

**ORDINANCE NO. PW071101-17**

**AN ORDINANCE ADDING A NEW SECTION 13.04.005 DEFINITIONS TO ARTICLE I AND AMENDING ARTICLE II SECTION 13.04.340 PLACEMENT OF SERVICE LINES AND AMENDING ARTICLE III, SECTION 13.04.460 RENTAL OF WATER METERS AND AMENDING ARTICLE IV, SECTION 13.04.590 SERVICE CHARGES AND ADDING A NEW SECTION 13.04.595 CAPITAL DEVELOPMENT FEES AND ADDING A NEW ARTICLE V, ALL OF CHAPTER 13.04 OF THE RAPID CITY MUNICIPAL CODE**

BE IT ORDAINED by the City of Rapid City that Section 13.04.005 of Chapter 13.04 of the Rapid City Municipal Code be and is hereby added to read as follows:

**ARTICLE I GENERALLY**

13.04.005 Definitions.

"SFRE" means single family residential equivalent, defined by the director as 460 gallons of water usage.

**BE IT FURTHER ORDAINED** by the City of Rapid City that a new Section 13.04.595 Chapter 13.04 of the Rapid City Municipal Code be and is hereby added to read as follows:

**13.04.595 Capital Development Fees**

Every application for a connection permit, submitted in accordance with Section 13.04.070, shall pay an additional sum for capital development to be determined as follows:

- A. Residential Connection: A single family residence with a single water connection shall pay a capital development fee of \$750.00.
- B. Multifamily Residential connections: Multifamily residential units shall be charged a capital development fee in the following amounts:
  - One (1) bedroom dwelling unit .....0.7 SFRE (\$525)
  - Two (2) bedroom dwelling unit .....0.8 SFRE (\$600)
  - Three (3) or more bedroom dwelling unit.....1.0 SFRE (\$725)
- C. Commercial and Industrial connections: Commercial and Industrial users shall pay an initial minimum Capital Development Fee equal to \$750.00 per SFRE. The number of SFREs per user shall be determined based on the water meter size as follows:

| <b>Meter Size</b> | <b>Commercial and Industrial SFRE</b> |
|-------------------|---------------------------------------|
| 5/8"              | 1.0                                   |
| 3/4"              | 1.1                                   |
| 1"                | 1.4                                   |

|            |      |
|------------|------|
| 1 1/2"     | 1.8  |
| 2"         | 2.9  |
| 3"         | 11.0 |
| 4"         | 14.0 |
| 6"         | 21.0 |
| 8"         | 29.0 |
| Irrigation | 0.0  |
| Unmetered  | 0.0  |

Actual water usage for each commercial and industrial user shall be determined annually for a period of three years. Upon such determination, the user's Capital Development Fee shall be adjusted to reflect actual water usage. All commercial and industrial users using more than 50 SFREs may request that the director modify that user's Capital Development Fee, whereupon the director shall assign a Capital Development Fee to such user in an amount the Director deems appropriate, but in no case less than the Capital Development Fee assessed to 50 SFREs. The director's decision can be appealed to the city council in a manner designated in Article V of this Chapter.

#### **ARTICLE IV. SERVICE CHARGES**

13.04.590 Rates prescribed.

A. All water taken from the waterworks system shall be metered or accounted for by a method approved by the director of public works and shall be paid for monthly by the consumer named on the account, based upon monthly meter readings or estimates, at the following rates:

1. For water delivered to service lines through mains owned by the city after the meter reading in July, 2001:

| <b>After meter reading in July of</b> | <b>Number of units</b> | <b>Rate per unit</b>                                     |
|---------------------------------------|------------------------|--|
| 2002                                  | 0-2                    | Minimum charge specified in subsection B of this section |
|                                       | Over 2                 | \$.97  |
| 2003                                  | 0-2                    | Minimum charge specified in subsection B of this section |
|                                       | Over 2                 | \$1.05   |
| 2004                                  | 0-2                    | Minimum charge specified in subsection B of this section |
|                                       | Over 2                 | \$1.13   |
| 2005                                  | 0-2                    | Minimum charge specified in subsection B of this section |
|                                       | Over 2                 | \$1.21   |

