

ORDINANCE NO. 22-07

AN ORDINANCE OF THE CITY OF HANFORD AMENDING HANFORD MUNICIPAL CODE CHAPTER 13.04

WHEREAS, in 2018, the California Legislature passed, and the Governor signed, Senate Bill No. 998 ("SB 998"), which enacted Chapter 6 (commencing with Section 116900) of Part 12 of Division 104 of the Health and Safety Code, setting forth procedures to be followed by municipal water providers in collecting unpaid, late, or delinquent water charges and in shutting off and reconnecting water service; and

WHEREAS, the City of Hanford is a municipal water provider for purposes of SB 998; and

WHEREAS, Hanford Municipal Code (HMC) Chapter 13.04 contains provisions relating to the City's water system, including, without limitation, provisions regarding the discontinuance of water service to customers who fail to pay services charges in a timely manner; and

WHEREAS, HMC Chapter 13.04 was previously amended to cause its compliance with SB 998; and

WHEREAS, the City Council has determined that further amendments to HMC Chapter 13.04 would best serve the City's residents.

NOW, THEREFORE, the City Council of the City of Hanford does ordain as follows:

Section 1. SB 998 establishes conditions under which the City may discontinue water service to a customer who fails to pay service charges in a timely manner. HMC Section 13.04.050 is deleted in its entirety and is restated in the manner reflected in the attached Exhibit "A."

Section 2. SB 998 requires the City to establish a process through which water service customers may appeal water service charges. HMC Section 13.04.110.C is deleted in its entirety and is restated in the manner reflected in the attached Exhibit "B."

Section 3. The enforcement provisions contained in HMC Sections 13.04.160 through Section 13.04.250 are deleted in their entirety and restated in the manner reflected in the attached Exhibit "C."

Section 4. This Ordinance shall take effect thirty (30) days after its adoption and shall be published once in the Hanford Sentinel within fifteen (15) days after its passage or a summary of this ordinance shall be published in the Hanford Sentinel in a manner consistent with the requirements of the California Government Code.



PASSED, ADOPTED AND APPROVED this 21st day of June, 2022, by the following vote:

AYES: Morrow, Sharp, Ramirez, Saltray, Bueno

NOES: _____

ABSTAIN: _____

ABSENT: _____

Kalish Morrow
KALISH MORROW
MAYOR of the City of Hanford

Attest:

Natalie Corral
CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF KINGS) ss
CITY OF HANFORD)

I, Natalie Corral, City Clerk of the City of Hanford, do hereby certify the foregoing Ordinance was duly passed and adopted at a regular meeting of the City Council of the City of Hanford held on the 21st day of June, 2022.

Date: 6/21/22

Natalie Corral
City Clerk

EXHIBIT "A"

Section 13.04.050 Delinquencies and Collections.

A. Water service charges, connection fees, and other charges identified in this chapter shall be collected by the director of finance.

B. Water service charges based on metered water use shall be billed monthly with other City utilities.

C. All other fees and charges not listed in subsection B. of this section shall be paid as set forth in this chapter. Fees and charges not requiring prepayment or payment at the time of issuance shall be included on the next monthly City utility bill to the customer.

D. Delinquencies & Discontinuance of Service – Residential Customers.

1. Late Fees and Interest. In the event any customer fails to pay the water service charges, connection fees, and other required charges and fees identified in this section within fifteen (15) calendar days after the date of the applicable City utility bill, the unpaid amount shall be deemed delinquent, and the City shall, except as otherwise provided herein: (i) assess a fee for late payment in an amount established by the City Council by resolution plus other fees established by the City Council, which amounts shall be added to the delinquent charges and fees, and the director of finance shall collect the late fee along with the delinquent charges and fees; and (ii) assess interest at the rate established by the City Council by resolution.

2. Discontinuance of Service.

a. The City Council shall adopt a written policy on discontinuation of residential water service (Discontinuation Policy) for nonpayment of service charges. Such policy will be available in English and the languages listed in Section 1632 of the California Civil Code, and any other language spoken by at least ten percent (10%) of the people residing within the area served by the City.

b. In the event any customer fails to pay any water service fees in full, including any late fee and interest, by 5:00 p.m. on the sixtieth (60th) calendar day following the date on which a payment becomes delinquent pursuant to subsection D.1. above, the City, in addition to all other remedies it may have, may discontinue furnishing water service and all other services identified on the applicable City utility bill and shall not resume the same until all outstanding charges and fees, together with any penalties, interest, service charges and/or connection fees necessitated by the resumption of water service, have been paid in full or a payment plan is approved.

c. Prior to discontinuing all services identified on the applicable City utility bill, the City shall contact the residential customer by phone or in writing advising the customer that all utilities identified in the applicable City utility bill will be discontinued if payment of the total amount identified in said written notice is not paid to the City or a payment

plan is approved within seven (7) business of such notice. Reconnections will only be processed Monday through Friday from 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m., and will not be processed on City-observed holidays. Reconnection of service by unauthorized individuals constitutes theft and will result in civil and/or criminal penalties, and the incident will be reported to the proper authorities. Any check or other form of payment not honored by a financial institution that is used to make payment on a customer's utility account will result in additional fees established by separate resolution and will be a basis for the discontinuance of service.

