

ORDINANCE NO. 12-08

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 74 OF THE CODE OF ORDINANCES ENTITLED "UTILITIES" BY AMENDING SECTIONS 74-201, 74-203, 74-208, 74-209, AND 74-238 TO CONFORM CITY BILLING POLICIES WITH THOSE OF FLORIDA KEYS AQUEDUCT AUTHORITY TO PROVIDE UNIFORM BILLING PROCEDURES FOR CUSTOMERS IN KEY WEST FOR BOTH WATER AND SANITARY SEWER SERVICES; AMENDING SECTION 74-201 TO AMEND SECURITY DEPOSIT REQUIREMENTS FOR NEW ACCOUNTS, AND ADDING AND BANK DRAFT (AUTOMATIC DEPOSITS) PROVISIONS; AMENDING SECTION 74-203 TO PROVIDE THAT SEWER CONNECTION FEES ARE PAID DIRECTLY TO THE CITY OF KEY WEST; AMENDING SECTION 74-208 TO ALLOW PAYMENT TO CITY DESIGNEE; AMENDING SECTION 74-209 TO AMEND DELINQUENT PAYMENT AND NON-PAYMENT DISCONNECTION PROCEDURES; AMENDING 74-238 TO ELIMINATE USE OF DEDUCT METERS ; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission finds that it would be both convenient and cost-effective to bill customers for water and sanitary sewer on one monthly bill; and

WHEREAS, for accounting purposes, the City Commission finds that City sanitary sewer billing policies should be conformed with those of Florida Keys Aqueduct Authority (FKAA), to maximize the efficiencies gained by combining utility bills

into one monthly statement, prepared on behalf of the City by FCAA;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Section 74-201 of the Code of Ordinances is hereby amended as follows\*:

**Sec. 74-201. Deposits.**

(a) The minimum guaranteed payment deposits for new, delinquent or re-connected sewer system use are as follows: For residential customers, the deposit minimum shall be \$90.00 per unit and for commercial customers, the deposit minimum shall be \$90.00 or three times the monthly rate, whichever amount is greater, the estimated total charge for a three month period as determined by utility department billing personnel based on the most recent rate study.

(b) The city reserves the right to set deposits for any customer to an amount greater than three months' sewer bills as estimated by the utility department director if, in the director's opinion, the minimum deposit is judged to be insufficient. These deposits apply to new customers and current customers that require a turn-on for delinquent accounts.

\*(Coding: Added language is underlined; deleted language is ~~struck through~~.)

(c) Interest on the guaranteed payment deposit shall be credited to all customer accounts for which the city has held guaranteed payment deposit for a full twelve month period ending September 30 of each year. The rate of interest shall be established based on interest earned on guarantee payment deposit funds invested by the city during the same twelve-month period less administrative costs.

(d) Guaranteed payment deposits are waived for accounts established for:

(1) All municipal, county, state and federal agencies; and

(2) Accounts which provide residential service and meet all criteria established under section (e), below.

(e) Upon customer's written request, the city may refund the guaranteed payment deposit to accounts which provide residential service under conditions that the residential customer:

(1) Has been on the city system three (3) years or greater;

(2) Has not been assessed with a delinquent account charge (penalty) on two (2) or more occasions within the past three (3) years;

(3) Has not been turned off for non-pay (delinquent) status on two (2) or more occasions within the past three (3) years; and

(4) Has not had any record of having presented dishonored checks to the city on two (2) or more occasions within the past three (3) years.

(f) Bank Drafts.

(1) Bank drafts shall be for the purpose of providing automatic direct payment to the City or its designee through a financial institution. The applicant will be subject to the following criteria:

A. Has no record of having presented dishonored checks to the City or its designee within the past twelve (12) months;

B. The applicant's financial institution must participate in the Automated Clearing House system (ACH);

C. Completion of a Bank Draft Authorization Agreement listing each account to be drafted;

(2) Authorized account(s) will be drafted monthly for the net amount due shown on the bill(s);

(3) The account(s) will be cancelled from the Bank Draft Service if a draft is returned as uncollectible. A return bank draft charge will be billed to the account and the account may be subject to disconnection of sewer service.

