INFORMATION MEMO

Securing Payment of Utility Charges

Learn about setting rates for municipal utilities and on what basis cities may make charges; applicability of state sales tax. Find a discussion of credits and penalties; special rules for rental property, manufactured homes, properties in foreclosure or in bankruptcy. Lists remedies for nonpayment. Federal clean water act and red flag rule requirements; Minnesota Cold Weather Rule. Links to many sample forms involved in seeking payment of utility charges.

RELEVANT LINKS:

Minn. Stat. § 444.075.
County of Washington v. City of Oak Park Heights, (Minn. 2012).

33 Dunnell Minn. Digest Municipal Corporations § 9.12.

I. Municipal waterworks

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 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.

1. Required information

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:

- 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.

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- 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.
- 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.

B. Cross connection control

MN Dept. of Health: High Hazard Cross Connections in Minnesota.

LMC Model *Cross Connection and Backflow Prevention Ordinance*.

Plumbing cross connections, where contaminated water or other substances from an outside source flows back into public water systems may significantly taint city water supplies. This has occurred in Minnesota. “In response to the federal Safe Drinking Water Act Ground Water Rule and recent incidents in Minnesota, the Minnesota Department of Health (MDH) has adopted high-hazard cross connections that are not adequately protected as a Significant Deficiency (SD) for all Community Public Water Systems (CPWSs).” Consider enacting an ordinance to prevent illegal cross connections and backflow.

MN Dept. of Labor & Industry, Fact Sheet: Backflow Devices, 2015.

In addition, the Minnesota Plumbing Code, effective January 23, 2016 requires that all testable backflow devices installed on or after this date, must be tested and inspected annually. Also, those installing and testing backflow devices must notify the city waterworks system of those actions. It is not the responsibility of the city waterworks system to ensure compliance with the reporting requirement, but the requirement supports an effective cross-connection control program.

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: sewers, 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.
Minn. Stat. § 412.331.

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. § 412.341, subd. 1.

A local public utilities commission has extensive statutory powers including:

Minn. Stat. § 412.361.

- The powers 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.

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 simply 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 in the fee schedule without having to redo the entire utility ordinance.

RELEVANT LINKS:

B. Water conservation

Minn. Stat. §103G.291.

Minnesota Department of Natural Resources: Demand Reduction Measures (includes Conservation Rate Structures).

Amendments made in 2012 to water conservation law provide more flexibility to municipal water utilities. In an effort to conserve groundwater, municipal water utilities serving more than 1,000 people must include a "conservation rate structure" or a uniform rate structure combined with other ways to reduce demand for water 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. The deadline for almost all public water suppliers to have water demand reduction efforts in place was Jan. 1, 2015. This deadline also applies to metropolitan area systems.

LMC model, Declaration of a Critical Water Deficiency Plan, Ordinance.

This law also requires cities to have an ordinance in place for declaration of its critical water deficiency plan should the governor declare a critical water deficiency in the state.

1. Conservation rates

If a conservation rate is applied to multifamily dwellings, the rate structure must consider each residential unit as an individual user. For multi-unit dwellings, the rate schedule must include calculating water rates based on counting each residential unit as an individual user. The law does not specify the type of conservation rate system required but now, city water utilities must *not* offer a rate structure that rewards 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. As of 2012, the law applies even if a public water supplier does not use water meters. This is because a section of the law exempting public water suppliers without meters was deleted in 2012, making even public water suppliers with no meters subject to conservation rate law.

See 2012 Minn. Laws, ch. 150 Art. 1 § 3.

2. Demand reduction measures

The amended law defines "demand reduction measures" as measures that reduce water demand, water losses, peak water demands, and nonessential water uses.

C. Basis of charges

Minn. Stat. § 444.075, subd. 3.
See LMC model Water and Sewer Ordinance.

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.

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.

Minn. Stat. § 456.33.

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.

Minn. Stat. § 216B.025.
Minn. Stat. § 216B.026.

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. However, no municipal electric or gas utility in Minnesota has elected regulation by the state PUC.

