

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA,
AMENDING ARTICLE 1, CHAPTER 6 OF THE FRESNO
MUNICIPAL CODE, RELATING TO BILLING AND
COLLECTION PROCEDURES FOR MUNICIPAL UTILITIES

WHEREAS, on September 28, 2018, Senate Bill 998 (SB 998) was signed into law by the Governor amending the California Health and Safety Code and introducing new restrictions on the discontinuation of residential water service for delinquent utility accounts; and

WHEREAS, SB 998 was codified as "The Water Shutoff Protection Act," Health and Safety Code Section 116900, et seq.; and

WHEREAS, the requirements of SB 998 require the City of Fresno (City) to have a written policy on the discontinuation of residential water services which will require the City to notify delinquent utility customers; and

WHEREAS, Article 1, Chapter 6 of the Fresno Municipal Code (FMC) contains several provisions which are inconsistent with SB 998; and

WHEREAS, in addition, some sections within Article 1, Chapter 6 of the FMC have not been updated in many years, requiring general updates to bring this portion of the FMC into alignment with current business practices.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 6-101 of the Fresno Municipal Code is amended to read:

1 of 22

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval: 

Ordinance No.

SECTION 6-101. DEFINITIONS.

(a) Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this chapter, and, except to the extent that a particular word or phrase is otherwise specifically defined in this section, the definitions and provisions contained in Article 2 (commencing with Section 1-201) of Chapter 1 of this Code shall also govern the construction, meaning, and application of words and phrases used in this article. The definition of each word or phrase shall constitute, to the extent applicable, the definition of each word or phrase which is derivative from it, or from which it is a derivative, as the case may be.

(b) "Bill" shall mean an invoice or statement of account for utility service charges, rentals, or fees or other municipal charges or fees.

(c) "Bimonthly" shall mean every two months.

(d) "Charges" shall mean charges, rentals, fees, and other debts incurred by reason of the rendering of a utility or other municipal service or privilege.

(e) "Consumer" shall mean a person using or receiving the benefit of utility services.

(f) "Customer" shall mean a person who has been designated on an application for service as responsible for payment of charges.

(g) "Premises" shall mean a tract of real estate, including adjoining lots or parcels under the same ownership or control and the improvements thereon, which is determined by the Controller to be a single unit for purposes of receiving, using, and paying for service.

(h) "Property" shall have the same meaning as "premises."

(i) "Quarterly" shall mean every three months.

[(j) "Residential Water Service" shall mean water service to a residential connection that includes single-family residences, multifamily residences, mobile homes, including but not limited to, mobile homes in mobile home parks, or farmworker housing.]

{j[k]} "Utility Service" or "Utility Services" shall mean water service, or waste disposal service, or sewer service, or any combination thereof, or privileges connected with water, waste, or sewer service.

{k[l]} "Day" shall mean a calendar day.

SECTION 2. Section 6-103 of the Fresno Municipal Code is amended to read:

SECTION 6-103. APPLICATION FOR MUNICIPAL UTILITY SERVICES.

~~(a) Application Necessary. Application for municipal utility service may only be made in writing by the property owner, his agent, or tenant.~~

~~(b) Telephone Orders. Applications may be received by telephone in lieu of a written application request. Any service granted shall be temporary only, with continued service conditional upon the receipt of all requested information in writing within ten days of the start of service. If the~~

~~requested information is not received, a deposit equal to one cycle bill may be added to the account.~~

[(a) Applications for municipal utilities service may be made by telephone, in writing, or online by the property owner, or the property owner's agent or tenant. A deposit equal to twice the average monthly cycle bill may be added to the account.]

(e[b]) Form of Application. The form of the application shall be designated by the Controller. It shall set forth the location of the premises to be served, the date service is to commence, the name, address and telephone number of the customer. Such service is to be under and subject to the rules and regulations of the city in respect thereto as from time to time may be in force, and such other information concerning the applicant's identity, financial status, or right to service, as may be required by the Controller.