d. When the City contacts a residential customer by telephone, it shall offer to provide in writing to the customer the City's policy on discontinuation of residential services for nonpayment. The City will offer to discuss options to avoid discontinuation of services, including, but not limited to, alternative payment schedules, deferred payments, minimum payments, procedures for requesting amortization of the unpaid balance, and petition for bill review and appeal.

e. When the City contacts a residential customer by written notice, the written notice of payment delinquency and impending discontinuation will be mailed to the customer of the residence to which the residential service is provided. If the customer's address is not the address of the property to which residential service is provided, the notice shall also be sent to the address of the property to which the residential service is provided, addressed to "Occupant." The notice shall include, but is not limited to, the following information:

- (i) Customer's name and address;
- (ii) Amount of the delinquency;
- (iii) Date by which payment or arrangement for payment is required in order to avoid discontinuation of residential service;
- (iv) Description of the process to apply for an extension of time to pay the delinquent charges;
- (v) Description of the procedure to petition for bill review and appeal; and
- (vi) Description of the procedure by which the customer may request a deferred or alternative payment schedule, including an amortization of the delinquent residential service charges, consistent with the City's Discontinuation Policy.

f. If the City is unable to make contact with the customer or an adult occupying the residence by telephone, and written notice is returned through the mail as undeliverable, the City shall make a good faith effort to visit the residence and leave, or make other arrangements for placement in a conspicuous place of, a notice of imminent discontinuation of residential service for nonpayment and the City's policy for discontinuation of residential service for nonpayment.

g. If an adult accountholder at the residence appeals the utility bill, the City shall not discontinue residential service while the appeal is pending.

h. The City will not discontinue residential service for nonpayment if *all* of the following conditions exist:

(1) The customer demonstrates that he or she is financially unable to pay for residential service within the City's normal billing cycle. The customer shall be deemed financially unable to pay for residential service within the City's normal billing cycle if any member of the customer's household is a current recipient of CalWORKs, CalFresh, general assistance, Medi-Cal, Supplemental Security Income/State Supplementary Payment Program, or California Special Supplemental Nutrition Program for Women, Infants, and Children, or the customer declares that the household's annual income is less than two hundred percent (200%) of the federal poverty level; and

(2) The customer is willing to enter into an amortization agreement or alternative payment schedule consistent with the City's Discontinuation Policy, with respect to all delinquent charges.

If these two (2) conditions are satisfied, the City shall, at the City's choice, offer the residential customer one (1) or more of the following options:

- (i) Amortization of the unpaid balance;
- (ii) Participation in an alternative payment schedule; and/or
- (iii) Temporary deferral of payment.

The City may choose the payment option a residential customer is offered and may set the terms of that payment plan. Ordinarily, the repayment option offered should result in repayment of any remaining outstanding balance within six (6) months. The City may, but is not required to, grant a longer repayment period if it finds the longer period necessary to avoid undue hardship to the customer based upon the circumstances of the individual case.

Residential service may be discontinued under this subsection h. no sooner than five (5) business days after the City posts a final notice of intent to discontinue service in a prominent and conspicuous location at the property under either of the following circumstances:

(a) The customer fails to comply with an amortization agreement, an alternative payment schedule, or a deferred payment plan for delinquent charge for sixty (60) calendar days or more.

(b) While undertaking an amortization agreement, an alternative payment schedule, or a deferral or reduction in payment plan for delinquent charges,

the customer fails to pay his or her current residential service charges for sixty (60) calendar days or more.

In lieu of certification from a primary care provider that discontinuation of residential service will be life threatening to, or pose a serious threat to the health and safety of, a resident of the premises at which service is provided, the City hereby declares that the discontinuance of service poses a serious threat to the health and safety of residents.

i. If the City discontinues water service to a residential customer, the City will provide the customer with information on how to restore service.

j. For a residential customer who demonstrates to the City that the customer's household income is below two hundred percent (200%) of the federal poverty line, the City shall:

(i) Charge a service fee for reconnection during normal operating hours of fifty dollars (\$50) or the City's actual cost for reconnection, whichever is less. For the reconnection of residential service during nonoperational hours, the service fee shall be one hundred fifty dollars (\$150) or the City's actual cost for reconnection, whichever is less. Reconnection fees shall be subject to an annual adjustment for changes in the Consumer Price Index beginning January 1, 2021.

(ii) Waive interest charges and late fees related to delinquent Water bills once every twelve (12) months.

A residential customer shall be deemed to have a household income below two hundred percent (200%) of the federal poverty line if any member of the household is a current recipient of CalWORKs, CalFresh, general assistance, Medi-Cal, Supplemental Security Income/State Supplementary Payment Program, or California Special Supplemental Nutrition Program for Women, Infants, and Children, or the customer declares that the household's annual income is less than two hundred percent (200%) of the federal poverty level.

k. This subsection k. shall apply if there is a landlord-tenant relationship between the residential occupants and the owner, manager, or operator of the dwelling:

(1) If the City furnishes individually metered residential service to residential occupants of a detached single-family dwelling, a multiunit residential structure, mobile home park, or permanent residential structure in a labor camp as defined in California Health & Safety Code Section 17008, and the owner, manager, or operator of the dwelling, structure, or park is the customer of record, the City shall make every good faith effort to inform the residential occupants, by means of written notice, when the account is in arrears that service will be terminated at least ten (10) calendar days prior to the termination. The written notice shall further inform the residential occupants that they have the right to become customers, to whom the service will then be billed, without being required to pay any amount which may be due on the delinquent account.

