

ORDINANCE NO. 2011-1276

AN ORDINANCE OF THE CITY OF POLK CITY, FLORIDA; AMENDING SECTIONS 74-36, 74-37, 74-61, AND 74-202, POLK CITY CODE; RATIFYING AND MODIFYING THE POLK CITY EXCLUSIVE SERVICE AREA; MAKING CERTAIN FINDINGS; DEFINING AND DESIGNATING THE CITY'S EXCLUSIVE RETAIL WATER AND WASTEWATER SERVICE AREA; RATIFYING AND MODIFYING REQUIREMENTS FOR MANDATORY CONNECTION TO CITY UTILITY SYSTEMS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF POLK CITY, FLORIDA:

SECTION 1. COMMISSION FINDINGS. In adopting this Ordinance and modifying the Polk City Code, the City Council of Polk City, Florida, hereby makes the following findings:

(1) The City is authorized, pursuant to general and special law and its home rule powers contained in statutes and the Florida Constitution, to own, operate, provide and extend central water, wastewater, and reclaimed water services both within and without the City of Polk City, Florida.

(2) In furtherance thereof, the City declared beginning in 2002 and continuously thereafter an exclusive water, wastewater, and reclaimed water service area both within and without the City limits.

(3) The City has determined that development at urban level densities should be served by a central potable water supply and central wastewater service.

(4) The City has also incurred bonded indebtedness to expand and maintain its central water system and central wastewater system.

(5) The City's debt includes loans from the Florida Department of Environmental Protection, the United States Department of Agriculture, and other lending institutions.

(6) The City's bond covenants, its City Code, and federal regulations prohibit free service.

(7) Failure to require adjoining property owners as specified herein to connect to the City's water and wastewater systems and pay minimum charges will harm the financial feasibility of the City's operation of its water and wastewater systems. Furthermore, the City has adopted a cross connection requirement to prevent the interconnection of contaminated water sources with the public water supply.

(8) Any risk of contamination to the public water supply must be eliminated by prohibiting interconnections of well water via inside plumbing systems with the City's water supply.

(9) Providing a water line and/or wastewater line adjacent to property in effect provides central fire service, available water service, and available wastewater service to that property, increasing the value of said property and enabling said property to be developed with central utilities and fire protection, and other benefits.

(10) For these and other reasons, it is necessary for the City to safeguard the public health, safety, and welfare of its inhabitants and customers by providing an adequate supply of potable water by central water system, providing adequate, safe, and environmentally acceptable means of treating and

disposing wastewater, eliminating public hazards of contaminated wells or overpumped wells, and strengthening the financial security of the City's central water system and central wastewater system, which can only be accomplished by requiring all abutting property owners as specified below within the City's exclusive service area to connect to and remain connected to the City's central water system and central wastewater system.

(11) Furthermore, the City needs to modify the provisions of its exclusive water and wastewater service territory to insure compliance with its existing and future debt attached to the City's water and wastewater utility system.

(12) If the City does not provide adequate central water and wastewater service within its designated service area to meet increased demand, it will be faced with private sector pressure to allow the continued construction and installation of substandard, privately financed, and operated water and wastewater treatment plants and septic tanks, and it may lose part of its existing customer base.

(13) The proliferation of privately financed and operated water and wastewater treatment plants and the loss of existing customers will contribute to higher user rates.

(14) The Capital Improvements Element of the Polk City Comprehensive Plan requires the City to adopt and/or comply with a concurrency management system in accordance with and authorized by Section 163.3180, Florida Statutes, in order to insure that the public facilities and services needed

to support new development are available concurrent with the impacts of such development.

(15) The financing of central water and wastewater facilities is complex, requires extensive planning and engineering, and calls for advanced participation by the development community so that adequate public facilities can be provided to meet the impacts of that development.

(16) Therefore, to protect groundwater resources, prevent sprawl, implement water and wastewater service concurrency, enable financing of City facilities, repay existing debts of the systems, stabilize user rates and avoid rate increases, and provide for the most cost effective and environmentally acceptable central water and wastewater facilities, the City has determined to establish, designate, and modify its service area so that public funds are not wasted.

(17) The City has full and exclusive authority over the management, operation, and control of all of the City's utilities and the authority to prescribe rules and regulations governing the use of such facilities whenever such are provided by the City, and to make such changes from time to time in such rules and regulations as it deems necessary.

(18) The construction, optimal financing, and optimal operation of the City's water and wastewater systems is an essential utility service.

(19) The failure to plan for and delineate future service areas will lead to the proliferation of other public and private utility systems and facilities in competition with and to the economic detriment of the City.

(20) In implementing this Ordinance, it is the Council's intent to conserve and protect water resources within boundaries of the City, in the interest of the public health, safety and welfare, and avoid and eliminate, to the extent permitted by law, the circumstances giving rise to water, wastewater, and

reclaimed water service duplications and resulting uneconomical and wasteful operations.

(21) In implementing this Ordinance, the City shall encourage the efficient utilization of water, wastewater, and reclaimed water facilities and systems, while avoiding, to the greatest extent possible, unreasonable restrictions upon free competition, fixing prices, or in reasonably limiting water, wastewater, or reclaimed water service capacity.

(22) The City has authority pursuant to general and special law to be the exclusive provider of water, wastewater, and reclaimed water services as further provided in this Ordinance.

(23) The City has provided the required public notice and held the necessary public hearing(s) in order to adopt these rules.

SECTION 2. AMENDMENT TO SEC. 74-36, POLK CITY CODE. Section 74-36, of the Code of Ordinances, City of Polk City, Florida, is hereby amended to read as follows:

“Sec. 74-36. Sanitary requirements.

