



**BURBANK SANITARY DISTRICT
SANTA CLARA COUNTY
CALIFORNIA**

OPERATIONS CODE

ADOPTED BY ORDINANCE NO. 65

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**DISTRICT OFFICE
STEVENS CREEK PROFESSIONAL CENTER
20863 STEVENS CREEK BOULEVARD, SUITE 100
CUPERTINO, CALIFORNIA 95014**

PHONE (408) 255-2137

**BURBANK SANITARY DISTRICT
OPERATIONS CODE**

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CHAPTER I GENERAL PROVISIONS

1000. TITLE

This Code shall be cited and referred to as the BURBANK SANITARY DISTRICT OPERATIONS CODE.

1001. APPLICATION OF RULES OF CONSTRUCTION

The general rules of construction set forth in this Article shall be applied throughout this Code, unless the context or the provision clearly requires otherwise.

1002. CONTINUATION OF EXISTING LAW

The provisions of this Code insofar as they are substantially the same as existing regulations relating to the same subject matter shall be construed as restatements and continuations, and not as new enactments.

1003. PENDING PROCEEDINGS

Any action or proceeding commenced before this Code takes effect and any right accrued is not affected by this Code, but all procedure thereafter taken therein shall conform to the provisions of this Code.

1004. ACTS BY AUTHORIZED REPRESENTATIVES

Whenever a power is granted to or a duty is imposed upon an officer or employee of the District, the power may be exercised or the duty may be performed by a deputy or a duly authorized representative of such officer or employee, unless this Code expressly provides otherwise.

1005. GRAMMATICAL INTERPRETATION

- A. **Gender.** Each gender includes the masculine, feminine and neutral genders.
- B. **Number.** The singular number includes the plural and the plural includes the singular.
- C. **Tense.** Words used in the present tense include the past and future tenses, and words used in the future tense include the past and present tenses.

1006. GIVING NOTICE

Whenever a notice is required to be given under this Code, unless different provisions herein are otherwise specifically made in said Code, such notice may be given either by personal delivery thereof to the person to be notified or by deposit in the United States Mail, in a sealed envelope postage prepaid, addressed to such person to be notified, at his last known business or residence address as the name appears in the public records of the District or other records pertaining to the matter to which such notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in the post office.

1007. CONSTITUTIONALITY

If any section, subsection, sentence, clause or phrase of this Code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Code. The Board hereby declares that it would have passed this Code, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional, and if for any reason this Code should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

1008. REFERENCE APPLIES TO AMENDMENTS

Whenever a reference is made to any portion of this Code, to any ordinances of this District or to any state Code or statute, said reference shall be to such Code, ordinance or statute as now or hereafter amended, unless herein otherwise provided.

CHAPTER II DEFINITIONS

2000. APPLICATION OF DEFINITIONS

For the purpose of this Code, certain words, phrases, or terms are defined and shall be construed as defined in this Chapter unless from the context of the Code a different meaning is specifically defined.

2001. BIOHAZARDOUS OR BIOMEDICAL WASTE

“Biohazardous or Biomedical Waste” shall mean any waste which may cause disease or reasonably be suspected of harboring pathogenic organisms; including waste resulting from the operation of medical clinics, hospitals, and other facilities processing wastes which may consist of, but are not limited to, human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, sharps, contaminated clothing, and surgical gloves.

2002. BOARD

“Board” shall mean the Board of Directors of Burbank Sanitary District.

2003. BUSINESS SERVICE UNIT

“Business Service Unit” shall mean all retail, professional, wholesale and industrial facilities and other commercial enterprises offering goods or services to the public.

2004. CLEANOUT

Cleanout at the property line is situated on private property within five feet from the property line and is a pipe fitting and associated piping connected between the upper and lower lateral that provides access to the lower sewer lateral for purposes of flushing, rodding, cleaning, and other maintenance and diagnostic purpose. Cleanout is owned and maintained by the private property owner.

2005. COMMERCIAL SERVICE UNIT

“Commercial Service Unit” shall mean Business Service Units, Multi-Family Service Units, and Mixed-Use Dwellings that utilize a cart or bin for the accumulation and set-out of Commercial Waste.

2006. COMMERCIAL WASTE

“Commercial Waste” shall mean Solid Waste and Green Waste generated by and at a Commercial Service Unit.

2007. CONNECTOR

“Connector” means any owner, contractor, or renter of any premise connected to the sewer system.

2008. COUNTY

“County” is the County of Santa Clara.

2009. DISTRICT

“District” shall mean the Burbank Sanitary District, Santa Clara County, California.

2010. DISTRICT COLLECTION SERVICE

“District Collection Service” shall mean the collection of Solid Waste, Recyclable Materials, and/or Green Waste by the Franchisee.

2011. DISTRICT ENGINEER

“District Engineer” means the Engineer of said District.

2012. DISTRICT OFFICE

“District Office” is the business location of the Burbank Sanitary District.

2013. DISTRICT SECRETARY

“District Secretary” is the Secretary of said Board.

2014. DISTRICT SERVICE UNITS

“District Service Units” shall mean those District properties or locations as designated by the District for annual clean-up events or for District requested clean-up services.

2015. DWELLING UNIT

“Dwelling Unit” shall mean any individual living unit in single family dwelling (SFD) or multi-family dwelling (MFD) structure or building intended for or capable of being utilized for residential living, either attached or detached, not including commercial units.

2016. E-WASTE

“E-Waste” shall mean discarded electrical or electronic devices such as cell phones, computers, monitors, televisions, and other items not containing cathode ray tubes.

2017. FRANCHISEE

“Franchisee” shall mean the entity granted a franchise by the District to collect and dispose of Solid Waste, Recyclable Materials, and/or Green Waste.

2018. GARBAGE

“Garbage” should mean all non-reusable, non-recyclable, non-compostable, and non-hazardous items. Garbage must be generated by and at the Service Unit wherein the Garbage is collected. Garbage does not include those items defined herein as Yard Waste or Recyclable Materials.

2019. HAZARDOUS WASTE

“Hazardous Waste” shall mean any material defined as hazardous under state or federal law or any regulations promulgated pursuant to such law, as such laws or regulations may be amended from time to time.

2020. LARGE ITEMS

“Large Items” shall mean those materials which are attributed to the normal activities of the Service Unit wherein the Large Items are collected, including furniture, carpets, mattresses, clothing, tires without rims, Large Green Waste, or some combination of such items in a container, the dimensions of the container-not exceeding four feet by four feet by two feet (4’x4’x2’) and weighing no more than 60 pounds.

2021. LATERAL SEWER (SEWER LATERAL)

The sewer line from the service unit to the sewer main further defined as follows:

LOWER LATERAL SEWER (LOWER SEWER LATERAL): The portion of the lateral sewer located within public street right of way, generally between the cleanout and the sewer main and is owned by the District. District will only maintain and service the lower lateral if an accessible cleanout is present.

UPPER LATERAL SEWER (UPPER SEWER LATERAL): The portion of the lateral sewer located on private property, generally between the cleanout and the service unit. If the sewer

main is located in an easement, the entire lateral shall be considered to be the Upper Sewer Lateral.

2022. MIXED-USE DWELLING

A Mixed-Use Dwelling is a dwelling unit that is property type that combines multiple zoned uses.

2023. MULTI-FAMILY SERVICE UNIT

A multi-family service unit is one in which multiple separate housing units for residential inhabitants are contained within one building or several buildings within one complex.

2024. OWNER

“Owner” shall mean the person(s) or entity(ies) holding title to the premises.

2025. PIPELINE ASSESSMENT CERTIFICATION PROGRAM (PACP)

The North American standard for pipeline defect identification and assessment.

2026. PERSON

“Person” is any person, firm, company, corporation or association.

