

ORDINANCE NO. 2313

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AMENDING THE CODE OF GILBERT, ARIZONA, CHAPTER 66 UTILITIES OPERATIONS, ARTICLE I IN GENERAL, BY AMENDING SECTION 66-3 AGREEMENT FOR UTILITY SERVICE TO DELETE PROVISIONS THAT PROVIDE FOR LIEN AUTHORITY ABSENT AN AGREEMENT, TO PERMIT ACTIVATION OF UTILITY SERVICE VIA THE INTERNET, AND BY MOVING PROVISIONS FOUND IN SECTION 66-3 TO A NEW SECTION 66-4 WHEN UTILITY SERVICE IS REQUIRED; DISCONTINUATION OF SERVICES; BY RENUMBERING PRIOR SECTION 66-4 CUSTOMER RESPONSIBILITIES AS SECTION 66-5; BY RENUMBERING SECTION 66-5 CONDITIONS OF RECEIPT OF UTILITY SERVICE AS SECTION 66-6 AND PROVIDING THAT A CUSTOMER WITH MORE THAN ONE ACCOUNT MUST BE CURRENT ON ALL ITS EXISTING UTILITY ACCOUNTS BEFORE A NEW ACCOUNT MAY BE OPENED; BY RENUMBERING VARIOUS OTHER SECTIONS; BY AMENDING ARTICLE II RATES AND CHARGES; BILLING AND COLLECTION BY AMENDING SECTION 66-73 PROCEDURE TO CHALLENGE UTILITY BILLS TO REVISE PROCEDURES FOR REVIEW AND ADJUSTMENT OF UTILITY BILLS; BY AMENDING SECTION 66-76 LIENS FOR NONPAYMENT FORECLOSURE TO PROVIDE THAT LIENS MAY ONLY BE IMPOSED AGAINST A PROPERTY IF THE PROPERTY OWNER HAS ENTERED INTO AN AGREEMENT AND THE UTILITY BILL OTHER THAN RESIDENTIAL SOLID WASTE IS OVER 90 DAYS DELINQUENT; BY AMENDING SECTION 66-102 METERS; INSTALLATION, READING AND TESTING TO REVISE PROCEURES FOR CORRECTION OF UTILITY BILLS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR PENALTIES.

WHEREAS, the Town of Gilbert desires to update its utility code.

NOW THEREFORE, BE IT ORDAINED by the Common Council of the Town of Gilbert, Arizona, as follows:

Section I. In General.

The Code of Gilbert, Arizona, Chapter 66 Utilities Operations, Article I In General, Section 66-3 Agreement for Utility Service is amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

Sec. 66-3. Agreement for utility service.

- (a) *REQUESTS FOR SERVICE.* The act of requesting or receiving utility service from the town constitutes an agreement by the customer to comply with all the terms and conditions related thereto which are imposed by the town. ~~and authorizes the lien for nonpayment of service, as authorized by statute. Persons who rent, lease or otherwise permit the occupancy of their real property are, to the extent allowed by law, jointly and severally liable for any utility service rendered to their property by the town and authorize the lien for nonpayment of utility service, as authorized by statute, unless they have provided the clerk with written notification that the real property is not to receive utility service from the town.~~
- (b) *CUSTOMERS.* As a condition of initiating, continuing or reestablishing utility service, the town may require the customer to execute an agreement for utility service in a form provided by the town.
- (c) *TELEPHONE OR OTHER ACTIVATION.* Finance DIRECTOR ~~manager~~ may permit utility service AGREEMENT to be activated by telephone, OR INTERNET.
- (d) The town may reject any application for utility service for any good and sufficient reason including, but not limited to, the failure to meet any condition of rendering service specified in section ~~66-5~~ 66-6 (Conditions of receipt of utility service).
- ~~(e) Utility service shall be provided as follows:~~
- ~~(1) Customers shall accept all town utility services that are available for residential and non-residential structures upon the issuance of a certificate of occupancy except that non-residential structures shall have the option to select alternative solid waste collection services.~~
- ~~(2) During the initial construction period on residential or non-residential structures, water and wastewater services shall be charged from the time a water meter is installed, except that wastewater services shall not be charged for any property that is not connected to the Gilbert sewer system, provided such structure is or to be legally connected to a sanitary cesspool in good working order.~~
- ~~(3) Residential structures that are receiving solid waste services in accordance with subsection (1) above, shall be billed from the time a certificate of occupancy is issued for the structure, unless otherwise provided in this section.~~
- ~~(4) Residential structures that are required to receive single family residential solid waste service and that have been identified by the director of public works as non-occupied model homes shall be exempt from solid waste~~

