

**RESOLUTION NO. 2629**

**ORDINANCE NO. 35.17**

**AN ORDINANCE PROVIDING FOR THE COLLECTION  
OF CAPACITY CHARGES FOR CONNECTION TO  
THE MAIN SEWERS OF UNION SANITARY DISTRICT**

The District Board of UNION SANITARY DISTRICT does order and ordain as follows:

**ARTICLE I**

**REPEAL OF PREVIOUS ORDINANCE**

Ordinance No. 35.16 is hereby repealed.

**ARTICLE II**

**GENERAL**

**SECTION 1 SHORT TITLE**

This Ordinance shall be known as the "CAPACITY CHARGE ORDINANCE."

**SECTION 2 PURPOSE OF THE CAPACITY CHARGE**

The purpose of the Capacity Charge is to allow new users to obtain a share of the District's system's capacity for the discharge of their wastewater. The charge is a payment for capacity rights and represents a reimbursement to the District's ratepayers for providing available capacity to future users of the system.

**SECTION 3 USE OF THE CAPACITY CHARGE**

Revenues collected through the payment of the capacity charge will be used to fund capital projects and upgrades that increase capacity or are appurtenant to the system's capacity. The capacity charges can be used to fund a proportionate share of capital outlays, including debt service, for any projects other than the replacement of facilities that are fully utilized by the ratepayers. The collected revenues will not be used to fund renewal and replacement and/or operating and maintenance costs.

**SECTION 4 ADOPTION OF A CAPITAL IMPROVEMENT PLAN**

The District has prepared a Capital Improvement Plan (CIP) which contains projects and facility upgrades that are required by typical development in order to increase capacity of the system. The Capital Improvement Plan, which has been reviewed and formally adopted by the Board of Directors, will be revised each year, and an updated Capital Improvement Plan will be adopted by the Board annually.

## SECTION 5 REASONABLENESS OF THE CAPACITY CHARGE

In order to demonstrate the reasonableness of the District's Capacity Fee, the calculation method and the basis for determining the annual capacity charge for an equivalent dwelling unit (EDU) are presented in a separate report entitled "Maximum Capacity Charge per EDU", and may be referenced by contacting the District.

## SECTION 6 REFUND POLICY

All capacity charge revenues collected by the District are designated for the construction of facilities identified in the Capital Improvement Plan and not for the renewal or replacement of existing facilities. In the event that any collected revenues are unexpended or uncommitted, the District will refund these revenues to the appropriate parties.

## SECTION 7 DEFINITIONS

Unless the context indicates otherwise, the following words and terms shall have the meaning as follows:

- a. **Boarding Establishment Unit.** One or more rooms with centralized kitchen facilities designed for use by transients, students, retirees, or other occupants for living and/or sleeping purposes. Each separate room which is designed for occupancy by one or more persons or which serves as one housekeeping unit shall be deemed to be one living unit. For facilities with only communal living space, the design occupancy shall be deemed as the determining factor for the capacity charge.
- b. **Building Sewer.** A sewer conveying wastewater from the property of the user to a main sewer.
- c. **Building Sewer Construction Permit.** A permit issued by UNION SANITARY DISTRICT allowing the construction and connection of a building sewer line to the main sewer.
- d. **Capacity Charge.** The charge to be made by the UNION SANITARY DISTRICT for a sewer connection either directly or indirectly to a main sewer; or, for a change, alteration, or expansion of the use of an existing building, as listed in and in accordance with all the provisions of Article III herein.
- e. **Chemical Oxygen Demand (COD).** The equivalent quantity of oxygen utilized during oxidation of organic and inorganic matter in wastewater under the conditions of the COD test as described in the latest edition of "Standard Methods for the Examination of Water and Wastewater", expressed in milligrams per liter.

