

SMCSD STANDARD PROCEDURES - SEWER SERVICE CHARGE REFUNDS AND UNDERCHARGES DATED JUNE 20, 2014

BACKGROUND: At the January 10, 2018 Finance, Insurance & Budget Committee Meeting the Sewer Service Charge and Undercharge Procedures were reviewed. It was proposed to adjust and align the number years for the refunds and undercharges. The Committee recommended the standard procedure be reviewed and discussed by the Board at the Special Meeting scheduled for March 21, 2018.

At the Strategic Plan Workshop Special Meeting on March 21st, the Board reviewed and discussed the proposed changes to the procedure changing the current 4 and 3-year period to a consistent 1-year refund/assessment for over/under charges. After a review by Staff and Counsel, the revised version of the procedures is attached for review and approval.

RECOMMENDATION: Approve the Revised SMCSD Standard Procedures -Sewer Service Charge Refunds and Undercharges.

ATTACHMENTS:

1. Revised Standard Procedure for Sewer Service Charge Refunds
2. Exhibit A – Settlement Release Form
3. Revised Standard Procedure for Sewer Service Charge Undercharges



PREPARED BY: _____
Jeffrey Kingston, General Manager

**SAUSALITO-MARIN CITY SANITARY DISTRICT
STANDARD PROCEDURE**

Effective: 04/02/18

SUBJECT: SEWER SERVICE CHARGE REFUNDS

- I. **PURPOSE:** To provide a policy for the District's refund of sewer service charges when a customer has overpaid or has been overcharged.
- II. **SCOPE:** This policy identifies the treatment of requests by the property owner of record for refunds of sewer service charges where no service was delivered, or where a customer was otherwise overcharged, and/or in cases of District error.
- III. **POLICY:**
 - A. Claims for sewer service refunds **where no service was delivered.** (Gov. Code 53082.) This includes situations where a property owner is on septic and has not been connected, or where a property has been charged but there is no physical connection allowing wastewater to discharge to the public sanitary sewer system. Claims filed under "no service was delivered" circumstances excludes temporary construction projects or vacation residences. Refunds in these situations will be handled as follows:
 1. Where the property owner is still residing at the location where no service was delivered, the District will refund the total amount of the overpayment.
 2. Where the property owner is not still residing or never resided at the location where no service was delivered, the refund policy is as follows:
 - a. All fees paid before January 1, 1992 will be refunded to the property owner of record.
 - b. Fees paid after January 1, 1992 are subject to a 180-day statute of limitations. Thus, the District will refund fees paid by the property owner of record for 180 days prior to the claim.
 - B. Claims for sewer service refunds **where a property owner was overcharged.** This includes situations:
 1. Where a property owner is charged for more dwelling units than he/she has (for example, where owner was charged for 2 units but can demonstrate that she has only 1.).
 2. Where a property is misclassified as residential or commercial.
 3. Where a property owner is otherwise charged too much.Where the property owner requests evaluation of residential or commercial usage, the District will research and make recommendation as to the sanitary unit designation.

Where a property owner has been wrongly overcharged for sewer service, the District will refund the amount overcharged for 1 year of the overcharged amount.

The District shall verify property ownership, proof of payment, and the correct amount of the charge.

C. Where the overcharge is **clearly identified as being caused by District error**.

The District may refund the total amount of an overpayment if the General Manager determines, based on credible evidence, that District error clearly was the primary cause of the overpayment. This policy will apply to the situations described in both A and B above.

D. Deviations from policy. The District will not make refunds smaller than the amounts indicated in this adopted policy. Any refunds larger than what this policy prescribes must be based on unusual circumstances and must be accompanied by Board findings of the public purpose for the larger refund.

E. Release. The District will require customers to sign a release of claims prior to providing a refund. A form release, Exhibit A, is attached to this policy.

