

ORDINANCE 14-06

AN ORDINANCE AMENDING CHAPTER 30, "UTILITIES," ARTICLE II, "WATER," DIVISION I "GENERALLY," IN THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES, BY ADDING THE FOLLOWING: SECTION 30-19, "DEFINITIONS;" SECTION 30-20, "CONNECTION TO MUNICIPAL WATER SYSTEM MANDATORY WHEN AVAILABLE;" SECTION 30-21, "APPLICATION FOR WATER SERVICE;" SECTION 30-22, "APPLICATION BY AGENTS;" SECTION 30-23, "WITHHOLDING SERVICE;" SECTION 30-24, "SERVICE CATEGORIES;" SECTION 30-25, "SERVICE CONNECTIONS;" SECTION 30-26, "WATER SERVICES RATES AND CHARGES;" SECTION 30-27, "RESERVATION OF CAPACITY;" SECTION 30-28, "CUSTOMER RESPONSIBILITIES;" SECTION 30-29, "BACKFLOW PREVENTION DEVICES;" SECTION 30-30, "PROTECTION OF TOWN'S PROPERTY;" SECTION 30-31, "RIGHTS-OF-WAY AND ACCESS TO PROPERTY;" SECTION 30-32, "WATER METERS;" SECTION 30-33, "METER TESTING;" SECTION 30-34, "CONTINUITY OF SERVICE;" SECTION 30-35, "LIMITATION OF USE;" SECTION 30-36, "UNAUTHORIZED ACTIVITY;" SECTION 30-37, "WATER BOIL NOTICE;" SECTION 30-38, "BILLING PROCEDURES;" SECTION 30-39, "MONTHLY BILLING;" SECTION 30-40, "LEAK CREDITS;" SECTION 30-41, "BACK BILLING;" SECTION 30-42, "DISPUTED WATER BILLS;" SECTION 30-43, "WORTHLESS PAYMENT INSTRUMENTS;" SECTION 30-44, "FIRE PROTECTION SERVICE BILLING;" SECTION 30-45, "DELINQUENT ACCOUNTS;" AND SECTION 30-46, "UNAUTHORIZED USAGE;" AMENDING CHAPTER 30, "UTILITIES," ARTICLE II, "WATER," DIVISION II, "WATER SHORTAGE PLAN," BY RENUMBERING SECTIONS 30-40 THROUGH 30-45 TO 30-50 THROUGH 30-55; PROVIDING FOR REPEAL OF ALL PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

Section 1. The following Sections 30-19 through 30-46 are hereby added in Chapter 30, "Utilities," Article II, "Water," Division I, "Generally," in the Town of Fort Myers Beach Code of Ordinances:

Sec. 30-19. Definitions.

For the purposes of this Chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined shall be construed to have their common and ordinary meaning.

Applicant means the person, organization or corporation who is the property owner or who has been authorized by the property owner to submit an application form requesting that water service be provided at the property owner's premises.

Backflow means a reversal of the normal direction of flow of water or other liquids, mixtures or substances, which has the potential to introduce used water or mixtures of used water and other liquids, gases or other substances into the distribution pipes of a potable water supply from another source or sources. Backflow may occur as the result of back-pressure, back-siphonage or both.

Backflow Prevention Device means a device that prevents backflow that is installed at the point of delivery, and may be either a double check valve assembly or a reduced pressure principle backflow prevention device.

Back-pressure means any elevation of pressure in the downstream piping system caused by a pump, elevated tank, boiler, or other means that could create pressure within that system greater than the supply pressure of the Town's water system which would cause or tend to cause a reversal of the normal direction of flow of water.

Connection Fee means the charge for connecting to the Town's potable water system.

Customer means any person, firm, corporation, government entity, homeowners' association or other entity that contracts for and uses or receives water from the Town's potable water system or anyone who benefits directly from service rendered by the Town, including the actual user of the water service. The "customer" is the person or entity who is responsible for payment of all charges and fees for potable water service. The term includes, where appropriate to the context, property owners, tenants and any person or entity that has a possessory interest in the property to be served.

Customer Deposit means the charge established in the Rate Schedule for security for the value of the meter and connections loaned to the customer as well as for payment of the water bill.

Customer's Installation means all pipes, shutoffs, valves, fixtures and appliances or apparatus of every kind and nature in connection with or forming a part of an installation for utilizing water service for any purpose, ordinarily located on the customer's side of the point of delivery, whether the installation is owned by the customer, or used by the customer under a lease or otherwise.

Double check valve assembly means an assembly composed of two single, independently acting, approved check valves, including tightly closing shutoff valves located at each end of the assembly and suitable connections for testing the water tightness of each check valve.

Equivalent Residential Connection (ERC) means a unit of measurement used to estimate the service capacity usage of all residential classes of users using a single family residential detached dwelling unit as a common denominator. One ERC shall equate to the estimated average gallons

9/5/14

per day of potable water used by a single family residence for the purpose of assessing fees and charges.

Fort Myers Beach Public Works (FMBPW) means the Town of Fort Myers Beach Department that operates the water utility

Hydrant Meter means a meter used to measure the volume of water withdrawn from a fire hydrant. Water may only be withdrawn from hydrants through an FMBPW-owned hydrant meter.

Owner means the person or entity holding title to the real property that is receiving potable water service.

Point of Delivery means the point where the Town's pipes or meters are connected with pipes belonging to the customer.

Potable Water means any water that, according to recognized standards, is safe for human consumption.

