

## ORDINANCE 2020-01

### AN ORDINANCE AMENDING ORDINANCE NO. 2017-02, IN PART, TO CHANGE SEWER SERVICE USER FEE RATES AND THE SPECIAL USER CHARGE FORMULA

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The BOARD OF DIRECTORS OF MONTEREY ONE WATER DOES ORDAIN, AS FOLLOWS:

1. **Definitions.** The following words and phrases shall be defined as follows in connection with the interpretation and construction of this ordinance:
  - A. “Business/Government” shall mean all businesses, offices, governmental agency offices and any other similar user not otherwise included in another category herein, including grocery stores not defined as “supermarkets” herein below. For governmental facilities and other businesses, a unit shall be charged for each 1 to 10 employees (i.e., 1-10 employees=1 unit; 11-20 employees=2 units; 21-30 employees=3 units, etc.).
  - B. “Residential” shall refer to all living or dwelling units (as defined by the Uniform Building Code) of a permanent, rather than a transient nature, including single-family residences, apartments, mobile homes, townhouses, and condominiums. A living unit shall be defined as any structure containing sleeping, eating, cooking, and sanitation facilities.
  - C. “Transient Occupancy Residential” shall refer to all living or dwelling units (as defined by the Uniform Building Code) located in a hotel, motel or other visitor-serving structure, which contain facilities for cooking and eating, but which are limited by zoning ordinance, use permit or other restrictions of the member jurisdiction where located to transient occupancy. Such units will be subject to residential user fees and capacity charges, but for all other purposes shall be treated as commercial, hotel/motel uses.
  - D. “Hotel/Motel” shall mean all living units of a transient nature including hotel and motel rental room units, and also living units of a permanent nature, which do not contain any kitchen facilities. Excluded from the category are major, full-service hotels, which are defined as a special user herein below.
  - E. “Bed and Breakfast Inn” shall mean hotel/motel facilities that use less than sixty-seven (66) gpd (gallons per day), per room. This is a residential living

unit(s) where the establishment is primarily engaged in renting rooms, with or without meals, on a fee basis.

- F. "Supermarket" shall mean all businesses whose principal activity involves the retail sale of all sorts of canned foods and dry goods, such as tea, coffee, spices, sugar, and flour; fresh fruits and vegetables; and fresh meats, fish, seafood, and/or poultry, which are prepared on premise. This category also contains fish, seafood, and/or meat markets primarily engaged in preparing fresh and raw or cooked fish, seafood, or meat for resale.
  - (1) "Grocery store" shall mean all businesses whose principal activity involves the retail sale of groceries that are prepackaged and where there is no on-premise bakery, produce, fish, seafood, poultry, or meat preparation. A grocery store shall be charged as a general commercial user as defined in Section 1.a. of this ordinance.
- G. "Medical Offices" shall be defined as all offices of physicians, surgeons, optometrists, chiropractors, and other similar professionals practicing in the medical field.
- H. "Dental Offices" shall mean all offices of dentists.
- I. "Rest Home (7 or more beds)/Convalescent Hospital" shall mean all health care facilities which provide in-patient bed facilities, but do not perform surgeries or other major medical services, and hospitals with less than 117 gpd, per bed.
- J. "General Hospital" shall be defined as a health care facility, which provides in-patient bed facilities and surgical services or other major medical services with flows of more than 117 gpd per bed.
- K. "Animal Hospital" shall mean all animal care facilities, including veterinary offices, animal boarding facilities and hospitals.
- L. "Restaurant" shall mean all establishments whose principal activity involves on-premise preparation and service of meals and food, including coffee shops and cafes. Includes restaurants serving one, two, or three meals per day.
- M. "Restaurant with a Bar" shall mean any retail establishment selling food prepared on premise and with a full-service bar on premise.

- N.** “Bar” shall mean all bars and taverns, which are, separate from or do not include restaurant facilities, and which may or may not include entertainment. Water consumption shall not exceed 634 gpd.
- O.** “Nightclub” shall mean all bars and taverns, which are, separate from or do not include restaurant facilities, and which may or may not include entertainment. Water consumption must exceed 634 gpd.
- P.** “Take-out Food Business” shall be defined as all drive-ins, sandwich shops, fast-food outlets and similar businesses whose principal activity involves food service, but which do not provide on premise eating facilities or which provide only disposable eating implements (paper plates, plastic utensils, etc.). A small take-out food business shall be one with one (1) cash register or check-out line, a medium business shall have two (2) or three (3) cash registers or check-out lines, and a large business shall be one with four (4) or more cash registers or check-out lines.
- Q.** “Bakery” shall mean all businesses whose principal activity involves the production of baked goods on premise for resale.
- R.** “Theater” shall mean all facilities whose principal activity involves the showing of movies or moving pictures, or the presentation of plays or other forms of entertainment.
- S.** “Bowling Center” shall mean a business whose principal activity is to provide facilities for bowling, even though incidental food and beverage services are also provided.
- T.** “Mortuary” shall mean all establishments principally involved in preparing the dead for burial and cremating the dead.
- U.** “School” shall mean an educational facility in which instruction takes place, including public, private, and religious schools and colleges.
- V.** “Service Station/Repair” shall mean all facilities who are primarily engaged in performing repair work on automobiles, boats, recreational vehicles, motorcycles, etc. Can include gasoline service stations that sell gas and perform repair work.
- W.** “Dry Cleaners” shall mean a business where dry cleaning services are performed on premise, and laundry services are not provided.

- X.** “Laundromats” shall be defined as all self-service clothes washing establishments.
- Y.** “Laundry” shall mean all laundries or combination laundries/dry cleaners that are considered special users. An “Industrial Laundry” is one which is primarily engaged in supplying businesses or industries with laundered or dry-cleaned work uniforms, wiping towels, table linens, bed linens and similar items on a contract basis. A “Commercial Laundry” is one, which is primarily engaged in supplying residences or businesses with laundered shirts, pants, household linen and similar items on an over-the-counter basis.
- Z.** “Car Wash” shall be defined as a business, whose principal activity involves motor vehicle washing, including automatic and self-service washing. This category is considered a special user.
- AA.** “Major Hotel” shall mean a full-service facility having rooms, restaurant(s), and/or bar, and which provide room service. This category is considered to be a special user.
- BB.** “Special User” shall mean any establishment, which cannot be classified in any other category, based on their individual flow and strength characteristics. The special user charge is determined based on applying the formula contained herein below. Actual water usage is ordinarily the basis for the special user’s average daily sewage flow.
- CC.** “Business/Commercial/Residential-Vacant” shall mean all commercial units, which are unoccupied, and residences, which are unoccupied for more than two (2) months out of the year.
- DD.** Residential housing units that are subject to special user capacity charges, but for all other purposes shall be treated as residential, shall mean:
  - (1)** “Residential Care Housing” which is defined as a cooperative residential care housing facility sponsored or finance, in part, by the U.S. Department of Housing and Urban Development (“HUD”) as a Section 202, Home Funds or Low-Income Housing Tax Credit project for elderly, low-income individuals, or a Section 811 project for physically disabled low-income individuals, with one-bedroom living units to be occupied by single residents only, with in-house counselor management and support services; or
  - (2)** “Low- to Extremely-Low Income Housing” which is defined as housing units for persons of incomes defined by HUD as described in Title 25, Section 6932 of the California Code of Regulations (CCR) with each unit containing

One (1) bedroom or less, no more than 550 sf., less than twelve (12) plumbing fixture units, and no more than two (2) persons per unit. Any such housing units shall require that an applicant requesting a waiver have an agreement with the applicable member entity restricting units to low-income housing for no less than twenty (20) years.

Such housing units will be subject to special user capacity charges, restricting units to low-income housing using flow as 126 GPD, BOD as 233, SS as 165.

- EE.** "Biochemical Oxygen Demand" shall mean the measure of the biologically decomposable material in wastewater, as determined by the procedures specified in the most current edition of "Standard Methods for the Examination of Water and Wastewater", or any successor publication which establishes the industry standard.
- FF.** "Flow" shall mean the amount of wastewater discharged by the customer.
- GG.** "Flow Rate" shall mean the volume of wastewater flow over a specified period of time, expressed as: gallons per day (gpd), etc.
- HH.** "HCF" shall mean one hundred cubic feet or 748 gallons and is the standard unit for measure for municipal water service. Also sometimes referred to as a billing unit or CCF.
- II.** "Strength" shall mean the measurement of SS and BOD within the wastewater.
- JJ.** "Suspended Solids" (SS) shall mean the insoluble solid matter in wastewater that is separable by laboratory filtration, as determined by the procedures specified in the most current edition of "Standard Methods for the Examination of Water and Wastewater," or any successor publication which establishes the industry standard.

