

ORDINANCE NO. 2019-024

AN ORDINANCE OF THE CITY OF CLUTE, TEXAS AMENDING CLUTE MUNICIPAL CODE SECTIONS 114-1 ENTITLED MONTHLY BILLING, PRESUMPTION; 114-46 ENTITLED DEPOSITS, PARAGRAPH (C) REGARDING BONDING; 114-47 ENTITLED CONSERVATION; 114-48 ENTITLED TERMINATION; SECTIONS 114-50 AND 114-51 REGARDING ADJUSTMENTS; APPROVING PROCEDURES FOR THE BILLING, RECEIPT OF PAYMENT, HANDLING OF DELINQUENCIES, TERMINATION AND REINSTATEMENT OF SERVICE FOR WATER AND SEWER; PROVIDING FOR SEVERABILITY AND SETTING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Clute is desirous of clarifying and amending the procedures for Billing, payment and other pertinent issues related to the provision of Water and Wastewater Services as detailed in Chapter 114 of the City Code.

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

SECTION 1.0

PURPOSE: The purpose of this Ordinance is to amend Chapter 114 of the City's Code to clarify the process for Billing; Deposits; Water Conservation and Cleanliness; Termination and Discharge of Water and Wastewater services.

SECTION 2.0

BILLING STANDARDS FOR WATER AND WASTEWATER SERVICES: Section 114-1 shall be amended to read thusly:

"The City Manager *or their designee* shall cause a monthly utility Bill to be sent each customer or consumer who has been furnished water, sewer or solid waste disposal services by the City. A single Bill may be sent for all such services furnished to the same customer or consumer, and such Bill shall also include the monthly voluntary contribution for Emergency Medical Service authorized by section 42-59.

Such Bill shall be sent not later than the tenth day of the month following each service month and shall include all charges and any penalties accruing per this Section. Such Bill shall be deposited in the U.S. post office located in the City, postage prepaid, and directed to such customer or consumer at the last address furnished to the City by such customer or consumer. When so mailed, such Bill shall be presumed to have been received by such customer or consumer at such address within three days of the date of mailing.

Customers may also elect to receive an electronic version of their Bill and may do so by providing the City with an active email account or visiting the City's utility payment portal. The City will continue to mail bills to all customers to ensure due notice.

Further, the following provisions shall apply to Customer Billing:

- (a) *All Bills for service are due when rendered. On residential and commercial accounts, if payment in full is not received by the City by the due date printed on the Bill, a **twenty-five percent (25%) late charge up to a maximum of \$150.00** will be added to the Bill. The due date for payment without the addition of the penalty may vary from 21 to 23 days. Upon a customer's request and for good*

cause shown, the City may waive the late charge one time in a 24-month period, on determination of a Billing Clerk, the Finance Manager or the City Manager.

- (b) An active account becomes delinquent when full payment is not received by the City on the due date printed on the Bill. Delinquent accounts are subject to termination/ suspension of service pursuant to this article. Should the customer fail to timely pay the total combined monthly Bill for Water, Wastewater, and/ or Solid Waste services, the City may discontinue water service to the customer in accordance with this article for delinquent payments
- (c) Service suspension for the failure to pay timely shall not occur until the 10th business day following the due date.
- (d) The City shall not suspend or terminate service for non-payment on a Friday, or the Thursday before a National Holiday which falls on a Friday.
- (e) If a customer does not receive a Bill for service, the customer's obligation to make payment for service rendered is in no way released or diminished."

SECTION 3.0

DEPOSITS: Section 114-46 is hereby amended to read:

- (a) A Deposit of \$80.00 shall be made with the City at the time an application is made for water, sewer and garbage collection services for single-family and two-family dwellings. The City Manager may order an increase of the Deposit of any account if the existing Deposit is not sufficient to protect the City from losses which may be sustained over a period of two months and the customer's payment history has had frequent, recent or large delinquencies.
- (b) An amount to be determined by the City Manager but which shall be equal to two months' estimated average bill for water, sewer and garbage services shall be Deposited with the City at the time an application is made for water, sewer and garbage collection services for Multi-Family dwellings and Commercial establishments. The City Manager may order an increase in the Deposit of any account to three months' average bill if the customer's payment history has had frequent, recent or large delinquencies.
- (c) If a person making a Deposit becomes insolvent or bankrupt, or makes an assignment for the benefit of creditors, the City shall have the prerogative to apply the Deposit to any bill of that person that may be outstanding, whether such delinquent bill is for water, sewer or garbage collection services.
- (d) The Deposits required by this section shall not draw interest but shall be refunded to the customer if service is disconnected, provided all water, sewer and garbage collection fees owed by the customer to the City are paid in full.

