

AN ORDINANCE TO AMEND CHAPTERS 44 AND 45 OF THE CITY CODE REGARDING (i) PENALTIES AND INTEREST FOR DELINQUENT ACCOUNTS FOR UNPAID PROPERTY TAXES AND WATER, SEWER, AND STORMWATER CHARGES AND (ii) THE APPLICATION OF PARTIAL PAYMENTS ON DELINQUENT ACCOUNTS OF UNPAID WATER, SEWER, AND STORMWATER CHARGES

#4631

Sponsors:

Council
Member
Freel

Council
President
Shabazz

WHEREAS, pursuant to Sections 44-34 and 45-176 of the City Code, customers owing property taxes and water, sewer, and stormwater charges are charged an escalating rate of interest for each month payment to the City is delinquent; and

WHEREAS, interest charged on delinquent accounts increases from one percent in the first three months to three percent per month after nine months of delinquency; and

WHEREAS, the City has accumulated over 37.8 million dollars in outstanding accounts receivable over the last year, of which 15.6 million dollars is back due interest charges; and

WHEREAS, partial payments to a customer's account are credited to interest charges first, then penalty charges second, and then the oldest unpaid bill; and

WHEREAS, customers owing the City for delinquent accounts are often not able to satisfy the total obligation in a timely manner; and

WHEREAS, the City would like to: (i) reduce the interest rates for delinquent accounts for unpaid property taxes and water, sewer, and stormwater charges and change the application of partial payments on delinquent accounts of unpaid water, sewer, and stormwater charges to assist customers in satisfying their delinquent obligations and (ii) slightly increase the one-time penalties to incentivize timely payment of bills; and

WHEREAS, in light of the foregoing, the City Council deems it necessary and appropriate to amend Sections 44-34 and 45-176 of the City Code to reduce the escalating interest rates on delinquent accounts, change the application of partial payments on delinquent

accounts, and increase the one-time penalties for late payment of bills.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. Chapter 44 of the City Code is hereby amended by amending Section 44-34 thereof by deleting the stricken language and adding the underlined language to read as follows:

Sec. 44-34. - Penalties and interest beginning from July 1, 1990 through June 30, 2019; penalties and interest beginning July 1, 2019.

(a) Penalties and interest from July 1, 1990 through June 30, 2019. From ~~and after~~ July 1, 1990 through June 30, 2019, a penalty charge equal in amount to the greater of \$10.00 or nine percent of the entire unpaid balance shall become due and payable as of September 15 on all taxes not paid on or before August 31 of the year in which the assessment shall have been laid. In addition, interest shall become due and payable as of the first day of each month on the full amount of any such unpaid taxes, but not including any penalties imposed, at the annual rate of 24 percent on taxes unpaid for up to one year and at the annual rate of 36 percent on taxes unpaid for more than one year, in accordance with the graduated monthly schedule as follows:

Period of Nonpayment of Taxes	Monthly Interest Rate
First three months	One percent
Second three months	1½ percent
Third three months	2½ percent
Fourth three months	Three percent
Each month, more than 12	Three percent

Any unpaid penalty for unpaid taxes shall be due and payable as imposed pursuant to the provisions of this subsection, but no interest charges shall be

imposed on the amount of such unpaid penalty nor on the amount of any interest charges already accrued. If real estate is placed on the assessment rolls at any time other than July 1 of any year, such penalty and interest charges shall become due and payable and accrue on all taxes not paid on or before 60 days from the date such real estate has been placed on the assessment rolls.

(b) Penalties and interest beginning July 1, 2019. From and after July 1, 2019, a penalty charge equal in amount to the greater of \$20.00 or ten percent of the entire unpaid balance shall become due and payable as of September 15 on all taxes not paid on or before August 31 of the year in which the assessment shall have been laid. In addition, interest shall become due and payable as of the first day of each month on the full amount of any such unpaid taxes, but not including any penalties imposed, at a monthly rate of 1 ½ percent.

~~(b)~~ (c) Waiver of interest and penalties. From and after December 1, 1995, the director of finance or ~~her~~ the director's authorized agent shall be authorized to waive, in whole or in part, interest or penalties, or both which are owed in connection with unpaid property taxes and the property tax, in part or in whole, where the full amount of such tax is determined to be uncollectible and a release of all or part of the tax liability is deemed to be in the best interest of the city, in accordance with and under the following circumstances only:

(1) When litigation of the amount of taxes due is pending or threatened and waiver of penalty, or interest, or both is proposed as part of the overall settlement of the litigation.

(2) Where the assessment of interest, or penalty, or both, is based on property taxes assessed in error by the department of finance.

(3) When the waiver of interest, or penalty, or both, is proposed as part of an agreement by which the entire principal amount of real property taxes shall be paid to the city whether litigation is pending or not.

(4) When the tax liability, in whole or in part, is proposed to be released where the full amount of such tax is determined to be uncollectible and the release of all or part of the tax liability is deemed to be in the best interest of the city.

The director of finance may promulgate rules and regulations deemed necessary to administer the provisions of this subsection, subject to approval by the administrative board.

SECTION 2. Chapter 45 of the City Code is hereby amended by amending Section 45-176 thereof by deleting the stricken language and adding the underlined language to read

as follows:

Sec. 45-176. – Water, and sewer, and stormwater charges; interest, penalties and costs; limitation of actions.

(a) As of July 1, 1983, and thereafter through June 30, 1990, as of the date that any water or sewer account first becomes delinquent, a penalty charge shall be imposed in the amount of a minimum of \$5.00 or five percent of the unpaid balance of such account, whichever amount is greater; provided, however, that no penalty shall be imposed upon any account for which the customer and the city have entered into an agreement to pay, so long as such agreement is entered into before the billing due date and so long as the customer complies with the terms and conditions of such agreement.

