City of Biddeford, Maine
Policy Committee Meeting
Monday August 13, 2018

Minutes

1. **Roll Call** – Meeting called to order at 6:30 p.m. by Policy Committee Chair councilor Marc Lessard. Other Policy Committee members present were: Councilor Norman Belanger; members Renee O'Neil and Nathan Bean. Committee member Laura Seaver was excused.

2. **Pledge of Allegiance** – The American flag was honored through the Pledge of Allegiance.

3. **Adjustments to the Agenda** – No adjustments.

4. **Acceptance of Minutes**: *Motion by BELANGER seconded by ONEIL to accept the minutes of the February 12, 2018 meeting as printed. Vote unanimous.*

5. **Discussion/Review**

5.1 Ch.42, Motor Vehicles and Traffic, Sec.42-90 – No Parking/add on Yale Street.

The Committee considered the following language:

2018. IN BOARD OF CITY COUNCIL...
BE IT ORDAINED, by the City Council of the City of Biddeford that the Code of Ordinances, Chapter 42, Motor Vehicles and Traffic, Article IV Specific Street Regulations, **Section 42-90 No Parking,** is amended by <u>adding</u> or ~~deleting~~ to read as follows:

<u>*Yale Street*, even numbered side, from May Street to Round Hill Street</u>

Motion by BELANGER and seconded by ONEIL to approve this Oder as printed , and to forward the Order to the City Council with a recommendation for Adoption. Vote: unanimous.

5.2 Policy Opinion: Scheduling of Organization Events & Possible Special Event Permit Amendments.

The Committee heard a presentation by C.O.O. Brian Phinney on behalf of Recreation Director Carl Walsh in preparation for next year's season. His inquiry sought an understanding from the Policy Committee as to: (1) the Recreation Department should proceed with establishing a formal plan/process for managing organization events, (2) that the program should be administered operationally, and (3) that the Recreation Department should prepare a fee schedule for such use and begin charging for such events as applicable. What was being proposed is to manage scheduling as an operational item, and that the Recreation Department use MyRec software to schedule and collect online payment for various recreation program fees.

Motion by BELANGER and seconded by BEAN to allow the Recreation Department to use the MyRec scheduling software for future events. Vote: unanimous. Councilor LESSARD added a request that the Committee receive a report back on the progress of using MyRec at some point during the middle of next season.

5.3 Policy Review: Sewer Abatement Policy
Attachment 1- Current Sewer Abatement Policy
Attachment 2 – Draft Sewer Abatement Policy

The Committee heard testimony from COO Brian Phinney regarding the above captioned Attachments.

After the presentation, Councilor BELANGER had questions regarding the criteria that would be used by Staff to make a recommendation to the Commission. Brian Phinney responded that determinations would be established and made more specific as the program continues. BELANGER stated that his desire was to have some criteria codified, such as Financial Hardship for example, rather than establishing criteria as the program continues.

The Committee took no formal action on this item, and requested that Brian Phinney update the information for a presentation at the next regularly scheduled Policy Committee meeting.

6. Adjourn – *Motion by BELANGER and seconded by ONEIL to adjourn at 7:03 p.m. Vote unanimous.*

Councilor LESSARD took this opportunity to thank you to staff for attending tonight's meeting, and for all the fine work that is being done.

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Briefing Memo

TO: Chairman Marc Lessard and Members of the Policy Committee

CC: James Bennett, City Manager
Roger Beaupre, Police Chief and Staff Liaison
Jeff Demers, Public Works Director
Tom Milligan, City Engineer
Cheryl Fournier Finance Director
Wastewater Management Commission

FROM: Brian S. Phinney, COO

DATE: August 9, 2018

RE: **Policy Opinion: Sewer Abatement Policy**

The water meter replacement project initiated by Maine Water in 2017 resulted in a number of Petition for Abatement (PFA) requests, some of which involved tens of thousands of dollars. The significance of the PFAs resulted in a critical review of the abatement process by both staff and the Wastewater Management Commission (Commission). In general, the Commission is looking for more guidance on evaluating PFAs and staff is looking for a better-defined system for processing PFAs.

