

**CUPERTINO SANITARY DISTRICT
SANITARY BOARD MEETING
WEDNESDAY, NOVEMBER 4, 2020**

A_G_E_N_D_A

In accordance with Executive Order N-33-20, meeting to be held at 7:00 p.m. via teleconference [call 1 (866) 899 - 4679 Conference Access Code: 251566821] and anyone interested may also call in. The District Office at 20863 Stevens Creek Blvd, Suite 100, Cupertino is closed.

1. ROLL CALL:

2. MINUTES:

- A. APPROVAL OF THE MINUTES OF OCTOBER 21, 2020
- B. APPROVED MINUTES OF OCTOBER 7, 2020

3. PERSONAL PRESENTATIONS:

THIS PORTION OF THE MEETING IS RESERVED FOR PERSONS DESIRING TO ADDRESS THE BOARD ON ANY MATTER NOT ON THE AGENDA. SPEAKERS ARE LIMITED TO THREE (3) MINUTES.

ALL STATEMENTS REQUIRING A RESPONSE WILL BE REFERRED TO STAFF FOR FURTHER ACTION. IN MOST CASES, STATE LAW WILL PROHIBIT THE BOARD FROM MAKING ANY DECISIONS WITH RESPECT TO A MATTER NOT LISTED ON THE AGENDA.

4. CORRESPONDENCE:

NONE

5. MEETINGS:

- A. TELECONFERENCE MEETING OF THE SAN JOSE/SANTA CLARA TREATMENT PLANT TECHNICAL ADVISORY COMMITTEE (TAC) TO BE HELD NOVEMBER 9, 2020
- B. THE REGULAR MEETING OF THE SAN JOSE/SANTA CLARA TREATMENT PLANT ADVISORY COMMITTEE (TPAC) TO BE HELD ON NOVEMBER 12, 2020

6. REPORTS:

NONE

**CUPERTINO SANITARY DISTRICT
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WEDNESDAY, NOVEMBER 4, 2020**

7. UNFINISHED BUSINESS:

- A. CONSULTANT AGREEMENT WITH RICHARD TANAKA AND REQUEST FROM BURBANK SANITARY DISTRICT
- B. COVID-19 UPDATES

8. NEW BUSINESS:

- A. RATE STUDY WORKSHOP NO. 3
- B. CONFLICT OF INTEREST STATEMENT

9. STAFF REPORT:

- A. FUTURE DEVELOPMENT PROJECTS
- B. FORUM UPDATE
- C. VIA REGINA SAFETY IMPROVEMENTS

10. CLOSED SESSION:

- A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
in accordance with government code section Paragraph (1) of Subdivision (d) of Section 54956.9, existing litigation. Name of Case: County Sanitation District 2-3, West Valley Sanitation District, Cupertino Sanitary District, Burbank Sanitary District and the City of Milpitas v. The City of San Jose, The City of Santa Clara and Does 1 through 50 inclusive.

11. CALENDAR ITEMS:

- A. NEXT REGULAR DISTRICT BOARD MEETING IS SCHEDULED TO BE HELD ON WEDNESDAY, NOVEMBER 18, 2020

12. ADJOURNMENT:

CUPERTINO SANITARY DISTRICT MEETING/EVENT SCHEDULE

NOVEMBER 2020

11/04: 1st Regular Meeting
 11/09: TAC
 11/12: TPAC
 11/18: 2nd Regular Meeting

NOVEMBER 2020						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4 1 st Regular Meeting	5	6	7
8	9 TAC	10	11	12 TPAC	13	14
15	16	17	18 2 nd Regular Meeting	19	20	21
22	23	24	25	26 <i>Happy Thanksgiving</i>		28
29	30					

DECEMBER 2020

12/02: 1st Regular Meeting
 12/07: TAC
 SCCSDA
 12/10: TPAC
 12/16: 2nd Regular Meeting

DECEMBER 2020						
SUN	MON	TUE	WED	THU	FRI	SAT
		1	2 1 st Regular Meeting	3	4	5
6	7 TAC	8	9	10 TPAC	11	12
	13 SCCSDA	14	15	16	17	18
			16 2 nd Regular Meeting	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

JANUARY 2021

01/04: 1st Regular Meeting
 01/09: TAC
 01/12: TPAC
 01/18: 2nd Regular Meeting
 01/27-28: CASA Virtual Winter Conference

JANUARY 2021						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 Happy New Year!	2
3	4	5	6 1 st Regular Meeting	7	8	9
10	11 TAC	12	13	14 TPAC	15	16
17	18	19	20 2 nd Regular Meeting	21	22	23
24	25	26	27	28	29	30
		31 CASA CONFERENCE				

CUPERTINO SANITARY DISTRICT BOARD MEETING WEDNESDAY, OCTOBER 21, 2020

The Sanitary Board of the Cupertino Sanitary District convened this date at 7:00 p.m. This meeting was conducted in accordance with the Executive Order N-33-20 via teleconferencing. The District office at 20863 Stevens Creek Blvd, Suite 100, Cupertino was closed.

1. ROLL CALL:

President Chen called the meeting to order and the following proceedings were had to wit: Roll call was taken, with the following members in attendance:

Directors present: Angela S. Chen, Taghi S. Saadati, John M. Gatto, William A. Bosworth, and Patrick S. Kwok.

