

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

SEP 13 2007

PUBLIC SERVICE
COMMISSION

Parksville Water District)
)
v.)
)
City of Danville)

Case No. 2007-00 405

COMPLAINT

Parksville Water District, by counsel, files this complaint against the city of Danville for the purpose of protesting the city's increase of its wholesale water rate charged to Parksville.

1. Parksville is a statutorily created water district operating pursuant to KRS Chapter 74. It is regulated by the Pubic Service Commission.

2. Its address is 10711 Lebanon Road, Box 9, Parksville, KY 40464;

3. Parksville purchases water at wholesale from the city of Danville. A copy of the water purchase contract is attached as exhibit 1.

6. During a review of wholesale water bills received from Danville in late 2006, Parksville noticed a discrepancy in the amount billed and the amount it calculated was owed based on the current wholesale rate from Danville. The August, 2005 bill received in September, 2005 was the first bill that deviated from the contract rate.

7. Parksville attempted to contact representatives from Danville to determine the source of the billing discrepancy, but the matter remained unresolved.

8. In September 2006, Parksville detected another billing change from Danville, which increased the wholesale water cost above that which Parksville believed to be in effect. It attempted to contact representatives of Danville to resolve the matter, but was unsuccessful.

9. Parksville believes that the increase in rates from August, 2005 to the present billing is void and that the city has failed to comply with procedures established by the Commission to increase rates.

10. The city failed to give Parksville notice required of 807 KAR 5:011(8)(2).

11. The city failed to comply with the directive of the Commission dated December 18, 1998, that requires a city to follow one of two methods to increase rates: (1) file a new rate schedule or tariff specified in 807 KAR 5:011(6)(3); or (2) file an application for an increase in rates pursuant to KRS 278.190;

12. No cost study has been prepared or filed by the city as specified in the Commission's regulation 807 KAR 5:001(10) for information to be submitted in support of the proposed rate increase.

13. No notice of an effective date of the proposed increase in rates was given to the Commission or Parksville as required by 807 KAR 5:011(9).

14. Because no notice was given to Parksville about the rate filing, it had no opportunity to object to it or to adjust its rates to reflect the increased wholesale rate.

15. Parksville has recently been obtained a copy of Ordinance 1536, dated September 30, 1997, which increases the wholesale water rate and purports to allow for an annual cost of living increase in the wholesale water rate, attached as exhibit 2.

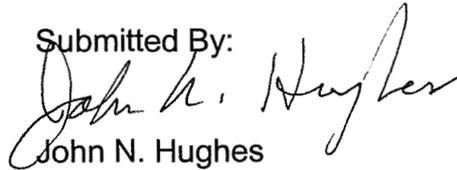
16. Based on the bill analysis, attached as exhibit 3, Parksville believes it has been improperly billed for water in the amount of \$20,672.78 from August, 2005, through July, 2007.

Parksville seeks a determination that the bills from Danville for the period August, 2005 through the present were improper; a recalculation of its bills from Danville to reflect

the correct amount due for water pursuant to the currently effective rate; and credit on future bills of the amount improperly billed or any additional amount determined by the Commission to have been improperly billed without notice and without approval of the Commission.

For these reasons, Parksville request that the Commission void the rate increases improperly charged and collected by Danville, order a recovery of the improperly collected rates and grant any other relief appropriate.

Submitted By:

A handwritten signature in black ink, appearing to read "John N. Hughes". The signature is written in a cursive style with a large, looping initial "J".

John N. Hughes
124 W. Todd St.
Frankfort, KY 40601

Attorney for Parksville Water District

EXHIBIT 1

WATER PURCHASE CONTRACT

This contract for the sale and purchase of water is made and entered into this 7th day of October, 1994, by and between the CITY OF DANVILLE, KENTUCKY, a municipal corporation of the third class, hereinafter referred to as the "SELLER"; and the PARKSVILLE WATER DISTRICT, hereinafter referred to as "PURCHASER";

W I T N E S S E T H:

WHEREAS, the Seller owns and operates a water supply distribution system and is currently providing water unto Purchaser, Parksville Water District, pursuant to a contract dated December 1, 1964 and

WHEREAS, the Purchaser intends to make improvements to its water service to its customers and in order to do so must borrow money from the United States of America, Farmers Home Administration, and in order to satisfy the requirements of the United States of America, Farmers Home Administration, the Purchaser must have an extension of its right to purchase water from the City of Danville; and

