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Clerk-Treasurer email

ORDINANCE 2017-01

**AN ORDINANCE RESTATING PORTIONS OF CHAPTER 51 AND 53
REGARDING UTILITY SERVICES FOR THE CITY OF AUBURN, INDIANA**

SUMMARY

The City of Auburn, Indiana hereby passes this ordinance which restates provisions associated with Chapter 51.17 “Deposit to Insure Payment of Bills” and 53.020 “Deposits” of the Auburn Municipal Code. This Ordinance addresses among other items, provisions to insure the payment of Utility Bills and procedures regarding payments.

The Summary of this Ordinance shall be published in a newspaper of general circulation and the full version of the Ordinance shall be available at the Clerk-Treasurer’s Office at City Hall located at 210 East Ninth Street Auburn, Indiana. A full copy of the Ordinance can also be viewed at www.ci.auburn.in.us or obtained from the Clerk-Treasurer during regular business hours.

_____ Recorder’s Office	<u> x </u> Publish Public Hearing
_____ Auditor’s Office	
_____ Clerk’s Office	<u> x </u> Publish O/R after adoption
_____ Other	

<u> x </u> _____	Clerk-Treasurer
<u> x </u> _____	Web-Site
<u> x </u> _____	City Code (web based)

ORDINANCE NO. 2017-01

**AN ORDINANCE RESTATING AMENDING PORTIONS OF CHAPTER 51 AND 53
REGARDING UTILITY SERVICES FOR THE CITY OF AUBURN, INDIANA**

WHEREAS, the Auburn Common Council previously passed an ordinance codified in Chapter 51 and 53 of the Auburn Municipal Code of Ordinances establishing the billing procedures, deposit requirements, and other terms to insure payment of bills owed to the City of Auburn Indiana's Municipal Utility; and

WHEREAS, the Municipal City of Auburn, Indiana by and through the Common Council proposes certain changes to the ordinance in an effort to further mitigate bad debt and risk of loss for failure to pay accounts; and

WHEREAS, the City of Auburn, Indiana herein restates to the provisions associated with Chapter 51 and 53 of the Auburn Municipal Code, in an effort to apply consistent and objective billing practices to Utility Customers and

WHEREAS, the previously passed Ordinances shall be restated and replaced to the extent applicable by law upon passage of this ordinance; and

WHEREAS, this ordinance shall be codified and restated in Sections 51.17 and 53.020 of the Auburn City Code. Said Ordinance shall be codified upon passage of the summary and publication on the City of Auburn's Web-Based Internet Code site; and an original copy of said ordinance shall be maintained by the Office of the Clerk-Treasurer.

**NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL
OF THE CITY OF AUBURN, INDIANA AS FOLLOWS:**

Section 1. DEPOSIT TO INSURE PAYMENT OF BILLS

That **Section 51.17** of the Auburn Municipal Code regarding Deposit to Insure Payment of Bills shall read as follows:

A) Residential

- 1) The utility may require from each new customer for utility service a cash deposit equal to the customer's estimated billing for a period of one-sixth (1/6th) of the estimated annual billings of the property being serviced, but not less than \$50.00, as a deposit and guarantee against nonpayment of bills for service for those who fail to establish creditworthiness. For newly constructed homes, the estimated annual billing shall be based on a home with similar square footage as determined by the Clerk-Treasurer. Applicants for residential service shall establish creditworthiness by a criterion that is established without regard to economic character of the area which the applicant resides; and solely upon the credit risk of the individual without regard to the collective credit reputation of the area in which he or she lives.
- 2) Each new applicant for residential utility service shall be deemed creditworthy and shall not be required to make a cash deposit as a condition of receiving service if the applicant satisfies the following criteria:
 - a. If the applicant has been a customer of any utility within the last two (2) years, the applicant: (i) owes no outstanding bills for service rendered within the past four (4) years by any such utility; (ii) during

the last twelve (12) consecutive months that the service was provided, did not have more than two (2) bills that were delinquent to any utility or, if service was rendered for a period for less than twelve (12) months, did not have more than one (1) delinquent bill in such period; and (iii) within the last two (2) years did not have a service disconnected by a utility for nonpayment of a bill for services rendered by that utility.

