

ORDINANCE NO. 1983

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UPLAND REPEALING AND REPLACING SECTIONS 13.12.030 THROUGH 13.12.100 AND CHAPTER 13.34 OF TITLE 13 OF THE UPLAND MUNICIPAL CODE

WHEREAS, Senate Bill 998 (SB 998) became effective on February 1, 2020, prohibiting the discontinuation of water service for nonpayment of any residential customer who has been delinquent less than 60 days; and

WHEREAS, SB 998 requires the establishment of a written Discontinuation of Water Service Due to Nonpayment Policy to be made available on the City's website in English, Spanish, Korean, Vietnamese, Tagalog and Chinese (Mandarin); and

WHEREAS, during the COVID-19 pandemic, the City followed an informal policy refraining from any discontinuation of water service for any reason (No-Shutoff Policy), including nonpayment in order to remain compliant with the goals of SB 998; and

WHEREAS, the City Council of the City of Upland has previously adopted Ordinance No. 1883 electing to have delinquent water and sewer service charges collected on the tax roll, including the addition of chapter 13.34 of Title 13 to the Upland Municipal Code relating to liens imposed for unpaid water and sewer service charges; and

WHEREAS, the City Council finds that allowing water service accounts to be placed in the name of tenants rather than property owners limits the effects and efficiency of both chapter 13.12 and 13.34 of Title 13 of the Upland Municipal Code and the water service application process; and

WHEREAS, the City Council finds that the number of delinquent accounts has increased significantly as a combined result of the after-effects of the COVID-19 pandemic, the City's No-Shutoff Policy, and the limited efficiency of chapters 13.12 and 13.34 of Title 13 of the Upland Municipal Code; and

WHEREAS, the City Council finds that the growing costs incurred by the City in providing water and sewer services to property owners and tenants who fail to pay for these services significantly detracts from the City's ability to provide other necessary services to the public; and

WHEREAS, Health and Safety Code Section 5470, *et seq.*, authorizes the City to secure a lien upon a property receiving water and sewer services that has delinquent water and sewer service charges if, among other procedural requirements, the City elects to have such charges collected on the tax roll; and

WHEREAS, all legal prerequisites prior to the adoption of this ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UPLAND DOES ORDAIN AS FOLLOWS:

Section 1. Section 13.12.030 through Section 13.12.100 of Chapter 13.12 of Title 13 of the Upland Municipal Code are hereby repealed and replaced with the following:

13.12.030 Management of advance payments, billing, collection and accounting for water.

The functions of advance payments, billing, collection and accounting for water services shall be performed by the finance division of the city. (Prior code § 7720.2)

13.12.040 Administrative manual.

The day-to-day administrative activities of the water division shall be governed by an administrative procedures manual, which shall be established and from time to time shall be amended, subject to the direction of the public works director and with the approval of the city manager. (Prior code § 7720.3)

13.12.050 Water rates.

A. Water for Supplying Consumers. Water shall be measured through meters installed by the water division at the expense of the consumer, and rates shall be set from time to time by resolution approved by the members of the city council.

B. Standby Service. Charges shall be set from time to time by resolution approved by the members of the city council.

C. Prorating of Charges for Water. There shall be a prorating of commodity charges for water on all opening and closing bills, and the full bimonthly standby service charge shall apply to service rendered and water supplied during any billing period or portion thereof.

D. No Rebate Until Notified. No allowance or rebate shall be made in the water rate charged against any premises so long as the water remains connected therewith, and the full rate shall be charged against any and all property or premises as herein specified until the finance division has been notified by the owner or consumer to shut off the water therefrom.

E. Vacant Dwellings. In case a premises becomes vacant, the regular minimum rates shall be charged and no refund or discount shall be made until the finance division has been notified by the owner or consumer to shut off the water.

F. Outside City Limits. For water furnished to any consumer outside the city limits rates shall be set by resolution approved by the members of the city council from time to time. The council may, however, provide by written agreement with any city, county, or other governmental agency the rate to be charged and said rates shall be as set forth in the said resolution. Consumers outside the city limits receiving the city water are subject to all rules and regulations as set by this division to obtain water service.

G. Current Water Charges.

1. For the supplying of customers, water shall be measured through meters installed by the water division at the expense of the consumer and the rates shall be set from time to time by resolution approved by the members of the city council.

2. Discount. A discount, set by separate resolution of the city council, will be provided to those individuals whose household income meets the qualifying income limit and who have submitted completed applications to the finance division, along with a copy of documentation to verify their income eligibility. The income

eligibility level shall be based upon the federal document which shows income limits for San Bernardino County within the very low income range.

