

**NIPOMO COMMUNITY SERVICES DISTRICT  
ORDINANCE NO. 2005-105**

**AN ORDINANCE OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
AMENDING TITLE 3 AND TITLE 4 OF THE  
NIPOMO COMMUNITY SERVICES DISTRICT CODE TO  
ESTABLISH NEW PROCEDURES FOR PAYMENT OF DISTRICT  
WATER CONNECTION FEES AND PROCEDURES FOR CONNECTING TO  
DISTRICT SEWER MAINS WITHIN THE PROHIBITION ZONE**

**WHEREAS**, it is a major responsibility of the Nipomo Community Services District ("District") to:

- A. Operate and maintain its water production and distribution facilities so as to provide adequate water service and fire protection to District water customers;
- B. Maintain adequate levels of revenue, equitably collected from District water customers and future customers, to meet the District's financial commitments including acquiring supplemental water to augment the District's current water production facilities to prevent impairment to the Groundwater Basin;
- C. Operate and maintain its wastewater distribution facilities to facilitate sewer connections within the Prohibition Zone as established by the Regional Water Quality Control Board; and

**WHEREAS**, District has reviewed and has on file at the District office a report titled "*Nipomo Mesa Groundwater Resource Capacity Study, San Luis Obispo, California*" prepared by S.S. Papadopoulos, Inc. for the San Luis Obispo County Board of Supervisors. That report included following opinions and findings:

1. That groundwater pumping in the Nipomo Mesa area is in excess of the dependable yield. Since current and projected pumping beneath Nipomo Mesa exceeds inflow (natural recharge plus subsurface inflow), the Nipomo Mesa portion of the Santa Maria Groundwater Basin is currently in overdraft and projections of future demand indicate increasing overdraft.
2. DWR's findings for groundwater beneath the Nipomo Mesa Area are consistent with the County's Resource Management System Water Supply Criterion, Level of Severity III—existing demand equals or exceeds the dependable supply.
3. Management response to these findings could include increased use of recycled water, increased importation of supplemental water, implementation of additional conservation measures, and appropriate limits on development; and

**WHEREAS**, the District has reviewed and has on file a report titled Resource Capacity Study Water Supply Nipomo Mesa Area August 2004, prepared by the San Luis Obispo County Department of Planning and Building. Said report confirms that current water demand presently equals or exceeds the dependable yield of the Groundwater Basin and further concludes that in order to address the projected deficits a combination of conservation and additional supply totaling four thousand two hundred forty-nine (4,249) AFY should be in place by the year 2010; and

**WHEREAS**, the District has reviewed and has on file the County of San Luis Obispo Environmental Impact Report ("EIR") for the Summit Station Land Use Ordinance Amendment ("LUO") where the County concludes that the additional draw of one hundred eleven (111) AFY per year from the Groundwater Basin creates a cumulative, significant, unmitigable, unavoidable adverse impact on water resources; and

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**WHEREAS**, there are a number of draft environmental impact reports (“DEIR”) for the for the County’s Growth Management Ordinance and the Craig Project that reach similar conclusions that the Groundwater Basin exceeds the dependable yield; and

**WHEREAS**, the above Studies, Reports, EIRs and DEIRS are incorporated herein by this reference; and

**WHEREAS**, the District has entered into a Memorandum of Understanding with the City of Santa Maria that provides for the construction of necessary facilities and the delivery of supplemental water; and

**WHEREAS**, the District has recently adopted Ordinance 2005-101 that enacts new supplemental water capacity charges for the purposes of funding supplemental water projects; and

**WHEREAS**, Section 3.28.040 (A) of the District Code and the District Will-Serve letters provides:

“A. This Will-Serve letter shall be subject to the current and future rules, agreements, regulations, fees, resolutions and ordinances of the District. This Will-Serve letter may be revoked as a result of conditions imposed upon the District by a court or by a change in ordinance, resolution, rules, or regulations adopted by the board of directors for the protection of health, safety, and welfare of the District and its residents.; and

**WHEREAS**, the general goals of the San Luis Obispo County South County Area Plan include the following:

- Balance the capacity for growth allowed by the Land Use Element with the sustained availability of resources.
- Provide additional public resources, services and facilities to serve existing communities in sufficient time to avoid overburdening existing resources, services and facilities.
- Avoid the use of public resources, services and facilities beyond their renewable capacities, and monitor new development to ensure that its resource demands will not exceed existing and planned capacities or service levels.
- Finance the cost of additional services and facilities from those who benefit by providing for dedications, in-lieu fees or exactions.

