



Securing Payment of Utility Charges

575A6C

January 2012

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I.	Introduction	3
II.	Federal Clean Water Act	3
	A. Consumer Confidence Reports	3
	B. Required information	3
III.	Structure of utilities	4
	A. Types of municipal utilities.....	4
	B. Supervision of municipal utilities	5
IV.	Rates in general	6
	A. Local ordinance.....	6
	B. Conservation rates.....	6
	C. Basis of charges	6
	D. Fair return.....	7
	E. Municipal sewer, water, and stormwater charges set by ordinance	7
	F. Municipal gas and electric charges	9
V.	State sales tax and utilities.....	10
	A. Sales tax on water	10
	B. Sales tax on natural gas or electricity.....	10
VI.	Regulations	11
	A. Social Security numbers.....	11
	B. Contracts	11
	C. Billing	11
	D. Mistakes in billing.....	12
VII.	Meters	13
VIII.	Deposits	14
	A. Interest on deposits	14
	B. Unclaimed deposits.....	15
IX.	Credits and penalties.....	15
	A. Penalties are not illegal	15
	B. Penalty terms.....	15
X.	Landlords and tenants.....	15
	A. Municipal water utility.....	15
	B. Municipal gas and electric	16
	C. Governmental entity acting as landlord	16
	D. Manufactured homes.....	17
XI.	Remedies for nonpayment of utility charges	17

A.	Possible limits on remedies.....	17
B.	Special situations	18
C.	Due process.....	19
D.	Certification of delinquent municipal water and sewer charges	20
E.	Certification of municipal gas and electric charges	22
F.	Shutting off utility service due to nonpayment.....	22
G.	Residential property remaining shut off.....	23
H.	Minnesota cold weather rule.....	24
I.	Shutting off utilities in landlord-tenant situations.....	27
XII.	Foreclosures.....	28
A.	Municipal water and sewer utilities	29
B.	Municipal gas and electric	30
C.	Vacant properties	30
D.	Abandoned properties	30
XIII.	Federal red flags rule	31
XIV.	Emergencies.....	32
XV.	Bankruptcy proceedings	32
A.	Chapter 11 or 13.....	33
B.	Other types of bankruptcy.....	33
C.	State law.....	34
II.	Conclusion.....	34
APPENDIX A	.....	35
APPENDIX B	.....	36
APPENDIX C	.....	37
APPENDIX D	.....	40
APPENDIX E	.....	44
APPENDIX F	.....	45
APPENDIX G	.....	46
APPENDIX H	.....	48

I. Introduction

[Minn. Stat. § 444.075.](#)

County of Washington v. City of Oak Park Heights, (Minn. Ct. App. 2011) 802 N.W.2d 767.

33 Durnell Minn. Digest
Municipal Corporations § 9.12.

Municipal waterworks operate as an enterprise or like a private business. To pay for the entire system city councils may impose just and equitable charges for the services. A city has the authority to impose any combination of use, availability, and connection charges to finance sewer and water facilities. A municipal utility may use a combination of different methods to procure payment for utility service charges.

II. Federal Clean Water Act

All the requirements in the federal law are beyond the scope of this memo. One annual requirement affects many city water utilities. The law requires an annual report to each resident, describing the quality of water in each city.

A. Consumer Confidence Reports

Minnesota Department of Health:
[Consumer Confidence Reports](#).

Water suppliers that serve the same people year-round must prepare annual water quality reports (consumer confidence reports) for their customers. The reports come out in July of each year.

United States Environmental
Protection Agency: Water:
[Consumer Confidence Report Rule](#).

While water systems are free to enhance their reports in any useful way, each report must provide consumers with the following fundamental information about their drinking water:

B. Required information

- The lake, river, aquifer, or other source of the drinking water.
- A brief summary of the susceptibility to contamination of the local drinking water source, based on the source water assessments by states.
- How to get a copy of the water system's complete source water assessment.
- The level (or range of levels) of any contaminant found in local drinking water, as well as EPA's health-based standard (maximum contaminant level) for comparison.
- The likely source of that contaminant in the local drinking water supply, if any.
- The potential health effects of any contaminant, if any, detected in violation of an EPA health standard, and an accounting of the system's actions to restore safe drinking water.
- The water system's compliance with other drinking water-related rules.

Each report must provide consumers with the following fundamental information about their drinking water:

- An educational statement for vulnerable populations about avoiding *Cryptosporidium* (a type of parasite.)
- Educational information on nitrate, arsenic, or lead in areas where these contaminants may be a concern.
- Phone numbers of additional sources of information, including the water system and EPA's Safe Drinking Water Hotline.

III. Structure of utilities

Minn. Stat. § 412.321, subd. 1.
Minn. Stat. § 412.221, subd. 6.
Minn. Stat. § 453.51.

The law authorizes any statutory city to own and operate the following utilities: waterworks, district heating systems, gas, electrical, heat or power systems, or hydroelectric generating plants.

A. Types of municipal utilities

State, v. Waughtal, No. C5-92-2400, (Minn. Ct. App. Aug. 25, 1993) (unpublished decision).

Cities may use their police powers to require residents to connect to city water for public health reasons. A Minnesota case finds that a township has the authority to require by *ordinance* that city residents connect to city water. This unpublished case references a number of U.S. Supreme Court cases finding (many years ago) that, for public health reasons, cities have the authority to require residents to connect their “water closets,” or toilets, to city sewer systems. The case also refers to other U.S. Supreme Court cases finding that such ordinances are a valid exercise of a city’s police powers. Because of these U.S. Supreme Court findings, it is not likely that a Minnesota court would disagree with this case. Cities must adopt a local ordinance that requires and explains connections, rates, billing, and other information.

Minn. Stat. § 453.51 - 453.62.

Statutory and charter cities have the authority to jointly form a separate municipal corporation to finance and acquire facilities for the generation or transmission of electric energy. These municipal power agencies have broad authority to acquire, build, and operate electric generation or transmission facilities.

Minn. Stat. § 452.08.

Cities of the first class have specific power to own, construct, acquire, purchase, maintain, and operate any public utility.

Minn. Stat. § 216B.2422.

Large municipal power agencies (with the capability of generating 100,000 kilowatts or more of electric power and serving, either directly or indirectly, the needs of 10,000 retail customers in Minnesota) are subject to state renewable energy mandates. "Renewable energy" means electricity generated through use of wind, solar, geothermal, water or liquid, trees or other vegetation, or landfill gas.

Minn. Stat. § 452.26.

Municipal and cooperative utilities may enter into a joint venture that incorporated before June 30, 2004, to provide gas utility services.

B. Supervision of municipal utilities

Minn. Stat. § 412.321, subd. 1.

In statutory cities, municipal utilities can be supervised directly by the city council or the council can establish and appoint a local public utilities commission.

Minn. Stat. § 412.331.

Minn. Stat. § 412.341, subd. 1.

A local public utilities commission has extensive statutory powers including:

Minn. Stat. § 412.361.

- The power to extend, modify, or rebuild any public utility, and to do anything it deems necessary for its proper and efficient operation; it may enter into necessary contracts for these purposes.
- The power to employ all necessary help for the management and operation of the public utility, prescribe duties of officers and employees, and fix their compensation.
- The power to buy all fuel and supplies; it may purchase wholesale electric energy, steam heat, hot water energy, gas or water, as the case may be, for municipal distribution.
- The power to fix rates and to adopt reasonable rules and regulations for utility service supplied by the municipally owned public utilities within its jurisdiction.
- The power to enter into agreements with the council for payments by the city for utility service; compensation for the use by either the commission or the city of buildings, equipment, and personnel under the control of the other; payments to the city in lieu of taxes; transfers of surplus utility funds to the general fund; and agreements on other subjects of relationships between the commission and the council.

Minn. Stat. § 412.391.

In statutory cities, the public utilities commission may be abolished or its jurisdiction over any particular utility transferred to the city council by a vote of city residents.

Minn. Stat. § 216B.025.

Minn. Stat. § 216B.01 - 216B.81.

A municipal utility can also elect to become subject to regulation by the Minnesota Public Utilities Commission (PUC). The PUC regulates all commercial gas or electric utilities in all areas including rates, charges, and so on.

The structure and applicable law determines the ways a municipal utility can seek to recover payment for utility services.

IV. Rates in general

Minn. Stat. § 412.321, subd. 1.
Minn. Stat. § 444.075, subd.
3(b).

A city council, or local public utilities commission, can fix rates and establish reasonable rules and regulations for the sale of municipal utility products. Charges for services must be, as nearly as possible, proportionate to the cost of furnishing the service even if the local charter provides otherwise.

A. Local ordinance

To enforce collection of utility charges, include an explanation of charges and methods of collection in the local ordinance. Many cities refer to a fee schedule in the city utility ordinance to allow for periodic adjustments to charges. This allows a city to change utility charges without having to redo the entire utility ordinance.

B. Conservation rates

Minn. Stat. §103G.291.

In an effort to conserve groundwater, by Jan. 1, 2010, municipal water utilities in the metropolitan area serving more than 1,000 people must include a “conservation rate structure” before requesting approval from the commissioner of Health to construct a public water supply well or requesting an increase in the authorized volume of water appropriation. All remaining municipal utilities serving more than 1,000 people must comply with this law by Jan. 1, 2013. The rate schedule must include calculating water rates for multi-unit dwellings based on counting each residential unit as an individual user. The law does not specify the type of conservation rate system required but by the effective dates, city water utilities must not offer a rate structure that awards consumption. (Rates must not go down based on increased consumption of water.) Cities must include an explanation of their conservation rate structure in their water supply plan. For the time being, suppliers without water meters do not have to meet this requirement.

C. Basis of charges

Minn. Stat. § 444.075, subd. 3.
See Appendix C.

A statutory or home rule charter city may impose just and equitable charges for the use, availability, and connection to municipal waterworks, including sewer systems. To collect utility charges, a city should pass an ordinance that spells out utility fees and charges; an ordinance is an enforceable local law.

Minn. Stat. § 444.075, subd. 5.

4 A.L.R.2d 595.

Minn. Stat. § 456.33.

Minn. Stat. § 216B.025.

Minn. Stat. § 216B.026.

Minn. Stat. § 444.075, subd. 3.

Minn. Stat. § 412.361, subd. 4.

A.G. Op. 624-C-11 (Jan. 25, 1952).

A.G. Op. 642-c-11 (August 5, 1969).

See “*Water and Sewer Rates*,” by Ruth Hubbard, *Minnesota Rural Water Today*.

Minn. Stat. § 444.075, subd. 3.

Minn. Stat. § 272.01, subd. 3.

Minn. Stat. § 453A.07.

Minn. Stat. § 453.57.

Statutory and home rule charter cities may contract to provide water to non-residents. The charges for non-residents may include, but are not limited to, costs for connection, maintenance, and use of the city’s facilities. The city prescribes the terms of the contract, including fees, charges, and future improvements; the non-residents (either individuals or businesses) agree to those charges. Generally speaking, city utilities may charge non-residents a higher rate than residents if the cost of providing the service to non-residents justifies the different rate. However, cities are not obligated to provide utility services to residents outside city boundaries.

In a first class city, the governing body of the city waterworks may adopt and enforce sensible rules on when payments for its water are due and payable.

A municipal gas or electric utility in a charter or statutory city, or a cooperative electric association, may elect regulation of municipal gas or electric utility services by the PUC, which would subsequently determine reasonable rates and payment schedules for the services.

A city may use a combination of methods to set rates for utility services, including, but not limited to, flat rates, rates based on usage, and different rates based on a reasonable classification of property (for example, commercial or residential property).