H. Units-Served Charge. For multiple services from a single meter there shall be an added monthly charge for each additional unit served over one. For purposes of administration, an added unit shall be: (1) each residential dwelling comprising duplexes, triplexes, apartment buildings and separate houses; (2) each separate occupancy comprising professional centers, commercial centers, industrial parks, or combinations thereof; (3) each unit space in a mobile home park or trailer park. The units-served charge shall be in addition to the standby service charge based on the meters size for the first unit, plus an additional charge per month for each additional unit served. The units-served charge shall be set from time to time by resolution approved by the members of the city council.

I. Temporary Water Meters. For water to be used on construction of buildings, the same rate is established as set forth in subsection G of this section, provided that an application must be made for such water to the water division which shall have installed a meter through which water must be used and measured. The installation of such a meter shall be paid for by the applicant before any water shall be turned on. The cost of the installation shall be set from time to time by resolution approved by a majority vote of the members of the city council. Temporary meters shall be installed for a period of time not to exceed 120 days. (Prior code § 7720.4)

13.12.060 Application for service.

A. Eligible Applicants:

1. Single-Family & Multi-Family Residences (4 dwellings or less): Property Owner.
2. Apartments, Commercial, Industrial and Landscape: Property Owner / Property Manager or Commercial/Industrial Tenant.

B. The consumer must contact the finance division and provide all requested applicable information such as Buyer's Final Settlement Statement, Lease Agreement, and/or Property Management Agreement in order to provide service for water supplied to any premises when water is turned on by the city for any purpose. Separate requests to supply service are required for each service address serviced by a separate metering device and such necessary information as is required such as Social Security Number, Driver's License Number and/or Passport Number must be furnished to the finance division of the city. No service shall be granted until all requested information has been provided to the finance division.

C. Notwithstanding subsection (A) above, if a property owner or property manager of a residential service address has been notified that the account is in arrears and service will be terminated, the authorized residential occupants may request to become consumers to whom the service will then be billed without being required to pay the owner or manager's delinquent amount. The occupant(s) applying for service shall agree to all standard terms and conditions and meet the city's application requirements. Additional procedures and requirements may be set forth in the city's Discontinuation of Residential Water Service Policy.

13.12.070 Security deposits.

A. Security Deposit Required. Each applicant for utility services to be provided by the city within or outside of the corporate limits of the city, and any customer re-establishing utility service following termination for non-payment, is

required to pay a security deposit in an amount no less than the estimated bimonthly bill for water, refuse collection and/or sewer service, as established by resolution of the city council. The term "security deposit" means and includes "advance payment(s)" as that term is used elsewhere in this title.

B. Refund of Security Deposit.

1. The security deposit will be retained in an interest-free account. Upon closure of a utility account the security deposit will be applied towards any balance remaining on the account, and the remainder, if any, will be refunded to the customer. If a balance remains due after crediting the security deposit, the amount of the balance will be due upon written notice to the customer.

C. Restrictions on Transfer of Services and Security Deposit.

1. Except as provided herein, no utility service or security deposit shall be transferred from one party to another. It shall be the responsibility of the utility user to notify the city in writing of the date discontinuance of service is desired and failure to do so shall render the user liable for all utility charges incurred until such notice is received. This provision shall not relieve a new customer or occupant of a residence or other place where city utility service is desired of the responsibility to apply for service. If at any time the city becomes aware that a customer has been receiving services without having properly applied for the same, such services shall be immediately discontinued until the customer provides a proper, complete application for service. Such customer shall be liable and charged for any services received from the date of commencement of the use, to the extent such date may be ascertained. If it cannot be ascertained, charges for utility services shall be made from the date of the last regular meter reading or other determination of usage.

2. Notwithstanding the foregoing, a residential customer shall be allowed to transfer services and/or any security deposit to an immediate member of the customer's family (i.e., spouse, sibling, child or parent) residing at the same premises when made necessary due to death or divorce (i.e., final divorce decree has been entered) of the customer of record. Such transfer shall be permitted provided that a written request by such spouse or relative to assume the original customer's obligation to pay utility charges is filed with the city no less than 10 business days after the death or effective date of divorce. The request shall be made under penalty of perjury on a form provided by the finance division, and shall explain in full the circumstances necessitating the transfer of the security deposit and utility service, and shall further represent that the transferee satisfies the requirements of this section in all respects. The city shall have the right to require further evidence in support of the requested transfer, where deemed necessary under the circumstances. Provided the request for approval or transfer complies in all respects with the requirements of this section and the account is not delinquent, then the city will revise its records and future billings to show the transferee as the "customer" on the original account and the transferee shall immediately become responsible for payment of future, current and any past due bills for service. Furthermore, by requesting transfer of a security deposit and/or utility services, the transferee expressly agrees to comply with and be governed by the provisions of this title. Any person who knowingly makes a false statement to the city in order to obtain approval of a transfer of a security deposit and/or utility service shall be guilty of a misdemeanor. (Prior code § 7720.6)

13.12.080 Billing.

A. When Issued. Regular billing for water and other utility services may be issued bimonthly or monthly, as may be deemed appropriate by the city manager and finance director of the city.

