

**AN ORDINANCE TO AMEND CHAPTER 2 OF THE CITY CODE TO CREATE  
A WATER REVIEW BOARD**

#0432

Sponsor:

Council  
Member  
Johnson

Co-Sponsor:

Council  
Member  
Oliver

**WHEREAS**, the water utility billing process is complex and susceptible to various kinds of technical and administrative errors; and

**WHEREAS**, said errors cause billing disputes that may ultimately result in the discontinuation of water service; and

**WHEREAS**, the discontinuation of water service renders a home uninhabitable and jeopardizes the health, safety and welfare of city residents; and

**WHEREAS**, numerous jurisdictions have established water review boards, which is an independent board of citizens that hears appeals from customers over the final determinations made in a water billing dispute; and

**WHEREAS**, in order to better serve residential water customers, the Wilmington City Council seeks to establish a Water Review Board as a means of last resort for customers to appeal water billing determinations made by the Department of Finance; and

**WHEREAS**, pursuant to the powers granted in City Charter §§ 1-103 and 8-403, the City has the authority to create a Water Review Board.

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

**SECTION 1.** A new division, Division 20, is hereby added to Chapter 2 (“Administration”), Article III (“Boards, Commissions and Similar Entities”) by adding the following underlined language to read as follows:

## **DIVISION 20. – WATER REVIEW BOARD**

### **Sec. 2-150.91. - Establishment, composition, compensation.**

- (a) Establishment. Pursuant to Charter Sections 1-104 and 8-403, there is hereby created a water review board (“WRB” or “Board”) to consider appeals by residential water customers from final determinations of the department of finance in connection with a billing dispute. The Board only considers appeals where the customer has received a notice of discontinuation of water service pursuant to city code section 45-86.
- (b) Composition. The WRB shall be comprised of seven (7) members appointed by the mayor with advice and consent of city council as follows: one (1) shall be a member from the department of finance; one (1) shall be a member from the department of public works; and five (5) shall be laypersons who are city residents.
- (c) Qualifications. In the nomination and confirmation of members to serve upon the WRB, consideration should be given to a candidate's professional experience in the fields of residential property management, plumbing, civil engineering, mechanical engineering or finance. In making a recommendation, the president of council or the candidate shall provide to the mayor and city council the resume and all other submissions that establish the candidate's qualifications.
- (d) Terms of the Members. Members shall be appointed for three-year terms. No person shall serve more than nine (9) consecutive years as a member of the Board.
- (e) Vacancy. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. A member appointed to fill a vacancy shall serve for the balance of the unexpired term.
- (f) Chairperson. A member shall be elected annually by the Board to preside at all meetings of the Board, for whatever purpose called, and shall perform and exercise all of the function, powers and duties granted or assigned by applicable law to a person who presides at or chairs meetings of the Board; provided, however, the member shall not be permitted to vote on any matters brought before the Board except to break tie votes. The Board may elect another member to preside in the absence of the presiding officer, and such person shall also not be permitted to vote while presiding except to break tie votes.

- (g) Compensation. Each member of the Board, except for the two (2) city employees, shall be paid \$100.00 for attending the entirety of each Board meeting or hearing; provided, however, the total amount paid to any member shall not exceed the sum of \$2,400.00 in any one calendar year.
- (h) Budget. Each year, the Board shall be allocated an operating budget which shall be proposed by the mayor in the city's annual budget. By the end of each calendar year, the Board shall submit a proposed annual operating budget to the mayor's office for consideration at a budget hearing to be conducted by city council. The appropriation for the WRB shall be a line item in the operating budget for the department of finance.