D. Fair return

In general, municipal water utilities are entitled to a fair return or to make a fair profit. A city or local water utilities commission may consider the profit factor when setting rates for utility services. The rates, however, must also be just, equitable, and reasonable as nearly as possible proportionate to the cost of furnishing the services.

Municipally owned gas and electric facilities may set rates high enough to cover operating expenses and to make payments to the city’s general fund either as a payment in lieu of taxes or as a franchise fee.

E. Municipal sewer, water, and stormwater charges set by ordinance

To enforce collection of utility charges, cities should include an explanation of charges and methods of collection in the local ordinance. Many cities refer to a fee schedule in the city utility ordinance to allow for periodic adjustments to charges without redoing the entire utility ordinance.

2-25 *Antieau on Local Government Law*, § 25.10 (2d ed. 2010).

The fee schedule itself should be adopted by ordinance, rather than resolution, to give it the weight and enforceability of a local law.

1. Sanitary sewer charges

Minn. Stat. § 444.075, subd. 3a (4).

The law defines “sanitary sewer” to include sanitary sewer systems, sewage treatment works, disposal systems, and other facilities for disposing of sewage, industrial waste, or other waste. For sanitary sewer, cities may assess charges according to the amount of water consumed or by reference to a reasonable classification of the types of premises receiving the service. Cities may also combine these formulas to set sanitary sewer charges based on the type of property and the amount of water used. Sanitary sewer charges must *not* be based on the size, or square footage, of the property served.

2. Water charges

Minn. Stat. § 444.075, subd. 3. A.G. Op. 642-c-11 (August 5, 1969).

Cities may charge based on water consumed. Cities may charge flat rates, or usage charges based on property classification, availability, and connection charges, for municipal water or sewer service.

A flat rate is a constant charge independent of water usage that may vary based on the classification of the property (for example, commercial or residential). The advantage of a flat rate is simplicity; the disadvantage is that it does not encourage conservation.

Minn. Stat. § 444.075, subd. 3.

Metered usage charges are based on the amount of water consumed and on classifications of property. Typically, the classifications are residential, farm, commercial, industrial, and institutional.

Nordgren v. City of Maplewood 326 N.W.2d 640 (Minn. 1982).
Crown Cork & Seal Co. v. City of Lakeville, 313 N.W.2d 196 (Minn. 1981).

Connection charges may be set by reference to actual cost of connection as well as by reference to assessments paid by connecting property or by any other method, as long as connection charge is “just and equitable.” The governing body of the utility (either the city council or the local public utilities commission) decides what method to use to determine the connection charges.

Minn. Stat. § 444.25.

Availability or standby charges are additional charges or fees imposed by a municipal water utility on the owners of structures equipped with fire protection systems such as stand pipes, hydrants, or automatic fire protection sprinkler systems. State law limits availability or standby charges to the cost of supplying water, and the actual cost of installing, inspecting, and maintaining the system.

Minn. Stat. § 444.075, subd. 3. A.G. Op. 624-D (April 19, 1966); A.G. Op. 387-G-9 (September 3, 1958); A.G. Op. 387-G-5 (August 2, 1957).

The term “availability charge” is also used as a basis for an acceptable charge against landowners whose property abuts a water or sewer line, even if the owner does not connect to the line. This charge recognizes the ability to connect to the system as a value to the property.

3. Stormwater charges

Minn. Stat. § 444.075, subd. 3b
(4).

Storm sewers are systems built to prevent flooding and to separate stormwater from sanitary sewer systems. Stormwater is the runoff from rain and melted snow that picks up dirt, grease, fertilizer, and many other pollutants as it makes its way into streams and lakes. Minnesota law currently defines “storm sewer” as storm sewer systems, including mains, holding areas and ponds, and other accessories and related facilities for the collection and disposal of stormwater. Storm sewer charges may be fixed according to the size of the property (adjusted for a reasonable calculation of the stormwater runoff) or by referring to the same reasonable classification of the type of property, as discussed above in section A2. Storm sewer charges may also be calculated by referring to the quantity and quality of pollutants and the difficulty of disposing of the stormwater runoff. Storm sewer charges must *not* be based on the amount of water consumed at a particular property.

F. Municipal gas and electric charges

Minn. Stat. § 453.51 - 453.62.
Western States Utilities Co. v. City of Waseca, 65 N.W.2d 255 (Minn. 1954).

The governing body (either the city council or the appointed local public utilities commission) sets rates for municipal electric service and may set them by ordinance – either in the utility ordinance or in a separate fee schedule ordinance. Most municipal electric utilities charge a fixed rate and a usage fee for the amount of electricity or gas actually consumed each month. Both the fixed rate and the consumption rate may vary according to the property classification.

Minn. Stat. § 216B.098, subd. 2.

Municipal gas and electric utilities serving more than 3,000 customers must offer budget billing plans for payment of charges for service, including adequate notice to customers prior to changing budget payment amounts.

Minn. Stat. § 216B.098, subd. 3.

Municipal gas and electric utilities are also required to offer customers a payment agreement for payment of delinquent charges. Payment agreements must consider a customer's financial circumstances and any extenuating circumstances of the household. The utility must not charge an additional service deposit as a consideration to continue service to a customer who has entered and is reasonably on time under an accepted payment agreement.

V. State sales tax and utilities

Sales Tax Fact Sheet 157
Residential Utilities.

Sales of electricity, gas, water or steam in Minnesota are normally taxable. However, there are exemptions to this general rule. The state assumes that fuel oil, coal, wood, hot water, propane and LP gas delivered to a residence is for residential use and is not subject to state sales tax. Water used for residential purposes is not taxable. Charges for sewer services are never taxable.

A. Sales tax on water

Water used by cities for non-residential uses is subject to state sales tax. Examples of non-residential use of water by cities includes but is not limited to using water to flush out fire hydrants, for water tower clean out, for City Hall and other public buildings; water used by cities in these ways is subject to state sales tax.

Minn. Stat. § 297A.70, subd. 3(a)(11).

Now water used to fight fires is exempt from sales tax. Passed in the 2011 special session, the new law exempts some water from sales tax, specifically “purchases of water used directly in providing public safety services by an organized fire department, fire protection district, or fire company regularly charged with the responsibility of providing fire protection to the state or a political subdivision.” According to a purpose statement in 2011 laws, this law change is made to provide state assistance for this public safety function to Minnesota local governments. The new law is effective retroactively for sales and purchases of water made after June 30, 2007; however, no refunds may be made for amounts already paid on water purchased between June 30, 2007, and Jan. 30, 2010.

B. Sales tax on natural gas or electricity

Sales Tax Fact Sheet 157
Residential Utilities.

Natural gas or electricity sold for residential use is not taxable for the billing months of November through April when sold to customers who use it as their primary source of residential heat. If more than one type of heat is used, natural gas or electricity is not taxable if it is the “primary source of heat” (the source that supplies more heat than any other source during the heating season). If the primary source of residential heat is either natural gas or electricity, and there is only one meter for that utility, then no gas or electricity measured through that meter is taxable during the winter heating months.

Sales Tax Fact Sheet 129
Utilities Used in Production.

Electricity, gas, or steam used or consumed in agricultural or industrial production is exempt from sales and use tax. This exemption also applies to water consumed as part of the production process.

VI. Regulations

City of East Grand Forks v. Luck, 107 N.W. 393 (Minn. 1906).

Western States Utilities Co. v. City of Waseca, 65 N.W.2d 255 (Minn. 1954).

AG. Op. 624-D (July 23, 1946).

Cities may develop reasonable regulations to operate successful municipal utilities and to enforce the collection of charges. Regulations of municipal utilities must be by ordinance. A court will enforce an ordinance, but not a motion or a resolution. Developing regulations and setting rates for municipal utilities is not subject to public hearings or voter approval.

A. Social Security numbers

Minn. Stat. § 13.355, subd. 3.

Cities must neither reveal Social Security numbers in any mailings, nor require customers to mail in Social Security numbers so that the number is visible.

B. Contracts

City of East Grand Forks v. Luck, 107 N.W. 393 (Minn. 1906).

To establish a basis for enforcing collection of utility charges, cities may enter into contracts with individual consumers. Even when no formal contract existed between a city and a user of the utility service, the Minnesota Supreme Court found an implied contract existed when a consumer either allowed or requested that the property receive the service.

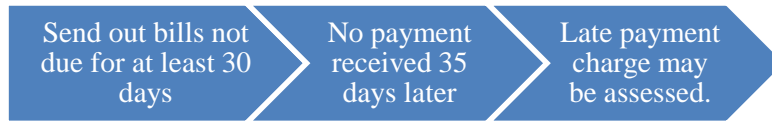
Some cities require a formal application for service, which may form the basis of an agreement or contract between the utility and the consumer if the language of the application so implies. In the alternative, other cities state in the ordinance or utilities section of the city code that the ordinance or code itself constitutes at least part of a contract between the city and consumers of municipal utility services, and those consumers are considered to have accepted the terms of that contract.

C. Billing

Best practice suggests that each bill provides due dates, credits for early payment, and penalties for late payment. This is good practice whether bills are sent monthly, quarterly, or otherwise. Bills should also indicate at what point in time a charge is considered delinquent.

City councils and staff decide what utility billing practices or processes best fit the city and the utility system. Just as an example of a billing cycle, consider the following timeline:

See also, [Appendix B](#).



City council and staff may adopt billing practices and timelines that fit the city and describe them in the local ordinance.

See [Appendix A](#).

In addition, some municipal utility bills include the statement, “Unpaid utility charges constitute a lien against the property,” on each bill as additional notice of the possible consequence of failing to pay utility charges.

Cities may also develop systems, and program computer software, to allocate partial payment of overdue utility charges consistently. For example, a city may credit partial payments to late charges first, then to the most current portions of the bill. Putting this process into the ordinance provides notice to consumers and residents as to how partial payment is allocated.

Based on the broad authority to operate municipal utilities or specific state law, city councils may set up a variety of billing options and procedures, including but not limited to:

- Budget billing plans.
- Automatic payment of utility bills deducted, with permission, from consumer bank accounts, known as automated clearing house or ACH payments.
- Utility payments made with credit cards.

[Minn. Stat. § 471.381, subd. 1.](#)
[City of Hopkins: Auto Pay Your Bill.](#)

[Minn. Stat. § 471.381, subd. 2.](#)

Best practice suggest developing policies and procedures for billing options and procedures that best fit local concerns. Many Minnesota cities post abbreviated policy and procedure statements on the city website. More information is often made available through direct contact, by phone or email, with city utility departments.

D. Mistakes in billing

[Minn. Stat. § 541.05.](#)
[Northern States Power Co. v. Lyon Food Products, Inc.](#), 229 N.W.2d 521 (Minn. 1975); cited with approval by [Goddard v. Public Service Co.](#), 43 Colo. App. 77, (Colo. Ct. App. 1979).

In general, even where a meter is inaccurate or defective, a city utility may recoup the undercharges. If a municipally owned and operated utility undercharges consumers, state law may allow the utility to seek recovery of underpayments for the last six years.

Minn. Stat. § 216B.098, subd. 4.

State law specifically addresses undercharges for municipal gas and electric utilities. The utility must offer a payment agreement to customers who have been undercharged but the customer did nothing to cause the undercharge. The agreement must cover a period equal to the time over which the undercharge occurred or a different time period that is mutually agreeable to the customer and the utility. No interest or delinquency fee may be charged under the agreement.

Knutson Hotel Corp. v. Moorhead, 84 N.W.2d 626 (Minn. 1957).

