

## Bond Covenant Restrictions

“Section 20 of the Master Utility System Bond Resolution establishes various covenants the City has given its bondholders to provide for the security of the bonds. Failure to observe the covenants results in an event of default under the bond resolution.

Section 20(E) is the rate covenant which in summary obligates the City Council to fix, maintain and collect utility system revenues which are at least sufficient to pay all costs of operation and maintenance plus 110% of the annual bond debt service on the bonds. In order to comply with the covenant, the City would have to estimate the revenue lost by providing the monthly credit and then determine whether the lost revenue could be made up solely by decreasing costs and expenses of the system in like amount, or whether it would be necessary to increase the rates paid by all other system customers. That analysis would likely unfold in the context of a rate study performed by the City's rate consultant. Prior to adopting any rate increase to fund the credit or discount program, the City would be required to follow the public hearing process required under Ch. 180, Fla. Stat., and hear comments and objections from the customer base. In addition to the rate covenant, the proposed credit program may also implicate state law, in particular s. 180.13(2), Fla. Stat. which requires that municipal utility rates and charges must be “just and equitable.” A property owner whose monthly rates are increased solely for the purpose of underwriting the cost of a discount for other property owners could argue that the resulting rate schedule violates the statutory requirement for just and equitable rates. Further, creating a class and showing preferential treatment for the class at the expense of other classes may implicate equal protection claims. Florida courts have ruled that a municipal utility may establish separate residential and commercial categories of ratepayers and charge each class differently without violating equal protection principals, or the just and equitable rate requirement of s. 180.13(2), provided the basis for the different rates is rational, i.e. related to differences in the cost of providing utility services to the different classes.

Secondly, Section 20(I) is the “no free service” covenant, pursuant to which the City may not furnish or supply utility services either free of charge or for a nominal charge to any person.