Reduced pressure principal backflow prevention device means a device containing a minimum of two independently acting, approved check valves, with an automatically operated pressure differential relief valve located between the two check valves. The unit must include tightly closing shutoff valves located at each end of the device, and each device shall be fitted with properly located test cocks. During normal flow and at the cessation of normal flow, the pressure between the two checks shall be less than the upstream (supply) pressure. In case of leakage of either check valve, the differential relief valve, by discharging to the atmosphere, shall operate to maintain the pressure between the checks at less than the supply pressure.

Town means the Town of Fort Myers Beach, Florida.

Valve means a device that regulates, directs or controls the flow of a fluid.

Water Commitment Letter means the document required for building permit purposes that allows connection to the Town's water system.

Worthless Payment Instrument means a check, draft or order, payment of which is refused by the drawee because of lack of funds or credit, in violation of Section 832.05, Florida Statutes.

Sec. 30-20. Connection to municipal water system mandatory when available.

Where an existing, adequate public water system is available in a public right-of-way or easement abutting improved real property, connection to the public water system is mandatory and any well located on the property shall not be used for human consumption.

Sec. 30-21. Applications for Water Service.

(a) Service is furnished only upon written application by the property owner, or party authorized by the property owner, that is submitted to and accepted by the Town, together with payment for all applicable connection or other service fees as contained in the Rate Schedule. The conditions of such application and the resulting agreement or contract for service are binding upon the customer as well as upon the Town. The Town accepts applications with the understanding that the Town's obligation to render service is subject to sufficient capacity being available from its existing system. A copy of the application and service contract will be furnished to the customer on request.

(b) No application for service shall be accepted without a proper site address, personal identification, signature of the property owner and, if applicable, the name and address of the individual responsible for payment of all fees, charges, and monthly bills.

(c) Third party notification is available for customers who wish to have a designated third party receive a duplicate notice if one is issued to the customer. The customer is responsible for all payments as shown on the bill, not the third party. It is the responsibility of the customer and the designated third party to make payment arrangements, not the Town. If payment is not received, service may be disconnected or terminated for nonpayment of an unpaid previous balance. The customer, or authorized third party must complete a notarized application for third party notification to be added to the account. A notarized written statement will be required to remove third party notification from an account.

Sec. 30-22. Applications by Agents.

Applications for service by firms, partnerships, associations, or other entities shall be submitted in writing to the Town only by persons who are legally authorized to represent the entity. When service is rendered under a service agreement entered into between the Town and an applicant who is not the property owner, the use of such service shall constitute full and complete ratification of such agreement by the property owner.

Sec. 30-23. Withholding service.

The Town may withhold or discontinue water service rendered under an application made by any member or agent of a household, organization, or business until all prior indebtedness to the Town of the household, organization or business for water service has been satisfied. Water service may also be discontinued for any violation by the customer of any rule or regulation contained in this Chapter or under state law. When service is involuntarily discontinued, the minimum billing continues.

Sec. 30-24. Service Categories.

(a) *Single Family Residential.* This category of service includes properties where each separate residential unit is served by a separate water meter.

(b) *Multi-Family Residential*. This category of service includes residential dwellings, such as apartment complexes and condominium developments that are served by one or more master meters.

(c) *Mobile Home*. This category of service includes Mobile Homes (MHs) as that term is defined in Section 320.01, Florida Statutes.

(d) *Recreational Vehicle*. This category of service includes Recreational Vehicles (RVs) as that term is defined in Section 320.01, Florida Statutes.

(e) *Irrigation*. This category of service applies to all services where one meter is used solely for the purpose of irrigation.

(f) *Commercial*. This category of service applies to churches, businesses, civic organizations, governmental organizations, master-metered multi-family residential dwellings, schools, hotels, motels, timeshares, and all other water services not included in another category.

(e) *Short Term (Temporary)*. This category of service is available for limited periods of time for streets, sewer, and similar or other type of general construction, circuses, fairs, exhibitions, displays, lunch carts, ships and boats, and similar temporary uses. Short-term service shall be limited to not more than six (6) months. Short-term service may be renewed for additional periods of not more than six (6) months. This category of water service will be supplied only when there is unreserved capacity for the service requested. Applicants for such temporary service shall pay to the Town, in advance, the cost of installing and removing any facilities necessary to furnish the service. Short-term service will be rendered only to the designated contracting party in accordance with the contract terms. For billing purposes, each individual service or meter will be billed according to appropriate water categories as described above in this Section.

(f) *Fire protection*. This category of service is intended to provide an emergency supply of water exclusively for fire protection purposes. The portion of the customer's installation to which this service is rendered must be in a service or services entirely separate and apart from the customer's installation for domestic water service. The Town does not guarantee any minimum fire flows for this service.

(g) *Other Service*. This category of service is available where sub-metering or separate metering is desired or needed. This type of service must be approved by the Town Manager or designee. Sub-meters are for customers' benefit only and only actual charges for service may be billed to the sub-metered properties. No administrative costs or other charges may be added by the owner. The Town does not maintain, read or otherwise utilize sub-meter information for billing purposes.

Sec. 30-25. Service Connections.

(a) *Service from a direct tap into existing water distribution main*. To obtain domestic water service from a direct tap into an existing distribution main, application should be made at the

FMBPW Office. The applicant should make sure that the name of the customer, the street address and legal description of the property to which service is to be rendered are correctly entered upon the contract or agreement for service. When feasible, the customer should determine whether the property to be served is adjacent to FMBPW's distribution system before making application for service.