If the city discovers that it overcharged a consumer for utility service, the city must return the excess payment with interest.

Avoiding Pitfalls – Policy for Account Adjustments and Write-offs. Office of the State Auditor, E-Update, (Jan. 4, 2008).

The state auditor recommends that city utilities adopt a written policy that identifies when an employee must obtain a supervisor’s authorization to adjust or write-off uncollectible amounts. The written policy should identify the appropriate level of management approval required for a proposed adjustment or write-off. The policy should contain sufficient controls to prevent an employee from unilaterally adjusting or writing off accounts.

VII. Meters

Minn. Stat. § 444.075, subd. 1(c).

64 Am. Jur. 2d Public Utilities § 42-43.

Water meters and charges for meters are part of a waterworks system authorized by state law. In general, all utilities have the authority to set utility rates, which includes the ability to charge for meter installation and meter rental.

Some city ordinances require that the property owner buy the utility meter at a price determined by the city council or public utilities commission. When the property sells, the city buys back the meter.

See [Section VI C](#): Mistakes in billing, above.

Other cities retain ownership of utility meters. Cities can also include a provision in the utility ordinance that a property owner is responsible for the repair of meters that are carelessly or intentionally damaged. If meters are not measuring accurately and undercharging the customer, the city may recover those costs.

LMCIT risk information memo, *Entering Private Property for Public Works Purposes*.

Camara v. Municipal Court of San Francisco, 387 U.S. 523, 539-540 (U.S. 1967).

Plisner v. Sweeney, Civ. No. 04-3352 (D. Minnesota, 2009) (unpublished decision).

Before entering a home to check, replace or repair city meters, solicit the written consent of a property owner. If a property owner refuses to give consent to enter private property to deal with a meter issue, the city should pursue an administrative search warrant. A court may consider it a trespass if a city enters private property without consent of the landowner or an administrative search warrant. Even if a city ordinance contains language allowing a city to enter private property to inspect, replace or repair meters, the law generally requires consent or a warrant. (No warrant is needed if the situation on the property is an emergency.) City utilities should consult the city attorney if issues involving inspection of meters on private property develop.

Minn. Stat. § 325E.026, subd. 2.

If a person tampers with a meter or engages in unauthorized use of a utility service, a city utility may bring a civil action against the person and seek to recover double the cost of the service, and the costs involved in the civil action.

VIII. Deposits

A.G. Op. (Feb. 13, 1975).
See [Section XI, Bankruptcy proceedings](#).

As part of the authority to set regulations, municipal utilities have the authority to require reasonable deposits. Deposits protect a municipal utility from loss if a consumer declares bankruptcy and leaves significant unpaid charges. Deposits can be required prior to initiation of service or 20 days after a consumer declares bankruptcy.

Cedar Rapids Gaslight Co. v. City of Cedar Rapids, 120 N.W. 966 (Iowa 1909); affirmed by *Cedar Rapids Gas Light Co. v. City of Cedar Rapids*, 32 S. Ct. 389 (U.S. 1912).

Many cases establish that requiring a deposit prior to providing utility service is a reasonable protection against loss and a sound business practice for a municipal utility. A suggestion for “reasonable” deposits is two months estimated usage of the particular consumer.

Most likely, a municipal utility can use deposits in a variety of ways to ensure payment of charges. For example, some utilities require deposits from consumers prior to initiation of service and refund the deposit if the consumer pays charges on time for six consecutive months. Some cities require deposits from consumers with lower credit ratings. As long as the amount of deposit required is reasonable, and the requirement for a deposit is applied consistently, it is another tool to ensure timely payment for services.

A. Interest on deposits

Minn. Stat. § 325E.02.
A.G. Op. (Feb. 13, 1975).
See [Minnesota Department of Commerce](#).
Minn. Stat. § 325E.02 (c).

State law requires that any privately or publicly owned water, gas, telephone, cable television, electric light, heat, or power company pay interest on deposits of more than \$20. The rate of interest must be set annually and be equal to the weekly average yield of one-year United States Treasury securities adjusted for constant maturity for the last full week in November. The interest rate must be rounded to the nearest tenth of one percent. By December 15 of each year, the commissioner of commerce shall announce the rate of interest that must be paid on all deposits held during all or part of the subsequent year. When consumers pay a deposit, they must be given a written receipt explaining how their deposit may be used (for example, for nonpayment of charges).

Minn. Stat. § 325E.02.

The interest on deposits can be paid out at any time interval the utility chooses, but it must be paid at least annually. The interest can either be paid directly or paid as a credit on the bill.

Minn. Stat. § 325E.02 (a).

When a consumer in good standing terminates service, the deposit, with interest accrued, must be paid within 45 days.

43 A.L.R.2d 1262.

The law does not address how long a utility can keep deposits. Therefore, deposits should be retained for a reasonable time based on acceptable classifications such as commercial or residential uses. Deposits can be returned as a direct payment or credit on utility bills.

B. Unclaimed deposits

Minn. Stat. § 345.34.
Minn. Stat. § 345.41.
Minn. R. 2885.0200 *et seq.*
Minnesota Department of
Commerce Unclaimed Property.
Minn. Stat. § 345.43.

Utility deposits left unclaimed for more than one year after service is terminated are considered abandoned. State law requires abandoned utility deposits be paid over to the state each year. If the unclaimed deposit is over \$100, utilities are first required to notify the owner by first class mail, at their last known address, that the property will soon revert to the state and how to prevent that action. Then utilities must file a holder's report with the state commissioner of commerce by Oct. 31 detailing information about each abandoned deposit the utility holds as of June 30. Deposits under \$100 can be combined in the report. Abandoned utility deposits must be paid over to the commissioner once a year, when the report is filed.

IX. Credits and penalties

Cedar Rapids Gaslight Co. v. City of Cedar Rapids, 120 N.W. 966 (Iowa 1909); affirmed by *Cedar Rapids Gas Light Co. v. City of Cedar Rapids*, 32 S. Ct. 389 (U.S. 1912).
State ex rel. Latshaw v. Board of Water & Light Com'rs of Duluth, 117 N.W. 827 (Minn. 1908).
A.G. Op. 624-C-4 (April 4, 1941).

As part of the authority to set rates and develop regulations, municipal utilities may offer consumers credit for early payment or assess penalties for late payment. Courts see encouraging early or timely payment of charges as a way to prevent loss and insolvency for public utilities. In fact, the Minnesota Supreme Court found an ordinance offering a credit for timely payment and a penalty for late payment "almost necessary" for the prompt collection of utility charges.

A. Penalties are not illegal

A.G. Op. 624-C-4 (Oct. 13, 1980).

The Minnesota attorney general has found that a penalty on a late payment for utility service is not interest because no loan of money or leniency on a debt is involved; therefore, usury law that prohibits excessive interest rates does not cover penalties.

B. Penalty terms

Minn. Stat. § 325E.021.

Penalties on late payments must be reasonable and applied consistently. Municipal utilities must state the terms and conditions of any penalty provision in terms of the monthly percentage rate on each monthly bill.

X. Landlords and tenants

A. Municipal water utility

City of East Grand Forks v. Luck, 107 N.W. 393 (Minn. 1906).

A city water utility may enact an ordinance making landlords, as owners of property, responsible for tenants' utility charges because the landlord allows or requests connection of the property to the utility and lets tenants use the services. The Minnesota Supreme Court found this to be more like a contract between the utility and the landlord than requiring a person to pay someone else's debt. The Court also found this practice reasonable if

adequate notice is provided to property owners. Given the frequency of tenants relocating, an ordinance making landlords responsible for tenant's water charges helps ensure payment.

B. Municipal gas and electric

Municipal gas or electric utilities shall not:

[Minn. Stat. § 325E.025.](#)

- Recover or attempt to recover payment for a tenant's outstanding bill or charge from a landlord, property owner manager, manufactured home park owner, or manufactured home dealer who has not contracted for the service;
- Condition service on payment of an outstanding bill or other charge for utility service due upon the outstanding account of a previous customer or customers when all of the previous customers have vacated the property; or
- Place a lien on the landlord or owner's property for a tenant's outstanding bill or charge whether created by local ordinance or otherwise.

A utility may recover or attempt to recover payment for a tenant's outstanding bill or charge from a property owner where the manager, acting as the owner's agent, contracted for the utility service.

C. Governmental entity acting as landlord

[Minn. Stat. § 504B.215, subd. 2a.](#)

In those limited situations where the governmental entity acts as a landlord new laws require more information on utilities for tenants in single metered buildings. A landlord of a single-metered residential building who bills for utility charges separate from the rent:

- Must provide prospective tenants notice of the total utility cost for the building for each month of the most recent calendar year;
- Must predetermine and put in writing for all leases an equitable method of apportionment and the frequency of billing by the landlord;

The lease must include a provision that, upon a tenant's request,

- The landlord must provide a copy of the actual utility bill for the building along with each apportioned utility bill.
- Upon a tenant's request, a landlord must also provide past copies of actual utility bills for any period of the tenancy for which the tenant received an apportioned utility bill.
- Landlords must provide past copies of utility bills for the preceding two years or from the time the current landlord acquired the building, whichever is most recent; and
- May, if the landlord and tenant agree, provide long-term tenants the option to pay those bills under an annualized budget plan providing for level monthly payments.

By September 30 of each year, a landlord of a single-metered residential

Minn. Stat. § 504B.215, subd. 2a (b).

Minn. Stat. § 504B.221.

building who bills for gas and electric utility charges separate from rent must inform tenants in writing of the possible availability of energy assistance from the low-income home energy assistance program. The information must contain the toll-free telephone number of the administering agency. A landlord's failure to comply with these requirements is a violation of landlord tenant law.

D. Manufactured homes

Manufactured home parks may pose unique challenges when seeking payment for utility services:

See [Section XI, D2: Shutting off water](#).

Minn. Stat. § 273.125, subd. 8.

See [Section IX C. Certification of delinquent municipal water charges, Manufactured Home Parks](#).

"The Manufactured Home Parks Handbook", Office of the Minnesota Attorney General (2005).

Minn. Stat. § 327C.04, subd. 2.

- If a park has only one shut-off valve for the entire park, a city obviously cannot shut off the park to seek payment from one resident;
- Charges for an individual manufactured home owner cannot be certified for payment with taxes because the home owner typically does not own the land under the home and, thus, does not pay property taxes;
- Pursuing a judgment for payment for utility bills in small claims court is a way a city utility may seek payment for services; actually getting the payment is often problematic.
- Certification of tenant's delinquent utility bills against the park owner is not settled law in Minnesota.

A park owner may provide utility service to the park residents, including electricity, fuel oil, natural or propane gas, sewer and waste disposal, or water service. If a park owner provides electricity to residents by reselling electricity purchased from a municipal utility, the park owner may charge a rate high enough to break even but may not charge for administrative, capital, or other costs.

XI. Remedies for nonpayment of utility charges

Nonpayment of any valid utility charge may trigger either a water shut-off or certification of the delinquency to the county auditor for collection with taxes if provided for in the city ordinance. A valid utility charge includes, but is not limited to deposits, meter charges, connection charges, flat rates, usage charges, penalties, and availability charges. There are some limits to keep in mind when seeking payment of unpaid utility charges.

A. Possible limits on remedies

[Cascade Motor Hotel, Inc. v. City of Duluth](#), 348 N.W.2d 84 (Minn. 1984).

- A city cannot withhold utility service and demand that a new owner pay delinquent charges incurred by the previous property owner before providing utility services.

