

CITY OF ELEPHANT BUTTE

ORDINANCE NO. 127

AN ORDINANCE PROVIDING FOR WATER SERVICE; PROVIDING FOR FEES AND PAYMENT PROCESSES; PROVIDING PENALTIES FOR DELINQUENCIES; PROVIDING FOR AN ADVISORY COMMITTEE. THIS ORDINANCE REPLACES AND REPEALS ORDINANCE 117.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ELEPHANT BUTTE, THAT:

SECTION 1. TITLE

This Ordinance shall be known as the City of Elephant Butte Water Ordinance.

SECTION 2. PURPOSE

- A. All pertinent provisions of this Ordinance are hereby made a part of the terms and conditions whereby the City may furnish any utility service to any person, or whereby the City shall make any utility connections, or perform any work of any kind in connection with the furnishing of any utility service pursuant to the rules and regulations of the City Council. Unless otherwise specified this Ordinance applies to the City Owned Water System.
- B. To establish processes and fees for connection, service deposit, and usage of the City owned water system.
- C. To provide for payment of the fees established.
- D. To provide penalties for violations of this Ordinance.
- E. To allow for establishment of an Advisory Board

SECTION 3. STATUTORY AUTHORITY

The authority for this Ordinance is found in 3-18-25 of the NMSA 1978.

SECTION 4. INTERPRETATIONS AND CONFLICT

- A. Federal and State Conflict. Any provision of the United States or New Mexico State law, which imposes a greater duty, standard or requirement than those contained herein shall supersede the provisions of this Ordinance.
- B. Conflict within This Ordinance. When two or more provisions of this Ordinance are Conflicting, the most restrictive provision shall apply.
- C. Local Conflict: Where the provisions of any local Ordinance, regulation or legal covenant provide for greater restrictions than those of this Ordinance, the more stringent regulations or restrictions shall prevail.

SECTION 5. DEFINITIONS

For the purpose of this section, the following words and phrases shall have the meanings respectively ascribed to them:

City Owned Water System – The water utility owned by the City of Elephant Butte previously referred to as the Lakeshore City Sanitation District.

Code enforcement officer is the City official charged with enforcement of this chapter and other provision of the City Code relating to public health, or his/her authorized deputy.

Commercial account is any account which is not a residential account. It describes a unit consisting of any other establishment than a residential unit, wherein a single business or other single activity is carried on. If more than one commercial activity is carried on within one place or building, each activity shall be deemed to constitute a separate unit for rate purposes.

Days – means calendar days unless otherwise indicated

Dwelling unit – means a room or suite of rooms with kitchen and bath facilities designed as a unit for occupancy by one family

ICIP: INFRASTRUCTURE CAPITAL IMPROVEMENTS PLAN (ICIP) - A prioritized list of capital improvements planned for construction in accordance with an approved time schedule.

Licensed plumber - Any contractor meeting the criteria set forth in the State of New Mexico Construction Industries Division Rules and Regulations Sections MM

Multi-unit structure means a structure containing more than one (1) living unit, or more than one (1) businesses unit, or any combination of living units and business units. This definition shall not be considered to include hotels or motels.

NMCID - NEW MEXICO CONSTRUCTION INDUSTRIES DIVISION

NMED – NEW MEXICO ENVIRONMENT DEPARTMENT

Public Utility System – This is any City owned or privately owned public water system to include the previously know Lakeshore City Sanitation District and including the area served by the New Mexico Water Service Company.

Residential account is an account for any single family or multi-family housing unit. Residential account is an account for any single family or multi-family housing.

Rate is the schedule of charges to be paid for the use for which water is supplied to any unit by the City.

Residential describes a unit constituting a place of residence or abode, dwelling house, dwelling place or place of habitation for a single family. As used in the context of this article the term includes an apartment within any multiunit dwelling, and trailer house, whether or not the same be permanently affixed to the land, and whether or not the same be in the legal contemplation of a fixture.

Shall - Mandatory; MAY is permissive

Subdivision - means the division of a surface area of land, including land within a previously approved subdivision, into two (2) or more parcels for the purpose of sale, lease or other conveyance or for building development, whether immediate or future.

UPC – UNIFORM PLUMBING CODE

Unit is any residence or commercial establishment to which water is supplied by the City's water system.

Utility - Water, sewer and/or other utility service furnished by the City to consumers thereof.

