

ORDINANCE NO. 72

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE MIDWAY CITY SANITARY DISTRICT OF ORANGE COUNTY, CALIFORNIA, ADJUSTING USER FEE RATES FOR SANITARY SEWER SERVICES AND ADOPTING FINDINGS RELATED THERETO.

WHEREAS, pursuant to the Sanitary District Act of 1923, Health & Safety Code §§ 6400 et seq., the Midway City Sanitary District ("District") has the authority to acquire, plan, construct, reconstruct, alter, enlarge, lay, renew, replace, maintain, and operate sewers and sewerage collection systems and to adopt ordinances and regulations relating to the provision of sanitary sewer services and facilities; and

WHEREAS, Health & Safety Code Section 5470 et seq. further authorizes the District to adopt fees and charges for the acquisition, construction, reconstruction, maintenance, and operation of sanitary sewer facilities; and

WHEREAS, the District intends to ensure that sufficient revenues are collected to adequately manage, operate, and maintain its sanitary sewer facilities; and

WHEREAS, pursuant to the requirements of Proposition 218 adopted by the voters of the State of California in November 1996, the District's consultant and staff have identified the operational costs and revenue requirements of the District, and have identified the appropriate users' fees adjustments to cover said operational costs of the District; and

WHEREAS, pursuant to the requirements of Proposition 218 the District provided notice of the proposed users' fee adjustments to the record owners of each parcel upon which the fees are proposed for adjustment, as well as to all real property tenants directly responsible for sewer users' fee bills, setting a public hearing for June 21, 2022, and describing the basis upon which the amount of the proposed adjustments were calculated and the reasons for the proposed adjustments in fees; and

WHEREAS, on June 21, 2022, the Board of Directors conducted the public hearing provided for in the Proposition 218 Notice, at which time the Board of Directors heard all objections and protests to the proposed adjustments in sewer users' fees; and

WHEREAS, the Board of Directors has considered all of the valid written protests received in opposition to the proposed users' fees adjustments, totaling 13, which failed to constitute a majority of the record owners of the 20,062 parcels subject to the District's services.

NOW, THEREFORE, the Board of Directors of the Midway City Sanitary District does hereby ordain as follows:

SECTION 1. FINDINGS. The Board of Directors of the Midway City Sanitary District hereby makes the following findings:

- A. The District charges a sewer service fee to the owners of parcels located in the District that are connected to the District's sanitary sewer facilities.
- B. On July 2, 1996, the District's Board of Directors adopted Ordinance No. 54 establishing sewer service fee charges for sanitary sewer services, electing to have said charges collected on the tax rolls, directing the General Manager to prepare and file a report of said charges, and directing the Secretary of the District to publish notice of the filing of the report.
- C. On June 17, 1997, the District's Board of Directors adopted Ordinance No. 57 establishing sewer service fee charges for sanitary sewer services for Reorganization Area No. 141.
- D. On August 2, 2005, the District's Board of Directors adopted Ordinance No. 64, amending Ordinance No. 54 and Ordinance No. 57 and adjusting the user fees established in those ordinances. Pursuant to Ordinance No. 54, user fees were established as a uniform not-to-exceed sum applicable to both residential units and commercial or industrial units or activities and were to be implemented incrementally over six fiscal years. The scheduled fee adjustment for Fiscal Year 2006-2007 was implemented; however, the Board of Directors subsequently determined not to implement the remaining scheduled fee adjustments provided for in Ordinance No. 64.
- E. On June 24, 2009, the District's Board of Directors adopted Ordinance No. 67, adjusting the user fee rates for commercial, industrial and other nonresidential sanitary sewer services and adopting related findings. Ordinance No. 67 established a separate rate structure for commercial, industrial, and other nonresidential activities, which categorized and assigned units of service to different types of activities and uses. Ordinance No. 67 also provided for automatic adjustments for inflation over a five-year period, through July 1, 2015, in accordance with Government Code Section 53756.
- F. Pursuant to the Federal Clean Water Act and the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems ("Waste Discharge Requirements"), the District is required to provide for adequate funding to ensure the proper management, operation, and maintenance of the sanitary sewer facilities and to maintain and replace its sanitary sewer system infrastructure in the manner necessary to prevent sewage spills.
- G. Pursuant to the Government Accounting Standards Board Statement 34, the District is required to account for the maintenance of its infrastructure and ensure that reserves are in place to maintain such infrastructure.
- H. The District's existing sanitary sewer facilities are aging, and due to uncontrollable factors such as corrosive soils, instances of subsidence, tidal effects on the water table, and the limited life expectancy of certain materials, portions of it are in need of repair or replacement.
- I. The District's capital improvement program includes approximately \$27.7 million in planned capital expenditures over the next five (5) years for repair and replacement of sewer lines and lift stations, replacement of vehicles, building and facility construction, and the purchase of additional equipment.