64 Am. Jur. 2d Public Utilities § 46.

[A.G. Op. 387g-7 \(April 28, 1965\).](#)

- Similarly, a city probably cannot make a consumer who is currently using utility services pay outstanding delinquent utility bills left unpaid by a previous owner of that same property. (The exception to this general rule is that if the delinquent water bills are certified for collection with taxes before the property is sold, the charges can be recouped. See “Certification of delinquent municipal water bills,” discussed subsequently.)

64 Am. Jur. 2d Public Utilities § 52; *Berner v. Interstate Power Co.* 57 N.W.2d 55 (Iowa 1953).

[In Re MidAmerican Energy Co., \(Iowa U.B. Mar. 11, 2002\) \(NO. DRU-02-1, ID 130760\).](#)

- While there is some disagreement, most courts find that a municipal utility cannot require payment at one address for utility services delivered to a different address where one person owns both properties. For example, a municipal electric utility cannot shut off electricity at a residence for charges incurred by a business even if the same person owns both properties.

60 A.L.R.3d 714 § 2.

- A municipal utility probably cannot shut off one type of service due to nonpayment for some other city service. For example, a municipal utility cannot shut off water for failure to pay a gas or electric charge. (The exception to this general rule is that water can be shut for failure to pay sewer charges.)

[Memphis Light, Gas and Water Division, et al., v. Craft](#), 436 U.S. 1 (U.S.1978).

- A municipal utility cannot disconnect or certify a consumer’s disputed charges while the consumer is going through the appropriate city authorized appeal process.

B. Special situations

See [Section XI, D: Shutting off utility service for nonpayment, below.](#)

Households with military personnel are protected from utility shut-offs. City utilities must not disconnect utility service to a home if a member of the household has active duty orders or receives other types of military orders. The customer must agree to a payment plan.

[Minn. Stat. § 216B.098, subd. 5.](#)

A municipal electric utility must reconnect or continue service to a customer’s residence where a medical emergency exists or where medical equipment requiring electricity necessary to sustain life is in use, provided that the utility receives from a medical doctor written certification, or initial certification by telephone and written certification within five business days, that failure to reconnect or continue service will impair or threaten the health or safety of a resident of the customer’s household. The customer must enter into a payment agreement. (The annual service quality report must include the number of customers who requested emergency medical account status under this statute, the number whose applications were granted, and the number whose applications were denied and the reasons for each denial.)

[Minn. R. 7826.1800.](#)

Once a consumer has filed for bankruptcy, a municipal utility cannot shut off the service to collect or recover a claim against the debtor that arose before the beginning of the bankruptcy case. After 20 days, a bankruptcy court may let a city shut off utility service if the consumer does not provide adequate assurance of payment. A municipal utility cannot try to certify previously unpaid charges once a consumer files for bankruptcy.

See, [Section XV: Bankruptcy proceedings.](#)

Minn. Stat. § 216B.0975.

A municipal utility may not disconnect residential services in counties where the National Weather Service has issued an excessive heat watch, heat advisory, or excessive heat warning and those warnings or watches are in effect.

C. Due process

Freeman v. Hayek, 635 F. Supp. 178 (D. Minn. 1986); *Smith v. City of Owatonna*, 450 N.W.2d 309 (Minn. 1990).

Minnesota law now recognizes consumers of utility services are entitled to the benefit of continued utility service. This does not mean service cannot be shut off for nonpayment or delinquent bills certified to be collected with taxes; it does mean consumers must first be given notice of the pending action and a chance to protest it. Due process is a two-step course of action.

1. Notice – and how to disagree

Memphis Light, Gas and Water Division, et al., v. Craft, 436 U.S. 1 (U.S. 1978).

Appendix E: Sample notice before shutting off water.

Appendix F: Sample notice sent before certifying unpaid charges to taxes.

First, a reasonable time before the shut-off or certification is scheduled to occur, the utility must give a consumer information or notice about the pending action, and, in the same notice, a consumer's right to protest it. The notice must clearly explain the process a customer can use to dispute a bill, shut-off or certification, who to contact at specific phone numbers and times, and how to object to the pending shut-off or certification. Some cities send notice of pending city action by first class mail to the person's last known address. (There is a legal presumption that any item sent first class is received in three days. Because certified mail is more expensive and the recipient may refuse to accept it, first class mail is preferable to certified mail.) If there is no response, a red tag with all the pertinent information is tied to the front door of the property as a warning of utility shut-off.

2. Opportunity to discuss

Second, due process requires that a municipal utility provide a consumer with an opportunity to discuss the situation with the city council or a person representing the city utility who has the authority to either correct a charge or otherwise resolve the problem of non-payment. This may include setting up a payment plan agreeable to both the municipal utility and the consumer. The consumer may or may not choose to use this chance to discuss unpaid utility bills. Either way, the city is required to offer the opportunity.

3. Timing

See [Section IX E, Minnesota Cold Weather Rule](#).

Timelines are important in this two-step process. The law does not specify an exact number of days that must pass to give sufficient notice of pending city action. The cold weather rule provides a useful example of reasonable timelines. Notice is mailed to the customer at least 20 days before the utility takes action. If the municipal utility personally delivers the notice, a consumer is given 15 days before the city takes the planned action.

4. Referenced in local ordinance

The due process steps, or notice and an opportunity to be heard, should be spelled out in the relevant city ordinance before a city shuts off service or certifies unpaid charges to the county auditor. Cities should consult with the city attorney as to the specific due process procedures to include in a city ordinance

D. Certification of delinquent municipal water and sewer charges

Minn. Stat. § 444.075, subd. 3 (e).

A.G. Op. 59-A-36 (January 26, 1961).

Minn. Stat. § 444.075, subd. 3 (e).

A.G. Op. 450-F-1 (September 8, 1969).

A.G. Op. 387g-7 (April 28, 1965).

A.G. Op. 59-A-36 (January 26, 1961).

Minn. Stat. § 279.01.

See Appendix G: *Sample resolution adopting lien or assessment for unpaid charges.*

Municipal water utilities in statutory or charter cities can certify unpaid water and sewer charges to the county auditor for collection with taxes. This can be done once a year or more often. Delinquent charges certified to the county auditor assume the same status as other taxes, even before the taxes are charged or “spread” against individual properties. The outstanding debt becomes a lien or charge against the property, as soon as the county receives the certified information from the city. Note: the city ordinance should also define when unpaid water and sewer charges become delinquent and subject to certification.

The law states that the governing body may certify “unpaid charges to the county auditor with taxes against the property served for collection as *other taxes are collected.*” Certified charges accrue statutory penalties in the same manner that unpaid property taxes accrue penalties. On the other hand, the authority to certify delinquent water and sewer charges *as a special assessment* is not clear. It is preferable, therefore, to certify delinquent water and sewer charges for collection with taxes. That said, cities should ask their county auditor when unpaid water and sewer bills must be certified; the statute implies a deadline of Dec. 28 in conjunction with property taxes, but some counties require certification of delinquent water and sewer bills by Nov. 29, with special assessments.

1. Manufactured home parks

Prudential Co. of Minnesota v. City of Minneapolis, 277 N.W. 351 (Minn.1938).

Minn. Stat. § 444.075, subd. 3 (e).

64 Am. Jur. 2d Public Utilities § 46.

Minn. Stat. § 327C.09, subd. 2.

A statutory city might consider certifying unpaid water charges to the manufactured home park property owner if all of the following conditions exist:

- The manufactured home park is privately owned.
- The local ordinance requires that utility accounts for all rental property are in the property owner’s name (i.e. the park owner’s name).
- The local ordinance states that property owners are responsible for payment of unpaid water charges.
- The local ordinance states that unpaid water charges incurred by tenants will be certified against the property owner.
- The manufactured park owner or agent contracts for the water services.
- Due process requirements are met prior to certification.

- A manufactured home park owner can recover possession of the land, or lot, if the tenant fails to pay utility charges after written notification.

However, manufactured home parks differ from one another in their legal structure and status. Therefore, cities should consult with the city attorney for specific legal advice before certifying unpaid utility charges to the property owner of a manufactured home park.

2. Advantages of certifying unpaid charges

- There are advantages to certifying delinquent water and sewer charges as opposed to shutting off the water for nonpayment, including:
- Concerns about shutting off water services in cold weather are eliminated.
- The municipal utility does not have to investigate the residence or unit to determine if it is occupied.
- A municipal utility is protected if the property with delinquent utility charges is sold after the delinquent charges are certified.
- Confusion is alleviated when joint owners of property disagree as to who is responsible for utility charges (for example, in divorce proceedings). The unpaid charges simply attach to the property and must be paid as property taxes are paid.
- Certified delinquent charges take priority over other unsecured creditors if a consumer later files for bankruptcy.
- Certification prevents large delinquent bills carrying over from year to year.
- Once delinquent bills are certified, staff time spent trying to collect payment is eliminated.
- Certified charges survive the tax forfeiture process and eventually the city will receive payment.
- Shutting off water may damage older infrastructure.

Not all delinquent sewer and water charges can be certified. If a property is sold before unpaid charges are certified to the county auditor, the city may not be able to certify the charges against the new owner. This is not a settled area of law in Minnesota, and cities should consult their attorney for specific legal advice on this point. Delinquent charges cannot be certified for some time after a consumer files for bankruptcy protection.

See [Section XI, Bankruptcy proceedings](#).

E. Certification of municipal gas and electric charges

A.G. Op. 624-D-5 (July 6, 1953). Unlike municipal water and sewer utilities, municipal gas and electric utilities do not have specific statutory authority to certify delinquent charges to taxes. Thus, in 1953, the Minnesota Attorney General’s Office stated that, in a statutory city, an electric or gas utility could not certify delinquent charges to taxes.

Minn. Stat. § 366.012.
Minn. Stat. § 415.01. There is some disagreement with this position since, in 1989, a law was passed giving towns the authority to certify unpaid service charges to the county auditor to be collected with taxes. In addition, a 1973 law, amended in 2003, states that cities have all the powers afforded to towns. Combining these two laws may allow a municipal gas or electric utility to certify delinquent charges to the county auditor to be collected with taxes if the property owner, or the owner’s agent, contracts for the utility service.

Minn. Stat. § 325E.025, subd. 2. According to state law, municipal gas or electric utilities cannot collect or attempt to collect a *tenant’s* unpaid gas or electric charges from a landlord or property owner—unless the property owner or the owner’s agent contracts for the utility service. “Property owner” includes a manufactured home park owner.

See also, Minn. Stat. § 514.67. Certification of unpaid electric or gas charges is not settled law. Consult the city attorney for specific legal advice and appropriate procedures as you draft your ordinance and before deciding to certify a tenant’s unpaid gas or electric charges to a landlord’s or a property owner’s taxes to be collected as other property taxes are collected.

F. Shutting off utility service due to nonpayment

State ex rel. Latshaw v. Board of Water & Light Com’rs of Duluth, 117 N.W. 827 (Minn. 1908).
A.G. Op. 624-D-5 (June 17, 1957).
Memphis Light, Gas and Water Division, et al., v. Craft, 436 U.S. 1 (U.S.1978).
See Appendix E. Generally, municipal utilities have the right to shut off water, electricity, or gas if a consumer fails to pay reasonable charges or fails to comply with reasonable regulations as stated in the local ordinance. Again, a municipal utility must provide reasonable notice of a pending shut-off and tell the consumer of their right to protest the shut-off as unjustified. If a customer appeals a pending shut-off using the appropriate appeal process, a city must not shut off service while the appeal is pending.

