

ORDINANCE 2009-O-7

AN ORDINANCE REPEALING DIVISION 2 OF ARTICLE 13.02 OF THE CHAPTER 13, OF THE CODE OF ORDINANCES RELATING TO “DELINQUENT ACCOUNTS”; ADOPTING NEW DIVISION 2 OF ARTICLE 13.02 OF THE CODE OF ORDINANCES RELATING TO “BILLING AND PAYMENT REQUIREMENTS; DISCONNECTION REGULATIONS”; PROVIDING FOR PENALTIES, FOR A REPEALER, SEVERABILITY, EFFECTIVE DATE, AND PROPER NOTICE AND MEETING.

WHEREAS, the City Council of the City of Moulton seeks to promote the health, safety and general welfare of the citizens of the City, and the best interests of the City; and

WHEREAS, the City Council seeks to ensure that water, sewer utility service, electric service, and garbage service are adequate and efficient for the citizens of the City; and

WHEREAS, pursuant to Texas Local Government Code section 51.001, the City Council is authorized to adopt an ordinance that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, pursuant to Texas Local Government Code section 51.012, the City Council is authorized to adopt an ordinance, not inconsistent with state law, that the council considers proper for the government, interest, welfare or good order of the City; and

WHEREAS, pursuant to chapter 552 of the Texas Local Government Code and other laws, the City is authorized to operate and regulate its electric, water and sewer utility systems in a manner that protects the interests of the municipality;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOULTON, TEXAS:

SECTION I. FINDINGS OF FACT.

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Moulton and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

SECTION II. AMENDMENT TO DIVISION 2, ARTICLE 13.02 OF CHAPTER 13, "RATES, CHARGES AND BILLING". That the Code of Ordinances, City of Moulton, Texas, is hereby amended by repealing Division 2. Delinquent Accounts, of Chapter 13 of the Code of Ordinances and adopting new Division 2. Billing and Payment Requirements; Disconnection Regulations, of Chapter 13 of the Code of Ordinances, which said Division reads as follows:

Division 2. Billing and Payment Requirements; Disconnection Regulations

Sec. 13.02.031. Charge Distribution and Payment Application.

(a) The Minimum Monthly Charge is applied from the first day of the monthly billing cycle to the last day of the monthly billing cycle. Charges shall be prorated for meter installations and service terminations falling during the monthly billing cycle. All services shall be subject to this charge whether or not the service is in use by the Customer.

(b) Gallonage Charge, defined as water usage, shall be billed at the rate specified by City Ordinance as may be amended from time to time, and shall be billed in one thousand (1000) gallon increments or fractions thereof. Water charges for usage are based on monthly meter readings and are calculated from reading date to reading date. Readings used in all billings calculations shall be taken by the City's employees or designated representative.

(c) Posting of Payments -- All payments shall be posted against previous balances prior to posting against current billings.

(d) The City shall require a deposit as specified in Appendix A of the Code of Ordinances to secure new service. Customers may transfer utility deposits from one place of residence or business to be served by the City if the previous utility account is paid in full.

(e) Additional Requirements for Certain Customers.

(1) This subsection (e) of this section applies to the following persons:

(A) a person that has given a check, draft, or other similar instrument to the City for payment of service, and the instrument was returned by the bank or other similar institution as insufficient or non-negotiable for any reason;

(B) a person whose service has been disconnected for failure to pay;

(C) a tenant or lessee of the property to served and the tenant or lessee seeks to obtain service from the City directly; and

(D) a person who refuses to provide the City his or her social security number when he or she obtains service from the City.

(2) Persons identified in (e)(1) shall pay to the City a deposit of a minimum of \$150.00 (or more, depending on billing and usage history) to secure service in addition to the deposit required by Appendix A of the Code of Ordinances.

(3) Any customer whose instruments have been returned as insufficient or non-negotiable for any reason for any two billing periods within a 12-month period shall be considered a bad credit risk by the City and the Customer shall be placed on a "cash-only" basis for a period of 12 months. "Cash-only" means certified check, money order, or cash.

(f) The City may refuse service to a person if, at the time of the application for service, the Person is indebted to the City for any charge, tax, or fee, or is indebted to another retail public utility for the same kind of service for which the Person has applied from the City. However, if the Person is disputing the indebtedness and is otherwise in compliance with the depository requirements, service shall not be refused.

Sec. 13.02.032. Due Date, Delinquent Bills, and Service Disconnection Date.

