

ORDINANCE NO. OCSD- 33

AN ORDINANCE OF THE BOARD OF DIRECTORS OF ORANGE COUNTY SANITATION DISTRICT ADOPTING FEES, PROCEDURES, AND POLICIES CONCERNING ANNEXATIONS OF TERRITORY TO THE DISTRICT, AND REPEALING ORDINANCE NO. OCSD-29

WHEREAS, the Board of Directors of the Orange County Sanitation District ("District") has previously adopted Ordinance No. OCSD-29 adopting fees, procedures, and policies concerning annexations of territory to the District, which Ordinance is presently in full force and effect; and

WHEREAS, for purposes of continued efficiency and effectiveness of the District's operations, preservation of the public health and safety, and in order to continue the provision of wastewater collection, treatment and disposal services, it is the intent, by adoption of this Ordinance, to continue said procedures and policies in effect, without interruption; and

WHEREAS, the Board of Directors of the District has received a management report, including financial needs of the District, and wishes to reaffirm the policy of imposing annexation fees when new territory is annexed to the District, and to adopt findings supporting the amount of the fees adopted pursuant to this Ordinance. The Board of Directors of the Orange County Sanitation District does hereby FIND:

A. That a comprehensive 30-year Master Plan of Capital Facilities, entitled "Collection, Treatment and Disposal Facilities Master Plan – 1989", hereinafter referred to as the "Master Plan", which includes detailed financial and engineering reports, was prepared, approved, and adopted by the Boards of Directors of the Predecessor Districts in 1989, setting forth and identifying the required future development of District facilities, including the financial projections for providing sewer service to all properties within the individual service areas of each of the nine Predecessor Districts; and

B. That the financial and engineering reports of the Master Plan were made available to the public, both prior to and subsequent to the adoption of the Master Plan, and were subject to noticed public hearings, all in accordance with the provisions of the California Constitution and Government Code Section 66016, and other provisions of law; and

C. That the District, in 1997, as part of its maintenance and updating of its Master Plan, undertook a comprehensive evaluation and study of its operational and financial needs for the next 20 years, including a detailed assessment of all types and categories of users; the demands on the system and capacity needs of the system to provide necessary service to the multiple categories of users; the total costs of the existing and future facilities in the system; and alternate methodologies for establishing fair and equitable charges to connect to and gain access to the system. These comprehensive planning, engineering, and financial studies led to the development of an updated Comprehensive Master Plan of Capital Facilities, which was approved and adopted by OCSD Resolution No. 99-21 of the Board of Directors on October 27, 1999; and

D. That the properties upon which the fees established by this Ordinance are levied, will, subsequent to payment of an additional Capital Facilities Capacity Charge, be allowed to discharge wastewater to the District's collection, treatment and disposal facilities; that the costs of operating and maintaining said facilities have constantly increased due in part to increased regulatory requirements to upgrade the treatment process; and that said costs will exceed the amounts of any ad valorem tax revenues derived from said property; and

E. That the District will not receive any tax exchange from said annexed properties because of an agreement with the County of Orange under which there is no tax exchange for newly-annexed property; and

F. That the annexation fees established here are an incident but not a condition of development, payable only on request to receive service by the property owner for the benefit of those persons on the property that use the service. The fees are not an incident of property ownership, nor are they a property-related service having a direct relationship to property ownership. Accordingly, the provisions of California Constitution Article XIII D are not applicable.

G. That the annexation fees imposed by authority of this Ordinance do not exceed the estimated amount required to provide access to the sewer service for which the fee is levied, as provided in California Government Code Section 66013; and

H. That the fees established by this Ordinance will not necessarily result in an expansion of facilities to provide for growth outside the existing service area. The collection of these annexation fees will not result in any specific project, and will not result in a direct physical change in the environment; and

I. That the fees adopted by this Ordinance are established upon a rational basis between the fees charged each property that is annexing, and the service and facilities provided to each annexed property by the District, a portion of which is necessary to replace the loss of ad valorem property taxes to the State General Fund as a result of State legislative action on September 2, 1992, and in subsequent years; and

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

K. That the adoption of this Ordinance is statutorily exempt under the California Environmental Quality Act from further environmental assessment pursuant to the provisions of California Public Resources Code Section 21080(b)(8), and 14 California Code of Regulations Section 15273(a).

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

Section 1: That the purpose of this Ordinance is to establish fees required to be paid by property owners for the annexation of property to the District. Said fees are in lieu of property taxes not allocated to the District while the property was outside of the District, and in lieu of future property tax allocations through a Tax Exchange Agreement. Revenues derived under the provisions of this Ordinance may be used for the

acquisition, construction, and reconstruction of the wastewater collection, treatment and disposal facilities of the District; to repay principal and interest on debt instruments; or to repay federal or state loans issued for the construction and reconstruction for said sewerage facilities, together with costs of administration and provisions for necessary reserves.

