

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

- 3 A. The commercial areas of the District's sanitary sewer collection system impact
4 approximately 9.4% of the entire system, but account for approximately 60% of the
5 total annual labor cost incurred by the District to maintain its system.
- 6 B. Recategorizing properties based on the demand the nature of the activities occurring
7 on the properties place on the District's sewer system will provide for continued
8 equitable allocation of sewer user fees.
- 9 C. Because the District's existing facilities are 40 to 50 years old, and due to
10 uncontrollable factors such as corrosive soils, instances of subsidence, tidal effects
11 on the water table, and the limited life expectancy of certain materials, the District's
12 sanitary sewer collection system within the commercial areas of impact is in need of
13 repair or replacement. The estimated cost to fully replace or rehabilitate this portion
14 of the system ranges from \$7,764,300 (to reline the system) to \$38,821,583 (to
15 replace the system).
- 16 D. If the District chooses the less expensive option of relining, rather than completely
17 replacing, the existing commercial portion of the sewer collection system, and such
18 costs are spread out over 20 years, the District would need to generate a minimum of
19 \$574,087 annually to adequately service, maintain, and rehabilitate the commercial
20 portion of the District's sewer system. The annual revenue generated by current
21 sewer user fees applicable to commercial, industrial, and other nonresidential
22 activities is only approximately \$282,272.
- 23 E. The District's engineering and financial consultants and staff have calculated the fee
24 adjustments adopted herein based upon the amount of funds required by the District
25 to service, maintain and operate the portion of the District's sewer system used for
26 commercial, industrial, and other nonresidential sewer service, including costs to
27 comply with regulations imposed by State agencies. The reports on which the
28 adjusted fees are based and a complete spreadsheet showing the District's current
and projected operational costs and required capital improvement projects were
made publicly available for review at the District's administrative office at least
forty-five days prior to the adoption of this Ordinance.
- F. The Board of Directors has determined that the sanitary sewer service users' fees
applicable to commercial, industrial, and other nonresidential activities should be
modified in accord with the calculations and recommendations of the District's
engineering and financial consultants and staff and the legislative findings herein,
and that automatic annual adjustments to such users' fees for inflation should be
authorized, in order to adequately finance the operations, capital improvements and
debt obligations for the District relating to commercial, industrial, and other
nonresidential activities.
- G. The Board of Directors has determined the following with regard to the users' fees
and charges for sanitary sewer service established by this Ordinance: (i) the fees and
charges are not imposed as a condition of approval of a development project, as
defined in California Government Code section 66001; (ii) the fees and charges are
established upon a rational basis between the fees charged each customer and the
service and facilities provided to each customer; (iii) the revenues derived from the
fees and charges do not exceed the estimated reasonable cost to provide the capital
facilities and sewer services for which they are levied; (iv) the revenues derived from
the fees and charges shall not be used for any other purpose than that for which the
fees and charges are imposed; (v) the fees and charges do not exceed the

1 proportional cost of the sewer service attributable to each consumer; (vi) the fees and
2 charges are imposed on sewer services which are immediately available to the
3 consumer; and (vii) the fees and charges are not levied for general governmental
4 services.

5 H. The Board of Directors has determined that the authorization for automatic annual
6 adjustments for inflation established by this Ordinance is appropriate, represents the
7 estimated increases in the users' fees needed to adequately finance the operations,
8 capital improvements and debt obligations for the District relating to commercial,
9 industrial, and other nonresidential activities for those years, and will not cause the
10 revenues derived from the fees to exceed the estimated reasonable cost to provide the
11 capital facilities and sewer services for which the fees are levied.

12 I. The adoption of this Ordinance and the establishment of such users' fees is
13 statutorily exempt under the California Environmental Quality Act ("CEQA")
14 pursuant to the provisions of Public Resource Code section 21080(b)(8) and Section
15 15378 and Section 15273 of the CEQA Guidelines because, (i) the increased rates
16 and charges are for the purpose of meeting operational and maintenance expenses of
17 the Sewer Enterprise, and (ii) the rates and charges constitute the creation of funding
18 mechanism/other governmental fiscal activity which does not involve any
19 commitment to any specific project which may result in a potentially significant
20 physical impact on the environment.

21 **Section 2. COMMERCIAL AND INDUSTRIAL SEWER FEE**
22 **ADJUSTMENTS.** Pursuant to the provisions of Health and Safety Code Section 5471, the
23 fees for commercial and industrial sanitary sewer service established by Subsection A of
24 Section 2 of Ordinance No. 54 and Subsection A of Section 1 of Ordinance No. 57, and as
25 adjusted pursuant to Subsection A of Section 2 of Ordinance No. 64, are hereby adjusted as
26 follows:

27 For each separate commercial, industrial or nonresidential activity connected to the
28 sewer collection facilities of the District, a sewer service fee shall be imposed not to
exceed the initial sum of \$435.00 annually, corresponding to a fee of \$87.00 per
assigned unit of service. Each separate commercial, industrial or nonresidential
activity (collectively "commercial" or "business" units) is hereby categorized and
assigned a number of units of service based on the demand the activity places on the
District's sewer collection facilities in accordance with the table below. Uses or
activities not specifically set forth below shall be categorized by the General
Manager, in his or her reasonable discretion, based upon the types of discharges
made and demand placed on the District's sewer system by such activities or uses.

