

RESOLUTION NO. 2008- 29

POTTAWATOMIE COUNTY, KANSAS

A RESOLUTION ESTABLISHING A SPECIAL MAINTENANCE TAX AND A SCHEDULE OF CHARGES FOR USERS OF A SEWER SYSTEM SERVING CERTAIN SEWER IMPROVEMENT DISTRICTS IN THE BROOK RIDGE SUBDIVISION IN POTTAWATOMIE COUNTY, KANSAS.

WHEREAS, the Board of County Commissioners of Pottawatomie County, Kansas, has heretofore created a certain lateral sanitary sewer district (the “Lateral Sanitary Sewer District”) and a certain main sewer district (the “Main Sewer District;” the Lateral Sewer District and the Main Sewer District collectively, the “Districts”) within the Brook Ridge Subdivision within the County pursuant to its Resolution No. 2007-28 and No. 2007-30, respectively, and both being dated March 12, 2007, all pursuant to K.S.A. 19-27a01 *et seq.*

WHEREAS, the County has heretofore on April 3, 2006, entered into an Interlocal Cooperation Agreement with the City of Louisville, Kansas, pursuant to K.S.A. 12-2901 *et seq.* for the express purpose of permitting the County to connect the County’s sanitary sewer system serving the sewer districts created, constructed and operating pursuant to the County’s Resolutions No. 2007-28 and No. 2007-30, to serve the individual lots, parcels and pieces of real property within said Districts and to permit the transportation of sewage generated by and from the Districts and the processing of sewage collected therefrom through sewer lines and by the sewage treatment system all owned, operated and maintained by the City; a copy of said Agreement being on file in the office of the County Clerk.

WHEREAS, pursuant to K.S.A. 19-27a01 *et seq.* (the “Act”), more particularly K.S.A. 19-27a09, the County is authorized to levy annually a special maintenance tax for the purpose of creating a maintenance fund to be used for the purpose of maintaining and keeping in repair sewer improvements in a sewer district created pursuant to the Act, and it is further authorized pursuant to the Act to establish a schedule of charges to be collected from individuals, cities, townships, sewer districts or other municipalities for use of such a district’s sewer facilities; and

WHEREAS, the Act further provides that any special maintenance tax or user charge shall become a lien upon the property against which the levy or service charge is made from the date the levy or sewer service charge becomes due; and

WHEREAS, the Board of County Commissioners has determined that it is necessary and in the best interest of the County to provide for a special maintenance tax to be assessed against the lots in the Districts and a schedule of user charges to be charged Users of the Sewer System in accordance with the Act and the Agreement.

NOW THEREFORE, IT IS RESOLVED BY THE GOVERNING BODY OF POTTAWATOMIE COUNTY, KANSAS, AS FOLLOWS:

**ARTICLE I
PURPOSE**

Section 1.01. Purpose. The purpose of this Resolution is to establish pursuant to the Act (1) a schedule of charges to be collected from Users for use of the Sewer System in accordance with the Act and the Agreement; and, (2) to authorize and levy annually a special maintenance tax for the purpose of creating a maintenance fund to be used for maintaining and keeping in repair sewer improvements in the Districts subsequent to the adoption and publication of this Resolution, and that said schedule of charges and special maintenance tax bear for each lot in the Districts and each User of the Sewer System an appropriate and proportionate share of the costs incurred and to be incurred by the County to transport and process the sewage generated by and from the Districts through use of the Sewer System.

Section 1.02. Annual Review. The schedule of charges and special maintenance tax herein described and authorized shall be reviewed at least annually by the Board to ensure that sufficient monies are collected to provide the necessary funds with which to pay the Districts' required capital improvements (exclusive of the sewer improvements for the Districts for which special assessments have heretofore been made and levied or for sewer improvements which may hereafter be made for sewer districts which have not been created as of the date of this Resolution) and necessary operation and maintenance expenses. The schedule of charges and special maintenance tax herein described and authorized may be reviewed at any time considered by the Board necessary to conform to those provisions herein pertaining to charges and fees established by and collected for the City as authorized, defined and controlled by the Agreement.

ARTICLE II DEFINITIONS

Section 2.01. Definitions of Words and Terms. In addition to words and terms defined elsewhere herein, the following words and terms as used in this Resolution shall have the following meanings:

“Act” shall mean collectively the Constitution and Statutes of the State of Kansas, K.S.A. 19-27a01 *et seq.*, specifically including K.S.A. 19-27a09, all as amended and supplemented.

“Agreement” shall mean that certain Interlocal Cooperation Agreement entered into between the City and the County dated April 3, 2006.

