

2019-03

**AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE CITY OF FREEPORT FLORIDA TO ELIMINATE CERTAIN FEES AND CREATE NEW FEES ENTITLED, "CAPACITY FEES", AMENDING AND REPEALING, IN PART, ORDINANCES NUMBERS 91-1, 91-2, 00-6, 04-23, 06-08, AND REPEALING ORDINANCE NUMBER 96-3, THEREBY AMENDING CHAPTER 20, ARTICLE 3, DIVISION 1, SECTION 20-173, CREATING NEW SECTIONS 20-191 through 20-220, AND DELETING ARTICLE 2, SECTION 2.02.05 OF THE FREEPORT LAND DEVELOPMENT CODE, PROVIDING FOR CONFLICT, PROVIDING FOR SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Freeport has conducted extensive and lengthy studies, workshops, public hearings, and be duly advised by staff, including legal counsel and professional engineers, on the matter of certain fees associated with the City's water and wastewater systems; and

**WHEREAS**, the City of Freeport has determined it is in the best interest of the City, and the customers of the City's water and wastewater systems to undertake revisions to the fees associated therewith; and

**WHEREAS**, the City of Freeport based the fees set forth herein on quantifiable data provided by professionals, and established uses for the revenue derived therefrom in consult with financial professionals; and

**WHEREAS**, the City of Freeport, has conducted all necessary public hearings following required notice and advertising, and additionally has conducted numerous meetings open to the public at which the changes and fees established herein were discussed; and

**WHEREAS**, the City of Freeport intends to make the necessary changes and thereby enact the provisions herein as set forth herein;

**NOW THEREFORE, BE IT ORDAINED** by the City Council of the City of Freeport, Florida, that Ordinance Numbers 91-1, 91-2, 00-6, 04-23, and 06-08 are hereby amended and repealed in applicable part as set forth herein, and Ordinance Number 96-3 is hereby repealed in its entirety, the effect of these changes being to amend Chapter 20, Article 3, Division 1, Section 20-173, to delete Article 2, Section 2.02.05 of the Freeport Land Development Code, and to create new provisions of

the Municipal Code to be identified as Chapter 20, Article III, Division 2, entitled “Capacity Fees”, to be numbered Sections 20-191 through Sections 20-220 which shall read as provided for herein:

**Section I: Amended and Repealed Provisions:** The following provisions shall be amended as follows:

- a.) Chapter 20, Article III, Division 2, entitled “Impact Fees”, shall be deleted in its entirety, with said section replaced by the new section identified herein.
- b.) Chapter 20, Article III, Division I, Section 20-173 shall be amended to remove all references to “Sewer Connection Fees”, and related language thereto.
- c.) Article 2, Section 2.02.05 of the Freeport Land Development Code shall be deleted in its entirety.

Any and all renumbering of sections related to these provisions shall be done in a manner that maintains consistency and readability of the City’s Municipal Code, and to the extent that this provision requires an amended or deleted provisions stated herein to be redesignated as “Reserved”, then the responsible official or entity for editing the Code shall make such changes, subject to review by the City Council.

**Section II: New Provisions of Municipal Code:** The following provisions shall be inserted into the Municipal Code to be read and numbered as follows:

## **CHAPTER 20, ARTICLE III, DIVISION 2 – Capacity Fees.**

### **Sec. 20-191. General**

The City of Freeport has determined that is in the best interest of the City to abolish existing connection (“tap”) fees and impact fees, and hereafter implement a single fee, hereafter known as a Capacity Fee, on all development that will connect to the City’s Water System, Wastewater system, or both Water and Wastewater systems.

### **Sec. 20-192. Definitions**

All terms used herein shall be given the ordinary meaning within the context of municipal utility service, land planning, and local governance within the State of

Florida, and more specifically within this locality, unless more specifically defined within this section. The City shall rely upon and implement any definitions contained within the City's Code of Ordinances ("Municipal Code"), together with appendices thereto, unless said definitions shall plainly not be applicable to the provisions of this section.

The City shall defer to its staff, professional engineers, and City Attorney in interpreting the provisions of this section and applying meaning to all words, terms, and phrases hereunder, with the ultimate interpretation and definition being that which the City Council shall accept, implicitly or explicitly.

**Sec. 20-193. Time of Payment, Prepayment Prohibited Except by Extraordinary Action.**

The Capacity Fee(s) stated in this section shall be due and payable, in full, at the time an application for a Development Order is applied for, and no Development Order, approval, or other authority permitting the commencement of development of any kind shall be permitted until the City has received payment in full of such fees.

