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TO: The Honorable City Council

FROM: David Whitaker, Director
Legislative Policy Division Staff

DATE: August 29, 2014

RE: **DWSD Affordability, Collection Rules and Procedures**

This Referral

Council President Jones recently directed LPD to analyze and report on the prospects for applying a Water Affordability Plan by Detroit Water and Sewerage Department.¹ Also, on July 28, 2014, Council Member Spivey directed LPD to review Detroit Water and Sewerage Department's (DWSD) collection rules and procedures, as well as policies, procedures and ordinances from other municipalities, looking toward adopting better collection procedures in aid of "those within the community that may need assistance with their delinquent bills."²

¹ LPD reported, in response to a request from the Council President, on July 21, 2014, that in 2006 City Council passed a resolution adopting the Water Affordability Plan (WAP) proposal, authored by Roger Colton at the request of Michigan Welfare Rights Organization and Michigan Legal Services in 2005. An attached one-page summary chart prepared by the organization Food & Water Watch compares the original WAP with the Detroit Residential Water Assistance Program (DRWAP) created by DWSD in 2006. The essential difference is that the original WAP proposal and the DRWAP program was that the former WAP was proactively based on the individual customer's ability to pay, before the account entered shut off status because of an arrearage; the latter DRWAP merely applied excess funds collected from other sources reactively, to subsidize payments by customers' who were already in shut off status.

² Council Member Spivey's memo noted that, in light of the Hon. Sean Cox's rulings in 2011 and 2012, LPD should also analyze and report whether or not "these changes are feasible and should changes be implemented in the form of an amendment to the current policies or by the drafting of an ordinance."

While the Mayor's recent DWSD 10-point plan was a timely response to a high-profile crisis of credibility and affordability, it seems to be somewhat improvised and *ad hoc*. Moving forward, DWSD should develop more broadly-based, comprehensive and institutionalized policies. These should be developed on a business process model basis. Such a comprehensive and intentional system is necessary to deal with the affordability of these services, as well as their accessibility to all Detroiters.

Background

As Your Honorable Body knows from extensive media coverage as well as direct information provided by department leadership, DWSD announced an aggressive water service shut off program in the spring, and after its contractor ramped up to full implementation of this program in the summer, there was significant protest and public criticism invoking human rights and public health issues, both locally and internationally. On August 7, 2014, the Mayor "*announced a 10-point plan that would allow DWSD to collect on overdue water bills while making it easier for customers to make payments, enter into payment arrangements and access financial assistance.*"³ That recently adopted plan is the necessary starting point for any further analysis of changes to DWSD's collection rules and procedures.

The Mayor's 10-point plan

As noted above, on August 7, 2014, the Mayor announced the following measures:

1. Waive Turn-On Fees and Late Payment Penalties.

During the moratorium, which ends August 25th, DWSD will waive turn-on fees for customers whose water had been shut off, as well as all late payment penalties.

2. Cut red tape.

To simplify getting into a payment plan, customers only need to present a valid state ID. Once a payment is made, service will be restored within 48 hours.

3. Extend hours at DWSD Customer Care Centers.

The DWSD has expanded hours at all of its Customer Care Centers, from 8:00 AM – 6:00 PM Monday - Friday (previously 8:30AM – 5:30 PM) and 8:00 AM – 3:00 PM on weekends (previously 9AM – Noon) to make sure customer service agents are available at all times. The DWSD has also added staff to reduce wait times.

4. Increase staffing at the DWSD Call Center and extend hours.

DWSD has also expanded hours at its Call Center to 8:00 AM – 7:00 PM daily (previously 8:30 AM – 5:30 PM) and 8:00 AM – 3:00 PM on weekends (weekend hours for the Call Center are new). Starting August 18th, the Call Center will have 50 percent more staff and new phone technology to better serve customers.

³ <http://www.detroitmi.gov/News/tabid/3196/mid/4561/articleId/509/ctl/ReadDefault/Default.aspx> (accessed on August 19, 2014) Meanwhile, on July 24, 2014, LPD had provided City Council with a privileged and confidential report specifically addressing the legal issues surrounding appeals from DWSD collection hearings, which DWSD's current collection rules from 2003 expressly state are binding on all parties.