“Board” shall mean the Board of County Commissioners of the County.

“City” shall mean the City of Louisville, Pottawatomie County, Kansas.

“Connection Charge” shall mean the amount charged by the County to connect separate lots within the Districts to the Sewer System or any part thereof all as authorized in **Section 3.01a** of this Resolution.

“County” shall mean Pottawatomie County, Kansas.

“County Clerk” shall mean the County Clerk of the County.

“Districts” shall mean collectively the Lateral Sewer District and Main Sewer District.

“Individual” and **“Individuals”** shall mean for the purposes of this Resolution shall have the same meaning as the definition of “person” provided at K.S.A. 19-27a01(h) and the plural thereof.

“Lateral Sewer District” shall mean that certain sanitary lateral sewer district created pursuant to Pottawatomie County, Kansas, Resolutions No. 2007-28, being dated March 12, 2007.

“Living Unit” shall mean a building (not a vehicle) or a portion thereof which:

a. provides complete living facilities for one family consisting of three or more rooms arranged for the use by one or more individuals living together as a single housekeeping unit, with separate rooms for (1) cooking, (2) living/sleeping, and (3) sanitary/bathing facilities; or

b. is designed for one person and which comprises two rooms or more with (1) a living/sleeping area partitioned from the cooking area, and (2) sanitary/bathing facilities.

“Main Sewer District” shall mean that certain sanitary main sewer district created pursuant to Pottawatomie County, Kansas, Resolutions No. 2007-30, being dated March 12, 2007.

“**Mixed Use Facility**” shall mean a building (not a vehicle) which is or may be used as a Living Unit and as a business activity

“**Monthly User Charge**” shall mean the amount charged by the County to use the Sewer System or any part thereof authorized in **Article IV** of this Resolution

“**Resolution**” shall mean this Resolution No. 2008-29, dated June 9, 2008.

“**Sewer System**” shall mean collectively all sewer lines and apparatus acquired, installed, maintained and operated by the County to serve the lots lying within the Districts to include such collection, transportation and treatment facilities accessed by the County pursuant to the Agreement.

“**Special Maintenance Tax**” shall mean that certain special maintenance tax pursuant to K.S.A. 19-27a09 described and authorized at **Article V** of this Resolution.

“**User**” shall mean an Individual owning a lot in the Districts which is connected to and using the Sewer System.

ARTICLE III CHARGES FOR CONNECTION TO THE SEWER SYSTEM

Section 3.01. User Charges. Subsequent to the adoption and publication of this Resolution in the official newspaper of the County, a “Connection Charge” shall be imposed upon each Individual who desires to connect a Living Unit or Mixed Use Facility to the Sewer System, which charge shall be due, owing and payable to the County upon submission to the County of the application requesting connection to the Sewer System and which shall consist of both of the following components:

a. A \$1,000 connection charge shall be imposed by the County for such connection to the Sewer System and which shall be paid prior to the issuance of a County Building Permit and the making of any such connection; and,

b. A \$1,000 connection charge shall be imposed by the City for such connection to the Sewer System, which fee is determined by the City by ordinance.

Section 3.02. Connection Charge Exemption. A Connection Charge shall not be charged for a new structure which replaces a structure previously connected to the Sewer System.

ARTICLE IV CHARGES FOR USE OF THE SEWER SYSTEM

Section 4.01. Establishment of Monthly User Charges. A Monthly User Charge in the aggregate amount of \$ 42.19 is hereby authorized and shall be imposed upon a Living Unit or Mixed Use Facility that connects to a water service and shall consist of both of the following two components:

a. The City component of the Monthly User Charge shall be \$10.00 which is established by City Ordinance and charged by the City to its residents using that portion of the Sewer System owned, operated and maintained by the City and which charge is to be imposed and collected from Users of the Sewer System by the County under the Agreement; and

b. The County component of the Monthly User Charge shall be \$32.19 per Living Unit or Mixed Use Facility to pay among other things administrative costs to provide billing, collection and administration of the charges for the Sewer System and the operation, maintenance and repair thereof, excluding that portion of the Sewer System owned, operated and/or maintained by the City.

Section 4.02. Monthly User Charges for Mixed Use Facilities. A Mixed Use Facility in the Districts for which the County has issued a Home Occupation Permit shall have its impact upon the Sewer System reviewed by the County and the County retains the right to determine if an adjustment to the Monthly User Charge for the Mixed Use Facility is warranted based upon that review.

Section 4.03. Failure to Pay Monthly User Charge. The failure to pay when due the Monthly User Charge authorized in **Article IV** of this Resolution shall cause the amount unpaid to become a lien upon the property against which the Monthly User Charge has been made effective and due and owing.

