

New York City Water Board

Regulation Number 4

Theft of Services

Effective: July 1, 2009

Statement of Basis and Purpose

This regulation is authorized by Sections 1045-g(3), g(4), g(17) and j(5) of the New York Public Authorities Law, which provide that the New York City Water Board (the “Board”) shall establish, fix, revise, charge, collect and enforce the payment of all fees, rates, rents and other service charges for the use of, or services furnished, rendered or made available by the water system and wastewater utility systems of the City of New York (the “System”) and that rules and regulations of the Board may provide for the enforcement of fees and service charges and the discontinuance or disconnection of the supply of water or the provision of sewerage service, or both, for non-payment of charges imposed by the Board.

Pursuant to an Agreement of Lease, dated as of July 1, 1985, as amended (as so amended, the “Lease”), between the City of New York (the “City”) and the Board, the City leased the System to the Board. The Lease provides that the City shall continue to operate and maintain such System and to enforce the rules and regulations of the Board and of the City relating to the use thereof. This function is performed by the New York City Department of Environmental Protection, an executive agency of the City (“DEP”).

It is evident that when a customer receives System services it should be billed a fair and equitable amount in proportion to the quantity of services provided and received and in proportion to other users of the System. When actions taken by a customer interfere with the accurate measurement of service usage to the extent that the usage measurement devices reflect less than the quantity of services actually received and the charges rendered for such usage accordingly are understated, a theft of services has occurred because a quantity of services actually received by the customer has neither been charged nor paid. The theft of services by a customer, whether by direct action or by the toleration of actions taken by others, negatively affects the Board’s ability to levy and collect rates and charges in a fair and equitable manner from all properties connected to the System and imposes additional costs on every responsible customer of the System. This Regulation is intended to recover those costs directly from the parties responsible for or benefiting from the impairment of System revenue. In addition, water and sewer charges are a lien on the premises served and all charges issued pursuant to this

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regulation will, if unpaid, constitute a lien on the property served and a charge against the owner thereof.

When System services are tampered with, a reasonable inference can be made that the party receiving the tampered service received more services than was previously charged and collected. Therefore, the charges imposed for the period of suspected theft should be in excess of the average recorded usage for the property. Because theft of service implies impeding the ability of service usage measurement devices to record actual usage, it is impossible to know with certainty the precise quantity of services received and stolen. In order to properly recover the appropriate revenue a reasonable approximation of the usage level must be made. This estimation should serve to both recover the revenue associated with the amount of services which could have been received and at the same time act as a rational disincentive to other and future thefts of services. Accordingly, the Board will impose an attributed consumption charge that will be equivalent generally to usage by high consumers in the building usage class associated with the property in question for the applicable period of prospective and retroactive billing. In addition, this Regulation will impose charges to recover the fixed costs associated with investigating and determining that services and revenue were compromised and that the tampered service has been corrected by imposing a fixed account administration fee on each account where a determination of theft of services has been made by DEP.

As further deterrents to theft of services, the Board and DEP will report instances of tampering with water delivery or measurement devices by licensed plumbers to the licensing board of the Department of Buildings or other appropriate agencies. The Board and DEP may also refer appropriate cases to the District Attorney of the County in which the property is located for prosecution. The Board also authorizes DEP to terminate service to those properties where a theft of services continues in non-compliance with a determination of theft of services and a theft of services cease and desist order.