SECTION 6. SERVICE AREA AND CONNECTION REQUIREMENTS

- A. This Ordinance applies to all areas currently with established water connections formerly known as Lakeshore City Sanitation District and Hot Springs Landing. Some provisions will be identified herein, will be applicable to all areas including areas not served by the City owned water system, but served by another public water company.
- B. It shall be unlawful for any person to use a dwelling or any other place for the purposes of a dwelling unless the dwelling or place is connected to the City or public water utility system in compliance with this Ordinance.

SECTION 7. WATER SERVICE OUTSIDE CITY LIMITS

- A. *Compliance required.* Any person desiring a new water service connection which will serve property wholly or partially outside the municipal boundaries of the City shall comply with the requirements of this section before connecting to the City water utility system.
- B. *Agreement.* Such person (hereinafter referred to as the "customer") shall fill an agreement for such water service to the office of the City Clerk. The agreement shall be on such form as may be approved by the City Clerk and shall contain, along with such other information as the City Clerk may reasonably require, the legal description of the property to be served, a description of the point it is desired to connect to the City's distribution line, the size of the proposed connection and service line, the rate classification of the proposed new service and pay the required fees.
- C. *Fees.* No water service shall be allowed pursuant to this section unless and until all fees required for a new water service connection are paid in full to the City, including, but not limited to, new service account set up, new service installation (hook-up) charges, account deposits, line extension charges and other fees assessed by the City Code.

SECTION 8. PROHIBITED CONNECTIONS

- A. It is prohibited to have connection to the system without prior submittal of agreement and payment of all fees required.
- B. It is prohibited to have multiple units on one meter unless otherwise detailed in the commercial and multi-use provisions of this Ordinance.
- C. It shall be unlawful for any person to resell to others any utility service obtained from the City except only by special arrangement with the City Council. This provision applies to the City water system and the public water system.

SECTION 9. NEW SERVICE CONNECTIONS

- A. Permits Required
 - 1. A City water service agreement is required by the owner of the property prior to connection.
- B. Service Connections

1. All service connections to the system will be made by the City of Elephant Butte. No private party or licensed plumber is allowed to connect into the public system. A plumber is required to connect the dwelling to the water meter.
2. All service connections with the static pressure exceeding 90 pounds per square inch shall be required to install a pressure regulating valve.
3. A cut off valve between the meter and the dwelling is required for new construction.

C. Service Connections for Commercial Establishments and Multi-Unit Developments

1. New commercial establishments or existing buildings being remodeled into commercial establishments, or any multi-unit structures must have an engineering report or architectural report to determine the quantity of water required for that establishment and the size of the meter required to be installed for proper flows and capacities.
2. Nothing in this subsection shall be construed to relax or modify the building requirements of the UPC.

SECTION 10. AGREEMENT FOR SERVICE

- A. Each person desiring connection to the City water system, shall submit an agreement to the City or its agent which shall include his/her Name, Mailing Address, phone number, local address and legal description of property for which service is needed.
- B. Agreement must be accompanied by required fees before any action for approval is taken.
- C. Existing Customers will be required to submit agreement for proper record keeping.

SECTION 11. CONSTRUCTION ACTIVITIES

The City is not allowing hydrant meters for construction activities. Future consideration may be given by the City Council. Rules, regulations, restrictions, rates will be determined and adopted by future resolution and made a part of this Ordinance by reference.

SECTION 12. WATER CONSERVATION AND WATER EMERGENCY

- A. Water Conservation - This provision applies to the City water system and the public water system. These restrictions apply to all properties within and outside the City limits:
- (1) No person, firm, corporation, or municipal facility or operation shall waste, cause or permit to be wasted any water provided by the City's municipal water supply system.
 - (2) No person, firm, corporation, or municipal facility or operation shall cause or permit the flow of water tailings, supplied by the municipal water system or any other irrigation system, onto adjacent property or public right-of-way.
 - (3) The restrictions above (1) and (2) shall not apply to the following:
 - a. Storm runoff.
 - b. Flow resulting from temporary water supply system failures or malfunctions.
 - c. Flow resulting from firefighting, firefighting training activities or from routine inspection of fire hydrants.

- d. Water applied for dust control.
- e. Water applied to abate spills of flammable or otherwise hazardous materials.
- f. Water applied to prevent or abate health, safety, or accident hazards when alternate methods are not available.
- g. Flow resulting from routine inspection, operation, or maintenance of the municipal water supply system.
- h. Penalties and violation in accordance to the penalty section of this Ordinance.