**Paragraph 2 Amended.** Paragraph 2 is hereby amended to include the following Special User Charge Formulas effective September 1, 2020 to read, as follows:

- 2. User Classifications and Charges.** Pursuant to Article 5, Sections 5.01-5.05 of M1W Ordinance No. 79-2, and as amended by M1W Ordinance No. 81-1, the following user classifications or categories in Appendix A are hereby established. The charges levied are for the use, rent, and availability of sewage facilities and services furnished. In certain circumstances a user may be placed in more than one category and assessed more than one user charge where multiple businesses as defined by this ordinance are conducted on the same parcel.

**A. User Category Average Flow, BOD, SS and Charges**

**\*SPECIAL USER CHARGE FORMULA (Annual Rate – Includes Proposed Formula and Factors)**

“Special User” shall mean any establishment, which cannot be classified in any other category, based on their individual flow and strength characteristics. The special user charge is determined based on applying the formula contained herein below. Actual water usage is ordinarily the basis for the special user’s average daily sewage flow.

Proposed Effective September 1, 2020

$$K = (1,200,071.69 \times V) + (1,440.01 \times V \times B) + (1106.75 \times V \times S)$$

Where:

K = Annual User Charge for Each User

V = Average Daily Sewage Flow in Million Gallons per Day

(MGD) B = Average Sewage BOD Concentration in mg/l

S = Average Sewage SS Concentration in mg/l

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**B. User Fee Based Minimum Charge.** The basic charge for single occupant residential users shall constitute the basic minimum charge for all users, and no user shall be charged less than this amount.

**C. Commercial Fee Variance.** Any non-residential, commercial user may apply for and be granted an annual variance from the applicable general user rate, as set forth in Paragraph 1, hereinabove, upon establishing to the satisfaction of the General Manager, or his designated agent, that the actual flow of wastewater into the M1W’s system from such user is more than twenty percent (20%) less than the average gallons-per-day flow as determined and used by the M1W for such user category, and if such is confirmed, then a rate reduction shall be allowed for the exact percentage the said user’s flow is below the M1W- established average. An application for a fee variance shall be made upon such forms and shall be accompanied by such information and data as specified by the M1W, and shall be accompanied by a non-refundable variance application fee of one hundred dollars (\$100). Any fee variance granted shall be valid only for the one-year period specified in the variance document and a variance shall not be granted to, nor continue to be valid to any user whose account is delinquent in payment of required fees.

**D. Payment of Charges: Delinquencies.** All charges and fees made pursuant to the provisions of this ordinance or any subsequent ordinance of the M1W, or any amendment thereto, shall be due and payable upon receipt of notice thereof, or upon

any other due date specified therein, or, with regard to connection fees, prior to the issuance of a building permit by the particular local jurisdiction which is a member entity of the M1W. All such charges and fees shall become delinquent thirty (30) days after mailing or delivery of notice thereof, or after the due date if specified therein. Any charge or fee that becomes delinquent shall have added to it a basic penalty charge equal to ten percent (10%) of the charge or fee that became delinquent. In addition a penalty of one and one-half percent (1½%) per month for non-payment of the delinquent charge or fee and the basic penalty shall be assessed. All user fee payments, when received, shall be applied to an account in the following sequence: a) to M1W lien amounts not yet recorded by the County, b) to non-M1W lien amounts, c) to M1W penalty charges, d) to any M1W prior balance, e) then, to M1W current fees, and f) then, in order, to any non-M1W penalties, prior balances and current fees charged or collected on the M1W billing.

- E. User Charge Billing.** All sewer service user charges may be billed in advance, either monthly, bimonthly or quarterly, as determined by the General Manager. The billing statement may be combined with statements for other services, and may be combined with billings for other utilities. All billings for sewer service user charges shall be either in the name of the owner of the property being served, as

reflected on the last equalized assessment roll for the County, or as reflected in any deed or other satisfactory evidence of change of ownership, recorded with the County Recorder since the date of the last equalized assessment roll, upon presentation of such evidence to the General Manager for such purposes, or if a billing service of some other utility is used, in the name of the respective customer- addressee of such other utility. In either event, the record owner of the property served shall be the party ultimately responsible for the payment of such sewer user charges.

- F. Delinquent Charges as Debt to M1W: Court Action.** Any charges or fees established or set by this ordinance or any subsequent ordinances enacted by the M1W, and all amendments thereto, which become delinquent pursuant to the terms of the ordinance establishing same, and all penalties or delinquent charges accrued thereon, shall constitute a debt due to the M1W, for which the M1W may sue the party responsible therefore, be it the owner and/or the occupant or user of the property or premises being served, in any competent civil court for collection of same. If the M1W prevails in such civil action, it shall be awarded a reasonable attorney's fees, to be fixed by the court, in addition to any other relief granted or other costs awarded.

- G. Delinquent Charges to Constitute Lien.** Any charges or fees established or set by this ordinance or any subsequent ordinances enacted by the M1W, and all amendments thereto, which become delinquent pursuant to the terms of the ordinance establishing same, and all penalties or delinquent charges accrued thereon, shall constitute a lien upon the real property served (except publicly- owned property), and such lien shall continue until the charge or fee and all penalties thereon are fully paid, or until the property is sold therefore.

- H. Collection of Delinquent Charges on Tax Roll.** Pursuant to the provisions of Sections 5470 through 5474.10 of the California Health and Safety Code, the M1W hereby elects, as an alternative procedure for the collection of delinquent charges or fees established by this ordinance or any subsequent ordinance of the M1W, or any amendments thereto, to have all such delinquent charges or fees for each fiscal year from and after July 1, 1979, collected on the tax roll in the same manner, by the same persons, and at the same time as, and together with and not separately from, the collection of general property taxes. The M1W shall prepare and file the written report on the parcels of real property for which there are delinquent charges or fees, and give notice and hold the public hearing thereon, all pursuant to the aforesaid provisions of Health and Safety Code.
- I. Lien Transfer Fee.** For each sewer service account which has a delinquent user fee or charge balance that is transferred into the M1W's processing system for the establishment of same as a lien to be collected upon the tax rolls, there is hereby levied thereon a lien transfer fee, in such an amount as shall be set from time to time by resolution of the Board of Directors, to be added to the delinquent account balance to reimburse the M1W for the actual cost of the data processing, accounting, public notice and control procedures related to the lien processing system; provided, however, that no lien transfer fee shall be levied on any delinquent account unless and until a thirty (30) days' prior written notice of the intent to levy such fee is given to the delinquent user in question, in the form of either a separate mailing or a notice on or with the usual billing statement.
- J. Court Action to Enforce Lien.** As a separate, distinct and cumulative remedy for collection of said delinquent charges or fees, and any penalties thereon, an action may be brought in the M1W's name in any court of competent jurisdiction to enforce or foreclose the lien provided for in Section F, hereinabove. If the M1W prevails in any such civil action, it shall be awarded a reasonable attorney's fees, to be fixed by the court, in addition to any other relief granted or other costs awarded.
- K. Disconnection of Sewer Line.** Any person, firm or corporation who is the owner, occupant or user of property receiving sewer services from the M1W, who fails or refuses to pay any charge or fee as provided by M1W ordinance within the time limit prescribed for the payment thereof, shall be subject to having their sewer line disconnected, and thereafter, no such sewer service which has been disconnected for non-payment of such charge or fee shall be reconnected until the owner, occupant or user of such property shall have paid all delinquent charges or fees owed the M1W and all actual expenses incurred by the M1W in causing such disconnection and reconnection.

**Paragraph 3 Amended.** Subparagraph B of this Paragraph is repealed; and Paragraph 3 and subparagraph A is hereby amended in part to read as follows:



3. **Capacity Charges.** Pursuant to the provisions of Article 5, Sections 5.01 through 5.05 of M1W Ordinance No. 79-2, and as amended by M1W Ordinance No. 81-1, thereby is hereby established and levied upon all persons, firms, or corporations making connections to a community sewer system within the M1W, a sewer capacity charge.

