CITY OF PORT ST. LUCIE

FINANCE DEPARTMENT

"A City for All Ages"

COUNCIL ITEM 13A
DATE 7/9/12

Memorandum

TO: Gregory J. Oravec, City Manager

From: Edwin M. Fry, Jr., CPA, CGFO, Finance Director/City Treasurer

Date: June 21, 2012

RE: Ordinance Amendment for dishonored checks fees

BACKGROUND

Currently the City has two sections of the Code of Ordinances authorizing a charge for returned checks. The charge is to cover the costs incurred by the City to process the returned check. Costs incurred by the City include the service fee charged by the bank for an insufficient funds (NSF) check, staff time required to reverse the revenue recorded in the financial records, sending a letter requesting payment on the NSF check, and other administrative processes. In my review of the Code of Ordinances, I realized that the charges authorized by the Code were inconsistent. Additional, the charges did not match State law. In a memorandum to the City Attorney, I requested a change to the sections of the City Ordinance authorizing charges for NSF checks. The City Attorney has prepared an Ordinance to amend Sections 36.01 and 61.13.

RECOMMENDATION

Establishing a consistent policy and charge for NSF checks will ensure a uniform policy for all City departments. The amendments of the Ordinance will mirror State law. I recommend approval of the Ordinance prepared by the City Attorney.

Attachments:

Ordinance amending Sections 36.01 and 61.13
Memorandum to City Attorney

C: Roger G. Orr, City Attorney
Karen A. Phillips, City Clerk
Tom O'Reilly
Marie Bouloy
Debbie Shinn

RECEIVED

JUN 21 2012

City Manager's Office

ORDINANCE 12-

AN ORDINANCE PROVIDING FOR THE AMENDMENT OF SECTIONS 36.01 AND 61.13, PORT ST. LUCIE CITY CODE; ESTABLISHING A SERVICE CHARGE FOR THE COLLECTION OF RETURNED OR DISHONORED CHECKS; PROVIDING AN EFFECTIVE DATE

WHEREAS, Sections 36.01 and 61.13 provide for and establish a service fee for the collection of returned or dishonored checks; and

WHEREAS, the service fees so established are not presently uniform, the fee charged by the Utility Systems Department being different from the fee charged for other purposes; and

WHEREAS, it is determined that it is in the best interests of the City to impose a uniform service fee for returned or dishonored checks.

NOW THEREFORE, THE CITY OF PORT ST. LUCIE HEREBY ORDAINS:

Section 1. That Section 36.01, Port St. Lucie City Code is hereby amended to read as follows:

Section 36.01. Collection of dishonored checks; service fee.

~~Pursuant to F.S. § 166.251, there is adopted a service fee in the amount of $15.00 or five percent of the face amount of the check, draft or order, whichever is greater, for the collection of a dishonored check, draft, or other order for the payment of money to the City or any agency of the City.~~

There shall be a charge for each check returned to the City as a result of insufficient or noncollected funds. The fee shall amount to $25.00 or five percent of the face amount of each returned check, whichever is greater, for each returned check received by the City.

Section 2. That Section 61.13, Port St. Lucie City Code is hereby amended to read as follows:

Section 61.13. Returned check charge.

There shall be a charge for each check returned to the City as a result of insufficient or noncollected funds. The fee shall amount to ~~$20.00~~ $25.00 or five percent of the face amount of each returned check, whichever is greater, for each returned check received by the City.

Section 3. This Ordinance shall become effective ten (10) days after its final adoption.

PASSED AND APPROVED by the City Council of the City of Port St. Lucie, Florida, this _____ day of_____, 2012.

