



St. Bernard Parish Council

8201 West Judge Perez Drive Chalmette, Louisiana, 70043
(504) 278-4228 Fax (504) 278-4209
www.sbp.net

#26

Guy McInnis
*Councilman
at Large*

George Cavignac
*Councilman
at Large*

Ray Lauga, Jr.
*Councilman
District A*

Nathan Gorbaty
*Councilman
District B*

Richard "Richie" Lewis
*Councilman
District C*

Casey W. Hunnicutt
*Councilman
District D*

**Manuel "Monty"
Montelongo III**
*Councilman
District E*

Roxanne Adams
Clerk of Council

EXTRACT OF THE OFFICIAL PROCEEDINGS OF THE COUNCIL OF THE PARISH OF ST. BERNARD, STATE OF LOUISIANA, TAKEN AT A REGULAR MEETING HELD IN THE COUNCIL CHAMBERS OF THE ST. BERNARD PARISH GOVERNMENT COMPLEX, 8201 WEST JUDGE PEREZ DRIVE, CHALMETTE, LOUISIANA ON TUESDAY, JULY 7, 2015 AT SEVEN O'CLOCK P.M.

On motion of Mr. McInnis, seconded by Mr. Lewis, it was moved to **adopt** the following ordinance:

ORDINANCE SBPC #1656-07-15

Summary No. 3208

Introduced by: Councilman Lauga on 3/3/15
Public hearing held on 3/17/15
Tabled on 3/17/15

AN ORDINANCE TO **AMEND ORDINANCE SBPC #1596-01-15**, AN ORDINANCE TO AMEND APPENDIX D, FEES; WATER AND SEWER RATES; SECTION 2, WATER RATES AND SECTION 3, SEWER RATES OF THE ST. BERNARD PARISH CODE OF ORDINANCES.

ST. BERNARD PARISH COUNCIL DOES HEREBY ORDAIN:

SECTION 1. That Ordinance SBPC #1596-01-15, which amended appendix D, Fees; Water and Sewer Rates; Section 2, Water Rates and Section 3, Sewer Rates of The St. Bernard Parish Code of Ordinances is hereby amended as per attached in Exhibit "A".

SECTION 2. Effective Date. This ordinance shall become effective immediately upon authorizing signature by the Parish President, contingent upon written approval from Foley & Judell and St. Bernard Parish Legal staff by close of business on July 10, 2015. In the event of a presidential veto this ordinance shall become effective upon a two-thirds favorable vote of the total membership of the Council pursuant to Sections 2-11 and 2-13 of the St. Bernard Parish Home Rule Charter.

SECTION 3. Severability. If any section, clause, paragraph, provision or portion of this ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, clause, paragraph, provision or portion of this ordinance, the St. Bernard Parish Council hereby expresses and declares that it would have adopted the remaining portion of this Ordinance with the invalid portions omitted.



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Guy McInnis
Councilman
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Extract #26 continued
July 7, 2015

George Cavignac
Councilman
at Large

The above and foregoing having been submitted to a vote, the vote thereupon resulted as follows:

Ray Lauga, Jr.
Councilman
District A

YEAS: Lauga, Lewis, Hunnicutt, Montelongo, McInnis

NAYS: Gorbaty

Nathan Gorbaty
Councilman
District B

ABSENT: None

Richard "Richie" Lewis
Councilman
District C

The Chairman, Mr. Cavignac, cast his vote as **YEA**.

And the motion was declared **adopted** on the 7th day of July, 2015.

Casey W. Hunnicutt
Councilman
District D

ROXANNE ADAMS
CLERK OF COUNCIL

GEORGE CAVIGNAC
COUNCIL CHAIRMAN

Manuel "Monty" Montelongo III
Councilman
District E

Roxanne Adams
Clerk of Council

Delivered to the Parish President

7/10/2015 10:30am
Date and Time

Approved

Vetoed

Parish President

David E. Peralta

Returned to Clerk of the Council

7/10/15 12:21pm
Date and Time

Received by

**ORDINANCE SBPC #1656-07-15
SUMMARY NO. 3208
EXHIBIT "A"**

**APPENDIX D – FEES
WATER AND SEWER RATES AND CHARGES
SECTION 2 – WATER RATES & SECTION 3 – SEWER RATES**

Section 2. Water Rates

In accordance with the findings described in section 1, and acting under the authority of section 7-10(B) of the Charter, the following rates and charges shall be imposed upon users of the water system in the parish:

