



Public Works Committee Agenda

Regular Meeting Wednesday August 17, 2011 – 6:30PM
City Shop Conference Room

MEMBERS

Jeff Sanders
Chair
Term Expires 12/2012

Frank Neitz
Vice-Chair
Term Expires 12/2013

Stanley Tundy Rodgers
Council Rep.
Term Expires 11/2011

Bill Schreiner
Committee Member
Term Expires 12/2013

Mike Salzbrun
Committee Member
Term Expires 12/2013

VACANT
Committee Member
Term Expires

VACANT
Committee Member
Term Expires

Chuck Willert
Ex-Officio Member

Cheryl Roberts
Secretary/Recorder

AGENDA

- I. CALL TO ORDER
- II. ROLL CALL
- III. PEOPLE TO BE HEARD – (15 Minute Limit)
- IV. APPROVAL OF MINUTES
 - A. Minutes from the previous regular meeting
- V. APPROVAL OF AGENDA
- VI. DIRECTOR'S REPORT
- VII. UNFINISHED BUSINESS
 - A. Discussing Non-Sewage.
- VIII. NEW BUSINESS
 - A. Steel @ Landfill.
 - B. Dust Control.
 - C. Election of Chair & Vice-Chair.
- IX. MEMBER COMMENTS
- X. ADJOURNMENT

MEMORANDUM

DATE: August 1, 2011

TO: Lee Foley, City Manager

FROM: Chuck Willert, Public Works Director

SUBJECT: Manager's Report –

Programs/Divisions

Public Works Director:

We have some good news to report from the BHWTP, Bethel Heights Water Treatment Plant, which operates in the ASHA subdivision regarding the big boilers that heat the water for this facility. We have shut down the boilers for the summer as the water doesn't need to be heated for the chemicals that are added to the water. In years past it was thought that the water needed to be heated for the chemicals to mix with the water for the treatment process which turned out to be not true. We expect to have the boilers shut down for at least four months during the summer for a savings of \$832.00 a day and a savings of \$99,840.00 for the four month period. This goes a long way in making up the 25% mark up of the FY 2012 heating fuel budget that we are operating on now.

Statewide petroleum came in to Public Works and calibrated the fuel pumps, old and new, and will give us a full report on up grading the fuel station to swipe cards or something equivalent to better keep track of the fuel.

We have started to install the new Welcome to Bethel signs, the first one being installed at the mouth of the Boat Harbor. There will be a sign at the slough entrance, the Lomack Building, and Chief Eddy Hoffman Highway coming in from the Airport. We are looking to have a Come Back Again sign built as well.

Utility Maintenance:

Filed lagoon discharge permit, replaced two motorized valves at CSWTP, we also have been flushing sewer lines in ASHA, flushing water lines as well, cleared brush around fire hydrants

Recycling:

As we all know as of June 30th the recycling center was shut down due to financial reasons and I was moved to the landfill. I have spent some time this last month buttoning up the operation and putting a sign up to notify the public to stop bringing recyclables. One of the projects that I am still working on is sending the high mercury bulbs from our old street lights to a company in Washington State that is willing to receive them. However there is a lot of paper work that needs to be done to provide a paper trail to ensure everything in the process is done according to government standards. I am in the middle of this process as you read this. In the future the other four hundred plus lights yet to be changed out will also have to be sent by this process and at that time I will be able to follow thru with the process again.

Land Fill:

Now that I am at the landfill we decided to keep the landfill open for longer hours so that the public can utilize it more readily as people work and now they can bring stuff to the dump after work instead of just on Saturdays. At present the landfill is open from eight to six, Mondays thru Saturdays. The equipment has been getting a workout as we have been mashing down the trash in the back. It's too bad we don't have some kind of burner as we could burn a lot of cardboard and paper and reduce the footprint at the landfill.

Safety:

A couple of months ago I requested another OSHA inspector to come in and look at some more City buildings, he did this on the first of June and he found seventeen problems. I had until the end of July to fix these and turn in the documentation showing that they had been rectified. This was done and we are in good standing with OSHA at the present.

Hauled Utilities:

We are expecting the return of utility truck driver Harry Choi from his one year deployment to Iraq. We are losing utility truck driver Allen Dock to his National Guard deployment soon.

Talks need to be initiated on the location of the future Bethel Municipal Landfill. The current landfill is filling up fast and land may need to be purchased for the planning and construction of a lined and permitted Municipal Landfill.

Property Maintenance:

Boiler work has been ongoing all month on our buildings. The Court House boiler had a section replaced. The Log Cabin is having a new boiler installed. The State Boiler Inspector was in town and we are following up on the recommendations that he gave us to correct on all our facilities. We serviced our ventilation units at the Court House also. There was a representative here from Systems House passing through town (they did the install on the ventilation units on the first phase of the building) and I talked to him about problems and improvements. Hopefully we can make improvements in the future as our needs change. We assisted the Finance department with updating the fuel inventory list and tank sizes for our buildings. We cleared up some budget issues as well.

We have been clearing up electrical issues/problems in our buildings with an additional electrician in town. We will get a start replacing some pressure sodium lights with L.E.D. lights on the Public Works buildings. This should help us save some money with our light bill. We will also be getting some work done to our generator down at the City Complex area to bring up to better operating abilities.

We have been helping other departments with their projects and problems as we can, manpower and experience goes a long way to completing plans and goals. Thank-you.

Road Maintenance:

Streets and Roads have been changing some of the bad culverts in Larson Sub., and we will be doing some in other subdivision as we have time. We have been doing this when we are caught up on the grading, but with all the rain, we had to keep a grader on the roads most of the time last month. Tracy has been doing road signs last month, he's been straightening and replacing some of the sign post, and he also replaced, or adding stop signs, street signs, ect. .

Streets and Roads has been hauling gravel to the stock pile on the south side of the city shop, from the stock pile that we have at the old hospital pit. This will help us out when we need it this winter, and also in a, emergency. We have been working on the grave yard by the airport, hauling in top soil to the hill in the back of the grave yard, the civilian side of the grave yard, and the shoulders of the road going into the grave yard. We should be done with this in a few days when it stops raining, and dries out a little, so we can drive the dump trucks on it. We haul a few loads of sand, and gravel to the teen center, and around the ball field for parks and recreation. We also help the port in hauling the old steel, behind the Quonset hut to the port, so it could be shipped out for recycling.

Vehicles and Equipment:

July was work as usual. Budget passed, oil ordered. Full crew...

Transit System:

For the month of July, Bethel Transit System transported a total of 1810 passengers. 74 of these had a disability and approximately 464 of these were elders. The cash fares totaled \$2,514.00 and total passes used equaled \$622.00. The BTS used 328.025 gallons of low sulfur diesel fuel and 331.479 of unleaded gasoline.

Betty Twitchell will be volunteering a few hours in the month of

August to help out while I am at two different mandatory DOT and RTAP trainings, one in Anchorage and the other in Juneau. I appreciate her willingness to do this since she is in the middle of packing up to move to Wasilla.

Our Part time driver is back from family business in the lower 48 and we've hired another part time person. With our 2 full time people, this means I should be able to drive less and learn the management side of the position. We were short and during my "training" month in July, both Betty and I drove at least 3-4 times a week. We are still looking to hire 1 or 2 "On Call" people.

Staffing Issues/Concerns/Training:

Cheryl Roberts attended training in Anchorage July 28th and 29th.

