

**ORDINANCE NO. 2019-130**

**AN ORDINANCE OF BOARD OF THE DIRECTORS OF  
THE NIPOMO COMMUNITY SERVICES DISTRICT  
AMENDING CHAPTER 3.03 OF THE  
NIPOMO COMMUNITY SERVICES DISTRICT CODE**

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

SECTION 1. Chapter 3.03 of the Nipomo Community Services District Code, referenced herein as "District Code," shall be amended and replaced in its entirety to read as shown in Exhibit A, attached hereto and incorporated herein by reference.

SECTION 2. 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 3. 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 Board of Directors 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 4. The Board of Directors of the District finds that this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15378(b)(2) and 15378(b)(4) because it constitutes general policy and procedure making and government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. The Board of Directors further finds that the adoption of this Ordinance is not a project as defined in CEQA Guidelines 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.

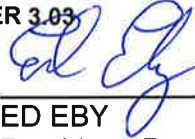
SECTION 5. This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage. Before the expiration of the fifteenth (15<sup>th</sup>) day after passage, this Ordinance shall be published, in accordance with Government Code section 25124(b)(2), with the names of the 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 November 27, 2019, and PASSED and ADOPTED by the Board of Directors of the Nipomo Community Services District at its regular meeting on the 11th day of December, 2019, by the following roll call vote, to wit:

AYES: Director Armstrong, Woodson, Blair, Gaddis and Eby  
NOES: None  
ABSENT: None  
CONFLICTS: None

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ED EBY  
President, Board of Directors

ATTEST:

  
MARIO IGLESIAS  
General Manager and  
Secretary to the Board

APPROVED AS TO FORM:

  
CRAIG A. STEELE  
District Legal Counsel

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Exhibit A

**Chapter 3.03 – WATER AND SEWER FEES AND CHARGES AND COLLECTION PROCEDURES**

**3.03.010 – Purpose and scope.**

This chapter is enacted pursuant to Sections 61060, 61115, and 60371 through 60375.5, of the Government Code and sets forth the rates, charges, rules, regulations and procedures governing the use of the district's sewer and water facilities.

**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 nonrefundable account set up fee and payment of outstanding accrued fees and charges, if applicable, pursuant to District Code Section 3.03.040. The account set up fee shall be established by resolution.
- 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.

**3.03.030 – District billing procedure.**

- A. Except as otherwise provided herein and in subsection B of this section, water meters are to be read and statements for water and sewer services are to be mailed once every month or every two months.
- B. The general manager, at his/her discretion, may cause a meter reading to be made at any time and thereafter bill the customer for water and sewer used since the previous reading.
- C. Meters will be read, as nearly as possible, on the same day of the month as determined by the district.
- D. Meter Read Surcharge. Customers shall have the water meter accessible at all times to district personnel. Meters shall be free of items including, but not limited to, parked vehicles, debris, guard animals, overgrown landscaping, fences, and locked gates. At no charge, the district will notify the owner, in writing, of an initial accessibility issue. A fee will be assessed for each subsequent unsuccessful attempt to access the meter. The fee will be placed on the next regularly scheduled utility billing. In addition, the district will

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estimate water usage for billing purposes. The meter read surcharge fee shall be established by resolution.

- E. Where both water and sewer service are being provided at a given service address, both water and sewer service charges shall appear on one bill. The district will not bill water and sewer service charges separately for service addresses receiving both services.
- F. Billing statement. All billing statements shall be mailed to the person designated in the application.
- G. Duplicate billing statement. The person designated in the application may request in writing on a form provided by the district to have a duplicate bill and late notice mailed to the service address, provided a mail receptacle is available. The duplicate billing fee shall be established by resolution.
- H. In the event of a transfer of ownership of property receiving water and/or sewer service, all fees and charges accrued up to the date of close of escrow and/or the date of recording of a deed acknowledging the transfer of ownership will become due and payable immediately and a closing bill will be provided to the customer of record. If the district is not notified of the pending transfer of ownership by either the buyer or seller, the district will prepare the closing bill upon notification of the transfer of ownership and all accrued charges up to that date will be included in the closing bill to the customer of record.