Section 4.04. Proration of the Monthly User Charge. The County may prorate an applicable Monthly User Charge between two Users if ownership of a Living Unit or Mixed Use Facility changes on a day other than the first day of a month for which a Monthly User Charge applies.

Section 4.05. Change in Zoning and Review of Monthly User Charges. All lots in the Districts as of the date of this Resolution are zoned “R1.” The Monthly User Charges herein authorized may be reviewed and amended to address any requested or authorized changes in zoning category for any of the lots lying within the Districts as in the judgment of the Board is deemed necessary and/or appropriate.

ARTICLE V SPECIAL MAINTENANCE TAX

Section 5.01. The County is hereby authorized pursuant to K.S.A. 19-27a09 to levy an annual “Special Maintenance Tax” for the purpose of creating a maintenance fund to be used for the purpose of maintaining and keeping in repair the Sewer System, expressly excluding there from that portion thereof owned, operated and maintained by the City, and said Special Maintenance Tax in the sum of \$43.32 per lot is hereby levied and assessed against all lots in the Pottawatomie County Force Main Sanitary Sewer District – Brookridge Subdivision created by the County’s Resolution No. 2007-30.

Section 5.02. The County Clerk shall levy, in the same manner and at the same time as other taxes are certified, the Special Maintenance Tax described and authorized at Section 5.01 of this Resolution; and such Special Maintenance Tax shall be placed on the tax rolls and collected as other taxes are collected.

Section 5.03. Use of Special Maintenance Taxes Collected. All Special Maintenance Taxes collected pursuant to this Resolution shall be deposited into the Brook Ridge Sewer Maintenance Fund and shall be used for the purposes authorized in the Act.

Section 5.04. Failure to Pay Special Maintenance Tax. The failure to pay when due the Special Maintenance Tax authorized in **Article V** of this Resolution shall cause the amount unpaid to become a lien upon the property against which the Special Maintenance Tax has been made effective and due and owing.

Section 5.05. Change in Zoning and Review of Special Maintenance Tax. All lots in the Districts as of the date of this Resolution are zoned “R1.” The Special Maintenance Tax herein authorized may be reviewed and amended to address any requested or authorized changes in zoning category for any of the lots lying within the Districts as in the judgment of the Board is deemed necessary and/or appropriate.

ARTICLE VI ESTABLISHMENT OF FUNDS AND ACCOUNTS AND USE OF CHARGES AND SPECIAL MAINTENANCE TAX

Section 6.01. Establishment of Funds and Accounts. There shall be created within the treasury of the County the following funds and accounts:

a. The Brook Ridge Sewer Agency Fund No. 703 (the “Brook Ridge Sewer Agency Fund”) for the purpose of accounting for the Monthly User Charges and the Connection Charges collected by the County on behalf of the City and remitting those payments to the City;

b. the Brook Ridge Sewer Reserve Fund No. 308 (the “Brook Ridge Sewer Reserve Fund”) for the purpose of maintaining, repairing and making necessary improvements to the force main line and pumping station serving the Districts and doing all other things authorized under the Act; and

c. the Brook Ridge Sewer Operations Fund No. 302 (the “Brook Ridge Sewer Operations Fund”) for the purpose of deferring the costs of administering, billing and collecting Monthly User Charges and making such additional expenditures as the County determines necessary for the operation, maintenance and repair of the Sewer System expressly excluding that portion thereof owned, operated and maintained by the City.

d. the Brook Ridge Sewer Maintenance Fund No. 304 (the “Brook Ridge Sewer Maintenance Fund”) for the purpose of maintaining and keeping in repair the Sewer System expressly excluding that portion therefrom which is owned, operated and maintained by the City.

Section 6.02. Use of Connection Charge Collected.

a. The County’s portion of the Connection Charges collected under this Resolution shall be deposited as follows: fifty dollars (\$50) of said charges shall be deposited in the County’s General Fund as payment of the fee for the Environmental Health Permit issued by the County for each connection and the remainder of the County’s portion of the Connection Charge collected shall be deposited into the Brook Ridge Sewer Reserve Fund for the purpose of maintaining, repairing, and making necessary improvements to the force main line and pumping station serving the Districts.

b. That portion of the Connection Charge collected by the County on behalf of the City shall be deposited into the Brook Ridge Sewer Agency Fund and shall be paid to the City after such monies are credited to said account by the County’s bank.