	New	
Minimum billed consumption:	4,000–1,000,000gallons/month	1,000,000 + gallons/month
Water Rates:		
District 1	\$2.98/thousand gallons	\$4.94/thousand gallons
District 2	\$2.98/thousand gallons	\$4.94/thousand gallons

(Total minimum charge for water: 4,000 gallons per dwelling unit)

Commercial & Industrial sites consumption will be cumulative in calculating consumption totals.
Forty percent (40%) of all revenues shall be dedicated to repair and maintenance of system infrastructure

Any dwelling with a Senior Special Assessment Freeze on file with the Tax Assessor's office, shall receive a \$5.00 monthly credit on their water bill.

The credit shall be retro-active to the date of the implementation of the rate increase, March 2015 and shall expire twelve 12 months from implementation unless the Council revisits and reapproves the credit.

Section 3. Sewer rates.

In accordance with the findings described in section 1, and acting under the authority of Section 7-10(B) of the Charter, the following rates and charges shall be imposed upon users of the sewer system in the parish:

	New
Minimum billed consumption	4,750 gallons
Sewer Rates:	
District 1	\$4.94/thousand gallons
District 2	\$4.94/thousand gallons

(Total minimum charge for sewer: 4,750 gallons per dwelling unit.)

Commercial & Industrial sites consumption will be cumulative in calculating consumption totals.
Forty percent (40%) of all revenues shall be dedicated to repair and maintenance of system infrastructure

*Residential sewer consumption is based on 90% water consumption

*Commercial sewer consumption is based on 100% water consumption

Any dwelling with a Senior Special Assessment Freeze on file with the Tax Assessor's office, shall receive a \$5.00 monthly credit on their sewer bill.

The credit shall be retro-active to the date of the implementation of the rate increase, March 2015 and shall expire twelve 12 months from implementation unless the Council revisits and reapproves the credit.



St. Bernard Parish Government

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David E. Peralta
Parish President

To: St. Bernard Parish Council

From: Scott M. Smith, *ESQ.*; and William M. McGoey, *ESQ.*

Date: July 9, 2015

RE: The governmental authority to classify different monthly water bill credits based upon residency, age, income, and/or use of land.

Issue:

Whether or not the governing authority can grant monthly water rate credits to certain citizens that have acquired a "Senior Assessment Freeze" with the St. Bernard Parish Tax Assessor's office as set forth in Ordinance Summary No. 3208?

Conclusion:

The governing authority cannot grant credits or adjust special water rates in consideration of factors that are collateral to providing public utilities, as it violates the Louisiana Constitution.¹ It is well settled law that public utility companies' charges for service "must be equal, uniform, and not discriminatory... They must apply to all classes, business, and individuals alike [.]"²

Rule of Law:

The Supreme Court of Louisiana has issued two opinions that unequivocally prohibit public utility companies from giving rebates or credits that are not directly related to the services rendered.³ The fundamental philosophy of public utility companies is that "there shall be one rate for a particular service, and a charge made to one patron or consumer different from that made to another, for the same service, ... [is] discrimination and renders the charge improper and a violation of statutory preferences."⁴

¹ La. Atty. Gen. Op. 1998-141; La. Const. Art. I, § 3; State ex rel. Guste v. Council of New Orleans, 309 So. 2d 290, (La. 1975); Hicks v. Monroe Utilities Com., 237 La. 848, 112 So. 2d 635, (La. 1959); Johnson v. Mayor & City Com., 14 La. App. 40, 129 So. 433, (La.App. 1930)

² Hicks, 112 So. 2d at 650.

³ Id. at 641.

⁴ Id. at 642, quoting, 73 C.J.S. Public Utilities § 27, p. 1048.

The landmark case for Louisiana utility discrimination law is *Hicks v. Monroe Utilities Com.* In that case, Mr. Hicks lived several miles outside of the City of Monroe.⁵ The defendant city was a public utility company that had the potential to supply both electricity and water to Mr. Hicks.⁶ The city established a rate policy that charged residents double the normal rate of water if the resident did not also engage the city for electric power.⁷ Mr. Hicks exercised his right to secure his power from Louisiana Power and Light Company and his water from the city.⁸ He was thus confronted with an unusually large bill simply because he did not acquiesce to the city's demand that he purchase water and electricity from the city.⁹ Mr. Hicks filed suit claiming discrimination.

