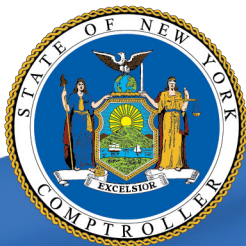


City of Dunkirk

Billing Enforcement

JUNE 2021



OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

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Report Highlights

City of Dunkirk

Audit Objective

Determine whether City of Dunkirk (City) officials properly enforced and monitored delinquent water, sewer and tipping fee balances.

Key Findings

The City Treasurer (Treasurer) did not properly enforce and the Common Council (Council) did not properly monitor delinquent water, sewer and tipping fee balances.

The Treasurer did not:

- Follow the enforcement procedures prescribed by the City Code (Code).
- Relevy 1,266 accounts totaling \$432,064 in January 2019.
- Charge penalties in accordance with the Code. Of the 30 accounts reviewed, approximately \$39,700 in additional penalties should have been charged.

If City officials had implemented shut-off procedures in accordance with the Code, the City could have collected more than \$577,000 on delinquent accounts and realized an additional \$31,200 in service resumption fees.

Key Recommendations

- Ensure that all delinquent accounts as of January 31 are included on the relevy.
- Assess penalties according to the Code.

The Treasurer generally disagreed with the findings but indicated he would take corrective action. The Council agreed with our findings and indicated it would take corrective action. Appendix B includes our comments to issues raised in the Treasurer's response.

Subsequent Event

Our audit fieldwork was completed before the COVID-19 pandemic (pandemic). The Code and our audit work did not factor in the pandemic's effect of water shut-off procedures on customers.

Background

The City is located in Chautauqua County (County). The City is governed by its Charter, Code, State statutes and local laws and ordinances. The City is governed by an elected five-member Common Council (Council) responsible for the general oversight of operations and adopting policies, local laws and ordinances. The elected Mayor, as the chief executive officer, is generally responsible, along with other officials and staff, for managing day-to-day operations.

The elected Treasurer, in conjunction with the Fiscal Affairs Officer, is responsible for supervising fiscal affairs. The Treasurer's office bills and collects water and sewer rents and tipping fees (sewage disposal charges).

Quick Facts

As of January 31, 2019

Water, Sewer and Tipping Fee Accounts	4,166
Total Billings	\$1,780,785
Total Past Due Bills	\$1,065,204
2019 Relevy	\$633,140

Audit Period

January 1, 2018 – March 13, 2020

Billing Enforcement

How Should the City Enforce Water, Sewer and Tipping Fee Bills?

The City Charter, Code and local laws amending the Charter detail specific procedures and requirements that the Treasurer must follow for the collection, application of penalties and enforcement of unpaid water, sewer and tipping fee bills. The Council is responsible for adopting policies and procedures regarding the enforcement of unpaid amounts due the City, overseeing the Treasurer in his efforts to collect and enforce unpaid amounts and ensuring that penalties are properly applied.

The Code states that unpaid water, sewer and tipping fee bills, including penalties, accrued through January 31 each year should be included in the annual tax levy. Any unpaid water, sewer and tipping fee bills City officials relevy are guaranteed by the County. In addition, the Code states that a 1.5 percent penalty should be applied each month to the balance of water and sewer rents not paid by the due date, until the balance is paid in full.

In addition, the Code allows for the water supply to a property to be shut off for unpaid balances that are outstanding for at least 30 days. At that time, a notice would be sent to the owner stating that the balance needs to be paid by a specified date. If the unpaid water is not paid by the appointed date, the service would be shut off. For service to be restored, a service charge of \$20 would need to be paid, in addition to the unpaid balance.

Unpaid Bills Were Not Properly Enforced

The Treasurer did not properly enforce the collection of all delinquent water, sewer and tipping fee bills or follow the enforcement procedures prescribed by the Code. He did not relevy all eligible unpaid water, sewer and tipping fee bills on the County tax roll.

