

ORIGINAL

OJAI VALLEY SANITARY DISTRICT
ORDINANCE NO. OVSD 61

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE
OJAI VALLEY SANITARY DISTRICT
ESTABLISHING A TREATMENT PLANT CAPACITY CHARGE, A TRUNK SEWER
CAPACITY CHARGE AND A LOCAL SEWER CAPACITY CHARGE

RECITALS

WHEREAS, the Ojai Valley Sanitary District ("District") is authorized by the Sanitary District Act of 1923 (Health & Safety Code §6400 et seq.) to provide public services and facilities related to the acquisition, construction, replacement, maintenance and operation of sewer collection, treatment works and sanitary disposal systems ("Services and Facilities") within the District's service area; and

WHEREAS, the District provides Services and Facilities to residential, commercial and institutional customers within the District's service area; and

WHEREAS, the District is empowered to prescribe, revise and collect fees, rates and charges related to said services and facilities, pursuant to Health and Safety Code §6520.2, §6520.5 and §5471, including capacity charges; and

WHEREAS, the District imposes capacity charges in accordance with Government Code §66013; and

WHEREAS, the owners or occupants of the properties upon which all capacity charges established by this Ordinance are levied desire to discharge wastewater to the District's collection, treatment and disposal facilities; and

WHEREAS, the District facility costs reflect increased regulatory requirements to upgrade the District's collection and treatment system; and

WHEREAS, the District's need for upgraded and improved treatment of all wastewater collection, treatment and disposal facilities is required to protect the public health and safety, and to preserve the environment without damage; and

WHEREAS, the District periodically undertakes evaluation and study of its financial needs for the future, including assessments of all types and categories of users; the demands on the system and capacity and treatment requirements for the system to provide necessary service to the multiple categories of users; the total costs of the existing and future operations and facilities in the system; and alternative methodologies for establishing fair and equitable charges to connect to and use the system; and

WHEREAS, the District maintains budgets, strategic plans, operations plans, capital improvement programs, reserve studies, and financial and engineering reports (collectively referred to as the "Administrative Record") which have been made available to the public, both prior to and subsequent to their public review, at noticed public meetings; and

WHEREAS, the financial requirements of the District, as shown in the Administrative Record, including the District's most recently approved Budget and Strategic Plan, are based on current, reliable information and data relating to population projections, wastewater flow, regulatory requirements, administrative costs and capital costs; and

WHEREAS, the District has previously, by duly adopted ordinances and resolutions, established capacity charges consisting of a Treatment Plant Capacity Charge and a Collection System Capacity Charge (also known as "connection charges" or "fees") to be paid by all persons obtaining a permit to connect to and use the District's existing and future wastewater collection, treatment and disposal facilities; and

WHEREAS, the District's Collection System Capacity Charge consists of a local sewer line component and a trunk sewer line component; and

WHEREAS, the District desires to clarify its capacity charges by substituting a Trunk Sewer Capacity Charge and Local Sewer Capacity Charge in place of the District's single Collection System Capacity Charge; and

WHEREAS, the District finds that the Treatment Plant Capacity Charge, Trunk Sewer Capacity Charge and Local Sewer Capacity Charge imposed for a new connection pursuant to this Ordinance will not exceed an amount equal to that new connection's proportionate share of capital costs for the District's existing and future facilities; and

WHEREAS, the District finds that the capacity charges established by this Ordinance are neither an incident of property ownership nor a property-related service having a direct relationship to property ownership and, therefore, not subject to the requirements of California Constitution Article XIID; and

WHEREAS, the District finds that the capacity charges established by this Ordinance are not imposed as a condition of approval of a proposed development project as defined in Government Code §66001 and, therefore, not subject to the requirements for imposing development fees set forth in Government Code §66000 et seq.; and

WHEREAS, the District finds that the capacity charges established by this Ordinance do not exceed the estimated reasonable cost of providing the service for which the capacity charges are imposed, pursuant to Government Code §66013 and §66016; and

WHEREAS, the District finds that the capacity charges established by this Ordinance are non-discriminatory as applied to all users of the District's sewer system, and are established upon a rational basis; and

WHEREAS, the District finds that the purpose of the capacity charges established in this Ordinance is to reimburse the District for capital costs which have been paid for existing treatment facilities, pay a proportionate share of the cost of future facilities and provide funds for capital projects necessary to maintain service, including service to new connections, within the existing District service area, and so the adoption of this Ordinance is statutorily exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines §15273(a); and

WHEREAS, the District finds that all capacity charges established by this Ordinance have been approved by the District's Board of Directors at a noticed public meeting, all in accordance with applicable provisions of law.