- f. **Chemical Oxygen Demand (COD) loading.** The annual average mg/L COD multiplied by the total annual industrial wastewater discharge volume in million gallons multiplied by the conversion factor 8.34.
- g. **District.** Union Sanitary District of Alameda County, California.
- h. **District Engineer.** The General Manager of the District or his designees, including, but not limited to, duly authorized personnel.
- i. **Domestic Loading.** The Domestic Premise in terms of pounds/yr allocating 20 gallons/day/employee to be used in the absence of a separate approved industrial wastewater or industrial process water flow meter.
- j. **Domestic Premise.** Domestic loading equal to 500 mg/L COD and 200 mg/L SS.
- k. **Domestic Wastewater.** Any wastewater which will enter into the main sewers from the non-industrial operation, preparation, cooking and handling of food; or, containing human wastes and similar matter from the sanitary conveniences of dwellings, commercial buildings, industrial facilities and installations.
- l. **Dwelling Unit.** The following living establishments shall be deemed to be one dwelling unit:
  - (i) Single family residential dwelling or mobile home designed for occupancy by one family;
  - (ii) Each housekeeping unit of a: duplex, triplex, fourplex, townhouse or condominium, apartment house, mobile home park, or other multi-residential establishment designed for occupancy for living purposes by more than one family, and which is divided into separate housekeeping units, each of which is designed for occupancy by one family only.
- m. **Industrial User.** Any establishment engaged in producing, manufacturing, or processing operations, and all other establishments engaged in any activity resulting in the production of industrial wastewater which will enter into the sewer system.
- n. **Industrial Wastewater.** Any non-domestic wastewater which will enter into the main sewers by being discharged, permitted to flow or escape from any industrial, manufacturing, commercial, or business establishment or process; or from the development, recovery, or processing of any natural resource. Industrial wastewater is directly reported from a separate approved industrial wastewater flow meter or industrial process water flow meter; otherwise,

industrial wastewater is calculated from potable water meter sources excluding a calculated percentage of non-industrial use.

- o. **Loadings.** The weight of Chemical Oxygen Demand and Suspended Solids discharged to the main sewer system during a given time interval. Unless otherwise specified, the loadings shall mean pounds per day or per year of a particular constituent or combination of constituents.
- p. **Main Sewer.** An existing sanitary sewer dedicated to public use, within the public right of way.
- q. **Mixed Use Commercial Property.** - A parcel of real property designed for the occupancy of multiple tenants, such as a shopping center. Examples of acceptable uses on mixed use commercial properties include; retail sales outlets, restaurants, offices, service companies, health clubs, laundromats, theaters, and similar commercial uses. Individual tenant units whose floor area exceeds 10,000 square feet may be included in the Commercial/Industrial/Office Use (C/I/O) (Domestic Use Only Category).
- r. **Person.** Any individual, firm, company, partnership or association; private, public, and municipal corporations; responsible corporate officer; the United States of America; the State of California; districts and all political subdivisions; governmental agencies and mandatories thereof.
- s. **Private Cafeteria.** A food service facility within a school, commercial or industrial building which is used exclusively by the students or employees of the company or school. Cafeterias which are open to the public, or provide catering or off-site food service to other companies will be considered a restaurant. Capacity fees for private cafeterias will be based on the area of food preparation, cooking, food storage, and food serving areas but shall exclude seating areas.
- t. **Property.** A parcel of real estate or portion thereof, including any improvements thereon, which is determined by the District to be a single user for purposes of receiving, using, and paying for service.
- u. **Public Assembly Facilities.** Any facility where the public may assemble for social, business, educational or entertainment purposes, including, but not limited to, movie theaters, auditoriums, theaters and music halls.
- v. **Suspended Solids (SS).** The solids that either float on the surface of, or are in suspension in, wastewater and which are largely removable by standard laboratory filtration procedures, expressed in milligrams per liter.

