

SOUTH COAST WATER DISTRICT

ORDINANCE NO. 201

AN ORDINANCE OF THE SOUTH COAST WATER DISTRICT
BOARD OF DIRECTORS ADOPTING REQUIREMENTS FOR THE USE OF SANITARY
SEWER FACILITIES BY FOOD SERVICE ESTABLISHMENTS, AND OTHER PRIVATE
SYSTEMS DISCHARGING TO THE PUBLIC SEWER, AND AMENDING CERTAIN
SEWER USAGE RATES APPLICABLE TO FOOD SERVICE ESTABLISHMENTS AS SET
FORTH IN DISTRICT ORDINANCE NO. 197

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AN ORDINANCE OF THE SOUTH COAST WATER DISTRICT BOARD OF DIRECTORS ADOPTING REQUIREMENTS FOR THE USE OF SANITARY SEWER FACILITIES BY FOOD SERVICE ESTABLISHMENTS, AND OTHER PRIVATE SYSTEMS DISCHARGING TO THE PUBLIC SEWER, AND AMENDING CERTAIN SEWER USAGE RATES APPLICABLE TO FOOD SERVICE ESTABLISHMENTS AS SET FORTH IN DISTRICT ORDINANCE NO. 197

WHEREAS, all persons discharging waste or proposing to discharge waste within the State of California, where such wastes may affect the quality of waters of the state within any region, may only do so in accordance with reporting and permitting requirements determined in accordance with state law as established in California Water Code Section 13260 et seq. and set forth with other requirements as a part of the Porter Cologne Water Quality Control Act, California Water Code Section 13000, et seq.;

WHEREAS, the state reporting and permitting requirements as set forth in the California Water Code effect a portion of the requirements for implementation of the state's in-lieu program for protection of water quality consistent with the requirements of the Federal Water Pollution Control Act, 33 U.S.C.A., Section 1342(a) and 1342(b) ("Federal Clean Water Act")(California Water Code Section 13160);

WHEREAS, the Regional Water Quality Control Board Region 9 ("RWQCB"), has met the requirements for water quality planning through issuance of the Water Quality Plan for the San Diego Basin (9), adopted on September 8, 1994 (the "Basin Plan"), and the Basin Plan contains prohibitions applicable within the region, including prohibiting the unauthorized discharge of treated or untreated sewage to waters of the state or to a storm water conveyance system (which is a conduit to waters of the state);

WHEREAS, the RWQCB, acting in accordance with the above authority, adopted Order 96-04, which is applicable to the South Coast Water District ("District") and other agencies owning, maintaining and controlling sewer collection systems, and said order prohibits all discharge of sewage from sanitary sewer systems at any point upstream of a sewage treatment plant ("Order 96-04");

WHEREAS, pursuant to Order 96-04, the RWQCB identified a primary cause of sanitary sewer overflows including blockages from fats, oils, grease, roots, and other system failures associated with sewer collection systems;

WHEREAS, Order 96-04 requires the District to develop and implement a Sanitary Sewer Overflow Prevention Plan to address the potential for sanitary sewer overflows;

WHEREAS, by Order No. CWA-402-9-03-29 the United States Environmental Protection Agency (US EPA) Region IX has required that the District adopt a program applicable to the reduction of fats, oils and grease from food service establishments;

WHEREAS, sanitary sewer overflows contain high levels of suspended solids, pathogenic organisms, oil, grease and other pollutants, which can cause temporary non-compliance with applicable water quality objectives, pose a threat to the public health, adversely affect aquatic life, and impair the public recreational use and aesthetic enjoyment of surface waters within the District's service area;

WHEREAS, the District Board of Directors finds that sewer overflow events within the District's public sewer system are from time to time related to or caused directly by the introduction of materials that block the collection system, including: fats, oils and grease from food service establishments;

WHEREAS, pursuant to California Water Code sections 31105, and Government Code Sections 54350 and 54739 the District has the authority to adopt ordinances relating to the provision of sanitary sewer services and facilities and regulation of those service and facilities;

WHEREAS, pursuant to California Water Code Sections 31024 and 31027, the District has authority to establish rules and regulations governing the use of water and to define by ordinance restrictions and prohibitions;

WHEREAS, pursuant to Health and Safety Code Section 5471 et seq. and Water Code Section 31101, the District has the authority to set rates and charges applicable to the provision of sewer services;

WHEREAS, the District has previously promulgated rules and regulations governing the discharge of wastewater to its public sewer system, which are embodied in Ordinance No. 190, "Waste Water Discharge Pretreatment and Source Control Program" ("Pretreatment Regulations");

WHEREAS, pursuant to Government Code Sections 54740, 54740.5 and 53069.4 the District has the authority to assess civil penalties and enact administrative fines and penalties for non-compliance with District pretreatment requirements and/or violations of District ordinance;

WHEREAS, the District Board of Directors does therefore desire to supplement District Ordinance 190 with specific requirements applicable to food service establishments to control the discharge of fats, oils, and grease and reduce damage to the District's public sewer systems and to the environment caused by sewer spills and for the protection of the public health, safety, and welfare;

NOW, THEREFORE, the Board of Directors does hereby ordain:

Article 1 – General Provisions

Section 1 – Purpose and Policy

1.1 Ordinance 201 supplements District Ordinance No. 190, Waste Discharge Requirements. The objective of Ordinance 201 is to facilitate the maximum beneficial use of the public sewer by preventing the blockage of sewer lines.

1.2 Ordinance 201 sets specific requirements for Food Service Establishments (FSEs) and applies to direct and indirect discharges of wastewater or waste containing Fats, Oils and Grease (FOG), which may alone or collectively cause or contribute to accumulation of FOG in public sewer lines and cause or contribute to the occurrence of sewer spills.

1.3 Ordinance 201 allows the District and the users of its facilities to comply with federal, state and local standards applicable to the operation of the public sewer system. These standards require the prevention of sewer spills, which may enter the storm drain system and harm public health and safety and the environment.

1.4 Ordinance 201 sets quality standards for activities of food service establishments that contribute or have the potential to contribute wastewater and waste discharges containing fats, oils and grease to the public sewer.