The subject of abatement if addressed generically in Chapter 70 at Sec. 70-32(g):

> *(g) Review of charge.*
>
> *(1) Any user who feels his sewer bill is in error may make written application to the Commission requesting a review of his/her user charge. Said written request shall, where necessary, show the actual or estimated average flow and/or strength of his/her wastewater in comparison with the values upon which the charge is based, including how the measurements or estimates were made.*
>
> *(2) In lieu of abatement — request of payment equal to last quarter/monthly amount to be based on previous history before coming to the wastewater Commission, if there is no previous history, amount must be paid in full.*
>
> *(3) Review of the request shall be made by the Commission and, if substantiated, the Commission shall direct that appropriate action be taken. Any charge abated shall become a credit against the next billing period if under $50 and refunded if over $50.*

The current sewer user abatement policy dates back to 1996 and is similarly generic (see Attachment 1).

The proposed Sewer Abatement Policy is provided as Attachment 2. The draft policy is intended to address a number of issues as outlined below:

Reduces the impact caused by estimated bills. The policy establishes a notification process independent of any procedures the water company may utilize to inform users that their bill is being estimated and providing them with an opportunity to correct. By managing an independent notification system, the City is able to tract notifications (registered mail) and with confirmation that a user was notified of the ability to correct, deny a PFA is based solely on reconciliation of estimated bills at a future date. However, instituting a program to limit future PFAs is only half the equation. The draft policy also provides guidance for addressing PFAs that may be based on meter reconciliation for periods prior to implementation of the notification system in a consistent manner.

Provides guidance on how to evaluate various types of PFAs. The draft policy provides guidance on eleven (11) items and identifies a number of PFA scenarios that are not eligible for abatement. These include minimum payment limitations, PFAs associated with non-compliance and misrepresentation, addresses PFAs where the disputed amount is known to enter as well as not enter the sewer, PFAs associated with administrative billing errors, and guidance for "all other" requests.

Clarifies the PFA process. The draft policy now includes clear responsibilities, submittal requirements, and timelines to ensure the PFA review process progresses in a consistent and timely manner. All PFAs (and appeals) are submitted in writing through the finance director using a city-provided form. The finance director performs an administrative review of the PFA to ensure it is complete and then performs a technical review, which includes developing a recommendation for consideration by the Commission. The use of a form ensures that reviews are consistent and all steps are documented. This streamlines the process for staff, provides the Commission with organized and consistent materials to review, and provides a uniform process the applicants are able to anticipate and understand.

Develops an accurate and complete PFA record. The draft policy includes recordkeeping requirements that consist of developing a PFA Record and a PFA Summary. The PFA record consists of the PFA form, all supporting documents, and all decisions associated with each PFA. The PFA summary compiles the critical information associated with all PFAs into one summary document. This enables staff to ensure recommendations are consistent and provides the Commission with an ongoing reference of all PFA decisions. If a decision is appealed, the Finance Committee will have a complete record of the current PFA decision and will be able to review the PFA summary and the appeal argument to verify whether or not the Commission's decision is arbitrary, capricious or unsupported by substantial evidence.

Staff is looking to make the Policy Committee aware of the proposed policy and to incorporate any recommendations offered. Once the recommendations are incorporated, or if none, staff intends to create the PFA form and begin implementation.

Attachment 1

SEWER USER ABATEMENT POLICY

No abatement will be considered if over 90 days from the most current billing Date.

Wastewater, which did not enter the sewer system:

Based on evidence of receipts/invoice provided by homeowners/business professionals, or by inspection by a City Employee, then the city will abate all the difference between the current consumption value and the average of the last three years of billing history. In the event that the previous billing consumption values are estimated or are suspect, then the Comptroller will substitute representative consumption values.

Wastewater, which did enter the sewer system:

If, in the opinion of the Commission, the wastewater did enter the collection system, then partial abatements may be given based on the following criteria, except no abatement will be considered that will reduce the bill below the minimum charge.

Billing Errors:

The City may issue a "make-up" bill for services that the user received, but were previously unbilled.

