

ORDINANCE NO. 2017-14

**AN ORDINANCE RELATING TO
ON-SITE AND CENTRALIZED WASTEWATER SYSTEMS
AND
THE CREATION OF A SANITATION DISTRICT IN MARSHALL COUNTY, KENTUCKY**

WHEREAS, the Marshall County Fiscal Court recognizes the need to correct and prevent the pollution of the many creeks, streams, lakes and other water resources that lie within the boundaries of Marshall County, and finds that responsive action is necessary to safeguard and improve the public health, safety, and welfare of its citizens; and

WHEREAS, the Kentucky Revised Statutes (KRS) Chapter 67.083 provides counties the authority to establish agencies which can provide necessary governmental services and KRS Chapter 67.715 authorizes the County Judge Executive, with the approval of the Fiscal Court, to create and abolish any special district / special purpose governmental entity to effect such purpose; and

WHEREAS, at present two sanitation districts with limited service areas operate in Marshall County, Marshall County Sanitation District No. 1, generally serving the Aurora area of the County and Marshall County Sanitation District No. 2, generally serving the Draffenville area of the County. These districts were created in accord with the procedure set out in KRS 220 and because the past work of these sanitation districts is valued; and

WHEREAS, the County Judge/Executive and Fiscal Court of Marshall County, in seeking to improve and expand wastewater services for residential users and at once to enhance the County's prospects for greater community improvement and enhance the prospects for economic development, finds that the establishment of a consolidated, county-wide Sanitation District constitutes a valuable and necessary governmental purpose and herein creates and charges such a district to work in a collaborative manner with the Marshall County Health Department, the City of Benton, the City of Calvert City, and the City of Hardin

to plan, develop, regulate, and manage on-site and centralized wastewater systems to the greatest extent feasible, so as to enhance the quality of life of its citizens, protect the natural environment, and promote the economic well being of the entire County.

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF MARSHALL COUNTY, COMMONWEALTH OF KENTUCKY, AS FOLLOWS:

SECTION 1: PROHIBITED FACILITIES

From the effective date of this Ordinance, it is deemed a public nuisance, endangering the public health and is considered unlawful for any person owning an occupied building in the County to construct, install, use, repair, or maintain a straight pipe to any body of water, or to a septage pit, cesspool, sinkhole, or other receptacle, or rely upon a privy or outhouse for the purpose of receiving or discharging human waste and wastewater which may pollute the waters of the Commonwealth, without the written approval of the Marshall County Health Department. The owner of a building connected to such facilities and any person(s) that performs the work in making such a connection shall be subject to the penalties set out herein.

SECTION 2: WHERE PUBLIC WASTEWATER SYSTEM IS NOT ACCESSIBLE

- A. From the effective date of this Ordinance, in any area of Marshall County where a public wastewater collection and treatment system is not accessible, it is the responsibility of a property owner to connect or have connected any and all newly constructed and/or substantially renovated buildings intended for occupancy, to an approved, on-site wastewater treatment system. The type, capacity, and location of any on-site wastewater system to serve any such building intended for occupancy shall comply with the regulations of the Marshall County Health Department regarding pollution of the waters of the Commonwealth, (902 KY Administrative Regulation (KAR) 10:081 & 10:085), and/or the regulations of the Kentucky Division of Water (KDOW).
- B. The property owner shall operate and maintain the on-site wastewater system, whether allowed by permit issued by the Marshall County Health Department or by permit of the KDOW, in good and efficient working condition at all times. The property owner may request the assistance of the Sanitation District in locating a qualified service provider. Discharge of effluent from any on-site wastewater system to any open drain, ditch, sinkhole, creek, river, lake, pond, stream, well or other body of water is prohibited, with the exception that holders of current NPDES/KPDES permits may discharge at permitted discharge points.
- C. Failure to connect to an approved on-site wastewater system when a public wastewater system is not accessible is hereby declared to constitute a nuisance, as endangering the public health and is unlawful (KRS 212.210).

