



**CITY OF LOS ALTOS  
CITY COUNCIL MEETING  
February 23, 2016**

**DISCUSSION ITEMS**

**Agenda Item # 7**

**SUBJECT:** Review the Sewer Service Charge Adjustment Policy, and direct staff accordingly

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**BACKGROUND**

On November 10, 2015, Council requested an agenda item to review the City's Sewer Service Charge Adjustment Policy.

On September 23, 2008, Council adopted the City's Sewer Service Charge Adjustment Policy. The primary purpose of the Policy is to allow the appeal of sewer service charges by customers with sewer use that is not accurately estimated by the City's standard method for estimating sewer use. On October 8, 2013, the Adjustment Policy was revised to reflect amendments to the Municipal Code that were made when the City shifted its service charge methodology to include a base charge as well as a rate based on estimated sewer use. The 2013 revisions did not substantially change the criteria used in resolving appeals.

**EXISTING POLICY**

Resolution No. 2013-32

**PREVIOUS COUNCIL CONSIDERATION**

September 23, 2008; October 8, 2012

**DISCUSSION**

The City's standard methodology for estimating a parcel's sewer use for a fiscal year is based upon that parcel's actual water use during the three "wet season months" of the prior calendar year. The wet season months are defined as the lowest total water consumption during that fiscal year by all parcels served by the California Water Service Company. For example, FY 2015/16 is based upon actual metered water use during the wet season months of calendar year 2014 (February, March, December).

The purpose of an appeal is to show that the City's estimation technique is inaccurate for a parcel for either of the following reasons: (i) because the parcel's water use during the baseline "wet season months" was atypical of water use on the parcel; or (ii) because an unusual portion of the water use on the parcel does not enter the City's sewer system.

Any appeal with respect to the sewer service charge for a fiscal year must be received no later than December 31 of that fiscal year and are reviewed by a third party Appeals Administrator.

Appeals shall be granted only if the Appeal Administrator determines that both of the following conditions exist on the parcel:

- A: There is unique or unusual water use on the parcel
- B: There is manifest unfairness

Unique or unusual water use exists on a parcel when some condition of the parcel or activity conducted upon the parcel causes an unusual amount of the water delivered to the parcel to evaporate, enter the storm drain system, be absorbed into the ground or otherwise not enter the sewer system. Not all conditions that divert water from the sewer system qualify as unique or unusual (i.e., typical landscape irrigation). Conditions that may qualify as unique or unusual water use are water line leaks and maintenance of unusual landscaping (when there is at least 80% more landscaped area on a parcel than on a typical parcel the same land type or a substantial number of plants that require winter watering).

Manifest unfairness can be demonstrated by showing that: (i) the parcel sewer service charge is at least 150% of the average sewer service charge of the same land use class; or (ii) the parcel sewer service charge is at least 150% of the charge for the parcel's prior fiscal year.

If the Appeals Administrator determines that an appeal should be granted, then an estimate of the sewer use shall be determined and directly refunded to the customer the difference between the original and recalculated charge.

The City issues sewer charges to over 11,000 parcel annually. Over the last 5 years, the City has, on average, received 10 appeals per year and denied 3 over the entirety of the period. All but three appeals during the 5-year period resulted in an adjustment of the appellant's sewer service charge.

Current Rate Structure and Appeal Policy				
Year	No. of Appeals	Approved	Denied	Amount Refunded
FY 15/16	5	5	0	\$4,973.16
FY 14/15	7	6	1	\$1,564.18
FY 13/14	11	9	2	\$9,326.25

Previous Rate Structure and Appeal Policy				
Year	No. of Appeals	Approved	Denied	Amount Refunded
FY 12/13	20	20	0	\$10,842.78
FY 11/12	10	10	0	\$7,405.32

No changes in policy are being recommended by staff at this time. Further review will be conducted at the time of the next sewer rate study in FY 2017/18 to account for potential changes in the rate setting methodology.

### **PUBLIC CONTACT**

Posting of the meeting agenda serves as notice to the general public.

