

SUNNYSLOPE COUNTY WATER DISTRICT

ORDINANCE NO. 71

AN ORDINANCE OF SUNNYSLOPE COUNTY WATER DISTRICT (AMENDING DISTRICT CODE § 4.36.060) (CHANGING SEWER SERVICE CHARGES)

Be it ordained by the Board of Directors of
Sunnyslope County Water District
as follows:

- Section 1. Authority. This ordinance is enacted pursuant to Sections 30000 and following of the California Water Code, and Sections 50021, 50022.4, 50022.7, 66013 and 66016 of the California Government Code, and Section 6 of Article XIII D of the California Constitution.
- Section 2. Findings.
- A. This ordinance is considered for action by the Board of Directors at a regularly scheduled and noticed meeting. The agenda was posted and notice of a public hearing on the ordinance was published in accordance with law in the Hollister Free Lance. A summary of the ordinance prepared by the district's General Manager in consultation with the district's legal counsel was published. A certified copy of the full text of the proposed ordinance was posted in the office of the board at least five days prior to the Board meeting of May 3, 2012. At least 10 days prior to the meeting, the district made available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the rates, fees and charges are levied, and the revenue sources anticipated to provide the service, including General Fund revenues. Certificates of publication will be filed with the minutes of this meeting.
- B. Rates for sewer service are established by Section 4.36.060 and Table 4.36.060 of the District Code. These rates were last amended in 2007 by Ordinance No. 64.
- C. Table 4.36.060 of the District Code, as adopted by Table "A" of Ordinance No. 64, provides for sewer service charges to be based on and adjusted annually by average winter water usage for February and March. The General Manager and Financial Services Manager advise that unusually dry and warm weather during February and March 2012 caused an unusually high use of water by District customers for outdoor irrigation and that, without a cap on sewer service charges, such use would expose the users to increased sewer service charges without a corresponding increase in the burdens placed on the District's sewer collection and treatment facilities.
- D. The General Manager and Financial Services Manager recommend amending Section 4.36.060 to amend Table 4.36.060 of the District Code to place a cap on increases in sewer charges in drought years by no more than 4 hundred cubic feet over the previous year variable consumption factor for calculating increased sewer service charges from winter water use in February and March, to maintain a reasonable relationship between charges and services and to be insofar as possible revenue neutral to the District. District staff advise that there is a need for immediate action on an amendment, to avoid hardship from disproportionate increases in charges to customers and potential undue administrative expense for the District and an undue burden to District ratepayers from a delay in adopting an amendment.
- E. District Counsel advises that, based on California Constitution Article XIID, section 6, on Government Code section 53750 and on the decision in AB Cellular LA, LLC v. City of Los Angeles (2007) 150 Cal.App.4th 747, as well as other court decisions and opinions of the California Attorney General, the District may change the methodology for imposing fees and charges previously duly approved without following

the notice and protest process specified in Article XIID, section 6 of the California Constitution, so long as the rate is not increased beyond the level previously approved by the District, and the change does not result in an increase in the amount being levied on any person or parcel.

F. Information presented to the Board after careful study by qualified experts shows that the district has a clear, present and immediate need to amend Table 4.36.060 of the District Code to place a cap on increased sewer service charges from winter water use, to maintain a reasonable relationship between charges and services and to be insofar as possible revenue-neutral to the District, providing sufficient revenue for (1) meeting operating expenses, including employee wage rates and fringe benefits, (2) purchasing or leasing supplies, equipment, or materials, (3) meeting financial reserve needs and requirements, and (4) obtaining funds for capital projects necessary to maintain service within existing service areas.

G. The potential for hardship from disproportionate increases in charges to customers and potential undue administrative expense for the District and an undue burden to District ratepayers from a delay in adopting an amendment to Table 4.36.060 require the provisions of this ordinance amending sewer service charges to become effective immediately upon adoption pursuant to Water Code Section 31027.

H. The district's legal counsel advises, and the Board finds, that adoption of this ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Public Resources Code Section 21080(b)(8) and Section 15273 of the State CEQA Guidelines codified at 14 CCR §15273.