(2) The City is not required to make service available to the residential occupants unless each residential occupant agrees to the terms and conditions of service and meets the requirements of law and the City's rules and requirements. However, if one (1) or more of the residential occupants are willing and able to assume responsibility for the subsequent charges to the account to the satisfaction of the City, or if there is a physical means legally available to the City of selectively terminating service to those residential occupants who have not met the requirements of the City's rules and requirements, the City shall make service available to those residential occupants who have met those requirements.

(3) If prior service for a period of time is a condition for establishing credit with the City, residence and proof of prompt payment of rent or other credit obligation acceptable to the City for that period of time is a satisfactory equivalent.

(4) In the case of a detached single-family dwelling, the City may do any of the following:

(i) Give notice of termination at least seven (7) business days prior to the proposed termination.

(ii) In order for the amount due on the delinquent account to be waived, require an occupant who becomes a customer to verify that the delinquent account customer of record is or was the landlord, manager, or agent of the dwelling. Verification may include, but is not limited to, a lease or rental agreement, rent receipts, a government document indicating that the occupant is renting the property, or information disclosed pursuant to Section 1962 of the Civil Code.

l. The City shall report the number of annual discontinuations of residential service for inability to pay on the City's Internet Web site and to the State Water Resources Control Board.

m. All written notices to residential customers required under this Subsection 2 shall be provided in English, the languages listed in Section 1632 of the Civil Code, and any other language spoken by ten percent (10%) or more of the customers in the City's service area.

n. This Subsection 2 does not apply to the termination of service connections by the City due to an unauthorized action of a customer, including, without limitation, the theft of water.

E. Delinquencies & Discontinuance of Services – Non-Residential Customers.

1. Late Fees and Interest. In the event any customer fails to pay the water service charges, connection fees, and other required charges and fees identified in this section within fifteen (15) days after the date of the applicable City utility bill, the unpaid amount shall be deemed delinquent, and the City may, except as otherwise provided herein: (i) assess a fee for late payment in the amount established by the City Council by resolution plus other fees

established by the City Council, which amounts shall be added to the delinquent charges and fees, and the director of finance shall collect the late fee along with the delinquent charges and fees; and (ii) assess interest at the rate established by the City Council by resolution.

2. Discontinuance of Service. In the event any non-residential customer fails to pay any charges or fees described in this chapter, including any late fee or interest, by 5:00 p.m. on the due date shown on the delinquent notice issued by the City, the City, in addition to all other remedies it may have, may discontinue furnishing water service and all other services identified on the applicable City utility bill and shall not resume the same until all outstanding charges and fees, together with any , interest, service charges and/or connection fees necessitated by the resumption of water service, have been paid in full. Prior to discontinuing all services identified on the applicable City utility bill, the City shall send a written delinquent notice to the customer advising the customer that all utilities identified in the applicable City utility bill will be discontinued if payment of the total amount identified in said written notice is not paid to the City within ten (10) calendar days after the date of said written notice. Reconnections will only be processed Monday through Friday from 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m., and will not be processed on City-observed holidays. Reconnection of service by unauthorized individuals will result in additional charges established by separate resolution and the incident will be reported to the proper authorities. Any check not honored by a financial institution that is used to make payment on a customer's utility account will result in additional fees established by separate resolution and will be a basis for the disconnection of service.

F. Court Action. In addition to the discontinuing all utilities identified on the applicable City utility bill, the City may file a civil action against the customer for the collection of any amount due and unpaid. Such remedy shall be cumulative and in addition to any other remedy provided in this chapter or by law.

G. Notice of Liens. In the event a customer fails to pay, in full, all charges, fees or interest identified in this chapter within ninety (90) days of the date of any City utility bill, the City shall notify the owner of the real property receiving the water service, in writing, of such delinquency and that the delinquency shall be collected pursuant to the provisions of paragraph 5 of this subsection.

H. Collection through Tax Roll. In the alternative to filing a civil action against the customer, the City Council, pursuant to the applicable provisions of the California Health and Safety Code, may elect to have all delinquent charges, fees and interest collected on the tax roll in the same manner, at the same time and by the same persons together with and not separately from general taxes. Such delinquent charges, fees and interest shall thereafter constitute a lien against the lot or parcel of land against which the charges have been imposed.

I. Recording of Lien. In addition to or in lieu of collecting delinquent fees through the tax roll, the City may, in accordance with California Health and Safety Code Section 5473.11, as may be amended, record a lien against real property for which fees are delinquent.

J. Restoration of Service. Except as otherwise provided in this Section 13.04.050, the utilities identified on the City utility bill shall not be restored until all charges, fees and interest,

including without limitation, all expenses of removal, discontinuance, disconnection, restoration and reconnection have been paid.

