

RESOLUTION NO. 2009-851

**RESOLUTION OF THE GOVERNING BOARD
OF THE MONTECITO SANITARY DISTRICT
ADOPTING A GENERAL REGULATION PROVIDING
FOR SEWER SERVICE CHARGES;
AND REPEALING RESOLUTION NO. 2004-812**

The Governing Board of Montecito Sanitary District resolves as follows:

ARTICLE I

General Provisions

Section 1. Enabling Authority. This General Regulation is established and adopted under authorization of the Sanitary District Act of 1923, being Article 4, Chapter 6, Part 3 of Division 6 of the Health and Safety Code commencing at Section 6400.

Section 2. Application. This General Regulation shall apply to any person or persons, including corporations, and others connected or directed by the District to connect to the Montecito Sanitary District sewage system.

Section 3. Separability. If any portion of this General Regulation or the application thereof is held to be unconstitutional or for any reason invalid, the validity of all remaining portions and applications shall be unaffected, and they shall remain in full force.

ARTICLE II

Definitions

Section 1. General. For the purpose of this Regulation and the fixing of rates and charges for the use of the District's sewage system (as distinguished from the fees charged for connecting to the sewage system as provided for in another District Resolution) there are two basic classes of users designated herein as either "Residential" or "Commercial."

"Residential" shall include all of those buildings (structures) suitable and intended exclusively for use as a dwelling for one or more persons, and containing facilities for sleeping and the preparation of food (kitchen) and appropriate sanitary facilities. Such buildings shall include, but not be limited to, single family dwellings, residential condominiums, multi-family (apartments and duplexes), mobile homes, residential second units, and similar residential uses. Residential uses shall not include boarding houses, lodging houses, hotels, motels, hospitals, nursing facilities, or any publicly owned (State, City, County or District) Parks, which

uses shall be classified as commercial.

Section 2. Residential Uses. "Residential" uses include those uses defined in this section.

(a) Apartment. Means a room or suite of rooms with kitchen or cooking facilities occupied or suitable for occupation as a residence by one or more persons for living and sleeping purposes. For purposes of this resolution, each apartment unit shall be assessed the same charges as a dwelling unit under the multi-unit/condominium rate.

(b) Building. Means a structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any person, animal or chattel.

(c) Condominium. Means an estate in real property consisting of a separately owned interest in a portion of a parcel of real property or building, including residences and apartments containing a separate kitchen or cooking facilities and each unit of which will be used exclusively for a dwelling or residence. For purposes of this resolution, each condominium shall be assessed the same charges as a dwelling unit under the multi-unit/condominium rate.

(d) Duplex. Means a single detached building containing two dwelling units each designed for or occupied by two separate families, and having two kitchens. For purposes of this resolution, each dwelling unit in the duplex shall be assessed the same charges as a dwelling unit under the multi-unit/condominium rate.

(e) Dwelling Unit. Means a building or portion thereof equipped with both food preparation and appropriate sanitary facilities that allows for independent living accommodation for one or more persons either permanently or temporarily, but not including boardinghouses, lodging-houses, hotels, motels, nursing facilities or hospitals.

(f) Dwelling – Single Family. Means a single detached building designed for or occupied by only one family, and having but one kitchen.

(g) Guest House. Detached living quarters of a permanent type of construction without kitchen or cooking facilities, intended and used primarily for temporary guests or employees of the occupants of the main building on the property on which such guest house is located, and not rented or otherwise used as a separate dwelling unit. For purposes of this resolution, a guest house is not a dwelling unit.

(h) Kitchen. Means a room, all or any part of which is designed, built, equipped, used or intended to be used for the cooking of foods.

(i) Mobile Home. Means a structure that is certified under the National Manufactured Housing Construction and Safety Act 1974 and meets the definition of mobile home contained in Section 18008 of the California Health and Safety Code. For purposes of this resolution, a mobile home shall be assessed the same charges as a single-family dwelling.

(j) Parcel. Means a single parcel of land in one ownership for which a legal description has been filed on record, or the boundaries of which are shown on a subdivision, or a record of survey map, filed in the office of the county recorder.

(k) Residential Second Unit. Means a dwelling unit on a permanent foundation that provides complete, independent living facilities (i.e. permanent provisions for living, sleeping, eating, cooking, water and sanitation) for one or more persons in addition to a principal single-family dwelling located on a single parcel. A residential second unit may either be attached to the single-family dwelling or may be a separate detached building. For purposes of this resolution, a residential second unit shall be assessed the same charges as a dwelling unit under the multi-unit/condominium rate, as long as a primary single-family dwelling located on the same parcel is charged the single-family dwelling rate.

