

ORANGE COUNTY LEGISLATURE

Committees: Rules, Enactments and Intergovernmental Relations; Physical Services

Sponsors:

Co-Sponsors:

Agenda No.

LOCAL LAW INTRODUCTORY NO. 10 OF 2020

A LOCAL LAW ESTABLISHING A LIMITED RESERVATION OF TREATMENT CAPACITY AT THE HARRIMAN WASTEWATER TREATMENT PLANT.

Be it enacted by the County Legislature of the County of Orange, State of New York, as follows:

WHEREAS, Orange County Sewer District No. 1 ("OCSD No.1") was established by, and is operated by, the Legislature for the County of Orange¹; and

WHEREAS, OCSD No.1's primary source for wastewater treatment is the Harriman Wastewater Treatment Plant ("Harriman WWTP"), which is authorized to treat up to six (6) million gallons a day ("gpd")²; and

WHEREAS, the Commissioner of the Orange County Department of Public Works, Administrator for OCSD No. 1 reports that available treatment capacity at the Harriman WWTP for development within OCSD No.1 is currently below 700,000 gpd; and

WHEREAS, presently, OCSD No.1's secondary source for wastewater treatment is the Kiryas Joel Wastewater Treatment Plant, which is authorized to treat up to 970,000 gpd³; and

WHEREAS, Commissioner of the Orange County Department of Public Works, Administrator for OCSD No. 1, reports that the Kiryas Joel Wastewater Treatment Plant is presently operating at about 560,000 gpd, but has no available capacity due to the need for repairs; and

WHEREAS, the draft Facility Plan prepared at the direction of the Orange County Legislature to evaluate increasing treatment capacity for OCSD No.1 estimates that such additional capacity will not be available for years⁴; and

WHEREAS, it is expected that over 2,500 residences will seek to connect to the County sewer system within the next year, thereby requiring an estimated 1,000,000 gpd of available treatment capacity⁵; and

¹ Orange County Legislature, Resolution No. 38 of 1970, An Order Establishing a County Sewer District in the County of Orange, New York, to be Known as County Sewer District No. 1 in Said County.

² See, New York State Pollutant Discharge Elimination System (SPDES) Permit #NY0027901.

³ See, New York State Pollutant Discharge Elimination System (SPDES) Permit #NY0250520.

⁴ See, Facility Plan to Increase the Wastewater Capacity of Orange County Sewer District No. 1 Orange County New York, prepared by Delaware Engineering, D.P.C. Albany, New York dated August 2016 Revised September 2019.

⁵ As reported by the O.C. Commissioner of Public Works based upon municipally approved subdivisions within OCSD #1.

WHEREAS, developers within OCSD No.1 are responsible for making necessary improvements to existing infrastructure required due to that developer's project; and

WHEREAS, given the capacity remaining at the Harriman WWTP, and the existing legal requirements that require developers to pay for infrastructure associated with new development, the law in its present form may have the unintended consequence of discouraging developers from making capital improvements due to fear that they may not be able to utilize the capital improvements they make; and

WHEREAS, the Orange County Legislature seeks to address such circumstances as it proceeds with the process of expanding the treatment capacity for OCSD No.1.

Section 1. Purpose.

The purpose of this Local Law is to provide a mechanism to encourage the continuation of development within OCSD No.1 until such time as the treatment capacity available to ratepayers within OCSD No.1 is expanded beyond the current six (6) million gpd available at the Harriman WWTP. This Local Law provides a means by which Developers that construct and/or install a Sanitary Sewer Main in OCSD No. 1 may utilize such improvements by allowing a non-guaranteed limited reservation of treatment capacity at the Harriman WWTP for a specifically identified Land Development Project.⁶

Section 2. Definitions.