B. Water Emergencies This provision applies to the City water system and the public water system.

The Mayor is authorized to determine and declare that a water emergency exists in any and/or all parts of the City that is served by the municipal water system, and upon such determination, to promulgate such regulations, rules, and conditions relative to the time/s, purpose/s of using water and such other necessary limitations that in the Mayor's opinion will relieve the water shortage in any and/or all parts of the water service area.

Future water conservation plan will be implemented as needed depending on the supply of water will be developed and adopted by Resolution and made a part of this Ordinance by reference.

SECTION 13. RULES AND REGULATIONS

The City Council shall have the authority to set by subsequent resolution, rule, regulation, or Ordinance such standards, specifications and policies, additional service areas, expansion, line extension and line sizes and other charges, conditions of service and/or other matters, as may be deemed necessary, for the establishment, construction, expansion and maintenance and operation of the water system. The rules, regulations, standards and specifications shall be filed in the office of the City Clerk. The Code Enforcement Officer may issue a citation to Municipal Court based on an alleged violation of such rules, regulations, standards and specifications. A violation shall be deemed a misdemeanor. This provision applies to the City water system and the public water system.

SECTION 14. FEE REQUIREMENTS

Properties being served by the City water system shall be subject to the following fees. The amount of each fee shall be determined by Ordinance of the City Council and shall be adjusted from time to time to meet maintenance, operating and capital improvement expenses. All adjustment in fees will require capital improvement planning, rate studies based upon operations, expenditures and capital improvement plans.

Fees will be derived by engineering methodology to recover cost of operations, cost of capital improvements and cost of debt service. These fees will be adopted by resolution from time to time. All reasonable methods will be made to inform the customer of any changes in rates or fees.

The following fees will be addressed in the resolution and made a part of this ordinance by reference:

- A. Meter Fee: There will be a one time fee allowing new connection to the water system for the purpose of providing capacity, pressure, flows, including water rights to serve the customer.
- B. Connection fee: The cost involved with the disconnect, reconnect, meter reading and billing when turning on the water meter
- C. Service Deposit Fee: joint water and sewer customers will be required to pay only one deposit for services. This deposit will be the highest of the two required deposits.
- D. Residential Monthly Service Charge
- E. Commercial and multi-unit Monthly Service Charge
- F. Administrative Set-up Fee: A one-time charge for setting up the customer account for all new accounts not on record with the City.
- G. Stand-by Fee: All vacant lots with water system accessible will be charged a yearly stand-by fee. (3-18-25.B NMSA). All developed lots who have their own well and are not connected to the water system will be assessed a stand-by fee. All owner initiated disconnection from the water service will pay a stand by fee prorated for the months disconnected at time of reconnect.
- H. A usage charge will be charged to all customers.
- I. Red Tag Fee
- J. Late Fee

SECTION 15. REFUND OF DEPOSIT

- A. Refunds of deposits made for utility service shall be made to the customer upon written request for termination of water service providing the customer has no outstanding indebtedness to the City.
- B. Deposits may be applied to any account debt remaining.
- C. Deposits may also be refunded after one year of timely payment of water service fees.

SECTION 16. FREE SERVICES PROHIBITED

- A. No free water services shall be allowed.

SECTION 17. PAYMENT PROCESS

- A. Each connection to the water system shall have a customer account set up. For new connections, accounts will be set upon payment of the Administrative Set-Up Fee. All fees shall be paid at the time of new agreement for service.
- B. The City of Elephant Butte will read actual meter readings monthly and mail monthly bills to owners of record connected to the City system as identified in the customer account. Bills will be due and payable 15 days after mailing.
- C. Payment can be made to the City by mail with a check or money order or in person at the Municipal Office by cash, check or money order. Receipts will be issued for payments made

in person at the Municipal Office. A \$30.00 fee will be assessed for all returned checks. Additional payment methods may become available in the future.

