

CHARTER ORDINANCE NO. 16

A CHARTER ORDINANCE EXEMPTING THE CITY OF WESTWOOD, KANSAS, FROM THE PROVISIONS OF THE WATER POLLUTION CONTROL ACT, K.S.A. 12-3101 THROUGH K.S.A. 12-3107, AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS RELATING TO THE ESTABLISHMENT, OPERATION, MAINTENANCE, IMPROVEMENT, AND REGULATION OF SEWER SYSTEMS, INCLUDING BUT NOT LIMITED TO, STORM AND SURFACE WATER DRAINAGE SYSTEMS AND FLOOD PROTECTION WORKS, AND TO THE ISSUANCE OF BONDS FOR THE PURPOSE OF PAYING FOR THE PROPERTY AND IMPROVEMENTS NECESSARY FOR ALL ASPECTS OF THE MANAGEMENT OF THESE SYSTEMS.

WHEREAS, the City of Westwood, Kansas by the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, may exempt itself from the provisions of a statutory enactment that is not uniformly applicable to all cities, and may adopt substitute and additional provisions thereto; and

WHEREAS, the Water Pollution Control Act, K.S.A. 12-3101, et seq., is applicable to the City, but not uniformly applicable to all cities;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WESTWOOD, KANSAS

SECTION 1. The City of Westwood, Kansas (the “City”), by virtue of the powers vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to exempt itself and make inapplicable to it Sections 12-3101, 12-3102, 12-3103, 12-3104, 12-3105, 12-3106, and 12-3107 of the Kansas Statutes Annotated, which apply to the City, acting as a city of the third class, and which are not uniformly applicable to all cities, and the City hereby provides further substitute and additional provisions as set forth herein.

SECTION 2. Definitions. For the purpose of this Charter Ordinance, the following words and phrases shall have the meaning ascribed to them in this section:

- A. “Person” shall mean any person, firm, corporation, association, partnership, political unit, or organization.
- B. “Sewer,” “Sewer System,” and “Sewer Systems” shall mean surface water and storm sewers that exist at the time this Charter Ordinance is adopted or that are hereafter established and all appurtenances necessary in the maintenance, operation, regulation, and improvement of the same, including, but not limited to, pumping stations; enclosed storm sewers; outfall sewers; surface drains; street, curb and alley improvements associated with storm or surface water improvements; natural and manmade wetlands; channels; ditches; rivers; streams; other storm water conveyances; detention and retention facilities; and other flood control facilities and works for the collection, conveyance, pumping, treating, controlling, managing and disposing of water carried pollutants or storm or surface water.
- C. “Storm Water Customer” shall mean the owner of any real property served or benefited, whether voluntarily or involuntarily, by the function of any Sewer, Sewer System, or Sewer Systems, which

captures, controls, conveys, discharges, manages, or regulates the flow or water quality of storm and surface waters within and from the City, or is served or benefited by the administration, activities and operation of the Storm Water Management Program of the City. This service or benefit shall include, but not be limited to, capturing, controlling, conveying, discharging, improving, managing and regulating the flow and water quality of storm and surface water from a property or from other properties situated at higher or lower elevations that might otherwise be subservient in right, and the administrative, planning, technical, regulatory and enforcement actions necessary to provide these services and/or benefits.

- D. "Storm Water Management Program" shall mean all aspects of work necessary to perform and provide storm and surface water services in the City, including, but not limited to, administration, planning, engineering, operations, maintenance, best management practices, control measures, public education, citizen participation, regulation and enforcement, protection, and capital improvement of sewer systems and facilities, plus such non-operating expenses as reserves and bond debt service coverage associated with provision of the Storm Water Management Program.

