

ADVISORY INFORMATION

Date Prepared: July 23, 2008

Subject: Approval of Changes to Service Availability Charge (SAC) Rules to Allow SAC Credit Transfers in Certain Economic Development Circumstances

Proposed Action:

That the Metropolitan Council approves authorizing staff to change the Service Availability Charge (SAC) rules, in substantially the form of the attached draft rules, to allow SAC credit transfers in certain economic development circumstances.

Summary of Committee Discussion / Questions:

Staff described the public outreach effort and the proposed rule change to allow voluntary SAC credit transfers for certain state-wide significant economic opportunities where capacity exists in MCES facilities.

MetroCities (AMM) spoke in support but stressed transfers should only happen when the entity will move out of state “but for” this assistance and with a package of assistance from the State. They stressed that it’s important that this is voluntary for cities.

Minneapolis spoke about their reservations and remained unsupportive. Despite the transfer being voluntary they felt it might put city staff and officials in the awkward position of supporting a move out of their city and that state incentives might not be forthcoming. In addition, they expressed concern that this was allowing a move of real site-specific sewer capacity which MCES has opposed in the past. They do not want the Department of Employment and Economic Development (DEED) to have to initiate such a transfer or a transfer within the City to require DEED approval.

CM Leppik asked, “how can DEED assure ‘but for’ is valid?” Staff said that draft forms require DEED and the business to certify this condition, but there will likely always be some uncertainty.

CM Scherer asked Minneapolis “why it would matter who initiates, if a local government has the ability to stop a transfer?” City staff said they don’t want to be in the position of stopping economic development.

CM Bowles asked “if this would have been considered if not for a specific business?” The answer was that this issue had not come up previously, but MCES staff wants to support DEED and cities in preserving economic opportunity when there are no capacity constraints. Even if the specific situation in Minneapolis does not go forward, DEED has now asked for this tool.

MCES staff was asked to continue to work with Minneapolis staff on procedural issues and clarifications.

The motion passed unanimously.

E Environment Committee

Meeting date: July 22, 2008

For the Metropolitan Council Meeting of July 23, 2008

ADVISORY INFORMATION

Date:	July 15, 2008
Subject:	Approval of Changes to Service Availability Charge (SAC) Rules to Allow SAC Credit Transfers in Certain Economic Development Circumstances
District(s), Member(s):	All
Policy/Legal Reference:	Policy 3-2-5 and MN Statute 473.517 subd. 3
Staff Presented/Prepared:	Jason Willett (651-602-1196)
Division/Department:	MCES c/o William G. Moore (651-602-1162)

Proposed Action

That the Metropolitan Council approves authorizing staff to change the Service Availability Charge (SAC) rules, in substantially the form of the attached draft rules, to allow SAC credit transfers in certain economic development circumstances.

Background

The Department of Employment and Economic Development (DEED) contacted Metropolitan Council Environmental Services (MCES) about a situation where an industry may move from Minneapolis to Wisconsin. With certain financial incentives, this company indicated it might move within the metro region instead. Among the incentives that DEED hopes to offer would be allowing a transfer of SAC credits from the current Minneapolis site to a new site within our service area. However, current SAC rules do not allow credit transfers.

On June 24, 2008, MCES held a public meeting to get public comments on proposed rule changes to allow such a credit transfer. The meeting was attended by 18 people (and staff). The proposed rule requirements and limitations that were presented at the meeting are listed below.

1. Transfers would be limited to industrial permittees of MCES and any other entities served by the metropolitan sewer system where at least 50 full-time equivalent jobs are currently located on the site to be moved.
2. Transfers would be permitted only where the business or entity being moved is not changing ownership and the moving entity is the property owner of the existing site or has the consent of the property owner for the transfer.
3. A written request for consideration in each specific instance would be required to be received by the Council from the Commissioner of DEED (or his/her designee).
4. Approval by MCES as to the availability of capacity in sewer pipes and plant serving the new location would be required and documented.
5. Written approval from each involved Local Governmental Unit, on forms approved by MCES, would be required. This would limit the use of the transferred credits only to the subject entity.
6. Credit Transfers would not occur until credits are established on the old site per existing rules (requires permitting of new use or other official governmental action to limit the future use). Potential credits from demolitions would not qualify for transfer as the capacity may still be required on that site.
7. Credit transfers would be allowed only for “city-wide” credits (this distinction does not apply after 2010).
8. Allocations of credits on a “campus” site would be at the reasonable discretion of MCES.
9. Allowances above SAC grandparent value and paid SAC would not transfer.
10. No retroactive transfers would be allowed.