- 3) If the applicant has not been a customer of a utility during the previous two (2) years, any two (2) of the following criteria are met:

The applicant either:

- a. Has been employed by his or her present employer for two (2) years;
- b. Has been employed by his or her present employer for less than two (2) years, but has been employed by only one (1) other employer during the past two (2) years; or
- c. Has been employed by the present employer for less than two (2) years and has no previous employment due to recently graduating from a school, university, or vocational program or being discharged from military service.
- d. The applicant either owns or is buying his or her home, or is renting a home or an apartment and has occupied the premises for more than two (2) years.
- e. The applicant has credit cards, charge accounts, or has extended credit by a bank, commercial concern, or individual unless a credit check

shows that the applicant has been in default on any such account more than twice within the last twelve (12) months.

- 4) If the applicant fails to establish that he or she is creditworthy, the applicant may be required to make a cash deposit. Such deposit shall not exceed one-sixth (1/6th) of the estimated annual cost of service to be rendered to the applicant. A utility may require a present customer to make such deposit when:
- a. The customer has been mailed disconnect notices for two (2) consecutive months;
 - b. The customer has been mailed disconnect notices for any three (3) months within the preceding twelve (12) month period; or
 - c. The service to the customer has been disconnected within the past four (4) years.

- 5) The amount of such deposit may not exceed an amount equal to one-sixth (1/6th) of the expected annual billings for the customer at the address at Deposits may be held more than twelve (12) months and shall not earn interest. Requirements for refunds shall be as follows: Deposits will be refunded to the customer with or without the customer's request when the customer submits satisfactory payment for a period of twelve (12) consecutive months.

- 6) Following customer requested termination of service, the utility shall:

Apply the deposit as applicable to the final bill.

The Utility shall maintain a record of each applicant or customer making a deposit that shows the following:

- a. The name of the customer.

- b. The current address of the customer so long as he or she maintains an active account with the utility in his or her name.
 - c. The amount of the deposit
 - d. The date the deposit was made.
 - e. A record of each transaction affecting said deposit.
- 7) Each customer shall be provided with a receipt from the utility at the time his or her deposit is paid. The utility shall provide a reasonable method by which a customer who is unable to locate his or her receipt may establish that he or she is entitled to a refund of the deposit.
- 8) Any deposit made by the applicant, customer or any other person to the utility (less any lawful deductions), or any sum the utility is ordered to refund for utility service that has remained unclaimed for one year after the utility has made diligent effort to locate the person who made such deposit or the heirs of such person, shall be presumed abandoned and may be transferred to the utility's operating fund.
- 9) A deposit may be used by the utility to cover any unpaid balance following disconnection of service.
- 10) In no event shall services be provided to any customer who is a renter or contract purchaser, unless the owner of the real estate signs the application and agrees to be responsible for any service rendered to the property in the event that the renter or contract purchaser fails to pay the charges rendered for service. The owner of a property may require a co-signor on utility accounts for renters, who shall sign the

application and provide name and contact information to the Clerk-Treasurer's Office of the City of Auburn. The co-signor shall sign the appropriate forms with the City of Auburn that shall jointly bind the individual for any past due accounts on said property. The City shall make efforts to pursue collection of past due accounts from the customer and the co-signor before pursuing the owner of the property. Notice of the past due account shall also be made to the owner of the property being served before taking legal action. All demands for payments for past due accounts made shall be copied to the property owner and the owner shall be made aware that failure by the customer and/or co-signor to pay the account may result in legal action against the customer, co-signor and the owner jointly in a Court of competent jurisdiction. The owner of the real estate shall have ultimate responsibility for all past due accounts.

- 11) The utility may require current customers to maintain a deposit equivalent to one-sixth ($1/6^{\text{th}}$) of the properties annual billing but not less than \$50.00 if the customer has been mailed a disconnect notice for two (2) consecutive months or any three (3) months within the preceding twelve (12) month period, or when the service has been disconnected. In cases where the deposit is required as a result of a disconnection for nonpayment, full payment of the deposit will be required prior to restoration of service.
- 12) Any deposit will be refunded promptly, along with a statement accounting for each transaction involving the deposit, upon successful termination of services between the customer and the City of Auburn.