**Sec. 2-150.92. - Duties and Power of the Board.**

- (a) The Board may establish its own rules of procedure for the accomplishment of its duties and functions provided that such rules shall not be in conflict with the city code or applicable state and federal law.
- (b) The full Board shall conduct at least four (4) regular meetings per year, no less than once per quarter, at which it shall discuss any appeals referred to it and conduct any other business.
- (c) The Board shall have the duty to resolve appeals by residential water customers from final determinations of the department of finance by conducting an appeal hearing or administratively reviewing the appeal request. The Board shall only resolve proper appeal requests; it shall not have the authority to make policy decisions.
- (d) The Board shall issue a decision letter for each appeal, which shall set forth findings of fact and conclusions as to the particular dispute. The decision letter shall be mailed or e-mailed to the customer, and submitted to the department of finance within ten (10) business days of the date of the appeal hearing or administrative review. The Board may delegate this task to any administrative personnel that assists the Board.
- (e) The Board's powers on appeal are limited to those of the underlying decisions of the department of finance. The Board shall have the power to direct the department of finance to make adjustments and/or apply credits to a water bill or sewer bill or both, for the for the following:
  - (i) Billing error credit;
  - (ii) Fee credit;

- (iii) Leak credit;
- (iv) Meter leak credit.
  
- (f) Leak credits are limited to up to two affected billing periods for each rolling 12-month period and leak credits exceeding \$5,000.00 shall be approved by resolution of the council.
  
- (g) Billing error credits, fee credits, and meter leak credits may be issued regardless of amount.
  
- (h) Notwithstanding subsection (f), the Board may direct the department of finance to issue leak credits for any period of time, regardless of the amount, where it can be demonstrated, to the satisfaction of the Board, that significant infrastructure repairs have been carried out on the property and water usage has decreased as a result of those repairs.

**Sec. 2-150.93. - Duties of Members.**

- (a) Board members shall attend all meetings and hearings. Should a board member need to be absent or arrive late for a meeting or hearing, or need to leave early, such Board member shall notify the chairperson before such meeting occurs. Otherwise, Board members are expected to adhere to meeting beginning and end times.
  
- (b) Board members shall be well-informed on issues and agenda items and seek guidance and training as needed. Such training shall be obtained from applicable city departments and/or independent third-party sources who have the appropriate subject matter experience. The cost of any training shall be included in the Board's annual budget proposal.
  
- (c) Board members shall contribute skills, knowledge, and experience when appropriate.
  
- (d) Board members shall participate in meetings and hearings in a professional and courteous manner to all those in attendance.
  
- (e) Board members shall not discriminate against other Board members or appellants.
  
- (f) Board members shall vote on all questions properly put before the Board. Board members may not abstain from voting except where a conflict of interest is deemed to exist or as otherwise required by law.

**Sec. 2-150.94. - Appeals Process, Appeal Hearings, Stay of Collection Efforts.**

- (a) A residential water customer may appeal a decision made by the department of finance as to the amount of the water or sewer bill

owed by submitting a written request for an appeal to the Board within three (3) calendar days of receiving a notice of discontinuation of water service pursuant to city code section 45-86. The appeal request form shall be approved by the Board and may be submitted to the Board by e-mail.

- (b) The form of notice of discontinuation of water service issued pursuant to city code section 45-86 shall be amended so as to clearly notify customers of their rights herein to submit an appeal to the Board.
- (c) The department of finance may not discontinue water service or initiate any other legal action to collect the full amount of a water bill, sewer bill, or both, that is the subject of an appeal, until and unless the Board has issued its decision letter to the customer.
- (d) Appeals may be heard in person, where the appellant shall be afforded the opportunity to present witnesses and documentary evidence, and cross examine employees or agents of the city as to the basis for determining the amount billed. Appellants shall have the right to be represented by their own counsel. In the alternative, appellants may waive their right to be heard in person and request that the Board conduct an administrative review of their appeal.
- (e) After an appeal request is properly submitted, administrative personnel for the Board shall schedule an appeal hearing on a first-come, first-served basis as the Board's schedule permits, unless the appellant waives it right to an in person hearing and requests an administrative review.
- (f) The Board is a citizen's appeal board and not a court of law. Hearings may be conducted by teleconference or videoconference. The Board considers the arguments and evidence of the appellant, who bears the burden of proof.
- (g) For hearings conducted via teleconference or videoconference, the Board may require appellants to provide any evidence to the Board within a reasonable time before the hearing.
- (h) When the appellant enters the hearing room or appears online, the Board shall go on the record, introducing all persons present in the room, the date and time, and the matter number. The Board shall then invite the appellant, or his or her designated representative, to present his or her case, including presenting witnesses and documentary evidence.

