

INFORMATION MEMO

Securing Payment of Utility Charges

Learn about setting rates for municipal utilities and when and how cities can impose and collect utility charges. Learn about state sales tax on utilities, including tax exemptions. Learn about credits and penalties and special rules for rental properties, manufactured homes, and properties in foreclosure or bankruptcy. Learn about remedies for nonpayment. Learn about the federal Clean Water Act and red flag rule requirements, as well as the Minnesota Cold Weather Rule.

RELEVANT LINKS:

[Minn. Stat. § 444.075, subd. 1\(c\).](#)
[County of Washington v. City of Oak Park Heights](#), 818 N.W.2d 533 (Minn. 2012).
33 Dunnell Minn. Digest Municipal Corporations § 9.12. [Minn. Stat. § 471.381, subd. 2.](#)

[40 C.F.R. pt. 141.](#)
[40 C.F.R. pt. 142.](#) See [40 C.F.R. pt. 141, subpt. O.](#)

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

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

I. Municipal waterworks

Municipal waterworks are water systems that supply water to a city's residents. These water systems include infrastructure like mains, valves, hydrants, service connections, wells, pumps, reservoirs, tanks, and treatment plants. Municipal waterworks operate like a private business. To pay for these water systems, city councils can impose just and equitable charges for water utility services. A city has the authority to impose charges for any combination of use, availability, and connection to finance sewer and water facilities. A municipal utility can use a combination of different methods to secure payment for utility service charges.

II. Federal Clean Water Act

The requirements of the federal Clean Water Act are generally beyond the scope of this memo. However, one annual requirement affects many city water utilities. The administrative rule put into effect by the Environmental Protection Agency (EPA) requires an annual report to each resident that describes the quality of water in each city.

A. Consumer Confidence Reports

A community water system is a public water system that provides water to the same people year-round. Community water systems must prepare annual water quality reports (consumer confidence reports) for their customers. The reports are due by July 1 of each year.

1. Required information

While community water systems can include more information in their reports than is required, each report must provide consumers with at least the following information about their drinking water:

- The lake, river, aquifer, or other source of the drinking water.

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

RELEVANT LINKS:

MN Dept. of Health: [High Hazard Cross Connections in Minnesota](#).

EPA: [Ground Water Rule](#). See 40 C.F.R. pt. 141.

[Cross Connections and Backflow Prevention](#), LMC Model Ordinance.

MN Dept. of Labor & Industry, [Plumbing code: Backflow Devices](#), 2020.

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

Minn. Stat. § 453.51.

- A brief summary of the risk of contamination of the local drinking water source.
- The regulated contaminant found in local drinking water.
- The potential health effects of any contaminant detected in violation of an EPA health standard.
- An accounting of the system's actions to restore safe drinking water.
- An educational statement for vulnerable populations about avoiding *Cryptosporidium* (a type of parasite).
- Educational information on nitrate, arsenic, or lead in areas where these contaminants may be a concern.
- Phone numbers of additional sources of information, including the water system.
- EPA's Safe Drinking Water Hotline number.

State reports may have state specific information in addition to the basic information above.

B. Cross connection control

Plumbing cross connections – where contaminated water or other substances from an outside source flow 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 classified 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.

Additionally, the Minnesota Plumbing Code 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 municipal waterworks. The municipality is responsible for notifying owners of backflow devices of the need for initial and annual testing.

III. Structure of utilities

The law authorizes any statutory city to own and operate the following utilities:

- Sewers.
- Waterworks.
- District heating systems.
- Gas systems.
- Electrical systems.
- Heat systems.

RELEVANT LINKS:

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

[Minn. Stat. §§ 453.51 - 453.62.](#)

[Minn. Stat. § 452.08.](#)

[Minn. Stat. § 216B.1691.](#)

[Minn. Stat. § 216B.2422.](#)

[Minn. Stat. § 452.26.](#)
[Minn. Stat. § 452.25.](#)

- Power systems.
- Hydroelectric generating plants.

A. Types of municipal utilities

Cities can use their police powers to require residents to connect to city water for public health reasons. One Minnesota case held that a township could require, by ordinance, that residents connect to city water. This unpublished case references several United States Supreme Court cases that held that, for public health reasons, cities could require residents to connect their toilets to city sewer systems. The case also refers to other United States Supreme Court cases that held that these ordinances were a valid exercise of city police powers. Because of the precedence of these United States Supreme Court cases, it is likely that Minnesota courts would agree with their holdings. Cities must adopt a local ordinance that requires and explains connections, rates, billing, and other information.

Two or more statutory and/or charter cities, by resolution, can form a separate municipal power agency 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.

First-class cities specifically can own, construct, acquire, purchase, maintain, and operate any public utility.

Municipal power agencies are subject to state renewable energy mandates. Renewable energy sources are electricity generated through use of solar, wind, hydroelectric with a capacity of less than 100 megawatts; hydrogen, or biomass.

Large municipal power entities (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 integrated resource planning.

A “resource plan” is a list of resource options that a utility could use to meet the service needs of its customers over a forecast period (the specific timeframe during which the utility predicts future energy usage or demand). The resource plan explains when and how much of each resource option would be used to meet those service needs. These resource options include using, refurbishing, and constructing utility plant and equipment, buying power generated by other entities, controlling how much energy customers use, and helping customers save energy.

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

RELEVANT LINKS:

[Minn. Stat. § 412.321, subd. 1.](#)
[Minn. Stat. § 412.331.](#)

[Minn. Stat. § 412.341, subd. 1.](#)

[Minn. Stat. § 412.361.](#)

[Minn. Stat. § 412.391.](#)

[Minn. Stat. § 412.321, subd. 1.](#)
[Minn. Stat. § 444.075, subd. 3\(b\).](#)

B. Supervision of municipal utilities

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.

A local public utilities commission has extensive statutory powers including:

- The powers to extend, modify, or rebuild any public utility, and to do anything necessary for its proper and efficient operation. The local public utilities commission can make any necessary contracts for these purposes.
- The power to make use of all help necessary for the management and operation of the public utility, assign duties of officers and employees, and set their pay.
- The power to buy all fuel and supplies. The local public utilities commission can purchase wholesale electric energy, steam heat, hot water energy, gas or water for municipal distribution.
- The power to set rates and adopt reasonable rules and regulations for utility service supplied by the municipally owned public utilities within its jurisdiction.
- The power to enter agreements with the council for:
 - Payments by the city for utility service.
 - Compensation when the commission or the city uses each other's buildings, equipment, and personnel.
 - Payments made to the city in place of taxes.
 - Transfers of surplus utility funds to the general fund.
 - Agreements on other aspects of the relationship between the commission and the council.