Section 2 – Applicability

2.1 Ordinance 201 is applicable to owners and operators of properties connecting to the public sewer system by sewer lateral. The sewer lateral installed from and within the structure served by the lateral to and including the point of connection to the main line of the District is the responsibility of the owner, occupant or operator of the FSE or other persons owning, managing or controlling private property. Sewer laterals must be kept in good condition and repair, and sewer laterals must be capable of delivering sewage to the public sewer free from conditions that cause or contribute to overflows, including but not limited to dirt, rags, debris, root intrusions, FOG or other obstructions that block or have the potential to block the flow of wastewater into or within the public sewer system.

2.2 Ordinance 201 is applicable to Food Service Establishments and owners and users of private sewer systems having the potential to discharge fats, oil and grease (FOG) to the public sewer.

2.3 Owners (or agents of owners) of single-parcel commercial properties with multiple tenants (e.g. shopping mall or strip mall), which include one or more FSEs, are subject to provisions of this Ordinance 201.

2.4 At the direction of the District's Director of Operations, Food Service Establishments located within the City of Laguna Beach and provided service by the

District shall be compliant with Ordinance 201 if the same are compliant with the requirements of Chapter 17.40 of the Municipal Code of the City of Laguna Beach, which establishes a grease control program applicable to Food Service Establishments.

Section 3 – Definitions

3.1 Authorized Inspector. Shall mean an inspector or other District representative designated by the Director of Operations.

3.2 Best Management Practices (BMPs). Shall mean kitchen and general operations practices for FSEs that establish schedules of activities, prohibitions or practices, maintenance procedures, and other management practices to prevent or reduce the introduction of FOG into the public sewer.

3.3 BMP Training. Shall mean FSE employee training conducted to educate employees as to the requirements of this Ordinance and covering kitchen best management practices and grease control requirements. FSE employee training shall utilize the District's Program Information/Training Kit provided to the FSE.

3.4 Director of Operations. Shall mean the District's Director of Operations or his authorized designee or another District representative as assigned by the District's General Manager.

3.5 Discharge Permit. Shall mean a general wastewater discharge permit issued to the FSE for the control of FOG releases to the public sewer, which may be issued following the FSEs application to the District and approval of that application. The Director of Operations may from time to time include specific discharge requirements in the Discharge Permit applicable to an individual FSE to reduce FOG or the likelihood of FOG discharges to the public sewer.

3.6 District. Shall mean the South Coast Water District, as the owner and/or operator of the public sewer system serving Dana Point, South Laguna, and portions of Northern San Clemente and Northern San Juan Capistrano.

3.7 Fat, Oil and Grease (FOG). Shall mean grease, fatty or oily substances, or vegetable or animal products, used in or the byproduct of cooking or food preparation processes, which result in insoluble waste that turns or may turn viscous or solidifies with change in temperature or other conditions.

3.8 FSE Transfer of Ownership or Successor Owner. For purposes of Section 6 of this Ordinance 201, transfer of ownership or successor owner shall mean a transfer by sale of 75% or more of the controlling ownership interest in the business (whether owned by a individual, partnership or corporate entity).

3.9 Food Grinder. Shall mean any device installed in the plumbing system for the purpose of grinding food waste or food preparation byproducts for the purpose of disposing it in the public sewer (e.g. garbage disposal).

3.10 Food Service Establishment (FSE or FSEs). Shall mean any restaurant, drive-thru, cafeteria, store, commercial kitchen or any other establishment serving food for consumption and operating for the purpose of storing, preparing, serving, manufacturing, packaging, unpacking, displaying or otherwise handling food for sale or distribution to the public, other entities, and other groups or persons. The term FSE shall include any commercial establishment which has processes or equipment that uses or produces FOG, grease vapors, steam, fumes, smoke or odors that are required to be removed by a Type I or Type II hood, as defined in CURFFL Section 113785. The term FSE shall include any operation that changes the form, flavor or consistency of food for resale or other distribution, assembles or hot holds food. The term FSE shall not include food preparation activity in domestic homes.

3.11 Grease control device. Shall mean a grease interceptor or a grease trap, which attaches to wastewater plumbing fixtures and lines for the purpose of trapping or collecting FOG prior to discharge into the private lateral and/or the public sewer system. Grease control device may also include any other proven method to reduce fats, oils, and grease, subject to the approval of the District Director of Operations.

3.12 Grease interceptor. Shall mean a two or three compartment device that is generally located, according to the Uniform Plumbing Code, underground between a FSE and the connection to the public sewer system. These devices are large (a minimum of 750 gallons) and primarily use gravity to separate FOG from the wastewater as it moves from one compartment to the next. These devices must be cleaned, maintained, and have the FOG removed and disposed of in a proper manner on a regular interval to work effectively.

3.13 Grease trap. Shall mean a FSE kitchen device for retaining grease that is much smaller than a grease interceptor (generally 50 gallons). Grease Traps need to be emptied more often than Grease Interceptors to be effective due to their small size.

3.14 Limited Food Preparation Establishment (LFPE). Shall mean an FSE that engages only in beverage services and limited reheating of ready to eat food products and as a result generates no wastewater discharge containing FOG (e.g. specialty coffee houses).

3.15 New FSE. Shall mean an FSE that is new to the District's service area and did not conduct business or operate as an FSE before April 1, 2006.

3.16 Notice of Noncompliance (NON). Shall mean a notice issued by the Authorized Inspector pursuant to Section 9 of this Ordinance requiring compliance with a Discharge Permit and/or compliance with other provisions of this Ordinance No. 201.

3.17 Public Sewer or Public Sewer System. Shall mean the main sewer or trunk sewer dedicated to public use and located and constructed under a street, highway, alley, place, right-of-way or easement of the District.

3.18 Remodeling. Shall mean a physical change or operational change to an FSE that either: substantially increases the potential for Sanitary Sewer Overflows to occur,

or exceeds a cost of \$50,000, requires a building permit, and involves any one or combination of the following: 1) under slab plumbing in the food processing area; 2) a 30% increase in the net public seating area; 3) a 30% increase in the size of the kitchen area; and/or 4) any change in the size or type of food preparation equipment.

