

MEMO

TO: Norton City Council
Norton Administration

FROM: Justin P. Markey

DATE: July 6, 2015

RE: Permissible Uses of Fund 127 Sanitary Sewer Fund

At the June 22, 2015 City Council meeting, I was asked to provide a memorandum summarizing the permissible uses of funds on deposit in the City's Fund 127 - Sanitary Sewer Fund (the "Sewer Fund"). The Sewer Fund is established under the authority of Section 729.52 of the Ohio Revised Code. Section 729.52 provides:

The funds received from the collection of sewer rentals under section 729.49 of the Revised Code shall be deposited weekly with the treasurer of the municipal corporation. Money so deposited shall be kept as a separate and distinct fund and shall be known as the sewer fund. When appropriated by the legislative authority of the municipal corporation, the fund shall be subject to the order of the director of public service of a city or of the board of trustees of public affairs of a village. The director or board shall sign all orders drawn on the treasurer of the municipal corporation against such fund, which fund shall be used for the payment of the cost of the management, maintenance, operation, and repair of the sewerage system and sewage pumping, treatment, and disposal works. Any surplus in such fund may be used for the enlargement or replacement of the system and works, for construction and reconstruction of main and interceptor storm sewers, for the payment of the interest on any debt incurred for the construction thereof, and for the creation of a sinking fund for the payment of such debt, *but shall not be used for the extension of a sewerage system to serve unsewered areas or for any other purpose*, provided, where such municipal corporation does not operate or maintain a sewage pumping, treatment, and disposal works, any or all of such surplus may be transferred to the general fund of the municipal corporation in the manner provided in sections 5705.15 and 5705.16 of the Revised Code. (emphasis added)

Accordingly, all sanitary sewer revenues received by the City for operation of its sanitary sewer utility are deposited into the Sewer Fund. This includes Access Charge (tap-in charges) collected under Section 1042.05 of the Codified Ordinances and surcharges collected under Section 1042.06 of the Codified Ordinances. This deposit is made in accordance with the requirements of Section 729.52 of the Ohio Revised Code, which requires the funds received from the collection of sewer rentals be so deposited.

As set forth in Section 729.52 of the Ohio Revised Code, funds on deposit in the Sewer Fund can be used for (1) enlargement and replacement of the system and works, (2) construction and reconstruction of main and interceptor storm sewers, (3) payment of the interest on any debt incurred for construction thereof and (4) the creation of a sinking fund for the payment of such debt. Funds on deposit in the Sewer Fund cannot be used for "the extension of a sewerage system to serve unsewered areas or for any other purpose."

The distinction between the enlargement/replacement (permissible) and extension (not permissible) of the sewer system is the critical point to analyze. Funds on deposit in the Sewer Fund can be used for the replacement/enlargement of existing sanitary sewer assets located in the Norton. Those funds cannot be used for the extension to sanitary sewer system to unsewered areas. This would include the extension of the sanitary sewer system to the Nash Heights project area. Moreover, the requirements of Section 729.52 of the Ohio Revised Code will not permit this Council to amend Sections 1042.05 and 1042.06 of the Codified Ordinances to direct the deposits of access charges and surcharges to some location other than the City's Sewer Fund.¹ Accordingly, neither the amounts currently on deposit in the Sewer Fund nor the future surcharge and access fees paid by Norton residents can be applied to pay the costs of the Nash Heights project. Council will receive new projections showing Norton's required financial participation in the Nash Heights area in light of this legal analysis.²

If Council is comparing this analysis to the original Barberton proposal, there are two main differences. First, under the Barberton proposal, Norton would no longer be operating a sanitary sewer system under the authority of Section 729.49 of the Ohio Revised Code. Second, all surcharge funds would be collected and retained by the City

¹ We were previously requested to include the Nash Heights "revenues" in the financial projections presented to Council on June 22, 2015. This was done without the benefit of a separate legal analysis regarding the use of funds in the Sewer Fund and the collection of future surcharge moneys from Nash Heights residents. In light of the questions raised by Mr. Rodgers regarding the use of City-wide surcharge funds, it became clear that a legal analysis of the permissible use of funds was required. This memo is the product of that legal analysis.

