

## RESOLUTION NO. 8930

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADOPTING A POLICY ON DISCONTINUANCE OF WATER SERVICE

**WHEREAS**, the City of Milpitas ("City") is a municipal corporation, duly organized under the California Constitution and laws of the State of California; and

**WHEREAS**, the City operates a public water system that supplies water to residential, commercial, and industrial customers; and

**WHEREAS**, in 2018, the California Legislature adopted Senate Bill 998, which imposes new and expanded customer protections regarding discontinuance of residential water service for nonpayment and related matters; and

**WHEREAS**, California Health and Safety Code Section 116906 requires each urban and community water system, including the City, to have a written policy on discontinuance of residential service for nonpayment, and such written policy must address specified subjects required by law; and

**WHEREAS**, the City Council desires to adopt the Policy for Discontinuance of Residential Water Service ("Policy") attached to this Resolution as Exhibit A.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. The City Council hereby adopts the attached Policy for Discontinuance of Residential Water Service ("Policy") as set forth in Exhibit A.

3. If any section, subsection, clause or phrase in this Resolution or the Policy or the application thereof to any person or circumstances is for any reason held invalid, the validity of the remainder of this Resolution or the Policy or the application of such provisions to other persons or circumstances shall not be affected thereby. The City Council hereby declares that it would have adopted this Resolution and the Policy and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases or the application thereof to any person or circumstance be held invalid.

4. This Resolution shall become effective on February 1, 2020. The attached Policy shall apply to all water bills issued after that date.

PASSED AND ADOPTED this 3<sup>rd</sup> day of December 2019, by the following vote:

AYES: (4) Mayor Tran, Vice Mayor Dominguez, Councilmembers Montano and Nuñez

NOES: (0) None

ABSENT: (1) Councilmember Phan

ABSTAIN: (0) None

ATTEST:

  
Mary Lavelle, City Clerk

APPROVED:

  
Rich Tran, Mayor

APPROVED AS TO FORM:

  
Christopher J. Diaz, City Attorney

**CITY OF MILPITAS, CALIFORNIA**  
**STANDARD OPERATING PROCEDURE**

**SUBJECT: POLICY ON DISCONTINUANCE OF RESIDENTIAL WATER SERVICE**

1. **Application of Policy.** This Policy on Discontinuance of Residential Water Service (this "Policy") shall apply to all City accounts for residential water service, but shall not apply to any accounts for non-residential service. To the extent this Policy conflicts with any other rules, regulations, or policies of the City, this Policy shall control.
2. **Contact Information.** For questions or assistance regarding your water bill, the City's Customer Service staff can be reached at (408) 586-3100. Customers may also visit the City's Customer Service desk in person Monday through Friday, from 8:00a.m. to 5:00p.m., except on City holidays.
3. **Billing Procedures.** Water service charges are payable to the City once every two months or at such other frequency as determined by the City Council from time to time. All bills for water service are due and payable within twenty-one (21) days after mailing or e-mailing by the City. Any bills not paid within such period are considered delinquent.
4. **Discontinuance of Water Service for Nonpayment.** If a bill is delinquent for at least sixty-three (63) days, the City may discontinue water service to the service address.

4.1 **Written Notice to Customer.** The City will provide mailed Reminder Notices to the customer of record at least fifteen (15) days before discontinuance of water service. The Reminder Notice will contain:

- (a) the name and address of the customer;
- (b) the amount of the delinquency;
- (c) the date by which payment or payment arrangements must be made to avoid discontinuance of service;
- (d) the procedure by which the customer may initiate a complaint or request an investigation or appeal concerning service or charges, unless included in the water bills;
- (e) a description of the procedure by which the customer may request an alternative payment arrangement, which may include an extension or alternative payment schedule;
- (f) the procedure for the customer to obtain information on financial assistance, if applicable; and
- (g) the telephone number where the customer may request a payment arrangement or receive additional information from the City.

4.2 Final Notice to Customers and Written Notice to Occupants or Tenants.

(a) The City will send Final Notices to the customer of record at least ten (10) days before discontinuance of water service.

