

department of community affairs

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division of local government services dlgs

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Pandemic-Related Water, Sewer & Electric Arrearages; Updates to COVID-19 Utility Ratepayer Relief Notice

P.L. 2021, c. 317 has established various relief measures for residential customers of local government water, sewer, and electric service. As used in this Notice, the terms "residential customer" and "residential ratepayer" mean a residential customer of record, or any residential tenant of a residence where the owner or any agent or other representative of the owner of the residence is a non-residential customer of record. P.L. 2021, c. 317 applies to water, sewer, or electric service provided by a municipality, local authority, or another local unit such as, but not limited to, a joint meeting or a water district.

P.L. 2021, c. 317 and Enforcement of Water, Sewer, and Electric Charges

The shutoff moratorium for local government water, sewer, and electric service extends until March 15, 2022. This moratorium does not apply to a shut off needed to prevent or reduce the risk to public health or safety. The grace period established by prior Executive Orders for water, sewer, and municipal electric charges has also been extended until March 15, 2022; however, the extended grace period does not encompass delinquent sewer charges that were sold at tax sale by January 1, 2022.

Before enforcing water, sewer, or electric arrearages accrued between March 9, 2020 and March 15, 2022, or allowing an existing tax lien owner to satisfy such arrearages, the law now requires a municipality, local authority, or other local unit to offer a residential ratepayer the opportunity to enter into an installment plan for satisfying the unpaid balance. Each residential ratepayer with arrearages accruing during the above period should be provided with individual written notification of the installment plan opportunity. Delinquent sewer charges accruing between March 9, 2020 and December 31, 2021 that had been sold at tax sale by January 1, 2022 are not affected.

The mandatory installment plan for arrearages accruing between March 9, 2020 and March 15, 2022 shall have a minimum 12-month duration, unless the residential customer requests a shorter payback period, and cannot require the residential customer to pay a down payment, deposit, reconnection costs, or the payment of interest or penalties on the unpaid balance. However, interest accruing between March 15, 2022 and the first day of the month beginning the payment plan needs to be included in the calculation of the payment plan. Please note that municipalities entering into the Department of Community Affairs Low Income Household Water Assistance Program (LIHWAP) may need to offer payment plans for eligible properties on arrearages accruing after March 15, 2022. Notwithstanding N.J.S.A. 54:5-19 to the contrary, a governing body resolution is not a prerequisite for offering the 12-month installment plan, as the plan is required by law, and a plan must be offered even if another installment plan already exists on the property for property taxes, local assessments or other municipal charges.

For arrearages accruing between March 9, 2020 and March 15, 2022, residential customers may be offered a more generous installment plan with a length of greater than 12 months but not exceeding five (5) years, or a combined installment and payment forgiveness plan that may be less than 12 months in duration if it includes forgiveness of at least 50 percent of the outstanding arrearages accruing between March 9, 2020 and March 15, 2022. Installment plans greater than the 12 months required under law, or plans of less than 12 months but forgiving at least 50 percent of a residential ratepayer's outstanding arrearages for the above-referenced period, must be authorized by governing body resolution either 1) on a case-by-case basis, or 2) as a resolution either directing a responsible official to offer such plans to residential ratepayers, or granting them the discretion to do so. In the case of a municipality this should be the tax collector or a designated collector of the relevant charges. Again, interest accruing between March 15, 2022 and the first day of the month beginning the payment plan needs to be included in the calculation of the payment plan.

For example, a governing body may adopt a resolution requiring all residential customers to be offered installment plans of 24 months, instead of the statutory minimum 12 months, for arrearages accruing between March 9, 2020 and March 15, 2022. Alternatively, a resolution may grant a tax collector the discretion to offer payment plans of greater than 12 months, but not more than 24 months, if a residential ratepayer can demonstrate that their financial circumstances warrant such an extended period.

Installment plans offered by municipalities and local authorities for arrearages accruing between March 9, 2020 and March 15, 2022 are subject to the provisions of N.J.S.A. 54:5-19, unless P.L. 2021, c. 317 states otherwise. Among other things, this means installment plans must have equal monthly payments and that a residential customer must make timely payments on the arrearages and current fees and charges (including property taxes and local assessments in the case of a municipality). The residential customer must know the monthly payment amount for the installment plan before agreeing to the plan. If the residential ratepayer does not pay their arrearages and/or current charges within 30 days after the due date, then the installment plan is void and enforcement can proceed on the unpaid arrears at any time after March 15, 2022, including service shutoff and bringing accrued arrearages and interest and penalties accruing

after March 15, 2022 to tax sale. Likewise, if a residential customer does not agree to an installment plan within 30 days of being offered a plan, enforcement action can be taken at any time after March 15, 2022. Again, interest and penalties, including the year-end penalty, accruing after March 15, 2022 can be enforced on the unpaid balance. Municipalities entering into the LIHWAP program may need to offer payment plans for eligible properties on arrearages accruing after March 15, 2022.