Staff present: District Manager Benjamin Porter, District Advisor Richard K. Tanaka, Deputy District Manager Robert Woodhouse, and Counsel Marc Hynes.

Public: None

2. MINUTES & BILLS:

- A. On a motion by Director Gatto, seconded by Director Saadati, by a vote of 5-0-0 the minutes of Wednesday, October 7, 2020 were approved.
- B. By consensus, the Minutes of Wednesday, September 16, 2020 are to be Noted & Filed.
- C. The Board reviewed October payable warrants. Counsel Hynes confirmed that Hunton's invoice is within budget. Manager Porter confirmed that Conquest's invoice was for Homestead PS flow meter and Florence PS repairs and not for Prospect Pump Station. On a motion by Director Gatto, seconded by Director Bosworth, by a vote of 5-0-0 the payment of bills was approved.

3. PERSONAL PRESENTATIONS:

There were none.

4. CORRESPONDENCE:

There was none.

5. MEETINGS:

There were none.

6. REPORTS:

- A. Director Gatto reported on the teleconference meeting of The San Jose/Santa Clara Treatment Plant Advisory Committee (TPAC) held October 8, 2020.

CUPERTINO SANITARY DISTRICT BOARD MEETING
WEDNESDAY, OCTOBER 21, 2020

7. UNFINISHED BUSINESS:

- A. COVID-19 update - Staff reported on the future of public meetings. There has been no change in status from Santa Clara County or the State. The Brown Act compliance is waived as long as the State Order N-33-20 and local social distancing protocols are in place.
- B. The Board reviewed the final draft Annual Report. On a motion by Director Bosworth, seconded by Director Gatto, by a vote of 5-0-0 the Annual Report was approved with revisions as requested by the Board. Staff can finalize and mail them out.

8. STAFF REPORTS:

- A. Manager Porter and Deputy Manager Woodhouse reported on The City of Sunnyvale update. The City is reviewing the draft agreement and they plan to set up a virtual meeting soon to discuss review comments. Manager Porter reported there is no urgency since the Santa Clara Valley Water District has delayed construction on Calabazas Creek until 2022.
- B. Manager Porter reported on the pavement issue on Via Regina. There is a safety concern with uneven pavement at manholes, pump station concrete pad and trenches. The District has an easement in the private road and still would be responsible for potential liability. District approved the work to be performed by Conquest in the amount of \$43,000. Repair work is now underway.
- C. Manager Porter reported on the monthly maintenance report.

9. CLOSED SESSION:

President Chen adjourned the regular meeting session and opened the closed session at 7:50 p.m. Manager Porter, Deputy Manager Woodhouse, and Advisor Tanaka were excused from the closed session.

- A. Conference with legal counsel – Existing Litigation in accordance with government code section Paragraph (1) of Subdivision (d) of Section 54956.9, existing litigation. Name of Case: County Sanitation District 2-3, West Valley Sanitation District, Cupertino Sanitary District, Burbank Sanitary District, and the City of Milpitas v. The City of San Jose, The City of Santa Clara, and Does 1 through 50 inclusive.

Closed session was adjourned at 8:23 p.m. and the regular meeting was called to order. Manager Porter, Deputy Manager Woodhouse, and Advisor Tanaka rejoined the regular meeting. There was no reportable action.

10. NEW BUSINESS:

- A. The Board reviewed and discussed Consultant Agreement for District Advisor. The Board requested several changes be made and for it to be brought back for approval at the next regular Board meeting.

CUPERTINO SANITARY DISTRICT BOARD MEETING
WEDNESDAY, OCTOBER 21, 2020

11. NEXT MEETING:

- A. The next regular District Board meeting is scheduled to be held on Wednesday, November 4, 2020.

12. ADJOURNMENT:

On a motion properly made and seconded, at 8:43 p.m. the meeting was adjourned.

Secretary of the Sanitary Board

President of the Sanitary Board

Approved

CUPERTINO SANITARY DISTRICT BOARD MEETING WEDNESDAY, OCTOBER 07, 2020

The Sanitary Board of the Cupertino Sanitary District convened this date at 7:00 p.m. This meeting was conducted in accordance with the Executive Order N-33-20 via teleconferencing. The District office at 20863 Stevens Creek Blvd, Suite 100, Cupertino was closed.

1. ROLL CALL:

President Chen called the meeting to order and the following proceedings were had to wit: Roll call was taken, with the following members in attendance:

Directors present: Angela S. Chen, Taghi S. Saadati, John M. Gatto, William A. Bosworth, and Patrick S. Kwok.

Staff present: District Manager Benjamin Porter, District Advisor Richard K. Tanaka, Deputy District Manager Robert Woodhouse, and Counsel Marc Hynes. Mark Thomas Principal, Sasha Dansky joined in progress.

Public: None

2. MINUTES:

A. On a motion by Director Gatto, seconded by Director Bosworth, by a vote of 5-0-0 the minutes of Wednesday, September 16, 2020 were approved.

B. By consensus, the Minutes of Wednesday, September 2, 2020 are to be Noted & Filed.

3. PERSONAL PRESENTATIONS:

There were none.

