



From: Stephanie O'Hara, MTAS Legal Consultant
Date: October 6, 2022
Re: Customer refusal to repair sewer lines on their private property

You have shared that after completing a round of smoke testing on the sewer system, a few customers with leaks on their private property have refused to complete the repairs on the wastewater lines. For the purposes of this opinion, I will assume that these leaks are allowing groundwater or stormwater into the wastewater system. You have asked what authority the town has to require the repairs in a reasonable amount of time. Based on title 18 of the municipal code, the town's water and wastewater was established under title 7, chapter 35, part 4 of the Tennessee Code. Tennessee Code Annotated § 7-35-401 states:

(a) Every incorporated city and town in this state is authorized and empowered to own, acquire, construct, extend, equip, operate and maintain within or without the corporate limits of such city or town a waterworks system or a sewerage system, to provide water or sewerage service and to charge for such service.

Under the authority to maintain the wastewater system in Tennessee Code Annotated § 7-35-401, the Town Municipal Code regulates the discharge into the wastewater system and includes the following prohibition:

18-207. Discharge regulations. (1) General discharge prohibitions. No user shall contribute or cause to be contributed, directly or indirectly, any pollutant or wastewater which will interfere with the operation and performance of the POTW. These general prohibitions apply to all such users of a POTW whether or not the user is subject to national categorical pretreatment standards or any other national, state, or local pretreatment standards or requirements. A user may not contribute the following substances to any POTW:

...

(o) Any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer. Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers, or to a natural outlet approved by the town and the Tennessee Department of Health. Industrial cooling water or unpolluted process waters may be discharged on approval of the town and the Tennessee Department of Health, to a storm sewer or natural outlet.

Municipal Code § 18-203(4) provides that each property owner or user is responsible for maintenance:

(4) Maintenance of building sewers. Each individual property owner or user of the POTW shall be entirely responsible for the maintenance which will include repair or replacement of the building sewer as deemed necessary by the health officer to meet specifications of the town.

Municipal Code § 18-117 states that the town has the authority to disconnect water and sewer service for violating the regulations:

18-117. Discontinuance or refusal of service. The town shall have the right to discontinue water and/or sewer service or to refuse to connect service for a violation of, or a failure to comply with, any of the following:

- (1) These rules and regulations.
- (2) The customer's application for service.
- (3) The customer's contract for service.

Such right to discontinue service shall apply to all service received through a single connection or service, even though more than one (1) customer or tenant is furnished service therefrom, and even though the delinquency or violation is limited to only one such customer or tenant. Discontinuance of service by the town for any cause stated in these rules and regulations shall not release the customer from liability for service already received or from liability for payments that thereafter become due under other provisions of the customer's contract. No service shall be discontinued unless the customer is given reasonable notice in advance of such impending action and the reason therefor. The customer shall also be notified of his right to a hearing prior to such disconnection if he disputes the reason therefor and requests such hearing by the date specified in the notice. When a hearing is requested, the customer shall have the right to have a representative at such hearing and shall be entitled to testify and to present witnesses on his behalf. Also, when such hearing has been requested, the customer's service shall not be terminated until a final decision is reached by the hearing committee and the customer is notified of that decision.

The enforcement provision for wastewater is found in sections 18-209 and 18-210 of the town's municipal code. Those sections are lengthy and should be read in full. You should also ensure that this is the latest adopted wastewater ordinance.

In addition, Tennessee Code Annotated § 7-35-401(c)(1) prohibits a municipality utility from bidding on or constructing any projects for a private purpose. However,

Tennessee Code Annotated § 7-35-401(c)(1)(B)(iii) excludes the following from the definition of “project for a private purpose”:

(iii) “Project for a private purpose” does not include the renewal or replacement of individual water or sewage lines behind a meter or onto private property when such rehabilitative maintenance or construction is deemed necessary by the municipal corporation because excessive infiltration and inflow from groundwater or rainwater is resulting in sanitary sewer overflows or other serious health or system capacity issues. Municipal corporations are authorized, but not required, to maintain or construct individual lines for this purpose if the property owner consents and agrees to hold the municipal corporation harmless for the work.

The Tennessee Attorney General has opined on the effect of this language originally adopted in 2007:

We further note that Tenn. Code Ann. § 7-35-401 was amended in 2007 to include the following provision in subsection(c)(1)(D):

(D) “Project for a private purpose” does not include the renewal or replacement of individual water or sewage lines behind a meter or onto private property when such rehabilitative maintenance or construction is deemed necessary by the municipal corporation because excessive infiltration and inflow from groundwater or rainwater is resulting in sanitary sewer overflows or other serious health or system capacity issues. Municipal corporations are authorized, but not required, to maintain or construct individual lines for this purpose if the property owner consents and agrees to hold the municipal corporation harmless for the work.

2007 Tenn. Public Acts, Ch. 123 (Emphasis supplied). The provisions of Tenn. Code Ann. § 7-35-401(c)(1)(D), therefore, effectively eliminate the need for a utility easement when the objective is to reduce sanitary sewer overflows, as long as the private property owner provides consent and agrees to hold the municipality harmless for the work. Once the rehabilitative construction is completed, each affected private property owner would be responsible in the future for maintaining that portion of the sanitary sewer connection that is located on the property of the owner. Tenn. Code Ann. § 7-35-201(2) and § 68-22 I-209(a)(2).

Tenn. Op. Att’y Gen. No. 08-185 (Dec. 12, 2008).

From a practical standpoint, Brett Ward, MTAS Utility Operations Consultant who specializes in wastewater, shared that this can be expensive work, and a whole new sewer service line could be \$3,000. He further shared that if it is a user who simply cannot afford the cost, there may be service groups or churches who would likely do the work as a service project.

After reviewing the options for enforcement, I recommend that the town seek the town attorney's review of the enforcement options and his/her advice be sought on this issue prior to the town proceeding.