

ORDINANCE NO. 2013-394

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS  
AMENDING ARTICLE 3 OF CHAPTER 10.12 OF THE LOS ALTOS  
MUNICIPAL CODE PERTAINING TO THE SEWER SERVICE CHARGE AND  
ESTABLISHING THE RATE OF THE SEWER SERVICE CHARGE FOR  
FISCAL YEAR 2013-14 AND SUBSEQUENT FISCAL YEARS

**WHEREAS**, pursuant to Article 3 of Chapter 10.12 of the Los Altos Municipal Code, the City of Los Altos imposes a Sewer Service Charge upon parcels connected to the sewer system; and

**WHEREAS**, the purpose of the Sewer Service Charge is to fund costs associated with providing sewer service; and

**WHEREAS**, the City engaged Harris & Associates (the "Rate Consultant") to prepare a rate study recommending a revision to the Sewer Service Charge that would fairly and equitably spread the costs of sewer system operation across parcels using sewer service and would meet the requirements of California law; and

**WHEREAS**, the Rate Consultant has prepared a rate study entitled "Rate Analysis Report for the City of Los Altos Sewer Service Charge" dated May 8, 2013 (the "Study") which is on file in the Office of the City Clerk, available for public inspection, and incorporated herein by reference; and

**WHEREAS**, the Study proposed new rates for the Sewer Service Charge, to become effective over a five-year period (collectively, the "Rate Structure"); and

**WHEREAS**, on May 14, 2013, by its Resolution No. 2013-10 (the "Resolution of Intention"), the City Council proposed the Rate Structure; called a public hearing for July 9, 2013 regarding the Rate Structure (the "Hearing"); directed that notice be given of such hearing; and adopted Guidelines for the Submission and Tabulation of Protests against the Rate Structure; and

**WHEREAS**, the City caused notice of the Rate Structure and the Hearing to be mailed to the record owner of each parcel subject to the Sewer Service Charge; and

**WHEREAS**, such notice was given pursuant to (and included all information required by) Section 6 of Article XIII D of the California Constitution (the "Proposition 218 Fee Provisions"), the Proposition 218 Omnibus Implementation Act (Section 53750 *et seq.* of the California Government Code) (the "Act"), and applicable law; and

**WHEREAS**, the Council finds that adoption of this Ordinance is exempt from review under the California Environmental Quality Act (CEQA) because CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies which the public agency finds are for the purpose of: meeting operating expenses, including employee wage rates and fringe benefits; purchasing or leasing supplies, equipment, or materials; meeting financial reserve needs and

requirements; and obtaining funds for capital projects, necessary to maintain service within existing service areas. (CEQA Guidelines Section 15273); and

**WHEREAS**, on July 9, 2013, at 7:00 PM, in the City Council Chambers located at One North San Antonio Road, Los Altos, California, 94022, the City Council will hold the Hearing as a full and fair public hearing at which the Council will hear all oral and written testimony with respect to the Rate Structure and will consider all protests against the Rate Structure; and

**WHEREAS**, the City Council desires to implement the Sewer Service Charge consistent with the recommendation of the Study; and

**WHEREAS**, the City Council desires to continue collecting the Sewer Service Charge on the Santa Clara County property tax roll.

**NOW THEREFORE**, the City Council of the City of Los Altos does hereby ordain as follows:

**SECTION 1. AFFIRMATION OF RECITALS.** Each of the recitals set forth above is true and correct in all respects.

**SECTION 2. APPROVAL OF RATE STUDY.** The Study is hereby approved by the City Council in the form on file in the Office of the City Clerk and available for public inspection.

**SECTION 3. AMENDMENT OF CODE:** Article 3 of Chapter 10.12 of the Municipal Code is amended to read as follows:

**“ARTICLE 3. SEWER SERVICE CHARGES**

- 10.12.090 Short Title
- 10.12.100 Authority
- 10.12.110 Definitions
- 10.12.120 Sewer Service Charge Imposed
- 10.12.130 Rate
- 10.12.135 Assignment of Equivalent Dwelling Units
- 10.12.140 Estimation of Sewer Use
- 10.12.150 Election to Collect on Tax Roll
- 10.12.160 Preparation of Report
- 10.12.170 Consideration of Report and Approval of Charges
- 10.12.180 Effect of Approval and Filing of Charges
- 10.12.190 Compensation of County
- 10.12.200 Alternative Collection Method
- 10.12.210 Appeal of Sewer Use Estimation
- 10.12.220 Use of Proceeds

**10.12.090 Short Title**

This article may be cited as the “City of Los Altos Sewer Service Charge Ordinance.”

