
Coates' Canons Blog: Water Disconnections During the COVID-19 Outbreak

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Article: <https://canons.sog.unc.edu/water-disconnections-during-the-covid-19-outbreak/>

This entry was posted on March 12, 2020 and is filed under **Featured Posts Related To COVID-19, Finance & Tax, Public Enterprise / Utility Finance**

UPDATE: Please note that local government water and wastewater utilities are not subject to regulation by the State's Utilities Commission. That means that the Utilities Commission's March 19, 2020 order suspending disconnections does not apply to local government water and wastewater utilities. As per below, it is up to the governing board of each local government utility to determine whether or not to suspend disconnections.

Among the myriad concerns local governments and community members are facing during the covid-19 global pandemic is ensuring access to water for citizens. An important front-line defense to prevent the spread of the disease is to wash hands often with soap and water for at least 20 seconds. What happens, though, when the local government water utility has shut off a customer's water for non-payment or other violation of the utility's regulations? May the local government reconnect service? May it waive the outstanding fees and/or penalties? May it temporarily suspend future disconnections? This post will address a local government utility's options.

Reconnecting Water Service and Suspending Disconnection Policy

Disconnecting service is a collection tool that a local government utility has to compel payment for its services or compliance with its regulations. A local governing board is free to stop using this tool or suspend its use for a period of time. If it wants to stop using this tool (either temporarily or permanently) the local governing board must amend its ordinance to modify the disconnection policy and specify the new terms of continued service.

For customers whose service is currently disconnected, the board has the option to simply reconnect service without requiring any contribution towards the outstanding balance, or it could reconnect only after the customer makes some nominal payment. It also could condition reconnection on the customer agreeing to a longer-term payment plan to satisfy the delinquency.

The governing board also could suspend all future disconnections for a specified period of time or until there is further action of the board. Alternatively, it could impose stricter criteria for the use of disconnections, such as authorizing disconnections only when a customer fails to pay for X billing cycles or only when an outstanding balance reached a certain threshold level.

The board could vary its disconnection policy by customer class. For example, it could suspend disconnections for residential service, but not for commercial or industrial service. Or it could suspend disconnections for all classes of service.

What if the board cannot meet or does not want to meet under the circumstances? Could the manager, administrator, utility director, or other employee make the change to the disconnection policy without formal board action? The law requires counties and municipalities to adopt all regulations related to the utility by ordinance. And the board must take action to amend the ordinance, unless the ordinance itself delegates certain authority to local government employees. Having said that, under these unique circumstances, even in the absence of a specific delegation of authority, if the manager, administrator, or utility director feels that the board would support this action, he or she could make the temporary policy change and then seek board ratification at the next board meeting. I suggest consulting with the local unit's attorney for guidance before taking this action, though.

Utility Fee Waivers and Subsidies

What if the local government instead (or additionally) wants to simply waive or pay off the outstanding water balances? Generally, a local government does not have authority to waive the utility fees owed by an individual customer. However, a

county or municipality could establish a water payment subsidy program for residents who are senior citizens (over the age of 60), see **G.S. 160A-497**, or for citizens who qualify as low or moderate income, see **G.S. 153A-376** (counties) and **G.S. 160A-456** (municipalities). The subsidy program could pay the water balances owed by qualifying customers who are also residents of the county or municipality. The board would have to fund these programs with general fund monies (property or sales tax proceeds or unrestricted fee revenue), though.

Links

- www.cdc.gov/coronavirus/2019-ncov/about/prevention.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fabout%2Fprevention-treatment.html
- www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_160A/GS_160A-497.pdf
- www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_153A/GS_153A-376.pdf
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