Budget/Financial:

See each department. We will be putting in the expenditures next month as this is still new into the FY 2012 budget.

HOUSE BILL NO _____

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE – SECOND SESSION

By: Representative(s) _____

Introduced: _____

Referred: _____

NOTE* Is it necessary to define residential and commercial property or is the use of these Words commonly understood?

A BILL

FOR AN ACT ENTITLED

"An Act relating to municipal fees for police protection serves to include commercial property"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

***Section (a)**, AS 29.35.125 of the codified law of the State of Alaska is amended to read:

AS 29.35.125. Fees For Police Protection Services.

(a) A municipality may by ordinance impose a fee on the owner of residential or commercial property, including multi-family housing, if a member of the municipal police department goes to the property an excessive number of times during a calendar year in response to a call for assistance, a complaint, an emergency, or a potential emergency. The number of responses considered to be excessive and the amount of the fee shall be set out in the ordinance that establishes the fee. The fee may not exceed the actual cost to the municipality for the excessive responses. A fee may not be imposed under this subsection for responses to calls that involve potential child neglect, potential domestic violence, as defined in AS 18.66.990, or potential stalking under AS 11.41.260 or 11.41.270.

HOUSE BILL NO _____

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE – SECOND SESSION

By: Representative(s) _____

Introduced: _____

Referred: _____

NOTE* Is it necessary to define residential and commercial property or is the use of these Words commonly understood?

A BILL

FOR AN ACT ENTITLED

"An Act relating to abatement of illegal use of premises"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*AS 09.50.180 of the codified law of the State of Alaska is amended to read:

AS 09.50.180. Injunction,

When there is reason to believe that a nuisance as defined in AS 09.50.170 - 09.50.240 exists, the attorney general shall, or a citizen, or a [**HOME RULE**] municipality [**IF THE NUISANCE IS LOCATED IN THE HOME RULE MUNICIPALITY,**] may, bring an action to perpetually enjoin the nuisance, the person maintaining it, and the owner, lessee, or agent of the building or group upon which the nuisance exists.

Introduced by:
Date:
Action:
Vote:

CITY OF BETHEL, ALASKA

Ordinance # 11-__

AN ORDINANCE OF THE BETHEL CITY COUNCIL TO REPEAL CHAPTER 9.36 PUBLIC NUISANCE PROPERTIES AND REENACT A NEW CHAPTER 9.37 CHRONIC NUISANCE PROPERTIES

WHEREAS, the current provisions of Chapter 9.36 of the Bethel Municipal Code relating to Public Nuisance Property do not provide an adequate tool for abating nuisance properties; and

WHEREAS, the City Council desires to repeal Chapter 9.36 entitled "Public Nuisance Abatement" and enact a new Chapter 9.37 entitled "Chronic Nuisance Properties" to provide a new process for enforcement and abatement of nuisance activities that repeatedly occur or exist at chronic nuisance properties;

THEREFORE BE IT ORDAINED by the City Council of Bethel, Alaska, that:

Section 1. Chapter 9.36 of the Bethel Municipal Code entitled "Public Nuisance Abatement" is hereby repealed in its entirety and replaced with a new Chapter 9.37 entitled "Chronic Nuisance Abatement" to read as follows:

Sections:

9.37.010 PURPOSE.

9.37.020 DEFINITIONS.

9.37.030 VIOLATION.

9.37.040 PROCEDURE.

9.37.050 COMMENCEMENT OF ACTION - ENFORCEMENT.

9.37.060 SUMMARY CLOSURE.

9.37.070 SEVERABILITY.

9.37.010 PURPOSE.

(a) Chronic nuisance properties present grave health, safety and welfare concerns, where the persons responsible for such properties have failed to take corrective action to abate the nuisance condition. Chronic nuisance properties have a tremendous negative impact upon the quality of life, safety and health of the neighborhoods where they are located. This chapter is enacted to remedy nuisance activities that are particularly disruptive to quality of life and repeatedly occur or exist at properties by

Introduced by:
Date:
Action:
Vote:

providing a process for abatement. This remedy is not an exclusive remedy available under any state or local laws and may be used in conjunction with such other laws.

(b) Also, chronic nuisance properties are a financial burden to the city by the repeated calls for service to the properties because of the nuisance activities that repeatedly occur or exist on such property. This chapter is a means to ameliorate those conditions and hold accountable those persons responsible for such property.

9.37.020 DEFINITIONS.

For purposes of this chapter, the following words or phrases shall have the meaning prescribed below:

(a) "Abate" means to repair, replace, remove, destroy, or otherwise remedy a condition which constitutes a violation of this chapter by such means and in such a manner and to such an extent as the applicable City department director or designee(s) determines is necessary in the interest of the general health, safety and welfare of the community;

(b) "Control" means the ability to regulate, restrain, dominate, counteract or govern property, or conduct that occurs on a property;

(c) "Chronic nuisance property" means property on which any combination of three or more nuisance activities occur or exist during any sixty (60) day period;

(d) "Drug-related activity" means any unlawful activity at a property which consists of the manufacture, delivery, sale, storage, possession, or giving away of any controlled substance as defined in Chapter _____, legend drug as defined in Chapter _____, or imitation controlled substances as defined in Chapter _____;

(e) "Nuisance activity" means and includes:

(1) Any nuisance as defined by State law, local ordinance or consumer law occurring on, around or near a property, including but not limited to, violations of the following laws and regulations:

- (a) Chapter _____, Unauthorized and Junk Vehicles;
- (b) Fire code, _____;
- (c) _____, Health and Sanitation;

(2) Any criminal conduct as defined by State law or local ordinance occurring on, around or near a property, including, but not limited to, the following activities or behaviors:

- (a) Stalking, _____;
- (b) Harassment, _____;

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- (c) Failure to disperse, _____;
- (d) Disorderly conduct, _____;
- (e) Assault, _____;
- (f) Any domestic violence crimes, _____;
- (g) Reckless endangerment, _____;
- (h) Prostitution, _____;
- (i) Patronizing a prostitute, _____;
- (j) Public disturbance noises, _____;
- (k) Lewd conduct, _____;
- (l) Any firearms/dangerous weapons violations, _____ through _____;
- (m) Drug-related loitering, _____;
- (n) Any dangerous animal violations, _____;
- (o) Any drug-related activity;

(3) For purposes of this chapter, "nuisance activity" shall not include conduct where the person responsible is the victim of a crime and had no control over the criminal act;

(f) "Person responsible for property" or "person responsible" means, unless otherwise defined, any person who has titled ownership of the property or structure which is subject to this chapter, an occupant in control of the property or structure which is subject to this chapter, a developer, builder, or business operator or owner who is developing, building, or operating a business on the property or in a structure which is subject to this chapter and/or any person who has control over the property and allows a violation of this chapter to continue;

(g) "Person" means natural person, joint venture, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, officer or employee of any of them;

(h) "Premises and property" may be used by this chapter interchangeably and means any public or private building, lot, parcel, dwelling, rental unit, real estate or land or portion thereof including property used as residential or commercial property;

(i) "Rental unit" means any structure or that part of a structure, including but not limited to single-family home, room or apartment, which is rented to another and used as a home, residence, or sleeping place by one or more persons.

9.37.030 VIOLATION.

(a) Any property within the City of Bethel which is a chronic nuisance property is in violation of this chapter and subject to its remedies; and

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(b) Any person responsible for property who permits property to be a chronic nuisance property shall be in violation of this chapter and subject to its remedies.

9.37.040 PROCEDURE.

(a) When the Chief of Police, or his/her designee(s), receives documentation confirming the occurrence of three or more nuisance activities within a sixty (60) day period on any property, the Chief of Police, or his/her designee(s), may review such documentation to determine whether it describes the nuisance activities enumerated in _____. Upon such a finding, the Chief of Police, or his/her designee(s), shall warn the person responsible for such property, in writing, that the property is in danger of being declared a chronic nuisance property.

(b) The warning shall contain:

(1) The street address or a legal description sufficient for identification of the property;

(2) A concise description of the nuisance activities that exist, or that have occurred on the property;

(3) A demand that the person responsible for such property respond to the Chief of Police or his/her designee(s) within ten (10) days of service of the notice to discuss the nuisance activities and create a plan to abate the chronic nuisance;

(4) Offer the person responsible an opportunity to abate the nuisance activities giving rise to the violation; and

(5) A statement describing that if legal action is sought, the property could be subject to closure and civil penalties and/or costs assessed up to one hundred dollars (\$100.00) per day if the property is declared a chronic nuisance property.

(c) The Chief of Police or his/her designee(s) shall serve or cause to be served such warning upon the person responsible in accordance with the procedures set forth in _____ and _____.

(d) If the person responsible fails to respond to the warning within the time prescribed, the Chief of Police, or his/her designee(s) shall issue a notice declaring the property to be a chronic nuisance property and post such notice at the property and issue the person responsible a civil infraction, punishable by a maximum penalty of one thousand dollars (\$1,000). If the person responsible fails to respond to the issued infraction and/or continues to violate the provisions of this chapter, the matter shall be referred to the City Attorney for further action.

Introduced by:

Date:

Action:

Vote:

(e) If the person responsible responds as required by the notice and agrees to abate the nuisance activity, the Chief of Police, or his/her designee(s), and the person responsible, may work out an agreed upon course of action which would abate the nuisance activity. If an agreed course of action does not result in the abatement of the nuisance activities or if no agreement concerning abatement is reached, the matter shall be forwarded to the City Attorney for enforcement action. Provided, that in the event the Chief of Police or his/her designee(s) or the City Attorney determines that the person responsible has taken reasonable steps to abate the nuisance activity, the City Attorney shall not commence an enforcement action under this chapter, notwithstanding the continuance of the nuisance activity.

(f) It is a defense to an action for chronic nuisance property that the person responsible, at all material times, could not, in the exercise of reasonable care or diligence, determine that the property had become a chronic nuisance property, or could not, in spite of the exercise of reasonable care and diligence, control the conduct leading to the determination that the property is chronic nuisance property.

9.37.050 COMMENCEMENT OF ACTION - ENFORCEMENT.

(a) Once the matter is referred to the City Attorney, the City Attorney may review and make a determination to initiate legal action authorized under this chapter or State statute, or may seek alternative forms of abatement of the nuisance activity. The City Attorney may initiate legal action on the chronic nuisance property and seek civil penalties and costs in superior court for the abatement of the nuisance.

(b) In determining whether a property shall be deemed a chronic nuisance property and subject to the court's jurisdiction, the City shall have the initial burden of proof to show by a preponderance of the evidence that the property is a chronic nuisance property. The City may submit official police reports and other affidavits outlining the information that led to arrest(s), and other chronic nuisance activity occurring or existing at the property. The failure to prosecute an individual, or the fact no one has been convicted of a crime is not a defense to a chronic nuisance action.

(c) Once a superior court determines the property to be a chronic nuisance under this chapter the court may impose a civil penalty against any or all of the persons responsible for the property, and may order any other relief deemed appropriate. A civil penalty may be assessed for up to one hundred dollars (\$100.00) per day for each day the nuisance activity continues to occur following the date of the original warning by the Chief of Police, or his/her designee(s), as described in _____. In assessing the civil penalty, the court may consider the following factors, citing to those found applicable:

(1) The actions taken by the person responsible to mitigate or correct the nuisance activity;

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Action:

Vote:

- (2) The repeated or continuous nature of the nuisance activity;
- (3) The statements of the neighbors or those affected by the nuisance activity;
and
- (4) Any other factor deemed relevant by the court.

(d) The superior court which determined the property to be a chronic nuisance property shall also assess costs against the person responsible in the amount it costs the City to abate, or attempt to abate, the nuisance activity.

(e) If the superior court determines the property to be a chronic nuisance property, the superior court shall order the property closed and secured against all unauthorized access, use and occupancy for a period up to one year, and may impose a civil penalty and costs.

(f) Once a determination has been made by the superior court that the chronic nuisance property shall be subject to closure the court may authorize the City to physically secure the premises and initiate such closure. Costs for such closure shall be submitted to the Court for review. Any civil penalty and/or costs awarded to the City may be filed with the City Treasurer who shall cause the same to be filed as a lien on the property with the State Recorder's Office. The City may file a formal lis pendens notice when an action for abatement is filed in the superior court.

(g) The superior court shall retain jurisdiction during any period of closure or abatement of the property.

9.37.060 SUMMARY CLOSURE.

Nothing in this chapter prohibits the City from taking any emergency action for the summary closure of such property when it is necessary to avoid an immediate threat to public welfare and safety. The City may take summary action to close the property without complying with the notification provisions of _____, but shall provide such notice as is reasonable under the circumstances.

9.37.070 SEVERABILITY.

If any portion of this chapter, or its application to any person or circumstances, is held invalid, the validity of the chapter as a whole, or any other portion thereof, or the application of the provision to other persons or circumstances is not affected.

Section 2. This ordinance shall become effective upon passage by the Bethel City Council.

**ENACTED THIS ___ DAY OF _____ 2011 BY A VOTE OF ___ IN FAVOR
AND ___ OPPOSED**

Introduced by:

Date:

Action:

Vote:

Eric Middlebrook, Mayor

ATTEST:

Lori Stickler, City Clerk

[Faint, large, diagonal watermark text, possibly reading "BETHEL"]

Wohlforth | Brecht | Cartledge | Brooking

A PROFESSIONAL CORPORATION

Julius J. Brecht
Cheryl Rawls Brooking
Cynthia L. Cartledge
Michael Gatti
Clyde W. Hutchins Jr.
Leila R. Kimbrell
Eric E. Wohlforth

ATTORNEYS AT LAW
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July 6, 2011

Dan Shea, Planning Director
City of Bethel
P.O. Box 1388
Bethel, AK 99559

Re: Utility Permit Applications; Our File No. 5792.0100(q)

Dear Dan:

Enclosed please find a draft letter related to utility company utility permits for use of public easements and rights-of-way. As you can see from the letter, there is some research you'll need to perform in order to develop additional facts related to this issue. Most fundamental to the problem is identifying what utilities have installed utility plant in or upon City utility easements or rights-of-way so the City can establish the location of the utility plant within or upon the public's property. You'll also need to research if the Council has adopted a resolution establishing a one-time or annual fee for the City's issuance of the permit. Lastly, the City should also review its utility permit application and ordinance to determine if it requires updating. See BMC 17.04.070(B). As you know, I previously sent you examples of permits when you were working on the Northern Fiber Optics Link (NFOL) issue.

Please review the draft letter and edit as appropriate. Call if you have questions.

Sincerely,

WOHLFORTH, BRECHT,
CARTLEDGE & BROOKING



Michael Gatti

Enclosure

cc: Lee Foley, City Manager
Chuck Willert, Public Works Director

[CITY OF BETHEL LETTERHEAD]

[INSERT DATE]

NAME
ADDRESS
CITY, STATE ZIP

Re: Utility Permit

Dear _____:

[ADD NAME OF UTILITY COMPANY] has installed **[ADD TYPE OF UTILITIES INSTALLED]** utility plant in dedicated street or utility rights-of-way or easements held by the City. **[ADD NAME OF UTILITY COMPANY]** utility plant is installed in the following areas as depicted on the attached map. **[Dan, you'll need to put a utility map in place]** A review of the City's records discloses that **[ADD NAME OF UTILITY COMPANY]** has not applied for or been issued a utility permit for the placement of its utility plant in street or utility rights-of-way or easements as depicted on the attached map.

The Bethel Municipal Code ("BMC") 17.04.070(B) requires a permit prior to the placement of utility facilities in such areas. It provides in part:

The placement of utility facilities in a dedicated street or utility right-of-way or easement ("city property") may occur only under a permit issued by the city authorizing the placement. The director of the public works department or such other person as the manager may designate shall issue utility permits. The permit may be conditioned on the payment of either or both one (1) time or annual fees established by the council by resolution. The rights of the public or the city to the use of a dedicated way or easement is superior to that of a private utility or other private person.

In accordance with the code, a utility permit may also be subject to a one time or annual fee established by the Council by resolution. In the case of utilities, the Council has adopted Resolution [] establishing the following fees for the use of the public's rights-of-way: **[Dan, please research whether the City Council has adopted a resolution charging fees for utility usage of City easements or rights-of-way.]**

Please contact my office within 15 days of the date of this letter to discuss this matter and to provide the City with any additional information you may have related to

[INSERT NAME]

Re: Utility Permit

Page 2 of 2

[NAME OF UTILITY COMPANY] use of the City's public rights-of-way or easements.
Please call if you have questions.

Sincerely,

Dan Shea, MRCP
Planning Director

Wohlforth | Johnson | Brecht
Cartledge | Brooking

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Julius J. Brecht
Cheryl Rawls Brooking
Cynthia L. Cartledge
Michael Gatti
Clyde W. Hutchins Jr.
Robert M. Johnson
Leila R. Kimbrell
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MEMORANDUM

TO: Lee Foley, City Manager
Bobby Sutton, Acting Finance Director

FROM: Michael Gatti, City Attorney

BY: Leila R. Kimbrell, Attorney 

DATE: March 30, 2011

SUBJECT: Utility Collections; Our File No. 5792.0100

Introduction:

Last summer, we began working with the former City Finance Director to review the City's utility collections procedures for delinquent water and sewer accounts. As part of that review, we began to develop sample forms and procedures, including this memorandum. The former Finance Director sought input from the Finance Committee in conjunction with other changes being made to the piped water metering service for Committee's input and consideration; however, we received no feedback for finalization. Based upon the recent issues you have presented relating to delinquent sewer accounts, we believe you will find this memorandum helpful. Therefore, we updated and finalized this memorandum and attached sample forms for your use. Specifically, this memorandum addresses enforcement procedures for delinquent water and sewer accounts, critical distinctions between the enforcement process for water versus sewer accounts, and the proper methods for terminating services to delinquent utility customers.

Discussion:

1. Relevant Code Provisions.

The BMC treats the water and sewer utilities separately. The relevant chapters dealing with each utility are BMC 13.04 and 13.08, respectively. For purposes of enforcing

Lee Foley, City Manager
Bobby Sutton, Acting Finance Director
Re: Utility Collections; Our File No. 5792.0100
March 30, 2011
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and collection of delinquent accounts, the provisions cited throughout this memorandum are highlighted because they require different approaches. Namely, delinquent water accounts are enforced through termination and debt collection. In contrast, sewer accounts cannot be terminated but instead are treated as public nuisances.

It is our understanding that water and sewer accounts are billed together. There is nothing wrong with this process so long as the bills separately indicate the amounts billed for each utility because of the different processes required for enforcing payment as well as different rates charged for the different services. See, BMC 13.08.210.

2. Water Utility Accounts.

The Finance Department is charged with the responsibility for sending delinquency notices for water utility accounts to its customers. BMC 13.04.270. Water utility bills are considered delinquent when a bill is not paid by the 25th of each month, or 20 days after it is mailed by the City, whichever is later. BMC 13.04.260B. Once an account becomes delinquent, the Finance Department must send a "notice of account delinquency" to each customer. BMC 13.04.270A. If the customer does not pay the delinquency within 15 days after receipt of the notice issued under BMC 13.04.0270A, then the City may turn off the water service to that delinquent customer. BMC 13.04.270B. The City is entitled to charge 15% interest per annum on all delinquent water utility accounts and may recover all expenses incurred that relate to the collection effort to enforce delinquent accounts. See, BMC 13.04.270D and E. Further, the City may shutoff water service specifically for "nonpayment of charges." BMC 13.04.290

We advise that all notices sent for delinquent accounts include the following information, at a minimum:

- (1) Notify the account holder that the account is delinquent;
- (2) Explain that the failure to pay the full amount of delinquency within 15 days of the date of the letter will result in the water service being turned-off;
- (3) The exact date turn-off will occur;
- (4) Explain that interest in the amount of 15% per annum shall be charged against the delinquent account;

Lee Foley, City Manager
Bobby Sutton, Acting Finance Director
Re: Utility Collections; Our File No. 5792.0100
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(5) A statement that delinquent payments, including all interest, constitute a lien on real and personal property of the customer; and

(6) A statement that the delinquent customer may be subject to all expenses relating to collection of this account, including but not limited to costs of collection, attorney's fees, recorder's fees, and court costs, if necessary.

This information satisfies the notice requirements set forth in BMC 13.04.270. In addition to this information, it is also advisable to include notice to the delinquent customer informing the customer what will happen in the event of shut-off, particularly with respect to additional charges assessed to reinstate service. A delinquent account customer should be advised of these penalties in addition to the above discussed notice requirements. Please see Sample Letter #1, attached.

BMC 13.04.110 discusses deposit requirements for establishing water service and water utility accounts with the City. To establish water service, a deposit of at least \$100 is required for all applicants with no credit history with the City. BMC 13.04.110A. Deposits are not to be used for payments on accounts. BMC 13.04.110B. However, deposits may be applied to unpaid balances in the event an account becomes delinquent. BMC 13.04.110C. In a delinquency situation, the deposit is forfeited to the City. Id. Most relevant for purposes of this analysis, however, is the code requirement that follows:

Water service shall not be restored to the customer at any premises in which the customer resides within the city until all outstanding water bills due the city from the customer have been paid and the cash deposit replaced in an amount equal to the department's estimated bill for two (2) months' service together with a thirty-five dollars (\$35) service charge for the restoration of services.

BMC 13.04.110C. For your convenience, we have attached a proposed "Notice of Water Utility Account Delinquency" letter which contains the above-discussed requirements for your review and use.

In the event a delinquent water utility account remains delinquent after shut-off, the City has two options: If the amount is large enough, it can refer the account to the City's collections company or to the City Attorney for collection. Or, the City may choose to write-off amounts too small to expend City resources. We can assist with this process at your

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Re: Utility Collections; Our File No. 5792.0100
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request. Also attached for your use is a checklist of procedures to facilitate collection efforts.