WHEREAS, the Purchaser, Parksville Water District, does now desire to continue to purchase its entire water supply directly from Seller, City of Danville, for the next forty (40) years; and

WHEREAS, the Seller, City of Danville, desires to sell water directly to the Purchaser for the next forty (40) years; and

WHEREAS, resolutions have been duly passed by each of the legislative bodies of the respective parties hereto, which resolutions approved the terms and provisions of this agreement and do further authorize the respective officers of each party to execute this agreement;

NOW, THEREFORE, in consideration of the foregoing and in further consideration of the mutual promises and agreements contained herein, the parties hereto do now agree to the following terms and conditions:

1. The term of this contract shall be for a period of forty (40) years, commencing effective _____, 1994.

2. The Seller agrees to furnish the Purchaser at the point of delivery hereinafter specified during the term of this contract potable treated water, meeting applicable purity standards of the state health department, in such quantity as may be required by the Purchaser. The Purchaser specifically agrees and covenants to purchase from the Seller during the term set forth above the Purchaser's entire water needs.

3. The water to be sold hereunder will be furnished at a reasonably constant pressure from the twelve (12") water main location on the Industrial Foundation property parallel to KY 34 approximately 1100 feet from its intersection with Alum Springs Cross Pike. If a greater pressure than normally available at the point of delivery is required by the Purchaser, the costs and means of providing such greater pressure shall be the responsibility of the Purchaser. It shall be the expense and the responsibility of the Purchaser to (a) construct and maintain any line or lines between the Parksville Water District and the point of delivery, (b) purchase and install a water meter consistent with the specifications directed by the Seller's City Engineer, and (c) provide the hookup or connection at the point of delivery, but subject to the supervision and approval of the Seller's City Engineer.

4. The water purchased and sold under this agreement shall be delivered by Seller at the above stated point of delivery and shall pass through and be measured by a meter or meters capable and sufficient to measure the quantity of water so delivered. It shall be the expense and responsibility of the Purchaser to furnish, install, operate and maintain at the point of delivery the necessary equipment, including a meter house or pit, and required devices of standard types for properly measuring the quantity of water delivered to the Purchaser and to calibrate and test for accuracy such metering equipment annually, or at such

other times as are reasonably requested by the Seller. A meter registering not more than 2% above or below the test results shall be deemed to be accurate. The previous readings of any meter disclosed by test to be inaccurate shall be corrected for the three months previous to such tests in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any period, the amount of water delivered in the corresponding period immediately prior to the failure shall be considered the amount consumed, unless the Seller and the Purchaser shall agree upon a different amount. The metering equipment shall be read on a regular basis, but not less than once every two months. An appropriate official or representative of the Purchaser shall at all reasonable times have access to the meter for the purpose of verifying its readings.

5. The Purchaser agrees to pay unto Seller for the water delivered in accordance with the following rate schedule:

	QUANTITY	RATE
	(Cu. Ft.)	(\$/100 Cu. Ft.)
First	20,000 cu. ft.	1.68 (Min.448.00 per mo.)
Next	80,000 cu. ft.	1.35
Next	100,000 cu. ft.	1.05
Next	300,000 cu. ft.	.96
All over	500,000 cu. ft.	.91

In addition to the foregoing schedule of rates, the Purchaser shall further pay unto the Seller a surcharge of twenty percent (20%) added to the total water bill only less taxes.

HOWEVER, the parties understand and agree that if at any time during the term of this agreement the rate charged to the other wholesale or industrial consumers, including other municipalities, independent water districts, or privately owned water companies, are modified, either increased or decreased, the rate of charge to the Purchaser shall automatically be modified to conform to such rates; similarly, it is agreed and understood

that in the event the amount of the surcharge which is charged to all customers outside the city limits of Seller is modified, then the rate of surcharge unto Purchaser shall automatically be modified to conform with such surcharge rate. It is understood and agreed by the parties that modification of the water purchase rate and surcharge thereon shall be at the discretion of the Seller, City of Danville.

6. Payment for such water delivered shall be made promptly and in accordance with the regular billing policy of the Seller, which shall from time to time be in effect. The Seller shall furnish Purchaser with an itemized statement for the amount of water furnished the Purchaser during the preceding period for which the meter was read.