IV. **RESPONSIBILITY**: It shall be the responsibility of the General Manager to ensure compliance with this procedure.

V. **PROCEDURE**:

A. **Date of Claim**: Any claim for correction or refund of sewer service charges must be filed with the Secretary of the Board of the Sausalito-Marín City Sanitary District within the applicable limitations period from the date of original payment.

B. **Investigation**: All requests for correction or refund of sewer service charges will be investigated and confirmed by Staff prior to presentation to the General Manager or the Board, as provided below.

C. **Authority to Approve Claims**: All claims for refund of overpayments shall be determined and approved by the General Manager. The General Manager's written determination will be provided to the property owner who filed the claim.

D. **Appeal of Claim Determination**: A property owner may file an appeal of the General Manager's determination to the Board of Directors.

SETTLEMENT AGREEMENT

The parties to this Agreement are the Sausalito-Marin City Sanitary District (“District”), and _____ (“Owner”). The parties enter into this settlement agreement (“Agreement”) as of ____, 2018.

I. RECITALS

A. This Agreement concerns [details of incident and claim]

B. In consideration of the risks and costs attendant in pursuing and ultimately litigating this Claim, this Agreement is to resolve and compromise all disputes among the Parties concerning the issues raised by the Claim.

II. AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual undertakings contained in this Agreement, and for other good and sufficient consideration, the Parties agree as follows:

A. Payment by District: [details of payment]

B. Property Owner’s Obligations: Owner agrees as follows:

1. Release of all claims: For and in consideration of the payment by the District as recited in Section A above, Owner hereby releases, acquits and forever discharges the District, as well as all departments, employees, contractors and agents thereof, from any and all actions, causes of action, claims, demands, damages, debts, liabilities, costs, interest and expenses, known or unknown, arising out of or in any way related to the facts described in the Claim or arising out of the Incident.

2. Civil Code section 1542 Waiver: Owner hereby waives and relinquishes all rights or benefits which Owner now has or in the future may have under the terms of section 1542 of the Civil Code of California, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

C. General Agreement Terms:

1. Attorneys Fees and Costs: Each of the Parties shall bear its own attorneys' fees and costs, if any.

2. Further Actions and Documents: Each of the Parties agrees to execute any and all further documents that may be necessary or appropriate to effectuate the provisions of this Agreement and to make this Agreement legally binding upon each of the other Parties, their officers, directors, agents, employees, attorneys, representatives, subsidiaries, affiliates, successors and assigns.

3. Authority: Each Party represents and warrants to the other Party that such Party has the legal authority to enter into this Agreement and bind such Party to the terms hereof, and that none of them has heretofore assigned or transferred, or purported to assign or transfer, to any person or entity any claim, demand, damage, debt, liability, obligation, account, action or cause of action, or any part or portion thereof, involved or referred to herein. Each Party does jointly and severally agree to indemnify and hold harmless any of the others against any claim, demand, debt, liability, account, action or cause of action (including the payment of attorneys' fees and costs actually incurred, whether or not litigation be commenced), based on or arising out of or in connection with any lack of authority or such transfer or assignment.

3. Enforcement of Agreement: Any suit brought by any Party to enforce any provision of this Agreement, or for damages for the breach hereof, shall be commenced and maintained exclusively in the County of Marin, California.

4. Independent Counsel: Both Parties do hereby acknowledge and agree that they have been represented by, or have been encouraged to retain, independent counsel of their own choice throughout the drafting and execution of this Agreement.

5. Governing Law: This Agreement is made and entered into in the State of California, and shall in all respects be interpreted, enforced, and governed by and under the laws of that state.

6. Full and Final Compromise. No Admission of Liability: Each of the Parties acknowledges that the money and other valuable considerations for settlement are solely for the purpose of producing peace and preventing further involvement in the Claim between them. This Agreement is a full and final compromise of all disputes identified in the Claim and/or arising out of the Incident, and any provision hereof is not to be construed as an admission of liability on the part of any Party hereto. No Party shall be deemed to be or considered a "prevailing party" for purposes of the Claim.

