

1
2 **CITY OF COVINGTON**
3 **STATE OF LOUISIANA**

4
5 **ORDINANCE NUMBER 2016-_____**
6

7 **AN ORDINANCE OF THE CITY OF COVINGTON**
8 **AMENDING THE FOLLOWING PROVISIONS OF THE**
9 **COVINGTON CODE OF ORDINANCES: CHAPTER 98**
10 **UTILITIES, TO INCLUDE ARTICLE V. CAPACITY**
11 **CHARGES**
12

13
14 **WHEREAS,** certain amendments have been suggested to Chapter 98,
15 Utilities, of the Covington Code of Ordinances, to include Article V. Capacity
16 Charges; and

17 **WHEREAS,** the Covington City Council deems these amendments
18 appropriate to protect the health, safety and welfare of the citizens of Covington;
19 and

20 **WHEREAS,** the City Council has held its public hearing in accordance
21 with law,

22 **NOW, THEREFORE, BE IT ORDAINED** by the City Council of the
23 City of Covington, at its regular session convened, that Chapter 98 Utilities, shall
24 be amended to include the following:

25 **ARTICLE V. CAPACITY CHARGES**

26 **Sec. 98-135. Legislative findings.**

27 **A. The city council finds that:**

28 **1. The protection of the health, safety, and general welfare of the citizens**
29 **of the city requires that the water and wastewater systems of the city be**
30 **expanded and improved to accommodate continuing growth within the city and**
31 **within those areas connected to its water and wastewater systems.**

32 **2. New residential and nonresidential development imposes increased and**
33 **excessive demands upon existing city facilities.**

34 **3. New development often overburdens existing public facilities, and the**
35 **tax revenues generated from new development often do not generate sufficient**
36 **funds to provide public facilities capacities to serve the new development.**

37 **4. New development is expected to continue and will place ever-increasing**
38 **demands on the city to provide public facilities to serve new development.**

39 **5. The creation of an equitable capacity charge system would enable the**
40 **city to impose a proportionate share of the costs of required improvements to**

1 the city's water and wastewater systems on those developments that create the
2 need for them.

3 6. All types of development that are not explicitly exempted from the
4 provisions of this Article will generate demand for city's water and wastewater
5 services or facilities that will require improvements to city facilities and
6 equipment.

7 7. The city's capacity charge studies set forth reasonable methodologies and
8 analyses for determining the impacts of various types of development on the
9 city's water and wastewater systems and for determining the cost of acquiring
10 or constructing facilities and equipment necessary to meet the demands for
11 such services created by new development.

12 8. The city establishes as city standards the assumptions and service
13 standards referenced in the capacity charge studies and other duly adopted
14 documents as part of its current plans for the water and wastewater systems.

15 9. The capacity charges described in this Article are reasonably related to
16 the service demands and needs of new development and are based on the
17 capacity charge studies and documentation commissioned by the City and
18 performed by TichlerBise.

19 10. All of the water system improvements listed in the water capacity charge
20 study will benefit all new development that connects to the city water system;
21 and it is, therefore, appropriate to treat the entire city and all properties
22 connected to the city water system as a single service area for purposes of
23 calculating, collecting, and spending the water capacity charges.

24 11. All of the wastewater system improvements listed in the wastewater
25 capacity charge study will benefit all new development that connects to the city
26 wastewater system; and it is, therefore, appropriate to treat the entire city and
27 all properties connected to the city wastewater system as a single service area
28 for purposes of calculating, collecting, and spending the wastewater capacity
29 charges.

30 12. There is both a rational nexus and a rough proportionality between the
31 development impacts created by each type of development covered by this
32 Article and the capacity charges that such development will be required to pay.

33 13. The city's facility planning, capital improvement program, development
34 review, and bidding processes create a public process by which, on a specific
35 and detailed basis, the capacity expanding components of construction can be
36 identified and funded distinctly from those components which are not capacity
37 expanding by providing for evaluation by the city and the capacity charge
38 review committee of future needs related to growth, identification of applicable
39 funding sources, and monitoring of construction and payments.