K. The City may discontinue water service without notice to the customer when the apparatus, appliances or equipment using water, in the sole opinion of the City, is found to be dangerous or unsafe. The City shall promptly notify the customer of the reasons for the discontinuance and the corrective action to be taken by the customer before service can be restored.

L. The City may discontinue service without notice to any customer when the use of water thereon by the apparatus, appliances, equipment or otherwise is found by the City in its sole discretion, to be detrimental or injurious to water service furnished to other customers. The City shall promptly notify the customer of the reasons for the discontinuance and the corrective action to be taken by the customer before service can be restored.

M. The City may discontinue water service without notice to any customer when it is determined by the City in its sole discretion, that the customer has obtained water service by fraudulent or illegal means or has diverted the water service for unauthorized use. The City shall not restore service until the customer has complied with all the rules and regulations of the City and the City has been reimbursed for the full amount of the service rendered and the actual cost to the water division incurred by reason of such fraudulent, illegal, or unauthorized use.

EXHBIT "B"

Section 13.04.110.C.

C. Appeals.

1. Any customer may appeal water charges. To appeal service charges, a customer must, except as otherwise provided herein, submit the following items to the director of finance within fifteen (15) calendar days of the date of the bill disputed bill: (i) a written notice of appeal; (ii) the amount payable under the disputed bill; and (iii) an appeal fee, which fee will be established by the city council. The failure to submit these items during such time period shall result in a waiver of appeal rights and shall constitute a failure to exhaust administrative remedies. The notice of appeal shall set forth in detail all facts supporting the customer's objection to a bill.

2. Notwithstanding the provisions of subsection 1. above, a customer who is financially unable to deposit the amount of the disputed bill and/or pay the appeal fee may file a request for a waiver of all or a portion of the required deposit and appeal fee. A waiver request must be submitted to the director of finance with the customer's notice of appeal, along with a sworn declaration and other supporting documents and materials showing the customer's actual financial inability to pay the appeal deposit and/or appeal fee. The customer bears the burden of demonstrating to the satisfaction of the director of finance the customer's actual inability to deposit the amount of the disputed bill and/or pay the appeal fee. If the director of finance determines that a waiver is warranted, the deposit and appeal fee will be waived or partially waived. If the director of finance finds that a waiver is not warranted, the customer must, within three (3) business days of the customer's receipt of the director of finance's written decision, deposit the amount of the disputed bill and pay the appeal fee for the customer's appeal to be processed.

3. Upon the director of finance's receipt of a notice of appeal, deposit of the amount of the disputed bill, and appeal fee (or the director of finance's determination to waive the deposit and/or fee), he or she shall set the matter for hearing before the hearing officer or hearing body designated by the city manager. The hearing officer or hearing body shall hold a hearing on the customer's appeal on the date specified by the director of finance and shall receive evidence presented by the appealing party and city staff. After the hearing, the hearing officer or hearing body may uphold or adjust the amount of the disputed bill. The hearing officer or hearing body shall cause to be issued a written determination on the customer's appeal within fifteen (15) calendar days of the date of appeal hearing. An aggrieved customer may seek judicial review of the hearing officer's or hearing body's decision on the customer's appeal by filing a complaint with the Superior Court of Kings County, California during the period identified by California Code of Civil Procedure Section 1094.6.

EXHIBIT "C"

Section 13.04.160 Unauthorized Water Use.

A. Any person using water from the City water system in violation of any provision of the Hanford Municipal Code shall be subject to the administrative, civil, and criminal remedies set forth in state law and in this Code.

B. It is unlawful for any person or entity to modify or tamper with any portion of the City's water system, including, without limitation, water meters, without the City's authorization.

Section 13.04.170 Administrative Enforcement Remedies.

A. Notice of Violation.

1. With respect to violations other than the failure to timely pay utility service charges, upon the determination by the City's director of finance or director of public works that a person or entity has violated this Chapter 13.04, such person or entity may be served with a written Notice of Violation. The notice shall, if feasible, describe the time, place, and circumstances of each violation charged and the corrective measures, if any, the person or entity is required to undertake to correct the violation. If the user who is responsible for the violation does not own the real property at which the violation occurred, the City will provide a copy of the notice to the owner when the notice is served upon the user.

2. The person or entity shall complete any corrective action described in the Notice of Violation within ten (10) calendar days of receipt of the Notice of Violation or shall identify in writing a proposed arrangement for the corrective action to be taken if corrective action cannot be reasonably completed during such ten (10) calendar day period. A proposed arrangement shall be submitted to the City official who issued the Notice of Violation.

3. Nothing in this section shall limit the authority of the City to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

B. Method of Service.

1. All written notices required by this chapter shall be served by personal delivery to the person or entity to be notified or by deposit in the United States Mail, certified with return receipt requested, addressed to such person or entity to be notified at his/her/its last known address as the same appears in the public records or other records pertaining to the matter to which such notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in the mail.

2. Where personal service or service by mail of a Notice of Violation or Notice of Hearing described below is unsuccessful, the City shall cause all of the following to occur:

a. A copy of the Notice of Violation or Notice of Hearing, as appropriate, shall be conspicuously posted at the real property where the violation is occurring; and

b. A copy of the Notice of Violation or Notice of Hearing, as appropriate, shall be published for at least three (3) consecutive days in a newspaper of general circulation in the City. A copy of the Notice of Hearing shall be published at least five (5) calendar days prior to the date scheduled for the public hearing that is referenced in the Notice of Hearing.

