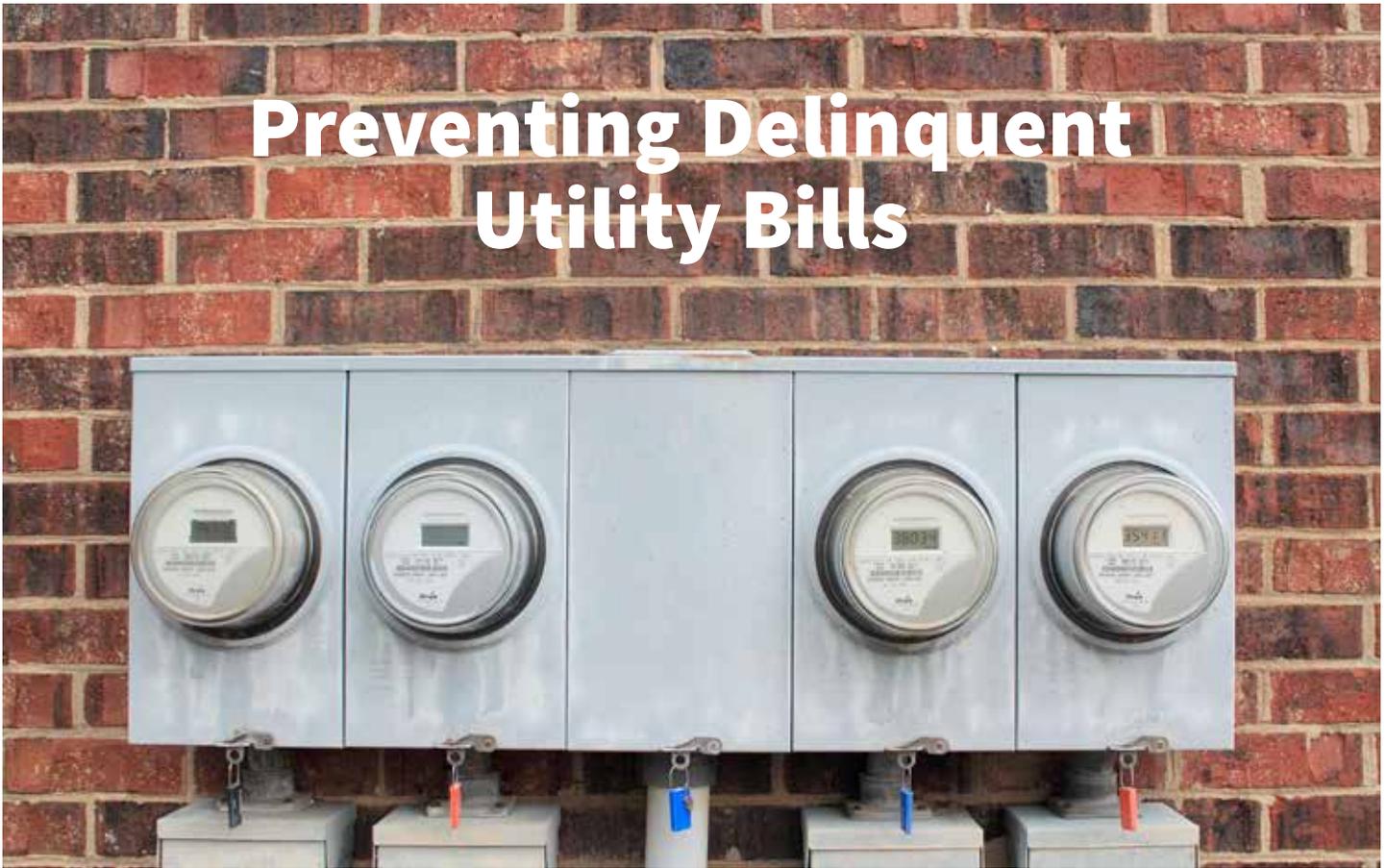


Preventing Delinquent Utility Bills



Utility billing issues are among the most common issues faced by cities of all sizes. Understand the steps cities may take to bring predictability to outstanding utility charge collection under Missouri law.

Deposits And Shut Offs

Before disconnecting or terminating service, a local government utility service provider must provide notice informing the customer not only of the possibility of termination but also of a procedure for challenging a disputed bill.¹ Due process requires an opportunity for a customer to complain to a designated employee of the local government that he or she is being overcharged or charged for services not rendered.²

Many delinquencies can be prevented by proactive deposit and shut-off procedures. The United States Supreme Court and Missouri courts have held that a public utility company may adopt and enforce, as a reasonable regulation, a rule that service will be discontinued for those customers who are in default.³ By requiring new customers to pay a deposit equal to

one month's average utility payment before beginning service, the city has extra funds to offset unpaid utility charges.⁴

Local governments should adhere to uniform deposit and shut-off requirements and procedures. The Missouri Court of Appeals held that a utility provider may have been liable for the wrongful termination of service when the utility provider demanded a deposit far exceeding the amount authorized by the utility's policy and disconnected utility service when the deposit was not immediately paid.⁵ The Court of Appeals further recognized potential liability for a utility provider that fails to provide a customer the standard time period allowed for payment to be made before disconnecting service, as well as when service is terminated when the amount due is in dispute.⁶ This liability, when considered with a local government's duty to provide a utility customer with

an opportunity for due process before taking any adverse action, means that any utility deposit and disconnection requirements that are only imposed upon a certain group of customers should at least be carefully considered by a municipality and scrutinized by its legal counsel before adoption.

In addition to terminating or suspending service for non-payment of its own utility charges, several Missouri statutes authorize local government utility providers to terminate services for non-payment of another utility provider's charges. RSMo 393.015 & 393.016 authorize water corporations, municipal water utilities, and water districts to terminate water services to any customer for nonpayment of a sewer bill pursuant to a contract entered into with a sewer corporation, municipality or sewer district. Also, under RSMo § 250.236, any city, town or village may contract with a private or public water company to terminate water services, at the direction of the city, because a customer fails to pay his sewer bill.

Collection Of Past-Due Charges

Collection of past-due charges, when standard shut-off procedures are not available, can be challenging. This typically occurs when a tenant leaves a rental property without paying outstanding charges and the space is re-occupied by another tenant. Unless specifically authorized by statute, a municipality cannot terminate utility service to collect bills left unpaid by a former tenant, occupant or owner of a building.⁷

RSMo 250.140 provides that water and sewer services

are deemed furnished to both the occupant and owner of the property. Therefore, assuming proper notice and an opportunity to dispute the charges has been given to both the owner and the current tenant of a delinquent utility property, it may be proper to disconnect the property's water service. However, this section does not allow a landlord to request a city disconnect water service if the tenant does not pay to prevent the landlord from being jointly liable for delinquent utility bills that exceed the utility deposit at the time of disconnection. According to the Missouri Court of Appeals, the purpose of RSMo 250.140 is to benefit the entity providing service, not the property owner.⁸ Also, RSMo 250.140 only applies to residences that have their own private water and sewer lines. In instances where several residences share a common water or sewer line, and in other circumstances where the property owner/landlord applies for water and sewer service instead of the tenants, the property owner/landlord of the real property upon which the residences sit shall be solely liable for water and sewer expenses and only the property owner is to be directly billed for the services provided.

Most importantly, the Missouri Court of Appeals has explained that no Missouri statute authorizes a public utility to collect charges for service rendered to a previous customer by threat of disconnecting service to the current customer or by imposing a lien on the real estate.⁹

While a city may sue the owner of a building for unpaid tenant utility charges, in reality this process is cumbersome and may not be worth the time investment. RSMo 250.140 provides that water and sewer services are deemed furnished to both the occupant and owner of the property. Under this statute, a city, town, village, sewer district or water supply district may sue the occupant or owner, or both, to recover unpaid charges. However, this section does not apply to other municipal utilities, including municipal gas and electric utilities. It also does not authorize imposing a lien for unpaid charges without pre-approval by a judge.

Difficulties With Liens

Liens are specifically authorized by statute for some municipal utilities. RSMo 250.234 authorizes cities, towns and villages to impose a lien for unpaid sewer charges. However, that state statute does not discuss the lien's priority. It does not place the lien on par with delinquent taxes that may make it difficult to enforce the lien if other senior liens already exist against the property, such as deeds of trust or tax liens. Many of the state statutes applicable to non-charter cities authorize collection of utility charges, but most do not authorize creating a lien.

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Public water supply districts may impose a lien under RSMo 247.110, and RSMo 249.255 and 249.645, to empower public sewer districts to impose a lien for unpaid charges that “shall have priority as and be enforced in the same manner as taxes levied for state and county purposes.” However, those statutes are not applicable to Missouri cities.

Attempting to impose liens against properties with delinquent accounts by ordinance may not be the solution to collecting outstanding charges. A non-charter city derives its power from the legislature’s enactment of laws.¹⁰ Dillon’s Rule applies and limits the powers of the municipality to: (1) those granted in express words; (2) those necessarily or fairly implied in or incident to the powers expressly granted; and (3) those essential to the declared objects and purposes of the city or municipal corporation; not simply convenient, but indispensable.¹¹

The state statutes authorizing the creation and operation of most municipal utilities do not authorize imposing liens for unpaid charges. Dillon’s Rule is strict, and any fair, reasonable doubt concerning the existence of power is resolved by the courts against the municipality and the power is denied.¹²

The Missouri Court of Appeals has already refused to recognize an implied power to impose liens for unpaid charges for a public utility when state statute did not expressly grant the authority to impose a lien. As the Missouri Court of Appeals explained, there is a “general rule that in the absence of a statute expressly authorizing shutoff, or making arrearages in service charges a lien on the land on which the service has been used, a public service company or municipal corporation furnishing such service has no right to cut off the service to the premises until the arrears due from the former owner or occupant are paid.”¹³

It is unknown whether home rule cities and counties have the authority to pass ordinances authorizing liens for unpaid charges. Although such authority may exist, lien enforcement may prove difficult. In *St. Louis Investment Properties, Inc. v. The Metropolitan St. Louis Sewer District*, the Missouri Court of Appeals considered whether the Metropolitan St. Louis Sewer District (MSLSD) had

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authority to impose liens for delinquent sewer service charges.¹⁴ The MSLSD was created under Sections 30(a) and 30(b) of Article VI of the Missouri Constitution. It enjoys even more home rule authority than constitutional charter home rule cities and counties under Section 30(b) that provides that the MSLSD’s plan shall become the law of the District and take the place of and supersede all laws, charter provisions and ordinances inconsistent with the District Plan relating to the District.¹⁵ In this case, the Missouri Court of Appeals held the MSLSD had the authority to enact an ordinance authorizing liens for delinquent sewer service charges because the MSLSD District Plan specifically authorized the District to impose sewer service charges “to be collected from all real property served by the sewer facilities of the District, ... and to collect or enforce collection of all such charges.”¹⁶ While this language in the District plan was held to grant the MSLSD authority to impose a lien against a property served by the MSLSD, it did not authorize the MSLSD to grant its lien priority over other liens that may exist on a property, such as deeds of trust or tax liens.¹⁷ As the Court of Appeals explained, the Missouri Legislature has the power to change the priorities of liens and to give a statutory lien

priority over other liens: “the express power to collect and enforce collection of sewer charges does not carry with it an implied power to reorder lien priorities.”¹⁸

Unlike the MSLSD plan that superseded inconsistent laws, no city in Missouri, including those with home rule authority, may enact and enforce an ordinance permitting what a state statute prohibits.¹⁹ Also, where state statute has authorized a municipality to exercise a power and prescribed the manner of its exercise, the right to exercise the power given in any other way is necessarily denied.²⁰ Therefore, to avoid conflicts with state statutes that establish the priority of other property liens, it is likely that a state statute would be needed to provide a municipal utility lien priority over other property liens under Missouri law.

Combined Billing To Prevent Delinquencies

Many delinquent utility charges may be prevented by combined utility billing. Combined utility billing has been adopted by cities throughout the state. Under a combined billing process, it is important to clarify that all utility charges shown on the combined utility bill are due and payable at the same time and any partial payment will be applied proportionally to each outstanding utility balance. One example of such language is found in Section 78-15 of the Code of Ordinances of Kansas City, Missouri. Section

78-15 provides that partial payments under combined utility bills “may be applied proportionally to each of the applicable water service, sanitary sewer service and stormwater service accounts.”

Combined billing may not be possible for all municipal utilities. Cities and counties that provide solid waste collection services that are not exempted from RSMo 260.215 must provide billing statements that separately state the solid waste collection charges. Under this statute, these cities and counties may not withhold, or authorize the withholding of, any other utility service for nonpayment of solid waste collection services charges. 🍃

Conclusion

Collecting unpaid utility charges can be challenging. Cities can ease this burden by implementing proactive deposit and shutoff procedures and combined utility billing.

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Footnotes are available for this article upon request by contacting the League office at (573) 635-9134 or info@mocities.com.



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