- w. **Suspended Solids (SS) loading.** The annual average mg/L SS multiplied by the total annual industrial wastewater discharge volume in million gallons multiplied by the conversion factor 8.34.
- x. **User.** Any person that discharges, causes, or permits the discharge of wastewater into a main sewer.
- y. **Volume.** The quantity of wastewater discharged during a specified period of time, expressed in gallons.
- z. **Warehouse.** A building or portion of a building used exclusively for the storage of goods. The following is NOT considered a warehouse;
  1. A distribution, wholesale trade, shipping, receiving, and/or packing center,
  2. Storage areas for goods or finished products within a manufacturing plant or commercial building that are not separated by a permanent partition wall, and or
  3. Storage areas that do not exceed 5,000 square feet in area.

Warehouse buildings that contain office, industrial, or other non-warehouse areas, totaling more than ten percent of the gross area of the entire building, will be segregated into separate uses and charged the appropriate rate for each different use. Otherwise, the warehouse rate shall apply to the gross area of the entire building.

Whenever the use of a proposed building or part of a building is not clear or not determined prior to connecting to the sanitary sewer, the Commercial/Industrial/Office Use rate will be used to calculate the capacity fee. If, after the building is first occupied, it becomes evident that it, or part of it, is being used exclusively for warehouse purposes, as described herein, a refund may be issued.

- aa. **Wastewater Discharge Permit.** A permit issued by UNION SANITARY DISTRICT authorizing the discharge of industrial wastewater by an industrial user, either directly or indirectly into a main sewer.
- bb. **Commercial/Industrial/Office Use (C/I/O) (Domestic Use Only).** A parcel of real property designed for use by a single tenant for a single commercial or industrial use whose discharge is limited to domestic waste only. Examples include retail sales, office space, showrooms, and other uses producing domestic waste only, which do not fall into one of the other specifically designated categories. Also included in this category are individual tenant units in the mixed-use commercial category whose floor space exceeds 10,000 square feet.

## **SECTION 8 TERMINOLOGY**

Words, phrases, or terms not specifically defined herein and having a technical or specialized meaning shall be defined as set forth in the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, the American Water Works Association and the Water Pollution Control Federation. Reference to waste constituents and characteristics shall have the meanings ascribed to them in the aforesaid "Standard Methods for the Examination of Water and Wastewater" and measurements thereof shall be as set forth in said publication, or as established by Federal or State regulatory agencies.

### **ARTICLE III** **BASIS FOR CAPACITY CHARGES**

#### **SECTION 1 DOMESTIC WASTEWATER**

The capacity charge to be paid for connecting either directly or indirectly to a main sewer shall be determined by the District based upon the existing or proposed use of the property to be served, the number of existing or proposed units thereon, and the volume of wastewater generated, in accordance with the following:

	<b>Connection Category</b>	<b>Charge per Unit</b>	
1.	Dwelling Unit	\$4,003.91	per unit
2.	Commercial/Industrial/Office Use (C/I/O) (Domestic Use Only) and Mixed Use Commercial Property with individual tenant units exceeding 10,000 square feet.	\$1.89	per square foot of building floor area
3.	Boarding Establishments Including Hotels and Motels	\$2,671.25 \$1,335.61	per living unit; or per capita design tenant
4.	Schools and Day Care Centers (Boarding Facilities Excluded)	\$2.14	per square foot of building floor area
5.	Churches (School and Day Care Facilities Excluded)	\$1.52	per square foot of building floor area
6.	Public Assembly Facilities	\$95.39	per seat
7.	Health Clubs	\$6.42	per square foot of building floor area

8.	Park or Recreation Site Restrooms	\$4,003.91	per water closet
9.	<sup>1</sup> Coin-Operated Laundromats	\$3,050.93	per washing machine
10.	<sup>2</sup> Restaurants - All	\$8.68	per square foot of building floor area
11.	<sup>2</sup> Eating/Drinking Facilities without Cooking Facilities	\$4.37	per square foot of building floor area
12.	Car Wash with Water Recycling	\$4,003.91	lump sum
13.	Mixed Use Commercial Property with individual tenant units less than 10,000 square feet.	\$4.55	per square foot of building floor area
14.	Warehouses	\$0.74	per square foot of building floor area up to 50,000 square feet
		\$0.23	per square foot of building floor area for that portion in each building above 50,000 square feet
15.	<sup>2</sup> Private Cafeterias	\$8.68	per square foot of floor area for food preparation, cooking, food storage, and food serving areas but excluding seating areas
16.	Equipment Wash Pad with Interceptor	\$4,003.91 \$12.79	lump sum, plus per square foot for any additional pad area above 600 sq. ft.