5. Cobo Water Fair August 23rd.

A Water Affordability Fair will be held at Cobo Center Saturday August 23rd to give customers one last opportunity to connect with all of the DWSD and community resources available to them before the moratorium ends August 25th.

6. Improve notification for customers in danger of shut-off.

The DWSD is expanding its efforts to communicate with customers who are late on their payments or may be facing shut-off. Bills will more clearly explain their status and assistance information will be included with the bill. Workers also will hand-deliver notices to all homes in shut-off status one week before their scheduled shut-off to give them time to enter into a payment plan.

7. Implement an Affordable Payment Plan.

Any resident with a delinquent account can enter into a 24-month “10/30/50” payment plan by coming to their local DWSD Customer Care Center, showing a valid state ID and paying down only 10 percent of their past-due balance. (The previous down payment requirement was 30 percent of the past-due balance.) If a customer misses a payment, they can reapply for the program by putting down 30 percent of their past-due balance. A second missed payment will require a 50 percent down payment of their past-due amount. Any customer who misses a third payment will no longer be eligible for the payment plan.

8. Provide financial assistance for low-income Detroit customers.

Starting August 11th DWSD Customer Care Centers will begin processing applications for the Detroit Water Fund. By paying down only 10 percent of their past-due balance, eligible city residents will receive up to 25 percent assistance with their bill from the new Detroit Water Fund. DWSD has partnered with the United Way for Southeastern Michigan, which will prequalify residents. To be eligible for Detroit Water Fund assistance, customers must be Detroit residents who:

- Have an outstanding balance between \$300 and \$1000; AND
- Maintain Average Water Usage for their household size; AND
- Are either enrolled in DTE’s Low Income Self-Sufficiency Plan (LSP); OR,
- Have income at or below 150 percent of the federal poverty level (for example, a family of 4 must have an annual income below \$35,775).

This funding is available on a first come first served basis and is subject to availability.

9. Build Neighborhood Partnerships.

DWSD customers are not alone. We’ve established a support network to assist individuals who may not qualify for some of the DWSD assistance programs. Our partners include [United Way 211](#), [THAW](#), [WAVE](#) and [Wayne Metro](#).

10. Provide a clear way to give.

Many people have offered to help Detroiters who are struggling to pay their water bills. There are several ways to donate to the Detroit Water Fund: online, by text message, by check or by phone. Details are available at www.DetroitWaterFund.org. [end of Mayor's 10-point plan]

More recently, multiple charitable and commercial donors – including the United Way, Ford, and the Michigan Health Endowment Fund – have made large financial donations to the Detroit Water Fund.⁴ The recent announcements of new policies by the Mayor are welcome upgrades. As recognized by, among others, bankruptcy judge Steven W. Rhodes, the DWSD shut off program initiated in the spring and fall was casting the City in a very bad light.

DWSD's Collection Rules

Functionally connected to shut off policies and to the Mayor's new 10-point plan, DWSD's Interim Collection Rules and Procedures, dated January 22, 2003, are posted on the department's web site.⁵ These rules govern situations where DWSD retail customers – Detroit residents – dispute bills for amounts allegedly owed to DWSD. Making these rules fairer to DWSD customers would be an excellent step toward restoring and even increasing trust in the Department, after the summer of controversy around water shut offs in the City. Specifically with regard to these rules applicable to such disputes, LPD respectfully suggests, at a minimum, the following amendments:

- Appeals should be allowed to Wayne County Circuit Court by leave granted (not as a matter of right), if the appellant can raise an appealable legal issue – amendments to the Michigan Court Rules and/or the Revised Judicature Act, MCL 600.601 *et seq* (the State statute governing court proceedings and jurisdictional requirements) may be required - in order to protect customers' rights to such appeals from administrative tribunals guaranteed by the State Constitution, Art. VI, Sec. 28 (Rule 17);⁶
- Customers should be allowed to reschedule a hearing less than two days beforehand, for good cause shown, as is common in judicial proceedings (Rule 11);
- DWSD should make transcripts of the hearing available at reasonable cost to customers (Rule 12); and

⁴ <http://www.detroitmi.gov/News/tabid/3196/mid/4561/articleId/516/ctl/ReadDefault/Default.aspx> (visited August 19, 2014) and <http://www.clickondetroit.com/news/michigan-health-endowment-donates-2m-to-detroit-water-fund/27681194> (visited August 22, 2014)

⁵ http://www.dwsd.org/downloads_n/customer_service/customer_information/collection_rules.pdf (Visited on August 19, 2014)

⁶ For more detail on this somewhat complex legal issue, see LPD's privileged report dated July 24, 2014, and/or the associated detailed legal memorandum on file at LPD. If Council desires, LPD can prepare an appropriate Resolution for Your Honorable Body's consideration, requesting that the Michigan Supreme Court and the State legislature make the necessary procedural changes to advance this position.

