

**CITY OF GAUTIER  
MEMORANDUM**

**To:** Samantha Abell, City Manager  
**From:** Darlene Brown, Utilities Customer Service Manager  
**Through:** Chad Jordan, ClearWater Solutions Project Manager  
**Date:** August 15, 2013  
**Subject:** Policy for Adjustment for Water and Sewer Charges

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**REQUEST:**

City Council authorization is requested for the City of Gautier to adopt and implement a policy for adjustments on water and sewer charges.

**BACKGROUND:**

The city manager has directed Clearwater Solutions to develop a comprehensive policy for water and sewer adjustments. The City Manager has received the attached policy, and the City Attorney has revised and approved for legal sufficiency. Clearwater's Utility Services Department recommends this policy in order to address leak adjustments, meter malfunctions, pool and irrigations options, tampering and vandalism, and payment plans with citizens concerning utility billing.

**DISCUSSION:**

The primary goal is to establish a policy that ensures billing equity among water/sewer customers, and also complies with Mississippi Law.

**RECOMMENDATION:**

Clearwater Solutions recommends that the City Council approve the policy for adjustments on water and sewer charges.

**ATTACHMENT(S):**

Policy for Adjustments on Water and Sewer Charges  
Attorney General Opinions

# **POLICY FOR ADJUSTMENTS ON WATER AND SEWER CHARGES**

**Pursuant to Mississippi Law, whether a municipality may reduce a utility bill of a customer depends upon the facts and circumstances of each case.**

## **LEAK ADJUSTMENTS**

If a leak occurs in a portion of the City owned and maintained water system, the Customer will not have to pay for either the water usage or sewer treatment attributable to the leak.

If a leak occurs in a portion of the Customer owned and maintained water system, the Customer will have to pay for the increased water usage. The Customer will not have to pay the sewer charge for any water that was not routed through the City sewer system.

## **METER MALFUNCTIONS**

If the City water meter malfunctions and results in a reading of increased usage, the Customer will not be required to pay either the water service charge or the sewer charge for any usage in excess of the previous six (6) month average.

## **POOL AND IRRIGATION OPTIONS**

The City offers an irrigation meter (water charge only) for outdoor use. This meter will result in charges for the water usage only, there will be no sewer charges on water usage through the meter.

The City offers a fire hydrant meter for in ground pool filling. This meter will result in charges for the water usage only, there will be no sewer charges on water usage through this meter.

## **TAMPERING AND VANDALISM**

In cases of a significant increase usage caused by tampering or vandalism which can be documented to the City's satisfaction, that portion of the bill for water and sewer in excess of the prior six (6) month average may be forgiven at the discretion of the City Manager.

## **PAYMENT PLANS**

Any abnormally high monthly billing may be satisfied through a payment plan, which shall not exceed a twelve (12) month period, and may only be approved by the City Manager.

**THIS POLICY IS SUBJECT TO CHANGE AT ANY TIME BY ORDER OF THE CITY COUNCIL**

**Mr. Joe T. Gay**  
1994 WL 240883  
May 09, 1994

Term | Best Section |  
1994 WL 240883 (Miss.A.G.)

Attorney General Mike Moore has received your recent letter on behalf of the Town of Blue Mountain and has asked me to respond. Your letter states:

The Board has requested information concerning whether or not the Board may reduce water bills without being in conflict with state law. The Town is fully aware that it cannot provide free service to any consumer; however, recently we have had a number of citizens request that their water bill be reduced or forgiven due to the fact of broken pipes, unknown leakages, and damage during the ice storm. I would request your opinion as to whether or not the Town under any one of these circumstances could forgive or reduce the amount of money due the Town without being in conflict with state law prohibiting not charging for water services.

Miss. prohibits a municipality from compromising or forgiving claims which are not doubtful, stating:

No obligation or liability of any person, association, or corporation held or owned by this state, or levee board, or any county, city, or town thereof, shall ever be remitted, released or postponed, or in any way diminished by the legislature, nor shall such liability or obligation be extinguished except by payment thereof into the proper treasury; nor shall such liability or obligation be exchanged or transferred except upon payment of its face value; but this shall not be construed to prevent the legislature from providing by general law for the compromise of doubtful claims.

