

ORDINANCE NO. 165, 2018  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING SECTIONS 26-120 AND 26-283 OF THE CODE OF THE  
CITY OF FORT COLLINS TO AUTHORIZE THE UTILITIES EXECUTIVE  
DIRECTOR TO WAIVE WATER PLANT INVESTMENT FEES AND  
SEWERPLANTINVESTMENT FEES IN LIMITED CIRCUMSTANCES

WHEREAS, Chapter 26 of the City Code prohibits changes to property served by the City water and wastewater utilities that would significantly affect the nature or quantity of use, including but not limited to a change of use from residential to nonresidential without approval and payment of water plant investment fees (WPIFs) (Section 26-120(c)) or sewer plant investment fees (SPIFs) (Section 26-283(c)); and

WHEREAS, Chapter 26 of the City Code does not include provisions that expressly permit the Utilities Executive Director to waive WPIFs or SPIFs in circumstances where a change of use from residential to nonresidential has occurred in the past and no WPIF or SPIF appears to have been charged by the respective utility based on a review of water service permits, sewer connection permits and/or building permits; and

WHEREAS, Chapter 26 of the City Code does include provisions that expressly permit the Utilities Executive Director to waive WPIFs and SPIFs in other limited circumstances and contains provisions that might arguably be read to include authority to waive WPIFs and SPIFs but lack clarity; and

WHEREAS, staff recommends that the Utilities Executive Director's authority to grant a waiver be extended to circumstances where a WPIF and/or SPIF has not been charged in connection with a previously known change in use that occurred more than two (2) years before a customer requests a waiver and the failure to charge a WPIF and/or SPIF is likely the result of error or omission on the part of the utility for which the applicant is not culpable; and

WHEREAS, the proposed extension of the Utilities Executive Director's authority to issue such waiver is structured to apply in limited circumstances where the equities warrant the exercise of discretion to waive a WPIF and/or SPIF that may have been due in connection with a past event where such a waiver will not adversely affect the capacity of the utility to serve its customers and other stated requirements are met; and

WHEREAS, providing authority for such a limited waiver of WPIF and/or SPIF is in the best interests of the City and benefits utility ratepayers by creating a mechanism to deal fairly with past unpaid amount, the collection or litigation of which may otherwise create additional costs to the utilities.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 26-120 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 26-120. - Water plant investment fees.**

(a) Any applicant desiring to connect to the water utility shall pay the utility a water plant investment fee (WPIF) pursuant to the schedule of fees prescribed by § 26-128 in addition to any other connection fees prescribed herein. Except to the extent that the deferral of all or any portion of such payment has been approved by the City Council by resolution or except as provided in Subsection (f) of this Section, this fee shall be paid in full at the time the water service connection permit is issued. If there is an increase in plant investment fee rates between the time of application for a water service permit and the actual payment of fees, the fee rates in effect at the time of payment shall apply.

(b) The WPIF shall be based on and used for growth-related capital expansion costs of water supply, storage, transmission, treatment, distribution and administrative facilities that are reasonably related to the overall cost of and required in providing water services to serve new development. The fee shall vary with the number of dwelling units and the lot area served for residential users and with the size of the water meter for nonresidential users. The parameters and rates shall be reviewed by the City Manager annually and fees shall be presented to the City Council for approval no less frequently than biennially.

(c) No user of City water shall make any changes or additions to the property served that would significantly affect the nature or quantity of the use of water without first obtaining a new water service permit from the utility and paying the WPIF based on the new use. Such changes include without limitation the resumption of service by replacement of an abandoned service line, an increase in the size of the water meter, an increase in the number of dwelling units or the lot area to be served and a change from residential to nonresidential use.

(d) In the case where an existing service is being changed or replaced, the utility will credit the user an amount equal to the WPIF that would have been charged for the service before the change or addition, but if the credit so determined is less than the amount previously paid for a WPIF, the amount actually paid shall be allowed as the credit. No cash refund shall be paid to any water user whose allowable credit exceeds the new WPIF nor to any water user who obtains permission to decrease demand for service. If the existing service tap is less than three-fourths ( $\frac{3}{4}$ ) inch in diameter, the customer is credited for a three-fourths-inch tap or meter. The credits prescribed by this Subsection are not transferable. They shall apply only to the property served by the existing water service line and only to WPIF's owed to the utility and not to other utility fees or charges.