After public comments were received, and with further discussion with DEED, staff eliminated the restriction against changing ownership and modified the timing of the transfer so that the entities moving are not liable for SAC in both places during construction of the new site.

Rationale

Providing this incentive for businesses may help prevent many jobs and tax base from moving out of the metro region.

Funding

Prior to 2010 (when previously adopted SAC credit rules changes apply), this proposal should have little to no impact on SAC program funding because these SAC credits would be available no matter where a business moves. After January 1, 2010, this rule change would allow SAC credits (in these rare situations) that otherwise would not have occurred, resulting in a loss of SAC units collected and slightly higher SAC rates. A business that remains in the metro area will continue to pay municipal waste charges and industrial charges, which should offset any loss of revenue because of the transfer of SAC credits.

Known Support/Opposition

DEED approves of this proposal. Metro Cities and the City of Minneapolis have written comments (attached).

Highlights of questions/comments taken at the public meeting:

- In the single instance now being negotiated by DEED, more than 200 jobs would be gone out of state if this business leaves its Minneapolis site.
- Transfers should be limited to substantial corporations and strong criteria should be used, including a requirement for certification that the company really would move out of state “but for” the incentives offered by the state.
- It was noted by DEED that no retail businesses would qualify as none would be considered to have a substantial statewide economic impact. DEED incentives are typically for large manufacturing or corporate headquarters.
- Confirmation was asked for and given by staff that the proposed SAC transfer would not be made unless all involved parties agree.
- A question was asked about why SAC units are not used for the size criteria instead of number of FTEs. The answer was that the key criteria will most likely be what DEED considers a “substantial economic development opportunity.” The number of employees is probably a better measure than water use for determining economic impact.
- A suggestion was made to tighten the language regarding the type of FTEs that are counted so that a differing interpretation doesn’t cause a snowball effect.



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July 18, 2008

Ms. Peggy Leppik, Chair
Metropolitan Council Environment Committee
390 North Robert Street
Saint Paul, MN 55101

Re: Minneapolis Position on SAC Credit Transfer

Dear Ms. Leppik:

Thank you for the opportunity to respond to your proposal to allow SAC credit transfers between cities under certain circumstances. Your staff has been very generous with their time and we always appreciate the openness and patience they show when explaining the changes to those affected.

As we stated in our letter we are sympathetic and support the need for state agencies to retain good employers. However, we still have reservations about the SAC program becoming a development tool because we believe that SAC represents real sewer capacity that should not be lost because a user of that capacity moves from a municipality.

Our concerns about a core urban city transferring valuable resources to develop the metro's edge is still very valid but could be tempered by a more holistic redevelopment policy that makes the transferring city whole through additional state and metropolitan resources to clean up and redevelop the vacated site for a higher and better use.

We would also propose that there be further policy changes that would set criteria and rules for transfer of SAC from one property to another within a single city, frequently the best alternative to out-of-state relocations. This transfer should only need approval from MCES and the local governing body. This change could also include additional criteria for such moves at a scale that meets the city's needs and by allowing a city to capture net unused credits to be used city-wide.

Letter to Ms. Leppik
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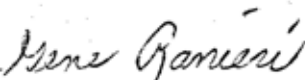
We do find some comfort in the fact that any transfer would be voluntary, that unused SAC would be left on the site and that this kind of circumstance would likely be rare. However, a transfer of this kind could put staff and elected officials in the awkward position of making an affirmative decision to help facilitate the exodus of a company and jobs from a city without any certain guarantees of remediation for the site being vacated or benefits for employees who are unable to move with the company.

We are also concerned that the Minnesota Department of Employment and Economic Development (DEED) would initiate the SAC transfer process. We believe this also puts local jurisdictions in a very difficult position of possibly having to react to an already proposed transfer. We suggest that if the rule changes move forward, DEED be required to approach a local government who would then be the initiating agency.

Lastly we remain concerned that the proposal runs contrary to the expressed MCES philosophy that SAC represents real sewer capacity in cities and could lead to further challenges about the nature of the relationship between SAC credits and the existence of sewer capacity.

At this point, under the current proposed rules, we remain unsupportive of the proposed policy change and have briefed all the appropriate chairs of the City Council. We remain open to further discussion but all share the concern that SAC policy is being altered without a full and balanced approach. A better proposal would be more consistent with the Met Council's own goals of maintaining and strengthening the region's core. It could address the needs of the vacated community, help employees who might be dislocated, and bring local communities to the table before their resources have been put into play.

