

Mayor:
David Grant

Councilmembers:
Brenda Holden
Fran Holmes
Dave McClung
Jonathan Wicklund



**Special City Council
Work Session
August 29, 2016
Immediately Following
the Regular City Council
Meeting
City Hall**

Address:
1245 W Highway 96
Arden Hills MN 55112

Phone:
651-792-7800

Website:
www.cityofardenhills.org

City Vision

Arden Hills is a strong community that values its unique environmental setting, strong residential neighborhoods, vital business community, well-maintained infrastructure, fiscal soundness, and our long-standing tradition as a desirable City in which to live, work, and play.

CALL TO ORDER

1. AGENDA ITEMS

1.A. Utility Billing/Water Shutoff Policy

John Anderson, Acting Director of Public Works

Documents:

[MEMO.PDF](#)
[ATTACHMENT A.PDF](#)
[ATTACHMENT B.PDF](#)

1.B. County Road E Bridge Pedestrian Lighting Review

John Anderson, Acting Director of Public Works

Documents:

[MEMO.PDF](#)
[ATTACHMENT A.PDF](#)

1.C. Snow Plow, Snow Removal And Ice Control Policy

John Anderson, Acting Director of Public Works

Documents:

[MEMO.PDF](#)
[ATTACHMENT A.PDF](#)
[ATTACHMENT B.PDF](#)

1.D. LMC Policy For Donation Of Equipment

Dave Perrault, Finance Analyst

Documents:

[MEMO.PDF](#)
[ATTACHMENT A.PDF](#)

1.E. Personnel Committee Update

Personnel Committee

Documents:

[MEMO.PDF](#)

2. COUNCIL/STAFF COMMENTS

ADJOURN



DATE: August 29, 2016

TO: Honorable Mayor and City Councilmembers
Susan Iverson, Interim City Administrator

FROM: John Anderson, Acting Public Works Director

SUBJECT: Utility Billing / Water shut off Policy

Requested Action

Provide feedback to staff on utility billing / water shut off policy.

Background/Discussion

The City Council requested a discussion be held on the policy as it relates to delinquent utility bills and whether the city should shut off water on past due accounts or roll delinquent bills into quarterly assessment to the property.

The City Attorney has supplied an email on this topic (attachment A). This email contains comments from both the City Building Official and the City Attorney both favoring remaining with the current policy to certify delinquent bills instead of disconnecting service. In addition, the Attorney has provided a link to a League of Minnesota Cities memo on the topic, the portion of this memo that pertains to utility billing / water shut off (attachment B)

From a public works standpoint if directed in accordance with adopted policy Public Works can shut off water. From time to time the shut off valve may not be accessible or may not operate if it has not been turned recently or may start leaking when operated. If a water shut off valve requires repair this is a city cost and therefore the city may incur repair costs during a water shut off.

Attachments

- Attachment A: July 6, 2016 Joel Jamnik email
- Attachment B: excerpt from LMC memo on Securing Payment of Utility Charges

Attachment A

John Anderson

From: Joel Jamnik <JJamnik@ck-law.com>
Sent: Wednesday, July 6, 2016 10:34 AM
To: Dave Scherbel
Cc: John Anderson; Sue Iverson; Ryan Streff; Matthew Bachler; Dave Perrault
Subject: RE: Water shut off opinion

The League's public works listserv lit up about this topic yesterday. I have client cities that do both, including several that have municipal electric utilities that do not have clear authority to certify delinquent bills. Both methods have their positives and negatives, some of which are discussed in the LMC memo on the topic, http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwj_IO7hit_NAhXH3YMKHevvCmkQFggcMAA&url=http%3A%2F%2Fwww.lmc.org%2Fmedia%2Fdocument%2F1%2Fsecuringpaymentsofutilitycharges.pdf&usg=AFQjCNFNu9ncNLv7sigNsPJb7ddXn1pQ0g&sig2=-ZeLEcaV-d0fM7WELIPO-Q&bvm=bv.126130881,d.dmo

For example, shut-off policies now frequently run afoul of bankruptcy and medical equipment shut-off limitations, as well as the dark of night reconnection problem, and the cold weather rule. And due process hearing requirements can get very messy, as does the building code requirement of having a potable water supply in order to maintain an occupancy permit. For these reasons, most cities find certification easier and more efficient.

However, certifications can get snagged by intervening bankruptcy filings, which has led to many cities certifying quarterly and delinquencies over a certain amount or more than two quarters overdue.

Overall, I lean toward quarterly certification as the best or "least worst" collection method we have available for overdue bills, but disconnection needs to be retained as an option if we are dealing with other types of violations/enforcement issues. And our code does allow for both of those options, as well as a civil lawsuit to collect and criminal charges if there is a theft of service.

Joel J. Jamnik

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From: Dave Scherbel [mailto:DScherbel@cityofardenhills.org]
Sent: Wednesday, July 6, 2016 9:26 AM
To: Joel Jamnik
Cc: John Anderson; Sue Iverson; Ryan Streff; Matthew Bachler; Dave Perrault
Subject: Water shut off opinion

Good morning Joel,

The question has come up as to whether we can shut the water off to a home for nonpayment of their utility bill. Currently we assess the property and place the bill on their property taxes.

Our previous attorney, Jerry Filla, was pretty adamant about not shutting off someone's water bill for any reason.

From my stand point, if we shut off someone's water and they are currently living in the home, we now have to placard the home as uninhabitable for health & sanitary reasons.

What is your opinion?

Thanks,

Dave

Dave Scherbel
Building Official
City of Arden Hills, MN 55112
Office: 651-792-7818 Fax: 651-634-5123
dscherbel@cityofardenhills.org

RELEVANT LINKS:

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

[Minn. Stat. § 273.125, subd.
8.](#)

See Section XI-D-1,
*Certification of delinquent
municipal water charges,
Manufactured Home Parks.*

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

[Minn. Stat. § 327C.04, subd.
2.](#)

[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 \(April 28,
1965\).](#)

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

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

XI. Remedies for nonpayment of utility charges

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

A. Possible limits on remedies

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

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

RELEVANT LINKS:

64 Am. Jur. 2d Public Utilities § 52. *Berner v. Interstate Power Co.* 57 N.W.2d 55 (Iowa 1953). *In Re MidAmerican Energy Co.*, (Iowa U.B. Mar. 11, 2002) (NO. DRU-02-1, ID 130760).

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

Minn. Stat. § 216B.098, subd. 5.

Minn. R. 7826.1800.

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

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

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

A municipal electric utility must reconnect or continue service to a customer's residence where a medical emergency exists or where medical equipment requiring electricity necessary to sustain life is in use, provided that the utility receives written certification, or initial certification by telephone and written certification within five business days, that failure to reconnect or continue service will impair or threaten the health or safety of a resident of the customer's household. Certification is required and may be provided by a licensed medical doctor, licensed physician assistant, an advanced practice registered nurse, or a registered nurse (but only to the extent of verifying current diagnosis or prescriptions made by a licensed medical doctor). Customers who are in arrears must contact and enter into a payment agreement with the utility. (The annual service quality report must include the number of customers who requested emergency medical account status under this statute, the number whose applications were granted, and the number whose applications were denied and the reasons for each denial).