3.19 Sewer Lateral or Private System. Shall mean that portion of private sewer pipe connecting a building or group of buildings to the public sewer system such that the building or group of buildings may receive sewer collection and treatment services from the District's public sewer system. A sewer lateral is generally located at an approximate right angle to the closest public sewer, is privately owned, operated and maintained, and serves a given lot or parcel. The sewer lateral includes the point of connection into the District's main line, which is the responsibility of the private property owner or occupant.

Section 4 - Discharge Prohibition

4.1 The owner, occupant or operator of the FSE or other persons owning, managing or controlling private property are responsible for the maintenance and repair of the sewer lateral installed from and within the structure served by the lateral to and including the point of connection to the main line of the District. Sewer laterals must be kept in good condition and repair, and sewer laterals must be capable of delivering sewage to the public sewer free from conditions that cause or contribute to overflows, including but not limited to dirt, rags, debris, root intrusions, FOG or other obstructions that block or have the potential to block the flow of wastewater into or within the public sewer system.

4.2 No FSE shall discharge or cause to be discharged into the public sewer system FOG that exceeds a concentration level approved by the Director of Operations or that may accumulate and/or cause or contribute to blockages in the public sewer or within the sewer lateral which connects the FSE to the public sewer.

4.3 The following prohibitions shall apply to all FSEs:

4.3.1 Disposal of waste cooking oil and/or spilled oils or greases into drain pipes or drainage systems leading to the Sewer Lateral and/or the public sewer system. All waste cooking oils shall be collected and stored in covered receptacles such as barrels or drums for recycling or disposal in accordance with the requirements of Section 5 of this Ordinance.

4.3.2 Discharge of wastewater with temperatures in excess of 140 °F to any grease control device.

4.3.3 Discharge of wastes from toilets, urinals, wash basins, and other fixtures containing fecal materials to the sewer lines connecting to a grease trap or grease interceptor.

- 4.3.4 Discharge of any waste containing FOG and solid materials removed from a grease control device to the sewer lateral or lines leading to the public sewer system. Grease removed from grease traps or grease interceptors shall be waste hauled periodically by a licensed hauler as part of proper operation and maintenance requirements for grease control devices in accordance with Section 5 of this Ordinance.
- 4.3.5 Operation of a grease interceptor with FOG and solids accumulation exceeding 25% of the design hydraulic depth (total operating depth) of the grease interceptor.
- 4.3.6 Operation of a grease interceptor that at any time contains floating oil/grease in the final chamber, or sludge in any chamber that is within two (2) inches of the discharge elbow; under such conditions the owner or operator of the FSE shall have the grease interceptor serviced immediately such that all fats, oils, grease, sludge, and other materials are completely removed from the grease interceptor after which the grease interceptor shall be refilled with cold water.
- 4.3.7 Maintenance of a grease interceptor in a manner that discharges grease into private laterals, public sewers, storm drains, or the public right of way or maintenance that fails to fully pump down the contents of the grease interceptor.
- 4.3.8 Installation of a new grease trap or operation of an existing grease trap in a manner that limits operational effectiveness, e.g. trap is full of hardened FOG.
- 4.3.9 Installation of a new food grinder (garbage disposal) or operation of an existing food grinder that is connected to a grease trap.
- 4.3.10 Dilution of waste oil, grease or FOG as a partial or complete substitute for proper disposal.
- 4.3.11 The introduction of additives into the FSE wastewater system for the purpose of emulsifying FOG or biologically/chemically treating FOG for grease remediation or as a supplement to interceptor maintenance, unless specific written authorization is obtained from the Director of Operations.

Section 5 - Discharge Permit

5.1 Each and every FSE connected or connecting via private lines or sewer lateral to the public sewer shall make application to the District for a Discharge Permit. All FSEs

doing business within the District's service area on or before March 15, 2006 shall submit an application by May 1, 2006.

5.2 New FSEs, and FSEs with a transfer of ownership or successor owner, shall make application to the District and receive a Discharge Permit prior to discharging wastewater directly or indirectly into the public sewer system.

5.3 Upon receipt of an approved Discharge Permit, FSEs shall conduct their operations and maintenance activities consistent with the requirements of this Ordinance 201, including but not limited to Section 4, Discharge Prohibition, and Section 5, Discharge Permit.

5.4 FSEs operating under Discharge Permits shall make their place of business, equipment, and operations available for inspection upon the request of an Authorized Inspector.

5.5 Discharge Permits shall be subject to all provisions of this Ordinance, including Section 4 FOG Discharge Prohibitions, and all other regulations, charges for use, and fees established by the District. The conditions of the Discharge Permit shall be enforced by the District in accordance with this Ordinance, and applicable State and Federal regulations.

5.6 Discharge Permits shall be issued for three (3) year periods and shall be renewed thereafter by application to the District. FSEs shall file an application with the District for permit renewal at least sixty (60) days prior to the expiration date of the current permit.

5.7 The Discharge Permit application form and required information shall be as established by the Director of Operations, and the same may be amended from time to time. The Discharge Permit application shall be submitted with an application fee as established by the General Manager, and the same may be adjusted from time to time to reflect all or a portion of the reasonable program costs of the District related to FOG control from FSEs.

5.8 Discharge Permit conditions shall be included within a general permit format as developed by the Director of Operations.

5.9 The Discharge Permit shall refer to the requirements of this Ordinance for FSEs. FSEs shall be required to comply with the following requirements:

5.9.1 Grease Traps or Grease Interceptors.

5.9.1.1 The proper configuration, operation and maintenance of grease control devices, e.g. grease traps or grease interceptors.

5.9.1.2 Required grease control device cleaning or pumping frequency. The FSE may request that the Director of

Operations or Authorized Inspector issue a revised cleaning or pumping schedule for grease interceptors where it can be shown that the change in frequency will not cause or contribute to non compliance with a Discharge Permit or the requirements of this Ordinance.

- 5.9.1.3 To keep, compile and submit to the Authorized Inspector a record or log listing regular removal of FOG from grease traps and grease interceptors for the previous twelve (12) months. Grease disposal logs and supporting manifests and invoices shall be retained by the FSE on-site for a period of three (3) years.