SECTION 3: WHERE A PUBLIC WASTEWATER SYSTEM IS OR BECOMES ACCESSIBLE

- A. All persons owning property in Marshall County, upon which there is an existing, occupied building that is or becomes accessible to a public wastewater system, shall make a service connection to that public wastewater system, at the owner's expense, using material and workmanship in accordance with the approved regulations of that public wastewater system, or may seek a temporary exemption from such connection, as set out in Section 4, below.
- B. Said connection shall be made within one hundred and twenty (120) days from the date that written notice is provided to the property owner that wastewater service is accessible. After this time, whether or not the connection to the wastewater system is made, the property owner shall be billed for wastewater service as set out below.
- C. Occupied buildings are deemed accessible to a public wastewater system if a collection line of the wastewater system is located within five hundred (500) linear feet from an occupied building or a building to be occupied. At the discretion of the affected public wastewater system, certain building locations within the 500 linear foot distance may be declared 'not feasible to serve' after taking into consideration geographic site characteristics, hydraulic engineering standards, and affordability.
- D. Permanency of connection: Once a building is connected to a public wastewater system the owner may not remove, disconnect, or otherwise interrupt the flow of wastewater to that public wastewater system for any purpose unless so directed in writing by the Marshall County Health Department or the Kentucky Division of Water.
- E. Failure to connect to a public wastewater system under the conditions outlined above is hereby declared to constitute a nuisance, as endangering the public health.

SECTION 4: PUBLIC WASTEWATER CONNECTION TIME EXTENSION PERMIT

A person owning property in Marshall County, upon which there is any existing, occupied building that is accessible, or which becomes accessible to a public wastewater system, may apply for a 'Connection Time Extension Permit' from the Sanitation District, which shall be valid for a period of eighteen (18) months from the date of notice of accessibility provided by the Sanitation District. To be eligible for such a permit, the owner must provide documentation that he or she has a functioning on-site wastewater treatment system approved by the Marshall County Health Department, or the Kentucky Division of Water, which was installed within ten (10) calendar years previous to the date of public wastewater service accessibility. Upon presentation of appropriate documentation, the person will receive a permit for that specific building. If, for whatever reason during the period of the time extension, the on-site wastewater system fails, the permit is automatically revoked and the owner must connect the building to the public wastewater system and comply in full with the provisions of this Ordinance. No additional time extension for that building shall be provided.

SECTION 5: EXCLUSION OF STORM WATER AND OTHER SURFACE WATER

- A. It is the responsibility of property owners to ensure that storm water, other surface water or unpermitted discharges not enter a public wastewater system.
- B. All persons requesting to connect to any wastewater system, either an on-site or centralized system, shall provide adequate means for excluding storm water (i.e., water from roof drains, foundation drains, or other sources of surface water) from entering the wastewater system, provide any requested or required supporting documentation, and allow an agent of the Sanitation District right of access for timely inspection to verify compliance.
- C. Once a building is connected to a public wastewater system, no person shall subsequently connect any roof drain or foundation drain to the public wastewater system or permit, allow, or cause water from any source other than the sanitary plumbing of the building to enter the public wastewater system.

SECTION 6: CREATION OF SANITATION DISTRICT

- A. In accordance with and pursuant to the organizational structure set out in KRS Chapter 67.715 (2) and KRS Chapter 67.083 (3) (c) (h) and (r), the Marshall County Judge Executive seeks and the Marshall County Fiscal Court grants its approval for the County Judge/ Executive to establish a non-taxing, special purpose governmental entity to be known as the "Marshall County Sanitation District" (Sanitation District). Further, the Sanitation District shall be operated so as to achieve the environmental goals cited in KRS 220.030 and shall have all powers and duties to reasonably, efficiently, and effectively implement the provisions of and carry out the duties prescribed by KRS 220. Further, the Sanitation District shall coordinate Marshall County's initial and on-going watershed planning effort to protect and enhance area water resources. The District shall serve as the County's representative in region-wide watershed planning implementation.
- B. Pursuant to KRS Chapter 220.035, the Marshall County Fiscal Court reserves the power and authority to review and approve, amend or disapprove the Sanitation District's annual budget. To assure timeliness in this procedure, the Sanitation District shall submit its budget to the Judge/Executive on or before April 1 of each year. If, after forty-five (45) days have elapsed and the Fiscal Court has not taken action, the budget as submitted by the Sanitation District shall be deemed approved by the Fiscal Court.