(b) *Service for property not directly served from existing water distribution main.* To obtain potable water service for property not currently served from an existing distribution main and requiring the construction of developer-contributed utility infrastructure, application should be made at the FMBPW Office. The application should include the name of the customer; the street address and legal description of the property to which service is to be rendered.

(c) A customer shall have the right to assign all or a portion of reserved system capacity after payment of applicable connection fees. Such assignment shall not be made without the prior written consent of the Town, and such consent shall not be unreasonably withheld. The Town shall not approve any assignment that would result in the reserved capacity from a storage tank that does not have sufficient capacity to provide the additional service. Assignment of reserved capacity to another party does not operate to extend the term of the reservation of capacity.

(d) Customers developing larger projects in phases are encouraged to contact the Town to discuss their project so that the Town can include that information in planning to provide for future water system needs.

(e) Water service shall only be rendered from Town-owned mains in public rights-of-way or easements abutting the property to be provided with water service. A determination of the availability of service from the existing system shall be at the sole discretion of the Town. The Town shall have the right to require extension(s) of its water mains and other facilities where necessary to provide water service. The Town may also require legal instruments that it deems necessary in order to provide water service.

(f) All connections to the Town's system are to be made only by Town's employees or by properly licensed contractors or plumbers with the prior approval of Town. No connection, whether temporary or otherwise, is permitted between that portion of the customer's installation for potable water service and that portion of the customer's installation for fire protection or other purposes.

(g) That portion of the customer's installation for potable water service shall be designed so that all potable water service passes through the meter. No temporary pipes, nipples or spacers are permitted except for temporary testing purposes and only by a person authorized by the Town. No connections which permit water to by-pass the meter or metering equipment are allowed.

(h) The Town will provide a standard service line and water meter of sufficient size to serve the lot or parcel adjacent to an existing distribution main owned by the Town upon advance payment by the customer of service connection and tap in, or drop in, fees in addition to other current fees as may be applicable. The fees for various meter sizes and classifications are

specified in the Schedule of Rates, Fees and Charges. At its sole option, the Town may install a second 5/8" meter on a 1" service line upon advance payment by the customer of an amount specified in the Schedule of Rates, Fees and Charges.

(i) In instances where a service line that is larger than 2" is necessary to serve the customer with an adequate supply of water, the customer shall provide the Town with both lot plans and plumbing plans and the Town will provide the customer with a cost estimate. After the cost has been determined, the Town will install the service line and meter provided the customer has submitted an application and made advance payment of the total estimated cost of such larger service line and meter.

(j) *Exceptions.* A subdivider or owner of property in a subdivision may connect into an approved subdivision water main without payment of connection fees provided that all connection charges and construction costs for the water main facilities in the subdivision have been previously paid.

Sec. 30-26. Water Service Rates and Charges.

(a) The Town utilizes Equivalent Residential Connections (ERCs) for determining certain fees and charges for residential customers. One Equivalent Residential Connection is based on the average number of gallons per day used by a typical single family residence with a standard (5/8") meter and is referenced in the Town's Comprehensive Plan. The following ERC factors will be utilized:

Single Family Residential	1	ERC
Multi-Family Residential	.8	ERC
Mobile Home	.625	ERC
Recreational Vehicle	.5	ERC

(b) The Town Council shall, after a duly noticed public hearing, establish, adopt, or modify, by resolution, a schedule for usage blocks, water rates, fees and charges incidental to operation of the Town's water utility system.

(c) All public hearings to consider adoption of a resolution relating to rates, fees and other charges incidental to operation of the Town's water utility system shall be noticed as required by Section 180.136, Florida Statutes.

(d) All customers receiving water service to a property are required to pay all fees contained in the Schedule of Rates, Fees and Charges. Water Commitment Letters required for building permit purposes will only be issued after all applicable fees are paid.

(e) The rates contained in the Rate Schedule shall apply to all regular customers who are supplied with water by the Town. There are no "vacation" or "seasonal" rates. Customers can elect to have service temporarily discontinued if they are going to be away for an extended period of time, but minimum monthly service charges will still be incurred for the period of time the meter is disconnected. Turn-on trip charges may also apply when the service is re-connected.

Sec. 30-27. Reservation of Capacity.

(a) New installations are required to pay one hundred percent (100%) of the applicable connection fees at the time reservation of capacity is requested and the Florida Department of Environmental Protection and Florida Health Department permit applications are submitted. The Town's commitment to reserve and provide service is limited to two (2) years, applies only for the location approved for service, and is not transferable to another property. Letters of Credit or other forms of sureties will not be accepted for payment of connection fees.

(b) Up to ninety percent (90%) of the amount paid for connection fees may be refunded if the customer determines the project will not be constructed and reservation of capacity to serve the project is no longer required. Application for a refund must be made prior to expiration of the two year reservation period. The Town's ability to resell the previously reserved capacity will be taken into consideration together with other factors in determining if a refund will be given.

Sec. 30-28. Customer Responsibilities.

(a) *Customer Installation.* The customer's installation shall include that part of the service line to be extended by the customer, at his expense, to a point designated by the Town, provided that such designated point is on the property line of the premises adjacent to a public street or right-of-way. The customer's installation shall be extended to the Town's meter and curb stop, ordinarily located at the front property line at one corner of the lot.