(4) Bank Draft Authorization Agreement will remain in effect until written notification of cancellation is provided by either the Customer, the participating financial institution or by the City or its designee.

Section 2: That Section 74-203 of the Code of Ordinances is hereby amended as follows:

**Sec. 74-203. Connection charges.**

(a) For the purpose of this section, the term "unit" is defined as any property, building or structure or any addition or increase thereto requiring or involving legal connection to the sanitary sewer, whether or not there is an existing main connection point to the sanitary sewer.

(b) Before any person shall newly connect any unit to the sewer system, he shall pay directly to the City of Key West for such connection and availability of sewer a connection charge to be assessed by the director in accordance with the following:

(1) Residential customer connection: \$1,000.00 for each living unit.

(2) Commercial customer connection: \$1,500.00 per connection point to the sewer system plus the greater of:

a. For each additional living unit served by the connection point, \$400.00.

b. For each 6,000 gallons per month increment of flow estimated through the connection point by the director, \$1,000.00. Such estimates of flow shall be made by the director in accordance with normal flows expected from the plumbing fixtures being serviced by the connection. Where the use or occupancy of a commercial unit changes, the director shall assess an additional connection fee where the estimate of flow increases as a result of the change.

(3) Low income residential and commercial connections. Qualified low income customers or commercial units shall be assessed a connection fee of \$100.00 for each residential unit or commercial connection point. A qualified low income customer or unit is defined as low income eligible by residency in a HUD, HUDAG, or KWHA project or compound consisting of not less than 50 HODAG developed residential units located on government-owned or government-leased property or by location as an auxiliary

facility (laundry room, management office, etc.) within the qualified property.

(c) Installment payments may be made in accordance with the following:

(1) Commercial customers located in the Bahama Village portion of the city's community redevelopment area, established in division 6 of article V of chapter 2, may opt to pay sewer connection fees directly to the City of Key West on an installment payment plan basis. This option shall apply only to new businesses established after December 4, 1997. The owner of any business who opts to pay sewer connection fees shall execute a promissory note in favor of the city. The note shall state a term of years not to exceed ten years and an interest rate of four percent; provided, however, that the precise term of years shall be determined by the city manager. The note shall be secured by a lien against the property recorded in the public records.

(2) Any person or business located within the city boundaries who agrees to convert from septic tank use to the city sewer system may opt to pay sewer connection fees directly to the City of Key West on an installment payment plan basis. This option shall apply only to persons or

businesses who convert from septic tank use to the city's sewer system after December 4, 1997. Any person or owner of any business who opts to pay sewer connection fees shall execute a promissory note in favor of the city. The note shall state a term of years not to exceed ten years and an interest rate of four percent; provided, however, that the precise term of years shall be determined by the city manager. The note shall be secured by a lien against the property recorded in the public records.

(3) Installment payments under this subsection shall be made on a monthly basis apart from the customer's monthly sewer bill, and directly to the City of Key West.~~as part of the customer's sewer bill.~~ They are deemed payment of sewer services pursuant to F.S. ch. 159.

Section 3: That Section 74-208 of the Code of Ordinances is hereby amended as follows:

**Sec. 74-208. Payment to city; disposition.**

The rates and charges established by this article shall be paid to and collected by the city manager by and under the direction of the city or its designee. However, all funds collected shall

be segregated, maintained and disposed of utilizing accounting specifically identifiable to the sewer utility.

Section 4: That Section 74-209 of the Code of Ordinances is hereby amended as follows:

**Sec. 74-209. Delinquent payments; disconnection and reconnection of service.**

(1) An account shall be considered delinquent if payment for service is not received within thirty (30) days of the date of meter reading.

