

**REGULAR**

**NUMBER:** 120.46

**TITLE:** AN ORDINANCE OF THE CITY OF MILPITAS AMENDING CHAPTER 1 OF TITLE VIII OF THE MILPITAS MUNICIPAL CODE RELATING TO WATER SERVICE CHARGES

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of February 15, 2011, upon motion by Councilmember Gomez and was adopted (second reading) by the City Council at its meeting of May 3, 2011, upon motion by Vice Mayor McHugh. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES: (5) Mayor Esteves, Vice Mayor McHugh, Councilmembers Giordano, Gomez and Polanski

NOES: (0) None

ABSENT: (0) None

ABSTAIN: (0) None

ATTEST:

APPROVED:

---

Mary Lavelle, City Clerk

---

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

---

Michael J. Ogaz, City Attorney

## **RECITALS AND FINDINGS:**

**WHEREAS**, the provision of potable and recycled services by the City of Milpitas (“City”) require the City to incur capital, operating, maintenance, replacement, and other costs related to the provision of such services; and

**WHEREAS**, the City provided written notice by mail of proposed water service charge increases to pay for such services, held a public hearing, and complied with other provisions of Article XIID of the California Constitution (commonly known as Proposition 218); and

**WHEREAS**, the City Council has determined that increases in water service charges are in the best interests of the City and in keeping with sound business and financial management of the water enterprises and does not exceed the cost of providing such services; and

**WHEREAS**, the adoption of the proposed increases to water service charges are statutorily exempt from the requirements of the California Environmental Quality Act under California Resources Code Section 21080 (b)(8).

**NOW THEREFORE**, the City Council of the City of Milpitas does ordain as follows:

### **SECTION 1. RECORD AND BASIS FOR ACTION**

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

### **SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE VIII-1-6.13**

Section VIII-1-6.13 of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

#### **VIII-1-6.13 Quantity Charges:**

The quantity charges per hundred cubic feet for metered water service shall be as set forth below and are limited to the actual cost of providing water service. The rates for Fiscal Year 2011/12 shall be those set forth in the first column, unless modified by inflation or unanticipated wholesale supplier cost increases, as provided herein. Rates for all years subsequent to Fiscal Year 2011/12 shall be at or below the proposed maximum rate as determined administratively by City staff after calculating total personnel, overhead, and capital costs incurred to provide the service and shall be based upon an annual review of utility finances. In no event shall rates exceed the cost of providing the service.

The maximum water rates listed below account for a possible inflation rate of 2%. Inflationary costs in excess of 2% caused by labor or commodity cost increases recorded in such indices as the Construction Cost Index, published in the Engineering News Record for the San Francisco Bay Area, and utility section financial reviews shall be passed through administratively to the ratepayer. The City shall also administratively calculate and pass through unanticipated changes in the wholesale water cost that were not projected in the calculation of the maximum rates. This wholesale water cost pass-through provision applies to wholesale rates, water management charges, and other regulatory or environmental charges that the City is required to pay its wholesale water suppliers. These rate pass-throughs shall only be implemented with at least 30 days notice to ratepayers.

	<b>FY11/12 Rate</b>	<b>FY12/13 to FY14/15 Maximum Rate</b>
Residential:		
0-10 hcf	\$1.77	\$2.62
11 - 20 hcf	\$2.76	\$3.48
21 - 30 hcf	\$3.72	\$4.69
31+ hcf	\$4.17	\$5.29
Commercial / Industrial / Institutional / Construction Meter	\$4.32	\$5.29
Irrigation (potable)	\$4.79	\$5.29
City Accounts (potable)	\$2.35	\$5.29
Ed Levin Park	\$2.68	\$3.32
Recycled - Irrigation	\$3.79	\$4.08
Recycled - Industrial / Dual Plumbed	\$2.16	\$2.65
City Accounts (recycled)	\$1.29	\$2.51

FY = Fiscal Year

1 hcf = One Hundred Cubic Feet = 748 Gallons

No adjustments shall be granted to any water account holder due to variation in the days of service for any bimonthly billing period. Acceptable days of service range from 50 to 69 days per bimonthly billing period.

### **SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE VIII-1-6.14**

Section VIII-1-6.14 of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

#### **VIII-1-6.14 Bimonthly Water Meter Charges:**

##### **(a) Water Meter Charges:**

The bimonthly charges for water meters shall be as follows:

<b>Water Meter Size</b>	<b>FY11/12 Charge</b>	<b>Subsequent Years</b>
5/8"	\$ 25.77	2% annual increase for all sizes
3/4"	\$ 27.39	
1"	\$ 38.90	
1-1/2"	\$ 49.07	
2"	\$ 64.04	
3"	\$171.45	
4"	\$217.27	
6"	\$331.57	
8"	\$434.40	
10"	\$628.82	

##### **(b) For Temporary Construction Meter Customers:**

\$150.00 bimonthly

### **SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE VIII-1-6.15**

Section VIII-1-6.15 of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

#### **VIII-1-6.15 Fire Service Charges:**

The bimonthly charges for “ready to serve” detector check valve fire suppression systems shall be made on the basis of the size of the detector check valve, and shall be as follows:

<b>Detector Check Valve Size</b>	<b>FY11/12 Charge</b>	<b>Subsequent Years</b>
2”	\$ 41.20	2% annual increase for all sizes
3”	\$ 61.89	
4”	\$ 68.78	
6”	\$ 89.45	
8”	\$110.04	
10”	\$130.69	

Water flowing through detector check valves shall be used solely for the purpose of fire protection and testing of such fire protection systems. In the event that water service provided through detector check valve fire suppression systems is used for purposes other than for fire protection or the testing of such fire protection systems, a quantity charge of \$14.75 per hundred cubic feet shall be imposed for water use that exceeds one hundred cubic feet per billing period.

#### **SECTION 5. AMENDMENT OF MILPITAS MUNICIPAL CODE VIII-1-6.16**

Section VIII-1-6.16 of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

#### **VIII-1-6.16 Billing and Effective Dates of Water Rates and Charges**

(a) Billing. After the Ordinance adopting the charges set forth in this Section goes into effect, customers shall be subject to the water charges, set forth in 6.13 (Quantity Charges), 6.14 (Bimonthly Water Meter Charges), and 6.15 (Fire Service Charges), in effect as of the beginning date of the bimonthly billing period or deposit period for which a customer is charged.

(b) Rate Program. The water service charges for the annual periods of Year 1 (June 2, 2011 to April 18, 2012), Year 2 (April 19, 2012 to April 18, 2013), Year 3 (April 19, 2013 to April 18, 2014) and Year 4 (April 19, 2014 to June 30, 2015) shall be calculated administratively, subject to adjustments to reflect the previous year’s actual budget balances and annual revenue and expenditures, but the annual rate shall not exceed the maximum allowed in this Section. In the absence of amendment of the rates set forth herein or adoption of a new rate ordinance, the maximum rate shall remain in effect for billing periods and service years subsequent to Fiscal Year 2014-15.

#### **SECTION 6. SEVERABILITY**

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

#### **SECTION 7. EFFECTIVE DATE AND POSTING**

This Ordinance shall be ineffective if, at the conclusion of the public hearing to hear protests to the proposed increase in sewer service charges held on May 3, 2011, the City Council determines that a majority protest exists pursuant to Section 6 of Article XIII(D) of the California Constitution. In the absence of a majority protest, in accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.