(b) The City will also send a notice to the occupants living at the service address at least ten (10) days before discontinuance of water service under the following circumstances: (1) the City furnishes individually metered service to a single-family dwelling, multi-unit residential structure, mobile home park, or farm labor camp and the owner, manager, or operator is the customer of record; or (2) the customer of record's mailing address is not the same as the service address. The notice will be addressed to "Occupant," will contain the information required in Section 4.1 above, and will inform the residential occupants that they have the right to become customers of the City without being required to pay the amount due on the delinquent account. Terms and conditions for occupants to become customers of the City are provided in Section 8 below.

(c) If the City furnishes water through a master meter in a multi-unit residential structure, mobile home park, or permanent residential structures in a labor camp and the owner, manager, or operator is the customer of record, the City will make a good faith effort to inform the occupants, by means of written notice posted on the door of each residential unit at least fifteen (15) days prior to termination, that the account is in arrears and the service will be terminated on a date specified in the notice. If it is not reasonable or practicable to post the notice on the door of each unit, the City will post two (2) copies of the notice in each accessible common area and at each point of access to the structure or structures. The notice will inform the residential occupants that they have the right to become customers of the City without being required to pay the amount due on the delinquent account. The notice will also specify what the occupants are required to do in order to prevent termination of, or to reestablish service; the estimated monthly cost of service; the title, address, and telephone number of a representative of the City who can assist the occupants in continuing service; and the address or telephone number of a qualified legal services project that has been recommended by the local county bar association. Terms and conditions for occupants to become customers of the City are provided in Section 8 below.

(d) The City will assess a penalty of 5% at the time of issuance of the Reminder Notice and an additional penalty of 5% at the time of issuance of the Final Notice.

4.3 In-Person or Telephonic Notice. The City will also make a reasonable, good faith effort to contact the customer of record or adult person living at the premises of the customer in person or by telephone at least seven (7) business days before discontinuance of service. The City will offer to provide in writing a copy of this Policy and to discuss options to avert discontinuance of water service for nonpayment, including the possibility of an extension or other payment arrangement.

4.4 Posting of Notice at Service Address. If the City is unable to make contact with the customer or an adult person living at the service address in person or by telephone, the City will make a good faith effort to leave a notice of imminent discontinuance of residential service and a copy of this Policy in a conspicuous place at the service address. The notice and copy of

this Policy will be left at the residence at least forty-eight (48) hours before discontinuance of service. The City will assess a service charge for this notice. The notice will include:

- (a) the name and address of the customer;
- (b) the amount of the delinquency;
- (c) the date by which payment or payment arrangements must be made to avoid discontinuance of service;
- (d) the procedure for the customer to obtain information on financial assistance, if applicable; and
- (e) the telephone number where the customer may request a payment arrangement or receive additional information from the City.

**4.5 Circumstances Under Which Service Will Not Be Discontinued.** The City will not discontinue residential water service for nonpayment under the following circumstances:

- (a) During an investigation by the City of a customer dispute or complaint under Section 5.1 below;
- (b) During the pendency of an appeal to the City Council under Section 5.3 below; or
- (c) During the period of time in which a customer's payment is subject to a City-approved extension or alternative payment schedule under Section 6 below, and the customer remains in compliance with the approved payment arrangement.

**4.6 Circumstances Under Which Service Through a Master Meter Will Not Be Discontinued.** If the City furnishes water through a master meter in a multi-unit residential structure, mobile home park, or permanent residential structures in a labor camp and the owner, manager, or operator of the dwelling, structure, or park is the customer of record, the City will not discontinue residential water service for nonpayment under the following circumstances:

- (a) When the customer's indebtedness is owed to another public agency, or when the obligation represented by the delinquent account or indebtedness was incurred with any public agency other than the City's water utility;
- (b) If a delinquent account relates to another property owned, managed, or operated by the customer;
- (c) If a public health or building officer certifies that termination would result in a significant threat to the health or safety of the residential occupants or the public.

