

ORDINANCE 34 - 16

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 19, WATER AND SEWER UTILITIES, BY AMENDING MANDATORY CONNECTION TO RECLAIMED WATER SYSTEM UPON AVAILABILITY; PROVIDING FOR WITHHOLDING SERVICE FOR INDEBTEDNESS RESULTING IN A LIEN; PROVIDING AN APPEAL PROCESS FOR UNAUTHORIZED CONNECTION PENALTIES, FEES, OR COSTS; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City is authorized to adopt water, wastewater (sewer), and irrigation (reclaimed) water rates, fees, charges, and other related regulations, pursuant to Florida Statutes, that are beneficial to the health, safety, and welfare of the City's citizens; and

WHEREAS, an objective of the City is to ensure that rates, fees, and charges levied to pay for the cost of providing water, wastewater (sewer), and irrigation (reclaimed) water are just and reasonable to cover the costs of providing such services.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 19, Article I, Sections 19-2.5, 19-3, 19-4, 19-5, 19-5.1, 19-6, 19-19, and 19-22 are hereby amended as follows:

**§ 19-2.5 Connection to approved sanitary sewer system, irrigation (reclaimed) water system and municipal potable water system mandatory upon availability.**

- (a) *Nonuse of individual sewage disposal system.* Where an existing, adequate sanitary sewer of a sewage system is available in a public right-of-way or easement abutting the property, 200 linear feet of a gravity flow line from the nearest point of the property, sewage waste shall be connected thereto, and any individual sewage disposal system, device or equipment shall be abandoned.
- (b) *Nonuse of well for potable drinking water purposes.* Where an existing, adequate municipal potable water system is available in a public right-of-way or easement abutting the property, or within 200 feet of the property being served by a well system, connections shall be made so that the well shall no longer be used for human consumption or other non-potable uses.
- (c) *Nonuse of well for irrigation purposes.* Where an existing, adequate municipal reclaimed water system is available in a public right-of-way or easement abutting property, or within 200 feet of the property being served by a well system, connections shall be made so that the well shall no longer be used for irrigation purposes.
- (e d) *Effect.* Sewer, reclaimed water and potable water charges shall be in effect upon connection or beginning 180 days from notification of the availability of sewer, reclaimed water and potable water service, whichever is less.
- (d e) *Time limitation for making connection.* Whenever an approved sanitary sewer system is made available, or whenever an accepted municipal potable water or reclaimed water facility is made available, to a residence or a building, connection to the available system shall be made within 180 days from the date of notice sent to the owner of record.
- (e f) *Penalty.* Any person failing to connect to approved utilities within the 180 day period, shall be guilty of an ordinance violation for each day in excess of 180 days, and be subject to a penalty.

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**§ 19-3 Signed application necessary for service.**

- (a) Potable and reclaimed ~~W~~water service/sewer service is furnished only upon signed application or agreement accepted by the city, and the conditions of such application or

agreement are binding upon the customer, as well as upon the city. This application must be executed by the Financial Services Department.

- (b) The applicant shall furnish to the city the correct name, street address or lot and block number at which water-sewer service is to be rendered.

#### § 19-4 Applications by agents.

Applications for potable and reclaimed water/sewer service requested by firms, partnerships, associations, corporations and others shall be tendered only by duly authorized parties. When water service is rendered under agreement or agreements entered into between the city and an agent or tenant of the principal, the use of the potable and reclaimed water/sewer service by the principal or tenant shall constitute full and complete ratification by the principal of the agreement or agreements entered into between the agent and the city and under which the potable and reclaimed water/sewer service is rendered.

#### § 19-5 Withholding service.

The city may withhold or discontinue the services rendered under application made by any member or agent of a household, organization or business unless all prior indebtedness to the city, including indebtedness perfected by a lien(s) (excluding special assessment liens), of the household, organization or business for water/sewer service has been settled in full. Service may also be discontinued for any violation by the customer or consumer of any rule or regulation set forth in this article. In case of involuntary discontinuance of service, the minimum billing continues.

