

RESOLUTION NO. 17

Series 2019

**AMENDMENT OF RULES AND REGULATIONS RELATED TO THE SFE
CONVERSION RATE FOR SINGLE-FAMILY RESIDENCES AND
MANUFACTURED HOMES USED FOR SHORT-TERM RENTALS**

WHEREAS, the Upper Blue Sanitation District (“District”) assesses a plant investment fee (“PIF”) and a monthly service fee by converting Buildings within the District into a base unit of wastewater collection and treatment service called a single-family equivalent unit or “SFE Unit;” and

WHEREAS, the SFE Unit is defined in the District’s Rules and Regulations (“Regulations”) as “a building unit that possesses the average characteristics of a home of a single family in a permanent residence in the District ... [which] contributes a maximum of 300 gallons per day, 0.63 pounds of biological oxygen demand per day, and 0.63 pounds of total suspended solids per day to the District’s Facilities,” Regulations at § 2.20 (emphasis added); and

WHEREAS, the District’s definition of an SFE Unit is based on the maximum, or peak, daily loading to the District’s Facilities (as opposed to an average weekly, monthly, or annual loading) because the District has to design, construct, operate, and maintain its Facilities to accommodate such peak daily loadings in order to provide reliable services to its customers; and

WHEREAS, the District uses the Single-Family Equivalent Unit Conversion Schedule in Appendix A of the Regulations (“Conversion Schedule”) to convert different Building types and uses into SFE Units; and

WHEREAS, the basic structure of Appendix A was originally developed in the early 1980s pursuant to a wastewater service charge study prepared by Black and Veatch which was initiated to satisfy the terms of § 204(b) of the Clean Water Act; and

WHEREAS, the District has, on occasion, modified Appendix A to reflect changed circumstances and the District has specifically reserved the right to make further changes to Appendix A as information becomes available which supports such changes; and

WHEREAS, one of the categories in the Conversion Schedule is for “Single-Family Residences and Manufactured Homes” and, when adopted, the rates for that category were based on the assumption that single-family residences and manufactured homes generally tend to be used for long-term use by a single family in permanent residence; and

WHEREAS, that assumption is no longer true for those single-family residences and manufactured homes that are rented out on a short-term basis through private arrangements/agreements or through commercial rental/accommodation companies that facilitate, or arrange for, short-term rental use of single-family residences and manufactured homes (e.g., *Airbnb* and *VRBO*), and such short-term rental use of single-family residences and manufactured homes in the District has increased over the past several years; and

WHEREAS, changing the use of a single-family residence or manufactured home from one that is used by a single family in permanent residence to one that is used periodically for short-term rentals is a change in the use of that Building and, therefore, a “Substantial Alteration” under Sections 9.6 and 9.7 and Appendix F of the Regulations which subjects such single-family residence or manufactured home to a re-evaluation of its SFE Units; and

WHEREAS, single-family residences and manufactured homes that are rented out on a short-term basis (less than 30 consecutive days) are regulated by the Town of

Breckenridge, the Town of Blue River, and Summit County through their respective codes and these governments are currently tracking the number and location of Buildings used for such short-term rentals and have a list of them; and

WHEREAS, the District used the Towns' and the County's data on the single-family residences and manufactured homes within the District that are used for short-term rentals together with information on how those short-term rental Buildings are being marketed/advertised (e.g., occupancy, number of bedrooms and bathrooms) to evaluate if, and to what extent, such short-term rental use of these Buildings results in peak daily loadings to the District's Facilities that are greater than contemplated by the current Conversion Schedule, and found that:

the marketed/advertised occupancy for single-family residences and manufactured homes used for short-term rentals averages about 85% higher than the occupancy contemplated by the Conversion Schedule for the single-family residences and manufactured homes that are used by a single family in permanent residence which, in turn, results in peak daily loadings to the District's Facilities that are greater than contemplated by the current Conversion Schedule (*see, e.g.*, Mott McDonald Technical Memorandum dated November 20, 2019 ("MM Report") attached hereto as **Exhibit A**); and

WHEREAS, the District's Conversion Schedule includes another category of residential Buildings described as "Apartments, Townhouses, Multiplexes, and Condominium Units" (herein "Multiplex Units"), and the calculated SFE Units for a Building in this category are higher than a single-family residence or manufactured home with the same number of bedrooms and bathrooms to account for the fact that Multiplex Units have historically tended to be used for short-term rentals with occupancy rates and peak daily loadings that are higher than those for traditional single-family residences and manufactured homes that are used by a single family in permanent residence, a fact that the District addressed in its Resolution No. 18, Series of 1997; and

