

Moratorium on Termination of Residential Utility Service

September 8, 2020

As NYCOM reported to you in a previous legislative update, on June 17, 2020, Governor Cuomo signed into law [Chapter 108 of the Laws of 2020](#) which amended the Public Service Law to prevent public utilities or municipalities from terminating electric, gas, steam, telephone, or water service to residential customers for failing to pay service charges or overdue fees during the COVID-19 emergency. Additionally, service termination is also prohibited for 180 days after the COVID-19 state of emergency expires for those residential customers who have experienced “a change in financial circumstances due to the COVID-19 state of emergency.” In these instances, the municipality or public utility is required to provide such residential customers the right to enter into, or restructure, a deferred payment agreement without the requirement of a down payment, or the imposition of late fees or penalties. It should be noted that residential customers who have experienced a change in financial circumstances do not have to enter into a deferred payment agreement in order to be protected from service termination during the 180-day period.

Notice Requirements

To ensure residential customers are aware of the new law, municipalities and utility providers are obligated to provide notice to residential customers in writing included with a utility or water bill and/or electronically if the customer receives such statements via email. Cities and villages providing water or other utility services must also “make reasonable efforts to contact customers who have demonstrated a change in financial circumstance due to the COVID-19 state of emergency” in order to offer such customers a deferred payment agreement. Although the statute does not describe what constitutes a “reasonable effort,” based upon discussions with the Department of Public Service (DPS), NYCOM has determined that, in addition to personal outreach or contact, such efforts would include posting information on the municipal website, social media pages, and bulletin boards.

Determining a Customer’s Change in Financial Circumstances

The DPS has issued [guidance](#) on the new law which addresses, among other provisions, a customer’s “change in financial circumstances.” Such guidance states that the utility provider may request and must accept self-certified statements of financial hardship and that such certification include the following attestation: “I attest that due to the COVID-19 state of emergency, which began on March 7, 2020, I have experienced a change in financial circumstances.” While a municipality does not have to require residential customers to contact the municipality in order to qualify for these protections, if a municipality chooses to do so, NYCOM recommends that you adopt a policy that incorporates the self-certification and attestation components prescribed by the DPS to ensure consistency as to when the financial hardship provisions may be triggered by a resident.

Recovering Lost Revenue After the State of Emergency

Implementation of the statute’s provisions does not prohibit a city or village from recovering lost or deferred revenues after the state of emergency expires, provided that recovery of the revenues is consistent with the other provisions of the statute. However, because municipalities are required to provide residents who have “experienced a change in financial circumstances” with the right to enter into a deferred payment agreement without the requirement of a down payment, late fees, or penalties, no late fees for nonpayment should be enforced on a customer who demonstrates financial hardship through the method determined by the municipal water or utility service and enters into a deferred payment plan. Additionally, if a resident enters into such a payment plan, the municipality will have to delay releveling the unpaid charges until after the payment plan’s term expires.