Each residence and building within the town in which human beings reside, are employed or congregated, shall be required to have a sanitary method of disposing of human excrement, namely either a ~~sanitary water closet that is connected~~ ion with the town sewer City’s wastewater system or an approved type of septic tank. A septic tank ~~shall be mandated pursuant to the requirements of applicable statutes, rules, regulations or ordinances~~ will be used only if the boundary line of a parcel or lot of property is not adjacent to an easement or public right of way in which a City sewer line exists.”

SECTION 3. AMENDMENT TO SEC. 74-37, POLK CITY CODE. Section 74-37, of the Code of Ordinances, City of Polk City, Florida, is hereby amended to read as follows:

“Sec. 74-37. Septic tanks.

(a) Septic tanks, other than those approved by the appropriate approved county public health unit, shall not be constructed within the corporate limits of the town.

(b) The property owners shall be responsible for abandoning septic tanks in accordance with F.A.C. ch. 64E-6.011, or subsequent regulations for abandonment of septic tank systems.

(c) No septic tank shall be constructed on a lot or parcel of property whose boundary line is adjacent to an easement or public right of way in which a City sewer line exists.”

SECTION 4. AMENDMENT TO SEC. 74-61, POLK CITY CODE. Section 74-61, of the Code of Ordinances, City of Polk City, Florida, is hereby amended to read as follows:

“Sec. 74-61. Required; fees.

The owner of each lot or parcel of land within the ~~town~~ City's Exclusive Service Area upon which any building or trailer used as a dwelling is situated, or shall be situated, for either residential, commercial or industrial use, shall connect, or cause to be connected, such building or trailer with the public sewer facilities of the City's wastewater system ~~municipal sewer system of the town~~, and such owner shall use such facilities within 90 days following notification to do so by the ~~town~~ City clerk. All such connections shall be made in accordance with the rules and regulations which shall be adopted from time to time by the ~~town~~ City council. Such adopted rules and regulations shall provide for a charge for making any such connections in such reasonable amount as the ~~town~~ City council may fix and determine. A connection shall not be mandated except as otherwise required by this applicable statutes, rules, regulations or ordinance. No connection or connections of lots or parcels of property shall be required where said wastewater system or line is not within an easement or right of way that is adjacent to a lot or parcel of property, and no connection of residential structures on lots or parcels where septic tanks are in use on or before June 13, 2011, shall be required until failure of the septic tank.”

SECTION 5. AMENDMENT TO SEC. 74-202, POLK CITY CODE.

Current Sec. 74-202, of the Code of Ordinances of the City of Polk City, Florida, is hereby repealed and substituted in its place shall be a new Sec. 74-202, which is hereby created to read as follows:

“Sec. 74-202. Creation of Exclusive Water, Wastewater, and Reclaimed Water Service Area.

(a) Pursuant to the Polk City Charter and, to the extent necessary, Chapter 180, Florida Statutes, the City of Polk City hereby creates the “Polk City Exclusive Water, Wastewater, and Reclaimed Water Service Area” for the

purpose of delivering to that area water, wastewater, and reclaimed water services and exercising within that area, the powers provided by law. The area to receive the services set forth above shall be as described in Exhibit "A" and depicted in Exhibit "A" attached to and incorporated in this Ordinance. All of the provisions or benefits of the Polk City Charter, and only to the degree necessary, Chapter 180, Florida Statutes, are hereby made available to the City of Polk City, Florida, within said zone or area including, but not limited to, the exclusive provision of water, wastewater, alternative water supply, reclaimed water, aquifer storage and recovery, and desalinization systems and services.

(b) The City hereby declares that, subject to a customer's or property owner's compliance with City rate ordinances, and service extension policies, the City has a duty to serve water, wastewater, and reclaimed water service to all property owners and potential customers within the City's Exclusive Service Area, provided the Florida Public Service Commission ("FPSC") or another City has not certified or franchised that area.

(c) No person or entity other than the City and/or its designee shall provide water, wastewater, or reclaimed water service (other than bottled water) to any person, firm, corporation, or government, within the City's Exclusive Service Area without the City's express written permission which shall not be unreasonably withheld. No person or entity other than the City and/or its designee shall construct or use water, wastewater, and/or reclaimed water transmission lines, pipes, mains, pump stations or the like on or within the established rights-of-way for the purpose of providing water, wastewater, and/or reclaimed water service to land located within the City's Exclusive Service Area without the City's express written permission.

(d) (1) To the full extent provided by law, all buildings and structures, which are located or constructed on property in the City's Exclusive Service Area and which are adjacent to a public right-of-way or easement, are hereby required, except as provided in subsections (2) and (3), to connect with and use the services and facilities of the City water and wastewater systems in order to preserve the health, safety, and welfare of the citizens and inhabitants of the City's Exclusive Service Area.

(2) A water main or gravity sewer is considered adjacent or available to a property when it is located anywhere in a public right-of-way or easement adjoining the property, but shall not include water mains providing fire or industrial service only.

(3) If a water main is adjacent or available to a property, and a building or structure located on that property is connected to an individual well, then that building or structure will be required to connect to the city water system; provided, however, those residential structures currently receiving potable water via well on or before June 13, 2011, shall not be required to connect until failure of the well. If a gravity sanitary sewer is adjacent or available to a property, and a building or structure located on that property is connected to a septic tank

system, then that building or structure will be required to be connected to the city's wastewater system within ninety (90) days of notification of availability.

SECTION 6. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Policy is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 7. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its passage.

PASSED ON FIRST READING this _____ day of _____, 2011.

PASSED ON SECOND READING this _____ day of _____, 2011.

CITY OF POLK CITY, FLORIDA

Joseph LaCascia, Mayor

ATTEST:

Patricia Jackson, City Clerk

APPROVED AS TO FORM AND LEGALITY:

Thomas A. Cloud, Esquire
City Attorney