

CITY OF BALTIMORE

BERNARD C. "Jack" YOUNG
Mayor



DEPARTMENT OF PUBLIC WORKS

RUDOLPH S. CHOW, P.E.
Director
200 Holliday Street
Baltimore, MD 21202

July 25, 2019

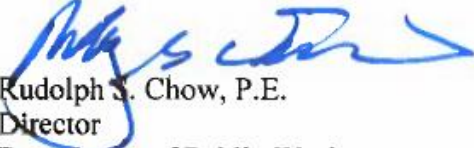
Dear Customers:

A few weeks ago, Mayor Young announced that the Department of Public Works (DPW) would be partnering with the Environmental Control Board (ECB) so their hearing officers could provide an independent review of billing disputes. I am happy to present these regulations, which will govern how such disputes will be considered.

These regulations codify in one place not only the dispute process but also outline the conditions under which charges for water, sewer, and stormwater can be made. These regulations will provide important information to our customers as well as to the hearing officers with ECB who will now be involved in dispute process.

The regulations are being promulgated under the authority granted DPW by the Baltimore City Annotated Code. The regulations will take effect August 1, 2019, but will apply to water, wastewater, and/or storm water charges incurred on or after July 1, 2019. Should you have any questions or comments, please contact us by email at DPW.Billing@Baltimorecity.gov or by phone at 410-396-5398.

Thank you,



Rudolph S. Chow, P.E.
Director
Department of Public Works



**BALTIMORE CITY
DEPARTMENT OF PUBLIC WORKS**

REGULATIONS

ON

**Customer Service and Support for Water, Wastewater, and
Storm Water Billing**

Authority: Baltimore City Charter, Art. VII; Baltimore City Code, Art. 24

EFFECTIVE AUGUST 1, 2019

I. Definitions.

A. In these regulations, the following terms have the meanings indicated.

B. Terms Defined.

1. “Billing Analyst” means a position within DPW that receives the initial customer contact.
2. “Bureau Head” means the Head of the Bureau of Water and Wastewater.
3. “Chief” means the Chief of the Customer Service and Support Division within the Department of Public Works for the City of Baltimore.
4. “City” means the Mayor and City Council of Baltimore acting as the legal entity known as the City of Baltimore.
5. “Customer” means a person, business, or other entity to whom DPW sends bills for water, wastewater, and/or storm water.
6. “Director” means the Director of the Department of Public Works for the City of Baltimore
7. “Division Manager” is the supervisor of the Section Manager.
8. “DPW” means the Baltimore City Department of Public Works.
9. “OLRA” means the Office of Legislative and Regulatory Affairs within DPW.
10. “Section Manager” is the manager of the Billing Analyst.

II. Authority and Applicability.

A. Authority.

1. The General Assembly of Maryland has given the City the power to “establish, operate, maintain, regulate and control a system of water supply and to make charges for the consumption or use of such water” and to “turn off and discontinue the supply of water furnished by the Mayor and City Council of Baltimore to any person or property located in or outside of the City of Baltimore because of the nonpayment of any fee or charge for water supplied.” Baltimore City Charter, Article II, §(45); Code of Public Local Laws for Baltimore City, Subtitle 25.
2. The City’s Charter vests most of the aforementioned powers in DPW by giving it charge of the water supply of the City and of all the properties, reservoirs, streams, pumping and filtration stations, pipes, apparatus and equipment appurtenant thereto and shall exercise all the powers and perform all the duties connected with the operation thereof and the supplying of water to customers. City Charter. Art. VII, §
3. Pursuant to the Baltimore City Charter, Art. VII § 34, DPW shall have charge of the construction, operation and maintenance of all drains, sewers, and sewage disposal facilities, of the inspection or supervision of sewer or drain construction and repair work, and of waste disposal.

4. The Director of DPW has the authority to adopt and enforce regulations governing its operations and the protection of the City's water supply and facilities pursuant to Art. 24 § 1-1 of the Baltimore City Code, Annotated.
 5. The Director of the Department of Public Works (DPW) has the authority to adopt regulations governing its operations pursuant to Art. 24 § 1-1, Art. 25 § 1-2, and Art. 27 § 1-2, Baltimore City Code.
 6. The Director of Finance has the power to collect amounts due and manage the lien process pursuant to Sections 10-13 of Article VII of the Baltimore City Charter.
- B. Applicability. These regulations apply to residents who receive bills from the City for water, wastewater, and/or storm water charges mailed on or after July 1, 2019.