- A. Developer: A landowner, an authorized agent of a landowner, or tenant of a landowner acting with the authority of such landowner, seeking to construct a Land Development Project.
- B. Land Development Project: The improvement, conversion of use or expansion of an existing use of one (1) lot, or two (2) or more contiguous lots, requiring the issuance of a Main Line Sanitary Sewer Construction Permit by Orange County Division of Environmental Facilities & Services (EF&S), for the construction, reconstruction, enlargement, replacement and/or installation of a Sanitary Sewer Main.
- C. Sanitary Sewer Main: An interceptor or trunk sewer for the conveyance of wastewater to the Harriman WWTP, including all appurtenances related thereto.
- D. Dependent Project: Any project (including an improvement, conversion of use or expansion of existing use) the wastewater from which will be conveyed to the Harriman WWTP, or other POTW, by passing through a Sanitary Sewer Main to be constructed, reconstructed, enlarged, replaced and/or installed by a Developer that has entered into a Reservation of Treatment Capacity Agreement with the County of Orange and which, but for the Sanitary Sewer Main's construction, reconstruction, enlargement, replacement and/or installation necessitated by the Land Development Project, could not connect to the County sewer system due to a lack of hydraulic conveyance capacity, as determined by the Administrative Head of OCSD No. 1.

⁶ This Local Law does not apply to development within the MOODNA communities and shall not affect their wastewater treatment capacity allocation.

Section 3. Grant of Authority; Application; Agreement.

- A. The Administrative Head of OCSD No.1 is hereby authorized to enter into Reservation of Treatment Capacity Agreements, allowing for a limited reservation of treatment capacity at the Harriman WWTP in favor of a specifically identified Land Development Project. **Such Reservation of Treatment Capacity Agreements shall not guarantee, and shall not constitute a guarantee of, the existence or availability of treatment capacity at the Harriman WWTP for the Land Development Project identified in the agreement. The Administrative Head of OCSD No.1 is not authorized to enter into any agreement guaranteeing such treatment capacity.**
- B. The limited reservation of treatment capacity for a Land Development Project shall be permitted when:
- i. A Sanitary Sewer Main is to be constructed, reconstructed, enlarged, replaced and/or installed as a requirement of the Land Development Project, as determined by the Administrative Head;
 - ii. The Administrative Head of OCSD No.1, or his/her designee (hereinafter "Administrative Head") has determined and required that such Sanitary Sewer Main is to be sized in accordance with sanitary engineering standards to meet the increased hydraulic conveyance capacity needs necessitated by the Land Development Project; and
 - iii. This determination and requirement by the Administrative Head is based on the hydraulic conveyance capacity needs of reasonably anticipated further development within OCSD No.1.
- C. A Developer seeking a reservation of treatment capacity for a Land Development Project shall complete a Reservation of Treatment Capacity Application ("RTC Application") (in the form as approved by the County Attorney), which shall be submitted to the Orange County Division of EF&S.
- D. The RTC Application shall:
- i. be in a form approved by the Administrative Head;
 - ii. specifically identify and describe the Land Development Project for which a reservation of treatment capacity is being sought;
 - iii. identify the amount of treatment capacity, as computed by an engineer licensed to practice in the State of New York, sought to be reserved for the Land Development Project;
 - iv. provide the methodology utilized by such engineer to reach that amount of treatment capacity sought to be reserved for the Land Development Project; and
 - v. have annexed thereto such other information and/or documentation as required by the RTC Application or as may be requested by the Administrative Head.
- E. The RTC Application shall be initially reviewed by the Administrative Head to ensure all required information and/or documentation has been provided. A Developer submitting an RTC Application shall provide all necessary information and/or documentation as may be reasonably requested by the Administrative Head, whether such request is made before or after submission of the RTC Application.

