

ORDINANCE NO. OC SAN-XX

AN ORDINANCE OF THE BOARD OF DIRECTORS OF ORANGE COUNTY SANITATION DISTRICT ADOPTING REGIONAL SEWER SERVICE CHARGES AND REPEALING ORDINANCE NO. OCSD-49.

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WHEREAS, Health & Safety Code Section 5471 authorizes the Orange County Sanitation District's ("OC San") Board of Directors to impose fees and other charges for services and facilities furnished by OC San in connection with OC San's sewage collection, treatment, disposal, and reuse system; and

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WHEREAS, OC San imposes annual sewer service charges on residential and commercial users. OC San uses revenue from these charges to operate, maintain, replace, and improve OC San's existing facilities. The current service charges are set forth in Ordinance No. OCSD-49.

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WHEREAS, OC San recently retained HDR Engineering, Inc. to evaluate OC San's projected revenue needs and recommend rates for the five-year period of July 1, 2023 to June 30, 2028. In December of 2022, HDR Engineering, Inc. issued its "Final Wastewater Rates, Fees, and Charges Study" ("HDR Report") OC San's Board of Directors received the HDR Report on December 15, 2022, and the HDR Report is on file with OC San; and

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WHEREAS, the recommendations set forth in the HDR Report are based in part on OC San's 2017 Facilities Master Plan ("Master Plan"). The Master Plan identified the capital improvement projects that will be needed over the next 20 years, and estimated the cost of each project. OC San's Board of Directors approved the Master Plan on December 20, 2017; and

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WHEREAS, pursuant to Article XIID, section 6, of the California Constitution, OC San mailed notice of a public hearing on the proposed sewer service charges to the record owner of each parcel subject to the proposed charges. The notice, which set forth the date, time, and location of the public hearing, as well as the charges, fees, and rates proposed for imposition, was mailed no less than 45 days prior to the public hearing; and

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WHEREAS, pursuant to Health and Safety Code sections 4766 and 5473, the Board of Directors may elect to have the proposed regional sewer service charges collected on the tax roll in the same manner, by the same persons, and at the same time as, together with and not separately from, its general taxes; and

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WHEREAS, pursuant to Health and Safety Code section 5473.1, on March 8, 2023, notice of a public hearing regarding the proposed sewer service charges and the election to have such charges collected on the tax roll was published in the Orange County Register, a newspaper of general circulation within OC San published in the county where OC San is located. The notice set forth the date, time and location of the hearing; and

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WHEREAS, on Wednesday, March 22, 2023 at 6:00 P.M., in OC San's Boardroom on the first floor of its Administration Building located at 10844 Ellis Avenue, Fountain Valley, California, OC San held a properly noticed public hearing in order to receive and consider comments, including objections, concerning the proposed regional sewer service charges and the election to have such charges collected on the tax roll; and

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WHEREAS, the Board of Directors has carefully reviewed the HDR Report and considered oral and written comments from the public, Board Members, OC San staff, and OC San consultants made at and prior to the March 22, 2023, public hearing;

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NOW, THEREFORE, the Board of Directors of the Orange County Sanitation District does hereby ORDAIN:

SECTION I. Adopt Regional Sewer Service Charges

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ARTICLE III: MISCELLANEOUS

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Section 3.01. Application of Ordinance
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ARTICLE I

FINDINGS

Section 1.01. Findings. Based upon substantial evidence presented to the Board of Directors, the Board of Directors of District hereby finds that:

A. The revenues collected pursuant to this Ordinance shall be used to finance the improvements, programs, and staffing needed to operate, maintain, replace, and improve OC San's existing facilities, fund necessary reserves, and retire debt incurred to finance such activities. The revenues shall be used for no other purpose.

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B. The revenues collected pursuant to this Ordinance are reasonably related to, and will not exceed, the cost of the improvements, programs, and staffing needed to operate, maintain, replace, and improve OC San's existing facilities, fund necessary reserves, and retire debt incurred to finance such activities over a reasonable period of time.

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C. The amount charged to each parcel pursuant to this Ordinance does not exceed the proportional cost of the service attributable to the parcel.

