AN ORDINANCE OF THE CITY OF COVINGTON
AMENDING THE FOLLOWING PROVISIONS OF THE
COVINGTON CODE OF ORDINANCES: CHAPTER 98
UTILITIES, TO INCLUDE ARTICLE V. CAPACITY
CHARGES

WHEREAS, certain amendments have been suggested to Chapter 98,
Utilities, of the Covington Code of Ordinances, to include Article V. Capacity
Charges; and

WHEREAS, the Covington City Council deems these amendments
appropriate to protect the health, safety and welfare of the citizens of Covington;
and

WHEREAS, the City Council has held its public hearing in accordance
with law,

NOW, THEREFORE, BE IT ORDAINED by the City Council of the
City of Covington, at its regular session convened, that Chapter 98 Utilities, shall
be amended to include the following:

ARTICLE V. CAPACITY CHARGES
Sec. 98-135. Legislative findings.
A. The city council finds that:
1. The protection of the health, safety, and general welfare of the citizens
of the city requires that the water and wastewater systems of the city be
expanded and improved to accommodate continuing growth within the city and
within those areas connected to its water and wastewater systems.
2. New residential and nonresidential development imposes increased and
excessive demands upon existing city facilities.
3. New development often overburdens existing public facilities, and the
tax revenues generated from new development often do not generate sufficient
funds to provide public facilities capacities to serve the new development.
4. New development is expected to continue and will place ever-increasing
demands on the city to provide public facilities to serve new development.
5. The creation of an equitable capacity charge system would enable the
city to impose a proportionate share of the costs of required improvements to
the city's water and wastewater systems on those developments that create the
need for them.

6. All types of development that are not explicitly exempted from the
provisions of this Article will generate demand for city's water and wastewater
services or facilities that will require improvements to city facilities and
equipment.

7. The city's capacity charge studies set forth reasonable methodologies and
analyses for determining the impacts of various types of development on the
city's water and wastewater systems and for determining the cost of acquiring
or constructing facilities and equipment necessary to meet the demands for
such services created by new development.

8. The city establishes as city standards the assumptions and service
standards referenced in the capacity charge studies and other duly adopted
documents as part of its current plans for the water and wastewater systems.

9. The capacity charges described in this Article are reasonably related to
the service demands and needs of new development and are based on the
capacity charge studies and documentation commissioned by the City and
performed by TichlerBise.

10. All of the water system improvements listed in the water capacity charge
study will benefit all new development that connects to the city water system;
and it is, therefore, appropriate to treat the entire city and all properties
connected to the city water system as a single service area for purposes of
calculating, collecting, and spending the water capacity charges.

11. All of the wastewater system improvements listed in the wastewater
capacity charge study will benefit all new development that connects to the city
wastewater system; and it is, therefore, appropriate to treat the entire city and
all properties connected to the city wastewater system as a single service area
for purposes of calculating, collecting, and spending the wastewater capacity
charges.

12. There is both a rational nexus and a rough proportionality between the
development impacts created by each type of development covered by this
Article and the capacity charges that such development will be required to pay.

13. The city's facility planning, capital improvement program, development
review, and bidding processes create a public process by which, on a specific
and detailed basis, the capacity expanding components of construction can be
identified and funded distinctly from those components which are not capacity
expanding by providing for evaluation by the city and the capacity charge
review committee of future needs related to growth, identification of applicable
funding sources, and monitoring of construction and payments.

14. This Article creates a system by which capacity charges paid by new
developments will be used to expand or improve the city water and wastewater
systems.

15. This section creates a system under which capacity charges shall not be
used to cure existing deficiencies in public facilities or to pay maintenance or
operations costs associated with providing public facilities.

Sec. 98-136. Authority and applicability.
A. This section is enacted pursuant to the city's self-government powers,
the authority granted to the city by the City of Covington Home Rule Charter
B. The provisions of this section shall apply to all of the territory within
the limits of the city.