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

The structure of the municipal utility and applicable laws determine the ways it can recover payment for utility services.

IV. Rates in general

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

RELEVANT LINKS:

[Minn. Stat. § 103G.291.](#)

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

[Minn. Stat. § 103G.291, subd. 3.](#)

See Dept. of Natural Resources: [Water Supply Plans](#) for templates, checklists and instructions.

[Minn. Stat. § 103G.291, subd. 1.](#)
[Water Usage in a Critical Water Deficiency](#), LMC Model Ordinance.

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.

B. Water conservation

Current water conservation law provides flexibility to municipal water utilities. 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 water demand. They must do this before requesting approval from the commissioner of health to construct a public water supply well or an increase in the authorized volume of water appropriation. “Demand reduction measures” are measures that reduce water demand, water losses, peak water demands, and nonessential water uses.

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 calculate water rates by counting each residential unit as an individual user. The law does not specify the type of conservation rate system required; however, city water utilities *cannot* offer a rate structure that rewards consumption. So, rates cannot decrease with increased water consumption.

2. Water supply plans

Cities must include an explanation of their conservation rate structure in their water supply plan. A section of the law exempting public water suppliers without meters was deleted in 2012, making public water suppliers with no meters subject to conservation rate and water supply plan law. Public water suppliers serving more than 1,000 people must update their water supply plan and submit it to the commissioner of natural resources for approval every 10 years.

3. Critical water deficiency

This law also requires that cities have an ordinance in place for declaration of a local critical water deficiency plan in case the governor declares a critical water deficiency in the state.

RELEVANT LINKS:

[Minn. Stat. § 412.221, subd. 11.](#)

[Prohibiting Private Wells, LMC Model Ordinance.](#)

[Minn. Stat. § 462.357, subd. 1.](#)

[Minn. Stat. ch. 1031.](#)

[Minn. Stat. § 444.075, subd. 3.](#)
See [Establishing City Water and Sewer Accounts](#), LMC Model Ordinance.

[Minn. Stat. § 444.075, subd. 5.](#)

[4 A.L.R.2d 595.](#)

[Minn. Stat. § 456.33.](#)

[Minn. Stat. § 216B.025.](#)
[Minn. Stat. § 216B.026.](#)

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

[City of Moorhead v. Minn. Pub. Utils. Comm'n](#), 343 N.W.2d 843, 846 (Minn. 1984).

C. Regulation of private wells

State law gives cities the authority to regulate or prohibit private wells by ordinance: “The council shall have power to provide and by ordinance regulate the use of wells, cisterns, reservoirs, waterworks, and other means of water supply.” Cities should consult their city attorney when crafting a local ordinance governing private wells.

Zoning law also gives cities the authority to prohibit private wells or to designate areas of the city where private wells are allowed. Note that the Minnesota Department of Health regulates the construction, repair, and sealing of wells, but this still allows cities to regulate or prohibit private wells within city boundaries.

D. Basis of water charges

A statutory or home rule charter city can 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.

Statutory and home rule charter cities can contract to provide water to non-residents. The charges for non-residents can include, but are not limited to, costs for connection, maintenance, and use of the city’s facilities. The city sets out the terms of the contract, including fees, charges, and future improvements. The non-residents (either individuals or businesses) agree to those charges. Generally, city utilities can 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 required to provide utility services to residents outside city boundaries.

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

A municipal gas or electric utility in a charter or statutory city, or a cooperative electric association, can elect to have its municipal gas or electric utility services regulated by the PUC, which would determine reasonable rates and payment schedules for the services. However, no municipal electric or gas utility in Minnesota has elected to do so.

A city can 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).

Courts generally respect the decisions of a government body establishing utility rates.

RELEVANT LINKS:

[Patti Amanda's Inc. v. City of Biwabik](#), No. A21-0680 (Minn. Ct. App. Feb. 7, 2022) (unpublished decision).

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

[Minn. Stat. § 444.075, subd. 3.](#)

[Minn. Stat. § 272.01, subd. 3.](#)

[Minn. Stat. § 453A.07.](#)
[Minn. Stat. § 453.57.](#)

9 McQuillin Mun. Corp. § 26:40 (3d ed.).

[Minn. Stat. § 444.075, subd. 3a\(4\).](#)

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

For example, in an unpublished decision, the Minnesota Court of Appeals found that a city was not in violation of its authority under Minn. Stat. § 444.075 when it charged a base rate for each dwelling unit within a multiple-unit building.

E. Fair return

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

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

F. 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.

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

A "sanitary sewer" includes sanitary sewer systems, sewage treatment works, disposal systems, and other facilities for disposing of sewage, industrial waste, or other waste. For sanitary sewer, cities can assess charges according to the amount of water consumed or based on the classification of the premises receiving the service (residential, commercial, etc.).

Cities can also combine these formulas to set sanitary sewer charges based on the type of property and the amount of water used. Sanitary sewer charges cannot be based on the size, or square footage, of the property served.

2. Water charges

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

RELEVANT LINKS:

[Minn. Stat. § 444.075, subd. 3.](#)

[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).

[Minn. Stat. § 444.25.](#)

[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).

[Minn. Stat. § 444.075, subd. 3b\(4\).](#)

See Section IV-F-1, *Sanitary sewer charges*.

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.

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.

Connection charges can be set based on the actual cost of connection as well as assessments paid by a connecting property or by any other method, if the 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.

Availability or standby charges are additional charges or fees that a municipal water utility charges to owners of structures with fire protection systems like standpipes, 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.

The term “availability charge” is a charge for landowners whose property is next to a water or sewer line, even if the owner does not connect to the line. This charge is for the value of having the option to connect to the system.

3. Storm water charges

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 can be set according to the size of the property (adjusted for a reasonable calculation of the storm water runoff) or based on the classification of the property. Storm sewer charges can 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 cannot be based on the amount of water consumed at a particular property.

RELEVANT LINKS:

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

Minn. Stat. § 216B.164, subd. 3(a).

In the Matter of a Request for Dispute Resolution with People's Energy Cooperative Under the Cogeneration and Small Power Production 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."

G. Municipal gas and electric charges

The governing body (either the city council or the appointed local public utilities commission) sets rates for municipal electric service and can 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.

Municipal electrical utilities or cooperative electric associations can charge an additional fee to recover the fixed costs that the customer has not already paid for through their existing billing arrangement. 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 can charge these customers a monthly fee for fixed costs.

