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**ORDINANCE NO. 64**

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

WHEREAS, State and Federal regulations, in addition to increased costs of living have increased the District's costs of providing sanitary sewer and solid waste services, which require the District to adjust its users' fees to cover such increased operational costs; and

WHEREAS, the District has not adjusted its users' fees since the 1996-1997 Fiscal Year, when the District REDUCED its users' fees; and

WHEREAS, pursuant to the requirements of Proposition 218 adopted by the voters of the State of California in November 1996, the District's engineering and financial consultants 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 sent mailed notice to all record owners of each identified parcel upon which the fees are proposed for adjustment, setting a public hearing for August 2, 2005 at 5:30 p.m., the basis upon which the amount of the proposed adjustments were calculated, and the reasons for the proposed adjustments in 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 ~~36~~<sup>94</sup>, which failed to constitute a majority of the 22,000 users of the District's services.

**NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE MIDWAY CITY SANITARY DISTRICT DOES HEREBY FIND AND ORDAIN AS FOLLOWS:**

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

- A. The District's engineering and financial consultants and staff have calculated the fee adjustments adopted herein based upon the amount of funds required by the District to maintain and operate the District's sewer system and personnel, and solid waste collection facilities and personnel. A complete spreadsheet showing the District's current and projected operational costs and required capital improvement projects was made publicly available for review at the District, and posted at the District's website at least forty-five days prior to the adoption of this Ordinance.

- 1 B. The Santa Ana Regional Water Quality Control Board recently imposed new  
2 regulations that require all sewer agencies in Orange County that operate a sewer  
3 system to adopt a stringent sewer system management plan (SA-RWQCB Order No.  
4 R8-2002-014). The plan is intended to reduce the number of sewage overflows that  
5 sometimes result in beach closures and other negative environmental threats to the  
6 health, safety, and welfare of the public.
- 7 C. The sewer system management plan includes many more administrative, monitoring  
8 and reporting requirements; an increase in the frequency of routine preventive  
9 operation and maintenance activities; a more aggressive schedule of rehabilitating or  
10 replacing aging portions of sewer systems; and a program to control fats, oils and  
11 grease discharged into the sewer system that cause many overflows by solidifying  
12 and then plugging up the sewers.
- 13 D. Furthermore, the Cal-EPA Air Resources Board has adopted more stringent air  
14 quality regulations that require the District to upgrade or replace its solid waste  
15 collection fleet with costly trucks and equipment that use alternative fuels or that  
16 otherwise emit less pollutants into the air (the "Solid Waste Collection Vehicle Rule").
- 17 E. The total cost of compliance with the foregoing regulations will be significant—  
18 increasing the District's revenue requirements to about \$10 million per year. In the  
19 past, the District spent only about \$5 million per year, all coming from the District's  
20 existing tax base and minimal user fees. With the increased costs of State regulatory  
compliance, the District's current revenues can no longer cover the costs.
- F. The allocation of costs to each user based upon each unit of service provided by the  
District to each parcel of property fairly represents the proportional costs of services  
provided by the District to each such parcel of property.

**Section 2. FEE ADJUSTMENTS.** Section 2 of Ordinance No. 54, and Section 1 of  
Ordinance No. 57 are hereby amended by adjusting the fees established therein as follows:

- 15 A. For each residential unit or separate commercial or industrial unit or  
16 activity connected to the sewer collection facilities of the District, a  
17 sewer service fee not to exceed the sum of \$111.00 annually,  
18 corresponding to a fee of \$9.25 per unit or activity per month. This not-  
19 to-exceed amount is to be implemented incrementally over six fiscal  
20 years pursuant to the table below.
- B. For each residential unit or separate commercial or industrial unit or  
activity not utilizing a Bin Service Program, a solid waste collection  
(curbside collection) fee not to exceed the sum of \$246.60 annually,  
corresponding to a fee of \$20.55 per unit or activity per month. This  
not-to-exceed amount is to be implemented incrementally over six fiscal  
years pursuant to the table below.