Minn. Stat. § 444.075, subd. 3.
Minn. Stat. § 412.361, subd. 4.
A.G. Op. 624-C-11 (Jan. 25, 1952).

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

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

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.

Minn. Stat. § 444.075, subd. 3.

Minn. Stat. § 272.01, subd. 3.

Minn. Stat. § 453A.07.
Minn. Stat. § 453.57.

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 storm water 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. In addition, 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.

RELEVANT LINKS:

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. Storm water charges

Minn. Stat. § 444.075, subd. 3b (4).

Storm sewers are systems built to prevent flooding and to separate storm water from sanitary sewer systems. Storm water 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 storm water.

Storm sewer charges may be fixed according to the size of the property (adjusted for a reasonable calculation of the storm water 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 storm water 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.164, subd. 3 (a).

Municipal electrical utilities or cooperative electric associations may charge an additional fee to recover the fixed costs not already paid for by the customer through the customer's existing billing arrangement.

RELEVANT LINKS:

In the Matter of a Request for Dispute Resolution with People's Energy Cooperative Under the Cogeneration and Small PowerProduction Statute, Minn. Stat. § 216B.164, PUC Docket No. E-132/CG-15-255.

Minn. Stat. § 216B.098, subd. 2.

Minn. Stat. § 216B.098, subd. 3.

Sales Tax Fact Sheet 157, "*Residential Utilities.*"

The most common example of this involves customers who generate solar or wind power and sell it back to the utility, thus often paying no utility charges; the law clarifies that the municipal utility or coop may charge such customers a monthly fee for fixed costs. In addition, the law provides a standard of review (fair and reasonable) under which the Minnesota Public Utilities Commission can adjudicate complaints brought by customers of those types of utilities. These fees are a matter of some debate so consulting the city attorney is best when a municipal electric utility considers such fees.

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.

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 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.

RELEVANT LINKS:

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

To provide state assistance to local government for the public safety function of fighting fires, water used to fight fires is exempt from sales tax. Passed in the 2011 special session, the 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."

Minn. Stat. § 297A.70, subd. 2.

Sales Tax Fact Sheet 176: *Local Governments – Cities, Counties, and Townships*.

In addition, in 2014, state law changed, allowing local governments to buy some goods and services without paying sales and use tax. According to the Minnesota Department of Revenue, city use of water that is not residential in nature is exempt from state sales tax. For example, if a city uses water to flush fire hydrants or to wash down police vehicles, the city need not pay sales tax on the amount of water used. In contrast, city use of water consumed in providing the following goods and services may be subject to state sales tax:

- Gas and electric utilities
- Liquor stores
- Golf courses
- Solid waste hauling
- Solid waste recycling (certain equipment used at a "resource recovery facility" may be exempt)
- Landfills
- Marinas
- Campgrounds

Minnesota Dept. of Revenue:
651-296-6181
800-657-3777
8:00 a.m.- 4:30 p.m. Mon.-Fri.

Note: the list above is not comprehensive. Check with the Minnesota Department of Revenue, Sales and Use tax division for specific sales and use tax related questions.

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.

RELEVANT LINKS:

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).
A.G. 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.

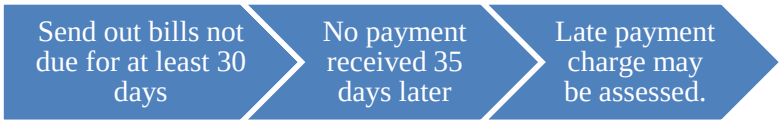
C. Billing

Best practice suggests that each bill provides due dates, credits for early payment (if any), 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.

RELEVANT LINKS:

See also, Appendix B, monthly billing cycle.

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:



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

See Appendix A, sample utility bill.
See Section XI. D.

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:

Minn. Stat. § 471.381, subd. 1.

City of Hopkins: "*Auto Pay Your Bill.*"

Minn. Stat. § 471.381, subd. 2.

- 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.

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.

In general, even where a meter is inaccurate or defective, a city utility may recoup the undercharges.

RELEVANT LINKS:

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).