**100 Cubic Feet** **Rate Per 100 Cubic Feet**  
2001

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0-2 Minimum specified in subsection B  
of this section

over 2 \$0.89

~~Volume charge for water delivered above irrigation allowance~~ ~~\$1.30~~

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**Irrigation Allowance for Meters Used for Irrigation**

| Meter Size | Volume, 100 Cubic Feet |
|------------|------------------------|
| 5/8"       | 40                     |
| 3/4"       | 50                     |
| 1"         | 50                     |
| 1 1/2"     | 150                    |
| 2"         | 150                    |
| 3"         | 200                    |
| 4"         | 200                    |

An advanced payment, which shall be included in the first month's billing, shall be charged for each account as follows:

5/8" to 3/4" meter \$25.00

Meters larger than 3/4" \$100.00

Each unit of water delivered above the irrigation allowance shall be sold at the rate of \$1.30 per unit.

2. For water delivered to service lines through city or privately owned water mains outside the city limits or through mains owned by a governmental entity other than the city, the rates shall be established by contract.

3. Wholesale rates (to systems within the city) shall be eighty-five percent (85%) of the retail rate as set forth in Paragraph A above.

~~2001~~

~~\$0.70~~

4. Water sold to Ellsworth Air Force Base outside the city shall be as negotiated between the City and Ellsworth Air Force Base.

**Per 100 Cubic Feet**

2001

\$0.15

5. Raw water:

| After July of | Rate per 100 cubic foot unit |
|---------------|------------------------------|
| 2002          | \$.13                        |
| 2003          | \$.13                        |
| 2004          | \$.14                        |
| 2005          | \$.14                        |

**Per 100 Cubic Feet**

**2001**

\$0.13

B. The minimum charges prescribed in subsection A of this section, based upon the size of the meter, shall be as follows:

| Meter Size<br>(inches) | Charge Per Month    |               |
|------------------------|---------------------|---------------|
|                        | 2002                |               |
| 5/8"                   | <del>\$4.30</del>   | <u>4.53</u>   |
| 3/4"                   | <del>\$6.15</del>   | <u>6.47</u>   |
| 1"                     | <del>\$7.80</del>   | <u>8.21</u>   |
| 1 1/2"                 | <del>\$13.60</del>  | <u>14.31</u>  |
| 2"                     | <del>\$20.25</del>  | <u>21.32</u>  |
| 3"                     | <del>\$27.00</del>  | <u>28.42</u>  |
| 4"                     | <del>\$40.50</del>  | <u>42.63</u>  |
| 6"                     | <del>\$68.50</del>  | <u>72.10</u>  |
| 8"                     | <del>\$111.00</del> | <u>116.84</u> |

Such minimum monthly charge shall increase five percent (5%) per year beginning July 2003.

C. There is established and imposed, pursuant to the authority of SDCL Chapter 9-40, a surcharge upon the service of water taken from the waterworks system, the proceeds of such surcharge to be used for payment of the principal of and interest on bonds issued under authority of SDCL Chapter 9-40; provided, that any amount charged during any calendar year in excess of the amount required to pay the principal of and interest upon such bonds which is due and payable during such year may be expended for additions to, replacements of, rehabilitation of, or improvements to the waterworks system. The surcharge shall be imposed at the following rates:

1. For water use less than two hundred cubic feet in any billing cycle month: one dollar;

2. For water used in excess of two hundred cubic feet in any billing cycle month: thirty-five cents per one hundred cubic feet.

The surcharge shall not apply to sales of raw water pursuant to subsection A(5) of this section.