Fiscal Year	Corresponding Monthly Sewer Rate	Corresponding Monthly Curbside Rate*	Proposed Combined Annual User Fee
2005-2006	\$ 6.75	\$ 13.30	\$ 240.60
2006-2007	7.25	14.75	264.00
2007-2008	7.75	16.20	287.40
2008-2009	8.25	17.65	310.80
2009-2010	8.75	19.10	334.20
2010-2011	9.25	20.55	357.60

\*Applicable to all residential, commercial, and industrial properties receiving curbside solid waste collection services.

**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. At the time of the public hearing required under section 5473.1, the Board of Directors may adjust the fees up to the not-to-exceed amounts established under this Ordinance.

**Section 4. EXEMPTIONS AND APPEALS.**

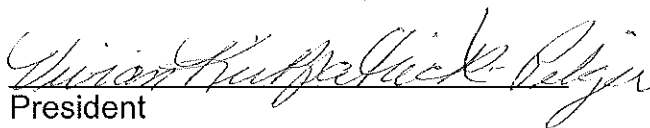
- A. The fees adjusted pursuant to this Ordinance shall apply to all owners of properties served by the District, and no exception shall be provided for properties otherwise deemed exempt from the payment of taxes or assessments by provisions of the State Constitution or statute, including properties owned by certain other public agencies or tax exempt organizations.
- B. Any property owner may appeal the levy of the charges adjusted herein, and if the charges have been paid under protest to the Orange County Tax Collector, together with property taxes, the owner may submit a claim for rebate to the District, on the forms prescribed and provided by the District, within one hundred twenty (120) days after the annual property tax bill is mailed. All applications 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:

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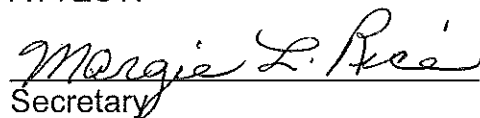
1. The parcel of property or unit of service is not connected to the District's sewer collection system or is vacant land which does not utilize curbside solid waste collection;
2. The use of the parcel or unit of service is different from the use indicated by the charge;
3. The principal use of the land is agricultural and all solid waste disposal is self-haul in accordance with District Ordinance 53 and evidence of self-haul disposal is provided;
4. Nuisance conditions do not exist, have not existed, and are not anticipated to exist on the property, which would be otherwise abated by the provision of services by the District.

**Section 5.** The secretary of the Board of Directors of the District shall certify to the passage of this Ordinance and shall cause the same to be published once in a newspaper of general circulation published in the District and this Ordinance shall be in full force and effect upon the expiration of one week from the date of such publication.

ADOPTED, SIGNED AND APPROVED this 2<sup>nd</sup> day of August, 2005.

  
President

ATTEST:

  
Secretary

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CERTIFICATION

I, Margie L. Rice, Secretary of the Midway City Sanitary District of Orange County, California, do hereby certify that the foregoing Ordinance No. 64 was duly adopted at a regular meeting of the Board of Directors of said District, held on the 2<sup>nd</sup> day of August, 2005, by the following vote of the members of the Board:

AYES: Directors Epperson, Kirkpatrick-Pilger, Neugebauer, Paris and Rice  
 NOES: None  
 ABSENT: None

and I further certify that Vivian Kirkpatrick-Pilger, as President and Margie L. Rice, as Secretary, signed and approved said Ordinance on the 2<sup>nd</sup> day of August, 2005.

Margie L. Rice  
 Secretary

(District Seal)

STATE OF CALIFORNIA )  
 ) §§  
COUNTY OF ORANGE )

I, \_\_\_\_\_, 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. 64, passed and adopted by the Board of Directors of said District at a regular meeting thereof held on the 2<sup>nd</sup> day of August, 2005.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official Seal of said District this 2<sup>nd</sup> day of August, 2005.

Margie L. Rice  
 Secretary

(District Seal)