(a) If the due date falls on a weekend or legal holiday, it shall be extended to the next business day. In the event partial payment of a bill is made, that portion of the bill not paid within thirty (30) days of billing shall be considered delinquent. However, government accounts shall be considered delinquent if payment is not received within forty-five (45) days of the date of meter reading.

(b) The City Manager is authorized to approve waiver of the Delinquent Account Charge for a two-month billing period following mandatory or voluntary evacuation orders due to hurricane.

(2) Delinquent Accounts shall be charged a Delinquent Account

Charge in the amount greater of \$4.00 or ten percent (10%) of the total amount that is the delinquent outstanding balance unless the outstanding balance is less than \$5.00, in which instance no Delinquent Account Charge will be imposed. In the event a partial payment is made between the 30<sup>th</sup> and 45<sup>th</sup> day from the date of meter reading, the total bill shall be subject to the Delinquent Account Charge. However, all qualified Senior Citizens/Disabled and government accounts are exempt from a Delinquent Account Charge.

(3) Service may be discontinued if the total delinquent amount that is past due is not received within fifteen (15) days of the current meter reading date shown on the bill. Failure to pay amounts due within the time designated for payment may result in a decision of the City Manager or his agent causing disconnection of sewer service until all amounts due, including delinquent fees and accrued interest, have been paid in full. The City shall give forty-eight (48) hours notice by hand delivery, use of a door hanger, notice by mail or telephone of proposed disconnection to the Customer.

(4) For service to be restored, the customer must request restoration of service and pay all amounts due, including the applicable service charge, and a Guaranteed Payment Deposit.

(5) In the event service is suspended twice as a result of

account delinquency, service shall not be restored until the customer has paid a guaranteed payment deposit in an amount three (3) times the average of the prior twelve (12) months billing or \$200.00, whichever is greater.

(6) Notwithstanding any other provision of this article , when sewer service is subject to disconnection or has been discontinued due to account delinquency, the City may restore such service prior to payment of all amounts due, provided the customer has entered into a negotiated payment agreement.

(7) Failure to pay amounts due within the time designated for payment shall result in the City exercising all reasonable business efforts to collect such unpaid amount, including, but not limited to placing a lien on the property for all amounts due, including delinquent fees, interest, attorney fees and filing charges.

~~(a) Any sewer service charge which becomes delinquent shall be assessed a one time penalty charge, which shall appear on the next billing statement, of the greater of \$5.00 or 15 percent of the delinquent service charge amount.~~

~~(b) If any rates, fees or charges established for the use and privilege of use of the public sanitary sewer system shall not be paid within 30 days after the rates, fees or charges shall become due and payable, the city may, at the expiration of~~

~~such 30 day period and after 15 days' written notice, which notice may be given and may run within the 30 day period, disconnect the premises from the sewer system for which the rates, fees or charges have not been paid. The owner of the premises may cause to have his premises reconnected at his own expense with the sewer system, provided that the owner pays to the city its actual cost of disconnecting the premises and all delinquent sewer rates, fees or charges.~~

Section 6: That Section 74-238 of the Code of Ordinances is hereby amended as follows:

Sec. 74-238. - Estimates of flow, extranormal strength and base charge units.

(a) Sewage flow. Sewage flow shall be estimated by obtaining monthly water consumption data for each sewer system user and multiplying by a factor representing the assumed percentage of water being contributed to the sewer system. Monthly wastewater contribution shall be estimated for each account by the city from FKAA water meter reading data or from water meters installed on privately owned wells and cisterns.

