

December 1, 2021

To: Mayor and Members of City Council

From: Paula Boggs Muething, City Manager

**202103136**

Subject: Sewer Payment Relief to Lower-Income Ratepayers

---

**REFERENCE DOCUMENT #202100295**

On February 1, 2021, the Budget and Finance Committee referred the following for a report:

MOTION, submitted by Councilmember Landsman, Last year, the City of Cincinnati created a financial forgiveness program for Greater Cincinnati Waterworks' low-income customers. This project - enabled by our City's "Home Rule" - gave direct relief to struggling families amidst the Coronavirus pandemic. The Metropolitan Sewer District of Greater Cincinnati (MSD), however, has split possession; Hamilton County owns MSD, the City of Cincinnati runs it. Due to this arrangement, the City is barred from exploring any meaningful relief programs for low-income rate-payers, and the County has to spend millions on outside consultants and lawyers to perform its role in the MSD relationship. WE MOVE that the Administration conduct a report on the potential savings for low-income ratepayers if MSD were able to leverage the City's Home Rule advantage, as well as the savings associated with the aforementioned millions in outside consultants and lawyers with an updated relationship between the City and County. By conducting such a report, we could better determine the positive impacts of an updated partnership between the City and County.

The current structure of ownership and management of MSD creates challenges to operating an efficient utility and being responsive to community needs. This report provides background about the governance of MSD—particularly how that governance impedes the ability to provide relief to low-income ratepayers—as well as identifies some of the increased expenditures caused in part by the unique governance structure.

Summary

MSD was created in 1968 when, in order to ameliorate the environmental and safety concerns resulting from Hamilton County's failing sewer system, the City agreed to be the sole management agency for the operation and maintenance of the sewer system for both the City and Hamilton County. MSD is a special purpose county sewer district regulated by Ohio state law. The County Commissioners determine the policy and financial decisions for the sewer district based on the professional advice of MSD's staff, who are City employees.

Unlike the City, which has home rule authority under the Ohio Constitution, Hamilton County is a statutory county, meaning it must follow the laws passed by the General Assembly. Under Ohio law, ratepayer funds are restricted use funds and can only be used to benefit the sewer district. Ohio law limits the County Commissioners from establishing broad ratepayer relief. Currently, the County is

limited in providing low-income ratepayer assistance to certain low-income senior citizens. The County Commissioners approved such a program in 2019. To date, only 1,932 low-income seniors of the approximate 19,000 eligible are using this program.

Changing the eligibility guidelines is not currently permitted by state law. If MSD were a City utility, the City could change these guidelines locally. Doing so to provide rate relief to low-income seniors and low-income homeowners would increase eligible participants to approximately 59,641 customers. Expanding the relief to all low-income ratepayers, regardless of age or ownership of property, increases the eligible customers to approximately 102,388.<sup>1</sup>

Another consequence of MSD's unique governance structure is the duplication of some efforts, most notably fees for County internal staff overhead costs, fees for the County monitor team consisting of private consultants that review MSD operations and capital projects, and fees for the County's outside counsel legal team who have done work both on the Consent Decree matters as well as disputes over the 1968 agreement. Most recently, the County budgeted \$4.4 million for these costs. It has been the City's position that these costs—paid at a premium given the use of consultants and outside counsel—are unnecessarily duplicative and unfortunately inefficient.

#### Background: 1968 Agreement and MSD Governance

The Metropolitan Sewer District of Greater Cincinnati (MSD) is a special purpose county sewer district under Ohio law. MSD was created in 1968 when the City of Cincinnati and the Hamilton County Board of County Commissioners agreed that the City, through its Sewer Department, would be the sole management agency for the operation and maintenance of the sewer system. The City would provide the professional, technical, and management personnel to run all of MSD's operations. Under the 1968 Agreement, the County Commissioners serve as the policy and financial authority for the sewer district. All of MSD's financial, legislative, rate-setting, and policy matters are under the County Commissioners authority. City Council neither approves the sewer district's annual operating budget nor its five-year capital budget and does not appropriate funds for these expenditures.

All MSD employees are City employees. The Department employs approximately 600 full-time (FTE) employees across a broad range of classifications that include administrative, financial, operations, scientific, and engineering disciplines for both office and field work areas. The Department of Sewers Director is also the Director of MSD, and the Sewer Department's Chief Engineer is also the Hamilton County Sanitary Engineer. No County personnel are directly employed by the City to provide MSD management, professional, or technical expertise.