(b) *Type and Maintenance.* The customer's installation, including all water pipes, apparatus and equipment, shall be selected, installed, used and maintained in accordance with standard practice, and shall conform to all rules and regulations of the Town, local plumbing codes, and all laws and applicable governmental regulations. The customer shall not utilize any appliance or device which may adversely affect the service, and the Town reserves the right to withhold or to discontinue service if it is determined that any such apparatus or device has been used.

(c) *Change of Customer's Installation.* No changes in the customer's installation, which materially affects the proper operation of the pipes, mains, or stations of the Town, shall be made without the written consent of the Town. The customer will be liable for any damage resulting from a violation of this rule.

(d) *Inspection of Customer's Installation.* All customer installations for water service shall be inspected, upon completion, by a plumbing inspector to ensure the piping, equipment and devices have been installed in accordance with accepted standard practice and in compliance with such local rules and building codes as may be in effect. Where inspection is required by governmental rules or ordinances, the Town shall discontinue service if the inspector notifies the Town that the installation has not been approved.

(e) *Periodic Inspections/Maintenance.* The Town reserves the right to inspect the customer's installation prior to rendering service and from time to time thereafter, but assumes no responsibility for maintenance or repair for any portion thereof.

(f) *Indemnification.* The customer shall indemnify, hold harmless and defend the Town from and against any and all liability, proceedings, suits, costs or expenses for loss, damage or injury to persons or property, in any manner directly or indirectly connected with the transmission and use of water by the customer at or on the customer's side of the point of delivery.

(g) *Electrical Currents.* On occasion, electrical currents may be conducted through waterlines and equipment. Such conditions may exist when: the water piping system is being used to ground appliances or electrical equipment (electric ranges, washing machines, switch boxes, etc.); the water piping system is conductive; an "open" neutral exists in an electrical line; or due to other causes. When such hazardous condition is discovered, the Town will notify the customer that they have forty-eight (48) hours to identify and correct the problem. If the hazard still exists after forty-eight (48) hours, service may be immediately disconnected without further notice.

(h) *Change of occupancy.* When there is a change of occupancy for any premises supplied by the Town with water service, the outgoing customer shall provide written notice to the Town's billing office not less than two (2) working days prior to the date of change of occupancy. The outgoing customer will be responsible for all water service rendered to such premises until such written notice has been received and the Town has had reasonable time to transfer or discontinue service. If the Town does not receive such written notice, the application of the new occupant for water service will automatically terminate the prior account. For the convenience of its customers, the Town will accept telephone orders to discontinue or to transfer water service and will use its best efforts to process the change in a timely manner.

Sec. 30-29. Backflow prevention devices.

(a) No potable water service connection that creates an actual or potential hazard to the Town's public water system shall be installed or maintained by the Customer or the Town unless the system is protected as required by this Section.

(b) An approved and appropriate backflow prevention device shall be installed as part of each service connection wherever and whenever any of the following conditions exist beyond the service connection:

1. An auxiliary water supply exists;
2. Industrial fluids or any other objectionable substances are handled in such a fashion as to create an actual or potential hazard of any kind to the Town's water system;
3. Internal plumbing or piping arrangements are not known, making it impracticable or impossible to ascertain whether or not cross-connections exist; or
4. The location is not a single family residence.

(c) Customers are responsible for the installation and maintenance of backflow prevention devices. All backflow prevention device(s) shall be installed and maintained in accordance with the FMBPW Operations Manual, Section 5 - Water Systems, Sub-Section 5.6.

(d) Any backflow prevention devices not installed and operating properly may result in immediate disconnection of water service.

(e) All backflow prevention devices shall be inspected and tested as required by law.

Sec. 30-30. Protection of Town's property.

(a) The customer shall protect Town's facilities and equipment that may be located on the customer's property and shall only allow access to Town's employees, agents, or other persons authorized by law.

(b) Service lines, meters, mains or other equipment owned by the Town that are damaged by contractors, construction companies, governmental agencies or others, will be repaired by the Town and the cost thereof, including any loss of water, will be charged to the party or parties causing the damage. Any loss or damage to Town's equipment caused by carelessness, neglect or misuse of the customer, their agents or invitees, will be repaired by the Town and the customer shall pay all repair costs, including any loss of water.

(c) No driveways or structures of any kind may be constructed over or in close proximity to a meter box, valve box blow-off, or any valve or similar control device without prior approval from the Town. If any structure is constructed over or in close proximity to Town's equipment and the Town determines that its equipment needs to be relocated, the customer shall pay the cost of relocation within thirty (30) days from mailing of the invoice for relocation costs.

Sec. 30-31. Rights-of-way and access to property.

(a) Customer shall, at no cost, grant to Town, all rights, easements, permits and privileges which, in Town's opinion, are necessary for the provision of water service, including maintenance of lines and equipment.

(b) All employees and authorized agents of Town shall have access, at all reasonable hours, to the premises of the customer for the purpose of installing, maintaining and inspecting or removing Town's facilities, reading meters, and for other purposes, and shall not be deemed to be trespassing.

Sec. 30-32. Water meters.

(a) *Meter Specifications.* The Town shall determine the size and type(s) of meters installed in the system. Customers can request a certain meter size, but the Town reserves the right to deny such request when it is incompatible with the existing system.

(b) *Duplicate Service.* Water service lines and meter locations shall be located where the Town deems appropriate. Different locations may, at the Town's sole discretion, be permitted, provided, however that it shall be at the sole expense of the customer.