Prepayment of a Capacity Fee(s) shall be prohibited unless expressly approved by the City Council, upon showing of good cause that such prepayment is in the best interests of the City and necessary for the development to occur. The finding of necessity shall be predicated upon a the City Council's review and approval of an application for development in a form approved by or deemed acceptable to the City that shall plainly identify the scope of development in a manner sufficient to allow the calculation of the Capacity Fee(s) due hereunder. No prepayment shall be permitted based solely upon allowable density without further statement as to the actual development to occur. Any approval of prepayment hereunder shall require the proposed development to proceed to development order issuance within one hundred eighty (180) days from the date of authorization for



prepayment. Failure to comply with the stated time to proceed to development order issuance, unless determined by the City Council, in its sole discretion, to be caused by the actions of the City, shall result in the City terminating the prepayment authorization and thereby returning the amount prepaid, less a penalty of ten percent (10%) of said amount, and the loss of any vested rights or entitlement hereunder by the payee.

**Sec. 20-194. Rights Vesting Upon Payment.**

Payment of the Capacity Fee(s) due hereunder, in full and in a timely manner, shall vest upon the payee the number of connections to the City's Water system, Wastewater system, or both Water and Wastewater Systems, as appropriate, based upon the calculations herein. Said rights and entitlements are a commitment by the City to provide service on the appropriate system(s) to the designated parcel(s) of land, lots, or other development defined by the appropriate development order at the time a request for service is made, and contingent upon the initial and continued payment of all service related fees and charges.

**Sec. 20-195. Fees Paid Shall Run with the Land and be Nontransferable, Assignability.**

The Capacity Fee(s) due and collected hereunder shall be required to be attached to a specific parcel of land at time of payment, and shall not be transferrable any other parcel of land, whether under common ownership or not.

The Capacity Fee(s) due and collected hereunder vest the right to service defined herein, and are deemed fully earned upon receipt by the City. Upon legal transfer of any parcel(s) of land upon which Capacity Fee(s) have been paid, the rights stated herein shall transfer with the land. Rights hereunder shall not be able to be reserved or severed from said land during a legal transfer, and are not assignable, except as part of a legal transfer of the associate parcel(s) of land.

**Sec. 20-196. Fees Exclusive of Service Charges and Fees.**

The City of Freeport has established certain service charges and fees due for use of the Cities’ Water and Wastewater systems. The Capacity Fee(s) due hereunder shall not be in lieu of those fees, and continued connection and service with the Cities’ system(s) shall require timely payment in full of all service charges and fees.

**Sec. 20-197. Capacity Fees for Development, Methodology for Determination.**

All development activities shall be assessed a Capacity Fee based on estimated water and wastewater usage in order to amortize existing and planned improvements to the City’s utility systems. These fees shall be based upon a standard Equivalent Residential Connection (ERC) usage of 350 gallons per day (gpd) of water usage and 280 gallons per day (gpd) of wastewater usage. These units are based on and in accordance with the Florida Administrative Code (FAC) 25-30.

Capacity Fees for each full ERC shall be assessed as follows:

Water Capacity Fees:		
	Inside City Limits	Outside City Limits
¾” Water Service	\$1,050.00	\$1,312.50
1” Water Service	\$1,300.00	\$1,625.00

All service requiring greater than a 1” shall be charged at the applicable amount stated above plus the prevailing market rates for all materials and equipment required.

Wastewater Capacity Fees:		
	Inside City Limits	Outside City Limits
	\$6,655	\$8,318.75

All Capacity Fees for service outside of the municipal boundaries of the City of Freeport are charged an additional twenty-five percent (25%) surcharge.

ERC Defined: The ERC system is a unit of measurement of water and wastewater generated by various uses of land that has been proven over time to be

reasonably accurate. Figure 2.1 below provides factors to be applied to various land uses for conversion into ERCs.

1. Water ERC: The total number of ERCs is then multiplied by 350 gallons per day to determine the amount of water used by a proposed development. This system provides more accurate measurement of demand a proposed development produces on the water system. It also provides a measurement of flow generated for use in calculating water capacity fees, if such fees are desired.

2. Wastewater ERC: The total number of ERCs is then multiplied by 280 gallons per day to determine the amount of wastewater used by a proposed development. This system provides more accurate measurement of demand a proposed development produces on the wastewater system. It also provides a measurement of flow generated for use in calculating waste water capacity fees, if such fees are desired.

A. Measurement of one ERC

Water and Wastewater Capacity Fees are calculated using a utility demand variable referred to as the Equivalent Residential Connection (ERC). In accordance with the Florida Administrative Code (FAC) 25-30, one ERC equals 350 gallons per day (gpd) for water service and 280 gallons per day (gpd) for wastewater service.