- The rules should provide the objecting customer/petitioner with some basic information and a standard defining a *prima facie* case of an inaccurate water bill. In the event the customer makes such a showing, the rules should shift the burden of proof temporarily to DWSD, pending the burden of coming forward with some evidence to oppose such a *prima facie* case (Rule 13).

Best Practices Recommendations for Water Affordability Programs

The above rule changes would increase the public perception and reality of DWSD's good faith and fair dealing with its retail customer base in Detroit. However, making their collection rules and procedures fair would be only one necessary step. As the Mayor's 10-point plan in July 2014 indicated, there is a need for more comprehensive policies pertaining to the underlying shut off program, inability to pay rapidly increasing water and sewer rates on behalf of DWSD's most vulnerable customers, and even the rate structure itself. Collection rules only relate to specific situations where customers dispute the accuracy of bills; by themselves they have no direct application to "*those within the community that may need assistance with their delinquent bills.*"

The Mayor's 10-point plan was a timely response to a high-profile crisis of credibility and affordability, but it seems to be somewhat improvised and *ad hoc*. Moving forward, DWSD should develop more broadly based, comprehensive and institutionalized policies. These should be developed on a business process model basis. Such a comprehensive and intentional system is necessary to deal with the affordability of these services, as well as their accessibility to all Detroiters.

As noted above, City Council previously adopted a Water Affordability Plan (WAP) in 2005. Under the original WAP (P. 5): "*The rate affordability program will be directed toward reducing water/sewer bills to an affordable percentage of income while at the same time generating business benefits for the DWSD. The rate affordability program is designed to reduce water/sewer bills to an affordable burden set at 2% of household income.*" (P. 13): "*The affordable DWSD burden is set on a sliding scale with three households. Customer payments are tied to a percentage of income as follows: Below 50% of Poverty: 2%; 50-100% of Poverty: 2.5%; 100-175% of Poverty: 3.0%*"⁷

⁷ Several commentators and even some officials have stated that the goal of the Water Affordability Plan is providing a right to free water without payment. Without denigrating the aspiration of a universal human right of access to adequate water, as demonstrated by the language of the plan itself and the attached water affordability literature, this is not true. Basing water and sewer rates on individual customers' ability to pay is different from demanding "free water." Similarly, the United Nations' General Assembly's recognition of a human right to water and sanitation is not predicated on a prohibition of payment for such services. See, e.g., http://www.un.org/waterforlifedecade/pdf/human_right_to_water_and_sanitation_milestones.pdf; and <http://www.un.org/es/comun/docs/?symbol=A/RES/64/292&lang=E>

It is also interesting to note that the 6th amended plan of adjustment in the Chapter 9 bankruptcy case contemplates a water affordability plan. At page 52, it states: "*The City may seek to implement a rate stability program for City residents, which program may, among other things, (a) provide a source of*

The issue of water and sewer service affordability is not limited to Detroit. Several recent studies have documented the broad applicability of water affordability and access measures to public water and sewer utilities nationwide. For example:

- A May 2012 paper for the Brookings Institute entitled “*Cleaner Rivers for the National Capital Region: Sharing the Cost*” by Carol O’Cleireacain (attached) describes a regional cost-sharing issue and an urban infrastructure funding problem, which appear to be very similar to Detroit’s.⁸

Specifically regarding water affordability in the nation’s capitol, the paper states:

“Affordability is a real concern in the District, given its 20 percent poverty rate. The District has a persistent group of low-income residents, earning at or below \$24,475 a year for a family of three. Moreover, the District’s income distribution is becoming more unequal. As a result, in constant dollars, the D.C. Water bill burden will double, from 2.5 percent to 5.2 percent of the top earners in the lowest quintile by 2019. This is a conservative estimate because it focuses only on the charges by D.C. Water and not those that the utility collects on behalf of the District government.

