

TO: BOARD OF DIRECTORS
FROM: MARIO E. IGLESIAS
GENERAL MANAGER
DATE: OCTOBER 19, 2017

**AGENDA ITEM
E-4
OCTOBER 25, 2017**

**ADOPT AN ORDINANCE OF THE BOARD OF DIRECTORS OF
NIPOMO COMMUNITY SERVICES DISTRICT AMENDING DISTRICT
CODE SECTIONS 3.03.110, 3.03.120, 3.03.180, AND 3.04.140**

ITEM

Adopt an Ordinance of the Board of Directors of the Nipomo Community Services District ("Nipomo CSD") amending Nipomo CSD District Code Sections 3.03.110, 3.03.120, 3.03.180, and 3.04.140, [RECOMMEND ADOPT ORDINANCE BY READING TITLE ONLY AND WAIVING FULL READING (BY MOTION AND ROLL CALL VOTE)]

BACKGROUND

At your October 11, 2017 Board Meeting your Board heard the first reading of an Ordinance modifying District Code Sections 3.03.110, 3.03.120, 3.03.180, and 3.04.140. At that meeting your Board introduced the Ordinance by reading title only, waiving the full reading, and set October 25, 2017 for the second reading and adoption of the Ordinance.

At your March 13, 2013 Board Meeting your Board heard the first reading of an Ordinance 2013-118 revising District water code allowing the general manager to grant customer relief from high water bills under limited Circumstances. Nipomo CSD policy holds that all water metered to a customer is the customer's responsibility regardless of circumstance. When leaks occur on the customer side of the water meter and go undetected, high water use and high water bills can result.

The methodology established for providing relief to customers must be modified. Currently, Nipomo CSD calculates the relief provided to customers with high water bills caused by customer-side water leaks by lowering the adjusted amount of water loss into Tier 2. With a uniformed unit cost structure, Nipomo CSD can no longer use this methodology. Instead, Nipomo CSD will calculate the level of customer relief by deducting the supplemental water cost. Supplemental water costs are factored into Nipomo CSD's budget. Therefore, any additional water usage, or in the case of water loss caused by a customer side leak, would increase the amount of pumped groundwater from Nipomo CSD groundwater wells.

3.03.120 – Investigation and possible relief for water customers

A. Relief for District water customers.

1.ii.

(2) All excess usage (over and above the average normal usage) will be billed at the Tier 2 rate in place at the time of the high bill a rate equivalent to the otherwise applicable water rates minus the portion of the rate associated with supplemental water, as established by Resolution.

Additionally, the Ordinance would set a minimum level of relief at \$100 for qualification of a leak adjustment. The efforts to confirm, calculate, and adjust customer accounts is significant. The leak adjustment option is intended to provide for significant cost burdens caused by customer-side leaks. And while significant cost burden is subjective, the cost to Nipomo CSD customers to provide relief below the set limit is inefficient. In addition, leak adjustments are only available

to customers every 18 months. Receiving an adjustment under \$100 removes the opportunity for a customer to utilize the leak adjustment option for 18 months. A majority of leak adjustment requests trend to a much greater cost than the \$100 minimum.

3.03.120 – Investigation and possible relief for water customers

A. Relief for District water customers.

1.ii.

(3) Leak adjustments will only be processed if the adjustment is greater than \$100.

A marked-up copy of the proposed modifications to the Ordinance language currently within the District Code is attached [Attachment A] for review and consideration. A clean copy with the mark-ups removed from the text is also provided [Attachment B] for ease of reading and comprehension.

Additional language changes are included for review. The modifications are generally suggested to provide clarity of the process, outlining time periods and workflow processes. The recommended language modifications also makes clear how water and sewer rates are presented and enacted and removes references to rates that are no longer relevant.

FISCAL IMPACT

Minor staff time administrating Ordinance and preparing board materials.

STRATEGIC PLAN

Goal 1. WATER SUPPLIES. Actively plan to provide reliable water supply of sufficient quality and quantity to serve both current customers and those in the long-term future.

Goal 6. GOVERNANCE AND ADMINISTRATION . Conduct District activities in an efficient, equitable and cost-effective manner.

6.4 Periodically review, update and reaffirm District policies and procedures.

RECOMMENDATION

Recommend second reading of Ordinance by title only and waiving full reading (by motion and roll call vote), and adopt Ordinance.

Suggested motion:

“I move that we adopt the Ordinance, AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT AMENDING NIPOMO COMMUNITY SERVICES DISTRICT CODE SECTIONS 3.03.110, 3.03.120, 3.03.180, AND 3.04.140, waive the full reading of the ordinance.”