40 14. This Article creates a system by which capacity charges paid by new
41 developments will be used to expand or improve the city water and wastewater
42 systems.

43 15. This section creates a system under which capacity charges shall not be
44 used to cure existing deficiencies in public facilities or to pay maintenance or
45 operations costs associated with providing public facilities.

46
47 Sec. 98-136. Authority and applicability.

48 A. This section is enacted pursuant to the city's self-government powers,
49 the authority granted to the city by the City of Covington Home Rule Charter
50 and the Louisiana Constitution of 1974.

1 B. The provisions of this section shall apply to all of the territory within
2 the limits of the city.

3 C. The provisions of this section related to water capacity charges shall
4 also apply to all properties located outside the city that are connected to the
5 city water system.

6 D. The provisions of this section related to wastewater capacity charges
7 shall also apply to all properties located outside the city that are connected to
8 the city wastewater system.

9
10 Sec. 98-137. Intent.

11 A. This Article is adopted to help implement the most recently adopted
12 water facility plan and the most recently adopted wastewater facility plan.

13 B. The intent of this Article is to ensure that new development bears a
14 proportionate share of the cost of improvements to the city water and
15 wastewater systems and to ensure that funds collected from new
16 developments are actually used to construct improvements to the city water
17 and wastewater systems that reasonably relate to the benefits accruing to
18 such new developments.

19 C. It is the further intent of this section that new development pay for its
20 proportionate share of public facilities through the imposition of capacity
21 charges that will be used to finance, defray, or reimburse all or a portion of
22 the costs incurred by the city to construct improvements to the city water and
23 wastewater systems that serve or benefit such new development.

24 D. It is the intent of this section to collect money from any new
25 development to offset new demands for water or wastewater improvements
26 generated by that new development.

27 E. It is not the intent of this section that any moneys collected from any
28 capacity charge and deposited in any capacity charge fund ever be co-
29 mingled with moneys from a different capacity charge fund or ever be used
30 for a type of facility or equipment different from that for which the fee was
31 paid.

32 Sec. 98-138. Definitions.

33 A. The following words, terms and phrases, when used in this section,
34 shall have the meanings ascribed to them in this section, except where the
35 context clearly indicates a different meaning:

36 1. "Capacity charge" means the water capacity charge and wastewater
37 capacity charge established by this Article.

38 2. "Capacity charge capital improvement program" means the capital
39 improvements program for the city water and wastewater systems, which
40 shall assign moneys from each capacity charge fund to specific projects and
41 related expenses for improvements to the type of facilities or services for
42 which the fees in that fund were paid, and shall not include improvements
43 needed to correct existing deficiencies or operations or maintenance costs.

44 3. "Capacity charge funds" means the water capacity charge fund and
45 wastewater capacity charge fund established by this section.

46 4. "Capacity charge studies" means the studies most recently adopted by
47 resolution of the city council for each capacity charge which set forth
48 reasonable methodologies and analyses for determining the impacts of
49 various types of development on the city's water and wastewater systems for

1 which a capacity charge may be charged and for determining the cost of
2 acquiring or constructing facilities and equipment necessary to meet the
3 demands for such services created by new development.

4 5. "Development" means any construction or expansion of a building,
5 structure, or use, any change in use of a building or structure, or any change
6 in the use of land, which creates additional demand for public services.

7 6. "Encumber" means to legally obligate by contract, or otherwise
8 commit to use by appropriation or other official act of the city.

9 7. "Improvement" means planning, land acquisition, engineering design,
10 construction inspection, on-site construction, off-site construction, equipment
11 purchases, and financing costs associated with new or expanded facilities,
12 buildings, and equipment that expand the capacity of a facility or service
13 system and that have an average useful life of at least five years. The term
14 "improvement" does not include maintenance, operations, or improvements
15 that do not expand capacity.

16 8. "Maintenance" means replacement, repair, or caring for a constructed
17 water or sewer facility to preserve them in a functional state equal to their
18 initial installed design; and which does not change the basic design or
19 structure or change them from their original purpose. Activities that change
20 the scope of a project beyond the original design are not included in this
21 definition.