(e) Notwithstanding the provisions of Subsections (a) and (c) of this Section the Utilities Executive Director may waive payment of the WPIF if the Utilities Executive Director determines that the request will not adversely affect the capacity of the water utility to treat and deliver water for its users, and that at least one of the following sets of requirements applies. Under either set of requirements set forth in Subsections (1) and (2) below, the Utilities Executive Director shall have the authority to discontinue the temporary water service if the capacity of the water utility to treat and deliver water to its users is adversely affected.

(1) The applicant is a customer of the water utility and shall only use the water connection as a source of irrigation water for the establishment of new native vegetation. For the purposes of this requirement, native vegetation shall be as defined in the City's Land Use Code or, if native vegetation is no longer defined in the City's Land Use Code, the Utilities Executive Director shall determine whether the vegetation to be irrigated is native vegetation for the purposes of this Subsection (e) following consultation with relevant City departments. The approved period of such connection shall not exceed a period of three (3) consecutive irrigation seasons. The applicant shall physically separate and abandon the water connection from the City's water distribution system at the end of the approved period of such connection and shall, before any such connection is made, escrow funds with the Utility to complete such disconnection and abandonment, with the amount of the funds to be determined by the Utilities Executive Director based on the estimated direct costs to complete such disconnection and abandonment plus fifteen (15) percent for indirect costs.

(2) The applicant is a City service area, department or division, or the Poudre Fire Authority, no new physical connection to the City's water system is required, water use under this Subsection (e) would not occur during the period of May 1 through September 30, and the Utilities Executive Director determines that the applicant's water use under this Subsection (e) during such time period is necessary because the applicant's regular water supply has become unavailable during that period and the unavailability of the applicant's regular water supply will result in measurable economic damage to the applicant.

(3) The applicant is a customer of the water utility who, after notifying the water utility of a proposed change in use from residential to nonresidential use, was not charged a WPIF by the utility for said change; provided, however, that:

a. The customer first requests a waiver of the uncharged WPIF, in writing, more than two (2) years after the change in use was noted on a new water service permit or building permit: and

b. The Utilities Executive Director, in writing, finds that and sets forth the reasons why the failure to charge the WPIF by the utility is likely the result of error or omission on the part of the utility for which the customer is not culpable; and

c. No waiver shall be authorized in connection with a change in use associated with any other alteration of the service, including the resumption of service by

replacement of an abandoned service line, an increase in the size of the water meter, or an increase in the number of dwelling units or the lot area to be served.

(f) In circumstances where a user has underpaid a WPIF as a result of a miscalculation of the user's WPIF, and the utility requires the user to pay the utility all or any portion of the difference between the corrected and miscalculated amounts of the WPIF, the Utilities Executive Director may allow the user to pay such amount over time under such reasonable terms and conditions as are approved by the Utilities Executive Director.

(g) No person shall knowingly provide the water utility with false, inaccurate or fraudulent information to be relied upon by the utility in calculating a user's WPIF.

Section 3. That Section 26-283 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 26-283. - Sewer plant investment fees (SPIF); basis.**

(a) An applicant desiring to connect to the wastewater utility shall pay the utility a sewer plant investment fee (SPIF) as prescribed in § 26-284 of this Article in addition to any other connection fee or charge imposed by this Article. Except to the extent that the deferral of all or any portion of such payment has been approved by the City Council by resolution or except as provided in either Subsection (e) or Subsection (g) of this Section, this fee shall be paid in full at the time the sewer connection permit is issued. In the case of an increase in SPIF rates between the time of application for the permit and the applicant's actual payment of sewer connection charges, the rates in effect on the date of payment shall apply.

(b) The SPIF shall be based on and used for growth-related capital expansion costs of wastewater collection, transmission, treatment and administrative facilities that are reasonably related to the overall cost of and required in providing wastewater services to serve new development. The fee shall vary with the number of dwelling units for residential users. For nonresidential users, the fee shall be based on: (1) quantity of discharge that may be determined by size of water meter or other means of accurately measuring or calculating flow quantity as approved by the Utilities Executive Director; and (2) the level of wastewater concentration of organic and solid materials. The parameters and rates shall be reviewed by the City Manager annually and fees shall be presented to the City Council for approval no less frequently than biennially.