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Section 1. Definitions

As used in this Regulation, the following terms shall have the respective meanings ascribed to them below:

- (1) “Account Administration Fee” is the fee authorized pursuant to the Rate Schedule upon DEP’s issuance of a Determination of a Theft of Services.
- (2) “Attributed Consumption Charges” is the charge authorized pursuant to the Rate Schedule in addition to the Account Administration Fee upon DEP’s issuance of a Determination of a Theft of Services.
- (3) “Authorized Representative” means any individual or organization who has an original ‘Letter of Authorization’ (“LOA”) on file with DEP, signed by the owner of the premises and notarized, designating that individual or organization as the Authorized Representative. If such LOA fails to state a specific end date, DEP will deem it to expire one year from the date of notarization. A valid Letter of Authorization must contain a statement that the owner hereby rescinds any previously issued LOA. In cases where an owner has authorized multiple representatives, DEP shall deem the latest dated LOA to be valid, superseding any earlier dated LOA.
- (4) “Board” means the New York City Water Board.
- (5) “Charges” means fees, rates, rents or other charges imposed by the Board and/or DEP pursuant to the Rate Schedule.
- (6) “City” means The City of New York.
- (7) “Customer” means a current property owner or Authorized Representative of a property owner.
- (8) “Days” unless otherwise stated means calendar days.
- (9) “Demand for Access” means the issuance of a notice by DEP to a Customer which requires the Customer to provide and/or facilitate access to the Customer’s premises to DEP at a time and in a manner acceptable to DEP.

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- (10) “Denial of Access” means a failure of the Customer to provide and/or facilitate access to DEP as required in the Demand for Access.
- (11) “DEP” means the New York City Department of Environmental Protection or any authorized agents of DEP.
- (12) “Deputy Commissioner” means the Deputy Commissioner of the DEP Bureau of Customer Services, or designee.
- (13) “Determination of Theft of Services” means DEP’s written notice of a finding of a Theft of Services.
- (14) “Executive Director” means the Executive Director of the Board.
- (15) “Rate Schedule” means the Board’s effective Water and Wastewater Rate Schedule.
- (16) “System” means the Water Supply System and the Wastewater System collectively.
- (17) “Termination of Service”, “Terminate Service”, “Terminating Service”, “Terminate”, and all such similar word forms mean the discontinuance or disconnection of the supply of water and/or the provision of sewer service to any Customer.
- (18) “Theft of Service” means such circumstances as set forth in Section 3.1 of this Regulation.
- (19) “Theft of Services Cease and Desist Order” means the notice provided to a Customer by DEP stating that the Customer must correct the plumbing condition resulting in an actual or potential theft of services condition at the premises within three (3) days.
- (20) “Water Board” means the New York City Water Board.
- (21) “Water Supply System” and “Wastewater System” mean, respectively, the water system and wastewater system under the control and jurisdiction of the Board.

Section 2. General Provisions

2.1 No Alteration of Rights, Powers and Privileges of DEP and Board.

Nothing contained herein shall be deemed to alter, amend or modify the rights, powers, or privileges of DEP or the Board otherwise conferred by law, or to subject DEP or the Board to the jurisdiction of any other governmental agency, authority, board, bureau, department or other body.

2.2 Delivery of Notices.

Unless otherwise specified, delivery of notices as provided herein shall be made by regular mail.

2.3 Termination of Service due to Public Health Concerns.

Nothing contained herein is intended to, nor should it be interpreted as, limiting any powers of DEP to protect the health, safety and welfare of the citizens of the City by entering a premises without notice to prevent a contamination of the Water Supply System or other threat to the public health, safety and welfare, including, but not limited to, situations involving a cross-connection of a property's plumbing system, back-flow to the Water Supply System or a leaking water consuming fixture, water supply or sewer transport pipe.

Section 3. Determination of Theft of Services

3.1 Definition of Theft of Services.

The Customer is responsible for safeguarding the meter and meter appurtenances and ensuring the integrity of the property's plumbing system. DEP shall make a Determination of Theft of Services upon a finding of any of the following in connection with System services:

- (a) Unauthorized bypass of the meter;
- (b) Tampering with the meter;
- (c) Breaking, picking or damaging the meter seal;
- (d) Removing, disabling or adjusting meter registers;
- (e) Removing the meter or removing and installing the meter backwards;
- (f) Moving the meter without permission;
- (g) Extending authorized flat-rate residential services to any commercial users;

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- (h) Extending authorized flat-rate residential services to any additional unauthorized residential services;
- (i) Unauthorized connections to water lines, valves or other appurtenances not owned by the Customer;
- (j) Tampering with any equipment designed to supply or to prevent the supply of any System services either to the public or to the Customer's premises;
- (k) Use of sprinkler system water service for any purpose other than fire protection;
- (l) Taking water from hydrants for any unauthorized purpose;
- (m) Obstructing, defacing or destroying the meter to prevent a meter reading;
- (n) Any unauthorized direct or indirect connection to the sewer system; or
- (o) Any other action or inaction that may reasonably result in costs to the System or the loss of revenue to the Board.