3. The failure of any person or entity to receive a notice properly served, mailed, posted, or published under this chapter shall not affect the validity of any proceedings occurring under this chapter.

C. Hearing.

1. If the director of finance or the director of public works, as applicable, determines that the violation has not been eliminated by the deadline for compliance established pursuant to subsection A. above, or that a violation has recurred prior to the compliance date, the City will set the matter for a hearing before a hearing officer designated by the city manager.

2. This hearing serves to provide a person or entity subject to a Notice of Violation a full opportunity to object to the determination that a violation has occurred, that the violation has continued to exist or has recurred, and/or that the person or entity is responsible for creating, maintaining, or fostering the violation. The failure of any person or entity subject to a Notice of Violation to appear at the hearing shall constitute a failure to exhaust administrative remedies.

3. The City Clerk shall cause a written Notice of Hearing before the hearing officer to be served on each person and entity subject to the Notice of Violation and to the owner of the real property at which the violation occurred, if the owner and the user are different parties.

D. Notice of Hearing. Each hearing shall be set for a date not less than fifteen (15) calendar days nor more than sixty (60) calendar days from the date of the Notice of Hearing unless the violator consents to a shortening or extension of time or the hearing officer determines that the matter is urgent or that good cause exists for an extension of time.

E. Conduct of Hearing.

1. At the date, time, and place set forth in the Notice of Hearing, the hearing officer shall conduct a hearing on the Notice of Violation.

2. At the hearing, the hearing officer shall consider any written or oral evidence, including the following:

a. The Notice of Violation and evidence submitted by persons subject to the Notice of Violation and by the City;

b. The objectively reasonable efforts made by the person or entity subject to the Notice of Violation to comply prior to the applicable compliance date; and

c. Any condition or situation beyond the control of the person or entity subject to the Notice of Violation that prevented compliance by the applicable deadline.

F. Findings and Order.

1. Within fifteen (15) calendar days following the conclusion of the hearing, the hearing officer shall make findings and issue a written determination in connection with the Notice of Violation.

2. The findings made by the hearing officer shall be supported by the evidence received at the hearing or otherwise submitted to the hearing officer in accordance with State law or this Code.

3. If the hearing officer finds by a preponderance of the evidence that a user has violated, or continues to violate, any provision of this Chapter 13.04, excluding violations involving the timely payment of utility charges, the hearing officer may issue a Compliance Order containing the following:

a. Directive to the user ordering him/her/it to comply immediately with all requirements and take such appropriate remedial or preventive actions to properly address a continuing or threatened violation;

b. Directive to the user to cease activities causing or associated with the unauthorized activity;

c. Requirements to address the noncompliance or prevent the continuation, exacerbation, or reoccurrence of the violation;

d. Deadline for compliance;

e. Directive for the termination of water service to the violating property through the severance of the connection between the violating property and the City's water system, if the user fails to take all required actions by the deadline established by the hearing officer;

f. Directive to the user to pay an administrative penalty for each violation, with each penalty not to exceed the maximum allowed under state law;

g. Directive to the violator to pay reimbursement to the City for the fees and costs incurred by the City, including, without limitation, administrative costs and legal fees, associated with the violation;

h. Directive to the user to pay a deposit to the City that represents the fees and costs that the City will incur to address continuing violations;

i. Other terms, conditions, and/or requirements that the hearing officer finds reasonable; and/or

j. Authorization to City staff to take any other action that the hearing officer finds reasonable.

4. A Compliance Order does not relieve the user of liability for any violation, including any continuing violation. Issuance of a Compliance Order shall not be a bar against, or a prerequisite for, taking any other action against the user.

5. Every person and entity subject to a Compliance Order shall observe and comply with such order and with all applicable laws, permits, and other approvals of federal, state, and local governments in any and all actions taken pursuant to or in order to comply with the Compliance Order, including, without limitation, the payment of applicable fees and charges.

6. If the hearing officer finds one (1) or more of the following exists, then the hearing officer shall issue a finding of those facts:

a. That a violation did not occur or recur at or on the subject property after the compliance date established through the Notice of Violation;

b. That the person or entity subject to the Notice of Violation took all objectively reasonable steps to comply with the Notice of Violation by the applicable compliance date; or

c. That some condition or situation beyond the control of the person or entity subject to the Notice of Violation prevented compliance prior to the compliance date.

G. Administrative Penalties.

1. When the hearing officer finds that a user has violated, or continues to violate, any provision of this Chapter 13.04, with the exception of violations associated with the failure to pay utility charges in a timely manner, the hearing officer may fine such user in an amount not to exceed the then-current maximum allowed by State law. Such penalties may be assessed on a per violation per day basis.

2. Unpaid charges, fines and penalties shall, after the payment deadline identified in the Compliance Order, be assessed an additional penalty in an amount established by the City Council by resolution, and interest shall accrue thereafter at a rate established by the City Council by resolution; provided however, the additional penalty and/or interest shall not apply if collection of the same by the City would violate State law.

3. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user.