1. Households with military personnel

Minn. Stat. § 325E.028. A municipal utility must not disconnect, or limit, the utility service of a residential customer if a member of the household has been issued orders into active duty, for deployment, or for a permanent change in duty. Note, Cities must not use load limiters Household income determines whether a city utility may disconnect the utility service. For this law, “household income” means household income measured after the date of the orders issue.

The city must not disconnect the utility if the residential customer:

- Has a household income below the state median household income or is receiving energy assistance and enters into an agreement with the municipal utility under which the customer pays ten percent of the customer's gross monthly income toward the customer's bill and the customer remains reasonably current with those payments; or
- Has a household income above the state median household income and enters into an agreement with the municipal utility establishing a reasonable payment schedule that considers the financial resources of the household and the customer remains reasonably current with payments under the payment schedule.

(1) Annual notice of this protection

Minn. Stat. § 325E.028.

NOTICE -- For Military Personnel; Minn. Stat. § 325E.028.

Military Service Personnel Form.

A municipal utility must notify all residential customers of this law once each year. And, if asked by a customer, a municipal utility must provide a form that requests the protections of this law to a residential customer.

(2) Income verification

Verification of income may be conducted by the local energy assistance provider or the municipal utility or cooperative electric association, unless the customer is automatically eligible for protection against disconnection as a recipient of any form of public assistance, including energy assistance that uses income eligibility based on income below the state median household income.

2. No disconnection in extreme heat

Minn. Stat. § 216B.0975.

As stated previously, a municipal utility may not disconnect residential services in counties where the National Weather Service has issued an excessive heat watch, heat advisory, or excessive heat warning and those warnings or watches are in effect.

G. Residential property remaining shut off

Sometimes city-provided water is shut off for nonpayment or because the consumer fails to repair the lateral line (from the street main to the house). In some cases, the water service is not restored for long periods of time because the inhabitants fail to pay or fix the line. The same issues arise with city sewer systems, but “shutting off” sewers poses serious potential threats to public safety. Adults and, in some cases, children continue living in the residence for months or years with no connection to drinkable water.

World Health Organization, Water and sanitation, Household water security.

Centers for Disease Control and Prevention, Typhoid fever.

The World Health Organization (WHO) finds that unhygienic conditions and practices at the household level create a dangerous environment with immediate health risks to children. Insufficient quantities of safe water for drinking, cooking, and personal and domestic hygiene causes negative health outcomes, including diarrheal diseases; Typhoid A, E, and F; and hygiene related diseases such as trachoma (which causes infectious blindness) and scabies.

Minn. R. 1300.0180.

If a city has adopted the State Building Code, the building inspector may order any building or portion of a building vacated if continued use is dangerous to life, health, or safety of the occupants. The order must be in writing and state the reasons for the action. The building inspector may also revoke the certificate of occupancy, direct the responsible person that no one can live in the residence with no water, and order it corrected. If water is shut off because the property owner fails to repair the lateral line, the city may provide the owner notice and a chance to discuss the situation and then go in and fix the line or abate the problem. Cities must consult with the city attorney before entering private property, which generally requires written permission or a court order.

A.G. Op. 387-G-5, (April 17, 1952).

A city may address this issue by ordinance if the city has not adopted the State Building Code. It is long established law that cities may use police power to pass an ordinance prohibiting the use of sanitary facilities that do not connect to the public water supply. The State Plumbing Code applies throughout the state and requires potable (drinkable) water that meets code specifications in every premise that is equipped with plumbing fixtures and used for human occupancy. Permanent residences must have hot water provided to all plumbing fixtures that require hot water for proper use. Only potable water shall be accessible to plumbing fixtures supplying water for drinking; bathing; culinary use; or the processing of food, medical, or pharmaceutical products. Cities have the authority to pass an ordinance requiring that all residences maintain a working and safe supply of potable water consistent with the State Plumbing Code. Ordinances requiring installation of toilets and connection of toilets to the public sewer system, and prohibiting the maintenance of sanitary facilities not connected with the sewer system are a valid exercise of the police power of the city council.

Minn. Stat. § 326B.43, subd.1.

Minn. R. 4715.1700.

A.G. Op. 477b-33, (May 12, 1967).

State ex rel. Latshaw v. Board of Water & Light Com'rs of Duluth, 117 N.W. 827 (Minn. 1908).

House Research Straight Pipe Septic Systems.

Minn. R. 4715.0200(A)-(C).

Minn. Stat. § 444.075, subd. 3e.

See Part IX A. *Due Process*.

See Part IX B. *Certification of delinquent water and sewer charges*.

Cities may choose to shut off a residence's water supply for non-payment. Blocking or digging up a resident's access to the sewer system poses serious potential threats to public health. Cities may certify unpaid water and sewer charges to be collected as other taxes are collected. Rather than leaving residences without water for *long* periods of time, or disconnecting sewer for any amount of time, city ordinances may allow turning the water back on after a number of days as determined by council and, after providing notice and due process, certifying any unpaid charges and reasonable fees to the county auditor to be collected with property taxes. Properly executed certification practically guarantees payment (eventually) and protects housing stock in the city by providing basic environmental sanitation and safety through adequately maintained plumbing systems.

H. Minnesota cold weather rule

[Minn. Stat. § 216B.097.](#)

The Minnesota cold weather rule, applicable to municipal utilities, is an important exception to keep in mind before shutting off water service during the winter. The municipal rule states that no utility shall disconnect and must reconnect utility service to a residential unit during cold weather months (Oct. 15 through April 15), if that disconnection would in any way affect the primary heat source of the unit, and the consumer complies with the provisions of the rule. “Disconnection” includes a service or load limiter or any device that limits or interrupts electric service in any way.

[Minn. Stat. § 216B.097, subd. 4.](#)

[Minn. Stat. § 216B.096.](#)

[Minn. Stat. § 216B.097.](#)

Questions remain as to whether this rule applies to municipal *water* utilities. The 2007 changes in the law, effective Sept. 1, 2008, define “utility heating service” as natural gas or electricity used as a primary heating source, including electricity service necessary to operate gas heating equipment, for the customer’s primary residence. The section of the cold weather rule that pertains to municipal utilities discusses “utility service,” but that term is not defined. The cautious approach, however, is for any municipal utility to refrain from disconnecting a utility service during the winter months if that disconnection could affect a customer’s primary heat source.

[Minn. Stat. § 216B.097.](#)

See also, [Appendix D.](#)

The cold weather rule certainly applies to municipal gas and electric utilities. From Oct. 15, to April 15, the rule requires that a municipal gas or electric utility reconnect and refrain from disconnecting a residential unit (or even limiting electrical supply with a load limiter) during cold weather months if the disconnection affects the primary heat source and if the following conditions are met:

See [Minnesota Department of Commerce.](#)

- The customer has declared inability to pay on forms provided by the utility. For the purposes of this clause, a customer receiving energy assistance is deemed to have demonstrated an inability to pay.
- The household income of the customer is at or below 50 percent of the state median income.
- Verification of income may be conducted by the local energy assistance provider or the utility, unless the customer is automatically eligible for protection against disconnection as a recipient of any form of public assistance, including energy assistance.
- A customer who enters into a payment schedule that considers the financial resources of the household and is reasonably current with payments under the agreement. (A requirement that customers be current with bills prior to Oct. 15 to qualify for protection from disconnection under the rule was removed from the law.)
- The customer receives referrals to energy assistance programs, weatherization, conservation, or other programs likely to reduce the customer’s energy bills

[Minn. Stat. § 216B.097, subd. 1\(2\).](#)

Between Aug. 15 and Oct.15 of each year, a municipal gas or electric utility must notify all residential customers of the provisions of the rule.

Before disconnecting service to a residential customer during the period between Oct. 15 and April 15, the rule requires a municipal gas or electric utility to provide the following information to a customer:

- Notice of proposed disconnection must be mailed to the customer 20 days before actually disconnecting the service—or 15 days if the notice is personally delivered to the customer.
- A statement explaining the customer’s rights and responsibilities.
- A list of local energy assistance providers.
- Forms on which to declare inability to pay.
- A statement explaining available time payment plans and other opportunities to secure continued utility service.

If a residential customer must be involuntarily disconnected between Oct. 15 and April 15 for failure to comply with the provisions of the cold weather rule, the disconnection must not occur at any of the following times:

- On a Friday, unless the customer declines to enter into a payment agreement offered that day in person or via personal contact by telephone by the utility.
- On a weekend, holiday, or the day before a holiday.
- When utility offices are closed.
- After the close of business on a day when disconnection is permitted, unless a field representative of the utility with authority to enter into a payment agreement, accept payment, and continue service, offers a payment agreement to the customer.

If a customer does not respond to a disconnection notice, the customer must not be disconnected until the utility investigates whether the residential unit is actually occupied. If the unit is occupied, the utility must immediately inform the occupant of the provisions of this section. If the unit is unoccupied, the utility must give seven days written notice of the proposed disconnection to the local energy assistance provider before making a disconnection.

[Minn. Stat. § 216B.096, subd. 9.](#)

If a customer appeals, a notice of disconnection (before the service is disconnected) the utility must not disconnect until the appeal is resolved. Best practice suggests that municipal utilities establish a process for dealing with complaints about utility heating service (or any utility service subject to the cold weather rule) during the cold weather months.

I. Shutting off utilities in landlord-tenant situations

Minn. Stat. ch. 504B.

Minn. Stat. § 444.075.

Landlord-tenant law and municipal utility law both apply to situations where either a tenant or a landlord fails to pay for a utility service. Parsing out when a city may disconnect a utility service in landlord-tenant situations requires careful analysis and consultation with the city attorney.

Minn. Stat. § 504B.221.

It is a misdemeanor for a landlord to shut off a tenant's utilities in an effort to force a tenant out. If a landlord or the landlord's agent interrupts a tenant's utility service (electricity, heat, gas, or water) the tenant may recover from the landlord treble damages or \$500, whichever is greater, and reasonable attorney's fees. Cities must not get involved in a situation where the city may be considered the landlord's agent. Landlords have many other legal ways to deal with tenants who fail to pay for utilities or comply with a lease agreement.

Cities may need to develop a process to use and require documentation when a landlord requests that the city shut off electricity, heat, gas, or water to a particular unit, saying that it is unoccupied. Using a form that requires the landlord's assertion that the unit is vacant and the landlord's signature may protect the city's interests. Best practices suggest consulting the city attorney for appropriate forms and process.

1. Landlord failure to pay and posted notice

Minn. Stat. § 504B.215, subd. 3.

Cities must notify tenants if the city intends to shut off a utility service to a building because the landlord has failed to pay for the service. This law applies to city utilities that supply water, electricity, heating oil, propane, or natural gas services. Tenants must receive posted notice and a chance to pay. The posting must be placed in at least one conspicuous location in or on the building and provide tenants with, at a minimum, the following information:

Minn. Stat. §504B.215, subd. 3.

See Sample [Disconnection Notice for water, gas, home heating oil or propane disconnection when the landlord fails to pay.](#)

- The date the service will be discontinued.
- The telephone number to call at the utility to obtain further information.
- A brief description of the rights of tenants under this section to continue or restore service.
- Advice to consider seeking assistance from legal aid, a private attorney, or a housing organization in exercising the rights of tenants under Minnesota law to maintain their utility service.

(1) Tenant paying for water

If the landlord still has not paid the bill and a tenant decides to pay, or the water is shut off, the city must provide a copy of each water bill the landlord failed to pay upon request from the tenant. A tenant has an ongoing right to pay the current charges for the most recent billing period and keep the water on. “Current charges” do not include late payment fees incurred by the landlord. The city must provide the tenant the same amount of time to pay current charges that the landlord has under current ordinance, policy, or practice. The tenant does not need to pay a deposit and must receive reasonable notice of any future disconnection. Tenants may deduct documented payments from rent obligations.