4. CORRESPONDENCE:

There was none.

5. MEETINGS:

A. Director Gatto plans to attend the teleconference meeting of The San Jose/Santa Clara Treatment Plant Advisory Committee (TPAC) scheduled to be held October 8, 2020.

6. REPORTS:

A. Manager Porter attended the teleconference meeting of The San Jose/Santa Clara Treatment Plant Technical Advisory Committee (TAC) held October 5, 2020. There was., discussion of janitorial service expenses and how they are allocated to the treatment plant.

7. UNFINISHED BUSINESS:

A. Manager Porter reported on COVID-19 update. However, there was not much to report.

CUPERTINO SANITARY DISTRICT BOARD MEETING
WEDNESDAY, OCTOBER 07, 2020

B. The Board discussed Staffing update.

Advisor Tanaka announced his retirement to be effective October 31, 2020 from Mark Thomas & Co. After discussion, there was a consensus to retain Advisor Tanaka as an independent consultant to the District. A Draft agreement will be included with the next Board meeting package.

8. NEW BUSINESS:

A. The Board discussed the Rate Study Workshop No. 2-SFR vs MFR. The discussion presented good data and information, but no decision was made to have separate rate for MFR. Staff is to bring back with more detail as to its impact on the rate structure. At the end of this discussion, Sasha Dansky joined in via telephone. Manager Porter requested to return to Item 7B for Mr. Dansky to provide input.

B. The Board reviewed the draft Annual Report. Staff is to polish it up and bring back the final version at the next regular meeting.

9. STAFF REPORTS:

A. Advisor Tanaka reported on future development projects, e.g. Vallco Development. Vallco may want to have an agenda item for discussion at the first meeting in November.

B. There was nothing to report for The Forum.

C. Deputy Manager Woodhouse presented on the Inflow Reduction Plan. On a motion by Director Saadati, seconded by Director Kwok, by a vote of 5-0-0, the Board approved to authorize V&A's contract.

10. CLOSED SESSION:

President Chen adjourned the regular meeting session and opened the closed session at 9:21 p.m. Manager Porter and Advisor Tanaka were excused from the closed session. Dansky left the meeting.

A. Conference with legal counsel – Existing Litigation in accordance with government code section Paragraph (1) of Subdivision (d) of Section 54956.9, existing litigation. Name of Case: County Sanitation District 2-3, West Valley Sanitation District, Cupertino Sanitary District, Burbank Sanitary District, and the City of Milpitas v. The City of San Jose, The City of Santa Clara, and Does 1 through 50 inclusive.

Closed session was adjourned at 9:40 p.m. and the regular meeting was called to order. Manager Porter and Advisor Tanaka rejoined the regular meeting. There was no reportable action.

11. NEXT MEETING:

CUPERTINO SANITARY DISTRICT BOARD MEETING
WEDNESDAY, OCTOBER 07, 2020

The next regular District Board meeting is scheduled to be held on Wednesday, October 21, 2020.

12. ADJOURNMENT:

On a motion properly made and seconded, at 9:42 p.m. the meeting was adjourned.

Secretary of the Sanitary Board

President of the Sanitary Board

CONTRACT FOR CONSULTING SERVICES

CUPERTINO SANITARY DISTRICT, a public agency of the State of California, (hereafter referred to as "District"), and **RICHARD K. TANAKA**, sole proprietorship (hereafter referred to as "Consultant"), hereby agree as follows:

- 1. Retention of Consultant:** District desires to retain the services of Consultant as effective as of November 1, 2020, and continuing until either party gives notice of termination in writing to the other pursuant to Paragraph 7 below.
- 2. Services to be provided:** Consultant shall provide scope of services to include:
 - (a) Participation in matters related to on-going litigation involving the Common Interest Group against the Cities of San José and Santa Clara currently pending in the Superior Court of California, County of Santa Clara.
 - (b) With one week advance notice, attend, as needed regular, closed sessions and special meetings of the Board of Directors unless excused for good cause by the President of the Board when Consultant is unavailable.
- 3. Fees.** The District shall be billed for all services provided by the Consultant at the rate of \$200.00 per hour.
- 4. Disbursements and Expenses.** In addition to hourly fees, Consultant will be reimbursed by the District for out-of-pocket expenses incurred that are related to providing these services. These out of pocket expenses may include mileage reimbursement at the current IRS rate and photographic reproduction costs.
- 5. Billing and Payment Responsibilities.** Consultant will send monthly invoices to the District Manager-Engineer by the 5th of each month for prior month services. District will make the payments within 30 days of receipt.
- 6. Indemnification.** With respect to the performance of Consulting Services under this Agreement, District shall indemnify, hold harmless and defend Consultant from and against any and all claims, liabilities, damages, losses and costs, including but not limited to reasonable attorney's fee and other costs of defense. Consultant will not carry a separate professional liability insurance.
- 7. Termination of Agreement.** District may terminate this Agreement at any time upon giving notice, in writing, delivered by U.S. mail to Consultant at 7024 Wooded Lake Drive, San Jose, California 95120. Consultant may terminate this Agreement upon thirty (30) days' notice, in writing, to District Office by U.S mail at 20865 Stevens Creek Boulevard, Suite 100, Cupertino, California 95014 or email to District Manager-Engineer.