### **FISCAL/RESOURCE IMPACT**

None

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*Review the Sewer Service Charge Adjustment Policy, and direct staff accordingly*

**ENVIRONMENTAL REVIEW**

Categorically exempt pursuant to CEQA Section 15061 (b) (3)

**RECOMMENDATION**

Review the Sewer Service Charge Adjustment Policy, and direct staff accordingly

**ALTERNATIVES**

Not applicable

Prepared by: Christopher Lamm, Engineering Services Manager

Reviewed by: Susanna Chan, Public Work Director

Approved by: Marcia Somers, City Manager

**ATTACHMENTS:**

1. Resolution No. 2013-32, City of Los Altos Sewer Service Charge Adjustment Policy
2. FY 2015/16 Sewer Service Charge Adjustment Form

RESOLUTION NO. 2013-32

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS  
APPROVING A SEWER SERVICE CHARGE ADJUSTMENT POLICY**

**WHEREAS**, pursuant to 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 Municipal Code provides that Sewer Service Charges be based upon estimated sewer use, and sets forth a methodology for estimating each parcel's sewer use; and

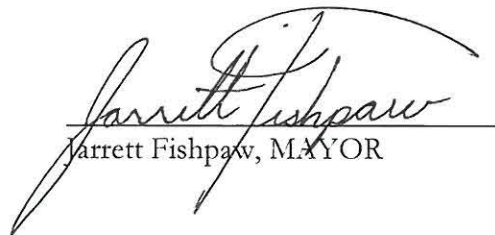
**WHEREAS**, Section 10.12.210 of the Municipal Code provides an avenue by which a property owner may appeal the sewer use estimation for his or her parcel; and

**WHEREAS**, the City Council desires to adopt a policy to govern the procedures for the processing a determination of such appeals; and

**NOW THEREFORE, BE IT RESOLVED**, that the City Council of the City of Los Altos hereby adopts the "Sewer Service Charge Adjustment Policy" attached hereto as Exhibit "A" and incorporated herein by reference.

**I HEREBY CERTIFY** that the foregoing is a true and correct copy of a Resolution passed and adopted by the City Council of the City of Los Altos at a meeting thereof on the 8<sup>th</sup> day of October, 2013 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

Exhibit "A"

CITY OF LOS ALTOS  
SEWER SERVICE CHARGE ADJUSTMENT POLICY

I. Purpose.

The purpose of this policy is to govern the acceptance and processing of sewer service charge adjustment requests ("appeals") submitted pursuant to Section 10.12.210 of the Municipal Code.

By making an appeal, the appellant is claiming that the City's standard methodology for estimating sewer use yielded an inaccurate estimation for the appellant's parcel. The City's standard methodology estimates a parcel's sewer use for a fiscal year based upon that parcel's actual water use during the three "wet season months"<sup>1</sup> of the prior calendar year. For example, the sewer service charge for FY 2013/14 is based upon actual metered water use during the "wet season months" of calendar year 2012 (February, April, and December). The sewer service charge for FY 2014/15 will be based on actual metered water use during the "wet season months" of calendar year 2013.

The purpose of an appeal is to show that the City's estimation technique is inaccurate for a parcel for either of the following reasons: (i) because the parcel's water use during the baseline "wet season months" was atypical of water use on the parcel or (ii) because an unusual portion of water use on the parcel does not enter the City's sewer system.

II. Manner of Submission.

Any appeal must be submitted on the City's "Sewer Service Charge Adjustment Request Form," which shall be in a format approved by the City Manager. Forms will be made available at the City Offices and online on the City's website. Completed forms must be submitted to the City (or the Appeals Administrator designated by the City Manager) in person, by fax, by e-mail or by mail in order to be considered. Only forms that have been fully completed will be considered. Partially completed forms will be returned unprocessed.

III. Time of Submission.

Any appeal with respect to the sewer service charge for a fiscal year must be received no later than December 31 of that fiscal year.

IV. Review.

All appeals will be reviewed and conducted by the Appeals Administrator, as designated by the City Manager. All appeals shall be conducted by review of the written request submitted

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<sup>1</sup> "Wet season months" are, with respect to a specific calendar year, the three monthly billing periods for which the records of the California Water Service Company 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.

by the sewer customer on (and along with) the Adjustment Request form, unless the customer requests to also provide oral testimony to the Appeals Administrator. The Appeals Administrator may also request additional information from the appellant if the Appeals Administrator believes that such information would be helpful to the resolution of the appeal.

#### V. Standards for Review.

Appeals shall be granted only if the Appeals Administrator determines that both of the following conditions exist on the parcel:

A. There is *unique or unusual water use* on the parcel.

*And*

B. There is *manifest unfairness*.

A *unique or unusual water use* exists on a parcel when some condition of the parcel or activity conducted upon the parcel causes an unusual amount of the water delivered to the parcel to evaporate, enter the storm drain system, be absorbed into the ground, or otherwise to not enter the sewer system. Not all conditions or activities that divert water from the sewer system qualify as “unique or unusual” water uses. The City's standardized sewer use estimation technique recognizes that no sewer customer introduces all of the water received from their water purveyor into the sewer system. Therefore, an exception to the standardized method can only be granted when the condition or activity is substantially different in nature or quantity from that typical of parcels in the City that have a similar land use.