Additionally, the law provides a standard of review (fair and reasonable) that the Minnesota Public Utilities Commission (PUC) uses to decide complaints brought by customers of those types of utilities. A standard of review is the criteria and scope of the examination the PUC uses when resolving disputes related to utility services. These fees are a matter of some debate so consulting the city attorney is best when a municipal electric utility considers them.

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 before changing budget payment amounts.

Municipal gas and electric utilities are also required to offer customers a payment agreement for payment of delinquent charges (charges that are overdue for payment). Payment agreements must consider a customer's financial circumstances and any other household circumstances. The utility cannot 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 exceptions to this general rule. The state assumes that fuel oil, coal, wood, hot water, propane, and liquid propane (LP) gas delivered to a residence is for residential use and is not subject to state sales tax.

RELEVANT LINKS:

[Minn. Stat. § 297A.70, subd. 3\(a\)\(11\).](#)

[Minn. Stat. § 297A.70, subd. 2.](#)

Sales Tax Fact Sheet 142:
[Local Governments – Cities, Counties, and Townships.](#)

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

Sales Tax Fact Sheet 157
[“Residential Utilities.”](#)

Additionally, payments made to electric utilities and cooperatives as a “contribution in aid of construction” are not taxable. Water used for residential purposes is not taxable. Charges for sewer services are never taxable.

A. Sales tax on water

Water used to fight fires is exempt from state sales tax. 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.”

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.

Note: there may be other goods and services subject to state sales tax that are not in the list above. 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

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.](#)”

*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).

[Minn. Stat. § 13.355, subd. 3.](#)

[Minn. Stat. § 216B.098,
subd. 7.](#)

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

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

Cities can develop reasonable regulations to operate successful municipal utilities and to enforce the collection of charges. Regulation of municipal utilities must be done 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

Cities cannot reveal Social Security numbers in any mailings and cannot require customers to mail in Social Security numbers so that the number is visible.

Additionally, if a utility requires a new customer to provide a Social Security number on an application for utility service, the utility must accept an individual taxpayer identification number in place of a Social Security number. The utility application must indicate that the utility accepts an individual taxpayer identification number.

B. Contracts

To establish a basis for enforcing collection of utility charges, cities can enter contracts with individual consumers. Even when no formal contract existed between a city and a consumer, the Minnesota Supreme Court found an implied contract (a contract formed based on actions, conduct, or circumstances) existed when a consumer either allowed or requested that the property receive the service.

Some cities require a formal application for service, which can be considered an agreement or contract between the utility and the consumer depending on the language in the application. Alternatively, other cities state in their ordinances that the ordinance itself is at least part of a contract between the city and consumers of municipal utility services, and that those consumers have accepted the terms of that contract.

C. Billing

Each bill should provide due dates, credits for early payment (if any), and penalties for late payment. This is a good practice whether bills are sent monthly, quarterly, or otherwise. Bills should also indicate at what point in time a charge is considered delinquent (overdue for payment).

RELEVANT LINKS:

See also Appendix B:
monthly billing cycle.

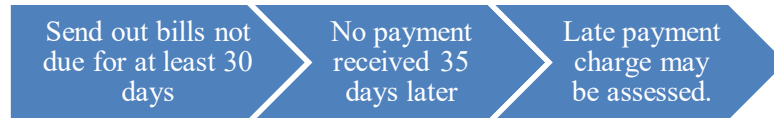
See Appendix A: sample
utility bill.
See Section XI-D.

[Minn. Stat. § 471.381, subd.
1.](#)

[City of Hopkins: “Auto Pay
Your Utility Bill.”](#)

[Minn. Stat. § 471.381, subd.
2.](#)

City councils set policies governing utility billing, and staff carry out those policies through billing practices or processes that best fit the city and the utility system. Just as an example of a billing cycle, consider the following timeline:



City councils set out billing practices and timelines in the local ordinance.

Additionally, 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. This statement means that if utility bill remains unpaid, then a legal hold can be placed on the property to ensure that there is a legal mechanism to recover the costs of the unpaid bill.

Cities can also use computer software to allocate partial payment of overdue utility charges consistently. This means distributing a payment that is not enough to cover the entire amount owed across different charges or debts. 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 on specific state law, city councils can set up a variety of billing options and procedures, including but not limited to:

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

Cities should develop policies and procedures for billing that are tailored to meet local needs. Many Minnesota cities post abbreviated policy and procedure statements on the city website. More information is often made available through direct contact with city utility departments by phone or email.

D. Mistakes in billing

Generally, even where a meter is inaccurate or defective, a city utility can recoup the undercharges.

RELEVANT LINKS:

[Minn. Stat. § 541.05.](#)

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

[Minn. Stat. § 216B.098, subd. 4.](#)

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

[Avoiding Pitfalls – Policy for Account Adjustments and Write-Offs](#). Office of the State Auditor, E-Update, (July 17, 2015).

[Minn. Stat. § 444.075, subd. 1\(c\).](#)
64 Am. Jur. 2d Public Utilities § 42-43.

[Minn. Stat. § 471.345, subd. 13\(a\)\(9\).](#)

Recouping undercharges means recovering or collecting the amounts that were initially undercharged by the utility. This can happen when the utility discovers that it did not bill a consumer the full amount owed for utility service. The utility then seeks to recover the unpaid balance to correct the billing mistake.

If a municipally owned and operated utility undercharges its consumers, state law may allow the utility to seek recovery of underpayments for the last six years.

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 did not cause the undercharge. The agreement must cover a period of time equal to the period of time during which the undercharge occurred, or a different time period that the customer and the utility agree to. Interest and delinquency fees cannot be charged under the agreement.

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

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

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

Purchases of new water meters may be exempt from competitive bidding law, also known as the municipal contracting law. Cities can enter certain agreements for "energy conservation measures" without going through a competitive bidding process. 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.

LMC information memo, [Administrative Search Warrants](#).

[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, 2007).

[City of Golden Valley v. Wiebesick](#), No. A15-1795, 2017 WL 3045553 (Minn. July 19, 2017).

[Minn. Stat. § 325E.026, subd. 2](#).

A.G. Op. (Feb. 13, 1975). See Section XV, *Bankruptcy proceedings*.

[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).

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

Before entering a home to check, replace, or repair city meters, the city must have the written consent of the property owner. If the property owner refuses to give consent to enter private property to deal with a meter issue, the city should pursue an administrative search warrant. Courts may consider it a trespass if a city enters private property without the consent of the property owner or without an administrative search warrant. This is likely 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.