The Treasurer worked with the County to determine when to generate the relevy list and then generated a relevy report. This was typically done by March 1 and reviewed by the Fiscal Affairs Officer. The Treasurer told us the City's finance committee advised him that only bills that were 90 days past due and exceeded \$200 were to be included on the relevy. However, this was contrary to the Code, which requires all unpaid water, sewer and tipping fee bills outstanding as of January 31 be included on the relevy list submitted to the County.

In 2019, the Treasurer based the relevy on outstanding billings as of February 28, 2019 and included 813 unpaid bills totaling \$633,140. We reviewed outstanding accounts as of January 31, 2019 (as required by the Code) and found an additional 1,266 accounts with unpaid water, sewer and tipping fee bills totaling \$432,064 that were not included on the 2019 relevy submitted to the County.

Without adequate enforcement procedures, City officials cannot ensure water and sewer rents are collected in a timely manner and act as a deterrent against non-payment. When revenue collection is not properly enforced, the availability of resources that could be used to finance operations is diminished.

City officials reported substantial interfund liabilities in the general fund and the water and sewer funds, which represent cash advances among these funds. Had officials included these additional accounts on the relevy, the unpaid water and sewer rents and tipping fee bills would have been collected and the cash positions of the general, water and sewer funds would be improved.

Penalties Were Not Properly Applied

The Treasurer did not properly apply penalties in accordance with the Code. The Treasurer applied a one-time penalty of 5 percent in the first month accounts were unpaid instead of the 1.5 percent per month penalty established by the Code. The Treasurer told us the Code had been changed around 20 years ago to reflect this practice. However, the Treasurer was not able to locate or provide us with any local laws or documentation to show this change was approved by Council.

We reviewed 30 accounts with delinquent balances totaling \$119,931 to determine whether the penalties charged were accurate.¹ We found that the Treasurer charged \$15,074 in penalties to these accounts. If the Treasurer assessed penalties according to the Code, the City could have potentially generated an additional \$39,768 in revenue.

For example, one account that remained unpaid since 2002 with a balance due of \$7,622 was assessed penalties of \$382. Had the Treasurer correctly applied penalties according to the Code, the charged penalties would have been \$11,191 or an additional \$10,809. However, if the Treasurer had properly enforced delinquent accounts and properly assessed penalties, the account owner likely would have paid their bill and not continued to accumulate a water bill over 18 years.²

By not assessing penalties as provided for in the Code, the likelihood of collecting unpaid amounts in a timely manner significantly decreased and the City lost revenue it was otherwise entitled to collect.

¹ Refer to Appendix C for more details on our sampling methodology.

² When delinquent accounts are enforced and relevied by the County, the City is guaranteed payment.

Water Service Was Not Shut Off for Delinquent Accounts

The City did not shut off water service when accounts were delinquent as provided for in the Code.

The City could have shut off water service for 1,560 customers who owed approximately \$577,000 in unpaid water rents. Had shut-offs been enforced and service resumed once the bills were paid in full and the service resumption fees paid, the City would have assessed an additional \$31,200 in service resumption fees and likely collected the delinquent amounts owed by these customers.

Water shutoff serves as a deterrent for non-payment and helps ensure that users pay for the services provided by the City in a timely manner. By not suspending water service when accounts are delinquent, the City has diminished its ability to collect revenues in a timely manner.³

What Do We Recommend?

The Council should:

1. Ensure that the Treasurer includes all unpaid water, sewer and tipping fee accounts for relevy on the tax roll.
2. Periodically review the Treasurer's work to ensure Charter and Code requirements are being met with respect to enforcing unpaid water, sewer and tipping fee billings and assessing penalties on delinquent accounts.
3. Review the Charter and Code provisions pertaining to the enforcement of unpaid water, sewer and tipping bills and the assessment of penalties and amend the procedures prescribed as necessary to align with the Council's intentions.

The Treasurer should:

4. Enforce the collection of unpaid water and sewer accounts according to the procedures prescribed by the Charter and Code, including working with appropriate City officials to terminate water service for delinquent accounts, preparing the re-levy by January 31 each year and submitting all accounts past due as of this date to the County for relevy.
5. Ensure that penalties are charged in accordance with the Code.