7. The Seller will at all times operate and maintain its system to the point of delivery to Purchaser in a state of reasonable repair and will take such reasonable action as may be necessary to furnish the Purchaser with the quantities of water heretofore set forth. Temporary or partial failure to deliver water shall be remedied with all possible dispatch. In the event of an extended shortage of water, or if the supply of water available to the Seller is otherwise diminished over an extended period of time, the supply of water to Purchaser's consumers shall be reduced or diminished in the same ratio or proportion as the supply to Seller's other customers located outside its corporate limits is reduced or diminished. The obligation of the Seller to supply water is limited, however, by the understanding that while the Seller shall use reasonable care and diligence in the operation and maintenance of its existing system to prevent and avoid interruptions and fluctuations in supply, that nevertheless the Seller does not guarantee that such interruption and fluctuations will not occur. The parties agree that the Seller shall not be liable for the curtailment of supply due to emergencies, breaks, leaks, defects, necessary repairs, fires, strikes, acts of God, or other causes of unusual demand upon its

system. Further, in the event of fire, storm, war, acts of God, or other emergencies, the Seller's City Manager may, without liability attaching to the Seller, and without notice, reduce or temporarily discontinue such water supply. In the event the Seller's City Manager shall be absent from the City of Danville, or be for any reason incapacitated, his power to order reduction or cessation of supply shall vest in the City of Danville's Engineer or the Mayor. In either event, the official determination of emergency shall permit such reduction or cessation during the pendency of the emergency without liability unto the Seller, but with the understanding that the same shall be rectified as quickly as is reasonably possible.

8. It is contemplated and understood that the water sold hereunder is for the purpose of providing for the needs of those residents and businesses located within the boundaries of the Parksville Water District, or within close proximity thereto. It is agreed and understood that the Purchaser shall not circumvent the intention of this contract by the selling of such water, or any portion thereof, unto other municipalities, water districts, or such other entities providing water to persons or businesses not located within the boundaries of the Parksville Water District or within close proximity thereto without the express written consent of the City of Danville.

9. Should a major industrial consumer of water desire to be located in the area served by the Parksville Water District, the Parksville Water District shall not supply water unto said major industrial consumer of water without the express written consent and approval of the City of Danville, which consent and approval shall not be unreasonably withheld. A major industrial consumer of water is defined as one using more than 500,000 gallons of water per month.

10. From and after the date of this Contract, all waterlines and other appurtenant and related water facilities developed within the annexable area as shown and designated in the City of

Danville's Growth Management Area shall be built and constructed according to all applicable construction regulations and specifications for the same or similar facilities developed within the limits of the City of Danville.

11. The parties do hereby agree that this contract agreement shall become effective upon execution by both parties and that the agreement dated December 1, 1964 shall no longer be of any force or effect.

IN TESTIMONY WHEREOF, the parties hereto, by and through their respective authorized officers, have executed this agreement as of the date first above written.

CITY OF DANVILLE, KENTUCKY
SELLER

By: Wm Bunny Davis
Mayor Pro Tem

PARKSVILLE WATER DISTRICT
PURCHASER

By: Ronald Russell
Chairman

ATTEST:

Cecil Wolcott
CITY CLERK

ATTEST:

Carl Lippert
SECRETARY

STATE OF KENTUCKY

COUNTY OF BOYLE

PRODUCED and ACKNOWLEDGED before me by William Bunny Davis, Mayor Pro Tem, a duly authorized officer of the City of Danville, Kentucky, to be his voluntary act and deed and the voluntary act and deed of the City of Danville, Kentucky.

Signed - 10-4-94

Sharon W. Branch
NOTARY PUBLIC, STATE AT LARGE, KY
My Commission Expires: 2-14-95

S E A L)**

STATE OF KENTUCKY

COUNTY OF BOYLE

PRODUCED and ACKNOWLEDGED before me by Ronald Russell, Chairman, a duly authorized officer of the Parksville Water District to be his voluntary act and deed and the voluntary act and deed of the Parksville Water District.

Signed 10-7-94

Jerry B. Feather
NOTARY PUBLIC, STATE AT LARGE, KY
My Commission Expires: 4-20-99

S E A L)**

ADDENDUM TO WATER PURCHASE CONTRACT

This addendum to the water purchase contract dated the 7th day of October, 1994, between the City of Danville, Kentucky, hereinafter referred to as the "Seller", and the Parksville Water District, hereinafter referred to as the "Purchaser", is made and entered into this 28th day of October, 1994.