2027. PLUMBING FIXTURES

“Plumbing Fixtures” is an approved receptacle or device intended to receive sanitary sewage and to discharge same into the sewer to which it is connected.

2028. RECYCLABLE MATERIALS

“Recyclable Materials” shall mean those materials that are capable of being recycled and which would otherwise be processed or disposed of as Solid Waste.

2029. SERVICE RECIPIENT

“Service Recipient” shall mean an individual or company receiving Collection Service.

2030. SERVICE UNIT

“Service Unit” shall mean single family dwelling (SFD) Service Units, Multiple Family Dwelling (MFD) Service Units, Business Service Units including hotels and any unit used as rental business such as Airbnb, or Commercial Service Units.

2031. STREET

“Street” is any public highway, road, street, avenue, alleyway, easement or right of way.

2032. TENANT

“Tenant” shall mean any person(s) or entity(ies), other than the Owner, occupying or in possession of the Commercial Service Unit or Dwelling Unit.

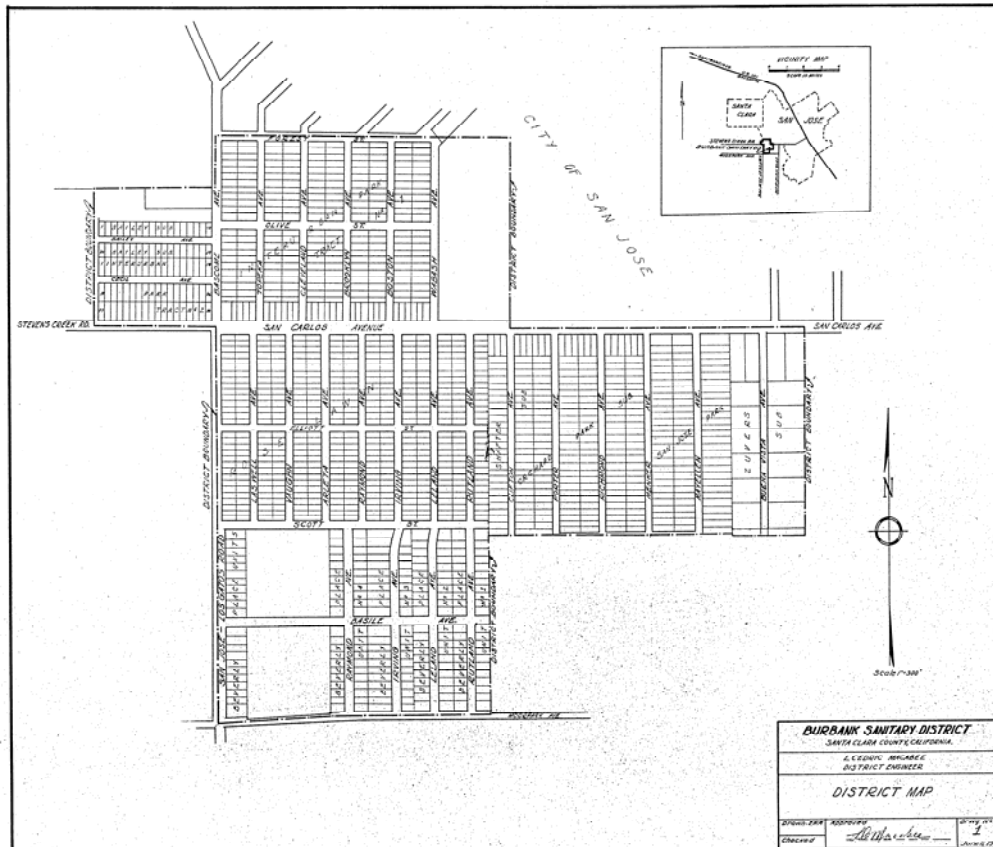
2033. YARD WASTE

“Yard Waste” shall mean any vegetative matter resulting from normal yard and landscaping maintenance that is not more than three feet in its longest dimension or six inches in diameter and fits in the receptacle utilized by the Service Recipient with the lid closed. Yard Waste includes branches cut to fit loosely in container, Christmas trees, grass clippings, leaves, sawdust, and tree trimmings and must be placed in the green yard waste container. Yard waste must be generated by and at the Service Unit wherein the yard waste is collected.

CHAPTER III ORGANIZATION

3000. LEGAL AUTHORITY

The Santa Clara County Board of Supervisors on May 20, 1940 adopted a resolution establishing in Santa Clara County, a sanitary district to be known as the BURBANK SANITARY DISTRICT. The Burbank Sanitary District is duly organized and existing under and pursuant to Part 1 of Division 6 of the Health and Safety Code (commencing at Section 6400), and in its incorporation proceedings complied with the provisions of the District Investigation Act of 1933 (California Statutes 1933, Page 2141, and as amended 1937, Chapter 837). The original formation of the District was the authority to operate and maintain sanitary sewer system. The original district boundary map is shown below:



On June 14, 1940, the Board of Directors adopted Ordinances No. 1, 2 and 3 establishing time and place for the regular board meeting, declaring the results of classification by lot of the members of the sanitary board and adopting an official seal for the District.

On July 6, 1944, the Board of Directors adopted Ordinance No. 8 regulating the collection and removal of garbage in the District and updated said ordinance with Ordinance No. 57, adopted on November 15, 2007 in compliance with California Integrated Waste Management Act of 1989 and subsequent additions and amendments (codified at California Public Resources Code Section 40000 et seq.) .

On May 19, 1994, the Board of Directors adopted trial street sweeping with Green Waste Recovery Company to keep streets clean. This street sweeping operation was terminated on November 1, 2015.

3001. 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.

3002. MEETINGS OF THE DISTRICT BOARD

Regular Meetings. The regular meetings of the Board shall be held on the first and third Tuesdays of each calendar month at the hour of 7:00 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.

Meeting Place. All meetings of the Board shall be held at the District business office, unless the meeting is adjourned to or fixed to another place of meeting in a notice for such meeting.

3003. 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.

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 in the absence of a District Clerk 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.

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.

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.

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.

CHAPTER IV POLICY REGARDING SEWER CONNECTIONS, CLEANOUTS, MAINTENANCE OF SEWER LATERALS, WORK AROUND EXISTING SEWERS AND SEWAGE BACKFLOW PREVENTION DEVICES

ARTICLE 1: GENERAL PROVISIONS

4100. RULES AND REGULATIONS

The following rules and regulations respecting sewer connection of the Burbank Sanitary District are hereby adopted and all work in respect thereto shall be performed as herein required and not otherwise.

4101. UNLAWFUL VIOLATION

Following the effective date of this code it shall be unlawful for any person to connect to, construct, install or provide other means of sewage disposal from any building in the Burbank Sanitary District except by connection to the sewerage system of said district in the manner as in this code provided.

4102. PERMIT, INSPECTION, AND FEES

Prior to any work being performed the property owner shall obtain a permit from the District and pay all fees due and payable. Condition of permit is subject to inspection to ensure compliance with District standards.

ARTICLE 2: GENERAL REQUIREMENTS AND PROCEDURES

4200. CONNECTION TO SEWER

All new buildings within the District shall connect to the District sewer system and all land development projects shall include provisions for future buildings to connect to the District's sewer system. An individual side sewer shall be provided for each building, except that when a building is located in the rear of another building on an interior lot, permission may be granted by the District to connect both buildings to the same side sewer, provided the buildings are under the same ownership and it would not be possible for the buildings to become vested under separate ownership.

Notwithstanding the provision hereof, single family residential units with common walls, condominiums, stock cooperatives, apartments or other similar improvement which entitles owners of interests therein to occupy independent ownership interests and to make joint use of utility and other services, which may be provided by facilities owned in common, may, upon issuance of a permit authorizing such common use by the District Engineer, be permitted to maintain a common side sewer or sewers.