City *water* utilities do not need to change their billing practices and can keep accounts in the landlord’s name. If there are multiple tenants in a building, the city has to offer the right to pay current charges to only one tenant in a 12-month period. The new law does not change city water utilities’ authority to make contracts with and impose utility charges against property owners and to certify unpaid water charges to the county auditor to be collected as other taxes are collected.

(2) Tenant paying for electric and gas

See [Sample Disconnection Notice for electricity disconnection when the landlord fails to pay.](#)

If a landlord fails to pay for *electricity or gas service*, or the service is shut off, a tenant or tenants may pay the current charges for the most recent billing period. The city must restore the service for at least one billing period. In a residential building with less than five units, one of the tenants may notify the city that the tenant agrees to be the customer of record, and the city must put the account in the tenant’s name as long as the tenant meets all the city’s requirements for establishing service. A tenant can choose to pay current charges and still exercise the right to become responsible for paying the bills. However, the city need not offer this option to more than one tenant in a 12-month period.

(3) Landlord options

The new law allows a landlord to re-establish responsibility for gas and electric accounts by paying all overdue charges or reaching an acceptable agreement with the city.

XII. Foreclosures

Unpaid charges for city utility services may be very difficult to recover when a property heads into foreclosure proceedings or is vacant. One way to stay on top of properties in trouble is to request disconnection information from private utility companies.

Minn. Stat. § 216B.0976.

See Appendix H.

Minn. Stat. § 13.681.

As discussed subsequently, vacant or abandoned properties in the foreclosure process pose significant challenges for cities, especially in winter when pipes may freeze and burst. To remedy this situation, if a city requests it, investor owned or *private gas and electric* utility companies must notify cities when they disconnect a residential property during cold weather months. Specifically, between Oct. 15 and April 15, private utility companies that disconnect a residence must provide notice and the residential address to any city that requests the information. The information must be available on Oct. 15 and Nov. 1 of each year. In addition, a city may request daily updates after Nov. 1, 2008. Cities that receive the disconnection information must share it with the local police and fire departments. All such data is private, according to state law.

If cities choose to shut off water or some other utility to a vacant or abandoned residence, the local ordinance should contain authority to do so and information on the process.

A. Municipal water and sewer utilities

Minn. Stat. § 444.075, subd. 3 (e).

A.G. Op. 387g-7 (April 28, 1965).

Minn. Stat. ch. 580 - 582.

Minn. Stat. § 580.042.

While analysis of foreclosure law is beyond the scope of this memo, the best way for a city *water and sewer* utility to recoup unpaid charges from properties in foreclosure is *to certify unpaid charges as soon and as often as possible*. (Remember, the local ordinance must articulate certification procedures.) While county auditors may only “spread” the unpaid water and sewer charges once a year “to be collected as other taxes are collected,” cities may certify the charges at multiple times throughout the year. Once unpaid water and sewer charges are certified to the county, they are a valid lien against the property. When a foreclosed property eventually sells, the unpaid charges must be paid.

In Minnesota, most foreclosure proceedings are done by advertisement and typically take at least a year. During these lengthy foreclosure proceedings, the defaulting owner of the property is responsible for utility charges (not the bank or mortgage holder). In rental situations, where a building with tenants enters foreclosure proceedings, utilities must be paid pursuant to the lease agreement between the tenant and the landlord. Even at the late stages of a foreclosure, when a property is sold at a sheriff’s sale, the defaulting owner has six months to redeem the property. During all this time, the defaulting owner is responsible for delinquent utility charges—but is not likely to pay them.

See Section IX A, *Due Process*.

Unlike bankruptcy proceedings, there is nothing to prevent a city from certifying unpaid water and sewer charges after a few months of non-payment, as long as due process procedures are provided the property owner and the local ordinance explains certification.

B. Municipal gas and electric

See [Section IX E, Minnesota Cold Weather Rule](#); see also, [Section IX, C: Certification of municipal gas and electric charges](#).

Municipal gas and electric utilities may have to use other methods to address nonpayment due to foreclosures. Shutting off the electricity or gas to properties in foreclosure proceedings is an option—as long as it complies with the cold weather rule and the local ordinance.

C. Vacant properties

[Minn. Stat. § 582.031](#).

[Minn. Stat. § 582.03, subd.1](#).

[Minn. Stat. §582.032](#).

Vacant properties in the foreclosure process pose additional challenges to cities. Cities, working with their city attorney, may take court action to speed up the foreclosure process, shortening it to five weeks. If a city chooses to do this, it may recover costs for bringing the court action.

[Minn. Stat. § 582.031, subd. 3](#).

[Minn. Stat. § 582.032, subd. 4](#).

Typically, a bank or other financial entity holds the mortgage on vacant property (until it is sold at a sheriff’s sale). Mortgage holders may take steps to protect vacant property known as “preventing waste” and includes installing or changing locks on doors and windows, boarding windows, installing an alarm system, providing a resident caretaker, and otherwise preventing or minimizing damage to the premises from the elements, vandalism, trespass, or other illegal activities. Mortgage holders may take action to prevent property from falling below minimum community standards for public safety and sanitation and may add all these costs to the principal balance of the mortgage.

[Minn. Stat. § 582.031, subd. 3](#).

[Minn. Stat. § 582.03](#).

After someone buys the mortgage and vacant property at the sheriff’s sale (towards the end of the foreclosure proceedings) that person has a limited right to enter the property to make reasonable inspections and prevent damage (or waste) to the property but is not required to do so. The holder of a sheriff’s certificate may also take steps to prevent the property from falling below minimum community standards for public safety and sanitation. City utilities and city officials may work with sellers and buyers of foreclosed and vacant properties to secure and maintain the property.

[Minn. Stat. § 429.101, subd. 1\(12\)](#).

A city may establish a program, by ordinance, to identify and register vacant buildings. The city may charge a fee for the program and specially assess the property to recover any unpaid fees associated with the identification and registration of vacant properties.

D. Abandoned properties

[Minn. Stat. § 582.032](#).

In some situations, the foreclosure proceedings may take only five weeks from the date of the sheriff’s sale, rather than six months, if a judge finds that a property has been abandoned. City officials (building inspector, zoning administrator, housing official, or other municipal or county official having jurisdiction over the mortgaged premises) may work with mortgage holders to establish that a particular property is not actually occupied and therefore abandoned. The court looks at a number of factors to determine if the property is abandoned, including:

- Windows or entrances to the premises are boarded up or closed off, or

multiple windowpanes are broken and unrepaired.

- Doors to the premises are smashed through, broken off, unhinged, or continuously unlocked.
- Gas, electric, or water service to the premises has been terminated.
- Rubbish, trash, or debris has accumulated on the mortgaged premises.
- The police or sheriff's office has received at least two reports of trespassers on the premises, or of vandalism or other illegal acts being committed on the premises.
- The premises are deteriorating and are either below or are in imminent danger of falling below minimum community standards for public safety and sanitation.
- A defendant's failure to appear at the court hearing; this is conclusive evidence of abandonment by the defendant.

Where property is abandoned it is to a city's advantage (and city utilities) to work with mortgage holders to speed up the foreclosure proceedings. The sooner abandoned property is restored to use, the more likely that city taxes and utility charges will be paid.

[Minn. Stat. § 580.22.](#)

Cities, and city utilities, may wish to keep a record of properties that have charges certified against them to inform buyers that those liens must also be paid once the property changes hands. However, it is the buyer's responsibility to find any duly recorded liens or judgments attached to the property.

XIII. Federal red flags rule

[15 U.S.C.A. 1681 et seq. 12 C.F.R. § 41.90, 41.91; FACT Act § 114. FCRA § 615\(e\). Red Flag Program Clarification Act of 2010; 15 U.S.C. 1681\(m\) \(e\) \(4\).](#)

The Federal Trade Commission originally developed "red flags" rules to detect, prevent, and mitigate identity theft. Enforcement of the rule was delayed numerous times. In December of 2010, Congress amended the red flags rule, narrowing the application of the law to fewer entities. Then, as of January 1, 2011, enforcement of the rule began. Cities need to examine all their practices to determine if the rule applies.

Currently, the new law covers creditors who regularly, and in the ordinary course of business, meet one of three general criteria. They must:

- Obtain or use consumer reports in connection with a credit transaction.
- Furnish information to consumer reporting agencies in connection with a credit transaction.
- Or advance funds to -- or on behalf of -- someone, except for funds for expenses incidental to a service provided by the creditor to that person.

[Red Flag Program Clarification Act of 2010. 15 U.S.C. 1681\(m\) \(e\) \(4\).](#)

[Federal Trade Commission: Fighting Fraud with the Red Flags Rule.](#)

To decide if this rule applies to your city, examine the municipal utility practices and procedures in consultation with the city attorney. The FTC provides extensive information on understanding and complying with the rule.

If it applies to your city utility operation, the final rules require that each creditor develop and implement an Identity Theft Prevention Program (Program) for combating identity theft in connection with new and existing accounts. The Program must include reasonable policies and procedures for detecting, preventing, and mitigating identity theft and enable a creditor to:

- Identify relevant patterns, practices, and specific forms of activity that are “red flags” signaling possible identity theft, and incorporate those red flags into the Program.
- Detect red flags that have been incorporated into the Program.
- Respond appropriately to any red flags that are detected to prevent and mitigate identity theft.
- Ensure the Program is updated periodically to reflect changes in risks from identity theft.

Given the uncertainty about the application of this rule to city operations, check back for updates and, again, review this issue with the city attorney.

XIV. Emergencies

City water and wastewater systems provide essential services. In a disaster or emergency, the Minnesota Water/Wastewater Utilities Agency Response Network (MnWARN) offers an immediate response through mutual assistance for water, wastewater, and stormwater utilities in the state. A mutual aid agreement provides the basis for emergency assistance so water, wastewater, and stormwater utilities sustaining physical damage may obtain emergency assistance in the form of personnel, equipment, materials, and other associated services. As explained on its website, there is no fee to join MnWARN, but the city council must adopt the MnWARN mutual aid agreement and resolution and meet other criteria to participate.

XV. Bankruptcy proceedings

Bankruptcy is a complex legal process and beyond the scope of this memo. What follows are a few very basic principles as they may apply to utility charges. Consult the city attorney for specific legal advice if a city resident or business with delinquent utility charges files any type of bankruptcy proceeding.

Municipal utilities must file claims in bankruptcy proceedings according to federal rules. A proof of claim filed by a governmental unit is timely filed if it is filed no later than 180 days after the date of the order for relief. On motion of a governmental unit before the expiration of such period and for cause shown, the court may extend the time for filing of a claim by the governmental unit.

A. Chapter 11 or 13

Initially, utility service may not be shut off, or charges certified to taxes, when a property owner with delinquent bills files a bankruptcy petition under either Chapter 11 or Chapter 13.

A utility may not alter, refuse, or discontinue service to or discriminate against the trustee or the debtor solely on the basis of the commencement of a case, or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.

11 U.S.C.A. § 362.

The petition for bankruptcy invokes an “automatic stay” that is applicable to utilities and prevents

11 U.S.C.A. § 362(a) (6).

- Any act to create, perfect, or enforce any lien against property of the estate.
- Any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title.
- Any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the bankruptcy case.
- The setoff of any debt owed to the debtor that arose before the commencement of the case under this title against any claim against the debtor.