As you know, (attached) prohibits a municipality from making a donation without specific authority.

A municipality may not reduce or forgive a utility bill of a customer as a donation for the benefit of that individual. However, a municipality may reduce a utility bill unreasonably increased because of unforeseen circumstances and for which the customer did not receive the benefits of the utility service. The municipality may negotiate settlement of a doubtful claim. Whether a municipality may reduce a utility bill of a customer depends upon the facts and circumstances of the case.

If we may be of any further assistance, please let us know.  
Sincerely yours,

Mike Moore  
Attorney General

By: Alice D. Wise  
Special Assistant Attorney General

ATTACHMENT

. Powers of governing authorities.

(1) The governing authorities of every municipality of this state shall have the care, management and control of the municipal affairs and its property and finances. In addition to those powers granted by specific provisions of general law, the governing authorities of municipalities shall have the power to adopt any orders, resolutions or ordinances with respect to such municipal affairs, property and finances which are not inconsistent with the Mississippi Constitution of 1890, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi, and shall likewise have the power to alter, modify and repeal such orders, resolutions or ordinances. Except as otherwise provided in subsection (2) of this section, the powers granted to governing authorities of municipalities in this section are complete without the existence of or reference to any specific authority granted in any other statute or law of the State of Mississippi.

(2) Unless such actions are specifically authorized by another statute or law of the State of Mississippi, this section shall not authorize the governing authorities of a municipality to (a) levy taxes of any kind or increase the levy of any authorized tax, (b) issue bonds of any kind, (c) change the requirements, practices or procedures for municipal elections or establish any new elective office, (d) change the procedure for annexation of additional territory into the municipal boundaries, (e) change the structure or form of the municipal government, (f) permit the sale, manufacture, distribution, possession or transportation of alcoholic beverages, (g) grant any donation or (h), without prior legislative approval, regulate, directly or indirectly, the amount of rent charged for leasing private residential property in which the municipality does not have a property interest.

(3) Nothing in this or any other section shall be construed so as to prevent any municipal governing authority from paying any municipal employee not to exceed double his ordinary rate of pay or awarding any municipal employee not to exceed double his ordinary rate of compensatory time for work performed in his capacity as a municipal employee on legal holidays.

SOURCES: Laws, 1992, ch. 430 § 1, eff from and after passage (approved May 4, 1992).

1994 WL 240883 (Miss.A.G.)

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Ms. Adrienne Howell  
2001 WL 880495  
July 16, 2001

Term Best Section  
2001 WL 880495 (Miss.A.G.)

Office of the Attorney General  
State of Mississippi  
Opinion No. 2001-0385

July 16, 2001

Re: Authority of municipality to reduce water bills

Ms. Adrienne Howell  
City Clerk  
P. O. Box 1800  
Ocean Springs, Mississippi 39566-1800

Dear Ms. Howell:

Attorney General Mike Moore has received your recent letter on behalf of the City of Ocean Springs and has asked me to respond. Your letter states:

As city clerk and person in charge of utility billing and collections, I am asked on occasions to adjust water and sewer bills of customers who water their lawns and fill their swimming pools. It has been the general practice of the City of Ocean Springs to adjust the sewer charges on these type accounts. Sewer charges are determined by the amount of water that is actually metered. The City has provided an alternative to allow customers to purchase a second meter wherein sewer charges would not be charged for the purposes stated. Some customers do not want to go to the expense and trouble of purchasing a second meter (\$300), but would rather have us adjust their account. I have no way of knowing who used the water and for what purposes it was used. All I see is a water bill that is above average.

Thank you for your official opinion on whether or not the adjustments as outlined above are considered a donation, making them unlawful, or if they are permissible.

addition, prohibits a municipality from compromising or forgiving claims which are not doubtful. In addition, prohibits a municipality from giving free

of customers at the request of the customers. On the other hand, the governing authorities may adopt a uniform regulatory scheme allowing for adjustment of sewer fees for unusual quantities used, upon proper and sufficient proof of the circumstances.

Sincerely,

Mike Moore  
Attorney General

By: Alice Wise  
Special Assistant Attorney General

2001 WL 880495 (Miss.A.G.)

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**Mr. Richard Rose**  
2002 WL 31663380  
September 06, 2002

Term Best Section  
2002 WL 31663380 (Miss.A.G.)

Office of the Attorney General  
State of Mississippi  
Opinion No. 2002-0464

September 6, 2002

Re: Adjustments to utility bills

Mr. Richard Rose  
Gulfport City Council Ward 2  
2309 15<sup>th</sup> Street  
Gulfport, Mississippi 39501

Dear Mr. Rose:

Attorney General Mike Moore has received your recent letter on behalf of the City of Gulfport and has asked me to respond. Your letter states:

The City of Gulfport annexed an area known as Orange Grove on January 1, 1994, and immediately began providing city services in the area with the exception of **water** utility service. In December 1999 the City of Gulfport purchased the private **water** utility in this service area, Orange Grove Utilities, and began charging these residents a flat rate for **water** service based on an average usage of 8,000 gallons per month. Orange Grove Utilities had also **billed** all residents on a flat rate prior to Gulfport taking ownership. Few residents of this area had **water** meters installed by the former owner and were not charged metered **water** usage by the former owner. The City of Gulfport continued this process. Residents of the "older" part of the city (not part of the Orange Grove area) are metered and are being charged for **water** usage. The City has two distinct and separate **water** systems, one for "old Gulfport" and one for the Orange Grove area.

On or about April 1, 2002, and with only an estimated 75-90% (disputed numbers) of residents metered in the Orange Grove area, the City of Gulfport began reading meters of those residents and began **billing** those residents based on **water** usage. All others continued to be **billed** at the flat rate. A couple of problems occurred; some meters installed by the former owner did not work (and were not tested by the city for accuracy prior to being read); some residents were **billed** for metered **water** usage even though there was not a meter installed; and some meters simply did not work properly.

As of August 1, 2002, the City of Gulfport still does not have 100% of the residents metered in the Orange Grove service area. It is expected to be some months until all the residents are metered.

There has been great debate on whether or not the city can place all residents that were formerly on metered **water**

and sewer district may assess "rates, fees, tolls or charges," but the fees "must be reasonably calculated to provide for the system's functioning and growth." The Court noted that "the reasonableness of utility rates cannot be measured by definite rules and legal formula, but rests on case-specific facts that a judge must consider."

**See also**

(reasonableness of public utility rates is fact question). In addition, a municipality may not constitutionally discriminate in setting rates among similarly situated users for the same type of service pursuant to the Fourteenth Amendment to the U.S. Constitution. There are, of course, entirely proper grounds for creating different classifications of users which have a reasonable basis and rational relationship to accomplishment of a public policy objective. A municipality may, for example, establish different rates for industrial, commercial and residential customers, and special uses, such as swimming pools.

We have stated in prior opinions that municipalities may not reduce or forgive a just utility bill of a customer as a donation. However, a municipality may reduce a utility bill unreasonably increased because of unforeseen circumstances and for which the customer did not receive the benefits of the utility service. *MS AG Op., Howell* (July 16, 2001); *MS AG Op., Gay* (May 9, 1994). The municipality may adjust a **water bill**, for example, if there was a broken meter or a leak in the **water** line.

A municipality may acquire a **water** system from a **water** association within the corporate limits and may switch the customers of the **water** association from a flat rate to a metered rate. We are of the opinion that a municipality may phase in a metered rate structure in an area with a flat rate, charging customers without meters the flat rate and customers with meters according to the new rate in the transition period. Alternatively, a municipality may charge a flat rate for all customers in the area until such time as all or substantially all of the meters are installed and operating. Further, it is our opinion that the city may place customers retroactively back on a flat rate **billing** and adjust their **bills** accordingly where the city finds that there were systemic errors and a lack of uniformity in the regulatory scheme of the area. In addition, the city may adjust the **bills** of individual customers who had broken meters or who demonstrate that there were leaks in the city main **water** lines or the service lines. The governing authorities may also adjust the rates charged for **water** services prospectively.

If we may be of any further assistance, please let us know.

Sincerely,

Mike Moore  
Attorney General

By: Alice Wise  
Special Assistant Attorney General

2002 WL 31663380 (Miss.A.G.)

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