4201. CLEANOUTS

All new lower sewer laterals shall be provided by the connector, with a new property line cleanout within five feet from the back edge of a standard sidewalk or from property line. The cleanout location will be determined by the District Engineer. All cleanouts shall meet the Standard Specifications of the District and shall be owned and maintained by the connector/owner.

All existing sewer laterals, which do not have cleanouts, will be required to have a cleanout installed upon the following triggering events:

1. When property is being issued any building permits.
2. When the lower lateral is replaced as part of the District's 10-Year Capital Improvement Project.
3. When there is a sanitary sewer overflow and the cause for the overflow is caused by lower sewer lateral condition PACP Rating 4 or 5.

Cleanouts are owned and maintained by the property owner. The cost to install cleanouts will be borne by the owner. When cleanouts are installed by the District upon one of the above triggers, the property owner has the right to pay cash upon demand by the District and must pay within 30 calendar days. If the property owner fails to pay cash for the cleanout, the District will include the cost of the cleanout as part of the sewer service charges charged to that property that are placed on the tax roll, divided into four equal installments over a period of four (4) years, without interest.

4202. MAINTENANCE OF SEWER LATERALS

It shall be the responsibility of the property owner to maintain both the upper and lower sewer laterals, except that if a cleanout is provided pursuant to Section 4104 hereof, the District will maintain the lower sewer lateral. In the event of a stoppage in the upper sewer lateral, which is caused by the connector, property owner shall reimburse the District for expenses incurred in clearing the stoppage. Where a sewer lateral provides service to more than one unit or dwelling unit in a development with common walls, a condominium, a stock cooperative, an apartment or other similar improvements, the obligation to maintain the upper sewer lateral shall be borne by the homeowners' association or other entity responsible for the maintenance of the property and facilities owned in common.

4203. WORK ABOUT EXISTING SEWERS

Any person who undertakes to pave, resurface, grade or do any work that contains District sewers shall not cover up or conceal any manhole, or structure or their covers, and every care must be used to protect them. In the event said work results in damage to, or a change of grade in the area of the manhole or structure, the person performing the work shall be responsible, at their own expense, for repairing or modifying the manhole or structure to meet the new grade. Before any work is performed upon District manholes or structures, the District Office shall be contacted and all work shall be done under the direction of the District Engineer, and in accordance with District standards.

4204. PLUMBING TOO LOW

In all buildings in which there are plumbing fixtures at an elevation too low to permit drainage by gravity from said fixtures to the main or other public sewers, the sewage from said fixtures shall be lifted by artificial means and discharged to the public sewer at the owner's expense.

4205. SEWAGE BACKFLOW PREVENTION DEVICE

To assist in the protection of health and property, a backflow valve or overflow device (backflow prevention device) shall be installed within one foot from the property line cleanout serving where a lateral flow to the sewer main is by gravity and any building where the lowest floor elevation (containing plumbing fixtures) will be less than one (1) foot above the rim of the nearest upstream manhole or flushing inlet. The cost of the backflow prevention device shall be at the expense of the property owner.

ARTICLE 3: LIMITATIONS ON POINT OF DISCHARGE

4300. FATS, OIL, AND GREASE (FOG)

No person shall discharge, or cause, allow, or permit to be discharged into the sanitary sewer system any liquid or other waste containing floatable and/or dispersed grease, vegetable oil, petroleum oil, non-biodegradable cutting oil, or fat, oil, or grease or products of animal, vegetable, or mineral origin, in excess of 150 parts per million by weight.

4301. TOXIC GASES, VAPORS, AND FUMES

No Person shall discharge, or cause, allow, or permit to be discharged into the sanitary sewer system any substance of any kind whatsoever which results in the presence of toxic gases, vapors or fumes within the system in a quantity that may cause acute health and/or safety problems for workers in the sanitary sewer system.

4302. FLAMMABLE LIQUIDS, GASES, AND SOLIDS

No person shall discharge, or cause, allow, or permit to be discharged into the sanitary sewer system any gasoline, benzene, naphtha, fuel oil, or any flammable liquid, solid vapor, or gas or other substance, including but not limited to any substance having a closed cup flash point of less than one hundred forty degrees Fahrenheit (140 F) or sixty degrees Centigrade (60 C), using the test, methods specified in Section 261.21 of Title 40 of the Code of Federal Regulations.

4303. REGULATION OF TRUCKED OR HAULED WASTE

No person shall cause, allow, or permit to be discharged into the sanitary sewer system any trucked or hauled waste, except at a site specifically designated in a wastewater discharge permit or a receiving station permit.

4304. TRUCKED OR HAULED WASTE DEFINED

“Trucked or Hauled Waste” means any waste discharged into the sanitary sewer system after being transported by motorized vehicle from the location where the waste was generated or produced.

CHAPTER V INFORMAL BIDDING ACT, STANDARD PLANS AND SPECIFICATIONS, AND CONTRACTOR'S REQUIREMENTS

ARTICLE 1: THE UNIFORM PUBLIC CONSTRUCTION COST ACCOUNT ACT ("INFORMAL BIDDING ACT")

5100. THE UNIFORM PUBLIC CONSTRUCTION COST ACCOUNT ACT ("INFORMAL BIDDING ACT")

The Uniform Public Construction Cost Account Act ("the Act"), as set forth in Article 3 of Chapter 2, Part 3, Division 2 (commencing with Section 22000 *et seq.* of the California Public Contract Code). Among other things, authorizes California local agencies to utilize less formal bidding procedures for public projects valued at less than \$175,000, which threshold is increased from time to time; and the Act requires California local agencies to implement uniform cost accounting standards to track the cost of certain public projects that they perform with their own employees; and the California Uniform Public Construction Cost Accounting Commission ("the Commission") has developed mandatory procedures for tracking the cost of projects performed with the agency's own employees, as set forth in the Commission's Cost Accounting Policies and Procedures Manual (the "Cost Accounting Manual"). Pursuant to Section 22030 of the Public Contract Code, the Burbank Sanitary District elected to become subject to the uniform construction cost accounting procedures and formal and informal bidding thresholds set forth in the Act as it may be amended from time to time, and to the commission's cost accounting policies and procedures as contained in the Cost Accounting Manual, as it may be amended from time to time.

ARTICLE 2: STANDARD PLANS AND SPECIFICATIONS

5200. STANDARD PLANS AND SPECIFICATIONS

Minimum standards for the construction of sewers within the District shall be in accordance with the Standard Plans (Details) and Specifications heretofore or hereafter adopted by the District, copies of which are on file and available to the public in the District office. The District Engineer shall have authority to modify the Standard Plans and Specifications whenever he deems such modifications to be necessary or appropriate to accommodate the requirements of the project, or construction conditions, or any physical or environmental circumstances.

"As-built" drawings, in electronic format (PDF) and the number of hard copies required by the District Engineer, showing the actual location of all mains, structures, "Y"s, laterals and cleanouts shall be filed with the District before final acceptance of the work.

5201. COMPLIANCE WITH REGULATIONS

Any person constructing a sewer within a public street shall comply with all applicable laws pertaining to the installation of sanitary sewers and any related activities, including cutting of pavement, opening, barricading, lighting and protection of trenches, backfilling and repaving thereof and shall obtain all permits and pay all fees required by the agency having jurisdiction prior to the issuance of a permit by the District. Where an encroachment permit is required to be obtained for sewer work to be performed within a public street, a copy of such permit or other evidence of the issuance thereof shall be provided to the District as a prerequisite to the issuance of any permit by the District for such sewer work.