4. In determining the amount of a penalty, the hearing officer may take any or all of the following factors into consideration:

- a. The period of time during which the violation(s) occurred;
- b. The nature, frequency, and recurrence of the violation(s);
- c. The ease with which the violation(s) could have been abated;
- d. The good faith efforts made to address the violation(s);
- e. The economic impact of the penalty on the person/entity responsible for payment;
- f. The impact of the violation on the public and/or property; and
- g. Such other factors as justice may require.

5. Penalties imposed by the hearing officer may accrue from a date no earlier than the compliance date specified in the Compliance Order and shall cease to accrue on the date the Compliance Order has been complied with as determined by the City.

6. Penalties assessed by the hearing officer shall be due by the date specified in the Compliance Order.

7. Penalties assessed by the hearing officer are a debt owed to the City and, in addition to all other means of enforcement, may be enforced and collected through an assessment added to the property tax roll or through the recording of a lien against the real property at which the violation occurred.

8. If a person or entity subject to the Compliance Order gives written notice to the City officer issuing the Notice of Violation that the terms of the Compliance Order have been satisfied and if the director finds that compliance has occurred, the date that the written notice is postmarked or personally delivered to the director or the date of the City's final inspection, whichever occurs first, shall be deemed to be the date of compliance.

H. Report of Compliance after Compliance Order. If the director issuing the Notice of Violation determines that a Compliance Order has been fully satisfied, the director will file a report with the City Clerk indicating that compliance has been achieved and the date of the City's final inspection.

I. Compliance Dispute.

1. If the director does not file a report required by subsection H. above, a person or entity subject to a Compliance Order who believes that compliance has been achieved may request a compliance hearing by filing for a hearing with the City Clerk.

2. The hearing shall be noticed and conducted in the same manner as a hearing on a Notice of Violation.

3. The hearing officer shall determine if compliance with the Compliance Order has been achieved and, if so, when it was achieved.

J. Right of Judicial Review. Following the exhaustion of administrative remedies identified in this chapter, any person or entity aggrieved by a Compliance Order may obtain review of such order in the superior court by filing with the court a petition for writ of mandate.

K. Lien and Tax Roll Assessment Procedures.

1. Whenever the amount of a penalty, cost, or fee, including interest, imposed upon a user by the City pursuant to this chapter has not been satisfied in full within ninety (90) calendar days of an applicable due date and/or has not been successfully challenged, the obligation may constitute an assessment or a lien against the real property at which the violation occurred or is occurring.

2. The lien provided herein shall have no force or effect until recorded with the County Recorder. Once recorded, the lien shall have the force, effect, and priority of a judgment lien governed by the provisions of the California Code of Civil Procedure, as may be amended.

3. Interest shall accrue on the principal amount remaining unsatisfied pursuant to law at the rate established by the City Council by resolution.

4. Prior to levying an assessment or recording a lien, the director of finance shall prepare and file with the City Clerk a written report stating the amounts due and owing.

5. The City Clerk shall fix a time, date, and place for a hearing on such report and any protests or objections thereto. The City Clerk will provide notice of such hearing to the user and to the owner of the subject real property, if the owner and user are not the same party, in the manner described in subsection D. above.

6. Any person or entity whose real property is subject to the proposed assessment or lien may file a written protest with the City Clerk and/or may protest verbally at the City Council meeting at which the hearing on the assessment or lien occurs.

7. The City Council will hold and conduct a public hearing at the time, date, and place set forth in the notice for such hearing.

8. The City Council will hear and consider only testimony and other evidence that is relevant to the calculation of the amounts owed or to the proposed imposition of the assessment or lien, including without limitation:

- a. The report of the director of finance;
- b. Objections or protests of property owners and other responsible or interested persons who may be held liable for the amounts owed;
- c. Evidence on whether all procedures were properly followed by the City;
- d. Evidence regarding the costs and fees incurred by the City in the matter; and
- e. Evidence on whether the person before the City Council is responsible for the amounts owed to the City.

9. The City Council shall confirm, modify, or forego the assessment or lien as a result of the hearing. The City Council's decision shall be based upon the preponderance of the evidence presented at the hearing.

10. The public hearing before the City Council shall not serve as a re-hearing for persons who previously have been duly determined as responsible for fines, penalties, costs, and/or fees owed to the City. The validity of fines, penalties, costs, and fees need not be re-considered at the lien or assessment hearing, and the City Council will not be required to receive evidence or testimony regarding the validity of fines, penalties, costs, or fees at such hearing.

11. Within thirty (30) days of the City Council's confirmation or modification of the assessment or lien amount, the City Clerk will, as applicable: (i) inform the Tax Collector for Kings County, California of the assessment amount; or (ii) record the lien in the office of the County Recorder for Kings County, California.

12. If a lien is recorded, the City Clerk will record a notice of satisfaction or provide the property owner of the subject property with a notice of satisfaction that may be recorded once payment in full is received by the City of the outstanding penalties, costs, fees, and interest. Such notice of satisfaction shall cancel the City's lien.

L. Consent Orders. The director of finance or the director of public works, as applicable, may enter into Consent Orders, assurances of compliance, or other similar documents establishing a voluntary agreement with any user responsible for noncompliance. Such documents shall include the specific action to be taken by the user to correct the noncompliance within a time period specified in the document. Such documents shall have the same force and effect as a Compliance Order issued by the City .