5.9.2 Waste Oil (Yellow Grease) Collection for Recycling or Disposal.

- 5.9.2.1 To keep, compile and submit to the Authorized Inspector a record or log listing regular waste oil (yellow grease) collection by a licensed hauler for the previous twelve (12) months. Waste oil collection logs and supporting manifests and invoices shall be retained by the FSE on-site for a period of three (3) years.

- 5.9.2.2 Required cleaning or pumping frequency for waste oil (yellow grease) barrels or drums. The FSE may request that the Director of Operations or Authorized Inspector issue a revised pumping schedule for waste oil (yellow grease) collection, where it can be shown that the change in frequency will not cause or contribute to non compliance with a Discharge Permit or the requirements of this Ordinance.

5.9.3 Kitchen Best Management Practices and BMP Training for Employees.

- 5.9.3.1 To conduct employee BMP Training. Employees with regular duties in food handling and preparation, kitchen duties, clean up and/or maintenance duties must receive BMP Training at least 1 time in each six month interval. New hire employees must receive BMP Training within 1 month of the date of hire. FSEs utilizing outside services for clean up and after hours maintenance must require vendors and contractors to conduct BMP Training for all contracted employees providing services at the site of the FSE on the same training schedule.

- 5.9.3.2 To keep, compile and submit to the Authorized Inspector a record or log documenting employee BMP Training. The log shall document employee BMP Training occurring over the

previous twelve (12) months and shall be retained by the FSE on-site for a period of three (3) years.

5.9.4 Implementation of kitchen best management practices (BMPs), as follows:

- 5.9.4.1 Trash Disposal. Dispose of food waste and fatty scraps into the trash or garbage bin, not down the sink. Use plastic trash bags to prevent leaks and odor. Double-bag waste that has the potential to leak in trash bins. Make sure trash bins are covered when not in use and call trash hauler if bin is leaking.
- 5.9.4.2 Pre-Wash. Dry wipe or scrape pots, pans, dishware, floor mats and work areas to remove grease and food scraps before washing and dispose in trash.
- 5.9.4.3 Use of Drain Screens. Install removable screens on all drainage pipes in food preparation areas. Keep screens in sink and floor drains clean and in good repair. Dispose of removed solids in trash, not down the drain.
- 5.9.4.4 Yellow Grease Disposal. Dispose of grease and oil from cooking equipment (pots, pans and fryers) by pouring waste oil and yellow grease into covered containers (drums, barrels) for storage and recycling. Provide secondary containment to capture any liquid grease or oil that may spill from the primary container. Use a licensed waste hauler or recycling facility to dispose of liquid grease and oil before the container is full.
- 5.9.4.5 Mat Cleaning. Clean and wash floor mats in a utility mop sink. Empty mop water into a sink or drain connected to a grease interceptor, if present. Do not empty mop or wash water into storm drains.
- 5.9.4.6 Hood Cleaning. Clean hoods and filters as frequently as necessary to maintain good operating condition. Use a licensed waste hauler to dispose of wastewater collected from cleaning hoods and filters.
- 5.9.4.7 Grease Trap Cleaning. Existing grease traps shall be cleaned as frequently as necessary to keep them free of food residues and hardened FOG. Inspect grease traps for leaking seams and pipes.
- 5.9.4.8 Spill Prevention. Place absorbent materials, such as paper towels or pads, under fryer baskets and other areas where

grease may drip or spill during cooking, frying or during the transfer of grease to storage or disposal containers.

- 5.9.4.9 Spill Kits. Maintain a spill kit accessible for use of employees, including absorbent pads, kitty litter or equivalent absorbing material, and paper towels. Require the use of the spill kit to clean up spilled FOG.
- 5.9.4.10 Super Hot Water. Do not pump water hotter than 140 °F through a grease control device.
- 5.9.4.11 Employee Training Posters. Post signs provided by District to show kitchen best management practices (BMPs) in food preparation, dishwashing and maintenance areas.

5.10 In addition to the other requirements of this Ordinance, the Director of Operations or the Authorized Inspector may from time to time establish discharger specific requirements for individual FSE Discharge Permits to the extent the same will reduce or have the potential to reduce or control FOG. Requests for Discharge Permit changes generated by the FSE shall be made in writing to the Director of Operations.

5.11 The Director of Operations may from time to time change the requirements of the general Discharge Permit form used by the District where such modification is appropriate to further the objectives of this Ordinance. FSEs holding existing Discharge Permits shall receive at least forty-five (45) days advanced written notice of changes in the form of the general Discharge Permit affecting terms or conditions. If the change to an existing Discharge Permit is the result of an Authorized Inspector's evaluation of the FSE for permit non-compliance, then the FSE shall receive fourteen (14) days advanced notice of the Discharge Permit revision.

5.12 FSEs operating under Discharge Permits shall dispose of all wastewater, accumulated FOG, yellow grease, floating materials, sludge or solid wastes in accordance with the requirements of this Ordinance and other federal, state and local laws and regulations.

5.13 In the event that District video monitoring of the connection point of the sewer lateral to the public sewer indicates that FSE FOG discharge is causing or contributing to build up of FOG inside the sewer lateral where it has discharged or has the potential to discharge to the public sewer, or in the event that an FSE fails to comply with the Prohibitions of this Ordinance (under Section 4) or a Discharge Permit issued by the District (under Section 5), then the Director of Operations shall have the authority to modify the Discharge Permit to require the installation of a District approved grease interceptor.

5.14 Discharge Permits are not transferable to a new or successor owner of the FSE, and a new application must be placed on file, approved by the District and issuance of a new Discharge Permit must be obtained prior to the operation of the FSE under new or successor ownership.

Section 6 - New FSEs, Remodeling FSEs and Transfers of Ownership

6.1 New FSEs, Remodeling FSEs and FSEs with a transfer of ownership or successor owner shall, prior to commencing business or operations within the District, install a grease interceptor sized and designed in accordance with the requirements of the Uniform Plumbing Code. Grease interceptor installation and related construction shall be subject to inspection by the District prior to operation.