4.7 Special Medical and Financial Circumstances Under Which Services Will Not Be Discontinued.

- (a) The City will not discontinue water service if all of the following conditions are met:
  - (i) The customer, or a tenant of the customer, submits to the City the certification of a licensed primary care provider that discontinuance of water service will be life threatening to, or pose a serious threat to the health and safety of, a resident of the premises where residential service is provided;
  - (ii) The customer demonstrates that he or she is financially unable to pay for residential service within the City's normal billing cycle. The customer is deemed financially unable to pay during the normal billing cycle if: (a) 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 (b) the customer declares under penalty of perjury that the household's annual income is less than 200 percent of the federal poverty level; and
  - (iii) The customer is willing to enter into an alternative payment arrangement, including an extension or alternative payment schedule with respect to the delinquent charges.
- (b) For any customers who meet all of the above conditions, the City shall offer the customer one of the following options, to be selected by the City in its discretion: (1) an extension of the payment period; or (2) an alternative payment schedule. The City's Finance Director will select the most appropriate payment arrangement, taking into consideration the information and documentation provided by the customer, as well as the City's payment needs.
- (c) The customer is responsible for demonstrating that the conditions in subsection (a) have been met. Upon receipt of documentation from the customer, the City will review the documentation within seven (7) days and: (1) notify the customer of the alternative payment arrangement selected by the City and request the customer's signed assent to participate in that alternative arrangement; (2) request additional information from the customer; or (3) notify the customer that he or she does not meet the conditions in subsection (a).
- (d) The City may discontinue water service if a customer who has been granted an alternative payment arrangement under this section fails to do any of the following for sixty (60) days or more: (a) to pay his or her unpaid charges

by the extended payment date; (b) to pay any amount due under an alternative payment schedule; or (c) to pay his or her current charges for water service. The City will post a warning notice of intent to disconnect service in a prominent and conspicuous location at the service address at least five (5) business days before discontinuance of service. The final notice will not entitle the customer to any investigation or review by the City.

4.8 Time of Discontinuance and Restoration of Service. The City will only discontinue water service during business hours.

4.9 Restoration of Service. Customers whose water service has been discontinued may contact the City by telephone or in person regarding restoration of service. Restoration shall be subject to payment of: (a) any past-due amounts, including applicable penalties; (b) any reconnection fees as approved by the City Council through the adoption of the Master Fee Schedule, subject to the limitations in Section 7.1, if applicable; (c) and a security deposit, if required by the City.

## 5. Procedures to Contest or Appeal a Bill.

5.1 Time to Initiate Complaint or Request an Investigation. A customer may protest the amount of a bill by submitting a written complaint or request for an investigation within fifteen (15) days after presentation or mailing of the bill to the customer, whichever is earlier.

5.2 Review by City. A timely complaint or request for investigation shall be reviewed by a manager of the Finance Department, who shall provide a written determination to the customer. The review will include consideration of whether the customer may receive an extension, or alternative payment schedule, under Section 6. The City may, in its discretion, review untimely complaints or requests for investigation; however, such complaints or requests are not subject to appeal.

5.3 Appeal to City Council. Any customer whose timely complaint or request for an investigation pursuant to this Section 5 has resulted in an adverse determination may appeal the determination to the City Council by filing a written notice of appeal with the City Clerk within ten (10) business days of the City's mailing of its determination. Upon receiving the notice of appeal, the City Clerk will set the matter to be heard at an upcoming City Council meeting and mail the customer written notice of the time and place of the hearing at least ten (10) days before the meeting. The decision of the City Council shall be final.

## 6. Extensions and Other Alternative Payment Arrangements.

6.1 Time to Request an Extension or Other Alternative Payment Arrangement. If a customer is unable to pay a bill during the normal payment period, the customer may request an extension or other alternative payment arrangement described in this Section 6. If a customer submits his or her request within thirteen (13) days after mailing of a written notice of discontinuance of service by the City, the request will be reviewed by a manager of the Finance Department. City decisions regarding extensions and other alternative payment arrangements are final and are not subject to appeal to the City Council.

6.2 Extension. If approved by the City, a customer's payment of his or her unpaid balance may be temporarily extended for a period not to exceed six (6) months after the balance was originally due. The City's Finance Director shall determine, in his or her discretion, how long an extension shall be provided to the customer. The customer shall pay the full unpaid balance plus penalties by the date set by the City and must remain current on all water service charges accruing during any subsequent billing periods. The extended payment date will be set forth in writing and provided to the customer.

