

ORDINANCE NO. 2809

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE
AMENDING SECTION 14.12.010 OF CHAPTER 14.12 OF TITLE 14 ("WATER") OF THE
MUNICIPAL CODE RELATING TO WATER RATES AND CHARGES

City Attorney's Summary

This Ordinance amends Section 14.12.010 of the Garden Grove Municipal Code to authorize, for a period of five (5) years, future automatic adjustments in water rates to account for (i) inflation and (ii) increases or decreases in the City's cost of wholesale water purchased from other public agencies.

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE HEREBY FINDS AS FOLLOWS:

WHEREAS, the City of Garden Grove provides water service to its customers;

WHEREAS, pursuant to Section 14.12.010 of the Garden Grove Municipal Code, the City Council imposes rates and charges on water customers to fund ongoing operational costs of the Water Enterprise and to pay for future capital improvements needed to meet future demands on the water system;

WHEREAS, in 2007, Black & Veatch Corporation prepared a Water Rate Study on behalf of the City, which evaluated the Water Enterprise's financing and capital facilities needs, determined the estimated funds needed to adequately finance the operations, capital improvements, and debt obligations for the Water Enterprise, reasonably allocated the Water Enterprise's projected revenue requirements to the various customer classes in accordance with their respective service requirements, and recommended a suitable schedule of water rates that produce revenues adequate to meet the Water Enterprise's financial needs in accordance with estimated reasonable customer costs of service;

WHEREAS, on July 10, 2007, the City Council adopted Ordinance No. 2713-A, amending Section 14.12.010 to modify the rates and charges imposed on customers of the City's Water Enterprise based on the recommendations set forth in the Water Rate Study prepared by Black & Veatch Corporation, to establish a commodity adjustment charge to reflect the increased water commodity costs known and anticipated at the time, and to provide for rate adjustments through 2012 for the minimum commodity charges for metered service and the total commodity delivery charges;

WHEREAS, in 2009, Black & Veatch Corporation prepared a supplemental update to the 2007 Water Rate Study, which calculated unanticipated increases in the City's water commodity costs not then reflected in the rates adopted in 2007;

WHEREAS, on September 8, 2009, the City Council adopted Ordinance No. 2757, amending Subsection (b) of Section 14.12.010 to modify the commodity adjustment charge imposed on customers of the City's Water Enterprise to reflect unanticipated increases in wholesale water costs, based on the 2009 Black & Veatch Corporation update to the Water Rate Study, and adding Subsection (f) to Section 14.12.010 to authorize future rate adjustments to reflect adopted increases or decreases in wholesale charges for water established by other public agencies from which the City purchases water;

WHEREAS, the rate adjustments authorized by Ordinance No. 2713-A have been phased in over a five (5) year period and are now fully implemented;

WHEREAS, the City will continue to incur ongoing operational costs in providing water service to its customers and in constructing future capital improvements, and these ongoing operational and capital improvement costs are subject to inflation over time;

WHEREAS, the cost to purchase water from other public agencies (i.e., water commodity costs) is a significant component of the operational costs of the Water Enterprise over which the City has no control;

WHEREAS, City staff and Black & Veatch Corporation have recently evaluated the anticipated revenues and costs of the City's Water Enterprise through Fiscal Year 2016/2017 and have prepared spreadsheets (which are made a part of the public record of the Public Hearing), which update and supplement the financial model set forth in the 2007 Water Rate Study and calculate the estimated funds needed to continue to adequately finance the operations, capital improvements, and debt obligations for the Water Enterprise over this period;

WHEREAS, Government Code Section 53756 authorizes any agency providing water service to adopt a schedule of fees or charges for a period not to exceed five (5) years authorizing (i) automatic adjustments that pass through increases or decreases in wholesale charges for water established by another public agency from which it purchases water, and (ii) automatic adjustments for inflation;

WHEREAS, the City Council has determined, based on the findings and recommendations of and supplemental spreadsheets prepared by, City Staff and Black & Veatch Corporation and the legislative findings herein, that, in order to adequately finance the operations, capital improvements, and debt obligations for the Water Enterprise, (i) automatic annual adjustments to the minimum charge, the capital improvement recovery charge, and the commodity delivery charge components of the rates and charges for water usage set forth in Subsections (a),

(b), and (c) of Section 14.12.010 over a five (5) year period to account for actual inflation should be authorized, and (ii) Subsection (f) of Section 14.12.010 should be re-adopted and the existing authorization for automatic adjustments to the commodity adjustment charge component of the rates and charges for water usage that pass through future increases in wholesale water charges should be extended for a five (5) year period;

