

BEN DAVIS CONSERVANCY DISTRICT
ORDINANCE NO. 2019-1
IMPLEMENTING EDU'S AS THE BASIS OF
SEWER USER FEES

WHEREAS, the Ben Davis Conservancy District (hereafter sometimes referred to as "District") has heretofore operated a system financed by the special benefits property tax and more recently user fees; and

WHEREAS, users of the sewer system who discharge larger volumes of water into the system have been charged an "exceptional benefit charge," based on a report of "appraisers" who determine the computation of the charge and the basis of computation of the charge. The exceptional benefit charges were made pursuant to the Indiana Conservancy Act and certain orders of the Marion County Circuit Court over time; and

WHEREAS, exceptional benefit charges have been assessed against car washes, laundromats, trailer parks, and other like heavy users of water; and

WHEREAS, the use of the exceptional benefit charge is a cumbersome system leading to uncertainty of charges to the user, is paid a year in arrears, and is not uniform; and

WHEREAS, in 1995, the Indiana General Assembly enacted I.C. § 14-33-22-1 which has authorized conservancy districts within Marion County to charge users of the sewers rates and charges based upon a flat charge for each sewer connection, the amount of water used, the number and size of water outlets, the amount and strength and character of sewer discharge, the size of a sewer connection and any combination of these factors. (See I.C. § 14-33-22-12.)

NOW, THEREFORE, in order to promulgate a fairer, more equitable, and uniform system of rates and charges, the Ben Davis Conservancy District believes a new system should be implemented as set out in this ordinance which will not only replace the exceptional benefit charges but shall implement a system based upon an EDU as the basic unit upon which user fees are made.

The Board of Directors of the Ben Davis Conservancy District (hereafter sometimes referred to as "Board") does hereby enact and ordain as follows:

1. Short Title. This ordinance may be cited as the "Ben Davis Conservancy District User Fee Ordinance."

1.1 Basis of Charges. The basis of the sewer service charges in this ordinance is the establishment of an EDU System which is short for "Equivalent Dwelling Unit." The EDU

System is authorized by I.C. § 14-33-22-1, *et seq.* The exceptional benefit charges heretofore authorized by the Circuit Court are abolished upon the enactment of this ordinance.

2. Definitions. Unless the context otherwise indicates, terms used herein shall have the following meaning:

(a) “Equivalent Dwelling Unit (or EDU)” means the unit of measure by which a single-family residential household in the District is charged by the District for sewer services based on the typical water consumption of a typical single-family residential household. At present, a single-family residential household consumes an average of 310 gallons of water per day and, therefore, is assigned an EDU of one (1). All other users shall be assigned an EDU pursuant to 327 IAC 3-6-11 as amended and incorporated by reference. Any property not classified by 327 IAC 3-6-11 shall be assigned an EDU by the District. The District may use any and all factors that are reasonable, just, and fair in the assignment of the number of EDU’s including negotiation of the appropriate number.

(b) “District” means the Ben Davis Conservancy District. “Board” means the Ben Davis Conservancy District Board of Directors.

(c) “Sewer capacity charge” means a charge for facilities in existence at the time a charge is imposed or charges for new facilities to be constructed in the future that are of benefit to the person or property being charged.

(d) “Sewer user fee” means fees, tolls, rates, or other charges for services and facilities furnished by the District in connection with its sanitary sewerage system for different classifications of property.

(e) “Sewer connection” means the connection of a structure or project to a public sewer system.

(f) “Customer” or “user” means any person, firm, corporation, association, governmental agency or other entity to which the services or facilities of the District are furnished whether the customer is physically located within the District’s boundaries or outside the District’s boundaries.

(g) “Single-family dwelling” means a structure designed, improved or used as a residential dwelling with one complete independent living facility, including permanent provisions for living, sleeping, eating, cooking and sanitation.