ATTACHMENTS

- A. Ordinance 2017-XXX Amending Subsections in Chapter 3.03 and 3.04 – Mark-up
- B. Ordinance 2017-XXX Amending Subsections in Chapter 3.03 and 3.04 – Clean Copy

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ATTACHMENT A

ORDINANCE NO. 2017-XXXX

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF
THE NIPOMO COMMUNITY SERVICES DISTRICT
AMENDING NIPOMO COMMUNITY SERVICES DISTRICT
CODE SECTIONS 3.03.110, 3.03.120, 3.03.180, AND 3.04.140**

The Board of Directors of the Nipomo Community Services District ordains as follows:

SECTION 1. Section 3.03.110 of the Nipomo Community Services District Code, referenced herein as "District Code," shall be amended and replaced in its entirety to read as follows:

3.03.110 --- Investigation and amortization of delinquent bill for residential water and/or sewer service

~~1. Investigation, amortization and relief of delinquent bills for residential water and for sewer service.~~

~~aA.~~ The General Manager, or his or her designee, is authorized to investigate complaints ~~in regards to and~~ disputes pertaining to any matters for which the water or sewer service may be discontinued; and to rectify errors and settle controversies pertaining to such disputes.

~~bB.~~ Every complaint or request for investigation by a ~~residential~~ customer that is made within five days of receiving the disputed bill for water and/or sewer service, and any request by a ~~residential~~ customer that is made within thirteen days, other than mailing of such notice required by Section 3.03.070 for an extension of the payment period of such bill asserted to be beyond the means of the customer to pay in full during the normal period of payment, shall be reviewed by the General Manager or his or her designee. The review shall include consideration of whether the customer shall be permitted to amortize the unpaid balance of the amount over a reasonable period of time not to exceed twelve months. The District will only permit one amortization ~~over a period~~ every eighteen months.

SECTION 2. Section 3.03.120 of the District Code is hereby amended and replaced in its entirety to read as follows:

3.03.120 – Investigation and possible relief for water customers

~~A. 1. Relief for District water customers.~~

~~1. a. In regards to any complaint or~~ A written request for relief may be made by a water service customer that is made within five days of receiving a high and/or disputed bill for water service. The written request must be received by the District no later than 4:30 PM on the due date of the bill in question. The General Manager or his or her designee shall investigate such complaint in the following manner:

i. The District Manager or his or her designee shall first determine whether or not the increase in water consumption is related to a leak occurring on the customer's side of the water service connection and

that the leak has been remedied.

ii. The District Manager or his or her designee shall review the customer's water bills for water usage for the water service customer for the same time period in the previous five years for the same time period to determine whether or not there is a significant differential in terms of water use that was evidenced by a leak. Where there is a significant difference as determined by the General Manager or his or her designee, water usage for the billing period shall be billed as follows:

- (1) The average normal usage will be billed at the Rates/Tiers in place at the time of the high bill.
- (2) All excess usage (over and above the average normal usage) will be billed at the Tier 2 rate in place at the time of the high bill a rate equivalent to the otherwise applicable water rates minus the portion of the rate associated with supplement water, as established by Resolution.
- (3) b. Leak adjustments will only be processed if the adjustment is greater than \$100.

iii. For water service customers who have not established a five year history in regards to of water usage, the General Manager shall determine equivalent water services using similar billings with a five year history to make the appropriate findings as set forth in section (a) subsections (i) and (ii) above. The customer shall then be charged according to Section A(1-(a)-(ii) above.

2. e. The relief provided by these sections is available, upon written request, for a District water service customer once during a three year period. In other words, a water service customer would may not be able to apply for relief under this Ordinance if relief had been sought and granted any time during the previous three years.

3. d. If a leak adjustment is approved, the customer must sign an acknowledgement of the leak adjustment prior to the adjustment being made to the customer's account. Within fifteen (15) days of the original due date of the water bill, the customer is responsible for completing the leak adjustment process and paying the adjusted bill. If the customer fails to execute the leak adjustment acknowledgement and pay the adjusted bill prior to the above-referenced due date, no leak adjustment will be granted and the customer will be responsible for the paying the full, original water bill plus all additional fees and charges assessed through the date of payment.

4. Leak adjustments will not be considered for previous billing cycles and adjustments will not be made retroactively.

5. Leak adjustments are for a specific billing cycle and cannot be spread over two billing cycles.

6. The General Manager or his or her designee may consider whether the customer shall be permitted to amortize the amount equal to the excess usage over a reasonable period of time, not to exceed twelve months.

SECTION 3. Section 3.03.180 of the District Code shall be amended and replaced in its entirety to read:

3.03.180 - District rates and charges.

A. Water rate shall be charged as follows:

1. Minimum Charges. A minimum monthly charge shall be paid by each customer for each bi-monthly billing period during which a service connection exists even if the meter is locked. Such charge for any billing period in which such a service connection has existed for less than the whole of such a billing period shall be prorated. Minimum monthly charges vary with the size of the meter. The minimum monthly charge for service shall be set forth in Appendix A set out at the end of this chapter established by Resolution.