- F. Upon completion of initial review, the RTC Application shall be evaluated by the Administrative Head to determine (a) if a limited reservation of treatment capacity at the Harriman WWTP is warranted for the Land Development Project identified in the RTC Application, and (b) if determined to be warranted, the amount of treatment capacity to be reserved at the Harriman WWTP for the Land Development Project identified in the RTC Application.
- G. If it is determined that reservation of treatment capacity for a Land Development Project is warranted, the Developer shall enter into a Reservation of Treatment Capacity Agreement ("RTC Agreement") within ten (10) business days of receipt of notification from the Administrative Head and presentation to the Developer of such RTC Agreement by the Administrative Head. The RTC Agreement shall specifically identify and describe the Land Development Project for which a reservation of treatment capacity is being sought; identify the amount of treatment capacity to be sought to be reserved at the Harriman WWTP; contain an acknowledgement by the Developer that neither the execution of the RTC Agreement nor this Local Law guarantee the existence or availability of treatment capacity for the Land Development Project; include language requiring the Developer to defend, indemnify and hold harmless the County of Orange and OCSD No.1; and otherwise be in a form approved by the County Attorney for the County of Orange. The RTC Agreement shall require the Land Development Project be developed based on a schedule agreed upon with the Administrative Head taking into account housing demand within the municipality where the housing units are to be, or are being, constructed.
- H. The Administrative Head shall also, in establishing such RTC Agreement and during the term of the RTC Agreement, obtain proof acceptable to him/her that housing units accounted for in such RTC Agreement are being marketed and sold at market rate so as not to enable an inflated sale price as a result of the housing unit being part of a RTC Agreement. To the extent that the Administrative Head determines professional appraisals are necessary to make such determinations, the costs of such appraisals shall be borne by the Developer seeking the RTC Agreement, in a security acceptable to the Administrative Head. Any such appraisals shall be performed by an appraiser licensed by the State of New York, and shall be based on comparable sales in the municipality where the housing units are to be, or are being, constructed. The RTC Agreement shall terminate if it is determined by the Administrative Head of OCSD No.1 that the housing units accounted for in the RTC Agreement are being marketed and/or sold at an inflated price as a result of the housing unit being part of the RTC Agreement.
- I. Following execution of an RTC Agreement by all parties, no Building Lateral Sewer Construction Permit shall be issued by the Orange County Division of EF&S for any Dependent Project of the Land Development Project identified in the fully executed RTC Agreement, if:
- i. OCSD No.1's available treatment capacity at the Harriman WWTP is below the amount of treatment capacity reserved for the Land Development Project identified in the fully executed RTC Agreement; or
 - ii. OCSD No.1's available treatment capacity at the Harriman WWTP will fall below the amount of treatment capacity reserved for the Land Development Project identified in the fully executed RTC Agreement by issuance of the Building Lateral Sewer Construction Permit.
- J. Unless the Administrative Head determines otherwise based upon an engineering analysis of existing circumstances, OCSD No.1's available treatment capacity at the Harriman WWTP shall

be based on a thirty-six (36) month rolling average, as computed by the Administrative Head. Such computation shall include any agreement relating to capacity at the Harriman WWTP, reservations for Building Lateral Sewer Construction Permits issued during the twelve (12) month period prior to such computation, as well as any allocation exceedance.

- K. The term of each RTC Agreement shall be determined by the Administrative Head, taking into account input from the Developer in relation to the number of housing units to be included in the RTC Agreement, the housing market, improvements to be made by the Developer, and the overall goals of requiring such Land Development Project to be built and occupied as expeditiously as possible to fulfill the intent of the reservation of treatment capacity. In no event shall an initial term of an RTC Agreement exceed five (5) years, and in no event shall the Administrative Head authorize more than two (2) extensions of up to one (1) year each, for an RTC Agreement. Such extensions shall be granted provided the Administrative Head determines the Developer is in compliance with the RTC Agreement. The term of an RTC Agreement shall commence on the date the agreement is signed by the Administrative Head on behalf of OCSD No.1. The RTC Agreement shall not, however, be signed until all other required approvals are in place.

Section 4. Utilization and Assignment of Capacity; Recoupment of Costs in Event of Termination of RTC Agreement.