Upon termination, Consultant shall turn over to District all records on all pending matters. Surrender of such information shall be conditioned upon District furnishing to Consultant a written document relieving Consultant from all further responsibility with respect to such pending matters from and after the date of execution thereof.

8. Entire Agreement; Full Understanding; Modifications in Writing. This Agreement contains the entire agreement between the parties. Any modifications or additions to Agreement must be made in writing.

WHEREFORE, the parties hereto have executed this Agreement, effective as of November 1, 2020.

CUPERTINO SANITARY DISTRICT

By: _____
President

Attest: _____
Secretary

Approved as to Form:

District Counsel

Richard K. Tanaka, Consultant
7024 Wooded Lake Drive
San Jose, CA 95120
(408) 838-7463



Memo

Item **8A**

To: Board of Directors

From: Benjamin T. Porter, District Manager-Engineer

Date: November 4, 2020

RE: Rate Study Workshop No. 3 – Establishment of User Rates

This workshop combines the two separate workshops initially proposed, which were to separately discuss the overall parity (establishment of user rates) and service area policy. This combination of two topics completes the staff presentation and provides the Board with information necessary to discuss and develop the Board's policy on setting user fees for the District.

Workshop 1 ADU

Workshop 2 Residential Rates

Workshop 3 Overall Parity (establishment of user rates)

Workshop 4 Special Zones and Service Area Policy

This Workshop 3 presents the establishment of user rates; discussion of adding special zone assessments will be conducted in the next workshop.

The staff analysis for this workshop is provided in the attached memo. This completes the staff presentation on the rate topic. The next step in this process is for the Board to discuss and achieve consensus on setting policy for defining user fees for the District. The consensus Board decision will need to comply with Proposition 218, which requires that the sewer rates must meet the "fair and equitable" provision of Proposition 218 in compliance with all applicable federal, state, and local laws and regulations and that the amount of the charge levied on any customer shall not exceed the proportional cost of service attributable to that customer.

Once a consensus is reached by the Board, a Rate Study Report will be prepared, discussed, and eventually adopted by the Board. The Rate Study Report will then be used to guide and set rates of FY 2021-22.

Attachment: Establishment of User Rates and Special Zone Assessment Memo

ESTABLISHMENT OF USER RATES AND POTENTIAL SPECIAL ZONE ASSESSMENTS

The District's current rates were adopted by Ordinance No. 126 as follows:

<u>Type of Use:</u>	<u>Service Charge:</u>
Residential Unit	\$638.86/Year-Unit
Auto Repair Shop & Service Station	\$5.23 /HCF
Car Wash	\$4.36 /HCF
Domestic Laundry	\$4.69 /HCF
Machinery Manufacturer	\$7.67 /HCF
Motels or Hotels without Food Service	\$5.34 /HCF
Motels or Hotels with Food Service	\$8.94 /HCF
Retirement Homes with Common Dining Facility	\$10.08 /HCF
Convalescent Hospital	\$5.04 /HCF
Printing Plant	\$9.02 /HCF
Restaurant	\$10.90 /HCF
Retail or Professional Office	\$4.80 /HCF
School, College, Day Care Facility	\$6.79 /HCF

These current rate structures were established using the standard California State Water Resources Control Board (SWRCB) Revenue Program Guidelines factors [flow, biochemical oxygen demand (BOD), suspended solids (SS), and ammonia (NH₃)] in effect in 1973 to determine rates for each type of use. Since 1973, the District's annual increases for rate adjustment were performed in compliance with the Proposition 218 requirement to increase the type of uses uniformly by a percentage increase.

The SWRCB has updated the State Revenue Guidelines numerous times to include changes in four sewer parameters due to current economic factors affecting the flow, BOD, SS and NH₃. Each time these guidelines have been changes, the loading from each parameter has changed slightly to reflect the variation of sewer strength parameters over time.

The first step in establishing rate structures is to determine revenue requirements. For this presentation, the FY 2020-21 Tax Roll revenue of \$18,918,065 was used to compare the current rates to newly calculated rates based on the most current State Revenue Guidelines.

Table 1 below shows cost allocation by cost components for the major components for Operating, District Capital, and Treatment Plant Capital.