W I T N E S S E T H

WHEREAS, the parties hereto have entered into a contract under which the Seller supplies treated water unto the Purchaser; and

WHEREAS, the Seller owns and operates a water supply distribution system and is currently providing water unto Purchaser, Parksville Water District, pursuant to a contract dated December 1, 1964 and

WHEREAS, the Purchaser intends to make improvements to its water service to its customers and in order to do so must borrow money from the United States of America, Farmers Home Administration, and in order to satisfy the requirements of the United States of America, Farmers Home Administration, and

WHEREAS, the water supply distribution system of the Seller is being extended, and

WHEREAS, the extension of the water supply distribution system is of mutual financial benefit to both the Seller and Purchaser.

NOW, THEREFORE, in consideration of the foregoing and in further consideration of the mutual promises and agreements contained herein, the parties hereto do now agree to the following terms and conditions:

1. The Purchaser is to pay as an agreed cost, a connection fee to connect the Seller's system with the system of the Purchaser, the sum of \$36,000 which shall cover the Purchaser's proportionate share of the water supply distribution system extension. The cost is based on the difference between the cost to the Purchaser of extending an 8" PVC line along the same

route which would have been required if the 12" ductile iron line were not being extended by the Seller.

2. The Seller will engineer and construct the twelve (12) water mains to a point as planned by Quest Engineers dated June 1994.

3. The Purchaser will provide for relocation of the meter pit and assembly at its expense. This pit is to be relocated and used.

4. The Seller will construct a wet tap connecting the new line to the old line for the purpose of a temporary service. This will provide for service to Purchaser during the time of the changing of the water meter pit.

5. Payment will be made within 15 days after completion of the line. Completion shall be defined as first use of the main.

IN TESTIMONY WHEREOF, the parties hereto, by and through their respective authorized officers, have executed this agreement as of the date first above written.

CITY OF DANVILLE, KENTUCKY
SELLER

PARKSVILLE WATER DISTRICT
PURCHASER

BY:

MAYOR

John W. Bauling

BY:

CHAIRMAN

Ronald Russell

ATTEST: --

ATTEST:

Craig K. Holman
CITY CLERK

Carl Leffew
SECRETARY

✓

STATE OF KENTUCKY

COUNTY OF BOYLE

PRODUCED and ACKNOWLEDGED before me by JOHN BOWLING, a
duly authorized officer of the City of Danville, Kentucky, to be his voluntary
act and deed and the voluntary act and deed of the City of Danville, Kentucky.

Nickolas Clayton Wesley
NOTARY PUBLIC, STATE AT LARGE, KY

MY COMMISSION EXPIRES: 7-5-1998

S E A L)**

STATE OF KENTUCKY

COUNTY OF BOYLE

PRODUCED and ACKNOWLEDGED before me by RONALD RUSSELL, a
duly authorized officer of the Parksville Water District, to be his voluntary
act and deed and the voluntary act and deed of the Parksville Water District.

October 28, 1994

William C. Bakker
NOTARY PUBLIC, STATE AT LARGE, KY

MY COMMISSION EXPIRES: 3/5/97

S E A L)**

ADDENDUM TO WATER PURCHASE CONTRACT

This ADDENDUM made and entered into this 11 day of January, 2002, by and between the CITY OF DANVILLE, KENTUCKY, a municipal corporation of the third class, hereinafter referred to as "Seller" and PARKSVILLE WATER DISTRICT, with its principal office at Kentucky Highway, P. O. Box 9, Parksville, Kentucky 40464, hereinafter referred to as "Purchaser",

WITNESSETH:

WHEREAS, these parties entered into a Water Purchase Agreement dated October 7, 1994;

WHEREAS, the parties hereto desire to extend that agreement under the terms contained herein,

NOW, THEREFORE, in consideration of the foregoing and the mutual promises contained herein, the parties hereto hereby agree as follows:

All the terms contained the existing Water Purchase Contract are hereby ratified and incorporated herein as if fully set out verbatim with the exception that the term of said Contract shall be for a period of forty-one (41) years commencing on December 31, 2001 and ending at midnight on December 31, 2042.

This Addendum is entered into by the parties pursuant to Resolutions of their respective Board of Directors adopted at meetings of the same, duly and regularly held and had, and the respective officers of each party are authorized to execute this Addendum.