The Sewer Department operates within the organizational parameters of the City Manager and utilizes other City services as resources to perform all work. Under Ohio law, ratepayer funds are restricted use funds and can only be used to benefit the sewer district and not for other purposes. The City's Financial System is used to disburse funds and the City's Purchasing Division is used to procure construction, goods, and services. Under a 2014 Southern District of Ohio Western Division (Sixth Circuit) District Court ruling, MSD procurement follows Ohio laws applicable to county purchasing and not City procurement ordinance. Also, based on its status, MSD does not comply with the City economic inclusion ordinance, but has its own small business enterprise policy approved by the County Commissioners in 2009.

---

<sup>1</sup> Ratepayer relief must be balanced against the need to ensure the utility's continued healthy financial outlook; expanding the pool of eligible ratepayers could require either a smaller percentage reduction or offsets elsewhere.

The City and County are both parties to a Global Consent Decree to address sanitary sewer overflows (SSOs), combined sewer overflows (CSOs), and treatment plant upgrades required by the Clean Water Act. This decree is based upon litigation brought by the U.S. and Ohio EPAs and the Ohio River Valley Sanitation Commission (ORSANCO). The Miami Group of the Sierra Club has also been a litigant during this legal action. The Federal District Court oversees the judicial management of the consent decree. Since 2016, the City and County have been in litigation regarding MSD control, the 1968 Agreement's 50-year term, and each party's sovereign authority under the 1968 Agreement. In 2019, the Federal Court indefinitely extended the 1968 Agreement's term. On appeal, the Sixth Circuit both approved the extension of the 1968 Agreement and made clear that in order to alter the City-County relationship, the parties must use the procedure set forth in the Consent Decree, which requires approval of all parties, not just the City and County.

Given this existing governance structure, the Board of County Commissioners must follow state law for setting MSD sewer rates, including any discounted rates, as set forth in Ohio Revised Code, Chapter 6117. Unless and until the City and County agree upon a new governance structure and obtain the approval of all parties to the Consent Decree to alter their relationship, MSD cannot utilize the City's "home rule" authority in setting sewer rates or establishing discounted rates.

#### CAP: Low Income Rate Relief

In 2019, the County Commissioners approved a Customer Assistance Program (CAP) for MSD to offer a reduced sewer rate to qualifying low-income seniors. Per Ohio Revised Code, Section 6117.02, County sewer districts may establish rate discounts for low-income seniors (65 and older) ONLY. The section also prescribes the criteria for establishing income eligibility requirements by using either:

- The Homestead Exemption income threshold that is indexed by Ohio Dept. Taxation, which is a modified adjusted gross income of no more than \$34,200 for 2021; or
- Low to moderate income threshold that is set by the Ohio Housing Finance Agency, which uses Federal HUD guidelines.

During the development of the program, the number of potentially eligible customers (qualifying seniors) was assumed to be 19,000, although there is a lack of reliable source data for this population subset. Using this figure, MSD looked at the revenue impact of the CAP under three discount scenarios: 25%, 30%, 40%. The Commissioners ultimately approved a 25% rate discount for qualifying low-income seniors using the Homestead exemption for income eligibility. By utilizing the Homestead exemption to establish income eligibility, home ownership is required. This was the preferred starting point for a discount program because it could be implemented under existing billing practices. There are significant challenges to including renters in the CAP, related both to eligibility criteria (e.g., determining who is responsible for utility costs based on a rental or lease agreement) and current billing practices for MSD sewer services. In the future, an expansion of the program could cover renters identified in the billing system as ratepayers, if they meet all eligibility criteria. Today, MSD has about 1,600 customers receiving the CAP discount;<sup>2</sup> the utility continues to perform outreach to enroll more seniors in the existing program.

Table 1, below, shows the revenue impact of the discount program with the established eligibility criteria under the three discount scenarios (25%, 30%, 40%):

---

<sup>2</sup> This amounts to approximately \$222,000 in rate relief per year.

**Table 1 – Qualifying low-income seniors + owners**

Discount Rate	Adoption/participation %	25.0%	Projected Rate Increase (%)*	30.0%	Projected Rate Increase (%)*	40.0%	Projected Rate Increase (%)*
	10%	\$222,984		\$267,581		\$356,774	
	20.0%	\$445,968		\$535,162		\$713,549	
	30.0%	\$668,952		\$802,742		\$1,070,323	
	40.0%	\$891,936		\$1,070,323		\$1,427,098	
	50.0%	\$1,114,920		\$1,337,904		\$1,783,872	
	60.0%	\$1,337,904		\$1,605,485		\$2,140,646	
	70.0%	\$1,560,888		\$1,873,066		\$2,497,421	
	80.0%	\$1,783,872		\$2,140,646		\$2,854,195	0.14%
	90.0%	\$2,006,856		\$2,408,227		\$3,210,970	0.28%
	100.0%	\$2,229,840		\$2,675,808	0.07%	\$3,567,744	0.43%
<b>Assumptions:</b>							
19,000 Accounts/Household							
Minimum water usage of 3ccf (\$39.12)							
*Rate increase if/when the revenue loss exceed \$2.4 million during/after the first three years of implementation							

Table 2, below, shows the revenue impact of expanding the program to all low-income customers, thus removing the 65 and older criteria, while still using the Homestead (home ownership) criteria for eligibility.

