



September 22, 2020

Carmel Area Wastewater District

Re: **Sewer User Fee Refund or Adjustment Policy**
Agenda Item 25 at Regular Meeting of September 24, 2020

To the District Board Members and Staff:

SIMA Barnyard LLC
dba The Barnyard Shopping Village

Physical Address:
26400 Carmel Ranch Ln
Carmel, CA 93923

Mail to:
PO Box 222465
Carmel, CA 93922

(831) 624-8886 Office
Marilyn.Schultz@thebarnyard.com

The Barnyard Shopping Village is one of many multi-use commercial facilities located within the jurisdiction of the Carmel Area Wastewater District. We currently have approximately 54 tenants including vacancies within our facility that are assessed annually by the District.

As landlords operating on a calendar fiscal year, the assessment that the District finalizes annually appears on our County of Monterey tax bill distributed in the Fall and is intended to apply to businesses operating between July of the assessment year through June of the following year, so we are required to pay the full assessment each year and prorate the charges over a 12 month period to our tenants the following year, often not knowing if those tenants will be renewing their leases, leaving their tenancies, or being mandated to operate at a reduced capacity which is our current reality.

DATA CORRECTION PROCESS:

To keep our assessment data up to date we have worked cooperatively with District staff to try and make sure the businesses are assessed accurately. There has been one particular difficulty in this process in that there has been no automatic procedure in place for the District to provide an advance copy of our assessment data for review (we have to reach out to them and ask for it), and there is no schedule established for allowing the assessee to submit data corrections in a timely manner so we are always guessing at that schedule. For this reason, we propose that:

The Accounting Policies & Procedures for this topic be amended to **provide a process for a printed prefilled form to be sent to all Commercial assessees at least 90 days prior to finalization of the annual assessment that allows them to verify the assessment data being carried forward from the previous year, as well as a worksheet for the assessee to indicate any changes or adjustments to that data** on a schedule to be determined by the District that also allows the District sufficient time to incorporate the changes into the assessment for the coming fiscal year. *[This can also be modified to include "all assessees" not just commercial assessees]*

The logistics behind this mailing could be modeled on a similar procedure employed by the County of Monterey who mails out assessment forms each year for reporting any changes to assets of a business in order to compute Unsecured Property Tax. I have attached a sample of what the line item for that survey might look like for CAWD data corrections. Instructional language for the assessee would need to be developed on how to complete the form properly.

REQUESTS FOR ASSESSMENT CREDITS OR REFUNDS:

In Staff's report dated September 24, 2020, the District's consultant Mark Mandell states that costs of services remain fairly consistent, citing a statistic of influent for the fiscal years 2018-2019 and 2019-2020 showing a mere 3% change.

Our reality is different. Since the Barnyard waters its gardens with well water, the Barnyard's Cal-am water use has a direct correlation to water going into the Barnyard waste lines. Our water use is down 53% when compared to water use 12 months ago (see table attached), so a lot has happened in the last year to cause that. Business income has gone down commensurately so if other businesses or homeowners are taking up the slack in the influent processing totals they should bear their fair share, and **the only way for that fair share to be established is through an operational or "occupied" factor being incorporated into the assessee's data correction process.** For this reason, we propose that:

The Accounting Policies & Procedures for this topic be amended to **(1) include a method for the assessee to report whether an assessed unit is occupied and operational for a full 12 months of the year and (2) to request a pro rata credit for any 30 day period that assessed unit is non-operational or vacant within the reporting period.** In order to allow for submission and verification of the assessee's claims, **the credit would not be for the upcoming assessment period, but for the assessment period after that.**

This process will probably play havoc with our tenants' NNN adjustments for the following calendar year but at least the assessee is not irrevocably penalized for a unit that is producing no income for them and has no impact on the volume of effluent exiting the facility. In this manner the District would also know their exposure for downward adjustments to their budget a year in advance and would have many months to evaluate documentation proving the assessee's claim for a credit to their future assessment. They would also have time to decide how to redistribute the fee burden on the assessee's fairly. The District would not be burdened with writing refund checks constantly because this suggested protocol would be handled through a line item credit a year later, but the District would need to write a check if the assessee is due a credit but closes its business before the assessment period arrives when they could qualify to receive the offset to their annual assessment due to the one-year process delay.

The argument that the sewer is always "on" and available to the assessee whether or not there is a business actually able to operate is an unfair advantage the District has due to their ability

to collect these fees in advance of an assessee knowing whether or not they will have any reasonable guarantee of recouping those fees. The current method, and the one sought to be codified by the District, maximizes the collection of fees for the District without taking into account the ability of the assessee to generate the income necessary to pay the fees. **There should be a fair and equitable adjustment process available to the assessee.** The fact that the assessee cannot “turn off” the sewer shouldn’t be the rationale for not allowing future credits or refunds. Neither does the assessee “have any idea when the pandemic will end” but it seems unfair for the assessee to be the sole entity burdened with this reality.

Our CAWD assessment constitutes 35-40% of our total property tax bill and our CAWD fees are over \$100K per year and climbing. For example, the assessment computation for our tenant Robata Grill, is currently a combined total of \$17,922.17 for 2020-2021. That’s a lot of sushi to roll (and they are currently limited to their 25 outdoor seats to produce their income to pay that fee back to us). **We are not asking for a reduction in capacity adjustment** (because the government mandates the number of customers we can serve), but **we are asking for a non-operation adjustment in the form of a future credit.** How that credit might be computed is shown on the attached illustration comparing how the District currently computes the assessment along with our proposed changes gained through a reporting process.