City administrative search warrant procedures must include notice to tenants, not just to landlords. This notice must include an opportunity for the property owner to be heard in court. If the city applying for the warrant does not disclose it, the court can ask about any planned police presence for the inspection. Typically, absent a threat of danger, police do not participate in the inspection. A warrant is likely not needed if the situation on the property is “an emergency or a compelling need”. City utilities should consult the city attorney if issues involving inspection of meters on private property develop.

If a person tampers with a meter or engages in unauthorized use of a utility service, a city utility can 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

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.

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 different ways to ensure payment of charges. For example, some utilities require deposits from consumers before starting service and refund the deposit if the consumer pays charges on time for six consecutive months.

RELEVANT LINKS:

[Minn. Stat. § 325E.02.](#)
A.G. Op. (Feb. 13, 1975).

[Minnesota Department of Commerce.](#)

[Minn. Stat. § 325E.02.](#)

[Minn. Stat. § 325E.02\(a\).](#)

43 A.L.R.2d 1262.

[Minn. Stat. § 345.34.](#)
[Minn. Stat. § 345.41.](#)
[Minn. R. 2885.0200 et seq.](#)

[Minnesota Department of Commerce Unclaimed Property.](#)
[Minn. Stat. § 345.43.](#)

Some cities require deposits from consumers with lower credit ratings. If 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

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 must 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 can be used (for example, for nonpayment of charges).

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.

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

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 like commercial or residential uses. Deposits can be returned as a direct payment or as a credit on utility bills.

B. Unclaimed deposits

Utility deposits that are unclaimed for more than one year after service is terminated are considered abandoned. State law requires abandoned utility deposits to 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.

RELEVANT LINKS:

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

State ex rel. Latshaw v. Board of Water & Light Com'rs of Duluth, 117 N.W. 827 (Minn. 1908). A.G. Op. 624-C-4 (April 4, 1941).

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

[Minn. Stat. § 325E.021](#).

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

IX. Credits and penalties

As part of the authority to set rates and develop regulations, municipal utilities can offer consumers credit for early payment or assess penalties for late payment. Courts view encouraging early or timely payment of charges as a way to prevent loss and debt for public utilities.

In fact, the Minnesota Supreme Court found an ordinance offering a credit for timely payment and a penalty for late payment “almost necessary” for the prompt collection of utility charges.

A. Penalties are not illegal

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 laws that prohibit excessive interest rates do not cover penalties.

B. Penalty terms

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

A city water utility can enact an ordinance making landlords, as owners of property, responsible for tenants’ utility charges because the landlord allows or requests connection of the property to the utility and lets tenants use the services. The Minnesota Supreme Court found this to be more like a contract between the utility and the landlord than requiring a person to pay someone else’s debt. The Court also found this practice reasonable if adequate notice is provided to property owners. Given the frequency of tenants relocating, an ordinance making landlords responsible for tenant’s water charges helps ensure payment.

B. Municipal gas and electric

Municipal gas or electric utilities cannot:

RELEVANT LINKS:

[Minn. Stat. § 325E.025.](#)

[Minn. L. 2024, c 107, s 9,](#)
repealing [Minn. Stat. § 504B.215.](#)

See [Minn. Stat. § 216B.022.](#)
[Minn. Stat. § 216B.023.](#)
[Minn. Stat. § 216B.024.](#)
[Minn. Stat. § 504B.216.](#)

[Minn. Stat. § 216B.022,](#)
subd. 1(f).

[Minn. Stat. § 216B.022,](#)
subd. 1(e).

See Section XI-I, *Shutting off utilities in landlord-tenant situations.*

- 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.
- Demand that the current tenant pay the outstanding bill or other unpaid charge left by previous tenants who have moved out before starting utility service.
- Place a lien on the landlord's or owner's property for a tenant's outstanding bill or charge whether created by local ordinance or otherwise.

A utility can 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

The law governing loss of utility service in single-metered residential buildings has been repealed as of January 1, 2025.

D. Submetering in shared-metered residential buildings

Effective beginning January 1, 2025, are a handful of new laws that govern how utility billing is handled between landlords and tenants when landlords implement separate meters for each unit in their property.

While these new laws mainly govern landlord and tenant rights and procedures regarding billing and disconnection of utility service, there are some important provisions that may affect cities' billing policies, practices, and procedures.

These new laws govern submetering in shared-metered residential buildings. A submeter is a meter owned or installed by a landlord, third party billing agent, or other agent of the landlord that measures the utility service consumed solely within an individual dwelling unit in a shared-metered residential building. Shared-metered residential buildings include residential buildings with multiple separate residential dwelling units where the buildings' utility service is measured by fewer meters than the number of separate dwelling units in the building. Shared-metered residential buildings do not include manufactured home parks.

Cities will likely encounter situations where their municipal utilities provide service to these shared-metered residential buildings and will interact with landlords and tenants when there are issues with billing and payment.

RELEVANT LINKS:

See Section XI-D-1,
*Advantages of certifying
unpaid charges.*

[Minn. Stat. § 273.125, subd.
8.](#)

See Section XI-D-2,
*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.](#)

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

64 Am. Jur. 2d Public
Utilities § 46.
A.G. Op. 387g-7 (April 28,
1965).

Cities should work with their city attorneys to better understand how these new laws may affect their city policies, practices, and procedures when issues with billing for municipal gas, electric, and water and sewer utilities arise.

E. Manufactured homes

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

- If a park has only one shut-off valve for the entire park, a city cannot shut off the park to seek payment from one resident.
- Charges for an individual manufactured homeowner cannot be certified for payment with taxes because the homeowner 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 can seek payment for services; but even then, 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 can 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 can charge a rate high enough to cover costs but cannot 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

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

Similarly, a city likely cannot make a consumer who is currently using utility services pay outstanding delinquent utility bills left unpaid by a previous owner of the property.

RELEVANT LINKS:

64 Am. Jur. 2d Public Utilities § 52. [Bernier v. Interstate Power Co.](#) 57 N.W.2d 55 (Iowa 1953).

60 A.L.R.3d 714 § 2.

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

See Section XI-D-1, *Advantages of certifying unpaid charges*, below.

See Section XI-F-1, *Households with military personnel*. Minn. Stat. § 325E.028.

Minn. Stat. § 216B.098, subd. 5.

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 below.

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.

A municipal utility likely 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.

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

Note that circumstances listed below limit a city’s ability to shut off utilities for nonpayment. As discussed below, cities may find certifying unpaid utilities easier due to these special situations limiting the shut off of utilities.