Section 3. Commercial Uses. "Commercial uses" are defined to be any use that is either not defined in Sections 1 and 2 of this Article or does not fit within the definition of the residential uses as set forth in this Resolution. Commercial users are classified based upon the strength of sewage discharged into the District sewage system. The District relies upon guidelines promulgated by the California State Water Resources Control Board in determining the appropriate strength designation for commercial users. Any commercial user may appeal the District's sewage strength determination pursuant to the procedures set out in Article VI.

(a) Low strength. Those commercial users who discharge sewage into the District sewage system with a combined concentration of biochemical oxygen demand ("BOD") and suspended solids ("SS") of less than 325 parts per million ("ppm"). Typical low strength users are business offices and churches.

(b) Medium strength. Those commercial users who discharge sewage into the District sewage system with a combined concentration of biochemical oxygen demand and suspended solids of more than 325 parts per million but less than 900 parts per million. Typical medium strength users are doctor's offices and resident schools.

(c) High strength. Those commercial users who discharge sewage into the District sewage system with a combined concentration of biochemical oxygen demand and suspended solids exceeding 900 parts per million. Typical high strength users are restaurants and food markets with either butcher shops or bakeries.

ARTICLE III**Sewer Service Charges**

Section 1. There is hereby levied and imposed upon the owner or occupant of any parcel within Montecito Sanitary District, having any sewer connection with the District's sewage system or otherwise discharging sewage which ultimately passes through the District's sewage system, a sewer service charge as hereinafter provided.

Section 2. Sewer Service Rate Charges. Charges are shown for the entire fiscal year.

RESIDENTIAL ANNUAL SEWER SERVICE CHARGES

Flat Rate Per 12 Months beginning July 1, 2009

Residential Accounts (\$ per Year)	July 1, 2009-June 30, 2010	July 1, 2010-June 30, 2011	July 1, 2011-June 30, 2012
Single Family Dwelling	\$890	\$960	\$1,080
Condo or 2 nd Dwelling	\$420	\$450	\$510

COMMERCIAL ANNUAL SEWER SERVICE CHARGES

Total Annual Commercial Sewer Service Charge = Fixed Capacity Allocation Charge + Variable Charge

Fixed Capacity Allocation Charge (\$ per hundred cubic feet (HCF) of Historic Maximum Annual Water Use)			
	July 1, 2009-June 30, 2010	July 1, 2010-June 30, 2011	July 1, 2011-June 30, 2012
Low Strength Sewage	\$2.48	\$2.67	\$3.02
Medium Strength Sewage	\$4.50	\$4.86	\$5.49
High Strength Sewage	\$8.37	\$9.03	\$10.20

Variable Charge (\$ per hundred cubic feet (HCF), Based on Prior Calendar Year Actual Water Use)			
	July 1, 2009-June 30, 2010	July 1, 2010-June 30, 2011	July 1, 2011-June 30, 2012
Low Strength Sewage	\$0.69	\$0.74	\$0.84
Medium Strength Sewage	\$1.39	\$1.51	\$1.70
High Strength Sewage	\$2.79	\$3.01	\$3.40

Section 3. Computation of Commercial Rate

(a) Fixed Capacity Allocation Charge. The fixed capacity allocation charge for commercial users shall be computed based upon the maximum historical annual water use during a calendar year, which represents the level of capacity that the District must reserve for handling the potential discharged from each commercial user. The amount of the maximum historical annual flow for each commercial user shall be based upon the commercial user's water bill provided by the Montecito Water District. In the event such records are not available from the Montecito Water District, the commercial user shall furnish such records to the District within ten days upon written request by the District.

(b) Variable Charge. The variable sewer service charge for commercial users shall be computed based upon the strength of sewage discharged and the amount of water used by the commercial user during the previous calendar year as depicted in the commercial user's water bill provided by the Montecito Water District. In the event such records are not available from the Montecito Water District, the commercial user shall furnish such records to the District within ten days upon written request by the District.

Section 4. The sewage strength classifications shall be derived from BOD and SS values. The BOD values shall represent 5 day BOD strengths, as defined by standard industrial practices.

Section 5. Unclassified Commercial Uses. For commercial premises having a sewer connection but for which a specific classification for sewer service charges has not been set forth in this Article, the District shall charge such rate as in its sole discretion it deems applicable for the type of use being made of the premises in relation to the uses made of classified premises and the rate in this resolution fixed for said classified premises. Notwithstanding anything to the contrary in this resolution contained, the minimum annual rate for any unclassified property being served shall be not less than the current residential rate for a one-family dwelling.

ARTICLE IV

Collection

Section 1. Where applicable, and permitted by law, and if this Governing Board elects to do so by separate ordinance the sewer service charge will be placed on the County Tax Roll, and collected with, the County tax statements. If an application for a connection is made after June 30th in any given year so as to be too late to be placed on the tax statement, then the applicable rate for the pro-rated balance of the fiscal year, and permitted by law, must be paid in advance at the time of making application.