(e[c]) Conditions Precedent to Final Acceptance of Application.

(1) No application for municipal utility service shall be finally accepted from any customer who is delinquent on any bill with respect to any premises, unless an agreement for payment has been entered into under the provisions of Section 6-107.

(2) No application shall be finally accepted from any previous customer, or any present customer who has had three or more incidences of delinquencies within a one-year period, unless the customer pays with the application the applicable utility service

charges or service deposit, or establishes credit in accordance with Section 6-105. [The charges applicable to customers applying to restore residential water service will be subject to the City of Fresno's Discontinuation of Residential Water Service for Nonpayment Policy and shall be set forth in the Master Fee Schedule.]

(3) The Controller may receive an application for utility service and provide commencement of [conditional] service(s) applied for, all subject to a check of the applicant's utility service record to determine whether he [or she] will finally accept the application. If it is determined that the application cannot be accepted, notice of this fact shall be given to the applicant with not less than ten days to correct the defect. If the defect is not corrected, service shall be discontinued. [For residential water service customers, discontinuation of service will be subject to the City of Fresno's Discontinuation of Residential Water Service for Nonpayment Policy.]

([d]e) [Tenant or Occupant Applications for Residential Water Service. The City will accept applications for residential water service from occupants or tenants if there is a landlord-tenant relationship between the residential occupants and the owner, manager, or operator of a dwelling, the occupant agrees to the terms and conditions for service, and the occupant meets the City's requirements and rules. New occupant

customers will not be required to pay any delinquent amounts associated with the premises for which they request residential water service.]

SECTION 3. Section 6-104 of the Fresno Municipal Code is amended to read:

SECTION 6-104. CHARGES, BILLS, AND PAYMENT FOR MUNICIPAL UTILITY SERVICES.

(a) Charges. Charges for municipal utility services, fiscal service charges, and minimum charges shall be in the amounts designated in the Master Fee Resolution.

(b) Purchaser's Responsibility. An owner or purchaser of premises maintaining water or sewer connections or furnished solid waste disposal service, shall assume responsibility for financial obligations of such service effective the date possession of the property is taken.

(c) Due and Delinquency Dates.

(1) Bills for flat rate utility services shall normally be due and payable ~~in advance of the rendering of the service.~~ [on the due date specified in the bill or upon presentation to the customer in cases of a retroactive assessment.]

(2) Bills for metered service will be rendered as soon as practicable after the reading of the meter.

~~(3) Bills for municipal utility services shall be due and payable upon deposit in the United States mail or upon presentation to the customer.~~

(4 [3]) Bills for municipal utility services shall become overdue and delinquent when payment is not made by the date specified thereon.

(d) Municipal Service Bills. The Controller shall have the power to combine bills for utility services rendered to any one customer or bill separately therefor, as in his discretion he may deem to be in the best interests of the city. The Controller shall have the power to bill for regular service or special services rendered to regular service customers or consumers, upon a monthly, bimonthly, quarterly, or other basis, as in his discretion he may deem to be in the best interests of the city. For billing periods other than monthly, the charge for flat rate service will be computed by multiplying the monthly charge by the number of months in the billing period.

(e) Payments.

(1) Place of Payment. Bills are payable at the office of the utility cashier in the Department of Finance [at Fresno City Hall], ~~2348 Mariposa Street, Fresno, California~~, or to an authorized city collector or city collection agent.

(2) Credit to Account. Payments shall be credited to a customer's account only when actually received by an employee of the Department of Finance or such collector or collection agent. Payments shall be received "on account" of the customer and shall not apply to charges for any particular period.

(3) Checks[, Electronic Funds Transfer, or Credit/Debit Card]. If a remittance tendered in payment of any account fails to clear through the banks and is returned, the account shall be considered unpaid, any receipts issued therefor shall be void, and the indebtedness shall be restored to the account. Section 6-106 shall apply where applicable.