1. Households with military personnel

Households with military personnel are protected from utility shut offs. City utilities cannot 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.

2. Medical emergencies or necessary medical equipment

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. The utility must receive 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 can 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).

RELEVANT LINKS:

See Section XV, *Bankruptcy proceedings*.

[Minn. Stat. § 216B.0975](#).

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

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

See [Water and Sewer Service Shut Off Notice](#), LMC Model Form.

See [Notice of Intent to Certify Unpaid Water and Sewer Charges](#), LMC Model Form.

Customers who are in arrears must contact and enter a payment agreement with the utility.

3. Bankruptcy

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 can allow a city to shut off utility service if the consumer does not provide adequate assurance of payment. A municipal utility cannot try to certify previously unpaid charges once a consumer files for bankruptcy.

4. Excessive heat watch

A municipal utility cannot 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

Importantly, Minnesota law recognizes that consumers of utility services are entitled to the benefit of continued utility service. Service can still be shut off for nonpayment and delinquent bills can still be certified to be collected with taxes. However, 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

First, a reasonable time before the shut off or certification is scheduled to happen, the utility must give a consumer information or notice about the pending action, and, in the same notice, their right to protest it.

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

RELEVANT LINKS:

See Section XI-H, *Minnesota Cold Weather Rule*.

[Minn. Stat. § 444.075, subd. 3e.](#)

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

[Minn. Stat. § 444.075, subd. 3e.](#)
A.G. Op. 450-F-1 (September 8, 1969).

2. Opportunity to discuss

Second, due process requires that a municipal utility give 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 correct charges or resolve non-payment issues.

This may include setting up a payment plan that the municipal utility and the consumer agree to. 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

Timelines are important in this two-step process. The law does not specify the exact number of days for notice of a pending city action. The cold weather rule gives a useful example of reasonable timelines. Notice is mailed to the customer at least 30 days before the utility acts.

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

D. Certification of delinquent municipal water and sewer charges

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

This can be done once a year or more often. Once delinquent charges are certified to the county auditor, they are treated the same as other taxes, even though the taxes are charged or “spread” against individual properties. The unpaid debt becomes a lien or charge against the property as soon as the county receives the certified information from the city.

Note: the city ordinance should also define when unpaid water and sewer charges become delinquent and subject to certification.

The law states that the governing body can certify “unpaid charges to the county auditor with taxes against the property served for collection as other taxes are collected.”

RELEVANT LINKS:

A.G. Op. 387g-7 (April 28, 1965). A.G. Op. 59-A-36 (January 26, 1961).
[Minn. Stat. § 279.01](#).
See [Certifying Unpaid Charges](#), LMC Model Resolution.

[Minn. Stat. § 282.07](#).

[Minn. Stat. § 282.07](#).

Certified charges accrue statutory penalties in the same manner that unpaid property taxes accrue penalties. Below is a discussion about how counties code these unpaid charges when they are “spread” on the tax rolls.

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 language in the law indicates that the unpaid charges are like taxes, not one-time special assessments for specific improvements. There are two main reasons for this:

1. The law states 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 law specifies that unpaid water and sewer charges should be collected in the same manner “as other taxes.” The Legislature’s use of the term “other taxes” indicates that these unpaid charges are treated with the same importance and legal significance as other taxes collected by a county.

Cities and other water systems operators 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 the charges to be coded in other ways. Water system operators expressed concern that they would not be able to recover money on the charges if the charges are coded as special assessments. This is because special assessments levied before forfeiture are canceled upon forfeiture.

Cities should ask their county auditor when unpaid water and sewer bills must be *certified*. The law implies a deadline of Dec. 28 along 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. This is because special assessments that are attached to a property are erased if that property is forfeited for failure to pay property taxes.

1. Advantages of certifying unpaid charges

Certifying delinquent water and sewer charges, instead of shutting off water for nonpayment, has several advantages:

- Concerns about shutting off water services in cold weather, which can potentially damage older infrastructure, are eliminated.

RELEVANT LINKS:

See Section XI-B, *Special situations*, above.

See Section XV, *Bankruptcy proceedings*.

Prudential Co. of Minnesota v. City of Minneapolis, 277 N.W. 351 (Minn.1938).
[Minn. Stat. § 444.075, subd. 3e.](#)

64 Am. Jur. 2d Public Utilities § 46.

[Minn. Stat. § 327C.09, subd. 2.](#)

- The municipal utility does not need to check if the residence or unit is occupied.
- Certification is not restricted by laws like those that restrict shutting off utilities in special situations.
- If the property with delinquent utility charges is sold after certification, the municipal utility is protected.
- Confusion is reduced when joint property owners disagree on who is responsible for utility charges (for example, in divorce proceedings). The unpaid charges simply attach to the property and must be paid along with property taxes.
- 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 no longer need to spend time collecting payment.
- Certified charges survive the tax forfeiture process, ensuring the city eventually receives payment.

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, so cities should consult their city attorney for specific legal advice.

2. Certification and manufactured home parks

A statutory city might consider certifying unpaid water charges to the manufactured home park property owner if:

- The manufactured home park is privately owned.
- The local ordinance requires that utility accounts for all rental properties 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 before 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 their city attorney for specific legal advice before certifying unpaid utility charges to the property owner of a manufactured home park.

RELEVANT LINKS:

A.G. Op. 624-D-5 (July 6, 1953).

[Minn. Stat. § 366.012.](#)
[Minn. Stat. § 415.01.](#)
Great Western Industrial Park, LLC, Relator, vs. *Randolph Township*, 853 N.W.2d 155 (Minn. Ct. App. 2014).

[Minn. Stat. § 325E.025, subd. 2.](#)

See also [Minn. Stat. § 514.67](#).

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 *Water and Sewer Service Shut Off Notice*, LMC Model Form.

[Minn. Stat. § 325E.028.](#)

E. Certification of municipal gas and electric charges

Unlike municipal water and sewer utilities, municipal gas and electric utilities do not have specific statutory authority to certify delinquent charges to taxes. In a 1953 opinion, the attorney general stated that in a statutory city, an electric or gas utility could not certify delinquent charges to taxes.

There is some disagreement with this position. In 1989, a law was passed giving towns the authority to certify unpaid service charges to the county auditor to be collected with taxes. Additionally, a 1973 law, amended in 2003, states that cities have all the powers afforded to towns. Combining these two laws may allow municipal gas or electric utilities to pass an ordinance to certify delinquent charges to the county auditor for collection with taxes, provided that the property owner or their agent contracts for the utility service.