(1) If the "make-up" bill is for service that was unbilled because of an error; made by the City or the Biddeford-Saco Water Company, or a meter failure that could not reasonably have been detected by either the City, the Water Company, or the user; then the City may bill or collect for services that occurred for one (1) year prior to the issuance of the "make-up" bill for a period not to exceed one (1) year from the issuance of the "make-up" bill.

(2) If the "make-up" bill is for service that was previously unbilled because of unauthorized use or misrepresentation by the user, the City may bill for service that occurred up to ten (10) years before the issuance of the "make-up" bill.

(3) In all cases where actual flow data is unavailable, the Commission shall estimate the water usage based on Historical usage, comparable facilities, or engineering estimates. No abatement will be considered that will reduce the bill below the minimum charge.

Leaking Fixtures:

If, in the opinion of the Commission, water entered the sewer system from a leaking fixture, it will only come to the Commission if over $999.99, or at the discretion of the Comptroller of City Services. The Commission can abate up to 50% of the difference between the highest consumption value and the average consumption value over the previous three years.

The above shall follow all procedures of PFA (Petition For Abatement).

Abatement Amount = (Disputed consumption – Highest Consumption) X (up to) 50%

Appeal Process:

The decision made by the Wastewater Commission, denying the abatement, under this section can be appealed by the owner to the Finance Committee in writing. The Wastewater Commission reasons for its decisions shall be included in the writing forwarded to the Finance Committee. Action by the finance Committee shall notify the Wastewater Commission and the claimant of the time and place when the Finance Committee will take up the recommendation of the Wastewater Commission. If the claimant disagrees with the recommendation of the Wastewater Commission, the claimant shall be given an opportunity to show that the recommendation is arbitrary, capricious, or unsupported by substantial evidence. The Wastewater Commission shall also be given the opportunity to be heard. The Finance Committee shall approve the recommendations of the Wastewater Commission unless it finds that it is arbitrary, capricious, or unsupported by substantial evidence. The Finance Committee shall order the claim dismissed or paid in accordance with this decision, which shall be final.

Sewer Abatement Policy (Draft)

Attachment 2

The following Sewer Abatement Policy (Policy) shall define the procedures for consistent and timely Petition for Abatement (PFA) processing. The Policy establishes responsibilities for the applicant, finance director or the finance director designee, the Wastewater Management Commission (Commission) and the Finance Committee.

Background

Maine Water, previously Biddeford & Saco Water Company (Company), installs and maintains water meters at business and residential facilities receiving water from the Company. In areas serviced by city sewer, the Company provides periodic flow data to the City for each account. The water bill data (input) is assumed to equal the sewer discharge (output) from each associated account. Thus for these accounts, sewer billing is based on data provided by the Company.

Sewer users obtaining water from a source other than the Company must install and maintain a meter to measure the sewer discharge. All such meters must be inspected and approved by the City and must be available for inspections during the year. For these accounts the user must report the meter reading.

By ordinance, residential users receive quarterly sewer bills based on actual water usage as determined by the Company's meter readings. Commercial and industrial users, who receive water bills from the Company on a monthly basis, also receive sewer user bills from the city on a monthly basis.

If a residential, commercial, industrial, or institutional user has a consumptive use of water, or, in some other manner, uses water which is not discharged into the collection system, the user charge for that contributor may be based on readings of wastewater meter(s) or a separate water meter(s) (sub-meter), which must be purchased through the City to ensure conformity and calibration, and installed and maintained at the user's expense.

PFA requests may be submitted for any number of reasons. One such reason involves reconciliation of estimated accounts. Occasionally the Company is not able to perform an actual meter reading or a user fails to report or reports incorrect data. When the Company is not able to read a meter, the Company estimates the water bill and subsequently the data the City receives for sewer billing is also estimated. The Company, by practice reports that a card is left on the premises indicating the inability to read the meter and notifying the resident that the bill will be estimated unless the actual meter reading is "called in". The Company replaces water meters periodically either due to a specific concern or as part of a larger upgrade project. In most instances, users receiving sewer bills based on actual readings do not see any impact to the sewer bill. For users receiving sewer bills based on estimated readings, depending on the length of time between initial account estimation and verification of an actual meter reading, the catch-up billing may be significant albeit representative of actual use.