J. The cap on sewer service charges adopted by this ordinance will not exceed the estimated reasonable costs of providing the services for which the rates, fees or charges are imposed, will not exceed the proportional cost of the service attributable to the customers on whom the charges are imposed and will not result in an increase in the amount being levied on any person or parcel pursuant to Section 4.63.060 (Table 4.63.060) of the Sunnyslope County Water District Code as adopted by Ordinance No. 64.

L. No written requests are on file with the district for mailed notice of meetings on new or increased fees or service charges pursuant to Government Code Section 66016.

Section 3. Purpose Of Ordinance. This ordinance amends Section 4.63.060 (Table 4.63.060) of the Sunnyslope County Water District Code.

Section 4. Effect Of Repeal On Past Actions And Obligations. This ordinance does not affect prosecutions for ordinance violations committed prior to the effective date of this ordinance, does not waive any fee or penalty due and unpaid on the effective date of this ordinance, and does not affect the validity of any bond or cash deposit posted, filed, or deposited pursuant to the requirements of any ordinance.

Section 5. Sewer Rate Schedule Amended. Section 4.63.060 of the District Code is amended by amending Table 4.63.060 to read in full as set forth in Exhibit "A" to this ordinance, incorporated by this reference.

Section 6. Requirements for Rates, Fees, and Charges. The rates, fees, or charges adopted by this ordinance shall not exceed the estimated reasonable costs of providing the services for which the rates, fees, or charges are imposed.

Section 7. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional or invalid, or superseded by some other provision of law, such provisions shall be severed from and shall not affect the validity of the remaining provisions of this ordinance. The Board hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any other part thereof be unconstitutional or invalid, or superseded by some other provision of law. The parts of this ordinance, which are not unconstitutional, invalid, or superseded shall remain in full force and effect and shall be enforced according to their terms.

Section 8. Interpretation. Words and Phrases used in this ordinance shall be read conjunctively with and shall have the same meaning as in prior district ordinances and the district Code, unless specifically changed by this ordinance or unless the context requires some other construction. If there is any inconsistency between this ordinance and prior provisions, this ordinance shall control.

Section 9. Effective Date. This ordinance shall take effect immediately upon adoption and shall apply to calculate increases in sewer service charges based on water use during February and March 2012 and subsequent years, adjusted annually.

Section 10. Publication and Posting. Within 10 days after adoption, the district shall publish, in a newspaper published in San Benito County and circulated within the district, a summary of this ordinance with the names of those directors voting for and against adoption, and shall post in the district office a certified copy of the full text of this ordinance as adopted along with the names of those directors voting for and against adoption.

Section 11. Notice of Exemption Notice of Determination. The Secretary is authorized and directed to give due notice of exemption of this ordinance from the provisions of CEQA, pursuant to Title 14, California Code of Regulations, section 15062.

On motion of Director Anderson, seconded by Director Hill, the foregoing Ordinance is enacted and shall take effect on May 3, 2012, by the following roll call of the Board:

YES: Directors Anderson, Clapham, Hill, Meraz, and Villalón
NAYS: None
ABSENT: None

By 
Dave Meraz, President

ATTEST:


Don Ridenhour, Secretary

CERTIFICATE OF SECRETARY

The undersigned hereby certifies that the foregoing Ordinance was adopted and approved by the Board of Directors at their regular meeting on May 3, 2012.


Don Ridenhour, Secretary

EXHIBIT A

Table 4.36.060

SEWER SERVICE CHARGES—Effective March 21, 2007	
<u>Facility Served</u>	<u>Charge per Month</u>
1. Single-family dwelling	\$31.58 plus \$1.87/HCF based on average winter water usage for February and March
2. Multiple-family dwellings, duplexes, flats, and apartments	\$24.02/unit plus \$1.87/HCF based on average winter water usage for February and March
3. Cottages, auto courts, motels, trailer parks, laundries, laundrettes and similar uses	\$3.05/HCF of metered water use
4. Commercial and industrial (including office buildings, businesses, restaurants, bars, theaters, hotels, rooming houses, schools, churches, fabrication, processing, service stations, garages, chemical plants, and similar uses)	\$4.03/HCF of metered water use