3. Sewer Utility Accounts.

The City's sewer utility code differs from the water utility code. For example, the code mandates that all residents receive sewer services from the City. BMC 13.08.025. There is no similar mandate for water service in BMC 13.04. Most likely this mandate serves to address public health concerns although the precise reason for this mandate is not stated in the code. Because sewer service is mandated, the sewer utility chapter sets forth different enforcement procedures to enforce delinquent utility accounts - most notably the fact that service may not be terminated for nonpayment. These differences as well as similarities are discussed below.

Similar to the water utility, persons required to subscribe to sewer service ("subscribers") must pay a deposit of at least \$100. BMC 13.08.080A. Like the water utility deposit, the sewer utility deposit is not a payment on the account. BMC 13.08.080B. However, while the deposit is forfeited in the event of delinquency, BMC 13.08.080C, only an additional deposit is required but not for reinstatement. ***Unlike the water utility, restoration of sewer utility service is not contingent upon the replacement of the deposit because sewer service is mandatory and may not be shutoff for delinquency.*** This subject speaks to the issue recently raised by Mr. Sutton with regard to a certain sewer account that frequently experiences delinquencies.

Finally, unique only to the sewer utility code is the provision that the "city shall provide assistance to any subscriber proving financial need." BMC 13.08.080D. The Code does not provide criteria for what constitutes "financial need." Nevertheless, this provision in conjunction with mandatory sewer subscription and deposit provisions appear to prevent the City from shutting off sewer service do to non-payment. It is recommended that the City amend the Code to define what constitutes "financial need" to avoid any appearances of impropriety, special or unequal treatment, or arbitrary and capricious decision making. We can assist with this process upon request.

a. Enforcing delinquent sewer accounts.

I. Notice of Delinquency.

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To enforce a delinquent sewer utility account, the City must use the following process. This process differs substantially from enforcing delinquent water utility accounts because the City is prevented from discontinuing sewer service by the terms of the code. Please see the checklist of procedures and form notice letters included for your reference.

The code requires that sewer utility bills be included in the bill for water service. BMC 13.08.210A. Customers not receiving water service can be billed separately. Id. Like the water utility bills, a sewer utility bill is considered delinquent if it is not paid by the 25th of each month, or within 20 days after the date the bill is mailed by the City, whichever is later. BMC 13.08.210B. Also, like water bills, the City may assess a 15% interest rate against delinquent sewer accounts and delinquent amounts constitute a lien against the real and personal property of the account holder. BMC 13.08.220D. However, unlike a delinquent water account, a delinquent sewer account shall be "deemed and declared a common or public nuisance" rather than terminated. See, BMC 13.08.240, 13.08.241. Delinquent sewer accounts are enforced through nuisance abatement procedures rather than traditional collections measures. Id.

In the event a sewer bill is not paid on time, the city must send a "Notice of Account Delinquency" to the customer on or after 10 days after the account becomes delinquent. BMC 13.08.220A. (Note that this is a shorter notice period than required by the delinquency procedures for water bills, which allows 15 days. See, e.g., BMC 13.04.270B.) See, Sample Letter #2, attached.

If the bill is not paid within 5 days thereafter, the City must send a second notice, which is a "Notice of Delinquency and Public Nuisance." BMC 13.08.220B. This second notice must inform the delinquent customer on the date in which the premises will be declared a public nuisance if the account is not paid in full before that date. Id. The date to declare the premises a public nuisance cannot be less than 5 or more than 15 days from the date of the second notice. Id. See, Sample Letter #3, attached.

Then, if the delinquency has not been cured by the date stated, the city must declare the premises a public nuisance and proceed to abate said nuisance in accordance with BMC 13.08.241. BMC 13.08.220C. This requires a third and final notice. See, Sample Letter #4, attached.

ii. Notice and Abatement of Public Nuisance.

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The "Abatement of Nuisance" procedures set forth at BMC 13.08.241 govern the next phase of enforcing a delinquent sewer account. The following outlines the process the City must follow to abate a public nuisance.

First, the City must formally deem the premises a public nuisance. See, BMC 13.08.240, 13.08.241A. This is achieved by providing a notice to the owner of the property and an inhabitant of the building. BMC 13.08.241A (emphasis added). The notice can be given by either the city manager or the police chief, or any of their designees. Id.

The notice of public nuisance must contain the following information:

1. The address of the property and the name of the record owner;
2. A short description of the nuisance;
3. An order to abate the nuisance in a manner acceptable to the city;
4. A statement that if such abatement is not completed within forty-eight (48) hours of service of the notice, the city is authorized to issue a citation for a violation and impose a fine of up to one hundred dollars (\$100) per day for each day abatement of the nuisance is not completed;
5. A statement that the city shall provide assistance to any subscriber proving financial need.

BMC 13.08.241B (emphasis added). Note the final requirement for the notice. This requirement suggests that the City must provide the assistance necessary to remove a subscriber from delinquency status. This requirement is problematic because there is no guidance for what constitutes "financial need," including how much assistance must be given, whether a subscriber is limited to an individual person, one household, etc., or whether this assistance mandate also requires the City to provide assistance to businesses. It seems unlikely that financial assistance was contemplated to be provided to businesses; however, in its current form, the ordinance does not prohibit a business from applying. Due to these ambiguities, it is recommended that the City amend the code to address these concerns.

If, after the City completes the "abatement of nuisance" procedures of BMC 13.08.241 and the owner/inhabitant still does not cure the delinquency, the City's final remedy is to seek injunctive relief from the courts. Pursuant to BMC 13.08.245, the City may seek injunctive relief to mandate compliance with the sewer utility code. If this action appears necessary, our office can assist with the necessary paperwork and pleadings to be filed with court.

4. Other issues.

a. Door tag concerns.

Prior to cancelling water utility services, the City must provide proper notice to the customer. BMC 13.04.270, 13.04.290. This notice does not require the hanging of a door tag at the location where the delinquent account exists, although city staff indicate that door tags are placed on residences to warn of shut off under these circumstances.

The door tag, in its present form, provides only notice that the City was unable to service a residence or property as a result of freezing, dogs or cars or other objects blocking the way, or placement of a septic tank more than 40 feet beyond the street. The door tag does not indicate, however, that it is for cancellation of service. There is a place for "Other" which the City could write in a notice of cancellation, however, there is not enough room for all the relevant information necessary discussed above to give proper notice.

Many communities use door hangers as a form of final notice prior to shut-off. Door hangers can be effective for providing immediate notice, however, door hangers are time and labor intensive for City staff. If the City wishes to use door hangers to provide notice of shutoff for delinquent accounts, our office can assist in drafting procedures for inclusion in the code. It is recommended that procedures are in place to ensure the City has given the proper notice required by BMC 13.04.270 prior to any shutoff due to delinquency noticed by a door hanger. This will also require amending the code.

b. Other issues - payment plans.

One option the City may want to consider that was not previously discussed are payment plans for delinquent customers. So-called "Promise to Pay" agreements are enforceable negotiable instruments and may provide flexible solutions for the City and its utility customers. Upon request, our office can provide the City with more information

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regarding this procedure as well as legal forms for your use that ensure the City's interests are protected in the event additional enforcement becomes necessary.

Recommendations:

Based on the above, we recommend the following.