D. The financial requirements of OC San as reflected in the Master Plan and other documents, are based on current, reliable information, and further, that data relating to population projections, wastewater flow, and capital facility needs are expected to be realized in each year as described in the reports.

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E. The successful operation, maintenance, replacement, and improvement of OC San's existing facilities is necessary to protect public health, safety, and the environment.

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F. The Sewer Service Charges adopted herein will not result in an expansion of facilities to accommodate growth within or outside the existing service area. The adoption of these Sewer Service Charges will not result in any specific project, nor result in a direct physical change in the environment.

G. This Ordinance is statutorily exempt from review under the California Environmental Quality Act pursuant to Section 21080(b)(8) of the Public Resources Code, because the Sewer Service Charges will be used (i) for operating expenses, (ii) for the purchase or lease of supplies, equipment, or materials, (iii) to meet financial reserve needs and requirements, and (iv) to obtain funds for capital projects necessary to maintain service within existing service areas.

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H. That all fees and charges established herein have been approved by OC San's Board of Directors at a noticed public meeting, all in accordance with applicable provisions of law.

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ARTICLE II

SEWER SERVICE CHARGES

Section 2.01. Purpose and Scope. The purpose of this Ordinance is to establish Sewer Service Charges to be paid by property owners for the services and facilities furnished by OC San. The revenues collected pursuant to this Ordinance shall be used to finance the improvements, programs, and staffing needed to operate, maintain, replace, and improve OC San's existing facilities, fund necessary reserves, and retire debt incurred to finance such activities.

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Section 2.02. Annual Sewer Service Charge.

Commencing with the effective date of this Ordinance, the owner of each parcel of real property located within OC San's service area which is improved with structures designed for residential, commercial, or industrial use and which, at the request of the owner or the owner's predecessor-in-interest, is connected to OC San's sewerage system, shall pay an annual Sewer Service Charge based on the respective class of users, in the sum or sums, as set forth in Tables A and B of this Ordinance, below, and incorporated by reference herein. The annual Sewer Service Charges for residential users are set forth in Table A. The applicable single family residential rate shown in Table A is multiplied by the applicable percentage figure shown on Table B with respect to the particular use classification to arrive at the annual Sewer Service Charge rate per 1,000 square feet or per unit. The annual Sewer Service Charges are dependent upon the respective classifications of property use, determined by reference to Table B.

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Section 2.03. Exemptions, Rebates, Refunds and Reduced Charges

A. Exemptions. It is the intent of OC San that the legal owner(s) of parcels of real property, otherwise subject to the levy and payment of the Sewer Service Charges, as prescribed herein, be relieved, in whole or in part, from the payment of said charges, in certain circumstances and under conditions prescribed herein, and be entitled to either a low-water rebate, reduced charge, or a refund with respect to charges paid, as more specifically set forth in Subparagraphs 2.03B and 2.03C below, provided an inequity is established or a billing error is proven, as specified in Subparagraphs 2.03B or 2.03C.

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B. Application for Low-Water or Reduced Charge.

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(1) A "low-water rebate" is based on the ratio of the annual flow to the assumed discharge for a parcel.;

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<u>Customer's Annual Flow Divided by Assumed Flow</u>	<u>Customer Percent Reduction</u>
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90% or Greater	0%
70% to 89%	20%
50% to 69%	40%
30% to 39%	60%
29% or Less	80%

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(2) A "reduced charge" is a lower sewer service charge imposed for the current fiscal year or a future fiscal year based on water consumption as provided herein.

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(5) Any property owner, or legally recognized authorized representative of the property owner, may apply to OC San for a low-water rebate or reduced charge by establishing that an inequity exists between the amount of the charge paid and the amount of wastewater discharged to OC San's system. Proof satisfactory to the General Manager of OC San, or his/her designee, shall establish that either:

Deleted: "Biochemical Oxygen Demand" (BOD) shall mean a measurement of oxygen utilized by the decomposition of organic material, over a specified time period (usually 5 days) in a wastewater sample. It is used as a measurement of the readily decomposable organic content of wastewater. ¶
 Deleted: "Suspended Solids" (SS) shall mean any insoluble material contained as a component of wastewater and capable of separation from the liquid portion of said wastewater by laboratory filtration as determined by the appropriate testing procedure and expressed in terms of milligrams per liter.¶

(a) The principal water use is agricultural or horticultural; or

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(b) The property is devoted to any other use wherein the amount of wastewater discharged to OC San's system is significantly less on a regular basis than the amount that would normally be expected to be discharged by the class of property in question.

