitary sewer basin;

multiplied by the dollar figure of:
- c) the Total *Cost* of the Sanitary Sewer Upgrade.

i.e. *Pro Rata* Cost Recovery = (Project's Additional Average Daily Flow / Total Required Additional Average Daily Flow Capacity) x Total Cost of Sanitary Sewer Upgrade

Section 2.06 Initiation, Establishment, Commencement, Duration.

The initiation of consideration for a Cost-Recovery District is made by formal application by the Triggering Developer. The form, material, and process of application is specified by DOTI, must be completed on behalf of the Triggering Developer by a Professional

Engineer licensed in the State of Colorado, and establishes the necessary justification and details of the proposed Cost-Recovery District. The Cost-Recovery District is considered established when the applicant receives a letter to that effect from the Executive Director of DOTI. Upon receipt of the letter, the Triggering Development has one year to construct the sanitary upgrade, although this deadline may be extended at the sole discretion of DOTI. While this process establishes the Cost-Recovery District, no cost-recovery will be assessed from Benefitting Developments until after inspection and acceptance of the upgraded sanitary sewer infrastructure by the City.

For a period of one year following the adoption of these Rules & Regulations, a Cost-Recovery District may be requested by a Triggering Development and can be approved, at the City's discretion, after the commencement of construction of a previously required sewer upgrade, with the proviso that no Cost-Recovery District will be established for a sanitary sewer upgrade that has already been inspected and accepted by the City. In all other cases, a Cost-Recovery District will be considered only for a sanitary sewer upgrade that is under review and not yet been approved or permitted for construction.

Upon approval to establish a Cost-Recovery District, the Triggering Developer proceeds with the SSPR process to a) identify the properties in the sanitary sewer basin that will be subject to appropriate cost-recovery; b) the necessary increase in flow capacity required for the sanitary sewer upgrade to provide for the basin; c) the specific pipe sizes and limits of construction for the required sanitary sewer upgrade; and d) and an estimated cost for such construction.

Once these values necessary for the establishment of the Cost-Recovery District are identified and approved, the City may notify and may hold a public meeting for the owners of all properties within the Cost-Recovery District. Also at the time of establishment, the Triggering Development must provide all information required by the City to make any and all future remittances to the Triggering Development as may be required hereunder. Thereafter, for the duration of the District, it shall be the responsibility of the Triggering Development to update and keep current in writing the name of the entity and banking information for payment of any and all future remittances. The City will rely solely on the information provided by the Triggering Development with regard to the manner making any remittances and in no event shall the City be obligated to verify, confirm, or otherwise investigate the instructions provided and/or updated by the Triggering Development. If the City is unable to make remittances hereunder based upon the information provided by the Triggering Development, the City may return such amounts to the Benefitting Development or take other action with regard to the disposition of such funds as the City deems appropriate, including, without limitation, dissolving the Cost Recovery District. Finally, upon formal establishment of the Cost-Recovery District by the City, the owners of all properties included within the Cost-Recovery District shall be notified, with all appropriate details, and are enjoined to include such information in all disclosures to potential buyers, heirs, and assigns. The obligations associated with inclusion in a Cost-Recovery District shall be deemed to constitute a covenant running with title to the land. Such obligations shall be triggered by filing an application for an SSPR, SUDP, or other permit or development

approval from or with the City with respect to the Benefiting Development and such obligations shall constitute an express condition to the issuance by the City of any such SSPR, SUDP, permit, or other approval.

The commencement of the non-refundable collection of cost-recovery from subsequent Benefiting Developments, however, does not take place until the upgraded sanitary sewer is constructed, inspected, as-built drawings approved, and the upgraded facility accepted by the City. Further, the official Total Cost of the sanitary sewer upgrade, upon which each Benefiting Development's *pro rata* cost is based, is not finalized until after construction is complete and a verification of actual costs has been submitted and approved by City staff. Nonetheless, subsequent Benefiting Developments that embark on the permitting process after the establishment of the Cost-Recovery District, but prior to City acceptance of the upgraded sanitary sewer, are subject to cost-recovery, and such will be noted on their permits and approvals and collected in due time, but no later than Certificate of Occupancy.