Table 1. CuSD Revenue Requirements

Costs Allocated to All Customers	A	B	Allocation %				Cost Allocation \$			
	2020-21 Budget	Prorated 2020 21 Tax Roll	Flow	BOD	SS	NH3	Flow	BOD	SS	NH3
Operating Cost Component										
Administration										
Labor, Admin and Office expense	\$1,412,200	\$1,055,588	33.955%	22.212%	22.293%	21.540%	\$358,425	\$234,467	\$235,322	\$227,374
Sewage Collection										
District Maintenance & Operations	\$4,843,000	\$3,620,035	33.955%	22.212%	22.293%	21.540%	\$1,229,183	\$804,082	\$807,014	\$779,756
Sewage Disposal										
Treatment Plant Operations	\$8,630,500	\$6,451,107	33.955%	22.212%	22.293%	21.540%	\$2,190,473	\$1,432,920	\$1,438,145	\$1,389,568
Operating Expenses	\$14,885,700	\$11,126,730	33.955%	22.212%	22.293%	21.540%	\$3,778,081	\$2,471,469	\$2,480,482	\$2,396,698
Add: Revenue from Reserve to TP		\$0	33.955%	22.212%	22.293%	21.540%	\$0	\$0	\$0	\$0
Less: Misc Operating Revenue (2)	(\$292,000)	-\$218,264	33.955%	22.212%	22.293%	21.540%	-\$74,111	-\$48,481	-\$48,657	-\$47,014
Rate Funded Operating Expenses	\$14,593,700	\$10,908,467					\$3,703,970	\$2,422,989	\$2,431,824	\$2,349,684
Capital Cost Component										
Administration										
Non-construction Capital	\$400,000	\$298,991	68.855%	18.355%	6.292%	6.498%	\$205,870	\$54,880	\$18,813	\$19,428
Sewage Collection & Pump Station										
District Construction & Joint Trunk	\$3,322,000	\$2,483,121	100.000%	0.000%	0.000%	0.000%	\$2,483,121	\$0	\$0	\$0
Sewage Disposal										
Treatment Plant Capital & Equip	\$6,393,000	\$4,778,626	68.855%	18.355%	6.292%	6.498%	\$3,290,323	\$877,117	\$300,671	\$310,515
Debt Service										
	\$1,200,500	\$897,347	68.855%	18.355%	6.292%	6.498%	\$617,868	\$164,708	\$56,461	\$58,310
Capital Expenses	\$11,315,500	\$8,458,085	80.003%	11.785%	4.040%	4.172%	\$6,597,183	\$1,096,705	\$375,945	\$388,253
Add: Revenue from Reserve to TP		\$0	68.855%	18.355%	6.292%	6.498%	\$0	\$0	\$0	\$0
Less: Capacity Fees	(\$600,000)	-\$448,487	80.003%	11.785%	4.040%	4.172%	-\$358,803	-\$52,854	-\$18,119	-\$18,711
Rate Funded Capital Expenses	\$10,715,500	\$8,009,598					\$6,238,380	\$1,043,850	\$357,826	\$369,542
Total Rate Funded Expenses	\$25,309,200	\$18,918,065					\$9,942,350	\$3,466,839	\$2,789,650	\$2,719,226

Column A is the approved budget for FY 2020-21 with a total budget of \$25,309,200 which exceeds the revenues being collected for FY 2020-21. Column B is a proration of cost based on budget to get the total cost to match tax roll revenue of \$18,918,065. This methodology will allow a comparison of current adopted rates versus rates developed by utilizing the most current State Revenue Guidelines. The total revenue cost of \$18,918,065 is allocated to flow, BOD, SS and NH₃ based on current SWRCB Revenue Guideline percentages. These percentages are shown in Column C, D, E and F and respective cost allocations are shown in Column G, H, I and J.

The next step is to estimate flows and loads for BOD, SS and NH₃ for each type of use.

For residential properties, the estimated flow quantity is based on the City of San Jose’s Flow Study Report completed in 2013, which estimated single family residence (SFR) flow volume to be 192 gallons per day (gpd) and multiple family residence (MFR) flow volume to be 148 gpd. For commercial and institutional uses, flow volume is determined by water meter readings for the months of December, January, and February and assuming 90% is discharged to sewer system. The three-month flow volume is then annualized for 12 months to get the one-year flow volume.

Loading factors for BOD, SS and NH₃ are using the current State Revenue Guidelines for Sanitary Sewers for various types of uses.

Table 2 shows estimated flows and loadings for BOD, SS, and NH₃ allocations by type of uses.

Table 2. Estimated Flows and Loads by Use

	# of Sewer EDUs / Accounts	Annual Flow Volume (HCF)	Working Days Per	Strength (mg/L)			Loading (lbs)		
				BOD	SS	NH3	BOD	SS	NH3
Residential									
Single Family	15,649	1,481,425	365	250	250	35	5,935.3	5,935.3	830.9
Single Family (Outside)	127	12,023	365	250	250	35	48.2	48.2	6.7
Multi Family	5,568	402,117	365	250	250	35	2,111.8	2,111.8	295.7
Total Residential	21,344	1,895,564		750	750	105	8,095	8,095	1,133
Commercial/Industrial									
Retail Professional Office	1,085	339,954	330	130	80	11.0	755.0	464.6	63.9
Domestic Laundry	4	1,280	360	150	110	5.0	3.3	2.4	0.1
Restaurant	236	226,671	360	1250	560	10.0	4,840.4	2,168.5	38.7
Repair Shops & Service Station	25	4,202	360	180	280	0.0	12.9	20.1	-
Hotel/Motel w/Food Service	5	17,165	365	500	600	35.0	146.6	175.9	10.3
Motel / Hotel	5	17,592	365	310	121	7.0	93.2	36.4	2.1
Printers	2	13	273	250	500	-	0.1	0.1	-
Car Wash	17	3,421	330	20	150	-	1.2	8.8	-
Machinery Mfg.	1	15	261	290	550	-	0.1	0.1	-
Total Comercial/Industries	1,380	610,313		3,080	2,951	68	5,852.7	2,877.0	115.1
Institutional									
School	3	2,491	300	130	100	30.0	5.5	4.3	1.3
Convalescent Home	7	18,964	365	230	85	15.0	74.5	27.5	4.9
Multiple Occupancy Units	8	14,969	365	950	467	27.5	242.9	119.4	7.0
Total Institutional	18	36,424		1,310	652	73	323.0	151.2	13.2
Total	22,742	2,542,301		5,140	4,353	246	14,271	11,123	1,262

Flow and Loadings from District CUSD Revenue Program for FY 2020-21

The final step is to calculate cost for each type of uses. This calculation is based on revenues generated for the FY 2020-21 Tax roll as shown on Table 1 and using Table 2 allocations.