6.2 New grease interceptors shall be reviewed by submission to the Director of Operations of facility site plans, mechanical and plumbing plans, with details to show all water meter and sewer connections, grease control devices, or other proposed pretreatment equipment and appurtenances by size, location and elevation, and such other information and documentation as may be required by the Director of Operations. The grease interceptor plan shall be approved by the District prior to installation and connection to the public sewer.

6.3 New FSEs, Remodeling FSEs and FSEs with a transfer of ownership are not permitted to install or continue utilizing Grease Traps or Food Grinders and the Director of Operations shall require the removal of Grease Traps and Food Grinders.

6.4 The Director of Operations shall determine the criteria applicable to the District's review of new grease interceptor(s), which may include: the type of FSE; the volume of projected business, meals, seats and hours of operation; the peak flow of discharge; the size and nature of the facility (including the kitchen and fixtures); the potential for grease-laden discharges; the location of the facility and its point of connection to the public sewer; any prior history of non-compliance with this Ordinance from the same location; other factors related to efficiency or effectiveness of the new grease interceptor and the proposed location.

6.5 The Director of Operations may from time to time require a sanitary tee location in a sample box on the discharge side.

6.6 The Director of Operations may from time to time require the installation of a dedicated water meter in addition to other requirements for the installation for the new grease interceptor. New grease interceptor installations shall also require one or more cleanout(s) installed on the private lateral in location(s) approved by the Director of Operations in conjunction with plan review.

6.7 The Director of Operations may from time to time consider requests for variance or waiver of the requirements of this Ordinance for the installation of new grease interceptors if the FSE can demonstrate that: (i) a proven alternative treatment technology is available and capable of observation under specific Discharge Permit requirements approved by the District; or (ii) that a negligible grease discharge will be released from the FSE and it will not cause or contribute to FOG accumulation in the public sewer and the FSE is otherwise capable of compliance with the requirements of this Ordinance, including the Prohibitions and Discharge Permit requirements; or (iii) the

FSE can demonstrate that the installation of a grease interceptor is not feasible because there is inadequate space and the FSE is otherwise capable of compliance with the requirements of this Ordinance, including the Prohibitions and Discharge Permit requirements. The burden of the variance or waiver demonstration is on the requesting FSE and is subject to review and approval by the Director of Operations taking into consideration the whole of the requirements of this Ordinance and its purpose.

Section 7 - Commercial Property Owners (Single Parcel, Multiple Tenants)

7.1 Owners (or their agents) of single-parcel commercial properties with multiple tenants (e.g. shopping mall or strip mall), which include one or more FSEs, shall:

- 7.1.1 Require that grease interceptors or grease traps serving FSEs within the property are operated and maintained in accordance with the requirements of this Ordinance, and that the tenant FSE has obtained a Discharge Permit.
- 7.1.2 Notify tenants with New FSEs, Remodeling FSEs or transfers of ownership of the requirements for installation and maintenance of a grease interceptor under Section 6 of this Ordinance.
- 7.1.3 Properly inspect, clean and maintain private laterals that connect tenants and the commercial property to the public sewer to reduce or eliminate the likelihood of sewer overflows from the property and/or the introduction of FOG into the public sewer.
- 7.1.4 Notify the Director of Operations within 2 business days of sewer overflows on private property.
- 7.1.5 Notify the District as soon as possible of any sewer overflow on private property that cannot be immediately stopped, contained and prevented from entering the public street, gutters or storm drains. District may determine to report the private spill to the Orange County Health Department and/or the RWQCB.

Section 8 - Sewer Usage Rates for FSEs

8.1 Section 4.01.4.C of District Ordinance No. 197 is hereby amended to add:

- 8.1.1 The Sewer Usage Rate applicable to Commercial Food Service under Section 4.01.4.B may be reduced by the General Manager if the Food Service Establishment is determined to be operating in accordance with the requirements of District Ordinance No. 201, as follows:

Food Service Establishments with approved Discharge Permits that are in compliance with said permits shall be charged a sewer usage

rate of \$4.25 per unit through the period ending June 30, 2006 and thereafter \$4.55 per unit until changed.

Food Service Establishments with approved Discharge Permits that are in compliance with said permits and have properly sized, installed and maintained grease interceptors as determined by the Director of Operations shall be charged \$3.42 per unit through the period ending June 30, 2006 and thereafter \$3.87 per unit until changed.

Section 9 - Enforcement

9.1 Purpose and Scope. The Board of Directors finds that specific enforcement provisions must be adopted in order for the District to comply with the laws, regulations, and rules imposed by federal, state and local regulatory authorities, and to ensure that the public sewers are protected and able to operate free from conditions that cause or contribute to overflows, including but not limited to FOG, dirt, rags, debris, root intrusions, or other obstructions that block or have the potential to block the flow of wastewater into or within the public sewer system.

9.2 Inspection. Upon the request of an Authorized Inspector made during normal business hours, the FSE shall allow the Authorized Inspector access to FSE facilities generating wastewater and all disposal facilities and equipment. The Authorized Inspector shall inspect the FSE place of business, operations and records or logs for compliance with the Discharge Permit and this Ordinance. The Authorized Inspector may inspect for noncompliance with BMPs, grease control device conditions, maintenance and disposal records and logs, BMP Training logs, and other Discharge Permit requirements or items related to verification of compliance with this Ordinance. No person shall interfere with, delay or resist entrance to District representatives (including the Authorized Inspector) attempting to inspect any FSE or facility discharging to the sewer system. Inspections during off hours (after normal business hours) may be requested by the Authorized Inspector or District representative if an emergency condition is present due to a sewer overflow or suspected sewer overflow coming from the FSEs private sewer system. In order to determine the origin of a condition of noncompliance with this Ordinance or the source of a sewer overflow event, the Authorized Inspector or District representative may enter adjoining businesses or properties that share sewer systems.