**A. Use Classifications and Charges**

Sewer capacity charges are specified as a fixed per unit fee for Single Family Dwellings and Apartments. All other user charges are determined based on the User Category's average flow and strength characteristics per an equivalent dwelling unit. As noted in subparagraph C of this Paragraph 3, sewer capacity charges are set and increased automatically each year. Current capacity charges based on calculated increases made pursuant to this paragraph can be found on a document titled Capacity Charge Fees. This document is maintained by the Finance Department and is available on the Agency's website and at the Customer Service Department. The Fiscal Year 17/18 rate per an equivalent dwelling unit (EDU) is \$3,389.13.

- B. Other Determination.** Whenever, in the opinion of M1W, the application of the above-described methods of determining sewer capacity charges is grossly unreasonable and inappropriate, M1W may calculate an appropriate sewer capacity charge. This charge will take into account anticipated wastewater flow based upon projected HCF of water usage and strength characteristics for the building in question. The projected water usage and resulting fee calculation will be reviewed twelve (12) to eighteen (18) months after the first user fee billing cycle to determine the actual flow rate, BOD, and/or SS of the user. Should the review show increased usage above that for which the capacity charge was paid, an additional capacity charge would be assessed pursuant to Section 3-L. of this ordinance.

- C. Annual Increase in Capacity Charge.** The sewer capacity charge as determined hereinabove for a single-family residence and other uses shall increase on the first day of each fiscal year, that is, on July 1 of each year, by the same percent as the annual change in the December Construction Cost Index (CCI) for San Francisco of the prior year, published in the "Engineering News Record." If said annual change is less than two percent (2%), the change shall be deferred and combined with the increase for the next fiscal year.

- D. Demolished Premises.** Whenever enclosed building space is or has been demolished after July 1, 1977, any construction of enclosed building space which takes place on the same parcel shall be exempt from sewer capacity charges fees to the extent current capacity charge value of the structure which was removed from the parcel as a result of said demolition work. Provided, however, that the foregoing exemption or credit for demolished premises shall not apply to any person, firm or corporation that received a sewer connection permit for the demolished premises at no cost or at a discounted rate (i.e., less than the current fee at the time the permit was obtained) for abandoning a septic tank and connecting to a sanitary sewer collector system, unless and until said premises have actually been connected to and received

and paid for services from the M1W's facilities for at least twelve (12) months prior to demolishing the premises and seeking an exemption from or credit towards a new connection fee. Provided further, however, that if such a discounted or no-fee connector demolishes the premises in question prior to the expiration of said twelve (12) month period, they will only be credited with, in obtaining a new connection permit, the exact dollar amount actually paid for the prior permit for the demolished premises.

**Existing Premises.** Buildings or occupied mobile home pads which were connected to the community sewer of entity being serviced by the M1W at the time said entity was annexed to the M1W shall be exempt from these sewer capacity charges to the extent of their existing use and EDU's at such time of annexation. Any proposed building for which a building permit application had been accepted by the entity having building permit issuance authority prior to the date of annexation of said entity to the M1W shall be considered to have been connected to the entity's community sewer as of the time of annexation. If, however, such building permit lapses and a new building permit becomes required, the proposed building will become subject to the full collection of sewer capacity fees.

- E. Expiration of Capacity Permit.** Any sewer capacity permit obtained pursuant to this section shall expire at the end of twelve (12) months after the date of issuance, unless the building or project for which it was issued is under actual construction. Within two (2) weeks after a permit expires, the owner of same may apply for one twelve (12) month extension of the permit, upon payment of any additional amount by which the connection fee has increased since the permit was obtained. If the permit is not so extended, the original permit fee, less a processing fee of fifty dollars (\$50) will be refunded to the party who had obtained same. If the permit expires after the one allowed extension for twelve (12) months, a refund will then be issued for the total amount paid, less the above-mentioned processing fee.
- F. No Capacity Permit If Delinquent.** Notwithstanding any other provision of this ordinance, no sewer capacity permit shall be issued to any person, firm, partnership or corporation, or the agent or representative of same, which is delinquent in the payment of user, connection or other fees and charges established by ordinance or resolution and due and owing to the M1W. A firm, partnership or corporation shall be considered to be delinquent in the payment of fees if an ownership interest therein of ten percent (10%) or more is held by a person or entity which is delinquent.
- G. Credit or Permit Transfers.** An owner of a commercial capacity permit shall be allowed to transfer that permit to, or to obtain a new permit using a portion of existing EDU credits transferred to another parcel of real property owned by the same owner. In addition, if the owner of the permit is a public entity or non-profit corporation, then a transfer may be made to another public entity or non-profit corporation. In all such transfers, the parcel receiving the transfer must be located within the same member entity jurisdiction as the parcel or parcels from which the transfer is made. Provided further that, and upon the following conditions:

- (1) That within sixty (60) days of occupying the premises to which a permit or credits are transferred, pursuant to a new capacity charge issued hereunder, the owner or tenant will plug up or demolish fixtures at the original parcel, in a manner satisfactory to the M1W, with such work to be certified by a licensed contractor or building inspector. Such action to plug up or demolish fixtures, as mentioned herein, shall run with the land and be set forth in a covenant and agreement to be recorded in the Official Records of Monterey County for said affected property;
- (2) That the owner-applicant shall pay the M1W its costs involved with assuring compliance with the terms and conditions of the permit issued pursuant hereto. Such costs shall be due and payable to the M1W not later than thirty (30) days after notice thereof and, if not paid, shall constitute a lien against the affected property. Costs shall include, but not be limited to, cost of investigation, court costs, attorney's fees, and costs of monitoring compliance;
- (3) That the owner-applicant shall agree to provide the M1W, upon request, with all pertinent and current employment and water-use records from the parcels involved in the transfer permit;
- (4) That for purposes of this section, a transfer may be made only to a parcel or building with the same owners of record as the parcel or building from which the permit or credits were transferred, with ownership to be determined as of the date of application for a permit hereunder. The person requesting a transfer hereunder shall present documentary evidence of such ownership acceptable to the M1W; and,
- (5) Any connection made pursuant to a permit issued under this subsection may only be made in accordance with the current wastewater flow allocation plan as has been or may be specified for said member entity by the M1W Board of Directors.

**H. Industrial Credit or Permit Transfers.** The provisions of Section "I" shall also be applicable to permit or credit transfers by the owner of an industrial capacity permit (defined as a permit for which the user and capacity charges are calculated by individual determinations based upon flow and strength characteristics), provided that:

- (1) The owners of the parcels involved approve the transfer and provide documentary evidence of same acceptable to the M1W, and
- (2) The owner of the parcel from which the permit or credits are transferred takes the action to plug up or demolish the fixtures and executes the covenant and agreement, as specified in Section 3-I (1).

**I. Groundwater Dischargers.** As a result of state legislation for gas station sites to clean up groundwater contaminated from aged gasoline tanks, the M1W has agreed to allow temporary connections of these groundwater dischargers. Inasmuch as these particular

**Codified Version of Ordinance Nos. 2001-01, 2002-02, 2003-01, 2004-03, 2005-01, 2006-01, 2006-02, 2007-01, 2007-02, 2008-02, 2009-03, 2010-02, 2011-01, 2013-01, 2014-01, 2015-02, 2017-01, and 2017-02.**

connections are of a temporary nature, a capacity charge will not be assessed unless a user discharges for more than ten years. This procedure will include all previously permitted groundwater dischargers whether currently connected or disconnected.

**J. Increase Capacity – Existing Facilities:** Any residential or commercial parcel which increases its flow, BOD, and/or SS above that for which it originally paid a capacity charge shall pay an additional capacity charge for that portion of its usage above the amount for which it originally paid. The additional charge shall be based on the rates in effect at the time the increased usage is identified by M1W.

**4. Effective Date.** This ordinance, upon adoption, shall become effective on September 1, 2020

The foregoing ordinance was passed and adopted at a Regular Meeting of the Board of Directors of Monterey One Water held on August 31, 2020 by the following roll call vote:

**AYES: STEFANI, CARBONE, GRIER, PHILLIPS, GAGLIOTI, MOORE, WILLIAMSON, SMITH, CAMPBELL**

**NOES: DE LA ROSA**

**ABSENT: NONE**

  
\_\_\_\_\_  
Ron Stefani, Chair  
M1W Board of Directors

**ATTEST:**

  
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Paul A. Sciuto, General Manager  
Secretary M1W Board of Directors