For the purpose of calculating and imposing the water and sewer Capacity Fee, the “ERC Factor” for any particular connection shall be calculated using drawings and documents provided to the City of Freeport Planning Department and per the units provided below in Figure 2.1.

**FIGURE 2.1 - CITY OF FREEPORT EQUIVALENT RESIDENTIAL CONECTION  
CALCULATION TABLE**

<b><u>RESIDENTIAL PROJECTS</u></b>			
<b>ESTABLISHMENT</b>	<b>Comment</b>	<b>Unit</b>	<b>ERC Factor</b>
Single Family Home	7, 8	Per Unit	1.000
Duplex, 1 or 2 Bedrooms	6, 7	Per Unit	0.714



Duplex, 3 or more Bedrooms	7	Per Unit	1.000
Mobile Home, 1 or 2 Bedrooms	6, 7	Per Unit	0.714
Mobile Home, 3 or more Bedrooms	6, 7	Per Unit	1.000
Multi family, Efficiency < 500 SF	6, 7	Per Unit	0.500
Multi family, 1 or 2 Bedroom Units	6, 7	Per Unit	0.714
Multi family, 3 or more Bedroom Units	7	Per Unit	1.000

**NON-RESIDENTIAL PROJECTS**

<b>ESTABLISHMENT</b>	<b>Comment</b>	<b>Unit</b>	<b>ERC Factor</b>
Animal Kennels	7	Per Kennel Bay	0.114
Auditorium	7	Per Seat	0.017
Automotive Repair & Maintenance		Per Repair Bay	0.286
Bar / Cocktail Lounge / Coffee Shop	7, 11	Per Seat	0.040
Bank	7	Per 1,000 SF	0.114
Barber / Beauty Shop		Per Opr. Sta.	0.300
Bath House		Per Unit	1.000
Bakery	11	Per 100 SF	0.142
Bowling Alley		Per Lane	0.333
Car Wash		Per Wash Bay	4.000
Church	2, 7	Per Seat	0.017
Convenience Store (no gas pump)		Per 1,000 SF	0.371
Dentist Office	12	Per Dentist	0.833
Dentist Office	12	Per Wet Chair	0.667
Doctors Office (includes animal practice)		Per Physician	0.400
Drug Store		Per 1,000 SF	0.371
Dry Goods Store		Per 1,000 SF	0.143
Extended Care Facility		Per Unit	0.500
Fitness Center		Per 1,000 SF	0.886
Hotel / Motel Suite	1, 6, 7	Per Unit	0.500
Hotel / Motel Suite w/ Kitchenette	1, 6, 7	Per Unit	0.571
Hotel / Condo / 1 Bedroom	1, 6, 7	Per Unit	0.714
Hotel / Condo / 2+ Bedroom	1, 6, 7	Per Unit	1.000
Housekeeping / Janitorial		Per 1,000 SF	1.000
Ice Cream Parlor	11	Per 100 SF	0.114
Industrial Building	2, 12	Per 1,000 SF	0.500
Industrial Building	2, 12	Per Employee	0.100
Laundry		Per 1,000 SF	0.857
Laundry, Self Service		Per Machine	2.143
Meeting & Banquet Room	7, 13	Per Seat	0.023
Nursing Home		Per Bed	0.571
Office Building	3, 6, 7	Per 1,000 SF	1.000
Restaurant / Cafeteria	7, 11	Per Seat	0.063
Restaurant, 24 hour	7, 11	Per Seat	0.126
Restaurant, Fast Food (baskets / paper plates)	7, 11	Per Seat	0.040
Restroom / Changing Room / Beach Access	7	Per Unit	1.000
Retail Space	7	Per 1,000 SF	0.143
School, Elementary & Nursery		Per 1,000 SF	0.657
School, Middle & High (with showers & cafeteria areas)		Per Student	0.051
Service / Gas Station		Per Toilet Room	1.000
Add:		Per Service Bay	1.000
Add:		Per Wash Bay	4.000
Shopping Center		Per 1,000 SF	0.514
Swimming Pool	7	Per Person Capacity	0.023
Supermarket		Per 1,000 SF	0.571
Theater	7	Per Seat	0.010
Trailer Park (overnight)	6, 7	Per Space	0.214

Warehouse Space	4	Per 1,000 SF	0.086
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**Comments**