6.3 Alternative Payment Schedule. If approved by the City, a customer may pay his or her unpaid balance plus penalties pursuant to an alternative payment schedule that will not exceed twelve (12) months, as determined by the City's Finance Director in his or her discretion. If approved, the alternative payment schedule may allow periodic lump-sum payments that do not coincide with the City's established payment date or may provide for payments made more or less frequently than the City's regular payment date. During the period of the alternative payment schedule, the customer must remain current on all water service charges accruing during any subsequent billing periods. The alternative payment schedule and amounts due will be set forth in writing and provided to the customer.

6.4 Failure To Comply. If a customer has been granted a payment arrangement under this Section 6 and fails to: (1) pay the unpaid charges by the extension date; or (2) pay an amount due under an alternative payment schedule; then the City may terminate water service. The City will post a final notice of intent to disconnect service in a prominent and conspicuous location at the service address at least five (5) business days before discontinuance of service. The final notice will not entitle the customer to any investigation or review by the City.

## 7. Specific Programs for Low-Income Customers.

7.1 Reconnection Fee Limits. For residential customers who demonstrate to the City a household income below 200 percent of the federal poverty line, the City will limit any service restoration charges during normal operating hours to fifty dollars (\$50), and during non-operational hours to one hundred fifty dollars (\$150) for 2020. The limits will only apply if the City's service restoration charges actually exceed these amounts. These limits are subject to an annual adjustment for changes in the Bureau of Labor Statistics' Consumer Price Index for All Urban Consumers (CPI-U) beginning January 1, 2021.

7.2 Qualifications. The City will deem a residential customer to have a household income below 200 percent of the federal poverty line if: (a) 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 (b) the customer declares under penalty of perjury that the household's annual income is less than 200 percent of the federal poverty level.

## 8. Procedures for Occupants or Tenants to Become Customers of the City.

8.1 Applicability. This Section 8 shall apply only when the property owner, landlord, manager, or operator of a residential service address is listed as the customer of record and has been issued a notice of intent to discontinue water service due to nonpayment.

8.2 **Agreement to City Terms and Conditions of Service.** The City will make service available to the actual residential occupants if each occupant agrees to the terms and conditions of service and meets the requirements of the City's ordinance. Notwithstanding, if one or more of the 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 discontinuing service to those occupants who have not met the requirements of the City's rules and regulations, the City shall make service available to the occupants who have met those requirements.

8.3 **Verification of Tenancy.** To be eligible to become a customer without paying the amount due on the delinquent account, the occupant shall 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, at the discretion of the City.

9. **Third Party Notification Service for Seniors and Dependent Adults.** The City will make available, to residential customers who are 65 years or older, or who are dependent adults (as defined in Welfare and Institutions Code Section 15610(b)(1)), a third-party notification service whereby the City will attempt to notify a person designated by the customer to receive notification when the customer's account is past-due and subject to termination. The notification will include information on what is required to prevent termination of service. The City will mail the notification to the designated third party at least ten (10) days before termination of service. To participate, the customer must submit a request for third-party notification on a form provided by the City, and must include the written consent of the designated third party. The notification service does not obligate the third party to pay any overdue charges, nor shall it prevent or delay termination of service.

10. **Language for Certain Written Notices.** All written notices under Section 4 and Section 6.6 of this Policy shall be provided in English, Spanish, Chinese, Tagalog, Vietnamese, Korean, and any other language spoken by ten percent (10%) or more people within the City's service area.

11. **Other Remedies.** In addition to discontinuance of water service, the City may pursue any other remedies available in law or equity for nonpayment of water service charges, including, but not limited to: securing delinquent amounts by filing liens on real property, filing a claim or legal action, or referring the unpaid amount to collections. In the event a legal action is decided in favor of the City, the City shall be entitled to the payment of all costs and expenses, including attorneys' fees, and accumulated interest.

12. **Discontinuance of Water Service for Other Customer Violations.** The City reserves the right to discontinue water service for any violations of City ordinances, rules, or regulations other than nonpayment.

13. **Fees and Charges Incurred.** Except as otherwise expressly stated in this Policy, any fees and charges incurred by a customer under any other rules, regulations, or policies of the City, including, but not limited to, delinquent charges, shall be due and payable as set forth therein.

14. **Decisions by City Staff.** Any decision which may be taken by the City's Finance Director under this Policy may be taken by his or her designee.