Table 3 summarizes the costs for each type of uses.

Table 3. Rate Calculation based on Use

Type of Uses	Usage, volume in HCF	Cost Based flow Dollar (\$)	Cost Based on Loading (\$)			Cost for FY 2020-21 based on Cash Requirement	Unit Rate based on Cost Allocation
			BOD	SS	NH3		
			Dollar (\$)	Dollar (\$)	Dollar (\$)		
Residential						\$/Yr	
Single Family	1,481,425	\$5,793,508	\$1,441,854	\$1,488,511	\$1,791,005	\$10,514,877	\$673.08
Single Family (Outside)	12,023	\$47,019	\$11,701	\$12,080	\$14,535	\$85,336	\$671.93
Multi Family	402,117	\$1,572,586	\$513,020	\$529,620	\$637,249	\$3,252,475	\$584.24
Total Residential	1,895,565	\$7,413,112	\$1,966,575	\$2,030,211	\$2,442,789	\$13,852,687	\$649.87
Commercial/Industries							\$/HCF
Retail Professional Office	339,954	\$1,329,481	\$183,411	\$116,520	\$137,696	\$1,767,108	\$5.20
Domestic Laundry	1,280	\$5,006	\$797	\$603	\$236	\$6,641	\$5.19
Restaurant	226,671	\$886,457	\$1,175,888	\$543,844	\$83,465	\$2,689,654	\$11.87
Repair Shops & Service Station	4,202	\$16,433	\$3,139	\$5,041	\$0	\$24,613	\$5.86
Hotel/Motel w/Food Service	17,165	\$67,128	\$35,619	\$44,125	\$22,122	\$168,994	\$9.85
Hotel/Motel	17,592	\$68,798	\$22,633	\$9,120	\$4,534	\$105,085	\$5.97
Printers	13	\$51	\$13	\$27	\$0	\$91	\$7.01
Car Wash	3,421	\$13,379	\$284	\$2,199	\$0	\$15,862	\$4.64
Machinery Mfg.	15	\$59	\$18	\$34	\$0	\$111	\$7.38
Total Comercial/Industries	610,313	\$2,386,792	\$1,421,800	\$721,514	\$248,053	\$4,778,159	\$7.83
Institutional							\$/HCF
School	2,491	\$9,742	\$1,344	\$1,067	\$2,752	\$14,905	\$5.98
Convalescent Home	18,964	\$74,164	\$18,101	\$6,906	\$10,474	\$109,645	\$5.78
Multiple Occupancy Units	14,969	\$58,540	\$59,018	\$29,951	\$15,158	\$162,668	\$10.87
Total Institutional	36,424	\$142,446	\$78,464	\$37,925	\$28,384	\$287,219	\$7.89
Total for Tax Roll Basis	2,542,302	\$9,942,350	3,466,839	2,789,650	2,719,226	18,918,065	

The next step is to verify accuracy of Table 3 with the City of San Jose’s adopted revenue program to report loads and cost annually to City of San Jose for treatment plan cost allocation to all tributary agencies.

Table 4 shows the loads and revenue calculations based on the adopted revenue program report the District utilizes to report loads and cost information annually to City of San Jose.

Table 4. Rate Calculation based on Flow and Load

Type of Uses	# of Sewer EDUs / Accounts	Usage (HCF)	Rate based flow	Rate Based on Loading			Revenue for FY 2020-21 based on Flow & Load	Rate based on Revenue Program
			(\$)	BOD	SS	NH3		
				(\$)	(\$)	(\$)		
Residential								\$/Yr/unit
Single Family	15,622	1,481,425	\$3,408,035	\$778,246	\$717,195	\$635,278	\$12,354,825	\$790.86
Single Family (Outside)	127	12,023	\$27,658	\$6,316	\$5,820	\$5,156	\$100,266	\$789.50
Multi Family	5,567	402,117	\$1,212,598	\$276,904	\$255,182	\$226,036	\$4,395,914	\$789.64
Total Residential	21,316	1,895,565	\$4,648,291	\$1,061,466	\$978,197	\$866,469	\$16,851,005	
Commercial/Industries								\$/HCF/unit
Retail Professional Office	1,085	339,954	\$833,688	\$98,997	\$56,142	\$48,841	\$2,705,045	\$7.96
Domestic Laundry	4	1,280	\$3,139	\$430	\$291	\$84	\$10,220	\$7.98
Restaurant	236	226,671	\$555,877	\$634,690	\$262,035	\$29,605	\$2,593,961	\$11.44
Repair Shops & Service Station	25	4,202	\$10,305	\$1,694	\$2,429	\$0	\$35,038	\$8.34
Hotel/Motel w/Food Service	5	17,165	\$42,095	\$19,225	\$21,261	\$7,847	\$174,617	\$10.17
Motel / Hotel	5	17,592	\$43,142	\$12,216	\$4,394	\$1,608	\$147,644	\$8.39
Printers	2	13	\$31	\$7	\$13	\$0	\$114	\$8.73
Car Wash	17	3,421	\$8,391	\$153	\$1,059	\$0	\$26,384	\$7.71
Machinery Mfg.	1	15	\$36	\$10	\$17	\$0	\$134	\$8.92
Total Comercial/Industries	1,380	610,313	\$1,496,703	\$767,422	\$347,640	\$87,986	\$5,693,158	
Instituional								\$/HCF/unit
School	3	2,491	\$6,110	\$726	\$514	\$976	\$20,545	\$8.25
Convalescent Home	7	18,964	\$46,506	\$9,770	\$3,327	\$3,715	\$156,330	\$8.24
Mujltiple Occupancy Units	8	14,969	\$36,710	\$31,855	\$14,431	\$5,377	\$161,794	\$10.81
total Institutional	18	36,424	\$89,326	\$42,351	\$18,273	\$10,068	\$338,669	
Total	22,714	2,542,302	\$6,234,320	\$1,871,239	\$1,344,110	\$964,523	\$22,882,832	