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 their agent contracts for the utility service. "Property owner" includes a manufactured home park owner.

Certification of unpaid electric or gas charges is not settled law. Cities should consult their city attorney for specific legal advice and appropriate procedures while drafting their ordinances. Additionally, cities should seek legal advice from the city attorney before deciding to certify a tenant's unpaid gas or electric charges to a landlord's or property owner's taxes for collection with other property taxes.

F. Shutting off utility service due to nonpayment

Generally, municipal utilities can shut off water, electricity, or gas if a consumer fails to pay reasonable charges or comply with reasonable regulations laid out 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.

If a customer appeals a pending shut off using the appropriate appeal process, a city cannot shut off service while the appeal is pending.

1. Households with military personnel

A municipal utility cannot 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 and the residential customer:

RELEVANT LINKS:

[Minn. Stat. § 325E.028, subd. 1\(b\).](#)

[Minn. Stat. § 325E.028. Annual Utility Payment Arrangement Notice](#), LMC Model Form.

[Utility Payment Schedule Arrangement](#), LMC Model Form.

[Minn. Stat. § 216B.0975.](#)

- Has a household income below the state median or receives energy assistance and:
 - Agrees with the municipal utility to pay 10% of their gross monthly income toward their bill.
 - Keeps up with their payments under the agreement.
- Has a household income above the state median and:
 - Sets up a payment plan with the municipal utility that fits their financial situation.
 - Keeps up with their payments under the plan.

“Household income” is income measured after the military orders are issued. Note that cities cannot use load limiters to limit utility service to qualifying households with military personnel under this law. Load limiters are devices used by utilities to restrict the amount of utility service supplied to a household.

a. Annual notice of this protection

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 allows the customer to apply for the protections offered by this law.

b. Income verification

Income verification can be done by the local energy assistance provider, the municipal utility, or the cooperative electric association. However, customers who automatically qualify for protection against disconnection due to receiving any form of public assistance, including energy assistance based on income below the state median, do not require additional qualification.

2. No disconnection in extreme heat

A municipal utility cannot 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:

[World Health Organization, Water and sanitation, Household water security, Centers for Disease Control and Prevention, Typhoid fever.](#)

[Minn. R. 1300.0180.](#)

[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, \(May 12, 1967\).](#)

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, which connects the street main to the house. In some cases, the water service is not restored for long periods of time because residents fail to pay or fix the line. Similar problems occur with city sewer systems, but “shutting off” sewers has serious public safety risks.

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. Not having enough 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.

If a city has adopted the State Building Code, the building inspector must order the evacuation of any building or part of a building if continued use is dangerous to the residents’ life, health, or safety. The order must be in writing and state the reasons for the action. In an emergency, the building inspector must have the authority to disconnect utility services to the building, structure, or system to eliminate any hazards to life or property.

The building inspector can also revoke the certificate of occupancy and instruct the responsible person that no one can live in the residence without water, ordering them to fix the issue. If water is shut off because the property owner fails to repair the lateral line, the city can notify the owner and give them a chance to discuss the situation and then fix the line or abate the problem. However, before entering private property, cities must consult with the city attorney, as this generally requires written permission or a court order.

If the city has not adopted the State Building Code, it can address this issue by ordinance. It is long established law that cities can use their police power to pass an ordinance that prohibits the use of sanitary facilities that are not connected to the public water supply. The State Plumbing Code requires that all places with plumbing fixtures that are used for human occupancy must have (drinkable) water that meets code specifications. Permanent residences must have hot water for bathing, washing, laundry, cooking purposes, dishwashing, and maintenance.

Cities have the authority to pass an ordinance requiring all residences to have a working and safe supply of potable water, consistent with the State Plumbing Code.

RELEVANT LINKS:

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 A-C.](#)
[Minn. Stat. § 444.075, subd. 3e.](#)
See Section XI-C, *Due Process*.
See Section XI-D, *Certification of delinquent water and sewer charges*.

[Minn. Stat. § 216B.097.](#)

[Minn. Stat. § 216B.097, subd. 4.](#)

[Minn. Stat. § 216B.096.](#)

[Minn. Stat. § 216B.097.](#)

[Minn. Stat. § 216B.097.](#)

[MMUA Municipal Utilities Guide to Minnesota's Cold Weather Rule.](#)

Additionally, ordinances requiring toilets to be installed and connected to the public sewer system, and prohibiting the maintenance of sanitary facilities that are not connected to the sewer system, are a valid exercise of the city council's police power.

Cities can certify unpaid water and sewer charges for collection with taxes. To avoid leaving residences without water or disconnecting sewer services, which has serious health risks, city ordinances can allow water services to be restored after a number of days determined by council. Additionally, city ordinances can allow, after providing notice and due process, any unpaid charges and reasonable fees to be certified to the county auditor for collection with property taxes. Properly executed certification increases the likelihood of payment and protects the city's housing by ensuring basic environmental sanitation and safety through well-maintained plumbing systems.

H. Minnesota cold weather rule

The Minnesota cold weather rule, which applies to municipal utilities, is an important to keep in mind before shutting off water service during the winter. This rule requires utilities to maintain and restore utility service to residential units during cold weather months (Oct. 1 through April 30), if disconnecting the service would affect the primary heat source of the unit. The consumer must comply with the provisions of the rule for this protection to apply.

"Disconnection" includes a service, load limiter, or any device that limits or interrupts electric service in any way.

Currently, it is unclear whether this rule applies to municipal water utilities. The law defines "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 applies 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.

The cold weather rule certainly applies to municipal gas and electric utilities. From Oct. 1 to April 30, the rule requires that municipal gas or electric utilities maintain and restore service to residential units (and even refrain from limiting electrical supply with a load limiter) during cold weather months if the disconnection affects the primary heat source and if:

RELEVANT LINKS:

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

- The customer has declared an inability to pay using forms provided by the utility. Customers receiving energy assistance are considered to have demonstrated an inability to pay.
- The customer's household income is at or below 50% of the state median income.
- Income verification can be conducted by the local energy assistance provider or the utility, unless the customer automatically qualifies for protection against disconnection as a recipient of any public assistance, including energy assistance.
- The customer has entered into a payment schedule that takes their household's financial resources into account and has kept up with payments. (The requirement that customers be current with bills prior to Oct. 15 to qualify for protection from disconnection has been removed from the law.)
- The customer receives referrals to energy assistance programs, weatherization, conservation, or other programs that may reduce their energy bills.