RELEVANT LINKS:

See, Section XV,
Bankruptcy proceedings.

[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 [LMC sample water shut-off notice.](#)

See [LMC sample notice sent before certifying unpaid charges to taxes.](#)

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

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

C. Due process

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

1. Notice – and how to disagree

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

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

2. Opportunity to discuss

Second, due process requires that a municipal utility provide a consumer with an opportunity to discuss the situation with the city council or a person representing the city utility who has the authority to either correct a charge or otherwise resolve the problem of non-payment.

RELEVANT LINKS:

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

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

[A.G. Op. 59-A-36 \(January
26, 1961\).](#)

[Minn. Stat. § 444.075, subd.
3 \(e\).](#)
[A.G. Op. 450-F-1
\(September 8, 1969\).](#)
[A.G. Op. 387g-7 \(April 28,
1965\).](#)
[A.G. Op. 59-A-36 \(January
26, 1961\).](#)
[Minn. Stat. § 279.01.](#)
[See LMC Sample
Resolution Certifying
Unpaid Charges.](#)

This may include setting up a payment plan agreeable to both the municipal utility and the consumer. The consumer may or may not choose to use this chance to discuss unpaid utility bills. Either way, the city is required to offer the opportunity.

3. Timing

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

4. Referenced in local ordinance

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

D. Certification of delinquent municipal water and sewer charges

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

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

The law states that the governing body may certify “unpaid charges to the county auditor with taxes against the property served for collection as other taxes are collected.” Certified charges accrue statutory penalties in the same manner that unpaid property taxes accrue penalties. Now, let’s discuss how counties code these unpaid charges when they are “spread” on the tax rolls.

RELEVANT LINKS:

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

1. The statute provides that the unpaid charges for water and sewer services provided by a local governing body should be certified to the county at the same time as local property taxes.
2. The statute specifies that unpaid water and sewer charges are to be collected in the same fashion “as other taxes.” The Legislature’s use of the term “other taxes” indicates that these unpaid charges are to be considered a form of tax that falls within the broader category that includes these and “other” taxes that a county collects.

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

All that said, cities should ask their county auditor when unpaid water and sewer bills must be *certified*; the statute implies a deadline of Dec. 28 in conjunction with property taxes, but some counties may require certification of delinquent water and sewer bills by Nov. 29. As discussed above, it is important that counties code these unpaid water and sewer charges as property taxes, not special assessments, because special assessments attached to a property are erased if that property is forfeited for failure to pay property taxes.

[Minn. Stat. § 282.07.](#)

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

64 Am. Jur. 2d Public Utilities § 46.

[Minn. Stat. § 327C.09, subd. 2.](#)

1. **Manufactured home parks**

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

- The manufactured home park is privately owned.
- The local ordinance requires that utility accounts for all rental property are in the property owner’s name (i.e. the park owner’s name).
- The manufactured park owner or agent contracts for the water services.

RELEVANT LINKS:

- Due process requirements are met prior to certification.
- A manufactured home park owner can recover possession of the land, or lot, if the tenant fails to pay utility charges after written notification.

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

2. Advantages of certifying unpaid charges

There are advantages to certifying delinquent water and sewer charges as opposed to shutting off the water for nonpayment, including:

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

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

See Section XV, *Bankruptcy proceedings*.

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](#), (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 LMC [sample notice sent before shutting off water.](#)

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. Thus, in 1953, the Minnesota Attorney General's Office stated that, in a statutory city, an electric or gas utility could not certify delinquent charges to taxes.

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

According to state law, municipal gas or electric utilities cannot collect or attempt to collect a tenant's unpaid gas or electric charges from a landlord or property owner—unless the property owner or the owner's agent contracts for the utility service. "Property owner" includes a manufactured home park owner.

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

F. Shutting off utility service due to nonpayment

Generally, municipal utilities have the right to shut off water, electricity, or gas if a consumer fails to pay reasonable charges or fails to comply with reasonable regulations as stated in the local ordinance. Again, a municipal utility must provide reasonable notice of a pending shut-off and tell the customer of their right to protest the shut-off as unjustified. If a customer appeals a pending shut-off using the appropriate appeal process, a city must not shut off service while the appeal is pending.

RELEVANT LINKS:

[Minn. Stat. § 325E.028.](#)

[Minn. Stat. § 325E.028.](#)
[Sample annual notice for military personnel.](#)

[Payment arrangement form for military service personnel.](#)

[Minn. Stat. § 216B.0975.](#)

1. Households with military personnel

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

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

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

a. Annual notice of this protection

A municipal utility must notify all residential customers of this law once each year.

And, if asked by a customer, a municipal utility must provide a form that requests the protections of this law to a residential customer.

b. Income verification

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

2. No disconnection in extreme heat

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

RELEVANT LINKS:

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

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

If a city has adopted the State Building Code, the building inspector shall order any building or portion of a building vacated if continued use is dangerous to life, health, or safety of the occupants. The order must be in writing and state the reasons for the action. The building inspector shall have the authority to order disconnection of utility services to the building, structure, or system, regulated by the code, in case of an emergency to eliminate a hazard of life or property.

The building inspector may also revoke the certificate of occupancy, direct the responsible person that no one can live in the residence with no water, and order it corrected. If water is shut off because the property owner fails to repair the lateral line, the city may provide the owner notice and a chance to discuss the situation and then go in and fix the line or abate the problem. Cities must consult with the city attorney before entering private property, which generally requires written permission or a court order.

A city may address this issue by ordinance if the city has not adopted the State Building Code. It is long established law that cities may use police power to pass an ordinance prohibiting the use of sanitary facilities that do not connect to the public water supply. The State Plumbing Code applies throughout the state and requires potable (drinkable) water that meets code specifications in every premise that is equipped with plumbing fixtures and used for human occupancy. Permanent residences must have hot water for bathing, washing, laundry, cooking purposes, dishwashing, and maintenance.

RELEVANT LINKS:

State ex rel. Latshaw v. Board of Water & Light Com'rs of Duluth, 117 N.W. 827 (Minn. 1908).
[House Research Straight Pipe Septic Systems.](#)
[Minn. R. 4714.0100 0\(A\)-\(C\).](#)
[Minn. Stat. § 444.075, subd. 3e.](#)
See Part XI-C, *Due Process*.
See Part XI-D, *Certification of delinquent water and sewer charges*.