C. The provisions of this section related to water capacity charges shall
also apply to all properties located outside the city that are connected to the
city water system.

D. The provisions of this section related to wastewater capacity charges
shall also apply to all properties located outside the city that are connected to
the city wastewater system.

Sec. 98-137. Intent.
A. This Article is adopted to help implement the most recently adopted
water facility plan and the most recently adopted wastewater facility plan.
B. The intent of this Article is to ensure that new development bears a
proportionate share of the cost of improvements to the city water and
wastewater systems and to ensure that funds collected from new
developments are actually used to construct improvements to the city water
and wastewater systems that reasonably relate to the benefits accruing to
such new developments.
C. It is the further intent of this section that new development pay for its
proportionate share of public facilities through the imposition of capacity
charges that will be used to finance, defray, or reimburse all or a portion of
the costs incurred by the city to construct improvements to the city water and
wastewater systems that serve or benefit such new development.
D. It is the intent of this section to collect money from any new
development to offset new demands for water or wastewater improvements
generated by that new development.
E. It is not the intent of this section that any moneys collected from any
capacity charge and deposited in any capacity charge fund ever be co-
mingled with moneys from a different capacity charge fund or ever be used
for a type of facility or equipment different from that for which the fee was
paid.

Sec. 98-138. Definitions.
A. The following words, terms and phrases, when used in this section,
shall have the meanings ascribed to them in this section, except where the
context clearly indicates a different meaning:
1. "Capacity charge" means the water capacity charge and wastewater
capacity charge established by this Article.
2. "Capacity charge capital improvement program" means the capital
improvements program for the city water and wastewater systems, which
shall assign moneys from each capacity charge fund to specific projects and
related expenses for improvements to the type of facilities or services for
which the fees in that fund were paid, and shall not include improvements
needed to correct existing deficiencies or operations or maintenance costs.
3. "Capacity charge funds" means the water capacity charge fund and
wastewater capacity charge fund established by this section.
4. "Capacity charge studies" means the studies most recently adopted by
resolution of the city council for each capacity charge which set forth
reasonable methodologies and analyses for determining the impacts of
various types of development on the city's water and wastewater systems for
which a capacity charge may be charged and for determining the cost of
acquiring or constructing facilities and equipment necessary to meet the
demands for such services created by new development.
5. "Development" means any construction or expansion of a building,
structure, or use, any change in use of a building or structure, or any change
in the use of land, which creates additional demand for public services.
6. "Encumber" means to legally obligate by contract, or otherwise
commit to use by appropriation or other official act of the city.
7. "Improvement" means planning, land acquisition, engineering design,
construction inspection, on-site construction, off-site construction, equipment
purchases, and financing costs associated with new or expanded facilities,
buildings, and equipment that expand the capacity of a facility or service
system and that have an average useful life of at least five years. The term
"improvement" does not include maintenance, operations, or improvements
that do not expand capacity.
8. "Maintenance" means replacement, repair, or caring for a constructed
water or sewer facility to preserve them in a functional state equal to their
initial installed design; and which does not change the basic design or
structure or change them from their original purpose. Activities that change
the scope of a project beyond the original design are not included in this
definition.

