

ORDINANCE NO. 2011- 1280

AN ORDINANCE OF THE CITY OF POLK CITY, FLORIDA; AMENDING SECTIONS 74-97 AND 74-264, POLK CITY CODE; PROVIDING FINDINGS; MODIFYING AND RENAMING THE WATER AND SEWER AVAILABILITY CHARGES AS READINESS TO SERVE CHARGES; AUTHORIZING A CREDIT AGAINST THE READINESS TO SERVE CHARGES; DECLARING THAT THE CITY HAS NO OBLIGATION TO SERVE PROPERTIES FOR WHICH READINESS TO SERVE CHARGES HAVE NOT BEEN PAID IN FULL; AUTHORIZING SPECIAL ASSESSMENTS IN LIEU OF READINESS TO SERVE CHARGES AND RATIFYING AND VALIDATING ASSESSMENTS IMPOSED PRIOR TO THE DATE OF ENACTMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; 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) Following the acquisition of a water system from the City of Lakeland, 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) Beginning in 1998, the City began the acquisition and expansion of a sewer/wastewater system which also included the purchase of a sewer system previously owned by Polk County.

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

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

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

(7) To more effectively and efficiently operate, expand, and manage its water and sewer systems, the City created a wastewater master plan in August of 2006, a water master plan in 2009, and updated the plans periodically.

(8) The City performed a full rate study in 2006 which assumed certain high growth projections and also concluded that without increases to impact and connection fees, monthly rates would have to increase.

(9) Based upon assumptions of high growth, the City acquired the Mount Olive sewer plant and constructed the Cardinal Hill sewer plant.

(10) The projected growth failed to materialize as predicted by consultants and former city staff and as predicted in the City's comprehensive plan.

(11) In February of 2009, the City's rate consultant proposed developing a charge that more fairly distribute debt service between existing customers and future customers to whom service had been made available.

(12) Jones Edmunds, a city consultant, presented a report to the City Council in February of 2009 recommending that the City develop some type of charge or assessment to more equitably spread the cost of debt service between existing and new customers to whom service was available.

(13) Based upon these reports and other competent, substantial evidence, the City adopted a water availability charge and a sewer availability charge in October of 2009.

(14) The water availability charge and the sewer availability charge are "readiness to serve" charges recognized under Florida law as a valid means of distributing debt service amongst customer classes based upon the availability of service.

(15) The Florida Governmental Utility Authority and its consultants also prepared and delivered a report to the City Council in early 2010 recommending 80-90 % user rate increase to address debt and operational cost issues for the City's water and sewer systems, and recommending a continuation of the sewer and water availability charges.

(16) The City has again received a series of studies and reports from GAI Consultants, including but not limited to the Water and Wastewater System Financial Optimization, Revenue Sufficiency, and Rate Study and other engineering studies that recommend retention of the readiness to

serve/availability charges, as well as other modifications to the City's rate regulations and structure.

(17) Failure to maintain such charges, the City's existing rates, and failure to adopt the other recommendations from GAI contained in their studies and reports will harm the City's ability to borrow necessary funds to properly manage, operate, and maintain the City's system and to pay its lawful debts.

(18) Failure to require property owners as specified herein to pay minimum charges will harm the financial feasibility of the City's operation of its water and wastewater systems.

(19) 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.

(20) For these and other reasons, it is necessary for the City to adopt the changes and modifications proposed within this ordinance.

(21) 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.

(22) 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. 74-97, POLK CITY CODE. Current Sec. 74-97, of the Code of Ordinances of the City of Polk City, Florida, is hereby amended to read as follows:

“Sec. 74-97. Sewer availability charge (SAC) Sewer Readiness to Serve Charge.

(a) *Charge established.* For the purpose of ~~providing funds for more equitably allocating the existing debt applicable to the city's~~ City's wastewater treatment, force mains, lift stations and sewage collection systems, and the plant and facilities connected therewith, and the payment of ~~capital charges represented by debt service on~~ bonds, certificates of indebtedness or otherwise, which may be used to finance the sewer system costs of additions or expansions to the facilities, and the payment of reasonable requirements or reserves for replacement in obsolescence thereof, there is hereby imposed upon each developable lot, parcel of land, or premises that does not have its own septic tank or sewer service by the City but having the immediate availability for connection with the city's City's public sewer system, ~~a sewer availability charge (SAC)~~ Sewer Readiness to Serve Charge (SRSC) as hereinafter provided. Said charge shall be in addition to any other previous or future charge or assessment levied against the property. The SRSC established under this section shall not be applied to any unimproved lot, parcel of land, or premises located outside of the City's boundaries.

(b) *Determination and administration of charge.* The availability readiness to serve charge as hereinabove authorized shall be imposed in lieu of the user charges for sewer service and shall be determined and administered as follows:

(1) *Payment required:*

- a. Payment required prior to connection. Prior to the issuance of the applicable permit and before connecting to the ~~city's~~ City's sewer system, all ~~sewer availability charges~~ SRSC's as hereinafter provided for shall be paid.
- b. The ~~availability charge~~ SRSC shall equal the base monthly charge of the sewer fees as determined by rate studies and set by city council multiplied by 12 months.
- c. The ~~availability charge~~ SRSC shall be invoiced on an annual basis the first year and shall be included on the tax bill in each subsequent year until such time as the parcel or lot has been issued a construction permit.