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(6) Satisfactory proof shall include, but not be limited to, verifiable documentation showing actual water usage for each billing cycle during the entire period for which the rebate is sought.

(7) The amount of any low-water rebate shall not reduce the charge payable by any property owner, whose property is connected to OC San's system, to less than the single family residential charge shown on the applicable Table attached hereto.

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Deleted: If a property owner submits a claim for a water efficiency rebate and also believes that an inequity exists in the BOD and SS components of the sewer service charge, the property owner may contact the DistrictOC San for sampling procedures to submit verifiable BOD and SS data to have these charges reviewed. The DistrictOC San may, in its sole discretion, grant an exemption upon finding satisfactory evidence that the BOD and SS of the property's wastewater discharge is significantly less on a regular basis than the amounts that would normally be expected to be discharged by the class of property in question.

(8) Once a low-water rebate or reduced charge to a service charge is granted, additional rebates or reduced charges will not be granted in the same year unless the property was vacant for the entire year.

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C. Application for Refund.

- (1) A "refund" is the difference between the original service charge paid by a property owner and the corrected service charge when the original charge was billed erroneously.
- (2) Any property owner, or legally recognized authorized representative of the property owner, may apply to OC San for a refund of Sewer Service Charges paid to OC San by establishing that the amount paid was pursuant to an error in the amount billed or the amount paid. The applicant for a refund must submit proof satisfactory to the General Manager of OC San, or his/her designee, that a billing error has been made by OC San, or the County Tax Collector. Such proof shall include, but not be limited to, proof that:
 - (a) The owner's parcel of property is not connected to OC San's system; or
 - (b) The property has not been classified in the proper property use classification code; or
 - (c) A clerical error has been made.

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D. Limitations Period.

- (1) Applications for low-water rebates and reduced charges shall be deemed a claim and be governed by the provisions of California Government Code Sections 935 et seq. Low-water rebates are only available for the most recently ended fiscal year and shall be presented to OC San as provided in the Government Tort Claims Act, Government Code Sections 915 et seq., Reduced charge claims are available for the current fiscal year or future fiscal years. The claim for low-water rebate or reduced charge may only be made with respect to amounts paid or payable under such property tax bill. A claim for low-water rebate or reduced charge is not deemed a claim for refund, and California Revenue & Taxation Code Sections 5096 and 5097 are not applicable.
- (2) Applications for refunds shall be deemed to be governed by the provisions of California Revenue & Taxation Code Sections 5096 and 5097.

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(3) Consistent with Section 2.04, a "year" for purposes of this Section 2.03 commences on July 1 for all annual Sewer Service Charges, based on OC San's fiscal year.

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E. Determination. All applications for low-water rebates, reduced charges or refunds of the Sewer Service Charge will be determined by the General Manager of OC San, or his/her designee, who, based on the submitted proof, may grant a full or partial rebate, reduced charge or refund.

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F. Administrative Fee. At the time of filing the application for a low-water rebate, reduced charge or refund, the property owner shall pay OC San 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 OC San 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.

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G. Duration of Reduced Charge. A reduced charge will remain in effect for one fiscal year, subject to the provisions below:

(1) Standard 5-Year Lock-In. Upon submission of three consecutive fiscal years of verifiable water data that resulted in a rebate or reduced charge, OC San shall determine the average annual percentage reduction based upon those three years. If qualified, OC San will implement a locked-in reduced charge for a standard period of five years.

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(2) Renewals. At the end of the lock-in period, the owner of the parcel may apply for a renewal by submitting verifiable water consumption data for the previous three years.

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(3) Failure to Submit. Failure to submit the required water consumption data with lock-in renewal application is equivalent to making an election to opt-out pursuant to Section 2.03, Article II, G4.