SECTION 3. Sewer Systems; Powers of the City. The City shall have all powers necessary or convenient to plan, study, design, alter, enlarge, extend, improve, construct, reconstruct, develop, redevelop, operate, maintain, protect, manage, and regulate and enforce the proper use of a Sewer System or Sewer Systems, including the powers that the City may, from time to time, establish by way of ordinances and/or resolutions adopted by the Governing Body of the City and including, but not by way of limitation, the following powers:

- A. To impose service, user, impact, in lieu of construction, buy in and plan review and inspection fees, special assessments, system development and other charges and/or taxes on Storm Water Customers. The method of calculating and fixing these charges and/or taxes shall be as established by regular ordinances or by rules and regulations heretofore or hereafter adopted;
- B. To provide that charges and/or taxes authorized in subparagraph (A) above may be certified by the City Clerk to the County Clerk of Johnson County, Kansas, to be placed on the tax roll for collection, subject to the same penalties and to be collected in like manner as taxes;
- C. To use the proceeds of the charges and/or taxes authorized in subparagraph above, together with any other available revenues, to pay the costs of the Storm Water Management Program, including, but not limited to, the costs to plan, study, design, engineer and operate the Storm Water Management Program and to plan, study, design, engineer, alter, enlarge, extend, improve, construct, reconstruct, develop, redevelop, operate, maintain, manage, protect, acquire real or personal property by purchase, lease, donation, condemnation, or otherwise for, and regulate and enforce the use of a Sewer System or Sewer Systems;
- D. To use and to pledge the proceeds of the charges and/or taxes authorized in subparagraph (A) above, and any available taxes, to pay the principal and interest on general obligation or revenue bonds heretofore or hereafter issued; and pending the issuance of the general obligation bonds or revenue bonds to issue temporary financing for these purposes;
- E. To contract with agencies of the federal government, the State of Kansas, other states, counties, cities, drainage districts, public bodies of the state, or other states, or with any person to jointly plan, study, design, alter, enlarge, extend, improve, construct, reconstruct, develop, redevelop, operate, maintain, protect, acquire real or personal property by purchase, lease, donation, condemnation, or otherwise for a Sewer System or Sewer Systems; regulate the use of a Sewer System or Sewer Systems; and to plan, study, design, engineer, operate, administer, maintain, and manage the Storm Water Management Program;

- F. To contract with agencies of the federal government, the State of Kansas, other states, counties, cities, drainage districts, public bodies of the state, or other states, or with any person for receiving and treating storm or surface water from outside the limits of the City;
- G. To carry out the Storm Water Management Program, including, but not limited to, the power to plan, study, engineer, design, administer, manage, maintain, and operate the Storm Water Management Program and to plan, study, design, engineer, alter, enlarge, extend, improve, construct, reconstruct, develop, redevelop, operate, maintain, manage, protect, acquire real or personal property by purchase, lease, donation, condemnation, or otherwise for and regulate the use of Sewer System or Sewer Systems within or outside the City;
- H. To borrow money and to apply for and accept advances, loans, grants, contributions, or any other form of financial assistance from the federal government, the State of Kansas, other states, counties, cities, drainage districts, or any other public body for the purposes of this act, and the City may, when contracting with the federal government for financial assistance, include in any contract the conditions imposed pursuant to federal law as the City may deem reasonable and appropriate;
- I. To, under the authority granted herein, establish a storm and surface water utility to be accounted for as a separate enterprise fund or special revenue fund of the City, as deemed reasonable and appropriate by the Governing Body of the City; and
- J. To utilize any mechanism deemed reasonable and appropriate by the Governing Body of the City to deliver billings to Storm Water Customers for services.

SECTION 4. Rules and Regulations Authorized; Billing and Collection of Charges and/or Taxes. The City shall have the power by ordinance or resolution to adopt rules and regulations that shall relate to the management and operation of its Storm Water Management Program and Sewer System or Sewer Systems; the method of calculating and fixing the charges and/or taxes applicable to properties served by the Sewer System or Sewer Systems or activities associated therewith; security for the payment thereof, and methods and rules of collection; and the disposition of the revenue therefrom. In the event any person by the City's Sewer System or Sewer Systems shall neglect, fail or refuse to pay service fees fixed by the Governing Body of the City, as authorized by rules and regulations adopted under the authority of this section and if a billing system has been established for the delivery and collection of service fees, the City may take any action authorized by law to collect any fees that are due and owing.