(c) *Location.* If required for proper meter and equipment installation, the customer shall provide the Town with an easement, for a suitable and readily accessible location as designated by the Town, preferably on the property line and near the sidewalk adjacent to the property. In no instance shall meters be installed under driveways. The customer's installation shall be connected, by the customer's plumber or contractor, to the designated meter location. All meters, valves, and other equipment must be kept freely accessible at all times.

(d) *Accessibility.* Water meters shall be installed in a location that is outside fenced areas and in grass or mulched areas only. The owner or occupant of any premises shall not permit any landscaping or other obstruction that interferes with access to the meter by employees or agents of the Town for the purpose of reading or repairing the meters or connecting or disconnecting the water supply. Customers shall also ensure that no dogs or other animals interfere with the Town's access to the meter and equipment. The Town reserves the right to discontinue water service to any location where such interference exists. At locations where two separate, adjacent properties are served by a single service tap, it shall be the customers' (or agent's) responsibility to ensure that both customer's service lines are not in conflict with any obstacles such as septic system drain fields.

(e) *Relocation.* Water meters will be relocated, upon request by a customer, and customer shall be charged for such relocation on either a time-and-materials basis or the tap-in fee for the specific meter size, whichever amount is greater.

(f) *Meter Reading.* Customers shall insure that hydrant meters or temporary meters are available for reading on a monthly basis at the same time as the scheduled meter reading for the area where the meter is in use. The user will be notified of the meter reading schedule, and read location, when the meter is first picked up. If a meter is not available for reading at the scheduled time, a premise visit fee may be charged for each additional trip required to read the meter. If a meter is not available for reading during the monthly read cycle, a usage fee will be estimated, and a lost meter fee may also be imposed.

(g) *Installation of Meters.* The Town will be responsible for installation and maintenance of all meters and metering equipment, provided that the customer has paid all applicable fees. All meters and metering equipment shall be owned by the Town.

(h) *Sub-Meters.* Customers, with prior approval of the Town, and at Customer's sole expense, may install sub-meters on customer's property to measure water not entering a sewer system. All sub-meters shall be owned and maintained by Customer.

(i) Customers are encouraged to install valves of corresponding line size on Customer's side of the meter, one at the point where customer's installation connects to the meter and another at the point where the customer's installation connects to the structure that is being provided with water service. This will provide customer with the ability to shut off the water in emergency situations, when repairing internal plumbing, or when the structure is going to be vacant for an extended period.

Sec. 30-33. Meter Testing.

(a) The Town will employ every practicable means to maintain the accuracy of its meters. The Town may require a written statement from a certified plumber that the customer has no leaks, cross connections or other possible reasons for high consumption prior to the Town testing the customer's meter. If the test reveals that the meter is accurate to within two percent (2%), the expense of the test shall be borne by the customer. If the test reveals that the meter is inaccurate by more than two percent (2%), the expense of the test shall be borne by the Town and there will be an equitable billing adjustment for a period not exceeding three (3) months. The Town tests all meters prior to installation at the customer's premises tests, and larger meters periodically thereafter.

(b) Upon Customer's written request, the Town shall pull the meter for testing by an outside company. The charge for testing meters by an outside company shall be paid by the Customer and is based on the meter size and the agency's cost.

(c) When a meter is found to be defective, it will be repaired or replaced. The Town will estimate the bill for the period when the meter was malfunctioning by either using the reading from a functioning meter or by averaging the amount of usage during the three (3) billing periods previous to the malfunction, taking into consideration the capacity of the installation.

(d) In case of damage to the meter or to the customer's installation, The Town may temporarily suspend water service until the necessary repairs have been made and the cost thereof paid by the Customer.

Sec. 30-34. Continuity of Service.

(a) The Town will use reasonable diligence to provide continuous service and will not be liable to its customers for failure or interruption of service. The Town will not be liable for any act or omission caused directly or indirectly by strikes, labor troubles, accidents, litigation, shutdowns for repairs or adjustments, interference by governmental agencies, failure of electric power, acts of God or other causes beyond its control.

(b) The Town will notify customers a minimum of twenty-four (24) hours in advance of any planned shut-off through one or more of the following methods: the local press, the Town's communication system, or posting on the Town's website. When feasible, the Town will also hang notification tags on customer doors.

Sec. 30-35. Limitation of Use.

(a) Customers shall use water service purchased from the Town only for the purposes specified in the application for service, and the customer shall not sell or otherwise dispose of such service to other parties. Water service furnished to the customer will be rendered directly to the customer through the Town's meter and shall be for the Customer's own use. Water shall not be re-metered by the customer for the purpose of selling or otherwise disposing of water service to lessees, tenants or others and under no circumstances shall the customer or the customer's agent

or any other individual, association or corporation install a meter for the purpose of so re-metering said service. Unless approved by the Town, no customer shall extend Customer lines across a street, alley, lane, court, avenue or other highway, or property line without unity of title, or an easement, in order to furnish service for adjacent property through one meter, even when adjacent property belongs to the same owner. In case of such unauthorized re-metering, sale or disposition of water service, the Customer's service shall be discontinued until such unauthorized re-metering, sale or disposition has been discontinued or approved by Town Manager. Prior to reconnection of service, full payment for all bills, connection fee(s), and any other applicable fees and charges (including extra expenses incurred for clerical work, testing and inspections), must be made to the Town. All re-metered service and usage fees shall be specified in a written agreement that has been approved by the Town Manager.