Based on the City of San Jose’s adopted revenue program, the cost and revenue generated is about \$22 million which is higher than the actual revenue being generated for FY 2020-21 as shown on Table 3.

The summary of findings is presented in Table 5.

Table 5. Rate Classification Based on Flow and Load and Prop 218

Use Classification	Rate Based on Flow & Load Data Submitted to San Jose	Rate Based on Prop 218 Compliance	Current Adopted Rates	Appropriate Charge Should be based on Prop 218 Compliance	Delta - Appropriate Rate less Current Adopted Rates	% Change
Residential	\$/Yr/Unit	\$/Yr/Unit	\$/Yr/Unit	\$/Yr/Unit		
Single Family 15,622	\$790.86	\$683.98	\$638.86	\$683.98	\$45.12	7.1%
Single Family (Outside) 127	\$789.50	\$682.81	\$638.86	\$682.81	\$45.12	7.1%
Multi Family 5,567	\$789.64	\$593.70	\$638.86	\$593.70	-\$45.16	-7.1%
Commercial/Industries	\$/HCF	\$/HCF	\$/HCF	\$/HCF		
Retail Professional Office	\$7.96	\$5.28	\$4.80	\$5.28	\$0.48	10.0%
Domestic Laundry	\$7.98	\$5.27	\$4.69	\$5.27	\$0.58	12.4%
Restaurant	\$11.44	\$12.06	\$10.90	\$12.06	\$1.16	10.6%
Repair Shops & Service Station	\$8.34	\$5.95	\$5.23	\$5.95	\$0.72	13.8%
Hotel/Motel w/Food Service	\$10.17	\$10.00	\$8.94	\$10.00	\$1.06	11.9%
Motel / Hotel	\$8.39	\$6.07	\$5.34	\$6.07	\$0.73	13.7%
Printers	\$8.73	\$7.13	\$9.02	\$7.13	-\$1.89	-21.0%
Car Wash	\$7.71	\$4.71	\$4.36	\$4.71	\$0.35	8.1%
Machinery Mfg.	\$8.92	\$7.50	\$7.67	\$7.50	-\$0.17	-2.2%
Institutional						
School	\$8.25	\$6.08	\$6.79	\$6.08	-\$0.71	-10.4%
Convalescent Home	\$8.24	\$5.88	\$5.04	\$5.88	\$0.84	16.6%
Multiple Occupancy Units	\$10.81	\$11.04	\$10.08	\$11.04	\$0.96	9.6%

These findings reflect the same conclusions as the City of San Jose's rate study, which ultimately shifted rates higher on non-residential users because it was determined that they needed to pay their fair share.

ATKINSON • FARASYN, LLP

ATTORNEYS AT LAW

REPLY TO:
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J.M. ATKINSON (1892-1982)
L.M. FARASYN (1915-1979)

October 14, 2020

Ms. Kimberly Forrester
Office of the County Counsel
County of Santa Clara
70 W. Hedding Street
East Wing, 9th Floor
San Jose, CA 95110 – 1770

Re: Biennial Review of Conflict of Interest Code – Cupertino Sanitary District

Dear Ms. Forrester:

I am in receipt of your most recent email correspondence with the District Manager, Ben Porter, regarding the District Conflict of Interest Code.

I enclose my letter to you dated November 2, 2016 regarding the issue of designated positions in our conflict of interest code. That Letter explains the reasons for the listing of positions in our Code.

You will see that based upon the rationale in my letter dated November 2, 2016 as well as the provisions of Government Code section 82019, the positions described in the District Code include “officer” as envisioned by the law.

It would seem to me that greater specificity is more desirable than a catchall “employee” as advanced by your communications.

I do not believe I ever received a response to my request in the November 2, 2016 letter. I look forward to discussing this with you in more detail now. There does not seem to be a compelling reason, to me that the District Code should be amended to use the default “employee” designation.