Two of the conditions for activities that may qualify as unique or unusual water use are water line leaks and maintenance of unusual landscaping.

To demonstrate that a water line leak occurred and was sufficiently substantial to be “unique or unusual,” the sewer customer needs to provide evidence (such as a repair bill or receipts for purchase of plumbing hardware) that a leak was repaired and evidence (such as water bills for the three months subsequent to repair of the leak) demonstrating that the leak caused at least a 30% increase in water consumption.

To demonstrate that landscape maintenance on the parcel was “unique or unusual,” the sewer customer needs to provide evidence that one of the following conditions exists on the parcel: (i) there is at least 80% more landscaped area on the parcel than on a typical parcel of the same land use type; or (ii) a substantial number of plants on the parcel are of a variety that require substantially more winter watering than typical plants used in the City.

Conditions other than water line leaks and unusual landscape maintenance may qualify as unique or unusual water use if the sewer customer can demonstrate that the use or activity both was not typical of similar properties and caused the City sewer use estimation formula to substantially overestimate the customer's sewer use.



*Manifest unfairness* can be demonstrated by showing that: (i) the customer's sewer service charge for the fiscal year is at least 150% of the average sewer service charge for that fiscal year for a parcel in the customer's land use class; and/or (ii) the customer's sewer service charge for the fiscal year is at least 150% of the charge (calculated using the City's current standard method of sewer use estimation) for the customer's parcel for the prior fiscal year.

#### VI. Redetermination of Sewer Use Estimate

If the Appeals Administrator determines that an appeal should be granted, he or she shall then estimate the sewer use for the sewer customer. The Appeals Administrator should follow the following guidelines when making this estimate:

- (i) Where the unique or unusual condition or activity was not present on the parcel during the wet season of the calendar year two years prior to the calendar year in which the fiscal year begins, estimated sewer use should be based on the parcel's actual water use for the wet season months of the earlier calendar year (multiplied by the average estimated sewer use for the customer's land use class for the current fiscal year divided by the average estimated sewer use for the customer's land use class for the prior fiscal year).
- (ii) Where the unique or unusual condition or activity is unusual or extensive landscaping, and if it is possible for the Appeals Administrator to estimate the amount by which water used for landscaping purposes on the parcel during the relevant wet season months exceeded 180% of the amount of water used for landscaping purposes on the typical parcel of the same land use class, then estimated sewer use calculated pursuant to the standard method should be reduced by the amount of such excess landscaping consumption. However, any estimate of sewer use calculated pursuant to this paragraph shall be no less than 150% of the average estimated sewer charge for a parcel in the customer's land use class for that fiscal year.
- (iii) Where neither (i) nor (ii) apply, estimated sewer use shall be 150% of the average estimated sewer use for the customer's land use class.

#### VII. Implementation of Adjustment.

Where the estimated sewer use of a parcel has been redetermined for a fiscal year, that parcel's Sewer Service Charge shall be recalculated based on the new estimate. The City will directly refund to the sewer customer the difference between the original and the recalculated Charge.

#### VIII. Finality.

The determination of the Appeals Administrator shall be final and non-appealable.

## IX. Correction of Data Errors.

The procedure set forth above applies where a sewer customer believes that the City's standard methodology of estimating sewer use does not yield an accurate estimation of the sewer use on his or her parcel. If a sewer customer believes that the Sewer Service Charge for his or her parcel has been improperly calculated because (i) a mathematical error occurred, (ii) the City based the Charge on incorrect water use data (ex used the metered water data for the wrong parcel) or (iii) the City based the Charge on incorrect land use data, the customer should bring this to the City's attention by contacting the City's Engineering Division. Authorized staff may correct such an error when they become aware of the error, or (if it is not clear to staff whether an error has occurred) may refer the matter to the Appeals Administrator for a determination. If the customer chooses to submit a written request under this Section, it should be signed and include a complete description of the claimed data error.



The purpose of this Form is to appeal the estimation of sewer use that was used as the basis for a Fiscal Year 2015/16 Sewer Service Charge.