³ Our fieldwork was completed in March 2020, before the pandemic. Given the negative effect of the pandemic, it is important that City officials evaluate the public health impact of water shut-off procedures during the pandemic.

Appendix A: Responses From City Officials



PAUL VANDENVOUVER
COUNCILMAN-AT-LARGE

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MARTY BAMONTO
COUNCILMAN SECOND WARD
JAMES STOYLE
COUNCILMAN THIRD WARD
NANCY NICHOLS
COUNCILWOMAN FOURTH WARD

April 30, 2021

Dunkirk Common Council Response to Billing Enforcement Report

NYS Office of State Comptroller



Council takes your office's report and recommendations very seriously. We will be working to change/add to the Dunkirk City Code as recommended by your report.

As mentioned in our exit interview, although the City's Code/Charter give the Dunkirk Common Council "Oversight" of the actions of the Treasurer's office, we can only oversee the information that we are given. We do ask for information, other than what is typically provided, and at times it seems that asking questions is frowned upon.

Thank you for the hard work you put on the Audit of the City of Dunkirk, we look forward to future reports being released.

Sincerely,

Paul VanDenVouver

Councilman-at-Large, City of Dunkirk



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April 20, 2021

Mr. Jeffrey D. Mazula
Chief Examiner of Local Government
Office of the State Comptroller
295 Main Street, Room 1032
Buffalo, New York 14203-2510

Dear Mr. Mazula:

After meeting and discussion with the Mayor and some members of the Common Council, it is our belief that this is the official response to the Billing Enforcement Audit 2020 M-117. In addition, we would like this to serve as our Corrective Action Plan.

The City Treasurer has neither the responsibility nor the authority to terminate a delinquent water service. Only the Department of Public Works Director has the legal authority to determine if and when a service should be terminated and to terminate said service (Dunkirk City Code §77-1; §77-22(A),(J),(K),(L)). The Director's authority to terminate an account is discretionary rather than mandatory (Dunkirk City Code §77-22(A)). It should be recognized that the termination of water service can cause public health and safety hazards, result in legally wrongful evictions, and create a variety of legal issues for the City. For this reason, the City Code guarantees due process prior to the termination of service (§77-22(J), (K), (L)).

See
Note 1
Page 9

In addition to the legal inaccuracies, the report is factually incorrect in regard to the procedure. The Treasurer's Office works closely with the County Taxation Department regarding the levying of delinquent water accounts. The dates for the submission of this information were mutually agreed and the information was transmitted prior to the agreed date.

See
Note 2
Page 9

Even the report's facts are presented in a misleading manner. The finding of 1,266 unpaid water accounts included a large number of accounts which were only one or two days past due. The City Code requires that an account must be delinquent for at least thirty (30) days before termination can even be considered (§77-22(A)).

See
Note 3
Page 9

The report's assumptions in regard to uncollected fees ignore the realities of the situation. While it may be legally possible to assess fees for termination and reinstatement, it defies logic to assume that these fees are actually collectable against individuals who were unable to pay their bill in the first place. This assumption is also inaccurate in terms of the commercial accounts. One of the cited accounts was for a restaurant which washed into Lake Erie in 2002 and another concerned a property which has had a pending Sheriff's sale for two years.

See
Note 4
Page 9

The process, procedure, and rates concerning this matter have been previously examined during the City's annual independent audits, as well as three State audits, over the last thirty years. The issues, suddenly "discovered" by the current report, are based on a total departure from the facts, logic, and the applicable law.

See
Note 5
Page 9

Going forward, the City Treasurer, Common Council and City Finance Committee will review their position as to delinquent utility billing accounts, shut-off procedures, payment arrangements and any other items relevant to delinquent accounts.

The established procedures will be examined and compared to the provisions of the Charter and Code. Amendments will be adopted so the intended procedures align with the provisions of the Code.

To comply with Audit recommendations, the re-levy of all accounts past due for 2021 was completed in early February and submitted to the County Department of Taxation. We will adjust the January 31 internal billing procedures so the re-levy file can be created and submitted to the County on January 31.

Effective with the utility billing quarter starting November 1, 2020, penalties on unpaid water/sewer balances were calculated according to the Code.