(4) Service Charge for Returned Checks [Payments]. The service charge designated in the Master Fee Resolution for returned checks shall be assessed under the conditions specified in Section 7-911. This charge shall be made against the account originally credited, shall be added to the amount of the bill, and shall become a part thereof. This charge is in addition to any collection, restoration or reconnection charges which may otherwise become due and payable. Assessment of this service charge shall not relieve the maker of any criminal or civil liability provided by law.

~~(f) — Opening Bills for Flat Rate Service. The opening bill for flat rate service will be the regular charge for the normal billing period as established by the Controller. Any amount paid in excess of the prorated charges otherwise applicable to the opening period will be credited against the charge for the succeeding regular billing period, except that if the total period of service rendered is less than one month, credit shall be allowed for only that portion of initial payment which is in excess of the charges for~~

~~a thirty-day period; when opening bill has not been paid, the closing bill shall be for an amount equal to the charges for a one-month period.~~

(g[f]) Proration of Bills. The charges applicable to opening periods and closing bills rendered for periods less than the regular billing cycle will be computed as follows:

(1) Metered Service. The amount of the minimum charge (and the quantity allowed therefor) or the readiness to serve charge [Water Meter Service Charge] and the quantity in each of the several quantity rate blocks will be prorated on the basis of the ratio of the number of days in the period to the number of days in the established billing period. The measured quantity of usage will be applied to such prorated amounts and quantities. In general, meters shall be read on a monthly, bimonthly, quarterly, or other basis. The period between reading dates may vary and still be considered as one or more whole months for billing purposes.

(2) Flat Rate Service. The billing period charge will be prorated on the basis of the ratio of the number of days in the period to the number of days in the established billing period.

(3) Established Billing Period. The number of days in billing periods will be considered as thirty days for those accounts on a monthly cycle, and as sixty days for those accounts on a bimonthly cycle. In the case of utility rates adopted with an effective date other than the first day of a billing cycle, or opening or closing period bills,

the billing period charge will be prorated on the basis of the ratio of the actual number of days service will be provided, to the actual number of days in the billing period.

(4) Rounding Off. Any flat rate charge may be rounded off to the nearest multiple of five cents. Charges based on volume may be rounded off only to the nearest multiple of one cent. Parcel size may be rounded off to the nearest one hundred square feet.

(h[g]) Disputed Bills. Should the amount of any bill for service be questioned, the customer should promptly request an explanation. If the explanation is not satisfactory or is not understood, the customer must pay the bill under protest in order to avoid discontinuance of service. Protests will be addressed to the Controller, must be in writing, and must state the reasons why the charges are believed to be incorrect. The Controller will analyze the facts of the case and is authorized to make such adjustments in the charges as may be necessary to effect an equitable settlement.

[For all accounts other than residential water service accounts, the] F[f]ailure of a customer to pay under protest after initial explanation is offered will warrant discontinuance of service without further notice if bill is not paid by delinquency date[. Discontinuation of residential water service accounts will be subject to the City of Fresno's Discontinuation of Residential Water Service for Nonpayment Policy].

(i[h]) Failure to Receive Bills. Municipal service bills shall be mailed to the premises served or other address known to the city. The applicant,

property owner, or his authorized agent may list a mailing address with the city for use in mailing bills. Failure to request such listing or to receive any bill, invoice, or notice shall not relieve responsibility for timely payment as required.

(j[i]) Computation When Meter Cannot be Read. Whenever for any reason a meter is inaccessible and cannot be read or fails to register, water consumption at the metered premises for the purpose of calculating charges based thereon shall be estimated by one or more of the following methods as the Controller may deem to be the best indicators of actual water consumed or actual charges due:

(1) Previous actual consumption at said premises as shown by previous meter readings.

(2) Previous average actual consumption for corresponding billing periods in previous years during which the meter is known to have registered correctly.

