

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director
Metropolitan Council Office

DATE: March 3, 2009

**RE: Analysis for the March 3, 2009, Special Council Meeting
Regarding Water/Sewer Rates and the Proposed Storm
Water User Fee**

ORDINANCE NO. BL2009-407 (FORKUM, TOLER & OTHERS) – This ordinance amends various sections in the Metropolitan Code pertaining to the department of water and sewerage services. The ordinance essentially makes three major changes to the Code: a water and sewer rate increase; a decrease in water and sewer capacity fees; and the enactment of a new storm water user fee.

Water and Sewer Rate Increase

The ordinance provides for a water rate increase effective May 1, 2009 of five percent for each of the next three years, and a sewer rate increase of nine percent for 2009, eight percent for 2010, and seven percent for 2011. This will result in an average increase of \$3.76 per month for a typical residential customer in the first year.

The last time a water rate increase was proposed by the administration and approved by the Council was 1995. The last sewer rate increase was in 1996. The last rate adjustment was actually a reduction in 1999, when the Council reduced water rates by twenty-five percent for residential customers, along with a smaller reduction for commercial users. Since 2000, the number of sewer customers has increased by twenty-one percent, while the number of employees in the water department decreased by five percent. The water department's aging infrastructure is in need of rehabilitation. In fact, over sixty percent of our water infrastructure and fifty percent of our sewer infrastructure is more than forty years old, with some pipes having been in the ground since the late 1800s. In order to satisfy state and federal environmental requirements, a number of capital improvements must be made to our water and sewer infrastructure. Under the current rate structure, there are simply no funds to carry out these infrastructure projects.

The council office would point out that the cities of Birmingham, AL and Atlanta, GA are experiencing a financial crisis as a result of their failure to properly maintain their water and sewer systems. Both cities have been under a court order to repair and rehabilitate their systems. If our rate structure is not modified to address the system's capital needs, the Metropolitan Government runs the risk of incurring substantial fines and penalties from the environmental protection agency (EPA).

This ordinance also makes an adjustment to the late fee calculation, which was modified in 2006 as part of the “revenue enhancements” for the water department. This ordinance reduces the amount of the minimum late fee from \$10.00 to \$2.50, and increases the time in which to pay the bill from 15 to 20 days. The new late fee will be the greater of \$2.50 or five percent of the total net bill.

Capacity Fee Reduction

As stated above, in June 2006 and June 2007, the Council approved certain “revenue enhancements” necessary to balance the department of water and sewerage services’ operating budget. One aspect of these revenue enhancements included an increase in tap fees and capacity fees for connection to the water and sewer system. In 2006, a new “capacity charge” of \$1,000 was enacted for all new single-family equivalent connections to the public water supply system. In addition, the 2006 ordinance increased the capacity charge on all new single-family equivalent connections to the public sewer system from \$500 to \$2,000. These fees were re-authorized in June 2007.

Since the enactment of these capacity fee increases, many developers and small businesses have been required to pay substantial sums of money for water/sewer connections, both for new construction and for renovations of existing buildings where water/sewer capacity is expected to increase. In an effort to provide some relief to these businesses, the council approved Ordinance No. BL2008-215 in June 2008 to allow certain water/sewer customers to pay these fees in even monthly installments over a three year period.

This ordinance would reduce the amount of the capacity fees by one-half. The capacity charge for water connections would be \$500, and the sewer capacity fee would be \$1,000. The ordinance would also provide a “true-up” mechanism for customers that are on an installment plan pursuant to Ordinance No. BL2008-215. Upon request of the customer, the department would be required to review the customer’s account after one year to determine the customer’s actual capacity requirement. If the actual capacity requirement differs by ten percent or more from the estimate from which the fees were based, the department would either refund to or collect the difference from the customer, as the case may be.

Storm Water User Fee

This ordinance adds a storm water user fee to be paid by all property owners in Davidson County, unless otherwise exempted from the fee. The federal Clean Water Act requires local governments to obtain a National Pollution Discharge Elimination System (NPDES) permit for discharges from the municipality’s storm sewer systems. In response to this federal law, the Tennessee General Assembly adopted the Storm Water Management Act in 1993 to enable municipalities to regulate storm water discharges and to collect storm water user fees. Although this law was enacted in 1993, the Metropolitan Government has never implemented a storm water user fee. In 2002, the personnel and operational activities associated with Metro’s storm water functions were “transferred” by a memorandum of understanding to Metro water services (MWS). This transfer was not officially ratified by the council until 2007.

