ORDINANCE NO. ORD-2021-04

AN ORDINANCE OF THE CITY OF MULBERRY, FLORIDA, RELATING TO UTILITIES; AMENDING CHAPTER 19, SECTIONS 19-16, 19-29, 19-37, 19-86, AND 19-155 OF THE CODE OF ORDINANCES OF THE CITY OF MULBERRY, FLORIDA; PROVIDING FOR AN INCREASE IN THE RATES, FEES AND CHARGES OF THE CITY FOR UTILITY SERVICES, INCLUDING CAPACITY FEES, TO ADJUST FOR INFLATION FOR RELEVANT PERIODS AND CONFORMING THE CODE OF ORDINANCES OF THE CITY OF MULBERRY; PROVIDING A PROCEDURE FOR ADJUSTMENT TO THE SCHEDULE OF RATES, FEES AND CHARGES OF THE CITY FOR UTILITY SERVICES BY RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MULBERRY; CORRECTING SCRIVENER'S ERRORS IN SECTIONS 19-29 AND 19-37 OF THE CODE OF ORDINANCES OF THE CITY OF MULBERRY; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND THE ADMINSTRATIVE CORRECTION OF SCRIVENER'S ERRORS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 19-16 of the *Code of Ordinances of the City of Mulberry, Florida* permits the City of Mulberry to calculate an annual adjustment in the City's utility rates, fees and charges to account for inflation and increases in the costs of materials and supplies; and

WHEREAS, the general schedule of basic rates, fees and charges for City utility services were last adjusted by the City Commission of the City of Mulberry in June 2015 and capacity fees were last adjusted by the Commission in July 2020; and

WHEREAS, the City Commission has given careful thought to its current utility rates and has determined that the existing rates, fees, and charges do not adequately cover the operation, maintenance and expected rise in demand on its existing utility services; and

WHEREAS, to promote and encourage water conservation and best management practices regarding the consumption and use of water resources, as well as the fiscal integrity of the City's utility systems in an equitable and just way, the City Commission has determined it necessary and desirable to revise and update the general schedule of utility rates, fees, and charges; and

WHEREAS, the City Commission desires to update its general schedule of basic rates, fees and charges for City utility services to account for inflation and increases in the costs of materials and supplies, by use of the cumulative increase in the Gross Domestic Product Implicit Price Deflator Index, as determined by the Florida Public Service Commission in Order No. PSC-2020-0493-PAA-WS, Docket No. 2020005-WS dated December 14, 2020, for the period of 2015 through 2021, a copy of which is incorporated herein by reference; and

WHEREAS, it is the desire of the City Commission to conform the *Code of*

Ordinances of the City of Mulberry to the revised and updated schedule of utility rates, fees and charges established in this Ordinance, and to permit further adjustment to the same by resolution, if necessary; and

WHEREAS, it is the further desire of the City Commission of the City of Mulberry to modify the procedure in the § 19-16 of the *Code of Ordinances of the City of Mulberry* and permit the City Commission to periodically consider an adjustment to the schedule of utility rates, fees and charges by resolution after proper notice; and

WHEREAS, all required notices to utility customers have or will be provided in accordance with general Florida law prior to the public meeting at which this Ordinance is adopted; and

WHEREAS, it is the intent of the City Commission that the amendments to the schedule of rates, fees and charges in Sections 19-29, 19-37 and 19-86 take effect on October 1, 2021 and amendments to capacity fees in Section 19-155 take effect on November 15, 2021; **NOW, THEREFORE:**

Be it enacted by the city commission of the City of Mulberry, Florida:

Section 1. **Amendment to Sections 19-16, 19-29, 19-37, 19-86 and 19-155 of the Code of Ordinances of the City of Mulberry, Florida; Adjustment to the Schedule of Basic Rates, Fees and Charges for Utility Services to Account for Inflation for the Period of 2015-2021; Adjustment to Capacity Fees to Account for Inflation for the Period of 2020-2021.**

Based on the recitals to this Ordinance, Sections 19-16, 19-29, 19-37, 19-86 and 19-155 of the *Code of Ordinances of the City of Mulberry, Florida* are amended as follows (deletions are reflected by ~~strikethrough~~ text; additions are reflected by underlined text):

Sec. 19-16. - ~~Annual adjustments~~ Adjustments for inflation.