Very truly yours,

MARC G. HYNES

MGH/ns
enc.
cc: Ben Porter

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REPLY TO:
MARC G. HYNES

November 2, 2016

FILE COPY

Ms. Kimberly Forrester
Office of the County Counsel
County of Santa Clara
70 West Hedding Street
East Wing, 9th Floor
San Jose, CA 95110-1770

Re: Biennial Review of Conflict of Interest Code – Cupertino Sanitary District

Dear Ms. Forrester:

I am the District Counsel for the Cupertino Sanitary District. The District is organized and operating under the provisions of the County Sanitation District Act appearing in Chapter 3 of the California Health and Safety Code, sections 4700 through 4858.

The District originally adopted a Conflict of Interest Code in 2009 by Resolution No. 1205. That Code designated positions of Members of the Board of Directors, District Manager–Engineer, Deputy Manager–Engineer, Board Legal Counsel, and Engineering Consultant–Senior Project. The Code was reviewed and approved by the County as the District's code reviewing body.

In 2012, the District by Resolution No. 1239 adopted a Conflict of Interest Code which listed the following positions: Member of the Board of Directors, District Manager, District Engineer, Deputy District Manager, Deputy District Engineer, District Counsel, and, finally, Consultant. This Code was reviewed and approved by the County as the District's code reviewing body.

When the District's Code was previously reviewed, no comment was made as to the listing of the positions as described. Section 4766 of the California Health and Safety Code provides that the District Board is empowered to adopt ordinances to carry out the provisions of Chapter 3 described above.

Section 4766 further provides: "In the absence of county or city regulation, the district board may also adopt ordinances for the purpose of exercise and effect of any of its powers, or for the purposes for which it was formed."

Further to its statutory authority, the District Board by Ordinance No. 115 adopted an Operations Code and has created the appointed positions of District Manager, District


Ms. Kimberly Forrester
Office of the County Counsel
County of Santa Clara
November 2, 2016
Page 2

Engineer, District Clerk and District Counsel. A copy of Section 3002 of Chapter III – Organization of the Cupertino Sanitary District Operations Code dated March 2, 2016, is attached for reference.

In view of the foregoing, it is submitted that the positions as presented to the County in the most recent version of the District's Conflict of Interest Code are the appropriate ones to be employed rather than the default "consultant" designation.

After you have had a chance to review this letter and its attachment, I would appreciate it if you would contact me so that we may discuss the most expeditious process going forward regarding the District's Conflict of Interest Code.

Very truly yours,



MARC G. HYNES
District Counsel
Cupertino Sanitary District

MGH/d
Enc.

CHAPTER III - ORGANIZATION

3000. DISTRICT OFFICE

The business office of the District is hereby fixed and established at the Stevens Creek Office Center, 20863 Stevens Creek Boulevard, Suite 100, Cupertino, California 95014.

3001. MEETINGS OF DISTRICT BOARD

- A. **Regular Meetings.** The regular meetings of the Board shall be held on the first and third Wednesdays of each and every calendar month at the hour of 7:30 P.M. The Board may, by motion recorded in the minutes, establish a different day or a different start time, or both, for the conduct of one or more regular meetings, which shall be indicated in any posted or published notice of each meeting.
- B. **Meeting Place.** All meetings of the Board shall be held at the District business office, unless the meeting is adjourned to or fix another place of meeting in a notice for such meeting, in said District.

3002. APPOINTED POSITIONS

The following positions are hereby established and shall be filled by appointment by the District Board. Appointees shall hold office at the pleasure of the Board and shall receive such compensation, expense reimbursement, and employment benefits as may be established from time to time by the District Board. A specific individual shall be appointed by the Board to fill each position and the same person may be appointed to more than one position. Where the appointee is a member of, or employed by, any partnership, corporation, or other business entity, the appointment shall be deemed to be of the individual person and not the business entity.

- A. **District Manager** – Whose duties shall be as prescribed by the District Board and by this Code. Said duties shall include, but are not limited to, supervision of all administrative matters pertaining to the operation, construction, replacement, maintenance and repair of the sanitary sewer system. The District Manager shall also serve as the Clerk of the District and the Purchasing Officer for the District, and shall perform the duties of said offices as prescribed by the District Board and by this Code or otherwise prescribed by law.
- B. **District Engineer** – Whose duties shall be as prescribed by the District Board and by this Code. Said duties shall include, but are not limited to, the preparation of all plans and specifications for District projects, and the checking of all plans and specifications prepared by an Installer's engineer. The District Engineer shall be a Civil Engineer, registered in accordance with the laws of the State of California.
- C. **District Clerk.** The District Clerk shall be responsible for posting of notices of Board meetings as required by State law, preparation of minutes of meetings, maintaining records of all District ordinances, resolutions, contracts, and notices, and performing such other duties as prescribed by this Code or otherwise prescribed by law, or assigned to him from time to time by the District Board. Unless otherwise designated by the District Board, the District Manager shall also serve as the District Clerk.
- D. **District Counsel.** The District Counsel shall act as the legal advisor to the District and shall prepare or review ordinances, resolutions and other legal documents. He shall at all times be a member in good standing of the State Bar of California. The District Counsel shall perform such other duties as prescribed by this Code or otherwise prescribed by law, or assigned to him from time to time by the District Board.