WHEREAS, using the same data from the Towns and the County on short-term rentals, the District found that converting single-family residences and manufactured homes used for short-term rentals using the Multiplex Units category and the number of marketed/advertised bedrooms and bathrooms tended to better reflect the peak daily loading impact of the short-term rental single-family residences and manufactured homes on the District's Facilities, with the marketed/advertised occupancy for single-family residences and manufactured homes used for short-term rentals averaging only about 10% higher than the occupancy contemplated by the current Conversion Schedule for Multiplex Units and the number of marketed/advertised bedrooms and bathrooms (*see, e.g.*, MM Report); and

WHEREAS, the Board of Directors of the District ("Board") has determined that using the Single-Family Residences and Manufactured Homes category to convert single-family residences and manufactured homes that are used for short-term rentals underestimates the peak daily loading of those Buildings, and that using the Multiplex Units category and the number of marketed/advertised bedrooms and bathrooms for such conversion better estimates the peak daily loading of those Buildings which, in turn, better assures that these Buildings are paying their fair share of the costs of waste water collection and treatment; and

WHEREAS, the Board has determined that using the Multiplex Units category and the number of marketed/advertised bedrooms and bathrooms to convert single-family residences and manufactured homes used for any short-term rental use to SFE Units for the purpose of assessing monthly service fees is reasonable, provides a more equitable allocation of operation and maintenance costs among the District's customers, and is in the best interests of the District; and

WHEREAS, given the potential intermittent nature of short-term rental uses, the Board has determined that it will not, at this time, assess and collect any additional PIF for single-family residences and manufactured homes that are used for short-term rentals, but

will instead assess such Buildings a “Monthly Capital Charge” to recover a portion of the additional capital cost necessary to address the increased peak daily loading on the District’s Facilities caused by the short-term rental use, said Monthly Capital Charge to be based on the number of marketed/advertised bedrooms and bathrooms, a 25-year (or 300 month) cost recovery period, and a phase-in period ending on September 30, 2023, which the District has determined is reasonable, provides a more equitable allocation of capital costs among the District’s customers, and is in the best interests of the District; and

WHEREAS, the Board has authority to amend its Regulations pursuant to C.R.S. § 32-1-1001(1)(m) and the Board has determined that it is in the District’s best interest to amend its Regulations as described herein; and

WHEREAS, the District announced its intention to discuss the impacts on the District’s Facilities when single-family residences and manufactured homes are used for short-term rentals and that it was considering a change in how the District assesses such uses for PIF and monthly service fee purposes in public notices published in local newspapers on September 6, October 4, and November 1, 2019; on the District’s website; and in the District’s newsletter that is sent to its customers; and

WHEREAS, the Board considered the matter at its regularly scheduled meetings on September 12, October 10, November 14, and December 12, 2019, and *[no oral or written public comments on this issue were received by the Board of Directors of the District prior to or at those meetings]*.

NOW, THEREFORE, BE IT RESOLVED that considering the above recitals and all the current evidence including, without limitation, the District’s experience and knowledge of its customer base and the MM Report attached hereto as **Exhibit A**, the Board hereby amends its Regulations as follows:

A new “Footnotes to Appendix A” numbered “3a” shall be added to the Single-Family Residences and Manufactured Homes category in Appendix A of the District’s current Regulations that reads as follows:

3a. The Single-Family Residences and Manufactured Homes conversion category shall not apply to single-family residences and manufactured homes that are rented out at any time for less than 30 consecutive days (herein “Short-Term Rental Use”), but such Short-Term Rental Use will instead be governed by the following:

(i) If a single-family residence or manufactured home is included on the list of units used for Short-Term Rental Use maintained by the Town of Breckenridge, the Town of Blue River, or Summit County on October 1 of any particular year, the District will treat that Building as if it will be used for Short-Term Rental Use from October 1 of that year to September 30 of the following year, and for that entire 12-month period, regardless of its actual use, that Building will be converted to SFE Units for monthly service fee purposes using the Apartments, Townhouses, Multiplexes, and Condominium Units conversion rates and the greater of: the number of marketed/advertised bedrooms and bathrooms, or the number of bedrooms and bathrooms listed in the District’s records; and, in addition, that Building will be assessed a Monthly Capital Charge for each month during that entire 12-month period.