² Please note that the surcharges currently collected from the so-called "Spring Avenue Outfall" area of the City are subject to a pending lawsuit and the City cannot spend those funds deposited into the Sewer Fund pending the final disposition of that lawsuit.

of Barberton and then applied for the benefit of Norton projects. Thus, Norton would not be collecting funds to be deposited in the Sewer Funds. For that reason, surcharge funds can be applied to the Nash Heights project under the Barberton proposal, but cannot be used if Norton is collecting the surcharge funds for deposit into the Sewer Fund.

In light of this legal analysis, a new set of financial projections have been provided to you for both the vacuum and gravity sewer options setting forth the City's obligations at various assessment levels. It appears that the only source of funds flexible enough to pay the City's costs of the Nash Heights project are the funds on deposit in Fund 128 from the income tax rollback.

JPM

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	Cost	Assessment Level	Property Owner Loan Amount	City Loan Amount	Annual Payment Required for City Loan Amount	Pump Station Payment**	Total City Payment
	\$ 7,790,000	\$ 8,000	\$ 2,432,000	\$ 5,358,000	\$ (327,678)	\$ (\$30,578)	\$ (358,256)
	\$ 7,790,000	\$ 8,500	\$ 2,584,000	\$ 5,206,000	\$ (318,382)	\$ (\$30,578)	\$ (348,960)
	\$ 7,790,000	\$ 9,000	\$ 2,736,000	\$ 5,054,000	\$ (309,086)	\$ (\$30,578)	\$ (339,664)
	\$ 7,790,000	\$ 9,500	\$ 2,888,000	\$ 4,902,000	\$ (299,790)	\$ (\$30,578)	\$ (330,369)
	\$ 7,790,000	\$ 10,000	\$ 3,040,000	\$ 4,750,000	\$ (290,494)	\$ (\$30,578)	\$ (321,073)
	\$ 7,790,000	\$ 10,500	\$ 3,192,000	\$ 4,598,000	\$ (281,199)	\$ (\$30,578)	\$ (311,777)
	\$ 7,790,000	\$ 11,000	\$ 3,344,000	\$ 4,446,000	\$ (271,903)	\$ (\$30,578)	\$ (302,481)
	\$ 7,790,000	\$ 11,500	\$ 3,496,000	\$ 4,294,000	\$ (262,607)	\$ (\$30,578)	\$ (293,185)
	\$ 7,790,000	\$ 12,000	\$ 3,648,000	\$ 4,142,000	\$ (253,311)	\$ (\$30,578)	\$ (283,889)
	\$ 7,790,000	\$ 12,500	\$ 3,800,000	\$ 3,990,000	\$ (244,015)	\$ (\$30,578)	\$ (274,594)
	\$ 7,790,000	\$ 13,000	\$ 3,952,000	\$ 3,838,000	\$ (234,719)	\$ (\$30,578)	\$ (265,298)
	\$ 7,790,000	\$ 13,500	\$ 4,104,000	\$ 3,686,000	\$ (225,424)	\$ (\$30,578)	\$ (256,002)
	\$ 7,790,000	\$ 14,000	\$ 4,256,000	\$ 3,534,000	\$ (216,128)	\$ (\$30,578)	\$ (246,706)
	\$ 7,790,000	\$ 14,500	\$ 4,408,000	\$ 3,382,000	\$ (206,832)	\$ (\$30,578)	\$ (237,410)
	\$ 7,790,000	\$ 15,000	\$ 4,560,000	\$ 3,230,000	\$ (197,536)	\$ (\$30,578)	\$ (228,115)
	\$ 7,790,000	\$ 15,500	\$ 4,712,000	\$ 3,078,000	\$ (188,240)	\$ (\$30,578)	\$ (218,819)
	\$ 7,790,000	\$ 16,000	\$ 4,864,000	\$ 2,926,000	\$ (178,945)	\$ (\$30,578)	\$ (209,523)
	\$ 7,790,000	\$ 16,500	\$ 5,016,000	\$ 2,774,000	\$ (169,649)	\$ (\$30,578)	\$ (200,227)
	\$ 7,790,000	\$ 17,000	\$ 5,168,000	\$ 2,622,000	\$ (160,353)	\$ (\$30,578)	\$ (190,931)
	\$ 7,790,000	\$ 17,500	\$ 5,320,000	\$ 2,470,000	\$ (151,057)	\$ (\$30,578)	\$ (181,635)
	\$ 7,790,000	\$ 18,000	\$ 5,472,000	\$ 2,318,000	\$ (141,761)	\$ (\$30,578)	\$ (172,340)
	\$ 7,790,000	\$ 18,500	\$ 5,624,000	\$ 2,166,000	\$ (132,465)	\$ (\$30,578)	\$ (163,044)
Min City Share	\$ 7,790,000	\$ 18,742	\$ 5,697,608	\$ 2,092,392	\$ (127,964)	\$ (\$30,578)	\$ (158,542)