III. Dispute Escalation, Review, and Determination.

- A. DPW shall publish on its website a phone number, email address, and physical address where customers may inquire about their water, wastewater, and/or storm water bills.
- B. Escalation Process.
1. Section or Division Manager.
 - a. Should a customer choose to dispute a charge on their bill, the customer shall notify a DPW Billing Analyst by phone, via email, or in person.
 - b. The Billing Analyst shall complete a standardized escalation form, documenting all pertinent information about the customer's dispute.
 - c. The Billing Analyst shall forward the information to a Section or Division Manager for review and shall render a determination after appropriate assessment and evaluation in accordance with these regulations.
 - d. The customer shall be informed of the decision as well as the right to appeal.
 2. Chief.
 - a. Within 10 calendar days of receipt of the Section or Division Manager's determination, the customer shall have the right to appeal the determination to the Chief in writing.
 - b. The Chief shall review the determination of the Section or Division Manager to ensure it was made objectively and in accordance with these regulations.
 - c. The Chief may contact the customer directly, should clarification on a matter or a specific piece of information be needed.
 - d. The customer shall be informed of the decision, in writing, per the

customer's preferred means of contact, as well as the right to appeal.

3. Bureau Head.

- a. Within 10 calendar days of receipt of the Chief's determination, the customer shall have the right to appeal the determination to the Bureau Head in writing.
- b. The Bureau Head shall review the determinations of the Section or Division Manager and the Chief to ensure they were made objectively and in accordance with these regulations.
- c. The Bureau Head may contact the customer directly should clarification on a matter or a specific piece of information be needed.
- d. The customer shall be informed of the decision as well as the right to appeal.

4. Independent Review.

- a. DPW shall contract with a hearing officer(s) to provide an independent review.
- b. The customer shall have the right to a third-party review and hearing.
- c. The procedures for conducting a third-party review shall conform to Section V of these regulations.

5. Director.

- a. Within 30 days of the recommendation by the third-party hearing officer, the customer shall have the right to appeal the recommendation of the hearing officer in writing to the Director who shall have final authority.
- b. The Director may reject the recommendation of the third-party hearing officer if it can be demonstrated the hearing officer failed to appropriately apply or consider the provisions of these regulations.
- c. In accordance with the Baltimore City Charter, the Director may, upon the advice and concurrence of the Law Department, make exceptions to the provisions of these regulations in rendering a final determination if extenuating and extraordinary circumstances exist. Such circumstances shall be limited to those specific decisions and by no means shall be considered binding on future decisions.
- d. The customer shall be informed of the final decision.

6. Circuit Court. If the customer wishes to contest the Director's final determination, the customer can appeal.

C. Procedures for Reviewing and Rendering a Determination.

1. Notwithstanding any other provisions of these regulations, the Section or Division Manager, Chief, Bureau Head, and Director shall review the dispute and render a determination in accordance with this subsection. The third-party hearing officer is not subject to the provision in this subsection.
2. Disputes shall only be allowed for charges incurred within the preceding two billing cycles.
3. Immediately upon notification of a dispute by a customer, DPW shall suspend late fees until the dispute is resolved or the appeals have been exhausted.
4. The customer shall continue to accrue charges based on consumption and usage.
5. DPW shall assist the customer in determining whether a leak on the customer's property is causing the charges.
6. If there is a suspicion of a leak, a turn-off test may be performed to help determine if the leak is interior to the property structure or an underground leak. In this test, the customer is asked to shut-off the valve to the main water line coming into the property structure. If water usage is still registering through the meter when the main valve is closed, it indicates there may be an underground leak.
7. Water meters may be tested for a fee based on the size of the meter. If, upon testing, it is determined that the meter failed to meet industry standards, the customer shall not be charged the meter testing fee.
8. If it is determined that an error in the meter and/or billing system is responsible for increased usage charges, the erroneous charges shall be voided. This does not apply to non-consumption or usage charges such as infrastructure or storm water fees.
9. If it is determined that the customer has either an interior/situational leak or an underground leak, the charges may be adjusted in accordance with Section IV of these regulations.
10. At any time, customers may enter into a payment plan agreement with the City.

IV. Adjustments to Bills

A. Requirements.

1. A customer may be eligible for an adjustment to their water and/or sewer bill if the customer is the legal owner or an authorized person designated by the property owner.
2. No more than two (2) consecutive bills are eligible for an adjustment for interior/situational usage or an underground leak.
3. No adjustment may be granted if the property has an active leak or the

known leak has not been repaired.