SECTION 18. CUSTOMER COMPLAINT PROCEDURES

A. Billing Issues

1. If any residential or commercial user believes that his or her user charges are unfair with respect to charges made to similar residential or commercial users, the user may request in writing to the Manager that the charges be reviewed. The request shall set out in detail the facts and figures supporting the user's alleged unfair charge and a proposed solution.
2. The Manager shall review the request and determine whether the charges are fair with respect to the user made by some other residential or commercial users. The Manager's determination shall be made in writing. If the Manager finds that the charges made are not fair, then he or she shall modify those charges to bring them into compliance with rates charged other residential or commercial users. If the Manager finds that the charges are fair, no change in rates shall be made.
3. If the user does not agree with the determination of the Manager, the user shall, within 10 days of receipt of the determination, submit in writing a request for a hearing before the City Council. If, upon such a hearing, a majority of those present and voting of the City Council are of the opinion the Manager's decision is correct, then the decision shall be affirmed. Otherwise the Council shall have the power to revise the decision made by the Manager. The same complaint may not be re-filed for 3 years.

B. Water Usage

1. A customer may request to have a meter proven for accuracy; the customer must agree in writing to pay for the calibration. In the event the meter is proven to be incorrect within standards of the meter, the City will pay for the calibration and will adjust the customer's previous billing. The meter testing will be done by an independent third party.
2. The City may adjust the water service charges as billed where all the following conditions are met:
 - a. The amount billed is much higher than the customer is normally billed for a comparable month;
 - b. The customer proves to the satisfaction of the City Manager that the reason for the high usage is an extraordinary condition relating to the water pipes on the customer's side of the meter, such as a broken pipe, but not including leaking faucet washers; and
 - c. The customer provides proof that the condition has been repaired.

If the customer proves the requirements were met in this section, the City may provide a discount after documentation that the leak has been fixed (i.e. a paid plumbers bill, etc.). Said discounts would be calculated on the quantity of water used, billed at the lowest commodity.

SECTION 19. DELINQUENT CHARGES

- A. If any charge established shall not have been paid within 10 calendar days after such charge is due, a statement thereof and notice to red tag will be sent to the customer on file. A late fee will be added to the balance due.
- B. If same charges for use of the water system are not paid within 10 calendar days after statement and notice to red tag such charges are hereby declared to be delinquent and the City shall red tag the property / residence specifying water will be cut off by the end of business day the 15th of the month. When the red tag is posted a red tag fee is charged to the account. Monthly charges and late fees continue to accumulate on unpaid balances.
- C. Following the above sequence, on the 16th of the month the water will be cut off at the meter. The account will be continued to be charged the monthly base rate and late charges for any past due amounts. If the customer wishes to restore water service, all past due charges, current charges, late fees, red tag fees, reconnect fees and a double deposit must be paid by secured funds (no check accepted).
- D. If all charges are not paid within 90 days and after appropriate notification as stated herein, The City shall terminate water service by locking or pulling the meter. A non-payment for 90 days constitutes liens upon real estate for which the services are supplied. The City shall file a notice of such lien in the office of the County Clerk and proceed to foreclose the same. This notice shall consist of a sworn statement by the Mayor setting out:
 - 1. A description of such real estate sufficient for the identification thereof;
 - 2. The amount of money past due, including accumulating monthly fees for the use and service of the water system
 - 3. The date when such amount became delinquent, and such other requirements as shall satisfy the laws of the state governing the establishment and foreclosure of liens. If foreclosure proceedings are instituted, a reasonable attorney's fee shall be recovered.
- E. In all cases, all past due amounts including expense to lien must be paid before water service is restored. A red tag fee will be charged, a reconnect fee will be charged, in addition to all past due amounts. A double deposit will be required for accounts which have been red tagged.

SECTION 20. BILL FOR ILLEGALLY USED SERVICES

Service connections to the water system which are found to be constructed without a permit or otherwise have undertaken without City authorization or have not been billed for service in accordance with rates established by subsequent Ordinance or Resolution are deemed illegal and hereby prohibited.

- 1. Upon discovery of an illegal connection, the City of Elephant Butte shall red tag and inform the owner and/or violator in writing of such a connection that:
 - (a) the property or properties are served by an illegal connection; and
 - (b) within seven (7) days of receipt of the City of Elephant Butte's letter, the illegal connection shall be removed. If after 7 days the connection is not removed, the City will have all rights to enter the property and disconnect the illegal connection; and
 - (c) the illegal connection shall be billed in arrears for twelve (12) months of service charges at the current authorized rates, and the illegal use or connection shall pay all

- arrears as specified before an account will be established for new compliant connection is made; and
- (d) if there is non-compliance to the disconnect or billing arrears, the City of Elephant Butte can make a criminal charge for illegal theft of water, lien the property, or refuse reconnection.
2. Any customer who has been found tampering with the water meter after it has been cut off, or have not set up an account, nor has paid the appropriate connection fees, will be considered an illegal connection and theft of water and criminal complaints will be made.