~~collection services, provided the owner applies for and receives approval for such exemption by the town.~~

~~(f) No customer may suspend or discontinue utility services unless all utility services provided, pursuant to subsection (e)(1) are discontinued by such customer and such discontinuance is verified by the director of public works.~~

The Code of Gilbert, Arizona Chapter 66 Utilities Operations, Article I In General, is amended by re-numbering Section 66-4 Customer Responsibilities as Section 66-5;

The Code of Gilbert, Arizona Chapter 66 Utilities Operations, Article I In General, is amended by adding a new Section 66-4 to read as follows (additions in ALL CAPS)(these requirements were previously located in Section 66-3(e) and are not new):

**SEC. 66-4 WHEN UTILITY SERVICE IS REQUIRED;
DISCONTINUATION OF SERVICES.**

- (A) CUSTOMERS SHALL ACCEPT ALL GILBERT UTILITY SERVICES THAT ARE AVAILABLE FOR RESIDENTIAL AND NON-RESIDENTIAL STRUCTURES UPON THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY EXCEPT THAT NON-RESIDENTIAL STRUCTURES SHALL HAVE THE OPTION TO SELECT ALTERNATIVE SOLID WASTE COLLECTION SERVICES.
- (B) DURING THE INITIAL CONSTRUCTION PERIOD ON RESIDENTIAL OR NON-RESIDENTIAL STRUCTURES, WATER AND WASTEWATER SERVICES SHALL BE CHARGED FROM THE TIME A WATER METER IS INSTALLED, EXCEPT THAT WASTEWATER SERVICES SHALL NOT BE CHARGED FOR ANY PROPERTY THAT IS NOT CONNECTED TO THE GILBERT SEWER SYSTEM, PROVIDED SUCH STRUCTURE IS LEGALLY CONNECTED TO A SANITARY CESSPOOL IN GOOD WORKING ORDER.
- (C) RESIDENTIAL STRUCTURES THAT ARE RECEIVING SOLID WASTE SERVICES IN ACCORDANCE WITH SUBSECTION (A) ABOVE SHALL BE BILLED FROM THE TIME A CERTIFICATE OF OCCUPANCY IS ISSUED FOR THE STRUCTURE, UNLESS OTHERWISE PROVIDED IN THIS SECTION.
- (D) RESIDENTIAL STRUCTURES THAT ARE REQUIRED TO RECEIVE SINGLE FAMILY RESIDENTIAL SOLID WASTE SERVICE AND THAT HAVE BEEN IDENTIFIED BY THE

DIRECTOR OF PUBLIC WORKS AS NON-OCCUPIED MODEL HOMES SHALL BE EXEMPT FROM SOLID WASTE COLLECTION SERVICES, PROVIDED THE OWNER APPLIES FOR AND RECEIVES APPROVAL FOR SUCH EXEMPTION BY GILBERT.

- (E) NO CUSTOMER MAY SUSPEND OR DISCONTINUE UTILITY SERVICES UNLESS ALL UTILITY SERVICES PROVIDED PURSUANT TO SUBSECTION (A) ARE DISCONTINUED BY SUCH CUSTOMER AND SUCH DISCONTINUANCE IS VERIFIED BY THE DIRECTOR OF PUBLIC WORKS.

The Code of Gilbert, Arizona Chapter 66 Utilities Operations, Article I In General, is amended by renumbering Section 66-5 Conditions of Receipt of Utility Service, and by amending subsections (a)(4) and (6), and by adding a new subsection (12) to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

Sec. ~~66-5~~ 66-6 Conditions of receipt of utility service.