B. When Due. All charges for water and other utility services shall be due and payable upon presentation. If payment is not received in Upland City Hall, or such other location as may be established by resolution, prior to 6:00 p.m. on the 25th day after presentation, the charges are delinquent and subject to additional charges and penalties as scheduled by separate resolution of the city council. Failure to receive a bill or statement of account does not relieve the consumer of liability.

C. Property Owner Legally Liable for Payment. The consumer receiving service is liable for water and other such utility service charges as billed until the city is notified to discontinue service. Should charges for utility services become delinquent, the legal owner of the property will be notified, and it shall be the final responsibility of the property owner to remedy the delinquency unless otherwise prohibited by applicable law. If charges remain delinquent for 60 days, such charges shall constitute a lien against the lot or parcel of land within the city or outside the limits of the city, against which the charge was imposed and for which services were rendered. This lien will be placed upon the service address pursuant to UMC 13.34 and collected by addition to the county tax roll.

D. Finance Director and/or the Public Works Director May Adjust. The finance director and/or the public works director or designee may, in their discretion, adjust bills for the purpose of reflecting their reasonable opinion of actual water usage and/or other charges and all persons affected shall have the right to appeal any such determination to the city council and a decision of the council with respect thereto shall be final and conclusive as to all parties. (Ord. 1883 § 4, 2014)

13.12.090 Discontinuance and restoration of service.

A. Consumer About to Vacate Premises. Each consumer about to vacate any premises supplied with water service by the water division and/or finance division shall give advance notice of his or her intended removal, specifying the desired date for discontinuing service; otherwise, he or she will be held responsible for water service furnished to such premises until the water division and/or finance division shall have notice for such removal.

B. Division's Right to Discontinue Service.

1. For Failure to Comply with Regulations. If a consumer or owner fails to comply with the provisions of this chapter or the regulations of the division after 48 hours' notice thereof, the division may forthwith discontinue water service to such consumer or owner until full and complete compliance is obtained.

2. For Improper Disposal of Water. Any person who, as owner or tenant of any premises, fails, refuses, or neglects to equip and maintain such premises with plumbing of such character, quality, and design as to assure that water will be disposed of into a disposal system acceptable to the city, shall 48 hours after being served by written notice of such intention, have all water service discontinued pending such improvements.

3. For Wastage of Water. Any person who wastes, causes, permits or allows to be wasted any water in any cooling system, ornamental foundation or other device of any kind whatsoever, may after service of 48 hours' notice of intention have

all water service discontinued or may be subject to the penalties under the provisions of Section 13.16.020 of the Upland Municipal Code.

4. For Refusal to Admit Employee to Inspect. Any person who as owner or occupant of any premises refuses admittance to, or hinders or prevents inspection by an authorized employee of the division may, after service of 24-hour notice of intention, have all water discontinued.

5. For Nonpayment of Bill. If water and other utility charges are not paid as previously set forth then the city will adhere to the city's Discontinuation of Residential Water Service Policy. The city council may, by resolution or motion, adopt or amend a Discontinuation of Residential Water Service Policy, which will comply with the provisions of Health & Safety Code Section 116900, et seq., and Public Utilities Code Section 10009, et seq. The policy may include, but may not be limited to, provisions concerning discontinuation of service, notification, restoration of service, procedures to contest or appeal a water bill, extensions or other alternative payment arrangements, protections available to qualified low-income consumers, procedures for becoming a consumer under specified circumstances, and related matters.

6. Turn-off or turn-on of service when requested by the consumer for the closing of an old account or the beginning of a new one will be supplied at no charge to the consumer, provided such request is placed with the finance division at least 24 hours prior thereto in order to effect discontinuance or restoration of water service. Requests for service connections after normal working hours and/or on weekends will be subject to fees set by separate resolution of the city council. Exceptions may be made by the public works director or designee in his or her discretion where he or she finds that discontinuance of service would jeopardize the health, safety and welfare of the water consumer.

C. Only Public Works Director May Turn Water On. No person shall tap, open or connect to, or cause, permit or allow to be turned on, in any way, any water after the same has been turned off by the public works director.