Property Owner's Name: \_\_\_\_\_  
Parcel Number (if known): \_\_\_\_\_  
Service Address: \_\_\_\_\_  
Mailing Address (if different): \_\_\_\_\_  
\_\_\_\_\_  
Daytime Phone Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_

In order for the sewer use estimation to be adjusted, you must have both a *Unique or Unusual Water Use* on your parcel *and* your sewer service charge must be *Manifestly Unfair*. Terms in italics are defined in more detail in the City's Sewer Service Charge Adjustment Policy, which is available at the City's offices or online on the City's website at [www.losaltosca.gov](http://www.losaltosca.gov).

How your 2015/16 sewer service charge was calculated:

2014											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC

The Fiscal Year 2015/16 charges are based on water use during the “wet season months” of calendar year 2014 and the “Base Charge” applicable to the parcel. Your parcel's actual metered water usage for February, March and December 2014 was used to calculate charges for Fiscal Year 2015/16 because these were the three “wet season months”<sup>1</sup> in Calendar Year 2014. The Fiscal Year 2015/16 charge pays for service provided between July 1, 2015 and June 30, 2016. The charge is collected on the Santa Clara County property tax bill.

Multi-year water use history MUST be attached to this appeal form for the parcel. This can be obtained by downloading this information at <http://www.calwater.com> or by calling California Water Customer Service at (650) 917-0152.

The City's Appeal Administrator is NBS. If you have any questions, or need assistance completing this form, please call NBS at (800) 676-7516 or via email at [pos@nbsgov.com](mailto:pos@nbsgov.com).

**PLEASE NOTE:** When completed and submitted, this form becomes a public record subject to the Public Records Act. Non-disclosable information will be redacted prior to release under the Public Records Act.

**The deadline for submitting appeals for 2015/16 is December 31, 2015.**

<sup>1</sup> “Wet season months” means the three monthly billing periods of lowest total water consumption by all parcels connected to the City's sewer system.

**COMPLETE BOTH SECTIONS I AND II.**

**SECTION I: Unique or Unusual Water Use.**

(Check one and complete the associated subsection)

- ☐ There was a water line leak on my property in that was actively leaking during all or part of the water meter read periods for February, March and December of 2014.

On what date was the leak discovered: \_\_\_\_\_

When was the leak repaired: \_\_\_\_\_

Describe the leak: \_\_\_\_\_

Was the leak active during February, March or December of 2014? ☐ Yes ☐ No

Attach a repair receipt, receipt for purchase of plumbing parts, or other evidence that leak occurred and was repaired. Also attach evidence, such as water bills for the three months following the repairs, to show that the leak caused (or could be expected to cause) at least a 30% increase in water use. If the leak was not active in February, March or December of 2014, please attach the water bills, if available, for those months.

- ☐ My property has more than 10,620 square feet of landscaped area or a substantial number of plants on my property are of a variety that require substantially more winter watering than typical plants used in the City.

Estimated Square Feet of Landscaping: \_\_\_\_\_

Describe Nature and Type of Plants, Trees and Landscaping:

Describe the schedule on which you watered your landscaping during the meter read periods for February, March and December of 2014 (include an estimate, if possible of the amount of water used for this purpose):

Describe any unusual water needs of the landscaping:

*Attach evidence, such as photographs or a dimensioned site sketch, to document the above information.*

**Fiscal Year 2015/16 Sewer Service Charge**

**Adjustment Request Form**

**City of Los Altos**

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- ☐ During the February, March or December of 2014 meter read periods, an unusual condition of the property (other than a water leak) or an unusual activity conducted upon the property (other landscape maintenance) contributed to water use in a manner that caused the City's estimating technique to substantially overestimate the parcel's sewer use.

Describe the unusual condition or activity (note that the condition or activity must not be typical of parcels in a similar land use class in the City):

*Attach evidence supporting this information.*

**SECTION 2: Manifest Unfairness.**

(Check One)

- ☐ My sewer service charge for 2015/16 is at least \$748 (threshold for single family residential parcels for Fiscal Year 2015/16 -- contact the City's Administrator for thresholds for other types of parcels).
- ☐ My sewer service charge for 2015/16 is at least 150% of what the charge for my parcel for Fiscal Year 2014/15 would have been using the City's current rate structure and method of sewer use estimation.

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Please attach all requested documentation, as well as any other evidence you wish to be considered.

**This information provided is accurate to the best of my knowledge.**

**Signature of Property Owner:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Please return the completed Sewer Service Charge Adjustment Request form to:

Via mail, please send to:

NBS

Attn: Los Altos Sewer Appeals Administrator  
32605 Temecula Parkway, Suite 100  
Temecula, CA 92592

Via email (pdf submittals are acceptable):

pos@nbsgov.com