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.

Minn. Stat. § 471.345, subd. 13 (a) (9).

Purchases of new water meters may be exempt from competitive bid law. Cities may enter certain agreements for "energy conservation measures" without going through a competitive bidding process, also known as the municipal contracting law. Effective Aug. 1, 2015, the list of energy conservation measures eligible to purchase without competitive bidding includes "water metering devices that increase efficiency or accuracy of water measurement and reduce energy use."

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.

RELEVANT LINKS:

See Section VI-D: *Mistakes in billing, above*.

Other cities retain ownership of utility meters. Cities may 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.

LMC 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).

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 XV, *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 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 announces 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. 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).

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.

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).

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

Minn. Stat. § 325E.025.

Municipal gas or electric utilities shall not:

- 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.

- 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, the law requires 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.
- 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.

Minn. Stat. § 504B.215, subd. 2a (b).
Minn. Stat. § 504B.221.

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

RELEVANT LINKS:

See Section XI-D-2: *Advantages of certifying unpaid charges*.

Minn. Stat. § 273.125, subd. 8.

See Section XI-D-1, *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 for water 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).

RELEVANT LINKS:

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. F. 1. *Households with military personnel*. Minn. Stat. § 325E.028.

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.

Minn. R. 7826.1800.

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 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. Certification is required and may be provided by a licensed medical doctor, licensed physician assistant, an advanced practice registered nurse, or a registered nurse (but only to the extent of verifying current diagnosis or prescriptions made by a licensed medical doctor). Customers who are in arrears must contact and enter into a payment agreement with the utility. (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).

RELEVANT LINKS:

See, Section XV, *Bankruptcy proceedings.*

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 may not try to certify previously unpaid charges once a consumer files for bankruptcy.

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).

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.

See LMC sample water shut-off notice.

See LMC sample notice sent before certifying unpaid charges to taxes.

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 XI-H, *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).

Municipal water utilities in statutory or charter cities can certify unpaid water and sewer charges to the county auditor for collection with taxes.

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

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.

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 LMC Sample Resolution Certifying Unpaid Charges.

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. Now, let's discuss how counties code these unpaid charges when they are "spread" on the tax rolls.

Quoting a September 2014 memo, "the Minnesota Department of Revenue has determined that unpaid water and sewer charges should be treated like taxes when they are certified with the counties. The statutory language indicates the unpaid charges are akin to taxes, not one-time special assessments for specific improvements. There are two main reasons supporting this interpretation:

1. The statute provides that the unpaid charges for water and sewer services provided by a local governing body should be certified to the county at the same time as local property taxes.

2. The statute specifies that unpaid water and sewer charges are to be collected in the same fashion "as other taxes." The Legislature's use of the term "other taxes" indicates that these unpaid charges are to be considered a form of tax that falls within the broader category that includes these and "other" taxes that a county collects.

Cities and other operators of water systems have expressed concern about recovering money for unpaid water and sewer charges when a property forfeits for nonpayment of property taxes. Many counties code the charges as special assessments in the county property tax systems, often because the county systems do not allow for the charges to be coded in other ways. Water system operators expressed concern that they would not recover money on the charges if the charges are coded as special assessments because special assessments levied before forfeiture are canceled upon forfeiture (Minn. Stat. 282.07)."

Minn. Stat. § 282.07.

All 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 may require certification of delinquent water and sewer bills by Nov. 29. As discussed above, it is important that counties code these unpaid water and sewer charges as property taxes, not special assessments, because special assessments attached to a property are erased if that property is forfeited for failure to pay property taxes.

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 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.

See Section XV, *Bankruptcy proceedings*.

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 may not be certified for some time after a consumer files for bankruptcy protection.

RELEVANT LINKS:

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.
Great Western Industrial Park, LLC,Relator, vs. *Randolph Township*, (Minn. Ct. App. 2014).

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 cities have all the powers afforded to towns. Combining these two laws may allow a municipal gas or electric utility to pass an ordinance that may allow a city 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 LMC sample notice sent before shutting off water.

