

ORDINANCE NO. 967 N.S.

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES
AMENDING SECTION 14.04.020 OF THE CITY OF EL PASO DE ROBLES
MUNICIPAL CODE TO ESTABLISH A
UNIFORM CONSUMPTION-BASED WATER FEE STRUCTURE

WHEREAS, the City of Paso Robles has traditionally relied upon the Paso Robles Groundwater Basin and the Salinas River underflow as sources of water for its citizens; and

WHEREAS, recent studies have indicated that the Paso Robles Groundwater Basin is rapidly reaching safe annual yield due to heavy usage and demand; and

WHEREAS, continuously increasing use of well water is associated with further diminishment of groundwater quality, which in turn results in higher costs to treat wastewater discharged to the City's wastewater system in order to meet State water quality standards; and

WHEREAS, beginning in 1991, the City Council studied a variety of possible alternative water sources that might be available to provide a good, continuous and reliable source of water for the citizens of Paso Robles and to decrease dependence upon well water; and

WHEREAS, the City Council, after much study and public discussion, determined several years ago that the City should participate, along with other cities and public entities in San Luis Obispo County and the County of San Luis Obispo, in the Nacimiento Water Project (the "Project"); and

WHEREAS, the City's well water supply, and its uses and softening thereof, create constituent loads that exceed wastewater discharge limits, and Nacimiento Water presents lower initial constituent loads that, when blended with well water, reduce the overall loading thus diminishing the frequency of constituent limit breaches; and

WHEREAS, in July 2004, the City executed the Nacimiento Project Water Delivery Entitlement Contract (the "Contract") in which the City committed to pay for its proportionate share of the costs of the Project and for the delivery of water; and

WHEREAS, the Project will serve both existing City water customers as well as future water customers; and

WHEREAS, on August 17, 2004, the City Council adopted Ordinance No. 882 N.S. which enacted certain increases in City water fees in order to help pay for the City's share of the estimated costs of the Project for existing water customers; and

WHEREAS, the City's Integrated Water Resource Plan adopted on May 1, 2007 includes the construction of a proposed water treatment plant (the "Proposed WTP"), the purpose of which is to process water delivered through the Project and blend it with well water before delivering it into the City's water distribution system; and

WHEREAS, the Project and the related Proposed WTP are necessary components of the City's water delivery system; and

WHEREAS, to ensure that existing water customers would pay only for their share of the Project and the Proposed WTP costs, the City retained the firm of HF&H Consultants to help determine the appropriate water connection fees that should be charged to new development in order to assure that new development would pay for its fair share, i.e., fifty percent (50%) of the costs of the Project and the Proposed WTP; and

WHEREAS, on March 17, 2009, the City Council adopted Resolution No. 09-032 which increased connection fees that would be charged for new development in the City (the "New Development Connection Fees") and which established that New Development

Connection Fees would pay for fifty percent (50%) of the costs of the Project and the Proposed WTP over time; and

WHEREAS, any additional water supply needed above the current 4,000 acre-feet allotment of Nacimiento Water will be paid for by new development; and

WHEREAS, the California Supreme Court determined in *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal. 4th 205, that fees for water delivery service are "property-related fees" subject to the procedures set forth in Proposition 218; and

WHEREAS, these procedures include the mailing of notices to all property owners of record and ratepayers notifying them of the date, time and place of a public hearing on a proposed rate increase, the purpose of the fee, the calculation of the fee, and the right to file a written protest to the fee; and

WHEREAS, on August 7, 2007, after following the procedures required for property-related fees under Proposition 218, and because written protests were not filed by a majority of the property owners, the City Council adopted Ordinance No. 935 N.S., establishing new water rates, which ordinance was subsequently repealed by Ordinance No. 939 N.S. after a referendum petition with a sufficient number of signatures from registered voters was submitted; and

WHEREAS, the City retained the firm of Kennedy/Jenks Consultants to undertake a comprehensive review of the City's water rate revenues and costs of water delivery operations, which was presented to the City Council on July 1, 2008; and

WHEREAS, upon further consideration and study and public input, the City Council determined on September 16, 2008 that the proposed water rate structure would be unduly burdensome upon water customers, and directed staff to consider an alternative approach; and

WHEREAS, Kennedy/Jenks Consultants presented a revised study, dated September 29, 2008, analyzing an alternative "pay-as-you-go" approach that would both phase in the Proposed WTP expansion over a longer period of time and cover existing operational costs without incurring any additional long-term debt; and

WHEREAS, after again following the required procedures under Proposition 218 and because written protests were not filed by a majority of the property owners, on February 3, 2009, the City Council adopted Ordinance No. 953 N.S., to adopt a combined fixed and variable water rate structure; and

WHEREAS, a referendum petition containing the requisite number of qualified voter signatures was submitted to the City challenging Ordinance No. 953 N.S.; and

WHEREAS, a special election was held on November 3, 2009, and Ordinance No. 953.N.S. was not ratified; and

WHEREAS, at the City's request, Kennedy/Jenks Consultants prepared additional studies and reports in connection with a revised water rate structure based on water consumption; and