D.C. Water (and by law, the EPA) must pay close attention to the burden of these payments. EPA guidelines suggest that water or sewer charges greater than 2 to 4 percent of median household income are a strain on household budgets. In 2008 ... payments to D.C. Water represented less than 2 percent of District median income for three-fourths of the District’s residents.

However, the degree of hardship that D.C. Water bills ... impose on the District’s low-income residents is hard to discern. Many low-income residents of the District are not direct customers of D.C. Water. Renters who live in multifamily apartment buildings or Housing Authority apartments are not direct D.C. Water customers. The landlord pays the water and sewer bill, which is covered in the rent. According to D.C. Water, an in-house analysis in 2009 determined that roughly 25 percent of low-income customers receive a D.C. Water bill.

D.C. Water’s Customer Assistance Program (CAP) helps low-income homeowners who face payment hardship. *Introduced in 2000 for those meeting income eligibility requirements, it has been expanded several times and is administered as part of the District’s utility relief programs. To qualify, the rate payer’s income must be below 150 percent of the poverty line. Participation in CAP has grown from an average of about*

funds to mitigate against rate increases, (b) enhance affordability and (c) provide a buffer against delinquent payments.”

⁸ As City Council knows, Ms. O’Cleireacain has been offered a position by the Mayor advising him regarding the City’s fiscal restructuring, and is scheduled to participate as a facilitator regarding governance issues at Council’s forthcoming legislative retreat.

2,680 households annually in 2001–2005 to 6,458 customers in 2010, about 6 percent of residential customers.

D.C. Water spent \$1.9 million in FY 2011 supporting low-income District households through CAP, and it expects to spend \$2.3 million in FY 2012. These costs are covered with higher rates on all payers. With the growing payment hardship, D.C. Water will face pressure to expand this subsidy, particularly as landlords face pressure to contain the pass-through of rising water bills into rents. All of this will bring further, marginal, pressure on D.C. Water to contain rates, or operating costs, or both. (emphasis added) (footnotes omitted)

All the above considerations apply with equal force in Detroit. With reasoning that is undoubtedly very familiar to Council Members and other Detroit area policy makers, the report calls for regional collaboration and increased federal resources to meet regional water and sewer needs. As succinctly stated on the report’s first page, “*Clean water is non-negotiable and expensive. ... the region needs a better financing system beyond D.C. Water’s narrow rate base.*” The same essential facts could be said of DWSD.

- More recently, in March 2014 the National Consumer Law Center issued a report entitled “*Review and Recommendations for Implementing Water and Wastewater Affordability Programs in the United States.*” Excerpts from the full 58-page report (which is available upon request from LPD) are attached. Highlights relevant to best practices that DWSD should consider adopting in Detroit include the following:
 - The price of water and sewer services is rising across the nation, and is anticipated to rise even more.
 - Utilities like DWSD and their regulatory authorities should consider a broad range of proactive measures to improve water affordability, such as the following:
 - Broaden measures used to determine the affordability of water and wastewater services, including household size and income, size of approved rate increase, and rate of consumer growth in the system. “***An affordability analysis should also focus on customer ability to pay...***” (emphasis added)
 - Relax interpretation of state statutes to allow for rate relief in disadvantaged communities

⁹ One example of an open issue that requires further analysis and policy determination, in the context of DWSD, would be the issue of water and sewerage services provided to renters. For purposes of setting the affordable rate, whose income would count and under what payment circumstances? (such as whether the water and sewer charge is included in the rent or not) The property owner/landlord? Or the tenant/resident who actually uses the water and sewer services? LPD’s study of the 2005 Water Affordability Plan has not to date definitively located an answer to such questions under all circumstances.