- J. Sanitary sewer service fees for residential units have not been adjusted since 2006. Sanitary sewer service fees for commercial, industrial and nonresidential activities have not been adjusted since 2015. Due to inflation, government mandates, and population changes, the cost for the District to provide sanitary sewer services has increased since fees were last adjusted.
- K. The District's consultant, IB Consulting, LLC, conducted a comprehensive Rate Study, which analyzed the District's costs to provide sanitary sewer services and identifies the estimated funds necessary to operate, maintain, replace and upgrade the District's sanitary sewer collection system, to fund capital programs, and to maintain adequate reserves. The District's consultant has recommended that the District charge a uniform rate for each residential, commercial, industrial, or other nonresidential unit or activity, or "sewer unit," on a parcel connected to the District sanitary sewer system.
- L. The Board of Directors has received the study from IB Consulting, LLC.
- M. The Board of Directors has determined the following with regard to the users' fees and charges for sanitary sewer service established by this Ordinance: (i) the fees and charges are not imposed as a condition of approval of a development project, as defined in California Government Code section 66001; (ii) the fees and charges are established upon a rational basis between the fees charged each customer and the service and facilities provided to each customer; (iii) the revenues derived from the fees and charges do not exceed the estimated reasonable cost to provide the capital facilities and sanitary sewer services for which they are levied; (iv) the revenues derived from the fees and charges shall not be used for any other purpose than that for which the fees and charges are imposed; (v) the fees and charges do not exceed the proportional cost of the sanitary sewer service attributable to each consumer; (vi) the fees and charges are imposed on sanitary sewer services which are immediately available to the consumer; and (vii) the fees and charges are not levied for general governmental services.
- N. The Board of Directors has determined that the rates established by this Ordinance are appropriate, represent the estimated revenue needed to adequately finance the operations, capital improvements and debt obligations for the District for the next five years, and will not cause the revenues derived from the fees to exceed the estimated reasonable cost to provide the capital facilities and sanitary sewer services for which the fees are levied.
- O. The adoption of this Ordinance and the establishment of such users' fees is statutorily exempt under the California Environmental Quality Act ("CEQA") pursuant to the provisions of Public Resource Code section 21080(b)(8) and Section 15273 of the CEQA Guidelines because, (i) the increased rates and charges are for the purpose of meeting operational and maintenance expenses of the sanitary sewer system, meeting financial reserve requirements and needs, and obtaining funds for capital projects and equipment purchases necessary to maintain sanitary sewer service within the District, and (ii) the rates and charges constitute the creation of funding mechanism/other governmental fiscal activity which does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.

SECTION 2. SEWER USER FEE ADJUSTMENTS. Based on the Rate Study prepared by IB Consulting, LLC, and pursuant to the provisions of Health and Safety Code Section 5471, the sanitary sewer service fees established by Subsection A of Section 2 of Ordinance No. 54 and Subsection A of Section 1 of Ordinance No. 57, and as adjusted pursuant to Subsection A of Section 2 of Ordinance No. 64 and Section 2 of Ordinance No. 67, are hereby adjusted as follows:

The owner of each parcel of land connected to the District's sanitary sewer facilities shall pay an annual sewer service fee in the following amounts for each residential, commercial, or industrial unit or activity ("sewer unit") connected to the sanitary sewer facilities of the District:

	Annual Residential and Nonresidential Sanitary Sewer Service Fees				
	FY 2022/23	FY 2023/24	FY 2024/25	FY 2025/26	FY 2026/27
Per Sewer Unit	\$97.48	\$100.41	\$103.43	\$106.54	\$109.74

SECTION 3. COLLECTION. Pursuant to Health and Safety Code § 5473, the Board of Directors has elected to collect the District's fees on the County Tax Roll and the County Tax Collector is authorized and ordered to make said collections in accordance with the terms and conditions of agreements between the County of Orange and the District. The General Manager is further directed to take all necessary action to submit the charges for the applicable fiscal year to the County Tax Collector in the amounts of each parcel as delineated pursuant to the report required under Health & Safety § 5473.1.

SECTION 4. EXEMPTIONS AND APPEALS.

- A. The fees adjusted pursuant to this Ordinance shall apply to all owners of properties served by the District, and no exception shall be provided for properties otherwise deemed exempt from the payment of taxes or assessments by provisions of the State Constitution or statute, including properties owned by certain other public agencies or tax exempt organizations.