#### **10.12.100 Authority**

This article is adopted pursuant to Article 4 of Chapter 6 of Part 3 of Division 5 of the California Health & Safety Code (Section 5470 *et seq.*) and Section 7 of Article XI of the California Constitution.

#### **10.12.110 Definitions**

Unless the context otherwise indicates, the terms used in this article shall have the following meanings:

A. "Actual water consumption," with respect to a parcel, shall mean the water consumption indicated for that parcel on the records of the California Water Service Company (or its successor) or such other water utility as serves the parcel.

B. "Appeals administrator" shall mean the City Manager or his or her designee.

C. "City" shall mean the City of Los Altos.

D. "County" shall mean the County of Santa Clara.

E. "Parcel that is connected to the sewer system" shall mean a parcel that is either (i) located in the City and connected to the City's sewer system, (ii) located in the City and connected to the City of Mountain View's sewer system by arrangement between the City and the City of Mountain View, or (iii) located in an unincorporated area of the County (or a portion of the County that was unincorporated as of July 1, 2013) and connected to the City's sewer system.

F. "Sewer service charge" shall mean the charge imposed pursuant to Section 10.12.120 of this article.

G. "Wet season months" shall mean, with respect to a specific calendar year, the three monthly billing periods for which the records of the California Water Service Company (or its successor) indicate the lowest total water consumption during that fiscal year by parcels connected to the City's sewer system that are served by the California Water Service Company (or its successor).

#### **10.12.120 Sewer Service Charge Imposed**

There is imposed upon each parcel connected to the sewer system an annual sewer service charge.

#### **10.12.130 Rate**

The rate of the sewer service charge shall be stated as a rate per equivalent dwelling unit, plus a rate per unit of estimated sewer use, and shall be established by ordinance adopted by the City Council pursuant to Section 5471(a) of the California Health & Safety Code.

### **10.12.135 Assignment of Equivalent Dwelling Units**

Each parcel shall be assigned one equivalent dwelling unit for each dwelling unit on the parcel.

Parcels with non-residential structures or improvements shall also be assigned one equivalent dwelling unit for the first 110 units (or fraction thereof) of estimated sewer use for non-residential improvements on the parcel plus a number of additional equivalent dwelling units (or fractions thereof) equal to the remaining estimated sewer use for non-residential improvements on the parcel divided by 110.

Where multiple non-residential parcels share a common water meter, the equivalent dwelling units calculated based on water use measured by that meter shall be divided equally amongst the parcels sharing the meter.

### **10.12.140 Estimation of Sewer Use**

The sewer use of a parcel upon which the sewer service charge for that parcel shall be calculated for a fiscal year shall be estimated by multiplying by 12, the average actual monthly water consumption for each water account (excluding water accounts used solely for irrigation) on that parcel during the three wet season months for the prior calendar year. One unit of sewer use shall be assigned for each 100 cubic feet of water use.

Where actual monthly water consumption data is not available for a water account on a parcel (as when a structure(s) on the parcel is recently connected to a water system), sewer use shall be estimated as the average estimated sewer use for the prior fiscal year of all parcels in the same land use. For purposes of this section, land use classes shall be:

- Single-Family Home
- Condominium Unit
- Multifamily Residence (two dwelling units)
- Multifamily Residence (three to four dwelling units)
- Multifamily Residence (five or more dwelling units)
- Church
- Commercial/Industrial
- Institutional
- Park
- School
- Government

#### **10.12.150 Election to Collect on Tax Roll**

The City continues its election to have the sewer charges for each forthcoming fiscal year collected on the Santa Clara County tax roll in the same manner as, by the same persons as, and at the same time as, together with and not separately from, the City's general tax.