Section 6.03. Use of Monthly User Charges Collected.

a. That portion of the Monthly User Charge collected by the County representing the City’s total monthly user fees authorized under the Agreement shall be deposited into the Brook Ridge Sewer Agency Fund and shall be remitted to the City on the twenty-fifth (25th) day of the month (or the next succeeding business day) after receipt by the County.

b. That portion of the Monthly User Charge collected by the County representing the County’s total monthly user fees shall be utilized first to defer the costs of administering the billing and collection of such fees, together with such expenditures as the County determines necessary for the maintenance and repair of the Sewer System, expressly excluding therefrom that portion thereof owned, operated and maintained by the City. The County’s portion of the Monthly User Charge so collected shall be deposited into the Brook Ridge Sewer Operations Fund. Any excess funds not used may be paid to the Brook Ridge Sewer Reserve Fund as authorized in the Agreement for the maintenance, repair, and improvements of the force main and pumping station serving the Districts.

**ARTICLE VII
ADMINISTRATION OF APPLICATIONS FOR
CONNECTION TO SEWER SYSTEM**

Section 7.01. Denial of Application for Unpaid Obligations. No Individual requesting sewer service in the Districts from the Sewer System shall be authorized a connection to the Sewer System if he, she and/or it has or have outstanding unpaid obligations to the County which have remained unpaid in excess of sixty (60) days, which obligations shall include, but not be limited to, any delinquent taxes, sewer service and/or water service accounts owed to the County.

Section 7.02. Impact Analysis Required in Certain Instances. The County or its representative may require any applicant for connection to the Sewer System to perform an independent analysis of the impact the proposed new structure will have on the Sewer System (for example, capacity, nature of discharge and/or noncompliance with Federal or state laws or regulations of the County). If the County determines, based upon the impact analysis, that the proposed or current use of the proposed structure requiring the analysis has a significant impact upon the Sewer System, the County may (i) require an applicant for connection to the Sewer System to install and maintain a pre-treatment system and/or pay an increased connection and/or monthly usage fee based upon the anticipated added impact to the Sewer System or (2) other impose additional requirements upon the applicant it deems necessary to minimize the impact to the Sewer System. An applicant's failure to comply with the provisions of this **Section 7.02** shall constitute grounds for the County's refusal to allow connection to the Sewer System.

ARTICLE VIII CHANGE IN USER CHARGES FOR SEWER SYSTEM

Section 8.01. Districts Annexation Policy. Any contiguous or non-contiguous property owners may petition the County for annexation of their lots into the Districts.

Section 8.02. Petitioner Request: A formal written petition shall be submitted by a petitioner to the Board requesting annexation into the Districts which shall be signed by not less than fifty-one percent (51%) of the land owners to be served. The petition shall be filed with the County Clerk. The petitioner must provide with the petition all of the following:

- a. A correct legal description of all of the real property to be annexed;
- b. the number and classification of anticipated buildings;
- c. the unit use and requested connections and an engineering feasibility study to determine the probable cost to serve the area proposed for annexation;
- d. an impact analysis for the requested services;
- e. a signed letter of consent from the City of Louisville for the proposed annexation; and
- f. a written letter of approval for the addition of the proposed annexation area to the Districts from the Kansas Department of Health and Environment.

Section 8.03. All of the County's costs for an annexation, including without limitation the preparation of all documents, notices of hearing if required, and the undertaking of any studies, shall be paid by the petitioner(s). The petitioner(s) shall deposit at the time of the submission of the request with the County the sum of \$2,000 to pay the County's cost for processing, reviewing and acting upon the request for annexation. If an established subdivision is requested for annexation into the Districts, the County will require an inspection of the existing sewer infrastructure to be annexed to determine the subdivision's conformance to applicable County standards. If in the judgment of the County it is determined that the sewer infrastructure of the subdivision requested to be annexed has material deficiencies, the County may require the property owners in the subdivision to be annexed to pay for improvements to the subdivision's sewer system deemed necessary and appropriate prior to connection to

the Sewer System. The property owners in the subdivision to be annexed shall be subject to all of the provisions of his Resolution.

**ARTICLE IX
CHANGE IN USER CHARGES
FOR SEWER SYSTEM**

Section 9.01. User Charge Variances. Any Individual may request a variance from the established User Charges by making a payment in full of the established User Charge then due and owing the County and filing a written variance request with the County Clerk stating the specific justification for the variance and providing information which demonstrates that the User Charge, as established by this Resolution or any amendment thereto, should not be applied to the Individual requesting the variance. Such requests shall be reviewed and acted upon by the Board within thirty (30) days of the receipt of the request by the County Clerk.