IN TESTIMONY WHEREOF, the parties hereto, by and through their respective authorized officers, have hereunto set their hands on this date which is first above written.

CITY OF DANVILLE, KENTUCKY

PARKSVILLE WATER DISTRICT

by: Alex Stevens
ALEX STEVENS, Mayor

by: Ronald Russell
RONALD RUSSELL, Chairman

ATTEST:

ATTEST:

Donna Adams
City Clerk

Herbert E. Allen
Secretary

STATE OF KENTUCKY~COUNTY OF BOYLE

The undersigned notary public hereby certifies that the foregoing ADDENDUM was produced, acknowledged and SWORN to, before me this date by the CITY OF DANVILLE, KENTUCKY, through its authorized representative and Mayor, ALEX STEVENS.

WITNESS my hand and seal of office this the 11th day of December, 2001.

My Commission expires March 7 2005

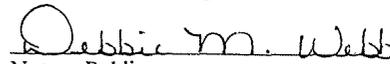

Notary Public

STATE OF KENTUCKY~COUNTY OF BOYLE

The undersigned notary public hereby certifies that the foregoing ADDENDUM was produced, acknowledged and SWORN to, before me this date by PARKSVILLE WATER DISTRICT, through its authorized representative and Chairman, RONALD RUSSELL.

WITNESS my hand and seal of office this the 11 day of January, 2002.

My Commission expires 3-19-2005


Notary Public

This instrument was prepared by:

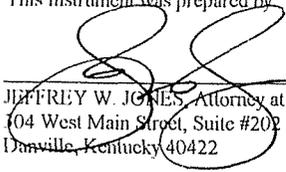

JEFFREY W. JONES, Attorney at Law
104 West Main Street, Suite #202
Danville, Kentucky 40422

EXHIBIT 2

ORDINANCE NO 1536

AN ORDINANCE AMENDING CDO SECTION 18-79 and 18-30 PERTAINING TO WATER WORKS AND SANITARY SEWAGE TREATMENT.

WHEREAS, the Board of Commissioners deems it necessary and appropriate to make certain adjustments in the water, sewer, and surcharge rates charged to consumers;

NOW THEREFORE, be it ordained by the City of Danville, Kentucky as follows:

SECTION ONE:

Sec. 18-79 Waterworks and Water Distribution

There is hereby adopted, established and ordained, and there shall be collected a revised schedule of rates and charges for use of the services and facilities rendered by the municipal waterworks and water distribution systems, except as otherwise provided by contract, as follows:

- (1) Monthly water rates for residential and commercial consumers.

Consumption (cuft)	Rate (per 100 cuft)
First 300-100	\$4.05
Next 200	\$1.35
Next 1,500	\$1.01
Next 2,000	\$0.84
All over 3800-1800	\$0.79

The minimum monthly rate is \$4.05 plus sewer charge.

- (2) Monthly Water Rates for Wholesale Consumers:

Consumption (cuft)	Rate (per 100 cuft)
First 20,000	\$1.68
Next 80,000	\$1.35
Next 100,000	\$1.20
Next 300,000	\$0.96
All over 500,000	\$0.91

The minimum monthly rate is \$448.00.

- (3) Monthly water rates for industrial consumers:

Consumption (cuft)	Rate (per 100 cuft)
First 20,000	\$1.60
Next 80,000	\$1.28
Next 100,000	\$0.99
Next 300,000	\$0.89
All over 500,000	\$0.86

MNA083

448

SECTION TWO CDD Section 13-80, entitled "Sanitary Sewage Collection Treatment and Disposal Facilities" is hereby amended to read as follows:

"There is hereby adopted, established, and ordained, and there shall be collected, a schedule of rates and charges for use of the services and facilities rendered by the municipal sanitary sewage collection treatment and disposal facilities of the City as follows:

~~A - Effective Date of Sewer Service Charge July 1, 1995~~

~~(1) The monthly sewer service charge for residential and commercial consumers shall be as follows:~~