#### **10.12.160 Preparation of Report**

The Public Works Director shall annually cause to be prepared and filed with the City Clerk the report described in Section 5473 of the California Health and Safety Code.

#### **10.12.170 Consideration of Report and Approval of Charges**

The City Council shall consider said report at a public hearing noticed and conducted pursuant to Sections 5473.1 through 5473.2 of the California Health and Safety Code, following which hearing it may take action on the report, pursuant to Section 5473.3 of that Code and may direct that the City Clerk file the report and the charges contained therein with the Santa Clara County Auditor pursuant to Section 5473.4 of that Code.

#### **10.12.180 Effect of Approval and Filing of Charges**

Upon the approval and filing of charges, such charges shall be subject to the provisions of Section 5473.5 through 5473.9 of the California Health and Safety Code, and other applicable law.

#### **10.12.190 Compensation of County**

The County shall be compensated for services rendered in connection with the levy, collection, and enforcement of sewer service charges for the City in accordance with the usual practices of the County or in accordance with an agreement between the City and the County for the collection of general taxes for the City.

#### **10.12.200 Alternative Collection Method**

In the event the City cannot, or does not, complete action pursuant to Sections 10.12.160 through 10.12.170 of this code to collect the sewer service charge against a parcel for a fiscal year, the City may collect such sewer service charge for that year with respect to that parcel by mailing a bill to the owner of the parcel. Any charge billed in this manner shall be due and payable upon presentation, but no earlier than December 1 of the fiscal year for which the charge is imposed. If a charge billed in this manner is not paid within 30 days of the due date, then on the first day of each calendar month thereafter a late fee of two percent of the amount of the delinquent sewer service charge shall be added and become due. If any such charge remains outstanding at the time the report is prepared for a subsequent fiscal year pursuant to section 10.12.160, the delinquent charge (and accrued late fees) may be included on

such report and collected on the tax roll along with the charges for that fiscal year.

**10.12.210 Appeal of Sewer Use Estimation**

In the event the owner of a parcel subject to the sewer service charge believes that the estimation of sewer use calculated by the City pursuant to Section 10.12.140 for that parcel for a fiscal year does not accurately reflect the amount of effluent introduced into the sewer system via the parcel's connection to the sewer system, then the owner may file a written appeal of the determination (and the sewer service charge against the parcel) with the Appeals Administrator (or his or her designee). Such written appeal must be filed before December 31st of the fiscal year and must include evidence that (i) due to the unique or unusual nature of water use on the parcel, the estimation method substantially overestimates the sewer usage of the parcel relative to other parcels with similar actual sewer use, (ii) the owner could not have avoided the error in estimation by establishing a separately metered water account for any unusual and intentional non-domestic use, and (iii) use of the standard estimation method is manifestly unfair under the circumstances. If the Appeals Administrator determines that each of the previous-stated criteria is true, based on the written appeal and on other evidence available to the Appeals Administrator, then the Appeals Administrator will reduce the sewer service charge for that parcel for that fiscal year to the amount he or she determines to reflect an accurate estimate of sewer use and shall either transmit a correct charge to the County or issue a refund in the amount of the reduction. The Appeals Administrator's determination shall be final.

**10.12.220 Use of Proceeds**

Sewer service charge proceeds shall be used only for the acquisition, construction or reconstruction, maintenance and operation of sanitation or sewerage facilities of the City and to repay principal and interest on bonds issued for the construction of such sanitary or sewerage facilities and to repay federal, state, county or other loans or advances made to the City for the construction or reconstruction of sanitary or sewerage facilities; provided, however, that such revenue 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.

**SECTION 4. RATE.** The rate of the Sewer Service Charge imposed by Section 10.12.120 of the Municipal Code for Fiscal Year 2013/14 is hereby established as \$1.66 per unit of estimated sewer use plus \$209 per equivalent dwelling unit. For subsequent fiscal years, the rate shall be as follows:

Fiscal Year	2014-15	2015-16	2016-17	2017-18 & Following
Per EDU	\$219.45	\$230.42	\$244.25	\$261.35
Per unit of est sewer use	\$1.74	\$1.83	\$1.94	\$2.07

No further action need be taken by the City Council to cause the rates established by this Section to become effective. However, the City Council may, pursuant to Section 10.12.130 adopt an ordinance that delays the effective date of a scheduled rate adjustment or eliminates such adjustment.