1. Water Rates. The metered rate for water sold, supplied, distributed, or transported to customers is set forth in Appendix B set out at the end of this chapter.

A. Supplemental Water Rates.

1. Fixed Charge: The minimum bi-monthly fixed charge for supplemental water shall be set forth in Appendix C set out at the end of this chapter. Bi-monthly fixed charges for supplemental water will be added to customer water bills once supplemental water deliveries into the district's water system begin. established by Resolution.

2. Volume Charge: The volume charge for supplemental water shall be applied to each unit of water metered, sold, supplied, distributed or transported to customers shall be set forth in Appendix D set out at the end of this chapter. The volume rate for supplemental water will be added to customer bills once supplemental water deliveries into the district's water system begin.

C.

B. Sewer rates shall be charged as follows:

1. Monthly sewer charges shall commence on the date the water meter is set.
2. District sewer charges are set forth in Appendix A of Chapter 4.12 of the district code shall be established by Resolution.

SECTION 4. Appendices A through D of Chapter 3.03 of the District Code are hereby stricken in their entirety.

SECTION 5. Subsection B.2 of Section 3.04.140 of the District Code shall be amended and replaced in its entirety, and the chart entitled "BI-MONTHLY PRIVATE FIRE PROTECTION CHARGES" stricken, so that the subsection reads:

2. — Bi-monthly charges for private fire service shall be as follows:

BI-MONTHLY PRIVATE FIRE PROTECTION CHARGES

Effective November 1 of each Year

Meter Size	2011-12	2012-13	2013-14	2014-15	2015-16
3" _____	\$10.95	\$11.99	\$13.13	\$14.38	\$15.75
4" _____	\$13.14	\$14.39	\$15.76	\$17.26	\$18.90
6" _____	\$19.71	\$21.58	\$23.63	\$25.87	\$28.33
8" _____	\$27.38	\$29.98	\$32.83	\$35.95	\$39.37
10" _____	\$32.85	\$35.97	\$39.39	\$43.13	\$47.23

2. established by Resolution. Water used for fire suppression shall be furnished without charge.

SECTION 6. Any sections, portions of sections, or subsections of the District Code not specifically amended and replaced herein shall remain in full force and effect.

SECTION 7. 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.

SECTION 8. The Board of Directors of the District finds that 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 policies and procedures constitute general policy and procedure making. The Board of Directors further 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 it will not result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The District General Manager is directed to prepare and file an appropriate notice of exemption.

SECTION 9. This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage. Before the expiration of the tenth (15th) day after passage this Ordinance shall be published once with the names of the members of the Board of Directors voting for or against the Ordinance in a newspaper of general circulation within the District.

INTRODUCED at its regular meeting of the Board of Directors held on October 11, 2017,

and PASSED and ADOPTED by the Board of Directors of the Nipomo Community Services District at its regular meeting on the _____ day of _____, 2017, by the following roll call vote, to wit:

AYES:
NOES:
ABSENT:
CONFLICTS:

DAN GADDIS
President, Board of Directors

ATTEST:

APPROVED AS TO FORM AND LEGAL
EFFECT:

MARIO IGLESIAS
General Manager and
Secretary to the Board

WHITNEY G. McDONALD
District Legal Counsel

October 25, 2017

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ATTACHMENT B

ORDINANCE NO. 2017-XXXX

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF
THE NIPOMO COMMUNITY SERVICES DISTRICT
AMENDING NIPOMO COMMUNITY SERVICES DISTRICT
CODE SECTIONS 3.03.110, 3.03.120, 3.03.180, AND 3.04.140**

The Board of Directors of the Nipomo Community Services District ordains as follows:

SECTION 1. Section 3.03.110 of the Nipomo Community Services District Code, referenced herein as "District Code," shall be amended and replaced in its entirety to read as follows:

3.03.110 -- Investigation and amortization of delinquent bill for water and/or sewer service

- A. The General Manager, or his or her designee, is authorized to investigate complaints and disputes pertaining to any matters for which the water or sewer service may be discontinued; and to rectify errors and settle controversies pertaining to such disputes.
- B. Every complaint or request for investigation by a customer that is made within five days of receiving the disputed bill for water and/or sewer service, and any request by a customer that is made within thirteen days, other than mailing of such notice required by Section 3.03.070 for an extension of the payment period of such bill asserted to be beyond the means of the customer to pay in full during the normal period of payment, shall be reviewed by the General Manager or his or her designee. The review shall include consideration of whether the customer shall be permitted to amortize the unpaid balance of the amount over a reasonable period of time not to exceed twelve months. The District will only permit one amortization every eighteen months.