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|-----|---|---|----------|
| 17. | Mobile Home Holding Tank Disposal Station | \$7,993.06  | lump sum |
| 18. | Miscellaneous Category                    | Capacity charges for uses not listed in the above table shall be determined by the District Engineer based upon the volume and pollutant loadings of the wastewater to be discharged. |          |

<sup>1</sup> Note: The charge listed is in addition to other capacity charges that may apply (example: Mixed-Use Commercial).

<sup>2</sup> Note: The rates listed for these categories have been reduced by 50%. The reduced rates shall remain in effect for a five-year period ending in fiscal year 2011 and shall then be re-evaluated by the Board of Directors.

## SECTION 2 INDUSTRIAL WASTEWATER

Properties with industrial wastewater discharges will be charged a Capacity Charge in addition to the Domestic Wastewater Capacity Charge in accordance with the following formula:

- a. **Initial Charge.** The initial charge shall be the sum of the following:
- (i) Volume Component. Estimated total annual industrial wastewater discharge volume (exclusive of domestic wastewater) times \$7.33 per 1,000 gallons.
  - (ii) COD Component. Estimated annual Chemical Oxygen Demand loading (exclusive of COD domestic loading) times \$486.56 per 1,000 pounds.
  - (iii) Suspended Solids Component. Estimated annual Suspended Solids loading (exclusive of SS domestic loading) times \$1,211.00 per 1,000 pounds.
- b. **Succeeding Annual Charges.** At the time a Building Sewer Construction Permit is issued, or prior to the issuance of a Wastewater Discharge Permit, the prospective user shall enter into an agreement with UNION SANITARY DISTRICT which shall provide that there be three additional charges due and payable upon billing at the end of the first, second, and third year from the date of acceptance of the building sewer or issuance of a Wastewater Discharge Permit. Each of these annual charges shall be the sum of the following:

- (i) Volume Component. \$7.33 per 1,000 gallons times the previous year's industrial wastewater discharge volume (exclusive of domestic wastewater).
- (ii) COD Component. \$486.56 per 1,000 pounds times the previous year's discharge of Chemical Oxygen Demand loading (exclusive of COD domestic loading).
- (iii) Suspended Solids. \$1,211.00 per 1,000 pounds times the previous year's discharge of Suspended Solids loading (exclusive of SS domestic loading).

Providing that any increase in the combined industrial flow and loadings does not exceed the initial estimate by more than 25%.

- c. **Excess Capacity.** In the event that the combined industrial flow and loadings exceed the initial estimate by more than 25%, an additional capacity charge shall be paid over 4 years, concurrently with the initial payment and succeeding annual payments, for the entire increase at the present-day rate.
- d. **Single Installment Amount.** If the calculated charges for an industrial use total less than \$500, the initial charge and the succeeding annual charges shall be paid in a single installment prior to the issuance of any permit.

### **SECTION 3 MINIMUM CHARGE**

In no case shall the minimum capacity charge for any initial connection to the District's system be less than the domestic wastewater capacity charge for a single family dwelling unit.

