

Utilities

3/18/2020

What information is available in relation to COVID-19 for water utilities?

The Texas Commission on Environmental Quality just shared the following for public water system operators.

TCEQ has prepared a centralized [website](#) to make resources and guidance readily available. A drinking water-related [webpage](#) also provides steps to minimize impacts to your system due to the COVID-19 outbreak. It contains up-to-date information concerning drinking water compliance, technical assistance, public water system guidance, and other available resources related to drinking water.

State and federal regulations have established treatment requirements for public water systems that prevent waterborne pathogens, such as viruses, from contaminating drinking water. COVID-19 is a type of virus that is particularly susceptible to disinfection and standard treatment and disinfection processes are expected to be effective. The TCEQ is emphasizing the importance of maintaining adequate disinfectant treatment at your public water system in accordance with TCEQ's rules (minimum 0.2 mg/L free chlorine or 0.5 mg/L chloramine measured as total chlorine).

If you have questions or need immediate assistance, please contact the [TCEQ regional office](#) that serves your county or call the TCEQ's emergency hotline at 1-888-777-3186.

- For technical assistance with treatment or repair, email at PLANDIST@tceq.texas.gov.
- For assistance with chemical compliance sampling, contact the Drinking Water Quality Team at PWSChem@tceq.texas.gov.
- For assistance with bacteriological monitoring or well disinfection, contact the Drinking Water Assessment Team at TCRData@tceq.texas.gov.
- For emergency equipment or supplies, please contact your local emergency manager (e.g., judge, mayor, or appointed emergency coordinator).

Additional assistance is also available through the Texas Water/Wastewater Agency Response Network (TXWARN - 866-989-9276 or info@txwarn.org), whose mission is to support and promote statewide disaster response and mutual aid assistance for public and private water and wastewater utilities. This is a free service.

Information on state emergency management, including the state District Coordinator is through the Texas Division of Emergency Management and can be found at: <https://tdem.texas.gov/field-response/>.

3/23/2020

Has TCEQ extended the deadlines for occupational licenses renewal?

Yes. In response to the disaster declaration issued by the governor, [TCEQ is extending the expiration dates](#) of all occupational licenses expiring in March and April of 2020 by 30 days. These occupational licenses include the following:

- Backflow Prevention Assembly Tester (BPAT)
- Customer Service Inspector (CSI)
- Landscape Irrigator, Technician and Inspector
- Leaking Petroleum Storage Tank (LPST) Corrective Action Specialist and Project Manager
- Municipal Solid Waste (MSW) Operator
- On-Site Sewage Facilities (OSSFs), including Septic Tanks
- Smoke School: Visible Emissions Evaluators
- Underground Storage Tank Contractors and On-Site Supervisors
- Wastewater Collection Operators
- Wastewater Operators
- Water Operators
- Water System Operating Company
- Water Treatment Specialist (WTS).

Has TCEQ extended the deadlines for the continuing education requirements for renewal of occupational licenses?

No. TCEQ is encouraging anyone with continuing education requirements to seek [online training opportunities](#) when possible.

Has TCEQ canceled occupational license exams?

Yes. In the interest of safety, paper exams have been cancelled through May 2020. In addition, computer-based testing (CBT) is not currently available. Therefore, TCEQ is extending the validity of new applications until testing is available. If you have an approved application on file, you will not be required to reapply and pay the application fee again.

For other questions or concerns, please email licenses@tceq.texas.gov.

3/24/2020

Can a city postpone utility bill payments and waive disconnection of service for its municipally-owned utility (MOU) in response to COVID-19?

Yes. Cities have inherent authority to regulate their utility in “a manner that protects the interests of” the city. Tex. Loc. Gov’t Code § 552.001(b). This inherent authority arguably includes postponing utility bill payments and waiving disconnection of service and related fees.

A city isn’t required by law to disconnect customers. It can choose to do so after providing due process to its customers, including notice and opportunity for a hearing, before disconnecting utility service. A city can choose to waive, terminate, or modify that process.

How can a city postpone utility payments and refuse to disconnect service for its MOU?

A city has several options available. A city council can vote to modify existing policies and postpone payments and waive disconnection. If the council has delegated that authority to another individual, such as a mayor or city manager, that individual could postpone payments and waive disconnection. The city should check its local ordinances and policies to determine if and how authority has been delegated.