@26.86%

* 27.5% surcharge and tap-in fees at \$2,740 (provided that it is not waived)

** Pump station debt service will be paid from the rollback funds

Vacuum Sewer Analysis at 304 Benefit Units

6/30/2015

Cost	Assessment Level	Property Owner Loan Amount	City Loan Amount	Annual Payment Required for City Loan Amount	Pump Station Payment*	Total City Payment
\$ 6,515,000	\$ 5,000	\$ 1,520,000	\$ 4,995,000	(305,478)	(\$30,578)	\$ (336,056)
\$ 6,515,000	\$ 5,500	\$ 1,672,000	\$ 4,843,000	(296,182)	(\$30,578)	\$ (326,760)
\$ 6,515,000	\$ 6,000	\$ 1,824,000	\$ 4,691,000	(286,886)	(\$30,578)	\$ (317,465)
\$ 6,515,000	\$ 6,500	\$ 1,976,000	\$ 4,539,000	(277,590)	(\$30,578)	\$ (308,169)
\$ 6,515,000	\$ 7,000	\$ 2,128,000	\$ 4,387,000	(268,295)	(\$30,578)	\$ (298,873)
\$ 6,515,000	\$ 7,500	\$ 2,280,000	\$ 4,235,000	(258,999)	(\$30,578)	\$ (289,577)
\$ 6,515,000	\$ 8,000	\$ 2,432,000	\$ 4,083,000	(249,703)	(\$30,578)	\$ (280,281)
\$ 6,515,000	\$ 8,500	\$ 2,584,000	\$ 3,931,000	(240,407)	(\$30,578)	\$ (270,985)
\$ 6,515,000	\$ 9,000	\$ 2,736,000	\$ 3,779,000	(231,111)	(\$30,578)	\$ (261,690)
\$ 6,515,000	\$ 9,500	\$ 2,888,000	\$ 3,627,000	(221,815)	(\$30,578)	\$ (252,394)
\$ 6,515,000	\$ 10,000	\$ 3,040,000	\$ 3,475,000	(212,520)	(\$30,578)	\$ (243,098)
\$ 6,515,000	\$ 10,500	\$ 3,192,000	\$ 3,323,000	(203,224)	(\$30,578)	\$ (233,802)
\$ 6,515,000	\$ 11,000	\$ 3,344,000	\$ 3,171,000	(193,928)	(\$30,578)	\$ (224,506)
\$ 6,515,000	\$ 11,500	\$ 3,496,000	\$ 3,019,000	(184,632)	(\$30,578)	\$ (215,210)
\$ 6,515,000	\$ 12,000	\$ 3,648,000	\$ 2,867,000	(175,336)	(\$30,578)	\$ (205,915)
\$ 6,515,000	\$ 12,500	\$ 3,800,000	\$ 2,715,000	(166,040)	(\$30,578)	\$ (196,619)
\$ 6,515,000	\$ 13,000	\$ 3,952,000	\$ 2,563,000	(156,745)	(\$30,578)	\$ (187,323)
\$ 6,515,000	\$ 13,500	\$ 4,104,000	\$ 2,411,000	(147,449)	(\$30,578)	\$ (178,027)
\$ 6,515,000	\$ 14,000	\$ 4,256,000	\$ 2,259,000	(138,153)	(\$30,578)	\$ (168,731)
\$ 6,515,000	\$ 14,500	\$ 4,408,000	\$ 2,107,000	(128,857)	(\$30,578)	\$ (159,436)
\$ 6,515,000	\$ 15,000	\$ 4,560,000	\$ 1,955,000	(119,561)	(\$30,578)	\$ (150,140)
Min City Share @26.86%	\$ 15,675	\$ 4,765,072	\$ 1,749,928	(107,020)	(\$30,578)	\$ (137,598)

* Pump station debt service will be paid from the rollback funds