(b) From February 17, 1988 through June 30, 1990, if any water facilities charges or water usage charges, or sewer system charges, or any combination thereof, imposed pursuant to this article and article II of this chapter are not paid when due, including any such charges remaining unpaid and due and owing to the city as of February 17, 1988, interest and penalty at the rate of 1½ percent each of the total amount of the unpaid charges shall be imposed upon and added to such amount, monthly, for each month or fraction thereof during which the charges shall remain unpaid and shall be collected together with the amount of the water and sewer charges and penalties; provided, however, that no penalty or interest shall be imposed upon any account for which the customer and the city have entered into an agreement to pay, so long as such agreement is entered into before the billing due date and so long as the customer complies with the terms and conditions of such agreement.

(c) ~~From~~ After July 1, 1990 through June 30, 2019, if any water facilities charges or water usage charges, or sewer system charges, or stormwater charges, or any combination thereof, imposed pursuant to the provisions of this article and of article II of this chapter are not paid when due, penalty charges equal in amount to the greater of \$10.00 or nine percent of the entire unpaid balance of such charges shall become due and payable as of the 15th day following the billing due date of the account. In addition, interest shall become due and payable as of the first day of each month on the total amount of any such unpaid charges, but not including any penalties imposed, at the annual rate of 24 percent on the total amount of charges unpaid for up to one year and at the annual rate of 36 percent on the total amount of charges unpaid for more than one year, in accordance with the graduated monthly schedule as follows:

Period of nonpayment of charges	Monthly interest rate
First three months	One percent
Second three months	1½ percent
Third three months	2½ percent
Fourth three months	Three percent
Each month, more than 12	Three percent

Any unpaid penalty for unpaid charges shall be due and payable as imposed pursuant to the provisions of this subsection, but no interest charges shall be imposed on the amount of such unpaid penalty nor on the amount of any interest charges already accrued.

(d) From and after July 1, 2019, if any water facilities charges or water usage charges, or sewer system charges, or stormwater charges, or any combination thereof, imposed pursuant to the provisions of this article and of article II of this chapter are not paid when due, penalty charges equal in amount to the greater of \$20.00 or ten percent of the entire unpaid balance of such charges shall become due and payable as of the 15th day following the billing due date of the account. In addition, interest shall become due and payable as of the first day of each month on the total amount of any such unpaid charges, but not including any penalties imposed, at a monthly rate of 1½ percent.

~~(d)~~ (e) Unless otherwise provided, when a partial payment is made toward the payment of unpaid water; ~~or sewer system, or stormwater~~ charges, such payment shall be applied to the account in the order of:

- (1) ~~Interest~~ The oldest unpaid bill;
- (2) Penalty; and
- (3) ~~The oldest unpaid bill~~ Interest.

~~(e)~~ (f) Whenever suit is brought for the recovery of any such unpaid water or sewer system charges, the person liable therefor shall, in addition, be liable for the costs of collection together with the penalty charges and interest imposed in this section.

(f) (g) The director of finance or ~~his~~ the director's authorized agent shall be authorized to waive, in whole or in part, interest, or penalties, or both which are owed in connection with unpaid water facilities charges or water usage charges, or sewer system charges, or stormwater charges, or any combination thereof ("water or sewer system charges"), imposed pursuant to the provisions of this article and article II of this chapter, under the following circumstances only:

(1) When litigation of the amount of water or sewer system charges due is pending or threatened and waiver of penalty, or interest, or both, is proposed as part of the overall settlement of the litigation.

(2) Where the assessment of interest, or penalty, or both, is based on water or sewer system charges assessed in error by the department of finance.

(3) When the waiver of interest, or penalty, or both, is proposed as part of an agreement by which the entire principal amount of water or sewer system charges shall be paid to the city whether litigation is pending or not.

The director of finance may promulgate rules and regulations deemed necessary to administer the provisions of this subsection, subject to approval by the administrative board.

(g) (h) The provisions of this section are in addition to and not in lieu of any other provision of this Code applicable to water and sewer system users, including the provisions of this article and article II of this chapter relating to discontinuance of water and sewer system service, respectively.

(h) (i) Limitation of actions. Any suit to recover any water facilities charges or water usage charges, or sewer system charges, or any combination thereof, and any interest, penalties and costs regarding the same, shall be begun within six years after such charges are due, but this limitation shall not apply in the following cases.

(1) In any case where the water or sewer customer has collected or withheld funds or monies of any nature or description under this Code as agent or trustee for the city and has failed, neglected or refused to pay the amount so collected or so withheld to the city.

SECTION 4. This Ordinance shall become effective as of July 1, 2019.

First Reading March 28, 2019

Second Reading March 28, 2019

Third Reading

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2019.

Mayor

SYNOPSIS: This Ordinance amends Chapters 44 and 45 of the City Code regarding penalties and interest for delinquent accounts for unpaid property taxes and water, sewer, and stormwater charges as follows: 1) decreases the interest rates listed in City Code Sections 44-34 and 45-176 to one-and-a-half percent per month, which will be non-compounding; 2) increases the one-time penalties listed in City Code Sections 44-34 and 45-176 to twenty dollars or ten percent of the unpaid balance, whichever is greater; and 3) amends City Code Section 45-176 to provide that partial payments on delinquent accounts of unpaid water, sewer, and stormwater charges will be applied to the oldest unpaid bill balance first, then to the penalty, then to the interest.

FISCAL IMPACT: The fiscal impact of this Ordinance is that it will reduce the amount of the City's accounts receivable by an undetermined amount. This Ordinance will not have an impact on the City's operating budget.

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