5202. CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS (DIR)

All District work (including maintenance and construction projects, except for work performed under the Installer's Agreement prior to acceptance of said improvements by the District) requires compliance with the Prevailing Wage Law and subject to compliance monitoring and enforcement by the California Department of Industrial Relations, pursuant to Labor Code section 1771.4. Under California Labor

Code section 1771.1, a contractor may not bid, nor be listed as a qualified District contractor, for any bid proposal submitted for a public work unless the contractor and its subcontractors are registered and qualified to perform public work pursuant to section 1725.5 of the Labor Code. The Bidder and its Subcontractors must be registered and qualified to perform public work pursuant to section 1725.5 of the Labor Code, subject to limited legal exceptions under Labor Code section 1771.1.

In accordance with the provisions of Section 1773.3 of the Labor Code, District will provide notice to the Department of Industrial Relations (DIR) of the award of any public works contract subject to the requirements of Chapter 1 of Part 7 of the Labor Code, within 30 days of the award. The notice shall be transmitted electronically in a format specified by the DIR (see <https://www.dir.ca.gov/pwc100ext/>) and will include the name of the contractor, any subcontractor listed on the successful bid, the bid and contract award dates, the contract amount, the estimated start and completion dates, job site location, and any additional information the DIR specifies that aids in the administration and enforcement of this chapter.

ARTICLE 3: CONTRACTOR'S REQUIREMENTS

5300. CONTRACTOR'S REGISTRATION

It shall be unlawful for any person to install or construct any sewer for connection to, or make connection to, the District sewer system, who is not a master plumber or contractor, whichever is applicable, and licensed to perform such work under the State Contractor's License Law. All such contractors must register with the District Manager prior to commencing or carrying out any such work within the District.

5301. CONTRACTOR'S INSURANCE

All contractors and installers shall procure and maintain for the duration of the contract, including any applicable warranty period, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the contractor or installer or its agents, representatives, employees or subcontractors. Unless otherwise permitted or required by the District Manager in writing, such insurance shall conform to the following specifications:

A. Minimum scope and limits of insurance.

1. General liability, occurrence form (including operations, products and completed operations): \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile liability: \$1,000,000 per accident for bodily injury and property damage.
3. Workers' compensation insurance: as required by State law.
4. Employer's liability: \$1,000,000 per accident for bodily injury or death.

B. Deductibles. Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of the District, either the insurer shall reduce or eliminate the deductible or self-insured retention as respects the District or the contractor shall provide a financial guarantee satisfactory to the District guaranteeing payment of losses, investigation and defense costs, and other expenses allocated to the deductible or self-insured retention.

C. Insurance policy provisions. The general liability and automobile liability policies shall contain, or be endorsed to contain, the following provisions:

1. The District, the District Manager, and the County in which the work will be performed, and their respective officers, officials, employees, agents, and volunteers ("Insured Parties") shall be named as additional insureds.

2. For any claims related to the work, the contractor's insurance coverage shall be primary as respects the Insured Parties and any insurance or self-insurance maintained by any of the Insured Parties shall be in excess of the contractor's insurance and shall not contribute with it.
 3. The contractor's insurance shall apply separately to each of the Insured Parties against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 4. Each insurance policy required by this Section shall be endorsed to state that coverage shall not be reduced, suspended or canceled by either party except after thirty (30) days prior written notice has been given to the District.
- D. **Verification of coverage.** The contractor shall furnish the District with original certificates of insurance or endorsements evidencing coverage required by Article 2, Section 5201 of this Chapter, in form and substance satisfactory to the District Manager. The certificates shall be received and approved prior to commencement of any work. At the request of the District, the contractor shall provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by this Section.
- A. **Subcontractors.** The contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All subcontractors shall be subject to the insurance requirements set forth in this Section.

5302. SECURITY FOR PERFORMANCE OF WORK

All contractors or installers shall file with the District Manager a Faithful Performance Bond and a Labor and Material Bond, each in the amount of 100% of the contract for District let jobs and 100% of the District Engineer's estimate for installer let contracts. Said Bonds are to be on forms provided or approved by the District and shall remain in effect for a minimum of one year after acceptance of the improvements by the District Board or the District Engineer and may not to be cancelled until released by the District. Upon approval by the District Board, alternative security may be provided instead of performance and payment bonds, including an irrevocable letter of credit or an irrevocable assignment of a bank account, certificate of deposit, or negotiable securities, all such documents to be in form and substance approved by the District Counsel.

5303. INSPECTIONS

All sanitary sewer construction work conducted within the District shall be subject to inspection by the District Engineer or his representative. The District Engineer may specify certain stages of the work at which inspection approval by the District Engineer must be granted before the work is allowed to proceed.

No construction shall be covered until it has been inspected and approved by the District Engineer. After approval, the contractor shall backfill any trench without delay and restore the surface to its original condition. Construction that has been covered without approval of the District Engineer shall, upon demand by the District Engineer, be uncovered for inspection. In all cases where inspection is required, the contractor shall give at least two (2) business days advance notice to the District Engineer stating the time when the work will reach the stage of completion at which the inspection must be conducted.

5304. CORRECTION OF DEFECTS

All persons performing work connected with the sanitary sewer system shall be held strictly responsible for any and all acts of agents, subcontractors, and employees in connection with said work. The contractor or installer shall be solely liable for any defects in the performance of its work, or any failure of the improvements that may be caused by such defects.

In the event any construction, when inspected by the District, is found to be defective, the Contractor shall take immediate steps to correct such defects to the satisfaction of the District Engineer.

5305. INDEMNIFICATION

The contractor or installer shall indemnify, defend, and hold the District, the District Board of Directors, the District Manager, and the County in which the work will be performed, and their respective officers, officials, employees, agents and volunteers ("Indemnitees"), free and harmless from any and all causes of action, claims, liabilities, obligations, judgments or damages, including reasonable attorney's fees and costs of litigation, arising out of the contractor's performance of its obligations under any agreement with the District or out of the operations conducted by the contractor related to the District's sewer system, including the District's active or passive negligence, except for loss or damage arising from the sole negligence or willful misconduct of the District. In the event the District or other Indemnitee is made a party to any action, lawsuit, or other adversarial proceeding arising from the contractor's performance of the work, the contractor shall provide a defense to the District and Indemnitees or, at the District's option, reimburse the District or the Indemnitees their costs of defense, including reasonable attorney's fees, incurred in defense of such claims.

CHAPTER VI GREASE CONTROL DEVICES

6000. GREASE CONTROL DEVICE INSTALLATION

- A. The District Manager reserves the right to make determinations of grease interceptor or device size, adequacy, location and need, based on review of relevant information.
- B. Any food service establishment, or other type of business or establishment where grease or other viscous, obstructing, or objectionable materials may be discharged into a public or private sewage main or disposal system, shall have a grease control device and related plumbing of a size and design approved by the District Manager.
- C. Each grease removal device shall be so installed and connected that it shall be at all times easily accessible for inspection, sampling, cleaning and removal of grease, and other matter from all surfaces. District Manager-Engineer will approve locations of all grease and oil/sand separator devices by acknowledging and signing the design plans. User shall not install any device if there is no signed approval from the District Manager.
- D. A Grease control device should be situated on the discharger's premises except when such a location would be impractical or cause undue hardship on the discharger. The District may, subject to the issuance of an encroachment permit by the entity having jurisdiction, allow the device to be installed in the Public Street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles.
- E. Waste discharge from fixtures and equipment in establishments which may contain grease or other objectionable materials including, but not limited to, scullery sinks, pot and pan sinks, food waste disposals, soup kettles, and floor drains located in areas where such objectionable materials may exist, shall be drained into the sanitary waste through the grease control device unless otherwise approved by the District Manager provided, however, that toilets, urinals, wash basins, and other fixtures containing fecal material shall not flow through the grease removal device.

6001. MAINTENANCE, OPERATION AND ENFORCEMENT OF GREASE CONTROL DEVICES

- A. The District Manager reserves the right to make determinations of grease trap and/or interceptor size, adequacy, location and need, based on review of relevant information, including, but not limited to grease trap and/or interceptor performance, waste stream characteristics, facility location, maintenance needs, and or inspection needs.
- B. Grease control devices shall be maintained in efficient operating condition by periodic removal of the accumulated grease. The use of chemicals, bacteria, enzymes or other additives that have the effect of emulsifying or dissolving grease is prohibited unless specifically authorized by the District Manager in writing. No accumulated grease shall be introduced into any drainage piping or public or private sewer.
- C. Grease control devices shall be cleaned on a sufficient frequency to prevent objectionable odors, surcharge of the grease control device, or interference with the operation of the sanitary sewer system.
 - 1. Grease traps shall be cleaned at least once every thirty (30) days.
 - 2. Grease interceptors shall be cleaned once every ninety (90) days.
 - 3. Oil and sand separator shall be cleaned once every 2 years.
 - 4. Mechanical Grease Removal Devices must be maintained in a manner and frequency consistent with manufacturer specifications and guidance.
 - 5. Grease control devices shall be cleaned when their last chamber is filled to twenty-five percent (25%) or more of capacity with grease or settled solids. Grease interceptors with a sample box shall be cleaned immediately when grease is evident in the sample box.
 - 6. Grease control devices shall be cleaned by being pumped dry and all accumulated sludge on all surfaces shall be removed by washing down the sides, baffles, and tees. No water removed from the device during cleaning shall be returned to the grease control device.
- D. Dischargers shall maintain records on site for a period of at least 3 years as follows:
 - 1. Dischargers with an installed control device shall maintain records showing that the control device has been properly maintained and cleaned as required by subsections B, C, and D.

2. Food service establishments shall maintain records showing the following related to all grease hauled off site: date and time material removed off site; volume removed; hauler name: truck license number, type of grease removed, and final destination of material collected.
- E. Existing Facilities: If in the opinion of the District Manager, an existing user requires the installation of a grease removal device for the proper handling of grease-laden wastewaters, the District will provide the user written notification of the requirement which will include a compliance timeline. Failure on the part of a user to install a required grease removal device within the specified time will result in the initiation of enforcement action against the user and may result in the issuance of fines or the termination of service.
 - F. Violations, Enforcement and Penalties: In the event that a user's grease interceptor or other removal device fails a visual inspection, effluent sample analysis or inadequate maintenance records, the user shall be given written notice of non-compliant condition. User shall take immediate steps to bring the facility into compliance. Failure on the part of any user to maintain continual compliance with any of the requirements set forth herein will result in the initiation of enforcement action. Such enforcement action may include, but not limited to, the issuance of a warning letter, notice of violations, administrative citations in accordance with Chapter X – "Enforcement and Penalty."

CHAPTER VII SEWER PERMITS, FEES AND SERVICE CHARGES

ARTICLE 1: CONNECTION PERMIT

7100. CONNECTION PERMIT

No one shall connect to the District sewer system or disconnect from the District sewer system without obtaining a sewer connection/disconnection permit from the District Manager. Anyone connecting or disconnecting to or from the District's sewer system may be subject to one or more of the connection permit fees.

7101. CONNECTION PERMIT FEES

TYPES OF PERMIT FEES	AMOUNT
1) Residential Charges. Persons desiring connection to the sanitary sewer system of the District for residential use shall pay to the District, prior to issuance of a permit, a connection charge in the amount of Three Thousand Two Hundred Dollars (\$3,200.00) per dwelling unit.	\$3,200.00/per dwelling unit
2) Commercial, Industrial, Public and Other Users. Persons desiring connection to the sanitary sewer system of the District for other than residential use shall pay to the District, prior to issuance of a permit, a connection charge in the amount of Three Thousand Two Hundred Dollars (\$3,200.00) per unit.	\$3,200.00/per unit
3) Sewer Clean-Out Permit Fee. The sewer clean-out fee shall be Four Hundred and Forty Dollars (\$440). This fee includes an inspection by the District Engineer. If problems arise and further inspections or assistance are needed additional fees levied will be actual costs incurred by the District.	\$440.00
4) Plan Check Fee. A plan check fee shall be levied in the amount of Three Hundred Dollars (\$300.00)	\$300.00
5) Lateral Inspection Fee. A lateral inspection fee shall be levied in the amount of Two Hundred Dollars (\$200.00)	\$200.00

7102. CEQA EXEMPTION

Adoption of this code is statutorily exempt from the requirements of the California Environmental Quality Act and the State Guidelines promulgated by the Act in that the purpose of the code, as specified above, is to provide for the generation of revenues from rates and charges to meet the District's operating expenses and other financial needs of the kind referred to in Public Resources Code §21080(b)(8) and California Code of Regulations §15273(a).

ARTICLE 2: SEWER SERVICE CHARGES

7200. PURPOSE OF SEWER SERVICE CHARGE

The purpose of the sewer service charge is to generate revenue to pay for the costs of maintenance, construction, and reconstruction of the District's wastewater facilities for the collection, conveyance, treatment, and disposal of wastewater, and for other expenditures deemed necessary by the District to

conduct its business except to the extent prohibited by Sections 5471 and 6520.5 of the Health and Safety Code.

7201. CUSTOMERS SUBJECT TO CHARGE

All premises connected to the District’s wastewater system are subject to the sewer service charge. Those premises which are unable to make the connection are exempt from the sewer service charge. It is the sole responsibility of the premises’ owner to notify the District of the grounds for any claimed exemption.

7202. RATE SCHEDULE

- A. Residential Customer Sewer Service Charge. The annual sewer service charge for residential users are specified below:

Table 1. Residential Customer Sewer Service Charges 2016-2020

Fiscal Year	Detached Single Family Dwelling	Each Dwelling Unit of a Multiple Family Residential Structure
2016-2017	\$604.08	\$343.44
2017-2018	\$694.68	\$394.92
2018-2019	\$798.84	\$454.20
2019-2020	\$918.72	\$522.36

In each case the flat rate charge shall apply regardless of the size, number of occupants or other use or occupancy characteristics of the dwelling unit.

- B. Nonresidential Customer Sewer Service Charge. The annual sewer service charge for nonresidential users shall be computed at the rate per unit of annual water consumption applicable to the classification of use and fiscal year specified below:

Table 2. Nonresidential Customer Sewer Service Charge 2016-2020

Fiscal Year	Rate in Dollars Per One Hundred Cubic Feet of Water Consumption		
	Garages, Service Station	Restaurants and Bars	Retail Commercial, Office, School, Other
2016-2017	\$4.84	\$11.10	\$4.16
2017-2018	\$5.57	\$12.77	\$4.78
2018-2019	\$6.41	\$14.69	\$5.50
2019-2020	\$7.37	\$16.89	\$6.32

Regardless of the amount of water consumed by any nonresidential user, there shall be a minimum annual sewer service charge for each of the following classifications connected to the District’s wastewater collection system:

Table 3. Minimum Nonresidential Sewer Service Charge 2016-2020

Fiscal Year	Garages, Service Station	Restaurants and Bars	Retail Commercial, Office, School, Other
2016-2017	\$1,717.44	\$1,809.60	\$432.96
2017-2018	\$1,975.08	\$2,081.04	\$497.88
2018-2019	\$2,271.36	\$2,393.16	\$572.52
2019-2020	\$2,612.04	\$2,752.08	\$658.44

- C. Subject to the provisions of Section 7204 annual water consumption shall be determined as follows: Water consumption for nonresidential premises shall be based upon actual metered

water consumption (measured in units) for the first two (2) month water billing period of the current calendar year, and then annualized to reflect a period equivalent to twelve (12) months. As used in this Section, a unit consumption is defined as the equivalent of a volume of water measuring one hundred cubic feet.

7203. RATE CHANGE

The District follows the procedures defined by Proposition 218 for any modifications or changes to sewer service charges.