If water furnished by the FKAA or any other water supply

source or system shall be used exclusively for irrigation purposes or for any other application from which the water does not enter the city's sanitary sewer facilities, the user may, at the user's own expense, contract with FCAA ~~install a deduct meter~~ to separately meter such water. The city manager shall determine approved meter types, frequency of maintenance and testing, criteria for meter location, and requirements for meter replacement. After the city is notified by the user of the installation of such a meter, the city shall maintain, repair, and read the meter and may bill the owner's sewer account for such charge. The water measured by such meter will be excluded from the calculation of chargeable sewer flow. Meters shall be considered city property. City employees or agents may enter upon the premises during business hours for purposes of maintenance, repair, and reading and may remove meters from the property for purposes of maintenance and repair.

For any residential living space using unmetered wells or cisterns as the sole source of water supply, a base charge shall be assessed for each such living space. The monthly wastewater flow (proportional use) component of the user charge for such residential wells and/or cisterns shall be based on an amount of water equal to the average monthly flow for residential system

users. In addition to the proportional use component, a flat monthly well surcharge shall be assessed for each residential living space served by the unmetered wells and/or cisterns. The well surcharge shall be assessed to account for the exposure of the wastewater system to unmetered flows and the likelihood that wells are contributing more than the average monthly flow for residential system users.

For any residential system user having a metered water connection to the FKAA water system and owning wells and/or cisterns currently in use and connected to the wastewater system, a base charge shall be assessed for the FKAA water system connection, but no base charge shall be assessed for the wells and/or cisterns. However, a minimum flow charge based on the estimated average monthly residential wastewater flow shall be assessed, if the FKAA meter reading is less than the average. In addition, regardless of the amount of metered FKAA water consumption, the flat monthly well surcharge to be established by the city manager shall be assessed for each residential living space served by an unmetered well or cistern connected to the city's wastewater system. Owners of single-family residences and duplexes, including mobile homes, may but shall not be required to install water meters on their private water

supplies.

Wells and cisterns used by all nonresidential users and that are connected to the city's wastewater system shall be metered at the user's expense in accordance with section 74-204. The city shall bill monthly sewer service charges to such users in accordance with section 74-205.

All wells and cisterns of all residential and nonresidential users within the city limits shall be assumed to be active wells and cisterns connected to the city's sanitary sewer system. The holder of record title to the property may demonstrate otherwise by filing with the city a notarized affidavit, supported by available documentation, declaring that the well or cistern is not active or connected and does not discharge water before or after use into the city sanitary sewer system.

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Section 7: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent

jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 8: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

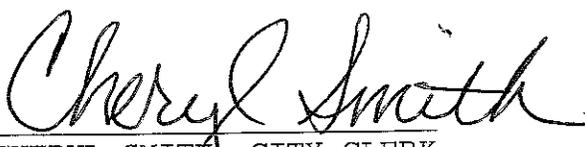
Section 9: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

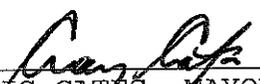
Read and passed on first reading at a special meeting held this 1 day of May, 2012.

Read and passed on final reading at a special meeting held this 15 day of May, 2012.

Authenticated by the presiding officer and Clerk of the Commission on 16 day of May, 2012.

Filed with the Clerk May 16, 2012.

  
CHERYL SMITH, CITY CLERK

  
CRAIG CATES, MAYOR



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

M E M O R A N D U M

**TO:** Jim Scholl, City Manager

**Cc:** E. David Fernandez, Asst. City Manager-Operations  
Mark Finigan, Asst. City Manager-Administration

**FROM:** Jay Gewin, Utilities Manager

**DATE:** April 10, 2012

**SUBJECT:** Revising the City's Sewer Ordinances in Order to Move Billing for Sewer Utility Customers to FKAA.

**Action statement:**

This ordinance will revise the City's sewer utility delinquency dates and late fees, and eliminate the City's deduct meter program. These changes are required as part of the interlocal agreement to move the City's billing for sewer services to FKAA.

