

**BOARD OF SANITARY COMMISSIONERS
MUNCIE SANITARY DISTRICT**

RESOLUTION NO 2011-12

**A Resolution concerning the maintenance and repair of
sanitary and/or storm sewers within the Muncie Sanitary
District upon petition by users.**

WHEREAS the Board of Sanitary Commissioners ("Board") of the Muncie Sanitary District ("District") of the City of Muncie, Indiana ("City") has heretofore established a system of sewers for the collection and sanitary disposal of sewage and storm water throughout the District; and,

WHEREAS there is no provision in the laws governing the District, which allows the owners of property served by those sewers to request the District to do repair, maintenance or replacement of those sanitary sewers or storm sewers by petition to the Board and to pay all or a part of the cost of their portion of that work; and

WHEREAS The Board must maintain its sanitary and storm sewers so as to prevent sewer discharges or drainage from polluting the watercourses of the District and so as to prevent such pollution constituting a menace to the public health and welfare of the citizens served by the District's sewers and drains; and

WHEREAS the State Legislature has established by law a system of Home Rule which has granted to the District not only Powers expressly granted to the District by statute but all Powers necessary or desirable in the conduct of the District's affairs, even though not granted by statute; and

WHEREAS the Board finds that it is both necessary and desirable, in carrying out the powers and responsibilities of the District, to establish a means by which owners of property served by the District may petition to the Board for repair, maintenance or replacement of the sanitary and/or storm sewer drains which serve their property and to provide for them a means by which they may pay for all or a part of the cost of their portion of such repair or maintenance.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE MUNCIE SANITARY DISTRICT THAT:

Section 1. That upon petition to the Board by:

- (1) a majority of the residents in a platted subdivision or owners of unplatted land within the boundaries of the District;
- (2) with such petition being signed by the interested residents in the platted or

unplatted area and listing the addresses of their property; and

(3) with the location of the sanitary or storm sewer system that is in need of repair, maintenance or replacement being contained in the petition;

The Board shall consider such petition and may, by Resolution, order that an investigation be undertaken concerning the repair, maintenance or replacement of the designated drain(s) in the petition.

Section 2. Consideration of Project and Costs

(a) If upon investigation, the Board finds that (1) the sewage and/or storm water drain system that is the subject of the petition is in such a state of disrepair so as to pollute by discharge of sewage and/or drainage harmful matter from the sewage or drainage systems; (2) that the correction of this discharge is necessary for the public health and welfare; and (3) the maintenance, repair or replacement of the system will be of public utility and benefit; the Board shall prepare general plans for the project including a plat showing the scope of the project and the location of all real property needed to be acquired for the project and the location of all real property and personal property that will be affected by the project. The Board shall also have the cost of all work for the project estimated, including damages to be awarded to the owners of the real and personal property appropriated or adversely affected by the project.

Section 3. Adoption of Resolution. When the project plans have been prepared by the Board, it shall consider the adoption of a resolution declaring that upon investigation it has found the following:

(1) That the waters particularly described in the resolution are being polluted by the discharge from sewage, drainage, or harmful material accumulating from the need for the maintenance, repair or replacement of the sanitary and/or storm drain and that the drain is a part of drainage system of the District.

(2) That it is necessary for the public health and welfare and will be of public utility and benefit to undertake the maintenance, repair or replacement and to appropriate the property as described in the project plans.

As a part of the Resolution the Board shall adopt all general plans and estimates which shall then be open to inspection by all persons interested in or affected by the construction of work or the appropriation of property.

Section 4. Publication of Notice of Hearing and Mailing of Notice.

(1) Following adoption of a resolution the Board shall publish in accordance with State law (IC 5-3-1) the adoption of the Resolution, the area of the drains covered by the resolution, and the fact that cost estimates have been prepared and can be inspected.

(2) The published notice must also name a date on which the Board will receive or hear remonstrances from persons interested or affected by the project and when, after hearing, the Board shall determine the public utility and benefit of the project.

(3) A similar notice shall be mailed to each owner of land to be appropriated under the resolution. If a nonresident's address is unknown to the Board, then that person is considered to

have been notified of the hearing by the publication of notice. All persons affected in any manner by the proceeding, including all taxpayers in the District, are considered to be notified of the pendency of the proceedings and of all subsequent acts, hearing, adjournments, and orders of the Board by the original notice of publication.

Section 5. Hearing and Remonstrance on Project.

(1) At or before the time fixed for hearing, an owner of land, right-of-way or other property to be appropriated for the project or injuriously affected by the project, including any person owning real or personal property affected by the project, may file a written remonstrance with the Board.

(2) At the hearing the Board may continue and/or adjourn the meeting from time to time and shall hear all persons interested in the proceedings and all remonstrances that have been filed. After considering them, the Board shall take final action determining the public utility and benefit of the proposed project and confirm, modify and confirm or rescind the resolution previously adopted. The final action of the Board shall be recorded, and is final and conclusive upon all persons.

(3) Within ten (10) days following the final action of the Board any person who has filed a written remonstrance and who is aggrieved by the decision of the Board may take an appeal to the Circuit Courts of Delaware County, Indiana wherein the District is located.

Section 6. Procedure Upon Remonstrance. A Remonstrator shall file in the office of the Clerk of Delaware County a copy of the order of the Board, together with a bond conditioned to pay the cost of the appeal if the appeal is against the remonstrator. The Remonstrance shall be had and heard in the manner as is provided for a remonstrance of final orders of the Board as set out at IC 36-9-25-18, sections (g) and (h) as the same may, from time to time, be amended or changed.

Section 7. Cap on Costs to Land Owners. Land owners who are subject to a project under this Resolution shall have the cost that they must pay for each tract or parcel of land capped at thirty five hundred dollars (\$3,500.00) and any costs which exceeds that amount shall be paid by the District from funds raised from levy of tax as provided at IC 36-9-25-32 (a) (2) or from revenue raised from fees as provided for at 36-9-25-34 (a).

Section 8. Payment Over Time. Any costs paid by the land owners and assessed pursuant to this resolution may be paid over a period of five (5) years with terms, conditions and interest rate to be determined by the Board at the Board's sole and absolute discretion. All payments made to the District shall be paid into the Sewage Utility Office unless otherwise designated by the Board.

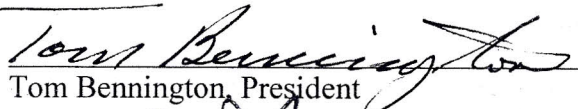
Section 9. Conflict With Resolutions. All resolutions or parts of resolutions that are in conflict with this resolution are hereby repealed to the extent of that conflict.

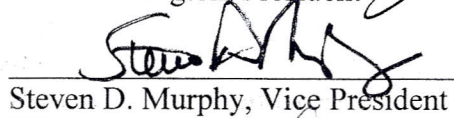
Section 10. Effective Date. This resolution shall be in full force and effect from and after its passage and shall thereafter remain in full force and effect unless amended or rescinded by further

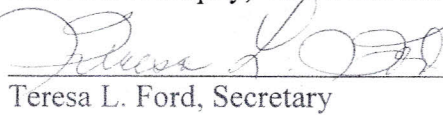
action of the Board. .

Adopted this 4th day of October, 2011.

BOARD OF SANITARY COMMISSIONERS
OF THE MUNCIE SANITARY DISTRICT


Tom Bennington, President


Steven D. Murphy, Vice President


Teresa L. Ford, Secretary