(a) The City shall mail each customer a bill for each billing cycle assessing the customer the minimum monthly rate or charge, gallonage charge, and any other applicable fees or charges. All bills shall be due by the close of business the date indicated on the bill, allowing ten (10) days to pay, after which time a 10% penalty shall be applied. A bill is delinquent if not paid by the due date. Payments made by mail will be considered late if postmarked after the due date. A notice advising the customer that the bill is delinquent shall be mailed to the customer providing the customer with an additional five (5) days to pay the delinquent bill plus the penalty. If the customer has not paid the overdue payment by the 5th day after the notice is mailed, the City shall disconnect service. The five (5) additional days shall begin on the day the final notice is deposited with the U.S. Postal Service with sufficient postage. If the due date of any bill is on a weekend or holiday, the next due date for payment purposes shall be the next day the City office is open for business after said weekend or holiday. For all disputed payment deadlines, the date postmarked on each bill will determine the beginning of each billing cycle or final notice mailings.

(b) On request by an elderly individual, who present reasonable proof that he or she is 60 years of age or older, a City shall delay without penalty the payment date of a bill for providing utility service to that individual until the 25th day after the date the bill is issued. The request that the City implement the delay may be for the most recent utility bill or the most recent utility bill and each subsequent utility bill. This subsection (b) applies only to an elderly individual who is a residential customer and occupies the entire premises for which a delay is requested.

Sec. 13.02.033. Disconnection of Service.

The following describes the conditions for disconnection of service:

(a) Disconnection at the Customer's Request - Upon receipt of a written request from a customer to terminate service at the customer's service location, the City shall terminate service on or before the third day the customer requests termination. No additional notice of termination or discontinuance of notice is required. The City shall refund the customer's deposit to the customer if the customer discontinues service and pays all outstanding utility service bills. The City may apply the customer's security deposit to the customer's unpaid utility account balance before the City refunds the balance of the deposit to the customer.

(b) Disconnection with Notice -- Utility service may be disconnected for any of the reasons provided in this subsection (b) after 5th day after written notice advising the customer of the disconnection is mailed. The five (5) days shall begin on the day the notice is deposited with the U.S. Postal Service with sufficient postage. The City may disconnect service after proper notice for the following reasons:

(1) Returned Checks -- In the event a check, draft, or any other similar instrument is given by a person to the City for payment of services, and the instrument is returned by the bank or other similar institution as insufficient or non-negotiable for any reason, the City shall mail, via the U.S. Postal Service, a notice requiring redemption of the returned instrument within ten (10) days of the date of the notice to be made in the City office. Redemption of the returned instrument shall be made by cash, money order, or certified check. The City shall initiate termination of service for failure to meet these terms.

(2) Failure to pay a delinquent account for utility service or failure to comply with the terms of an agreement regarding water or sewer service;

(3) Violation of the City's ordinances pertaining to the use of service in a manner which interferes with the service of others or the operation of non-standard equipment if a reasonable attempt has been made to notify the Customer and the Customer is provided with a reasonable opportunity to remedy the situation;

(4) Failure of the Customer to comply with the terms of the City's Service Agreement, Code of Ordinances, Drought Contingency Plan, or Special Contract provided that the City has given notice of such failure to comply, as may be required, and Customer has failed to comply with a specified amount of time after notification.

(5) Failure to provide access to the meter under the terms of the Code of Ordinances, or to property at which utility service is received when there is

reason to believe that a hazardous condition or policy violation exists for which access is necessary to verify.

(6) Misrepresentation by any Applicant of any fact on any form, document, or other agreement required to be executed by the City.

(7) Failure of Customer to meet requirements of the regulatory authority for construction or maintenance of on-site sewage facilities as authorized by the Texas Health & Safety Code Chapter 366.

(8) Failure of Customer to re-apply for service upon notification by the City that Customer no longer meets the terms of the service classification originally applied for under the original service application.

(c) Disconnection Without Notice.

(1) Utility service may be disconnected without notice for any of the following conditions:

(A) A known dangerous or hazardous condition exists for which service may remain disconnected for as long as the condition exists, including but not limited to a violation of the Texas Health & Safety Code Chapter 341 or the public drinking water rules and regulations of the TCEQ, or there is reason to believe a dangerous or hazardous condition exists and the Customer refuses to allow access for the purpose of confirming the existence of such condition and/or removing the dangerous or hazardous condition.

(B) Failure to comply with the City's Cross Connection Prevention Program, Sewer Use Ordinance, or Grease Trap Ordinance.

(C) Service is connected without authority by a person who has not made application for service or who has reconnected service without authority following termination of service for nonpayment;

(D) In instances of tampering with the City's meter or equipment, bypassing the meter or equipment, or other diversion of service; or

(E) In instances in which the service connection has been abandoned and is not longer in use.