Between Aug. 15 and Oct. 1 of each year, a municipal gas or electric utility must notify all residential customers of this rule.

Before disconnecting service to a residential customer between Oct. 1 and April 30, the municipal gas or electric utility must give the following information to a customer:

- Notice of proposed disconnection must be mailed 30 days before, or personally delivered 15 days before, disconnecting the service.
- A statement explaining the customer's rights and responsibilities.
- A list of local energy assistance providers.
- Forms on which to declare inability to pay.
- A statement explaining available payment plans and other opportunities to maintain utility service.

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

A municipal utility must also provide written notice of a proposed disconnection to the local energy assistance provider and the Minnesota Department of Commerce.

If a residential customer must be involuntarily disconnected between Oct. 1 and April 30 for failure to comply with the provisions of the cold weather rule, the disconnection cannot occur at any of the following times:

- On a Friday, unless the customer refuses to enter a payment agreement offered that day, either in person or by telephone contact by the utility.
- On a weekend, holiday, or the day before a holiday.
- When utility offices are closed.

RELEVANT LINKS:

[Minn. Stat. § 216B.097, subd. 3\(b\).](#)

[Minn. Stat. § 216B.096, subd. 9.](#)

[Minn. Stat. § 216B.097, subd. 5.](#)

[Minn. Stat. ch. 504B.](#)
[Minn. Stat. § 444.075.](#)

[Minn. Stat. § 504B.225.](#)

[Minn. Stat. § 504B.221.](#)

- After a business closes on a day when disconnection is permitted, unless a field representative of the utility, who has the authority to enter 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 cannot be disconnected until the utility attempts to confirm whether the residential unit is actually occupied. This can be accomplished by visiting the residential unit or, with remote metering, by examining usage data over the past 24-hour period.

If a customer appeals a notice of disconnection (before the service is disconnected) the utility cannot disconnect until the appeal is resolved. Municipal utilities should 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.

A municipal gas or electric utility can recover the reasonable costs of disconnecting and reconnecting a customer based on the cost of notice to the customer and other entities.

I. Shutting off utilities in landlord-tenant situations

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. Determining when a city can disconnect a utility service in landlord-tenant situations requires careful analysis and consultation with the city attorney.

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 can recover from the landlord treble damages or \$500, whichever is greater, and reasonable attorney's fees.

Cities cannot 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. Cities should consult their city attorney for appropriate forms and processes.

RELEVANT LINKS:

Minn. Stat. § 504B.216, subd. 13.

See *Non-Electric Utility Service Disconnection Notice to Tenants*, LMC Model Form.

Minn. Stat. § 504B.216, subd. 7.

Minn. Stat. § 504B.216, subd. 13.

Minn. Stat. § 504B.216, subd. 13(g).

Minn. Stat. § 504B.216, subd. 13(e).
See Section X-D,
Submetering in shared-metered residential buildings.

Minn. Stat. § 504B.216, subd. 13(i).

1. Landlord failure to pay and posted notice

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 natural gas, electricity, and water and sewer 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:

- 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 tenants have 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 utility service.

a. Tenant paying for water and sewer

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 is not required to pay a deposit and must be given reasonable notice of any future disconnection. Landlords must deduct the tenant’s share of any payments made to the utility bill from the tenant’s total bill.

City water utilities are not required to change their accounting system or billing records if the tenant exercises the right to pay current charges and retain water service. If there are multiple tenants in a building, the city is not required to offer the right to pay current charges and retain service to more than 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.

In shared-metered residential buildings, other tenants in the building can contribute payments to the municipal utility on the account of the tenant who is the customer of record, or on the landlord’s account.

Tenants can deduct the amount of their payment to the city utility from their next rental payment to the landlord.

RELEVANT LINKS:

See *Electric Utility Service Disconnection Notice to Tenants*, LMC Model Form.

Minn. Stat. § 504B.216, subd. 13(b).

Minn. Stat. § 504B.216, subd. 13(e).
See Section X-D,
Submetering in shared-metered residential buildings.

Minn. Stat. § 504B.216, subd. 13(i).

Minn. Stat. § 504B.216, subd. 13(f).

Minn. Stat. § 216B.0976.

See Appendix C: Contact information for investor-owned utilities.

b. Tenant paying for electric and gas

If a landlord fails to pay for electricity or gas service, or the service is shut off, a tenant or tenants can 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 can 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 if 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 is not required to offer this option to more than one tenant in a 12-month period.

As with water and sewer service, in shared-metered residential buildings, other tenants in the building can contribute payments to the municipal utility on the account of the tenant who is the customer of record, or on the landlord's account.

Tenants can deduct the amount of their payment to the city utility from their next rental payment to the landlord.

c. Landlord options

The 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.

As discussed below, 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. 1 and April 30, 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. 1 and Nov. 1 of each year.

RELEVANT LINKS:

[Minn. Stat. § 13.681.](#)
LMC information memo,
Data Practices: Analyze,
Classify and Respond.

[Minn. Stat. § 444.075, subd. 3e.](#)

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

[Minn. Stat. ch. 580 - 582.](#)

[Minn. Stat. § 580.042.](#)

See Section XI-C, *Due Process.*

See Section XI-H, *Minnesota Cold Weather Rule.* See also Section XI-E, *Certification of municipal gas and electric charges.*

Additionally, a city can 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 data under the Minnesota Government Data Practices Act.

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

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

In Minnesota, most foreclosure proceedings are done by advertisement and typically take at least a year. During these lengthy foreclosure proceedings, the defaulting owner of the property is responsible for utility charges (not the bank or mortgage holder). In rental situations, where a building with tenants enters foreclosure proceedings, utilities must be paid following 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, although they are not likely to pay them.

Generally, there is nothing preventing a city from certifying unpaid water and sewer charges after a few months of non-payment, if due process procedures are provided to the property owner and the local ordinance explains certification.

B. Municipal gas and electric

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 if it complies with due process, the cold weather rule, and the local ordinance, as discussed above.

RELEVANT LINKS:

[Minn. Stat. § 582.031.](#)
[Minn. Stat. § 582.03, subd.1.](#)
[Minn. Stat. § 582.032.](#)

[Minn. Stat. § 582.031, subd. 3.](#)
[Minn. Stat. § 582.032, subd. 4.](#)

[Minn. Stat. § 582.031, subd. 3.](#)
[Minn. Stat. § 582.03.](#)

[Minn. Stat. § 582.03.](#)

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

C. Vacant properties

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

Typically, a bank or other financial entity holds the mortgage on vacant property (until it is sold at a sheriff's sale). Mortgage holders can take steps to protect vacant property known as "preventing waste." These steps include:

- Installing or changing locks on doors and windows.
- Boarding windows.
- Installing an alarm system.
- Providing a resident caretaker.
- Otherwise preventing or minimizing damage to the premises from the elements, vandalism, trespass, or other illegal activities.