- Ensure that allowed return on equity is as low as it can reasonably be set and adopt rate designs favorable to low-income customers
 - Consider low-income rates a “discount” rather than a subsidy, similar to discount rates offered to industrial customers, so that such low-income rates recover marginal costs and contribute to fixed costs
 - Implement payment plans with the goal of maximizing opportunities from payment-troubled customers to meet their payment obligations
 - Combine discount and assistance programs with conservation and leak repair programs
- There is a strong business case for such measures: *“While there is some administrative cost to providing additional assistance programs to customers, costs are mitigated because customers who receive adequate assistance are better able to make regular bill payments that provide a stream of income to the utility service provider. This income might be lost if these customers are terminated. Costs can be mitigated by reduced arrearage carrying costs, uncollectibles, and bad debt; reduced termination and reconnection costs; reduced costs of establishing new payment plans; reduced costs of collection and termination activities and notices; and reduced administrative and regulatory costs of resolving bill disputes and other complaints.”*
- In 2010 the Water Research Foundation jointly sponsored a report with the US Environmental Protection Agency, entitled *“Best Practices in Customer Payment Assistance Programs.”* Excerpts from the full 186-page report (which is available upon request from LPD) are attached.¹⁰ The report’s section on “Defining Objectives” for a comprehensive, *“business process model”* program reads like a summary of improved decision making from the inception of DWSD’s spring 2014 shut off program, through the Mayor’s 10-point plan last month, and on to the situation today prompting this referral:

“Defining an overall business process forces a concentrated focus on objectives. In contrast, when an ad hoc collection of practices is being implemented without formal recognition of the intent of the overall process, the sense of purpose can get lost. It can then become very difficult to assess how the overall effort is performing or to identify needs and methods for improving performance. In addition, having a clearly articulated sense of purpose is essential to the coordination and integration of practices across several utility departments.

At the outset, many utilities may approach the development of customer payment assistance programs with some reluctance, viewing it as something outside their area of technical expertise and tangential to their core mission of delivering utility services. But, cost recovery and the cost of collections are essential business objectives. And, in the political

¹⁰ One of the authors of the 2010 Water Research Foundation report was Roger Colton, author of the 2005 Detroit Water Affordability Plan.

environment in which monopoly businesses operate, it cannot be forgotten that shut-offs can be expensive, harmful to public health, and contribute to a negative image. Thus, maintaining the integrity of revenues through good business practices and maintaining a favorable image in the community are significant objectives that must be approached in harmony.

At a household level, there are some people in need of assistance who face potentially significant adverse consequences if their water is shut off. But, one of the greatest challenges facing utilities is that those truly in need comprise only a subset of the total accounts overdue at any point in time. Many past due accounts will “self-cure.” Others will be resolved short of shutoff as a result of “interventions” applied during the collections process such as late notices or reminder phone calls. Some late-payers may be gaming the system and seem poor candidates for any type of actual assistance; yet there is a worthy subset that is truly having difficulty paying and for whom the consequences are dire.

It takes a noble effort for a utility to dive into this morass and undertake to sort it out to get to those truly in need and help them. The rewards are great, however. When the right help reaches the right people, adverse social consequences can be avoided. These include avoided impacts on public health that, in fact, relate to the utility’s core mission. In addition, customers tend to have long memories regarding their experiences with customer service departments and good news travels. Over the long-term, a utility can do much to build customer satisfaction, loyalty, and trust by performing well in this area.”

The report goes on to recommend the following elements of a best practices water affordability plan:

“The implementation of agreed upon, appropriate, and affordable payment arrangements, with flexibility to suit each customer, including:

- Centrepay (automatic debiting for households on assistance)*
- Incentive plans*
- Partial or complete waiver of debt*
- Review of fees*

Suspension of disconnection, debt collection, legal action—while customers are on the hardship response program

A specialist team skilled in responding to customers experiencing hardship, which includes:

- The retailer’s call centre and other staff refer customers to appropriate representatives*
- Customers are able to contact directly*
- Conducts home visits where it has been difficult to contact a customer by phone or in writing*

Staff training on:

- Causes of financial hardship*
- Identification of customers experiencing hardship, including proactive identification*
- Literacy and access issues experienced by some customers*

- *How to talk to customers experiencing hardship*
- *When to refer customers to the hardship response program*

A hardship policy that is clearly communicated to customers

An articulation of the rights of customers experiencing financial hardship

Links to:

- *Energy/water efficiency programs*
- *Financial counseling agencies*
- *Concessions, government assistance, nongovernment support services*
- *Dispute resolution services*

Continuous review, including customer focus groups to gain feedback on hardship Programs”