~~d. Change by resolution. Any change in the city sewer availability charge, as hereinafter set forth shall be by council resolution.~~

(2) *Determination of charge:*

a. *Residential lots.* The amount of the ~~availability charge~~ SRSC shall be determined by the ~~city~~ City to be one ERC per parcel or lot based on the typical three-quarter-inch meter.

b. *Commercial lots.* The amount of the ~~availability charge~~ SRSC shall be determined by the city to be two ERC per acre based on the typical two-inch commercial meter.

(3) *Credit:* The City may grant a credit against SRSC's to be paid equal to but not exceeding the amount of sewer connection charges paid to the City by the lot or parcel owner for any lot or parcel connected to and receiving service from the City. This shall be known as the "Sign up and Save Program."

(c) *Obligation to Serve:* The City shall have no obligation to provide sewer service to any lot, parcel of land, or premises for which the SRSC has not been paid in full.

(d) *Authority to levy special assessment:* Pursuant to its home-rule power and other statutory authority, including (but not limited to) Section 170.01 of Florida Statutes, the City is hereby authorized to levy special assessments from time to time in connection with its sewer system. Without limiting the generality of the foregoing, the special assessment shall be levied only on real property benefiting from the availability of the City's sewer system. The rate of such assessments shall be based on the special benefit accruing to the assessed property from such improvements and the availability of the sewer system. Collections of the special assessment levied under this subsection against property lying outside the City's boundaries shall not take place unless and until the specially benefited property connects to the capital improvement. If levied, the special assessment shall be in lieu of the SRSC. All such special assessments levied by the City prior to the enactment of this subsection are ratified, validated, and confirmed.

SECTION 3. AMENDMENT TO SEC. 74-264, POLK CITY CODE.

Current Sec. 74-264, of the Code of Ordinances of the City of Polk City, Florida, is hereby amended to read as follows:

"Sec. 74-264. ~~Water availability charge (WAG)~~ Water Readiness to Serve Charge.

(a) *Charge established.* For the purpose of ~~providing funds for more equitably allocating the existing debt applicable to~~ the city's City's wells, water treatment, water storage and water distribution systems, and the plant and facilities

connected therewith, and the payment of ~~capital charges represented by debt service on~~ bonds, certificates of indebtedness or otherwise, which may be used to finance the water system costs of additions or expansions to the facilities, and ~~the payment of reasonable requirements or reserves for replacement in obsolescence thereof,~~ there is hereby imposed upon each developable lot, parcel of land, or premises that does not have its own well and/or water service by the City but having the immediate availability for connection with the city's City's public water system, a ~~water availability charge (WAC)~~ Water Readiness to Serve Charge (WRSC) as hereinafter provided. Said charge shall be in addition to any other previous or future charge or assessment levied against the property. The WRSC established under this section shall not be applied to any unimproved lot, parcel of land, or premises located outside of the City's boundaries.

(b) *Determination and administration of charge.* The availability readiness to serve charge as hereinabove authorized shall be imposed in lieu of the user charges for water service and shall be determined and administered as follows:

(1) *Payment required:*

- a. Payment required prior to connection. Prior to the issuance of the applicable permit and before connecting to the ~~city's sewer~~ City's water system, all ~~water availability charges~~ WRSC's as hereinafter provided for shall be paid.
- b. ~~The availability charge~~ WRSC shall equal the base monthly charge of the water fees as determined by rate studies and set by city council multiplied by 12 months.
- c. ~~The availability charge~~ WRSC shall be invoiced on an annual basis the first year and shall be included on the tax bill in each subsequent year until such time as the parcel or lot has been issued a construction permit.
- d. ~~Change by resolution. Any change in the city water availability charge, as hereinafter set forth shall be by council resolution.~~

(2) *Determination of charge:*

- a. *Residential lots.* The amount of the ~~availability charge~~ WRSC shall be determined by the ~~city~~ City to be one ERC per parcel or lot based on the typical three-quarter-inch meter.
- b. *Commercial lots.* The amount of the ~~availability charge~~ WRSC shall be determined by the ~~city~~ City to be two ERC per acre based on the typical two-inch commercial meter.

(3) Credit: The City may grant a credit against WRSC's to be paid equal to but not exceeding the amount of water impact fees paid to the City by the lot or parcel owner for any lot or parcel connected to and receiving service from the City. This shall be known as the "Sign up and Save Program."

(c) *Obligation to Serve*: The City shall have no obligation to provide water service to any lot, parcel of land, or premises for which the WRSC has not been paid in full.

(d)) *Authority to levy special assessment*: Pursuant to its home-rule power and other statutory authority, including (but not limited to) Section 170.01 of Florida Statutes, the City is hereby authorized to levy special assessments from time to time in connection with its water system. Without limiting the generality of the foregoing, the special assessment shall be levied only on real property benefiting from the availability of the City's water system. The rate of such assessments shall be based on the special benefit accruing to the assessed property from such improvements and the availability of the water system. Collections of the special assessment levied under this subsection against property lying outside the City's boundaries shall not take place unless and until the specially benefited property connects to the capital improvement. If levied, the special assessment shall be in lieu of the SRSC. All such special assessments levied by the City prior to the enactment of this subsection are ratified, validated, and confirmed.

SECTION 4. 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 5. CONFLICTING ORDINANCES AND RESOLUTIONS. All existing ordinances and resolutions of the City of Polk City in conflict with this ordinance are repealed to the extent necessary to give this Ordinance full force and effect.

SECTION 6. 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

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