**3.03.040 – Responsibility of property owner.**

The owner of the property which is furnished services is the customer and shall be responsible for the payment of all rates, charges, and fees, including penalties, thereon regarding such furnished services, except as otherwise provided in this Chapter or as required by state law. Unpaid obligations shall run with the land and shall lead to delinquency and termination of service for the residential unit or other real property involved without regard to any changes of residency or occupancy by persons different than the persons shown on district records as obligated to pay said bill, except as otherwise required by the district's Discontinuation of Residential Water Service Policy.

**3.03.050 – Delinquency and Penalty.**

- A. Delinquency. Utility bills are due and payable upon presentation. Accounts not collected in full by 4:30 p.m. on the due date stated in the bill, which shall be not earlier than 19 days from the date of mailing the district's bill for services, are delinquent. Postmarks are not accepted.
- B. Penalty. Delinquent accounts shall incur a penalty on the total current charges owing. A notice that includes the penalties assessed and the final due date prior to discontinuance of service will be generated and mailed to the billing address. The penalty shall be established by resolution.
- C. Small Balance Accounts. Any balance on a bill totaling \$40.00 or less may be carried over and added to the next billing period without being assessed a penalty. Any such

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small balances not paid during the next billing period will be subject to all otherwise applicable penalties, fees, and discontinuation of service procedures.

**3.03.060 – Discontinuance of service.**

- A. Water and sewer service may be discontinued for any one of the following reasons:
1. Delinquency in the payment of any water and/or sewer service rate or charge;
  2. The unauthorized taking of water or the taking of water in excess of the amount paid for;
  3. Failure of the customer to maintain their facilities in a suitable condition to prevent waste of water;
  4. Failure of the customer to pay district connection fees for water and/or sewer service;
  5. The existence of any unprotected cross connections on the customer's premises or the lack of adequate backflow protection at the service connection;
  6. To protect the district against fraud or abuse;
  7. Any violation by the customer of any rules, regulations, or fees of the district governing water and/or sewer service.
- B. Non-Payment Fee. Commencing at 4:30 p.m. on the due date stated in the notice described in District Code section 3.03.050.B, a non-payment/reconnection fee will be charged to the account regardless of whether the meter has been physically turned off. The non-payment/reconnection fee shall be established by resolution.
- C. Services discontinued pursuant to this section shall not be restored until all fees and charges are paid in full. The district will restore service as soon as is practicable, but at a minimum, will restore service no later than the end of the next regular business day following receipt of payment in full. Restoration of service that has been discontinued for non-payment will not be made after-hours or during non-regular business hours.

**3.03.070 – Discontinuance of residential service for nonpayment.**

Prior to any proposed discontinuance of residential water and/or sewer service for nonpayment of a delinquent account respecting such service, the district shall comply with the district's Discontinuation of Residential Water Service Policy, including but not limited to compliance with all notice requirements contained therein and/or as required by applicable state law. The district's Discontinuation of Residential Water Service Policy shall be adopted by resolution.

**3.03.080 – [Reserved.]**

**3.03.090 – Discontinuance of nonresidential services for nonpayment.**

- A. At least ten days before discontinuing nonresidential water and/or sewer service, the district shall provide a written notice to the customer. The notice shall specify the reason for the proposed discontinuance and inform the customer of the opportunity to discuss

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the reason for the proposed discontinuance with the district general manager, or his/her designee consistent with the district's code. The name and phone number of the district general manager, or his or her designee, shall be included in any such notice of proposed discontinuance given to a nonresidential customer. Forty-eight (48) hours before a nonresidential customer's service will be discontinued for nonpayment, the district will generate and post a shut-off notice (door hanger) in conspicuous location at the service address. A fee will be added to every account for which a shut-off notice (door hanger) is generated. The fee will be added to the account and will be payable upon the presentation of the next regularly scheduled bill. This fee is in addition to any past due balance and penalty. The shut-off notice (door hanger) fee shall be established by resolution.