Alternatively, the city could provide for postponing payments and waiving disconnection in its emergency management plan. Each city is required to maintain its own emergency management agency or participate in a local interjurisdictional emergency management agency that has an emergency management plan. *See* Tex. Gov't Code § 418.106(a); 37 TAC § 7.1. The purpose of an emergency management plan is to provide for disaster mitigation, preparedness, response, and recovery. *See* Tex. Gov't Code § 418.106(a). Each emergency management plan must be signed by the mayor, and must include, at a minimum: (1) wage, price, and rent controls and other economic stabilization methods; (2) curfews and other movement restrictions; (3) limitations on utility use in areas affected by a disaster; and (4) rules governing entrance to and exit from the affected area, and other security measures. *Id.* § 418.106(b); 37 TAC § 7.12. Under Section 418.106(b)(1), the plan could postpone utility payments and waive disconnection until the disaster has ended, for example.

When the mayor declares a local disaster, it activates the appropriate provisions of the emergency management plan, including any provisions the city adopted suspending utility payments and disconnection for the duration of the disaster. Tex. Gov't Code § 418.108(c).

If a city does not have provisions for utility payment deferral and waiving disconnection in its emergency management plan, it may amend the emergency management plan to provide for it. See also next question.

Can a mayor postpone utility payments under a local disaster declaration?

Arguably. In a disaster, the mayor serves as the governor's designated agent in the administration and supervision of disaster management duties set out in state law and may exercise the same powers granted to the governor under the Texas Disaster Act (Chapter 418 of the Government Code) on an appropriate local level. *Id.* § 418.1015(b). The governor may use all available resources of state government and of political subdivisions that are reasonably necessary to cope with a disaster. *Id.* § 418.017.

A mayor can declare a local disaster under Government Code Section 418.108. Using his or her authority acting as the governor's designated agent and Section 418.017, a mayor probably could suspend utility payments and waive disconnections during a declared local disaster. *See also id.* at § 418.1075.

Can a city or mayor waive payment of utility bills in response to COVID-19?

Probably not. Generally, the Texas Constitution prohibits a city from giving a gratuitous donation or gift. TEX. CONST. arts. III, § 52(a) (providing the legislature shall have no power to authorize any city “to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever,”); XI, § 3 (providing no city “shall hereafter become a subscriber to the capital of any private corporation or association, or make any appropriation or donation to the same, or in anywise loan its credit. . . .”).

A city can use public funds to make a donation under limited circumstances. The Texas Supreme Court has held that “[a] political subdivision’s paying public money is not ‘gratuitous’ if the political subdivision receives return consideration.” *Texas Mun. League Intergovernmental Risk Pool v. Tex. Worker’s Comp. Comm’n*, 74 S.W.3d 377, 383 (Tex. 2002). Before making a gift or donation to a private entity, the city council should determine that: (1) the conveyance will serve a predominantly public purpose of the city; (2) the city will retain sufficient control to ensure the public purpose is carried out; and (3) the city will receive return benefit. *Id.*

Additionally, the rates charged by an MOU must be equal and uniform. Tex. Gov’t Code § 1502.057(b). Furthermore, a municipality may not allow any free service except for municipal public schools or buildings and institutions operated by the municipality. *Id.* § 1502.057(b).

A city also should check with bond counsel and check bond covenants before offering to waive utility payments. The bond may require that the MOU does not provide free service.

Any city considering waiving utility bills instead of delaying or postponing them should consult with its city attorney and bond counsel prior to doing so.

3/27/2020

Has the Public Utility Commission (PUC) suspended any rules in response to coronavirus?

Yes. The PUC issued an [order](#) on March 16, 2020, suspending three things: (1) any requirements that filings at the PUC be in person; (2) provisions in chapters 22, 24, 25, and 26 of title 16 of the Texas Administrative Code requiring that filings be made in a certain amount of time or that the presiding office act by a certain date, unless that requirement is also found in statute; and (3) provisions in chapters 22, 24, 25, and 26 of title 16 of the Texas Administrative Code requiring that the Commission act by a certain date, unless that requirement is also found in statute.

What deadlines did the PUC order extend for cities?

Most PUC rules do not apply to municipally-owned utilities (MOUs), but some deadlines will apply to certificates of convenience and necessity (CCNs). The PUC extended the deadlines in chapters [22](#), [24](#), [25](#), and [26](#) of title 16 of the Texas Administrative Code unless there is a deadline in state statutes. The order suspends most deadlines to respond to proceedings at the PUC.

However, certain deadlines remain in place because they are in the statutes, not just the PUC rules. For example, if a city receives service from a water utility and the utility notifies the city of a rate change, the city has only a certain period per statute to file a complaint with the utility to initiate a hearing. See Water Code § 13.1871(i). Additionally, when a city annexes an area

already served by a retail public utility, the city still has a deadline to reach an agreement with the retail public utility regarding service to the area. See id. § 13.255. There are other deadlines in Section 13.255 regarding service of an annexed area that are also still in effect.