SECTION 7: SANITATION DISTRICT PURPOSES, STRUCTURE & AUTHORITY

- A. Purposes: The Sanitation District is created to implement KRS 220.030, and to this end:
 - 1) shall prepare a comprehensive wastewater services plan for the entire land area of Marshall County where wastewater service is not available. The Sanitation District shall engage and work cooperatively with the existing wastewater systems as well as with the citizens in those areas of the County that currently do not have wastewater service in this planning process to assure a realistic and common sense approach to the development of on-site as well as centralized wastewater services throughout the County, where and as appropriate. The scope

of the Sanitation District's planning process shall include the entirety of all watersheds in the County and be ongoing, in multi-year cycles;

2) shall regulate and control the development of wastewater facilities throughout the County with the exception of the planning and service areas of the City of Benton, the City of Calvert City and the City of Hardin as setout in Section 8, below;

3) may own, operate, and maintain wastewater facilities or contract with existing wastewater systems and others to provide these services utilizing any and all types of centralized and site-appropriate on-site wastewater facilities to effect the purpose of the ordinance;

4) shall serve as directed by the Fiscal Court in matters relating to the water resources of Marshall County and shall be an active participant in the Purchase Area Water/Wastewater Management Planning Council.

B. Structure: The Sanitation District:

1) shall be governed by a five (5) member board of directors, appointed by the County Judge/Executive and approved by the Fiscal Court, such that the initial members' terms shall be: one member for 2 years, two members for 3 years, and two members for 4 years respectively; thereafter terms shall be 4 years in duration;

2) shall devise and promulgate rules, regulations, and procedures affecting all aspects of the planning and implementation processes for various types of wastewater service in Marshall County which may extend into neighboring counties, if warranted and so authorized by the Marshall County Fiscal Court and the fiscal court of the affected county;

3) shall work cooperatively with the Marshall County Health Department, the City of Benton, the City of Calvert City, and the City of Hardin to establish a 'single point of contact' relating to centralized and on-site wastewater regulation, coordination, and development for all of Marshall County;

4) shall prepare and submit its proposed plans and projects to the Marshall County Fiscal Court, to the existing wastewater systems and the Marshall County Health Department for their review and comments. After consideration of comments or recommendations from these bodies, the Sanitation District shall approve these plans and projects by formal action of the board of directors.

5) shall make available plans and projects, together with its rules, regulations, and procedures, to all citizens of Marshall County, as well as to developers, contractors, and others, upon request.

C. Authority: The Sanitation District

1) shall have the responsibility and authority to coordinate, oversee, and regulate the development of wastewater facilities in Marshall County. Incident to the purposes stated above and to enable their accomplishment, the Sanitation District is specifically authorized to develop, acquire, own, manage, and operate wastewater facilities and to discharge the attendant duties and obligations thereof as enumerated in KRS 220.030. To this end, the Sanitation District shall have the authority to inspect, approve, construct, or arrange for the proper de-commissioning of both on-site and centralized wastewater management facilities, in cooperation with the Marshall County Health Department and the Division of Water. Such facilities may include, but are not limited to, drainage control, collection mains, laterals, filters, tanks, trunk lines, lift stations, force

mains, treatment, and disposal works, and all appurtenances. Further, the Sanitation District shall have the responsibility and attendant authority to operate, maintain, repair, and replace facilities and components thereof by hiring qualified employees or by contracting with qualified operators to provide such services, and take any and all other action necessary for the fulfillment of the purposes of KRS 220.010 to 220.520;

2) shall have the powers stated in KRS Chapter 220 including the power to sue and be sued, contract and be contracted with, incur liabilities and obligations, secure rights of way and easements, issue bonds, and to perform all acts necessary and proper for carrying out the purposes for which the Sanitation District is created. The Sanitation District shall have the authority to execute the powers with which it is vested as provided in KRS Chapter 220.510.

3) shall have the authority to exercise the right of eminent domain, as provided and described in KRS Chapter 220.310, subject to the approval of the Marshall County Fiscal Court;

4) shall adopt and comply with the same procurement standards as the Marshall County Fiscal Court (KRS 424.160) and conduct its business activities in accordance with approved governmental fiscal procedures;

5) shall be subject to and comply with the Kentucky Open Meeting and Open Records Act as well as with KRS 65A, which regulates special purpose governmental entities.

SECTION 8: SANITATION DISTRICT BOUNDARIES

The Sanitation District boundaries shall be the same as those of Marshall County; however, the Sanitation District shall not in any way hinder, restrict or interfere with the wastewater planning and service areas of the City of Benton, the City of Calvert City and the City of Hardin. Rather, the Sanitation District shall engage and work cooperatively with the municipal wastewater systems of the City of Benton, the City of Calvert City, and the City of Hardin, together with the Marshall County Health Department in planning and implementing wastewater services improvements and extensions beneficial to all citizens throughout Marshall County. Where warranted, the Sanitation District may develop extensions into areas of neighboring counties, conditioned upon approval of the Marshall County Fiscal Court and the fiscal court of the affected county.