11 U.S.C.A. § 366 (c) (2); 2005 A.L.R. Fed. 2d 3; 83 A.L.R. Fed. 207.

Congress updated bankruptcy law in 2005. Now, for Chapter 11 bankruptcies, a utility may alter, refuse, or discontinue utility service, if during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility. An assurance of payment must be one of the following items: A cash deposit. A letter of credit. A certificate of deposit. A surety bond, prepayment of utility consumption. Another form of security that is mutually agreed on between the utility and the debtor or the trustee, but an administrative expense priority does not constitute an assurance of payment. On request of a party and after notice and a hearing, the court may order modification of the amount of an assurance of payment. On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.

B. Other types of bankruptcy

11 U.S.C.A. 366(b).

For other bankruptcy proceedings, a city can terminate utility service to the property twenty days from the date of the filing unless the owner or bankruptcy trustee provides a deposit or some other assurance of payment for continued utility service.

26 U.S.C.A. § 6321.

26 U.S.C.A. § 6323.

In a Chapter 7 bankruptcy, an individual debtor typically attempts to discharge all debts incurred before filing. However, *certified* unpaid utility charges are a valid tax lien, and may have priority over other liens. IRS liens most likely take precedence over liens related to unpaid charges for utilities.

C. State law

Minn. Stat. § 514.67. *In Re Lanford*, 10 B.R. 129 (U.S.B.C. D. Minn. 1981); *In re Sheldahl, Inc.*, 298 B.R. 874, (Bankr. D. Minn. 2003).

In addition, state law makes governmental services a prior lien in bankruptcy proceedings by operation of law, although once a person files under the bankruptcy code, federal law takes precedence over state law. In one case, the bankruptcy panel upheld a city's claim for payment of unpaid utility charges against a debtor under a statutory lien theory.

II. Conclusion

Municipal utilities may develop reasonable charges and may simultaneously use a variety of tools and procedures to secure payment for valid utility charges. Developing a process, with clear timelines and ample notice provisions will increase collection of utility charges. The city utility ordinance should mirror the process, timelines and notice provisions a utility uses to seek payment for utility charges.

APPENDIX A

SAMPLE UTILITY BILL

City of _____
Utility Billing Office

Account Information
Customer: Jane Doe
Service Address: 111 Main St.
Account Number: 01011010

Customer Service: 666-555-0000
9A.M. – 4:30 P.M. Mon. – Fri. except holidays
Water Emergency: 666-444-0000
24 – hour message service

Account Activity
Previous Balance
Payment 00/00/00
Balance Forward

49.36
49.36CR
00.00

Current Charges

Water usage	_unit @ \$1.03 each OR \$2.00 minimum	\$12.00
Sewer	_unit @ \$3.03 each OR \$2.00 minimum	\$27.27
Minnesota Water Testing Fees		\$.37
Solid Waste Fee	\$15.00 per living unit	\$15.00
Recycling Credit	\$ 7.00 per living unit	\$7.00CR
Country solid waste fee		\$1.15

Total Current Charges	\$48.79
-----------------------	---------

Total Amount Now Due	\$48.79
----------------------	---------

Pay in person or mail payment:

City of _____

Utility Billing

222 8th St.

_____ MN, 55555

If payment is received after
this date a 10% late fee of
current charges will apply.

Unpaid utility charges constitute a lien against the property.

Meter	Service Period	Previous	Present	Amount Used
Readings	From: 00/00 To: 00/00	*****	*****	*****

APPENDIX B

MONTHLY BILLING CYCLE 30 DAY MINIMUM

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
31	1 Generate bills dated within 3 days of mailing.	2	3 Day 1 Bills mailed out with due date no earlier than Day 30	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31	1 Generate bills dated within 3 days of mailing for next billing cycle.	2 Day 30 Payment due no sooner than this day.	3 Day 1 Next billing cycle. Start process over.
4	5	6	7 Day 35 If no payment is received by this date on first billing cycle, a late fee attaches.	8	9	10

This sample is provided for general information purposes. IT is not intended to provide legal advice and should not be used as a substitute for legal guidance. City councils and staff may develop billing practices and procedures that fit local situations in consultation with the city attorney.

APPENDIX C

SAMPLE WATER AND SEWER ORDINANCE

ORDINANCE NO. _____.

THE CITY COUNCIL OF THE CITY OF _____, _____, COUNTY, MINNESOTA, ORDAINS:

SECTION 1. DEFINITIONS

For the purpose of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

Account. A record of utility services used by each property and the periodic costs for those utility services.

City. The City of _____, County of _____, State of Minnesota.

City Utility System. Facilities used for providing public utility service owned or operated by City or agency thereof, including sewer, storm sewer and water service.

Utility Rate Schedule. A schedule of all utility rates and charges set by ordinance of the City.

Waterworks System. Water and sewer transmission pipes, lines, fixtures, meters and all necessary equipment and appurtenances owned or operated by the City utility system for the purpose of providing water and sewer services for public or private use.

SECTION 2. ACCOUNTS.

All accounts shall be carried in the name of the owner who personally, or by his or her authorized agent, applied for such service. The owner shall be liable for water and sewer services supplied to the property, whether he or she is occupying the property or not, and any unpaid charges shall be a lien upon the property.

SECTION 3. BILLING.

Water, sewer, and (other utility service, if any) charges shall be billing on one bill as applicable to each account. All charges for water, sewer, and (other utility service, if any) shall be due upon receipt and considered delinquent after the tenth day of the following month. All bills shall contain the title, address and telephone number of the official in charge of billing; the title, address and phone number shall be clearly visible and easily readable. Bills shall be mailed to the customers on or before the fifth day of January, April, July, and October of each year and specify the water consumed and the sewer, (and other utility services, if any) charges in accordance with the current fee schedule set by ordinance of the City council

SECTION 4. UTILITY RATE SCHEDULE.

4.1 The utility rate schedule shall be adopted annually by ordinance of the City Council.

- 4.2 The City Council ordinance setting out the utility rate schedule shall also establish the number of certification cycles per year. At least one certification cycle will be timed each year to coincide with _____ County's requirements for certification to the following year's taxes. Additional certification cycles may be set in the annual rate schedule ordinance. Each year, the council shall establish one or more certification cut-off dates. All city utility accounts, unless exempt for other legal reason, which have been billed a delinquent bill and remain unpaid as of the certification cut-off date shall have the balance on the account including in a preliminary certification list.

SECTION 5. DELINQUENT ACCOUNTS.

- 5.1 **Penalties.** A late payment penalty of (ten percent) shall be assessed on all accounts with a past due balance.
- 5.2 **Shut-off for nonpayment.** Water shall not be shut-off until notice and an opportunity for a hearing before the city council or an employee designated by the city council have provided to the occupant and owner of the premises involved.
- 5.2.1 If any bill is not paid by the due date listed on the bill, a second bill will be mailed by first class mail and shall state that if payment is not made within ten days of the mailing of the second bill, water service to the premises will be shut off for nonpayment.
- 5.2.2 The second bill and shut-off notice contain the title, address and telephone number of the official in charge of billing; the title, address and phone number shall be clearly visible and easily readable.
- 5.2.3 The notice shall also state that the any occupant or owner has the right to a hearing before the water service is shut off. The owner or occupant may be represented in person and by counsel or any other person of his or her choosing. The owner or occupant may present orally or in writing his or her complaint to the city official in charge of utility billing. This official shall be authorized to order continuation of the customer's service and shall have the authority to adjust the customer's bill or enter into a mutually agreeable payment plan.
- 5.2.4 If an occupant or owner requests a hearing, the water shall not be shut off until the hearing process is complete.
- 5.2.5 If a customer fails to pay and fails to request a hearing under this part, service will be shut off at the time specified in the notice but not until the charges have been due and unpaid for at least 30 days.
- 5.3 **Certification for collection with taxes.** Unpaid charges on sewer and water accounts shall not be certified to the county auditor until notice and an opportunity for a hearing have been provided to the owner of the premises involved. The notice shall be sent by first class mail and shall state that if payment is not made before the date for certification, the entire amount unpaid plus penalties will be certified to the county auditor for collection as other taxes are collected. The notice shall also state that the occupant may, before such certification date, attend or schedule a hearing on the matter to object to certification of unpaid utility charges.

In addition to any penalties provided for in this ordinance if any person, firm or corporation fails to comply with any provision or this ordinance, the Council or any city official designated by it, may institute appropriate proceedings at law or at equity to procure payment.

- 5.4 The owner of the property shall have the option of paying the balance due on the account until the date the notice of the certification hearing is mailed. After the date the notice of certification hearing is mailed, payments will still be accepted but will include unpaid penalties.
- 5.5 A hearing shall be held on the matter by the City Council. Property owners with unpaid utility charges shall have the opportunity to object to the certification of unpaid charges to be collected as taxes are collected. If, after the hearing, the City Council finds that the amounts claimed as delinquent are actually due and unpaid and that there is no legal reason why the unpaid charges should not be certified for collection with taxes in accordance with this ordinance, the City may certify the unpaid charges to the county auditor for collection as other taxes are collected.
- 5.6 For each certification sustained, the property owner shall have the following options after the hearing,
 - 5.6.1 To pay the delinquent amount listed on the preliminary roll, but without additional interest after the hearing, within ten day of the hearing date.
 - 5.6.2 To pay the certified delinquent amount after the hearing date, but before the county certification deadline, with interest at the rate set in the adopted rate schedule, accrued beginning on eleventh day following the hearing date through the date of payment.
 - 5.6.3 To pay the certified charges as billed to them by _____ County on their property tax statement with a collection term of one year.
- 5.7 Fifteen days after the hearing, the certified roll, minus any payments, shall be delivered to _____ County.

SECTION 6. OTHER REMEDIES

In addition to any procedures or penalties provided for this ordinance if any person, firm or corporation fails to comply with any provision of this ordinance, the council or any city official designated by it may institute appropriate proceedings at law or at equity to procure payment and or enforce the provisions of this ordinance.

SECTION 7. EFFECTIVE DATE

This ordinance becomes effective from and after its passage and publication.

APPENDIX D

Source of Appendix D: Minnesota Municipal Utilities Association (763) 551-1230 (Revised)

Cold Weather Rule: Application for Winter Disconnect Protection

Read the enclosed notice of customer rights and possible assistance before completing this form.

IF YOU CAN'T PAY YOUR FULL BILLS AND NEED TO MAKE SPECIAL ARRANGEMENTS TO SPREAD YOUR PAYMENTS, call your utility at the number listed on the Notice of Proposed Disconnection.

INABILITY TO PAY DECLARATION FORM

IF YOU CAN'T PAY YOUR FULL BILLS AND NEED COLD WEATHER PROTECTION FROM UTILITY SHUTOFF. Fill out this form and return it to your utility immediately. Minnesota Public Utilities Commission Cold Weather Rule provides that from Oct. 15 through April 15 a utility cannot disconnect a residential utility customer for nonpayment if you enter information, and keep current with, a mutually agreed upon arrangement with the utility.

Fill out completely-please print

NAME _____

SERVICE ADDRESS _____ APT# _____

CITY _____ STATE _____ ZIP _____

PHONE: HOME _____ WORK _____

ACCOUNT NUMBER FROM BILL _____

TOTAL AMOUNT YOU OWE _____

Total annual (yearly) household income \$ _____ Number of persons in household (include yourself) _____

Source of income (circle appropriate sources):

Employment

AFDC/GA

GA Medical Care/Medical Assistance/

I do not pay for any of my own medical expenses

Please circle if any of the following exists in your home:

Medical emergency disabled person in residence

Payment Arrangements (Inability to pay):

I propose to pay my outstanding and future bills according to the following schedule of payments:

\$ _____ by (date) _____.