7204. NONRESIDENTIAL ADDED PROVISIONS

The following are additional provisions applicable to the computation of the sewer service charge for nonresidential customer:

- A. Upon application to the District by customers maintaining extensive irrigated landscaping or in other situations where it can be conclusively established that water consumption determined as provided in Section 7202.(C) above is not a valid measure of the quantity of wastewater discharged, the quantity of wastewater to be used in determining the yearly rate shall be determined by the District Manager, taking into account information it deems pertinent.
- B. The District or the customer may require the installation of District-approved recording and sampling devices or flow meters on the premises for use by the District at the customer's expense. Such devices or meters shall be available for inspection at any reasonable time. Recording devices shall be capable of recording instantaneous and accumulated flows, and sampling devices shall be automatic and capable of twenty-four-hour storage and maintenance of temperature between 35 degrees and 40 degrees Fahrenheit and have a 5-gallon capacity as approved by the District. The customer shall be responsible for the maintenance, repair and replacement of all sampling or recording devices and equipment.

7205. VACANCY

No Credit, adjustment or refund shall be made to any customer because the premises or any part thereof are vacant, unless said premises are disconnected from the sewer system and capped in compliance with the District's rules and regulations.

7206. EFFECTIVE DATE OF CHARGES

Charges and rates established by this Section shall be effective upon the date specified by the District and shall apply to all premises connected at the time to the District's wastewater system. Premises that are connected to the system after the effective date shall be subject to the sewer service charge effective as of and pro-rated from the date of connection; such charge shall be billed directly in accordance with Section 6210 below.

7207. PERSON RESPONSIBLE

The owner of any premises is and shall be responsible for payment of any and all sewer service charge applicable to the premises. It is the duty of each owner to ascertain from the District the amount and due date of any charge applicable to the owner's premises and to pay the charge when due and payable. It is the duty of all owners of all premises to inform the District immediately of all circumstances, and of any change or changes in any circumstances, which will in any way affect the applicability of any charge to the premises or amount of any such charge.

7208. ADJUSTMENTS PURSUANT TO SPECIAL STUDIES

- A. The intent of this code, in establishing different sewer service charges for different classifications of properties, is to reflect the benefit from such service to each property. If a customer believes that the applicable sewer service charge is unreasonably high, that customer may request that a special study be conducted by District staff to determine the appropriate sewer service charge. Such study will be undertaken upon payment by the customer of the cost for such study. If the

District independently believes that an applicable sewer service charge is inaccurate, it may conduct a special study. Studies voluntarily undertaken by the District shall be at the District's expense.

- B. If the special study is completed sufficiently in advance of when payment is due, or when the sewer service charge is submitted to the County of Santa Clara, the amount of the charge may be adjusted based on the results of the special study and the District may in its discretion provide a separate bill for the charge. However, if the special study cannot be completed prior the time such charges are due or must be submitted to the County of Santa Clara, the customer shall pay sewer service charges specified in Section 6203. If the subsequently completed special study results in a sewer service charge that exceeds the charge actually paid or billed on the tax roll by more than ten percent (10%), the customer shall be responsible, and will be billed separately for the difference. If the subsequently completed special study results in a sewer service charge that is more than ten percent (10%) less than the charge actually paid or billed on the tax roll the District will refund the difference to the parcel owner by separate payment.

7209. USE OF REVENUE

Revenue derived under this code shall be used for the acquisition, construction or reconstruction, maintenance and operation of sanitation or sewage facilities of the District including cost of treatment and disposal of sewer at the San Jose-Santa Clara Regional Wastewater Facility and to set aside dollar amounts for the District's reserve policy as herein specified, to repay the principal and interest on bonds for the construction of such facilities, and to repay any federal or state loans or advances made to the District for the construction or reconstruction of such facilities; provided, however, the revenues shall not be used for the acquisition or construction of new local street sewers or laterals, as distinguished from main trunk, interceptor and outfall sewers. Generally, these revenues are to pay the costs of maintenance, operation, construction, conveyance, treatment, and disposal of wastewater, and for other expenditures deemed necessary by the District to conduct its business except to the extent prohibited by Section 5471 of the Health and Safety Code and the Sanitary District Act (Health and Safety Code sections 6400 *et seq.*).

- A. **District Reserve Policy Statement.** One key element of prudent financial planning is to ensure that sufficient funding is available for current operating, capital and debt service cost needs. An additional critical element of fiscal responsibility is to anticipate and prepare for future funding requirements as well as for unforeseen disasters and other unforeseen events. The District will at all times strive to have sufficient funding available to meet its operating, capital, and debt service cost obligations. Reserve funds will be accumulated and maintained in a manner, which allows District to fund costs consistent with District Adopted 10-Year CIP Plan while avoiding significant rate fluctuations due to changes in cash flow requirements. District will also maintain an emergency reserve position that may be utilized to fund unexpected disasters or unanticipated major failures. The Board of Directors will annually review the level of reserve funds maintained.

- B. **Definitions:**

- Restricted Reserves:

- Restrictions on their use are imposed by an outside source such as creditors, granters, contributors, or laws or regulations of other governments.

- Unrestricted Reserves:

- Have no externally imposed use restriction. The use of Unrestricted Reserve funds is at the discretion of the Board of Directors. There are two categories of Unrestricted Reserves - Designated and Undesignated. At the District, all Unrestricted Reserves are Designated Reserves. Set-aside for a specific purpose, which is determined by the Board of Directors. The Board of Directors also has the authority to redirect the use of these reserve funds as needs of District change.

C. DISTRICT RESERVES

The District maintains the following reserve funds:

1. Restricted Reserves:
 - a) Capital Improvement Reserve:

The purpose of the Capital Improvement Reserve is to finance future capital facilities beyond the 10-Year Adopted CIP, including CPI and capital support costs that are not included in the budget. These capital improvements are identified in the District's Asset Management Plan and Comprehensive Financial Plan Update. These reserve funds are accumulated in an orderly manner in conformance with State law and drawn down as required.
2. Unrestricted Designated Reserves:
 - a) Operating Reserve:

Since the majority of operating revenues are received periodically over the fiscal year and operating expenses are incurred uniformly over the fiscal year, an operating reserve is necessary to fund those costs attributable to daily operations. To meet daily operational needs District has established an Operating Reserve balance at 33% of annual operating expenses.
 - b) Replacement Reserve:

The Replacement Reserve provides funds for capital replacement and rehabilitation of existing facilities beyond the 10-Year Adopted CIP. Replacement reserve funds are accumulated in an orderly manner and drawn down as required to fund capital replacement projects. To avoid abrupt sewer service rate changes, this reserve may be used to stabilize rates.
 - c) Emergency Reserve:

The Emergency Reserve provides funds for emergency response for potential repair or replacement of capital facilities due to damage from a natural disaster or unanticipated failure in a period when capital improvements funds have otherwise been purposely spent down to preset limits on planned projects. The Emergency Reserve is at the discretion of the Board of Directors and is maintained at a level of \$50,000 on an annual basis.

D. SOURCES AND USE OF FUNDS:

RESERVE	SOURCE OF FUNDS	USE OF FUNDS	NOTES
RESTRICTED RESERVES			
Capital Improvement	Interest earned on reserve	Growth related capital expenditures	Funds collected as change in use fees, frontage or area fees
UNRESTRICTED DESIGNATED RESERVES			
Operating	Service charge income and interest earned on reserve	Operating expenses	Reserve balance maintained at 33% of budgeted operating expenses. Excess (deficit) funds transferred to/from Replacement Reserve
Replacement	100% of Capacity/Developers Fees, service charge income, and Interest earned on reserve	Replacement related capital expenditures and rate stabilization	Limited to 10-year capital replacement costs as identified in the Comprehensive Financial Plan Update
Emergency	Originally funded by board action. Interest earned on reserve	Emergency repair or replacement expenditures	Reserve balance maintained at \$50,000 level. Excess funds transferred to Replacement Reserve

7210. BILLING

The District elects, as the primary procedure for the collection of sewer service charges prescribed or imposed by the provisions of this code, to have sewer service charges for each fiscal year collected on the tax roll of the County of Santa Clara in the same manner, by the same persons and at the same time as property taxes, assessments and other charges collected in that manner.