- B. A nonresidential customer may request to amortize or make alternative payment arrangements for the balance of an unpaid bill for water and/or sewer service by filing a written request with the district at least two business days prior to the discontinuance date stated in the notice required by subsection A of this section. Any amortization or alternative payment arrangement shall provide for payment of all charges, fees, and penalties owed on the account within twelve months. The district will only permit one amortization every eighteen months.

**3.03.100 – Discontinuance of service on weekends, holidays or after hours.**

- A. District services will not be discontinued to any customer or user because of any delinquency in payment on any Saturday, Sunday, legal holiday, or at any time during which the business offices of the district are not open to the public.
- B. Water on/off after hours fee. Any customer who requests a meter to be turned on or off for any reason, other than for non-payment, on any Saturday, Sunday, legal holiday, or at any time during which the business office of the district is not open to the public shall be assessed a fee for each request. The fee(s) shall be placed on the next regularly scheduled utility bill. The turn on/off after hours fee shall be established by resolution.

**3.03.110 – Investigation and resolution of disputes.**

- 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. Any complaint or request for investigation by a nonresidential customer related to a disputed bill, charge, fee, or penalty for water and/or sewer service must be made in writing, which must identify the disputed bill, charge, fee or penalty, and state the reason for the complaint or request, and must be filed with the district within five days of receiving the disputed bill. The general manager, or his or her designee, shall review and investigate the complaint and issue a final decision to the customer. Complaints and requests for investigation by residential customers related to disputed bills, charges, fees, or penalties are governed by the district's Discontinuation of Residential Water Service Policy.

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**3.03.120 – Leak adjustments.**

- A. Leak adjustments for district water customers. 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 p.m. 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:
1. 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.
  2. 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 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:
    - i. The average normal usage will be billed at the rates in place at the time of the high bill.
    - ii. 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.
    - iii. Leak adjustments will only be processed if the adjustment is greater than one hundred dollars.
- B. 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 A(2)(i) and (ii) above. The customer shall then be charged according to Section A(2)(ii) above.
- C. The relief provided by this section 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.
- 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 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.

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- E. Leak adjustments will not be considered for previous billing cycles and adjustments will not be made retroactively.
- F. Leak adjustments are for a specific billing cycle and cannot be spread over two billing cycles.
- G. 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.

**3.03.130 – Public nuisance, abatement.**

During any period of non-connection or disconnection of water and/or sewer service, habitation of premises by human beings shall constitute a public nuisance, whereupon the district may cause proceedings to be brought for the abatement of the occupancy of said premises by human beings during the period of such disconnection. The district may request the county health officer to commence proceedings to be brought for the abatement of the occupancy of the premises by human beings. In such event, and as a condition of reconnection, there shall be paid to the district a reasonable attorney's fee and costs of suit arising in said action.

**3.03.140 – Partial payment spread.**

In the case of partial payment by a customer, the payment will be applied to the account in the following order:

- A. Penalties and restoration charges;
- B. Late charge;
- C. Sewer charge;
- D. Water charge.

**3.03.150 – Returned checks.**

A fee will be charged against any account whose check or electronic payment is returned by the bank for any reason. Following receipt of a returned check or returned electronic payment, all amounts owed must be paid in cash, money order, or credit card. Returned checks or returned electronic payments are treated as nonpayment and any otherwise applicable penalties and/or discontinuance procedures shall apply as if no payment had been made to the account. If the account is otherwise subject to discontinuance pursuant to the requirements of this Chapter, upon receipt of a returned check or returned electronic payment, the district will post a twenty-four (24) hour notice of imminent discontinuance at a conspicuous location at the property pursuant to this section. The twenty-four (24) hour notice will state the total amount due in order to avoid discontinuance of service and the requirements for reconnection. The returned check/returned electronic payment fee shall be established by resolution.