(ii) For the purpose of assessing the Monthly Capital Charge, the following definitions will apply:

- “STR SFE Units” are the Short Term Rental SFE Units that will be determined by subtracting the number of SFE Units purchased for, and allocated to, the Building from the number of SFE Units calculated for that Building using the Apartments, Townhouses, Multiplexes, and Condominium Units conversion rates and the greater of: the number of marketed/advertised bedrooms and bathrooms, or the number of bedrooms and bathrooms listed in the District’s records. By way of example, if 1 SFE Unit was purchased for the Building and the number

of SFE Units calculated for the Building using the Apartments, Townhouses, Multiplexes, and Condominium Units conversion rates and the greater of: the number of marketed/advertised bedrooms and bathrooms, or the number of bedrooms and bathrooms listed in the District’s records is 3, then the STR SFE Units are $3 - 1 = 2$.

- “Service Year” is the period from October 1 of one year through September 30 of the following year, and the designation for a particular Service Year will be the year when that Service Year ends (*i.e.*, the period from October 1, 2019 through September 30, 2020 will be designated “Service Year 2020”).

(iii) The Monthly Capital Charge per STR SFE Unit for each Service Year will be calculated as follows:

| Service Year | Service Year Period | Monthly Capital Charge per STR SFE Unit |
|---------------------------------------|---|---|
| 2020 | 1/1/20-9/30/20 | .2 x 1/300 x Unit PIF Rate in effect on 10/1/2019 |
| 2021 | 10/1/20-9/30/21 | .4 x 1/300 x Unit PIF Rate in effect on 10/1/2020 |
| 2022 | 10/1/21-9/30/22 | .6 x 1/300 x Unit PIF Rate in effect on 10/1/2021 |
| 2023 | 10/1/22-9/30/23 | .8 x 1/300 x Unit PIF Rate in effect on 10/1/2022 |
| 2024 and all subsequent Service Years | 10/1/23-9/30/24 and all subsequent 12-month periods | 1.0 x 1/300 x Unit PIF Rate in effect on October 1 of the applicable Service Year |

The Monthly Capital Charge for a particular Short-Term Rental Use Building will be equal to the Monthly Capital Charge per STR SFE Unit times the number of STR SFE Units for that Building.

By way of example, if the Unit PIF Rate in effect on October 1, 2019 is \$11,584, then the Monthly Capital Charge per STR SFE Unit for Service Year 2020 (January 1, 2020 through September 30, 2020) would be $.2 \times 1/300 \times \$11,584 = \7.72 ; and the Monthly Capital Charge for a Building with 2 STR SFE Units would be $2 \times \$7.72 = \15.44 . And, if the Unit PIF Rate in effect on October 1, 2020 is \$12,000, then the Monthly Capital Charge per STR SFE Unit for Service Year 2021 (October 1, 2020 through September 30, 2021) would be $.4 \times 1/300 \times \$12,000 = \16.00 ; and the Monthly Capital Charge for a Building with 2 STR SFE Units would be $2 \times \$16.00 = \32.00

(iv) If a single-family residence or manufactured home is included on the Towns’ or County’s Short-Term Rental Use lists at any time **after** the start of a particular Service Year (*i.e.*, after October 1 of any particular year), the District will treat that Building as if it will be used for Short-Term Rental Use for the remainder of that Service Year (*i.e.*, from the date the Building is included on such list to the immediately following September 30), and for the remainder of that Service Year, regardless of its actual use, that Building will be converted to SFE Units for monthly service fee purposes using the Apartments, Townhouses, Multiplexes, and Condominium Units conversion rates and the greater of: the number of marketed/advertised bedrooms and bathrooms, or the number of bedrooms and bathrooms listed in the District’s records; and, in addition, that Building will be assessed a Monthly Capital Charge for each month during the remainder of that Service Year. The Monthly Capital Charge per STR SFE Unit for the remainder of that Service Year will be calculated as described in subsection (iii) above

except that the Unit PIF Rate will be the rate in effect on the date the Building was included on the above-referenced Short Term Rental Use lists.

The Board reserves the right and authority to further amend its Regulations at any time in a manner now or hereafter provided by law including, without limitation, an amendment that affirms or eliminates the changes set forth herein or establishes other changes.

APPROVED as of the 12 day of December, 2019.

UPPER BLUE SANITATION DISTRICT

Allyn Mosher, President

ATTEST:

Signe Rockne-Stimson, Secretary

ATTACHMENT

Exhibit A Mott McDonald Technical Memorandum dated November 7, 2019