Section 13.04.180 Criminal Prosecution.

A. A user who willfully or negligently violates any provision of this chapter, with the exception of provisions pertaining to the timely payment of utility charges, shall, upon conviction, be guilty of a misdemeanor punishable pursuant to Section 19 of the California Penal Code, as may be amended.

B. A user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this chapter, or who falsifies, tampers with, bypasses, or knowingly renders inaccurate any water control or monitoring device shall, upon conviction, be punished by a fine and/or imprisonment as allowed under State law.

Section 13.04.190 Civil Remedies.

A. When the director of finance or the director of public works, as applicable, finds that a user has violated or continues to violate, any provision of this chapter, with the exception of provisions pertaining to the timely payment of utility charges, such director may petition the Superior Court of Kings County, California, through the City's attorney, for the issuance of a temporary restraining order, temporary injunction, and/or permanent injunction, as appropriate, which restrains or compels the specific performance of any requirement imposed by this chapter. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against the user.

B. Nothing contained in this Code shall preclude or limit the City from pursuing a civil action for damages against a person or entity that causes the City to incur injury, loss, costs, or expenses as a result of the person's or entity's violation of this chapter.

C. In addition to all other remedies, as part of any civil action brought by the City, a court may assess a civil penalty in an amount not to exceed the maximum allowed by State law per day for each violation with respect to any person or entity that violates this chapter, which penalty shall be payable to the City.

Section 13.04.200 Administrative Citations.

A. Issuance of Citation.

1. Whenever the director of finance or the director of public works, as applicable, determines that a violation of a provision of this chapter has occurred, such director

or his/her designee shall have the authority to issue an administrative citation to any person or entity responsible for the violation, with the exception of violations pertaining to the payment of utility charges.

2. Each administrative citation shall contain the following information:

a. The date of the violation or, if the date of the violation is unknown, then the date the violation is identified;

b. The address or a description of the location where the violation occurred;

c. The section of this code violated and a description of the violation;

d. The amount of the fine for the violation;

e. A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;

f. An order prohibiting the continuation or repeated occurrence of the code violation described in the administrative citation;

g. A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request for hearing form to contest the administrative citation may be obtained; and

h. The name and signature of the individual issuing the citation.

B. Amount of Fines.

1. The amounts of the fines for code violations imposed pursuant to this section shall be set forth in a schedule of fines established by resolution of the City Council.

2. The schedule of fines shall specify any increased fines for repeat violations of the same code provision by the same person or entity.

C. Payment of Fines.

1. Fines shall be paid to the City within thirty (30) days from the date of the administrative citation.

2. Any administrative citation fine paid shall be refunded if it is determined, after an appeal hearing, that a person or entity charged in the administrative citation was not responsible for the violation or that there was no violation as charged in the citation.

3. Payment of a fine under this chapter shall not excuse, discharge, or permit any continuation or repeated occurrence of the code violation that is the subject of the administrative citation.

D. Hearing Request.

1. Any recipient of an administrative citation may appeal the citation by completing a request for hearing form and returning it to the City within thirty (30) days from the date of the administrative citation, together with an advance deposit of the fine.

2. A request for hearing shall be submitted in writing to the City Clerk.

3. The person or entity requesting the hearing shall be notified of the time and place set for the hearing at least ten (10) calendar days prior to the date of the hearing.

4. If the City department that issued the citation submits an additional written report concerning the administrative citation to the hearing officer, then a copy of such report shall be served on the person requesting the hearing at least five (5) calendar days prior to the date of the hearing.

E. Hearing Officer. A hearing officer designated by the city manager shall serve as the hearing body for appeals regarding administrative citations issued under this chapter.

F. Hearing Procedure.

1. No hearing to contest an administrative citation shall be held unless the fine has been deposited with the City in advance; provided however, the deposit requirement shall be waived if the director of the City department issuing the citation determines that the appealing party is financially unable to deposit the amount of the fine. The process to waive the deposit and fee requirements set forth in section 13.04.110 of this Code relating to the appeal of water service charges shall, to the extent feasible, apply with respect to the waiver of the deposit of fine amounts.

2. A hearing shall be set for a date that is not less than fifteen (15) calendar days and not more than sixty (60) calendar days from the date that the request for hearing is filed in accordance with the provisions of this section.

3. At the hearing, the party contesting the administrative citation shall be given the opportunity to testify and to present evidence concerning the administrative citation.

4. The failure of any recipient of an administrative citation to appear at the appeal hearing shall constitute a forfeiture of the fine and a failure to exhaust administrative remedies.

5. The administrative citation and any additional report submitted by the department issuing the citation shall constitute prima facie evidence of the respective facts contained in those documents.

6. The hearing officer may continue the hearing and request additional information from the City department issuing the citation or from the recipient of the administrative citation prior to issuing a written decision.

G. Hearing Officer's Decision.

1. After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision to uphold, modify, or cancel the administrative citation and shall list in the decision the reasons for the decision. The decision of the hearing officer shall be final.

2. If the hearing officer determines that the administrative citation should be upheld, then the fine amount on deposit with the City shall be retained by the City.

