

**ORDINANCE NO. 2023-01**

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF SANITARY DISTRICT NO. 5  
OF MARIN COUNTY INCREASING THE SEWER SERVICE CHARGES FOR THE  
DISTRICT**

WHEREAS, the Tiburon Zone has been a portion of Sanitary District Number 5 of Marin County (“SD No. 5”) since the creation of the District;

WHEREAS, the Tiburon Zone includes all parcels receiving sanitary sewer services from SD No. 5 within the Town of Tiburon;

WHEREAS, Ordinance No. 78-1 established and prescribed Sewer Service Charges for Sanitary District No.5 (“SD No. 5”);

WHEREAS, in June 2005, the City of Belvedere established a Sewer Service Charge of \$890 per Equivalent Dwelling Unit (“EDU”) for the Belvedere Zone prior to annexation into the District;

WHEREAS, the Belvedere Zone includes all parcels receiving sanitary sewer services from SD No. 5 within the City of Belvedere;

WHEREAS, upon the annexation of the Belvedere Zone sewer system to SD No. 5 in July 2005, SD No. 5 continued to charge the existing \$890 Sewer Service Charge per EDU to the Belvedere Zone;

WHEREAS, in 2007 it became necessary to increase the Belvedere Zone Sewer Service Charge for the first time since annexation. Ordinance No. 2007-01 increased the Sewer Service Charge for Fiscal Year 2007-2008 to \$1,139 and increased the Sewer Service Charge for Fiscal Year 2009-2010 to \$1,185. An approved 9% Sewer Service Charge increase for Fiscal Year 2008-2009 was not implemented by the Board of Directors;

WHEREAS, the Sewer Service Charge is supplemented in the Tiburon Zone by a portion of property taxes paid by parcels in the Town of Tiburon;

WHEREAS, to pay for needed District improvements and costs, the Sewer Service Charge in the Tiburon Zone was increased to \$478 per Equivalent Dwelling Unit (“EDU”) in 2008;

WHEREAS, in 2010 it became necessary to increase the Belvedere Zone Sewer Service Charge and the Tiburon Zone Sewer Service Charge. Ordinance No. 2010-03 increased the Sewer Service Charge in the Tiburon Zone for Fiscal Year 2010-2011 to \$598, FY 2011-2012 to \$717, FY2012-2013 to \$825, FY2013-2014 to \$923 and FY2014-2015 to \$1034 and Ordinance No. 2010-04 increased the Sewer Service Charge in the Belvedere Zone for Fiscal Year 2010-2011 to \$1,457, FY2011-2012 to \$1748, FY2012-2013 to \$1836, FY2013-2014 to \$1928 and FY2014-2015 to \$1985.

WHEREAS, in the 7 years from 2015 to 2023, there were no District Sewer Service Charge increases in the Tiburon Zone and/or Belvedere Zone;

WHEREAS, SD No. 5 has determined that the Tiburon and Belvedere Zones should be combined and that the same Base Parcel Rate Sewer Service Charge should apply to all parcels in the District because all customers are served by and benefit from the entire sanitary sewer system;

WHEREAS, the Base Rate Parcel Sewer Service Charges will be charged to parcels that are located in a jurisdiction that does not contribute property tax revenues to SD No. 5 and the Ad Valorem Credited Parcel Rate will be charged to parcels that are located in a jurisdiction that does contribute property tax revenues;

WHEREAS, it is now necessary for SD No. 5 increase Sewer Service Charges in the District for the following reasons:

- \$8.8 million in average annual maintenance, upgrades, and improvements are needed to ensure reliable service across the District;
- To establish sufficient District reserves in order to fund needed system improvements and to pay for emergencies;
- To avoid spills or other violations resulting in costly penalties;
- To protect the public health and safety;
- To help the District comply with increasingly strict regulations that are designed to protect the San Francisco Bay;

WHEREAS, SD No. 5 commissioned, and approved, on April 20, 2023, a Sewer Rate Study, performed by HF&H, which serves as the basis for the increases in Sewer Service Charges contained herein and is attached hereto as Exhibit A;

WHEREAS, the Sewer Service Charges contained herein are based on the actual cost to collect, transport, and treat wastewater from customers within the District;

WHEREAS, the Sewer Service Charges are calculated to include a Base Rate Parcel Sewer Service Charge and an Ad Valorem Credited Parcel Rate Sewer Service Charge;

WHEREAS, the SD No. 5 Board finds and determines that, based on the entire record before the Board, including but not limited to the Staff Report and attachments thereto:

- 1) Revenues derived from the proposed Sewer Service Charges will not exceed the funds required to provide sewer service, respectively.
- (2) Revenues derived from the proposed Sewer Service Charges will not be used for any purpose other than that for they were imposed.
- (3) The amount of the Sewer Service Charges imposed upon any parcel or person as an incident of property ownership will not exceed the proportional cost of the service attributable to the parcel.