22
23 Sec. 98-139. Water capacity charges.

24 A. Imposition of water capacity charges.

25 1. Any person who seeks to obtain a permit for connection to the city
26 water system and applies for a permit to expand or add to the structure
27 served by a previously approved water connection, or any extension of such
28 a permit issued before the effective date of the ordinance from which this
29 section is derived, is required to pay a water capacity charge in the amount
30 specified in Paragraph G. of this Section; or

31 2. No permits for connection to the city water system may be issued until
32 the water capacity charge described in this section has been paid, unless the
33 development for which the permit is sought is exempted by subsection F. of
34 this section.

35 B. Computation of amount of water capacity charge.

36 1. The city shall determine the amount of the required water capacity
37 charge by reference to Paragraph G. of this section.

38 C. Payment of water capacity charge.

39 1. All funds paid by an applicant pursuant to this section shall be
40 identified as water capacity charges and shall be promptly deposited in the
41 water capacity charge fund described in subsection D. of this section.

42 D. Water capacity charge funds.

43 1. A single water capacity charge fund is created and such fund shall be
44 maintained in an interest-bearing account.

45 2. Such fund shall contain only those water capacity charges collected
46 pursuant to this section and any interest which may accrue from time to time
47 on such amounts.

48 E. Use of water capacity charge funds. The moneys in the water capacity
49 charge fund shall be used only:

50 1. To acquire or construct improvements to the city water system; or

2. To pay debt service on any portion of any future general obligation bond issue or revenue bond issue used to finance improvements to the city water system; or
3. As described in Sec. 98-141.
- F. Exemptions from water capacity charges.
1. The following types of development shall be exempted from payment of the water capacity charge:
- a. Alteration or expansion of an existing nonresidential building that does not require an additional or larger water meter;
- b. Replacement of a nonresidential building or structure of the same size that does not require an additional or larger water meter;
- c. The reconstruction or replacement of a previously existing residential unit that does not create any additional or larger residential units.
2. Citizens of the city, who are disabled or who are 65 years of age or older and whose total household income is less than \$20,000 per year shall be “senior citizen/disabled users” and shall be exempt from water capacity charges, and shall meet all eligibility requirements in Sec. 98-133.
3. Any such claim for exemption must be made no later than the time when the applicant applies for the first permit of a type listed in subsection A.1 of this section for the proposed development and any claim for exemption not made at or before that time shall have been waived.
4. The city shall determine the validity of any claims for exemption pursuant to the criteria set forth in subsections F.1 and F.2 of this section.
- G. Water capacity charge schedule (Effective Month, Day, Year).

	Cost per Gallon
Water Tower	\$1.81
Gallons per Day per Person	83

Residential (per unit)

Development Type	Persons per Housing Unit	Proposed Capacity Charge
Single-Family Detached	2.18	\$328
Multi-Family	2.04	\$306

Nonresidential (per meter)

Meter Size (inches)*	Weighting Factor**	Proposed Capacity Charge
0.75	1.0	\$328
1.00	1.7	\$557
1.50	3.3	\$1,081
2.00	5.3	\$1,736
3.00	10.7	\$3,504

* Fees for meters larger than three inches will be based on annualized average daily demand and the net capital cost per gallon of capacity.

** AWWA, Manual of Water Supply Practices, M6.

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1 Sec. 98-140. Wastewater capacity charges.

2 A. Imposition of wastewater capacity charges.

3 1. Any person who seeks to obtain a permit for connection to the city
4 wastewater and applies for a city permit to expand or add to the structure
5 served by a previously approved wastewater connection, or any extension of
6 such a permit issued before the effective date of the ordinance from which
7 this section is derived is required to pay a wastewater capacity charge in the
8 amount specified in Paragraph G. of this section; or

9 2. No permits for connection to the city wastewater system may be
10 issued until the wastewater capacity charge described in this section has been
11 paid, unless the development for which the permit is sought is exempted by
12 subsection F. of this section.

13 B. Computation of amount of wastewater capacity charge.

14 1. The city shall determine the amount of the required wastewater
15 capacity charge by reference to Paragraph G. of this section.