[Minn. Stat. § 216B.097.](#)

[Minn. Stat. § 216B.097, subd. 4.](#)

[Minn. Stat. § 216B.096.](#)

[Minn. Stat. § 216B.097.](#)

Cities have the authority to pass an ordinance requiring that all residences maintain a working and safe supply of potable water consistent with the State Plumbing Code. Ordinances requiring installation of toilets and connection of toilets to the public sewer system, and prohibiting the maintenance of sanitary facilities not connected with the sewer system are a valid exercise of the police power of the city council.

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

H. Minnesota cold weather rule

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

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

RELEVANT LINKS:

[Minn. Stat. § 216B.097.](#)

[MMUA Cold Weather Rule \(CWR\) Guide.](#)

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

[MMUA Sample Annual Notice to Residential Customers.](#)

[MMUA Sample Notice of Proposed Winter Disconnection during Cold Weather Rule period.](#)

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

[MMUA Sample Application for Winter Disconnect Protection under the Cold Weather Rule.](#)

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

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

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

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

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

RELEVANT LINKS:

- A statement explaining available time payment plans and other opportunities to secure continued utility service.

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

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

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

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

I. Shutting off utilities in landlord-tenant situations

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

It is a misdemeanor for a landlord to shut off a tenant's utilities in an effort to force a tenant out. If a landlord or the landlord's agent interrupts a tenant's utility service (electricity, heat, gas, or water) the tenant may recover from the landlord treble damages or \$500, whichever is greater, and reasonable attorney's fees.

[Minn. Stat. § 216B.096, subd. 9.](#)

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

[Minn. Stat. § 504B.225.](#)

[Minn. Stat. § 504B.221.](#)

RELEVANT LINKS:

[Minn. Stat. § 504B.215, subd. 3.](#)

[Minn. Stat. §504B.215, subd. 3.](#)
See sample [notice for non-electric utility disconnection when the landlord fails to pay](#).

Cities must not get involved in a situation where the city may be considered the landlord's agent. Landlords have many other legal ways to deal with tenants who fail to pay for utilities or comply with a lease agreement.

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

1. Landlord failure to pay and posted notice

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

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

a. Tenant paying for water

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

RELEVANT LINKS:

See [sample notice for electricity disconnection when the landlord fails to pay](#).

[Minn. Stat. § 216B.0976](#).

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

[Minn. Stat. § 13.681](#).

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

b. Tenant paying for electric and gas

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

c. Landlord options

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

XII. Foreclosures

Unpaid charges for city utility services may be very difficult to recover when a property heads into foreclosure proceedings or is vacant.

One way to stay on top of properties in trouble is to request disconnection information from private utility companies.

As discussed subsequently, vacant or abandoned properties in the foreclosure process pose significant challenges for cities, especially in winter when pipes may freeze and burst. To remedy this situation, if a city requests it, investor owned or private gas and electric utility companies must notify cities when they disconnect a residential property during cold weather months. Specifically, between Oct. 15 and April 15, private utility companies that disconnect a residence must provide notice and the residential address to any city that requests the information. The information must be available on Oct. 15 and Nov. 1 of each year.

RELEVANT LINKS:

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

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

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

[Minn. Stat. § 580.042.](#)

See Section IX-A, *Due Process*.

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

In addition, a city may request daily updates after Nov. 1, 2008. Cities that receive the disconnection information must share it with the local police and fire departments. All such data is private, according to state law.

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

A. Municipal water and sewer utilities

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

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

Even at the late stages of a foreclosure, when a property is sold at a sheriff’s sale, the defaulting owner has six months to redeem the property. During all this time, the defaulting owner is responsible for delinquent utility charges—but is not likely to pay them.

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

B. Municipal gas and electric

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

RELEVANT LINKS:

[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. § 429.101, subd. 1\(12\).](#)

[Minn. Stat. § 582.032.](#)

C. Vacant properties

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

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

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

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

D. Abandoned properties

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

RELEVANT LINKS:

[Minn. Stat. § 580.22.](#)

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

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

- 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 originally developed "red flags" rules to detect, prevent, and mitigate identity theft. Enforcement of the rule was delayed numerous times. In December of 2010, Congress amended the red flags rule, narrowing the application of the law to fewer entities.

Then, as of January 1, 2011, enforcement of the rule began. Cities need to examine all their practices to determine if the rule applies.

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

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

RELEVANT LINKS:

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

[MMUA Model Red Flag Identity Theft Prevention Program.](#)

[Minn. Stat. § 471.59. MnWARN.](#)

[11 U.S.C.A. § 362\(a\).](#)

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

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

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

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

XIV. Emergencies

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

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

XV. Bankruptcy proceedings

Bankruptcy is a complex legal process and beyond the scope of this memo. What follows are a few very basic principles as they may apply to utility charges.

RELEVANT LINKS:

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

Consult the city attorney for specific legal advice if a city resident or business with delinquent utility charges files any type of bankruptcy proceeding.

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

A. Chapter 11 or 13

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

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

[11 U.S.C.A. § 362.](#)

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

[11 U.S.C.A. § 362\(a\) \(6\).](#)

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

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

Congress updated bankruptcy law in 2005. Now, for Chapter 11 bankruptcies, a utility may alter, refuse, or discontinue utility service, if during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility. An assurance of payment must be one of the following items: A cash deposit. A letter of credit. A certificate of deposit. A surety bond, prepayment of utility consumption.

RELEVANT LINKS:

[11 U.S.C.A. 366\(b\).](#)

[26 U.S.C.A. § 6321.](#)

[26 U.S.C.A. § 6323.](#)

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

Another form of security that is mutually agreed on between the utility and the debtor or the trustee, but an administrative expense priority does not constitute an assurance of payment. On request of a party and after notice and a hearing, the court may order modification of the amount of an assurance of payment. On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.

B. Other types of bankruptcy

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

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

C. State law

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

XVI. Conclusion

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

Appendix A: sample utility bill

City of _____
 Utility Billing Office

Account Information
 Customer: 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
<hr/> Total Current Charges	<hr/> \$48.79
<hr/> Total Amount Now Due	<hr/> \$48.79

Pay in person or mail payment:

City of _____

Utility Billing

222 8th St.

_____ MN, 55555

If payment is received after

this date a 10% late fee of

current charges will apply.

Unpaid utility charges constitute a lien against the property.

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

Appendix B: monthly billing cycle

MONTHLY BILLING CYCLE 30 DAY MINIMUM

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

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

Appendix C: contact information for investor-owned utilities

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

Xcel Energy

Manager of Credit Policy and Compliance

3115 Centre Pointe Drive

Roseville, MN 55113

(651) 639-4407

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

patrick.j.boland@xcelenergy.com

Connexus Energy

Member services (763) 323-2650.