(2) Where reasonable, given the nature of the reason for disconnection, a written statement providing notice for disconnection and the reason therefore shall be posted at the place of common entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected.

(d) Disconnection Prohibited -- Utility service may not be disconnected for any of the following reasons:

(1) Failure of the Customer to pay for merchandise or charges for non-utility service provided by the City, unless an agreement exists between the Applicant and the City whereby the Customer guarantees payment of non-utility service as a condition of service;

(2) Failure of the Customer to pay charges arising from an underbilling occurring due to any misapplication of rates more than four (4) months prior to the current billing;

(3) Failure of the Customer to pay the account of another Customer as guarantor thereof, unless the City has in writing the guarantee as a condition precedent to service;

(4) Failure of the Customer to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due to meter error;

(5) Failure of the Customer to pay estimated bill other than a bill rendered pursuant to an approved meter reading plan, unless the City is unable to read the meter due to circumstances beyond its control; or

(6) In response to a request for disconnection by an Owner/Customer of rental property where the renter is billed directly by the City as authorized by the owner, and the renter's account is not scheduled for disconnection under the conditions for disconnection of Service in this ordinance.

(e) Disconnection on Holidays and Weekends -- Unless a dangerous condition exists or the Customer requests disconnection, service shall not be disconnected on a day, or on a day preceding a day, when personnel of the City are not available to the public for the purpose of making collections and reconnecting service.

(f) Disconnection for Ill and Disabled -- The City may not discontinue service to a delinquent residential Customer permanently residing in an individually metered dwelling unit when that Customer establishes that discontinuance of service will result in some person at that residence becoming seriously ill or more seriously ill if service is discontinued. Each time a Customer seeks to avoid termination of service under this subsection, the Customer must have the attending physician call or contact the City within ten (10) days of issuance of the bill. A written statement must be received by the City from the physician within twenty (20) days from the issuance of the utility bill. The prohibition against service termination shall last sixty (60) days from the issuance of the utility bill or such lesser period as may be agreed upon by the City and Customer's physician.

(g) Disconnection of Master-Metered Services -- When a bill for utility or sanitation services is delinquent for a master-metered service complex (defined as a complex in which a single meter serves two (2) or more residential dwelling units), the following shall apply:

(1) The City shall send a notice to the Customer as required. This notice shall also inform the Customer that notice of possible disconnection will be provided to the tenants of the service complex in six (6) days if payment is not rendered before that time.

(2) At least six (6) days after providing notice to the Customer and at least four (4) days prior to disconnection, the City shall post at least five (5) notices in public areas of the service complex notifying the residents of the scheduled date for disconnection of service.

(3) The tenants may pay the City for any delinquent bill in behalf of the owner to avert disconnection or to reconnect service to the complex.

(h) Reconnection of Service - The City shall reconnect service to a customer whose service has been disconnected under this section if the customer's account is current or the customer has otherwise entered into a payment plan and is current under that plan, a reconnection fee of \$50 been paid, and any hazardous or dangerous conditions have been corrected.

Sec. 13.02.034. Billing Cycle Changes.

The City reserves the right to change its billing cycles if the work load requires such practice. After a billing period has been changed, the billings shall be sent on the new change date unless otherwise determined by the City.

Sec. 13.02.035. Back-billing.

The City may back-bill a Customer for up to four (4) months for meter error, misapplied meter multiplier, incorrect meter readings, or error in computing a Customer's bill. Failure to pay the most recent two (2) months billing will result in disconnection of service and the re-establishment of credit.

Sec. 13.02.036. Disputed Bills.

In the event of a dispute between the Customer and the City regarding any bill, the City shall make and conduct an investigation as shall be required by the particular case, and report the results in writing thereof to the Customer. All disputes under this Subsection must be submitted to the City, in writing, prior to the due date posted on said bill. The Customer shall also deposit with the City one-half of the amount of the disputed bill with the City. The City shall not disconnect service to a customer that is disputing a bill and that has complied with this section until the City has investigated the complaint,

evaluated the fee owed by the Customer, and informed the Customer of the outcome of the investigation.

Sec. 13.02.037. Inoperative Meters.

Utility meters found inoperative will be repaired or replaced within a reasonable time. If a meter is found not to register for any period, unless by-passed or tampered with, the City shall make a charge for units used, but not metered, for a period not to exceed three (3) months, based on amounts used under similar conditions during the period preceding or subsequent thereto, or during corresponding periods in previous years.

Sec. 13.02.038. Bill Adjustment Due to Meter Error.