The text of N.J.S.A. 54:5-19 is included in the Appendix to this Notice. Local authorities are reminded that the tax collector notification requirement of N.J.A.C. 5:31-3.2 will apply to those arrearages subject to enforcement action.

After March 15, 2022, delinquent water, sewer, and electric charges that had accrued prior to March 9, 2020 and after March 15, 2022 can be enforced pursuant to law, including interest and penalties. There is no obligation to offer an installment plan for such accrued charges.

The Division strongly encourages regular monitoring of all installment plans, including at least monthly reporting, allowing the local unit's finance officials, governing body members and auditor visibility into the process. Calculations for installment plans should be verified by another official, and the rationale supporting any discretionary judgments concerning installment plans should be memorialized in writing and provided to the residential customer.

Unpaid Sewer Charges – Additional Considerations

The Executive Orders prohibiting shutoffs for sewer arrearages accruing from March 9, 2020 did not bar enforcement of those delinquent sewer charges through tax sale. As a result, P.L. 2021, c. 317 does not apply to those sewer arrearages accruing between March 9, 2020 and December 31, 2021 that were sold at a tax sale held before January 1, 2022. If sewer arrearages accruing between March 9, 2020 and December 31, 2021 had not been sold at tax sale as of January 1, 2022, those arrearages are subject to the provisions of P.L. 2021, c. 317, including the prohibition on enforcing late interest and penalties (including the year-end penalty).

Updates to Ratepayer Notice under P.L. 2021, c. 97

As explained in Local Finance Notice 2021-22, P.L. 2021, c. 97 requires all investor-owned utilities and all local governments providing water, sewer, and electric service to provide their residential customers with monthly notice of COVID-19 related relief measures, and to post the notice prominently on their websites. The obligation to provide such notice will remain effective until 18 months after the date of termination of Executive Order 103, which to date has not been terminated. Within parameters determined by the Board of Public Utilities and the Department of Community Affairs, as applicable, investor-owned utilities and local governments have certain flexibility in determining the form and manner of the notice; however, certain standard information must be included.

With the enactment of P.L. 2021, c. 317, municipalities and direct customer-billing local units operating water systems, wastewater treatment systems, and/or electric utilities must update

their ratepayer notices. An updated model residential ratepayer notice is included as Appendix B to this Notice and as a Word document on the Division of Local Government Services' Miscellaneous Publications webpage. Spanish and Korean translations of the model notice will follow shortly.

The residential ratepayer notice must contain information on the availability of installment plans for satisfying arrearages accruing from March 9, 2020 until March 15, 2022 along with the availability of any additional bill payment and arrearage forgiveness programs. The ratepayer notice must include a statement that ratepayers with arrearages accruing during the period covered by the law are eligible for an installment plan to satisfy those arrearages. The notice must also include contact information for ratepayers to obtain further information, which the Division recommends listing on the local unit's website with the specific webpage link included in the ratepayer notice.

LIHWAP has been established to assist low-income households who have arrears for drinking water and/or sewer services, providing a benefit of up to \$1,500 per household. Since the average arrearage amount per household is currently \$1,250, the Department anticipates that most households assisted by the program will have their arrears fully paid by the program. As part of the program, DCA is required to establish vendor agreements with the water and wastewater providers. As LIHWAP funds cannot be paid directly to eligible households, vendor agreements are the method by which the program benefits are administered. Utilities must return the vendor agreements to DCA to allow DCA to make payments on behalf of municipal residents. The model notice in Appendix B contains further information on LIHWAP.

If a municipality, or the county in which the municipality is situated, is offering its own utility assistance program (i.e. funded through ARP or CDBG dollars), information on the program and how to apply shall also be included in the notice, along with utility assistance programs available to the local unit's residential ratepayers that are being offered through non-profit community organizations.

Further information on utility assistance programs can be found on DCA's website. Although not strictly oriented toward utility assistance, information on housing assistance programs can also be included on the notice to broaden awareness. NJ 211 contains further information on such programs.