## ARTICLE IV

### **ALLOWANCE FOR INDUSTRIAL CREDITS, REVIEW OF CHARGES AND CHANGES IN PROPERTY USE**

#### **SECTION 1 QUALIFICATION FOR INDUSTRIAL RELOCATION CREDIT**

This section shall apply to industrial wastewater only, not to domestic wastewater. If the transfer of an industry discharging industrial wastewater to a different parcel of land does not impose any additional burden on the District's facilities, a credit, which shall be referred to as a relocation credit, may be allowed, provided that:

- (i) The owner of the real property is willing to relinquish the industrial wastewater capacity for the purpose of a relocating tenant or relocating industrial process.

- (ii) essentially the same industrial operation has been transferred from one parcel to another and such operation was previously connected to the District's system;
- (iii) the industrial operation was owned prior to the transfer by the person now making claim to the relocation credit;
- (iv) the discharger has demonstrated to the satisfaction of the District that the industrial operation has been abandoned from the parcel from which the transfer has occurred, or presented a certification in writing and a performance bond of equal or greater value than the relocation credit that such industrial operation will be abandoned within six (6) months of the District approving an application for connection. Should the facility not be abandoned within the prescribed period, the relocation credit shall be revoked and a capacity charge, with respect to the parcel to which the industrial operation transferred, shall be due and payable as of the date said parcel was connected to the District's system;
- (v) there is adequate capacity in the District's system to accommodate connection of the industrial operation to be transferred.

## **SECTION 2 BASIS FOR RELOCATION CREDIT**

The relocation credit shall be based upon the average of the total annual discharge of: the number of gallons of industrial wastewater, number of pounds of Chemical Oxygen Demand (exclusive of COD domestic loading), and number of pounds of Suspended Solids (exclusive of SS domestic loading) for the preceding four (4) years, or years of operation if less than four (4) years, prior to the transfer. In no case shall there be a refund or a credit applied to any other type of fee or charge if the fee for the industrial wastewater discharge for the relocated industrial operation is less than the relocation credit allowed.

## **SECTION 3 REVIEW OF CAPACITY CHARGE**

Capacity charges or relocation credit determined under Article III and Article IV may be reviewed at the applicant's request. The review will be based on the use data provided by the applicant and other criteria to be established by the District for a review fee of \$25.00. Any requested adjustments to the capacity charge using this method are subject to verification by the District using District sampling, monitoring, and analysis procedures. All verification costs must be paid by the applicant. After completion of the District's review, the questioned capacity charge may be adjusted up or down in accordance with the results of the verification study.

## SECTION 4 CHANGE OF PROPERTY USE

- a. **Industrial Wastewater.** If the existing use of a building or property is changed, an industrial process is altered, production is increased or any other change, or alteration will increase the existing combined industrial wastewater flow and loadings by more than 25%, an additional capacity charge shall be paid over 4 years for the entire increase at the present-day rate.
- b. **Change in Building Size.** If the existing size of a building or property is expanded, added onto, increased, or otherwise physically modified, an additional capacity charge applicable to the expansion, addition, or increase shall be paid. In no instance shall a refund be granted if the size of a building or property is decreased.
- c. **Domestic Wastewater Changes in Use.** When the use of a building or property is modified or changed, such as a change in tenants, or a change in the type of business occupying the property, the District will consider this a change in use. Each change in use shall be reviewed by the District to determine if an additional capacity fee will apply. An additional capacity fee shall apply whenever the capacity fee calculated for the new use is greater than the value of capacity fees already paid for the former use. For the purpose of this comparison, the current capacity fee rates as listed in Article III of this Ordinance, shall apply to both the new and former use. Whenever the capacity fee calculated for the new use exceeds the value of the capacity fees already paid for the former use, the difference shall be paid to the District as an additional capacity fee for the change of use. In no instance shall a refund be granted if the change in the use of a building or property results in the value of capacity fees paid for the former use being greater than the cost of the capacity fee calculated for the new use.
- d. **Credit for Previously Purchased Capacity.** If the existing size or use of a building or property is expanded, added onto, or increased, a credit may be allowed based on verified previously purchased capacity that is retained on the property site. In no instance shall a refund be granted if the decreased use of a building or property results in a lower discharge volume and/or loading level than that for which capacity charges have previously been paid.
- e. **Payment Due Date.** If a Building Sewer Construction Permit or a new or revised Wastewater Discharge Permit is required as a result of an expansion of a building or property and/or the increase in flow or loadings from the property, additional capacity charges shall be paid prior to the issuance of the permit. If neither permit is required, additional capacity charges shall be paid upon billing by the UNION SANITARY DISTRICT and be delinquent thirty (30) days thereafter.