##### § 19-5.1 Authority to disconnect water and wastewater disposal service.

The city reserves the right to terminate water and wastewater disposal services and disconnect a customer from the system when:

- (a) Acids or chemical damaging to sewer line or treatment process are released into the sewer causing rapid deterioration of these structures or interfering with proper conveyance and treatment of wastewater;
- (b) A governmental agency informs the city that the effluent from the wastewater treatment plant is no longer of a quality permitted for discharge into a watercourse, and it is found that the customer is delivering wastewater to the city's system that cannot be sufficiently treated or requires treatment that is not provided by the city as normal domestic treatment;
- (c) The customer:
  - (1) Discharges industrial waste or wastewater that is in violation of the permit issued by the approving authority;
  - (2) Discharges wastewater at an uncontrolled, variable rate in sufficient quantity to cause an imbalance in the wastewater treatment systems;
  - (3) Fails to pay monthly bills for water and sanitary sewer services when due; or
  - (4) Repeats a discharge of prohibited wastes into public sewers.
- (d) Prior to disconnecting any water or sewer service for non-payment, the city shall provide the ~~occupant~~ account holder of the premises with a minimum of 30 days written notice of the city's intent to terminate service. The notice shall also advise the ~~occupant~~ account holder of the premises of the procedure to contest the notice of intent to terminate service.

#### § 19-6 Customer deposit.

- (a) *Deposit required.* A deposit shall be required of all new customers of the city water, reclaimed water and sewer systems. Deposits shall be paid to the city by cash, check, money order or credit card. The city shall begin requiring deposits for new accounts that are in the name of the property owner(s) on June 1, 2004; for all new accounts that are in the name of someone other than the property owner(s), the city shall begin requiring deposits for new accounts on April 27, 2004.

(b) *Exemptions.*

- (1) a. A customer who has had a previous account with the city and who is applying for new service must satisfy any outstanding balance owed to the city, including outstanding balances secured by a lien, on any previous account(s) prior to receiving service at a new address. A customer who has had a previous utility account may be exempted from paying a customer deposit if the following criteria are met:
  - b. The previous account(s) existed a minimum of 24 months immediately preceding application for the new account; the new account requested is in the same name as the previous account and is of the same type; and the customer has not, during the preceding 12 months:
    1. Made more than two payments that were received after the due date;
    2. Paid with a check refused by the bank;
    3. Had utility service discontinued for non-payment;
    4. Tampered with a meter; or
    5. Used utility service in a fraudulent or unauthorized manner.
- (2) Written statement from another utility company. A new customer will be exempt from the customer deposit requirement if the new customer furnishes a written statement from another utility company that previously provided service to the customer, stating that the new customer's account meets the criteria stated in subsection (b)(1) above.

(c) *Deposits on existing accounts.*

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**§ 19-19 Adjustment of bills.**

- (a) *General.* When a customer has been overcharged or undercharged as a result of incorrect application of the rate schedules, incorrect reading of the meter, incorrect connection of the meter or other similar reasons, an amount necessary to correct the error may be credited or billed to the customer as determined by the Financial Services Department.
- (b) *Water billing adjustment.* The City Manager or his or her designee is hereby authorized to make adjustments to water bills resulting from involuntary use of water due to leaks in water service lines or defective plumbing fixtures. For purposes of this section, **INVOLUNTARY USE** is defined as water consumption resulting from one of the aforementioned causes, where the billed consumption exceeds the average monthly consumption for the previous six months by at least 100% and is a minimum of 10,000 gallons. Voluntary uses of water such as lawn watering or failure to turn off an outside hose shall not provide the basis for a water billing adjustment. The billing adjustment shall be based on a review of the account for the six month period prior to the involuntary use. In the event the involuntary use encompasses two billing cycles, the calculation for the adjustment shall be based upon the average monthly consumption which exceeds two times the average monthly consumption for the previous six months. In order to obtain a water billing adjustment, the account holder must provide a written ~~and notarized~~ request seeking the adjustment and stating the reason for the involuntary use. The request must be received by the city within 60 days of the date of the billing for which the adjustment is sought and must be accompanied by evidence that a leak or other involuntary use has occurred and has been repaired. The written evidence may be an invoice from a plumber for the repair. Water billing adjustments shall be limited to the two month period prior to repair of the leak and may only be granted once in any 12 month period. The total amount of the adjustment shall not exceed 50% of the excess usage.
- (c) *Sewer billing adjustment.* The City Manager or his or her designee is hereby authorized to make adjustments to sewer bills resulting from involuntary use of water that does not result in the water entering the sanitary sewer system. Voluntary uses of water such as lawn watering or failure to turn off an outside hose shall not provide the basis for a sewer billing adjustment. The billing adjustment shall be based on a review of the account for the six month period prior to the involuntary use. In the event the involuntary use encompasses two billing cycles, the calculation for the adjustment shall be based upon the average monthly consumption

which exceeds two times the average monthly consumption for the previous six months. In order to obtain a sewer billing adjustment, the account holder must provide a written ~~and notarized~~ request seeking the adjustment and stating the reason for same. The request must be received by the city within 60 days of the date of the billing for which the adjustment is sought and must be accompanied by evidence that a leak or other involuntary use has occurred and has been repaired and must establish that the involuntary use did not result in the water entering the sanitary sewer system. Sewer billing adjustments shall be limited to the two month period prior to repair of the leak and may only be granted once in any 12 month period. The total amount of the adjustment shall not exceed 50% of the excess usage.