3.2 Observation of a Theft of Services.

If DEP observes a Theft of Service, DEP shall issue a Determination of Theft of Services and a Theft of Services Cease and Desist Order. This Determination and Order shall be sent by certified mail to the Customer. Upon making this Determination, DEP shall impose the Account Administration Fee and Attributed Consumption Charge as indicated in the Rate Schedule. The Theft of Services Cease and Desist Order shall require the Customer to correct any unlawful plumbing arrangement within three (3) days of the notice date and shall require the Customer to promptly provide and/or facilitate access to the premises for a confirmation inspection at a time and in a manner acceptable to DEP.

3.3 Potential Theft of Services.

DEP may suspect a potential Theft of Services in any situation with a reasonable potential for a Theft of Services, including but not limited to stagnant or low meter readings for the property type or a Denial of Access. If evidence suggests the potential of Theft of Services, DEP may issue to the Customer a Demand for Access to the meter and the premises. The Demand for Access notice shall be sent by certified mail to the Customer and shall provide the Customer with information on how to arrange an inspection with DEP. The Customer must provide and/or facilitate access within three (3) days of the notice.

- (a) Customer Provides Access – No Theft of Services.

If the Customer provides and/or facilitates access to the premises within three (3) days of the notice and the inspection confirms there is no Theft of Services or

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potential Theft of Services, the account will not be subject to the Theft of Services Account Administration Fee and Attributed Consumption Charge, but may be subject to any upward or downward adjustment of charges otherwise authorized pursuant to the Rate Schedule.

(b) Customer Provides Access – Determination of Theft of Services.

If the Customer provides and/or facilitates access to the premises within three (3) days of the Demand for Access notice and the inspection confirms a Theft of Services, DEP shall issue a Determination of Theft of Services and a Theft of Services Cease and Desist Order pursuant to Section 3.2.

(c) Customer Does Not Provide Access.

If access is not provided and/or facilitated within three (3) days of the date of the Demand for Access notice, DEP is authorized to pursue all enforcement actions authorized by Board Regulations and the Rate Schedule.

Section 4. Fees and Charges

4.1 Account Administration Fee and Attributed Consumption Charges.

DEP shall impose the Theft of Services Account Administration Fee and Attributed Consumption Charges as indicated in the Rate Schedule in each case where DEP has issued a Determination of Theft of Services pursuant to this Regulation.

4.2 Meter Repair or Replacement.

Pursuant to the Rate Schedule, the Customer is responsible for the actual replacement or repair cost to any meter or DEP equipment that has been damaged.

4.3 Customer Appeal of Fees or Charges.

Customers that disagree with the imposition of the Account Administration Fee or Attributed Consumption Charges imposed pursuant to this Regulation may utilize the Board's appeal process as provided for in the Rate Schedule.

Section 5. Enforcement

5.1 Liable Charges.

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All Theft of Service charges and fees are Charges and if the not paid are a lien on the premises served pursuant to Section 1045-j of the New York State Public Authorities Law.

5.2 Termination of Service for Denial of Access or Failure to Comply with a Theft of Services Cease and Desist Order.

If a Customer fails to provide and/or facilitate access to the meter pursuant to a Demand for Access or fails to comply with a Theft of Services Cease and Desist Order, DEP may commence Termination of Service pursuant to the Board's Regulation Number 3, Discontinuance of Water Supply and/or Sewer Service for Denial of Access.