**Table 2 – Qualifying low-income property owners**

Discount Rate	Adoption/participation %	25.0%	Projected Rate Increase (%)*
	10%	\$699,947	
	20.0%	\$1,399,894	
	30.0%	\$2,099,840	
	40.0%	\$2,799,787	
	50.0%	\$3,499,734	0.40%
	60.0%	\$4,199,681	0.68%
	70.0%	\$4,899,627	0.96%
	80.0%	\$5,599,574	1.24%
	90.0%	\$6,299,521	1.52%
	100.0%	\$6,999,468	1.80%
<b>Assumptions:</b>			
Accounts/ Owners : 59,641			
Water usage per month: 3 ccf			

This table shows that eliminating the age criteria increases the potentially eligible customers to 59,641 and also increases the amount of annual rate relief. As noted above, this program expansion cannot be implemented by MSD under existing State law governing county sewer districts.

*\*Rate increase if/when the revenue loss exceeds \$2.4 million during/after the first three years of implementation*

Table 3, below, shows the impact of expanding the program even further, by eliminating both the age criteria and the home ownership criteria, and using low-income as the only eligibility criteria.

**Table 3 – Qualifying low-income customers (owners and renters)**

Discount Rate	25.0%	Projected Rate Increase (%)*	
<b>Adoption/participation %</b>			
10%	\$1,201,626		
20.0%	\$2,403,251		
30.0%	\$3,604,877	0.44%	
40.0%	\$4,806,502	0.92%	
50.0%	\$6,008,128	1.40%	
60.0%	\$7,209,753	1.88%	
70.0%	\$8,411,379	2.36%	
80.0%	\$9,613,005	2.85%	
90.0%	\$10,814,630	3.33%	
100.0%	\$12,016,256	3.81%	
<b>Assumptions:</b>			
Accounts/( <b>Owners</b> + <b>Renters</b> ):	102,388		
Water usage per month:	3 ccf		

This scenario increases the eligible customer pool increases to 102,388, thereby increasing revenue loss and showing the need for a higher rate increase much sooner. Again, as noted above, this cannot be implemented under existing State law governing county sewer districts.

*\*Rate increase if/when the revenue loss exceeds \$2.4 million during/after the first three years of implementation*

#### Cost of County Consultants and Lawyers

Annually, the County Commissioners authorize funding for County oversight in the approved MSD budget, which includes the County overhead costs (internal staff), the County monitor team (consultants that review MSD operations and capital projects), and the County's legal team (lawyers for both City/County litigation and Consent Decree negotiations). The bulk of the expenses are captured in the MSD capital budget under the project title "County Oversight."

- For 2020, the County appropriated \$4.3M for County Oversight.
- For 2021, the County appropriated \$4.4M for County Oversight.
- Generally speaking, the oversight is split roughly 60/40 for Consultants and Lawyers. See attached invoice as an example of one quarter of expenditures.

Much of the County's oversight spending is an unnecessary duplication of the City's role and responsibilities under the 1968 Agreement. Indeed, the City has challenged the County monitor's actions as ultra vires, or in contradiction of the 1968 Agreement. The County Monitor team, primarily third-party consultants, often engages in engineering and technical work that is the responsibility of the City (MSD). Note that MSD also pays for the City's legal fees for litigation against the County, in addition to all other legal fees necessary for the operation and management of the district, including for Consent Decree work. Elimination of these duplicative County legal costs and County oversight would be a savings of at least \$4.4M/year.

## CONCLUSION

In summary, MSD is a county sewer district and is therefore limited in its ability to establish discounted sewer rates for its ratepayers as explicitly set forth in the Ohio Revised Code. If the City and County were to pursue a new governance structure following the process laid out in the Consent Decree, they could alter their relationship to allow MSD to function as a City sewer agency, not a county sewer district. As a City-run agency, MSD would have the ability to establish discounted sewer rates for its customers under the City's home rule powers. In addition, with the City in charge of both managing the utility and setting rates, there would be no need for the duplicative County oversight costs. This money could instead be used to cover the costs of an expanded discount program to help low-income ratepayers without increasing rates for all other users.

Attachments: Oversight Invoices (4)