SECTION 9: FEES, RATES AND CHARGES

For each type of service provided by the Sanitation District, such as centralized wastewater collection, on-site treatment or other services, the District shall review, devise, and publish annually its schedule of rates and charges, which shall be based on 100% of the actual cost of providing such services, as provided in KRS Chapter 220.510. The following procedure shall guide the Sanitation District's rate-making process and the Sanitation District is charged to adhere to this procedure or any future amendments to the procedure as may be approved by the Marshall County Fiscal Court prior to its implementation:

A. The Sanitation District shall invite three customers to work with the District's board for a three-year period as a Rate Advisory Committee to assist in establishing customer rates and charges such that:

1) The initial rate and all future rates to be charged by the Sanitation District to all customers, by service type, shall be the same in dollar amount and shall be levied so as to recover 100% of the cost of providing the respective service. Rates shall be levied per 1,000 gallons of service provided, based on metered water service to each customer and shall be charged monthly, by invoice showing metered amounts of flow and the total dollar amount to be remitted for wastewater service. If the wastewater customer's water consumption is unmetered, the average usage of those on public water service in the County shall be applied to the wastewater customer for billing purposes.

2) The Sanitation District with the advice of the Rate Advisory Committee shall establish initial rates, which shall be based on: a) the probable costs for providing such services; and b) a comparison of the probable costs with the actual costs experienced by one or more comparably sized and equipped wastewater utilities in neighboring communities. The Sanitation District shall charge this rate for the period beginning with the start of operation of the facilities required for the service and continuing through the first full fiscal year (July-June) of operation of that service by the Sanitation District.

3) In February after the first full fiscal year (July-June) of operation of the facilities owned by the Sanitation District created by this Ordinance, and each February thereafter, the District board and Rate Advisory Committee shall meet to review verified, historical cost information obtained from the Sanitation District's records, audits, management interviews and other such informational sources as it deems appropriate, and compile this information into a cost study. The elements of the cost study shall generally conform to industry standards and shall include but not be limited to:

- a. personnel, electricity, chemicals, supplies, repair materials, vehicles and related operation costs, equipment and related operation costs, contract labor, contracted operations, lab testing costs, and other similar, documented costs; and
- b. timely retirement of any outstanding debt obligations secured by the Sanitation District to construct and maintain required wastewater facilities.

4) The Sanitation District shall not allow charges to be calculated into the initial cost of service reports or subsequent reports for capital costs of replacement equipment or repair or replacement materials or the cost of labor required to make such repairs or replacements to newly constructed or renovated facilities, due to the equipment and construction warranty period.

5) Based on the annual cost of service analysis, the Sanitation District board, assisted by the Rate Advisory Committee, shall present the proposed rates for service to the affected customers at a public hearing by March 1 of each year, for the subsequent July 1 through June 30 service period. The Sanitation District board shall respond to customer questions and take into consideration customer comments prior to voting to establish the final rate determination for the respective period. The Sanitation District shall provide written notification regarding any change in rates or charges to each customer affected.

B. The Sanitation District shall comply with the public notification and hearing requirements for rate changes, in accordance with KRS 65A, which regulates special purpose governmental entities.

C. A customer's failure to pay wastewater charges, fees, or penalties may result in public water being shut off to the premises or removal of wastewater service lines. The Sanitation District is

authorized to contract with any public water provider to turn off and lock the water meter that serves a property in the event of non-payment for wastewater service, fees or penalties. The Sanitation District is further authorized to require payment of additional charges or service fees prior to the restoration of water service to the property.

D. Any wastewater service charges that are owed to the Sanitation District are the responsibility of the owner of the property to which service is provided. The Sanitation District shall have the right and the fiduciary responsibility to use any and all appropriate means to secure payment for its services, as provided by law.