Sincerely,



Gene Ranieri, Director
Intergovernmental Relations

cc: Members, Metropolitan Council Environment Services Committee
Mr. Bill Moore, General Manager, MCES
Mr. Jason Willett, Finance Director, MCES



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July 3, 2008

Ms. Peggy Leppik
Chair, Metropolitan Council Environment Committee
390 North Robert Street
Saint Paul, MN 55101

Dear Ms. Leppik:

We are writing in response to the Met Council's proposal to allow SAC credit transfers between cities under certain circumstances. Contrary to a memo produced at your last committee meeting, the City of Minneapolis has not supported this change. However, staff from city departments are working diligently and examining the proposal and will brief our elected officials to develop an official policy position.

What we are currently communicating to our policy makers is that while we are sympathetic to the needs of state agencies to do what they can to stimulate the state's job base and retain good employers, we have strong reservations about the SAC program becoming a development tool and particularly the precedent of using resources of one city to subsidize a business in another.

Asking a core urban center to transfer what it believes are valuable resources to develop the metro's edge runs contrary to our goals within the city and we believe the Met Council's own principles on growth, economic development and redevelopment of the fully developed portion of the region. We also believe that the proposal runs contrary to the goals of the recent work done to improve and simplify the SAC program itself.

We are hopeful that this policy change is not just in response to one particular circumstance and that, state agencies, while asking for voluntary transfer of SAC credits, also consider a package of redevelopment tools in both communities to balance proposals of this type.

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We plan to have a final city position to you prior to your next Environment Committee meeting. We are also open to any discussions with your staff or staff from other state agencies to refine this policy change or, preferably, deal with specific circumstances where new development tools are being pursued.

Sincerely,



Gene Ranieri, Director
Minneapolis Intergovernmental Relations Department

cc: Members, Metropolitan Council Environment Services Committee
Mr. Bill Moore, General Manager, MCES
Mr. Jason Willett, Finance Director, MCES

METRO CITIES

Association of Metropolitan Municipalities

June 30, 2008

Ms. Peggy Leppik
Chair, Metropolitan Council Environment Committee
390 North Robert Street
Saint Paul, MN 55101

Copies to:

— Dan
— Karen
— Jessie

Dear Ms. Leppik:

Thank you for the opportunity to comment regarding the proposal under consideration by the Met Council's Environment Committee to allow SAC credit transfers in certain economic development circumstances.

In these challenging economic times for our state, Metro Cities can appreciate the desire by the MN Department of Employment and Economic Development (DEED) to have additional tools to stimulate economic development. We support agencies working in tandem to achieve these goals, as well as cities in the metro area working together toward the attainment of important statewide economic development objectives. A strong and vibrant business climate benefits all of us, and involves important roles by many actors across our region and state.

Metro Cities does believe, however, that overall, statewide economic development goals are primarily the responsibility of state government. While we support cities working as partners with the Met Council and DEED to keep jobs and businesses in Minnesota, we also must keep in mind that this proposal means one city is potentially subsidizing the location of a business in another city in the region. In particular, we are concerned about the core and inner ring cities being asked to subsidize economic development on the metro fringe, while at the same time losing a business in their community. We trust that this will be an important consideration for the Metropolitan Council as it moves forward on this proposal.

Metro Cities supports the SAC credit transfer proposal, with the understanding that such transfers would be restricted to situations in which, without the incentive, a business would move out of state, and with the following criteria:

- A strong "but for" test, in which a business receiving SAC credits provide a letter or other written certification that indicates that without the transfer, their intent is to move the business out of state.
- That the 'voluntary' aspect of the SAC credit transfers takes utmost importance. Cities have varying needs and circumstances, and need to have complete authority over whether to allow these kinds of transfers.

- That SAC credit transfers be part of a package of state offered incentives, and not be offered in lieu of state assistance.
- The opportunity for Metro Cities and other interested parties to further comment once rulemaking is underway and more specific details on how the credit transfers would work are available.

Finally, please know that Metro Cities will be an active partner in supporting state economic development programs at the Minnesota Legislature in order to sustain and grow our state's economy.

Again, we appreciate the opportunity to comment, and look forward to working with the Committee as it moves forward in its consideration of the proposal.

Sincerely,



Louis F. Jumbois
Executive Director

Cc: Members, Metropolitan Council Environment Services Committee
Mr. Bill Moore, General Manager, MCES
Mr. Jason Willett, Finance Director, MCES

5.7 SAC CREDIT TRANSFER

A SAC Credit Transfer allows a transfer of SAC credits between local governments and between sites within a local government for substantial statewide economic development opportunities.

