

ORDINANCE NO. 20130620-002

AN ORDINANCE AMENDING CITY CODE CHAPTER 15-9 REGARDING UTILITY SERVICE, AND ADMINISTRATIVE REVIEWS AND HEARINGS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Subsection (A) of City Code Section 15-9-37 (*Customer's Responsibilities*) is amended to read:

§ 15-9-37 CUSTOMER'S RESPONSIBILITIES.

- (A) A customer is responsible for utility service provided on the customer's side of the point of delivery, including:
- (1) excessive consumption caused by faulty equipment or settings on equipment;
 - (2) damage caused by an open valve or circuit after service initiation; or ~~[and]~~
 - (3) a violation of this chapter, including utility service diversion, unlawful use of service, or damage to City utility equipment.

PART 2. City Code Section 15-9-135 (*Multifamily Residential Utility Service Rate*) is renamed to read:

§ 15-9-135 MULTIFAMILY ~~[RESIDENTIAL]~~ UTILITY SERVICE RATE.

PART 3. City Code Chapter 15-9, Article 12 (*Administrative Review and Hearing*) is repealed and replaced to read:

ARTICLE 12. ADMINISTRATIVE REVIEW AND HEARING.

§ 15-9-191 ADMINISTRATIVE REVIEW.

- (A) Except as provided in Subsections (B), (C), and (D), before requesting an administrative hearing, a person who disputes an action, policy, decision, or invoice relating to utility service must contact the director of the utility providing the service no later than the 90th day after the date of the notice of violation or the date the customer knew or should have known about the subject of the dispute.
- (B) Before requesting an administrative hearing, a customer who disputes an action, policy, decision, or application related to the drainage fee or the transportation user fee shall request an administrative review from the

director of the Watershed Protection Department or the Public Works Department, respectively. These administrative reviews are authorized by Chapters 14-10 (*Transportation User Fee*) and 15-2 (*Drainage Utility*) of the Code. If requested by a customer, the department director shall provide a customer with a copy of the department's Appeals Rules and Procedures.

- (C) A customer who disputes an action, policy, or decision by a utility related to compliance with Title 25 (*Land Development Code*) or Title 30 (*Austin/Travis County Subdivision Regulations*) of the Code shall follow the procedures prescribed in the applicable title.
- (D) A customer who disputes an action, policy, or decision related to compliance with Chapter 6-4 (*Water Conservation*) of the Code shall follow the procedures prescribed in Article 3 of that chapter. A customer who disputes an action, policy, or decision related to compliance with Chapter 15-5 (*On-Site Sewage Facilities*) of the Code shall follow the procedures prescribed in that chapter. A customer who disputes an action, policy, or decision related to compliance with Chapter 15-11 (*Private Lateral Sewer Lines*) of the Code shall follow the procedures prescribed in that chapter.
- (E) The director of a utility shall attempt to resolve the customer's dispute. If the director of a utility cannot resolve the dispute through an administrative review, the director shall:
 - (1) communicate the administrative review decision to the customer including the reason for the dispute and if applicable, the disputed amount; and
 - (2) if applicable, inform the customer that the customer has a right to request an administrative hearing and provide the customer instructions how to request an administrative hearing.
- (F) If a customer is informed of his right to a hearing, the customer must request that hearing not later than 30 days after the date of the notice.

§ 15-9-192 RESTRICTION ON ADMINISTRATIVE HEARING.

A customer may not request an administrative hearing if:

- (1) the utility did not conduct an administrative review;
- (2) the customer did not timely request an administrative hearing;

- (3) criminal charges are pursued for the occurrence of utility service diversion, unlawful use of service, damage to City utility equipment, unauthorized sale of utility service or other violation of law; or
- (4) the customer is disputing:
 - (a) the terms or denial of a deferred payment agreement;
 - (b) the customer's financial inability to pay for utility services provided by the City;
 - (c) the rate schedule;
 - (d) unexplained high utility consumption if a meter has been tested and is determined to be accurate or under-registering in accordance with the American Water Works Association standards or the American National Standard Institute standard;
 - (e) denial or discontinuance of utility service based on a danger to public health or safety;
 - (f) a matter subject to a court decision;
 - (g) the application or amount of a credit security deposit; or
 - (h) a decision by the City regarding a claim for property damage or personal injury.