4. Adjustment requests must be noted on a standardized Water and Sewer Adjustment Request" form.

B. Adjustment Request Types.

1. Interior/Situational Usage Adjustment.
 - a. This is an adjustment for water loss typically associated with interior plumbing in which water loss returns to the sanitary sewer system.
 - b. Such incidents may involve broken or leaky pipes, faulty or malfunctioning appliances, or broken water faucets, to name some examples.
 - c. An Interior/Situational Usage Adjustment may only be granted at a property once every three (3) years.
2. Underground Leak Adjustment.
 - a. This is an adjustment for water loss typically associated with underground pipe ruptures in which water loss does not return to the sanitary sewer system.
 - b. In order to qualify for an Underground Leak Adjustment, a receipt from a licensed plumber is required containing the date of the repair, the type of repair, and an indication that the repair was completed.
 - c. If water consumption data is available, the data must support the repair receipts.
 - d. An Underground Leak Adjustment may only be granted at a property once every two (2) years.
3. Adjustment Types Not Considered. Water loss due to theft or vandalism will not be considered for adjustment under any circumstances.

C. Adjustment Calculation.

1. Interior/Situational Usage Adjustment.
 - a. Except for customers enrolled in DPW's BH₂O Assist program where an adjustment of the full average of water usage is credited to the account, an Interior/Situational Usage Adjustment shall be limited to water volumetric consumption.
 - b. An Interior/Situational Usage Adjustment is calculated from the consumption of water from the last billing period prior to the leak and is multiplied by the total days of service within the affected billing period.
 - c. Fifty percent (50%) of the additional water usage is deducted from the amount owed.

2. Underground Leak Adjustment.

- a. An Underground Leak Adjustment is limited to charges for water and sewer volumetric consumption only.
- b. An Underground Leak Adjustment is calculated from the daily average consumption of water from the last billing period prior to the leak and is multiplied by the total days of service within the affected billing period.
- c. The additional water and sewer volumetric charges are deducted from the amount owed.

D. Effective Date of an Adjustment. An approved adjustment will appear on the customer's water bill approximately four (4) weeks after the request was received.

V. Independent Review

A. DPW shall develop a Memorandum of Understanding with hearing officers or an independent entity to assist in performing independent reviews. For the purposes of this review, hearing officers will be deemed part of DPW so that records of the accounts can be shared with the hearing officers pursuant to state law. Md. Code, Gen. Prov., §4-336(b).

B. Request for Hearing.

1. In order to obtain a hearing by a third-party hearing officer, an aggrieved party must submit a written request within thirty (30) days of the determination of the Bureau Head.
2. A written request must be submitted on a standardized request form to the hearing officer or independent entity.
3. Upon receipt of a hearing request, the hearing officer or independent entity will provide notice to DPW as well as the aggrieved party and any other necessary parties:
 - a. Acknowledging the timely hearing request; or
 - b. Indicating that the request is untimely, and the Bureau Head decision is final.

C. Notice of Hearing.

1. Within a reasonable time after receipt of a timely hearing request, generally 30 days, the hearing officer or independent entity will send a letter to the Petitioner and DPW acknowledging receipt of the hearing request and asking the parties to submit a Joint Submission providing:
 - a. The names and contact information of the people who are anticipated to represent each party;
 - b. Any agreement between the parties regarding any exchanges of documents, or discovery, and any proposed deadline by which all such exchanges or discovery must occur;

- c. Any stipulations of fact agreed to by the parties; and
 - d. A proposed duration of the hearing in hours or days.
2. Within a reasonable time after receipt of the parties Joint Submission, generally 30 days, the hearing officer or independent entity will send a Hearing Notice to the parties which shall provide:
 - a. The date, time, place, and nature of the hearing;
 - b. A statement of the right to present witnesses and documents, or other evidence, and the right to cross-examine any witness that another party calls;
 - c. A statement of any rights or requirements pertaining to representation by counsel;
 - d. A statement that failure to appear for the scheduled hearing may result in an adverse action against that party;
 - e. A deadline for the parties to exchange and provide documents to the Department, as well as a description of any discovery deemed appropriate by the Department;
 - f. A deadline to identify and summarize the scope of testimony of any expert witnesses; and
 - g. Where deemed necessary or beneficial, a deadline for filing dispositive motions.
 3. In establishing the schedule, the hearing officer or independent entity will generally seek to accommodate a joint request by the parties for a particular hearing date or discovery.
 4. A party seeking to alter a deadline set forth in the Hearing Notice must file a written motion with the hearing officer or independent entity.
 5. The hearing officer or independent entity will generally conduct hearings within their offices, although it may select another location when deemed appropriate.
 6. The Notice may also designate a specific person within DPW to receive further pleadings or correspondence from the parties.