- B. It is the intent of the District that the legal owner(s) of parcels of real property, otherwise subject to the levy and payment of the sewer fees, as prescribed herein, be relieved, in whole or in part, from the payment of said fees, in certain circumstances and under conditions prescribed herein, and be entitled to either a rebate or a refund with respect to fees paid, provided an inequity is established or a billing error is proven. The owner may submit a claim for rebate to the District, on forms prescribed and provided by the District. All claims for rebate of the annual fees will be determined by the General Manager of the District, who may grant a partial or full rebate or adjustment of the charge based on receiving satisfactory proof that the services have been otherwise provided as required by District Ordinance (in order to prevent any nuisance or danger to public health and safety) and/or that there is an actual inequity between the amount of the charge and the services provided by the District. Such inequities may include, but are not limited

to, a billing or clerical error has occurred, or the parcel of property or one or more units or activities thereon are not connected to the District's sewer collection system, the number of sewer units assigned to the parcel has changed or is incorrect.

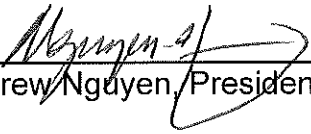
- C. Claims for rebates and refunds shall be deemed to be governed by the provisions of California Revenue & Taxation Code Sections 5096, 5097, 5141 and 5142 allowing for refunds for a period of four (4) years from the date of payment of the second installment of the bill claimed to be either inequitable or incorrect, subject to the filing of a claim therefor.
- D. At the time of filing the application for rebate or refund, the property owner shall pay District an administrative fee for the processing of such application. The amount of the fee shall be equal to the total of all fees and charges imposed on the District by any other public entity, such as the Orange County Tax Collector, the Orange County Auditor, or the Orange County Recorder, in connection with the rebate or refund.
- E. In the event the District determines that, due to a billing or payment error, or to inequity in the amount billed, a property owner has underpaid annual sewer fees payable to the District, the District may, within four (4) years after the date of mailing of the tax bill:
 - (1) Collect the amount of any deficiency directly on the County Tax Roll;
 - (2) Off-set the amount of any deficiency against any amounts that the District determines is owing, by the District, to the property owner, as a rebate or refund under this or subsequent ordinance; or
 - (3) Submit, directly to the property owner, a bill for the amount of any deficiency, which shall be due and payable within thirty (30) days of the invoice date and which, if not paid, shall become a lien on said property.

SECTION 5. EFFECT ON PRIOR ORDINANCES. Provisions of other ordinances inconsistent with this ordinance are hereby repealed.

SECTION 6. SAVINGS CLAUSE. If any provision of this ordinance or the application to any person or circumstance is held invalid by order of any court, the remainder of the ordinance or the application of such provision to other persons or other circumstances shall not be affected.

SECTION 7. EFFECTIVE DATE. These regulations shall take effect immediately upon their adoption and after a summary shall have been published in a newspaper of general circulation as provided by law.

ADOPTED, SIGNED AND APPROVED this 21st day of June, 2022.



Andrew Nguyen, President

ATTEST:


Sergio Contreras, Secretary

CERTIFICATION

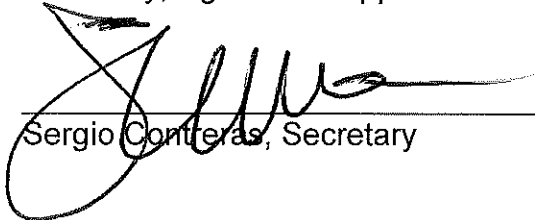
I, Sergio Contreras, Secretary of the Midway City Sanitary District of Orange County, California, do hereby certify that the foregoing Ordinance No. 72 was duly adopted at a regular meeting of the Board of Directors of said District, held on the 21st day of June, 2022, by the following vote of the members of the Board:

AYES: A. Nguyen, M. Nguyen, T. Diep, S. Contreras

NOES: C. Nguyen

ABSENT:

and I further certify that Andrew Nguyen, as President and Sergio Contreras, as Secretary, signed and approved said Ordinance on the 21st day of June, 2022.



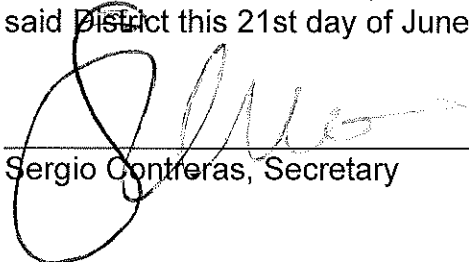
Sergio Contreras, Secretary

(District Seal)

STATE OF CALIFORNIA)
) §§
COUNTY OF ORANGE)

I, Sergio Contreras, Secretary of Midway City Sanitary District of Orange County, California, do hereby certify that the foregoing is a full, true and correct copy of Ordinance No. 72, passed and adopted by the Board of Directors of said District at a regular meeting thereof held on the 21st day of June, 2022.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official Seal of said District this 21st day of June, 2022.



Sergio Contreras, Secretary

(District Seal)