- (a) No utility service shall be initiated, continued or reestablished unless all of the following are met:

* * *

- (4) The customer has executed a service agreement for the utility service in a form provided by the town ~~or, where permitted by the director of public works, has activated service by telephone.~~

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- (6) All bills rendered for utility service provided to the customer ~~and/or the service location~~ AND ANY REQUIRED DEPOSITS have been paid.

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- (12) IF A CUSTOMER WITH MORE THAN ONE ACCOUNT SEEKS TO OPEN A NEW ACCOUNT, THE CUSTOMER MUST BE CURRENT ON ALL ITS EXISTING UTILITY ACCOUNTS BEFORE SERVICE CAN BE INITIATED FOR THE NEW ACCOUNT.

The Code of Gilbert, Arizona Chapter 66 Utilities Operations, Article I In General, is amended by renumbering Sections 66-6 Utility Equipment, Section 66-7 Prohibited Acts; Tampering; Obstruction; Discontinuation of Service; Section 66-8 Limitation of Liability of Town; Section 66-9 Right of Entry; Inspections as Sections 66-7 through 66-10 respectively; and by noting Sections 66-11 through 66-70 as Reserved.

The Code of Gilbert, Arizona Chapter 66 Utilities Operations, Article I In General, Section 66-7, now renumbered as Section 66-8 Prohibited Acts; Tampering; Obstruction; Discontinuation of Service, subsection (h)(3) is amended to read as follows:

- (3) The failure of the customer or the property owner to meet any of the conditions for initiating, continuing or reestablishing service set forth in section ~~66-5~~ 66-6.

The Code of Gilbert, Arizona Chapter 66 Utilities Operations, Article II Rates and Charges; Billing and Collection, is amended by amending Section 66-73 Procedure to Challenge Utility Bills to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

Sec. 66-73. Procedure to challenge utility bills; CORRECTION OF UTILITY BILLS.

- (a) All bills tendered for utility services are presumed to be correct.
- (B) A person who believes a utility bill or any charge related to a utility service is incorrect shall:
 - ~~(1) Contact the town and arrange to meet with the finance director or his designee to discuss his bill and the grounds for dispute. Following the meeting, the finance director or his designee shall determine whether the utility bill is correct or whether an adjustment in the bill is appropriate. The determination shall be provided to the customer by mail.~~
 - (1) SUBMIT A CLAIM IN WRITING TO THE TOWN FINANCE DIRECTOR ON A FORM APPROVED BY THE TOWN. THE DISPUTE WILL BE REVIEWED BY THE FINANCE DIRECTOR. AN ADJUSTMENT OR DETERMINATION WILL BE PROVIDED TO THE CUSTOMER IN WRITING.
 - (2) Any customer who feels aggrieved by the determination of the finance director or his designee, or by the discontinuation, suspension, or refusal of utility service, ~~shall follow the claims procedures of the town to challenge the determination of the finance director or his designee; and shall follow the procedure and abide by the prescribed time limits.~~ MAY FILE AN APPEAL WITHIN FIFTEEN (15) DAYS FROM RECEIPT OF THE DETERMINATION. THE APPEAL MUST BE IN WRITING AND FILED WITH THE ASSISTANT TOWN MANAGER. THE DECISION OF THE ASSISTANT TOWN MANAGER IS FINAL.
- ~~(b)~~ (C) Disputing a bill or contacting the town regarding a bill shall not relieve the customer of the obligation to make timely

payment as specified in section 66-72 or preclude the town from terminating utility service or taking any other action permitted by this chapter or otherwise.