16 2. Individualized calculations.

17 a. The city may identify a user as having extraordinary demands for
18 wastewater service which are not accurately represented by the average
19 usage which was relied upon by the methodology in the most recently
20 adopted wastewater capacity charge study. In this circumstance the city shall
21 prepare a customized calculation based upon the methodology in the
22 wastewater capacity charge study. When applicable an adjustment for high
23 strength discharge will be applied. The capacity charge paid for wastewater
24 meters larger than three inches as of the effective date of the ordinance from
25 which this section is derived may be adjusted based on actual usage. If usage
26 is greater than 110 percent of anticipated volume or other measure of
27 demand during the 12-month period of time beginning six months after
28 building occupancy is granted by the city, an additional capacity charge may
29 be charged, using the same techniques for calculating wastewater treatment
30 EDUs and collection system net acres and multiplying by the wastewater
31 treatment capacity charge cost per EDU and the collection system capacity
32 charge cost per net acre then in effect. The additional capacity charge is the
33 positive net between a previously calculated capacity charge and the capacity
34 charge based upon the metered demand.

35 C. Payment of wastewater capacity charge.

36 1. All funds paid by an applicant paid pursuant to this section shall be
37 identified as wastewater capacity charges and shall be promptly deposited in
38 the wastewater capacity charge fund described in subsection D. of this
39 section.

40 D. Wastewater capacity charge funds.

41 1. A single wastewater capacity charge fund is created and such fund
42 shall be maintained in an interest-bearing account.

43 2. Such fund shall contain only those wastewater capacity charges
44 collected pursuant to this section and any interest which may accrue from
45 time to time on such amounts.

46 E. Use of wastewater capacity charge funds. The moneys in the
47 wastewater capacity charge fund shall be used only:

48 1. To acquire or construct improvements to the city wastewater system;
49 or

2. To pay debt service on any portion of any future general obligation bond issue or revenue bond issue used to finance improvements to the city wastewater system; or
3. As described in section 98-141.
- F. Exemptions from wastewater capacity charges.
1. The following types of development shall be exempted from payment of the wastewater capacity charge:
- a. Alteration or expansion of an existing nonresidential building that does not require an additional or larger water meter;
- b. Replacement of a nonresidential building or structure of the same size that does not require an additional or larger water meter;
- c. The replacement of a previously existing residential unit that does not create any additional or larger residential units.
2. Citizens of the city, who are disabled or who are 65 years of age or older and whose total household income is less than \$20,000 per year shall be “senior citizen/disabled users” and shall be exempt from wastewater capacity charges, and shall meet all eligibility requirements in Sec. 98-133.
3. Any such claim for exemption must be made no later than or the time when the applicant applies for the first permit of a type listed in subsection A.1 of this section for the proposed development and any claim for exemption not made at or before that time shall have been waived.
4. The city shall determine the validity of any claims for exemption pursuant to the criteria set forth in subsections F.1 and F.2 of this section.
- G. Wastewater capacity charge schedule (Effective Month, Day, Year)

		Cost per Gallon
Wastewater Treatment Plant		\$6.67
Major Collector Lifts		\$2.86
Total		\$9.53
Gallons per Day per Person		83

Residential (per unit)

Development Type	Persons per Housing Unit	Proposed Capacity Charge
Single-Family Detached	2.18	\$1,724
Multi-Family	2.04	\$1,614

Nonresidential (per meter)

Meter Size (inches)*	Weighting Factor**	Proposed Capacity Charge
0.75	1.0	\$1,724
1.00	1.7	\$2,931
1.50	3.3	\$5,690
2.00	5.3	\$9,139
3.00	10.7	\$18,451

* Fees for meters larger than three inches will be based on annualized average daily demand and the net capital cost per gallon of capacity.