**WHEREAS**, based upon the Staff Report, this Ordinance, Staff Presentation and public testimony received, the Board of Directors finds:

- A. The public meetings adopting this Ordinance have been properly noticed pursuant to Government Code Section 54954.2 (The Brown Act);
- B. The Rules and Regulations adopted by this Ordinance will protect the health, safety and general well fare of the District and its residents by:
  - 1. Balancing the capacity for growth allowed by the Land Use Element of the South County Area Plan with the sustained availability of resources.
  - 2. Providing a funding source to obtain supplemental water in sufficient time to avoid overburdening existing resources, services and facilities that provide water service

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- to existing District customers.
- 3. Avoiding the use of public resources, services and facilities beyond their renewable capacity and monitor new development to insure that resource demands of new development will not exceed existing and planned capacities or service levels.
- 4. Providing financing for additional services and facilities from those who will benefit.
- C. It is in the interest of the District, District residents and for the protection of the groundwater basin and to avoid speculation, that the District recover supplemental water charges from all projects that are not currently connected, by District installed water meters, to District water facilities.

**NOW, THEREFORE, BE IT ORDAINED**, by the Board of Directors of the District as follows:

**Section 1. Authority.**

This Ordinance is enacted pursuant to Government Code Sections 61600(a) and (b), 61621, 61621.5, and 61623.

**Section 2. Section 3.03.020 of the District Code is hereby amended as follows:**

**3.03.020 Application for Service**

- A. Applications for service shall be made by the property owner or a bona fide nonresident property manager (authorized agent), in writing on a form provided by the District. All applications shall include a ten dollar (\$10) nonrefundable account set up fee and payment of accrued fees and charges, if applicable.
- B. Applications for service are non-transferable and upon change of ownership, as defined in subsection C, below, the new owner, as a condition to District service, shall apply for District services prior to close of escrow and/or recording a deed acknowledging a transfer of ownership.
- C. "Change of Ownership" means a transfer of a present interest in real property. Every transfer of property shall qualify as a "change of ownership", except transfer of title from one spouse to another, whether the transfer is voluntary, involuntary, by operation of law, by grant, gift, devise, inheritance, trust, contract of sale, addition or deletion of an owner, property settlement, or any other means. "Change of Ownership" affected other than by a contract of sale shall be deemed to occur at the time of actual transfer of title.
- D. The General Manager or his/her designee is authorized to record notice on all parcels of real property located within the District of the requirements of this Section.

**Section 3. Section 3.04.021 is added to the District Code as follows:**

**3.04.021 Service limitations on LUO Amendments and other County approved density increases\***

- A. The District will not approve Intent-to-Serve letters or Will-Serve letters for water service to projects that require water demand beyond that required to serve the project consistent with the maximum zoning densities without consideration of density increases, as approved by

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the South County Area Plan – Inland (SCAP) as amended May, 2002 or any land use changes after May 2002 that creates a parcel less than five (5) acres in size. For example, the District will not approve water service within its boundaries for projects whose water demands are increased due to General Plan Amendments, transfer density credits (TDC's), density bonuses, planning ordinance changes, or other discretionary increases in density.

- B. The restrictions on water service shall be in effect until such time that supplemental water is delivered to the District or the court finds that the District is not restricted in pumping ground water to serve District residents.

\*This is not implementing new policies but reaffirming those policies established by the District in its Urban Water Management Plan.

**Section 4.** Section 3.04.050 (D) of the District Code is deleted and Section 3.04.051, Payment of Connection Fees, is added to the District Code as follows:

**Section 3.04.051 Payment of Connection Fees and Capacity Charges.**

The applicant shall pay the water capacity charges, sewer capacity charges, supplemental charge (if applicable), meter fee and account set-up fee, collectively "Fees for Connection" as follows:

- A. The Applicant shall make a non-refundable deposit ("Deposit") at the time the District issues a Will-Serve Letter in an amount equal to the then calculated Fees for Connection.
- B. The Fees for Connection shall be calculated and owing as of the date the District sets the water meter(s) to serve the affected property from which the amount of the Deposit shall be deducted.
- C. The District will set water meter(s) upon proof of a building permit from the County of San Luis Obispo and that the District has accepted improvements to be dedicated to the District, if applicable.

"Except where the Applicant has either completed well improvements to be dedicated to the District and has development plans that have been approved by the District, paid all fees and charges based on said approved development plans, and has been issued a Will-Serve Letter, or has development plans that have been approved by the District, paid all fees and charges based on said approved development plans, and has been issued a Will-Serve Letter, the calculation of payment of "Fees for Connection" referenced in Section B, above, shall apply to all properties where a water meter has not been set by the District."

**Section 5.** Section 3.28.020 (7) is amended to read as follows:

7. This Intent-to-Serve Letter shall be subject to the current and future rules, agreements, regulations, fees, resolutions and ordinances of the District. This Intent-to-Serve Letter may be revoked or further conditioned as a result of conditions imposed upon the District by a court or availability of resources, or by a change in ordinance, resolution, rules, fees or regulations adopted by the Board of Directors;

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**Section 6.** Chapter 4.07, Mandatory Connection to District Sewer System is added to the Nipomo Community Services District Code as follows:

**Chapter 4.07**

**Mandatory Connection to District Sewer System Within the Prohibition Zone.**

**4.07.010 Definitions**

- A. "Change of Ownership" means a transfer of a present interest in real property. Every transfer of property shall qualify as a "change of ownership", except transfer of title from one spouse to another, whether the transfer is voluntary, involuntary, by operation of law, by grant, gift, devise, inheritance, trust, contract of sale, addition or deletion of an owner, property settlement, or any other means. "Change of Ownership" effected other than by a contract of sale shall be deemed to occur at the time of actual transfer of title.
- B. "Basin Plan" means the Water Quality Control Plan adopted by the California Regional Water Quality Control Board Central Coast Region.
- C. "Prohibition Zone" means that area within the District described in Appendix A-27 of the Basin Plan where the discharge from individual sewage disposal systems are prohibited.