SECTION 4.0

CONSERVATION AND CLEAN WATER PROVISIONS: Section 114-47 is hereby amended to read:

"SECTION 114-47. – Conservation and Clean Water Provisions

The City strives to attain Local, State and National water Conservation and Clean Water goals and has implemented a tiered rate structure as required by the Texas Commission on Environmental Quality and

the Texas Water Development Board. As detailed in Section 114-42 and 114-43 of this Code, the nature of this structure means that customers with higher use will pay more for that usage.

In accordance with this and the aforementioned Code Sections, State and Federal regulations, individuals shall be charged for all Water passing through their meter including Water used for irrigation and the filling of pools.

Customers wishing to decrease their Wastewater charges associated with Water used for irrigation purposes are encouraged to install a separate irrigation meter.

Water used for the filling of pools shall not be discounted except for that portion capped under the provisions in Section 114-43. Further Water used to fill pools shall not be discharged anywhere other than the City's Wastewater system unless it can be proven to meet the standards for discharge into the Waters of the State of Texas and Waters of the United States as defined by the regulations adopted by the Texas Commission on Environmental Quality and the United States Environmental Protection Agency."

SECTION 5.0

TERMINATION: Section 114-48 is hereby amended to read:

" 114-48. – Termination, Appeal and Reinstatement of Service.

I. Termination:

(a) The City may terminate a customer's utility service:

- 1) At the request of the customer;
- 2) For the customer's failure to pay a delinquent account, comply with the terms of a deferred payment agreement, or comply with credit security requirements;
- 3) Because of utility service diversion or unlawful use of service;
- 4) Because of a known dangerous condition of the premises; or
- 5) For a violation of any City Ordinance, statute or rule regulating the sub-metering of utility service or any law or regulation which provides for termination or refusal of service as a remedy. Such violation may include, but not be limited:

- i. Utility service diversion, unlawful use of service, or customer damage to City equipment. The City will Bill the customer for previously unbilled utility costs for all Water not recorded on the meter, and any Wastewater service based thereon, the amount of which may be estimated by the City from the best available data, and Billed at the proper rate schedule. Additionally, the City will charge the customer a minimum charge as detailed in its Ordinance setting rates and fees for such services and for all other costs borne by the City, including personnel costs, incurred in investigating and correcting the diversion and other, as well as costs for the provision of third party services related to the investigation and

correction of the diversion. Furthermore, the customer may face criminal charges for such diversion and tampering

- (b) Written notice of the proposed termination of service will be given by the City by mail or delivery to the service address prior to termination. The notice will include the following:
- 1) The reason or reasons for termination;
 - 2) That the customer has a right to appeal the termination if the customer disputes the reason for termination; and
 - 3) The address and telephone number of the City department that may be contacted regarding the proposed termination. Prior notice is not required when termination is requested by the customer, where a known dangerous condition exists or where a condition threatens the public health, safety, or resources, or where there is a utility service diversion or unlawful use of service. If the customer does not take action by the date required by the termination notice to correct the reasons for termination, service will be terminated without further notice.

II. APPEALS:

- (a) Customers objecting to any action, policy, Billing, or other decision relating to utility service may appeal the action, policy, Billing, or decision to the City Manager. The City Manager shall require that the person reduce the appeal to writing. The City Manager need not consider an appeal from any action or decision that occurred more than 60 days prior to the date the person requests an appeal. Nor shall they be compelled to respond to any appeal authored by someone other than the Customer or the Legally designated agent.
- (b) The City Manager will designate one or more employees to hear appeals. The person requesting an appeal has the right to appear in person to present or explain information relating to the appeal at any reasonable time during City business hours, as agreed upon between the customer and the City.
- (c) The City will consider all information submitted by the person requesting the appeal, submitted in writing or orally at a hearing. The City employee(s) hearing the appeal may request additional information, including additional documents or sworn statements from relevant witnesses, if reasonably necessary to resolve the issue.
- (d) The City must make any decision on the appeal in writing and provide a copy thereof to the person filing the appeal by mailing or emailing them to the service customer address. The decision rendered may be appealed to the City Council. Any appellate decision rendered by the City Council shall be final.
- (e) The City will not terminate service if the termination is based on an issue over which the customer has filed an appeal, until after the appeal is resolved. The customer must, however, pay any undisputed charges for service before delinquency to avoid termination of service.