Given that the City is impacted by and must evaluate and address sewer billing questions and PFAs based on estimated water readings and reporting by sewer users of which the City would have no prior responsibility as to the accuracy of the information, the City has modified its procedures to ensure sewer users are aware of the implications of estimated billings and to limit the City's exposure with regard to estimated accounts and PFA resolutions.

Notification Procedure for Estimated Accounts

The Finance Department shall compile and maintain a list of all sewer users whose bill is calculated based on estimated water meter readings. This initial list shall be based on data provided by the Company. Thereafter, the City will receive an updated list of estimated accounts monthly.

The City, through the Finance Department, will provide a one-time notice to each named account holder on the list informing the user of the updated city policy on abatement procedures. The notice shall be transmitted by certified mail and issued within 15 days of receipt of the list. The notice shall inform the user that the upcoming bill will be estimated unless the user provides a meter reading or schedules an actual meter reading within 30 days of their receiving the notice otherwise the bills (water and sewer) will be based on estimated usage. Finally, the notice will clearly state that failure to provide accurate data or arrange for a meter reading may result in reconciliation at a future date. The user is responsible for payment of the reconciled amount.

PFA Submittal and Recordkeeping

PFAs shall be submitted in writing to the finance director using only a city-provided form. The finance director shall establish a recording system that at a minimum includes date of receipt, the PFA contact information, the account address, the amount of the PFA request, the reason for the request, the date of the PFA review, the PFA review decision and rationale, the amount of the abatement if issued, and any appeal dates, decisions, and amounts (PFA Summary).

PFA Processing

Administrative Review

The finance director or the finance director designee shall administratively review each PFA to determine if the submittal is complete. The finance director or designee may request additional information. Once the PFA is administratively complete, it shall be accepted for technical review.

Technical Review

The finance director or designee shall perform a technical review of the PFA and provide an opinion of eligibility (eligible or not eligible for abatement) along with a recommendation as to the amount of an abatement if applicable. The eligibility opinion, abatement recommendation, and rationale shall be documented and become part of the PFA. The eligibility opinion and abatement recommendation shall be performed in accordance with the General PFA Review Criteria. The finance director may request that engineering and or wastewater department staff review the information submitted and provide data on expected flows, verify calculations, and or provide technical guidance as to the reasonableness and accuracy of the information submitted in support of the PFA. Upon completion of technical review, the PFA shall be forwarded to the Commission.

General PFA Review Criteria

- PFA requests equal to the last quarter/monthly amount where no previous history exists shall be deemed ineligible for abatement. (Sec. 70-32(g)(2))

- PFA requests involving a disputed amount identified as a prohibited discharge (Sec. 70-86), associated with failure to comply with requirements specified in Sec. 70-90 *Protection from accidental discharge of prohibited material; notification requirements*, or listed as a *prohibited discharge* (Sec. 71-5) shall be deemed ineligible for abatement.

- A PFA shall be deemed ineligible for abatement when the finance director determines and the Commission confirms the abatement is based solely or in part on unauthorized use of the sewer system or misrepresentation by the user.

- A PFA shall be deemed ineligible for abatement when the finance director determines and the Commission confirms the abatement is based solely or in part upon the user failing to obtain the necessary municipal permits or authorizations for activity at the physical address associated with the account, including but not limited to failing to request and install a sub meter.

- A PFA shall be deemed ineligible if submitted more than three (3) billing cycles from the most recent sewer bill identifying a disputed amount as referenced by the PFA. For the purpose of clarification a PFA may cover a period longer than three (3) billing cycles but a PFA must be submitted within three (3) billing cycles of becoming aware of the disputed amount.

- In all cases where a PFA is deemed eligible and a credit is to be calculated based on estimated data, the maximum allowable credit shall be based on the estimated value but in no event shall be greater than the minimum applicable charge over the period in question.