3. If the hearing officer determines that the administrative citation should be canceled, then the City shall promptly refund the amount of the deposited fine.

4. If the hearing officer determines that the fine levied under the administrative citation should be adjusted, then the City will promptly refund the amount of the deposited fine that exceeds the amount fixed by the hearing officer or the recipient of the administrative citation will promptly pay to the City an additional amount fixed by the hearing officer if the officer finds that the fine assessed under the administrative citation to be insufficient.

5. The recipient of the administrative citation shall be served with a copy of the hearing officer's written decision.

H. Late Payment Charges. Any person or entity who fails to pay to the City any fine imposed pursuant to the provisions of this section on or before the date that the fine is due shall also be liable for the late payment charges described in Section 13.04.170 G. above.

I. Recovery of Administrative Citation Fines and Costs. The City may collect any past due administrative citation fine or late payment charge by use of all available legal means, including the tax roll and lien remedies described in section 13.04.170.K. above. Collection costs shall be in addition to any penalties, interest, and/or late charges imposed upon the delinquent obligation. Collection costs imposed under this provision shall be added to and become a part of the underlying obligation. Any partial payment of an obligation, when a partial payment is permitted, will be applied first to the principal amount of the underlying obligation, then to any penalties, and then to interest.

J. Right to Judicial Review. Any person or entity aggrieved by a decision of the hearing officer on an administrative citation may obtain review of the decision by filing a

petition for review with the Superior Court for Kings County, California in accordance with the timelines and provisions set forth in California Government Code Section 53069.4, as may be amended.

K. Notices. The administrative citation and all notices required to be given by this section shall be served on the responsible party by personal delivery thereof to the person or entity to be notified or by deposit in the United States Mail, certified mail with return receipt requested, addressed to such person to be notified at his/her/its last-known address as the same appears in the public records or other records pertaining to the matter to which such notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in the mail. If the user who is responsible for the violation does not own the real property at which the violation occurred, the City will also provide a copy of the citation and associated notices to the owner when the citation and notices are served upon the user.

Section 13.04.210 Appeal.

A. This section shall only apply to matters in which no appeal process is otherwise specified in this chapter.

B. Any person affected by any decision, action or determination by any City department in interpreting or implementing the provisions of this chapter may file with the City Clerk, within ten (10) calendar days of the date of service of such decision, action or determination, a notice of appeal to the City Clerk appealing such decision, action or determination. Except as otherwise provided, the appealing party shall, at the time of submitting the notice of appeal, pay the applicable appeal fee, which shall be established by the City Council, as a condition of the City processing the appeal. The notice of appeal shall set forth in detail all facts supporting the user's appeal. The filing of the notice of appeal shall not limit the authority of the City to take such action as the City deems necessary to stop or prevent an ongoing or threatened violation of any of the provisions of this chapter, including actions or directives to prevent or stop threatened harm to the health or safety of the public.

C. Notwithstanding subsection B. above, a user who is financially unable pay the appeal fee may file with the City Clerk a request for a waiver of all or a portion of the required deposit and appeal fee. The waiver provisions set forth in section 13.04.110 of this Code shall, to the extent feasible, apply to appeal fees charged pursuant to this section 13.04.210; provided however, the City Clerk shall possess decision-making authority over the waiver or partial waiver of appeal fees occurring under this section.

D. Upon receipt of a notice appeal and appeal fee, the City Clerk shall set the matter for hearing before an appeal officer designated by the city manager, and after said hearing, the appeal officer may affirm, overrule or modify the decision, action or determination of a City department that is the subject of the appeal. To the extent feasible, the hearing provisions contained in Section 13.04.200 above shall apply to appeals occurring under this section.

E. Following the appeal hearing, an aggrieved user may seek judicial review of an appeal officer's decision by filing a complaint with the Superior Court of Kings County,

California during the period identified by California Code of Civil Procedure Section 1094.6, as may be amended.

Section 13.04.220 Superior court action.

The City may, at its option, elect to petition the Superior Court of Kings County, California to confirm any order establishing civil penalties and enter judgment in conformity therewith in accordance with the provisions of 1285 through 1297.6, inclusive, of the California Code of Civil Procedure.

Section 13.04.230 Public nuisance.

In addition to any other remedy provided by law or in equity, violation of any provisions of this chapter, excluding provisions relating to the timely payment of services charges, is hereby determined and declared to a public nuisance and may be abated and/or enjoined pursuant to State law. The City may cause proceedings to be brought for abatement and may recover reasonable attorney's fees, court costs and other expenses associated with such action.

Section 13.04.240 Attorney's fees.

The City shall have the right to recover reasonable attorney's fees, court costs and other expenses associated with any and all of the enforcement activities identified in this chapter, in addition to the amount assessed as damages to the City.

Section 13.04.250 Non-exclusive remedies.

The enforcement procedures, penalties, and remedies provided in this chapter are not exclusive, but are in addition to any other enforcement procedures, penalties and remedies that may be provided elsewhere in this chapter or by any federal, state or local law, regulation, or rule. In addition, the City may pursue any, all, or any combination of these enforcement procedures, penalties and remedies against any person or entity that violates any provision of this chapter.