- (D) IF UTILITY SERVICES IS PROVIDED TO A CUSTOMER AND THE TOWN FAILS TO BILL FOR SUCH SERVICE, A CORRECTION WILL BE MADE TO THE ACTIVE UTILITY ACCOUNT WITHIN THE NEXT BILLING CYCLE AFTER THE INACCURACY IS IDENTIFIED, PURSUANT TO THE FOLLOWING TERMS:
 - (1) IF THE TOWN DETERMINES THAT THE CUSTOMER WAS REASONABLY UNAWARE THAT IT WAS NOT BEING BILLED THE FULL AMOUNT OF THE UTILITIES BEING PROVIDED, THE TOWN SHALL BILL THE ACCOUNT BACK TO THE DATE THE UTILITY SERVICE WAS PROVIDED AND NOT BILLED, OR FOR A 12-MONTH PERIOD, WHICHEVER IS SHORTER IN DURATION. THE TOWN WILL ALLOW THE CUSTOMER TO REPAY THE DIFFERENCE OVER THE LENGTH OF TIME EQUIVALENT TO THE PERIOD FOR WHICH THE CUSTOMER WAS UNDER-BILLED OR FOR A 12-MONTH PERIOD, WHICHEVER IS SHORTER IN DURATION.
 - (2) IF A CUSTOMER KNOWINGLY RECEIVES SERVICES WITHOUT PAYING FOR THOSE SERVICES IN FULL, THE CUSTOMER WILL BE BACK-BILLED TO THE INITIAL DATE WHEN SERVICES WERE PROVIDED AND NOT BILLED.
- (E) IF UTILITY SERVICE IS NOT PROVIDED AND THE TOWN BILLS AND COLLECTS PAYMENT FOR SUCH SERVICE, A CORRECTION WILL BE MADE TO THE UTILITY ACCOUNT WITHIN THE NEXT BILLING CYCLE AFTER THE INACCURACY IS IDENTIFIED, PURSUANT TO THE FOLLOWING TERMS:
 - (1) THE TOWN WILL CREDIT TO THE UTILITY ACCOUNT THE AMOUNT OF THE FEES PAID WHILE THE SERVICE WAS NOT PROVIDED, OR FOR A THREE (3) YEAR PERIOD, WHICHEVER IS SHORTER IN DURATION. IF THE ACCOUNT IS CLOSED, OR THE CREDIT EXCEEDS THREE (3) MONTHS OF UTILITY SERVICE, THE CUSTOMER MAY REQUEST THE CREDIT BE REFUNDED TO THEM AFTER ANY OUTSTANDING UTILITY BILLS ARE PAID IN FULL.

The Code of Gilbert, Arizona Chapter 66 Utilities Operations, Article II Rates and Charges; Billing and Collection, is amended by amending Section 66-76 Liens for Nonpayment; Foreclosure to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

Sec. 66-76. Liens for nonpayment; foreclosure.

- (a) ~~By requesting or receiving or authorizing another to request or receive utility service, the owner of the land where the utility service is rendered consents to a lien in favor of the town in the amount of the bill for utility service. The lien shall attach immediately and shall remain until the bill, together with any late payment penalty and collection costs, are paid in full.~~
- (A) WHENEVER A PROPERTY OWNER HAS ENTERED INTO AN AGREEMENT WITH GILBERT FOR UTILITY SERVICE TO HIS PROPERTY, THE PROPERTY OWNER CONSENTS TO A LIEN AGAINST THE PROPERTY FOR THE AMOUNT OF UNPAID UTILITY BILLS, TOGETHER WITH LATE PAYMENT, PENALTY, INTEREST AND COLLECTION COSTS UNTIL THE BILL IS PAID IN FULL.
- (b) Whenever a bill for utility service remains unpaid for ~~60~~ NINETY (90) days from the billing date, the town shall have the right to sell the real property subject to the lien, and the proceeds of such sale shall be applied to pay the charges, after deducting costs, as is the case in the foreclosure of statutory liens. The town attorney is hereby authorized and, upon the direction of the director of public works, shall institute such proceedings, in the name of the town, in any court having jurisdiction over such matters, against any property for which the utility bill has remained unpaid for ~~60~~ NINETY (90) days after the billing date. Any number of liens on the same lot or tract of land under this section may be enforced in the same action.
- (c) Whenever a utility bill for a utility service remains unpaid for 45 NINETY (90) days after the billing date, the town may file with the county recorder a statement of lien claim. This statement shall contain the legal description of the premises served, the amount of the unpaid bill, and a notice that the town claims a lien for this amount as well as for all charges for the utility served subsequent to the period covered by the bill.
- (d) ~~The failure of the town to record a lien claim under this section or to mail notice as set forth in section 66-74(d), or the failure of the owner to receive such notice, shall not affect the right to foreclose the lien for unpaid utility bills.~~