- PFA requests where the disputed amount is solely the result of reconciling one or more estimated bills - by way of example but not limitation, reconciling due to the sale of a property, the replacement of a meter, or a meter upgrade – the PFA shall be deemed ineligible for any period after documented notification that the bill is being estimated.

- PFA requests where the disputed amount covers a period prior to documented notification that the bill is being estimated and is solely the result of reconciling one or more estimated bills - by way of example but not limitation, reconciling due to the sale of a property, the replacement of a meter, or a meter upgrade – the PFA shall be evaluated and if deemed eligible, processed in accordance with the following:

    For small single-family residential units, defined as up to three units (on one account) one of which must be owner occupied, the user shall be responsible for the applicable sewer fee for a period no greater than the last 36 months.

    For all other accounts, the user shall be responsible for the applicable sewer fee for a period no greater than the last 10 years.

- For a PFA request where the disputed amount is confirmed to not have entered the sewer system, based on evidence such as receipts, invoices, etc., or through a documented opinion from a qualified municipal employee, or for a one-time filling of a pool, the Commission may consider a full abatement of the disputed amount.

- For a PFA request where the disputed amount is confirmed to have entered the sewer system, based on evidence such as receipts, invoices, etc., or through a documented opinion of a qualified municipal employee, the Commission may consider a partial abatement of no more than 50% of the difference between the disputed amount and the average of the last three years of billing history multiplied by the identified PFA period. In the event the previous billing consumption values rely on estimates or suspect values, the finance director or the finance director designee shall document and use representative consumption values in calculations.

- For a PFA request, determined to be the result of an administrative billing error, the finance director or designee shall verify the disputed amount and upon verification deem the PFA eligible, the Commission may consider full abatement of the disputed amount.

- For all other PFA requests, the finance director or designee shall evaluate the PFA on a case-by-case basis in accordance with this policy and past practice and submit a recommendation to the Commission. In the event the PFA is unique and no applicable past practice exists, the finance director shall document the final determination to serve as future evidence of past practice.

Once the technical review is complete, the finance director shall submit all PFAs to the Commission for review and consideration at the next regular Commission meeting. For the purpose of clarification, a PFA with a completion of technical review date after the agenda preparation date, which is typically one (1) week prior to a scheduled meeting, shall be considered by the Commission no later than the second regular Commission meeting following technical review.

Commission Review

The Commission shall review each PFA and render a determination after consideration of the weight of the evidence provided and the testimony offered. The determination shall be consistent with the intent and guidance provide in this policy.

All Commission PFA decisions shall include a formal determination consisting of either a tabling, an approval, or a denial.

- Tabled PFAs shall not remain tabled for more than the lesser of 90 days or such time needed for the Commission to receive requested information.
- Approvals and denials shall be documented with such documentation consisting of the determination (approval or denial), the specific amount of any abatement issued, and the rationale supporting the determination.
- All Commission decisions shall become part of the PFA (PFA record).

Appeals

A decision by the Commission may be appealed to the Finance Committee.

All PFA appeals must be submitted to the finance director in writing and clearly identify the basis for the appeal. The finance director shall attach the PFA record to the appeal. The PFA record and the PFA summary shall be submitted to the Finance Committee. The finance director shall notify the person submitting the appeal of the date, time, and location of the appeal meeting.

The appeal shall be heard at the next regular meeting of the Finance Committee. In the event the request for PFA appeal is received after the agenda preparation date, the appeal will be heard at the Finance Committee's second regularly scheduled meeting after receipt of the request for appeal.

The Finance Committee shall approve the Commission's decision(s) unless it finds that the decision is arbitrary, capricious, or unsupported by substantial evidence. The Finance Committee shall order the claim dismissed or paid in accordance with this decision, which shall be final.

PFA Limitations

- In no event shall the period of time associate with a PFA exceed ten (10) years prior to the date of PFA submittal.
- In no event shall a credit associated with a PFA result in payment of less than the greater of the sum of the undisputed amount paid over the period identified in the PFA or the sum of applicable minimum charge(s) for the period identified in the PFA, administrative billing errors notwithstanding.