(3) Consumption as registered by a later substituted meter.

(4) Consumption based upon the nature of use, volume of business, seasonal demand, and similar factors that may indicate consumption.

Where a meter cannot be read without undue difficulty because of an obstruction, the customer['s bill] will be estimated until an actual meter reading can be obtained. ~~notified and~~

~~requested to correct the condition.~~ The city has the right to discontinue the service if the condition is not correct~~ed~~. Where service is turned off for such cause, the city may require payment of a turn-on charge as provided for in this article.

SECTION 4. Section 6-105 of the Fresno Municipal Code is amended to read:

SECTION 6-105. ESTABLISHMENT OF CREDIT FOR MUNICIPAL UTILITY SERVICES.

(a) Commercial or Industrial Accounts. An applicant for any utility service for a commercial or industrial establishment or for any measured or metered water service shall establish his credit to the satisfaction of the Controller. An applicant's credit will be deemed to be established if the applicant:

(1) makes a cash deposit with the city or makes an assignment to the city of a savings and loan investment certificate or passbook, or a commercial bank savings or time deposit certificate, ~~or furnishes a two party guaranty or corporate surety bond satisfactory to the Controller,~~ to secure the payment of charges for municipal utility services;

(2) is, or is an agency of, the federal, state, or other government;

(3) furnishes evidence acceptable to the Controller of a favorable credit rating by a nationally recognized credit rating firm;

(4) has previously been a utility service customer of the city within one year of the application for service and has paid all bills promptly for the last twelve-month period prior to the date of discontinuance of service.

~~(b) — Flat Rate Residential Accounts. A new applicant for flat rate residential service, or a flat rate customer who has been delinquent two or more times within one year, may also be required to establish his credit as provided in subsection (a) when, in the judgment of the Controller, such is required in order to ensure payment of charges for utility services.~~

(e[b]) [Occupants or Tenants Receiving Residential Water Service. A tenant or occupant may also establish credit by presenting proof of prompt payment of rent or other credit obligation, acceptable to the Controller, for the past year, when, in the judgment of the Controller, such is required in order to ensure payment of charges for residential water service.]

(c) Amount of Security. Service deposits, ~~bonds,~~ or other security, when furnished by a customer to guarantee payment of utility service bills, shall be made in an amount equal to the estimated charges for twice the established billing period as determined by the Controller, but not less than fifteen dollars (\$15). When actual records of previous consumption or charges at the service location are not available, or where the use of the property or the nature or extent of services rendered will change, the estimate shall be based on charges to customers whose installations are similar in size and similarly operated; provided, however, that a deposit

required for flat rate residential service shall be equal to the charges for the established billing period, rounded to the next full dollar amount.

(d) Return of Security and Prepaid Charges. If a customer's account has not been delinquent in twelve consecutive months, any service deposit or other security for said account shall be returned to the depositor upon application for refund of said security. Upon the closing of any account, the balance of the security or prepaid charges, remaining after the closing bill for service has been paid, and less any city offsets, shall be returned to the customer upon application for refund, provided such application is made within one year after discontinuance of service. No interest shall be paid by the city on any such balance. In the event no such application is received in one year, said balance shall be forfeited.

(e) Failure to Pay Bills Promptly. If a customer who has established his credit, or whose deposit has been returned as provided herein, later fails to pay his bills promptly as required by this article, or if a customer fails to establish his credit or deposit security as herein provided, the Controller may demand as a condition precedent to further service and as security for the payment of bills thereafter to be incurred, further security as described in subsection (a)(1) hereof in the amount specified in subsection (c) above, provided that service will not be discontinued or disconnected for failure to make such deposit until at least fifteen days after notice of intention to do so has been given to the customer and to the consumer, if different.

SECTION 5. Section 6-106 of the Fresno Municipal Code is amended to read:

SECTION 6-106. LATE PAYMENT OF MUNICIPAL SERVICE BILLS.