9.3 Sampling. From time to time the Director of Operations may conduct sampling of wastewater discharge to determine compliance with this Ordinance. Any sample taken from a sample point within the FSE facility or sewer system is considered to be representative of the discharge to the public sewer. In order to determine the characteristics of wastewater discharge, the Director of Operations may require sampling or flow monitoring for a facility, and to accomplish sampling may require installation of sampling facilities, sample collection ports or use of sampling devices.

9.4 Due Process. To ensure that all interested parties are afforded due process of law and that violations are resolved as soon as possible, the general policy of the District is:

9.4.1 The Authorized Inspector working in cooperation with the Director of Operations shall make inspections and determine compliance with this Ordinance, with a right of appeal to the General Manager pursuant to the procedures set forth in this Ordinance.

9.4.2 Persons may request that the Board of Directors review a decision of the General Manager. Such request may be granted or denied by the Board of Directors.

9.4.3 District decisions issued in connection with review of an action or an appeal will be made based on findings supported by evidence, and shall be made in writing to the affected party.

9.4.4 The District, at its discretion, may utilize any one or combination of enforcement remedies identified in this Ordinance in response to noncompliance with any Discharge Permit or any provision of this Ordinance. The issuance or exercise of any type of enforcement action within this Ordinance is not a prerequisite for any other or additional enforcement action.

9.4.5 All persons subject to this Ordinance have a right of appeal pursuant to this Ordinance. The District shall provide notice to affected parties concurrent with the notice of final decision that Section 1094.5 of the Code of Civil Procedure governs the time within which judicial review must be sought.

9.5 Notice of Noncompliance.

9.5.1 In the event that noncompliance with the provisions of a Discharge Permit or this Ordinance occurs, the Authorized Inspector or the Director of Operations may issue a Notice of Noncompliance (NON), whereby the FSE or receiving party shall comply with all directives, conditions, and requirements contained therein within the time so prescribed. The receiving party may be directed by a NON to cease and desist from activities or actions that are prohibited by this Ordinance. Each NON shall state a reasonable time period for the FSE or receiving party to come into compliance with the NON.

9.5.2 The FSE or receiving party shall promptly pay all noncompliance charges reflecting the actual costs of the District for additional inspection, follow-up, notice preparation, monitoring, or other costs associated with the NON, which charges shall be in addition to and not in lieu of any penalties assessed under this Ordinance.

9.5.3 The FSE or receiving party may be assessed a fine in the amount of \$600 per day applicable to each day of continuing noncompliance beyond the reasonable time period for corrective action as set forth in the NON.

9.5.4 Persons in receipt of an NON may appeal the NON to the General Manager and the Board of Directors as provided in Sections 9.4.1 and 9.4.2 of this Ordinance 201.

9.6 Compliance Schedule Agreement.

9.6.1 In the event that noncompliance with the provisions of a Discharge Permit or this Ordinance has occurred or is continuing, the Director of Operations may require that the FSE or other party enter into a Compliance Schedule Agreement (CSA). The CSA may state terms and conditions to allow the FSE or other party to come into compliance with a Discharge Permit or other provisions of this Ordinance.

9.6.2 The Director of Operations shall not enter into a CSA until all amounts due and owing to the District under applicable Ordinances and policies have been paid, or until a payment arrangement has been approved by the General Manager.

9.6.3 Persons in receipt of a Compliance Schedule Agreement may appeal the terms thereof to the General Manager and the Board of Directors as provided in Sections 9.4.1 and 9.4.2 of this Ordinance 201.

9.7 Discharge Permit Suspension and Revocation.

9.7.1 A Discharge Permit may be suspended and/or revoked for the following reasons:

Failure to comply with a Notice of Noncompliance or a Compliance Schedule Agreement issued to require compliance with a Discharge Permit or other provision of this Ordinance.

Knowingly providing a false Discharge Permit application or making false representations, or submitting false documents, reports or logs to the Authorized Inspector or the Director of Operations.

Refusal to allow inspections during normal business hours or after hours if emergency conditions exist (overflow or suspected overflow) as required by Section 9.2.

Interference with an Authorized Inspector during the FSE inspection or in sampling a FSEs discharge or in inspecting and sampling an overflow event.

Causing or contributing to sewer blockages or sewer overflows within the public sewer, or failing to address the conditions leading to more than one (1) overflow event from a private system within a twelve (12) month period.

- 9.7.2 The Director of Operations shall cause written notice to be mailed to the FSE stating the facts and grounds supporting the suspension or revocation action, together with a time and place where the charges will be heard. A hearing date shall be not less than 15 calendar days or more than 45 calendar days after the mailing of such notice.
- 9.7.3 The General Manager or his designee shall serve as the hearing officer. The Director of Operations or his designee shall present the facts and grounds supporting the suspension or revocation action. The FSE or its representative will have an opportunity to present oral or in written testimony and provide information to respond to the grounds stated for the suspension or revocation.
- 9.7.4 The General Manager, after review of information presented and testimony given shall determine whether the permit suspension or revocation is required and shall issue a written decision within a period up to 30 days following the conclusion of the hearing. If the permit is not suspended or revoked, the General Manager may issue other enforcement actions or orders, including but not limited to a temporary suspension.
- 9.7.5 Upon suspension or revocation of a Discharge Permit, the FSE shall cease and desist its discharge to the public sewer. The Director of Operations may discontinue water service to the FSE if sewer service use does not cease in accordance with the suspension or revocation order.
- 9.7.6 An order of permit suspension or revocation will be final on the 16th day after it is mailed to the FSE unless a request for hearing is filed with the Secretary of the Board of Directors on the 15th day following such mailing. Procedures for the appeal to the Board of Directors shall be provided to the FSE with the order of suspension or revocation. Such procedures shall be consistent with Section 9.4.2 of this Ordinance.