Mortgage holders can act to prevent property from falling below minimum community standards for public safety and sanitation and can add all these costs to the principal balance of the mortgage.

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. However, this is not required. The holder of a sheriff's certificate can also take steps to prevent the property from falling below minimum community standards for public safety and sanitation. City utilities and city officials can work with sellers and buyers of foreclosed and vacant properties to secure and maintain the property.

A city can establish a program, by ordinance, to identify and register vacant buildings. The city can 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

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

RELEVANT LINKS:

[Minn. Stat. § 580.22.](#)

[15 U.S.C. § 1681 et seq.](#)
[FACT Act § 114.](#) [FCRA § 615\(e\).](#) Red Flag Program
Clarification Act of 2010. [15 U.S.C. § 1681.](#)

Red Flag Program
Clarification Act of 2010.
[15 U.S.C. § 1681.](#)

- 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.

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

The Federal Trade Commission (FTC) originally developed "red flags" rules to detect, prevent, and mitigate identity theft. Enforcement of the rule was delayed numerous times. In 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 their practices to determine if the rule applies.

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

- Obtain or use consumer reports in connection with a credit transaction.
- Give 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 related 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.](#)

[Identity Theft and Municipal
Utilities, Red Flag Program.](#)

[Minn. Stat. § 471.59.](#)

[MnWARN.](#)

[11 U.S.C. § 362\(a\).](#)

To decide if this rule applies to your city, examine the municipal utility practices and procedures with the help of 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) to combat 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 the uncertainty about the application of this rule to city operations, cities should review this issue with their city attorney.

XIV. Emergencies

City water and wastewater systems provide essential services. In a disaster or emergency, the Minnesota Water/Wastewater Utilities Agency Response Network (MnWARN) offers an immediate response through mutual assistance for water, wastewater, and storm water utilities in the state.

A mutual aid agreement provides the basis for emergency assistance so that water, wastewater, and storm water utilities with physical damage can get emergency assistance in the form of personnel, equipment, materials, and other services. As explained on their website, there is no fee to join MnWARN, but the city council must adopt the MnWARN mutual aid agreement and resolution and meet other criteria to participate.

XV. Bankruptcy proceedings

Bankruptcy is a complex legal process and is beyond the scope of this memo. What follows are a few very basic principles that 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 bankruptcy proceeding.

RELEVANT LINKS:

[Federal Rules of Bankruptcy Procedure 3002\(c\)\(1\).](#)

[11 U.S.C. § 362.](#)

[11 U.S.C. § 362.](#)

[11 U.S.C. § 362\(b\)\(18\).](#)
In re Sheldahl, Inc., 298 B.R. 874, (Bankr. D. Minn. 2003).
But cf. In Re Lanford, 10 B.R. 129 (U.S.B.C. D. Minn. 1981).
[Minn. Stat. § 514.67.](#)

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

Municipal utilities must file claims in bankruptcy proceedings following federal rules. A proof of claim filed by a governmental unit is timely if filed within 180 days of the order for relief. If the governmental unit files a motion before this period ends and provides a valid reason, the court may extend the deadline for time for submitting the claim.

A. Chapter 11 or 13

Initially, utility service cannot be shut off and charges cannot be certified to taxes when a property owner with delinquent bills files for either Chapter 11 or Chapter 13 bankruptcy. Certification of unpaid water and sewer charges may be an exception, as discussed below.

A utility cannot change, deny, or discontinue service, or discriminate against the trustee or the debtor simply because a bankruptcy case has started or because the debtor did not pay a debt owed to the utility for service provided before the order for relief.

The petition for bankruptcy typically triggers an “automatic stay” that applies to some utilities and prevents:

- Any act to create, perfect, or enforce any lien against property of the estate.
- Any act to create, perfect, or enforce any lien against the debtor’s property if the lien secures a claim that arose before the bankruptcy case began.
- Any act to collect, assess, or recover a claim against the debtor that arose before the bankruptcy case began.
- The setoff of any debt owed to the debtor that arose before the bankruptcy case began against any claim against the debtor.

An automatic stay is a legal provision that temporarily halts most collection actions once the bankruptcy petition is filed and stops actions like utility disconnections.

However, one federal district bankruptcy court decision held that unpaid sewer and water charges accrued before filing a bankruptcy petition are statutory liens under Minnesota law. Thus, these unpaid water and sewer charges may be exempt from the automatic stay and arguably may be certified against a property. Cities should consult their city attorney if facing certification of unpaid sewer and water once bankruptcy proceedings begin.

For Chapter 11 bankruptcies, a utility can change, deny, or discontinue utility service if, during the 30-day period beginning when the petition was filed, the utility has not received adequate assurance of payment for utility services from the debtor or the trustee that is satisfactory to the utility. An assurance of payment must be:

RELEVANT LINKS:

[11 U.S.C. § 366\(b\).](#)

[26 U.S.C. § 6321.](#)

[26 U.S.C. § 6323.](#)

- A cash deposit.
- A letter of credit.
- A certificate of deposit.
- A surety bond.
- A prepayment of utility consumption.
- Another form of security that the utility and the debtor or trustee agree to.

However, an administrative expense priority does not qualify as an assurance of payment. If requested by a party and after notice and a hearing, the court can order that the amount of an assurance of payment be modified. Additionally, if a party in interest requests it, and after notice and a hearing, the court can order that the amount of the deposit or other security necessary to provide adequate assurance of payment be reasonably modified.

B. Other types of bankruptcy

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

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, however, likely take precedence over liens related to unpaid utility charges. In any bankruptcy proceeding, it is important to consult the city attorney for specific legal advice on utility service and utility charges.

XVI. Conclusion

Municipal utilities can establish reasonable charges and can use various methods to secure payment of utility charges. Creating a process with clear timelines and ample notice will improve the collection of utility charges. The city utility ordinance should align with the utility's processes, timelines, and notice provisions for securing payment of utility charges.

Appendix A: sample utility bill

City of _____
Utility Billing Office

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

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

Account Activity

| | |
|------------------|---------|
| Previous Balance | 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 can contact the following investor-owned utilities to receive notice of residential disconnections from October 1 to April 30, 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

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