- (e) For purposes of this section, "utility service" means ANY UTILITY SERVICE EXCEPT FOR RESIDENTIAL SOLID WASTE COLLECTION SERVICE. ~~sewer service and fees charged for provision of sewer service.~~

The Code of Gilbert, Arizona Chapter 66 Utilities Operations, Article III Potable Water Service, is amended by amending Section 66-102 Meters; Installation, Reading and Testing, subsection (e)(1) and (2) to read as follows, and by deleting subsection (g) (additions in ALL CAPS; deletions in ~~strikeout~~):

- (e) If a tested meter is found to be more than three percent in error, the correction of previous bills will be made to the customer last served by the meter tested under the following terms allowing the town to recover or refund the difference:
 - (1) The town shall adjust the customer's billing FOR CONSUMPTION back to the date the meter error occurred or for a six-month period, whichever is shorter in duration. If the customer has been underbilled, the town will allow the customer to repay the difference over length of time equal to that of the underbillings or for a six-month period, whichever is shorter in duration. The customer will be allowed to pay the underbilling amount without penalties, interest or late fees, unless there is evidence of meter tampering or water diversion. any underbilled amounts due by customer as the result of tampering or diversion shall be immediately due and payable.
 - (2) If it is determined that the customer has been overbilled and there is no evidence of meter tampering or water diversion, the town will ~~make a refund~~ CREDIT THE ACCOUNT in an amount equal to the amount overcharged for the period of time such overbilling occurred or for six months, whichever is shorter in duration the corrected billing shall occur within the next billing cycle. IF THE ACCOUNT IS CLOSED, OR THE CREDIT EXCEEDS THREE MONTHS OF UTILITY SERVICE, THE CUSTOMER MAY REQUEST THE CREDIT BE REFUNDED TO HIM AFTER OUTSTANDING UTILITY BILLS ARE PAID.

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~~(g) If utility service is provided to a customer and the town fails to bill for such service or utility service is not provided and the town bills and collects fees for such service, a correction will be made to the customer last served by the meter or to the town, under the following terms:~~

- ~~(1) The town shall adjust the customer's billing back to the date the fees were paid when the utility service was not provided or for a six-month period, whichever is shorter in duration.~~

~~(2) If it is determined that the customer has been paying fees for services not provided, the town will refund the amount of the fees paid while the service was not provided or for six months, whichever is shorter in duration, and the corrected billing shall occur within the next billing cycle.~~

Section II. Providing for Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

Section III. Providing for Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section IV. Providing for Penalties.

Any person found guilty of violating any provision of this Ordinance shall be guilty of a Class One misdemeanor, and upon conviction thereof shall be punishable by a fine not to exceed Two Thousand Five Hundred Dollars (\$2,500) or by imprisonment for a period not to exceed six (6) months, or both such fine and imprisonment. Each day that a violation continues shall be a separate offense punishable as herein described.

Section V. Effective Date.

The provisions of this ordinance and the amendments to the utility code adopted herein shall become effective on January 10 , 2011.

PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona, this 9th day of December, 2010 by the following vote:

AYES: Abbott, Cooper, Crozier, Daniels, Lewis, Presmyk, Sentz

NAYES: None ABSENT: None

EXCUSED: None ABSTAINED: None

APPROVED this 9th day of December 2010.

/s/ John W. Lewis, Mayor

ATTEST:

/s/ Catherine A. Templeton, CMC, Town Clerk

APPROVED AS TO FORM:

Curtis, Goodwin, Sullivan, Udall, & Schwab, P.L.C.

Town Attorneys

By Susan Goodwin