Section 9.02. Appeal and Review. Any Individual aggrieved by the establishment of a User Charge under the provisions of this Resolution may file a written protest of his or her User Charge with the County Clerk within ten (10) days after mailing of the statement for the User Charge. The Board shall set a hearing date within thirty (30) days from the date it receives the protest in the office of the County Clerk. The Individual requesting review shall pay to the County the full amount of the User Charge then due and shall have the burden of showing to the satisfaction of the Board why the User Charge is incorrect, unjust or unreasonable and should be adjusted. If an Individual prevails in his or her protest, the Board shall have thirty (30) days to refund any amounts paid to the County by such Individual.

**ARTICLE X
BILLING**

Section 10.01. Monthly Billing. All Monthly User Charges for use of the Sewer System shall be billed on a monthly basis on the first business day of each month following use unless otherwise determined by formal written agreement approved by the County. New Users will be billed the first business day of the month following their connection to water service. All monthly billings shall be sent to the property owner of record for the structure connected to the Sewer System unless the property owner submits a written request for an alternate designated recipient on a form provided by the County and approved by the County. If an account becomes more than sixty (60) days delinquent, the billing will revert permanently to the property owner.

Section 10.02. Delinquent Payments. Payments of Monthly User Charges to the County are due on the twenty-fifth (25th) day of each month unless otherwise agreed upon in writing and approved by the County. Payments not received by the twenty-fifth (25th) day of the month shall be assessed a late fee of ten percent (10%) of all past due amounts per month. The County may pursue all remedies at law and equity available to it under Kansas law and the collection of delinquent payments as permitted by applicable Kansas statutes.

Section 10.03. Billing Adjustments (Request For).

a. A User may request the County's consideration for adjustment to a monthly billing when any of the following applies:

- (1) demolition of the connected structure and water service to the structure is no longer provided;
- (2) the structure becomes uninhabitable and water service is no longer provided;
or,
- (3) when there is a reduction in the number of units in a structure.

b. It is the responsibility of the User to keep the County informed of any changes in the User's specific status once an adjustment has been granted. Failure to inform the County once sewer service has resumed or an increase is made in the number of Living Units in a structure may result in an additional assessment for past due billings and penalties by the County up to an amount that would have been due if the adjustment had not been granted.

ARTICLE XI COUNTY RESPONSIBILITIES

Section 11.01. Current Subdivisions. The County shall be responsible for the maintenance, inspection and repair of all Sewer System sewer collectors, manholes, pumps and all other components of the Sewer System dedicated to the County on public property, public rights-of way and easements, excluding those owned, operated and maintained by the City,.

Section 11.02. New Subdivisions. The County shall maintain all sewer force mains and sewer collectors on public property and utility easements in subdivisions following inspection of the sewer infrastructure for compliance with County standards and annexation to the districts. Such inspection cost shall be paid by the new subdivision.

ARTICLE XII USER RESPONSIBILITIES

Section 12.01. Easements. The individual User is responsible for acquiring, creating and transferring to the County all utility easements for public use which are necessary for the User to connect to and use the Sewer System.

Section 12.02. Charges and Permits. A property owner(s) requesting sewer service by the Districts shall complete an application for sewer service obtained either at the County Zoning Office or Administration Office. Once a property owner's(s') application has been approved for service by the County, the property owner(s) shall be responsible for acquiring all permits and paying all fees and charges as established in this resolution. The owner is responsible for notifying the County of all changes in his or her or its billing address. It is the property owner's(s') responsibility to notify the County in writing of a change in ownership for the applied service.

Section 12.03. Internal Lines. The User is responsible for installing and maintaining all service connections to a sewer collector. Any blockage in those service connections between the structure and the connection to the sewer collector shall be the responsibility of the User.

Section 12.04. Grinder Pumps. The acquisition, installation, maintenance and operation of all grinder pumps owned, operated and/or maintained by a User and connected to the Sewer System, when permitted and approved in writing by the County, shall be the sole responsibility at all times of the User.

ARTICLE XIII MISCELLANEOUS

Section 13.01. Further Authority. The Chairperson of the Board, County Clerk, County Engineer and other County officials are authorized to execute any and all documents and take such actions, as they deem necessary or advisable in order to carry out and perform the purposes of the Resolution.

Section 13.02 Amendment to Prior Existing Resolutions. All provisions of Resolutions of the County passed and adopted prior to the effective date of this Resolution which are inconsistent with the provisions of this Resolution are hereby deemed amended so that such prior existing inconsistent provisions are hereby conformed to this Resolution.

Section 13.03 Effective Date. This Resolution shall become effective from and after its adoption by the Board and its publication one time in a newspaper of general circulation in the County.