

ORDINANCE NO. 33

AN ORDINANCE OF THE
MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT
REVISING THE BASIS FOR CONNECTION
CHARGES APPLICABLE TO NEW MUNICIPAL,
COUNTY, AND LOCAL AGENCY WATER USES

FINDINGS

1. The Monterey Peninsula Water Management District has duly adopted Rules and Regulations which, among other things, establish connection charges to fairly and equitably distribute the actual costs associated with new and expanded water use to those persons and entities which enjoy that new water use.

2. The existing connection charge method is intended to factor as precisely as possible the burden which new uses are capable of placing on the water supply system.

3. Average water use data has less reliability respecting governmental water use as compared to other uses because each municipality and local governmental agency has a distinct water use pattern which cannot be generalized due to the individual characteristics of the various cities, the county, and other local agencies.

4. Actual water use records are easily available from municipalities to factor water use charges, are more accurate than average use methods, and can be obtained without undue administrative expense.

5. Municipal and governmental uses are dedicated uses which are unlikely to substantially change or intensity over time, and are likely to achieve full capacity during a short period following completion of any improvement.

6. The Board of Directors is currently required pursuant to District Rule 24 to make findings that "special circumstances" exist and that "substantial uncertainty exists regarding the projected water use proposed" with regard to each and every application for a permit or amended permit by a municipality, the county, or other local governmental agency. Governmental efficiency and cost savings are thereby promoted by deleting any requirement for a "special circumstance hearing" on local government connection charge applications.

NOW, THEREFORE, BE IT ORDAINED,

SECTION I.

PURPOSE

It is the purpose of this ordinance to clarify the method used to calculate connection charges for municipalities, the county, and other local government agencies. It is the further purpose of this ordinance to streamline the administration of permits for these local agencies, and to ensure the precise calculation of water use occasioned by new permits and amended permits processed by the Monterey Peninsula Water Management District.

AMENDMENT OF RULE 24, SECTION G

The provisions of Section G of Rule 24 of the Rules and Regulations of the Monterey Peninsula Water Management District shall be amended to include those provisions which are underscored, and shall read as follows:

G. ADJUSTMENT OF CALCULATIONS WHERE SPECIAL CIRCUMSTANCES EXIST

After making the connection charge calculation detailed above in this rule, the General Manager may reduce (or increase) the connection charge with respect to the fixture unit count component or the projected water use component of any extension/expansion application where special circumstances exist with respect to the anticipated water consumption resulting from that permit. Special circumstances shall be deemed to exist in each single family dwelling unit project which proposes to irrigate more than two acres, and for each other project which proposes to irrigate more than two acres. Special circumstances shall also be deemed to exist where a dual system provides sub-potable water for outdoor use. The General Manager may make a proportional reduction in the connection charge and/or the water supply improvement charge calculation for connections to any system which uses a dual delivery of sub-potable water for non-consumptive purposes, and shall factor the charge based upon the portion of potable water which otherwise would have been used in the absence of the dual system. Special circumstances shall be deemed to exist with respect to each expansion/extension permit or amended permit which proposes to utilize water in conjunction with a manufacturing process. Special circumstances shall also be deemed to exist with respect to each expansion/extension permit or amended permit for a municipality, county, or other local government agency.

The connection charge adjustment shall operate to exact a connection charge as it relates to the increment of water which is projected to actually be available to and subject to use by the applicant as a function of the connection, or the use of water. The General Manager shall make this adjustment based upon projected use figures which are clearly more accurate and reliable (based upon historical use or other hard documentation) that the regional average methodology used to substantiate the fixture unit or projected use category methods: Calculation of any charge shall be made by use of regional averages should any reasonable question arise with respect to the projected use figures for a particular expansion/extension permit or amended permit. Determinations of the General Manager pursuant to this subdivision may be appealed to the Board.

For those special circumstances where substantial uncertainty exists regarding the projected water use proposed by the permit applicant, the connection may be approved and installed upon payment of an estimated connection charge, and the actual final connection charge be adjusted upon the actual water use record of that connection for a reasonable time period. Adjustment of connection charges for non-governmental connections shall occur only where the Board of Directors finds (a) that special circumstances exist in accord with this paragraph, and (b) that substantial uncertainty exists regarding the projected water use proposed by the permit applicant. For such applications, the Board may approve the permit subject to the following conditions:

- (1) The applicant shall deposit with the District the full fee estimated to be due by reason of the projected water use.
- (2) The applicant shall make available to the General Manager, upon request, any information pertaining to the actual water use or water use practices, any information pertaining to the special circumstances which justify application of the extraordinary fee calculation.
- (3) The applicant shall agree to tender the final connection fee calculated pursuant to this paragraph, and shall agree that such charge shall constitute a lien against the real property upon which the water connection is located.
- (4) Failure to tender the final connection fee upon written demand shall result in the automatic revocation of the connection permit.
- (5) The applicant shall authorize, in writing, the water distribution system to remove any water meter installed pursuant to this permit, upon revocation of the permit.
- (6) The conditions of this permit shall be recorded as a restriction upon the deed for the real property upon which the water connection is located. Such restriction shall be removed only upon payment of the final connection fee.

- (7) The Board shall set a time certain for the determination of actual water use, and the calculation of the final connection fee.

In all application where substantial evidence does not support the finding that uncertainty exists regarding the projected water use, it shall be presumed that the regional water consumption figures as shown on Tables 1 or 2 apply to the permit.

Notwithstanding any other provisions of this section, the General Manager shall be granted authority to factor municipal, county, and other local government connection charges upon the actual water use record for a reasonable time period without the necessity of a hearing before the Board of Directors or other Board action. Determinations of the General Manager may nonetheless be appealed by the governmental entity to the Board of Directors.

SECTION III.

SEVERABILITY

If any subdivision, paragraph, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforcement of the remaining portions of this ordinance, or of any other provisions of the Monterey Peninsula Water Management District Rules and Regulations. It is the District's express

intent that each remaining portion would have been adopted irrespective of the fact that any one or more subdivisions, paragraphs, sentences, clauses, or phrases be declared invalid or unenforceable.

SECTION IV.

PUBLICATION

The Amendment caused by Section II of this ordinance shall be published in Rule 24 of the Rules and Regulations of the Monterey Peninsula Water Management District.

SECTION V.

EFFECT

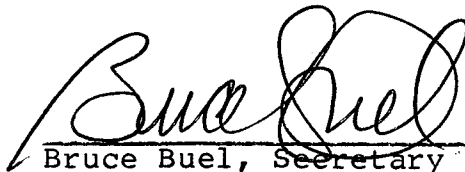
The amendment caused by Section II of this ordinance shall affect all municipal, county and local agency connection applications which are pending and are not final. A governmental application shall be deemed final only if the statute of limitations for judicial review of that connection fee determination has run and is available to be asserted as a defense on behalf of the Monterey Peninsula Water Management District.

On motion of Director Strasser Kauffman, and second by Director DeBerry, the foregoing ordinance is duly adopted this 14th day of March, 1988 by the following votes:

AYES: Directors Pendergrass, DeBerry, Strasser Kauffman, Heuer, Lombardo, Hughes and Davis
 NAYES: None
 ABSENT: None

I, Bruce Buel, Secretary of the Board of Directors of the Monterey Peninsula Water Management District, hereby certify that the foregoing is a full, true and correct copy of an ordinance duly adopted on the 14th day of March, 1988.

Witness my hand and seal of the Board of Directors this 18th day of March, 1988.



Bruce Buel, Secretary to the Board

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