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 customer 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.

RELEVANT LINKS:

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.

a. Annual notice of this protection

Minn. Stat. § 325E.028. Sample annual notice for military personnel.

Payment arrangement form for military service personnel.

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.

b. 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.

RELEVANT LINKS:

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 shall 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 shall have the authority to order disconnection of utility services to the building, structure, or system, regulated by the code, in case of an emergency to eliminate a hazard of life or property.

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).

Minn. Stat. § 326B.43, subd.1.
Minn. R. 4714.0100 (A).
Minn. R. 4714.0601.

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

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 for bathing, washing, laundry, cooking purposes, dishwashing, and maintenance.

RELEVANT LINKS:

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.

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. 4714.0100 0(A)-(C).
Minn. Stat. § 444.075, subd. 3e.
See Part XI-C, *Due Process*.
See Part XI-D, *Certification of delinquent water and sewer charges*.

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, posing serious potential threats to public health, 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 almost 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.

Minn. Stat. § 216B.097, subd. 4.

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.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. Consult the city attorney for specific legal advice on the applicability of the cold weather rule to city water systems.

RELEVANT LINKS:

Minn. Stat. § 216B.097.

MMUA Cold Weather Rule (CWR) Guide.

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:

- 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).

MMUA Sample Annual Notice to Residential Customers.

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:

MMUA Sample Notice of Proposed Winter Disconnection during Cold Weather Rule period.

- 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.

MMUA Sample Third-Party Notification Form. Use this form plus a list of energy assistance providers in your area.

- A list of local energy assistance providers.

MMUA Sample Application for Winter Disconnect Protection under the Cold Weather Rule.

- 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.225.

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.

RELEVANT LINKS:

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 notice for non-electric utility 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.

a. 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 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.

b. Tenant paying for electric and gas

See sample 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.

c. 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 C, Contact information for investor-owned utilities.

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).

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.

Minn. Stat. ch. 580 - 582.

Minn. Stat. § 580.042.

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 XI-H, *Minnesota Cold Weather Rule*; see also, Section XI-D: *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 due process, the cold weather rule, and the local ordinance, as discussed previously.

RELEVANT LINKS:

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. 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:

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

- 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.

RELEVANT LINKS:

Federal Trade Commission: Fighting Identity Theft with the Red Flags Rule: A How-To Guide for Business.

MMUA Model Red Flag Identity Theft Prevention Program.

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.

It is still not entirely clear whether this federal rule applies to all municipal utilities in Minnesota. Given that uncertainty about the application of this rule to city operations, review this issue with the city attorney.

XIV. Emergencies

Minn. Stat. § 471.59.
MnWARN.

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 storm water utilities in the state.

A mutual aid agreement provides the basis for emergency assistance so water, wastewater, and storm water 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

11 U.S.C.A. § 362(a).

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.

Federal Rules of Bankruptcy Procedure 3002 (c) (1).

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.

RELEVANT LINKS:

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.

XVI. 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 Service: 666-555-0000
Customer: Jane Doe	9A.M. – 4:30 P.M. Mon. – Fri. except holidays
Service Address: 111 Main St.	Water Emergency: 666-444-0000
Account Number: 01011010	24 – hour message service

Account Activity		
Previous Balance		49.36
Payment 00/00/00		49.36CR
Balance Forward		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

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: contact information for investor-owned utilities

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

Xcel does not disconnect electricity on vacant properties at any time of the year.

patrick.j.boland@xcelenergy.com

Connexus Energy

Member services (763) 323-2650.

MN Power

Tedd Ells at tells@mnpower.com

Field Collections and Policy Supervisor 30 West Superior Street

Duluth, MN 55802

MN Energy Resources

Customer Service

Call Minnesota Energy Resources at 800-889-9508

Or email them at www.minnesotaenergyresources.com

Center Point Energy

Contact Jeffrey McCullough

(612) 321-4657

Jeffrey.mccullough@centerpointenergy.com mailto:

You will be given access to a website that shows disconnections in your area during the cold weather months, Oct. 15 to April 15.