CITY COUNCIL
CITY OF PORT ST. LUCIE

BY:_____
JoAnn M. Faiella, Mayor

ATTEST:

_____
Karen A. Phillips, City Clerk

APPROVED AS TO FORM:

By:_____
Roger G. Orr, City Attorney

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CITY OF PORT ST. LUCIE

FINANCE DEPARTMENT

"A City for All Ages"

MEMORANDUM

TO: ROGER ORR, CITY ATTORNEY

FROM: ED FRY, ASSISTANT FINANCE DIRECTOR

DATE: JUNE 6, 2012

RE: NSF CHECK FEES

In the City's Code of Ordinances, there are two different Sections regarding charging a fee for NSF checks as follows:

Section 36.01 Collection of Dishonored Checks: Service Fee

"Pursuant to F.S. § 166.251, there is adopted a service fee in the amount of $15.00 or five percent of the face amount of the check, draft or order, whichever is greater, for the collection of a dishonored check, draft, or other order for the payment of money to the city or any agency of the city."

Sec 61.13 Returned Check Charge

"There shall be a charge for each check returned to the city as a result of insufficient or noncollected funds. The fee shall amount to $20.00 or five percent of the face amount of each returned check, whichever is greater, for each returned check received by the city."

Section 36.01, which is in Title III - Administration - Chapter 36, is used by all city departments, except the Utilities Department, as the basis to charge a fee for NSF checks. The Utilities Department uses Section 61.13, which is in Title VI - Public Utilities - Chapter 61, as the basis to charge a fee for NSF checks.

I recommend that Section 36.01 of the City's Code of Ordinances be changed to the same language as contained in Section 61.13 and the minimum fee be changed to $25 as follows:

Section 36.01 Collection of Dishonored Checks: Service Fee

~~"Pursuant to F.S. § 166.251, there is adopted a service fee in the amount of $15.00 or five percent of the face amount of the check, draft or order, whichever is greater, for the collection of a dishonored check, draft, or other order for the payment of money to the city or any agency of~~

~~the city."~~
"There shall be a charge for each check returned to the city as a result of insufficient or noncollected funds. The fee shall amount to $25.00 or five percent of the face amount of each returned check, whichever is greater, for each returned check received by the city."

I also recommend changing Section 61.13 to increase the minimum fee from $20 to $25 as allowed by State law:

Sec 61.13 Returned Check Charge

"There shall be a charge for each check returned to the city as a result of insufficient or noncollected funds. The fee shall amount to ~~$20.00~~ $25.00 or five percent of the face amount of each returned check, whichever is greater, for each returned check received by the city."

Changing the language in Section 36.01 to match Section 61.13 will provide consistency in the charging of NSF check fees by all City departments. Changing the minimum fee from $20.00 to $25.00 in each Section will match State law. The proposed language for Section 36.01 and Section 61.13 will comply with Section 166.251, Florida Statutes, and Section 832.08(5), Florida Statutes. The language in those sections is as follows:

166.251 Service fee for dishonored check.—The governing body of a municipality may adopt a service fee not to exceed the service fees authorized under s. 832.08(5) or 5 percent of the face amount of the check, draft, or order, whichever is greater, for the collection of a dishonored check, draft, or other order for the payment of money to a municipal official or agency. The service fee shall be in addition to all other penalties imposed by law. Proceeds from this fee, if imposed, shall be retained by the collector of the fee.

832.08(5) To fund the diversion program, the state attorney may collect a fee on each check that is collected through the state attorney's office, whether it is collected through prosecution or through the diversion program. Funds collected under this subsection shall be deposited in the State Attorneys Revenue Trust Fund. However, the state attorney may not collect such a fee on any check collected through a diversion program which was in existence in another office prior to October 1, 1986. A fee may be collected by an office operating such a preexisting diversion program for the purpose of funding such program. The amount of the fee for each check shall not exceed:

(a) Twenty-five dollars, if the face value does not exceed $50.
(b) Thirty dollars, if the face value is more than $50 but does not exceed $300.
(c) Forty dollars, if the face value is more than $300.

C: Gregory J. Oravec, City Manager
Tom O'Reilly
Debbie Shinn
Marie Bouloy