

ORDINANCE NO. 177

ORDINANCE OF THE VALLECITOS WATER DISTRICT
ESTABLISHING A WASTEWATER DENSITY IMPACT FEE
FOR DEVELOPMENTS WITH INCREASED LAND USE DENSITIES

BE IT ORDAINED by the Board of Directors of the Vallecitos Water District ("District") as follows:

This ordinance establishes a Wastewater Density Impact Fee for development projects which increase densities beyond the land use densities identified in the 2008 Master Plan.

Section 1. Declaration of Policy and Background. The District is a County Water District, established and operating pursuant to California Water Code section 30000 et seq., and provides water and sewer service to the cities of San Marcos, Vista, Carlsbad, Escondido and unincorporated areas of San Diego County within the boundaries of the District.

On August 3, 2011, the District's Board of Directors adopted the 2008 Water, Wastewater, and Water Reclamation Master Plan ("2008 Master Plan"). In compliance with the California Environmental Quality Act ("CEQA"), the Board also certified the Final Program Environmental Impact Report for the 2008 Master Plan ("2008 Master Plan PEIR"). The District used information and data from the 2008 Master Plan and 2008 Master Plan PEIR to prepare the Atkins Water, Wastewater Capital Facility Fee and Wastewater Density Impact Fee Study ("Atkins Study").

The Study includes the calculation of a Wastewater Density Impact Fee that reflects the estimated cost of new treatment facilities at the Encina Water Pollution Control Facility ("Encina") which will be required to accommodate the wastewater treatment impacts of development projects that increase land use densities beyond those identified in the 2008 Master Plan. The Study analyzes the necessary costs of capital facilities needed for Encina Phase IV and Phase V expansion plus financing costs to demonstrate the additional treatment costs caused by developments which increase densities.

The Atkins Study was approved by the Board of Directors at a public meeting on March 21, 2012 and an Updated Atkins Study is approved as part of this ordinance. The Updated Atkins Study substantiating the proposed fee in accordance with this ordinance was made available for public inspection and review ten (10) days prior to a public meeting and notice was given in compliance with Government Code section 66016.

Section 2. Findings.

(a) Development Projects which increase densities beyond the land use densities identified in the 2008 Master plan have greater impacts on wastewater treatment capacity at Encina.

(b) In order to accommodate the impacts of development projects which increase densities beyond the land use densities identified in the 2008 Master Plan, it will be necessary to expand the treatment capacity at Encina.

(c) The proposed Wastewater Density Impact Fee will be used to pay for the financing and construction of capital facilities necessary to expand Encina or purchase the capacity to mitigate the impacts that said development projects will have on wastewater treatment.

(d) The proposed Wastewater Density Impact Fee does not exceed the estimated reasonable costs of providing the service for which the fee is imposed.

(e) The proposed Wastewater Density Impact Fee will not be used for repair, maintenance, replacement or operational expenses.

The Wastewater Density Impact Fees shall be calculated and collected in accordance with Sections 3 and 4 of this ordinance.

Section 3. Development Project Review. All development projects shall, at the expense of the developer, complete a Water and Wastewater Study in order to determine if Wastewater Density Impact Fees are necessary due to the increased densities of the proposed development project.

(a) Wastewater Flow Study. Project wastewater flows shall be based upon duty factors for land use densities identified in the District's 2008 Master Plan. The Water and Wastewater Study shall identify the wastewater allowance made in the 2008 Master Plan for the project property, based upon the adopted land use, and the wastewater allowance for the proposed land use type. A land use category for mixed use (residential plus a non-residential land use category) is not included in the current Master Plan. A wastewater generation rate of 180 gallons per day per unit for the residential portion shall be applied in accordance with District Ordinance No. 176 and in determining Wastewater Density Impact Fees pursuant this ordinance.

(b) Wastewater Treatment Impacts. Project wastewater flows identified in section 3(a) above shall be used as the basis of the project's impact on wastewater treatment. The incremental increase between the 2008 Master Plan allowance and the Wastewater Flow Study shall also be the basis of determining the number of equivalent dwelling units (EDU's) and total Wastewater Density Impact Fees which shall be charged to the development project. No credit shall be given for Wastewater Density Impact Fees for projects with wastewater flows that are less than those referenced in the 2008 Master Plan.

Section 4. Wastewater Density Impact Fee. A Wastewater Density Impact Fee of \$3,183 shall be charged on each Equivalent Development Unit for development projects which increase densities beyond the land use densities identified in the 2008 Master Plan. Wastewater Density Impact Fees shall be due and payable prior to commitment of service and in accordance with Resolution No. 1343.

Section 5. Environmental Review. In accordance with the CEQA Guidelines Section 15061, the Board of Directors ordains that the Wastewater Density Impact Fees required by this ordinance are exempt from CEQA for the following reasons:

(a) The Wastewater Density Impact Fee is not a "project" as defined by Guidelines Section 15378;

(b) The project is exempt in accordance with Guidelines Section 15273(1), 15273(3), and 15274(4); and

(c) The activity will not have any significant impact upon the environment pursuant to Guidelines Sections 15061(b)(3).

The Board of Directors of the District orders and directs that the foregoing exemptions and reasons be made a part of the Notice of Exemption and that the Notice of Exemption be filed with the County Clerk of the County of San Diego.

Section 6. Non-Refundable. To assure availability of funding for proper planning and to meet obligations incurred by the District to develop capacity in the District's water and sewer systems in a timely manner, all water and sewer capacity fees and additional capacity fees required and collected pursuant this ordinance shall be non-refundable and non-transferable.

Section 7. Interpretation and Severability. Each and every section, subsection, sentence, clause, phrase, part, or portion of this ordinance shall be construed at all times so as to be in compliance with all federal, state, and local laws, roles, and regulations governing development fees. If any section, subsection, sentence, clause, phrase, part, or portion of this ordinance as so interpreted is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Directors of the District hereby declares that this measure, and each section, subsection, sentence, clause, phrase, part, or portion of this ordinance would have been adopted or passed irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, parts, or portions of this ordinance are declared invalid or unconstitutional. In the event a court of competent jurisdiction determines that any sentence, clause, subsection, section, phrase, or any part or portion of this ordinance is invalid or unconstitutional, the Board of Directors of the District hereby expressly requests that the court sever the invalid portion of this ordinance and declare the balance of the ordinance to be valid.

Section 8. Effective Date. This ordinance shall be effective immediately upon passage by the Board of Directors. The secretary of the District shall publish a summary of this ordinance two (2) times on successive weeks in an adjudicated newspaper of general circulation within the District. The new District Wastewater Density Impact Fee established by this ordinance shall be effective at 12:00 a.m. on November 1, 2012, more than sixty (60) days after adoption of this ordinance in accordance with Government Code section 66017.

Section 9. Limitation on Judicial Review. Any judicial action or proceeding to attack, review, set aside, void, or annul this ordinance or any water or sewer capital facility fee increase

