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2     **AN ORDINANCE AMENDING CITY CODE CHAPTER 15-9 REGARDING**  
3     **UTILITY SERVICE, BILLING ADJUSTMENTS, AND ADMINISTRATIVE**  
4     **REVIEWS AND HEARINGS.**

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

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

8      **§ 15-9-37 CUSTOMER’S RESPONSIBILITIES.**

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

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

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

**PART 3.** Subsections (A) and (B) of City Code Section 15-9-140 (*Billing Adjustments*) are amended to read:

§ 15-9-140 BILLING ADJUSTMENTS.

- (A) Subject to Subsection (B), the City shall adjust a customer's account and issue a corrected bill if it determines that it has overbilled or underbilled the customer for utility service. ~~[because of:~~
- ~~(1) a meter's failure to meet the accuracy standards of the American National Standards Institute or the American Water Works Association, as applicable;~~
- ~~(2) the application of an incorrect rate to the customer's account;~~

1                   ~~(3) an erroneous meter reading or the reading of a meter other than that~~  
2                   ~~through which the customer actually received service; or~~

3                   ~~(4) the failure of the City to include the utility service in the customer's~~  
4                   ~~account.]~~

5           (B) No billing adjustment shall be made, and no backbill or refund shall be  
6           issued, with respect to utility service provided:

7                   (1) more than four years before the date the error or inaccuracy is  
8                   discovered if the error or inaccuracy caused the customer to be  
9                   overbilled;

10                  (2) more than twelve months before the date the error or inaccuracy is  
11                  discovered if the error or inaccuracy caused the customer to be  
12                  underbilled, or, in the case of a ~~[residential]~~ customer billed at a  
13                  residential rate, more than six months before the date the error or  
14                  inaccuracy is discovered, unless the billing adjustment is for taxes;

15                  (3) to any customer other the customer currently receiving service at the  
16                  service address to which the adjustment pertains; or

17                  (4) under an account that has become an inactive account and for which a  
18                  final bill was issued more than 90 days before the error or inaccuracy  
19                  was discovered.

20   **PART 4.** City Code Chapter 15-9, Article 12 (*Administrative Review and Hearing*) is  
21   repealed and replaced to read:

22   **ARTICLE 12. ADMINISTRATIVE REVIEW AND HEARING.**

23   **§ 15-9-191 ADMINISTRATIVE REVIEW.**

24           (A) Except as provided in Subsections (B), (C), and (D), before requesting an  
25           administrative hearing, a person who disputes an action, policy, decision, or  
26           invoice relating to utility service must contact the director of the utility  
27           providing the service no later than the 90th day after the date of the notice of  
28           violation or the date the customer knew or should have known about the  
29           subject of the dispute.

30           (B) Before requesting an administrative hearing, a customer who disputes an  
31           action, policy, decision, or application related to the drainage fee or the  
32           transportation user fee shall request an administrative review from the  
33           director of the Watershed Protection Department or the Public Works  
34           Department, respectively. These administrative reviews are authorized by

1 Chapters 14-10 (*Transportation User Fee*) and 15-2 (*Drainage Utility*) of the  
2 Code. If requested by a customer, the department director shall provide a  
3 customer with a copy of the department's Appeals Rules and Procedures.

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

27 **§ 15-9-192 RESTRICTION ON ADMINISTRATIVE HEARING.**

28 A customer may not request an administrative hearing if:

- 29 (1) the utility did not conduct an administrative review;
- 30 (2) the customer did not timely request an administrative hearing;
- 31 (3) criminal charges are pursued for the occurrence of utility service  
32 diversion, unlawful use of service, damage to City utility equipment,  
33 unauthorized sale of utility service or other violation of law; or

- 1 (4) the customer is disputing:
- 2 (a) the terms or denial of a deferred payment agreement;
- 3 (b) the customer's financial inability to pay for utility services
- 4 provided by the City;
- 5 (c) the rate schedule;
- 6 (d) unexplained high utility consumption if a meter has been tested
- 7 and is determined to be accurate or under-registering in
- 8 accordance with the American Water Works Association
- 9 standards or the American National Standard Institute standard;
- 10 (e) denial or discontinuance of utility service based on a danger to
- 11 public health or safety;
- 12 (f) a matter subject to a court decision;
- 13 (g) the application or amount of a credit security deposit; or
- 14 (h) a decision by the City regarding a claim for property damage or
- 15 personal injury.

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17 **§ 15-9-193 ADMINISTRATIVE HEARING.**

- 18 (A) Except as provided in Section 15-2-14 (*Adjustments*), a hearing under this
- 19 article shall be held by a hearings officer appointed by the city manager. A
- 20 hearings officer may not be an employee of a utility.
- 21 (B) A customer who disagrees with an administrative review decision by the
- 22 director of a utility may request an administrative hearing. The customer
- 23 shall request the administrative hearing in writing no later than the 30th day
- 24 after the director of a utility informed the customer of the right to request a
- 25 hearing in accordance with Subsection (E) of Section 15-9-191
- 26 (*Administrative Review*). The customer requesting the hearing shall have the
- 27 burden of proof to prove the City's position is in error.
- 28 (C) Not later than the third day before the date of an administrative hearing, the
- 29 director of a utility shall provide the customer with notice of the time, date,
- 30 and location of the hearing either in person, by telephone, by confirmed
- 31 facsimile transmission, by electronic mail, or by mail to the customer's last
- 32 known address.

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

27 **§ 15-9-194 RESULTS OF HEARINGS.**

- 28 (A) If a hearings officer rules against a customer, the hearings officer's decision  
29 shall include:
- 30 (1) the actions to be taken by the customer to continue utility service; and
- 31 (2) a deadline for performance by the customer that is consistent with the  
32 deferred payment agreement policies of the utility and the  
33 requirements of this chapter.

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

10 **§ 15-9-195 CONTINUITY OF SERVICE DURING APPEAL.**

- 11 (A) Before a hearing under this article, the City shall continue to provide a  
12 customer with utility service, unless:
- 13 (1) the service was disconnected before the customer requested a hearing;  
14 (2) the customer fails to pay an invoice for utility services provided after  
15 a hearing was requested;  
16 (3) the customer's service is transferred; or  
17 (4) termination is required to protect public health and safety.
- 18 (B) If a customer's utility service is disconnected before the customer requested  
19 a hearing, the City shall reconnect utility service after the customer pays all  
20 amounts owed for utility service less the amount disputed in the requested  
21 hearing.
- 22 (C) The City shall not continue or reconnect utility service if the connection:  
23 (1) allows utility service diversion;  
24 (2) creates a dangerous condition;  
25 (3) allows an unlawful use of service;  
26 (4) allows unauthorized remetering, sub-metering, or resale of utility  
27 service; or  
28 (5) violates Title 25 (*Land Development*) of the Code or a City ordinance  
29 relating to the utility service.

**PART 5.** This ordinance takes effect on \_\_\_\_\_, 2013.

**PASSED AND APPROVED**

\_\_\_\_\_, 2013      §  
   §  
   § \_\_\_\_\_  
   Lee Leffingwell  
   Mayor

**APPROVED:** \_\_\_\_\_ **ATTEST:** \_\_\_\_\_  
                         Karen M. Kennard                      Jannette S. Goodall  
                         City Attorney                              City Clerk