- *“...[N]ationwide there are an estimated 10 million households with annual incomes below \$20,000 [roughly equivalent to 125% of the Federal Poverty Level (FPL)] that pay a water bill. This compares with a total 64 million households that pay water bills to community water systems. It is conceivable therefore that, over time, as much as 15% (10/64) of the customer base nationally might come into contact with a utility’s bill collection practices. In some communities, the proportion can be much higher. Further, the effect of collections practices on overall customer perceptions of the utility reaches beyond low-income groups, such as when a shut-off draws attention from community activists or it is covered in the local news media.”*
- *“Another significant dimension of the problem of nonpayment relates squarely to public health – the very heart of a water utility’s mission. ... disconnection of water and wastewater service is tantamount to eviction because the property becomes uninhabitable, both legally and practically. Thus, in communities where the penalty for nonpayment is service disconnection, low-income families may be expected to reduce their expenditures on health-related items such as medical care, food, child care, or energy service in order to pay the water and wastewater bill. In other words, there is a compelling logic suggesting that water “trumps” other health related expenditures. ...*

HHS succinctly summarized the findings from several studies, as follows: “Households with limited resources may make trade-offs among basic needs (e.g., food vs. needed medical care) or choose different allocations of goods and services to make ends meet.” When these induced deprivations have negative impacts on health, it results – directly or Indirectly – in outcomes inconsistent with the water utility mission to sustain public health. To place this in perspective, consider that the total national cost of Safe Drinking Water Act (SDWA) regulations promulgated since 1986 has been estimated to be about \$5 billion per year (Raucher and Cromwell 2004). Benefit-cost analyses conducted in developing these standards asserted that health benefits are at least equal to these expenditures. By comparison, if there are 10 million low-income households facing an average water and sewer bill of more than \$400 per year (Rubin 2005), this equates to more than \$4 billion per year to be raised from low-income households. To whatever

extent that portion of water revenue is obtained at the expense of other health-related expenditures, the resulting detriment to health could rival the magnitude of improvements to health intended under the SDWA. Water utilities must remain mindful that public health is their core business and there is as much health impact at stake in the manner in which they obtain revenue from low-income households as there is in treating the water to high standards.”

- A city water pilot project is currently being conducted by National League of Cities in Houston, Louisville, Newark, Savannah and St. Petersburg. A July 29, 2014 article about the program (attached) leads with a reference to Detroit’s water shut off debacle. The two-year “LIFT-UP” program uses water bill payment troubles as an opportunity to intervene and assist low income residents with options for improved financial stability. Detroit would greatly benefit from such a program, which would be a much better use of scarce resources than contracts for shutting thousands of households off water service per week.

Discussion

The impending regionalization of DWSD – referenced repeatedly in the media and officially in the 6th amended plan of adjustment dated August 20, 2014 – adds another procedural issue to this referral. As implicitly recognized by Council member Spivey’s memorandum quoted at the beginning of this report, simply enacting an ordinance requiring a water affordability plan and amending DWSD’s collection rules may not be possible for a utility run by its own independent regional board. The BOWC is empowered to promulgate its own rules, and City Council cannot legislate how they will run a regional water and sewerage authority.

City Council may be able to enact a local ordinance that prohibits water shut offs, conditioned on DWSD first adopting equitable access and affordability measures like those outlined above and in the 2005 Water Affordability Plan. The enforceability of such an ordinance, as against the anticipated new regional water and sewer authority, is a substantial, untested legal issue.

DWSD and BOWC provide vital services, on a monopoly basis, that are used by necessity in every household and business throughout this metropolitan area. The issue of how DWSD and BOWC set rates and enforce their claims for services rendered, as demonstrated by the widespread controversy ensuing after their shut off program in spring and summer of this year, is further evidence of the necessity for improved, systematic policies dealing with collections and enforcement. Even the Mayor’s 10-point plan, while certainly an important first step, only subsidizes arrearages; within months a payment-troubled household is likely to be in trouble again. A systematic, comprehensive, and business process focus is necessary for a real solution. City Council certainly can adopt a resolution urging DWSD, the Mayor and the State to adopt such measures in this critical context. Such a proposed resolution is attached.

If Council has any additional questions or concerns regarding this matter, LPD would be pleased to provide further research and analysis and report back regarding same.