(a) Service Charge. Whenever a payment of any bill for municipal utility services is not received by the specified delinquent date, the delinquency service charge designated in the Master Fee Resolution shall be, without notice, added to the amount of such bill and become part thereof. This subsection shall not apply to payments due from any government or governmental agency.

(b) Delinquency Notice. A delinquent bill notice or reminder, stating the amount past due and remaining unpaid and the service charge due and payable, ~~may~~ shall be mailed to the customer ~~and to the owner of the premises.~~ [For residential water service accounts, delinquency notices shall conform to the requirements set forth in the City's Discontinuation of Residential Water Service for Nonpayment Policy.]

(c) Collection or Restoration Charge. [Subject to the City's Discontinuation of Residential Water Service for Nonpayment Policy,] ~~U~~upon any of the following listed occurrences, the Controller may send a representative to collect the bill or discontinue the utility service, and the service charge designated in the Master Fee Resolution shall be charged for this collection follow-up and/or any restoration or reconnection of service during normal working hours. This amount shall be in addition to the service charge imposed under subsection (a) of this section,

(1) When a delinquent bill, bill notice or reminder, or dishonored check [payment] remains unpaid more than seven days after a mailing of a notice or reminder thereof;

~~(2) When a written application for service is not received as provided in subsection (b) of Section 6-103;~~

~~(3[2])~~ When a final acceptance of the application (and continuance of service) cannot be made and the defect is not corrected as provided in subsection (d) of Section 6-103;

~~(4[3])~~ When service has been discontinued for violations of other sections of this Code, or of lawful rules and regulations issued as authorized in this Code.

(d) Discontinuance for Nonpayment. [For all accounts other than residential water service accounts,] ~~¶[t]~~he Controller may discontinue, upon ten days' written notice, any or all utility services being rendered, at any or all premises for which the customer is responsible for payment of charges and may require payment in full of all amounts due including service charges, ~~including main, branch, and front footage charges owed,~~ and cost of discontinuance and restoration of the service, before any service is restored; ~~provided, however, that water service to a dwelling, or to a part of a multifamily dwelling, leased or rented to a tenant who is not a customer shall not be terminated without seventeen days' prior written notice from the Controller to the tenant where the Controller has actual knowledge that such tenant is not a customer. No water or sewer service shall be furnished to~~

~~any premises until main, branch, service connection, and front footage charges have been paid.~~

[(e) Discontinuance of Residential Water Service for Nonpayment.

(1) The City Council is authorized to adopt a policy establishing guidelines for the discontinuation of residential water service for nonpayment of a delinquent account, including how account holders and/or occupants are notified of the policy, how they may obtain a payment arrangement or alternative payment schedule, how they may contest or appeal water charges, and how they may restore service after it has been discontinued for nonpayment.

The Policy shall comply with the Water Shutoff Protection Act (Cal. Health & Safety Code section 116900 et. seq.). Such policy may be amended from time to time to ensure ongoing compliance with applicable law.

(2) The City's Discontinuation of Residential Water Service for Nonpayment Policy shall be available on the City's website.]

~~(e[f]) Notice of Lien. When services to any property with the owner as the City's customer have been discontinued for non-payment for a period of not less than one month, the Controller [City may, subject to Health and Safety Code 5471 et seq., elect to have delinquent charges collected on the tax roll in the same manner, by the same persons, and at the same time as, together with and not separately from, its general taxes.] shall have~~

~~executed and filed, in the office of the County Recorder of Fresno County, a certificate in the following form:~~

~~Pursuant to the authority vested in the Controller by the provisions of Article 11 of Chapter 2 of the Fresno Municipal Code, said Controller did, on or about the _____ day of _____, 20____, cause the city utility service on the property herein described to be discontinued for nonpayment. The costs associated with the discontinuance for nonpayment has not been paid nor any part thereof, and the said City of Fresno does hereby claim a lien on said real property for the net expenses of the doing of said termination in the amount of said assessment, to wit, the sum of _____ Dollars (\$_____). The same shall be a lien upon said real property until the sum has been paid in full and discharged of record.~~