(b) *Authorized Re-Metering.* Remetering and resale of water service is authorized for commercial buildings and developments only, and subject to the following terms and conditions:

1. All costs of installing remetering equipment shall be the sole responsibility of the property owner or authorized agent of the property owner;
2. Only the actual charges for water service to the building or development, as billed to the owner by the Town, may be charged to the individual units. No administrative costs or other charges may be added;
3. Within thirty (30) days after the end of each calendar year, the the Town must be provided with a sworn and notarized written statement the water charges billed to tenants or individual owners for the calendar year did not exceed the charges billed by the Town; and
4. The property owner requesting re-metering must enter into a written contract with the Town agreeing to abide by the terms and conditions of this section; allowing for the award of costs and attorneys' fees in any legal action to enforce the contract; and authorizing the judicial appointment of a receiver to accept and disburse tenants' or owners' payments for water service at any time the account for the building or development becomes delinquent and the owner of the building or development fails to bring the account current within fifteen (15) days after notice thereof; and
5. All records of tenant or owner billings for a period of at least three (3) years must be maintained. The Town may at any time, upon reasonable notice, demand inspection of the records. If the property owner is found to have overbilled tenants or owners for water service, the Town may order the property owner to cease the overbilling and to make appropriate refunds within a reasonable time. Failure to comply with the order, and any failure to keep the records required by this section, shall result in an order from the Town to immediately remove the remetering equipment. Failure to timely comply with any the order from the Town to cease activities that are in violation of this section shall result in fines levied against the owner in the amount of \$50 per day per tenant or owner that is served by the Town's master meter to the property. Failure to pay the fines shall be cause for discontinuance of service, in the same manner as failure to pay charges for water and sewer service.

Sec. 30-36. Unauthorized activity.

(a) No person shall tamper with, work on, uncover, make connection with, or in any way alter or damage any Town water main, meter or other Town facilities. Any activities involving work or alteration of Town facilities require prior written authorization of the Town. It is unlawful for any person not an authorized employee or agent of the Town to modify, tamper with, alter or change any water system equipment. Should it appear that water has been stolen by altering the system, bypassing the meter or otherwise, the Town shall have the right to discontinue the service until the defect is corrected and the service approved by the Town.

(b) Water service is subject to disconnection if the connection is unauthorized. Service will not be reconnected until such unauthorized connections have been investigated and until payment in full is made for all water service estimated by the Town to have been used by reason of such unauthorized connection.

Sec. 30-37. Water Boil Notice.

(a) Precautionary Boil Water Notices are placed into effect when water pressure in a water main drops below 20 pounds per square inch (psi). This usually occurs as a result of a water main break or a scheduled utility repair. While such repairs are being conducted, open pipes could be exposed to dirt or debris. Once repairs or services are completed, the pipes are flushed with chlorine to kill any bacteria that may be present. After flushing, the pipes are put back into service and water is restored to homes and businesses. The Florida Department of Health, as a safety precaution, requires utilities to issue a Boil Water Notice until bacteriological tests confirm that the water is safe to drink. Until the testing confirms that the water supply is safe, boiling water for use in cooking or consumption is an effective way to kill any bacteria that may be present. Bottled water may, as an alternative, also be used for drinking and cooking.

(b) Customers are notified of a Water Boil Notice through one or more of the following methods: the local press, the Town's communications system and posting on the Town's website. When feasible, the Town will also hang notification tags on customer doors. When the Water Boil Notice is lifted customers are notified in the same manner.

(c) See Florida Department of Health Guidelines for the Issuance of Precautionary Boil Water Notices at <http://www.doh.state.fl.us/environment/water/manual/boil.htm>.

Sec. 30-38. Billing Procedures.

(a) *Customer's Responsibility.* The customer is responsible for all water that passes through the meter until water service is disconnected. Disconnection occurs for the following reasons:

1. The Town receives notice from a customer to discontinue service for a date in the future.
2. Service is disconnected by the Town due to nonpayment or delinquent payment of twenty (20) days or more, or for any violation of these rules and regulations.

(b) *Customer deposits*

1. When a new account is opened, a customer deposit shall, except as provided herein, be required for each service address. The deposit amount shall be as provided in the Rate Schedule. Personal identification is required for all customers opening accounts.
2. Governmental agencies, churches, synagogues, charitable organizations, and public utilities with reciprocal agreements with the Town are not required to post customer deposits.
3. The Town may, in its sole discretion, waive deposit requirements if the customer furnishes a letter of credit status from another water utility company indicating a satisfactory credit rating and payment status for two consecutive years prior to the application for service.

(c) *Short Term (Temporary) Customer deposits.* A customer requesting short term (temporary) service and needing a temporary or hydrant meter shall pay a customer deposit as stated in the Rate Schedule. This customer deposit is security for the value of the meter and connections loaned to the customer as well as for payment of the water bill.

(d) *Transfer of a Customer deposit.*

1. A customer deposit may be transferred from one service location to another as follows:
 - a. Customer must specify a disconnection date for the account that currently has the customer deposit that is to be transferred to a new location.
 - b. The disconnection date for previous location and connection date for the new location cannot exceed thirty (30) days.
 - c. Customer account cannot be in arrears at the time the request is made to transfer the customer deposit.
 - d. The name for both accounts must be the same.
2. An additional deposit amount may be required when there is a change in classification, meter size or services.
3. The customer deposit is required as security for payment of the customer's water bills. It is refundable only to the customer upon termination of service, and is not transferable to another customer.