(4) The Sewer Service Charges are imposed for a service for services that are actually used by, or immediately available to, the owner of the property in question.

(5) The Sewer Service Charges are not being imposed for general government services;

WHEREAS, pursuant to the provisions of Article 13D, Section 6, of the California Constitution (e.g., Proposition 218), prior to extending, imposing or increasing Sewer Service Charges, property owners shall be provided at least 45 days' notice of a public hearing to consider such modifications to the Sewer Service Charges together with an explanation of: (1) the amount of the propose rates, (2) the basis on which the rates are calculated, (3) the reason for the rate modifications, and (4) the date, time and place of a public hearing to consider the rate modifications, together with an explanation of the rights of property owners to submit written protests to the proposed rate modifications. The proposed rate modifications may not be imposed if, prior to the close of the public hearing, written protests are submitted by property owners or tenants representing a majority of the properties subject to the modified rates ("majority protest");

WHEREAS, on May 10, 2023 and May 24, 2023, SD No. 5 conducted a community workshop to present the details of the fee increases contained herein and to answer questions from the public regarding the fee increases contained herein;

WHEREAS, Notice of the public hearing to consider proposed adjustments to the Sewer Service Charges was mailed at least 45 days prior to the scheduled public hearing as required by state law (Cal. Cons. Art. XIID, §6);

WHEREAS, On May 11, 2022, the SD No. 5 Board conducted a public hearing, considered testimony, and at the conclusion of the hearing determined that a majority protest did not exist.

**NOW, THEREFORE, THE BOARD OF DIRECTORS OF SANITARY DISTRICT NO. 5 OF MARIN COUNTY DOES HEREBY ORDAIN AS FOLLOWS:**

- A. The above recitations are true and correct and, accordingly, are incorporated as a material part of this Ordinance.
- B. That the Sewer Service Charge increase is exempt from the California Environmental Quality Act ("CEQA") under the "General Rule", Section 15061 (b) (3), in that it can be seen with certainty that no environmental impacts will result from these actions, and under CEQA Guideline section 15273 as these actions apply only to rates and fees to obtain funds necessary to operate and maintain the wastewater system.

C. Annual Sewer Service Charge for the users below shall be as follows:

1. **Residential Sewer Service Charges:** The annual Sewer Service Charge payable by each single-family dwelling unit (1 EDU), exclusive of Hotels and Inns, shall be as follows:

a. Base Rate Parcel=	Fiscal Year 2023-2024: \$1,848
Ad-Valorem Credited Parcel=	Fiscal Year 2023-2024: \$1,358
b. Base Rate Parcel=	Fiscal Year 2024-2025: \$2,033
Ad-Valorem Credited Parcel=	Fiscal Year 2024-2025: \$1,534
c. Base Rate Parcel=	Fiscal Year 2025-2026: \$2,237
Ad-Valorem Credited Parcel=	Fiscal Year 2025-2026: \$1,728
d. Base Rate Parcel=	Fiscal Year 2026-2027: \$2,460
Ad-Valorem Credited Parcel=	Fiscal Year 2026-2027: \$1,942
e. Base Rate Parcel=	Fiscal Year 2027-2028: \$2,706
Ad-Valorem Credited Parcel=	Fiscal Year 2027-2028: \$2,179

a. The following definitions shall apply to the Residential Sewer Service Charges above:

- i. Base Rate Parcel = A parcel that is located in a jurisdiction that does not contribute property tax revenues to SD No. 5.
- ii. Ad-Valorem Credited Parcel = A parcel that is located in a jurisdiction that does contribute property tax revenues to SD No. 5.

2. **Non-Residential Use (Includes Hotels and Inns):** The annual Sewer Service Charge payable for each Non-Residential customer shall be calculated based upon the following:

b. Non-Residential users shall be assessed a Sewer Service Charge based upon annual metered water readings and wastewater strengths. A strength factor (EDU factor) will be used to recover costs for wastewater strengths greater than residential wastewater strengths. The non-residential use groups and EDU factors are as follows:

<u>User Group*</u>	<u>EDU Factor</u>
Non-Residential, Miscellaneous	1.0
Hotels, Inns with Dining	1.7
Delicatessens	2.0
Groceries with Grinders	2.2
Restaurants	2.4

\* Any use not listed herein shall be assigned the most appropriate/similar of the above EDU Factors by SD No. 5.