5.7.1 Requirements for a Transfer

SAC Credit Transfers are allowed (as of the date of Council action) in situations where:

- The request originates from the Department of Employee and Economic Development (DEED) for businesses they determine would make a significant statewide economic impact if the business left the state,
- The transferring entity is a: 1) standard Permitted Industrial User of MCES (not including liquid waste haulers, special discharge permittees or general permittees) or 2) any other entity served by the Metropolitan Disposal (sewer) System where at least 50 full-time equivalent (FTE) jobs are currently located on the site to be moved, (*A definition of FTE will be added to the full SAC Procedure Manual*),
- The entity moving is not a service or retail company (retail businesses include, but are not limited to: retail shopping stores, restaurants, salon/spas, and repair shops),
- The owner of the business or entity being moved is the property owner of the existing site, (or has the written consent of the property owner for the credit transfer),
- MCES reviews and approves the availability of capacity in conveyance (lift stations and interceptor pipes) and treatment facilities for the new site, **and**
- Written approval from each Local Government Unit involved has been received by MCES on approved forms.

5.7.2 Determination of Credits Available to Transfer

The number of credits that may be transferred is at the discretion of the Local Government Unit representing the existing site of the business or entity, but limited to the amount potentially available at that site. There is a minimum of one SAC unit per building that must be left at the current site. If all buildings will be demolished as part of this Credit Transfer, this minimum requirement does not apply.

5.7.2.1 Campus Credits

The allocation of SAC units between buildings that will be retained for those businesses or entities that are considered campuses for SAC purposes is at the reasonable discretion of MCES.

5.7.2.2 Permitted Industrial Users

For those industries permitted by MCES, until 2010 the only credits available to transfer are the SAC grandparent values and actual SAC paid. After 2010, the new rules for potential SAC credit availability apply. Any baseline or modified baseline values above grandparent SAC and actual SAC paid do *not* transfer.

5.7.2.3 Credit Balances from other Local Government Units

Any Local Government Unit that has a city-wide credit balance must each month use those credits to offset the current charges on their SAC monthly report. However, surplus booked city-wide credits are available to be transferred to another Local Government Unit as part of a SAC Credit Transfer if all of the requirements of section 5.7.1 are met.

5.7.3 Implementation of a Credit Transfer

5.7.3.1 Timing

SAC Credit transfers occur at the point of execution of the required documents by all parties. MCES will notify all parties when this is done. Once the credit transfer occurs they become the reserved capacity for the Local Government Unit on the future site for the business or entity.

Once 1) the SAC Credit Transfer has occurred and 2) the MCES determination letter for the new site has been issued, the business or entity has up to 5 years from the date of the determination letter to complete the project. If the project doesn't occur within the 5-year period, the transferred credits are lost.

5.7.3.2 Revocability

If either a building permit for the new site has been issued *or* if a new use has been established on the old site (the existing site before the transfer), the credit transfer is irreversible and irrevocable. Up to that point in time the credit transfer may be reversed with the agreement of all local governments.

5.7.3.3 Use of Credits after the Transfer

Once the SAC Credit Transfer has occurred, the credits are required to stay site-specific. These units will be available only to offset SAC charges for the property related to the business or entity moving to the site and only for the facilities built at the time of the move.

For permitted industrial users, SAC Credit Transfer units are limited to the amount needed on the future site for the new use that will be determined at the next MCES flow review. The review will determine how many additional SAC, if any, are required for the permitted user's maximum discharge.

5.7.3.4 Local Government Unit Reporting

The Local Government Unit at the future site is the responsible party for reporting the SAC Credit Transfer on the monthly reports. Once the type of local permit as stated on the MCES Credit Transfer – C2 form has been issued, the Local Government Unit is required to report the credit transfer on the next monthly SAC report to MCES. SAC Credits transferred may only be applied up to the amount needed on the new site for the new use.

5.7.4 SAC Credit Transfer Forms

5.7.4.1 Form MCES Credit Transfer – A: DEED Checklist

“MCES Credit Transfer – A” is a checklist for the Department of Employee and Economic Development that includes the minimum requirements for a SAC Credit Transfer.

5.7.4.2 Form MCES Credit Transfer – B: Submittal List

“MCES Credit Transfer – B” is a submittal list for the business or entity wishing to transfer available credits to a new location. The legal owner must sign and date this form.

5.7.4.3 Form MCES Credit Transfer – C1: Local Government Form for the current site

“MCES Credit Transfer – C1” is an approval form for the Local Government Unit representing the current site. This form states the number of credits that will be transferred. Only the Local Government Unit Finance Director or City Manager has the authority to sign this form.

5.7.4.4 Form MCES Credit Transfer – C2: Local Government Form for the new site

“MCES Credit Transfer – C2” is an approval form for the Local Government Unit representing the new site. This form states what type of local permit will be issued to activate the SAC determination on the new site. Only the Local Government Unit Finance Director or City Manager has the authority to sign this form.