- (i) If, upon proper showing of need and relevance to the dispute, the appellant requests that an employee or agent of the city be present at the hearing for questioning, an employee or agent shall be produced for that purpose. Such an employee or agent is only required to respond to questions about which he or she has actual knowledge or experience in the course and scope of his or her present job position, or a past job position if the past job position is specifically relevant to the issue at hand; for instance, if an employee currently holds an administrative position but previously worked as a meter-reader and can speak to a circumstance in which he or she read a particular meter, the specifics of which are related to the appellant's appeal.
- (j) At the conclusion of the appellant's argument and presentation of evidence, the Board may call on the appellant or any of the appellant's witnesses. When the Board has completed its examination of the appellant and any witnesses, it shall inform the appellant that a decision letter will be mailed or emailed to his or her address within ten (10) business days.
- (k) Documentary evidence submitted by an appellant shall not be returned to the appellant and shall become part of the appellant's customer file. The appellant should submit copies of documents, not original documents, with his or her appeal.

**Sec. 2-150.95. - Regular Meetings of the Board.**

- (a) The most current edition of *Robert's Rules of Order* shall govern all meetings of the Board, unless otherwise provided for in these procedures.
- (b) Board members shall participate in all meetings and hearings in a professional and courteous manner.
- (c) The Board shall require a quorum to decide on all matters. A quorum shall consist of five (5) members.
- (d) Regular meetings may be conducted via teleconference or videoconference. In such case, all votes shall be taken by roll call.

**Sec. 2-150.96. - Further Appeal.**

- (a) Any party who feels aggrieved by the decision of the Board may, within thirty (30) days after receiving the Board's decision letter, appeal therefrom to the superior court of the state. The decision of the Board shall be prima facie correct and the burden of proof shall be on the appellant to show that the board acted contrary to law.

fraudulently, arbitrarily or capriciously. The appeal shall be heard on the record and proceedings of the Board, which shall be certified to the court by the Board within fifteen (15) days after service on the Board of the notice of appeal. The court may affirm, reverse or modify the decision of the Board. Either party to the appeal may appeal such decision of the superior court to the supreme court of the state; provided that such appeal is taken in accordance with the rules of procedure of the superior court of the state and the rules of the supreme court of the state.

- (b) Any appeal under this section shall operate as a stay of all further collection efforts by the department of finance, including discontinuation of water service.

**SECTION 2.** This Ordinance shall become effective immediately upon its date of passage by the City Council and approval by the Mayor.

First Reading.....May 2, 2024  
Second Reading....May 2, 2024  
Third Reading.....

Passed by City Council,

\_\_\_\_\_  
President of City Council

ATTEST: \_\_\_\_\_  
City Clerk

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2024

\_\_\_\_\_  
Mayor

**SYNOPSIS:** This Ordinance amends Chapter 2 of the City Code by creating a Water Review Board authorized to consider appeals of residential water bills. The Water Review Board will only consider appeals that have gone through the formal dispute process with the Department of Finance and where the customer has received a water service shut-off notice. Customers will be

afforded the opportunity to be heard in person, to present witnesses and documentary evidence, and to cross examine employees or agents of the City as to the basis for determining the amount billed. The Water Review Board will be authorized, where appropriate, to make adjustments and/or apply credits to a water bill or sewer bill, or both.

**FISCAL IMPACT:** [TBD]