A city with proceedings before the PUC should consult with its attorney to make sure there are no statutory deadlines still in effect.

Did the PUC temporarily suspend rules allowing the utility industry to disconnect service for non-payment?

Yes. On March 26th, the PUC temporarily suspended a series of rules. First, the PUC ordered Retail Electric Providers (REPs) to suspend disconnections of service for non-payment. The PUC also created the COVID-19 Electricity Relief Program, a funding mechanism through which REPs may recover a reasonable portion of the cost of providing those uninterrupted services to customers facing financial hardship.

The PUC ordered electricity providers outside the ERCOT grid (namely Entergy, El Paso Electric, SPS and SWEPCO) to suspend disconnections for non-payment. The commission also ordered PUC-regulated water and sewer utilities across the state immediately to suspend disconnections for non-payment.

More information about the PUC's order is available [here](#). The PUC has a Frequently Asked Questions document on its order [here](#).

Note that this suspension does not apply to an MOU. An MOU can make the decision to suspend disconnections. The League has [previously prepared Q&As](#) on that subject.

4/3/2020

Has TCEQ provided any additional updates in response to COVID-19?

Yes. On Thursday, TCEQ released [this website](#), which contains various regulatory guidance from TCEQ.

Does TCEQ have guidance for medical waste for solid waste disposal utilities?

Yes. TCEQ released [guidance](#) for disposal of medical waste as a reminder. The procedure to dispose of medical waste remains the same. The Center for Disease Control and Prevention (CDC) and the World Health Organization (WHO) recommend that the management of waste materials related to COVID-19 from healthcare facilities should be performed in accordance with routine handling procedures for medical waste (for example: lab specimens, sharps, cleaning cloths, wipes, single-use microfiber cloths, etc.).

Has TCEQ extended deadlines for regulated entities?

Yes. TCEQ extended certain deadlines for reporting for regulatory entities. The extension affects the following entities:

- Point Source Emissions Inventory Reporting
- Mass Emissions Cap and Trade (MECT) and Highly Reactive Volatile Organic Compound Emissions Cap and Trade (HECT) Annual Compliance Reporting
- Air Permitting Public Notice Signage Requirements
- Stormwater General Permit Reporting
- TPDES Individual Permit Reporting

More information is available [here](#)

4/17/2020

Has the Environmental Protection Agency created a website with resources for COVID-19?

Yes. The EPA has created a [website](#) with COVID-19 resources for state, local, and tribal agencies and associations. It includes links to information about items of interest to cities like [water utility resources](#) and [frequent questions on grant issues in response to coronavirus](#).

4/20/2020

Has the FCC taken any action related to broadband deployment during the COVID-19 crisis?

Yes. Federal Communications Commission Chairman Ajit Pai has [announced](#) additional charges for the Disaster Response and Recovery Working Group of the [Broadband Deployment Advisory Committee](#) (BDAC). Specifically, the working group “will assist the BDAC in documenting the various strategies and solutions that stakeholders are developing and implementing in real time to address the deployment-related challenges presented by the coronavirus (COVID-19) pandemic.” Chairman Pai is adding additional positions to the working group, and the Texas Coalition of Cities for Utilities Issues and TML are recommending Kevin Pagan, McAllen city attorney and Texas City Attorneys Association board member, for an appointment to the group. Even if a city representative is appointed to the group, the FCC’s recent actions have heavily-favored industry deployment, especially in the area of small cell nodes and related equipment in city rights-of-way.

Has the Public Utility Commission released more information on utility disconnections?

Yes. The PUC released a [new FAQ](#). The following two questions, reprinted verbatim, are most relevant to cities:

- Does the PUC’s disconnection for non-payment directive apply to communities, municipalities, districts, and non-profit water supply corporations that provide retail water and sewer utility service?

No. The Commission’s order applies only to IOUs residing outside the corporate limits of a municipality because they have original jurisdiction over their retail water and sewer rates. The governing body or elected board of a county, municipality, district and non-profit water supply and sewer service corporation (WSC) is responsible for making its own business decisions regarding the disconnection of service for nonpayment during the COVID-19 crisis.

-What should counties, municipalities, districts, and non-profit WSCs do to respond to customers regarding water and sewer utility service in response to the COVID-19 crisis?