1. Revise notice/collection letters to address the difference between water utility and sewer utility delinquencies. We have attached proposed letters for your use. These include separate enforcement letters for delinquent water utility accounts and delinquent sewer utility accounts.
2. Add the second notice requirement to City systems for enforcement of delinquent sewer utility accounts pursuant to BMC 13.08.220B. (See attached.)
3. Add nuisance abatement procedures to the City's current enforcement systems in accordance with BMC 13.08.241. (See attached.)
4. Amend Sewer Utility Code, BMC 13.08, billing requirements to conform to the timelines established for the Water Utility Code to streamline enforcement of delinquent accounts. (Compare BMC 13.08.210 and BMC 13.04.260.)
5. Amend Sewer Utility Code to include criteria to establish what constitutes "financial need" including a limit to the financial assistance pursuant to BMC 13.08.080.
6. Optional: Revise the "door tag" or create a new door tag that properly gives notice of cancellation of service due to non-payment. (Note: This currently is not required by the code however the City may choose to use this service.)
7. For your convenience, checklists are also included to facilitate compliance with enforcement procedures. (See attached.)

Please note that the forms attached to this memorandum are provided as one example of what may be used to enforce delinquent utility accounts. These forms have not, to our knowledge, been reviewed or approved by the City for City use. Regardless of the

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type of form used, the important point is to ensure that the minimum notice requirements discussed herein are met.

Conclusion:

The procedures for enforcing delinquent water and sewer utility accounts vary significantly despite the code requirement that sewer accounts be billed with water accounts. Each utility code provides a procedure wherein the City is able to enforce delinquencies every billing cycle. If delinquency procedures prove ineffective, the city attorney can assist the City to enforce a debt action for water accounts, or seek injunctive relief in the event of delinquent sewer accounts where subscribers refuse to abate the public nuisance.

If you have any questions, please call.

LRK/
Attachments

DELINQUENT WATER UTILITY ACCOUNT CHECKLIST
(BMC 13.04)

CHECK WHEN DONE:

- 1) Is account more than 20 days past due? _____
If yes, send NOTICE OF WATER UTILITY ACCOUNT
DELINQUENCY letter. (BMC 13.04.270) _____
DATE NOTICE MAILED: _____
- 2) After notice is mailed, calendar 15 days to remit payment. _____
Date delinquent payment due: _____
- 3) Payment received? _____
If YES, no further enforcement action necessary. _____
If NO, proceed to step 4. _____
- 4) TERMINATE SERVICE if no payment received within 15 days. _____
- 5) Deposit on file with City? APPLY DEPOSIT to delinquent account
balance. Remainder is forfeited per BMC 13.04.110. _____
- 6) Forward delinquent account to City collections agency or City Attorney
for collection, if necessary. _____
- 7) Reinstatement of Service? Determine eligibility:
a. Did customer pay entire delinquency and all assessed charges? _____
b. Assess \$35 reinstatement fee? (BMC 13.04.110) _____
c. Collect additional deposit? (BMC 13.04.110) _____
d. Total amount required to reinstate service: \$ _____

**[NOTE: IS SEWER UTILITY ACCOUNT ALSO DELINQUENT? IF YES, PROCEED SEPARATELY
WITH DELINQUENT SEWER UTILITY ACCOUNT ENFORCEMENT/ PUBLIC NUISANCE
ABATEMENT REQUIREMENTS PURSUANT TO BMC 13.08]**

SAMPLE LETTER #1:
WATER TERMINATION NOTICE

[CITY OF BETHEL LETTERHEAD]

[DATE]

[Name]
[Address]
[City, State Zip]

Re: **Notice of Delinquent Water Utility Account and Termination of Service**

Account Number: _____

Amount of Delinquency: \$ _____

Utility Account/Subscriber Address (the "Property"):

Name of Property Owner:

Dear [Insert Utility Customer Name]:

Your water utility account is **more than 20 days delinquent**. Please make arrangements to pay your account immediately. Failure to pay the full amount of the account delinquency stated above within 15 days of the date of this letter will result in the termination of your water service to the above address. To avoid termination, payment in the amount of \$ _____ must be received not later than 5:00p.m., [Insert Date].

Please be advised that delinquent charges constitute a lien on real and personal property of the utility customer. All delinquent water utility accounts are subject to a 15% interest rate per annum assessment. In addition, you may be responsible for all costs of collection taken by the City against this account, including but not limited to the attorneys fees, recorder fees, and court costs.

Any deposit previously paid to initiate service on this account will be forfeited if payment is not received by the date above and will be applied to the delinquent balance. If water service is shut off at your address, you will be subject to reinstatement charges, which include a cash deposit in an amount equal to the estimated bill for two months of service, plus a \$35.00 service charge for restoration of services.

Your prompt attention to this matter is appreciated.

Sincerely,

[INSERT NAME]
Finance Director

DELINQUENT SEWER UTILITY ACCOUNT CHECKLIST
(BMC 13.08)

CHECK WHEN DONE:

- 1) Is account more than 10 days past due? _____
If yes, send **FIRST NOTICE OF SEWER UTILITY ACCOUNT DELINQUENCY** letter. (BMC 13.08.220A) _____
DATE FIRST NOTICE MAILED: _____
- 2) After notice is mailed, calendar 5 days to remit payment. _____
Date delinquent payment due: _____
- 3) Payment received? _____
If YES, no further enforcement action necessary. _____
If NO, proceed to step 4. _____
- 4) If delinquency not paid, send **SECOND NOTICE: "NOTICE OF DELINQUENCY AND PUBLIC NUISANCE"** (BMC 13.08.220B) _____
DATE SECOND NOTICE MAILED: _____
- 5) Payment received? _____
If YES, no further enforcement action necessary. _____
If NO, proceed to step 6. _____
- 6) Deposit on file with City? **APPLY DEPOSIT** to delinquent account balance. Remainder is forfeited per BMC 13.04.110. _____
- 7) If no payment received, **REFER TO CITY MANAGER** to give "Notice of Abatement of Public Nuisance & Order to Abate within 48 Hours." CM may refer to Police. (BMC 13.08.241) _____
Date referred to City Manager: _____
(Police Dept. should issue citations for violations and refer to City Attorney if no abatement.) (BMC 13.08.241, .245)
- 8) **FINANCIAL ASSISTANCE** requested? Determine eligibility per BMC 13.08.241:
 - a. Did customer pay entire delinquency and all assessed charges? _____
 - b. Collect additional deposit? (BMC 13.08.110) _____

[CITY OF BETHEL LETTERHEAD]

[DATE]

[Name]
[Address]
[City, State Zip]

Re: **Notice of Account Delinquency for Sewer Utility – FIRST NOTICE**
Sewer Account Number: _____
Amount of Delinquency: \$ _____
Utility Account/Subscriber Address (the "Property"):
Name of Property Owner:

Dear [OWNER –OR- UTILITY CUSTOMER]:

Pursuant to BMC 13.08.220 this letter serves as notice that your sewer utility account **is more than 10 days delinquent**. Failure to pay the full amount of the account delinquency within 15 days of the date of this letter will result in a declaration that the above-named Property constitute a public nuisance and code violation, which are subject to \$100 fine for each day the public nuisance continues. To avoid further action against you, payment of \$ _____ must be received not later than 5:00 p.m., [Insert Date].