NOW, THEREFORE, the Board of Directors of the Ojai Valley Sanitary District does ordain as follows:

1. **Recitals.** All of the above Recitals are true and incorporated by reference herein.
2. **Definitions.**
 - 2.1. "Capacity Charge" means a charge for sewer facilities in existence at the time a charge is imposed and/or a charge for new sewer facilities to be acquired or constructed in the future that are of proportional benefit to the person or property being charged. A Capacity Charge does not include a commodity charge.
 - 2.2. "Board of Directors" or "Board" means the governing board of the Ojai Valley Sanitary District of Ventura County.
 - 2.3. "Capacity Unit" equates to the average wastewater flow generated by a Single Dwelling Unit, which is determined to be two hundred (200) GPD. The method by which a Capacity Unit is calculated depends upon the use generating the wastewater flow.
 - 2.4. "Existing Sewer Connection" means any lateral connection to the sewer system authorized pursuant to a connection permit.
 - 2.5. "Expanded Use" means expanding the use of an existing sewer connection so as to increase the Capacity Units associated with that connection.

- 2.6. "Food Preparation Area" shall mean an area containing plumbing fixtures, appliances, or devices for: (1) heating or cooking food; (2) refrigerating food; and (3) washing utensils used for dining and food preparation and/or for washing and preparing food. Permanent removal of two of the three (2 of the 3) above-numbered elements is required to eliminate a food preparation area.
- 2.7. "General Manager" means the person appointed by the Board of Directors to administer and enforce the rules and regulations of the District.
- 2.8. "GPD" means gallons per day.
- 2.9. "Local Sewer" means a sewer transporting wastewater originating from Parcels connected to the District's sewer system and which line is twelve (12) inches in diameter or less.
- 2.10. "New Sewer Connection" means any lateral connection to the District's sewer system for which a connection permit has not previously been issued.
- 2.11. "Non-discriminatory" means that the Capacity Charge does not exceed an amount determined on the basis of the same objective criteria and methodology applicable to comparable public or non-public users, and is not in excess of the proportionate share of the costs of the District's facilities of benefit to the person or property being charged, based upon the proportionate share of use of those facilities.
- 2.12. "Owner" means the recorded owner as shown by the official records of the County Recorder of Ventura County.
- 2.13. "Parcel" means a single parcel of land for which a legal description has been filed on record, or the boundaries of which are shown on a subdivision map or a record of survey map, filed in the office of the County Recorder.
- 2.14. "Trunk Sewer" means a sewer transporting wastewater originating from Parcels connected to the District's sewer system and which line is larger than twelve (12) inches in diameter.
- 2.15. "Single Dwelling Unit" shall mean a room or rooms connected together (whether or not constructed in compliance with applicable government regulations) with independent exterior access, a food preparation area, multi-purpose or bedroom area, and a toilet.

An additional separate living area within a Parcel, whether or not said additional separate living area is within the primary residence or within a detached building, shall be treated as a separate Single Dwelling Unit if (1) it is, or can be, physically separated by a wall or door from other dwelling units on the Parcel, and (2) contains an independent exterior access, a food preparation area, multi-purpose or bedroom area, and a toilet.

Any trailer, boat, motor home or other recreational vehicle connected to the District's sewer system, either permanently or for a temporary period exceeding thirty (30) days, shall be deemed a separate Dwelling Unit.

3. **Application.** This Ordinance imposes one-time, non-discriminatory Capacity Charges on Parcel Owners as a condition of the District permitting those Parcel Owners to establish a new sewer connection or to expand the use of an existing sewer connection.

4. **Use of Revenues.** The District may impose Capacity Charges to pay for facilities in existence at the time the charge is imposed or to pay for new facilities to be constructed in the future, provided those facilities are of benefit to the property being charged and the charges do not exceed the reasonable cost of the service provided.