- A. Treatment capacity reserved for an identified Land Development Project shall only be utilized by that Land Development Project, as such Land Development is described and identified in the RTC Agreement.
- B. Treatment capacity reserved for a specifically identified Land Development Project shall not be sold, transferred, conveyed, mortgaged, hypothecated, encumbered, pledged as security, or assigned to any person or entity for any purpose. Any such sale, transfer, conveyance, mortgage, hypothecation, encumbrance, pledge, security interest or assignment shall be null and void ab initio, and shall automatically, and without notice, terminate the corresponding RTC Agreement.
- C. (i) In the event a Land Development Project subject to an RTC Agreement is not fully built out, the Developer may, on a pro-rata basis, recoup the costs of its infrastructure investment that is used by another developer, in the following manner:

The Developer shall, at the time of the final, installed completion of the Sanitary Sewer Main, submit detailed costs and billing records associated with such infrastructure investment to the Administrative Head. Upon the termination of an RTC Agreement without the full project contemplated by the RTC Agreement being connected to the Orange County sewer system, and provided the Administrative Head finds the information supplied on the detailed costs and billing records reasonable, the Administrative Head shall charge an infrastructure investment connection fee to any other developer whose project would utilize the Sanitary Sewer Main that was constructed or reconstructed as part of the terminated RTC Agreement. The infrastructure investment connection fee shall be the total cost of all detailed costs and billing records submitted to the Administrative Head, which the Administrative Head finds to be reasonable and also actually representing costs of the sewer infrastructure improvements which are necessitated by the Land Development Project subject to an RTC Agreement, divided by the total number of units contemplated to benefit from the RTC Agreement multiplied by the

number of units such other developer whose project would utilize the Sanitary Sewer Main that was constructed or reconstructed as part of the terminated RTC Agreement. Nothing herein shall be an obligation of the County to defend or indemnify in any manner the Developer for any amounts such Developer believes the Developer is entitled to under this provision.

(ii) Upon receipt of the infrastructure investment connection fee, provided the Developer has otherwise met all commitments to OCSD No.1 and the County of Orange, the Administrative Head shall cause the pro-rated infrastructure investment connection fee actually paid into the County of Orange or OCSD No. 1 to be paid to the Developer.

(iii) By way of example, if the Sanitary Sewer Main (infrastructure investment) subject to the RTC Agreement is a total of \$100.00, and fifty percent (50%) of the Land Development Project is connected to the Orange County sewer system before termination of the RTC Agreement, and the total units contemplated by the Land Development Project was 100 units, for each unit after the first fifty built (when the RTC Agreement was terminated), another developer applying to connect to the Orange County sewer system that would utilize the Sanitary Sewer Main subject to the RTC Agreement, shall pay OCSD No.1 one dollar (\$1), representing one percent (1%) of the infrastructure investment paid by the Developer and to be actually utilized by the other developer, and the Administrative Head shall, subject to the preceding, cause the same to be paid to the Developer.

(iv) In the event the other developer, or the Developer who entered into the terminated RTC Agreement, dispute the pro-rata costs, as determined by the Administrative Head, of the reasonable costs of the actual infrastructure improvements to be utilized by the other developer and/or the developer's pro-rata share thereof, such developer, or the Developer who entered into the terminated RTC Agreement, may apply to a court of competent jurisdiction for a determination as to the appropriate pro-rata share.

Section 5. Reduction or Cancellation of the Reserved Treatment Capacity.

- A. A Developer may request, in writing directed to the Administrative Head, that the amount of reserved treatment capacity for a Land Development Project set forth in an RTC Agreement and the annual Treatment Capacity Reservation Fee be reduced due to building lateral connections made to the County's sewer system. Such reduction, if approved by the Administrative Head, shall be in proportion to the building lateral connections made to the County's sewer system for the Land Development Project, as determined by the Administrative Head. Such reduction, if approved by the Administrative Head, shall be effective as of the first day of the first month following approval of the written request by the Administrative Head.
- B. A Developer may request, in writing directed to the Administrative Head, that the reserved treatment capacity for a Land Development Project set forth in an RTC Agreement be cancelled. Such cancellation, if approved by the Administrative Head, shall be effective as of the first day of the first month following approval of the written request by the Administrative Head.
- C. If any reduction of the reserved treatment capacity for a Land Development Project set forth in an RTC Agreement is initiated by the Administrative Head, which is hereby authorized, written notice shall be provided to the Developer prior to any such reduction. Such reduction shall be effective, and the corresponding RTC Agreement shall be deemed amended, sixty (60) calendar days after Developer receives written notice of such reduction from the Administrative Head.

