

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CODE OF THE CITY OF FORT WORTH (2015), AS AMENDED, CHAPTER 35 “WATER AND SEWERS,” ARTICLE III, “CHARGES,” AMENDING SECTION 35-10, TO RETITLE THE SECTION AND PROVIDE CLARIFICATIONS FOR USAGE AND AMEND SECTION 35-63 TO RETITLE THE SECTION AND ADD A PROCEDURE FOR NOTIFICATION AND PLACEMENT OF LIENS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH:

SECTION 1.

That Chapter 35 of the Code of the City of Fort Worth (2015), Article III, “Charges,” Section 35-10 be amended to retitle the section to replace the word “leakage” with “usage” and clarify that the property owner and tenants are responsible for all water usage and arrears for past usage, to read as follows:

Sec. 35-10 LIABILITY FOR USAGE; DISCONTINUANCE OF SERVICE FOR FAILURE TO PAY CLAIMS.

All property owners, their agents and tenants shall be held responsible for all water use including loss of water due to leakage in pipes or plumbing inside the discharge side of the meter or on their property, and if this water is not paid for according to the rates provided in this chapter when payment therefor becomes due, the water service shall be discontinued by the city and not turned on again until all claims are paid. If there is any change in tenant as customer on rented property and there exist, at that time, charges in arrears for past usage, the property owner or tenant shall be held to account for payment for such usage before service will be extended and water furnished to any new tenant. If any customer shall be indebted to the city for water or sewerage service furnished or for leakage or repairs on any account at his or her then or previous place of consumption, service shall be discontinued until payment in full is made.

SECTION 2.

That Chapter 35 of the Code of the City of Fort Worth (2015), Article III, “Charges,” Section 35-63 be amended to retitle the section to “Payable and Delinquent Accounts” and to add subsections (b) through (k) to provide a procedure for notice and placement of water lien to read as follows:

Sec. 35-63 PAYABLE AND DELINQUENT ACCOUNTS.

- (a) Bills for water and service charges shall become due and payable to the city, in person, over the phone, by mail, online or as otherwise indicated on the customer's bill within 21 days from the date of the bill. If a customer has not paid the bill in full within 24 days of the date of the bill, a late charge shall be assessed against all unpaid current charges on the bill according to the specified in § 35-56(l).
- (b) The owner, occupant or tenant of any premises receiving services shall be responsible for the payment of the fees incurred for such premises for services under this article.
- (c) When an account becomes delinquent, the director may send the customer a second bill. If the account is not brought current within ten days of the date of the second billing, the city may suspend all city-provided utility services until payment is made in full.
- (d) After the city has terminated a customer's service for nonpayment or if the account becomes delinquent, the director may file a lien against the property that received the services in the amount of the delinquent fee. A lien may not be filed against any property that is protected as a homestead by the Texas Constitution.
- (e) A notice of lien authorized by this section shall be filed in the real property records in the county in which such property is located. The lien shall contain a legal description of the property and the service account number.
- (f) The director may add the amount of delinquent charges, including penalties, filing fees, interest and collection costs, if any, incurred upon the property as of the date of execution of the lien. Should additional delinquent charges be incurred subsequent to the date of the original lien's execution, a correction lien may be executed and filed fixing the additional delinquent charges. The correction lien, when filed of record, shall relate back to the date of recording of the original lien and shall become a part of the original lien.
- (g) A lien filed pursuant to this section is inferior to a bona fide mortgage lien that is recorded before the recording of the city's lien. The city's lien is superior to all other liens including previously recorded judgment liens and any liens recorded after the city's lien.
- (h) The authority of the director to impose liens on real property for nonpayment of service fees does not apply to property which has been properly declared rental property pursuant to this subsection.
 - (1) The owner of any property which is rented to another person may declare such property to be rental property not subject to lien if the service account is in the name of the tenant.
 - (2) The declaration shall be in writing, specifically naming the service address, declaring such to be rental property, and declaring that the owner does not wish such property to be used as security for services provided by the city.
 - (3) The declaration of rental property shall be valid only so long as the person making the declaration owns the property, and rents the property to another, and

the tenant has services provided in his or her name. An owner may revoke a declaration at any time by notifying the city in writing.

- (i) A lien shall not apply to the services provided to the tenant prior to the effective date of this section, nor shall it apply to services provided a tenant in the tenant's name after a declaration is filed by the property owner.
- (j) A lien may be appealed, modified and released as follows.
 - (1) Within 30 days after filing a lien pursuant to this section, the director shall give notice to the property owner and the account holder that such a lien has been filed on the property. Notice shall be delivered by certified mail, return receipt requested.
 - (2) Within 30 days after receiving notice, the property owner may appeal the filing of the lien to the director in writing. The director may hold a hearing on the matter or may make a decision based upon the property owners written appeal.
 - (3) The director shall authorize the release of the lien if the property owner shows by a preponderance of the evidence that no bill for services to the property is owing or that at the time the lien was filed the property was protected as a homestead under the Texas Constitution.
 - (4) The director may modify or release the lien to reflect the true amount of delinquency in payment for services to the property if the owner proves by a preponderance of the evidence that a lesser bill is owing than that alleged by the lien.
 - (5) The person last listed on the county tax rolls as being the owner of the subject property shall be presumed to be the owner for purposes of this subsection (j), and the address listed for the owner on the county tax records shall be presumed to be the address of the owner.
 - (6) Whenever a person pays all interest, principal, and filing fees of a lien validly filed pursuant to this section, the director shall execute a release of that lien and surrender it to the paying party. The city shall not be responsible for filing the release.
- (k) The city attorney, at the request of the director, may file suit to judicially foreclose the lien in a state court of competent jurisdiction.

SECTION 3.

That this ordinance shall be cumulative of all other ordinances of the City of Fort Worth, Texas, and shall not repeal any of the provisions of such ordinances, except in those instances where provisions of such ordinances are in direct conflict with the provisions of this ordinance.

SECTION 4.

That all rights or remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the City Code, or any amendments thereto that have accrued at the time of the effective date of this ordinance; and as to such accrued violations, and all pending litigation,

both civil and criminal, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 5.

That it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared void, ineffective or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such voidness, ineffectiveness or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, since the same would have been enacted by the City Council without the incorporation herein of any such void, ineffective or unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 6.

This ordinance shall take effect upon adoption.

APPROVED AS TO FORM AND LEGALITY:

ATTEST:

Melinda Ramos
Sr. Assistant City Attorney

Jannette S. Goodall
City Secretary

ADOPTED and EFFECTIVE : _____