D. A new account charge of seven dollars and fifty cents for accounts within the city limits and ten dollars for accounts outside the city limits shall be paid for water turn-on service. A surcharge of fifteen dollars shall be paid in addition to the turn-on charge if such service is requested to be performed during hours other than hours that the general offices of the city are open. An additional surcharge of eight dollars and fifty cents during normal hours and fifteen dollars for after hours shall be paid if the employees of the city are unable to turn on the water because of inability to obtain access through no fault of the city.

E. No funds collected pursuant to charges imposed by subsections A and B of this section shall be spent for other than waterworks expenditures. No funds collected pursuant to charges imposed by subsection C of this section shall be spent for any purpose other than the purposes specified in subsection C of this section.

F. Whereas the state has imposed a tax denominated as an environmental fee upon central systems providing drinking water, there is imposed a surcharge, as set forth below, in addition to the charges established by subsection A(1) of this section, which surcharge shall be billed and collected with the monthly bill for July, 1992, and thereafter in June of each year.

The surcharge is imposed at the following rates:

| <b>Meter Size<br/>(inches)</b> | <b>Annual State<br/>Environmental<br/>Tax Surcharge</b> |
|--------------------------------|---|
| 5/8"                           | \$ 1.25   |
| 3/4"                           | 1.40  |
| 1"                             | 1.75  |
| 1 1/2"                         | 2.25  |
| 2"                             | 3.50  |
| 3"                             | 13.75   |
| 4"                             | 17.50   |
| 6"                             | 26.25   |
| 8"                             | 35.25   |

a. (1) No person other than authorized employees of the city shall open, close, or operate any fire hydrant which is part of or connected to the city system.

(2) Except as provided in subsection B of this section, no person shall take any water from any fire hydrant which is part of or connected to the city system.

(3) No person other than authorized employees of the city shall attach, remove, or replace any hose, meter, back-flow prevention device, or other apparatus to or from any fire

hydrant which is part of or connected to the city system; provided, nonetheless, that nothing herein shall prohibit authorized employees of a contractor engaged in the work of constructing additions to the city system from making such connections to the system as are shown on approved plans prepared by a licensed professional engineer.

(4) A violation of this section shall be punishable by a fine not to exceed Two Hundred Dollars (\$200.00), thirty (30) days in jail, or both. Each violation shall be punishable as a separate offense.

b. The director of public works may authorize the taking of water from fire hydrants subject to the following conditions:

(1) All water shall be metered through meters provided and installed by the city, or approved in writing by the director of public works, and shall be paid for at the rates provided by Section 13.04.590 (A).

(2) The public works director, with the approval of the city council, shall establish written policies for the taking of water from fire hydrants. Such policies shall include the types of proposed uses which will qualify for use of water from fire hydrants, the fees to be charged in connection therewith in addition to the rates for use of water, and such other matters as he shall deem appropriate.

(3) Before any meter is installed and before any water is taken from the hydrant the customer shall pay to the city, at the time the account is opened, a deposit of \$500.00 to cover the costs of enforcing this ordinance in the event of the failure of the customer to comply with the provisions of this section. Upon closing the account the customer may have the deposit refunded if all city equipment is recovered undamaged and in good working order, the meter has not been removed or relocated by other than city employees, the account has been paid in full, and in all other respects the use of the hydrant has been in full compliance with this section. The deposit shall be for the purpose of paying administrative costs incurred by the City in enforcing this ordinance and shall not be construed as a prepayment for the use of water or prepayment of damages arising from the failure to comply with this section.