Sewer Use Code Categories*	Number of Assigned Units of Service	Rate Per Business Unit Per Parcel	Proposed Annual User Fee Per Business Unit Per Parcel
Very High Demand	5	\$ 87.00	\$ 435.00
High Demand	4	87.00	348.00
Average Demand	3	87.00	261.00
Low Demand	2	87.00	174.00
Very Low Demand	1.3	87.00	113.00

*Very High Demand uses include the following: car wash, car dealership, gas station, restaurant, laundromat, manufacturing (water is used in the manufacturing process), food processing, hospital, schools, spa/health club, facilities combining these types of uses and other uses with similar discharges.

1 *High Demand uses include the following: supermarket, bars, entertainment (theater, night
2 clubs, banquet facilities, bowling alley and cinemas), dentistry, department stores,
veterinary and other uses with similar discharges.

3 *Average Demand uses include the following: bakery, car dealer/used, library, medical,
4 post office, parks with bathrooms, food stores, salon, government buildings, auditoriums,
and other uses with similar discharges.

5 *Low Demand uses include the following: warehouse, manufacturing, mini-marts, light
6 industrial, open storage, church, cleaners, automotive repair, storage units, and other uses
with similar discharges.

7 *Very Low Demand uses include the following: small office building (less than 10,000
8 square feet), small retail store, vacant buildings or lots with sewer connection, and other
uses with similar discharges.

9 Commencing July 1, 2010, and continuing annually thereafter through July 1, 2015,
10 annual commercial, industrial and nonresidential rate adjustments shall automatically
11 be made in accordance with the consumer price index ("CPI"), as measured from
12 March 1 through February 28 of the immediately preceding year by the Los Angeles-
13 Riverside-Orange Counties Consumer Price Index ("All Urban Consumers"). In no
case, however, shall the CPI adjustment exceed 5% in any one year. The General
Manager is hereby authorized to take all actions necessary to implement the CPI
adjustment.

14 **Section 3. EFFECT ON PRIOR ORDINANCES.** Except to the extent otherwise
15 inconsistent with this Ordinance, the fees and charges established pursuant to Section 2 of
16 Ordinance No. 54 and Section 1 of Ordinance No. 57, as amended by Section 2 of
Ordinance No. 64, including, without limitation, all residential sewer rates and all
residential and commercial and industrial solid waste collection rates, shall remain in full
force and effect.

17 **Section 4. COLLECTION.** Pursuant to Health and Safety Code § 5473, the Board
18 of Directors has elected to collect the District's fees on the County Tax Roll and the County
19 Tax Collector is authorized and ordered to make said collections in accordance with the
20 terms and conditions of agreements between the County of Orange and the District. The
21 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.

22 **Section 5. EXEMPTIONS AND APPEALS.**

- 23 A. The fees adjusted pursuant to this Ordinance shall apply to all owners of properties
24 served by the District, and no exception shall be provided for properties otherwise
25 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.
- 26 B. Any property owner may appeal the levy of the charges adjusted herein, and if the
27 charges have been paid under protest to the Orange County Tax Collector, together
28 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

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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:

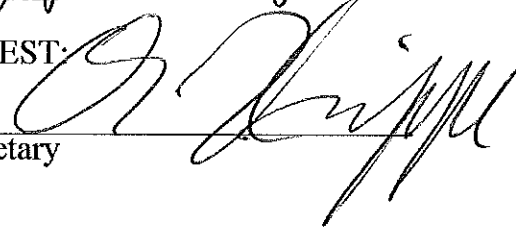
1. The parcel of property or unit of service is not connected to the District's sewer collection system;
2. The use of the parcel is different from the use indicated by the charge;
3. Nuisance conditions do not exist, have not existed, and are not anticipated to exist on the property, which would be 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 24th day of June, 2009.



President

ATTEST: 

Secretary

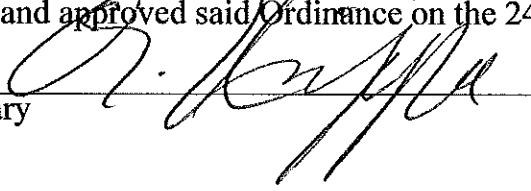
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CERTIFICATION

I, Al P. Krippner, Secretary of the Midway City Sanitary District of Orange County, California, do hereby certify that the foregoing Ordinance No. 67 was duly adopted at a regular meeting of the Board of Directors of said District, held on the 24th day of June, 2009, by the following vote of the members of the Board:

AYES: DIRECTORS DIEP, EPPERSON, KRIPPNER, NEUGEBAUER AND RICE
NOES: NONE
ABSENT: NONE

and I further certify that Joy L. Neugebauer, as President and Al P. Krippner, as Secretary, signed and approved said Ordinance on the 24th day of June, 2009.


Secretary

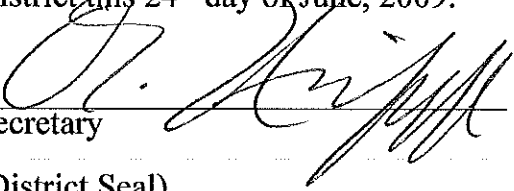
(District Seal)

STATE OF CALIFORNIA)

COUNTY OF ORANGE) §§

I, Al P. Krippner, 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. ____, passed and adopted by the Board of Directors of said District at a regular meeting thereof held on the 24th day of June, 2009.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official Seal of said District this 24th day of June, 2009.


Secretary

(District Seal)