The District may use revenues derived from Capacity Charges for the acquisition, construction and reconstruction of the District's wastewater collection, treatment and disposal facilities; to repay principal and interest on debt instruments; or to repay federal or state loans for the construction and reconstruction of said sewer facilities, together with costs of administration and provisions for necessary reserves.

5. **Payment Required.** Payment of applicable Capacity Charges is required and no Parcel Owner may establish a new sewer connection or expand use of an existing sewer connection without paying applicable Capacity Charges in full (or making other financial arrangement for payment).

6. **Time of Payment.** Parcel Owners seeking a New Sewer Connection or expanded use of an existing sewer connection must pay all applicable Capacity Charges (or make other financial arrangements for payment) prior to the District approving or issuing a "will-serve letter."

7. **Amount of Payment.** Capacity Charges shall be paid in accordance with the charges effective on the date that a "will-serve letter" is issued.

8. **Person Responsible.** A Parcel Owner seeking a new service connection or expanded use of an existing sewer connection shall be solely responsible for payment of applicable Capacity Charges. It is the duty of each Parcel Owner to ascertain from the District the amount and due date of any Capacity Charge applicable to the property and pay the charge when due and payable. Each Parcel Owner shall be responsible for informing the District within a reasonable period of time of any changes in circumstances that might result in a change in the amount of the charge.
9. **No Credit.** Capacity Charges are imposed in addition to any amount paid or to be paid for the cost of a sewer line or lines previously constructed or to be constructed for the purpose of connecting the Parcel in question to the District's sewer system, not including laterals. No credit shall be taken against any Capacity Charge for any amount paid or to be paid as a processing or inspection fee or any other fee or charge imposed pursuant to other District ordinances, as amended. The Capacity Charges imposed by this Ordinance shall be in addition to all other District fees and charges.
10. **Runs with the Parcel.** A Capacity Charge paid for by a Parcel Owner related to a new connection or Expanded Use of an existing connection, is a one-time charge upon a Parcel which, upon payment, runs with the Parcel.
11. **Waiver.** Capacity Charges may be waived by the District in certain situations where the Parcel Owner actually constructs District facilities. For example, a Local Sewer Capacity Charge may be waived where the Parcel Owner constructs the local sewer line that serves the subject Parcel.
12. **Types of Capacity Charges.**
 - 12.1. **Treatment Plant Capacity Charge.** The Treatment Plant Capacity Charge is based upon the District's treatment plant facilities in existence at the time the charge is imposed. The Treatment Plant Capacity Charge is calculated so that the Treatment Plant Capacity Charge equals a Parcel's proportionate share of the total replacement cost of unused treatment plant capacity and is, therefore, proportionate to the benefit received by that Parcel.
 - 12.1.1. **Residential Use.** A Treatment Plant Capacity Charge shall be paid for each Capacity Unit. Each Single Dwelling Unit projected to be located on a Parcel equals a Capacity Unit.

- 12.1.2. Commercial, Industrial, Institutional or Miscellaneous Uses Under 25,000 GPD.** A Treatment Plant Capacity Charge shall be paid for each Capacity Unit. One Capacity Unit shall be assigned for every twenty-five (25) fixture units (or any portion thereof) projected to be installed on the Parcel.

In determining number of fixtures units, fixtures shall be defined according to the current California Plumbing Code, except no additional credit shall be given for low-flow fixtures.

- 12.1.3. Commercial, Industrial, Institutional or Miscellaneous Uses Equal to or Greater than 25,000 GPD.** A Treatment Plant Capacity Charge shall be paid for each Capacity Unit. For uses generating twenty-five thousand (25,000) GPD or more, each two hundred (200) GPD of projected wastewater flow equals a Capacity Unit.

- 12.2. Trunk Sewer Capacity Charge.** The Trunk Sewer Capacity Charge is based upon the District's Trunk Sewer facilities in existence at the time the charge is imposed. The Trunk Sewer Capacity Charge is calculated by dividing the total replacement cost of the District's Trunk Sewer facilities at the time the charge is imposed by the total Capacity Units accessing those facilities. Accordingly, the Trunk Sewer Capacity Charge equals each Parcel's proportionate share of the total replacement cost of the District's existing Trunk Sewer facilities and is, therefore, proportionate to the benefit received by that Parcel.