(4) Lock-In Opt-Out. At the time the owner of a parcel qualifies for a five-year lock-in pursuant to Section 2.03, Article II, G1, whether as a first time application for rebate or reduced charge, as a renewal pursuant to Section 2.03, Article II, G2, or upon three annual submittals of the most recent fiscal year of verifiable water consumption records, the owner may elect in writing to opt-out of the lock-in and instead elect year to year renewals and submit verifiable water consumption records annually.

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(5) Significant Change in Business Operation-Demonstration. If the owner of a locked-in parcel is able to demonstrate that a significant change in business operation has occurred, verifiable water consumption may be submitted for the most recently ended fiscal year to be used in a recalculation of the reduction, with a duration of one year until three consecutive fiscal years of water consumption have been submitted and then the standard lock-in will apply.

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(6) Audit. If OC San becomes aware that a lock-in parcel has had a significant change in business operation that increases water consumption, OC San may request current verifiable water consumption records for the most recently ended fiscal year and re-establish the reduced charge prior to the expiration of the five-year period.

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H. Penalty. The falsification of an application for a low-water rebate or reduced charge is a misdemeanor, punishable as provided by the law. In addition, any person who falsifies an application for a water efficiency rebate or reduced charge shall be civilly liable to OC San in the maximum sum provided by law.

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Section 2.04. Annual Charge Based on Fiscal Year. The Sewer Service Charges established by this Ordinance shall be effective as of July 1 of each year, as set forth in Tables A and B, attached hereto, for OC San's fiscal year, and shall remain in effect until such time as the rates adopted herein are changed by OC San Ordinance. There shall be no proration of such charges in any fiscal year.

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Section 2.05. Method of Collection.

A. Pursuant to the authority granted by California Health & Safety Code Sections 4766 and 5473, and except as otherwise provided in Subparagraph 2.05B below, all Sewer Service Charges established herein shall be collected on the County Tax Roll in the same manner, by the same persons, and at the same time as, together with, and not separately from, its general taxes. The County Treasurer-Tax Collector is authorized and hereby ordered to make said collections in accordance with the terms and conditions of agreements between the County of Orange and OC San.

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B. In the event OC San determines that, due to billing or payment error, or to inequity in the amount billed, a property owner (or person who paid the tax) has underpaid annual Sewer Service Charges payable to OC San, OC San, within four (4) years after the date of mailing of the tax bill, may:

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- (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 OC San determines is owing, by OC San, to the property owner, as a rebate or refund under this 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.

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Section 2.06. Credit for Industrial Permittees. A credit shall be allowed to all dischargers permitted pursuant to Article 3 of District Ordinance No. OCSD-53, as amended, in an amount equal to the annual Sewer Service Charge established by Section 2.02 of this Ordinance.

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Section 2.07. Open-Air Facilities. Sewer Service Charges for open-air facilities will be based on annual attendance records. Open-Air facilities will pay a rate per million gallons based upon the related sewage flow, Biochemical Oxygen Demand ("BOD") and Suspended Solids ("SS") charge for single family residences. The usage per attendee will be 15 gallons.

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TABLE A
ANNUAL SEWER SERVICE CHARGES
RESIDENTIAL USERS

FISCAL YEAR	2023-24	2024-25	2025-26	2026-27	2027-28
SFR*	\$ 358.00	\$ 371.00	\$ 384.00	\$ 397.00	\$ 411.00
MFR	\$ 50.60	\$ 59.70	\$ 68.80	\$ 77.90	\$ 87.70

SFR = SINGLE FAMILY RESIDENTIAL
MFR = MULTI FAMILY RESIDENTIAL

* The SFR fee is the minimum sewer service charge any user must pay.

All properties located within Revenue Area No. 14 pay no annual sewer service charges. OC San costs relating to providing service to these properties are billed by OC San directly to the Irvine Ranch Water District, the local agency providing the local sewer service.

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TABLE B
ANNUAL SEWER SERVICE CHARGES

PROPERTY USE CLASSIFICATIONS

Assessor Use Code or Unit	Description	Percentage of SFR Per 1,000 SF
1	Vacant Land Parcel	0%
5	Common Area Parcel	0%
6	"Hold" Parcel	0%
8	Equivalent to Vacant	0%
121	Parcel of Minimal or No Value	0%
122	Subsurface Parcels	0%
124	Oil/Mineral Rights	0%
125	Mineral Rights Equipment	0%
126	Vacant Comm. Area-IMP Alloc.	0%
201	Homeowners Exemption Add'l.	0%
666	Unassigned Vacant	0%
777	Septic Tank Property	0%
112	Steel Building	7%
113	Mini-Warehouse	7%
58	Nurseries (Plants)	10%
100	Drive-In Theater	10%
44	Lumber/Constr. Material Yard	17%
71	Parking Garage	17%
72	Paved Parking Lot	17%
110	Warehouse – Single Tenant	17%
111	Warehouse – Multi Tenant	17%
115	Recreational Vehicle Storage	17%
116	Truck Terminal	17%
33	Church Buildings	20%
94	Department Store	23%
95	Discount Store	23%
96	Unattached Single Store	23%
97	Strip Store	23%
74	Recreational Vehicle Park	27%
36	Financial Buildings	27%
40	Health Club	29%
68	High Rise Office	30%
225	United States Post Office	35%
21	Automobile Dealership	41%
22	Auto Repair Shop	41%
23	Automotive Service	41%
24	Used Car Lot	41%
39	Golf Course	41%
57	Motorcycle/Small Vehicle Building	41%
83	Automotive Service Station	41%

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TABLE B (CONTINUED)
ANNUAL SEWER SERVICE CHARGES

PROPERTY USE CLASSIFICATIONS

Assessor Use Code or Unit	Description	Percentage of SFR Per 1,000 SF
84	Marine Service Station	41%
86	Combin.-Service Station/Convenience	41%
65	Single Office Bldgs. to 3 Stories	41%
66	Small Office Center	41%
67	Office Complex	41%
69	Converted Residence to Office	41%
7	Mobile Home	50%
55	Mobile Home Park	50%
107	Light Industrial – Single Tenant	50%
108	Light Industrial – Multi Tenant	50%
109	Research and Development	50%
114	Industrial Park	50%
37	Fraternal Buildings	51%
101	Unattached Theater	51%
26	Airport and Related Buildings	53%
45	Marinas	53%
88	Low Flow Center	53%
3	Two or More Residences	70%
10	Duplex Only	70%
11	Triplex Only	70%
12	04-Units Only	70%
13	5 to 16 Units	70%
14	17 to 25 Units	70%
15	26 to 40 Units Only	70%
16	41-99 Units Only	70%
17	100 or More Units	70%
18	Developed with a Mix of Forms	70%
63	Low Rise Retirement Building	70%
64	High Rise Retirement Building	70%
56	Low Demand Hotel/Motel	70%
81	Pre-Schools, Nursery or Care	82%
82	Private Schools	82%
98	Store with Offices or Living Quarter	82%
99	Store with Office Upstairs	82%
118	Governmental Use Vacant/Develop.	82%
19	SFR with 1 or 2 rental units	85%
34	Dormitory	97%
42	Hospital	97%
43	High Demand Hotel/Motel	97%
0	Conversion-C/1, Rural PC	100%
2	One Residence	100%