\$ _____ by (date) _____.

\$ _____ by (date) _____.

\$ _____ by (date) _____.

\$ _____ by (date) _____.

If you are the "Third Part" for the Customer whose Service is affected By this notice and are submitting this for That customer, please sign blow.

Signature _____

Phone number: _____ Date: _____

By signing this form, I hereby acknowledge that I have received, read and understand the enclosed Notice of Residential Customer's Rights and Possible Assistance. I declare that the above information is true and correct. I give my permission to any energy provider or public assistance agency that serves me to exchange income and billing information with other energy providers and the public utilities commission for the purpose of program qualification.

Customer signature _____ Date _____

Notice of Proposed Disconnection

We have not yet received payment of past-due charges shown on your last bill. You now owe (name of utility) _____ (amount) _____.

You must agree to a payment plan with the utility before _____. If you do not, we may disconnect your service on or after that date unless you exercise your rights under Minn. Stat. § 216B.097 Cold Weather Rule, Cooperative or Municipal Utility.

You may have the right to pay your bill over a number of months on the budget plan, or you may use some other payment plan. The cold weather rule allows you certain other legal rights concerning this notice. Please review the enclosed notice of residential customer rights and responsibilities, list of local energy assistance providers, a form on which to declare inability to pay, and third party notification form.

If we disconnect your service, you will have to pay a fee to have it reconnected.

It's up to you. Please act today.

(Name of Utility) _____

(Telephone number) _____

If a customer does not respond to a disconnection notice, the customer must not be disconnected until the utility has investigated whether the residential unit is actually occupied. If the unit is unoccupied, the utility must give seven days' written notice of the proposed disconnection to the local energy assistance provider (third party) before making the disconnection. This form may be used to satisfy this requirement. It can also be sent along with the original notice of proposed disconnection in hopes of taking care of the problem at that time.

<p style="text-align: center;">Cold Weather Shut-Off Third Party Notification Form</p> <p>If you have been served a notice of proposed disconnection by your utility, you may want to alert a third party (friend, relative, church group, or community agency) that a disconnection notice has been issued to you. The third party will not be responsible to pay your bill. The third party does have the right to contact the utility and provide information or work out a payment arrangement. If you want a third to be notified of the potential disconnection, please complete this form and return it to the utility.</p>	<hr/>
	<p>Customers name</p> <hr/>
<p>Account number</p> <hr/>	
<p>Service Address</p> <hr/>	
<p>Home Phone</p> <hr/>	
<p>Work Phone</p> <hr/>	
<p>The utility has my permission to provide information to and accept information from the party named below.</p> <hr/>	
<p>Customer signature Date</p> <hr/>	
<p>Name of Third Party</p> <hr/>	
<p>Third Party Address</p> <hr/>	
<p>City State Zip</p> <hr/>	
<p>Third Party Home Phone</p> <hr/>	
<p>Third Party Work Phone</p> <hr/>	
<p>Third Party Signature Date</p> <hr/>	
<p>This request will not be accepted without the third party's signature. The customer making the request understands that the utility assumes no liability for failure of third party to act upon notification.</p>	

The following notice must be made to all resident customers of the utility between August 15 and October 15 of each year. The purpose of the notice is to comply with the Minnesota “Cold Weather Rule.” The state Public Utilities Commission has stated that this notice must be made through the mail.

Annual Notice to All Residential Customers

Bills can pile up just like snow. However, the Minnesota Cold Weather Rule is designed to protect people who may have trouble paying their utility bills in winter. The Minnesota Cold Weather Rule applies from October 15 to April 15. The rule, established by the Minnesota Public Utilities Commission, means that your utility cannot disconnect your residential electric service during the winter if the customer meets the following requirement:

- (1) Utility disconnection would affect the customer’s primary heat source;
- (2) The customer has declared inability to pay on forms provided by the utility (Note: Customers receiving “any form of public assistance, “including energy assistance, are deemed to have qualified for inability to pay status);
- (3) The household income of the customer is less than 50 percent of the state median income level, as documented by the customer to the utility ; and
- (4) The customer enters into and makes reasonably timely payments under agreement that considers the financial resources of the household.

If you have trouble paying your utility bill, local agencies may be able to provide payment assistance. The state Department of Human Services recommends you call the county in which you live.

If you know you’re going to have trouble paying your utility bills, please contact (name and phone number of utility) to try to work out a payment schedule. We’ll try to help.

APPENDIX E

Sample notice sent before shutting off water

DATE

NAME

SERVICE ADDRESS

MAILING ADDRESS

RE: UNPAID WATER/SEWER BILL

Pursuant to the authority granted by Minn. Stat. §444.075 and Ordinance #, entitled “_____”, specifically “Section *** you are hereby notified that you are delinquent in the payment of your water and sewer bill in the amount of **\$XXX.XX**.

This amount must be paid within twenty (20) days of the receipt of this notice. If the amount is not paid within the required twenty (20) days, your water service shall be disconnected. If the service is disconnected, it will not be reconnected until the amount is paid in full, along with a **reconnection fee of \$_____** for a total cost to you of \$_____. You may, before the twenty (20) days, contact (*name of person to talk to about the water bill*) at (*phone number of person to talk to about the water bill*) and request a hearing on this matter if you believe the amount stated is not actually due and unpaid. **This is the only notice you will receive**. Payment must be received in full, and we will not “hold checks” or accept post-dated checks for payment.

A copy of Ordinance *** is enclosed.

By Order of the **** City council,

Name

Title

Enclosure (*ordinance*)

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

APPENDIX F

Sample notice sent before certifying unpaid charges to taxes

NOTICE OF INTENT TO CERTIFY UNPAID WATER AND SEWER CHARGES TO BE COLLECTED WITH TAXES

CITY OF *(insert name of city)*

Date:

Phone Number:

Name/Address of Owner:

Name/Address of Occupant if different from owner:

This letter is your notice that the city is preparing to certify or add your unpaid water and sewer charges to your property taxes. If these unpaid charges for water and sewer services for the property described above are not paid by *(insert date)*, the city council will certify them to the county auditor to be collected along with property taxes.

Delinquent amount	\$ _____
Delivery/ Administrative costs	\$ _____
TOTAL AMOUNT NOW DUE	\$ _____

To make payment now, return this letter with a check payable to the City of *(insert name of city)* in the amount of *(insert total amount due)* or you may pay your bill at city offices from *(insert days and hours that city hall is open)*.

You have a right to request a hearing in front of the city council on this matter, but you must request this hearing by contacting the office of the City Clerk on or before 4:00 p.m. on *(insert date)* at phone number *(insert phone number)*.

If you request a hearing, it will be held by the city council at least one week after the date on which you make your request and the unpaid water and sewer charges will not be certified for payment with taxes before the hearing. You may contact me at the number below if you have any questions.

(Insert name of city staff person)

(Insert title, phone number and hours of availability)

CITY OF *(insert name of city)*

THIS IS THE ONLY NOTICE YOU WILL RECEIVE BEFORE THE CITY COUNCIL WILL CERTIFY YOUR UNPAID WATER AND SEWER CHARGES TO BE COLLECTED WITH YOUR PROPERTY TAXES.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situation

APPENDIX G

STATE OF MINNESOTA, CITY OF _____
RESOLUTION # _____

STATE OF MINNESOTA)
County of _____)
City of _____)

RESOLUTION ADOPTING (LIEN OR ASSESSMENT) FOR UNPAID CHARGES

WHEREAS, pursuant to proper notice duly given as required by law, the City Council has met, heard, and passed upon all objections to the proposed (liens or assessments) for unpaid charges for municipal fees and utilities; and

WHEREAS, the amounts of bad debt have been minimized through diligent collection efforts by staff.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF _____, MINNESOTA:

Such proposed (lien or assessment) for unpaid charges, a copy of which is hereby attached as Exhibit 1 and made a part hereof, is hereby accepted and shall constitute the (lien or assessments) against the lands named herein.

Such (lien or assessment) shall be payable over a period of one year on or before the first Monday in January.

The owner of the property so assessed may, at any time prior to certification of the (lien or assessment) to the County Auditor, pay the whole of the (lien or assessment) on such property, with interest accrued to date of payment, to the City Clerk Treasurer, except that no interest shall be charged if the entire (lien or assessment) is paid within thirty (30) days from the adoption of the resolution. The taxpayer may at any time thereafter, pay the City Clerk or County Auditor, the entire amount of the (lien or assessment) remaining unpaid, with interest accrued to (insert month and day), of the year in which payment is made. Such payment must be made before (insert month and day), or interest will be charged through (insert month and day) of the following year.

The clerk shall forthwith transmit a certified copy of this (lien or assessment) role to the County Auditor to be extended on the property tax lists of the county and such (lien or assessment) shall be collected and paid over in the same manner as (property) taxes.

Adopted by the Council on the (insert day, month, and year).

Mayor

Attested: _____
Clerk

(Lien or Assessment) Listing	Parcel Description	Service	Amount
Name	Address	Water bill	\$000.00

(STATE OF MINNESOTA

) ss. Authentication Certificate

COUNTY OF _____)

I, the undersigned, being the duly qualified City clerk of the City of _____, certify that the attached Resolution of the City Council adopting a(n) (lien or assessment) for unpaid charges under the _____ Ordinance, is a true copy of the original, of which is on file at the City of _____.

Dated this _____ day of _____, 20____

Seal

City Clerk

City of _____

APPENDIX H

Cities may contact the following investor-owned utilities to receive notice of residential disconnections from October 15 to April 15, pursuant to Minn. Stat. § 216B.0976.

Xcel Energy

Manager of Credit Policy and Compliance

3115 Centre Pointe Drive

Roseville, MN 55113

(651) 639-4407

Patrick.j.boland@xcelenergy.com

Patrick.j.boland@xcelenergy.compatrick.j.boland@xcelenergy.com

Connexus Energy

Manager of Customer Service

(763) 323-2624

MN Rural Electric

Look up phone numbers for Minnesota Rural Electric city electric distributors at:

http://www.mrea.org/ourmembers/electric_coops.php

MN Power

Credit and Collection Manager

30 West Superior Street

Duluth, MN 55802

Phone: (218) 720-2688

MN Energy Resources Corp

P.O. Box 455

Rosemount, MN 55068

(651) 322-8921

Center Point Energy

(612) 372-4727 or (800) 245-2377

800 LaSalle Avenue

P.O. Box 59038

Minneapolis, MN 55459-0038

Notification of Gas Disconnections —Sample Letter provided by Center Point Energy:

Instructions: Please put on city letterhead and mail, fax or e-mail to:

E-mail Chekelea.Brazelton@centerpointenergy.com

Fax (612) 321-4738

US Mail Chekelea Brazelton

CenterPoint Energy – HQ16

800 LaSalle Avenue

Minneapolis, MN 55402

Dear Chekelea,

The City of _____ is requesting that CenterPoint Energy provide notification of gas utility initiated disconnections that have occurred in the city, as outlined in Minn. Stat. § 216B.0976.

Please provide access to your website by providing a user ID and password, which will allow access to utility disconnection information between October 15 and April 15. The following city personnel are authorized to receive this information.

Name _____

Name _____

Title _____

Title _____

E-mail _____

E-mail _____

Address _____

Address _____

Phone _____

Phone _____

It is understood that the data is non-public as defined in Minn. Stat. § 216B.0976 and Minn. Stat. § 13.681, subd. 6.

Name _____

Title _____

Signature _____