- 13) The procedure following a customer request for termination of service is as follows:
- a. The utility will require payment of any past due balance currently billed and owed.
 - b. The utility will apply the deposit to the final billing.
 - c. Any portion of the deposit remaining after the application will be forwarded to the customer.
- 14) The utility will maintain a record of each applicant or customer making a deposit which will indicate the following:
- a. The name of the customer.
 - b. The current address of the customer so long as there exists an active account with the utility in the same name.
 - c. The name of the owner of the property.
 - d. The current address of the owner of the property.
 - e. The name of the co-signor.
 - f. The current address of the co-signor so long as there exists a current account with the customer and the utility department.
 - g. The amount of the deposit.
 - h. The date of the receipt of the deposit.
- 15) Each customer shall be provided a receipt from the utility at the time the deposit is paid.
- 16) Any deposit made by the applicant, customer, or any other person to the utility (less any lawful deductions) or any sum which the utility is ordered to refund for

utility service, which has remained unclaimed for one (1) year after the utility has made diligent efforts to locate the person who made the deposit or the heirs of the person, will be presumed abandoned and may be transferred to the utility's operating fund.

- 17) A deposit may be used by the utility to apply toward any unpaid balance following disconnection of service provided, however, any surplus may be returned to the customer. In instances where the deposit is used to pay arrearages, the utility shall require a new deposit to replace that applied to the unpaid balances before service is restored.
- 18) The procedure for taking legal action on past due accounts shall be as follows:
- a. At all times, owners, customers and co-signors shall have access to all account information upon request.
 - b. Upon a disconnect notice being issued a duplicate of said notice shall be sent by regular U.S. Mail to the co-signor and/or owner of the property involved. No disconnection shall take place until proper notice has been given to all relevant parties.
 - c. After disconnection and before any legal action is taken a demand letter shall be sent requesting that the account be made current within ten (10) days.
 - d. Should the account not be made current within ten (10) days, the City of Auburn shall then take action against the customer, the co-signor, and the property owner in a competent court of law in an effort to recover the unpaid utility services.

- e. Any judgment rendered shall act as a judgment on the real estate until said time that the amount is paid by the account holder.

19) Utility deposits shall only be released to a third party upon written agreement between the owner of the deposit and the third party being presented to the City of Auburn Utility Department.

20) The City of Auburn shall develop a form that will be signed by all customers, co-signors, and owners regarding the provisions continued in this chapter.

- B. Non Residential All new non-residential customers may make a cash deposit to assure payment of such customer's bill for utility services. Such deposit may be required as a condition for obtaining service. Deposits taken shall not exceed one-sixth (1/6th) of the estimated annual billings for the property being serviced. Deposits received shall be refunded after a period of twelve (12) months, if said customer has made timely payments for said period. If timely payments have not been made the deposit shall be held until said time as timely payments have been made for twelve (12) consecutive months.

Section 2. WATER DEPOSITS

That **Section 53.020** of the Auburn Municipal Code regarding Water Deposits shall read as follows:

A) Residential

- 1) The utility may require from each new customer for utility service a cash deposit equal to the customer's estimated billing for a period of one-sixth (1/6th) of the estimated annual billings of the property being serviced, but not less than \$50.00, as a deposit and guarantee against nonpayment of

bills for service for those who fail to establish creditworthiness. For newly constructed homes, the estimated annual billing shall be based on a home with similar square footage as determined by the Clerk-Treasurer. Applicants for residential service shall establish creditworthiness by a criterion that is established without regard to economic character of the area which the applicant resides; and solely upon the credit risk of the individual without regard to the collective credit reputation of the area in which he or she lives.