MN Power

Tedd Ells at tells@mnpower.com

Field Collections and Policy Supervisor 30 West Superior Street

Duluth, MN 55802

MN Energy Resources

Customer Service

Call Minnesota Energy Resources at 800-889-9508

Or email them at www.minnesotaenergyresources.com

Center Point Energy

Contact Jeffrey McCullough

(612) 321-4657

Jeffrey.mccullough@centerpointenergy.com mailto:

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



DATE: August 29, 2016

TO: Honorable Mayor and City Councilmembers
Sue Iverson, Interim City Administrator

FROM: John Anderson, Acting Public Works Director

SUBJECT: County Road E Bridge Pedestrian Lighting Review

Requested Action

Provide Staff with direction on any modifications to lighting on County Rd E / TH51 bridge.

Background

On March 28, 2016, the City Council directed staff to proceed with contracting for installation of lighting on the County Rd E / TH51 bridge. The staff memo on this item was specific in its description that the lighting was intended to light the pedestrian facility on the south side of the bridge. The contractor has installed the lighting and Councilmember Holmes brought forward a concern that the lights should cover more of the bridge surface and that her understanding was the lights would cover more of the bridge.

Attachments

Attachment A: March 28, 2016 Staff memo



DATE: March 28, 2016

TO: Honorable Mayor and City Councilmembers
Sue Iverson, Acting City Administrator

FROM: John Anderson, Acting Public Works Director

SUBJECT: County Road E Bridge Pedestrian Lighting

Requested Action

Approve proposal from Forest Lake Contracting in the amount of \$17,173.00 for the installation of two LED light fixtures and poles on the County Road E / TH 51 Bridge to light the pedestrian facility on the south side of this bridge.

Background

MnDOT reconstructed the bridge over TH 51 at County Road E in 2015. Included in that construction was placement of conduit in the bridge structure to route a power supply to two locations on the ends of the bridge for light poles if the City wished to someday install lighting. Also in 2015, the City of Arden Hills and Ramsey County had a joint improvement project along County Road E. Part of that project was the addition of pedestrian lighting along both sides of the street. The lights that were added are owned and maintained by Xcel Energy.

Discussion

Xcel will not install and maintain lighting on a bridge. MnDOT and Ramsey County are the two road authorities involved in the bridge over TH 51 at County Road E. The City is responsible for improvements on the bridge above and beyond the basic installation. The City Council expressed an interest in the addition of pedestrian lighting along the bridge. Public Works has obtained two quotes for the installation of lighting with two fixture options (HPS, LED). The quotes include placing a power supply cabinet on the west end of the bridge and directional boring a conduit to the bridge and installing all wiring and fixtures on the bridge. A power drop would be required from Xcel energy in the park, and to date we have not received an estimate on this cost. From a maintenance standpoint, we recommend using LED fixtures. The City will be responsible to maintain these poles and fixtures in the future.

We obtained two quotes for the work, one from Forest Lake Contracting and one from Peoples Electric. The results are listed in Table 1 below. We have requested three quotes but have only had two responses to date.

Table 1 - Co Rd E Bridge Lighting Quotes

No.	Contractor	LED Option
1	Forest Lake Contracting	\$ 17,173.00
2	Peoples Electric	\$ 24,400.00

The light fixture and poles are similar to that of the pedestrian lights along County Road E that Xcel maintains. The lights quoted have LED bulbs and should require less maintenance than the high pressure sodium option. The color of the fixture and pole is black and should coordinate with the existing pedestrian lighting installed by Xcel. Details of the fixtures and poles are included in Attachment C

Attachments

Attachment A: Forest Lake Contracting quote 2/26/16

Attachment B: Peoples Electric quote 3/11/16

Attachment C: LED light fixture and pole details



DATE: August 29, 2016

TO: Honorable Mayor and City Councilmembers
Susan Iverson, Acting City Administrator

FROM: John Anderson, Acting Public Works Director

SUBJECT: Snow Plowing, Snow Removal and Ice Control Policy

Requested Action

Provide feedback to Public Works on the Snow Plowing, Snow Removal, and Ice control policy.

Background/Discussion

The City Council discussed the policy on January 19, 2016, and requested it be brought back with edits during the summer months. Staff has edited the policy to reflect the current snow plowing practice and is looking for feedback from the City Council

Attachments

Attachment A: Staff Revisions to Snow Plowing, Snow Removal, and Ice Control Policy
Attachment B: City Council meeting minutes January 19, 2016

Attachment A

Adopted 2006
Revised July 2016

CITY OF ARDEN HILLS SNOWPLOWING, SNOW REMOVAL AND ICE CONTROL POLICY

DETERMINATION OF NEED AND INTRODUCTIONS

The City of Arden Hills has determined that it is in the best interest of the residents, for the City to assume basic responsibility for control of snow and ice on the streets under the jurisdiction of the City. Appropriate snow and ice control is necessary for emergency services as well as routine travel. Providing this service in a cost-effective manner is a discretionary decision of the City Council. The City will use City employees, equipment and/or contract services as deemed appropriate to provide this service. Therefore, this policy is needed to provide direction for these operations and guidelines for employees and residents based upon available resources.

The City of Arden Hills has approximately thirty~~-five~~ (30~~5~~) miles of street under its jurisdiction. These consist of State Aid roads and residential streets. This policy is intended to provide guidelines for snow and ice control operations for streets under the City's jurisdiction. Some sidewalks are also covered under this policy.

COMMENCEMENT OF OPERATIONS

Snowplowing and/or ice control operations shall commence under the direction of the ~~Operations & Maintenance~~Public Works Director. Or in his absence, the ~~O & M~~Public Works Superintendent will determine when and what operations will begin.

If there is sufficient notice of an upcoming storm, crews will apply salt brine at intersections, hills and curves on dry pavement in advance of the storm. Salt brine has been found to be more effective, longer lasting and more environmentally friendly than conventional road salt.

It is policy to begin snowplowing operations after the snowstorm has subsided. The call out of equipment is dependent upon time and severity of the snowfall. The most critical times are morning and evening rush hour period.

This policy is designated, if at all feasible, to have the snow removed prior to the beginning of these rush hour periods. If a storm is forecast to be unusually long, or heavy accumulations appear imminent, full snowplowing operations will begin on all of the snowplow routes when accumulations become hazardous for driving. Based on different storm situations and severity levels, the starting time frames are flexible. The following guidelines may also warrant the beginning -of the operations.

- A. Snow accumulation of two inches, with continued snowfall.
- B. Drifting of snow may warrant commencement of partial or full operations depending upon conditions.
- C. Icing of pavements may also warrant partial or full operation depending upon extent and conditions.

- D. The O & M Public Works Director or his designated representative shall determine the time to start operations and the extent of the operations. Storms forecast for late afternoon or evening hours may be the basis for the O & M Public Works Director splitting a shift and sending crews home for call-out later in the evening.

SUSPENSION OF OPERATIONS

Operations shall continue until all roads are passable. Widening and clean-up operations may continue immediately or on the following working day, depending upon conditions and circumstances. Safety of the plow operators and the public is important. Therefore, snowplowing/removal operations may be terminated after ten to twelve hours to allow personnel adequate time to rest. There may be instances when this is not possible, depending on storm conditions and other circumstances. Operations may also be suspended during periods of limited or zero visibility. Any decision to suspend operations shall be made by the O & M Public Works Director, or his designee, and shall be based on the conditions of the storm.

~~All plow units are radio equipped.~~ In the event that the driver gets stuck in snow or breaks down, another unit will be summoned to replace or rescue the disabled unit. The safety of the drivers will be of prime importance. If the City should experience equipment breakdown, attempts will be made to engage contract units, or other municipalities to supplement our work force or equipment fleet.

PLOW ROUTES AND SEQUENCING

City streets, public sidewalks, trails, public parking lots, and ice rinks under the City's jurisdiction are affected by this policy. All private sidewalks shall be maintained by the property owner. City parking lots and ice rinks will be cleared by City crews, but as a secondary priority. At the City's discretion, they shall either be cleared in conjunction with street routes or after street routes have been completed.

The O & M Public Works Superintendent shall have the responsibility of determining plow routes and sequencing operations. The O & M Public Works Superintendent shall retain the latitude to adjust sequencing or route assignments based on storm conditions, equipment availability and/or other conditions warranting changes. Currently, the City has been divided into three different plow routes, with ~~two~~ one snowplows assigned to each.

LEVELS OF SERVICE

The intent of this policy is to provide safe winter driving conditions appropriate for the type of travel typical to City streets. The level of service described herein shall be considered a guideline with the understanding that immediately after a storm, the level of service provided may be less than described herein and may vary across the City, depending on storm conditions and other circumstances. Streets shall be plowed and/or ~~salted~~ salted, with additional emphasis given to intersection approaches and curves, in order to provide the safest conditions practical under the circumstances.

Snow shall be plowed in a manner that will not obstruct traffic flow on a normal basis. The center of the roadway will be plowed first. The snow will be pushed from the center- line. The

discharge shall go onto the boulevard area of the street. There is no known way to keep snow from filing the end of driveways as the plow passes by.

~~Sanding-Salting may will start as soon as the vehicles currently equipped with sanding devices have completed their plow routes occur while plowing depending on the conditions. Generally intersections hills and curves are salted during plowing. If severe ice conditions exist, the sanding trucks may be pulled from their plow routes to being sandings salt applications may be more widespread.~~

~~Other plow units will then complete the plow routes of the vehicles used to sand~~

~~Salt and sand shall be ordered and mixed in controlled quantities, based upon usage, in order to avoid excessive storage. The quality of the material is affected by long storage. The salt and sand is usually mixed at between 15% to 20% or approximately 18 tons of salt every 100 tons of sand is purchased from Ramsey County. It is loaded by Ramsey County operators that measure tonnage via scales on the loader. Excess salt returned to storage is estimated and recorded by the plow operator.~~

The City of Arden Hills does not have a dry pavement policy so those using City maintained rights-of-way are expected to exercise careful judgment and caution during winter months.

During light to normal snowfalls, streets shall be plowed to full width as soon after the initial pass as possible. During heavier snowfalls, the streets shall be plowed as wide as possible initially and widened as the storm intensity lessens. After the storm subsides, clean-up operations shall begin in order to clear intersections and snow storage areas along corners and boulevards. It is the City's intent to complete the initial plowing and ~~sanding-salting~~ operations within twenty-four (24) hours of light snowfalls and within seventy- two (72) hours of heavy snowfalls. Major blizzards may require more time.

PARKING RESTRICTIONS

On-street parking is not compatible with efficient snowplowing operations. Vehicles left parked on the street for extended periods of time create significant operational problems for snowplow operators as well as safety problems due to packed snow and ice remaining on the roadway around the vehicle. The City's Ordinance prohibits parking of vehicles on City streets after the accumulation of two inches or more of snow, with the prohibition continuing until snow removal or plowing thereof has been completed. Any vehicle parked in violation of this Ordinance is subject to a parking citation and is also declared to be a safety hazard and nuisance. This nuisance may be summarily abated by removing and towing away such vehicle under the direction of the Ramsey County Sheriff's Department. Enforcement of this Ordinance shall be directed by the City Council.

SNOW REMOVAL

Certain locations within our community may require additional service after snowplowing operations cease. This shall be referred to as "snow removal". Snow removal hereinafter will be defined as the loading and trucking of snow to an approved site under the direction of the ~~O & M~~ Public Works Director or his designated representative. This service may be approved when

there is no area for snow storage. Snow removal operations normally begin within twenty-four (24) hours after snowplowing operations have been completed.

There are approximately sixty (60) cul-de-sacs in Arden Hills. It may take some time for the specialized equipment to complete the actual cul-de-sac areas; therefore, a snowplow may complete the normal part of the street and complete only a portion of the cul-de-sac.

The major portion of the cul-de-sac will be plowed by the special equipment during the usual time guidelines for snowplowing operations. Snow removal may be required in cul-de-sac areas if previous snow accumulations prevent normal movement of snow to boulevard areas.

SNOW REMOVAL FOR CITY SIDEWALKS AND TRAILS

The City of Arden Hills does maintain most sidewalks and trails. Arden Hills sidewalk snow plowing begins as soon as possible after a significant snowfall. The City will maintain sidewalks and trails only after all City streets have been plowed. Sidewalks and trails that are maintained by the City during the winter months will be cleared of accumulated snow but will not be maintained to a "clean pavement" condition. The following sidewalk and trail areas will not be maintained by the City's Operations and Maintenance Department in the winter months due to steep grades or dangerous sidewalk conditions:

- Arden View Drive to Colleen Avenue Trail
- Cummings Park-Lexington Avenue to Cummings Ball Field
- Cummings Park-North Water Tower to Hamline Avenue

The City of Arden Hills will post the aforementioned trail locations as "Minimal Maintenance Trails" during the winter months.

Special priority is given to school routes along a few sidewalks and trails. All efforts will be made to clear the following sidewalks/trails by 7:00 AM:

- Trail along County Road E2
- Trail from Venus Avenue to County Road E2
- Trail along Lake Valentine Road

PROPERTY DAMAGE

Snowplowing and ice control operations may cause property damage even under the best of circumstances and care on the part of the operator. The major types of damage are to improvements within the City right-of-way, which extends approximately ten to fifteen feet beyond the curb locations. The intent of the right-of-way is to provide room for snow storage, utilities, boulevard trees, sidewalks and other City uses.

The City will repair sod that was damaged by a City snowplow. Operations and Maintenance Department staff members will repair the sod damage with black dirt and grass seed. All other damage within the public right-of-way is the responsibility of the

property owner including, but not limited to trees, shrubs, landscaping materials. Decorative rock, brick walls, and lawn/landscaping irrigation (sprinkler heads) systems.

The City will not repair/replace sod damaged due to the application of sand, salt, or other deicing chemicals.

Certain private improvements such as mailboxes are required within this area; therefore the City will cooperate with property owners in the event of damaged private property. The City shall specify when this damage is the responsibility of the City and when it shall be the responsibility of the resident.

Mailboxes and supports are the property of the mail route patron and must be installed and maintained by their owner, who must bear the liability for them. Since mailboxes must be located in the road right-of-way in order to be accessed by postal service, certain regulations apply for the safety of the driving public as well as for the protection of the mailboxes themselves.

Federal postal regulations require the mailbox patron to remove any obstructions, including snow, which make delivery difficult. Using one of the approved mailbox supports is highly recommended, as it will allow clearing under or near the mailbox without damage during a normal plowing operation.

When there is a heavy accumulation of snow, the location of mailboxes close to the roadway makes the push back operations of the City's ~~Operations and Maintenance~~Public Works workers-staff difficult and renders the boxes quite susceptible to damage as a result of plowing operations. It shall be the City's policy to use special care and consideration when plowing snow in the vicinity of mailboxes.

State law now requires all mailbox supports be of a breakaway design.

Mailboxes can be especially vulnerable to damage from snow removal operations. The City assumes liability for mailboxes damaged during plowing, if it is determined that the plow did make direct contact with a mailbox that was properly placed and under the approved guidelines.

To be properly placed, a mailbox should be installed so that its bottom edge is 45" to 48" above street level, with the post 48" back from the curb or front of the box. That amount of clearance is necessary to keep the plow's wing from hitting the box. If there are any plastic newspaper tubes attached to the mailbox, they must also be above the minimum 45" height requirement. The box's post should be securely in the ground.

If mailboxes are not installed with the proper clearance mentioned above, the responsibility for repairing any damage lies with the homeowner, not the City. The City will replace standard metal mailboxes that are installed properly on an approved swing-away post. The City WILL NOT pay the replacement cost for a decorative mailbox.

RESPONSIBILITY OF RESIDENTS

Snowstorms create numerous problems and inconveniences. This policy has identified streets, sidewalks, parking lots and ice rinks that the City will clear. The residents will also have certain responsibilities. These include clearing their own driveways and private sidewalks, clearing areas for refuse containers, clearing around mailboxes and/or newspaper tubes and fire hydrants adjacent to or located upon their property. These areas must be cleared without depositing any snow into the street. The practice of moving snow from driveways into the street causes a very serious traffic problem. When the snow freezes and a vehicle hit a rough spot, it could be thrown out of control and an accident might occur. It is prohibited to blow, shovel or plow any snow back onto, or across any City street. Snow must not be accumulated into any large piles that obstruct vision or driveways or walks. Refuse containers must not be placed on the street surfaces. The City will not clear private drives or walks.

Snowplowing can cause additional snow to be deposited in driveway approaches and around roadside obstacles. Operators are instructed to attempt to minimize these instances; however, it is not practical to eliminate this situation. Residents must be aware they will be responsible for the subsequent clearing of their driveways after their street has been plowed.

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COMPLAINTS

Complaints regarding snow and ice control or damage shall be taken during normal working hours and handled in accordance with the City's normal complaint procedure. High priority complaints (those involving access to property or problems requiring immediate attention) shall be handled on a priority basis. Response time should not exceed twenty-four (24) hours for any complaint. It should be understood that complaint responses aree to ensure that the provisions of this policy have been fulfilled and that all residents of the City have been treated uniformly. It is the City's intention to log all complaints and upgrade this policy as necessary in consideration of the constraints of our resources.

PARKING REGULATIONS

Arden Hills Code of Ordinances Section 800.03 Parking Regulations

Winter Parking Regulations - Except in compliance with the directions of a law enforcement officer or in compliance with regulatory parking signs placed by law enforcement officers or employees of the City, no vehicle shall be parked on the improved portion of any street or highway in the City during the period of time commencing immediately after the accumulation thereon of two or more inches of snow and continuing thereafter until snow removal or plowing has been completed.

Overnight Parking - No vehicles shall be parked on any street for more than 30 minutes between the hours of 2:00 a.m. and 6:00 a.m.

Parking in Residential Districts. - Parking in residential districts shall be limited to the use of the occupants of those residences and their guests.

Parking on Public Streets -Parking on public streets shall not exceed six hours.

Vehicles over 12,000 Pounds - No motor vehicle or trailer with a rated gross weight exceeding 12,000 pounds shall be parked or stored in a residential zone except when loading, unloading or rendering a service.

Parking on Boulevard Prohibited - No motor vehicle shall park upon the boulevard of any public street.

Setbacks from Intersection -Parking shall be set back from street intersections as follows:

- 1. Twenty (20) feet from crosswalk of any uncontrolled intersection;*
- 2. Thirty (30) feet from crosswalk of any controlled intersection; and*
- 3. Twenty (20) feet from any intersection without marked crosswalk.*

Administrative Procedures - The city administrator shall adopt, from time to time, procedures to provide for the safe and consistent application of the parking regulations. The City Administrator may grant variances from the application of parking regulations provided that the variances can be allowed without creating a safety hazard. Administrative variances shall be in writing and shall state the specific time limits during which the variation will be allowed to occur.

Acting Public Works Director Anderson estimated that the back of the existing house was 20 feet closer to the street than the sewer line was. He reported that the City would want a 10-foot easement on either side of the sewer line.

Mayor Grant stated that at this point, he was not in favor of moving the sewer line.

Councilmember Holmes agreed that she did not see the need to move the sewer line as this would become a burden to the City. She encouraged Mr. Nelson to speak with staff to see how the existing home could be expanded. She understood that the sewer on this property has been a concern for the past 20 years. She encouraged Mr. Nelson to consider reaching a compromise that does not include moving the sanitary sewer lines.

Mr. Nelson thanked the Council for their time and feedback regarding this situation.

E. Snow Plowing, Snow Removal and Ice Control Policy

Acting Public Works Director Anderson stated that the City Council approved the current Snow Plowing, Snow Removal and Ice Control Policy in 2006. Since nearly ten (10) years have elapsed since last adopted, it is appropriate to check in with the City Council to determine if the policy and implementation are providing the level of service that the Council is looking to provide to residents.

Acting Public Works Director Anderson explained that Public Works plows 30 miles of public streets, 12.6 miles of trails, four parking lots, three hockey and three pleasure rinks, as well as driveways at 11 lift stations and two water towers. The plow routes include three street routes, and one trail and walk route. Each street route is plowed by one large truck, and a small truck plows cul-de-sacs and narrow streets. Trails and walks are usually plowed by either pickup trucks or toolcats.

Acting Public Works Director Anderson indicated that the current policy is sometimes thought of as having a trigger of requiring two inches of snow to have fallen before the City considers plowing the streets. The reference to two inches of snowfall is one factor used in the decision process as to when to begin snow plowing, but it is not the test as to whether or not to plow. There are a number of factors when it comes to making decisions regarding snow plowing which include the following: accumulation, weather forecast, timing to morning and evening commutes, and what other communities are doing. Staff communicates with other agencies and municipalities leading up to and during a snow event to stay informed about how our neighbors are responding to a snow event. Some of the changes that have taken place in our procedures since the policy was adopted are as follows:

1. Shift in the use of sand/salt mixture to 100% salt with brine activation.
2. Reduction in volume of ice control materials in exchange for more plowing.
3. Addition of salt brine pretreatment prior to a snow event.

Acting Public Works Director Anderson stated that additional challenges when it comes to snow and ice control are:

1. More obstacles adjacent to walks (County Road E and County Road 96).
2. 36% increase in total walk/trail mileage in the last 10 years

Acting Public Works Director Anderson explained that another issue covered in the snow plowing policy is damage to yards and mailboxes during plowing. Public Works repairs plow sod damage with topsoil and seed in the spring. Staff does not repair salt damage or damaged sprinkler heads in the right-of-way. Damaged mailboxes will be repaired if there is a physical hit between the plow and the mailbox. If the force of the snow caused the mailbox to drop, it is the homeowners' responsibility to repair the mailbox.

Staff requested feedback from the Council on the policy.

Mayor Grant understood staff was completing a check-in with the Council. He questioned what four parking lots were plowed by staff.

Acting Public Works Director Anderson reported that the Public Works staff plows the City Hall parking lot, in addition to the lots at Ingerson, Perry and Freeway Parks.

Mayor Grant requested comments from the Council on the policy.

Councilmember Holmes supported the policy as is.

Councilmember Holden asked if the current policy would cover the sidewalk and trails within TCAAP.

Acting Public Works Director Anderson was in favor of having property owners maintaining the sidewalks within TCAAP, as was the practice within the remainder of the City.

Mayor Grant reviewed several edits to the document, noting that the City no longer uses sand and requested the mileage reference be corrected.

Councilmember McClung questioned how the salt brine was working for the City.

Acting Public Works Director Anderson reported that the salt brine was very effective and he appreciated the relationship City staff had with the County.

Councilmember Holden stated that her roadway was the last plowed after each snow event. She questioned if staff could review the route schedule to have this area completed more quickly.

Acting Public Works Director Anderson stated that he could review this but understood that staff worked to complete business and commercial plowing first before moving onto City streets. He expressed the concern that the snow plow drivers have when running by the new Goodwill Store.

Councilmember Holden did not want to have this same snow removal concern on the properties within TCAAP.

Councilmember McClung requested that no changes be made to the sidewalk policy from January to April, but that any changes to the current policy be enforced in the 2016-2017 winter season.

Councilmember Holmes agreed with this recommendation and looked forward to discussing this matter further. She believed that the City currently did a great job removing snow.

Councilmember McClung was in agreement stating that the City received few complaints from the public regarding the snow removal process.

Mayor Grant asked if the snow removal policy was located on the City's website.

Acting Public Works Director Anderson indicated that the entire policy was not posted on the website.

Mayor Grant requested that staff publish the City's snow plow policy on the City's website.

F. 2016 Employee Compensation Plan Non-Union Employees

City Clerk Dietl indicated that the City Council annually evaluates its compensation plan and determines if a cost of living adjustment (COLA) is appropriate. The 2016 budget was prepared with a 3.0% increase for non-union employees. The seasonal and part-time recreation employee compensation plan has been reviewed by staff and adjustments have been based on a memo drafted by John Anderson and Sara Grant.

Staff recommended that this item be brought to the regular City Council meeting on January 25, 2016, to approve the 2016 Employee Compensation Plan for non-union employees retroactive to January 1, 2016, as presented and the Seasonal Employee 2016 Part-time scale as presented.

Mayor Grant noted that the Council approved the union contract at 2.5% first year and 2.75% second year. He explained that the proposed 3.0% increase for non-union employees was included in the 2016 budget. However, he wanted the Council to discuss this matter further prior to recommending approval.

Councilmember Holmes supported the 3.0% increase based on the results of the 2015 pay study.

Councilmember McClung was in favor with a 2.5% increase as this would be consistent with the City's union employees.

Councilmember Holden recommended a 2.75% increase be approved for the non-union employees.

Mayor Grant supported a 2.75% increase as this would be in alignment with the union contract.

Councilmember McClung indicated that he could support a 2.75% increase as this would closely align with the union employees and other State agency increases.



DATE: August 29, 2016

TO: Honorable Mayor and City Council
Sue Iverson, Interim City Administrator/Director of Finance and Admin Services

FROM: Dave Perrault, Finance Analyst

SUBJECT: Review Policy for Donation of Surplus City Equipment

Background

The Council expressed interest in adopting a policy to donate surplus City equipment to nonprofit organizations pursuant to state law. The League of Minnesota Cities recently published information regarding background information, applicable state statutes, and a model policy for cities to consider adopting. Attached is the background information, and the model policy for Council to review and provide feedback.

Policy Highlights:

- Council will set the standard for how and when surplus equipment is identified and approved for donation
- Council will set the standard for which organizations will be allowed to accept donated equipment
- Provides additional tort immunity to municipalities assuming there was no fraud or intentional misrepresentation

Discussion

Staff would like direction from the Council on whether or not they would like to proceed and approve a policy regarding the donation of surplus City equipment to nonprofit organizations.

Attachment

- A. League of Minnesota Cities background information and Model Policy for Donation of Surplus Equipment

League of Minnesota Cities

Model Policy for Donation of Surplus City Equipment to a Nonprofit Organization Pursuant to Minnesota Statutes, Section 471.3459

Cities may find additional guidelines on donations to organizations in the League's Information Memo, [Public Purpose Expenditures](#).

Background Information

In 2016, the Minnesota Legislature passed a new law authorizing a “local government,” including statutory and home rule charter cities, to donate “surplus equipment” to a “nonprofit organization.” See [Ch. 87, H.F. No. 1003 \(2016\)](#), to be codified in part as Minnesota Statutes, Section 471.3459 (2016).

Section 471.3459 defines “surplus equipment” as “equipment used by a local government public works department, and cellular phones and emergency medical and firefighting equipment that is no longer needed by the local government because it does not meet industry standards for emergency medical services, police, or fire departments, or has minimal or no resale value.”

A “nonprofit organization” is defined as “an organization formed under section 501(c)(3) of the Internal Revenue Code.”

Before surplus equipment can be donated, a city “must adopt a policy on how it will determine what equipment is surplus eligible for donation and how it will determine which nonprofit organizations may receive donations.” In addition, the policy “must address the obligations of the local government to disclose to the nonprofit that the surplus equipment may be defective and cannot be relied upon for safety purposes.”

The new law also adds a new municipal tort immunity to Minnesota Statutes, Section 466.03. Municipalities, including all cities, are immune from liability for any tort claim “resulting from the use of surplus equipment donated by the municipality to a nonprofit organization under section 471.3459.” Immunity does not apply if “the claim is a direct result of fraud or intentional misrepresentation.” Minnesota Statutes, Section 466.03, subd. 25 (2016).