**AWWA, Manual of Water Supply Practices, M6.

- Sec. 98-141. Refunds of capacity charges paid.
- A. Refunds of capacity charges shall be made only in the following instances and in the following manner:
1. Expenses and encumbrances.
- a. Upon application to the city, the city shall refund the capacity charge paid and not expended or encumbered within twenty-five years from the date the capacity charge was paid or spent in a manner not in accordance with this section. Refunds shall be paid to the owner of the property at the time the refund is due. In determining whether capacity charges have been expended

1 or encumbered, fees shall be considered encumbered on a first-in, first-out
2 (FIFO) basis.

3 b. When the right to a refund exists due to a failure to expend or
4 encumber capacity charges, the city shall publish written notice within 30
5 days after the expiration of the twenty-five year period from the date
6 capacity charge was paid. The published notice shall contain the heading
7 "Notice of Entitlement to Capacity Charge Refund."

8 2. A refund application shall be made to the city within one year from the
9 date such refund becomes payable under subsections A1.a or A1.b of this
10 section, or within one year from the date of publication of the notice of
11 entitlement of a refund under subsection 1.b of this section, whichever is
12 later. Any refund not applied for within said time period shall be deemed
13 waived.

14 3. A refund application shall include information and documentation
15 sufficient to permit the city to determine whether the refund claimed is
16 proper and, if so, the amount of such refund.

17 4. A refund shall include a pro rata share of interest actually earned on
18 the unused or excess capacity charge paid.

19 5. All refunds shall be paid within 60 days after the city determines that
20 such refund is due.

21 6. Any refund payable pursuant to subsections A1.a and A1.b of this
22 section shall be made to the record owner of property as of the date the
23 refund was due.

24 Sec. 98-142. Administrative provisions.

25 A. Interest earned on moneys in any capacity charge fund shall be
26 considered part of such fund and shall be subject to the same restrictions on
27 use applicable to the capacity charges deposited in such fund.

28 B. No moneys from any capacity charge fund shall be spent for periodic
29 or routine maintenance of any facility of any type or to cure deficiencies in
30 public facilities existing on the effective date of the ordinance from which
31 this section is derived.

32 C. Nothing in this section shall restrict the city from requiring an
33 applicant to construct reasonable project improvements required to serve the
34 applicant's project.

35 D. The city shall maintain accurate records of the capacity charges paid,
36 including the name of the person paying such fees, the project for which the
37 fees were paid, the date of payment of each fee, the amounts received in
38 payment for each fee, and any other matters that the city deems appropriate
39 or necessary to the accurate accounting of such fees, and such records shall
40 be available for review by the public during city business hours.

41 E. The city shall be entitled to retain not more than five percent of the
42 capacity charges collected as payment for the expenses of collecting the fee
43 and administering this section.

44 F. If a capacity charge has been calculated and paid based on a mistake
45 or misrepresentation, it shall be recalculated. Any amounts overpaid by an
46 applicant shall be refunded by the city to the applicant within 30 days after
47 the city's acceptance of the recalculated amount, with interest at the rate of
48 five percent per annum since the date of such overpayment. Any amounts
49 underpaid by the applicant shall be paid to the city within 30 days after the

city's acceptance of the recalculated amount, with interest at the rate of five percent per annum since the date of such underpayment. In the event the underpayment is caused by an error attributed solely to the city, the applicant shall pay the recalculated amount without interest. In the case of an underpayment to the city, the city shall not issue any additional permits or approvals for the project for which the capacity charge was previously paid until such underpayment is corrected; and if amounts owed to the city are not paid within such 30-day period, the city may also repeal any permits issued in reliance on the previous payment of such capacity charge and refund such fee to the then current owner of the land.

G. Appeal.

1. Any determination made by any official of the city charged with the administration of any part of this section may be appealed to the Director of Administration by filing:

- a. A written notice of appeal on a form provided by the city;
- b. A written explanation of why the appellant feels that a determination was in error; and
- c. An appeal fee of \$500.00 with the Director of Administration within ten working days after the determination for which the appeal is being filed.