Please be advised that delinquent charges constitute a lien on real and personal property of the utility customer. All delinquent water utility accounts are subject to a 15% interest rate per annum assessment. In addition, you may be responsible for all costs of collection taken by the City against this account, including but not limited to the attorneys fees, recorder fees, and court costs.

Any deposit you may have paid to initiate service on this account will be forfeited if your account is not paid in full by the date set forth above and will be applied to the delinquent balance stated above.

If you are unable to pay the above amount due to financial need, you may apply to the City for financial assistance pursuant to BMC 13.08. Proof of financial need is required and eligibility is not guaranteed. BMC 13.08.080D.

Your prompt attention to this matter is appreciated.

Sincerely,

[INSERT NAME]
Finance Director

[CITY OF BETHEL LETTERHEAD]

[DATE]

[Name]
[Address]
[City, State Zip]

Re: **Notice of Account Delinquency for Sewer Utility – SECOND NOTICE**
Sewer Account Number: _____
Amount of Delinquency: \$ _____
Utility Account/Subscriber Address (the "Property"):
Name of Property Owner:

Dear [OWNER –OR- UTILITY CUSTOMER]:

This is the **second notice** that your sewer utility account is **now more than 15 days past due**. If this delinquency is not paid within 5 days from the date of this letter, the premises located at the above-referenced Property shall be deemed and declared a common or public nuisance in accordance with BMC 13.08.240-13.08.241. To avoid further enforcement, please pay your account immediately. **Failure to make payment by 5:00 p.m. [INSERT DATE], may subject you to additional fines up to \$100.00 per day for each day your account is delinquent.**

Delinquent charges constitute a lien on real and personal property of the utility customer. All delinquent sewer utility accounts are subject to a 15% interest rate per annum assessment. You may also be responsible for all costs of collection taken by the City against this account, including but not limited to attorneys fees, recorder fees, and court costs. Any deposit you may have paid to initiate service on this account will be forfeited if your account is not paid in full by the date set forth above and will be applied to the delinquent balance stated above. You will be required to pay a new deposit if this occurs.

If you are unable to pay the above amount due to financial need, you may apply to the City for financial assistance pursuant to BMC 13.08. Proof of financial need is required and eligibility is not guaranteed. BMC 13.08.080D. You will need to come into the billing office and speak with a finance department account manager.

Sincerely,

[INSERT NAME]
Finance Director

SAMPLE LETTER #4:
NOTICE OF PUBLIC NUISANCE -
DELINQUENT SEWER UTILITY ACCOUNT

[CITY OF BETHEL LETTERHEAD]

[DATE]

[Name]

[Address]

[City, State Zip]

Re: **DECLARATION OF PUBLIC NUISANCE – BMC 13.08.241**

Sewer Account Number: _____

Amount of Delinquency: \$ _____

Utility Account/Subscriber Address (the "Property"):

Name of Property Owner:

Dear [OWNER –OR- UTILITY CUSTOMER]:

The City hereby deems and declares a public nuisance to exist at the above-named Property for failure to timely pay the sewer utility account at the premises described herein pursuant to BMC 13.08.240.

You are hereby ordered to cease this public nuisance immediately by paying your account in full. You must come to billing office at City Hall and pay \$ _____ **within 48 hours from receipt of this notice.** If payment is not received within 48 hours of service of this notice, the City will issue a citation against you for a violation of the Bethel Municipal Code Sewer Utility Code. BMC 13.08.241. Violations are subject to a fine of up to \$100.00 per day for each day the nuisance continues and may result in further legal action against you.

If you are unable to cure this public nuisance due to financial need, you will need to come into the billing office and speak with a finance department account manager. You may qualify for financial assistance pursuant to BMC 13.08.080D.

Please contact the City Finance Department to resolve this matter immediately.

Sincerely,

Lee Foley,
City Manager

CC: City Attorney
City Police Chief
City Finance Director

Wohlforth | Johnson | Brecht
Cartledge | Brooking

A PROFESSIONAL CORPORATION

Julius J. Brecht
Cheryl Rawls Brooking
Cynthia L. Cartledge
Michael Gatti
Clyde W. Hutchins Jr.
Robert M. Johnson
Leila R. Kimbrell
Eric E. Wohlforth

ATTORNEYS AT LAW
900 WEST 5TH AVENUE, SUITE 600
ANCHORAGE, ALASKA 99501-2048

Telephone
907.276.6401

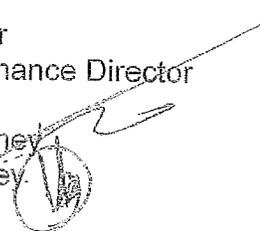
Facsimile
907.276.5093

Website
www.akatty.com

MEMORANDUM

TO: Lee Foley, City Manager
Bobby Sutton, Acting Finance Director

FROM: Michael Gatti, City Attorney

BY: Leila R. Kimbrell, Attorney 

DATE: March 30, 2011

SUBJECT: Utility Collections; Our File No. 5792.0100

Introduction:

Last summer, we began working with the former City Finance Director to review the City's utility collections procedures for delinquent water and sewer accounts. As part of that review, we began to develop sample forms and procedures, including this memorandum. The former Finance Director sought input from the Finance Committee in conjunction with other changes being made to the piped water metering service for Committee's input and consideration; however, we received no feedback for finalization. Based upon the recent issues you have presented relating to delinquent sewer accounts, we believe you will find this memorandum helpful. Therefore, we updated and finalized this memorandum and attached sample forms for your use. Specifically, this memorandum addresses enforcement procedures for delinquent water and sewer accounts, critical distinctions between the enforcement process for water versus sewer accounts, and the proper methods for terminating services to delinquent utility customers.

Discussion:

1. Relevant Code Provisions.

The BMC treats the water and sewer utilities separately. The relevant chapters dealing with each utility are BMC 13.04 and 13.08, respectively. For purposes of enforcing

and collection of delinquent accounts, the provisions cited throughout this memorandum are highlighted because they require different approaches. Namely, delinquent water accounts are enforced through termination and debt collection. In contrast, sewer accounts cannot be terminated but instead are treated as public nuisances.

It is our understanding that water and sewer accounts are billed together. There is nothing wrong with this process so long as the bills separately indicate the amounts billed for each utility because of the different processes required for enforcing payment as well as different rates charged for the different services. See, BMC 13.08.210.

2. Water Utility Accounts.

The Finance Department is charged with the responsibility for sending delinquency notices for water utility accounts to its customers. BMC 13.04.270. Water utility bills are considered delinquent when a bill is not paid by the 25th of each month, or 20 days after it is mailed by the City, whichever is later. BMC 13.04.260B. Once an account becomes delinquent, the Finance Department must send a "notice of account delinquency" to each customer. BMC 13.04.270A. If the customer does not pay the delinquency within 15 days after receipt of the notice issued under BMC 13.04.0270A, then the City may turn off the water service to that delinquent customer. BMC 13.04.270B. The City is entitled to charge 15% interest per annum on all delinquent water utility accounts and may recover all expenses incurred that relate to the collection effort to enforce delinquent accounts. See, BMC 13.04.270D and E. Further, the City may shutoff water service specifically for "nonpayment of charges." BMC 13.04.290

We advise that all notices sent for delinquent accounts include the following information, at a minimum:

- (1) Notify the account holder that the account is delinquent;
- (2) Explain that the failure to pay the full amount of delinquency within 15 days of the date of the letter will result in the water service being turned-off;
- (3) The exact date turn-off will occur;
- (4) Explain that interest in the amount of 15% per annum shall be charged against the delinquent account;

request. Also attached for your use is a checklist of procedures to facilitate collection efforts.