BE IT FURTHER ORDAINED by the City of Rapid that a new Article V of Chapter 13.04 of the Rapid City Municipal Code be and is hereby added to read as follows:

#### **ARTICLE V APPEALS**

##### 13.04.680 Generally.

Any person who feels aggrieved by a decision of the director under this chapter may file an appeal with the public works committee of the common council as a utility board of appeals on the terms and conditions hereinafter specified. As such board, the committee shall have the power to adopt, amend or modify any order or determination made by the director or his designee under this chapter. (Prior code § 30-204)

13.04.690 Filing.

A. Form of Appeal. Any person entitled to appeal may do so by filing at the office of the director within ten days from the date of determination or order of the director or his designee and the appeal shall contain the following:

1. A heading in the words: "Before the Public Works Committee of the Rapid City Common Council";

2. A caption reading "Appeal of \_\_\_\_\_" giving the names of all appellants participating in the appeal;

3. A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the notice and order;

4. A brief statement in ordinary and concise language of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant;

5. A brief statement in ordinary and concise language of relief sought, and the reasons why it is claimed the protested order or action should be reversed, modified or otherwise set aside;

6. The signatures of all parties named as applicants and their official mailing addresses;

7. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

B. Processing of Appeal. Upon receipt of any appeal filed pursuant to this chapter, the director shall notify the chairman of the public works committee and shall present the appeal at the next regular or special meeting of the public works committee.

C. Scheduling and Noticing Appeal for Hearing. As soon as practicable after receiving the written appeal, the utility board of appeals shall fix a date, time and place for the hearing of the appeal by the board. Such date shall be not less than ten days nor more than sixty days from the date the appeal was filed with the director. Written notice of time and place of the hearing shall be given at least ten days prior to the date of the hearing to each appellant by the director either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at his address shown on the appeal.

D. Failure of Any Person to File an Appeal. In accordance with the provisions of this chapter shall constitute a waiver of his right to an administrative hearing and adjudication of the notice and order, or any portion thereof.

E. Scope of Hearing an Appeal. Only those matters or issues specifically raised by the appellant shall be considered in the hearing of the appeal.

F. Staying or Order Under Appeal. Except for certain orders made pursuant to this chapter, enforcement of any notice and order of the director or his designee issued under this chapter shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.

13.04.700 Procedure for conduct of hearing.

A. Hearing Examiners. The public works committee may appoint one or more hearing examiners or designate one or more of its members to serve as hearing examiners to conduct the hearings. The examiner hearing the case shall exercise all powers relating to the conduct of hearings until it is submitted to the committee for decision.

B. Record. A record of the entire proceedings shall be made by tape recording, or by any other means of permanent recording determined to be appropriate by the committee.

C. Reporting. The proceedings at the hearing shall also be reported by a phonographic reporter if requested by any party thereto. A transcript of the proceedings shall be made available to all parties upon request and upon payment of the fee prescribed therefor. Such fees may be established by the committee, but shall in no event be greater than the cost involved.

D. Continuances. The committee may grant continuances for good cause shown; however, when a hearing examiner has been assigned to such hearing, no continuances may be granted except by him for good cause shown so long as the matter remains before him.

E. Oaths—Certification. In any proceedings under this chapter, the committee, any committee member, or the hearing examiner has the power to administer oaths and affirmation and to certify to official acts.

F. Reasonable Dispatch. The committee and its representatives shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives.

G. Form of Notice of Hearing. The notice to appellant shall be substantially in the following form, but may include other information:

You are hereby notified that a hearing will be held before the Public Works Committee of the Rapid City Common Council at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at the hour \_\_\_\_\_ upon the notice and order served upon you. You may be present at the hearing. You may be, but not be represented by counsel, you may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by filing an affidavit therefor with the Public Works Committee.

H. Subpoenas.

1. Filing of Affidavit. The public works committee or examiner may obtain the issuance and service of a subpoena for the attendance of witnesses or the production of other evidence at a hearing upon the request of a member of the committee or upon the written demand of any party. The issuance and service of such subpoenas shall be obtained upon the filing of an affidavit therefor which states the name and address of the proposed witness; specifies the exact things sought to be produced and the materiality thereof in detail to the issues involved; and states that the witness has the desired things in his possession or under his control. A subpoena need not be issued when the affidavit is defective in any particular.

2. Cases Referred to Examiner. In cases where a hearing is referred to an examiner, all subpoenas shall be obtained through the examiner.