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TABLE B (CONTINUED)
ANNUAL SEWER SERVICE CHARGES

PROPERTY USE CLASSIFICATIONS

Assessor Use Code or Unit	Description	Percentage of SFR Per 1,000 SF
4	Miscellaneous Improvement	100%
85	Comb. Serv. Stn./Restaurant	100%
103	Chemical Tank and Bulk Storage	100%
104	Food Processing Plant	100%
105	Cold Storage Plant	100%
106	Factory	100%
119	Public Utility	100%
120	Water Mutual or Company	100%
888	Conversion-Composite Prop.	100%
32	Cemetery & Related Buildings	101%
38	Funeral Home	101%
60	Nursing Home	102%
61	Convalescent Hospitals	102%
62	Converted Res. Used as Nursing	102%
28	Bowling Alleys	112%
92	Skating Rinks	112%
50	Single Medical Bldgs. to 3 Stories	124%
51	Small Medical Center	124%
52	Medical Center Complex	124%
53	High Rise Medical	124%
54	Converted Residence to Medical	124%
89	Average Flow Center	139%
20	Amusement Parks	144%
35	Entertainment Center	144%
73	Recreation	144%
30	Coin Operated Car Wash	151%
47	Supermarket	151%
48	Convenience Market	151%
224	Nightclub	200%
90	High Flow Center	226%
76	Restaurant – Low Demand	300%
77	Restaurant – Coffee Shop	600%
78	Restaurant – Dinner House	600%
79	Restaurant – Conversion from SF	600%
29	Conventional Car Wash	796%
223	Laundromat	1,800%

NOTE: Multiply the Table A Single Family Residential Rate by the percentage figure above in order to determine the rate per 1,000 square feet for the commercial or industrial user.

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ARTICLE III

MISCELLANEOUS

Section 3.01. Application of Ordinance. The provisions of this Ordinance shall be in addition to (i) the provisions of OC San's Wastewater Discharge Regulations for use of District's sewage facilities, including provisions for payment of charges or fees related thereto; (ii) District's ordinance establishing Fees Concerning Annexations of Territory to OC San; (iii) District's ordinance establishing Local Sewer Service Fees, where applicable, and (iii) any other District Ordinances and Resolutions not in conflict herewith.

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Section 3.02. Exceptions. The provisions of this Ordinance shall apply to all owners of properties within OC San, including those properties otherwise deemed exempt from payment of taxes or assessments by provisions of the State Constitution or statute, including properties owned by other public agencies or tax-exempt organizations, except as expressly provided herein.

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Section 3.03. Out of Area Sewer Service Agreements. Pursuant to Health and Safety Code Section 4742.1, OC San is empowered to contract for the handling, treatment or disposal by OC San of sewage or industrial wastes originating within OC San or county or within areas outside of OC San or county when, in the judgment of OC San Board, it is for the best interest of OC San to do so. In exercise of such power, OC San may, from time to time, enter into Out-of-Area Sewer Service Agreements. These Out-of-Area Sewer Service Agreements will establish fees and charges relative to the services provided by OC San for each individual agreement.

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The Board of Directors of the Orange County Sanitation District does further hereby ORDAIN:

SECTION II. Severability. If any provision of this Ordinance, or the application to any person or circumstances is held invalid by order of Court, the remainder of the Ordinance, or the application of such provision to other persons or other circumstances, shall not be affected.

SECTION III. Effective Date. This Ordinance shall take effect July 1, 2023.

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SECTION IV. Repeal. Ordinance No. OCSD-49 is repealed in its entirety effective June 30, 2023.

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SECTION V. Certification and Publication. The Clerk of the Board shall certify to the adoption of this Ordinance and shall cause a summary to be published in a newspaper of general circulation within 15 days as required by law.

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PASSED AND ADOPTED by a vote of not less than two-thirds of the Board of Directors of the Orange County Sanitation District at a Regular Meeting held on March 22, 2023.

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Chad P. Wanke
Chairman, Board of Directors
Orange County Sanitation District

Deleted: Gregory C. Sebourn, PLS

ATTEST:

Kelly A. Lore, MMC
Clerk of the Board
Orange County Sanitation District

APPROVED AS TO FORM:

Bradley R. Hogin
General Counsel
Orange County Sanitation District

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STATE OF CALIFORNIA)
)SS.
COUNTY OF ORANGE)

I, Kelly A. Lore, Clerk of the Board of Directors of Orange County Sanitation District, do hereby certify that the above and foregoing Ordinance No. OC_SAN-XX, was introduced for first reading at a regular meeting of said Board on the 22nd day of February 2023, and passed and adopted by a vote of not less than two-thirds at a regular meeting of said Board on the 22nd day of March 2023, by the following vote, to wit:

AYES:
NOES:
ABSTENTIONS:
ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of Orange County Sanitation District this 22nd day of March, 2023.

Kelly A. Lore, MMC
Clerk of the Board
Orange County Sanitation District

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