For a municipality in which the primary language of 10 percent or more of the population is a language other than English, ratepayer notification shall be provided in that other language or languages for use by customers in that municipality. This information is provided by the United States Census Bureau's American Community Survey (ACS or Survey). An Excel-based breakdown is available on the Division's Miscellaneous Publications webpage. To determine whether your municipality has a population or populations meeting the 10 percent or greater threshold, first review the "Primary Lang by Mun 2019 Summ" tab which breaks down the percentage of people using languages such as Spanish, Korean, Vietnamese, Arabic, and Tagalog (Filipino). Because the 2011-2015 ACS contains a more detailed language breakdown than the later 2015-2019 Survey, the municipality will also need to check the "Primary Lang by Mun 2015 Detail" tab to verify

whether there are other languages meeting the 10 percent or greater threshold. Among the languages specifically counted in the 2011-2015 ACS are Portuguese, Russian, Polish, French Creole, Hindi, and Gujarati. Please note that both the 2011-2015 and 2015-2019 Surveys only count Chinese language speakers as a whole without providing a further breakdown into Mandarin, Cantonese, et cetera.

To the extent the residential ratepayer notice directs customers to another local unit webpage or document for more detailed information, and the municipality has one or more populations of 10 percent or greater whose primary language is other than English, the local unit should also make those resources available in those languages.

Notice Distribution

The residential ratepayer notice required by P.L. 2021, c. 97 must not only be placed in a prominent location on the website of the municipality, local authority or other local unit, but also must be affirmatively communicated to ratepayers on a monthly basis. The monthly notice must be communicated through means reasonably calculated to reach the ratepayer base, including, but not limited to, water and sewer bills distributed through regular mail and online delivery. Unlike with many investor-owned utilities, the Division recognizes that many local units do not bill monthly for water and sewer, and further recognizes that requiring a monthly mailer could trigger a rate increase. In lieu of a separate monthly mailer, other means of affirmatively communicating the monthly notice can include:

- E-mail communication;
- Mass text and/or voice messages;
- Social media posts;
- Distribution at community events, senior and recreation programs;
- Partnering with school district(s) on outreach;
- Partnering with community non-profits, including faith-based, on outreach; and
- Regular announcements at governing body meetings.

Local units are strongly encouraged to use a combination of available communication methods and document them. The ratepayer notice should also be posted in a prominent place in the local unit's administrative offices, with take-home fliers made publicly available. Authorities or other local units that directly bill customers are strongly encouraged to partner with their constituent municipalities in communicating the ratepayer notice. County-based sewerage authorities and MUAs that directly bill customers should also work with their constituent county or counties.

Municipalities and authorities that contract with an outside entity to operate their water and/or sewer operations (e.g. Water and/or Wastewater Public-Private Contracting Acts) should review the underlying contract to determine whether the outside entity would bear any responsibility for communicating the required notice and, if so, to what extent.

Approved: Jacquelyn A. Suárez, Director

Document	Internet Address
P.L. 2021, c. 317	https://www.njleg.state.nj.us/Bills/2020/AL21/317_.PDF
P.L. 2021, c. 97	https://www.njleg.state.nj.us/Bills/2020/PL21/97_.PDF
Executive Order 103	https://nj.gov/infobank/eo/056murphy/pdf/EO-103.pdf
Primary Language (non-English)	https://www.nj.gov/dca/divisions/dlgs/resources/misc_docs/11-2021 Primary Language by Municipality Data - COVID Ratepayer Notice.xlsx
DLGS Miscellaneous Publications	https://www.nj.gov/dca/divisions/dlgs/resources/misc_publications.html
Dept. of Community Affairs Website	https://nj.gov/dca/
NJ 211 COVID-19 Housing Assistance	https://www.nj211.org/covid-19-housing-assistance

Appendix A

N.J.S.A. 54:5-19 Power of sale, "collector" and "officer" defined.

The term "collector" as hereinafter used includes any such officer, and the term "officer" includes the collector.

A municipality shall have the authority to conduct both standard and accelerated tax sales.

When unpaid taxes or any municipal lien, or part thereof, on real property remain in arrears at the close of the fiscal year, the collector or other officer charged by law in the municipality with that duty, shall enforce the lien by selling the property in the manner set forth in this article by holding a standard tax sale in the following fiscal year.

When unpaid taxes or any municipal lien, or part thereof, on real property remains in arrears on the 11th day of the eleventh month in the fiscal year when the taxes or lien became in arrears, the collector or other officer charged by law in the municipality with that duty, shall enforce the lien by selling the property in the manner set forth in this article by conducting an accelerated tax sale by selling the property in the manner set forth in this article, provided that the sale is conducted and completed no earlier than in the last month of the fiscal year. Whenever the due date for the fourth quarter property tax installment payment has been extended for real property pursuant to the provisions of subsection a. of R.S.54:4-67, a municipality shall not conduct an accelerated tax sale with respect to that installment pursuant to this section.