Sec. 98-139. Water capacity charges.
A. Imposition of water capacity charges.
1. Any person who seeks to obtain a permit for connection to the city
water system and applies for a permit to expand or add to the structure
served by a previously approved water connection, or any extension of such
a permit issued before the effective date of the ordinance from which this
section is derived, is required to pay a water capacity charge in the amount
specified in Paragraph G. of this Section; or
2. No permits for connection to the city water system may be issued until
the water capacity charge described in this section has been paid, unless the
development for which the permit is sought is exempted by subsection F. of
this section.
B. Computation of amount of water capacity charge.
1. The city shall determine the amount of the required water capacity
charge by reference to Paragraph G. of this section.
C. Payment of water capacity charge.
1. All funds paid by an applicant pursuant to this section shall be
identified as water capacity charges and shall be promptly deposited in the
water capacity charge fund described in subsection D. of this section.
D. Water capacity charge funds.
1. A single water capacity charge fund is created and such fund shall be
maintained in an interest-bearing account.
2. Such fund shall contain only those water capacity charges collected
pursuant to this section and any interest which may accrue from time to time
on such amounts.
E. Use of water capacity charge funds. The moneys in the water capacity
charge fund shall be used only:
1. To acquire or construct improvements to the city water system; or
2. To pay debt service on any portion of any future general obligation bond issue or revenue bond issue used to finance improvements to the city water system; or
3. As described in Sec. 98-141.
F. Exemptions from water capacity charges.
   1. The following types of development shall be exempted from payment of the water capacity charge:
      a. Alteration or expansion of an existing nonresidential building that does not require an additional or larger water meter;
      b. Replacement of a nonresidential building or structure of the same size that does not require an additional or larger water meter;
      c. The reconstruction or replacement of a previously existing residential unit that does not create any additional or larger residential units.
2. Citizens of the city, who are disabled or who are 65 years of age or older and whose total household income is less than $20,000 per year shall be “senior citizen/disabled users” and shall be exempt from water capacity charges, and shall meet all eligibility requirements in Sec. 98-133.
3. Any such claim for exemption must be made no later than the time when the applicant applies for the first permit of a type listed in subsection A.1 of this section for the proposed development and any claim for exemption not made at or before that time shall have been waived.
4. The city shall determine the validity of any claims for exemption pursuant to the criteria set forth in subsections F.1 and F.2 of this section.
G. Water capacity charge schedule (Effective November 1, 2016).

<table>
<thead>
<tr>
<th>Cost per Gallon</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water Tower</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Gallons per Day per Person</th>
</tr>
</thead>
<tbody>
<tr>
<td>83</td>
</tr>
</tbody>
</table>

### Residential (per unit)

<table>
<thead>
<tr>
<th>Development Type</th>
<th>Persons per Housing Unit</th>
<th>Proposed Capacity Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single-Family Detached</td>
<td>2.18</td>
<td>$328</td>
</tr>
<tr>
<td>Multi-Family</td>
<td>2.04</td>
<td>$306</td>
</tr>
</tbody>
</table>

### Nonresidential (per meter)

<table>
<thead>
<tr>
<th>Meter Size (inches)*</th>
<th>Weighting Factor**</th>
<th>Proposed Capacity Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.75</td>
<td>1.0</td>
<td>$328</td>
</tr>
<tr>
<td>1.00</td>
<td>1.7</td>
<td>$557</td>
</tr>
<tr>
<td>1.50</td>
<td>3.3</td>
<td>$1,081</td>
</tr>
<tr>
<td>2.00</td>
<td>5.3</td>
<td>$1,736</td>
</tr>
<tr>
<td>3.00</td>
<td>10.7</td>
<td>$3,504</td>
</tr>
</tbody>
</table>