Sincerely,

Mark A. Woods
City Treasurer
City of Dunkirk



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City of Dunkirk
Billing Enforcement
2020M-117

Audit Recommendations:

- Ensure that all delinquent accounts as of January 31 are included in the re-levy
- Assess penalties according to the Code

Implementation Plan of Action:

To comply with Audit recommendations, the re-levy of all accounts past due for 2021 was completed in early February and submitted to the County Department of Taxation. We will adjust the January 31 internal billing procedures so the re-levy file can be created and submitted to the County on January 31.

Effective with the utility billing quarter starting November 1, 2020, penalties on unpaid Water/sewer balances were calculated according to the CVode.

Implementation Date:

As listed above.

Person Responsible for Implementation:

Mark A. Woods
City Treasurer

April 20, 2021

Signed:

City Treasurer

Appendix B: OSC Comments on the Treasurer's Response

Note 1

Our audit report does not make this claim; the report states that City officials did not enforce the Code, which requires several City officials, including the Treasurer, to work together to identify delinquent accounts and initiate termination.

Note 2

The report is factually correct. The Treasurer did not adhere to the Code and implemented a different relevy procedure, and he was unable to provide documentation that authorized him to make the relevy procedure changes.

Note 3

The report states, "The City could have shut off water service for 1,560 customers who owed approximately \$577,000 in unpaid water rents." None of these accounts were only one or two days past due.

Note 4

We recognize that there might be individuals who are unable to pay the shut-off fee and their bill in order to resume service. However, had officials followed the process prescribed in the Code, these individuals could have requested a hearing, presented their case and potentially prevented termination. Without such a process in place, it is not possible to determine if or how many individuals could not pay their water bill or if they simply chose not to pay.

City records indicate the water account with a 2002 balance belongs to an individual, not a restaurant and continued to have service beyond 2002. We were not provided with any additional supporting information concerning the other property mentioned in the response as having a pending sale, but it is unclear how this would impact the termination of water service.

Note 5

We compared the City's current billing enforcement procedures to the City's adopted Code which prescribes the City's billing enforcement process and procedures. The statements regarding prior audits examining the City's billing enforcement process, procedures or rates is misleading and disingenuous. The City engaged external auditors to audit its annual financial statements for the purpose of attesting to their material accuracy. If City officials engaged an independent auditor for any other purpose, officials did not provide us with or make us aware of these audits.

Although our office has audited various aspects of the City's operations, the audit objectives and scopes were different, and they did not focus on the City's billing enforcement practices. During the exit conference, the Treasurer agreed that our office had not previously reviewed the billing enforcement process or procedures during his tenure with the City.

Appendix C: Audit Methodology and Standards

We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We reviewed the City Charter and Code provisions related to water, sewer and tipping fee billing enforcement.
- We interviewed City officials and employees to gain an understanding of billing enforcement procedures.
- We obtained an outstanding balance report as of January 31, 2019 to determine the relevy in accordance with the Code.
- We reviewed the City's actual relevy as of February 28, 2019 and outstanding balance report to determine which accounts were not being properly enforced.
- We used our professional judgment to select a sample of 30 outstanding accounts to review for accuracy of penalties. We included 10 appointed or elected officials or key employees and the top five accounts from each of the four billing zones within the City.
- We recalculated penalties to be charged to the sample of accounts according to the Code and compared these amounts to amounts charged.
- We reviewed the outstanding water balance report to determine the number of accounts eligible for shutoff based on the Code and calculated the potential revenue the City could have received.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

The Council has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your

CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Council to make the CAP available for public review in the City Clerk's office.

Appendix D: Resources and Services

Regional Office Directory

<https://www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf>

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

<https://www.osc.state.ny.us/local-government/publications>

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.state.ny.us/local-government/fiscal-monitoring

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

<https://www.osc.state.ny.us/local-government/publications>

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/local-government/resources/planning-resources

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

<https://www.osc.state.ny.us/files/local-government/publications/pdf/cyber-security-guide.pdf>

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.state.ny.us/local-government/required-reporting

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

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