**4.07.020 Connection on Change of Ownership.**

All parcels within the Prohibition Zone where any part of the parcel is within fifty (50) feet of the District sewer main shall connect to the District sewer main prior to the "Change of Ownership".

**4.07.030 District Plans and Specifications.**

All connections to the District sewer system as required by Section 4.07.020 shall be in accordance with District's standard plans, specifications and engineering standards.

**4.07.040 District Fees and Charges.**

All District fees and charges including connection and capacity charges shall be paid prior to connection.

**4.07.050 Certification.**

The Seller, prior to the "Change of Ownership", shall obtain from the District Utility Department a connection certification, in accordance with the administrative procedures established by the Department verifying that the property has been connected to the District sewer system and all fees and charges have been paid. The Seller shall allow an inspection of the property by District Staff.

**4.07.060 Application for Service.**

- A. No change in application, or new application, for District service as required by Section 3.03.020 of the District Code, shall be accepted by District until a Certification has been completed and deposited with the District.
- B. The General Manager or his/her designee is authorized to record a notice on all parcels of property within the Prohibition Zone of the requirements of this Section.

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**Section 7.** Section 3.24.020 is amended to read as follows:

- A. No customer shall waste water. As used herein the term “waste water” means:
  - 1. Allow potable water to escape from breaks within the customers plumbing system for more than four hours after the customer is notified or discovers the break.
  - 2. Use of potable water for sewer system maintenance or fire protection training without prior approval by the District.

**Section 8.** Incorporation of Recitals

The Recitals are true and correct and incorporated herein by this reference. The Recitals and referenced reports and studies contained therein constitute and support the findings of the District in support of this Ordinance.

**Section 9.** Effect of Repeal on Past Actions and Obligations.

This Ordinance does not affect prosecutions for Ordinance violations committed prior to the effective date of this Ordinance, does not waive any fee or penalty due and unpaid on the effective date of this Ordinance, and does not affect the validity of any bond or cash deposit posted, filed or deposited pursuant to the requirements of any Ordinance.

**Section 10.** CEQA Findings

The Board of Directors of the District finds that the revisions of the policies and procedures adopted by this Ordinance are exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15378 (b) (2) because such amendments constitute general policy and procedure making. The Board of Directors further finds that the amendment of the existing Rules and Regulations established by this Ordinance fall within the activities described in CEQA Guideline 152734 for obtaining funds for capital projects necessary to maintain service within the existing service areas. Further, the Board of Directors finds that the adoption of the Rules and regulations established by this Ordinance is not a project as defined in CEQA Guideline Section 15378, because it can be seen with certainty that the revisions will not result in either a direct physical change in the environment, nor is there a reasonable indirect physical change in the environment. The District General Manager is directed to prepare and file an appropriate notice of exemption.

**Section 11.** Severance Clause.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, ineffective or in any manner in conflict with the laws of the United States, or the State of California, such decision shall not affect the validity of the remaining portions of this Ordinance. The Governing Board of the District hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsection, sentence, clause or phrase be declared unconstitutional, ineffective, or in any manner in conflict with the laws of the United States or the State of California.

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**Section 12.** Effect of Headings in Ordinance.

Title, division, part, chapter, article, and section headings contained herein do not in any manner affect the scope, meaning, or intent of the provisions of this Ordinance.

**Section 13.** Effective Date.

This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage. Before the expiration of fifteen (15) days after passage it shall be posted in three (3) public places with the names of the members voting for and against the Ordinance and shall remain posted thereafter for at least one (1) week. The Ordinance shall be published once with the names of the members of the Board of Directors voting for and against the Ordinance in the Five Cities Times Press Recorder.

Reintroduced at its regular meeting of the Board of Directors held on October 12, 2005, and passed and adopted by the Board of Directors of the Nipomo Community Services District on the 26<sup>th</sup> day of October 2005, by the following roll call vote, to wit:

AYES: Directors Winn, Trotter, Wirsing, Eby and Vierheilig

NOES: None

ABSENT: None

CONFLICTS: None

  
Lawrence Vierheilig, President  
Nipomo Community Services District  
Board of Directors

ATTEST:

  
Donna K. Johnson  
Secretary to the Board

APPROVED AS TO FORM:

  
Jon S. Seitz  
District Legal Counsel

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