* Fees for meters larger than three inches will be based on annualized average daily demand and the net capital cost per gallon of capacity.
Sec. 98-140. Wastewater capacity charges.
A. Imposition of wastewater capacity charges.
1. Any person who seeks to obtain a permit for connection to the city wastewater system and applies for a city permit to expand or add to the structure served by a previously approved wastewater connection, or any extension of such a permit issued before the effective date of the ordinance from which this section is derived is required to pay a wastewater capacity charge in the amount specified in Paragraph G. of this section; or
2. No permits for connection to the city wastewater system may be issued until the wastewater capacity charge described in this section has been paid, unless the development for which the permit is sought is exempted by subsection F. of this section.
B. Computation of amount of wastewater capacity charge.
1. The city shall determine the amount of the required wastewater capacity charge by reference to Paragraph G. of this section.
2. Individualized calculations.
a. The city may identify a user as having extraordinary demands for wastewater service which are not accurately represented by the average usage which was relied upon by the methodology in the most recently adopted wastewater capacity charge study. In this circumstance the city shall prepare a customized calculation based upon the methodology in the wastewater capacity charge study. When applicable an adjustment for high strength discharge will be applied. The capacity charge paid for wastewater meters larger than three inches as of the effective date of the ordinance from which this section is derived may be adjusted based on actual usage. If usage is greater than 110 percent of anticipated volume or other measure of demand during the 12-month period of time beginning six months after building occupancy is granted by the city, an additional capacity charge may be charged, using the same techniques for calculating wastewater treatment EDUs and collection system net acres and multiplying by the wastewater treatment capacity charge cost per EDU and the collection system capacity charge cost per net acre then in effect. The additional capacity charge is the positive net between a previously calculated capacity charge and the capacity charge based upon the metered demand.
C. Payment of wastewater capacity charge.
1. All funds paid by an applicant paid pursuant to this section shall be identified as wastewater capacity charges and shall be promptly deposited in the wastewater capacity charge fund described in subsection D. of this section.
D. Wastewater capacity charge funds.
1. A single wastewater capacity charge fund is created and such fund shall be maintained in an interest-bearing account.
2. Such fund shall contain only those wastewater capacity charges collected pursuant to this section and any interest which may accrue from time to time on such amounts.
E. Use of wastewater capacity charge funds. The moneys in the wastewater capacity charge fund shall be used only:
1. To acquire or construct improvements to the city wastewater system; or
2. To pay debt service on any portion of any future general obligation bond issue or revenue bond issue used to finance improvements to the city wastewater system; or

3. As described in section 98-141.

F. Exemptions from wastewater capacity charges.

1. The following types of development shall be exempted from payment of the wastewater capacity charge:
   a. Alteration or expansion of an existing nonresidential building that does not require an additional or larger water meter;
   b. Replacement of a nonresidential building or structure of the same size that does not require an additional or larger water meter;
   c. The replacement of a previously existing residential unit that does not create any additional or larger residential units.

2. Citizens of the city, who are disabled or who are 65 years of age or older and whose total household income is less than $20,000 per year shall be “senior citizen/disabled users” and shall be exempt from wastewater capacity charges, and shall meet all eligibility requirements in Sec. 98-133.

3. Any such claim for exemption must be made no later than or the time when the applicant applies for the first permit of a type listed in subsection A.1 of this section for the proposed development and any claim for exemption not made at or before that time shall have been waived.

4. The city shall determine the validity of any claims for exemption pursuant to the criteria set forth in subsections F.1 and F.2 of this section.

G. Wastewater capacity charge schedule (Effective November 1, 2016).

<table>
<thead>
<tr>
<th>Wastewater Treatment Plant</th>
<th>$6.67</th>
</tr>
</thead>
<tbody>
<tr>
<td>Major Collector Lifts</td>
<td>$2.86</td>
</tr>
<tr>
<td>Total</td>
<td>$9.53</td>
</tr>
</tbody>
</table>

Gallons per Day per Person — 83

### Development (per unit)

<table>
<thead>
<tr>
<th>Residential (per unit)</th>
<th>Persons per Housing Unit</th>
<th>Proposed Capacity Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single-Family Detached</td>
<td>2.19</td>
<td>$11.72</td>
</tr>
<tr>
<td>Multi-Family</td>
<td>2.04</td>
<td>$11.74</td>
</tr>
</tbody>
</table>

### Nonresidential (per meter)

<table>
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<tr>
<th>Meter Size (inches)*</th>
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<tr>
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<tr>
<td>1.00</td>
<td>1.7</td>
<td>$11.74</td>
</tr>
<tr>
<td>1.50</td>
<td>3.3</td>
<td>$11.76</td>
</tr>
<tr>
<td>2.00</td>
<td>5.3</td>
<td>$11.79</td>
</tr>
<tr>
<td>3.00</td>
<td>10.7</td>
<td>$11.84</td>
</tr>
</tbody>
</table>

* Fees for meters larger than three inches will be based on annualized average daily demand and the net capital cost per gallon of capacity.