- 1) Hotels and Motels: add food service, housekeeping / janitorial, meeting & banquet rooms and self-service laundries.
- 2) Add for “food service”: Industrial water and wastewater flows for food service to be determined on a fixture unit basis per comment 14.
- 3) Office Buildings: add food service and retail space.
- 4) Warehouses: add office space, food service and retail space.
- 5) Add City of Freeport Single Family Residence Capacity Fee Fixture Value Worksheet.
- 6) Assumes building is served by a single meter “Master Meter.” Otherwise, see “Note 7” below.
- 7) City of Freeport requires a minimum of 1.000 ERC per meter.
- 8) City of Freeport Single Family Residence Capacity Fee Fixture Value Worksheet shall always take precedence on Single Family Residential projects.
- 9) All Commercial/Industrial ERC calculation results containing remainders greater than or equal to 0.500 shall be rounded up to the nearest whole number.
- 10) All Commercial/Industrial applications require a Reduced Pressure Zone (RPZ) Backflow Preventer, the size of which shall be specified by the applicant.
- 11) Seating shall include both indoor and outdoor seating. All outdoor seating shall be shown on the plans.
- 12) Connection quantity to follow the greater of the options.
- 13) If seating is not available each seat is equivalent to 15 sq. ft.
- 14) For all establishments not listed above, the total equivalent residential connection (ERC) value shall be determined by multiplying the number of fixture units, as published in the Standard Plumbing Code, by twenty-five (25), and then dividing that numerator by 350 gallons per day / ERC for water usage and 280 gallons per day / ERC for wastewater usage.

**Sec. 20-198. Annual Increase in Capacity Fee Rates.**

In addition to any and all rate increases enacted lawfully by the City of Freeport, the rates stated hereunder shall be subject to an automatic annual rate increase on October 1<sup>st</sup> of each year, beginning October 1, 2019, with said rate increase to be equal to rates contained in the Consumer Price Index (“CPI”). The CPI increase shall be based on the CPI published by the Florida Public Service Commission, unless a separate CPI is selected by super-majority vote of the City Council prior to the rate increase for a given calendar year.

**Sec. 20-199. Existing Inventories of Prepaid Fees.**

The City recognizes that at the time of enactment of the City Ordinance establishing Capacity Fees and repealing previously established connection (“tap”) and impact fees, that certain existing inventories of those repealed fees exists. In recognition of those fees, the City adopts the following policies regarding existing inventories of prepaid fees.



The City Planner, in consult with the City's professional engineers and City Attorney, shall compile the existing inventories of prepaid fees, identified by type of fee (e.g., connection ("tap"), impact, or both); the amount of fees paid and the equivalent entitlements under the then-effective City Code; the parcel(s) of land to which they are attached (if any); the present owner of the parcel(s) of land, and if no parcel(s) of land are attached, the name of the person or entity to whom the prepaid fees are associated along with a statement identifying if the fees predate the City's policy requiring all fees paid to be directly connected to a parcel of land; any and all development orders or similar approvals or authorizations associated with those fees and parcel(s) of land. Upon compilation of this list, which the City Council hereby deems to be plainly an administrative function of compiling existing records of the City, the City Planner shall present such report(s) to the Mayor, who upon consultation with the City Attorney, shall approve the inventories if they appear to have been appropriately compiled. Upon approval by the Mayor, the City Planner shall notify every person or entity to whom an existing prepaid fee inventory exists of the Mayor's determination in this regard and provide a written communication detailing such person or entity's existing inventory and their rights and obligations hereunder. In the event that the person or entity wishes to dispute the existing inventory determination by the Mayor, said person or entity shall, within ten (10) business days provide a written notice to the Mayor at City Hall, via U.S. Certified Mail, Return Receipt Requested, of that dispute, specifically detailing the nature of the dispute, the asserted discrepancy, and the inventory calculation believed to be accurate. The Mayor, City Planner, and City Attorney shall meet with the person or entity disputing the existing inventory within thirty (30) days of the date of receipt of the dispute notice, and present a recommendation to the City Council based upon that meeting related to resolution of said dispute no later than the second regularly scheduled City Council meeting following the meeting with disputing person or

entity. The City Council shall have final authority over the approval of the existing inventory determination, and shall make said determination after reviewing the recommendation presented to them and allowing the disputing person or entity and opportunity to be heard. Failure to follow the provisions herein related to this dispute process shall cause all determinations made by the Mayor to become final and binding.

**a.) Exemption From Capacity Fee(s).**

All persons or entities with existing inventories of prepaid fees shall be entitled to an exemption from the specific Capacity Fee(s) that would be due for development of the parcel(s) of land to which the specific prepaid fees are associated, provided they pay the amount of any needed, but unpaid, connection (“tap”) fee or impact fee that was in effect on the day prior to the enactment of this ordinance, together with all other service connection and usage charges, when making application for connection to the City’s system(s). The exemption provided hereunder shall only be valid for sixty (60) months from the date this Ordinance becomes effective.