We encourage these entities to review the Commission’s order on the direction given to IOUs when making their own decision regarding disconnections for nonpayment during the COVID-19 crisis. Many of these entities have decided to not disconnect customers for non-payment during this time; however, we have not heard from all of them. If you are one of their customers, you are encouraged to contact them with your questions and concerns.

5/20/2020

Has the Public Utility Commission (PUC) issued any additional orders regarding utilities?

Yes. On May 14, the PUC voted to continue the suspension of disconnections for non-payment by vertically integrated electric utilities outside of ERCOT (namely Entergy, El Paso Electric, SPS and SWEPCO) and water and sewer utilities regulated by the PUC.

Do the PUC orders apply to municipally-owned utilities?

No, but the PUC is urging MOUs to “review the Commission’s order on the direction given to IOUs when making their own decision regarding disconnections for nonpayment during the COVID-19 crisis” in a [Q&A](#) on its website. The League previously reported on this question [here](#).

10/27/2020

What’s the status of utility disconnections for municipally-owned utilities (MOU)?

An MOU has always been able to disconnect its customers for non-payment, even during the pandemic. However, many cities have chosen not to disconnect their customers in line with guidance from the Public Utility Commission (PUC).

The PUC issued orders in April 2020 that suspended disconnections, but those orders did not apply to MOUs. The PUC did urge MOUs to “review the Commission’s order on the direction given to [investor-owned utilities] when making their own decision regarding disconnections for nonpayment during the COVID19 crisis” in a [Q&A](#) on its website. [The last PUC order](#) suspending disconnections expired on June 13, 2020.

Do cities have options to assist with unpaid utility bills?

If a city received funding through the Coronavirus Relief Fund (CRF) under the federal CARES Act, it may be able to set up a grant program for individuals enduring an economic hardship to continue receiving essential services. The [U.S. Department of Treasury Guidance](#) allows a city to use CRF revenue on grant funding to assist certain individuals with their utility bills:

“27. May Fund payments be used to replace foregone utility fees? If not, can Fund payments be used as a direct subsidy payment to all utility account holders?”

Fund payments may not be used for government revenue replacement, including the replacement of unpaid utility fees. Fund payments may be used for subsidy payments to electricity account holders to the extent that the subsidy payments are deemed by the recipient to be necessary expenditures incurred due to the COVID-19 public health emergency and meet the other criteria of section 601(d) of the Social Security Act outlined in the Guidance. For example, if determined to be a necessary expenditure, a government could provide grants to individuals facing economic hardship to allow them to pay their utility fees and thereby continue to receive essential services.”

Similar guidance can be found in the Texas Division on Emergency Management’s [CRF FAQ](#).

Still, the Texas Constitution prohibits a city from giving a gratuitous donation or gift. TEX. CONST. arts. III, § 52(a); XI, § 3. A city can use public funds to make a donation under limited circumstances. The Texas Supreme Court has held that “[a] political subdivision’s paying public money is not ‘gratuitous’ if the political subdivision receives return consideration.” *Texas Mun. League Intergovernmental Risk Pool v. Tex. Worker’s Comp. Comm’n*, 74 S.W.3d 377, 383 (Tex. 2002). Before making a gift or donation to a private entity, the city council should determine that: (1) the conveyance will serve a predominantly public purpose of the city; (2) the city will retain sufficient control to ensure the public purpose is carried out; and (3) the city will receive return benefit. *Id.*

A city considering setting up a grant program to assist with unpaid utility bills should consult with its local legal counsel.

1/12/2021

What do Texas cities need to know about the new federal Emergency Rental Assistance Program?

In its most recent COVID-19 stimulus package, Congress allocated \$25 billion towards a new Emergency Rental Assistance (ERA) program. Generally speaking, ERA funds are designed to assist households unable to pay rent or utilities due to the COVID-19 pandemic.

ERA payments will be made directly to qualifying Texas cities and counties with populations exceeding 200,000 ([list](#)). In order to receive direct ERA funding, cities and counties over 200,000 population must submit to the U.S Department of Treasury completed payment information and a signed acceptance of award terms form not later than **11:59 p.m. EDT on**

January 12, 2021, to ensure payments are made within the 30-day period specified by the statute. Treasury guidance, including the necessary paperwork, can be found [here](#).

Texas cities with populations of 200,000 and less will ultimately need to work with state and county government, as applicable, to receive pass-through ERA funding. (Note: Treasury guidance [shows](#) that Texas state government will receive roughly \$1.95 billion in ERA funding.) The League will provide information on how cities under 200,000 population can access ERA funding from the state when it becomes available.