3. Penalties. Any person who refuses without lawful excuse to attend any hearing, or to produce material evidence in his possession or under his control as required by any subpoena served upon such person as provided for herein shall be guilty of a misdemeanor.

I. Conduct of Hearing.

1. Rules. Hearings need not be conducted according to the technical rules relating to evidence and witnesses.

2. Hearsay Evidence. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be efficient in itself to support a



finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state.

3. Admissibility of Evidence. Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.

4. Oral Evidence. Oral evidence shall be taken only as an oath or affirmation.

5. Excluding of Evidence. Irrelevant and unduly repetitious evidence shall be excluded.

6. Rights of Parties. Each party shall have these rights, among others:

a. To call and examine witnesses on any matter relevant to the issues of the hearing;

b. To introduce documentary and physical evidence;

c. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;

d. To impeach any witness regardless of which party first called him to testify;

e. To rebut the evidence against him;

f. To represent himself or to be represented by anyone of his choice who is lawfully permitted to do so.

7. Official Notice—What May be Noticed. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or of official records of the public works committee or departments and ordinances of the city or rules and regulations of the public works committee.

8. Parties to be Notified. Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto.

9. Opportunity to Refute. Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the public works committee or hearing examiner.

10. Inspection of the Premises. The public works committee or the hearing examiner may inspect any building or premises involved in the appeal during the course of the hearing; provided, that (i) notice of such inspection shall be given to the parties before the inspection is made, (ii) the parties are given an opportunity to be present during the inspection, and (iii) the committee or the hearing examiner shall state for the record upon completion of the inspection the material facts observed and the conclusions drawn therefrom. Each party then shall have a right to rebut or explain the matters so stated by the committee or hearing examiner.

J. Method and Form of Decision.

1. Hearing Before the Public Works Committee Itself. Where a contested case is heard before the public works committee itself, no member thereof who did not hear the evidence or has not read the entire record of the proceedings shall vote on or take part in the decision.

2. Hearing Before Examiner. If a contested case is heard by a hearing examiner alone, he shall within a reasonable time (not to exceed ninety days from the date the hearing is closed) submit a written report to the committee. Such report shall contain a brief summary of the evidence considered and state the examiner's findings, conclusions and recommendations.

The report also shall contain a proposed decision in such form that it may be adopted by the committee as its decision in the case. All examiner's reports filed with the committee shall be matters of public record. A copy of each such report and proposed decision shall be mailed to each party on the date they are filed with the committee.

3. Consideration of Report by Committee Notice. The committee shall fix a time, date, and place to consider the examiner's report and proposed decision. Notice thereof shall be mailed to each interested party not less than five days prior to the date fixed, unless it is otherwise stipulated by all of the parties.

4. Exceptions to Report. Not later than two days before the date set to consider the report, any party may file written exceptions to any part or all of the examiner's report and may attach thereto a proposed decision with written argument in support of such decision. By leave of the committee, any party may present oral argument to the public works committee.

5. Disposition by the Committee. The committee may adopt or reject the proposed decision in its entirety, or may modify the proposed decision.

6. Proposed Decisions Not Adopted. If the proposed decision is not adopted as provided in subdivision 5 of this subsection, the committee may decide the case upon the entire record before it, with or without taking additional evidence or may refer the case to the same or another hearing examiner to take additional evidence. If the case is reassigned to a hearing examiner, he shall prepare a report and proposed decision as provided in subdivision 2 of this subsection after any additional evidence is submitted. Consideration of such proposed decision by the committee shall comply with the provisions of this section.

7. Form of Decision. The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of the decision shall be delivered to the appellant personally or sent to him by certified mail, postage prepaid, return receipt requested.

8. Effective Date of Decision. The effective date of the decision shall be as stated therein.

CITY OF RAPID CITY

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer

(SEAL)

First Reading:  
Second Reading:  
Published:

Effective: