



**Date:** October 22, 2013

**To:** Thomas J. Bonfield, City Manager  
**Through:** W. Bowman Ferguson, Deputy City Manager  
**From:** Donald F. Greeley, Director, Water Management  
**Subject:** Amend Section 70-51, 57 and 61 of the City Code and Part 15-102A and B of the City's Fee Schedule

**Executive Summary**

The proposed amendments to the ordinance and fee schedule will make clear for employees and customers the specific billing practices used for correction of errors and assessment of fees to ensure compliance with existing laws and regulations.

The City ordinance currently is silent regarding how the City will correct under- or over-billed water and/or sewer charges. Adding provisions for dealing with errors and omissions to the Utility section of the City ordinance will clarify for customers and staff the calculation and processing of billing mistakes and oversights.

City ordinance Section 70-57(g) allows the setting of a fee to recoup the cost of city employees visiting a customer's premises for the purposes of meter service, leak investigation or other purpose not covered elsewhere in the ordinance. This amendment clarifies when such charges may and may not be assessed. The ordinance also includes establishment of a fee separate from the service initiation fee.

The City ordinance Section 70-61 allows the setting of a fee to recoup the cost of city employees visiting property for the purposes of turning water on or off per the customer's request if the premises will be vacant for 30 days or more. There are currently no charges in the City's fee schedule for these services.

**Recommendation**

To adopt the attached amendment to Section 70 of the City's ordinance and Part 15-102A and B of the City's fee schedule.

**Background**

The City Council is authorized under Section 70-51 of the City Ordinance to set rates and charges for water and sewer services. However, the ordinance is silent regarding the time frame for which billing errors impacting past charges will be processed. Staff currently operates under recommendations from the School of Government as authoritative guidance when questions arise regarding the City's authority to assess and collect charges for past errors, especially if caused by a City employee or contractor.

The City Council is authorized under Section 70-57(g) of the City Ordinance to set a fee for visiting a customer's premises upon request to inspect a meter, check for evidence of leaks,

or investigate plumbing malfunctions. Currently the City fee schedule does not contain a fee for providing this service.

The City Council is authorized under Section 70-61 of the City Ordinance to allow customers to suspend service and associated billing when the premises will be vacant for 30 or more days, with advance written notice provided to the customer services supervisor of the dates of vacancy and of reoccupancy, and the water is turned off during such period of vacancy. The ordinance allows the City Council to set a charge for visiting the premises to turn the water off and on, with separate charges for during and after regular working hours. The City fee schedule does not currently contain a fee to provide this service.

## **Issues/Analysis**

### **Correction of billing errors**

Currently the City has no specified time frame/period established to hold customers responsible for charges under-billed, as well as to issue refunds for over-billed charges. Kara Millonzi, an attorney affiliated with the School of Government (SOG) specializing in local government law, has published "A Guide to Billing and Collecting Public Enterprise Fees for Water, Wastewater, and Solid Waste Services" which states:

*In fact, a local government likely has an obligation, rooted in general utility law, to collect any moneys owed. Several courts have held that "the statutory policy against rate discrimination not only permits but requires a utility to collect undercharges."*

This reference book further stipulates that based on GS 1-52 and GS 25-2-725:

*A local government likely is subject to a three-year statute of limitations for collecting underpaid wastewater and solid waste utility charges that are billed along with other public enterprise service fees, and a four-year statutory period for collecting underpaid water utility fees, although it may set shorter limitations periods by ordinance.*

The attorneys at the SOG also prepared an article in the October 2006 Local Finance Bulletin explaining nondiscrimination in detail including the following:

*Under common law utilities owe "the duty of equal service" to customers located within their territorial boundaries. Further, as both public utilities and state actors, their rate-setting for water and sewer services must conform to both common law utility principles and to the Equal Protection Clause of the U.S. Constitution (as well as to states' equal protection clauses). Cities must charge rates, rents, fees, and charges that are (1) reasonably related to the value of the services either actually consumed or readily available for consumption (the reasonableness principle) and (2) roughly equal for similarly situated groups of consumers (the nondiscrimination principle). With respect to the rates charged, however, courts have held that "a distinction may be made between different customers or classes of customers [based on] . . . material conditions which distinguish them from each other or from other classes.' "*

Common examples are different rates for residential and non-residential customers. The fact that the City made an error on one customer's account but not another's does not qualify as such a material condition.

Section 70-654(e) of the ordinance allows for back billing of stormwater charges for three years, so this proposed ordinance will provide consistency for water and sewer billing.

Realizing the customer may be facing responsibility for up to four years of water and three years sewer and other charges, the City provides installment payment arrangements available to any customer. Also, if the City did not bill the charges in a timely manner, there will be no late payment penalties assessed per existing provisions of the ordinance.

### **Service Visit Fees**

The City is responsible for proper and equitable allocation of the costs of providing water and sewer service. From time to time City employees visit customer premises as requested by customers to investigate meter or plumbing issues.