Sec. 98-141. Refunds of capacity charges paid.

A. Refunds of capacity charges shall be made only in the following instances and in the following manner:

1. Expenses and encumbrances.

a. Upon application to the city, the city shall refund the capacity charge paid and not expended or encumbered within twenty-five years from the date the capacity charge was paid or spent in a manner not in accordance with this section. Refunds shall be paid to the owner of the property at the time the refund is due. In determining whether capacity charges have been expended
or encumbered, fees shall be considered encumbered on a first-in, first-out (FIFO) basis.

b. When the right to a refund exists due to a failure to expend or encumber capacity charges, the city shall publish written notice within 30 days after the expiration of the twenty-five year period from the date capacity charge was paid. The published notice shall contain the heading "Notice of Entitlement to Capacity Charge Refund."

2. A refund application shall be made to the city within one year from the date such refund becomes payable under subsections A1.a or A1.b of this section, or within one year from the date of publication of the notice of entitlement of a refund under subsection 1.b of this section, whichever is later. Any refund not applied for within said time period shall be deemed waived.

3. A refund application shall include information and documentation sufficient to permit the city to determine whether the refund claimed is proper and, if so, the amount of such refund.

4. A refund shall include a pro rata share of interest actually earned on the unused or excess capacity charge paid.

5. All refunds shall be paid within 60 days after the city determines that such refund is due.

6. Any refund payable pursuant to subsections A1.a and A1.b of this section shall be made to the record owner of property as of the date the refund was due.

Sec. 98-142. Administrative provisions.

A. Interest earned on moneys in any capacity charge fund shall be considered part of such fund and shall be subject to the same restrictions on use applicable to the capacity charges deposited in such fund.

B. No moneys from any capacity charge fund shall be spent for periodic or routine maintenance of any facility of any type or to cure deficiencies in public facilities existing on the effective date of the ordinance from which this section is derived.

C. Nothing in this section shall restrict the city from requiring an applicant to construct reasonable project improvements required to serve the applicant's project.

D. The city shall maintain accurate records of the capacity charges paid, including the name of the person paying such fees, the project for which the fees were paid, the date of payment of each fee, the amounts received in payment for each fee, and any other matters that the city deems appropriate or necessary to the accurate accounting of such fees, and such records shall be available for review by the public during city business hours.

E. The city shall be entitled to retain not more than five percent of the capacity charges collected as payment for the expenses of collecting the fee and administering this section.