Since fiscal year 2005, Metro's storm water program has been funded solely by the ratepayers of Metro water services, as opposed to the Metro general fund. The council office would point out that it is highly questionable from a legal standpoint as to whether the use of ratepayer funds for storm water projects in areas not served by MWS is appropriate.

The state Storm Water Management Act allows municipalities operating or maintaining storm water control facilities to establish a graduated storm water user's fee to be based on the actual or estimated use of the storm water and/or flood control facilities. The state law requires that the cost be distributed proportionately to all users or classes of users, which may include basing the fee on the user's impervious surface. The state law specifically exempts properties, including agricultural properties, whose storm water runoff is not discharged into or through the storm water or flood control facilities of the municipality. The state law also requires that the fee structure provide adjustments for users who construct facilities to retain and control storm water runoff. All revenue generated from the storm water user fee must be used exclusively for the municipality's storm water and flood control facilities.

This ordinance establishes a graduated storm water user fee based upon the impervious area of each property. The ordinance defines "impervious area" as any portion of the property covered by a material that substantially reduces or prevents the infiltration of storm water, excluding natural surface rock areas. The fee will be added to property owners' water bills, and will be based upon the following schedule:

Property Type; Impervious Area (Square Feet)	Monthly Fee
All; Less than 400	\$0.00
Residential; Between 400 and 2000	\$1.50
Residential; Between 2000 and 6000	\$3.00
Residential; More than 6000	\$4.50
Non-Residential; Between 400 and 12,800	\$20.00
Non-Residential; Between 12,800 and 51,200	\$40.00
Non-Residential; Between 51,200 and 300,000	\$100.00
Non-Residential; Between 300,000 and 1,000,000	\$200.00
Non-Residential; More than 1,000,000	\$400.00

The ordinance defines "residential property" as any parcel zoned for agricultural, single-family, or two-family use. All other property would be billed at the non-residential rate. The council office recommends that the definition of "residential property" be amended to be based upon primary use of the property rather than zoning. Otherwise, a nonconforming single-family home with 4,000 square feet of impervious surface in an area that has been rezoned for mixed-use, multi-family or commercial uses, would pay \$20.00 per month, as opposed to the house across the street in a residential (R or RS) zoning district, which would pay \$3.00 per month.

Properties that do not receive water and/or sewer service from MWS will still be responsible for paying the storm water user fee. This includes surface parking lots and properties served by other utility districts. The ordinance allows MWS to contract with other utilities operating in Davidson County to have the fee included on the bills sent out by the utility district. Otherwise, MWS will bill these properties at least twice a year.

In keeping with state law, the ordinance includes several exemptions and adjustments. The following properties would be exempt from paying any fee:

1. Residential properties in the AG and AR2a districts of which one-half or more of the property is used as a working farm.
2. Properties having no impervious area.
3. Properties for which no storm water is discharged through the public system. "Public system" includes all storm water and flood control facilities, including natural conveyances maintained or improved by Metro that are used to control storm water.
4. Properties within the six satellite cities (Belle Meade, Berry Hill, Forest Hills, Goodlettsville, Lakewood and Oak Hill). By law, we cannot mandate that these satellite cities participate in our program since they each have their own NPDES permit. However, the ordinance provides that any of the satellite cities may opt to have all of their properties included in our program by action of their legislative body upon equal terms with all other customers. The council office is concerned that the ordinance does not require any contractual arrangement between Metro and the satellite cities that choose to opt in.

The ordinance allows properties with a functioning system that substantially limits the discharge of storm water or improves its quality to receive an adjustment to the storm water user fee in proportion to the improvement achieved by the system. The ordinance also provides for up to a fifty percent reduction in the fee to any nonprofit facility (i.e. church or school) that provides a regular education program regarding stewardship of water resources. Each qualifying nonprofit would have to submit an application for the adjustment to MWS and the nonprofit's water education program would have to be approved by the director of MWS in order to receive the discount.

The director of MWS is to promulgate regulations pertaining to the administration of the storm water user fee program after a public comment period. Such regulations must be approved by the Metro stormwater management committee prior to becoming effective. The director must also submit an annual report to Metro listing the properties that have been exempted or granted adjustments.

The council office recommends that this ordinance be amended to (1) codify the new rate tables; (2) require a periodic review of impervious area; (3) base the residential classification upon the use of the property rather than the base zoning district; (4) require a form contract between Metro and any satellite city choosing to participate in our program; and (5) add an appeal process for property owners disputing the calculation of their impervious area.