The Administrative Head shall prepare a written justification for any such reduction, which shall be provided to Developer with the written notice required by this subsection.

Section 6. Treatment Capacity Reservation Fee.

- A. A Treatment Capacity Reservation Fee shall be imposed by the County of Orange pursuant to this Local Law for the reservation of treatment capacity at the Harriman WWTP under an RTC Agreement.
- B. For the initial term of the RTC Agreement, the Treatment Capacity Reservation Fee imposed by the County (the "initial term") pursuant to this Local Law shall be \$100 per Unit of Use, as determined by the Administrative Head based on his/her review and analysis of the plans and specifications of the Land Development Project identified in the RTC Agreement. The Administrative Head shall utilize the Schedule of Units of Use in the Orange County Sewer Use Law to determine the Treatment Capacity Reservation Fee for the initial term of the RTC Agreement. Thereafter, the Treatment Capacity Reservation Fee shall be equal to the sum of the estimated annual sewer taxes (SW060 and SW061) and the annual sewer rent for the Land Development Project had such been fully constructed and complete.
- C. Within forty-five (45) calendar days of execution of an RTC Agreement, Developer shall pay to the County of Orange in the form directed by the Administrative Head, the Treatment Capacity Reservation Fee. If such initial term Treatment Capacity Reservation Fee is not fully and timely paid, the RTC Agreement shall be deemed null and void unless the Administrative Head shall extend the date for good cause shown.
- D. If any portion of the reserved treatment capacity is reduced or cancelled pursuant to Section 5 hereof, the Treatment Capacity Reservation Fee shall be prorated and (as may be required) repaid to Developer.

Section 7. Effect of Failure to Pay Treatment Capacity Reservation Fee.

- A. For Capacity Reservation Fees other than for the initial term, a late payment fee will be charged for any portion of the Treatment Capacity Reservation Fee that remains unpaid after thirty (30) calendar days from the date such fee is due, in an amount equal to one percent (1%) of the amount of the unpaid Treatment Capacity Reservation Fee. An additional late payment fee equal to one percent (1%) of the unpaid Treatment Capacity Reservation Fee shall be added for each additional thirty (30) calendar days, or any portion of such period, in which any portion of the Treatment Capacity Reservation Fee remains unpaid.
- B. The Orange County Division of EF&S shall not issue a Main Line Construction Permit or a Building Lateral Sewer Construction Permit, and shall not perform a final inspection of building laterals, for a Land Development Project where any portion of the Treatment Capacity Reservation Fee, or any late payment fee provided herein relating to a Treatment Capacity Reservation Fee, remains unpaid.

C. The RTC Agreement shall terminate if any portion of the Treatment Capacity Reservation Fee, be it for the initial term or a subsequent one, or any late payment fee as provided herein remains unpaid for a period of 180 calendar days after the same fee is due.

Section 8. Inconsistencies with Local Law 4 of 2008, as amended.

Solely to the extent that this Local Law conflicts with Local Law 4 of 2008, as amended, the Legislature intends this local law to supersede Local Law 4 of 2008, as amended.

Section 9: Invalidity of Local Law.

If a Court of competent jurisdiction determines that any portion of this local law is invalid, the entire local law shall be void and wholly unenforceable. Provided, however, that nothing shall preclude a Developer who enters into an RTC Agreement from appealing, on behalf of OCSD No.1, and at no cost or expense to OCSD No.1 or the County of Orange, a determination of invalidity of this local law, or a portion thereof, provided such Developer gives written notice thereof to the Administrative Head and agrees in writing to defend, indemnify and hold harmless the County of Orange and OCSD No.1 in a form approved by the County Attorney. A Developer that enters into an RTC Agreement shall be a necessary party to any challenge to such RTC Agreement.

Section 10: Effective Date.

This Local Law shall take effect upon the completion of the requisite filings and procedures and shall expire 7 years from the date that the last RTC Agreement has been fully executed

DATED: MAY 7, 2020