The City shall test any Customer's meter upon written request of the Customer. In the event the test results indicate that the meter is faulty or inaccurate, the test fee shall be waived, the meter shall be calibrated or replaced, and a billing adjustment may be made as far back as six (6) months prior to the test. The billing adjustment shall be made to the degree of the meter's inaccuracy as determined by the test.

Sec. 13.02.039. Damage to City Property; Meter Tampering and Diversion.

No person shall destroy, deface, damage, or interfere with City facilities, property, or meters. Any customer that destroys, defaces, damages, or interferes with City facilities shall be subject to the applicable civil fines and criminal penalties described by City Ordinance. A person who willfully destroys, defaces, damages, or interferes with City property is guilty of a Class B misdemeanor. Damage or interference with City property includes, but is not limited to, meter-tampering, by-passing the meter, an unauthorized diversion around the meter, removing a locking or shut-off device used by the City to discontinue service, physically disorienting the meter, attaching objects to the meter to divert service or to by-pass, inserting objects into the meter, and other electrical and mechanical means of tampering with, by-passing, or diverting service.

Sec. 13.02.040. Meter Relocation.

Relocation of meters or taps shall be allowed by the City provided that:

- (a) An easement for the proposed location has been granted to the City;
- (b) The existing tap or meter location is located on the same property as the proposed tap or meter location; and
- (c) The Customer pays the Meter Relocation Fee.

Sec. 13.02.041. Prohibition of Multiple Connections to a Single Tap.

All connections of any dwelling, household, business, or water or electricity-consuming establishment currently receiving or planning to receive water service or electric service, either directly or indirectly from the City's water or electric system, shall individually apply for service as required by the City's Code of Ordinances, unless otherwise exempted by the City Council. Any unauthorized submetering of service shall be considered a Multiple Connection and subject to disconnection of service. If the City has sufficient reason to believe a Multiple Connection exists, the City shall discontinue service under the Disconnection with Notice provisions of this Division.

Sec. 13.02.042. Access to Meters.

The Customer shall provide access to the meter at all reasonable times for the purpose of reading, installing, checking, repairing, or placing the meter. Customer shall provide a key to locked gates. If the gate to the Customer's premises is locked, preventing the reading of the meter, an estimated bill shall be rendered to the Customer for the month; and a notice shall be sent to the effect that entrance could not be gained and that a key should be furnished or the gate unlocked for each reading period. Should the gate remain locked for three (3) consecutive months after proper notification to the Customer, then service shall be discontinued and the meter removed with no further notice.

Sec. 13.02.043. Customer's Responsibilities on Customer's side of the Meter.

(a) The City's ownership and maintenance responsibility of utility system and metering equipment shall end at the point where the Customer connects to the equipment provided by the City during the installation of the metering equipment. Therefore, all usage registering upon and/or damages occurring to the metering equipment owned and provided by the City shall be subject to charges as determined by the City's Code of Ordinances as amended from time to time by the City Council.

(b) The City Administrator, in his sole discretion, may assist Customers/Customers to correct problems and leaks to service lines on the Customer's side of the meter if such assistance will promote water conservation.

Sec. 13.02.044. Cut-Off Valve Required.

The City shall require each customer to provide a cut-off valve on the Customer's side of the meter for purposes of isolating the customer's service pipeline and plumbing facilities from the City's water pressure. The customer's use of the City's curb stop or other similar valve for such purposes is prohibited. Any damage to the City's equipment shall be subject to service charges.

Sec. 13.02.045. Easements.

Each customer shall grant to the City any and all easements as may be necessary and reasonable for the provision of utility and sanitation service.

Sec. 13.02.046. Civil Fines.

In addition to criminal penalties as may be allowed by law, a person violating this Article is subject to a civil fine of \$500.00. Civil fines do not apply to violations of this Article related to the disconnection of service because of non-payment. The City may also seek injunctive relief and any other relief available to it by law, included but not limited to placing a lien against property. The City does not waive its right to seek criminal penalties should the City decide to also pursue its civil remedies.

SECTION III. REPEALER

All ordinances or parts of ordinances in force when the provisions of this Ordinance becomes effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of any such conflict.

SECTION IV. SEVERABILITY

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, and the remainder of this Ordinance shall be enforced as written.

SECTION V. EFFECTIVE DATE

This Ordinance shall take effect immediately upon its passage and publication as may be required by governing law.

SECTION VI. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED AND APPROVED this 12th day of November, 2009, by a three (3) Ayes, zero (0) Nays, and zero (0) Abstain vote of the City Council of the City of Moulton, Texas.

CITY OF MOULTON, TEXAS

By: _____,
Cynthia McIntosh, Mayor

ATTEST:

Gloria Jasek, City Secretary

APPROVED AS TO FORM:

Emily Rogers, City Attorney