(h) “Multiple-family dwelling” means any structure designed, improved or used as a residential dwelling with two or more living units with complete

independent living facilities with separate entrances. Complete independent living facilities include permanent provisions for living, sleeping, eating, cooking and sanitation. Multiple family dwellings include apartment houses and duplexes, but not hotels, motels, dormitories, or similar structures, which do not have separate kitchen facilities for any of the units therein.

(i) “BOD” means biochemical oxygen demand, which is a measure of strength of sewage expressed in terms of the amount of oxygen required by bacteria to render sewage inert.

(j) “Tariff” or “Schedule or Rates and Charges” shall mean a schedule implemented by the District attached to an ordinance or otherwise ordained or ordered by the District from time to time setting out the present charges for sewer user fees for various classifications of property, charges for excess suspended solids, BOD’s, capacity charges, connection fees, and other lawful charges. The tariff shall change from time to time based upon changed conditions. The charge for an EDU shall be determined as follows: The District shall formally adopt its budget as provided by law. Thereafter, the District shall determine the number of EDU’s in the Conservancy District. The District shall determine the charge for each EDU by estimating the amount of money it will need to operate the Conservancy and assign a charge for each EDU considering all factors required in the budget process.

(k) “SS” means suspended solids, a measure of strength of sewage expressed in terms of the quantity of the solid material measured in milligrams within a liter of sewage.

(l) “Maximum Day” means the maximum daily loading (flow, BOD, SS) anticipated from a given discharger in a calendar year.

(m) “Maximum Sustained” means the maximum consecutive 5-day-average loading (flow, BOD, SS), i.e., loadings from the maximum consecutive 5-day discharge period during the calendar year from a given discharger.

3. Severability. The Board hereby declares that if any provision of this ordinance or the application thereof to any person or circumstance is held invalid by court order, the remainder of this ordinance, or the application of any provision held invalid to other persons or circumstances shall not be affected.

4. Authority. The Board finds that the imposition of fees and charges that have been adopted pursuant to this ordinance have been authorized by I.C. § 14-33-22-1, *et seq.*

5. Sewer User Fees. Sewer user fees shall be determined by ordinance from time to time and shall be based on how many EDU’s a user is assigned or billed, or other factors detailed in the Schedule of Rates and Charges in the ordinance.

6. Study for EDU's. The District shall cause a study to be conducted to determine how many EDU's are to be assigned to all users of the sewer. Each single-family residential household shall be assigned one (1) EDU. All other properties in the District shall be assigned an EDU based upon 327 IAC 3-6-11 to the extent possible or upon water consumption or metered usage for categories of property not classified by 327 IAC 3-6-11. There is an irrebuttable presumption that 100% of water consumed will eventually reach the sanitary sewer and that watering and evaporation is *di minimus* and is already factored into the cost of transportation treatment, and cost of an EDU. Therefore, no set off or credit shall be allowed for lawn watering, evaporation, or any other matter. There are no partial EDU's. Any proportioned EDU shall be assigned the next higher EDU.

Example: A customer not classified by 327 IAC 3-6-11 has an average monthly water consumption of 27,000 gallons each month. $27,000 \div 31 = 870.96$ gallons per day. $870.96 \div 310 = 2.809$. The customer shall be assigned an EDU of three (3).