~~Minimum Monthly Rate \$2.99 \$2.52~~

~~Consumption (G/Ft) Rate
ALL OVER 0.0 G/Ft 1.0501 per cu ft
of water consumed~~

~~The monthly sewer service charge for wholesale and industrial consumers, shall be as follows or by special agreement with the City in cases where all water used by the consumer is not returned to the sanitary sewer or where the sewer service is of unusual strength or composition, except that any such user which has a national pollutant discharge elimination system permit shall be required to pay the sewer surcharge only on that portion of water returned to the sewer system; such user must have a sewage meter or some approved means of measuring the amount returned to the system and the city shall have the right to inspect the meter at all reasonable times and may require the user to supply and maintain records containing pertinent data and information which records shall be subject to inspection by the city and provided to the city upon request.~~

~~Minimum Monthly Rate \$150.00 \$224.06~~

~~Consumption Rate
All Over 100 G/Ft \$1.0126 \$1.017 per 100 G/Ft
of water consumed~~

~~B - Effective Date of Sewer Service Charge July 1, 1996~~

~~(1) The monthly sewer service charge for residential and commercial consumers shall be as follows:~~

~~Minimum Monthly Rate \$2.37 \$2.70~~

~~Consumption (G/Ft) Rate
ALL OVER 0.0 G/Ft 1.0681 per cu ft
of water consumed~~

MNA083

~~The monthly sewer service charge for wholesale and industrial consumers shall be as follows or by special agreement with the City in cases where all water used by the consumer is not returned to the sanitary sewer or where liquid sewage wastes are of unusual strength or composition, except that any such user which has a national pollutant discharge elimination system permit shall be required to pay the sewer surcharge only on that portion of water returned to the sewer system; each user must have a sewage meter or some approved means of measuring the amount returned to the system and the city shall have the right to inspect the meter at all reasonable times and may require the user to compile and maintain records containing pertinent data and information which records shall be subject to inspection by the city and provided to the city upon request.~~

Minimum Monthly Rate	\$160.00	\$225.00
Consumption	Rate	
All Over 0.00 CuFt	1.0450 - 1.5600	per 100 Cu Ft of water consumed

-6-A. Effective Date of sewer service charge July 1, ~~1997~~ 1999

1. The monthly sewer service charge for residential and commercial consumers shall be as follows:

Minimum Monthly rate	\$2.99 <u>\$2.76 per month</u>
Consumption (CuFt)	Rate
ALL OVER 0.0 CuFt	1.697 per 100 CuFt <u>\$1.7731 per 100 CuFt</u> of water consumed.

The monthly sewer service charge for wholesale and industrial consumers, shall be as follows or by special agreement with the City in cases where all water used by the consumer is not returned to the sanitary sewer or where liquid sewage wastes are of unusual strength or composition, except that any such user which has national pollutant discharge elimination system permit shall be required to pay the sewer surcharge only measuring the amount returned to the system and the city shall have the right to inspect the meter at all reasonable times, and may require the user to compile and maintain records containing pertinent data and information, which records shall be subject to inspection by the city and provided to the city upon request.

Minimum Monthly Rate	325.00 per month <u>273.58 per month</u>
Consumption	Rate
All Over 0.0 CuFt	1.5120 over 100 CuFt <u>2.0935 per 100 CuFt</u> of water consumed.

450

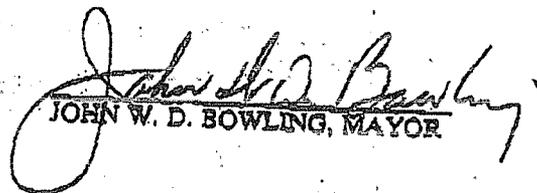
SECTION THREE : A new section under CDO Section 18-87 is hereby created to read as follows:

Commencing effective July 1, 1998, the water rates contained in CDO section 18-79 and the Sewer Rates contained in CDO section 18-80 shall be adjusted annually in accordance with KRS 65A.075 as may be amended from time to time, so as to allow automatic cost of living adjustments based on the purchasing power of the dollar as computed by the State of Kentucky Finance and Administration Cabinet.

SECTION FOUR: if any section, sentence, clause or portion of this Ordinance is for any reason declared illegal, unconstitutional, or otherwise invalid, such declaration shall not affect the remaining portion hereof.

SECTION FIVE: This Ordinance shall become effective immediately upon passage and publication as required by law.

GIVEN FIRST READING AND PASSED 9-9-97
GIVEN SECOND READING AND PASSED 9-23-97
PUBLISHED BY DANVILLE ADVOCATE MESSENGER 9-30-97


JOHN W. D. BOWLING, MAYOR

ATTEST:


Cindi Woolum, CITY CLERK

EXHIBIT 3