The ordinance makes clear that any visits due to City error, whether administrative or operational, will not result in any charges. Similarly, there will be no service charges if there are clear signs of sewer issues or water leakage. Considering the potential financial implications of sewer spills and the City's generous water leakage adjustment policy, it is in the City's best interest to identify and address any such issues immediately without possible delays caused by customers trying to avoid a fee.

The City currently sends out staff at no charge to check unusual meter readings. However, with the ongoing implementation of automated meter reading which has a very high rate of accuracy, this practice will become infrequent. Some customers will still insist on a meter check which comes with a cost. The burden will be passed on to all rate payers through steeper rate increases if appropriate fees are not assessed.

City employees often return to a customer premise unnecessarily. This may occur when staff visits a residence or business to turn on a meter, either for a new service or to restore service after termination for non-payment. During this visit, if the meter indicates continuing use of significant amounts of water, the employee turns the water back off to avoid water waste and/or a flooding issue inside the premises. If no one answers the door, City staff leave an explanatory door hanger; to resolve the issue – called an "open fixture" – requires follow-up contact by customer billing staff to create another service order and arrange a second visit.

The proposed ordinance amendment will address such situations where the customer has discretion or ability to act, such as making provision to be on site when water service is restored or investigating a possible leak. Another instance when this fee will be applied is when landlords want to turn water off or on when a tenant leaves the premises vacant for a period of time and City staff must visit the property in addition to the routine visit to get the final reading for the tenant moving out.

A proposed fee of \$25 is based on an estimate of the time, direct expenses, and overhead incurred by staff for administrative processing as well as performing the visit. Comparable fees at OWASA and the Town of Cary are \$45 and \$60, respectively.

### **Vacancy Service Fees**

The City is responsible for proper and equitable allocation of the costs of providing water and sewer service. The burden of cost-recovery for non-routine services will be passed on to all rate payers through steeper rate increases if a fee for this service is not established.

The proposed fee of \$25 is based on an estimate of the time, direct expenses, and overhead incurred by staff for administrative processing as well as performing the visit, and is consistent with other service visit fees charged by the City. Comparable service visit fees at OWASA and the Town of Cary are \$45 and \$60, respectively.

The after-hours fee of \$100 is based on the estimate of minimum on-call compensation at overtime rates plus vehicle costs and overhead.

### **Alternatives**

#### *Correction of billing errors*

- Make no changes which would continue to place a burden on staff who must spend additional time explaining to customers and their attorneys.
- Make other changes to the ordinance to shorten the limitation period and/or increase the period for which refunds could be made. Any decrease in revenue would be reflected in future rate increases for all customers.

#### *Service visit fees*

- Make no changes which would continue to place responsibility for discretionary visits to some customers on all rate payers.
- Amend the fee schedule to establish a service visit fee of \$25 as allowed under Section 70-57(g) of the Ordinance. Amend the Ordinance Section 70-57(g) to clarify that this fee will be assessed for services as requested by the customer but not in instances of City error or to investigate damage or malfunction to water/sewer infrastructure. This is what we are recommending.
- Modify the ordinance to include additional or exclude some of the proposed instances of when the visit fees will be assessed.

#### *Vacancy service fees*

- Make no changes which would continue to place responsibility for discretionary visits to relieve some customers who will not be receiving utility bills on all other rate payers.
- Amend the fee schedule to establish a vacant property service visit fee of \$25 to turn the water service on or off between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday and \$100 during other times and holidays as allowed under Section 70-61 of the Ordinance. This is what we are recommending.
- Modify the ordinance to assess different fees.

## **Financial Impacts**

### *Correction of billing errors*

There is no anticipated financial impact from the recommendation; as proposed the ordinance specifically authorizes the current practice as recommended by the SOG. Any alternatives to shorten the limitation period for under billing or extend the period for refunds would have a negative financial impact by decreasing revenue.

### *Service Visit Fee*

Currently the City is not identifying the types of visits which would incur the service fee except for those caused by having an open fixture when service is attempted to be turned back on. Over the past three months, an average of 46 extra visits a month occurred due to open fixtures. Assessing the proposed fee would provide an additional \$13,800 of revenue a year. Additionally, the fee might encourage more persons to be on-site reducing overtime costs.

### *Vacancy Service Fee*

Currently the City is not identifying the types of visits which would incur the service fee, so there is no way for a reasonable estimate of additional revenue. Staff are implementing specific codes in the work order system to better track this type of service call.

## **SDBE Summary:**

The Ordinance to Promote Equal Opportunity in City Contracting does not apply to this item.

## **Attachments**

Ordinance amending Sections 70-51 and 70-57(g) and Fee Schedule Section 15-102B. Excerpts from "A Guide to Billing and Collecting Public Enterprise Utility Fees for Water, Wastewater, and Solid Waste Services"