- (d) *Sewer billing adjustment for filling or re-filling of swimming pools.* The City Manager or his or her designee is hereby authorized to make adjustments to sewer bills in the event of total or partial filling or re-filling of a swimming pool which does not result in water entering the sanitary sewer system. The account holder must submit a written request for a sewer billing adjustment to the city no later than 30 business days after the date of the initial filling or re-filling of the pool. The written request shall specify the design capacity of the pool and certification by a licensed pool contractor substantiating the reason for same. The adjustment shall be calculated based on a review of the account for the six month period prior to the filling or re-filling of the swimming pool and the design capacity of the pool. The sewer billing adjustment for filling or re-filling swimming pools shall be limited to one adjustment per 12 month period. In no event shall any adjustment for initial filling or re-filling of a pool exceed the total design capacity of the pool.

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**§ 19-22 Unauthorized connections; penalties; appeals.**

- (a) Connections to the city's water, sewer, or irrigation system for any purpose whatsoever are to be made only under the supervision of city employees. Unauthorized connections render the service subject to immediate discontinuance without notice, and water, sewer, or irrigation service will not be restored until such unauthorized connections have been removed and unless settlement is made in full for all water, sewer, or irrigation service estimated by the city to have been used by reason of the unauthorized connection.
- (b) Any person, firm, contractor, corporation, association or partnership who is found by the city to have made or caused to have made any connection prohibited by subsection (a) above shall be required by the city to pay the following to the city:
- (1) A penalty in the amount of:
    - a. First offense \$250.00
    - b. Second offense \$500.00
    - c. Third and subsequent offenses \$750.00
  - (2) An amount equal to three times the connection fees and water, sewer, or irrigation service charges imposed by the city for such connection and water, sewer, or irrigation service provided. Said fees and charges shall be computed using the rates in effect at the time of the discovery of said unauthorized connection. For residential connections, the water, sewer, or irrigation service charges shall be estimated by using the average water, sewer, or irrigation use for similar types and sizes of residential users during the entire period from the date of a certificate of occupancy was issued for any dwelling unit found illegally connected to the system until the date of collection. For commercial connections, water, sewer, or irrigation service charges shall be estimated by using the average water, sewer, or irrigation use for similar types and sizes of commercial users during the entire period from the date of a certificate of occupancy was issued for any portion of the project served until the date of collection.
  - (3) All costs of investigation and collection, including time, labor, material, attorney fees, court costs, and professional fees of any kind necessitated to determine that such unauthorized connection existed.
  - (4) Unauthorized connections may be prosecuted according to F.S. § 812.14.

- (c.) All persons, firms, contractors, corporations, associations or partnerships making or causing said unauthorized connection to be made and/or receiving the benefit of the water, sewer, or irrigation service shall be jointly and severally liable for the payment of the above-described amounts to the city. Water, sewer, or irrigation service shall be discontinued to such persons, firms, contractors, corporations, associations or partnerships until said amount is paid in full. In the event that any corporation is found to be liable for such sums and is not solvent or is without assets to make appropriate payment, the individual officers, directors and shareholders of such corporation shall be liable for such payment.
- (d.) Any person, firm, contractor, corporation, association or partnership who is found by the city to have made or caused to have made any unauthorized connection may appeal a penalty, fee, or cost under this section. The person, firm, contractor, corporation, association or partnership shall notify the Code Compliance Manager within ten (10) days of receipt of the notice of penalty, fee, or cost. Proper notice to the Code Compliance Manager shall stay the imposition of a penalty, fee, or cost, until adjudication by the Code Compliance Special Magistrate. The Special Magistrate shall conduct a hearing and consider evidence presented by the person, firm, contractor, corporation, association or partnership, and the city. The Special Magistrate shall make a decision based on the preponderance of the evidence standard. The decision of the Special Magistrate is a final administrative remedy as to the city.

SECTION 2. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.

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MARNI L. SAWICKI, MAYOR


VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI	_____	LEON	_____
BURCH	_____	ERBRICK	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	COSDEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.

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REBECCA VAN DEUTEKOM  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
BRIAN R. BARTOS  
ASSISTANT CITY ATTORNEY  
Utilities- Ch-19; 6/23/16