

COUNCIL ACTION FORM

Meeting Date: June 6, 2013

Staff Contact: John Sullivan, Public Works Director

Agenda Item: Consideration of Charter Ordinance No. 16. - exemption 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 provision 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 protecting works, and to the insurance of bonds for the purpose of paying for the property and improvement necessary for all aspects of the management of these systems.

Background / Description of Item:

The City of Westwood, a City of the Third Class, is required by State Statute, to follow the laws of the State of Kansas. However, via legislation found in Article 12, Section 5 of the Constitution of the State of Kansas, a City may exempt itself from the provisions of a statutory enactment this is not uniformly applicable to all cities, and may adopt substitute and additional provisions.

The proposed Charter Ordinance No. 16 provides the substitute and additional provisions which will allow the City of Westwood to operate a Storm Water Management System and the Operation of the Storm Water Management Utility.

Adoption of the Charter Ordinance must occur at the June 6, 2013 Special Council Meeting to meet the legal publication deadline, start the 61 day Protest Petition clock, and if successful access the collection of the fee on the 2014 property tax bills. All assessments for the FY 2014 property tax cycle must be conveyed to the county clerk by August 25, 2013.

Charter Ordinance

A charter ordinance is required for ordinance provisions that are in conflict with a state law provision. The ordinance must be passed by a 2/3 vote of the governing body (which by definition, includes both the councilmembers and the mayor). Because the mayor is included in the original vote, the mayor is unable to veto a charter ordinance. The ordinance must be published once each week for two consecutive weeks in the official city newspaper – *The Legal Record*.

There is a 60-days period after publication to allow time for the public to petition for a referendum on the matter. If no petition is filed during this period, the charter ordinance becomes effective on the 61st day after publication. The city clerk must send the Kansas Secretary of State a copy of all charter ordinances passed by a City. If a valid protest petition is filed by 10% of the number of electors who voted in the last regular city election (the November 2012 election), then an election must be held and a majority of voters must approve the charter ordinance for it to become effective.

Storm Water Management Utility

Storm water is water from the rain. As rains falls it is either absorbed into the ground or runs downhill and dissipates. Impervious surfaces, such as rooftops and pavement, prevent water from absorbing into the ground and causes runoff. Unmanaged storm water runoff can cause

flooding and threatens public health and safety. Storm water can carry contaminants such as garbage and other pollutants. The City of Westwood has storm water infrastructure to manage runoff, but the pipes and structures are aging and will be in need repair or replacement in the near future. The City of Westwood also operates an annual leaf-pick up program in the fall, which also helps in the management of the city's storm water system.

In previous years, maintenance of the city's storm drains and storm sewer system as well as operation of the leaf pick-up program was paid out of the city's general fund, which is primarily revenue from property and sales taxes. Since the general fund pays for a wide variety of services, the storm sewer system often did not receive the necessary funds to make the needed improvements and maintenance.

Many cities have created storm water utilities to maintain and repair existing storm drainage system components (storm sewer pipes, inlets and valves, canals and channels, ditches, curb drainage, etc.) and to fund costs associated with compliance with the Federal Clean Water Act. Storm water utilities have been used in Kansas cities since 1990.

Why a Storm Water Utility?

A storm water utility and the assessment of a storm water fee is an attempt to spread the costs of maintaining the City's infrastructure across all entities and properties in the city that both contribute to the drainage issues and benefit from storm drainage improvements and system maintenance. A storm water management service fee is not a tax; as such the new fee would spread the payment across all properties in the city – even those that are tax exempt. The University of Kansas Hospital's facility on Shawnee Mission Parkway and along Rainbow Blvd will be subject to the fee, as will churches and city-owned property. Because the storm water drainage system's challenges are directly attributable to the amount of impervious surface, the proposed storm water management service fee will be based on the amount of storm water runoff that comes from each property in the city.

Staff Recommendation:

Pass Charter Ordinance No. 16. - exemption 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 provision 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 protecting works, and to the insurance of bonds for the purpose of paying for the property and improvement necessary for all aspects of the management of these systems.

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.