7. Appeals. In the event that an aggrieved customer desires to challenge the number of EDU's assigned to the user, the user shall file with the District a protest, in writing, setting forth why the user believes that the EDU assigned is incorrect. Said challenge may be made at any time but the receipt date of the challenge is the "start date" of any successful appeal. No credit shall be allowed for the time period prior to the start date. A form will be available at the District's office for the use of the aggrieved user. All appeals must be made using the District's form. Upon receipt of the protest, the District shall note the date and time of the receipt of protest and shall appoint a hearing officer to conduct a hearing to hear the merits of the protest and to make a recommendation to the Board as to how many EDU's should be assigned and/or the nature and kind of relief, if any, that should be afforded the aggrieved user. The hearing officer shall be a person familiar with the concept of EDU's and of sewers. The hearing shall be informal and normal rules of evidence shall not apply. The aggrieved user shall be allowed to present any evidence deemed appropriate. The hearing may but is not required to be recorded, and the hearing officer shall forthwith make a recommendation to the Board. The Board shall upon receipt consider the report of the hearing officer and shall notify the aggrieved user as soon as practical as to its decision. The aggrieved user shall not be afforded the right to appear in person before the Board as the hearing officer is to act for and on behalf of the Board. However, the Board may upon majority vote allow the aggrieved party to personally appear before the Board. The decision of the Board shall be mailed by first class mail to the aggrieved user. If favorable, the Board shall adjust the EDU assignments and make a refund to the customer. If the decision is not favorable to the customer, the aggrieved customer shall have thirty (30) days from receipt of the Board's decision to file a request for judicial review with the Marion County Circuit Court. If the report is mailed, an additional five (5) days shall be allowed. If a request for judicial review is not filed within thirty (30) days, the decision of the Board shall be final. The appeal shall be an action *de novo* and shall consist of a request for judicial review in the form of a civil action against the Board with the filing of a complaint and the issuance of a summons to the Board. The Indiana Rules of Civil Procedure and Indiana Statutes regarding evidentiary rules shall govern the trial. The District shall comply with

the Order of the Court and shall refund any monies due if the customer receives a favorable decision from the Court. However, until the Board's initial action is reversed, the number of EDU's assigned to the particular property shall be as first determined by the District and the "end date" of the appeal shall be the date of the determination of the correct EDU assignment. The refund shall be made to the aggrieved user and shall be based upon that sum of money which should have been charged from the "start date" until the date of the corrected assignment of EDU's, either by the Circuit Court or by Order of the Board.

8. Contract Users. The Board has heretofore contracted with certain users whose property lies outside the boundaries of the District. These properties shall be charged for the transportation and treatment of their sewage by assigning an EDU number to the property and assigning other factors affecting their user fees. Such factors shall be determined from time to time and shall be published by ordinance in the Schedule of Rates and Charges. The contract users shall be charged essentially the same as users in the Conservancy boundaries with the exception of other charges that are unique to these properties, including but not limited to inflow and infiltration, plus an additional fee of 15% of the total bill which represents additional administrative costs which these properties have historically cost the District. Any existing contract made between these contract users and the District shall be considered null and void upon the effective date of this ordinance and shall be superseded by this ordinance. This ordinance shall be first approved by the Marion County Circuit Court with notice of the hearing to interested contract users and users being assessed exceptional benefits charges by publication and certified mail. Each contract is subject to negotiation based upon circumstances unique to the property.

9. Grease. Grease causes great problems for the District in that it clogs lines more than any other unlawful substance introduced to the sewer lines. If the District determines that any establishment is introducing unreasonable amounts of grease, the District may require the customer to install a grease trap and if the customer refuses, the District may without further authority install the grease trap and collect the amount required for installation along with reasonable attorney fees from the customer or may seek further injunctive action from the Circuit Court of Marion County.

10. BOD's and Suspended Solids. Should the Board determine that any user is discharging an unreasonable amount of BOD's and suspended solids, the Board may charge the user a reasonable charge later determined and included in the Schedule or Rates and Charges.

11. Sewer Connection. The District has heretofore established uniform existing rates for sewer connections as well as capacity charges. These rates shall be amended from time to time by the Schedule or Rates and Charges or future ordinances.

12. Other Ordinances Not Repealed. All other ordinances of the District not modified by this ordinance shall remain in full force and effect.

13. Board May Change Rates from Time to Time. If this ordinance is approved by the Circuit Court, it shall not be necessary to request approval of any new rates or charges implemented from time to time, but an aggrieved party shall have the right at any time to file an action with the Marion County Circuit Court challenging the validity of the Schedule or Rates and Charges.

This ordinance shall be effective January 1, 2020.

All of which his enacted and ordained this _____, 2019.

FRED BUCKINGHAM, Chairman

BEVERLY A. MATTHEWS, Vice Chairman

JEFFREY T. WOOD, Member

ATTEST:

Secretary