III. RE-INITIATION OF SERVICE:

- (a) Terminated service will be re-initiated if the customer pays the past due balance, or the City accepts a deferred payment agreement for the amount due.
- (b) The City will charge the customer a delinquency processing fee as stated in the existing Rate Order to reinstate service after service has been terminated or to continue service after a work order to terminate service has been issued and regardless of whether service has been terminated. In addition, the customer may be required to supply or maintain credit security on the account, as provided in this article.
- (c) For a utility service diversion, unlawful use of service, or damage to City equipment, the utility services that were provided in the probable time of the violation to the time of correction, damage, or utility diversion, will be Billed to the customer or other responsible persons as determined by the City, and payment required prior to restoring utility services.

SECTION 6.0

BILLING ADJUSTMENTS: Chapter 114, Sections 114-50 and 114-51 are revised and merged to read as follows:

" Any water or sewer customer who desires to request an adjustment of a water bill or sewer bill (if such customer's sewer bill is based on water consumption) for any service month, where an exceptionally high bill for such month as a result of a rupture or leak in such customer's water line (excluding leaky faucets or toilets) caused by freezing weather or other unforeseen occurrence, must file with the city manager a written application for adjustment of such water bill and, if applicable, such sewer bill containing the information set forth below, which shall be signed by such customer and sworn to before a notary public or other officer authorized by the laws of the state to administer oaths.

- (a) If the City determines an account is over Billed, the City will refund the total amount due or credit the account.
- (b) If any meter is found to be on the wrong rate, the account will be adjusted back to the date when the account was set up with the wrong rate, up to a maximum of three years.
- (c) If the City determines any account is undercharged, the City will back Bill the customer for the amount that was undercharged. The back Billing will not exceed three years, unless the undercharge is the result of meter tampering, bypassing, or an unmetered connection, or diversion by the customer.
- (d) If the amount of the back Billing is \$25.00 or more, the City will offer the customer a deferred payment plan. Provisions for deferred payment plans are as follows:
 - 1) Any current customer with a previous balance owed the City for utility service may apply for a deferred payment agreement, except for a back-Billing resulting from diversion of service, unlawful use of service, or customer

damage to City equipment. Under other circumstances the City determines are reasonable, the City may, but is not required to enter into a deferred payment agreement with a customer.

2) The City will determine whether to enter into a deferred payment agreement based on factors related to the purpose of providing for deferred payments, including the following:

- i. The size of the previous balance owed the City;
- ii. The customer's ability to pay;
- iii. The customer's payment history;
- iv. The time that the debt has been outstanding; and
- v. The reasons the debt has been outstanding.

3) If a customer fails to meet the terms of a deferred payment agreement, the City may terminate service and is not required to offer another deferred payment agreement prior to termination.

(e) If the back Billing is a result of utility service diversion, unlawful use of service, or damage to City equipment, the City may, but is not required to, offer the customer a deferred payment agreement.

(f) Wastewater charges will be adjusted in the same manner and for the same time period as water.

(g) Deferred payment plans may be offered on any Billing due to financial hardship at the discretion of the City. The City shall not waive amounts owed or reduce rates for customers for whom there is adequate proof usage as determined by meter read or Solid Waste collection.

(h) All reimbursements or collections will be made at the rates in effect at the time of each over Billing or under Billing. No refund is required from the City except to the customer last served by the meter.

SECTION 7.0

SEVERABILITY CLAUSE: That if any provision, word, sentence, paragraph, clause, phrase or section of this Ordinance or its application to any person or circumstances is adjudged or held invalid, void or unconstitutional, the invalid, void or unconstitutional portion shall not affect the validity of the remaining portions of this ordinance which shall remain in full force and effect.

SECTION 8.0

REPEALING CLAUSE: All provisions in conflict with the provisions of this Ordinance shall be, and the same are hereby repealed, and all other provisions not in conflict with the provisions of this Ordinance shall remain in full force and effect.

SECTION 9.0

EFFECTIVE DATE: This Ordinance shall be effective and be in force from and after the descriptive caption of this ordinance has been published twice in the Brazosport Facts

SECTION 10.0

PUBLICATION: The City Secretary is hereby authorized and directed to publish the caption of this ordinance in the manner and for the length of time prescribed by law.

READ, PASSED AND ADOPTED this 14th day of November, 2019.



Calvin Shiflet, Mayor

ATTEST:



Rosie Poitevint, City Clerk