(c) No wastewater utility user shall make any changes or additions to the property served or operations at the property that would significantly affect the nature or quantity of the wastewater discharged and/or cause a change in the category of use without first obtaining the approval of the Utilities Executive Director and paying a SPIF based on the altered service. Such changes include without limitation the replacement of an abandoned service line, an increase in the water or sewer tap size, an increase in the number of dwelling units, a change from residential use to nonresidential use or a modification of production by a nonresidential user.

(d) In the case where an existing service is being changed or replaced, the utility will credit the user an amount equal to the SPIF that would have been charged for the service before the change or addition, but if the credit so determined is less than the amount previously paid for a SPIF, the amount actually paid shall be allowed as the credit. No cash refund shall be paid to any user whose allowable credit exceeds the new SPIF, nor to any user who obtains permission to decrease the level of service. The credits prescribed by this Subsection are not transferable. The credits apply only to the property served by the existing private sewer and only to SPIF's owed to the utility and not to other utility fees or charges.

(e) Notwithstanding the provisions of Subsections (a) and (c) of this Section, the Utilities Executive Director may waive payment of the SPIF if the Utilities Executive Director determines that sufficient excess wastewater system capacity is available, that the request will not adversely affect the capacity of the utility to treat wastewater for its users, and that the following requirements are satisfied:

(1) The applicant is a customer of the wastewater utility who, after notifying the wastewater utility of a proposed change in use from residential to nonresidential use, was not charged a SPIF by the utility in connection for said a change; and

a. The customer first requests a waiver of the uncharged SPIF, in writing, more than two (2) years after the change in use was noted on a new water sewer connection permit or building permit: and

b. The Utilities Executive Director, in writing, finds that and sets forth the reasons why the failure to charge the SPIF by the utility is likely a result of error or omission on the part of the utility for which the customer is not culpable; and

c. the waiver does not involve SPIFs due in connection with a change in use associated with any other alteration of the service, including the replacement of an abandoned service line, an increase in the water or sewer tap size, an increase in the number of dwelling units, or a modification of production by a nonresidential user.

(f) In circumstances where a user has underpaid a SPIF as a result of a miscalculation of the user's SPIF, and the utility requires the user to pay the utility all or any portion of the difference between the corrected and miscalculated amounts of the SPIF, the Utilities Executive Director may allow the user to pay such amount over time under such reasonable terms and conditions as are approved by the Utilities Executive Director.

(g) No person shall knowingly provide the wastewater utility with false, inaccurate or fraudulent information to be relied upon by the utility in calculating a user's SPIF.

(h) If the Utilities Executive Director determines that sufficient excess wastewater system capacity is available, and if a customer requires temporary service for a temporary use or condition not exceeding three (3) years in duration, the Utilities Executive Director may arrange for the provision of temporary wastewater service through a special services agreement in the manner prescribed in § 26-290 of this Article.

(1) If the full SPIF due in connection with any such service is not paid prior to connection or deferred as provided in Subsection (a) above, the associated special services agreement shall require the customer to pay a temporary wastewater plant capacity charge each month, which charge shall be one-twelfth ( $1/12$ ) of eight (8) percent of the calculated SPIF charge, based on BOD, TSS and monthly discharge volume in gallons. These payments will not be credited against any SPIF amount due in connection with service to the customer for any subsequent temporary or permanent use or condition, regardless of whether the permanent use or condition is the same as, or comparable to, the temporary use or condition.

(2) The customer shall also be required to pay any and all other service and connection fees or charges associated with the temporary wastewater service as generally imposed by this Article, including, but not limited to, monthly service charges for discharged wastewater. If charges for temporary wastewater service are based upon estimates of the quantity or characteristics of the wastewater discharged and the actual quantity or characteristics are subsequently measured and found to have exceeded the discharge limits for which any fees or charges have been paid, the customer shall be required to pay such additional temporary wastewater plant capacity charges, monthly charges or other charges required in light of the underestimate of discharged flows.

(3) Except as set forth herein, all requirements for wastewater discharges in this Article, including, but not limited to, industrial pretreatment and other regulatory requirements, shall apply to temporary wastewater service.

Introduced, considered favorably on first reading, and ordered published this 4th day of December, A.D. 2018, and to be presented for final passage on the 18th day of December, A.D. 2018.

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Mayor

ATTEST:

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City Clerk

Passed and adopted on final reading on the 18th day of December, A.D. 2018.

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Mayor

ATTEST:

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City Clerk