§ 15-9-193 ADMINISTRATIVE HEARING.

- (A) Except as provided in Section 15-2-14 (*Adjustments*), a hearing under this article shall be held by a hearings officer appointed by the city manager. A hearings officer may not be an employee of a utility.
- (B) A customer who disagrees with an administrative review decision by the director of a utility may request an administrative hearing. The customer shall request the administrative hearing in writing no later than the 30th day after the director of a utility informed the customer of the right to request a hearing in accordance with Subsection (E) of Section 15-9-191 (*Administrative Review*). The customer requesting the hearing shall have the burden of proof to prove the City's position is in error.
- (C) Not later than the tenth day before the date of an administrative hearing, the director of a utility shall provide the customer with notice of the time, date, and location of the hearing either in person, by telephone, by confirmed

facsimile transmission, by electronic mail, or by mail to the customer's last known address.

- (D) Except as provided in Subsection (E), if the customer fails to appear at an administrative hearing, the hearings officer may enter a default decision against the customer.
- (E) The City and the customer may agree to waive appearance at an administrative hearing and submit the dispute to the hearings officer in writing.
- (F) The customer may appear in person and may be represented by counsel. If a customer is represented by counsel, the customer must notify the City at least two business days before the hearing. If the City does not receive notice under this subsection, the City may reschedule the administrative hearing.
- (G) The customer may make one request to reschedule an administrative hearing for a period not to exceed 30 days from the date of the original hearing before the City reinstates utility service termination procedures. The City may agree to the date and time of a hearing rescheduled under this subsection to a date later than 30 days after the date of the original hearing. If a customer makes a second request to reschedule an administrative hearing, the City may terminate the customer's utility service.
- (H) If the City does not agree to a customer's second or later request to reschedule, the City shall not reschedule the administrative hearing and the hearings officer shall issue a decision on the merits.
- (I) The hearings officer may deliver an oral decision at the close of a hearing and shall deliver a written decision not later than:
 - (1) the 10th day after the close of the hearing; or
 - (2) if the hearings officer requests additional information from the parties, a date agreed to by the parties.

§ 15-9-194 RESULTS OF HEARINGS.

- (A) If a hearings officer rules against a customer, the hearings officer's decision shall include:
 - (1) the actions to be taken by the customer to continue utility service; and

- (2) a deadline for performance by the customer that is consistent with the deferred payment agreement policies of the utility and the requirements of this chapter.
- (B) If a hearings officer rules completely or partly in favor of a customer, the hearings officer's decision shall include:
 - (1) the actions to be taken by the City and the customer to continue or reconnect utility service; and
 - (2) deadlines for performance by the City and the customer that are consistent with the deferred payment agreement policies of the utility and the requirements of this chapter.
- (C) A hearings officer shall not base the officer's decision on a judicial decision from a case to which the City was not a party.

§ 15-9-195 CONTINUITY OF SERVICE DURING APPEAL.

- (A) Before a hearing under this article, the City shall continue to provide a customer with utility service, unless:
 - (1) the service was disconnected before the customer requested a hearing;
 - (2) the customer fails to pay an invoice for utility services provided after a hearing was requested;
 - (3) the customer's service is transferred; or
 - (4) termination is required to protect public health and safety.
- (B) If a customer's utility service is disconnected before the customer requested a hearing, the City shall reconnect utility service after the customer pays all amounts owed for utility service less the amount disputed in the requested hearing.
- (C) The City shall not continue or reconnect utility service if the connection:
 - (1) allows utility service diversion;
 - (2) creates a dangerous condition;
 - (3) allows an unlawful use of service;
 - (4) allows unauthorized remetering, sub-metering, or resale of utility service; or

- (5) violates Title 25 (*Land Development*) of the Code or a City ordinance relating to the utility service.

PART 5. This ordinance takes effect on July 1, 2013.

PASSED AND APPROVED

June 20, 2013

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§ Lee Deffingwell
Lee Deffingwell
Mayor

APPROVED: Karen M. Kennard
Karen M. Kennard
City Attorney

ATTEST: Jannette S. Goodall
Jannette S. Goodall
City Clerk