

Attachment 2

Proposed Code Modifications to be presented at Public Hearing

Note: New language is indicated with underlined text. Any language being deleted is indicated by ~~strikethrough~~.

Section 201.22. - Responsibility for payment of water/sewer fees; impact fee loans, special assessments, lien for unpaid bills.

- Except when the exception for non-owner customers of subparagraph B applies, responsibility for payment of any and all utility charges rests with the property owner. Charges for which the owner is responsible shall constitute an automatic lien in favor of the county against the property serviced. The county may record the liens in the public records of Indian River County, Florida; however, the liens need not be recorded to be an enforceable lien against the property. It is the intention of the county that these liens, whether recorded or not, shall have the same priority as liens for taxes and other governmental assessments, and shall be superior to mortgages and other claims against the property, whether or not the mortgages or other claims predate the creation of this lien. The county finds that having such a priority status for its utility liens is necessary and serves a public purpose, and that it has the authority to enact this provision pursuant to the authority of Dade County v. Certain Lands, 247 So.2d 787, and Gleason v. Dade County, 174 So.2d 466, F.S. §§ 153.67 and 125.01(1).

- A. When an account is opened by a non-owner customer, the non-owner customer shall be responsible for payment of all fees and charges; except that the property owner shall be responsible for payment of the base bill if not paid by the non-owner customer. The county shall collect a deposit equal to no less than two (2) months' estimated utility bills for that non-owner customer. This deposit shall not be returned until the

account is closed and all unpaid charges which are the responsibility of the non-owner customer are paid. The deposit shall be used to offset any such charges in the following order: (i) volumetric consumption charges; (ii) charges, fees, fines, and penalties assessed pursuant to this chapter and the rate resolution; (iii) fees in lieu of franchise fees (also known as "franchise surcharges"); (iv) where applicable, municipal franchise fees and other municipal fees and taxes; (v) billing charges; and (vi) service availability charges (formerly known as "base facility charges"). Unpaid utility bills for which the non-owner customer is responsible shall not be a lien against the owner's property. The property owner shall be responsible for payment of the base bill.

- B. Except when the exception for non-owner customers of subparagraph B applies, in the event that the fees, rates or charges for the services and facilities of any water or sewer system shall not be paid as and when due, any unpaid balance thereof shall be a lien on any parcel or property affected thereby. Such liens shall be superior and paramount to the interest on such parcel or property of any owner, lessee, tenant, mortgagee, or other person except the lien of county taxes and shall be on a parity with the lien of any such county taxes. In the event that any such service charge shall not be paid as and when due and shall be in default for thirty (30) days or more the unpaid balance thereof and all interest accrued thereon, together with attorney's fees and costs, may be recovered by the county in a civil action, and any such lien and accrued interest may be foreclosed or otherwise enforced by the county by action or suit in equity as for the foreclosure of a mortgage on real property.
- C. Provisions of this subsection apply to rental residential complexes where tenants are not real property owners. Its primary application is to apartments, recreation vehicle parks and trailer parks where short-term tenancies are the norm. Applicability of this subsection to

mobile/manufactured home communities, which generally are based on lifetime homeowner tenancies, is subject to the constraints having been placed upon the laws and ordinances enacted by units of local government by F.S. ch. 723. The state legislature's intent and preemption of the subject matter and of state regulation of the complex relationship which exists between manufactured home park owners and tenants are set forth in Sections 723.004(1),(2), and (3), which prohibit any units of local government from enacting any laws or ordinances in conflict with F.S. ch. 723.

- D. At any time that an account has 24 months of unpaid water and or sewer charges, staff shall notify the property owner of the County's intention to pursue foreclosure, where applicable. The property owner shall be given 60 days to bring the account current. The Director of Utility Services or his designee shall have the authority to make a settlement offer in lieu of foreclosure. Such settlement offer shall never be less than the actual charges for water and sewer services which shall include but not be limited to service availability charges, consumption charges, disconnection or reconnection of service, and lien fees. It is the intention of this section to allow for forgiveness of penalties and interest only, in order to avoid foreclosure. If the attempt to settle the account is not successful then staff shall work with the County Attorney's office to perfect the lien (pursue foreclosure).
- E. For any water and sewer accounts that have accumulated 24 or more months of water and sewer charges as of February 1, 2021, allow for the waiver of penalties and interest as describe herein:

From May 1, 2021 until close of business on June 29, 2021, the County will waive all penalties and interest on any water and sewer accounts that have accumulated over 24 months of charges. No payments received after 5:30 p.m. on June 29, 2021 will qualify

for this waiver.

From May 1, 2021 until close of business on April 29, 2022, the County will waive ninety-percent of all penalties and interest on any water and sewer accounts that have accumulated over 24 months of charges. No payments received after 5:30 p.m. on April 29, 2022 will qualify for this waiver.

- F. For any impact fee loans that have expired as of February 1, 2021, allow the waiver of penalties and interest as described herein:

From May 1, 2021 until close of business on June 29, 2021, the County will waive all penalties and interest on any water and sewer accounts that have accumulated over 24 months of charges. No payments received after 5:30 p.m. on June 29, 2021 will qualify for this waiver.

From May 1, 2021 until close of business on April 29, 2022, the County will waive ninety-percent of all penalties and interest on any water and sewer accounts that have accumulated over 24 months of charges. No payments received after 5:30 p.m. on April 29, 2022 will qualify for this waiver.

- G. For any assessment loans that have expired as of February 1, 2021, allow the waiver of penalties and interest as described herein:

From May 1, 2021 until close of business on June 29, 2021, the County will waive all penalties and interest on any water and sewer accounts that have accumulated over 24 months of charges. No payments received after 5:30 p.m. on June 29, 2021 will qualify for this waiver.

From May 1, 2021 until close of business on April 29, 2022,

the County will waive ninety-percent of all penalties and interest on any water and sewer accounts that have accumulated over 24 months of charges. No payments received after 5:30 p.m. on April 29, 2022 will qualify for this waiver.

- H. For any impact fee or assessment loans that are delinquent as of month 48 of the loan or assessment period, staff shall notify the property owner the County's lien will be perfected if the past due amounts are not brought current within 60 days of the notification. Since the impact fee loan term and assessment loan terms run beyond 48 months, the Utility Director or his designee shall have the authority to negotiate a settlement offer. Under no circumstances shall the settlement offer be less than the total payments due as of the negotiation date plus the remaining principle of the original loan or assessment.
- I. A "Notice of Future Potential Future Utility Charges" shall be filed with the Clerk of Court on any properties where the assessments were not considered paid in full.