(a) *Basis for adjustment.* ~~Each year on or after March 1,~~ From time to time the city manager shall direct staff to calculate an increase in one, some or all of the utility rates, fees and charges assessed in this Chapter by application of ~~an appropriate price inflator. The staff may by default utilize the PSC's annual~~ the annual Florida Public Service Commission Price Index for each year since the city commission last adjusted the rate, fee or charge, ~~"GDP Implicit Price Deflator Index" (hereinafter "PSC Index");~~ which shall be a presumptively appropriate, just and equitable ~~price adjustment~~ index to account for inflation and the overall increase in costs to the city for materials. ~~as applied to accounts determined to be appropriate by a professional rate consultant. Other price inflator or deflator indexes may be used as deemed appropriate, with adequate justification provided.~~

(b) *Procedure.* ~~For the initial indexing, the city manager shall utilize the services of a rate consultant to establish a worksheet for proper future application of the PSC index. If~~

~~appropriate, the city manager may utilize a rate consultant to establish a worksheet(s) for use of other indexes, but should spend no more than $1,000.00 to do so.~~ Revisions proposed by authority of this section shall be submitted to the city commission for consideration. Notice to the utility customers shall be given pursuant to F.S. § 180.136, and ~~Approval by~~ approval by resolution of the commission at a public hearing shall be required before any proposed revision takes effect. If a resolution revising one, some or all of the utility rates, fees and charges in this Chapter is adopted by the city commission, the schedule and list of current rates, fees and charges kept on file in the city clerk's office shall be updated accordingly. ~~as follows:~~

~~(1) Notice to the utility consumers if required by section F.S. § 180.136.~~

~~(2) Supermajority vote (4/1) in opposition to indexing must be made to defeat the automatic implementation of the PSC Index adjustment and failing such defeat shall be deemed approved for immediate implementation by authority of this section, and shall be implemented as soon after such public hearing as reasonable.~~

~~(3) A majority vote of the commission shall be required to approve any other index sought to be applied by staff.~~

(c) Nothing in this section shall prevent the city commission from revising the schedule of rates, fees and charges in this Chapter by ordinance or in response to a rate analysis or study.

Sec. 19-29. - Rates.

The water service rates in the City of Mulberry, together with the current method of water rate calculation, shall be on file in the city clerk's office. The rates and method of calculation as of ~~the adoption of this section~~ October 1, 2021 are set forth below. However, the city reserves the right to choose the method of calculation by charging for "per 1,000 gallons" usage or "per 100 gallons" of usage, whichever is deemed in the best interest of the city and its residents.

(1) *Water—Residential*: Minimum (base) rate is ~~$5.80~~ $8.61. In addition to the base rate, charges for water shall be:

a. ~~$2.53~~ $3.76 per thousand for 0—5,000 gallons.

b. ~~$3.16~~ $4.70 per thousand for 5,001—8,000 gallons.

c. ~~$3.95~~ $5.87 per thousand for above 8,000 gallons.

Water—Other than residential: Minimum rates shall be ~~$16.50~~ $24.46 plus all gallonage charges for water as set forth above for residential usage.

(2) *Master meters*: Minimum rates shall be ~~$5.80~~ $8.61 times the number of Residential units being served, and ~~$16.50~~ $24.46 times the number of commercial units being served.

Residential users defined: One family dwellings having one water meter, or duplex units with separate water meters for each unit.

(3) *Temporary meters and backflow devices*: Water rates shall be same as "other than residential" along with an additional monthly equipment repair and replacement ("R & R") charge as follows:

5/8 " x ¾" $15.00

1" $20.00

1.5" $25.00

2" $25.00

3" $30.00

4" and above $50.00

Temporary meters defined; ~~prohibtion~~ prohibition on tampering. Temporary meters are meters set by the city as a courtesy for construction projects or other temporary uses approved by the director, where on onsite water is needed on a temporary basis. Any alteration including without limitation ~~movment~~ movement of such equipment by any person other than city employees shall be tampering as prohibited by this Code. The R & R charge for such meters is for reasonable wear and tear, and shall be in addition to charges for any visible damage to the meter and/or backflow device requiring repair before the next use, or which otherwise affects the utility of the device. Except for projects that have executed an annexation agreement for the property where the temporary water is used, outside surcharges shall apply to temporary meter charges. The city reserves the right to remove such meters if it is determined that the meters are not being reasonably used, are misused, or create a security risk.

Residential and commercial connections. Outside the municipal boundaries—a 25 percent surcharge will be added to the rates and charges.

Sec. 19-37. - Irrigation meters.