7. Interpretation: Both Parties have had an equal opportunity to participate in the drafting of this Agreement. The usual construction of an agreement as to the drafting Party shall not apply to this Agreement. No provision of this Agreement shall be interpreted for or against any Party because that Party or its legal counsel drafted the provision.

8. Modification: This Agreement may not be altered, amended, or modified or otherwise changed, except in writing duly executed by authorized representatives of each of the Parties to it.

9. Entire Agreement: This Agreement contains the entire agreement and understandings concerning the subject matter between and among the Parties and supersedes and replaces all prior negotiations, proposed agreement and agreements, written and oral. Each of the Parties acknowledges that no other Party nor any agent or attorney of any other Party, has made any promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof, to induce them to execute this Agreement, and acknowledges that they have not executed this Agreement in reliance upon any such promise, representation, or warranty not contained herein.

10. Effective Date: This Agreement shall be effective upon execution.

11. Severability: Each provision of this Agreement shall be interpreted in such a manner as to be valid and enforceable under applicable law, but, if any provision hereof shall be prohibited or invalid under any applicable law, that provision shall be ineffective only to the extent of such prohibition or invalidity, without thereby invalidating the remainder of that provision or any other provision hereof.

12. Counterparts: This Agreement may be executed in counterparts and so executed shall constitute an agreement binding on all the Parties hereto notwithstanding that all the Parties are not signatories to the original or the same counterpart.

THE UNDERSIGNED HEREBY AFFIRMS AND ACKNOWLEDGES that s/he has read the foregoing Agreement; that s/he fully understands and appreciates the foregoing words and their significance; that s/he is entirely satisfied with the terms contained within this document; and that s/he has affixed his or her signature hereto voluntarily and of his or her own free will and accord.

Dated: _____
Owner _____

Dated: _____
By: _____
District

Attest:

Dated: _____
By: _____

Approved as to form and content:

Dated: _____
By: _____

**SAUSALITO-MARIN CITY SANITARY DISTRICT
STANDARD PROCEDURE**

Effective: 4/2/2018

SUBJECT: COLLECTION OF SEWER SERVICE CHARGE UNDERCHARGES

- I. **PURPOSE:** To provide a policy for the District's collection of sewer service charges when a customer has been undercharged.
- II. **SCOPE:** This policy identifies the treatment of correction of sewer service charges where a customer was undercharged.
- III. **POLICY:** Where District customers have been undercharged for sewer service, the following policy shall apply:
 - A. After verifying the amount of the undercharge based on credible evidence, the District may charge a customer for the amount of the undercharge for a total of up to 1 year. The customer will be notified by mail or telephone call of the District's intent to charge him or her, the reason for the charge, and the total amount of the charge.
 - B. In collecting the undercharged amount, the District may collect a direct payment, or may include the undercharged amount with the sewer service charges on the tax roll. If the customer wishes to divide the payment into smaller payments, the District may enter into an agreement with the customer for two or more regular direct payments for such time period that the District and customer agree, or, the District may divide the required payments for collection on the tax roll for an agreed-upon time period.
- IV. **RESPONSIBILITY:** It shall be the responsibility of the General Manager to ensure compliance with this procedure.
- V. **PROCEDURE:**
 - A. **Date of Request for Reimbursement:** Any request made by the District for collection of underpayment of sewer service charges must be sent to the customer within one (1) year from the date of the original payment.
 - B. **Investigation:** All requests made by the District for collection of underpayment of sewer service charges will be investigated and confirmed by Staff, and approved by the General Manager, prior to being delivered to the customer.
 - C. **Authority to Negotiate Collection:** As stated in Section III.B, the General Manager is granted the authority to work with the customer to determine the terms of repayment.
 - D. **Appeals:** A property owner may file an appeal of the General Manager's determination to the Board of Directors.