

Expansion of Existing Municipal Wastewater Infrastructure by Developers

QUESTION

The following question was sent to members of the NACWA Legal Affairs committee on February 11, 2010:

“Do any NACWA members have the ability as a matter of policy or via local legal authority to require developers constructing new or redevelopment projects such as high-rise buildings to expand the existing water and wastewater infrastructure surrounding the job site when the current pipes do not have sufficient capacity for the new building? If so, could NACWA members please share a copy of the pertinent policy or legal authority authorizing them to impose these requirements on developers?”

RESPONSES

The following responses were received:

Response 1: Atlanta does not have specific written policies regarding this. Each project is handled individually. If the City has planned to construct additional capacity (water and/or sewer) and a new development needs the capacity prior to the time that the City's planned improvements would be in place, the City negotiates an agreement with the developer that must be authorized by Mayor and City Council for cost sharing for the required improvements. The cost sharing is typically 50/50.

If the City has not identified the need for improvements to serve projected growth and a developer needs additional capacity, the developer is typically required to construct the improvements or to pay the City to construct.

Response 2: We construe current New York State decisional law as likely prohibiting such a policy so we have focused instead on creating an off-set program that would become effective if the proposed development would be precluded by a moratorium imposed pending resolution of capacity issues.

Response 3: The city of Columbus will pay for the expansion of public infrastructure, but not for the private lines. When expansion shall be made to accommodate the developer's schedule, we will reimburse the construction cost (budget permitted), but not the design and easements.

Response 4: We address this as part of the building permit process. If infrastructure is not sufficient for proposed development, building permit is not approved pending resolution of infrastructure issues. Usually the developer will not wait for us to resolve infrastructure issues, but will construct to our requirements and then dedicate to us.

Response 5: The Sanitation Districts of Los Angeles County are "Special Districts" under California law and we operate a regional wastewater collection and treatment system. The boundary of each District is established based on topography and not on political boundaries. The Districts' wastewater collection system is composed of large 'regional' sewer lines that accept flow from local collector sewers. Individual users typically do not connect to Sanitation District lines but connect to local sewers owned by cities or local sewer improvement districts. New users must get

approval from both the Sanitation Districts and the operator of the local sewer before they can connect to the system.

The Sanitation Districts impose a "Connection Fee" to new users for the right to receive service. The connection fee recovers the capital cost for new facilities to treat the quantity and strength of the wastewater from the new user. [Click here](#) copy of our Connection Fee Ordinance and the instructions for obtaining a 'will serve' letter from the Districts.

Each city and local sewer agency has its own rules for new users. A new user provides the facilities necessary to convey their wastewater to the closest local sewer with available capacity for the new flow. Local jurisdictions typically require developers to install at their cost a new collector sewer system for large developments and convey title of the collector sewers to the local agency. In some rapidly growing areas, developers have been required to build miles of sewer lines to convey flow from their development to the closest sewer that has capacity.

Response 6: [Click here](#) for a copy of the Fairfax County, VA sewer policy. Section B5 of the Policy addresses NACWA's inquiry.

Response 7: If the downstream sewer of a development lacks capacity we will not approve concept. We give the developer the option to make repairs/improvements or not develop.

Response 8: DCWASA has a practice of requiring the developer to pay for the pipe if the existing pipe is not sufficient and they want to proceed with the project.