We respectfully request that the District not put the full burden of any current or future economic downturn solely onto its individual assessees and thoughtfully consider processes and budget adjustments which make the assessment process fair for all concerned.

Making the argument that it is too burdensome on staff to handle the requests for relief while blocking refunds and collecting higher fees each year to continue “business as usual” is not in the spirit of fairness to the assessees footing the bill when business is definitely not as usual and doesn’t look like it will be for some time to come. Granted, there remains an expectation that the wastewater is treated properly, but there must be a way to accomplish that without pushing the businesses you serve into the red or worse, into nonexistence.

Please consider making modifications to the proposed policy along the lines stated above.

Sincerely,



Marilyn Schultz, General Manager
The Barnyard Shopping Village

cc : Kevin Burnes, SIMA Management Corp.
Adam Geeb, SIMA Management Corp.

Attachments

- Proposed line item format for annual assessment reporting form
- Barnyard water use data (effluent)

Sample of a current internal District Excel sheet assessment line item:



D-11	Robata 126 In, 25 Out, 1 Meal (2 turns/seat meal)	Restaurant/Seat Meals	264.50	62.74	16594.73
	Robata Bar	Bar/Each	1.00	1327.44	1327.44

Cell formula =126+(25/4))*2
 126 inside seats plus
 25 outside seats divided by 4 = 6.25
 126 + 6.25 = 132.25 seats
 132.25 X 2 meal turns = 264.50 seats
 264.50 x \$62.74/seat = \$16,594.73/yr
 (Plus \$1327.44 flat fee for the bar)

Proposed assessment reporting line item for annual reporting TO BE COMPLETED BY ASSESSEE ANNUALLY IN ADVANCE OF ASSESSMENT BEING FINALIZED, with operational adjustments being credited a full year later after verification through water flow records and/or other verification processes which allows plenty of time for District staff to prepare for adjustments to their budget since they already know their exposure through the credit requested in red below.

Unit #	Business Name	Use	# Inside Seats	# Outside seats divided by 4 (ex. 2.00)	# of meal/seat turns	Total Seats	Cost Per Unit	Annual Cost 2020-2021	# Months Operational July-June 2019-2020	2021-2022 Credit Requested for Non-operation
D-11	Robata	Restaurant	126	6.25	2	264.50	62.74	16,594.73	10	2,765.79
D-11	Robata	Bar	N/A	N/A	N/A	1.00	1327.44	1327.44	10	221.24

This method does not address capacity restrictions mandated by the state during the pandemic but it at least doesn't irrevocably penalize the assessee and charge them maximum assessment rates when they have no income from a business that was forced to close or is completely out of business, or the unit is otherwise vacant. The reality is that the Landlord/Assessee absorbs all of the cost of pre-paying the fee for the months the tenant may or may not be operational and has no realistic recourse to collect District fees after the fact from a business that has vacated their unit or gone out of business. The landlord should rightfully receive a credit from the District during the following assessment year after providing reasonable verification of the vacancy or non-operation of the tenant's business.

Vendor Name	Mty County Fiscal Yr	Service Period	Gallons used	% Less	Invoice Date	Paid Amount	Chk Pd Date
California American Water	2018-2019	01/04/19 - 02/04/19	288,354		2/7/2019	5,154.27	2/20/2019
California American Water	CAWD Assessment	Image not available			3/8/2019	5,224.19	3/20/2019
California American Water	\$106,095.44	03/05/19 - 04/02/19	299,574		4/9/2019	5,392.24	4/24/2019
California American Water	7/1/18-6/30/19	04/03/19 - 05/02/19	323,136		5/7/2019	5,805.78	5/23/2019
California American Water		05/03/19 - 06/04/19	289,476		6/13/2019	5,477.99	7/11/2019
California American Water		06/05/19 - 07/02/19	267,410		7/9/2019	5,638.73	7/17/2019
California American Water	2019-2020	07/03/19 - 08/02/19	336,600		8/9/2019	7,026.55	8/21/2019
California American Water	CAWD Assessment	08/03/19 - 09/04/19	324,258		9/13/2019	6,692.10	9/25/2019
California American Water	\$113,424.84	09/05/19 - 10/02/19	247,962		10/17/2019	5,113.69	10/30/2019
California American Water	(User Fees)	10/03/19 - 11/04/19	293,590		11/7/2019	5,965.36	11/20/2019
California American Water	7/1/19-6/30/20	11/05/19 - 12/04/19	240,856		12/6/2019	4,942.66	12/18/2019
California American Water		12/05/19 - 01/03/20	228,888		1/3/2020	4,765.30	1/23/2020
California American Water		01/04/20 - 02/04/20	251,328		2/11/2020	5,400.78	2/26/2020
California American Water		02/05/20 - 03/04/20	235,620		3/12/2020	5,188.99	4/16/2020
California American Water		03/05/20 - 04/02/20	135,388	-55%	4/6/2020	3,046.42	5/14/2020
California American Water		04/03/20 - 05/04/20	79,382	-75%	5/7/2020	1,849.31	5/21/2020
California American Water		05/05/20 - 06/02/20	100,500	-65%	6/5/2020	2,300.70	6/17/2020
California American Water		06/03/20 - 07/02/20	174,200	-35%	7/9/2020	3,885.72	7/15/2020
California American Water	2020-2021	07/03/20 - 08/04/20	197,700	-41%	8/5/2020	4,437.34	8/20/2020
California American Water	CAWD Assessment	08/05/20 - 09/02/20	164,500	-49%	9/3/2020	3,753.49	9/15/2020
California American Water	\$101,523.64						
California American Water	7/1/20-6/30/21	Covid-19 March-Sept	Water Use	-53%			
Compared to previous year - same months							