In the event that any persons or entities has fully prepaid all required fees for a specific parcel or parcels of land prior to the effective date of this section, said persons shall be fully vested and shall be exempt from payment of any capacity fee required hereunder, and this exemption shall not be subject to the sixty (60) month time limitation stated herein.

**b.) Credit Against Capacity Fee(s).**

In the event that a person or entity with an existing inventory of prepaid fees has not exhausted those prepaid fees within the thirty-six (36) month exemption window provided herein, said person or entity shall then be required to pay the Capacity Fee(s) due at the time they seek issuance of a development order or similar development approval from the City, with their existing inventory of prepaid fees

being able to be used as a credit against the then-effective Capacity Fee(s). Said credits shall be system specific, and on a one-to-one basis with the method of calculating each individual fee.

**c.) Limited Exception for Certain Existing Inventories.**

The City recognizes that certain developers within the City were encouraged under past policy of the City to prepay fees in full without the need for assignment of the fees to any specific parcel(s) of land, and certain developers entered into agreements in which the City provided said fee credits as consideration for something of value given by the developer. The specific accounts will be identified in the existing inventory process outlined herein, and as those accounts have previously been grandfathered into subsequent new policies of the City of Freeport, the City Council determines that this practice should continue for these limited number of existing inventory accounts, and recognizes that no future occurrences of these will ever arise. Therefore, this ordinance shall vest with any existing prepaid inventory account that is deemed to include unassigned connection ("tap") and impact fees a one-to-one (1:1) credit for those fees against any Capacity Fee(s) due hereunder. A Resolution shall be adopted by the City Council approving those specific accounts and memorializing the intent and effect of this Ordinance on those account.

No existing inventory of prepaid fees shall be subject to the issuance of any refund, in whole or in part.

**Sec. 20-200. Allocation of Revenue Generated, Reserve Accounts.**

The City of Freeport expressly recognizes the need to allocate portions of revenue generated into a reserve account for the purpose of funding future expansions, maintenance, repair, and upgrades to the systems for which the monies are collected. Accordingly, all revenue received from collected Capacity Fees shall be allocated as follows:



a.) **Water Capacity Fees:** One hundred percent (100%) of Capacity Fee revenue will be placed into the primary operating account for the City's Water System. Upon completion of the City's annual financial audit, any revenue received that exceeds the operating budget of that fiscal year shall be deemed profit, and allocated into a reserve account for future growth of the water system. This reserve account will serve both the Freeport and North Bay Water Systems.

b.) **Wastewater Capacity Fees:** Twenty-five percent (25%) of Capacity Fee revenue will be placed into the primary operating account for the City's Wastewater System, and the remaining seventy-five percent (75%) shall be placed into a reserve account for future growth of the wastewater system.

**Sec. 20-201 through Sec. 20-220. Reserved.**

**Section III: Authority and Purpose.** This ordinance is adopted pursuant to the authority granted to municipalities by Chapter 166, Florida Statutes, together with authority granted by §163.31801 Fla. Stat. The purpose hereof shall be to amend the City's Municipal Code to eliminate impact and tap fees and provide for Capacity Fees, and to implement those changes as described herein.

**Section IV: Incorporation Into Municipal Code.** This ordinance shall be incorporated into the City of Freeport's Municipal Code and any section or paragraph number or letter and any heading may be changed or modified as necessary to effectuate the foregoing.


**Section V: Conflicts.** Special Acts of the Florida Legislature applicable to the incorporated area of the City of Freeport, City Ordinances and City Resolutions, or parts, thereof, in conflict with the provisions of this ordinance are hereby superseded by this ordinance to the extent of such conflict.


**Section VI: Severability.** Each separate provision of this ordinance is deemed independent of all other provisions herein so that if any portion or provision

of this ordinance is declared invalid, all other provisions thereof shall remain valid and enforceable.

**Section VII: Effective Date.** This ordinance having been adopted by the City Council as of the date of January 31, 2019, and submitted to the Mayor for his signature thereon, and having been given a set effective date, shall hereby become effective on February 1, 2019.


**Adopted on this 31<sup>st</sup> day of January, 2019, by the City Council of the City of Freeport, Florida, and to become effective on February 1, 2019.**

By:   
Sidney Russell Barley  
Mayor of the City of Freeport

**ATTEST:**  
  
Rebecca L. Podraza  
City Clerk

[SEAL]

**Approved as to Form and Legal Sufficiency:**

  
Clay B. Adkinson  
City Attorney