- 2) Each new applicant for residential utility service shall be deemed creditworthy and shall not be required to make a cash deposit as a condition of receiving service if the applicant satisfies the following criteria:
 - a. If the applicant has been a customer of any utility within the last two (2) years, the applicant: (i) owes no outstanding bills for service rendered within the past four (4) years by any such utility; (ii) during the last twelve (12) consecutive months that the service was provided, did not have more than two (2) bills that were delinquent to any utility or, if service was rendered for a period for less than twelve (12) months, did not have more than one (1) delinquent bill in such period; and (iii) within the last two (2) years did not have a service disconnected by a utility for nonpayment of a bill for services rendered by that utility.
- 3) If the applicant has not been a customer of a utility during the previous two (2) years, any two (2) of the following criteria are met:

The applicant either:

- a. Has been employed by his or her present employer for two (2) years;
 - b. Has been employed by his or her present employer for less than two (2) years, but has been employed by only one (1) other employer during the past two (2) years; or
 - c. Has been employed by the present employer for less than two (2) years and has no previous employment due to recently graduating from a school, university, or vocational program or being discharged from military service.
 - d. The applicant either owns or is buying his or her home, or is renting a home or an apartment and has occupied the premises for more than two (2) years.
 - e. The applicant has credit cards, charge accounts, or has extended credit by a bank, commercial concern, or individual unless a credit check shows that the applicant has been in default on any such account more than twice within the last twelve (12) months.
- 4) If the applicant fails to establish that he or she is creditworthy, the applicant may be required to make a cash deposit. Such deposit shall not exceed one-sixth (1/6th) of the estimated annual cost of service to be rendered to the applicant. A utility may require a present customer to make such deposit when:
- a. The customer has been mailed disconnect notices for two (2) consecutive months;

- b. The customer has been mailed disconnect notices for any three (3) months within the preceding twelve (12) month period; or
 - c. The service to the customer has been disconnected within the past four (4) years.
- 5) The amount of such deposit may not exceed an amount equal to one-sixth. (1/6th) of the expected annual billings for the customer at the address at which service is rendered. Deposits may be held more than twelve (12) months and shall not earn interest and shall not earn interest. Requirements for refunds shall be as follows: Any deposit shall be promptly refunded to the customer without the customer's request when the customer submits satisfactory payment for a period of twelve (12) consecutive months.
- Following customer-requested termination of service, the utility shall:
Apply the deposit, as applicable to the final bill.
- 6) The utility shall maintain a record of each applicant or customer making a deposit that shows the following:
- a. The name of the customer.
 - b. The current address of the customer so long as he or she maintains an active account with the utility in his or her name.
 - c. The amount of the deposit
 - d. The date the deposit was made.
 - e. A record of each transaction affecting said deposit.
- 7) Each customer shall be provided with a receipt from the utility at the time his or her deposit is paid. The utility shall provide a reasonable method by which

a customer who is unable to locate his or her receipt may establish that he or she is entitled to a refund of the deposit.

- 8) Any deposit made by the applicant, customer or any other person to the utility (less any lawful deductions), or any sum the utility is ordered to refund for utility service that has remained unclaimed for one (1) year after the utility has made diligent effort to locate the person who made such deposit or the heirs of such person, shall be presumed abandoned and may be transferred to the utility's operating fund
- 9) A deposit may be used by the utility to cover any unpaid balance following disconnection of service.
- 10) In no event shall services be provided to any customer who is a renter or contract purchaser, unless the owner of the real estate signs the application and agrees to be responsible for any service rendered to the property in the event that the renter or contract purchaser fails to pay the charges rendered for service. The owner of a property may require a co-signor on utility accounts for renters, who shall sign the application and provide name and contact information to the Clerk-Treasurer's Office of the City of Auburn. The co-signor shall sign the appropriate forms with the City of Auburn that shall jointly bind the individual for any past due accounts on said property. The City shall make efforts to pursue collection of past due accounts from the customer and the co-signor before pursuing the owner of the property. Notice of the past due account shall also be made to the owner of the property being served before taking legal action. All demands for payments for past due

accounts made shall be copied to the property owner and the owner shall be made aware that failure by the customer and/or co-signor to pay the account may result in legal action against the customer, co-signor and the owner jointly in a Court of competent jurisdiction. The owner of the real estate shall have ultimate responsibility for all past due accounts.