SECTION 5. Issuance of Sewer System revenue bonds; requirements.

- A. The Governing Body of the City shall have the power to use any unencumbered municipal revenues or to issue revenue bonds from time to time in its discretion, without an election, to finance the planning, altering, enlarging, extending, improving, constructing, and reconstructing of a Sewer System or Sewer Systems under this Charter Ordinance. These bonds shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the City derived from or held in connection with its Sewer System or Sewer Systems; provided, however, that payment of these bonds, both as to principal and interest, may be further secured by a pledge of other unencumbered municipal revenues and of any loan, grant or contribution from the federal government, the State of Kansas, other states, counties, cities, drainage districts, public bodies of the state or other states or any person.
- B. Bonds issued under this section shall constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law relating to the authorization, issuance or sale of bonds. Bonds issued under the provisions of this Charter Ordinance are declared to be issued for an essential public and

governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

- C. Bonds issued under this section shall be authorized by ordinance or resolution of the governing body and may be issued in one or more series and shall bear such date or dates, be payable on demand or mature at such time or times, bear interest at such rate or rates, not exceeding the maximum rate of interest prescribed by K.S.A. 10-1009, be in such denomination or denominations, be in such form, have such rank or priority, , be executed in such manner, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics as may be provided by such ordinance or resolution.
- D. Pending the issuance of revenue bonds authorized by this Charter Ordinance, the Governing Body of the City may issue revenue anticipation bonds of the City for the purpose of providing interim financing for a project, these revenue anticipation bonds being payable from revenue bonds issued to provide permanent financing for activities authorized by this Charter Ordinance and the income, proceeds, revenues and funds of the City derived from or held in connection with its Sewer System or Sewer Systems.

SECTION 6. Powers Supplemental and Additional. The power granted herein with respect to the Storm Water Management Program, including but not limited to the power to plan, study, design, engineer, alter, enlarge, extend, improve, construct, reconstruct, develop, redevelop, operate, maintain, manage, protect, acquire real or personal property by purchase, lease, donation, condemnation, or otherwise for, and regulate the use of a Sewer System or Sewer Systems and to issue bonds shall be supplemental to and not amendatory of the provisions of all other laws heretofore or hereafter in force and shall not be construed to limit the City's authority under the provisions of any other laws.

SECTION 7. Severability. In the event that any portion or section of this Charter Ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, that decision shall not in any manner affect the remaining portions or sections of this ordinance or chapter which shall remain in full force and effect.

SECTION 8. Publication. This ordinance shall be published once each week for two consecutive weeks in the office City newspaper.

SECTION 9. Effective Date; Filing.

THIS IS A CHARTER ORDINANCE AND SHALL TAKE EFFECT 61 DAYS AFTER FINAL PUBLICATION UNLESS WITHIN 60 DAYS OF ITS FINAL PUBLICATION A PETITION SIGNED BY A NUMBER OF ELECTORS OF THE CITY OF WESTWOOD EQUAL TO NOT LESS THAN TEN PERCENT OF THE NUMBER OF ELECTORS WHO VOTED AT THE LAST PRECEDING REGULAR CITY ELECTION SHALL BE FILED IN THE OFFICE OF THE CITY CLERK OF WESTWOOD DEMANDING AN ELECTION ON THE CHARTER ORDINANCE, IN WHICH CASE THE CHARTER ORDINANCE SHALL BECOME EFFECTIVE ONLY IF AND WHEN APPROVED BY A MAJORITY OF THE ELETORS VOTING THEREON.

PASSED by the Governing Body of the City of Westwood, Kansas, with not less than two-thirds of members elect voting in favor thereof the 13th day of June, 2013.



ATTEST

A handwritten signature in blue ink, appearing to read "F-L-S", written over a horizontal line.

Frederick L. Sherman, City Clerk

A handwritten signature in black ink, appearing to read "John M. Ye", written over a horizontal line.

John M. Ye, Mayor

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read "Ryan B. Denk", written over a horizontal line.

Ryan B. Denk, City Attorney