SECTION 10: TRANSFER OF ASSETS AND LIABILITIES AND DISSOLUTION OF SANITATION DISTRICT NO.1 AND SANITATION DISTRICT NO. 2

- A. Upon enactment of this Ordinance, on a future date to be determined by the Marshall County Fiscal Court, the Marshall County Sanitation District, established herein, together with Marshall County Sanitation District No. 1 and Marshall County Sanitation District No. 2 shall notify the respective customers of each Sanitation District regarding the scheduling of the following steps necessary to carry out the consolidation of wastewater services in Marshall County, subject of this ordinance:
1. Marshall County Sanitation District, established herein, shall assume all responsibility for and commence operation of the facilities of Marshall County Sanitation District No.1 and Marshall County Sanitation District No. 2., including all personnel management and customer services on or about _____.
 2. Within the following sixty (60) days of that date, Marshall County Sanitation District No. 1 and Marshall County Sanitation District No. 2, respectively and in the following order, shall:
 - i. Prepare and provide to the Marshall County Sanitation District, a complete and comprehensive catalog of all system assets and liabilities, which shall include all lands, easements, rights of way, and any and all other real and personal property, such as equipment, materials, tools, vehicles, customer records, billing and financial journals and related documentation;
 - ii. Disclose any and all active or anticipated litigation, financial obligations; contentious personnel matters, environmental regulatory non-compliance issues, customer complaints or other similar matters;
 - iii. Conduct a regular or special meeting of the Board of Commissioners, for which proper notice has been provided, to approve the transfer of all of its assets and liabilities to the Marshall County Sanitation District by quit claim deed and to authorize the respective Board Chairman to effect such transfer to the Marshall County Sanitation District.
 3. Marshall County Sanitation District, established herein, shall accept ownership and operation responsibilities of all assets and liabilities of Marshall County Sanitation District No. 1, and shall accept ownership and operational responsibilities of all assets and liabilities of Marshall County Sanitation District No. 2. Marshall County Sanitation

District shall arrange to have all KPDES Discharge Permits and other similar designations appropriately transferred to its name in a timely manner.

4. The Marshall County Sanitation District shall assure that the respective quit claim deed is properly filed and recorded in the in the Marshall County Clerk's Office.

B. Once all actions set out in this Section are completed, the Marshall County Fiscal Court shall proceed with the proper dissolution of Marshall County Sanitation District No. 1 and Marshall County Sanitation District No. 2, in accordance with KRS 65.166 / KRS 220.115.

SECTION 11: COMMUNICATION & COOPERATION

The Sanitation District shall actively and routinely coordinate all its planning, administration, and regulatory actions with, as well as convey updated information regarding its facilities, construction and operational activities to the Marshall County Fiscal Court, the Marshall County Health Department, the City of Benton, the City of Calvert City, and the City of Hardin to best assure full interagency communication and integrated service delivery to the citizens of Marshall County.

SECTION 12: No General Obligation or Personal Liability

A. Grants, loans, bonds, or other funding assistance that may be awarded to or secured by the Sanitation District, as authorized by this Ordinance, shall not carry any responsibility to, nor in any way constitute an obligation or indebtedness of the Marshall County Fiscal Court. Also, no member of the Fiscal Court, individually or collectively, shall be required or obligated to reimburse any grant or portion of a grant, as a result of a failure on the part of the Sanitation District; nor shall the Fiscal Court or any member thereof, be obligated to make any loan or bond payment on behalf of the Sanitation District from any general or special tax revenues, within the meaning of any constitutional provision or limitation.

B. No Sanitation District director, board officer, or employee of the Sanitation District shall be personally obligated, individually or collectively, to make payment, or in any way be liable for any debt, bond obligation, contract, or other fiscal obligation or expense legally incurred in furtherance of Sanitation District purposes, except for malfeasance, misfeasance or criminal activity.

SECTION 13: CONCORDANCE

This Ordinance shall supercede and render all previous ordinances or orders of the Marshall County Fiscal Court relating to the establishment and/or operations and management of Marshall County Sanitation District No. 1 and of Marshall County Sanitation District No. 2. null and void, and shall be interpreted and construed so as not to conflict with other Marshall County ordinances, as well as state or federal laws or regulations.

SECTION 14: PENALTIES

Any person, entity, or corporation violating any of the provisions of this ordinance, or failing or refusing to comply with the rules and regulations of the Marshall County Health Department or

the Sanitation District relating to this Ordinance, shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) for each offense. Each day such person, entity, or corporation fails or refuses to comply with the specific provisions of this ordinance, shall constitute a separate offense.

Enacted this the _____ day of _____, 2017

First Reading: _____

Second Reading: _____

Publication: _____

Kevin Neal
Marshall County Judge/Executive

ATTEST:

Desiree Hermosillo
Marshall County Fiscal Court Clerk

Date: _____