

AN ORDINANCE OF THE CITY OF BONIFAY, FLORIDA, SETTING FORTH REQUIREMENTS AND PROCEDURES FOR THE PROVISION OF POTABLE WATER AND SANITARY SEWER UTILITY SERVICES TO NON-CITY CUSTOMERS; AUTHORIZING BULK WATER AND SEWER UTILITY SERVICE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SCRIVENERS' ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City has home rule authority pursuant to Article VII, Section 2 of the Constitution of the State of Florida, and Chapter 186, Florida Statutes, to enact this ordinance; and

WHEREAS, Article 1, Section 1.01, of the City Charter of the City of Bonifay, Florida, empowers and enables the City of Bonifay to provide municipal services; and

WHEREAS, the Supreme Court of Florida in *Allen's Creek Properties, Inc. v. City of Clearwater*, 679 So. 2d 1172 (Fla. 1996), held that a municipality has no duty to supply municipal services to areas outside its boundaries and may condition the provision of utilities on an agreement to annex out-of-city properties; and

WHEREAS, to effectuate the compatibility of growth, economic development in and around the City, and the security and safety of its citizens, the City finds it is in its best interests to provide potable water and sanitary sewer service on specified conditions to out-of-city parcels and customers as set forth herein; and

WHEREAS, the City desires to set forth requirements and administrative procedures for approval of applications for potable water and sanitary sewer services to properties outside the corporate limits of the City at the time of application for said services.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BONIFAY, FLORIDA AS FOLLOWS:

SECTION I. The above recitals represent the legislative findings of the City Council of the City of Bonifay and are incorporated herein by reference.

SECTION II. The following Article is hereby adopted as an ordinance of the City of Bonifay to be read *in pari materia* with all other ordinances of the City not in conflict herewith:

Article I: Service to Non-city customers.

- (a) Upon to the City of Bonifay, potable water and sanitary sewer utility services may be provided to customers located in areas adjacent to but outside the corporate limits of the City. In such event, the applicable rates, charges, fees, deposits, etc., shall be 150 percent

of the specific residential, commercial or non-residential, or industrial rates, charges, fees, deposits, etc. specified by the City Council from time to time by ordinance or resolution for provision of potable water and sanitary sewer to properties and customers located within the corporate limits of the city.

- (b) Nothing herein shall preclude the City Council, in its discretion, from entering into contracts or interlocal agreements for the bulk supply of potable water or bulk sewer collection services to properties within and outside the City limits in situations where the expected use exceeds five (5) times the average customer use of City utilities, and such bulk supply contracts are hereby authorized inside and outside the city limits consistent with the legislative findings herein above. Any such bulk supply contracts shall approved by the City Council's sole discretion.
- (c) Out of City utility services are hereby authorized and may be provided to properties or customers located outside the City without further approval of the City Council only when the property owner voluntarily submits (i) an application for out-of-city water or sewer service on forms approved by the City; and (ii) an annexation agreement, each in keeping with the following:

- i. Application for Out-of-City Utility Service.

- 1. The application for utility service shall set forth that the applicant, who must be the owner of the property to be served (and if not the owner of the property, the application must be signed by the applicant in addition to the owner of the property to be served), must acknowledge the following:
 - a. Annexation of the property to be served is a condition of the City providing utility service;
 - b. Sanitary sewer and potable water service shall only be provided if concurrency is satisfied pursuant to Section 163.3180, Florida Statutes and the City's comprehensive plan; and
 - c. Rates for out-of-city utilities are 150% of the rates in effect for the specified class of service, as established by ordinance or resolution of the City from time to time.

- ii. Annexation Agreement.

- 1. If application is made for utility service(s) to property located outside the city boundary, which is contiguous to the existing city boundary or is within an enclave surrounded by the city's boundary. the property owner shall concurrently annex the property into the city by voluntary annexation pursuant to Sec.

171.044, Florida Statutes as a precondition to the provision of utility service(s) to the property.

2. If application is made for utility service(s) to property located outside the city boundary which is not contiguous to the existing city boundary, the property owner shall concurrently submit an annexation agreement in a recordable form acceptable to the city and binding upon the property, the property owner, and any successors and/or assigns, which shall be a covenant running with the land. This agreement shall give the city the right to annex the property into the city limits when the prerequisites for voluntary annexation under state law are met.
3. Upon successful application, to include all completed regular forms as provided by the city and a duly executed and recorded annexation agreement, the Mayor or other designated administrative official shall approve the utility service(s) connection.
4. Failure of the property owner to annex the property pursuant to the annexation agreement shall constitute grounds to terminate utility service(s) to the property.
5. The city reserves the right to annex the property at the city's expense at any time the property becomes contiguous through any available legal process.

SECTION III. Section II of this Ordinance shall be codified and made a part of the City of Bonifay Code of Ordinances at such time as the said ordinances of the City are codified.

SECTION IV. In the event there is a conflict or conflicts between this ordinance and any other ordinance, this Ordinance shall control to the extent of the conflict.

SECTION V. It is the intent of the City Council of the City of Bonifay, and it is hereby provided, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalid or unconstitutional portion shall not be construed to render invalid or unconstitutional the remaining provisions of this Ordinance.

SECTION VI. This Ordinance shall become effective upon adoption.

PASSED AND ADOPTED ON SECOND READING BY THE CITY COUNCIL OF BONIFAY, FLORIDA, ON THE ____ DAY OF DECEMBER, 2024.

CITY OF BONIFAY, FLORIDA

ATTEST:

By its Mayor, Larry Cook

By Rickey Callahan, City Clerk