**SECTION 5. RATE ADJUSTMENTS.** The Sewer Service Charge rate adjustment schedule set forth in Section 4 of this Ordinance was approved by the City Council following a public hearing that was noticed and conducted pursuant to the Proposition 218 Fee Provisions and the Act. Consequently, so long as a revised rate established in the future by the City Council does not exceed the rates set forth in Section 4, such revision shall not constitute an “increase” of the sewer service charge rate for purposes of the Proposition 218 Fee Provisions or the Act. Such rate revisions shall not, therefore, require additional compliance with the procedural requirements of the Proposition 218 Fee Provisions or of the Act.

**SECTION 6. PRIOR SEWER SERVICE CHARGES.** Notwithstanding the provisions of this Ordinance, sewer service charges levied for fiscal years prior to Fiscal Year 2013/14 shall remain governed by the provisions of Chapter 10.12 of the Municipal Code as they existed prior to the effective date of this Ordinance.

**SECTION 7. FINDINGS.** The City Council, based upon the Study and upon such other testimony provided to it at the Hearing finds as follows:

- (a) Revenues derived from the Sewer Service Charge, as imposed pursuant to this Ordinance, will not exceed the funds required to provide sewer service to the parcels subject to the Sewer Service Charge.
- (b) Revenues derived from the Sewer Service Charge cannot, pursuant to Section 10.12.220 of the Municipal Code, be used for any purpose other than that for which the Sewer Service Charge is imposed.
- (c) The amount of the Sewer Service Charge upon each parcel does not exceed the proportional cost of sewer service attributable to that parcel.
- (d) The Sewer Service Charge is only imposed upon parcels that are actually connected to a sewer system, and which therefore either use, or have immediate ability to use, sewer services.
- (e) Sewer service is not a general governmental service as that term is used in subdivision (b)(5) of the Proposition 218 Fee Provisions.

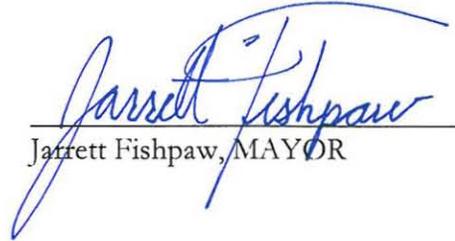
**SECTION 8. CONSTITUTIONALITY.** If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

**SECTION 9. PUBLICATION.** This ordinance shall be published as provided in Government Code section 36933.

**SECTION 10. EFFECTIVE DATE.** This ordinance shall be effective upon the commencement of the thirty-first day following the adoption date.

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on June 11, 2013 and was thereafter, at a regular meeting held on July 9, 2013 passed and adopted by the following vote:

AYES: BRUINS, CARPENTER, PEPPER, SATTERLEE, FISHPAW  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

  
Jarrett Fishpaw, MAYOR

Attest:  
  
Jon Maginot, CMC, CITY CLERK



STATE OF CALIFORNIA )  
COUNTY OF SANTA CLARA ) CERTIFIED COPY OF ORDINANCE  
CITY OF LOS ALTOS ) SECOND READING/ADOPTION

I, Jon Maginot, City Clerk for the City of Los Altos in said County of Santa Clara, and State of California, do hereby certify that the attached is a true and correct copy of Ordinance No. 2013-394, adopted by the Los Altos City Council on July 9, 2013 by the following vote:

AYES: BRUINS, CARPENTER, PEPPER, SATTERLEE, FISHPAW  
NOES: NONE  
ABSTAIN: NONE  
ABSENT: NONE

I hereby further certify that a summary of the ordinance was published in accordance with Government Code Section 36933 on the following dates: June 19, 2013 and July 17, 2013. Said ordinance shall be effective August 9, 2013

Dated this 22nd day of July, 2013.

  
Jon Maginot, CMC  
City Clerk