3. Sewer Utility Accounts.

The City's sewer utility code differs from the water utility code. For example, the code mandates that all residents receive sewer services from the City. BMC 13.08.025. There is no similar mandate for water service in BMC 13.04. Most likely this mandate serves to address public health concerns although the precise reason for this mandate is not stated in the code. Because sewer service is mandated, the sewer utility chapter sets forth different enforcement procedures to enforce delinquent utility accounts - most notably the fact that service may not be terminated for nonpayment. These differences as well as similarities are discussed below.

Similar to the water utility, persons required to subscribe to sewer service ("subscribers") must pay a deposit of at least \$100. BMC 13.08.080A. Like the water utility deposit, the sewer utility deposit is not a payment on the account. BMC 13.08.080B. However, while the deposit is forfeited in the event of delinquency, BMC 13.08.080C, only an additional deposit is required but not for reinstatement. *Unlike the water utility, restoration of sewer utility service is not contingent upon the replacement of the deposit because sewer service is mandatory and may not be shutoff for delinquency.* This subject speaks to the issue recently raised by Mr. Sutton with regard to a certain sewer account that frequently experiences delinquencies.

Finally, unique only to the sewer utility code is the provision that the "city shall provide assistance to any subscriber proving financial need." BMC 13.08.080D. The Code does not provide criteria for what constitutes "financial need." Nevertheless, this provision in conjunction with mandatory sewer subscription and deposit provisions appear to prevent the City from shutting off sewer service do to non-payment. It is recommended that the City amend the Code to define what constitutes "financial need" to avoid any appearances of impropriety, special or unequal treatment, or arbitrary and capricious decision making. We can assist with this process upon request.

a. Enforcing delinquent sewer accounts.

I. Notice of Delinquency.

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To enforce a delinquent sewer utility account, the City must use the following process. This process differs substantially from enforcing delinquent water utility accounts because the City is prevented from discontinuing sewer service by the terms of the code. Please see the checklist of procedures and form notice letters included for your reference.

The code requires that sewer utility bills be included in the bill for water service. BMC 13.08.210A. Customers not receiving water service can be billed separately. Id. Like the water utility bills, a sewer utility bill is considered delinquent if it is not paid by the 25th of each month, or within 20 days after the date the bill is mailed by the City, whichever is later. BMC 13.08.210B. Also, like water bills, the City may assess a 15% interest rate against delinquent sewer accounts and delinquent amounts constitute a lien against the real and personal property of the account holder. BMC 13.08.220D. However, unlike a delinquent water account, a delinquent sewer account shall be "deemed and declared a common or public nuisance" rather than terminated. See, BMC 13.08.240, 13.08.241. Delinquent sewer accounts are enforced through nuisance abatement procedures rather than traditional collections measures. Id.

In the event a sewer bill is not paid on time, the city must send a "Notice of Account Delinquency" to the customer on or after 10 days after the account becomes delinquent. BMC 13.08.220A. (Note that this is a shorter notice period than required by the delinquency procedures for water bills, which allows 15 days. See, e.g., BMC 13.04.270B.) See, Sample Letter #2, attached.

If the bill is not paid within 5 days thereafter, the City must send a second notice, which is a "Notice of Delinquency and Public Nuisance." BMC 13.08.220B. This second notice must inform the delinquent customer on the date in which the premises will be declared a public nuisance if the account is not paid in full before that date. Id. The date to declare the premises a public nuisance cannot be less than 5 or more than 15 days from the date of the second notice. Id. See, Sample Letter #3, attached.

Then, if the delinquency has not been cured by the date stated, the city must declare the premises a public nuisance and proceed to abate said nuisance in accordance with BMC 13.08.241. BMC 13.08.220C. This requires a third and final notice. See, Sample Letter #4, attached.

ii. Notice and Abatement of Public Nuisance.

Lee Foley, City Manager
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Re: Utility Collections; Our File No. 5792.0100
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The "Abatement of Nuisance" procedures set forth at BMC 13.08.241 govern the next phase of enforcing a delinquent sewer account. The following outlines the process the City must follow to abate a public nuisance.

First, the City must formally deem the premises a public nuisance. See, BMC 13.08.240, 13.08.241A. This is achieved by providing a notice to the owner of the property and an inhabitant of the building. BMC 13.08.241A (emphasis added). The notice can be given by either the city manager or the police chief, or any of their designees. Id.

The notice of public nuisance must contain the following information:

1. The address of the property and the name of the record owner;
2. A short description of the nuisance;
3. An order to abate the nuisance in a manner acceptable to the city;
4. A statement that if such abatement is not completed within forty-eight (48) hours of service of the notice, the city is authorized to issue a citation for a violation and impose a fine of up to one hundred dollars (\$100) per day for each day abatement of the nuisance is not completed;
5. A statement that the city shall provide assistance to any subscriber proving financial need.

BMC 13.08.241B (emphasis added). Note the final requirement for the notice. This requirement suggests that the City must provide the assistance necessary to remove a subscriber from delinquency status. This requirement is problematic because there is no guidance for what constitutes "financial need," including how much assistance must be given, whether a subscriber is limited to an individual person, one household, etc., or whether this assistance mandate also requires the City to provide assistance to businesses. It seems unlikely that financial assistance was contemplated to be provided to businesses; however, in its current form, the ordinance does not prohibit a business from applying. Due to these ambiguities, it is recommended that the City amend the code to address these concerns.

If, after the City completes the "abatement of nuisance" procedures of BMC 13.08.241 and the owner/inhabitant still does not cure the delinquency, the City's final remedy is to seek injunctive relief from the courts. Pursuant to BMC 13.08.245, the City may seek injunctive relief to mandate compliance with the sewer utility code. If this action appears necessary, our office can assist with the necessary paperwork and pleadings to be filed with court.

4. Other issues.

a. Door tag concerns.

Prior to cancelling water utility services, the City must provide proper notice to the customer. BMC 13.04.270, 13.04.290. This notice does not require the hanging of a door tag at the location where the delinquent account exists, although city staff indicate that door tags are placed on residences to warn of shut off under these circumstances.

The door tag, in its present form, provides only notice that the City was unable to service a residence or property as a result of freezing, dogs or cars or other objects blocking the way, or placement of a septic tank more than 40 feet beyond the street. The door tag does not indicate, however, that it is for cancellation of service. There is a place for "Other" which the City could write in a notice of cancellation, however, there is not enough room for all the relevant information necessary discussed above to give proper notice.

Many communities use door hangers as a form of final notice prior to shut-off. Door hangers can be effective for providing immediate notice, however, door hangers are time and labor intensive for City staff. If the City wishes to use door hangers to provide notice of shutoff for delinquent accounts, our office can assist in drafting procedures for inclusion in the code. It is recommended that procedures are in place to ensure the City has given the proper notice required by BMC 13.04.270 prior to any shutoff due to delinquency noticed by a door hanger. This will also require amending the code.

b. Other issues - payment plans.

One option the City may want to consider that was not previously discussed are payment plans for delinquent customers. So-called "Promise to Pay" agreements are enforceable negotiable instruments and may provide flexible solutions for the City and its utility customers. Upon request, our office can provide the City with more information