**ARTICLE V**  
**PAYMENT AND DEPOSITION OF CHARGES**

**SECTION 1 PAYMENT OF INITIAL CHARGES**

No building sewer or building drain shall be constructed and connected to any main sewer until the UNION SANITARY DISTRICT has issued a Building Sewer Construction Permit in accordance with District specifications and a capacity charge has been paid to the District. The capacity charge shall be in addition to the annual sewer service charge, charges for annexation, inspection, permits, reimbursements, and the requirements of any other rule, regulation, or ordinance of the UNION SANITARY DISTRICT.

**SECTION 2 PAYMENT OF SUCCEEDING CHARGES**

All charges prescribed under this Ordinance are payable upon billing and delinquent at the expiration of thirty (30) days thereafter. If it is necessary to initiate legal action to collect the delinquent obligation, all penalties allowed by the law will be applied. In addition to all other means of legal process available for the collection of the delinquent charges, the UNION SANITARY DISTRICT may elect to have the delinquent charges collected annually on the property tax roll in the same manner, by the same persons, at the same time as, and together with and not separately from general taxes in accordance with the provisions of 5473 and 5473a et seq. of the California Health and Safety Code and UNION SANITARY DISTRICT Ordinance No. 31 as amended. Delinquent tenant capacity charges will be charged against the property of the owner of the premises occupied by the tenant.

**SECTION 3 DEPOSITION OF FUNDS**

The collected capacity charges shall be deposited in the Capacity Fund.

**ARTICLE VI**  
**ADMINISTRATION**

**SECTION 1 APPEALS**

Any user, permit applicant, or permit holder affected by any decision, action, or determination made by the District interpreting or implementing the provisions of this Ordinance may file a written request for reconsideration with the District Engineer, setting forth in detail the facts supporting the user's request.

If the ruling made by the District Engineer is unsatisfactory to the person requesting reconsideration, he may file a written appeal to the District's governing body within ten (10) days after notification of the District's action. The written appeal shall be heard by the governing body within thirty (30) days from the date of filing. The District's governing body shall make a final ruling on the appeal within thirty (30)

days of the meeting. The District Engineer's decision, action, or determination shall remain in effect during the period of reconsideration.

## **SECTION 2 FALSIFYING OF INFORMATION**

Any person who knowingly makes any false statements, representation, record, report, plan or other document filed with the District; or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this Ordinance, is hereby declared to be in violation of this Ordinance, and subject to the Civil Penalties imposed under Section 7.05 of UNION SANITARY DISTRICT'S Ordinance No. 36.

## **SECTION 3 SEVERABILITY**

If any provision of this Ordinance or the application to any person or circumstances is held invalid, the remainder of the Ordinance or the application of such provisions to other persons or other circumstances shall not be affected.

## **SECTION 4 EFFECTIVE DATE**

A summary of the changes to this Ordinance shall be published once in the Argus, a newspaper of general circulation published in the UNION SANITARY DISTRICT, and shall take effect sixty days thereafter.

On Motion duly made and seconded, this Ordinance was adopted by the following vote on June 28, 2010.

AYES: Gacoscos, Handley, Kite, Lathi, Toy

NOES: ---

ABSENT: ---

ABSTAIN: ---

  
\_\_\_\_\_  
President, Board of Directors  
UNION SANITARY DISTRICT

ATTEST:

  
\_\_\_\_\_  
Secretary, Board of Directors  
UNION SANITARY DISTRICT

Adopted June 28, 2010