SEWER SERVICE CHARGES—Effective December 21, 2007	
<u>Facility Served</u>	<u>Charge per Month</u>
5. Single-family dwelling	\$50.53 plus \$2.99/HCF based on average winter water usage for February and March
6. Multiple-family dwellings, duplexes, flats, and apartments	\$38.44/unit plus \$2.99/HCF based on average winter water usage for February and March
7. Cottages, auto courts, motels, trailer parks, laundries, laundrettes and similar uses	\$4.88/HCF of metered water use
8. Commercial and industrial (including office buildings, businesses, restaurants, bars, theaters, hotels, rooming houses, schools, churches, fabrication, processing, service stations, garages, chemical plants, and similar uses)	\$6.44/HCF of metered water use

SEWER SERVICE CHARGES—Effective December 21, 2008

Facility Served

Charge per Month

- | | |
|---|---|
| 9. Single-family dwelling | \$55.58 plus \$3.29/HCF based on average winter water usage for February and March |
| 10. Multiple-family dwellings, duplexes, flats, and apartments | \$42.28/unit plus \$3.29/HCF based on average winter water usage for February and March |
| 11. Cottages, auto-courts, motels, trailer parks, laundries, laundrettes and similar uses | \$5.37/HCF of metered water use |
| 12. Commercial and industrial (including office buildings, businesses, restaurants, bars, theaters, hotels, rooming houses, schools, churches, fabrication, processing, service stations, garages, chemical plants, and similar uses) | \$7.09/HCF of metered water use |

SEWER SERVICE CHARGES—Effective December 21, 2009

Facility Served

Charge per Month

- | | |
|---|---|
| 13. Single-family dwelling | \$61.14 plus \$3.62/HCF based on average winter water usage for February and March |
| 14. Multiple-family dwellings, duplexes, flats, and apartments | \$46.51/unit plus \$3.62/HCF based on average winter water usage for February and March |
| 15. Cottages, auto-courts, motels, trailer parks, laundries, laundrettes and similar uses | \$5.91/HCF of metered water use |
| 16. Commercial and industrial (including office buildings, businesses, restaurants, bars, theaters, hotels, rooming houses, schools, churches, fabrication, processing, service stations, garages, chemical plants, and similar uses) | \$7.79/HCF of metered water use |

SEWER SERVICE CHARGES – Effective December 21, 2010

Facility Serviced

Charge per Month

17. Single-family dwelling

\$67.25 plus \$3.98/HCF based on average winter water usage for February and March.

18. Multiple-family dwellings, duplexes, flats, and apartments

\$51.16/unit plus \$3.98/HCF based on average winter water usage for February and March.

19. Cottages, auto courts, motels, trailer parks, laundries, laundrettes and similar uses

\$6.50/HCF of metered water use

20. Commercial and industrial (including office buildings, businesses, restaurants, bars, theaters, hotels, rooming houses, schools, churches, fabrication, processing, service stations, garages, chemical plants, and similar uses)

\$8.57/HCF of metered water use

SEWER SERVICE CHARGES – Effective May 3, 2012

Facility Serviced

Charge per Month

21. Single-family dwelling

\$67.25 plus \$3.98/HCF based on average winter water usage for February and March¹.

22. Multiple-family dwellings, duplexes, flats, and apartments

\$51.16/unit plus \$3.98/HCF based on average winter water usage for February and March¹.

23. Cottages, auto courts, motels, trailer parks, laundries, laundrettes and similar uses

\$6.50/HCF of metered water use

24. Commercial and industrial (including office buildings, businesses, restaurants, bars, theaters, hotels, rooming houses, schools, churches, fabrication, processing, service stations, garages, chemical plants, and similar uses)

\$8.57/HCF of metered water use

¹ In drought years, as determined by the Board of Directors, customers whose average winter water usage increased by 4 or more HCF for February and March over the prior year will have their increase capped at the prior year average plus 4 HCF.