(e) *Refund of Customer deposit.*

1. Refunds of customer deposits will be processed after water service has been disconnected.

2. In lieu of a refund, and when requested by a customer, a customer deposit can be applied to the customer's account. This is an available option for residential customers who have had at least twenty-three (23) months of continuous service with no delinquencies or other infractions.
3. Customer deposits will be refunded by check to the customer upon termination of service and only after the final bill has been paid in full. The customer deposit, at the option of the customer, may be credited toward payment of the final bill.
4. Requests to issue deposit refunds will be verified and checks will be issued by the Town Finance Department, normally within 2-4 weeks from regular billing date.
5. No Town employee or contractor is authorized to disburse any funds or refunds to a customer. The Town, its employees and agents shall at all times comply with disbursement policies and procedures established by the Town.

(f) *Increase in Amount of Customer deposit.*

1. An increase in the amount of a customer deposit may be required to insure that there is a sufficient amount to secure payment of current bills. The total amount of a customer deposit, however, shall not exceed the average billing amount for two water service billing periods for the twelve month period immediately prior to the date of notice of additional deposit being required. In the event the customer has had service for less than twelve months, the customer deposit(s) shall be based upon the average billing(s) available.
2. When water service is disconnected, an additional customer deposit (as calculated in paragraph 1 above) may be required prior to the reconnection of service. In cases where service has not been disconnected and an increase in the customer deposit(s) is (are) required, the customer will be given fifteen (15) days written notice that includes the reason(s) for the increased amount, and the date and amount due. The amount due must be received by the Town's Billing Office by the due date in order to avoid disconnection of service.
3. Additional customer deposit(s) (as calculated in paragraph 1 above) shall be required when a customer, in the preceding twelve months, has had one or more of the following occurrences or infractions:
 - a. more than two late payments,
 - b. payment with an instrument that is dishonored by a bank,
 - c. service that has been disconnected for nonpayment,
 - d. tampering with the meter, or
 - e. use of water service that is unauthorized or fraudulent.
4. A customer who has had a deposit increased and who has had none of the above-listed occurrences of infractions for a period of twenty-three (23) months, will be returned to

"good customer" status. Once such status is achieved, any additional customer deposit amount in excess of the normal customer deposit amount specified in the Rate Schedule will, upon request from the customer, be returned to the customer.

Sec. 30-39. Monthly Billing.

(a) *Water Usage Presumption.* The quantity of water registered by the water meter shall be conclusive of the quantity of water delivered to the customer, except in those instances when the meter is found to be registering inaccurately or fails to register at all.

(b) *Monthly Water Service Billing Periods.* Bills for water service will normally be rendered monthly, but there may be instances where a bill is for a shorter period, such as when a shorter period is specified in the Rate Schedule or when written notice of a different billing period is given to the customer.

(c) Bills are due upon receipt and shall be presumed as having been received by the customer when delivered or mailed to the service address or to a mailing address specified by the customer.

(d) Non-receipt of a bill by the customer shall not relieve the customer of the obligation for payment of the bill.

(e) *Account Name Change.* Account name changes are permitted provided proper documentation of the change is submitted with the request and provided further that such change does not transfer the customer deposit or payment responsibility to another customer.

(f) The Town reserves the right to refuse any oral request for an account name change, until proper legal documentation is received by the Town.

(g) *Minimum Bill.* Each bill for water service usage charges shall not be less than the minimum usage charge specified in the Rate Schedule.

(h) For a customer's first and final bill, the monthly usage, administrative charges, and capital reserve charges may be prorated based on the actual number of days of service.

Sec. 30-40. Leak credits.

Upon written request, a customer may be permitted one (1) leak credit per year (i.e. twelve (12) consecutive billing periods). Such leak credit shall not exceed two consecutive months and the amount of the credit shall be determined in the following manner:

- (1) The leak credit shall be based on the greater of (1) the average of three (3) billing periods immediately prior to the leak billing period; or (2) the actual usage for the same billing period for the prior three years. The average number of gallons used during that prior period will be subtracted from the actual gallons measured by the meter for the leak

period. The resulting number of gallons will be charged at the lowest per thousand gallons rate from the Rate Schedule.

- (2) The credit shall not be applied until the Town is satisfied that the leak or other cause for high consumption has been corrected, either by presentation of plumber or parts receipts or invoices, or meter readings that indicate a return to normal use.
- (3) The Town Manager or designee may approve a payment plan for excessive water and sewer bills caused by leaks, or inadvertent use. No interest shall apply to payments pursuant to an approved payment plan.

Sec. 30-41. Back billing.

Back billing occurs when the Town discovers or determines that the customer's billing amount is less than the actual usage or when the account has not been billed correctly due to incorrect information submitted by the customer or Town clerical error.

Sec. 30-42. Disputed water bills.

- (a) The Town may require that all plumbing fixtures, piping and outlets be inspected by a licensed plumber to certify that there are no leaks before high usage accounts are analyzed for errors or meter malfunctions.
- (b) Customers may request one re-read of their meter per twelve month billing period, at no charge. Additional re-read requests will incur premise visit charges as specified in the Rate Schedule. If a re-read indicates an error in the original meter reading, the premise visit charge will not be assessed.

Sec. 30-43. Worthless Payment Instruments.