9.8 Emergency Discontinuance of Service. In the event that a violation of this Ordinance causes or contributes to a sewer system overflow event or an overflow event

emanating from a sewer lateral or private system and such event is creating or contributing to an immediate or impending threat to health or safety of persons or the environment, then the Authorized Inspector may discontinue the water service to the FSE or to the property, and such service discontinuance shall remain in effect until the private sewer lateral impairment is repaired or until the matter is heard and water service is ordered continued by the District General Manager or his designee. The following procedures shall apply in the event of an emergency water service discontinuance:

- 9.8.1 The Authorized Inspector shall provide telephonic notice as soon as practicable to the FSE emergency contact as stated on the FSE Discharge Permit application;
- 9.8.2 In the event the overflow is coming from a property with multiple tenants, the District shall provide telephonic notice as soon as practicable to the owner or manager of the property as appears in District records;
- 9.8.3 District notice of service discontinuance shall provide a time within 48 hours of the service discontinuance for a hearing on the action before the District General Manager or his designee, and the discharge permittee or owner or manager of the property shall be notified of the time and location of such hearing and shall have the opportunity to attend said hearing in person or by telephone to address the action. A written decision shall be issued within 24 hours by the District General Manager or his designee;
- 9.8.4 The decision of the General Manager or his designee to continue the water service interruption shall be subject to a right of further appeal to a two member panel of the Board of Directors as designated by the Board President. The District representative shall present the basis for the decision to the panel within four (4) days of the affected party's request for appeal to the Board panel, unless an extension of time is agreed to by the aggrieved party. The FSE permittee or owner or manager of the commercial property shall be notified of the time and location of such hearing and shall have the opportunity to attend said hearing in person or by telephone to address the action. A written decision shall be issued within two (2) days of the conclusion of the Board panel hearing, and the decision shall be final subject to judicial review in accordance with Section 10.

9.9 Civil Liability, Administrative Civil Penalties and Criminal Penalties.

- 9.9.1 All users of the District's system and facilities are subject to further enforcement actions of federal, state and local regulatory agencies. In the event the District is the subject of fines or penalties or legal

actions as a result of actions of the FSE or other parties in violation of a Discharge Permit or this Ordinance, the District shall be entitled to recover from the responsible party all costs and expenses to which it has been subjected.

9.9.2 All users of the District's sewer system are subject to enforcement actions administratively or judicially by the District, the State Regional Water Quality Control Board, the U.S. EPA, or the County of Orange District Attorney. The actions of said agencies may be taken pursuant to the authority of federal and/or state law, including but not limited to: the Federal Clean Water Act and the California Porter-Cologne Water Quality Control Act, among others.

9.9.3 Pursuant to Government Code Sections 54739 through 54740, any person who violates any provision of this Ordinance, any Discharge Permit condition or prohibition or any suspension or revocation order shall be liable civilly for a sum not to exceed \$25,000 per violation for each day of violation. The District shall petition the superior court to impose and assess such penalty in accordance with applicable statutory authority, but no liability shall be recovered under this section for any violation for which liability is recovered under Section 9 of this Ordinance.

9.9.4 Pursuant to Government Code Section 54740.5 and 53069.4 the District has the authority to issue an administrative complaint to any person in violation of Ordinance 201 or a District issued Discharge Permit, or in noncompliance with a permit revocation or suspension order. The District may act in accordance with the requirements of this Section 9 and may assess civil penalties and administrative fines as provided in Section 9.9.4.3 of this Ordinance.

9.9.4.1 The administrative complaint shall be served by personal delivery or certified mail on the person subject to the complaint and shall inform the person that a hearing will be conducted. The hearing date shall be scheduled within thirty (30) days of the service of the administrative complaint. The administrative complaint shall state the alleged act or failure to act that constitutes a violation of District Ordinance 201, noncompliance with a District issued Discharge Permit, or noncompliance with a permit revocation or suspension order. The administrative complaint shall state the provisions of law authorizing civil liability and the proposed civil penalty.

9.9.4.2 The matter shall be heard at the time and location provided in the notice of hearing by the General

Manager or his designee. In the event that the person in receipt of the administrative complaint waives the right to a hearing, the hearing will not be conducted. At the hearing, the charged party shall have the opportunity to respond to the allegations of the administrative complaint with written and/or oral evidence. The General Manager or his designee shall issue a notice of decision. The charged party may appeal the notice of decision (under Section 9.4.2) to the District Board of Directors within thirty (30) days of the notice of decision.

9.9.4.3 If after the hearing, or the appeal (if taken), the General Manager or his designee, or the Board of Directors may find that the charged party has acted or failed to act in violation of District Ordinance 201, acted in noncompliance or failed to comply with a District issued Discharge Permit, or acted in noncompliance with a permit revocation or suspension order, and the charged party may be assessed a civil penalty in accordance with the following:

In an amount not to exceed two thousand dollars (\$2,000) for each day of failing or refusing to furnish required reports, logs or compliance documentation;

In an amount not to exceed three thousand dollars (\$3,000) for each day of failing or refusing to timely comply with a CSA established by the District;

In an amount not to exceed five thousand dollars (\$5,000) for each day of violation of a Discharge Permit or requirement issued by the District.

9.9.4.4 In an amount which does not exceed (\$10) per gallon for any discharge in violation of a suspended or revoked Discharge Permit, cease and desist order, or other order or prohibition issued or reissued by the District.

9.9.5 In determining the amount of any civil penalty under this Section 9, the General Manager or his designee or the Board of Directors may take into consideration all relevant circumstances, including the extent of harm caused by the violation, the economic benefit derived through noncompliance, the nature and persistence of the

violation, the length of the violation and corrective action, if any, attempted or taken by the charged party.

- 9.9.6 An order of the General Manager or his designee assessing a civil penalty under this Section 9 shall be final on the 31st day after it is served on the person unless an appeal and request for hearing is filed with the Secretary of the Board of Directors pursuant to Section 9.4.2 no later than the 30th day following such service.
- 9.9.7 An order assessing civil penalties issued by the Board of Directors shall be final upon issuance. Persons in receipt of a final order of the Board may obtain judicial review pursuant to Government Code Section 54740.6 by filing in the court a petition for a writ of mandate, see Section 10 of this Ordinance.
- 9.9.8 No civil penalty shall be recoverable for any violation for which the District has recovered civil penalties through a judicial proceeding filed pursuant to Section 9 of this Ordinance 201.
- 9.9.9 The amount of any civil penalty issued under this Section shall constitute a lien against the real property of the fined party if remaining delinquent and unpaid for 60 days, and the lien may be recorded in accordance with Government Code Section 54740.5(d)(5) or the amount may be reduced to judgment in accordance with Section 54740.5(e).