SECTION 2. Section 3.03.120 of the District Code is hereby amended and replaced in its entirety to read as follows:

3.03.120 – Investigation and possible relief for water customers

- A. Relief for District water customers.
 - 1. A written request for relief may be made by a water service customer receiving a high bill for water service. The written request must be received by the District no later than 4:30 PM on the due date of the bill in question. The General Manager or his or her designee shall investigate such complaint in the following manner:
 - i. The District Manager or his or her designee shall first determine whether or not the increase in water consumption is related to a leak occurring on the customer's side of the water service connection and that the leak has been remedied.
 - ii. The District Manager or his or her designee shall review the customer's water bills for the same time period in the previous five years to determine whether or not there is a significant differential in

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terms of water use that was evidenced by a leak. Where there is a significant difference as determined by the General Manager or his or her designee, water usage for the billing period shall be billed as follows:

- (1) The average normal usage will be billed at the Rates in place at the time of the high bill.
 - (2) All excess usage (over and above the average normal usage) will be billed at a rate equivalent to the otherwise applicable water rates minus the portion of the rate associated with supplement water, as established by Resolution.
 - (3) Leak adjustments will only be processed if the adjustment is greater than \$100.
- iii. For water service customers who have not established a five year history of water usage, the General Manager shall determine equivalent water services using similar billings with a five year history to make the appropriate findings as set forth in subsections (i) and (ii) above. The customer shall then be charged according to Section A(1)(ii) above.
2. The relief provided by these sections is available, upon written request, for a District water service customer once during a three year period. A water service customer may not apply for relief under this Ordinance if relief had been sought and granted any time during the previous three years.
 3. If a leak adjustment is approved, the customer must sign an acknowledgement of the leak adjustment prior to the adjustment being made to the customer's account. Within fifteen (15) days of the original due date of the water bill, the customer is responsible for completing the leak adjustment process and paying the adjusted bill. If the customer fails to execute the leak adjustment acknowledgement and pay the adjusted bill prior to the above-referenced due date, no leak adjustment will be granted and the customer will be responsible for the paying the full, original water bill plus all additional fees and charges assessed through the date of payment.
 4. Leak adjustments will not be considered for previous billing cycles and adjustments will not be made retroactively.
 5. Leak adjustments are for a specific billing cycle and cannot be spread over two billing cycles.
 6. The General Manager or his or her designee may consider whether the customer shall be permitted to amortize the amount equal to the excess usage over a reasonable period of time, not to exceed twelve months.

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CODE SECTIONS 3.03.110, 3.03.120, 3.03.180, AND 3.04.140

SECTION 3. Section 3.03.180 of the District Code shall be amended and replaced in its entirety to read:

3.03.180 - District rates and charges.

A. Water rate shall be charged as follows:

1. Minimum Charges. A minimum monthly charge shall be paid by each customer for each bi-monthly billing period during which a service connection exists even if the meter is locked. Such charge for any billing period in which a service connection has existed for less than the whole of a billing period shall be prorated. Minimum monthly charges vary with the size of the meter. The minimum monthly charge for service shall be established by Resolution.
2. Water Rates. The metered rate for water sold, supplied, distributed, or transported to customers shall be established by Resolution.

B. Sewer rates shall be charged as follows:

1. Monthly sewer charges shall commence on the date the water meter is set.
2. District sewer charges shall be established by Resolution.

SECTION 4. Appendices A through D of Chapter 3.03 of the District Code are hereby stricken in their entirety.

SECTION 5. Subsection B.2 of Section 3.04.140 of the District Code shall be amended and replaced in its entirety, and the chart entitled "BI-MONTHLY PRIVATE FIRE PROTECTION CHARGES" stricken, so that the subsection reads:

2. Bi-monthly charges for private fire service shall be established by Resolution. Water used for fire suppression shall be furnished without charge.

SECTION 6. Any sections, portions of sections, or subsections of the District Code not specifically amended and replaced herein shall remain in full force and effect.

SECTION 7. 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.

SECTION 8. The Board of Directors of the District finds that 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 policies and procedures constitute general policy and procedure making. The Board of Directors further finds that the

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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 it will not result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The District General Manager is directed to prepare and file an appropriate notice of exemption.

SECTION 9. This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage. Before the expiration of the tenth (15th) day after passage this Ordinance shall be published once with the names of the members of the Board of Directors voting for or against the Ordinance in a newspaper of general circulation within the District.

INTRODUCED at its regular meeting of the Board of Directors held on October 11, 2017, and PASSED and ADOPTED by the Board of Directors of the Nipomo Community Services District at its regular meeting on the ____ day of _____, 2017, by the following roll call vote, to wit:

AYES:
NOES:
ABSENT:
CONFLICTS:

DAN GADDIS
President, Board of Directors

ATTEST:

APPROVED AS TO FORM AND LEGAL
EFFECT:

MARIO IGLESIAS
General Manager and
Secretary to the Board

WHITNEY G. McDONALD
District Legal Counsel