D. Manner of Representation.

1. A party may appear *pro se*, unless prohibited by law, or may be represented by an attorney authorized to practice law in Maryland.
2. A party's representative of record shall be served with all notices, pleadings, and other correspondence.

E. Correspondence and Motions.

1. Motions shall be made in the following form:
 - a. Motions shall be made in writing and shall articulate the requested

relief or action; and

- b. A party filing a motion shall attach any documents, as exhibits, that are necessary for the Director or designated hearing officer to decide the issue.
2. A party opposing the motion shall file a written response within fifteen (15) days, unless otherwise shortened or extended by the designated hearing officer.
3. The moving party may file a written reply to an opposition within ten (10) days, unless otherwise shortened or extended by the designated hearing officer.
4. The designated hearing officer may schedule a hearing or telephone conference to hear oral argument on any motion.
5. The designated hearing officer shall provide a ruling on any motion in writing prior to the hearing or as part of the final administrative decision.
6. Dispositive motions shall only be permitted where the designated hearing officer determines that it is necessary or beneficial to the orderly and fair resolution of the case.
7. A party filing any pleading or correspondence with the hearing officer or independent entity shall promptly serve a copy on all other parties to the proceeding as verified through a signed certificate of service providing:
 - a. Date and manner of service and
 - b. The name and address of each person served.

F. Conduct of Hearings.

1. Hearings shall be conducted in a full, fair, impartial, and orderly manner.
2. The designated hearing officer shall:
 - a. Administer oaths and affirmations;
 - b. Rule upon offers of proof and receive relevant and material evidence;
 - c. Consider and rule upon any motions deemed appropriate in the subject proceeding;
 - d. Examine witnesses;
 - e. Limit unduly repetitious testimony and reasonably limit the time for presentations;
 - f. Grant a continuance or postponement where deemed necessary or appropriate;
 - g. Modify or waive, reasonably and for good cause, any established deadlines;
 - h. Require parties to submit legal memoranda, and proposed findings

of fact or conclusions of law, where deemed appropriate; and

- i. Issue orders as are necessary to ensure order and administrative fairness and to eliminate unjustifiable expense and delay.
3. Formal rules of evidence shall not apply during the hearing.
4. The hearing shall be filmed, recorded, or transcribed.

G. Independent Recommendation.

1. The designated hearing officer shall provide a proposed written decision following the hearing articulating:
 - a. Findings of fact;
 - b. Legal determinations based on the facts found;
 - c. A recommendation on the disposition of the matter including any proposed relief; and
 - d. Rights for either party to appeal the decision to the Director.
2. The Hearing Officer or the independent entity shall promptly serve a copy of the written determination on each party to the proceeding.

H. Administrative Record.

1. The administrative file shall including:
 - a. The proposed decision;
 - b. A transcript, video, or audio recording of the hearing;
 - c. All correspondence, motions, stipulations, exhibits, or other papers filed in the agency proceeding; and
 - d. Any other document, presentation, or item submitted during the proceeding.

I. Exceptions.

1. If either party disputes the recommended disposition or proposed relief determined by the hearing officer or independent entity, they may file written exceptions with the hearing officer or independent entity within fifteen (15) days of the hearing.
2. Upon receiving written exceptions by either party, the hearing officer or the independent entity shall forward the proposed decision and the administrative record to the Director.

J. Final Decision.

1. Upon transmittal from the hearing officer or the independent entity, the Director shall review the proposed decision, record, and the filed exceptions, and may either:
 - a. Issue a Final Agency Decision adopting the proposed hearing officer's or the independent entity's decision;

- b. Reject the proposed decision, and issue a written Final Agency Decision; or
 - c. Where the proposed decision fails to provide sufficient information on which to render a decision, remand the decision to the hearing officer or the independent entity for further proceedings.
2. The Director shall promptly serve a copy of the Final Agency Decision or order on each party to the proceeding.
- K. Judicial Review. If either party disputes the Director's final decision, the party shall have the right to seek judicial review in a court of law of appropriate jurisdiction.

VI. Effective Date

These regulations shall be effective August 1, 2019.

Issued and Approved:



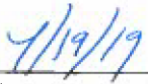
Rudolph Chow, Director
Department of Public Works



Date



Hilary Ruley
Law Department



Date