9.10 Criminal Penalties.

Any person who violates any provision of this Ordinance is guilty of a misdemeanor, which upon conviction shall be punishable by fine of not more than \$600 or punishment by imprisonment in the county jail for not more than 30 days, or by both the fine and imprisonment.

9.11 Appeals to the General Manager

- 9.11.1 Any FSE, Discharge Permit permittee or other persons affected by any decision, action or determination made by the Director of Operations, a District representative or the Authorized Inspector or aggrieved by any NON or the terms of any CSA may file a request for a hearing before the General Manager.
- 9.11.2 A request for hearing under this Section 9.4.1 must be received by the District within 30 days of the mailing or issuance of a decision, action, or determination by the Director of Operations, District representative or Authorized Inspector or within 15 days of the issuance of a NON or CSA. The request for hearing shall set forth all relevant facts supporting the request for hearing.

- 9.11.3 The General Manager or his designee shall, within 15 days of receiving the request for hearing, provide written notice to the aggrieved party of the hearing date, time and place. The hearing date shall be not more than 30 days from the District's mailing or delivery of the notice of hearing, unless a later date is agreed to by the aggrieved party.
- 9.11.4 At the hearing, a District representative shall detail the findings and supporting evidence for the District action, decision or determination, and the other party shall have the opportunity to present information supporting its position.
- 9.11.5 At the conclusion of the hearing, the General Manager or his designee shall issue a written decision setting forth a statement of facts determined to be true and findings in support of the decision. The decision shall state whether the original decision, action or determination is upheld or changed, and if so changed, the details of the change. The written decision shall issue within 30 days of the conclusion of the hearing on the matter
- 9.11.6 The decision shall be final on the 16th day after mailing unless the appealing party requests further hearing on appeal before the Board of Directors in accordance with Section 9.4.2 of this Ordinance.

9.12 Appeals to the Board of Directors

- 9.12.1 Any FSE, discharge permittee or other persons affected by any decision, action or determination made by the General Manager or his designee pursuant to this Ordinance may, prior to the date the decision becomes final, file a request for hearing before the Board of Directors.
- 9.12.2 The Board of Directors shall grant all requests for a hearing on appeal concerning Discharge Permit suspension and revocation proceedings, Discharge Permit denials, or CSA disputes. All other basis for hearing appeals of the decisions of the General Manager or his designee shall be within the discretion of the Board of Directors to grant or deny the hearing. The aggrieved party shall set forth in the appeal request the relevant facts supporting the request for the hearing.
- 9.12.3 The Secretary of the Board of Directors shall, within 30 days of receiving the request for appeal, provide written notice to the aggrieved party of the hearing date, time and place. The hearing date shall be not more than 30 days from the District's mailing or

delivery of the notice of hearing, unless a later date is agreed to by the aggrieved party.

9.12.4 At the hearing, the General Manager or his designee shall detail the findings and supporting evidence for the District action, decision or determination, and the appealing party shall have the opportunity to present information supporting its position.

9.12.5 At the conclusion of the hearing, the Board of Directors shall issue a written decision setting forth a statement of facts determined to be true and findings in support of the decision. The decision shall state whether the original decision, action or determination is upheld or changed, and if so changed, the details of the change. The written decision shall issue within 45 days of the conclusion of the hearing on the matter

9.12.6 The decision of the Board shall be final on the date issued.

Section 10 - Judicial Review

10.1 Pursuant to Section 1094.6 of the Code of Civil Procedure, the District hereby enacts this part to limit to ninety (90) days following final decisions in administrative hearings the time within which an action can be brought to review such decisions by means of administrative mandamus.

10.2 As used in this Section 10, the following terms shall mean:

10.2.1 “Decision” shall mean and include adjudicatory administrative decisions made after hearing or after revoking, suspending or denying an application for a Discharge Permit.

10.2.2 “Complete Record” shall mean the transcript, if any exists, of the proceedings or hearings and all notices, orders, proposed decisions by District officers, agents, or employees, the final decision, all admitted exhibits, all rejected exhibits, in the possession of the District, its officers, agents or employees, all written evidence and any other papers in the case.

10.3 Judicial review of any decision of the District, its Director of Operations or his designee, the General Manager or his designee, or the District Board of Directors may be made pursuant to Section 1094.5 of the Code of Civil Procedure only if the petition for writ of mandate is filed not later than the 90th day following the date on which the decision is final. If there is no provision for reconsideration in the procedures governing the proceedings or if the date is not otherwise specified, the decision is final on the date it is made. If there is provision for reconsideration, the decision is final on the expiration of the period during which reconsideration can be requested if not so requested.

10.4 The complete record of the proceedings shall be prepared by the Secretary of the Board and delivered to the petitioner within 90 days after a written request therefore has been filed. The District may recover the actual costs for transcribing or otherwise preparing the record.

10.5 Where the petitioner submits a request for the record within ten (10) days after the date of decision becomes final, the time within which a petition pursuant to Section 1094.5 of the Code of Civil Procedure may be filed shall be extended to not later than 30 days following the date on which the record is either personally delivered or mailed to the petitioner or the attorney of record for the petitioner.

10.6 Notwithstanding this Section 10, pursuant to Government Code Section 54740.6, judicial review of a District order imposing administrative civil penalties pursuant to Section 9 may be made only if the petition for writ of mandate is filed not later than the 30th day following the day on which the order became final.

Section 11 – Severability.

11.1 If any section, subsection, subdivision, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such invalidity shall not affect the validity of this entire Ordinance or any of the remaining portions hereof. The Board of Directors hereby declares that it would have passed this Ordinance, and each section, subsection, subdivision, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sees, clauses or phrases be declared unconstitutional or otherwise invalid.

This Ordinance shall take effect immediately upon its passage.

PASSED AND ADOPTED this 21st day of February, 2006 by the following vote:

AYES: Bishop, Runge, Moore, McGuire, Gardner

NOES:

ABSTENTIONS:

ABSENT:

(Add Certification)