- (a) Payment for utility service by presenting a worthless payment instrument is a violation of Section 832.05, Florida Statutes. The issuance or delivery of a worthless payment instrument can be prosecuted by the State Attorney as a criminal offense. Such offense may be either a misdemeanor or a felony, depending on the amount of the instrument.
- (b) If the Town receives a worthless payment instrument from a customer, the customer will be notified by the Town in writing by certified mail, return receipt, that the instrument has been dishonored and that the customer must, within fifteen (15) days, make payment of the full amount of the dishonored instrument plus the service charge authorized by Sections 68.065 and 832.07, Florida Statutes. Failure to make payment of the full amount of the dishonored instrument plus the service charge may result in the matter being referred to the State Attorney for prosecution, or in a civil action to recover the amounts owed.

Sec. 30-44. Fire Protection Service Billing.

- (a) Fees for fire protection service are billed on an annual basis, during the month of October,, at the rates contained in the Rate Schedule. Rates are based on the size of the fire protection service line.
- (b) Fees for fire protection service are the responsibility of the customer. Bills are sent to the property owner unless the property owner authorizes the Town to send the bills to a tenant or lessee on the Fire Protection Service Application form.
- (c) Bills are for the entire year unless, during the previous twelve (12) months, the billing is for a new service of less than one year, or the property was sold during the year, as follows:
- (d) Charges for new service begin the first day of the month following the month in which the Town accepts ownership of fire protection waterlines and charges are prorated based on the number of months of service.
- (e) Charges for property that is sold during the billing year will be billed as follows: Charges for the previous owner will be billed through the end of the month that includes the date of sale. Charges for the new owner will begin the first day of the month following sale of the property and run through June of the billing year.
- (f) If further proration of the annual fee is required (i.e. on a daily basis for the month of sale), the proration will be calculated in a manner that does not cause the total annual fire protection service fee to exceed what the annual fee would be without the proration.

Sec. 30-45. Delinquent Accounts

- (a) *Billing Procedure; Delinquent Bills.* Water utility bills are due and payable when rendered and become delinquent if not paid within twenty (20) days of the billing date. Delinquent balances incur a late payment penalty and unpaid delinquent balances and late payment charges will appear on the next month's bill as past due. If the bill is not paid by the due date specified in the bill, a past due notice will be sent to the customer. The past due notice will advise the customer that if the past due amount is not paid by a specified date, water service will be disconnected.
- (b) *Termination of Service.* Past due utility bills that are not paid by the date specified in the disconnection notice will result in termination of utility service. Utility service that has been terminated for non-payment shall not be reconnected until all past due utility bills and late payment charges have been paid in full. Utility service that is reconnected after termination for non-payment shall also incur a reconnection charge, and an additional deposit amount may also be required.
- (c) The Town will not refuse or disconnect service to the owner of the rental unit or to a tenant or prospective tenant of such rental unit for nonpayment of service charges incurred by a former occupant of the rental unit. Where a rental unit has had more than one instance of a tenant who

defaults on the water bill, the Town may require that any future water service account can only be opened in the name of the property owner.

(d) *Collection agency.* Delinquent accounts with balances greater than \$10.00 may be forwarded to a collection agency 40 days after a final bill is issued if the amount remains unpaid.

(e) *Lien for unpaid charges.* Pursuant to Section 159.17, Florida Statutes, the Town has a lien on all lands or premises served by its water system for all services charges, and said liens shall be superior to all other liens on such lands or premises except the lien of state, county and municipal taxes and shall be on parity with the lien of such state, county and municipal taxes, provided, however, that no lien shall attach to rental property where a tenant contracts for service and then defaults in payment. Such liens, when delinquent for more than thirty (30) days, may be foreclosed by the Town in the manner provided by law for the foreclosure of mortgages on real property.

(f) The methods of collection of delinquent charges provided in this section shall not be construed as limiting, or in any way restricting, the use of any other remedy or method of collection authorized by law.

Sec. 30-46. Unauthorized Usage.

(a) Any unauthorized connections to the Town's water system will result in immediate termination of service, without notice, and service will not be restored until all unauthorized connections have been removed and the Town has received payment for all water service estimated by the Town to have been used as a result of the unauthorized connection.

(b) Theft of utility services is a criminal offense as provided in Section 812.14, Florida Statutes. In addition to criminal prosecution, the violator is also subject to a civil action by the Town and, if found guilty of utility theft, the violator is liable to the Town in an amount equal to three (3) times the amount of services unlawfully obtained or \$3,000, whichever is greater.

Section 2. Repeal of Prior Inconsistent Ordinances and Resolutions. All prior inconsistent ordinances and resolutions adopted by the Town Council, or parts of prior ordinances and resolutions in conflict herewith, are hereby repealed to the extent of the conflict.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 4. Effective Date. This ordinance shall take effect immediately upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Council Member Mandel and seconded by Council Member Hosafros and upon being put to a vote, the result was as follows:

9/5/14

Anita Cereceda, Mayor aye
Alan Mandel aye
Summer Stockton aye

Dan Andre, Vice Mayor aye
Rexann Hosafros aye

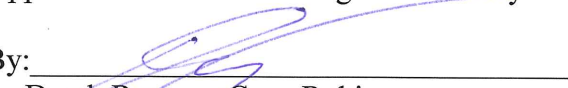
DULY PASSED AND ADOPTED THIS 15th DAY OF SEPTEMBER 2014, BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

By: 
Anita T. Cereceda, Mayor

ATTEST:

By: 
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By: 
Derek Rooney, Gray-Robinson
Town Attorney