(a) Charges for irrigation meters and water together shall be kept on file in the city clerk's office and, as of October 1, 2021, shall be as follows:

~~$5.80~~ $8.61 for residential minimum (base) rate, ~~$16.50~~ $24.46 for nonresidential minimum (base) rate plus all charges for water usage as set forth in section 19-29 ~~subsection 19-29(a)~~ herein.

(b) Connection fee.

There shall be a separate charge in the amount set forth in section 19-36 for all irrigation meters.

Sec. 19-86. - Sewer rates.

(a) The monthly rates and charges for sewer services furnished by the city shall be as on file in the city clerk's office. The rates effective as of ~~the passage of this section~~ October 1, 2021 shall be:

(1) Residential ~~Twenty-six dollars and forty cents~~ $39.13 base rate charge plus an additional ~~$2.31~~ $3.44 per thousand gallons of water used, up to a maximum of 10,000 gallons per month.

(2) Commercial and master meters (including schools, churches, any meter serving two or more residential units, and/or businesses including home based occupations and rooming houses) ~~$27.50~~ $40.76 base rate charge plus an additional ~~$2.70~~ $4.01 per thousand gallons used.

(b) The rates will not apply where an irrigation system or water usage does not return to the wastewater system, provided they are on a separate meter.

(c) Sewer service outside municipal limits will be surcharged 25 percent in addition to regular charges assessed herein.

Sec. 19-155. - Fees and charges.

(a) *Monthly service rates and charges.*

(1) *Rates.* Water and wastewater rates, charges and deposits not specifically established in this article may be established by resolution of the board of commissioners, and shall be on file in the city clerk's office. Rates, fees and charges already in existence and not specifically established in this article shall continue in effect until such time as the commission modifies them by resolution.

(2) *Liability for payment for services.*

a. All consumers shall be responsible for charges for water flowing through the meter designated for their water use, and all wastewater charges derived from that water use, if applicable. No service shall be provided to customers who are delinquent in the payment of any rates fees, or charges. Consumers are responsible for terminating their service account with the city when ownership of the service location has been transferred to others.

b. The city shall not be responsible for leaks on private property or in the plumbing system on the consumer's side of the meter assembly.

(3) *Payment for services.* The rules and regulation shall establish the procedure and deadlines for payment for services, delinquent accounts.

(b) *Capacity fees.*

(1) *Policy; calculation.* A capacity fee shall be paid by each applicant to reserve capacity for the applicant's use as otherwise provided herein. Capacity fees shall be uniform, and based upon the projected costs of replacing the potable water supply and treatment or wastewater treatment plant and disposal facility capacity used or projected to be used by the consumer. An individual applicant's capacity fees shall be based upon the anticipated average daily water consumption and/or wastewater flow contribution for the type of development or establishment requesting or expanding service to its project. When existing structures connected to the system will require an increased water supply and/or sewage capacity, additional capacity fees shall be charged based upon the anticipated increase in flow resulting from the new demand. When existing structures connected to the system use a greater water supply and/or sewage capacity than they were allocated, additional capacity fees shall be charged based upon the increased flow resulting from the additional usage.

(2) The amount of additional capacity fees charged for the additional usage shall be based on the average daily water usage and/or sewage treated for the most recent 3-month period. All additional capacity fees shall be paid at the rates in effect at time of final connection of the utility system to the consumer service assembly.

(c) *Reservation of capacity.* Reservation of capacity shall only be accomplished by service agreement. The capacity fee paid shall be in exchange for a theoretical reservation of the capacity required for the applicant's use. There shall be no refund of the capacity fee regardless of the amount used. The city must approve any transfer of reserved capacity. The applicant cannot transfer the reserved capacity except in a transfer of the whole parcel of property or project for which service was initially requested.

(1) *Disposition of unused reserved capacity.* The reservation of unused capacity remains open for the shorter of the date that service is commenced at the applicant's property (not including construction water service), or a three-year period. All capacity remaining unused for a period of three or more years is subject to resale to other applicants. The applicant's future capacity needs will then be subject to the availability of future capacity.

(d) *Capacity fee amount.*

(1) *In-city fees.*

a. The potable water capacity fee for applicants connecting within the city shall be ~~$2,530.00~~ $2,559.60 per ERC.

b. The wastewater capacity fee for applicants connecting within the city shall be ~~$4,394.00~~ $4,445.41 per ERC.

(2) *Outside of city fees.*

a. The potable water capacity fee for applicants connecting outside the city shall be ~~$3,162.00~~ $3,199.00 per ERC.

b. The wastewater capacity fee for applicants connecting outside the city shall be ~~$5,492.00~~ $5,556.26 per ERC.