**Background:**

The delinquency fees and deposit requirements for the City of Key West utilities are currently as follows:

SEWER (Sewer Sec. 74-201, 74-203, 74-208, 74-209, 74-238)

- Bills are delinquent after 30 days.
- After 20 days, a late fee of \$5.00 or 15% (whichever is higher) is applied
- After 15 days written notice, City Code authorizes permission to disconnect sewer, with owner paying to reconnect. However, the City has not been disconnecting delinquent customers for environmental safety reasons.
- Our Code of Ordinances states that for sewer residential and commercial customers, the deposit minimum shall be the estimated total charge for a three-month period as determined by utility department billing personnel based on the most recent rate study. However, currently the City is collecting no deposits for any of our utilities.

*Key to the Caribbean - Average yearly temperature 77° F.*

- The City code allows for the use of deduct meters by customers who use irrigation. City staff reads these meters in the field on a monthly basis.

In FKAA billing there is

- A due date of 30 days from initial billing
- A \$90.00 per residential unit deposit, and the non-residential rate is based on meter size, or number of units if a single meter is used for multiple units.
- A charge for delinquent accounts the greater of \$4.00 or 10% of the outstanding balance unless that balance is less than \$5.00, in which case no charge is imposed
- For service to be restored, the customer must pay all amounts due, including the service charge along with a deposit. If service is discontinued twice, the deposit goes up to \$200.00 or 3 times the monthly average of the prior 12 months billing.
- No use of deduct meters of a type similar to the City's program, however the FKAA has its own irrigation meter program on its own type of meter that allows customers to deduct irrigation water from billing. Both programs accomplish the same goal.

### **Purpose and Justification:**

The City Commission and Staff have indicated a desire to move the City's sewer utility billing over to FKAA so that customers would receive a combined water/sewer bill. This move would help the City improve its ability to gain payment from delinquent accounts, and would make sure water meters are always properly matched with accounts, with the added benefit of increased convenience for the customer.

In order to enter an inter-local agreement with FKAA to provide utility billing services, the City needs to make several changes to our Code of Ordinances to make our systems compatible. These include the following:

- The City will charge the \$4.00 or 10% penalty on the current portion due after a 30-day delinquency date, unless the outstanding balance is less than \$5.00.
- The City will not collect a new sewer deposit in addition to the water deposit FKAA customers currently pay. Staff feels that this is an additional unnecessary burden to customers, and the ability of FKAA to shut off water for nonpayment of fees will greatly help reduce our delinquencies. The Code would allow the City to implement deposits at a future date if we choose.
- The use of deduct meters under the City's program will be eliminated, and customers will be required to utilize FKAA's irrigation meters at customer expense if they want to continue in a similar program. FKAA does not offer deduct meters similar to the City's existing program in any of their service areas. If customers choose not to purchase an irrigation meter, they will be billed for sewer at 80% of their water flow. They are billed at 100% of the water flow not passing through the deduct meter under the City's program, which would also be the case utilizing FKAA's irrigation meter.

**Options:**

1. The City could approve the aforementioned ordinance changes. Doing so would bring consistency to our billing process with FCAA, which is essential if we want FCAA to assume responsibility for administering our sewer utility billing.
2. The City could elect to keep current utility billing procedures for delinquent accounts in place. This option is not recommended because the City could not enter in to an inter-local agreement with FCAA to assume billing without these ordinance changes.

**Financial Impact:**

These ordinances changed are needed in order for FCAA to assume the City's sewer utility billing. The annual cost for the FCAA to assume our billing is higher than we are currently paying, however it will more than be offset by anticipated increased revenues due to superior collection efforts by FCAA. Our delinquency rate, which is now approaching \$1,000,000, will be vastly improved in the future, and there will also be additional revenue from an improved ability to correctly match new water meters installed.

Existing delinquencies will not be managed by FCAA. FCAA would handle delinquencies beginning the date they initiate sewer billing for the City.

**Recommendation:**

Staff recommends option #1, that the City amends its sewer ordinances to facilitate the move of the City's utility billing to FCAA.