WHEREAS, the amounts set forth in Subsections (A), (B), and (C) of Section 14.12.010 adopted pursuant to this Ordinance reflect the current legal rates and charges, as lawfully established and adjusted in accordance with Ordinance Nos. 2713-A and 2757 and State law, and do not reflect new or additional increases in the rates and charges imposed by the City for water usage;

WHEREAS, the City Council has determined the following with regard to the rates and charges for water usage established by this Ordinance: (i) the fees and charges are not imposed as a condition of approval of a development project, as defined in California Government Code Section 66001; (ii) the fees and charges are established upon a rational basis between the fees charged each customer and the service and facilities provided to each customer of the City's Water Enterprise; (iii) the revenues derived from the fees and charges do not exceed the estimated reasonable cost to provide the capital facilities and water services for which they are levied; (iv) the revenues derived from the fees and charges shall not be used for any other purpose than that for which the fees and charges are imposed; (v) the fees and charges do not exceed the proportional cost of the water service attributable to each consumer; (vi) the fees and charges are imposed on water services that are immediately available to the consumer; (vii) the fees and charges are not levied for general governmental services; and (viii) the rates and charges are not discriminatory or excessive, are sufficient under Government Code Section 54515, comply with the provisions or covenants of any outstanding revenue bonds of the City payable from the revenues of the Water Enterprise, comply with the provisions of Title 5, Division 2, Chapter 6 of the California Government Code, and are in compliance with all other applicable laws;

WHEREAS, the City Council has determined that the authorization of automatic adjustments to the rates and charges for water usage provided for herein is appropriate and represents increases in the rates and charges needed to adequately finance the operations, capital improvements, and debt obligations for the Water Enterprise for those years;

WHEREAS, in accordance with Proposition 218 and Government Code Section 53755, notice of a Public Hearing to consider the proposed adjustments in water rates and charges and containing such information required to be included pursuant to California law (the Proposition 218 Notice) was mailed to all record owners of affected property to the addresses as they appear on the latest equalized assessment roll and to all City customers located on the affected parcels at the addresses to which the City customarily mails the billing statements;

WHEREAS, on February 14, 2012, the City Council conducted the Public Hearing provided for in the Proposition 218 Notice, at which time the City Council heard all objections and protests to the proposed adjustments in water rates and charges;

WHEREAS, the City received 84 written protests against the proposed adjustments in water rates and charges, which does not constitute a majority protest, as defined in Proposition 218, by a majority of the property owners on which the rates are imposed;

WHEREAS, pursuant to California Government Code Section 66016 notice of the time and place of this Public Hearing, including a general explanation of the matter to be considered and a statement that the data required by Government Code Section 66016 is available for public review at the City, was mailed to interested parties requesting notice at least fourteen (14) days prior to the Public Hearing;

WHEREAS, pursuant to California Government Code Section 66016 the City made available to the public the Water Rate Study, the 2009 supplemental update, the most recent supplemental update, and other data documenting the estimated costs required to provide services for which the proposed modified rates and charges will be levied and the revenue sources anticipated to provide the services;

WHEREAS, on February 14, 2012, in accordance with applicable legal requirements, the City Council conducted a duly noticed Public Hearing to consider the proposed adjustments in water rates and charges set forth herein, at which Public Hearing all those who wished to speak for or against the proposed adjustments in water rates and charges were heard; and

WHEREAS, the adoption of this Ordinance and the establishment of such rates and charges is statutorily exempt under the California Environmental Quality Act ("CEQA") pursuant to the provisions of Public Resource Code Section 21080(b)(8) and Section 15378 and Section 15273 of the CEQA Guidelines because (i) the increased rates and charges are for the purpose of meeting operational and maintenance expenses of the Water Enterprise, and (ii) the rates and charges constitute the creation of funding mechanism/other governmental fiscal activity that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment.

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DOES HEREBY ORDAIN:

Section 1. Section 14.12.010 of Chapter 14.12 of Title 14 ("Water") of the Garden Grove Municipal Code is hereby amended in its entirety to read as follows:

"SECTION 14.12.010 – RATES AND CHARGES

The City of Garden Grove Water Division incurs ongoing operational costs, such as labor, commodities, and contractual services in providing water service to the community. A water rate schedule is established to consist of a minimum charge and commodity delivery charge to pay for the system operational and capital replacement costs. The commodity delivery charge includes two components: (i) the commodity delivery charge and (ii) the commodity adjustment charge. A capital improvements charge is established to pay for future capital improvements needed to meet future demands on the system. Accordingly, the following rate structure is established for water usage:

(A) MINIMUM CHARGE. Subject to adjustment pursuant to Subsections (E) and (F), the minimum commodity charge for metered service shall be:

METER SIZE (IN INCHES)	BI-MONTHLY MINIMUM CHARGE
5/8 x 3/4	\$11.95
1	\$31.87
1 1/2	\$61.73
2	\$93.58
3	\$155.31
4	\$215.04
6	\$491.80
8	\$768.58
10	\$1,045.34

(B) COMMODITY DELIVERY CHARGE. Subject to adjustment pursuant to Subsections (E) and (F), the unit charge for metered services shall be:

UNITS OF WATER (1 UNIT = 100 CUBIC FT) ("hcf")	COMMODITY DELIVERY CHARGE (\$ per hcf)	COMMODITY ADJUSTMENT CHARGE (\$ per hcf)
0 – 36	\$2.11	\$0.53
37 – 250	\$2.19	\$0.53
251 – 500	\$2.27	\$0.53
> 500	\$2.35	\$0.53

(C) CAPITAL IMPROVEMENTS CHARGE. Subject to adjustment pursuant to Subsections (E) and (F), the capital improvements recovery charge for services shall be:

METER SIZE (IN INCHES)	BI-MONTHLY CHARGE
5/8 x 3/4	\$1.38
1	\$1.94
1 1/2	\$2.48
2	\$4.00
3	\$15.18
4	\$19.32
6	\$28.98
8	\$40.02
10	\$51.06

(D) SPECIAL RATE FOR SMALL USAGE. All residential customers with 5/8" x 3/4" meters who use six (6) units or less of water in a billing period shall pay only the minimum charge provided for in Subsection (A), provided the water usage remains at six (6) units or under. If usage exceeds six (6) units, then the water customer shall pay the minimum charge, plus the commodity delivery charge, commodity adjustment charge, and capital improvements charge provided for in Subsections (B) and (C).

(E) AUTOMATIC ANNUAL ADJUSTMENTS FOR INFLATION. Except for the commodity adjustment charge component of the commodity delivery charge, the rates established in Subsections 14.12.010 (A), (B), and (C) above will be adjusted for inflation annually on July 1, commencing July 1, 2012, and continuing through July 1, 2016, based on the same percentage as the percentage of increase in construction costs between March 1 of the calendar year immediately preceding March 1 of the then current calendar year, based on the Engineering News Record Construction Costs Index – Los Angeles Area, without further action by the City Council. However, if the inflation adjustment in any year exceeds six (6) percent under the inflation index set forth above, the amount of the inflation adjustment shall be presented to the City Council for final legislative determination. The Finance Director shall cause notice of any automatic adjustment made pursuant to this subsection (E) to be given pursuant to subdivision (a) of Government Code Section 53755, as it may be amended from time to time, and/or other applicable law, not less than thirty (30) days before the effective date of the adjustment.

(F) AUTOMATIC PASS THROUGH ADJUSTMENTS FOR PURCHASED WATER COSTS.

- (1) The commodity delivery charge shall be automatically adjusted to reflect adopted increases or decreases in wholesale charges for water established by other public agencies from which the City of Garden Grove purchases water to the extent such increases or decreases are not reflected in the schedule of charges then in effect. Any such automatic adjustment shall be implemented through adjustment of the commodity adjustment charge component. The amount of any such automatic adjustment shall be calculated by the Finance Director, or his designee, and shall be presented to the City Council for review. Data documenting the amount of the increase or decrease in wholesale water costs and the basis for all adjustment calculations shall be made available to the public upon request.
- (2) The Finance Director shall cause notice of any automatic adjustment made pursuant to this subsection (F) to be given pursuant to subdivision (a) of Government Code Section 53755, as it may be amended from time to time, and/or other applicable law, not less than thirty (30) days before the effective date of the adjustment.
- (3) Unless readopted pursuant Government Code Section 53756, as it may be amended from time to time, and/or other applicable law, the authority to make automatic adjustments pursuant to this subsection (F) shall expire five (5) years from the effective date of the Ordinance adopting or readopting this subsection (F).

(G) DETERMINATION OF WATER SUPPLY. The percent of water to be pumped and the percentage to be purchased shall be established by the Public Works Director prior to May 1st of each year, based on the basin production percentage assigned to the City of Garden Grove by the Orange County Water District.

Section 2. Severability. If any section, subsection, subdivision, sentence, clause, phrase, word or portion of this Ordinance is, for any reason, held to be invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid.

Section 3. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after adoption.

The foregoing Ordinance was passed by the City Council of the City of Garden Grove on the ____ day of _____.

ATTEST:

MAYOR

CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, KATHLEEN BAILOR, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Ordinance was introduced and presented on February 14, 2012, with a vote as follows:

AYES: COUNCIL MEMBERS: (5) BEARD, BROADWATER, JONES, NGUYEN, DALTON
NOES: COUNCIL MEMBERS: (0) NONE
ABSENT: COUNCIL MEMBERS: (0) NONE