F. If a capacity charge has been calculated and paid based on a mistake or misrepresentation, it shall be recalculated. Any amounts overpaid by an applicant shall be refunded by the city to the applicant within 30 days after the city's acceptance of the recalculated amount, with interest at the rate of five percent per annum since the date of such overpayment. Any amounts underpaid by the applicant shall be paid to the city within 30 days after the
city's acceptance of the recalculated amount, with interest at the rate of five
percent per annum since the date of such underpayment. In the event the
underpayment is caused by an error attributed solely to the city, the applicant
shall pay the recalculated amount without interest. In the case of an
underpayment to the city, the city shall not issue any additional permits or
approvals for the project for which the capacity charge was previously paid
until such underpayment is corrected; and if amounts owed to the city are not
paid within such 30-day period, the city may also repeal any permits issued
in reliance on the previous payment of such capacity charge and refund such
fee to the then current owner of the land.
G. Appeal.
1. Any determination made by any official of the city charged with the
administration of any part of this section may be appealed to the Director of
Administration by filing:
   a. A written notice of appeal on a form provided by the city;
   b. A written explanation of why the appellant feels that a determination
      was in error; and
   c. An appeal fee of $300.00 with the Director of Administration
      within ten working days after the determination for which the appeal is being
      filed.
2. The Director of Administration shall review the appeal within 30
working days of the date the written appeal was presented to the Director of
Administration. If the appellant is dissatisfied with the decision of the
Director of Administration, the appellant may appeal the decision to the city
council by filing a written request with the Director of Administration within
ten working days of the Director of Administration’s decision. At the regular
meeting following the filing of the appeal, the city council shall fix a time
and place for hearing the appeal; and the Director of Administration shall
mail notice of the hearing to the appellant at the address given in the notice
of appeal. The hearing shall be conducted at the time and place stated in such
notice given by the city council. The determination of the city council shall
be final. If the city council concludes that all or part of a determination made
by an official of the city charged with the administration of any part of this
section was in error, then the appeal fee described in this subsection shall be
returned to the appellant.
H. Updating of capacity charge information. The city reserves the right
to review this Article to ensure that:
   a. The demand and cost assumptions underlying such fees are still valid;
   b. The resulting fees do not exceed the actual cost of constructing
      improvements that are of the type for which the fee was paid and that are
      required to serve new development;
   c. The moneys collected or to be collected in each capacity charge fund
      have been, and are expected to be, spent for improvements of the type for
      which such fees were paid; and
   d. That such improvements will benefit those developments for which
      the fees were paid as well as the City as a whole.
I. The capacity charges shown in the most recently adopted capacity
charge studies shall be adjusted annually to reflect the effects of inflation on
those costs for improvements set forth in the capacity charge studies. On
January 1 of each year unless and until the capacity charge studies are
fee amount set forth in each such study shall be adjusted by multiplying such
amount by one plus the value of the Construction Cost Index published in the
first December edition of the current year. (Source: Engineering News
Record.) Such adjustments in such fees shall become effective immediately
upon calculation by the city and shall not require additional action by the city
council to be effective.

J. Violation of this section shall result in a civil penalty and shall be
subject to those remedies provided in section 18-87 of the City of Covington
Code of Ordinances. Knowingly furnishing false information to any official
of the city charged with the administration of this section on any matter
relating to the administration of this section, including without limitation the
furnishing of false information regarding the expected size or use from a
proposed development, shall be a violation of this section. In addition to, or
in lieu of, any criminal prosecution, the city or any applicant for a permit of
the types described in sections 98-139 or 98-140 shall have the right to sue in
civil court to enforce the provisions of this section.

K. The section titles used in this section are for convenience only and
shall not affect the interpretation of any portion of the text of this section.

L. Any judicial action or proceeding to attack, review, set aside, or annul
the reasonableness, legality, or validity of any capacity charge must be filed
and service of process effected within 90 days following the date of
imposition of the fee or the final appeal determination of the city council,
whichever is the later.

Secs. 98-143 – 98-155. - Reserved.

BE IT FURTHER ORDAINED that all other sections of Chapter 98
Utilities shall remain the same and in full force.

BE IT FURTHER ORDAINED that if any provision of this ordinance
shall be held to be invalid, such invalidity shall not affect other provisions
herein which can be given effect without the invalid provision and to this end
the provisions of this ordinance are hereby declared to be severable.

WHEREUPON, this ordinance having been submitted in writing,
having been read by title and adopted at a public meeting of the City Council
of the City of Covington, State of Louisiana, was then submitted to an official
vote as a whole, the vote thereon being as follows:

MOVED FOR ADOPTION as amended, by Rolling, seconded by Smith.

YEAS: 6  ABSENT: 1 (Wright)
NAYS: 0  ABSTAIN: 0
PASSED AND ADOPTED this 16th day of August, 2016.

LEE S. ALEXIUS
COUNCIL PRESIDENT

BONNIE D. CHAMPAGNE
COUNCIL CLERK

Presented to the Mayor on this 16th day of August, 2016, at 2:45 o'clock P.M.

BONNIE D. CHAMPAGNE
COUNCIL CLERK

Approved √ or Vetoed ___ by the Mayor on this 16th day of August, 2016.

MICHAEL B. COOPER
MAYOR

Received from the Mayor on this 16th day of August, 2016, at 3:10 o'clock P.M.

BONNIE D. CHAMPAGNE
COUNCIL CLERK