

**ORDINANCE NO. O-2017-33**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS DENYING THE PROPOSED TARIFF AND SCHEDULE OF RATES FILED BY LIBERTY UTILITIES (AKA TALL TIMBERS UTILITY COMPANY, INC.); AND PROVIDING NOTICE OF THIS ORDINANCE TO LIBERTY UTILITIES (TALL TIMBERS UTILITY COMPANY, INC.); AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, Liberty Utilities (Liberty; AKA Tall Timbers Utility Company, Inc.), on September 2, 2016, filed an Application for Tariff/Rate Change with the City of Tyler for an increase in sewer rates charged by Liberty within the City of Tyler and,

**WHEREAS**, the City of Tyler has received complaints from more than ten percent (10%) of the ratepayers affected by this proposed sewer rate increase who are located within the City of Tyler; and,

**WHEREAS**, the City of Tyler is a regulatory authority having a statutory duty to review applications for sewer rate changes within its city limits and is an affected municipality having the right to initiate and participate in a hearing on an application for a sewer rate change filed with the Public Utility Commission (PUC) for sewer rates outside of its city limits when ratepayers within the city limits may be affected by the sewer rates established as a result of such proceedings; and,

**WHEREAS**, on January 25, 2017 the City Council suspended the Application and Statement of Intent for ninety (90) days, until May 1, 2017; and,

**WHEREAS**, City Council must take action on the Application and Statement of Intent on or before May 1, 2017; and,

**WHEREAS**, the City's consultant and legal counsel conducted a review of the Company's requested rate increase and concluded that the application and Statement of Intent was based on alternative rate methodologies which the City of Tyler does not have the authority to approve; and,

**WHEREAS**, it is in the public interest of the City of Tyler to intervene, participate and file evidence in the regulatory proceeding before the Texas Commission on Environmental Quality concerning Liberty's application.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, THAT:**

**PART 1:** That all statements made above are hereby found to be true and correct and are incorporated in their entirety.

**PART 2:** Findings:

- (a) On September 2, 2016, Liberty Utilities (Tall Timbers Utility Company, Inc.) (hereinafter called the "Utility") filed an Application and Statement of Intent for Tariff/Rate Change with the City of Tyler (the "City"). The application seeks to increase retail sewer rates inside the City. The application also seeks approval of

alternative rate methodologies that would allow the rates to be based on the combined cost of service of the Utility and Liberty Utilities - Woodmark Sewer Corporation. The alternative rate methodologies would allow phased rates, and would also allow the Utility to add investment in capital assets that were not in service during the test year or before the application was filed.

- (b) The Utility was notified that the City does not have the authority to approve rates based on alternative rate methodologies, and the Utility was requested to amend its application to remove the request for the approval of rates using alternative rate methodologies. The Utility refused to amend its application as requested.
- (c) The City has exclusive original jurisdiction over retail sewer rates within its jurisdiction under the Texas Water Code.

**PART 3:** The rate increases and tariff modifications requested by the Utility in its September 2, 2016, application are denied.


**PART 4:** That the City Council authorizes the City of Tyler to initiate and intervene in regulatory proceedings before the Public Utility Commission held for the purpose of reviewing Liberty's Application for Tariff/Rate Change.

**PART 5:** That it is hereby officially found and determined that the meeting at which this Ordinance is passed is open the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

**PART 6:** That copies of this Ordinance shall be sent to Liberty.

**PART 7:** That this Ordinance shall be effective on and after its date of passage.

**PASSED AND APPROVED** on this the 12th day of April 2017.

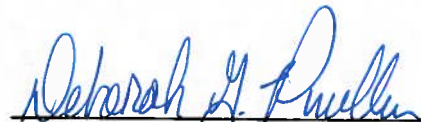
  
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MARTIN HEINES, MAYOR  
OF THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:

  
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CASSANDRA BRAGER, CITY CLERK



  
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DEBORAH G. PULLUM,  
CITY ATTORNEY