D. Restoration of Service. Upon failure to comply with regulations of the division, to pay charges, or to comply with any charge or penalty imposed for failure as herein provided, water services may be turned off until the regulations are complied with and/or penalty payments are made in the amount due. To restore service an amount as set by separate schedule and resolution enacted by the city council will be collected to defray the cost of turning water service back on. In the event the consumer turns on the water service or suffers or causes it to be turned on after it has been turned off for any of the above reasons, the department may again turn off the water service and remove the meter. The costs incurred for this additional expense shall be commensurate with the cost of this service and shall be determined and charged by the public works director or designee. In any case, if the meter is removed for cause, additional charges as set by separate resolution may be incurred by the consumer. The consumer's account may then be closed by the finance department and any advance payments applied against this closing bill.

E. Returned Checks. Any account for which payment is made by check and for which check is returned by the bank on which it was drawn shall be considered as unpaid and subject to charges for handling as set by separate schedule. Consumers who have had checks returned by the bank may be subject to request for payment by cash, credit card or money orders only, at the discretion of the finance director. (Prior code § 7720.8)

13.12.100 Meters.

A. Consumer Dissatisfaction with Meter—Meter Testing. In case of dissatisfaction with the registration of any meter, the consumer shall make a written complaint to the water division, and pay a deposit in an amount as set by separate resolution of the city council enacted from time to time, which deposit will be returned and the water bill adjusted in an equitable manner in case the meter shall be found to register over three percent more than actually passes through it. If the meter is found to be accurate within three percent, the deposit shall be forfeited to the city and the water bill paid as rendered.

B. Meter Failure. If a meter fails to register during any period or is known to register inaccurately, the consumer shall be charged with an average daily consumption according to the season, as shown by the meter when in use and registering accurately.

C. Installation and Perpetual Maintenance of Meters and Laterals. The water division shall determine and make charges for the installation and perpetual maintenance of meters and service laterals. Upon the filing with the water division of a written application by a property owner and the payment to the water division of the required charge for a meter, the water division will make a connection for such property owner to the city water main; such connection shall be laid to the inside of the curb line in front of applicant's property or the side or rear of the same, provided there is a city main passing along the street in front of or at the side or at the rear of such property. Where there is no water main in front of, at the side of or to the rear of applicant's property, applicant shall install at his own expense.

D. Meter City Property. All services and all water meters installed by the division shall, at all times, remain the property of the division. The expense of maintenance, repair and renewal of such meters due to the wear of normal service shall be borne by the division. Provided, however, any expense occasioned by any act, careless or otherwise, on the part of the consumer, or any member of the consumer's family, or any person in the consumer's employ, shall be charged to such consumer.

E. Unlawful to Tamper with Meter or Break Seals. No person shall tamper with, remove, cause, permit, or allow to be tampered with or removed, any meter where the same has been attached to any service, or break, cause, permit, or allow to be broken any meter seal. If such tampering or breaking occurs, the division shall impose a penalty set by separate resolution of the city council and may remove the meter.

F. By-Pass Connections Unlawful. Any by-pass or connection around the meter between the service and the main shall be prohibited and such service shall be subject to discontinuance without prior notification. All water used shall pass through the meter.

G. Unlawful to Cover Meter Box. It is unlawful at any time to cover meter boxes with trash, rubbish, dirt or other foreign matter, to permit ivy or other shrubbery to grow over meter boxes, or to park automobiles or other vehicles over meter boxes. If the city's water meter reader is unable to read the meter in the normal course of his or her work because of any of the above, an estimated reading for a comparable period will be estimated and billed to the consumer. Additionally, if the consumer permits a dog or other animal to prohibit the meter reader from reading the meter of the consumer, then the consumer's meter may be billed on an estimated

basis for a comparable period of time in which the meter reader is effectively prevented from reading the meter. (Prior code § 7720.9)

Section 2. Chapter 13.34 of Title 13 of the Upland Municipal Code is hereby repealed and replaced with the following:

13.34.010 Definitions.

As used in this chapter, the following terms shall have the following definitions:

"City" shall mean the city of Upland.

"City clerk" shall mean the city clerk of the city of Upland.

"City council" shall mean the city council for the city of Upland.

"County" shall mean the county of San Bernardino.

"County auditor" shall mean the auditor-controller for the county of San Bernardino.

"County recorder" shall mean the recorder for the county of San Bernardino.

"County tax collector" shall mean the tax collector for the county of San Bernardino.

"Current assessment roll" shall mean current tax assessment roll for the county of San Bernardino.