- c. The formulae used to calculate the annual Sewer Service Charge for each Non-Residential user shall be the following:
- i.  $(\text{Annual Flow} \times \text{EDU Factor}) \div \text{Annual Residential Flow per EDU} = \text{Non-Residential EDU Units}$
  - ii.  $\text{Non-Residential EDU Units} \times \text{Annual Rate} = \text{Annual Non-Residential Sewer Service Charge}$
- d. The following definitions shall apply to the Non-Residential Sewer Service Charge formulae contained in Subsection (b) above:
- i. Annual Flow: The total volume of water utilized by a commercial property in the previous calendar year as calculated by the Marin Municipal Water District (“MMWD”) meter reading for the property, excluding any MMWD meters designated, or proven to be, only for irrigation purposes or other uses not resulting in water entering the SD No. 5 collection system.
  - ii. Annual Residential Flow per EDU: The annual residential flow per EDU is assumed to be 75 hundred cubic feet (HCF). This is the historic average for single family home and duplex water meters in Southern Marin for the previous calendar year as provided by MMWD, but excluding 1/3 to account for water consumption used for irrigation purposes.
- e. The Annual Rate for use in the calculation of the Non-Residential Sewer Service Charge shall be set as follows:
- i. Base Rate Parcel = Fiscal Year 2023-2024: \$1,848  
Ad-Valorem Credited Parcel= Fiscal Year 2023-2024: \$1,358
  - ii. Base Rate Parcel= Fiscal Year 2024-2025: \$2,033  
Ad-Valorem Credited Parcel= Fiscal Year 2024-2025: \$1,534
  - iii. Base Rate Parcel= Fiscal Year 2025-2026: \$2,237  
Ad-Valorem Credited Parcel= Fiscal Year 2025-2026: \$1,728
  - iv. Base Rate Parcel= Fiscal Year 2026-2027: \$2,460  
Ad-Valorem Credited Parcel= Fiscal Year 2026-2027: \$1,942
  - v. Base Rate Parcel= Fiscal Year 2027-2028: \$2,706  
Ad-Valorem Credited Parcel= Fiscal Year 2027-2028: \$2,179
- f. The following definitions shall apply to the Non-Residential Sewer Service Charge contained in Subsection (e) above:
- i. Base Rate Parcel = A parcel that is located in a jurisdiction that does not contribute property tax revenues to SD No. 5.

- ii. Ad-Valorem Credited Parcel = A parcel that is located in a jurisdiction that does contribute property tax revenues to SD No. 5.
- g. For all Non-Residential users, the minimum Sewer Service Charge shall be one (1) EDU per parcel.
- 3. **Sewer Service Charge collection costs:** An additional charge of \$2.00 shall continue to be collected by the County of Marin in addition to each of the above Residential and Non-Residential Sewer Service Charges and used for the purpose of defraying the costs of levying, collecting, and enforcing said charges on each lot or parcel of land against which a charge has been imposed.
- D. This Ordinance shall supersede Ordinance No.78-1, 2010-03 and 2010-04, as amended, by setting new rates and clarifying the methods of calculating Sewer Service Charges. All other provisions of Ordinance No. 78-1, 2010-03 and 2010-04 as amended, shall remain the same.
- C. Upon adoption of this Ordinance, it shall be entered in the minutes of the Board of Directors and shall be published once in *The Ark*, a newspaper published in SD No. 5's district.

\* \* \* \* \*

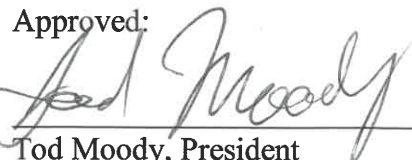
I certify that the foregoing Ordinance was duly and regularly adopted by the Board of Directors of Sanitary District No. 5 of Marin County, California at a meeting held on June 22, 2023 by the following vote:

**AYES**, and in favor thereof, Directors:

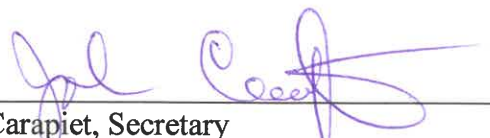
**NOES**, Directors: *TOD MOODY, CHAR ADIAS-KANTER, JOHN CARAPIET, CATHARINE BENEDEKTSSON*

**ABSTAIN**, Directors: *NONE*

**ABSENT**, Directors: *RICHARD SNYDER*

Approved:   
\_\_\_\_\_  
Tod Moody, President  
Sanitary District No. 5 of Marin County

Attest:

  
\_\_\_\_\_  
John Carapiet, Secretary  
Sanitary District No. 5 of Marin County