- 12.2.1. Residential Use.** A Trunk Sewer Capacity Charge shall be paid for each Capacity Unit. Each Single Dwelling Unit projected to be located on a Parcel equals a Capacity Unit.

- 12.2.2. Commercial, Industrial, Institutional or Miscellaneous Uses Under 25,000 GPD.** A Trunk Sewer Capacity Charge shall be paid for each Capacity Unit. One Capacity Unit shall be assigned for every twenty-five (25) fixture units (or any portion thereof) projected to be installed on the Parcel.

In determining number of fixtures units, fixtures shall be defined according to the current California Plumbing Code, except no additional credit shall be given for low-flow fixtures.

12.2.3. Commercial, Industrial, Institutional or Miscellaneous Uses Equal to or Greater than 25,000 GPD. A Trunk Sewer Capacity Charge shall be paid for each Capacity Unit. For uses generating twenty-five thousand (25,000) GPD or more, each two hundred (200) GPD of projected wastewater flow equals a Capacity Unit.

12.3. Local Sewer Capacity Charge. The Local Sewer Capacity Charge is based upon the District's Local Sewer facilities in existence at the time the charge is imposed. The Local Sewer Capacity Charge is calculated by dividing the total replacement cost of the District's Local Sewer facilities at the time the charge is imposed by the total capacity units accessing those facilities. Accordingly, the Local Sewer Capacity Charge equals a Parcel's proportionate share of the total replacement cost of the District's existing Local Sewer facilities and is, therefore, proportionate to the benefit received by that Parcel.

12.3.1. Residential Use. A Local Sewer Capacity Charge shall be paid for each Capacity Unit. Each Single Dwelling Unit projected to be located on a Parcel equals a Capacity Unit.

12.3.2. Commercial, Industrial, Institutional or Miscellaneous Uses under 25,000 GPD. A Local Sewer Capacity Charge shall be paid for each Capacity Unit. One Capacity Unit shall be assigned for every twenty-five (25) fixture units (or any portion thereof) projected to be installed on the Parcel.

In determining number of fixtures units, fixtures shall be defined according to the current California Plumbing Code, except no additional credit shall be given for low-flow fixtures.

12.3.3. Commercial, Industrial, Institutional or Miscellaneous Uses Equal to or Greater than 25,000 GPD. A Local Sewer Capacity Charge shall be paid for each Capacity Unit. For uses generating twenty-five thousand (25,000) GPD or more, each two hundred (200) GPD of projected wastewater flow equals a Capacity Unit.

13. Establishment of Capacity Charges. Effective July 1, 2010, the Treatment Plant Capacity Charge, Trunk Sewer Capacity Charge and Local Sewer Capacity Charge shall be in the amounts set forth in Attachment "A," attached hereto and incorporated herein by reference.

- 14. Adjustment of Capacity Charges.** Commencing on July 1, 2011, and continuing annually thereafter on each July 1, all Capacity Charges set forth in Attachment "A" may be adjusted. On or about May of each year, or more often if determined necessary, the District General Manager shall review the estimated cost and value of District capital improvements, the continued need for additional capital improvements, and the reasonable relationship between such need and any new service connections which may benefit from the improvements or facilities for which this fee is charged. The General Manager shall report his findings to the Board of Directors at a noticed public hearing and recommend any adjustments to the Capacity Charges set forth in this Ordinance or other action as may be needed. As appropriate, such adjustments shall be made by the Board of Directors upon resolution, based upon appropriate findings, including information presented by the General Manager as to those factors specified herein.

The General Manager shall use as guidance when determining any adjustment to all Capacity Charges the March-to-March percentage change in the ENR Los Angeles area Construction Cost Index. The General Manager shall also take into account any other factors deemed appropriate for the given circumstances at the particular time of the adjustment.