"Delinquent service charges" shall mean service charges for water and/or sewer and/or trash collection services, including any associated penalties and fees, that remain unpaid for sixty (60) days or more.

"Hearing" shall mean a proceeding before the Upland city council where protests and objections to the report may be heard and where the council may adopt, revise, change, reduce or modify any charge or overrule any or all objections to the charges contained in the report.

"Newspaper" shall refer to any newspaper of general circulation within the city of Upland.

"Property owner" shall mean the person, persons, or entity that is listed on the San Bernardino County Current Equalized Assessment Roll as the owner or owners of the subject property.

"Report" shall mean the report described in Section 13.34.030. (Ord. 1891 § 7, 2015)

13.34.020 City may record lien for collection on current assessment roll.

Except as otherwise allowed by law, in the event of delinquent service charges, the City may at its discretion elect to record an assessment lien on the property to which said charges have been imposed in the amount of the delinquent service charges and any associated penalties and fees. The City shall collect such charges by their addition to the current assessment roll pursuant to the procedures set forth in this chapter, or any other applicable procedures under state law.

13.34.030 Report of delinquent service charges.

The city shall cause to be created and filed with the city clerk a report proposing the collection of delinquent service charges to be collected by addition to the current assessment roll and describing properties with delinquent service charges, including the name and address of the property owner, and the amount of the delinquent service charges for each property. (Ord. 1891 § 7, 2015)

13.34.040 Notice of hearing to property owners.

The city council shall conduct a hearing where it will consider the contents of the report and any objections or protests from affected property owners. The city clerk shall publish notice of the date, time and location of the hearing in a newspaper of general circulation within the city of Upland, once a week for two consecutive weeks prior to the hearing as set forth in California Government Code Section 6066. Notice containing the date, time and location of the hearing shall also be mailed to each property owner with delinquent service charges at least 10 days prior to the hearing. (Ord. 1891 § 7, 2015)

13.34.050 Hearing.

At the hearing, the city council shall hear any objections or protests from property owners with delinquent service charges. The city council may adopt, revise, change, reduce or modify any charge or overrule any or all objections to the charges contained in the report. The report, including any revisions, changes or modifications shall be adopted by resolution of the city council. (Ord. 1891 § 7, 2015)

13.34.060 Filing of report with county auditor.

The city clerk shall file the adopted report with the county auditor by August 10 of each year and shall include a signed statement that the report was adopted by resolution of the city council. The county auditor shall enter the amount of each delinquent service charge against each respective property contained in the report as it appears on the current assessment roll for the purpose of collecting such charges. (Ord. 1891 § 7, 2015)

13.34.070 Filing of certificate with county recorder—Placement of assessment lien.

After filing the report and statement with the county auditor pursuant to Section 13.34.060, the amount of delinquent service shall constitute an assessment lien against the property against which the charge has been imposed, and said charges shall be secured by filing for record in the office of the county recorder a certificate specifying the amount of delinquent service charges and the name and address of the property owner liable for said charges. (Ord. 1891 § 7, 2015)

13.34.080 Inclusion of amount of charges on bill for taxes

The county tax collector shall include the amount of the delinquent service charges on bills for taxes against the property and thereafter the amount of said charges shall be collected at the same time and in the same manner as ordinary municipal taxes are collected. All laws applicable to the levy, collection and enforcement of municipal ad valorem taxes shall be applicable to such charges, except that if any real property to which such lien would attach has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of such taxes would become delinquent, then the lien which would otherwise be imposed by this section shall not attach to such real property and the delinquent and unpaid charges relating to such property shall be transferred to the unsecured roll for collection.

13.34.090 Fees and penalties.

The City may charge fees and penalties in connection with the provisions of this chapter in an amount set by resolution of the city council and such fees and penalties may be added onto the amount of any delinquency that is assessed on the tax roll or recorded against any property as a lien. (Ord. 1891 § 7, 2015)

13.34.100 Satisfaction of Lien.

Assessment liens recorded pursuant to this chapter shall be released upon full satisfaction thereof.

Section 3. Any provision of the Upland Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

Section 4. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Upland hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Section 5. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect 30 days after its final passage.

PASSED, APPROVED, AND ADOPTED this 27th day of November, 2023.



Bill Veto, Mayor

I, Keri Johnson, City Clerk of the City of Upland, California, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Upland held on the 13th day of November, 2023, and was adopted at a regular meeting of the City Council of the City of Upland on the 27th day of November, 2023, by the following vote:

AYES:	Mayor Velto, Councilmembers Garcia, Breitling, Maust, Zuniga
NOES:	None
ABSENT:	None
ABSTAINED:	None

ATTEST: 
Keri Johnson, City Clerk