(3) The board of city commissioners may choose to amend these capacity fees by resolution of the board as provided for in Section 19-164 of this code or as adopted in compliance with general law.

(e) *Capacity fees for industrial or abnormal strength wastewater.* If the applicant's projected use of his property indicates a reasonable likelihood of industrial, unusual, or abnormal strength wastewater flows as provided in the city's industrial wastewater pretreatment ordinance, the wastewater capacity fees may be increased to reflect additional treatment or special concerns. In no event, however, shall any payment of additional capacity fees create any obligation on the city to continue to accept flows from the consumer in the event that the consumer violates any ordinances or otherwise discharges flows that create pass through or interference as defined herein or in any state of federal laws.

(f) *Capacity fee use restricted.*

(1) *Enterprise funds.* The city shall maintain two separate and distinct enterprise funds for the deposit of capacity fees. One water capacity fee fund strictly for the deposit of water capacity fees, and one wastewater capacity fee fund strictly for the deposit of wastewater capacity fees.

(2) Wastewater capacity fees may only be expended for planning, construction and professional services used for development of new wastewater capacity, land for new capacity, or to pay debt service for the financing of the new facilities.

(3) Water capacity fees may only be expended for planning, construction and

professional services used for development of new potable water treatment plant supply and capacity, emergency major repairs, land for new capacity, and to pay debt service for the financing of the new facilities or emergency major repairs.

(g) *Disposition of reserved capacity for existing structures left idle for excessive time.* Capacity reservation for structures which have been connected to the utility system but which remain unused and, therefore, pay no utility bills for a period of three or more years, shall expire at the end of the three-year period, and may be sold to other applicants for service. The property owner of the structure with the expired capacity shall be required to pay the city's current water and/or wastewater capacity fees pursuant to this article prior to any re-initiation of that customer service.

(h) *Calculation methods for capacity fees; true-up.* To determine the necessary allocation of capacity based on anticipated average daily water consumption and/or wastewater flow contribution for the type of development or establishment, the city may either:

(1) require the applicant to furnish an estimate the number of water equivalent residential connections and/or wastewater equivalent residential connections to be used based on the definitions in this Article and the general type of the proposed development or establishment requesting or expanding utility service; or

(2) use the general estimates of the number water equivalent residential connections and wastewater equivalent residential connections based on the applicant's requested water meter size as shown in Table 19-155.

As provided for in paragraph (b)(2) of this section, at any time after three months of service, if the city determines that a customer's actual use of water supply and/or sewage capacity is greater than the customer's allocation of capacity based on the amount of capacity fees paid, additional capacity fees shall be charged based upon the increased flows of water and/or wastewater resulting from the additional usage.

Section 2. Conflicts.

All ordinances or parts of ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

Section 3. Severability.

If any section or portion of a section of this Ordinance proves to be invalid, unlawful or unconstitutional, it shall not be held to invalidate or impair the validity, force or effect of any other section or part of this Ordinance.

Section 4. Codification; Administrative Correction of Scrivener's Errors.

It is the intent of the City Commission that the provisions of Section 1 of this Ordinance shall be codified and become and be made a part of the *Code of Ordinances of the City of Mulberry*. The text of Section 1 of this Ordinance may be renumbered or relettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word. The implementing sections of this Ordinance, Sections 2, 3, 4 and 5 shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance. Regardless of whether such inclusion in such codes is accomplished, sections of this ordinance may be renumbered or relettered and the correction of typographical or scrivener's errors which do not affect the intent may be authorized by the City Manager or his or her designee, without need of public hearing, by filing a corrected or recodified copy of same with the City Clerk.

Section 5. Effective Date.

This Ordinance shall become effective October 1, 2021. Adjustments to water and wastewater capacity fees that are authorized herein shall not take effect until November 15, 2021, which is 90 days from the date of this Ordinance's adoption on second reading and public hearing. After the date of adoption of this Ordinance on second reading and public hearing, the City Manager is directed to publish this Ordinance and a notice of the impending increase in water and wastewater capacity fees in a prominent location on the City of Mulberry's website and in a conspicuous location at City Hall.

INTRODUCED AND PASSED on First Reading the 3rd day of August, 2021.

PASSED AND DULY ADOPTED, on Second Reading with a quorum present and voting, by the City Commission of Mulberry, Florida, this 17th day of August, 2021.

CITY OF MULBERRY, FLORIDA

Mayor George H. Hatch

Attest:

Sharon Lauther, City Clerk

Approved as to Form:

Frederick J. Murphy, Jr. City Attorney