SECTION 21. VOLUNTARY DISCONTINUANCE OF SERVICE

- A. Customers wishing to discontinue the use of water service due to change in ownership shall give written notice thereof at the City Hall. Failure to do so shall render them liable for the payment of all bills until the notice has been given. The new owner will be assessed a connection fee.
- B. Customers wishing to discontinue the use of water service due to prolonged absence from the dwelling will be considered if all bills and outstanding fees are paid to date. A connection fee will be charged when the customer requests the City to reconnect the water meter. If there are outstanding bills, all bills must be brought up to date before reconnect is completed. In addition, a stand by fee will be charged at a prorated monthly charge added to the reconnect fee.

SECTION 22. LIEN ON NONRESIDENT CONSUMER'S PROPERTY

All persons, associations or legal entities, including governmental agencies and political subdivisions, and the owners of all property located outside the corporate limits of the City do agree upon request being made for and the providing of water service by the City to pay for such water service at the rates provided by Ordinance or resolution and further that said charges for water service shall constitute a lien upon the premises until paid superior to all other liens except general property taxes upon the property.

SECTION 23. RIGHT OF ENTRY

Any authorized employee of the City shall have free access at any time to all premises supplied with any utility service by the City for the purpose of examination in order to protect the utility services from abusive use or in cases of emergency for notification.

SECTION 24. WATER WELLS (This provision applies to the City water system and the public water system.)

- A. Grandfathering of Existing Private Domestic Wells: Any residence maintaining existing private domestic water well will not be required to connect onto the public water system. Grandfathering only applies to existing conditions, except:

1. Sale or Transfer – Any lot served by a private domestic water well, must join connect to the public water system upon transfer or sale, except for the death of a spouse and transfer to a surviving spouse.
 2. Existing Private Domestic Wells are allowed to remain in existence after connection to the public water system provided they meet the requirements of the State Engineer who regulates such wells, and there is no cross connection between the well and the public water system.
- B. New private domestic water wells: In accordance with State Statute 3-53-1.1; in areas served with a public water system, after July 31, 2008, no new private domestic water wells will be allowed. This Ordinance which contains this provision will be filed with the State Engineer.

SECTION 25. VIOLATIONS

- A. Unlawful Connections: Any person who shall make any connection in any manner to the water system without the prior knowledge and consent of the City shall be a criminal offense and enforceable in Municipal Court.
- B. Damage or Trespass of Equipment: It shall be unlawful for any person, not having authority to do so, to tamper with the water service by the City to consumers, or to any other way molest damage or trespass upon any equipment or premises belonging to the City connected with the utility service. Said violations will be cited into Municipal Court.

SECTION 26. Intentionally left blank

SECTION 27. ENFORCEMENT PROCEDURES

- A. Notification of Violation: Whenever the Manager or his designee finds that any person has violated or is violating this Ordinance, the Manager or his designee may serve upon such person a written notice stating the nature the alleged violation and providing a time, not to exceed fourteen days for satisfactory correction. Citations will be taken to Municipal Court.
- B. Penalty for Violation of this Ordinance. Any person or entity convicted of a violation of this Ordinance shall be fined a sum not to exceed \$500 for any one offense, and such person may be confined in the County Jail for a period of not more than 90 days. Each day a violation of this Ordinance occurs may be considered a separate offense.

SECTION 28. ADVISORY BOARD

- A. An Advisory Board may be established made up of at least one City Council member (but no more than 2), the City Manager and at least 3 customers.
- B. If such Board is established, it will meet at least annually to review operational income and expenses. The Board may offer suggestions about operation, fees, etc., to the City Council. Such suggestions shall be advisory in nature, and they shall not bind the City Council.

SECTION 29. SEVERABILITY

Should a Court of competent jurisdiction, hold any section, paragraph, clause, or provision of this Ordinance invalid or unenforceable, it shall not affect any of the remaining provisions of this Ordinance.

SECTION 30. EFFECTIVE DATE

This Ordinance shall take effect July 1, 2011.

PASSED, APPROVED, AND ADOPTED THIS 23rd DAY OF JUNE, 2011.

Mayor R. Eunice Kent

ATTEST:

Mary Ann Dix, Municipal Clerk