The court begins by explaining that:

“when a municipality undertakes to furnish a public service, such as the supplying of electricity, gas, or water, to consumers other than itself, it acts as a proprietary, and not in its governmental, capacity, and cannot grant free or reduced rates or otherwise make discriminations which would be unlawful if the service were rendered by an individual or private corporation; in other words, the fact that the service is by a municipal plant does not change the rule prohibiting unreasonable discrimination.”¹⁰

The general rule, simply stated, is a utility company (both private and public) must provide uniform rates, rebates, credits, and adjustments to all its customers. ¹¹ The rates or charges may be adjusted when there is a “reasonable classification of its customers based upon material differences in the type and quantity of services furnished.”¹² A permissive classification would have to relate to material used for the services extra labor needed to provide the service or any other unique circumstance particular to the consumer and is related to the services. The utility provider cannot base any “classification which is entirely collateral to and unconnected with the particular service which is being rendered.”¹³

With the above principles the court unanimously struck down Mr. Hick's increased water rate, holding that the rate classification was not reasonably related to the service being provided.¹⁴

The Hicks decision was most recently cited in a Louisiana Attorney General opinion which considered water rate reductions.¹⁵ Zachary Parish crafted a senior citizen discount plan that would reduce the water rate by \$.50 for senior citizens.¹⁶ The Attorney General started with the general principle that, “public utilities may reasonably distinguish among classes of customers by charging varying rates for varying services, any discrimination among customers as to rates charged for the same service is universally considered

⁵ Id. at 637.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id. at 643, Quoting 50 A. L.R. 126.

¹¹ Id.

¹² Id.

¹³ Id. at 649.

¹⁴ Id.

¹⁵ La. Atty. Gen. Op. 1998-141

¹⁶ Id.

impermissible.”¹⁷ The Attorney General opined that a senior citizen discount would unlawfully discriminate against citizens who are not elderly.¹⁸

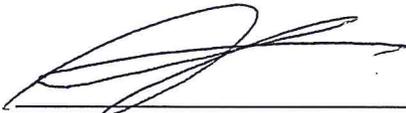
Analysis:

The Council proposes to give a \$5.00 monthly credit to both the water and sewer rates to only those citizens that have a “Senior Special Assessment Freeze” on file with the St. Bernard Parish Tax Assessor’s office.¹⁹ To qualify for the special assessment, a citizen must be 65 years or older and have an income which does not exceed \$50,000 (adjusted annually).²⁰ In order for this classification to be non-discriminatory it must be reasonably related to the services provided and not based upon collateral factors unrelated to the services provided.²¹

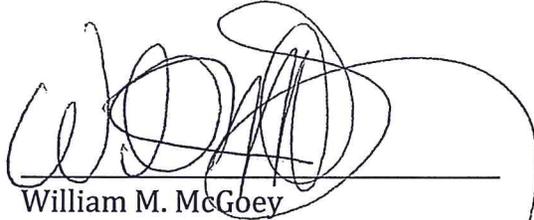
This classification is unrelated to providing utilities services and is directly contemplated by the Attorney General in its opinion numbered 1977-869. The age and income of a recipient does not determine the use, quantity, type, or manner of service provided to them. It is true that age and income do, normally, show different trends in utility usage, but these trends are not related to the manner of service.

Conclusion:

The governing authority may not grant credits or adjust special water rates in consideration of factors that are collateral to providing public utilities. It is well settled law that public utility companies’ charges for service “must be equal, uniform, and not discriminatory... They must apply to all classes, business, and individuals alike [.]” The proposed ordinance violates the Louisiana Constitution and cannot become law.



Scott M. Smith
Assistant Parish Attorney
St. Bernard Parish Government



William M. McGoe
Parish Attorney
St. Bernard Parish Government

¹⁷ Id. Quoting State of Louisiana, 309 So. 2d at 294.

¹⁸ Id.

¹⁹ SBPCO #3208.

²⁰ La. Const. Art. VII, § 18 (G)

²¹ La. Atty. Gen. Op. 1998-141; State ex rel. Guste v. Council of New Orleans, 309 So. 2d 290, (La. 1975); Hicks v. Monroe Utilities Com., 237 La. 848, 112 So. 2d 635, (La. 1959); Johnson v. Mayor & City Com., 14 La. App. 40, 129 So. 433, (La.App. 1930)