If the full amount of the applicable sewer service charges for premises connected to or discharging wastewater into the District’s system are, for any reason, not collected on the tax roll, the sewer service charges, or the portion not appearing on the tax roll, shall be collected by direct billing to the property owner. The provisions of this Section shall also apply to sewer service charges accruing after a new connection to the District’s wastewater facilities, in which case the annual charge shall be prorated over the period of time from the date of the new connection to the end of the fiscal year.

- A. Direct Billing.** The District shall ascertain the amount of each sewer service charge applicable to each premise and within sixty (60) days after the date charges become due and payable, mail to the owner a bill for the charges. The bill shall be mailed to the person or persons listed as the owners on the last equalized assessment role of the County of Santa Clara at the address shown on the assessment role, or to the successor in interest and/or the lessee of such owner if known. Each bill shall contain a statement that a delinquency in payment for sixty (60) days shall constitute a lien against the lot or parcel against which the charge is imposed and that when recorded it shall have the force, effect, and priority of a judgment lien for three (3) years unless sooner released or otherwise discharged. Failure of the District to mail or failure of the owner to receive any bill does not excuse the owner of any premises from the obligation of timely paying any sewer service charge for any premises owned by him or her.

- B. How Payable.** Each sewer service charge is due and payable in full at the time of billing; provided, however, if in any fiscal year, a sewer service charge is payable for a period covering eight (8) months, or more, of the fiscal year, the sewer service charge shall be billed in two installments with the first instalment covering the period for which a sewer service charge is owed during the first six (6) months of the fiscal year, and the second installment covering the remaining six months of the fiscal year.
- C. Delinquency Date of Sewer Service Charges.** Each sewer service charge shall be delinquent if not paid on or before thirty (30) days following the date upon which the charge became due and payable.
- D. Where Payable.** Sewer service charges collected by direct billing shall be payable at the administrative office of the District, as noted in the billing.
- E. Penalties for Non-Payment of Sewer Services Charges-Lien.** Whenever a delinquency shall occur for non-payment of sewer service charge, a penalty of ten (10) percent shall attach to such charges, and for each month that such charges remain delinquent a further penalty of one and one-half percent (1-1/2%) of the basic charge shall be added.

7211. SUPERSEDING EFFECT

This code supersedes and repeals all ordinances, resolutions or other order and actions of the Board which may have been adopted previously and which are contrary to or inconsistent with the provisions of this code. To the extent this code or the sewer service charges adopted herein, is challenged and set aside for any reason, the preexisting sewer service charges adopted therein shall be immediately restored and will be effective until further action of the Board of Directors.

CHAPTER VIII THE COLLECTION, REMOVAL, AND DISPOSAL OF ALL SOLID WASTE, RECYCLABLE MATERIALS AND YARD WASTE

8000. MANDATORY SERVICE

The District is authorized to compel all residents and property owners in the district to use the District's garbage collection service pursuant to Health and Safety Code § 6520. All occupied premises within the District to have Solid Waste, Recyclable Materials and Yard Waste collection service as herein provided and all persons occupying such premises are required to use said District collection service, except as hereinafter provided, and to pay the charges thereof, and it shall be unlawful for any person in the District to otherwise dispose Solid Waste, Recyclable Materials and Yard Waste on or from any such premises.

8001. EXCLUSIVE FRANCHISE CONTRACT

The Board of the Burbank Sanitary District has established and will maintain a system for the collection, removal, and disposal of Solid Waste, Recyclable Materials, and Yard Waste from premises upon which Solid Waste, Recyclable Materials, and Yard Waste is also produced within the District with a franchise contract granting an exclusive privilege therefor in pursuant to Public Resources Code § 40059.

District will award Said Franchise Contract after notice calling for sealed proposals therefor, by two publications in a newspaper published in the District, or if there is none then in a newspaper circulated in the District, the first of which shall be at least ten (10) days before the day fixed for opening proposals.

Said contract will be awarded to the responsible proposer who provides the best combination of favorable rates to the people of the District and the highest consideration to the District. All other things being equal, greater consideration shall be given to rates to the people rather than price to the District. In considering the responsibility of proposers, weight shall be given to former favorable experience and capacity to perform as well as financial ability.

8002. RESPONSIBILITY FOR SERVICE

Every owner or tenant of any commercial service unit or dwelling unit where Solid Waste, Recyclable Materials, and Yard Waste is generated and/or accumulated shall be serviced by Franchisee for collection under the terms of the Franchise Contract and shall pay the designated fee for such services to the Franchisee.

8003. BILLING AND COLLECTION OF PAYMENTS

Franchisee shall be responsible for the billing and collection of payments for all collection services.

8004. RESPONSIBILITY FOR PAYMENT

It shall be unlawful for any person to refuse to pay the collection services fees as established by the Franchise Contract and pursuant to the provisions of this Operations Code.

8005. DISPUTED BILLINGS

In any case where a dispute shall arise as to the fees charged by the Franchisee, the District shall have the power of final determination of such dispute.

8006. DELINQUENT SERVICE ACCOUNTS

Franchisee may report to the District on a monthly basis all service recipients who have received Collection Service and whose account is over sixty (60) days past due. Franchisee may take such action as is legally available to collect or cause collection of such past due amounts. Except upon notice in writing by the District, the Franchisee may not cease provision of Collection Services to any

Service Unit due to non-payment. Franchisee may reduce service to the minimum level of Solid Waste collection for non-payment.

8007. PROHIBITED ACTS

- a. No person owning or occupying any building, lot or premises within the District shall allow any refuse or other deleterious or offensive substance to accumulate or remain in or upon said building, lot, or premises.
- b. No person shall dump, place, or bury in any lot, land or street or alley within the District, any garbage or any other deleterious or offensive substance under any circumstances whatsoever, nor shall any person dump, place, or bury within the District any rubbish without first having obtained a permit from the District to do so.
- c. No refuse or other deleterious or offensive substance shall be burned in the open air within the District except in accordance with all State, County, and District laws and regulations applicable thereto.
- d. Violation of any provision of this Chapter shall be considered an infraction.

8008. CONTAINERS

- a. The Franchisee shall provide each service unit with a refuse container. The Franchisee's employees shall take care not to damage the containers by unnecessary rough treatment. Any container damaged by Franchisee shall be replaced by the Franchisee within three working days at no cost to the service recipient.
- b. Each container and its cover shall be kept clean, and the cover shall not be removed except to place garbage or rubbish therein or empty the same. No garbage container shall be placed or kept in or on any public street, sidewalk, footpath or other public places whatsoever. Each service recipient shall place the container so as to be readily accessible for removing and emptying by the collector.
- c. No rubbish container shall be placed or kept in or on any public street, sidewalk, footpath or other public place or in front of the premises of the person requiring rubbish disposal for over twenty-four (24) hours prior to and twenty-four (24) hours after removal by the collector.
- d. It shall be unlawful for any person, other than the owner thereof or a person authorized by contract with the Board of this District, and other than the Sanitary Inspector of the District or the County Health Officer, or their agents, to tamper with any container on any premises, or to collect, remove, or dispose of the contents thereof.
- e. All containers shall be maintained in a clean, neat and sanitary condition.

8009. PERIODIC SERVICE

All Solid Waste created, produced or accumulated in the District shall be removed by the Franchisee not less than once weekly.