**3.03.160 – Meter malfunction.**

- A. Meter Calibration Deposit. A customer who questions the accuracy of a meter serving the premises may request in writing a test of meter registration. A deposit equal to the



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water meter calibration check charge and any calibration charges shall be required in advance when a test is requested. The water meter calibration charge fee shall be established by resolution.

- B. If a meter is found to over-register more than five percent, the district shall return the charge for the test and the customer shall be entitled to a refund based on adjustment made by the district manager. Such adjustment shall be calculated by taking the difference between the normal use and the incorrect reading. In no case shall refunds cover more than two consecutive months prior to the discovery of meter malfunction.
- C. When a meter is found to under-register by more than five percent, the charge for water will be based, at the option of the district, either on previous consumption for the same period in the preceding year during which the meter is known to have registered correctly, or on the consumption as registered by a "substitute meter."

**3.03.170 – Tampering.**

- A. No person, other than an authorized district employee, shall at any time or in any manner, operate, or cause to be operated, any valve in or connected to a water main or sewer main, service connection or fire hydrant, or tamper or otherwise interfere with any water meter, meter valve, backflow prevention device, detector check valve, or other part of the district's water or sewer system.
- B. Tampering fee. In addition to other district fees and charges, a tampering fee will be charged to the customer in all situations where a person has tampered with district services or privately restores water service without district permission. Such fee shall be added to the account for the property affected by the illegal tampering. The tampering fee shall be established by resolution.
- C. Repair Authorization fee. If a person's actions result in damage to the district's water or sewer systems, the cost of repair and/or replacement will be charged to the customer. The repair authorization fee shall be established by resolution.
- D. Staff shall prepare and keep complete and accurate records concerning tampering with district's service systems. The manager shall review such records and shall decide whether or not to seek a criminal complaint through the sheriff's office. If there is more than one such tampering violation for the same property within any five-year period, the board shall hold a public hearing to consider permanent disconnection of water service to the property, or such other remedies as the board deems appropriate.

**3.03.180 – District rates and charges.**

- A. Water rates shall be charged as follows:
  - 1. Minimum Charges. A minimum bi-monthly or monthly charge shall be paid by each customer for each bi-monthly or 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 bi-monthly or monthly charges vary with the size of the

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meter. The minimum bi-monthly or 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. For new customers, sewer charges shall commence on the date the water meter is set. For existing water customers, sewer charges shall commence when sewer service is connected or thirty (30) days from the date of issuance of the will-serve letter, whichever occurs first.
2. District sewer charges shall be established by resolution.

**3.03.190 – Collection of delinquent charges on the tax roll or by recorded certificate and lien.**

- A. The board of directors adopts the procedures for the collection of rates, charges, fees, and penalties for nonpayment of delinquent bills established in Government Code Section 61115 or any successor statute.
- B. The general manager or his/her designee is authorized to record a certificate and lien for the amount of charges, fees, and penalties owed, and the name and address of the persons liable therefor, sixty days after the payment becomes delinquent, pursuant to Government Code Section 61115 or any successor statute.
- C. Remedies for collection and enforcement for nonpayment of delinquent rates, charges, fees, and penalties are cumulative and may be pursued alternatively or consecutively by the district.

**3.03.200 – Judicial relief and attorney's fees.**

In the event that any customer fails to timely pay a billing statement, the customer shall be deemed to be in default and in such case, the district may declare the balance or remaining balances due and payable. In the event that the district is required to bring action to collect any sum in default, the customer shall pay any attorney's fees, court costs, or other costs incurred by the district to bring such action.

**3.03.210 – Means of enforcement.**

The district declares that the foregoing procedures are established as a means of enforcement of the terms and conditions of its ordinances, rules, and regulations, and not as a penalty.

**3.03.220 – Cumulative remedies.**

All remedies set forth herein for the collection and enforcement of charges, rates, fees, and penalties are cumulative and may be pursued alternatively or consecutively.