In either a standard or an accelerated tax sale, the municipality may by resolution direct that when unpaid taxes or other municipal liens or charges, or part thereof, are in arrears as of the 11th day of the eleventh month of the fiscal year, such sale shall include only such unpaid taxes or other municipal liens or charges as were in arrears in the fiscal year designated in such resolution, and may by resolution, either general or special, direct that there shall be omitted from such sale any or all such unpaid taxes, and other municipal liens, or parts thereof, on real property, upon which regular, equal monthly installment payments are being made, in pursuance to such agreement as may be authorized by said resolution between the collector and the owner or person interested in the property upon which such delinquent taxes may be due; provided, that said agreement shall require payment of such installment payments in amounts large enough to pay in full all delinquent taxes, assessments and other municipal liens held by the municipality, in not more than five years from the date of such agreement; provided, that the extension of time for payment of such arrearages herein authorized shall not apply to any parcel of property which prior thereto has been included in any plan theretofore adopted by any municipality of this State under and pursuant to the provisions of any public statute of this State whereunder prior extensions for the payment of delinquent taxes were authorized; provided further, that the right of any person interested in such property to pay such arrears in such installments shall be conditioned on the prompt payment of the installments of taxes for the current year in which such agreement is made, and all subsequent taxes, assessments and other municipal liens imposed or becoming a lien thereafter, including all installments thereafter payable on assessments theretofore levied, and also the prompt payment of all installments of arrears as hereinbefore authorized; and provided further, that in case any such installment of arrears or any new taxes, assessments or other liens are not promptly paid, that is to say, within thirty days after the date when the same is due and payable, then such agreement shall be void, and in any such case the collector, or other officer charged by law with that duty, shall proceed to enforce such lien by selling in the manner in this article provided.

Appendix B

Model Ratepayer Notice: COVID-19 Relief Measures

IMPORTANT MESSAGE: COVID-19 RATEPAYER RELIEF MEASURES

This notice announces relief measures for residential ratepayers experiencing economic hardship during the COVID-19 pandemic. Please review this message in its entirety. For more information please go to our website at <insert web address> or contact <insert email/telephone number>.

INSTALLMENT PLAN AVAILABILITY

BE ADVISED that State law requires residential customers to be offered an installment plan for any <insert water, sewer, and/or electric, as applicable> arrearages accruing between March 9, 2020 and March 15, 2022. To maintain the installment plan, a residential customer must make timely payments on all current charges. More information is available at <insert email/telephone number and, if applicable, the address of a webpage with specific information on installment plans>. Sewer liens that were sold before January 1, 2022 cannot be included in the installment plan.

LATE FEES, CHARGES AND PENALTIES

BE ADVISED that P.L. 2021, c. 317 prohibits local governments from charging residential customers interest, fees, or charges for late payment of <insert water, sewer, and/or electric, as applicable> charges accruing between March 9, 2020 and March 15, 2022 until after March 15, 2022 at which time interest and penalties may begin to accrue. This prohibition does not apply to sewer liens that were sold before January 1, 2022. Late interest, fees or charges may be enforced against arrearages accruing before March 9, 2020 and after March 15, 2022.

BILL ASSISTANCE AND ARREARAGE FORGIVENESS PROGRAMS

The application period for the New Jersey Department of Community Affairs' Low Income Water Assistance Program (LIHWAP) is now open. This federally funded program will provide financial assistance to low-income households to reduce the balances on their residential water and sewer bills. LIHWAP will provide benefits directly to water and sewer service providers on behalf of residential customers. The assistance can be used, in order of priority, to:

- restore services where services have been terminated and pay reconnection fees and other charges accrued due to a disconnection;
- avoid service disruption for those residential customers who are in danger of disconnection (i.e., received shut off notices or have past due balances) and to help them afford bill payment going forward; and
- support those household customers who are current in their bills but might be in danger of falling behind in the near future.

Priority will also be given to families with elderly or disabled household members and/or with children under the age of five, no matter which category they fall into.

BILL ASSISTANCE AND ARREARAGE FORGIVENESS PROGRAMS (cont.)

To be eligible for LIHWAP assistance, applicants must be water/sewer bill holders who are responsible for paying their water and sewer bills directly to the water/sewer provider. Also, applicants' total gross household income must be at or below 60% of the state median Income (\$6,439 a month for a family of four). The LIHWAP frequently asked questions webpage, available at <https://njdca-housing.dynamics365portals.us/lihwapfaq> has additional information about maximum income limits and other items.

Participants in the Low-Income Home Energy Assistance Program (LIHEAP) are automatically eligible for LIHWAP assistance so long as they are water/sewer bill holders.

People can apply online through the DCAid application portal at <https://njdca-housing.dynamics365portals.us/en-US/dcaid-services/>.

Those without computer or internet access can call 1-800-510-3102 to be directed to one of the community action agencies to assist them with starting, completing, and submitting an application online.