Section 2: That the proponents of any application for annexation of any territory to the District are requesting that the annexed property become a part of the District's jurisdiction, and that by doing so, they become entitled to receive the benefits of having access to the use of the extensive capital facilities system and to receive the District's service, and shall, as a condition to securing approval of the Board of Directors of the District to such annexation, agree to and comply with the following requirements:

A. Payment of all administrative costs incurred by the District in processing the annexation.

B. Payment of annexation acreage fees, as follows: Beginning January 1, 2004, the sum to be paid for annexation of territory to the District for which no tax exchange is negotiated between all affected agencies is hereby fixed:

Consolidated Revenue Area Nos. 1-13: \$4,235/acre
Revenue Area No. 14: N/A

C. The annexed territory shall be subject to the terms and conditions of all Ordinances and Resolutions pertaining to fees for connection to the District's facilities and use of said facilities, including but not limited to, industrial discharge permit fees, capital facilities capacity charges, and sewer service user fees.

D. The annexed territory shall be annexed into an appropriate local sewerage agency, or obtain the written approval of the designated local sewerage agency, such as a city, for the purpose of obtaining access to and use of the local sewer system, including pumping stations and force mains, which connects to the District's facilities and system.

E. The territory, upon annexation, shall be subject to all ad valorem taxes required for the retirement of the existing and future bonds of the District, and all other applicable ad valorem taxes of the District.

F. In the case of territory outside of the District's adopted sphere of influence that is provided service pursuant to District Resolution 99-05, Section 2 (as the same may be amended from time to time), the following areas shall not be subject to fees equivalent to annexation fees:

- That portion of land that is subject to a permanent easement for open space preserve or dedication for open space preserve. This exception shall not apply to areas that are internal to developments. Portions of property to be used for public and private parks intended for recreation purposes shall be subject to the fees. Individual open space areas that are surrounded or substantially surrounded by development shall be subject to the fees,

- Land that is designated for use as a golf course, except that all portions of golf course land which are utilized for access road, parking, and clubhouse shall be included.
- Land designated for use as a flood control or water quality basin.

If the use of any portion of territory previously exempted from payment of the fees hereunder is changed to a non-exempt use, the then-owner of that portion of the territory shall pay the fees equivalent to annexation fees at the amount then in effect for that portion of the territory that is no longer exempt.

Section 3: The General Manager is hereby authorized and directed to establish procedures and fees for processing annexation of territory to the District. Said procedures may include provisions for collection by the District of fees charged by other local and state agencies involved in the annexation process for submittal to said agencies by the District on behalf of the annexation proponent.

The District's Staff is hereby directed to provide the proponents of any proposed annexation a copy of procedures and fee schedules established pursuant to the authority of this Section.

Notwithstanding the foregoing, upon application of any property owner seeking permission to connect to the District's system, the District Board of Directors may defer payment of the applicable annexation fees until such time as the applicant actually connects to the District's system.

Section 4: That the Staff be directed to transmit to the Orange County Local Agency Formation Commission a certified copy of this Ordinance.

Section 5: If any of the provisions of this Ordinance, or the application to any persons or circumstance are held invalid by order of Court, the remainder of this Ordinance, or the application of such provision to other persons or other circumstances, shall not be affected.

Section 6: That the provisions of this Ordinance shall become effective thirty (30) days after adoption and shall apply to all annexations to the District on or after said date.

Section 7: That Ordinance No. OCSD -29 is repealed effective upon the effective date of this Ordinance.


Section 8: That 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 as required by law.

PASSED AND ADOPTED by the affirmative vote of not less than two-thirds of the Board of Directors of the Orange County Sanitation District at a regular meeting held May 23, 2007.




Vice Chair, Board of Directors
Orange County Sanitation District

ATTEST:



Clerk of the Board
Orange County Sanitation District



BRADLEY R. HUGIN
GENERAL COUNSEL

STATE OF CALIFORNIA)
)SS.
COUNTY OF ORANGE)

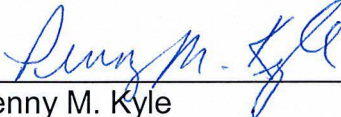
I, PENNY M. KYLE, Clerk of the Board of Orange County Sanitation District, do hereby certify that the above and foregoing Ordinance No. OCSD-33 was passed and adopted at a regular meeting of said Board on the 23rd day of May, 2007, by the following vote, to wit:

AYES: Doug Davert, Vice Chair; Charles Antos; Don Bankhead; Tom Beamish; Larry Crandall; Bill Dalton; Rich Freschi; Cathy Green; Phil Luebben; Patsy Marshall; Darryl Miller; Roy Moore; Joy Neugebauer; Chris Norby; Dave Shawver; Harry Sidhu; Sal Tinajero; Constance Underhill; Mark Waldman; Don Webb; Jim Winder

NOES: None

ABSENT: Jim Ferryman, Board Chair; Steven Choi; Jon Dumitru; Ken Parker

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of May, 2007.



Penny M. Kyle
Clerk of the Board
Orange County Sanitation District