This model policy is intended to help cities comply with the policy adoption requirement in Minnesota Statutes, Section 471.3459.

The provisions of this model policy are recommendations. Each city should carefully consider its own circumstances before adopting a policy. In particular, cities may want to impose additional requirements or restrictions on the types of nonprofit organizations that are eligible for donations, how or whether surplus equipment will be advertised, and how the city will determine which nonprofit organizations will receive donations.

The new law becomes effective on Aug. 1, 2016.

City of _____

Policy for Donation of Surplus Equipment to a Nonprofit Organization

Purpose

The purpose of this Policy is to establish procedures for the donation of Surplus Equipment by the City to a Nonprofit Organization as required by Minnesota Statute § 471.3459 (2016).

Scope

This policy applies to all City departments that generate Surplus Equipment and governs the actions of all City employees and officials.

Definitions

“City” means the City of _____, Minnesota.

“City Council” means the governing body of the City.

“Donation” means to contribute, donate or give Surplus Equipment at no cost to a Nonprofit Organization that serves a public purpose and benefits its community as a whole.

“Eligible Organization” means a Nonprofit Organization serving one or more of the following functions: cultural, historical, educational, safety, social services, environmental or economic.

“Fair Market Value” means the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of all relevant facts.

“Nonprofit Organization” means an organization formed under Section 501(c)(3) of the Internal Revenue Code.

“Policy” means this Policy adopted by the City Council.

“Surplus Equipment” means equipment used by the City’s public works department, and cellular phones and emergency medical and firefighting equipment that is no longer needed by the City because it does not meet industry standards for emergency medical services, police, or fire departments or has minimal or no resale value.

“Surplus Equipment Form” means the form attached as Exhibit I to this Policy that must be filled out by a Nonprofit Organization requesting a Donation of Surplus Equipment.

Procedure

The City shall determine all Surplus Equipment and may offer it for Donation in conformance with the following guidelines:

1. Identify Surplus Equipment. Department supervisors are responsible for monitoring their equipment and shall identify and report all Surplus Equipment to the *[City Official]* on at least an annual basis.
2. Determine the Fair Market Value of Surplus Equipment. *The [City Official]* shall work with City staff to determine the Fair Market Value of the Surplus Equipment.
3. City Council Declaration. The *[City Official]* will forward a list of the Surplus Equipment with each item's Fair Market Value to the City Council who shall approve or deny the Surplus Equipment as eligible for Donation. The City has no obligation to make a Donation of Surplus Equipment. Surplus Equipment that is not donated may be sold, recycled or discarded in the discretion of the *[City Official]*.
4. Donation. After the City Council has determined the Surplus Equipment is eligible for Donation, the *[City Official]* is responsible for coordinating the Donation of the Surplus Equipment in accordance with the terms of this Policy.
5. Transfer between Departments. All Surplus Equipment must first be considered for transfer between departments for the benefit of the City.
6. Advertisement. Surplus Equipment shall be posted as eligible for Donation on the City's website. The City may also use other reasonable means to notify Eligible Organizations about the availability of Surplus Equipment. The City shall wait at least 30 days after advertising Surplus Equipment before approving any Donation.
7. Surplus Equipment Form. Eligible Organizations interested in Surplus Equipment shall fill out a Surplus Equipment Form and submit the form to the *[City Official]*.
8. Approval of Donation. If the Surplus Equipment has a Fair Market Value less than \$_____, the *[City Official]* shall approve the Donation to an Eligible Organization, subject to review by the City Council. If the Surplus Equipment has a Fair Market Value greater than \$_____, the City Council must approve the donation by a majority vote of the City Council.
9. Prioritization of Donations. If more than one Eligible Organizations requests a Donation for the same Surplus Equipment, the City shall consider factors it deems relevant including how the Surplus Equipment will be used, the benefit to the Eligible Organization, the impact on the City, how the Donation will accomplish goals of the City Council, and any previous Donation to the Eligible Organization.
10. Conflict of Interest. All City employees and officials are prohibited from taking possession of any Surplus Equipment on behalf of an Eligible Organization.

11. As Is. A Donation of Surplus Equipment is made “as is” with no warranty, guarantee or representation of any kind, express or implied, as to the condition, utility, or usability of the Surplus Equipment offered. The Surplus Equipment may be defective and cannot be relied up for safety purposes.

12. Title. The *[City Official]* shall cause any title or other ownership documents to be transferred to the Eligible Organization at the time of transfer. Any fees required to transfer the Surplus Equipment are the responsibility of the Eligible Organization.

13. Transportation. In the Surplus Equipment Form, the Eligible Organization must provide a detailed plan for transporting the Surplus Equipment from the City to the Eligible Organization. The Eligible Organization must pay all expenses associated with the transportation of the Surplus Equipment.

14. Delegation. The *[City Official]* may delegate specific responsibilities for implementing this Policy.

15. Documentation. The *[City Official]* shall document the Donation of all Surplus Equipment and shall keep such records in accordance with the City’s Records Retention Schedule.

16. Review of Policy. The *[City Official]* is responsible for maintaining and reviewing this Policy. Any changes to this Policy must be approved by the City Council.

Exhibit I

Surplus Equipment Form

Organization Name: _____

Organization Address:

Organization Website: _____

(Attach proof of status as a nonprofit corporation under Section 501(c)(3) of the Internal Revenue Code.)

Organization Purpose: _____

Point of Contact

Name: _____

Address: _____

Email: _____

Phone: _____

City Surplus Equipment of Interest: _____

How will the requested Surplus Equipment benefit your organization?

How do you plan to transport the surplus property from the City to your location?

DISCLAIMER OF WARRANTIES. The City makes no agreement, warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for any particular purpose or use of the Surplus Equipment by the recipient or any other user.

The recipient acknowledges the Surplus Equipment may be defective and that it cannot be relied upon for safety purposes. The recipient has a duty to inspect the Surplus Equipment before it is used for any purpose.

The recipient acknowledges that the City is not a manufacturer of the Surplus Equipment or a dealer therein; that the Surplus Equipment is being provided “as-is” and “with all faults,” it being agreed and understood that all of the aforementioned risks are to be borne by the recipient or user of the Surplus Equipment.

In no event shall the City be liable for any damages in connection with or arising out of the recipient’s or any other person’s or entity’s use of the Surplus Equipment.

I acknowledge that the Donation of any Surplus Equipment to my organization is subject to the City’s Policy for Donation of Surplus Equipment to a Nonprofit Organization.

I have authority to request a Donation from the City and to bind my organization to the terms of this form.

Signature of Applicant _____

Date _____



DATE: August 29, 2016
TO: Honorable Mayor and City Council
FROM: Sue Iverson, Interim City Administrator/Director of Finance and Admin Services
SUBJECT: Personnel Committee Discussion

Background/Discussion

The Personnel Committee will have a discussion with the full City Council on personnel items.