8010. REGULATIONS.

It shall be unlawful for any person to collect or carry refuse through the streets of the District without first having entered into a contract or obtained a permit from the District to do so. It shall also abide by any and all laws of the State, ordinances of the County, regulations and orders of the County Health Department or officer, and ordinances and general regulations of the District, now or hereafter adopted. It is unlawful for any person to permit, allow or enter into any agreement for the collection, removal or disposal of Solid Waste, Recyclable Materials or Yard Waste with any person who is not the District Franchisee, except as to the following:

- a. Recyclable Materials or items are source separated from Solid Waste by a Service Recipient, for which the waste generator sells or is otherwise compensated by a collector in a manner resulting in a net payment to the waste generator;
- b. Solid Waste, Recyclable Materials, Yard Waste, Large Items or Commercial Green Waste, which is removed from any SFD Service Unit or District Service Unit and which is transported

- personally by the owner or occupant of such premises (or by his or her full-time employees) to a processing or Disposal Facility;
- c. Recyclable Materials, Yard Waste or Large Items which are source separated at any premises by the waste generator and donated to youth, civic or charitable organizations;
 - d. Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, §§ 14500, et Seq.;
 - e. Yard Waste removed from the premises by a gardening, landscaping or tree trimming company as an incidental part of a total service offered by that company rather than as a hauling service;
 - f. Materials that are not defined herein as Recyclable Materials but which are collected for recycling by a collector;
 - g. Large Items removed from the premises by a property cleanup or maintenance company as an incidental part of the total cleanup or maintenance service offered by the company rather than as a hauling service;
 - h. Animal waste and remains from slaughterhouse or butcher shops for use as tallow;
 - i. Byproducts of sewage treatment, including sludge, ash, grit and screenings;
 - j. Hazardous Waste regardless of its source; and
 - k. Residential Waste, Commercial Waste, District Waste or Recyclable Materials that are removed from the premises through the performance of a service that the Franchisee has elected not to provide.

CHAPTER IX GENERAL ADMINISTRATIVE APPEAL PROCESS

9000. REQUEST FOR ADMINISTRATIVE REVIEW BY THE BOARD OF DIRECTORS

Unless a different hearing or review procedure is specifically provided herein or by District ordinance or resolution, a party aggrieved by a final decision or determination by the District Manager may request reconsideration of such a decision or determination by the Board of Directors. Such requests must be made in writing and submitted within ten (10) calendar days of the final decision or determination. Requests shall provide the relevant facts and documentation of the grievance.

9001. BOARD PROCEDURE

Upon receiving a notice of appeal and request for Board reconsideration, the District shall place the matter on the agenda for public hearing and consideration at a regular scheduled meeting of the Board within sixty (60) calendar days of the receipt of the submitted notice. This time may be extended by agreement. Each affected party will be given an opportunity to make an oral and/or documentary presentation at the public hearing. Any plans or documentation of more than two pages in length for the Board's consideration at the hearing must be submitted to the office of the District Manager at least seven (7) calendar days prior to the hearing. At the hearing, the Board President shall allocate time to each affected party as he or she deems appropriate. After both sides have presented their case, the Board shall close the hearing and begin deliberation in open session. After the conduct of a vote, a written opinion and findings on the matter shall be prepared and issued within sixty (60) calendar days of the hearing.

9002. FINALITY OF BOARD DETERMINATION

Any and all determinations of the Board arising from Board consideration of a notice of appeal of the District Manager's decision are final and conclusive.

9003. NO STAY OF STAFF DECISION

A request for Board consideration of a final decision or determination of any employee of the District does not prevent the District from acting, refusing to act, or continuing to act relative to the decision during Board review. Furthermore, an administrative appeal shall not prevent the District from pursuing any additional enforcement procedure, penalty or remedy which may be available to the District as a result of the terms of any District permit. The requirements of the District's construction specifications or ordinances, resolutions, rules, orders, policies or regulations remain in full force and effect.

CHAPTER X ENFORCEMENT AND PENALTY

10000. AUTHORITY TO ENFORCE CODE

In the absence of a specific delegation, assignment, or restriction of enforcement authority to a particular officer, employee, or agent of the District or the City of San Jose, the District Manager, the Director, and their respective authorized representatives, shall have authority to enforce the provisions of this Code, or any other ordinance of the District, or any rule, regulation or order promulgated or issued pursuant to this Code, or the provisions of any code adopted by reference by this Code, with the power to inspect and issue notices, administrative citations, and compliance orders for violations of this Code.

10001. VIOLATIONS AS MISDEMEANORS OR INFRACTIONS; PUBLIC NUISANCES

- B. **General violation.** It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this Code, or any other ordinance of the District, or any rule, regulation or order promulgated or issued pursuant to this Code, or the provisions of any code adopted by reference by this Code. Any person violating any of such provisions or failing to comply with any of such requirements shall be guilty of a misdemeanor or an infraction, if so specified.
- C. **Separate offense.** Each person shall be guilty of a separate offense for each and every day during any portion of which any violation is committed, continued, or permitted by such person, and shall be punishable accordingly.
- D. **Reduction of misdemeanor to infraction.** Notwithstanding any other provision of this Code, any violation constituting a misdemeanor may, in the discretion of the enforcing authority, be charged and prosecuted as an infraction. A violation shall be deemed an infraction if a citation is issued specifying that the violation is an infraction, or the District Counsel files a complaint in the superior court specifying that the offense is an infraction, or the District Counsel makes a motion to reduce a misdemeanor charge to an infraction prior to trial on the matter.
- E. **Enhancement of infraction to misdemeanor.** Notwithstanding any other provision of this Code, any offense which would otherwise be an infraction may, in the discretion of the enforcing authority, be charged and prosecuted as a misdemeanor if the defendant has been convicted of three or more violations of this Code within twelve (12) consecutive months immediately preceding the commission of the offense, or four or more violations of this, Code within twenty-four (24) consecutive months immediately preceding the commission of the offense. For the purposes of this section, a bail forfeiture shall be deemed to be a conviction for the offense charged.
- F. **Public nuisance.** In addition to the penalties provided by this Chapter, any condition caused or permitted to exist in violation of any of the provisions of this Code, or any other ordinance of the District, or any rule, regulation or order promulgated or issued pursuant to this Code, or the provisions of any code adopted by reference by this Code, shall be deemed a public nuisance and may be abated by the District as permitted by State law. Each day such condition continues shall be regarded as a new and separate offense.

10002. PENALTIES FOR VIOLATIONS

- A. **Misdemeanor offenses.** Whenever a violation of this Code, or any other ordinance of the District, or any rule, regulation or order promulgated or issued pursuant to this Code, or the provisions of any code adopted by reference by this Code, is declared to be unlawful and a misdemeanor, where no specific penalty is provided therefore, such violation shall be punished by a fine not exceeding one thousand dollars (\$1,000.00) or imprisonment for a term not exceeding thirty (30) days, or by both such fine and imprisonment
- B. **Infraction offenses.** Whenever a violation of this Code, or any other ordinance of the District, or any rule, regulation or order promulgated or issued pursuant to this Code, or the provisions of any code adopted by reference by this Code, is declared to be unlawful and an infraction, where no specific penalty is provided therefore, such violation shall be punished by:
 - 1. A fine not exceeding one hundred dollars (\$100.00) for a first violation;

2. A fine not exceeding two hundred dollars (\$200.00) for a second violation of the same provision or ordinance within twelve (12) consecutive months;
3. A fine not exceeding five hundred dollars (\$500.00) for each additional violation of the same provision or ordinance within twelve (12) consecutive months.

10003. CHANGES TO GOVERNMENT CODE

If the maximum fines for infraction offenses allowed to be charged by California Government Code Section 36900(b) should increase or decrease, then the revised amounts allowed or permitted by law shall automatically be applied to this Section, as of the effective date of the change.