~~The real property herein before mentioned, and upon which a lien is claimed, is that certain parcel of land lying and being in the City of Fresno, County of Fresno, State of California, and particularly described as follows:~~

~~(Description of property)~~

~~Dated: This _____ day of _____, 20____. Controller of the City of Fresno~~

~~Immediately upon the recording of the notice of lien, the assessment shall constitute a lien on the real property assessed.~~

SECTION 6. Section 6-107 of the Fresno Municipal Code is amended to read:

SECTION 6-107. MUNICIPAL UTILITY SERVICE PAYMENT AGREEMENTS.

Whenever a delinquent current or former customer desires continuance of a municipal utility service discontinued under this article or new utility service for which an application cannot be finally accepted under this article, service may be extended to the customer on a temporary basis until such delinquency is cured, providing that the customer enters into an agreement with the city for the payment of the delinquency. The agreement may be made by the Controller and shall provide for the regular repayment of the delinquent amount. The terms of the agreement shall be determined by the Controller with the approval of the City Attorney, ~~shall~~ [may] include simple interest charges established by the Controller, and shall be reasonably calculated to ensure payment and collection of the delinquent amount. [For all accounts other than residential water service accounts,] Failure to make a scheduled payment shall result in discontinuance of service without further notice. [Discontinuation of service for residential water accounts for failure to make a scheduled payment will be subject to the City of Fresno's Discontinuation of Residential Water Service for Nonpayment Policy.]

SECTION 7. Section 6-109 of the Fresno Municipal Code is amended to read:

SECTION 6-109. DISCONTINUANCE OF UTILITY SERVICES.

Charges for utility services shall continue to accrue and be in full force and effect until the customer or consumer shall have given the city at least twenty-four hours' ~~written notice at the City Hall in Fresno~~ that such service is no longer desired, provided that the Controller may declare the account closed and that

charges have ceased to accrue if he finds from a written notation in the city records that discontinuance of service has been requested, that another customer has properly requested service, or that the customer has moved from the premises. When advance notice of desired discontinuance is not given, the customer will be required to pay for service until such time as the Utilities Accounting Division has knowledge that the customer has vacated the premises or otherwise has discontinued use of service.

SECTION 8. Section 6-110 subsection (a) of the Fresno Municipal Code is amended to read:

SECTION 6-110. TEMPORARY DISCONTINUANCE OF SERVICE.

(a) Disposal Service. When [residential] disposal service is [not required for more than 30 days, a customer may complete a Solid Waste Exemption form to temporarily suspend charges. Customers must adhere to the requirements for exemption approval.] ~~stopped or varied and is then resumed by the same customer at the same premises within sixty days, the special service charge designated in the Master Fee Resolution shall be made.~~

SECTION 9. Section 6-111 of the Fresno Municipal Code is amended to read:

SECTION 6-111. RESTORATION OR DISCONTINUANCE OF WATER SERVICE DURING OFF-HOURS.

Whenever water service is requested to be turned off for other than repairs, or on at any time, other than during normal city working hours, a special service charge shall be paid by the water customer or consumer. This charge shall be

established by the Controller at an amount to reimburse the city for the direct and indirect costs of providing this special service[, subject to the City of Fresno's Discontinuation of Residential Water Service for Nonpayment Policy.]-

SECTION 10. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, TODD STERMER, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____ 2021.

AYES :
NOES :
ABSENT :
ABSTAIN :
Mayor Approval: _____, 2021
Mayor Approval/No Return: _____, 2021
Mayor Veto: _____, 2021
Council Override Vote: _____, 2021

TODD STERMER
City Clerk

By: _____
Deputy Date

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Jennifer M. Quintanilla Date
Senior Deputy City Attorney