15. Right to Review.

15.1. Right to Hearing. Any Parcel Owner subject to Capacity Charges may request review of any decision by District staff related to imposition of those charges by filing with the District a written request for an informal hearing before the District's General Manager. Said request must be made **prior to** payment of any Capacity Charges. Failure by a Parcel Owner to timely file said written request shall result in a waiver of the right to said hearing.

15.2. Hearing. Within thirty (30) days of a Parcel Owner's filing of a written request pursuant to Section 15.1, and on at least ten (10) days written notice of the hearing to the Parcel Owner, the General Manager shall meet with the Parcel Owner to hear the Parcel Owner's objections. Within five (5) days of said hearing, the General Manager shall deliver, by first-class mail, a ruling on the hearing to the Parcel Owner.

15.2.1. Action by General Manager. In ruling on a request pursuant to Section 15.1, the General Manager may, in his or her sole discretion, affirm, reverse or modify the District staff's decision and make any adjustments and impose any conditions it deems just and proper, if he or she finds and determines that the provisions of this Ordinance are not being properly applied to the matter under consideration.

15.3. Request for Reconsideration. If a ruling by the General Manager is unsatisfactory to the Parcel Owner, the Parcel Owner may, within fifteen (15) days after notification of that ruling, file a written request for reconsideration of the General Manager's ruling with the District. The request for reconsideration shall be considered by the District's Board of Directors at a regular scheduled meeting within sixty (60) days after filing, and on at least ten (10) days written notice of the meeting to the Parcel Owner. The Board of Directors shall make a final ruling on the matter within fifteen (15) days of the close of the meeting at which the matter is reconsidered, and the District shall thereafter promptly notify the Parcel Owner of the Board's ruling by first-class mail. The Board's determination on the matter shall be final.

15.3.1. Action by Board. In ruling on a request for reconsideration pursuant to Section 15.3, the Board may, in its sole discretion, affirm, reverse or modify the General Manager's ruling and make any adjustments and impose any conditions it deems just and proper, if it finds and determines that the provision of this Ordinance are not being properly applied to the matter under consideration.

15.4. Continuance. At the discretion of the General Manager, a request for an informal hearing pursuant to Section 15.1 may be continued for a reasonable period of time. At the discretion of the Board, a request for reconsideration pursuant to Section 15.3 may be continued for a reasonable period of time

16. Capacity Charges Refund. A current Parcel Owner may wish to permanently disconnect a Parcel from the District's sewer system. In such cases, the District may, in its sole discretion, decide to refund Capacity Charges. The District's decision to refund and the amount of that refund shall be rendered on a case-by-case basis. If Capacity Charges are refunded, the amount refunded shall be equal to the Capacity Charges originally paid with respect to the subject Parcel.

17. **Severability**. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held invalid, unconstitutional or unenforceable, such holding shall not affect the validity of the remaining portions of this Ordinance. The Board of Directors hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is for any reason held invalid, unconstitutional or unenforceable.
18. **Inconsistent Ordinances**. All District ordinances and resolutions and parts of District ordinances and resolutions inconsistent herewith are hereby repealed.
19. **Effective Date and Publication**. . This Ordinance shall become effective on July 1, 2010. This Ordinance shall be published or posted in accordance with Health and Safety Code §6490.

PASSED, APPROVED AND ADOPTED by the Governing Board of the Ojai Valley Sanitary District on this 24th day of May, 2010, by the following votes:

AYES: CURTIS, BURG, BAGGERLY, KAISER, GREENE, GALGAS, MURPHY

NAYS: NONE

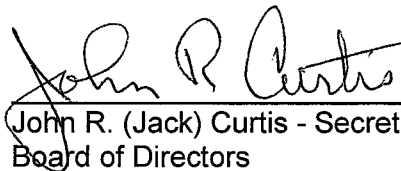
ABSENT: NONE

ABSTAIN: NONE

ATTEST:



Peter M. Kaiser - Chairman
Board of Directors



John R. (Jack) Curtis - Secretary
Board of Directors

ATTACHMENT "A"

| | |
|---------------------------------|------------------------------|
| Treatment Plant Capacity Charge | \$4,883.00 per Capacity Unit |
| Trunk Sewer Capacity | \$2,818.00 per Capacity Unit |
| Local Sewer Capacity Charge | \$7,521.00 per Capacity Unit |