WHEREAS, as documented in the Kennedy/Jenks Consultants study, dated January 25, 2010, current water rates generate approximately \$6.3 million per year, while water rate revenues of \$13 million are needed to pay for the City's costs of operating the water system, which includes the City's contractual obligations for the Project and the costs of the Proposed WTP; and

WHEREAS, bonds were issued by the San Luis Obispo Flood Control and Water Conservation District to pay for the cost of the Project and the City is obligated under the Contract to pay for its share of the debt service on the bonds and other Project costs upon completion of the Project; and

WHEREAS, the Project is expected to be completed and begin water deliveries in 2010; and

WHEREAS, the Court of Appeal in *Paland v. Brooktrails Township Community Services District* (Dec. 3, 2009, Case No. A122630) confirmed that revenues from water service rates can pay both for fixed operating and maintenance costs as well as capital costs, including those for improvements to increase capacity that will serve already-connected customers; and

WHEREAS, also on February 2, 2010, staff presented to the City Council a water rate proposal, along with the consultant's reports, based on consumption; and

WHEREAS, the proposed water rates are set at levels to ensure that existing water customers will pay for one-half of the City's share of the Project and Proposed WTP costs, while the New Development Connection Fees will pay for one-half of the City's share of the Project and Proposed WTP costs over time; and

WHEREAS, after considering proposed rates and hearing public testimony, the City Council directed staff to take the necessary steps under Proposition 218, including the mailing of notices regarding a public hearing to consider a proposed ordinance to adopt a consumption-based fee structure; and

WHEREAS, the City identified the parcels upon which the rates will be imposed, calculated the amount of the rates, and mailed notices on February 8, 2010 to all record owners and tenants of properties responsible for water charges, which notices provided information on the proposed rates, the basis for the calculation, the reason for the rates, and the date, time, and location for a public hearing which was not less than 45 days after the date of mailing; and

WHEREAS, the City Council held the duly noticed public hearing on April 6, 2010 and considered any and all property owner and tenant protests; and

WHEREAS, at the public hearing on April 6, 2010, the City Clerk attested that written protests against the water rates had not been filed by a majority of property owners;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. In accordance with Article XIII D, Section 6(b), of the California Constitution, the City Council makes the following findings:

A. The revenues derived from the water rate increase do not exceed the funds required to provide water service because the rates are calculated to allow the City to recover its costs associated with (i) its contractual obligation to pay for a portion of the costs of construction of the Nacimiento Water Project; (ii) to the extent possible, a portion of the costs of the design and construction of the Proposed WTP; and (iii) the other necessary and essential ongoing costs of operation and maintenance of the City's water delivery system. This finding is based upon the information contained in the notice, the January 2010 Kennedy/Jenks Consultants study, the staff report to the City Council at the public hearing and the testimony presented at the public hearing.

B. The revenues derived from the water charges will not be used for any purpose other than that for which the charge is imposed. This finding is based on the fact that all revenues collected from water customers are deposited into a designated fund for such water operations purpose.

C. The charges do not exceed the proportional cost of the water service attributable to each parcel. This finding is based on the fact that the proposed rates are based upon the City's actual total cost of providing water service to its customers, divided by the actual amount of water used on such parcel.

D. The proposed increases in the rates are intended to balance the anticipated increases in the costs of delivering water and the possible reductions in the amount of water used.

SECTION 2. Effective January 1, 2011, paragraph C. of Section 14.04.020 of the Paso Robles Municipal Code is hereby revised in its entirety to read as follows:

"14.04.020 Fees

....

"C. Fees – Water Usage Rates. The monthly rates to be charged and collected for all water consumption, including private fire lines, bulk water delivery or fire hydrant usage, from every water customer, including, but not limited to, any person, school, business entity or corporation, shall be charged at rates established by ordinance of the City Council.

The water usage rates shall be reviewed no less than annually in conjunction with the update of the city's budget to ensure that water user fees then in existence do not exceed the costs of providing water service within the City."

Beginning on January 1, 2011 the monthly water usage fee to be charged for each unit of water, or 748 gallons, used shall be as follows:

January 1, 2011:	\$2.50/unit
January 1, 2012:	\$3.20/unit
January 1, 2013:	\$3.70/unit
January 1, 2014:	\$4.10/unit
January 1, 2015	\$4.40/unit"

SECTION 3. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

SECTION 4. Effective Date. This Ordinance shall take effect thirty (30) days after adoption as provided by Government Code section 36937.

SECTION 5. Publication. The City Clerk will certify to the passage of this Ordinance by the City Council of the City of El Paso de Robles, California and cause the same to be published once within fifteen (15) days after its passage in a newspaper of general circulation, printed, published and circulated in the City in accordance with Government Code section 36933.

Introduced at a regular meeting of the City Council held on April 6, 2010, and passed and adopted by the City Council of the City of El Paso de Robles on the 20th day of April, 2010 by the following roll call vote, to wit:

AYES: Gilman, Hamon, Steinbeck, Strong and Picanco

NOES:

ABSTAIN:

ABSENT:

Mayor, Duane Picanco, Mayor

ATTEST:

Lonnie Dolan, Deputy City Clerk