The Cost-Recovery District shall persist for 15 years, or until the Maximum Recoverable Cost has been remitted to the entity and bank account designated by the original Triggering Development, whichever comes first. In the event of extenuating circumstances, and only by request of the owner of the entity and bank account recipient of cost-recovery, the Executive Director of DOTI, in their sole discretion, may extend the Cost-Recovery District for an additional 10 years, in 5-year increments, to a maximum of 25 years of total potential duration. Also upon request, and only by explicit legal instrument, the owner of the entity and bank account recipient of cost-recovery may designate a new entity and bank account to receive cost-recovery going forward.

In the rare event that a Benefiting Development in the Cost-Recovery District will itself exceed the flow capacity of the upgraded sanitary sewer, this subsequent Triggering Development will be considered for exemption by the City from a *pro rata* share payment to the existing Cost-Recovery District and may apply for creation of a new Cost-Recovery District to cover the cost of their own necessary sanitary sewer upgrade.

In the rare event that subsequent development projects not included in the Cost-Recovery District are nonetheless approved by DOTI to transfer sanitary sewer flows into the upgraded sanitary sewer basin, such projects may (at the discretion of the Executive Director) be required to pay their *pro rata* share of cost-recovery, based on the new demand they are placing on the upgraded sanitary sewer infrastructure. In the same vein, subsequent development projects included within the Cost-Recovery District but approved by DOTI to transfer their sanitary sewer flows out of the upgraded sanitary sewer basin, may not be required to pay cost-recovery, based on the absence of new demand being placed on the upgraded sewer system.

Section 2.07 Cost-Recovery Collection, Management, and Remittance.

Properties within a Cost-Recovery District are identified in the City's GIS and plan review and permitting system such that a Benefiting Development on any of these properties is flagged for cost-recovery upon initiation of the SDP process, or upon inquiry. The calculation of the *pro rata* cost-recovery, per the terms established by the Cost-Recovery District, is determined through the SUDP process, using the standard calculations and methodology in practice by the City at that time for determining the design average flow from a development project. This cost-recovery calculation will be adjusted for the inflation of construction costs over time, using, at the City's sole discretion, any of several published and widely accepted calculations of such construction inflation. The cost-recovery assessment is collected by the City at issuance of the SUDP for the Benefiting Development. In the case of projects seeking SUDP approval after establishment of the Cost-Recovery District but prior to the inspection and acceptance of the sewer for which a Cost-Recovery District is created, a note shall be placed on the project's SUDP and any other appropriate permits and approvals, and appropriate cost-recovery will be assessed in due time. Specifically, only upon completion and acceptance by the City of the sanitary sewer upgrade and the final determination of Total Cost, Maximum Recoverable Cost, and *pro rata* cost will cost-recovery be assessed, but no later than Certificate of Occupancy.

Receipt of cost-recovery, management and record-keeping for the Cost-Recovery District, remittances of cost-recovery to the entity and bank account established by the original Triggering Development, and managing any formal legal transfer of such entity and bank account, are the responsibility of the City. The City shall analyze and estimate the real administrative costs and overhead associated with these tasks and establish the appropriate and reasonable fee to be charged Benefiting Developments with their cost-recovery payment. Prior to such analysis, this appropriate and reasonable administrative overhead is assumed not to exceed 10% of each cost-recovery payment. Such charges only cover the City's overhead for management of the Cost-Recovery District and are not counted towards satisfaction of the Maximum Recoverable Cost.

The City will, on no less than an annual basis, remit any and all cost-recovery collected to the entity and bank account legally designated as recipient of cost-recovery. Such remittances will continue until the sum of those remittances equals the Maximum Recoverable Cost, as adjusted by the CPI-U Index Rate, if applicable, or the expiration of the Cost-Recovery District, whichever comes first. Upon expiration of the Cost-Recovery District or the full satisfaction of the Maximum Recoverable Cost, the City shall dissolve the Cost-Recovery District. Should the Cost-Recovery District expire before full satisfaction of the Maximum Recoverable Cost, neither the City nor Benefiting Developments are in any way responsible for the difference.

With respect to any and all established Cost-Recovery Districts, the City will make reasonable efforts to collect and remit to the Triggering Development cost-recovery shares which may become due and payable hereunder; provided that, notwithstanding,

any term or provision set forth herein to the contrary, in no event shall the City guarantee or otherwise become liable for any cost-recovery payments due and payable by or with respect to any Benefitting Developments even if such failure to collect is due to the actual or claimed negligence of the City. Upon acceptance of the Cost-Recovery District, the Triggering Development shall be deemed to have waived and relinquished any and all claims against the City with respect to the assessment, collection, or remittance of future cost-recovery shares.