11) The utility may require current customers to maintain a deposit equivalent to one-sixth (1/6th) of the properties annual billing but not less than \$50.00 if the customer has been mailed a disconnect notice for two (2) consecutive months or any three (3) months within the preceding twelve (12) month period, or when the service has been disconnected. In cases where the deposit is required as a result of a disconnection for nonpayment, full payment of the deposit will be required prior to restoration of service.

12) Any deposit will be refunded promptly, along with a statement accounting for each transaction involving the deposit, upon successful termination of services between the customer and the City of Auburn.

13) The procedure following a customer request for termination of service is as follows:

- a. The utility will require payment of any past due balance currently billed and owed.
- b. The utility will apply the deposit to the final billing.
- c. Any portion of the deposit remaining after the application will be forwarded to the customer.

- 14) The utility will maintain a record of each applicant or customer making a deposit which will indicate the following:
- a. The name of the customer.
 - b. The current address of the customer so long as there exists an active account with the utility in the same name.
 - c. The name of the owner of the property.
 - d. The current address of the owner of the property.
 - e. The name of the co-signor.
 - f. The current address of the co-signor so long as there exists a current account with the customer and the utility department.
 - g. The amount of the deposit.
 - h. The date of the receipt of the deposit.
- 15) Each customer shall be provided a receipt from the utility at the time the deposit is paid.
- 16) Any deposit made by the applicant, customer, or any other person to the utility (less any lawful deductions) or any sum which the utility is ordered to refund for utility service, which has remained unclaimed for one (1) year after the utility has made diligent efforts to locate the person who made the deposit or the heirs of the person, will be presumed abandoned and may be transferred to the utility's operating fund.
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18) The procedure for taking legal action on past due accounts shall be as follows:

- a. At all times, owners, customers and co-signors shall have access to all account information upon request.
- b. Upon a disconnect notice being issued a duplicate of said notice shall be sent by regular U.S. Mail to the co-signor and/or owner of the property involved. No disconnection shall take place until proper notice has been given to all relevant parties.
- c. After disconnection and before any legal action is taken a demand letter shall be sent requesting that the account be made current within ten (10) days.
- d. Should the account not be made current within ten (10) days, the City of Auburn shall then take action against the customer, the co-signor, and the property owner in a competent court of law in an effort to recover the unpaid utility services.
- e. Any judgment rendered shall act as a judgment on the real estate until said time that the amount is paid by the account holder.

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20) The City of Auburn shall develop a form that will be signed by all customers, co-signors, and owners regarding the provisions continued in this chapter.

B. Non – Residential

All new non-residential customers shall may make a cash deposit to assure payment of such customer’s bill for utility services. Such deposit shall be may be required as a condition for obtaining service. Deposits taken shall not exceed one-sixth (1/6th) of the estimated annual billings for the property being serviced. Deposits received shall be refunded after a period of twelve (12) months, if said customer has made timely payments for said period. If timely payments have not been made the deposit shall be held until said time as timely payments have been made for twelve (12) consecutive months.

Section 3. CODIFICATION

This ordinance shall become effective upon passage, signing of the Mayor, and publication in a newspaper of daily circulation in DeKalb County, State of Indiana. The original copy of this Ordinance upon passage shall be held by the Office of the Clerk-Treasurer. The Ordinance shall be codified and placed onto the City of Auburn’s web-based Municipal Code, which is located at www.ci.auburn.in.us.

PASSED AND ADOPTED by the Common Council of the City of Auburn,
Indiana, this ____ day of _____, 201____

JAMES FINCHUM, Councilmember

ATTEST:

Patricia Miller
Clerk-Treasurer

1st Reading: _____
2nd Reading: _____

Presented by me to the Mayor of the City of Auburn, Indiana, this _____ day of _____, 20____.

PATRICIA MILLER
Clerk-Treasurer

APPROVED AND SIGNED by me this _____ day of _____, 20____.

NORMAN E. YODER, Mayor

AYE

NAY

James Finchum

Mike Watson

Matthew “Dennis” Kruse

Denny Ketzenberger

Wayne Madden

Kevin Webb

Michael Walter