Section 2. The powers authorized by this Article shall be alternative to all other powers of the District authorized by the applicable provisions of the Health and Safety Code for the collection of the sewer service charges provided for herein.

Section 3. As an alternative to any other procedure provided for herein, the District may collect any delinquent sewer service charges and penalties thereon either by way of the County Tax Roll or by suit, in which event judgement for the District shall include the cost of suit and reasonable attorney's fees arising from such action.

ARTICLE V

Hearing Procedures -- Commercial Users

Section 1. Reduction in Volumetric Water Billing

(a) Any commercial user may submit a written request to the District's General Manager or designee ("District Manager") for a one-time reduction in volumetric water billing. The written request must specify that a volume of water that will bypass or has in its entirety permanently bypassed the District's sewage system. The written request must be certified by a civil engineer registered in the State of California for any reduction of more than 5000 Hcf of metered water. The volume of water must be technically calculated by a verifiable methodology and based upon actual metered water.

(b) The District's General Manager shall consider all evidence submitted by the commercial user and any other information and evidence available to the District and make a decision based thereon. The General Manager's decision shall be in writing and shall be made within 30 days of a submittal by a commercial user.

(c) In the event a commercial user disagrees with the decision of the District's General Manager, the commercial user may request a hearing before the District's Governing Board. The District shall schedule such hearing at the soonest convenient time following the commercial user's request. The hearing before the District's Governing Board shall be open to the public and shall be conducted informally. The decision of the District's Governing Board shall be final.

Section 2. Sewage Strength Classification

(a) Any commercial user may submit a written request to the General Manager for a variation in the commercial user's sewage strength classification as determined by the District. The written request must specify (1) the amount of metered water discharged into the District's sewage system, and (2) the strength of the sewage being discharged into the District's sewage system. The written request must be quantified by a verifiable and technically calculated methodology, and must be certified by a civil engineer registered in the State of California.

(b) The General Manager shall consider all evidence submitted by the commercial user and any other information and evidence available to the District and make a decision based thereon. The General Manager's decision shall be in writing and shall be made within 30 days of a submittal by a commercial user.

(c) In the event a commercial user disagrees with the decision of the District's General Manager, the commercial user may request a hearing before the District's Governing Board. The District shall schedule such hearing at the soonest convenient time following the commercial user's request. The hearing before the District's Governing Board shall be open to the public and shall be conducted informally. The decision of the

District's Governing Board shall be final.

(d) Any decision by the General Manager or the District's Governing Board granting a variation in a commercial user's sewage strength classification shall be valid for a period of five years. The General Manager or Governing Board's decision granting a reduction in a commercial user's strength of sewage may be vacated by District, following written notice to the commercial user, in the event of a change in operations by the commercial user. Upon the expiration of the five-year period the commercial user may renew the request for an additional five-year period. Any renewal shall be subject to the same hearing process based upon updated evidence.

ARTICLE VI

Relief

Section 1. Relief. Any person, who by reason of special circumstances believes that the application of this Regulation as to that individual is unjust or inequitable, may make written application to the Governing Board for relief. Said application shall set forth all of the special facts and circumstances and shall request the specific relief or modification desired. The Board, upon receipt of such application and after such investigation as deemed necessary, may take action to grant such relief or modification as it finds necessary. The Governing Board on its own motion and without an application, may, when special circumstances make the application of these rules and regulations a hardship or unjust or inequitable, modify or suspend the rules and regulations for the period during which the special circumstances exist.

ARTICLE VII

Charges and Rates Do Not Exceed Costs

Section 1. This Governing Board finds and determines that the charges, rates and fees as set forth in this Regulation do not exceed the estimated reasonable cost of providing the service for which the charges, rates and fees are charged.

ARTICLE VIII

Exemption from CEQA

Section 1. Pursuant to Sections 21080 (b)(8) of the Public Resources Code, the Governing Board finds and determines that the establishment of the charge rates and fees imposed by this Regulation are exempt from the requirements of the California Environment Quality Act for the reasons set forth in Section 21080 of the Public Resources Code.

ARTICLE IX

Repeal

Section 1. All Regulations or parts or portions thereof, including, but not limited to, Resolution No. 2004-812 that are inconsistent or contrary to this resolution are hereby repealed and declared to be of no further force and effect.

PASSED AND ADOPTED by the Governing Board of MONTECITO SANITARY DISTRICT this 26th day of May 2009, by the following vote:

AYES: Arnold, Cannata, Eidelson, Hovey, Ishkanian

NAYS:

ABSTAIN:

ABSENT:

Judith M. Ishkanian

President
of the Governing Board of the
MONTECITO SANITARY DISTRICT

ATTEST:

Charles C. Arnold

Secretary
of the Governing Board of the
MONTECITO SANITARY DISTRICT



(SEAL)