2. The Director of Administration shall review the appeal within 30 working days of the date the written appeal was presented to the Director of Administration. If the appellant is dissatisfied with the decision of the Director of Administration, the appellant may appeal the decision to the city council by filing a written request with the Director of Administration within ten working days of the Director of Administration's decision. At the regular meeting following the filing of the appeal, the city council shall fix a time and place for hearing the appeal; and the Director of Administration shall mail notice of the hearing to the appellant at the address given in the notice of appeal. The hearing shall be conducted at the time and place stated in such notice given by the city council. The determination of the city council shall be final. If the city council concludes that all or part of a determination made by an official of the city charged with the administration of any part of this section was in error, then the appeal fee described in this subsection shall be returned to the appellant.

H. Updating of capacity charge information. The city reserves the right to review this Article to ensure that:

- a. The demand and cost assumptions underlying such fees are still valid;
- b. The resulting fees do not exceed the actual cost of constructing improvements that are of the type for which the fee was paid and that are required to serve new development;
- c. The moneys collected or to be collected in each capacity charge fund have been, and are expected to be, spent for improvements of the type for which such fees were paid; and
- d. That such improvements will benefit those developments for which the fees were paid as well as the City as a whole.

I. The capacity charges shown in the most recently adopted capacity charge studies shall be adjusted annually to reflect the effects of inflation on those costs for improvements set forth in the capacity charge studies. On January 1 of each year unless and until the capacity charge studies are revised or replaced, and then beginning in the subsequent calendar year, each

1 fee amount set forth in each such study shall be adjusted by multiplying such
2 amount by one plus the value of the Construction Cost Index published in the
3 first December edition of the current year. (Source: Engineering News
4 Record.) Such adjustments in such fees shall become effective immediately
5 upon calculation by the city and shall not require additional action by the city
6 council to be effective.

7 J. Violation of this section shall result in a civil penalty and shall be
8 subject to those remedies provided in section 18-87 of the City of Covington
9 Code of Ordinances. Knowingly furnishing false information to any official
10 of the city charged with the administration of this section on any matter
11 relating to the administration of this section, including without limitation the
12 furnishing of false information regarding the expected size or use from a
13 proposed development, shall be a violation of this section. In addition to, or
14 in lieu of, any criminal prosecution, the city or any applicant for a permit of
15 the types described in sections 98-139 or 98-140 shall have the right to sue in
16 civil court to enforce the provisions of this section.

17 K. The section titles used in this section are for convenience only and
18 shall not affect the interpretation of any portion of the text of this section.

19 L. Any judicial action or proceeding to attack, review, set aside, or annul
20 the reasonableness, legality, or validity of any capacity charge must be filed
21 and service of process effected within 90 days following the date of
22 imposition of the fee or the final appeal determination of the city council,
23 whichever is the later.

24 Secs. 98-143 – 98-155. - Reserved.
25

26 **BE IT FURTHER ORDAINED** that all other sections of Chapter 98
27 Utilities shall remain the same and in full force.

28 **BE IT FURTHER ORDAINED** that if any provision of this ordinance
29 shall be held to be invalid, such invalidity shall not affect other provisions
30 herein which can be given effect without the invalid provision and to this end
31 the provisions of this ordinance are hereby declared to be severable.

32 **WHEREUPON**, this ordinance having been submitted in writing,
33 having been read by title and adopted at a public meeting of the City Council
34 of the City of Covington, State of Louisiana, was then submitted to an official
35 vote as a whole, the vote thereon being as follows:

36 **MOVED FOR ADOPTION** by _____, seconded by _____.

37 **YEAS:**

ABSENT:

38 **NAYS:**

ABSTAIN:

1 **PASSED AND ADOPTED** this ____ day of _____, 2016.

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LEE S. ALEXIUS
COUNCIL PRESIDENT

BONNIE D. CHAMPAGNE
COUNCIL CLERK

Presented to the Mayor on this ____ day of _____, 2016, at ____
o'clock ____M.

BONNIE D. CHAMPAGNE
COUNCIL CLERK

Approved ____ or Vetoed ____ by the Mayor on this ____ day of _____, 2016.

MICHAEL B. COOPER
MAYOR

Received from the Mayor on this ____ day of _____, 2016, at ____
o'clock ____M.

BONNIE D. CHAMPAGNE
COUNCIL CLERK